

# Sexual Offences Definitive Guideline

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# Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 1 April 2014.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed on or after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

## Structure, ranges and starting points

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified different *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. **Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases.** Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on ancillary orders is set out at Annex A on page 153. Information on historic offences is set out at Annexes B and C on pages 155 and 157.

Information on community orders and fine bands is set out at Annex D on page 160.



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# Rape

## Sexual Offences Act 2003 (section 1)

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**Triable only on indictment**

**Maximum: Life imprisonment**

**Offence range: 4 – 19 years' custody**

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

**Offences may be of such severity, for example involving a campaign of rape, that sentences of 20 years and above may be appropriate.**

| Harm              |   | Culpability  |
|-------------------|---|--|
| <b>Category 1</b> | The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors <b>may</b> elevate to category 1   | <b>A</b>   |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Pregnancy or STI as a consequence of offence</li> <li>Additional degradation/humiliation</li> <li>Abduction</li> <li>Prolonged detention/sustained incident</li> <li>Violence or threats of violence (beyond that which is inherent in the offence)</li> <li>Forced/uninvited entry into victim's home</li> <li>Victim is particularly vulnerable due to personal circumstances*</li> </ul> <p>* for children under 13 please refer to the guideline on page 27</p> | Significant degree of planning<br>Offender acts together with others to commit the offence<br>Use of alcohol/drugs on victim to facilitate the offence<br>Abuse of trust<br>Previous violence against victim<br>Offence committed in course of burglary<br>Recording of the offence<br>Commercial exploitation and/or motivation<br>Offence racially or religiously aggravated<br>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present   | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
|                   |   | <b>B</b>   |
|                   |   | Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

|            | A   | B   |
|------------|---|---|
| Category 1 | <b>Starting point</b><br>15 years' custody      | <b>Starting point</b><br>12 years' custody      |
|            | <b>Category range</b><br>13 – 19 years' custody | <b>Category range</b><br>10 – 15 years' custody |
| Category 2 | <b>Starting point</b><br>10 years' custody      | <b>Starting point</b><br>8 years' custody       |
|            | <b>Category range</b><br>9 – 13 years' custody  | <b>Category range</b><br>7 – 9 years' custody   |
| Category 3 | <b>Starting point</b><br>7 years' custody       | <b>Starting point</b><br>5 years' custody       |
|            | <b>Category range</b><br>6 – 9 years' custody   | <b>Category range</b><br>4 – 7 years' custody   |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

| Aggravating factors   |  |
|---|--|
| <i>Statutory aggravating factors</i>  |  |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Attempts to dispose of or conceal evidence   |
| Offence committed whilst on bail  | Commission of offence whilst under the influence of alcohol or drugs   |
| <i>Other aggravating factors</i>  |  |
| Specific targeting of a particularly vulnerable victim  | <b>Mitigating factors</b>  |
| Ejaculation (where not taken into account at step one)  |  |
| Blackmail or other threats made (where not taken into account at step one)  | No previous convictions <b>or</b> no relevant/recent convictions   |
| Location of offence   | Remorse  |
| Timing of offence   | Previous good character and/or exemplary conduct*  |
| Use of weapon or other item to frighten or injure   | Age and/or lack of maturity where it affects the responsibility of the offender  |
| Victim compelled to leave their home (including victims of domestic violence)   | Mental disorder or learning disability, particularly where linked to the commission of the offence   |
| Failure to comply with current court orders   | * Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.<br><br>In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence. |
| Offence committed whilst on licence   |  |
| Exploiting contact arrangements with a child to commit an offence   |  |
| Presence of others, especially children   |  |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Assault by penetration

## Sexual Offences Act 2003 (section 2)

---

**Triable only on indictment**  
**Maximum: Life imprisonment**

**Offence range: Community order – 19 years' custody**

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |   | Culpability  |
|-------------------|---|--|
| <b>Category 1</b> | The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors <b>may</b> elevate to category 1   | <b>A</b>   |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Penetration using large or dangerous object(s)</li> <li>Additional degradation/humiliation</li> <li>Abduction</li> <li>Prolonged detention/sustained incident</li> <li>Violence or threats of violence (beyond that which is inherent in the offence)</li> <li>Forced/uninvited entry into victim's home</li> <li>Victim is particularly vulnerable due to personal circumstances*</li> </ul> <p>* for children under 13 please refer to the guideline on page 33</p> | Significant degree of planning<br>Offender acts together with others to commit the offence<br>Use of alcohol/drugs on victim to facilitate the offence<br>Abuse of trust<br>Previous violence against victim<br>Offence committed in course of burglary<br>Recording of the offence<br>Commercial exploitation and/or motivation<br>Offence racially or religiously aggravated<br>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present   | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)<br><b>B</b><br>Factor(s) in category A not present   |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions.

Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A   | B  |
|------------|---|--|
| Category 1 | <b>Starting point</b><br>15 years' custody      | <b>Starting point</b><br>12 years' custody                             |
|            | <b>Category range</b><br>13 – 19 years' custody | <b>Category range</b><br>10 – 15 years' custody                        |
| Category 2 | <b>Starting point</b><br>8 years' custody       | <b>Starting point</b><br>6 years' custody                              |
|            | <b>Category range</b><br>5 – 13 years' custody  | <b>Category range</b><br>4 – 9 years' custody                          |
| Category 3 | <b>Starting point</b><br>4 years' custody       | <b>Starting point</b><br>2 years' custody                              |
|            | <b>Category range</b><br>2 – 6 years' custody   | <b>Category range</b><br>High level community order – 4 years' custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Specific targeting of a particularly vulnerable victim

Blackmail or other threats made (where not taken into account at step one)

Location of offence

Timing of offence

Use of weapon or other item to frighten or injure

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Sexual assault

## Sexual Offences Act 2003 (section 3)

---

**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Community order – 7 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |  | Culpability   |
|-------------------|--|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Abduction</li> <li>Violence or threats of violence</li> <li>Forced/uninvited entry into victim's home</li> </ul>   | <b>A</b>  |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>Touching of naked genitalia or naked breasts</li> <li>Prolonged detention/sustained incident</li> <li>Additional degradation/humiliation</li> <li>Victim is particularly vulnerable due to personal circumstances*</li> </ul> <p>* for children under 13 please refer to the guideline on page 37</p> | Significant degree of planning<br>Offender acts together with others to commit the offence<br>Use of alcohol/drugs on victim to facilitate the offence<br>Abuse of trust<br>Previous violence against victim<br>Offence committed in course of burglary<br>Recording of offence<br>Commercial exploitation and/or motivation<br>Offence racially or religiously aggravated<br>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)<br>Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability) |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  | <b>B</b>  |
|                   |  | Factor(s) in category A not present   |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A   | B  |
|------------|---|--|
| Category 1 | <b>Starting point</b><br>4 years' custody                                 | <b>Starting point</b><br>2 years 6 months' custody                           |
|            | <b>Category range</b><br>3 – 7 years' custody                             | <b>Category range</b><br>2 – 4 years' custody                                |
| Category 2 | <b>Starting point</b><br>2 years' custody                                 | <b>Starting point</b><br>1 year's custody                                    |
|            | <b>Category range</b><br>1 – 4 years' custody                             | <b>Category range</b><br>High level community order – 2 years' custody       |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                                | <b>Starting point</b><br>High level community order                          |
|            | <b>Category range</b><br>High level community order –<br>1 year's custody | <b>Category range</b><br>Medium level community order –<br>26 weeks' custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Specific targeting of a particularly vulnerable victim

Blackmail or other threats made (where not taken into account at step one)

Location of offence

Timing of offence

Use of weapon or other item to frighten or injure

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Demonstration of steps taken to address offending behaviour

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Causing a person to engage in sexual activity without consent

## Sexual Offences Act 2003 (section 4)

---

**Triable only on indictment (if penetration involved)**  
– otherwise, triable either way

**Maximum: Life imprisonment (if penetration involved)**  
– otherwise, 10 years

**Offence range: Community order – 7 years' custody (if no penetration involved) /  
19 years' custody (if penetration involved)**

This is a serious specified offence for the purposes of section 224 and, where the offence involved penetration, section 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences involving penetration, committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |  | Culpability  |
|-------------------|--|--|
| <b>Category 1</b> | The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors <b>may</b> elevate to category 1  | <b>A</b>   |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Penetration using large or dangerous object(s)</li> <li>Pregnancy or STI as a consequence of offence</li> <li>Additional degradation/humiliation</li> <li>Abduction</li> <li>Prolonged detention/sustained incident</li> <li>Violence or threats of violence</li> <li>Forced/uninvited entry into victim's home</li> <li>Victim is particularly vulnerable due to personal circumstances*</li> </ul> <p>* for children under 13 please refer to the guideline on page 41</p> | Significant degree of planning<br>Offender acts together with others to commit the offence<br>Use of alcohol/drugs on victim to facilitate the offence<br>Abuse of trust<br>Previous violence against victim<br>Offence committed in course of burglary<br>Recording of the offence<br>Commercial exploitation and/or motivation<br>Offence racially or religiously aggravated<br>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
|                   |  | <b>B</b>   |
|                   |  | Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

## Where offence involved penetration

|            | A   | B  |
|------------|---|--|
| Category 1 | <b>Starting point</b><br>15 years' custody      | <b>Starting point</b><br>12 years' custody                             |
|            | <b>Category range</b><br>13 – 19 years' custody | <b>Category range</b><br>10 – 15 years' custody                        |
| Category 2 | <b>Starting point</b><br>8 years' custody       | <b>Starting point</b><br>6 years' custody                              |
|            | <b>Category range</b><br>5 – 13 years' custody  | <b>Category range</b><br>4 – 9 years' custody                          |
| Category 3 | <b>Starting point</b><br>4 years' custody       | <b>Starting point</b><br>2 years' custody                              |
|            | <b>Category range</b><br>2 – 6 years' custody   | <b>Category range</b><br>High level community order – 4 years' custody |

## Where offence did not involve penetration

|            | A   | B  |
|------------|---|--|
| Category 1 | <b>Starting point</b><br>4 years' custody                                 | <b>Starting point</b><br>2 years 6 months' custody                           |
|            | <b>Category range</b><br>3 – 7 years' custody                             | <b>Category range</b><br>2 – 4 years' custody                                |
| Category 2 | <b>Starting point</b><br>2 years' custody                                 | <b>Starting point</b><br>1 year's custody                                    |
|            | <b>Category range</b><br>1 – 4 years' custody                             | <b>Category range</b><br>High level community order – 2 years' custody       |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                                | <b>Starting point</b><br>High level community order                          |
|            | <b>Category range</b><br>High level community order –<br>1 year's custody | <b>Category range</b><br>Medium level community order –<br>26 weeks' custody |



The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Specific targeting of a particularly vulnerable victim

Ejaculation (where not taken into account at step one)

Blackmail or other threats made (where not taken into account at step one)

Location of offence

Timing of offence

Use of weapon or other item to frighten or injure

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

- \* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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# Rape of a child under 13

## Sexual Offences Act 2003 (section 5)

---

**Triable only on indictment**  
**Maximum: Life imprisonment**

**Offence range: 6 – 19 years' custody**

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables on the next page.

**Offences may be of such severity, for example involving a campaign of rape, that sentences of 20 years and above may be appropriate.**

When dealing with the statutory offence of rape of a child under 13, the court may be faced with a wide range of offending behaviour.

Sentencers should have particular regard to the fact that these offences are not only committed through force or fear of force but may include exploitative behaviour towards a child which should be considered to indicate high culpability.

This guideline is designed to deal with the majority of offending behaviour which deserves a significant custodial sentence; the starting points and ranges reflect the fact that such offending merits such an approach. There may also be **exceptional** cases, where a lengthy community order with a requirement to participate in a sex offender treatment programme may be the best way of changing the offender's behaviour and of protecting the public by preventing any repetition of the offence. This guideline may not be appropriate where the sentencer is satisfied that on the available evidence, and in the absence of exploitation, a young or particularly immature defendant genuinely believed, on reasonable grounds, that the victim was aged 16 or over and that they were engaging in lawful sexual activity.

Sentencers are reminded that if sentencing outside the guideline they must be satisfied that it would be contrary to the interests of justice to follow the guideline.

**See page 29.**

| Harm              |  |
|-------------------|--|
| <b>Category 1</b> | The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors <b>may</b> elevate to category 1  |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>• Severe psychological or physical harm</li> <li>• Pregnancy or STI as a consequence of offence</li> <li>• Additional degradation/humiliation</li> <li>• Abduction</li> <li>• Prolonged detention /sustained incident</li> <li>• Violence or threats of violence</li> <li>• Forced/uninvited entry into victim's home</li> <li>• Child is particularly vulnerable due to extreme youth and/or personal circumstances</li> </ul> |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  |

| Culpability  |
|--|
| <b>A</b>   |
| Significant degree of planning   |
| Offender acts together with others to commit the offence   |
| Use of alcohol/drugs on victim to facilitate the offence   |
| Grooming behaviour used against victim   |
| Abuse of trust   |
| Previous violence against victim   |
| Offence committed in course of burglary  |
| Sexual images of victim recorded, retained, solicited or shared  |
| Deliberate isolation of victim   |
| Commercial exploitation and/or motivation  |
| Offence racially or religiously aggravated   |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
| <b>B</b>   |
| Factor(s) in category A not present  |

See page 30.

