

# Section nine: Other sexual offences

The offences to be dealt with in this section are:

- exposure
- voyeurism
- sex with an adult relative
- preparatory offences (administering a substance with intent; committing an offence with intent to commit a sexual offence; trespass with the intent to commit a sexual offence)

This section will also highlight the approach that the Council intends to take in relation to offences committed a long time ago, which will be referred to as historic sexual offences.

## Exposure, Sexual Offences Act 2003 – section 66

**Maximum sentence: 2 years' custody (full guideline page 321)**

The offence of exposure is committed when a person intentionally exposes their genitals and intends that someone will see them and be caused alarm and distress. The Council is proposing to deal with this offence by identifying circumstances when harm to the victim and culpability of the offender would be raised, an approach already proposed for the grooming offence at page 65.

The proposed categories would therefore be:

<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

### STEP ONE Determining the offence category

In the current Sentencing Guidelines Council (SGC) guidelines the only factors identified are the basic offence and a repeat offender. The new guidelines deal with previous convictions at step two and so reference to repeat offenders is dealt with there rather than at step one. The list of factors at step one is an exhaustive list and the Council has identified the following factors.

#### Factors indicating raised harm

Victim followed/pursued

Offender masturbated

#### Factors indicating raised culpability

Vulnerable victim targeted

Abuse of position of trust

Threats of violence/threatening or violent sexual language

#### Harm

- 'Victim followed/pursued' would increase harm to the victim as this would increase the sense of fear and menace they experienced.
- 'Offender masturbated' – where the offender masturbates in front of the victim in addition to exposing their genitalia this is likely to increase the shock and disgust felt by the victim.

### Culpability

- ‘Vulnerable victim targeted’ would increase the offender’s culpability as they have deliberately sought out someone who may be less able to deal with, or may be more affected by the offender’s action. The definition of what amounts to vulnerability is quite wide and includes, for example, youth, old age or disability.
- ‘Abuse of position of trust’ – as with other offences, where an offender has exploited a position of trust in order to commit an offence. The Council would be interested in views as to whether this is a common enough factor to be included.
- ‘Threats of violence/ threatening or violent sexual language’ – whilst the offence of exposure is inherently upsetting, where the offender uses deliberately threatening or explicit threatening language to further intimidate or frighten the victim this increases his culpability.

Q73

**Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.**

### STEP TWO

#### Starting point and category range

Once the category and starting point has been decided, the court will look at aggravating and mitigating factors to consider the wider context of the offence and decide whether the sentence should move up or down from the starting point. The factors at this stage are non-exhaustive. Where factors have been discussed previously this is indicated below. New factors are explained in full.

### 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 the offence

Timing of the offence

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

Offence committed whilst on licence

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of the offence’ – the wording is deliberately drafted widely so that it can encompass, for example, an offender who deliberately chooses an isolated location, or one who deliberately chooses a playground or a school to commit the offence.
- ‘Timing of the offence’ is drafted widely so that it can be used in any situation where it makes the offence worse.
- ‘Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ – see discussion at page 24.
- ‘Offence committed whilst on licence’ – see discussion at page 24.

## Mitigation

A full discussion of the mitigating factors set out below can be found at page 24.

Mitigating factors
No previous convictions <b>or</b> 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

Q74

**Do you agree with the aggravating and mitigating factors at step two for this offence? If not, please specify what you would add or remove and why.**

## Sentence levels

The maximum sentence for this offence is 2 years. The current SGC guideline has two categories, 'basic offence' and 'repeat offender', with a 12 week custodial starting point within a 4–26 week range. In 2011, 6.8 per cent of offenders were sentenced above the current ranges. The Council is proposing that there are some offences where a sentence greater than 26 weeks may need to be available to a sentencer as an option, for example, where there are vulnerable victims or there is targeting of children. It is therefore proposing to change the highest starting point to 26 weeks' custody with a range from 12 weeks to 1 year's custody.

The proposed sentencing starting points and ranges are below:

<b>Category 1</b>	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 12 weeks' – 1 year's custody
<b>Category 2</b>	<b>Starting point</b> High level community order
	<b>Category range</b> Medium level community order – 26 weeks' custody
<b>Category 3</b>	<b>Starting point</b> Medium level community order
	<b>Category range</b> Band A fine – High level community order

Q75

**Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.**

## Voyeurism, Sexual Offences Act 2003 – section 67

**Maximum sentence: 2 years’ custody (full guideline page 327)**

The offence of voyeurism is committed if, for the purposes of sexual gratification, an offender observes or records a person doing a private act and the offender knows that the person does not consent to being observed or recorded. It also includes a person who operates equipment so that a third person can observe a private act.

