

Possession of indecent photograph of child

Criminal Justice Act 1988 (section 160)

Triable either way
Maximum: 5 years' custody

Offence range: Community order – 2 years' custody

Indecent photographs of children

Protection of Children Act 1978 (section 1(1))

Triable either way
Maximum: 10 years' custody

Offence range: Community order – 9 years' custody

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 offences committed on or after such date, 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 (in respect of section 1 Protection of Children Act 1978 only); and
- 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.

	Possession	Distribution*	Production**
Category A (previously levels 4 and 5)	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
Category B (previously levels 2 and 3)	Possession of images involving non-penetrative sexual activity	Sharing of images involving non-penetrative sexual activity	Creating images involving non-penetrative sexual activity
Category C (previously level 1)	Possession of images of erotic posing	Sharing of images of erotic posing	Creating images of erotic posing

* Distribution includes possession with a view to distributing or sharing images.
 ** Production includes the taking or making of any image at source i.e. 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 (i.e photographed) images of a higher category.

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.

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
Category A	Starting point 1 year's custody	Starting point 3 years' custody	Starting point 6 years' custody
	Category range 26 weeks' – 2 years' custody	Category range 2 – 5 years' custody	Category range 4 – 9 years' custody
Category B	Starting point 26 weeks' custody	Starting point 1 year's custody	Starting point 2 years' custody
	Category range High level community order – 18 months' custody	Category range 26 weeks' – 2 years' custody	Category range 1 – 4 years' custody
Category C	Starting point High level community order	Starting point 13 weeks' custody	Starting point 18 months' custody
	Category range Medium level community order – 26 weeks' custody	Category range High level community order – 26 weeks' custody	Category range 1 – 3 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 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>
Age and/or vulnerability of the child depicted*
Visible physical pain suffered by child depicted
Period over which images were possessed, made or distributed
Large volume of images possessed, distributed or produced/taken
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 position 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
Deliberate or systematic searching for images portraying young children, category A images or the portrayal of familial sexual abuse
Systematic storage of collection

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

* 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**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

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children and inform him accordingly.

Deprivation of property

The court may order the offender be deprived of property used to commit crime or intended for that purpose.

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.