

Sexual activity with a child (offender under 18)

Sexual Offences Act 2003 (sections 9 and 13)

Causing or inciting a child to engage in sexual activity (offender under 18)

Sexual Offences Act 2003 (sections 10 and 13)

Triable either way
Maximum: 5 years' custody

Offence range: Youth rehabilitation order – 24 months' detention and training order

These are 'grave crimes' for the purposes of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- 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 226B (extended sentence for certain violent or sexual offences: persons under 18) of the Criminal Justice Act 2003.

When sentencing offenders under 18 the court must:

- have regard to the principal aim of the youth justice system, which is to prevent offending by children and young persons, in accordance with section 37 of the Crime and Disorder Act 1998;
- have regard to the welfare of the young offender in accordance with section 44 of the Children and Young Persons Act 1933; and
- apply the *Overarching Principles – Sentencing Youths* guideline.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Other sexual activity

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
Sexual images of victim recorded, retained, solicited or shared
Vulnerable victim targeted
Member of group or gang during commission of offence
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)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
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 below. The starting point applies to offenders irrespective of plea or previous convictions, unless the court imposes a referral order in accordance with the applicable statutory provisions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

The sentencing options that are available to the court will depend on the age of the young offender and relevant statutory criteria. These sentencing options are set out in Annex XXXX at page XXXX [this annex will be included in the definitive guideline].

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.

	A	B
Category 1	Starting point 12 months' detention and training order	Starting point 4 months' detention and training order
	Category range Youth rehabilitation order – 24 months' detention and training order	Category range Youth rehabilitation order – 12 months' detention and training order
Category 2	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order – 12 months' detention and training order	Category range Youth rehabilitation order
Category 3	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order	Category range Youth rehabilitation 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 or 2 offences**, the court should also consider the custody threshold as follows, taking into account the circumstances, age and maturity of the young offender and that a custodial sentence is a measure of last resort:

- has the custody threshold been passed?
- if so, could a suitable community sentence be imposed instead?
- if not, is it unavoidable that a custodial sentence be imposed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or 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>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity of the young offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	Young offender intervenes to stop the sexual activity taking place
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	
Pregnancy or STI as a consequence of sexual activity	
Failure of young offender to respond to previous warnings about his/her behaviour	
Commission of offence whilst under the influence of alcohol or drugs	

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 Crown 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 226B).

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**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. 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.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

In respect of a grave crime, the Crown Court must consider whether a disqualification order prohibiting the offender from working with children should be made.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Engaging in sexual activity in the presence of a child (offender under 18)

Sexual Offences Act 2003 (sections 11 and 13)

Causing a child to watch a sexual act (offender under 18)

Sexual Offences Act 2003 (sections 12 and 13)

Triable either way
Maximum: 5 years' custody

Offence range: Youth rehabilitation order – 12 months' detention and training order

These are 'grave crimes' for the purposes of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- 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 226B (extended sentence for certain violent or sexual offences: persons under 18) of the Criminal Justice Act 2003.

When sentencing offenders under 18 the court must:

- have regard to the principal aim of the youth justice system, which is to prevent offending by children and young persons, in accordance with section 37 of the Crime and Disorder Act 1998;
- have regard to the welfare of the young offender in accordance with section 44 of the Children and Young Persons Act 1933; and
- apply the *Overarching Principles – Sentencing Youths* guideline.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

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

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
Vulnerable child targeted
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)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
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 below. The starting point applies to offenders irrespective of plea or previous convictions, unless the court imposes a referral order in accordance with the applicable statutory provisions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

The sentencing options that are available to the court will depend on the age of the young offender and relevant statutory criteria. These sentencing options are set out in Annex XXXX at page XXXX [this annex will be included in the definitive guideline].

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.

	A	B
Category 1	<p>Starting point 8 months' detention and training order</p> <p>Category range Youth rehabilitation order – 12 months' detention and training order</p>	<p>Starting point 4 months' detention and training order</p> <p>Category range Youth rehabilitation order – 12 months' detention and training order</p>
Category 2	<p>Starting point Youth rehabilitation order</p> <p>Category range Youth rehabilitation order – 4 months' detention and training order</p>	<p>Starting point Youth rehabilitation order</p> <p>Category range Youth rehabilitation order</p>
Category 3	<p>Starting point Youth rehabilitation order</p> <p>Category range Youth rehabilitation order</p>	<p>Starting point Youth rehabilitation order</p> <p>Category range Youth rehabilitation order</p>

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 or 2 offences**, the court should also consider the custody threshold as follows, taking into account the circumstances, age and maturity of the young offender and that a custodial sentence is a measure of last resort:

- has the custody threshold been passed?
- if so, could a suitable community sentence be imposed instead?
- if not, is it unavoidable that a custodial sentence be imposed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or 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>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Lack of maturity of the young offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the 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 young offender to respond to previous warnings about his/her behaviour	
Commission of offence whilst young offender under the influence of alcohol or drugs	

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 Crown 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 226B).

STEP SIX**Totality principle**

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

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. 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.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

In respect of a grave crime, the Crown Court must consider whether a disqualification order prohibiting the offender from working with children should be made.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

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)

Triable either way
Maximum: 5 years' custody

Offence range: Youth rehabilitation order – 24 months' detention and training order

These are 'grave crimes' for the purposes of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- 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 226B (extended sentence for certain violent or sexual offences: persons under 18) of the Criminal Justice Act 2003.

When sentencing offenders under 18 the court must:

- have regard to the principal aim of the youth justice system, which is to prevent offending by children and young persons, in accordance with section 37 of the Crime and Disorder Act 1998;
- have regard to the welfare of the young offender in accordance with section 44 of the Children and Young Persons Act 1933; and
- apply the *Overarching Principles – Sentencing Youths* guideline.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of mouth In either case by, or of, the victim	A
Category 2	Masturbation by, or of, the victim	Use of gifts/bribes to coerce the victim
Category 3	Other sexual activity	Use of threat (including blackmail)
		Use of alcohol/drugs on victim to facilitate the offence
		Abuse of position of trust
		Sexual images of victim recorded, retained, solicited or shared
		Vulnerable child targeted
		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)
		Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
		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 below. The starting point applies to offenders irrespective of plea or previous convictions, unless the court imposes a referral order in accordance with the applicable statutory provisions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

The sentencing options that are available to the court will depend on the age of the young offender and relevant statutory criteria. These sentencing options are set out in Annex XXXX at page XXXX [this annex will be included in the definitive guideline].

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.

	A	B
Category 1	Starting point 12 months' detention and training order	Starting point 4 months' detention and training order
	Category range Youth rehabilitation order – 24 months' detention and training order	Category range Youth rehabilitation order – 12 months' detention and training order
Category 2	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order – 12 months' detention and training order	Category range Youth rehabilitation order
Category 3	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order	Category range Youth rehabilitation 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 or 2 offences**, the court should also consider the custody threshold, taking into account the circumstances, age and maturity of the young offender and that a custodial sentence is a measure of last resort:

- has the custody threshold been passed?
- if so, could a suitable community sentence be imposed instead?
- if not, is it unavoidable that a custodial sentence be imposed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or 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>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity of the young offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the 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	
Pregnancy or STI as a consequence of sexual activity	
Failure of young offender to respond to previous warnings about his/her behaviour	
Commission of offence whilst under the influence of alcohol or drugs	

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 Crown 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 226B).

STEP SIX**Totality principle**

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

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. 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.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

In respect of a grave crime, the Crown Court must consider whether a disqualification order prohibiting the offender from working with children should be made.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.