This is a type of offending which has developed with the greater prevalence of recording equipment and the ease of sharing and distributing images electronically.

### STEP ONE

#### Determining the offence category

It is proposed that the categories of offence are the same as those used for exposure.

<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

At step one an exhaustive list of harm and culpability factors are used to determine which category the case should fall into. The following factors have been identified:

#### Factors indicating raised harm

Image(s) available to be viewed by others

Victim observed or recorded in their own home

#### Factors indicating raised culpability

Image(s) recorded

Abuse of position of trust

A significant degree of planning or organisation

#### Harm

- ‘Image(s) available to be viewed by others’. The NatCen research conducted for the Sentencing Council reported that:

“In the case of voyeurism, making or storing images was felt to be a particular violation, as the images could continue to be accessed long after the offence, effectively humiliating the victim each time they were viewed.”<sup>102</sup>

Where a permanent record of the image has been made, the victim will be subject to ongoing humiliation and anxiety about others viewing and accessing the image thereby increasing the harm caused by the offence.

- ‘Victim observed or recorded in their own home’. This factor is designed to deal with the increased harm caused by the victim no longer feeling safe in their own home and having the knowledge of intrusion.

#### Culpability

- ‘Image(s) recorded’ deals with the increased culpability of an offender who records the victim.
- ‘Abuse of position of trust’. There may be cases where an offender has abused their position in order to observe or record people; for example, an offender who manages a leisure centre and sets up recording equipment in the female changing rooms, or a stepfather sets up recording equipment in the home to spy on a stepchild.
- ‘A significant degree of planning or organisation’ is a factor that the Council proposes should increase culpability as the offender will have put forethought into how to observe the individual(s) and may also have been involved in setting up recording equipment.

Q76

**Do you agree with the harm and culpability factors at step one? If not, please specify which you would add or remove and why.**

## STEP TWO

### Starting point and category range

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any additional factors not already considered at step one which could aggravate or mitigate the offence. The list of factors is non-exhaustive but the factors listed are intended to be those that will be encountered most commonly. Some of the factors have already been discussed in previous sections and where this is the case the reference to that discussion is given.

#### 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*

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

Period over which images were made or distributed

Image(s) circulated to people known to victim

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

Attempts to dispose of or conceal evidence

Offence committed whilst on licence

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.

- ‘Placing images where there is the potential for a high volume of viewers’. This does not rely on establishing how many people actually saw the pictures but is based on the potential for it to be viewed; for example, an offender places the images on a website or a social networking site which has a high volume of access.
- ‘Period over which images were made or distributed’ demonstrates a pattern of offending on the part of the offender.
- ‘Image(s) circulated to people known to victim’ may increase the distress and humiliation felt by the victim.
- ‘Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Offence committed whilst on licence’ – see discussion at page 24.

#### Mitigation

The suggested mitigating factors have already been discussed at page 24.

#### 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

Q77

Do you agree with the aggravating and mitigating factors at step two for this offence? If not, please specify what you would add or remove and why.

### Sentence levels

The proposed sentence levels are given below. They are very similar to those for exposure but it will be seen that the top of the range for category 1 is higher than for exposure. The Council feels that a higher sanction should be available for voyeurism where the offence has involved the aggravating factors of recording and/or distribution of images.

Category 1	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 12 weeks' – 18 months' custody
Category 2	<b>Starting point</b> High level community order
	<b>Category range</b> Medium level community order – 26 weeks' custody
Category 3	<b>Starting point</b> Medium level community order
	<b>Category range</b> Band A fine – High level community order

Q78

Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

### Sex with an adult relative (penetration), Sexual Offences Act 2003 – section 64 and Sex with an adult relative (consenting to penetration), Sexual Offences Act 2003 – section 65 Maximum sentence: 2 years' custody (full guidelines page 333)

These offences occur when consenting adults who are closely related engage in penetrative sexual activity. The definition of 'relative' for the purposes of these subsections (set out at sections 64 and 65 of the Sexual Offences Act 2003) includes: parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, niece or nephew. It also includes adoptive parents and children.