**STEP TWO**  
**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Sentencers should also note the wording set out at step one which may be applicable in exceptional cases.

|                   | <b>A</b>  | <b>B</b>  |
|-------------------|---|---|
| <b>Category 1</b> | <b>Starting point</b><br>16 years' custody      | <b>Starting point</b><br>13 years' custody      |
|                   | <b>Category range</b><br>13 – 19 years' custody | <b>Category range</b><br>11 – 17 years' custody |
| <b>Category 2</b> | <b>Starting point</b><br>13 years' custody      | <b>Starting point</b><br>10 years' custody      |
|                   | <b>Category range</b><br>11 – 17 years' custody | <b>Category range</b><br>8 – 13 years' custody  |
| <b>Category 3</b> | <b>Starting point</b><br>10 years' custody      | <b>Starting point</b><br>8 years' custody       |
|                   | <b>Category range</b><br>8 – 13 years' custody  | <b>Category range</b><br>6 – 11 years' custody  |

See page 31.

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

| Aggravating factors   | Mitigating factors   |
|---|--|
| <i>Statutory aggravating factors</i>  | No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse  |
| Offence committed whilst on bail  | Previous good character and/or exemplary conduct*  |
| <i>Other aggravating factors</i>  | Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Specific targeting of a particularly vulnerable child   | Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Ejaculation (where not taken into account at step one)  |  |
| Blackmail or other threats made (where not taken into account at step one)  |  |
| Location of offence   |  |
| Timing of offence   |  |
| Use of weapon or other item to frighten or injure   |  |
| Victim compelled to leave their home, school, etc   |  |
| Failure to comply with current court orders   |  |
| Offence committed whilst on licence   |  |
| Exploiting contact arrangements with a child to commit an offence   |  |
| Presence of others, especially other children   |  |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |
| Attempts to dispose of or conceal evidence  |  |
| Commission of offence whilst offender under the influence of alcohol or drugs   |  |
| Victim encouraged to recruit others   |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Assault of a child under 13 by penetration

Sexual Offences Act 2003 (section 6)

---

**Triable only on indictment**

**Maximum: Life imprisonment**

**Offence range: 2 – 19 years' custody**

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE**  
**Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |  |
|-------------------|--|
| <b>Category 1</b> | The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors <b>may</b> elevate to category 1  |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>• Severe psychological or physical harm</li> <li>• Penetration using large or dangerous object(s)</li> <li>• Additional degradation/humiliation</li> <li>• Abduction</li> <li>• Prolonged detention /sustained incident</li> <li>• Violence or threats of violence</li> <li>• Forced/uninvited entry into victim's home</li> <li>• Child is particularly vulnerable due to extreme youth and/or personal circumstances</li> </ul> |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  |

| Culpability  |
|--|
| <b>A</b>   |
| Significant degree of planning   |
| Offender acts together with others to commit the offence   |
| Use of alcohol/drugs on victim to facilitate the offence   |
| Grooming behaviour used against victim   |
| Abuse of trust   |
| Previous violence against victim   |
| Offence committed in course of burglary  |
| Sexual images of victim recorded, retained, solicited or shared  |
| Deliberate isolation of victim   |
| Commercial exploitation and/or motivation  |
| Offence racially or religiously aggravated   |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
| <b>B</b>   |
| Factor(s) in category A not present  |

**STEP TWO**  
**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

|            | A   | B   |
|------------|---|---|
| Category 1 | <b>Starting point</b><br>16 years' custody      | <b>Starting point</b><br>13 years' custody      |
|            | <b>Category range</b><br>13 – 19 years' custody | <b>Category range</b><br>11 – 17 years' custody |
| Category 2 | <b>Starting point</b><br>11 years' custody      | <b>Starting point</b><br>8 years' custody       |
|            | <b>Category range</b><br>7 – 15 years' custody  | <b>Category range</b><br>5 – 13 years' custody  |
| Category 3 | <b>Starting point</b><br>6 years' custody       | <b>Starting point</b><br>4 years' custody       |
|            | <b>Category range</b><br>4 – 9 years' custody   | <b>Category range</b><br>2 – 6 years' custody   |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Specific targeting of a particularly vulnerable child

Blackmail or other threats made (where not taken into account at step one)

Location of offence

Timing of offence

Use of weapon or other item to frighten or injure

Victim compelled to leave their home, school etc

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Victim encouraged to recruit others

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Sexual assault of a child under 13

## Sexual Offences Act 2003 (section 7)

---

**Triable either way**

**Maximum: 14 years' custody**

**Offence range: Community order – 9 years' custody**

For offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |   |
|-------------------|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>• Severe psychological or physical harm</li> <li>• Abduction</li> <li>• Violence or threats of violence</li> <li>• Forced/uninvited entry into victim's home</li> </ul>  |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>• Touching of naked genitalia or naked breast area</li> <li>• Prolonged detention/sustained incident</li> <li>• Additional degradation/humiliation</li> <li>• Child is particularly vulnerable due to extreme youth and/or personal circumstances</li> </ul> |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present   |

| Culpability  |
|--|
| <b>A</b>   |
| Significant degree of planning   |
| Offender acts together with others to commit the offence   |
| Use of alcohol/drugs on victim to facilitate the offence   |
| Grooming behaviour used against victim   |
| Abuse of trust   |
| Previous violence against victim   |
| Offence committed in course of burglary  |
| Sexual images of victim recorded, retained, solicited or shared  |
| Deliberate isolation of victim   |
| Commercial exploitation and/or motivation  |
| Offence racially or religiously aggravated   |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
| <b>B</b>   |
| Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A   | B  |
|------------|---|--|
| Category 1 | <b>Starting point</b><br>6 years' custody             | <b>Starting point</b><br>4 years' custody                              |
|            | <b>Category range</b><br>4 – 9 years' custody         | <b>Category range</b><br>3 – 7 years' custody                          |
| Category 2 | <b>Starting point</b><br>4 years' custody             | <b>Starting point</b><br>2 years' custody                              |
|            | <b>Category range</b><br>3 – 7 years' custody         | <b>Category range</b><br>1 – 4 years' custody                          |
| Category 3 | <b>Starting point</b><br>1 year's custody             | <b>Starting point</b><br>26 weeks' custody                             |
|            | <b>Category range</b><br>26 weeks' – 2 years' custody | <b>Category range</b><br>High level community order – 1 year's custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Specific targeting of a particularly vulnerable child

Blackmail or other threats made (where not taken into account at step one)

Location of offence

Timing of offence

Use of weapon or other item to frighten or injure

Victim compelled to leave their home, school, etc

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Victim encouraged to recruit others

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Causing or inciting a child under 13 to engage in sexual activity

## Sexual Offences Act 2003 (section 8)

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**Triable only on indictment (if penetration involved)**

– otherwise, triable either way

**Maximum: Life imprisonment (if penetration involved)**

– otherwise, 14 years' custody

**Offence range: 1 – 17 years' custody**

This is a serious specified offence for the purposes of sections 224 and, where the offence involved penetration, 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE**  
**Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |  |
|-------------------|--|
| <b>Category 1</b> | The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors <b>may</b> elevate to category 1  |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>• Severe psychological or physical harm</li> <li>• Penetration of vagina or anus (using body or object) by, or of, the victim</li> <li>• Penile penetration of mouth by, or of, the victim</li> <li>• Additional degradation/humiliation</li> <li>• Abduction</li> <li>• Prolonged detention/sustained incident</li> <li>• Violence or threats of violence</li> <li>• Forced/uninvited entry into victim’s home</li> <li>• Child is particularly vulnerable due to extreme youth and/or personal circumstances</li> </ul> |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  |

| Culpability   |
|---|
| <b>A</b>  |
| Significant degree of planning  |
| Offender acts together with others to commit the offence  |
| Use of alcohol/drugs on victim to facilitate the offence  |
| Grooming behaviour used against victim  |
| Abuse of trust  |
| Previous violence against victim  |
| Offence committed in course of burglary   |
| Sexual images of victim recorded, retained, solicited or shared   |
| Deliberate isolation of victim  |
| Commercial exploitation and/or motivation   |
| Offence racially or religiously aggravated  |
| Offence motivated by, or demonstrating hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)   |
| <b>B</b>  |
| Factor(s) in category A not present   |

**STEP TWO**  
**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

|            | A   | B   |
|------------|---|---|
| Category 1 | <b>Starting point</b><br>13 years' custody      | <b>Starting point</b><br>11 years' custody      |
|            | <b>Category range</b><br>11 – 17 years' custody | <b>Category range</b><br>10 – 15 years' custody |
| Category 2 | <b>Starting point</b><br>8 years' custody       | <b>Starting point</b><br>6 years' custody       |
|            | <b>Category range</b><br>5 – 10 years' custody  | <b>Category range</b><br>3 – 9 years' custody   |
| Category 3 | <b>Starting point</b><br>5 years' custody       | <b>Starting point</b><br>2 years' custody       |
|            | <b>Category range</b><br>3 – 8 years' custody   | <b>Category range</b><br>1 – 4 years' custody   |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

| Aggravating factors   |  |
|---|--|
| <i>Statutory aggravating factors</i>  |  |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Attempts to dispose of or conceal evidence   |
| Offence committed whilst on bail  | Commission of offence whilst offender under the influence of alcohol or drugs  |
| <i>Other aggravating factors</i>  | Victim encouraged to recruit others  |
| Specific targeting of a particularly vulnerable child   | <b>Mitigating factors</b>  |
| Ejaculation (where not taken into account at step one)  | No previous convictions <b>or</b> no relevant/recent convictions   |
| Blackmail or other threats made (where not taken into account at step one)  | Remorse  |
| Pregnancy or STI as a consequence of offence  | Previous good character and/or exemplary conduct*  |
| Location of offence   | Age and/or lack of maturity where it affects the responsibility of the offender  |
| Timing of offence   | Mental disorder or learning disability, particularly where linked to the commission of the offence                           |
| Use of weapon or other item to frighten or injure   | Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it |
| Victim compelled to leave their home, school, etc   |  |
| Failure to comply with current court orders   |  |
| Offence committed whilst on licence   |  |
| Exploiting contact arrangements with a child to commit an offence   |  |
| Presence of others, especially other children   |  |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Sexual activity with a child

Sexual Offences Act 2003 (section 9)

# Causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003 (section 10)

---

**Triable only on indictment (if penetration involved)**

– otherwise, triable either way

**Maximum: 14 years' custody**

**Offence range: Community order – 10 years' custody**

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

## **Arranging or facilitating the commission of a child offence (section 14 of the Sexual Offences Act 2003 – page 61)**

The starting points and ranges in this guideline are also applicable to offences of arranging or facilitating the commission of a child offence. In such cases, the level of harm should be determined by reference to the type of activity arranged or facilitated. Sentences commensurate with the applicable starting point and range will ordinarily be appropriate. For offences involving significant commercial exploitation and/or an international element, it may, in the interests of justice, be appropriate to increase a sentence to a point above the category range. In exceptional cases, such as where a vulnerable offender performed a limited role, having been coerced or exploited by others, sentences below the starting point and range may be appropriate.

