

Sexual Assault

Sexual Offences Act 2003 (section 3)

This guideline applies only to offenders aged 17 and under

Triable either way
Maximum: 7 years' custody

Offence range:

STEP ONE

Determining the offence category

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

HARM		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> • Severe psychological or physical harm • Abduction • Violence or threats of violence • Forced/uninvited entry into victim's home 	<ul style="list-style-type: none"> • Significant degree of planning • Offender acts together with others to commit the offence • Use of alcohol/drugs on victim to facilitate the offence • Abuse of trust • Previous violence against victim • Offence committed in course of burglary • Recording of the 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) or transgender identity (or presumed transgender identity) • Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability) 	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> • Touching of naked genitalia or naked breasts • Prolonged detention/sustained incident • Additional degradation/humiliation • Victim is particularly vulnerable due to personal circumstances* <p>*for sexual assault of a child under 13 please refer to the guideline on page xxxx</p>		
Category 3	Factor(s) in categories 1 and 2 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 aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old.** 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.

Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

(i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime'¹ warranting detention for a period in excess of 2 years².

(ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.

(iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.

(iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

	A	B
Category 1	Starting point 3 years detention Category range 1 – 5 years detention	Starting point 18 months detention Category range Medium level YRO – 3 years detention
Category 2	Starting point 18 months detention Category range Medium level YRO – 3 years detention	Starting point 6 months detention Category range Low level YRO – 18 months detention
Category 3	Starting point High level YRO Category range Low level YRO – 10 months' detention	Starting point Low level YRO Category range Discharge - High level YRO

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

Aggravating factors
<i>Statutory aggravating factors</i>
<ul style="list-style-type: none"> • 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

¹ Rape is a grave crime

² Powers of Criminal Courts (sentencing) Act 2000, s.100

Other aggravating factors

- Specific targeting of a particularly vulnerable victim
- Blackmail or other threats made (where not taken into account at step one)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Failure to comply with current court orders
- 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
- Mental disorder or learning disability, particularly where linked to the commission of the offence

Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the initial sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

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 impose a life sentence (section 226(2)) or an extended sentence (section 226B). When sentencing

offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

Ancillary orders

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

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