If a child under 18 is involved then this would be dealt with as sexual activity with a child family member under section 25 Sexual Offences Act 2003 (discussed at page 54). The section 25 offence has a much wider definition of 'family member' and carries a maximum penalty of 14 years' imprisonment as opposed to 2 years for this offence.

There are two ways in which this offence can be charged; one deals with the person who has carried out the penetration and the other with the person who has consented to the penetration. This split ensures that both parties can be charged, typically with the male relative charged with penetration and the female relative with consenting to penetration.

The format proposed for this guideline mirrors that for exposure and voyeurism discussed above so the categories will be:

Category 1	Raised harm <b>and</b> raised culpability
Category 2	Raised harm <b>or</b> raised culpability
Category 3	Sex with an adult relative <b>without</b> raised harm or culpability factors present

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

At step one the court will look at an exhaustive list of harm and culpability factors to determine the category the offence falls into.

**Harm**

The factors indicating increased harm that have been identified are:

**Factors indicating raised harm**

Context of habitual exploitation

Child conceived as a result of the sexual activity

- ‘Context of habitual exploitation’. Where it is established that one of the parties has been subject to sexual exploitation in the past this will increase and exacerbate the harm done even where both parties maintain that they agreed to the sexual activity. This is because the apparent acquiescence by one party to sexual activity could be as a result of the damage done and conditioning when they were previously exploited.
- ‘Child conceived as a result of the sexual activity’ focuses on the emotional and social harm caused to the child whose parents are close blood relatives.

**Culpability**

The factors identified as indicating raised culpability are:

**Factors indicating raised culpability**

Evidence of grooming

Use of threat (including blackmail)

- ‘Evidence of grooming’ and ‘use of threat (including blackmail)’ – even where both parties maintain that they have agreed to the sexual activity, where there is evidence that one of the parties has groomed or threatened the other, this increases their culpability.

Q79

**Do you agree with the harm and culpability factors proposed at step one for these offences? If not, please specify which you would add or remove and why.**

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

Once the category has been determined the court will look at a non-exhaustive list of aggravating and mitigating factors in order to see if there are any other factors that have not been considered at step one that might aggravate or mitigate the offence. This would lead the court to decide whether to move up or down from the starting point.

The table below sets out the proposed aggravating factors:

**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 respond to previous warnings about the relationship

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 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’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to respond to previous warnings about the relationship’ is included as there may have been attempts to address the behaviour before involving the criminal justice system.
- ‘Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.

### Mitigation

The mitigating factors set out below have already been considered and discussed at page 24.

Mitigating factors
No previous convictions <b>or</b> 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

**Q80** Do you agree with the proposed aggravating and mitigating factors? If not, please state which you would add or remove and why.

### Sentence levels

The suggested starting points and category ranges are:

<b>Category 1</b>	<b>Starting point</b> 1 year’s custody
	<b>Category range</b> 26 weeks’ – 2 years’ custody
<b>Category 2</b>	<b>Starting point</b> High level community order
	<b>Category range</b> Medium level community order – 1 year’s custody
<b>Category 3</b>	<b>Starting point</b> Medium level community order
	<b>Category range</b> Fine – High level community order

Where there are no signs of aggravation or exploitation then community orders are suggested as a better way to address offending behaviour and to focus the offender’s behaviour on the inappropriateness of the relationship.

**Q81** Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.



## Preparatory offences

There are three offences in the Sexual Offences Act 2003 that are designed to deal with activity that takes place in preparation for committing a sexual offence. These offences are:

- administering a substance with the intent to stupefy or overpower the victim so as to enable any person to engage in sexual activity with them (section 61);
- committing an offence to commit a relevant sexual offence (section 62); and
- trespass with intent to commit a relevant sexual offence (section 63).

These offences can be charged where no sexual offence took place but the offender's intention was that it would enable them to go on to commit a sexual offence.

## Administering a substance with intent to stupefy or overpower, Sexual Offences Act 2003 – section 61

**Maximum sentence: 10 years' custody (full guideline page 339)**

This offence is committed when a person deliberately administers a substance to a victim knowing that the victim does not consent and the offender's intention is that the victim is stupefied or overpowered to the point that any person can engage in sexual activity with the victim without resistance. This covers situations where an alcoholic drink has been spiked with a drug or a soft drink spiked with alcohol or the victim is drugged in some other way, such as by inhalation of chloroform. If the substance is administered and the offender intends that they or anyone else can engage in sexual activity with the victim then the offence is committed.

It is intended to take the same approach to harm and culpability factors as has been set out for exposure and voyeurism (see above at page 124).