**STEP ONE**

**Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

**This guideline also applies to offences committed remotely/online.**

| Harm              |   |
|-------------------|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Penetration of vagina or anus (using body or object)</li> <li>Penile penetration of mouth</li> </ul> <p>In either case by, or of, the victim</p> |
| <b>Category 2</b> | Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim  |
| <b>Category 3</b> | Other sexual activity   |

| Culpability  |
|--|
| <b>A</b>   |
| Significant degree of planning   |
| Offender acts together with others to commit the offence   |
| Use of alcohol/drugs on victim to facilitate the offence   |
| Grooming behaviour used against victim   |
| Abuse of trust   |
| Use of threats (including blackmail)   |
| Sexual images of victim recorded, retained, solicited or shared  |
| Specific targeting of a particularly vulnerable child  |
| Offender lied about age  |
| Significant disparity in age   |
| Commercial exploitation and/or motivation  |
| Offence racially or religiously aggravated   |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
| <b>B</b>   |
| Factor(s) in category A not present  |

(CAUSING/INCITING) SEXUAL ACTIVITY WITH A CHILD

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   | <b>A</b>  | <b>B</b>   |
|-------------------|---|--|
| <b>Category 1</b> | <b>Starting point</b><br>5 years' custody                                 | <b>Starting point</b><br>1 year's custody  |
|                   | <b>Category range</b><br>4 – 10 years' custody                            | <b>Category range</b><br>High level community order – 2 years' custody             |
| <b>Category 2</b> | <b>Starting point</b><br>3 years' custody                                 | <b>Starting point</b><br>26 weeks' custody   |
|                   | <b>Category range</b><br>2 – 6 years' custody                             | <b>Category range</b><br>High level community order – 1 year's custody             |
| <b>Category 3</b> | <b>Starting point</b><br>26 weeks' custody                                | <b>Starting point</b><br>Medium level community order                              |
|                   | <b>Category range</b><br>High level community order –<br>3 years' custody | <b>Category range</b><br>Low level community order –<br>High level community order |



The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

| Aggravating factors   |
|---|
| <i>Statutory aggravating factors</i>  |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction |
| Offence committed whilst on bail  |
| <i>Other aggravating factors</i>  |
| Severe psychological or physical harm   |
| Ejaculation   |
| Pregnancy or STI as a consequence of offence  |
| Location of offence   |
| Timing of offence   |
| Victim compelled to leave their home, school, etc   |
| Failure to comply with current court orders   |
| Offence committed whilst on licence   |
| Exploiting contact arrangements with a child to commit an offence   |
| Presence of others, especially other children   |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |
| Attempts to dispose of or conceal evidence  |
| Failure of offender to respond to previous warnings   |
| Commission of offence whilst under the influence of alcohol or drugs  |
| Victim encouraged to recruit others   |
| Period over which offence committed   |

| Mitigating factors   |
|--|
| No previous convictions <b>or</b> no relevant/recent convictions   |
| Remorse  |
| Previous good character and/or exemplary conduct*  |
| Age and/or lack of maturity where it affects the responsibility of the offender  |
| Mental disorder or learning disability, particularly where linked to the commission of the offence                           |
| Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.  
In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

### STEP THREE

#### Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### STEP FOUR

#### Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

### STEP FIVE

#### Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

### STEP SIX

#### Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

### STEP SEVEN

#### Ancillary orders

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

### STEP EIGHT

#### Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

### STEP NINE

#### Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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# Sexual activity with a child family member

Sexual Offences Act 2003 (section 25)

# Inciting a child family member to engage in sexual activity

Sexual Offences Act 2003 (section 26)

---

**Triable only on indictment (if penetration involved)**

**– otherwise, triable either way**

**Maximum: 14 years' custody**

**Offence range: Community order – 10 years' custody**

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE**

**Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below. This offence involves those who have a family relationship with the victim and it should be assumed that the greater the abuse of trust within this relationship the more grave the offence.

| Harm              |   |
|-------------------|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Penetration of vagina or anus (using body or object)</li> <li>Penile penetration of mouth</li> </ul> <p>In either case by, or of, the victim</p> |
| <b>Category 2</b> | Touching of naked genitalia or naked breasts by, or of, the victim  |
| <b>Category 3</b> | Other sexual activity   |

| Culpability  |
|--|
| <b>A</b>   |
| Significant degree of planning   |
| Offender acts together with others to commit the offence   |
| Use of alcohol/drugs on victim to facilitate the offence   |
| Grooming behaviour used against victim   |
| Use of threats (including blackmail)   |
| Sexual images of victim recorded, retained, solicited or shared  |
| Specific targeting of a particularly vulnerable child  |
| Significant disparity in age   |
| Commercial exploitation and/or motivation  |
| Offence racially or religiously aggravated   |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
| <b>B</b>   |
| Factor(s) in category A not present  |

(INCITING) SEXUAL ACTIVITY WITH A CHILD FAMILY MEMBER

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   | <b>A</b>  | <b>B</b>   |
|-------------------|---|--|
| <b>Category 1</b> | <b>Starting point</b><br>6 years' custody                                 | <b>Starting point</b><br>3 years 6 months' custody                                 |
|                   | <b>Category range</b><br>4 – 10 years' custody                            | <b>Category range</b><br>2 years 6 months' – 5 years' custody                      |
| <b>Category 2</b> | <b>Starting point</b><br>4 years' custody                                 | <b>Starting point</b><br>18 months' custody  |
|                   | <b>Category range</b><br>2 – 6 years' custody                             | <b>Category range</b><br>26 weeks' – 2 years 6 months' custody                     |
| <b>Category 3</b> | <b>Starting point</b><br>1 year's custody                                 | <b>Starting point</b><br>Medium level community order                              |
|                   | <b>Category range</b><br>High level community order –<br>3 years' custody | <b>Category range</b><br>Low level community order –<br>High level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

| Aggravating factors   |
|---|
| <i>Statutory aggravating factors</i>  |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction |
| Offence committed whilst on bail  |
| <i>Other aggravating factors</i>  |
| Severe psychological or physical harm   |
| Ejaculation   |
| Pregnancy or STI as a consequence of offence  |
| Location of offence   |
| Timing of offence   |
| Victim compelled to leave their home, school, etc   |
| Failure to comply with current court orders   |
| Offence committed whilst on licence   |
| Exploiting contact arrangements with a child to commit an offence   |
| Presence of others, especially other children   |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |
| Attempts to dispose of or conceal evidence  |
| Failure of offender to respond to previous warnings   |
| Commission of offence whilst under the influence of alcohol or drugs  |
| Victim encouraged to recruit others   |
| Period over which offence committed   |

| Mitigating factors   |
|--|
| No previous convictions <b>or</b> no relevant/recent convictions   |
| Remorse  |
| Previous good character and/or exemplary conduct*  |
| Age and/or lack of maturity where it affects the responsibility of the offender  |
| Mental disorder or learning disability, particularly where linked to the commission of the offence                           |
| Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.



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# Engaging in sexual activity in the presence of a child

Sexual Offences Act 2003 (section 11)

# Causing a child to watch a sexual act

Sexual Offences Act 2003 (section 12)

**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Community order – 6 years' custody**

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

## **Arranging or facilitating the commission of a child offence (section 14 of the Sexual Offences Act 2003 – guidance on page 61)**

The starting points and ranges in this guideline are also applicable to offences of arranging or facilitating the commission of a child offence. In such cases, the level of harm should be determined by reference to the type of activity arranged or facilitated. Sentences commensurate with the applicable starting point and range will ordinarily be appropriate. For offences involving significant commercial exploitation and/or an international element, it may, in the interests of justice, be appropriate to increase a sentence to a point above the category range. In exceptional cases, such as where a vulnerable offender performed a limited role, having been coerced or exploited by others, sentences below the starting point and range may be appropriate.

**STEP ONE**  
**Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm                           |  |  |
|--------------------------------|--|--|
| <b>Category 1</b>              | <ul style="list-style-type: none"> <li>Causing victim to view extreme pornography</li> <li>Causing victim to view indecent/prohibited images of children</li> <li>Engaging in, or causing a victim to view live, sexual activity involving sadism/violence/sexual activity with an animal/a child</li> </ul> | Offender acts together with others in order to commit the offence  |
|                                |  | Use of alcohol/drugs on victim to facilitate the offence   |
|                                |  | Grooming behaviour used against victim   |
|                                |  | Abuse of trust   |
|                                |  | Use of threats (including blackmail)   |
| <b>Category 2</b>              | Engaging in, or causing a victim to view images of or view live, sexual activity involving: <ul style="list-style-type: none"> <li>penetration of vagina or anus (using body or object)</li> <li>penile penetration of the mouth</li> <li>masturbation</li> </ul>  | Specific targeting of a particularly vulnerable child  |
|                                |  | Significant disparity in age   |
|                                |  | Commercial exploitation and/or motivation  |
|                                |  | Offence racially or religiously aggravated   |
| <b>Category 3</b>              | Factor(s) in categories 1 and 2 not present  | Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
|                                |  | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
| Culpability                    |  |  |
| <b>A</b>                       |  | <b>B</b>   |
| Significant degree of planning |  | Factor(s) in category A not present  |

**STEP TWO**  
**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A  | B   |
|------------|--|---|
| Category 1 | <b>Starting point</b><br>4 years' custody                              | <b>Starting point</b><br>2 years' custody   |
|            | <b>Category range</b><br>3 – 6 years' custody                          | <b>Category range</b><br>1 – 3 years' custody                                     |
| Category 2 | <b>Starting point</b><br>2 years' custody                              | <b>Starting point</b><br>1 year's custody   |
|            | <b>Category range</b><br>1 – 3 years' custody                          | <b>Category range</b><br>High level community order – 18 months' custody          |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                             | <b>Starting point</b><br>Medium level community order                             |
|            | <b>Category range</b><br>High level community order – 1 year's custody | <b>Category range</b><br>Low level community order – Medium level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Location of offence

Timing of offence

Victim compelled to leave their home, school, etc

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Failure of offender to respond to previous warnings

Commission of offence whilst offender under the influence of alcohol or drugs

Victim encouraged to recruit others

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Demonstration of steps taken to address offending behaviour

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Arranging or facilitating the commission of a child sex offence

## Sexual Offences Act 2003 (section 14)

---

**Triable either way**

**Maximum: 14 years' custody**

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

Sentencers should refer to the guideline for the applicable, substantive offence of arranging or facilitating under sections 9 to 12. See pages 45 to 49 and 57 to 60. The level of harm should be determined by reference to the type of activity arranged or facilitated. Sentences commensurate with the applicable starting point and range will ordinarily be appropriate. For offences involving significant commercial exploitation and/or an international element, it may, in the interests of justice, be appropriate to increase a sentence to a point above the category range. In exceptional cases, such as where a vulnerable offender performed a limited role, having been coerced or exploited by others, sentences below the starting point and range may be appropriate.

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# Meeting a child following sexual grooming

Sexual Offences Act 2003 (section 15)

---

**Triable either way**

**Maximum: 10 years' custody**

**Offence range: 1 – 7 years' custody**

For offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.



**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

|                   |  |
|-------------------|--|
| <b>Category 1</b> | Raised harm <b>and</b> raised culpability                          |
| <b>Category 2</b> | Raised harm <b>or</b> raised culpability                           |
| <b>Category 3</b> | Grooming <b>without</b> raised harm or culpability factors present |

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating raised harm**

Continued contact despite victim's attempts to terminate contact

Sexual images exchanged

Victim exposed to extreme sexual content (for example, extreme pornography)

Child is particularly vulnerable due to personal circumstances

**Factors indicating raised culpability**

Offender acts together with others to commit the offence

Communication indicates penetrative sexual activity is intended

Offender lied about age/persona

Use of threats (including blackmail), gifts or bribes

Abuse of trust

Specific targeting of a particularly vulnerable child

Abduction/detention

Commercial exploitation and/or motivation

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | <b>Starting point</b><br>4 years' custody                   |
|                   | <b>Category range</b><br>3 – 7 years' custody               |
| <b>Category 2</b> | <b>Starting point</b><br>2 years' custody                   |
|                   | <b>Category range</b><br>1 – 4 years' custody               |
| <b>Category 3</b> | <b>Starting point</b><br>18 months' custody                 |
|                   | <b>Category range</b><br>1 year – 2 years 6 months' custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

| Aggravating factors   | Mitigating factors   |
|---|--|
| <i>Statutory aggravating factors</i>  | No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse  |
| Offence committed whilst on bail  | Previous good character and/or exemplary conduct*  |
| <i>Other aggravating factors</i>  | Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Failure to comply with current court orders   | Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Offence committed whilst on licence   | Demonstration of steps taken to address offending behaviour  |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |
| Attempts to dispose of or conceal evidence  |  |
| Victim encouraged to recruit others   |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

## Abuse of position of trust: sexual activity with a child

Sexual Offences Act 2003 (section 16)

## Abuse of position of trust: causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003 (section 17)

---

**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community order – 2 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

**This guideline also applies to offences committed remotely/online.**

| Harm              |   | Culpability  |
|-------------------|---|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Penetration of vagina or anus (using body or object)</li> <li>Penile penetration of mouth</li> </ul> <p>In either case by, or of, the victim</p> | <b>A</b>   |
| <b>Category 2</b> | Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim  | Significant degree of planning   |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present   | Offender acts together with others to commit the offence   |
|                   |   | Use of alcohol/drugs on victim to facilitate the offence   |
|                   |   | Grooming behaviour used against victim   |
|                   |   | Use of threats (including blackmail)   |
|                   |   | Sexual images of victim recorded, retained, solicited or shared  |
|                   |   | Specific targeting of a particularly vulnerable child  |
|                   |   | Commercial exploitation and/or motivation  |
|                   |   | Offence racially or religiously aggravated   |
|                   |   | Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
|                   |   | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
|                   |   | <b>B</b>   |
|                   |   | Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A  | B   |
|------------|--|---|
| Category 1 | <b>Starting point</b><br>18 months' custody                            | <b>Starting point</b><br>1 year's custody                                       |
|            | <b>Category range</b><br>1 – 2 years' custody                          | <b>Category range</b><br>26 weeks' – 18 months' custody                         |
| Category 2 | <b>Starting point</b><br>1 year's custody                              | <b>Starting point</b><br>26 weeks' custody                                      |
|            | <b>Category range</b><br>26 weeks' – 18 months' custody                | <b>Category range</b><br>High level community order – 1 year's custody          |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                             | <b>Starting point</b><br>Medium level community order                           |
|            | <b>Category range</b><br>High level community order – 1 year's custody | <b>Category range</b><br>Low level community order – High level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Ejaculation

Pregnancy or STI as a consequence of offence

Location of offence

Timing of offence

Victim compelled to leave their home, school, etc

Failure to comply with current court orders

Offence committed whilst on licence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Failure of offender to respond to previous warnings

Commission of offence whilst under the influence of alcohol or drugs

Victim encouraged to recruit others

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it

Demonstration of steps taken to address offending behaviour

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Abuse of position of trust: sexual activity in the presence of a child

Sexual Offences Act 2003 (section 18)

# Abuse of position of trust: causing a child to watch a sexual act

Sexual Offences Act 2003 (section 19)

---

**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community order – 2 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.



