

Sexual activity with a child/ Causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003, s.10, Sexual Offences Act 2003, s.9

Effective from: 1 April 2014

Sexual activity with a child, Sexual Offences Act 2003, s.9

Causing or inciting a child to engage in sexual activity, Sexual Offences Act 2003, s.10

Triable only on indictment (if penetration involved), otherwise, triable either way

Maximum: 14 years' custody

Offence range: Community order – 10 years' custody

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

These are **specified offences** for the purposes of sections 266 and 279 (extended sentence of imprisonment for certain violent, sexual or terrorism offences) of the Sentencing Code.

Step 1 – 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.

This guideline also applies to offences committed remotely/online. Sentencers should draw no distinction between activity caused or incited in person and activity caused or incited remotely, nor between the harm caused to a victim in this jurisdiction and that caused to a victim anywhere else in the world.

In section 10 cases where activity is incited but does not take place the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm actually resulted.

The extent of downward adjustment will be specific to the facts of the case. Where an offender is only prevented by the police or others from carrying out the offence at a late stage, or in attempts where a child victim does not exist and, but for this fact, the offender would have carried out the offence, a small reduction within the

category range will usually be appropriate. No additional reduction should be made for the fact that the offending is an attempt.

Where for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be the case that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features.

Harm
<p>Category 1</p> <ul style="list-style-type: none">• Penetration of vagina or anus (using body or object)• Penile penetration of mouth <p>In either case by, or of, the victim.</p>
<p>Category 2</p> <ul style="list-style-type: none">• Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim
<p>Category 3</p> <ul style="list-style-type: none">• Other sexual activity

Culpability
<p>Culpability A</p> <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• Grooming behaviour used against victim• Abuse of trust• Use of threats (including blackmail)• Sexual images of victim recorded, retained, solicited or shared• Specific targeting of a particularly vulnerable child• Offender lied about age• Significant disparity in age• Commercial exploitation and/or motivation• Offence racially or religiously aggravated

<ul style="list-style-type: none"> • 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)
<p>Culpability B</p> <ul style="list-style-type: none"> • Factor(s) in category A not present

Step 2 – Starting point and category range

Having determined the category of harm and culpability, 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 Part 3 of Schedule 9 to the Sentencing Code can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	<p>Starting point 5 years' custody</p> <p>Category range 4 – 10 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 2 years' custody</p>
Category 2	<p>Starting point 3 years' custody</p> <p>Category range 2 – 6 years' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category range High level community order – 1 year's custody</p>
Category 3	<p>Starting point 26 weeks' custody</p> <p>Category range High level community order – 3 years' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – High level community 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 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 or physical harm
- Ejaculation
- Pregnancy or STI as a consequence of offence
- Location of offence
- Timing of offence
- Victim compelled to leave their home, school, etc
- 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 other 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
- Failure of offender to respond to previous warnings
- Commission of offence whilst under the influence of alcohol or drugs
- Victim encouraged to recruit others
- Period over which offence committed

Mitigating factors

Statutory aggravating 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, particularly where linked to the commission of the offence
- ~~Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it~~

* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

[Further steps]

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