## STEP ONE

### Determining the offence category

At step one the court will assess an exhaustive list of harm and culpability factors to determine the category that the offence will fall into.

### Factors indicating raised harm

In the current SGC guidelines the distinction depends on the nature of the offence that was to be committed; for example, an intention to carry out a rape or assault by penetration would result in the offender being placed in the highest category. Whilst this is an important factor, the Council believes that there are other factors which should also be taken into consideration. The proposed factors indicating greater harm are:

#### Factors indicating raised harm

Abduction/detention

Additional degradation/humiliation of victim

- 'Abduction/detention' – where a victim is removed to a location they are unfamiliar with or is in any way detained following the administration of a substance, this will increase their sense of fear and disorientation and the harm caused to them.
- 'Additional degradation/humiliation of victim' – where it transpires that the victim has been humiliated or degraded in any way whilst insensible because of the administration of a substance, this may increase the psychological harm done to the victim when they discover what they have been subjected to.

## Culpability

### Factors indicating raised culpability

Vulnerable victim targeted

Intended sexual offence attracts a statutory maximum of life

Breach of trust

Recording of victim

Member of group or gang during the commission of the offence

- ‘Vulnerable victim targeted’. This includes an offender who targets someone because of their vulnerability; for example, targeting a victim because of their youth, because they are isolated from their friends, or because they are mentally or emotionally vulnerable.
- ‘Intended sexual offence attracts a statutory maximum of life’ is worded slightly differently from the SGC factor of ‘intended offence is rape or assault by penetration’. The reason for this is to ensure that raised culpability could, if necessary, capture the other sexual offences that have a maximum sentence of life imprisonment; for example, sexual activity with a person with a mental disorder impeding choice and causing sexual activity without consent.
- ‘Breach of trust’ is included for cases where the offender has abused their position of trust to administer a substance; for example, where the offender is a barman and spikes the victim’s drink.
- ‘Recording of victim’ whilst they are insensible or under the influence of any substance increases the culpability of the offender.
- ‘Member of group or gang during the commission of the offence’ increases the culpability of the offender because it makes the experience worse for the victim.

Q82

**Do you agree with the harm and culpability factors? If not, please state which you would add or remove and why.**

## STEP TWO

### Starting point and category range

Once the category has been determined at step one the court will look at any additional factors that might aggravate or mitigate the offence and move the sentence up or down from the starting point. This is a non-exhaustive list of factors.

The proposed aggravating factors are:

### 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

Significant degree of planning

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 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’ and ‘offence committed whilst on bail’ – see discussion at page 23.

- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Significant degree of planning’ is included to cover situations where the offender has planned in detail the proposed sexual offence and administration of the substance.
- ‘Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.

### Mitigation

The proposed mitigating factors have been discussed at page 24.

The factor ‘offender intervenes to stop the sexual activity taking place’ is included, as it is in the SGC guideline and elsewhere in these guidelines, to reflect situations where the offender changes their mind rather than something or someone external intervening to prevent the escalation of the offence. The Council is interested in views on whether this mitigation factor is appropriate for this offence.

Mitigating factors
No previous convictions <b>or</b> 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
Offender intervenes to stop the sexual activity taking place

Q83

**Do you agree with the aggravating and mitigating factors? If not, pleased say which you would add or remove and why.**

### Sentence levels

The proposed sentence levels for these cases are:

Category 1	<b>Starting point</b> 6 years’ custody
	<b>Category range</b> 4 – 9 years’ custody
Category 2	<b>Starting point</b> 4 years’ custody
	<b>Category range</b> 3 – 7 years’ custody
Category 3	<b>Starting point</b> 2 years’ custody
	<b>Category range</b> 1 – 5 years’ custody

The statutory maximum for this offence is 10 years’ custody.

Q84

**Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.**

### Committing an offence with intent to commit a sexual offence, Sexual Offences Act 2003 – section 62

**Maximum sentence:**

**If offence committed by kidnapping or false imprisonment, life imprisonment**

**Otherwise, 10 years' custody**

This offence is wide as it covers an offender who commits **any** offence with the intention of committing a sexual offence; for example, it would include an offender who assaults a victim by punching them in the face with the intention of raping them.

As this is such a wide ranging offence the approach of the current SGC guideline is to state that:

“The starting point and sentencing 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 need to be varied depending on the nature and the seriousness of the intended sexual offence, but **2 years** is suggested as a suitable enhancement where the intent was to commit rape or an assault by penetration.”