**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |  |
|-------------------|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Causing victim to view extreme pornography</li> <li>Causing victim to view indecent/prohibited images of children</li> <li>Engaging in, or causing a victim to view live, sexual activity involving sadism/violence/sexual activity with an animal/a child</li> </ul> |
| <b>Category 2</b> | Engaging in, or causing a victim to view images of or view live, sexual activity involving: <ul style="list-style-type: none"> <li>penetration of vagina or anus (using body or object)</li> <li>penile penetration of mouth</li> <li>masturbation</li> </ul>  |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  |

| Culpability  |
|--|
| <b>A</b>   |
| Significant degree of planning   |
| Offender acts together with others to commit the offence   |
| Use of alcohol/drugs on victim to facilitate the offence   |
| Grooming behaviour used against victim   |
| Use of threats (including blackmail)   |
| Specific targeting of a particularly vulnerable child  |
| Commercial exploitation and/or motivation  |
| Offence racially or religiously aggravated   |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
| <b>B</b>   |
| Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A  | B   |
|------------|--|---|
| Category 1 | <b>Starting point</b><br>18 months' custody                            | <b>Starting point</b><br>1 year's custody                                       |
|            | <b>Category range</b><br>1 – 2 years' custody                          | <b>Category range</b><br>26 weeks' – 18 months' custody                         |
| Category 2 | <b>Starting point</b><br>1 year's custody                              | <b>Starting point</b><br>26 weeks' custody                                      |
|            | <b>Category range</b><br>26 weeks' – 18 months' custody                | <b>Category range</b><br>High level community order – 1 year's custody          |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                             | <b>Starting point</b><br>Medium level community order                           |
|            | <b>Category range</b><br>High level community order – 1 year's custody | <b>Category range</b><br>Low level community order – High level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### Statutory aggravating factors

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### Other aggravating factors

Location of offence

Timing of offence

Victim compelled to leave their home, school, etc

Failure to comply with current court orders

Offence committed whilst on licence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Failure of offender to respond to previous warnings

Commission of offence whilst under the influence of alcohol or drugs

Victim encouraged to recruit others

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Demonstration of steps taken to address offending behaviour

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Possession of indecent photograph of child

Criminal Justice Act 1988 (section 160)

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**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community order – 3 years' custody**

# Indecent photographs of children

Protection of Children Act 1978 (section 1)

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**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Community order – 9 years' custody**

For section 1 offences committed on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

|                   | Possession   | Distribution*   | Production**  |
|-------------------|--|---|---|
| <b>Category A</b> | Possession of images involving penetrative sexual activity               | Sharing images involving penetrative sexual activity                  | Creating images involving penetrative sexual activity               |
|                   | Possession of images involving sexual activity with an animal or sadism  | Sharing images involving sexual activity with an animal or sadism     | Creating images involving sexual activity with an animal or sadism  |
| <b>Category B</b> | Possession of images involving non-penetrative sexual activity           | Sharing of images involving non-penetrative sexual activity           | Creating images involving non-penetrative sexual activity           |
| <b>Category C</b> | Possession of other indecent images not falling within categories A or B | Sharing of other indecent images not falling within categories A or B | Creating other indecent images not falling within categories A or B |

\* Distribution includes possession with a view to distributing or sharing images.

\*\* Production includes the taking or making of any image at source, for instance the original image. Making an image by simple downloading should be treated as possession for the purposes of sentencing.

**In most cases the intrinsic character of the most serious of the offending images will initially determine the appropriate category. If, however, the most serious images are unrepresentative of the offender's conduct a lower category may be appropriate. A lower category will not, however, be appropriate if the offender has produced or taken (for example photographed) images of a higher category.**

See page 77.

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   | Possession   | Distribution   | Production                                    |
|-------------------|--|--|---|
| <b>Category A</b> | <b>Starting point</b><br>1 year's custody                                    | <b>Starting point</b><br>3 years' custody                                  | <b>Starting point</b><br>6 years' custody     |
|                   | <b>Category range</b><br>26 weeks' – 3 years' custody                        | <b>Category range</b><br>2 – 5 years' custody                              | <b>Category range</b><br>4 – 9 years' custody |
| <b>Category B</b> | <b>Starting point</b><br>26 weeks' custody                                   | <b>Starting point</b><br>1 year's custody                                  | <b>Starting point</b><br>2 years' custody     |
|                   | <b>Category range</b><br>High level community order –<br>18 months' custody  | <b>Category range</b><br>26 weeks' –<br>2 years' custody                   | <b>Category range</b><br>1 – 4 years' custody |
| <b>Category C</b> | <b>Starting point</b><br>High level community order                          | <b>Starting point</b><br>13 weeks' custody                                 | <b>Starting point</b><br>18 months' custody   |
|                   | <b>Category range</b><br>Medium level community order –<br>26 weeks' custody | <b>Category range</b><br>High level community order –<br>26 weeks' custody | <b>Category range</b><br>1 – 3 years' custody |

See page 78.

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Failure to comply with current court orders

Offence committed whilst on licence

Age and/or vulnerability of the child depicted<sup>†</sup>

Discernable pain or distress suffered by child depicted

Period over which images were possessed, distributed or produced

High volume of images possessed, distributed or produced

Placing images where there is the potential for a high volume of viewers

Collection includes moving images

Attempts to dispose of or conceal evidence

Abuse of trust

Child depicted known to the offender

Active involvement in a network or process that facilitates or commissions the creation or sharing of indecent images of children

Commercial exploitation and/or motivation

Deliberate or systematic searching for images portraying young children, category A images or the portrayal of familial sexual abuse

Large number of different victims

Child depicted intoxicated or drugged

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct<sup>\*</sup>

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Demonstration of steps taken to address offending behaviour

- \* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

<sup>†</sup> Age and/or vulnerability of the child should be given significant weight. In cases where the actual age of the victim is difficult to determine sentencers should consider the development of the child (infant, pre-pubescent, post-pubescent).

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.



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# Causing or inciting prostitution for gain

Sexual Offences Act 2003 (section 52)

# Controlling prostitution for gain

Sexual Offences Act 2003 (section 53)

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**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Community order – 6 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The terms “prostitute” and “prostitution” are used in this guideline in accordance with the statutory language contained in the Sexual Offences Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |   | Culpability   |
|-------------------|---|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Abduction/detention</li> <li>Violence or threats of violence</li> <li>Sustained and systematic psychological abuse</li> <li>Individual(s) forced or coerced to participate in unsafe/degrading sexual activity</li> <li>Individual(s) forced or coerced into seeing many “customers”</li> <li>Individual(s) forced/coerced/deceived into prostitution</li> </ul> | <b>A</b>  |
|                   |   | Causing, inciting or controlling prostitution on significant commercial basis   |
|                   |   | Expectation of significant financial or other gain  |
|                   |   | Abuse of trust  |
|                   |   | Exploitation of those known to be trafficked  |
|                   |   | Significant involvement in limiting the freedom of prostitute(s)  |
|                   |   | Grooming of individual(s) to enter prostitution including through cultivation of a dependency on drugs or alcohol   |
| <b>Category 2</b> | Factor(s) in category 1 not present   | <b>B</b>  |
|                   |   | Close involvement with prostitute(s), for example control of finances, choice of clients, working conditions, etc (where offender’s involvement is not as a result of coercion) |
|                   |   | <b>C</b>  |
|                   |   | Performs limited function under direction   |
|                   |   | Close involvement but engaged by coercion/intimidation/exploitation   |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   | A  | B   | C  |
|-------------------|--|---|--|
| <b>Category 1</b> | <b>Starting point</b><br>4 years' custody          | <b>Starting point</b><br>2 years 6 months' custody                        | <b>Starting point</b><br>1 year's custody  |
|                   | <b>Category range</b><br>3 – 6 years' custody      | <b>Category range</b><br>2 – 4 years' custody                             | <b>Category range</b><br>26 weeks' – 2 years' custody                              |
| <b>Category 2</b> | <b>Starting point</b><br>2 years 6 months' custody | <b>Starting point</b><br>1 year's custody                                 | <b>Starting point</b><br>Medium level community order                              |
|                   | <b>Category range</b><br>2 – 5 years' custody      | <b>Category range</b><br>High level community order –<br>2 year's custody | <b>Category range</b><br>Low level community order –<br>High level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

| <b>Aggravating factors</b>  |  |
|---|--|
| <i>Statutory aggravating factors</i>  |  |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction |  |
| Offence committed whilst on bail  |  |
| <i>Other aggravating factors</i>  |  |
| Failure to comply with current court orders   |  |
| Offence committed whilst on licence   |  |
| Deliberate isolation of prostitute(s)   |  |
| Threats made to expose prostitute(s) to the authorities (for example, immigration or police), family/friends or others  |  |
| Harm threatened against the family/friends of prostitute(s)   |  |
| Passport/identity documents removed   |  |
| Prostitute(s) prevented from seeking medical treatment  |  |
| Food withheld   |  |
| Earnings withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates                                       |  |
| Any steps taken to prevent the reporting of an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |
| Attempts to dispose of or conceal evidence  |  |
| Prostitute(s) forced or coerced into pornography  |  |
| Timescale over which operation has been run   |  |
| <b>Mitigating factors</b>   |  |
| No previous convictions <b>or</b> no relevant/recent convictions  |  |
| Remorse   |  |
| Previous good character and/or exemplary conduct*   |  |
| Age and/or lack of maturity where it affects the responsibility of the offender   |  |
| Mental disorder or learning disability, particularly where linked to the commission of the offence  |  |
| Demonstration of steps taken to address offending behaviour   |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Keeping a brothel used for prostitution

## Sexual Offences Act 1956 (section 33A)

---

**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Community order – 6 years' custody**

The terms “prostitute” and “prostitution” are used in this guideline in accordance with the statutory language contained in the Sexual Offences Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |   | Culpability  |
|-------------------|---|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Under 18 year olds working in brothel</li> <li>Abduction/detention</li> <li>Violence or threats of violence</li> <li>Sustained and systematic psychological abuse</li> <li>Those working in brothel forced or coerced to participate in unsafe/degrading sexual activity</li> <li>Those working in brothel forced or coerced into seeing many “customers”</li> <li>Those working in brothel forced/coerced/deceived into prostitution</li> <li>Established evidence of community impact</li> </ul> | <b>A</b>   |
|                   |   | Keeping brothel on significant commercial basis  |
|                   |   | Involvement in keeping a number of brothels  |
|                   |   | Expectation of significant financial or other gain   |
|                   |   | Abuse of trust   |
|                   |   | Exploitation of those known to be trafficked   |
|                   |   | Significant involvement in limiting freedom of those working in brothel  |
|                   |   | Grooming of a person to work in the brothel including through cultivation of a dependency on drugs or alcohol  |
|                   |   | <b>B</b>   |
|                   |   | Keeping/managing premises  |
|                   |   | Close involvement with those working in brothel, for example control of finances, choice of clients, working conditions, etc (where offender’s involvement is not as a result of coercion) |
|                   |   | <b>C</b>   |
|                   |   | Performs limited function under direction  |
|                   |   | Close involvement but engaged by coercion/intimidation/exploitation  |
| <b>Category 2</b> | Factor(s) in category 1 not present   |  |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   | A   | B  | C  |
|-------------------|---|--|--|
| <b>Category 1</b> | <b>Starting point</b><br>5 years' custody     | <b>Starting point</b><br>3 years' custody                | <b>Starting point</b><br>1 year's custody  |
|                   | <b>Category range</b><br>3 – 6 years' custody | <b>Category range</b><br>2 – 5 years' custody            | <b>Category range</b><br>High level community order –<br>18 months' custody        |
| <b>Category 2</b> | <b>Starting point</b><br>3 years' custody     | <b>Starting point</b><br>12 months' custody              | <b>Starting point</b><br>Medium level community order                              |
|                   | <b>Category range</b><br>2 – 5 years' custody | <b>Category range</b><br>26 weeks' –<br>2 years' custody | <b>Category range</b><br>Low level community order –<br>High level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 1 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Failure to comply with current court orders

Offence committed whilst on licence

Deliberate isolation of those working in brothel

Threats made to expose those working in brothel to the authorities (for example, immigration or police), family/friends or others

Harm threatened against the family/friends of those working in brothel

Passport/identity documents removed

Those working in brothel prevented from seeking medical treatment

Food withheld

Those working in brothel passed around by offender and moved to other brothels

Earnings of those working in brothel withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates

Any steps taken to prevent those working in brothel reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Those working in brothel forced or coerced into pornography

Timescale over which operation has been run

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Demonstration of steps taken to address offending behaviour

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SIX****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Causing or inciting child prostitution or pornography

Sexual Offences Act 2003 (section 48)

# Controlling a child prostitute or child involved in pornography

Sexual Offences Act 2003 (section 49)

# Arranging or facilitating child prostitution or pornography

Sexual Offences Act 2003 (section 50)

---

**Triable either way**

**Maximum: 14 years' custody**

|  |   |
|--|---|
| <b>Offence range: Victim aged under 13</b> | <b>1 – 13 years' custody</b>              |
| <b>Victim aged 13–15</b>                   | <b>26 weeks' – 11 years' custody</b>      |
| <b>Victim aged 16–17</b>                   | <b>Community order – 7 years' custody</b> |

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The terms “child prostitute”, “child prostitution” and “child involved in pornography” are used in this guideline in accordance with the statutory language contained in the Sexual Offences Act 2003.

