

# Rape

## Sexual Offences Act 2003 (section 1)

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

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

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

- 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 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; and
- for convictions on or after such date (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 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.

**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>	<ul style="list-style-type: none"> <li>• Extreme violence</li> <li>• The extreme nature of one or more category 2 factors may elevate to category 1</li> </ul>	<b>A</b>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Pregnancy or STI as a consequence of rape</li> <li>• Additional degradation/humiliation</li> <li>• Abduction/detention</li> <li>• Prolonged/sustained incident</li> <li>• Use of violence</li> <li>• Context of habitual sexual abuse</li> <li>• Forced entry into victim's home</li> </ul>	Significant degree of planning
<b>Category 3</b>	Factor(s) in categories 1 and 2 not present	Member of group or gang during commission of offence
		Use of alcohol/drugs on the victim to facilitate the offence
		Abuse of position of trust
		Recording of the offence
		Vulnerable victim targeted
		Stalking/harassment of victim
		Previous violence against victim
		Offence committed in course of burglary
		Use of a weapon to frighten or injure
		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>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 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.

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

##### *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*

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

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, where linked to the commission of the offence

\* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of 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 five 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****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***

If the offence has been committed against a child (being under 18 years of age), 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 or vulnerable adults and inform him accordingly.

***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.



# Assault by penetration

## Sexual Offences Act 2003 (section 2)

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

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

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

- 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 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; and
- for convictions on or after such date (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 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
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Extreme violence</li> <li>• The extreme nature of one or more category 2 factors may elevate to category 1</li> </ul>	<b>A</b>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Penetration using large or dangerous object(s)</li> <li>• Additional degradation/humiliation</li> <li>• Abduction/detention</li> <li>• Prolonged/sustained incident</li> <li>• Use of violence</li> <li>• Context of habitual sexual abuse</li> <li>• Forced entry into victim's home</li> </ul>	Significant degree of planning
<b>Category 3</b>	Factor(s) in categories 1 and 2 not present	Member of group or gang during commission of offence
		Use of alcohol/drugs on the victim to facilitate the offence
		Abuse of position of trust
		Recording of the offence
		Vulnerable victim targeted
		Stalking/harassment of victim
		Previous violence against victim
		Offence committed in course of burglary
		Use of a weapon to frighten or injure
		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>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 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.



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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

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, where linked to the commission of the offence

\* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of 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 five 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****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***

If the offence has been committed against a child (being under 18 years of age), 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 or vulnerable adults and inform him accordingly.

***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 assault

## Sexual Offences Act 2003 (section 3)

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Triable either way  
Maximum: 10 years' custody

Offence range: Community order – 7 years' custody

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

- for convictions on or after such date (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 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	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Use of violence</li> <li>• Abduction/detention of victim</li> <li>• Forced entry into victim's home</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Touching of genitalia</li> <li>• Prolonged/sustained assault</li> <li>• Additional degradation/humiliation</li> <li>• Context of habitual sexual abuse</li> </ul>
<b>Category 3</b>	Factor(s) in categories 1 and 2 not present

Culpability	
<b>A</b>	
Significant degree of planning	
Member of group or gang during the commission of the offence	
Use of alcohol/drugs on the victim to facilitate the assault	
Abuse of position of trust	

Recording of the offence
Vulnerable victim targeted
Stalking/harassment of victim
Previous violence against victim
Offence committed in course of burglary
Use of weapon to frighten or injure
Threats of violence/threatening or violent sexual language
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>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 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.

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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

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, where linked to the commission of the offence

- \* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of 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 five 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****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**

If the offence has been committed against a child (being under 18 years of age), 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 or vulnerable adults and inform him accordingly.

**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.