The Council is consulting on adopting the same approach by using the sentence for the substantive offence as the starting point and then inflating the sentence to reflect the further sexual offence that was intended.

The Council is interested in whether this approach gives sentencers enough guidance or whether it is felt further guidance is needed.

Q85

**Do you agree with the approach to committing an offence with the intention of committing a sexual offence? If not, please give reasons why.**

### Trespass with intent to commit a sexual offence, Sexual Offences Act 2003 – section 63

**Maximum sentence: 10 years' custody (full guideline page 345)**

This offence is committed when someone trespasses on any premises intending to commit a sexual offence.

It is proposed to use a similar approach to that discussed above for administering a substance with intent – see page 132.

#### STEP ONE

#### Determining the offence category

##### Factors indicating raised harm

Abduction/detention

Additional degradation/humiliation of victim

Forced entry into victim's home

- ‘Abduction/detention’ in this context could arise if, for example, the victim is forcibly detained in their home following the trespass.
- ‘Additional degradation/humiliation of victim’ – see discussion at page 17.
- ‘Forced entry into victim's home’ – although this offence concerns trespass it can be trespass on any premises not just the victim's home and entry does not need to be forced but needs to be without the consent of the owner of the premises. Where, however, the trespass does involve forced entry into the victim's home, this may increase the psychological harm done to the victim.

## Culpability

### Factors indicating raised culpability

Vulnerable victim targeted

Intended sexual offence attracts a statutory maximum of life

Member of group or gang during the commission of the offence

- ‘Vulnerable victim targeted’ – see discussion at page 133.
- ‘Intended sexual offence attracts a statutory maximum of life’ – see discussion at page 133.
- ‘Member of group or gang during the commission of the offence’ – see discussion at page 133.

Q86

**Do you agree with the harm and culpability factors? If not, please specify which you would add or remove and why.**

## STEP TWO

### Starting point and category range

Once the category has been determined at step one the court will look at any additional factors that might aggravate or mitigate the offence and move the sentence up or down from the starting point. This is a non-exhaustive list of factors and it is proposed to replicate the factors that have been used for administering a substance with intent:

### 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

Significant degree of planning

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 license

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Significant degree of planning’ is included to cover situations where the offender has planned in detail the proposed sexual offence and administration of the substance.

- ‘Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on license’ – see discussion at page 24.

### Mitigation

The mitigating factors proposed are the same as for administering a substance with intent (see discussion at page 24):

Mitigating factors
No previous convictions <b>or</b> 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
Offender intervenes to stop the sexual activity taking place

Q87

**Do you agree with the aggravating and mitigating factors at step two for this offence? If not, please specify what you would add or remove and why.**

### Sentence levels

The proposed sentence levels for this offence are in line with those for administering a substance with intent:

<b>Category 1</b>	<b>Starting point</b> 6 years’ custody
	<b>Category range</b> 4 – 9 years’ custody
<b>Category 2</b>	<b>Starting point</b> 4 years’ custody
	<b>Category range</b> 3 – 7 years’ custody
<b>Category 3</b>	<b>Starting point</b> 2 years’ custody
	<b>Category range</b> 1 – 5 years’ custody

Q88

**Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.**

### Historic sexual offences

There are cases when sexual offences will not have been reported by the victim until many years after the event. These are often referred to as historic sexual offences. This does not diminish the impact on the victim or the pain and suffering caused to them.

The challenge for sentencers when faced with an offence committed before the Sexual Offences Act 2003 came into force is how to ensure the proper sentence is given. The Lord Chief Justice set out guidance in the case *R v Hall*<sup>103</sup> confirming that the court will be limited to the maximum sentence that would have been available when the offence was committed but, given those constraints, the court should think about the current purposes of sentencing and base the sentencing on the principles that would apply now. This would include looking at any

sentencing guidelines that are in use today. The court should not seek to establish the likely sentence that would have applied at the time when the offence was actually committed.

The Council proposes to add a table to the guidelines as an annex which would set out the statutory limits which would have applied at the time of an offence so that sentencers are aided in sentencing.

Q89

**Do you agree with the addition of an annex to the sentencing guidelines which sets out a comparison of the sentences available under old laws and what the equivalent offences and sentences would be under the Sexual Offences Act 2003?**

<sup>103</sup> *R v Hall and others* [2011] EWCA Crim 2753