**STEP ONE**

**Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

**For offences that involve wide scale commercial and/or international activity sentences above the category range may be appropriate.**

| Harm              |   |
|-------------------|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Victims involved in penetrative sexual activity</li> <li>Abduction/detention</li> <li>Violence or threats of violence</li> <li>Sustained and systematic psychological abuse</li> <li>Victim(s) participated in unsafe/degrading sexual activity beyond that which is inherent in the offence</li> <li>Victim(s) passed around by the offender to other “customers” and/or moved to other brothels</li> </ul> |
| <b>Category 2</b> | Factor(s) in category 1 not present   |

| Culpability   |
|---|
| <b>A</b>  |
| Directing or organising child prostitution or pornography on significant commercial basis   |
| Expectation of significant financial or other gain  |
| Abuse of trust  |
| Exploitation of victim(s) known to be trafficked  |
| Significant involvement in limiting the freedom of the victim(s)  |
| Grooming of a victim to enter prostitution or pornography including through cultivation of a dependency on drugs or alcohol   |
| <b>B</b>  |
| Close involvement with inciting, controlling, arranging or facilitating child prostitution or pornography (where offender’s involvement is not as a result of coercion) |
| <b>C</b>  |
| Performs limited function under direction   |
| Close involvement but engaged by coercion/intimidation/exploitation   |

(CAUSING/INCITING/CONTROLLING/ARRANGING) CHILD PROSTITUTION OR PORNOGRAPHY

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   |              | A  | B  | C   |
|-------------------|--------------|--|--|---|
| <b>Category 1</b> | <b>U13</b>   | <b>Starting point</b><br>10 years' custody     | <b>Starting point</b><br>8 years' custody                | <b>Starting point</b><br>5 years' custody                                 |
|                   |              | <b>Category range</b><br>8 – 13 years' custody | <b>Category range</b><br>6 – 11 years' custody           | <b>Category range</b><br>2 – 6 years' custody                             |
|                   | <b>13–15</b> | <b>Starting point</b><br>8 years' custody      | <b>Starting point</b><br>5 years' custody                | <b>Starting point</b><br>2 years 6 months' custody                        |
|                   |              | <b>Category range</b><br>6 – 11 years' custody | <b>Category range</b><br>4 – 8 years' custody            | <b>Category range</b><br>1 – 4 years' custody                             |
|                   | <b>16–17</b> | <b>Starting point</b><br>4 years' custody      | <b>Starting point</b><br>2 years' custody                | <b>Starting point</b><br>1 year's custody                                 |
|                   |              | <b>Category range</b><br>3 – 7 years' custody  | <b>Category range</b><br>1 – 4 years' custody            | <b>Category range</b><br>26 weeks' – 2 years' custody                     |
| <b>Category 2</b> | <b>U13</b>   | <b>Starting point</b><br>8 years' custody      | <b>Starting point</b><br>6 years' custody                | <b>Starting point</b><br>2 years' custody                                 |
|                   |              | <b>Category range</b><br>6 – 11 years' custody | <b>Category range</b><br>4 – 9 years' custody            | <b>Category range</b><br>1 – 4 years' custody                             |
|                   | <b>13–15</b> | <b>Starting point</b><br>6 years' custody      | <b>Starting point</b><br>3 years' custody                | <b>Starting point</b><br>1 year's custody                                 |
|                   |              | <b>Category range</b><br>4 – 9 years' custody  | <b>Category range</b><br>2 – 5 years' custody            | <b>Category range</b><br>26 weeks' – 2 years' custody                     |
|                   | <b>16–17</b> | <b>Starting point</b><br>3 years' custody      | <b>Starting point</b><br>1 year's custody                | <b>Starting point</b><br>26 weeks' custody                                |
|                   |              | <b>Category range</b><br>2 – 5 years' custody  | <b>Category range</b><br>26 weeks' –<br>2 years' custody | <b>Category range</b><br>High level community order –<br>1 year's custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

(CAUSING/INCITING/CONTROLLING/ARRANGING) CHILD PROSTITUTION OR PORNOGRAPHY

| Aggravating factors   |
|---|
| <i>Statutory aggravating factors</i>  |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction |
| Offence committed whilst on bail  |
| <i>Other aggravating factors</i>  |
| Failure to comply with current court orders   |
| Offence committed whilst on licence   |
| Deliberate isolation of victim(s)   |
| Vulnerability of victim(s)  |
| Threats made to expose victim(s) to the authorities (for example, immigration or police), family/friends or others  |
| Harm threatened against the family/friends of victim(s)   |
| Passport/identity documents removed   |
| Victim(s) prevented from seeking medical treatment  |
| Victim(s) prevented from attending school   |
| Food withheld   |
| Earnings withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates                                       |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |
| Attempts to dispose of or conceal evidence  |
| Timescale over which the operation has been run   |

| Mitigating factors   |
|--|
| No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Remorse  |
| Previous good character and/or exemplary conduct*  |
| Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Mental disorder or learning disability, particularly where linked to the commission of the offence |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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# Paying for the sexual services of a child

Sexual Offences Act 2003 (section 47)

Triable only on indictment (if involving penetration against victim under 16)  
– otherwise triable either way

|                |                                   |                                    |
|----------------|-----------------------------------|------------------------------------|
| Maximum:       | Victim under 13 (penetrative)     | Life imprisonment                  |
|                | Victim under 13 (non-penetrative) | 14 years' custody                  |
|                | Victim aged 13–15                 | 14 years' custody                  |
|                | Victim aged 16–17                 | 7 years' custody                   |
| Offence range: | Victim aged 16–17                 | Community order – 5 years' custody |

This guideline should only be used where the victim is aged 16 or 17 years old. If the victim is under 13 please refer to the guidelines for rape of a child under 13, assault by penetration of a child under 13, sexual assault of a child under 13 or causing or inciting a child under 13 to engage in sexual activity, depending on the activity involved in the offence.

If the victim is aged 13–15 please refer to the sexual activity with a child guideline.

Where the victim is 16 or 17 years old – for convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.



## STEP ONE

### Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

**This guideline should only be used where the victim was aged 16 or 17 years old.**

| Harm              |   | Culpability   |
|-------------------|---|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Penetration of vagina or anus (using body or object) by, or of, the victim</li> <li>Penile penetration of mouth by, or of, the victim</li> <li>Violence or threats of violence</li> <li>Victim subjected to unsafe/degrading sexual activity (beyond that which is inherent in the offence)</li> </ul> | <b>A</b>  |
| <b>Category 2</b> | Touching of naked genitalia or naked breasts by, or of, the victim  | Abduction/detention   |
| <b>Category 3</b> | Other sexual activity   | Sexual images of victim recorded, retained, solicited or shared   |
|                   |   | Offender acts together with others to commit the offence  |
|                   |   | Use of alcohol/drugs on victim  |
|                   |   | Abuse of trust  |
|                   |   | Previous violence against victim  |
|                   |   | Sexual images of victim recorded, retained, solicited or shared   |
|                   |   | Blackmail or other threats made (including to expose victim to the authorities, family/friends or others) |
|                   |   | Offender aware that he has a sexually transmitted disease   |
|                   |   | Offender aware victim has been trafficked   |
|                   |   | <b>B</b>  |
|                   |   | Factor(s) in category A not present   |

## STEP TWO

### Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page **for victims aged 16 or 17**. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A   | B  |
|------------|---|--|
| Category 1 | <b>Starting point</b><br>4 years' custody             | <b>Starting point</b><br>2 years' custody                              |
|            | <b>Category range</b><br>2 – 5 years' custody         | <b>Category range</b><br>1 – 4 years' custody                          |
| Category 2 | <b>Starting point</b><br>3 years' custody             | <b>Starting point</b><br>1 year's custody                              |
|            | <b>Category range</b><br>1 – 4 years' custody         | <b>Category range</b><br>26 weeks' – 2 years' custody                  |
| Category 3 | <b>Starting point</b><br>1 year's custody             | <b>Starting point</b><br>26 weeks' custody                             |
|            | <b>Category range</b><br>26 weeks' – 2 years' custody | <b>Category range</b><br>High level community order – 1 year's custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

| Aggravating factors   | Mitigating factors   |
|---|--|
| <i>Statutory aggravating factors</i>  | No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse  |
| Offence committed whilst on bail  | Previous good character and/or exemplary conduct*  |
| <i>Other aggravating factors</i>  | Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Ejaculation   | Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Failure to comply with current court orders   | Demonstration of steps taken to address offending behaviour  |
| Offence committed whilst on licence   |  |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |
| Attempts to dispose of or conceal evidence  |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Trafficking people for sexual exploitation

Sexual Offences Act 2003 (sections 59A)

(This guideline also applies to offences, committed before 6 April 2013, of trafficking into/within/out of the UK for sexual exploitation contrary to sections 57 to 59 of the Sexual Offences Act 2003)

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**Triable either way**

**Maximum: 14 years' custody**

**Offence range: Community order – 12 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The term “prostitution” is used in this guideline in accordance with the statutory language contained in the Sexual Offences Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |   | Culpability   |
|-------------------|---|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Abduction/detention</li> <li>Violence or threats of violence</li> <li>Sustained and systematic psychological abuse</li> <li>Victim(s) under 18</li> <li>Victim(s) forced or coerced to participate in unsafe/degrading sexual activity</li> <li>Victim(s) forced/coerced into prostitution</li> <li>Victim(s) tricked/deceived as to purpose of visit</li> </ul> | <b>A</b>  |
|                   |   | Directing or organising trafficking on significant commercial basis   |
|                   |   | Expectation of significant financial or other gain  |
|                   |   | Significant influence over others in trafficking organisation/hierarchy   |
|                   |   | Abuse of trust  |
|                   |   | <b>B</b>  |
|                   |   | Operational or management function within hierarchy   |
|                   |   | Involves others in operation whether by coercion/intimidation/ exploitation or reward (and offender's involvement is not as a result of coercion) |
|                   |   | <b>C</b>  |
|                   |   | Performs limited function under direction   |
|                   |   | Close involvement but engaged by coercion/ intimidation/ exploitation   |
| <b>Category 2</b> | Factor(s) in category 1 not present   |   |

**STEP TWO****Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A  | B   | C   |
|------------|--|---|---|
| Category 1 | <b>Starting point</b><br>8 years' custody      | <b>Starting point</b><br>6 years' custody     | <b>Starting point</b><br>18 months' custody                                 |
|            | <b>Category range</b><br>6 – 12 years' custody | <b>Category range</b><br>4 – 8 years' custody | <b>Category range</b><br>26 weeks' – 2 years' custody                       |
| Category 2 | <b>Starting point</b><br>6 years' custody      | <b>Starting point</b><br>4 years' custody     | <b>Starting point</b><br>26 weeks' custody                                  |
|            | <b>Category range</b><br>4 – 8 years' custody  | <b>Category range</b><br>2 – 6 years' custody | <b>Category range</b><br>High level community order –<br>18 months' custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### Statutory aggravating factors

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### Other aggravating factors

Failure to comply with current court orders

Offence committed whilst on licence

Deliberate isolation of victim(s)

Children of victim(s) left in home country due to trafficking

Threats made to expose victim(s) to the authorities (for example, immigration or police), family/friends or others

Harm threatened against the family/friends of victim

Exploitation of victim(s) from particularly vulnerable backgrounds

Victim(s) previously trafficked/sold/passed around

Passport/identity documents removed

Victim(s) prevented from seeking medical treatment

Food withheld

Use of drugs/alcohol or other substance to secure victim's compliance

Earnings of victim(s) withheld/kept by offender or evidence of excessive wage reduction, debt bondage, inflated travel or living expenses, unreasonable interest rates

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Timescale over which operation has been run

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Sexual activity with a person with a mental disorder impeding choice

Sexual Offences Act 2003 (section 30)

# Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity

Sexual Offences Act 2003 (section 31)

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**Triable only on indictment (if penetration involved)**

– otherwise, triable either way

**Maximum: Life imprisonment (if penetration involved)**

– otherwise 14 years' custody

**Offence range: Community order – 19 years' custody**

These are serious specified offences for the purposes of section 224 and, where the offence involved penetration, section 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences involving penetration, committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.



**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |   |
|-------------------|---|
| <b>Category 1</b> | The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors <b>may</b> elevate to category 1   |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>• Severe psychological or physical harm</li> <li>• Pregnancy or STI as a consequence of offence</li> <li>• Additional degradation/humiliation</li> <li>• Abduction</li> <li>• Prolonged detention/sustained incident</li> <li>• Violence or threats of violence</li> <li>• Forced/uninvited entry into victim's home or residence</li> </ul> |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present   |

| Culpability  |
|--|
| <b>A</b>   |
| Significant degree of planning   |
| Offender acts together with others to commit the offence   |
| Use of alcohol/drugs on victim to facilitate the offence   |
| Grooming behaviour used against victim   |
| Abuse of trust   |
| Previous violence against victim   |
| Offence committed in course of burglary  |
| Sexual images of victim recorded, retained, solicited or shared  |
| Deliberate isolation of victim   |
| Commercial exploitation and/or motivation  |
| Offence racially or religiously aggravated   |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)  |
| <b>B</b>   |
| Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

**Where offence involved penetration**

|                   | <b>A</b>  | <b>B</b>  |
|-------------------|---|---|
| <b>Category 1</b> | <b>Starting point</b><br>16 years' custody      | <b>Starting point</b><br>13 years' custody      |
|                   | <b>Category range</b><br>13 – 19 years' custody | <b>Category range</b><br>11 – 17 years' custody |
| <b>Category 2</b> | <b>Starting point</b><br>13 years' custody      | <b>Starting point</b><br>10 years' custody      |
|                   | <b>Category range</b><br>11 – 17 years' custody | <b>Category range</b><br>8 – 13 years' custody  |
| <b>Category 3</b> | <b>Starting point</b><br>10 years' custody      | <b>Starting point</b><br>8 years' custody       |
|                   | <b>Category range</b><br>8 – 13 years' custody  | <b>Category range</b><br>6 – 11 years' custody  |

**Where offence did not involve penetration**

|                   | <b>A</b>  | <b>B</b>   |
|-------------------|---|--|
| <b>Category 1</b> | <b>Starting point</b><br>6 years' custody             | <b>Starting point</b><br>4 years' custody                              |
|                   | <b>Category range</b><br>4 – 9 years' custody         | <b>Category range</b><br>3 – 7 years' custody                          |
| <b>Category 2</b> | <b>Starting point</b><br>4 years' custody             | <b>Starting point</b><br>2 years' custody                              |
|                   | <b>Category range</b><br>3 – 7 years' custody         | <b>Category range</b><br>1 – 4 years' custody                          |
| <b>Category 3</b> | <b>Starting point</b><br>1 year's custody             | <b>Starting point</b><br>26 weeks' custody                             |
|                   | <b>Category range</b><br>26 weeks' – 2 years' custody | <b>Category range</b><br>High level community order – 1 year's custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When appropriate, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Ejaculation (where not taken into account at step one)

Blackmail or other threats made (where not taken into account at step one)

Location of offence

Timing of offence

Use of weapon or other item to frighten or injure

Victim compelled to leave their home or institution (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it

- \* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

### STEP THREE

#### Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### STEP FOUR

#### Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

### STEP FIVE

#### Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

### STEP SIX

#### Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

### STEP SEVEN

#### Ancillary orders

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

### STEP EIGHT

#### Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

### STEP NINE

#### Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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# Engaging in sexual activity in the presence of a person with mental disorder impeding choice

Sexual Offences Act 2003 (section 32)

# Causing a person, with mental disorder impeding choice, to watch a sexual act

Sexual Offences Act 2003 (section 33)

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**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Community order – 6 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |  | Culpability  |
|-------------------|--|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Causing victim to view extreme pornography</li> <li>Causing victim to view indecent/prohibited images of children</li> <li>Engaging in, or causing a victim to view live, sexual activity involving sadism/violence/sexual activity with an animal/a child</li> </ul> | <b>A</b>   |
| <b>Category 2</b> | Engaging in, or causing a victim to view images of or view live, sexual activity involving: <ul style="list-style-type: none"> <li>penetration of vagina or anus (using body or object)</li> <li>penile penetration of mouth</li> <li>masturbation</li> </ul>  | Significant degree of planning   |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  | Offender acts together with others in order to commit the offence  |
|                   |  | Use of alcohol/drugs on victim to facilitate the offence   |
|                   |  | Grooming behaviour used against victim   |
|                   |  | Abuse of trust   |
|                   |  | Use of threats (including blackmail)   |
|                   |  | Commercial exploitation and/or motivation  |
|                   |  | Offence racially or religiously aggravated   |
|                   |  | Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
|                   |  | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
|                   |  | <b>B</b>   |
|                   |  | Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A  | B   |
|------------|--|---|
| Category 1 | <b>Starting point</b><br>4 years' custody                              | <b>Starting point</b><br>2 years' custody   |
|            | <b>Category range</b><br>3 – 6 years' custody                          | <b>Category range</b><br>1 – 3 years' custody                                     |
| Category 2 | <b>Starting point</b><br>2 years' custody                              | <b>Starting point</b><br>1 year's custody   |
|            | <b>Category range</b><br>1 – 3 years' custody                          | <b>Category range</b><br>High level community order – 18 months' custody          |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                             | <b>Starting point</b><br>Medium level community order                             |
|            | <b>Category range</b><br>High level community order – 1 year's custody | <b>Category range</b><br>Low level community order – Medium level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

#### Aggravating factors

##### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

##### *Other aggravating factors*

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

#### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Demonstration of steps taken to address offending behaviour

- \* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Inducement, threat or deception to procure sexual activity with a person with a mental disorder

Sexual Offences Act 2003 (section 34)

# Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception

Sexual Offences Act 2003 (section 35)

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**Triable only on indictment (if penetration involved)**

– otherwise triable either way

**Maximum: Life imprisonment (if penetration involved)**

– otherwise 14 years' custody

**Offence range: Community order – 10 years' custody**

These are serious specified offences for the purposes of section 224 and, where the offence involved penetration, section 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences involving penetration, committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

**This guideline also applies to offences committed remotely/online.**

| Harm              |   | Culpability  |
|-------------------|---|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Penetration of vagina or anus (using body or object)</li> <li>Penile penetration of mouth</li> </ul> <p>In either case by, or of, the victim</p> | <b>A</b>   |
| <b>Category 2</b> | Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim  | Significant degree of planning   |
| <b>Category 3</b> | Other sexual activity   | Offender acts together with others to commit the offence   |
|                   |   | Use of alcohol/drugs on victim to facilitate the offence   |
|                   |   | Abuse of trust   |
|                   |   | Sexual images of victim recorded, retained, solicited or shared  |
|                   |   | Commercial exploitation and/or motivation  |
|                   |   | Offence racially or religiously aggravated   |
|                   |   | Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
|                   |   | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
|                   |   | <b>B</b>   |
|                   |   | Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   | A  | B   |
|-------------------|--|---|
| <b>Category 1</b> | <b>Starting point</b><br>5 years' custody                              | <b>Starting point</b><br>1 year's custody                                       |
|                   | <b>Category range</b><br>4 – 10 years' custody                         | <b>Category range</b><br>High level community order – 2 years' custody          |
| <b>Category 2</b> | <b>Starting point</b><br>3 years' custody                              | <b>Starting point</b><br>26 weeks' custody                                      |
|                   | <b>Category range</b><br>2 – 6 years' custody                          | <b>Category range</b><br>High level community order – 1 year's custody          |
| <b>Category 3</b> | <b>Starting point</b><br>26 weeks' custody                             | <b>Starting point</b><br>Medium level community order                           |
|                   | <b>Category range</b><br>High level community order – 3 years' custody | <b>Category range</b><br>Low level community order – High level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

| Aggravating factors   |  |
|---|--|
| <i>Statutory aggravating factors</i>  | Attempts to dispose of or conceal evidence   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Commission of offence whilst under the influence of alcohol or drugs   |
| Offence committed whilst on bail  |  |
| <i>Other aggravating factors</i>  |  |
| Severe psychological or physical harm   |  |
| Ejaculation   |  |
| Pregnancy or STI as a consequence of offence  |  |
| Location of offence   |  |
| Timing of offence   |  |
| Victim compelled to leave their home or institution (including victims of domestic violence)  |  |
| Failure to comply with current court orders   |  |
| Offence committed whilst on licence   |  |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |
|   | Mitigating factors   |
|   | No previous convictions <b>or</b> no relevant/recent convictions   |
|   | Remorse  |
|   | Previous good character and/or exemplary conduct*  |
|   | Age and/or lack of maturity where it affects the responsibility of the offender  |
|   | Mental disorder or learning disability, particularly where linked to the commission of the offence   |
|   | * Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor. |
|   | In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.   |

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

Sexual Offences Act 2003 (section 36)

# Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

Sexual Offences Act 2003 (section 37)

---

Triable either way

Maximum: 10 years' custody

Offence range: Community order – 6 years' custody

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |  | Culpability  |
|-------------------|--|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Causing victim to view extreme pornography</li> <li>Causing victim to view indecent/prohibited images of children</li> <li>Engaging in, or causing a victim to view live, sexual activity involving sadism/violence/sexual activity with an animal/a child</li> </ul> | <b>A</b>   |
| <b>Category 2</b> | Engaging in, or causing a victim to view images of or view live, sexual activity involving: <ul style="list-style-type: none"> <li>penetration of vagina or anus (using body or object)</li> <li>penile penetration of mouth</li> <li>masturbation</li> </ul>  | Significant degree of planning<br>Offender acts together with others in order to commit the offence<br>Use of alcohol/drugs on victim to facilitate the offence<br>Abuse of trust<br>Commercial exploitation and/or motivation<br>Offence racially or religiously aggravated<br>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
|                   |  | <b>B</b>   |
|                   |  | Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A  | B   |
|------------|--|---|
| Category 1 | <b>Starting point</b><br>4 years' custody                              | <b>Starting point</b><br>2 years' custody   |
|            | <b>Category range</b><br>3 – 6 years' custody                          | <b>Category range</b><br>1 – 3 years' custody                                     |
| Category 2 | <b>Starting point</b><br>2 years' custody                              | <b>Starting point</b><br>1 year's custody   |
|            | <b>Category range</b><br>1 – 3 years' custody                          | <b>Category range</b><br>High level community order – 18 months' custody          |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                             | <b>Starting point</b><br>Medium level community order                             |
|            | <b>Category range</b><br>High level community order – 1 year's custody | <b>Category range</b><br>Low level community order – Medium level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

| Aggravating factors   | Mitigating factors   |
|---|--|
| <i>Statutory aggravating factors</i>  | No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse  |
| Offence committed whilst on bail  | Previous good character and/or exemplary conduct*  |
| <i>Other aggravating factors</i>  | Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Location of offence   | Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Timing of offence   | Demonstration of steps taken to address offending behaviour  |
| Failure to comply with current court orders   |  |
| Offence committed whilst on licence   |  |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |
| Attempts to dispose of or conceal evidence  |  |
| Commission of offence whilst under the influence of alcohol or drugs  |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Care workers: sexual activity with a person with a mental disorder

Sexual Offences Act 2003 (section 38)

# Care workers: causing or inciting sexual activity

Sexual Offences Act 2003 (section 39)

---

**Triable only on indictment (if penetration involved)**

– otherwise triable either way

**Maximum: 14 years' custody (if penetration involved)**

– otherwise 10 years' custody

**Offence range: Community order – 10 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

**This guideline also applies to offences committed remotely/online.**

| Harm              |   | Culpability  |
|-------------------|---|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Penetration of vagina or anus (using body or object)</li> <li>Penile penetration of mouth</li> </ul> <p>In either case by, or of, the victim</p> | <b>A</b>   |
| <b>Category 2</b> | Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim  | Significant degree of planning   |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present   | Offender acts together with others to commit the offence   |
|                   |   | Use of alcohol/drugs on victim to facilitate the offence   |
|                   |   | Grooming behaviour used against victim   |
|                   |   | Use of threats (including blackmail)   |
|                   |   | Sexual images of victim recorded, retained, solicited or shared  |
|                   |   | Commercial exploitation and/or motivation  |
|                   |   | Offence racially or religiously aggravated   |
|                   |   | Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
|                   |   | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
|                   |   | <b>B</b>   |
|                   |   | Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A  | B   |
|------------|--|---|
| Category 1 | <b>Starting point</b><br>5 years' custody                              | <b>Starting point</b><br>18 months' custody                                     |
|            | <b>Category range</b><br>4 – 10 years' custody                         | <b>Category range</b><br>1 – 2 years' custody                                   |
| Category 2 | <b>Starting point</b><br>3 years' custody                              | <b>Starting point</b><br>26 weeks' custody                                      |
|            | <b>Category range</b><br>2 – 6 years' custody                          | <b>Category range</b><br>Medium level community order – 1 year's custody        |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                             | <b>Starting point</b><br>Medium level community order                           |
|            | <b>Category range</b><br>High level community order – 3 years' custody | <b>Category range</b><br>Low level community order – High level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

### Aggravating factors

#### *Statutory aggravating factors*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### *Other aggravating factors*

Ejaculation

Pregnancy or STI as a consequence of offence

Location of offence

Timing of offence

Victim compelled to leave their home or institution (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Failure of offender to respond to previous warnings

Commission of offence whilst under the influence of alcohol or drugs

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct\*

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, particularly where linked to the commission of the offence

Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

## Care workers: sexual activity in the presence of a person with a mental disorder

Sexual Offences Act 2003 (section 40)

## Care workers: causing a person with a mental disorder to watch a sexual act

Sexual Offences Act 2003 (section 41)

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**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Community order – 2 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

| Harm              |  | Culpability  |
|-------------------|--|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>Causing victim to view extreme pornography</li> <li>Causing victim to view indecent/prohibited images of children</li> <li>Engaging in, or causing a victim to view live, sexual activity involving sadism/violence/sexual activity with an animal/a child</li> </ul> | <b>A</b>   |
| <b>Category 2</b> | Engaging in, or causing a victim to view images of or view live, sexual activity involving: <ul style="list-style-type: none"> <li>penetration of vagina or anus (using body or object)</li> <li>penile penetration of mouth</li> <li>masturbation</li> </ul>  | Significant degree of planning   |
| <b>Category 3</b> | Factor(s) in categories 1 and 2 not present  | Offender acts together with others to commit the offence   |
|                   |  | Use of alcohol/drugs on victim to facilitate the offence   |
|                   |  | Grooming behaviour used against victim   |
|                   |  | Use of threats (including blackmail)   |
|                   |  | Commercial exploitation and/or motivation  |
|                   |  | Offence racially or religiously aggravated   |
|                   |  | Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
|                   |  | Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |
|                   |  | <b>B</b>   |
|                   |  | Factor(s) in category A not present  |

**STEP TWO****Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|            | A  | B   |
|------------|--|---|
| Category 1 | <b>Starting point</b><br>18 years' custody                             | <b>Starting point</b><br>1 year's custody                                       |
|            | <b>Category range</b><br>1 – 2 years' custody                          | <b>Category range</b><br>26 weeks' – 18 months' custody                         |
| Category 2 | <b>Starting point</b><br>1 year's custody                              | <b>Starting point</b><br>26 weeks' custody                                      |
|            | <b>Category range</b><br>26 weeks' – 18 months' custody                | <b>Category range</b><br>High level community order – 1 year's custody          |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                             | <b>Starting point</b><br>Medium level community order                           |
|            | <b>Category range</b><br>High level community order – 1 year's custody | <b>Category range</b><br>Low level community order – High level community order |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

| Aggravating factors   |
|---|
| <i>Statutory aggravating factors</i>  |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction |
| Offence committed whilst on bail  |
| <i>Other aggravating factors</i>  |
| Location of offence   |
| Timing of offence   |
| Failure to comply with current court orders   |
| Offence committed whilst on licence   |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |
| Attempts to dispose of or conceal evidence  |
| Failure of offender to respond to previous warnings   |
| Commission of offence whilst under the influence of alcohol or drugs  |

| Mitigating factors   |
|--|
| No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Remorse  |
| Previous good character and/or exemplary conduct*  |
| Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Demonstration of steps taken to address offending behaviour  |

- \* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Exposure

## Sexual Offences Act 2003 (section 66)

---

**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Fine – 1 year's custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

|                   |  |
|-------------------|--|
| <b>Category 1</b> | Raised harm <b>and</b> raised culpability                          |
| <b>Category 2</b> | Raised harm <b>or</b> raised culpability                           |
| <b>Category 3</b> | Exposure <b>without</b> raised harm or culpability factors present |

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating raised harm**

Victim followed/pursued

Offender masturbated

**Factors indicating raised culpability**

Specific or previous targeting of a particularly vulnerable victim

Abuse of trust

Use of threats (including blackmail)

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | <b>Starting point</b><br>26 weeks' custody                                |
|                   | <b>Category range</b><br>12 weeks' – 1 year's custody                     |
| <b>Category 2</b> | <b>Starting point</b><br>High level community order                       |
|                   | <b>Category range</b><br>Medium level community order – 26 weeks' custody |
| <b>Category 3</b> | <b>Starting point</b><br>Medium level community order                     |
|                   | <b>Category range</b><br>Band A fine – High level community order         |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3 offences**, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

| Aggravating factors   | Mitigating factors   |
|---|--|
| <i>Statutory aggravating factors</i>  | No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse  |
| Offence committed whilst on bail  | Previous good character and/or exemplary conduct*  |
| <i>Other aggravating factors</i>  | Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Location of offence   | Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Timing of offence   | Demonstration of steps taken to address offending behaviour  |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution   |  |
| Failure to comply with current court orders   |  |
| Offence committed whilst on licence   |  |
| Commission of offence whilst under the influence of alcohol or drugs  |  |
| Presence of others, especially children   |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Voyeurism

## Sexual Offences Act 2003 (section 67)

---

**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Fine – 18 months' custody**

For convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | Raised harm <b>and</b> raised culpability                           |
| <b>Category 2</b> | Raised harm <b>or</b> raised culpability                            |
| <b>Category 3</b> | Voyeurism <b>without</b> raised harm or culpability factors present |

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating raised harm**

|  |
|--|
| Image(s) available to be viewed by others                  |
| Victim observed or recorded in their own home or residence |

**Factors indicating raised culpability**

|  |
|--|
| Significant degree of planning   |
| Image(s) recorded  |
| Abuse of trust   |
| Specific or previous targeting of a particularly vulnerable victim   |
| Commercial exploitation and/or motivation  |
| Offence racially or religiously aggravated   |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) |
| Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)  |

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | <b>Starting point</b><br>26 weeks' custody                                |
|                   | <b>Category range</b><br>12 weeks' – 18 months' custody                   |
| <b>Category 2</b> | <b>Starting point</b><br>High level community order                       |
|                   | <b>Category range</b><br>Medium level community order – 26 weeks' custody |
| <b>Category 3</b> | <b>Starting point</b><br>Medium level community order                     |
|                   | <b>Category range</b><br>Band A fine – High level community order         |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3 offences**, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

| <b>Aggravating factors</b>  |   |
|---|---|
| <i>Statutory aggravating factors</i>  |   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution |
| Offence committed whilst on bail  | Attempts to dispose of or conceal evidence  |
| <i>Other aggravating factors</i>  |   |
| Location of offence   | <b>Mitigating factors</b>   |
| Timing of offence   | No previous convictions <b>or</b> no relevant/recent convictions  |
| Failure to comply with current court orders   | Remorse   |
| Offence committed whilst on licence   | Previous good character and/or exemplary conduct*   |
| Distribution of images, whether or not for gain   | Age and/or lack of maturity where it affects the responsibility of the offender   |
| Placing images where there is the potential for a high volume of viewers  | Mental disorder or learning disability, particularly where linked to the commission of the offence                                |
| Period over which victim observed   | Demonstration of steps taken to address offending behaviour   |
| Period over which images were made or distributed   |   |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Sex with an adult relative: penetration

Sexual Offences Act 2003 (section 64)

# Sex with an adult relative: consenting to penetration

Sexual Offences Act 2003 (section 65)

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**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Fine – 2 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

|                   |  |
|-------------------|--|
| <b>Category 1</b> | Raised harm <b>and</b> raised culpability  |
| <b>Category 2</b> | Raised harm <b>or</b> raised culpability   |
| <b>Category 3</b> | Sex with an adult relative <b>without</b> raised harm or culpability factors present |

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating raised harm**

Victim is particularly vulnerable due to personal circumstances

Child conceived

**Factors indicating raised culpability**

Grooming behaviour used against victim

Use of threats (including blackmail)

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range on the next page. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out on the next page.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

|                   |  |
|-------------------|--|
| <b>Category 1</b> | <b>Starting point</b><br>1 year's custody                                |
|                   | <b>Category range</b><br>26 weeks' – 2 years' custody                    |
| <b>Category 2</b> | <b>Starting point</b><br>High level community order                      |
|                   | <b>Category range</b><br>Medium level community order – 1 year's custody |
| <b>Category 3</b> | <b>Starting point</b><br>Medium level community order                    |
|                   | <b>Category range</b><br>Band A fine – High level community order        |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3 offences**, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

| Aggravating factors   | Mitigating factors   |
|---|--|
| <i>Statutory aggravating factors</i>  | No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse  |
| Offence committed whilst on bail  | Previous good character and/or exemplary conduct*  |
| <i>Other aggravating factors</i>  | Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Failure to comply with current court orders   | Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Offence committed whilst on licence   | Demonstration of steps taken to address offending behaviour  |
| Failure of offender to respond to previous warnings   |  |
| Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution  |  |
| Attempts to dispose of or conceal evidence  |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Administering a substance with intent

## Sexual Offences Act 2003 (section 61)

---

**Triable either way**

**Maximum: 10 years' custody**

**Offence range: 1 – 9 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | Raised harm <b>and</b> raised culpability   |
| <b>Category 2</b> | Raised harm <b>or</b> raised culpability  |
| <b>Category 3</b> | Administering a substance with intent <b>without</b> raised harm or culpability factors present |

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. Where no substantive sexual offence has been committed the main consideration for the court will be the offender's conduct as a whole including, but not exclusively, the offender's intention.

**Factors indicating raised harm**

Severe psychological or physical harm

Prolonged detention /sustained incident

Additional degradation/humiliation

**Factors indicating raised culpability**

Significant degree of planning

Specific targeting of a particularly vulnerable victim

Intended sexual offence carries a statutory maximum of life

Abuse of trust

Recording of offence

Offender acts together with others to commit the offence

Commercial exploitation and/or motivation

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | <b>Starting point</b><br>6 years' custody     |
|                   | <b>Category range</b><br>4 – 9 years' custody |
| <b>Category 2</b> | <b>Starting point</b><br>4 years' custody     |
|                   | <b>Category range</b><br>3 – 7 years' custody |
| <b>Category 3</b> | <b>Starting point</b><br>2 years' custody     |
|                   | <b>Category range</b><br>1 – 5 years' custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

| Aggravating factors   | Mitigating factors   |
|---|--|
| <i>Statutory aggravating factors</i>  | No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse  |
| Offence committed whilst on bail  | Previous good character and/or exemplary conduct*  |
| <i>Other aggravating factors</i>  | Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Location of offence   | Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Timing of offence   | Demonstration of steps taken to address offending behaviour  |
| Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution  |  |
| Attempts to dispose of or conceal evidence  |  |
| Failure to comply with current court orders   |  |
| Offence committed whilst on licence   |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.



**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

# Committing an offence with intent to commit a sexual offence

Sexual Offences Act 2003 (section 62)

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**Triable only on indictment (if kidnapping or false imprisonment committed)**

– otherwise, triable either way

**Maximum: Life imprisonment (if kidnapping or false imprisonment committed)**

– otherwise, 10 years

This is a serious specified offence for the purposes of section 224 and, where kidnapping or false imprisonment was committed, section 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

For offences committed by kidnapping or false imprisonment, on or after 3 December 2012, this is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The starting point and range should be commensurate with that for the preliminary offence actually committed, but with an enhancement to reflect the intention to commit a sexual offence.

The enhancement will vary depending on the nature and seriousness of the intended sexual offence, but 2 years is suggested as a suitable enhancement where the intent was to commit rape or assault by penetration.

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# Trespass with intent to commit a sexual offence

Sexual Offences Act 2003 (section 63)

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**Triable either way**

**Maximum: 10 years' custody**

**Offence range: 1 – 9 years' custody**

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | Raised harm <b>and</b> raised culpability   |
| <b>Category 2</b> | Raised harm <b>or</b> raised culpability  |
| <b>Category 3</b> | Trespass with intent to commit a sexual offence <b>without</b> raised harm or culpability factors present |

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. Where no substantive sexual offence has been committed the main consideration for the court will be the offender's conduct as a whole including, but not exclusively, the offender's intention.

**Factors indicating raised harm**

Prolonged detention/sustained incident

Additional degradation/humiliation

Offence committed in victim's home

**Factors indicating raised culpability**

Significant degree of planning

Specific targeting of a particularly vulnerable victim

Intended sexual offence attracts a statutory maximum of life imprisonment

Possession of weapon or other item to frighten or injure

Abuse of trust

Offender acts together with others to commit the offence

Commercial exploitation and/or motivation

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | <b>Starting point</b><br>6 years' custody     |
|                   | <b>Category range</b><br>4 – 9 years' custody |
| <b>Category 2</b> | <b>Starting point</b><br>4 years' custody     |
|                   | <b>Category range</b><br>3 – 7 years' custody |
| <b>Category 3</b> | <b>Starting point</b><br>2 years' custody     |
|                   | <b>Category range</b><br>1 – 5 years' custody |

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

| Aggravating factors   | Mitigating factors   |
|---|--|
| <i>Statutory aggravating factors</i>  | No previous convictions <b>or</b> no relevant/recent convictions                                   |
| Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction | Remorse  |
| Offence committed whilst on bail  | Previous good character and/or exemplary conduct*  |
| <i>Other aggravating factors</i>  | Age and/or lack of maturity where it affects the responsibility of the offender                    |
| Location of offence   | Mental disorder or learning disability, particularly where linked to the commission of the offence |
| Timing of offence   | Demonstration of steps taken to address offending behaviour  |
| Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution  |  |
| Attempts to dispose of or conceal evidence  |  |
| Failure to comply with current court orders   |  |
| Offence committed whilst on licence   |  |

\* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page 153.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

## Child sex offences committed by children or young persons (sections 9–12) (offender under 18)

Sexual Offences Act 2003 (section 13)

## Sexual activity with a child family member (offender under 18)

Sexual Offences Act 2003 (section 25)

## Inciting a child family member to engage in sexual activity (offender under 18)

Sexual Offences Act 2003 (section 26)

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**Triable either way**

**Maximum: 5 years' custody**

These are 'grave crimes' for the purposes of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

For convictions on or after 3 December 2012 (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226B (extended sentence for certain violent or sexual offences: persons under 18) of the Criminal Justice Act 2003.

Definitive guidelines for the sentencing of offenders under 18 years old are **not** included.

When sentencing offenders under 18, a court must in particular:

- follow the definitive guideline **Overarching Principles – Sentencing Youths**;

and have regard to:

- the principal aim of the youth justice system (to prevent offending by children and young people);
- and
- the welfare of the young offender.



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# Annex A

## Ancillary orders

This summary of the key provisions is correct as at the date of publication but will be subject to subsequent changes in law. If necessary, seek legal advice.

| ANCILLARY ORDER   | STATUTORY REFERENCE  |
|---|--|
| <p><b>Compensation</b></p> <p>The court must consider making a compensation order in any case in which personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to make an order in such cases.</p>   | <p>Section 130 of the Powers of Criminal Courts (Sentencing) Act 2000</p>  |
| <p><b>Confiscation</b></p> <p>A confiscation order may be made by the Crown Court in circumstances in which the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct.</p>  | <p>Section 6 and Schedule 2 of the Proceeds of Crime Act 2002</p>  |
| <p><b>Deprivation of property</b></p> <p>The court may order the offender is deprived of property used for the purpose of committing, or facilitating the commission of, any offence, or intended for that purpose.</p>   | <p>Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000</p>  |
| <p><b>Disqualification from working with children</b></p> <p>From 17 June 2013 courts <b>no longer</b> have the power to disqualify offenders from working with children pursuant to the Criminal Justice and Court Services Act 2000.</p>  | <p>Schedule 10 of the Safeguarding Vulnerable Groups Act 2006</p> <p>Safeguarding Vulnerable Groups Act 2006 (Commencement No. 8 and Saving) Order 2012 (SI 2012/2231)</p> <p>Protection of Freedoms Act 2012 (Commencement No. 6) Order 2013 (SI 2013/1180)</p> |
| <p><b>Restraining order</b></p> <p>Following a conviction <i>or an acquittal</i>, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.</p>  | <p>Sections 5 and 5A of the Protection from Harassment Act 1997</p>  |
| <p><b>Serious crime prevention order (SCPO)</b></p> <p>An SCPO may be made by the Crown Court in respect of qualifying offenders, if the court is satisfied such an order would protect the public by preventing, restricting or disrupting the involvement of the offender in serious crime.</p>   | <p>Section 19 and Schedule 1 of the Serious Crime Act 2007</p>   |
| <p><b>Sexual offences prevention order (SOPO)</b></p> <p>A SOPO may be made against qualifying offenders if the court is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm from the offender. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.</p> | <p>Section 104 and Schedules 3 and 5 of the Sexual Offences Act 2003</p>   |

## AUTOMATIC ORDERS ON CONVICTION

The following requirements or provisions are **not** part of the sentence imposed by the court but apply automatically by operation of law. The role of the court is to inform the offender of the applicable requirements and/or prohibition.

| REQUIREMENT OR PROVISION   | STATUTORY REFERENCE   |
|--|---|
| <p><b>Notification requirements</b></p> <p>A relevant offender automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The court should inform the offender accordingly.</p> <p><i>The operation of the notification requirement is not a relevant consideration in determining the sentence for the offence.</i></p> | <p>Sections 80 to 88 and Schedule 3 of the Sexual Offences Act 2003</p>   |
| <p><b>Protection for children and vulnerable adults</b></p> <p>A statutory scheme pursuant to which offenders <i>will</i> or <i>may</i> be barred from regulated activity relating to children or vulnerable adults, with or without the right to make representations, depending on the offence. The court should inform the offender accordingly.</p>  | <p>Section 2 and Schedule 3 of the Safeguarding Vulnerable Groups Act 2006</p> <p>Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37) (as amended)</p> |

# Annex B

## Approach to sentencing historic sexual offences

Details of the principal offences are set out in the table at Annex C on page 157.

When sentencing sexual offences under the Sexual Offences Act 1956, or other legislation pre-dating the 2003 Act, the court should apply the following principles:<sup>1</sup>

1. The offender must be sentenced in accordance with the sentencing regime applicable at the *date of sentence*. Under the Criminal Justice Act 2003<sup>2</sup> the court must have regard to the statutory purposes of sentencing and must base the sentencing exercise on its assessment of the seriousness of the offence.
2. The sentence is limited to the maximum sentence available at the *date of the commission of the offence*. If the maximum sentence has been reduced, the lower maximum will be applicable.
3. The court should have regard to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003.
4. The seriousness of the offence, assessed by the culpability of the offender and the harm caused or intended, is the main consideration for the court. The court should not seek to establish the likely sentence had the offender been convicted shortly after the date of the offence.
5. When assessing the culpability of the offender, the court should have regard to relevant culpability factors set out in any applicable guideline.
6. The court must assess carefully the harm done to the victim based on the facts available to it, having regard to relevant harm factors set out in any applicable guideline. Consideration of the circumstances which brought the offence to light will be of importance.
7. The court must consider the relevance of the passage of time carefully as it has the potential to aggravate or mitigate the seriousness of the offence. It will be an aggravating factor where the offender has continued to commit sexual offences against the victim or others or has continued to prevent the victim reporting the offence.
8. Where there is an absence of further offending over a long period of time, especially combined with evidence of good character, this may be treated by the court as a mitigating factor. However, as with offences dealt with under the Sexual Offences Act 2003, previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.
9. If the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may be regarded as personal mitigation.
10. If the offender made admissions at the time of the offence that were not investigated this is likely to be regarded as personal mitigation. Even greater mitigation is available to the offender who reported himself to the police and/or made early admissions.
11. A reduction for an early guilty plea should be made in the usual manner.

<sup>1</sup> R v H and others [2011] EWCA Crim 2753

<sup>2</sup> Section 143

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# Annex C

## Historic offences

| OFFENCE<br>(Sexual Offences Act 1956<br>unless stated otherwise)                         | EFFECTIVE DATES   | MAXIMUM  |
|--|---|--|
| <b>Rape and assault offences</b>   |   |  |
| Rape (section 1)   | 1 January 1957 – 30 April 2004  | Life   |
| Buggery with a person or animal (section 12)   | 1 January 1957 – 30 April 2004 (from 3 November 1994 non-consensual acts of buggery were defined as rape) | Life   |
| Indecent assault on a woman (section 14)   | 1 January 1957 – 30 April 2004  | 1 January 1957 – 31 December 1960:<br>2 years  |
|  |   | 1 January 1961 – 15 September 1985:<br>2 years or 5 years if victim under 13 and age stated on indictment                  |
|  |   | 16 September 1985 onwards: 10 years  |
| Indecent assault upon a man (section 15)   | 1 January 1957 – 30 April 2004  | 10 years   |
| <b>Offences against children</b>   |   |  |
| Sexual intercourse with a girl under 13 (section 5)                                      | 1 January 1957 – 30 April 2004  | Life   |
| Incest by a male person (section 10)   | 1 January 1957 – 30 April 2004  | Life if victim under 13; otherwise 7 years   |
| Incest by a female person (section 11)   | 1 January 1957 – 30 April 2004  | 7 years  |
| Gross indecency (section 13)   | 1 January 1957 – 30 April 2004  | Male offender over 21 with male under age of consent: 5 years  |
|  |   | Otherwise: 2 years   |
| Indecency with a child (section 1 of the Indecency with Children Act 1960)               | 1 January 1961 – 30 April 2004  | 1 January 1961 – 30 September 1997:<br>2 years   |
|  |   | 1 October 1997 onwards: 10 years<br><i>Note: on 11 January 2001 the age definition of a child increased from 14 to 16.</i> |
| Incitement of a girl under 16 to commit incest (section 54 of the Criminal Law Act 1977) | 8 September 1977 – 30 April 2004  | 2 years  |
| Abuse of position of trust (section 3 of the Sexual Offences (Amendment) Act 2000)       | 8 January 2001 – 30 April 2004  | 5 years  |

| OFFENCE<br>(Sexual Offences Act 1956<br>unless stated otherwise)   | EFFECTIVE DATES                | MAXIMUM   |
|--|--------------------------------|---|
| <b>Indecent images</b>   |                                |   |
| Taking indecent photographs of a child (section 1 of the Protection of Children Act 1978)                        | 20 August 1978 – present       | 20 August 1978 – 10 January 2001: 3 years<br>11 January 2001 onwards: 10 years  |
| Possession of indecent photographs of a child (section 160 of the Criminal Justice Act 1988)                     | 11 January 1988 – present      | 11 January 1988 – 10 January 2001: 6 months<br>11 January 2001 onwards: 5 years |
| <b>Exploitation offences</b>   |                                |   |
| Procurement of woman by threats (section 2)  | 1 January 1957 – 30 April 2004 | 2 years   |
| Procurement by false pretences (section 3)   | 1 January 1957 – 30 April 2004 | 2 years   |
| Causing prostitution of women (section 22)   | 1 January 1957 – 30 April 2004 | 2 years   |
| Procurance of girl under 21 for unlawful sexual intercourse in any part of the world (section 23)                | 1 January 1957 – 30 April 2004 | 2 years   |
| Detention in a brothel (section 24)  | 1 January 1957 – 30 April 2004 | 2 years   |
| Permitting a defective to use premises for intercourse (section 27)  | 1 January 1957 – 30 April 2004 | 2 years   |
| Causing or encouraging prostitution (etc) of a girl under 16 (section 28)  | 1 January 1957 – 30 April 2004 | 2 years   |
| Causing or encouraging prostitution of a defective (section 29)  | 1 January 1957 – 30 April 2004 | 2 years   |
| Living on earnings of prostitution (section 30)  | 1 January 1957 – 30 April 2004 | 7 years   |
| Controlling a prostitute (section 31)  | 1 January 1957 – 30 April 2004 | 7 years   |
| Trafficking into/within/out of the UK for sexual exploitation (sections 57 – 59 of the Sexual Offences Act 2003) | 1 May 2005 – 5 April 2013      | 14 years  |

| OFFENCE<br>(Sexual Offences Act 1956<br>unless stated otherwise)             | EFFECTIVE DATES                 | MAXIMUM                                  |
|--|---------------------------------|--|
| <b>Offences against those with a mental disorder</b>                         |                                 |  |
| Intercourse with a defective (section 7)                                     | 1 January 1957 – 30 April 2004  | 2 years                                  |
| Procurement of a defective (section 9)                                       | 1 January 1957 – 30 April 2004  | 2 years                                  |
| Sexual intercourse with patients (section 128 of the Mental Health Act 1956) | 1 November 1960 – 30 April 2004 | 2 years                                  |
| <b>Other offences</b>  |                                 |  |
| Administering drugs to obtain or facilitate intercourse (section 4)          | 1 January 1957 – 30 April 2004  | 2 years                                  |
| Burglary with intent to commit rape (section 9 of the Theft Act 1968)        | 1 January 1969 – 30 April 2004  | 14 years if dwelling; otherwise 10 years |

With thanks to Sweet & Maxwell, HHJ Rook QC and Robert Ward CBE for their kind permission to reproduce parts of *Sexual Offences Law & Practice*.



# Annex D

## Fine bands and community orders

### FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B or C).

| Fine Band | Starting Point <i>(Applicable to all offenders)</i> | Category Range <i>(Applicable to all offenders)</i> |
|-----------|---|---|
| Band A    | 50% of relevant weekly income                       | 25–75% of relevant weekly income                    |
| Band B    | 100% of relevant weekly income                      | 75–125% of relevant weekly income                   |
| Band C    | 150% of relevant weekly income                      | 125–175% of relevant weekly income                  |

### COMMUNITY ORDERS

In this guideline, community orders are expressed as one of three levels (low, medium and high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

| LOW   | MEDIUM   | HIGH  |
|---|--|---|
| In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary   |  | More intensive sentences which combine two or more requirements may be appropriate  |
| Suitable requirements might include: <ul style="list-style-type: none"> <li>• 40–80 hours unpaid work;</li> <li>• curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks);</li> <li>• exclusion requirement, without electronic monitoring, for a few months;</li> <li>• prohibited activity requirement;</li> <li>• attendance centre requirement (where available).</li> </ul> | Suitable requirements might include: <ul style="list-style-type: none"> <li>• appropriate treatment programme;</li> <li>• greater number of hours of unpaid work (for example, 80–150 hours);</li> <li>• an activity requirement in the middle range (20–30 days);</li> <li>• curfew requirement within the middle range (for example, up to 12 hours for 2–3 months);</li> <li>• exclusion requirement, lasting in the region of 6 months;</li> <li>• prohibited activity requirement.</li> </ul> | Suitable requirements might include: <ul style="list-style-type: none"> <li>• appropriate treatment programme;</li> <li>• 150–300 hours unpaid work;</li> <li>• activity requirement up to the maximum of 60 days;</li> <li>• curfew requirement up to 12 hours per day for 4–6 months;</li> <li>• exclusion order lasting in the region of 12 months.</li> </ul> |

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines and community orders.

