

PART 7: SENTENCING YOUNG OFFENDERS – OFFENCES WITH A LOWER STATUTORY MAXIMUM

7.1 The SOA 2003 makes special provision in respect of the maximum sentence that can be imposed for certain offences where committed by a person under the age of 18 (a young offender). The sentencing framework that applies to the sentencing of young offenders is also different.

7.2 This section deals with those offences within the context of the framework that currently applies. Many cases will be sentenced in the youth court, but a significant proportion may also be dealt with in the Crown Court. The essential elements of each offence, relevant charging standards and any other general issues pertaining to the offence are set out in the offence guidelines at pages 135–139.

7.3 The offences with which Part 7 is concerned are:

- (i) Sexual activity with a child
- (ii) Causing or inciting a child to engage in sexual activity
- (iii) Engaging in sexual activity in the presence of a child
- (iv) Causing a child to watch a sexual act
- (v) Sexual activity with a child family member
- (vi) Inciting a child family member to engage in sexual activity

7.4 In relation to each offence, the maximum sentence for an offence committed by a young offender is 5 years' custody compared with a maximum of 14 years or 10 years for an offender aged 18 or over. Offences under (i), (ii), (v) and (vi) above can be committed to the Crown Court where it is considered that sentencing powers greater than those available in a magistrates' court may be needed.¹

7.5 The provisions relating to the sentencing of dangerous offenders apply to young offenders with some variation and, where appropriate, cases should be sent for trial or committed for sentence in the Crown Court. The offences in this section are 'serious' offences for the purposes of the provisions. Where the significant harm criterion is met, the court is required² to impose one of the sentences for public protection, which in the case of those under 18 are discretionary detention for life, indeterminate detention for public protection or an extended sentence.

7.6 The following guidelines are for those offences where the court considers that the facts found by the court justify the involvement of the criminal law – these findings may be different from those on which the decision to prosecute was made.

7.7 The sentencing framework that applies to young offenders is different from that for adult offenders. The significant factors are set out below.

7.8 For each offence, the circumstances that would suggest that a custodial sentence should be passed where it is available to the court and those that would suggest that a case should be dealt with in the Crown Court (as 'grave crimes') are set out. As for adult

1 Powers of Criminal Courts (Sentencing) Act 2000, s.91

2 Criminal Justice Act 2003, ss.226 and 228

offenders, these guidelines relate to sentencing on conviction for a first-time offender after a plea of not guilty.

7.9 The principal aim for all involved in the youth justice system is to prevent offending by children and young persons.³

7.10 A court imposing sentence on a youth must have regard to the welfare,⁴ maturity, sexual development and intelligence of the youth. These are always important factors.

7.11 Where a young offender pleads guilty to one of these offences and it is the first offence of which they are convicted, a youth court may impose an absolute discharge, a mental health disposal, a custodial sentence, or make a referral order.

7.12 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' warranting detention for a period in excess of 2 years.⁵
- (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.

3 Crime and Disorder Act 1998, s.37

4 Children and Young Persons Act 1933, s.44

5 Powers of Criminal Courts (Sentencing) Act 2000, s.100

Sexual activity with a child

(when committed by a person under the age of 18)

THIS IS A SPECIFIED OFFENCE FOR THE PURPOSES OF SECTION 224 CJA 2003

Intentional sexual touching of a person under 16 (section 9 and section 13)

Maximum penalty: 5 years (14 years if offender is 18 or over)

The starting points below are based upon a first-time offender aged 17 years old who pleaded not guilty. For younger offenders, sentencers should consider whether a lower starting point is justified in recognition of the offender's age or immaturity.

Type/nature of activity	Starting points	Sentencing ranges
Offence involving penetration where one or more aggravating factors exist or where there is a substantial age gap between the parties	Detention and Training Order 12 months	Detention and Training Order 6–24 months
CUSTODY THRESHOLD		
Any form of sexual activity (non-penetrative or penetrative) not involving any aggravating factors	Community order	An appropriate non-custodial sentence*

* 'Non-custodial sentence' in this context suggests a youth community order (as defined in the Criminal Justice Act 2003, section 147(2)) or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.

Aggravating factors	Mitigating factors
<ol style="list-style-type: none"> 1. Background of intimidation or coercion 2. Use of drugs, alcohol or other substance to facilitate the offence 3. Threats to prevent victim reporting the incident 4. Abduction or detention 5. Offender aware that he or she is suffering from a sexually transmitted infection 	<ol style="list-style-type: none"> 1. Relationship of genuine affection 2. Youth and immaturity of offender

An offender convicted of this offence is automatically subject to notification requirements when sentenced to imprisonment for a term of at least 12 months.⁶

⁶ In accordance with the SOA 2003, s.80 and schedule 3

Causing or inciting a child to engage in sexual activity

(when committed by a person under the age of 18)

THIS IS A SPECIFIED OFFENCE FOR THE PURPOSES OF SECTION 224 CJA 2003

Intentional causing/inciting of person under 16 to engage in sexual activity (section 10 and section 13)

Maximum penalty: 5 years (14 years if offender is 18 or over)

The same starting points apply whether the activity was caused or incited and whether or not the incited activity took place.

The starting points below are based upon a first-time offender aged 17 years old who pleaded not guilty. For younger offenders, sentencers should consider whether a lower starting point is justified in recognition of the offender's age or immaturity.

Type/nature of activity	Starting points	Sentencing ranges
Offence involving penetration where one or more aggravating factors exist or where there is a substantial age gap between the parties	Detention and Training Order 12 months	Detention and Training Order 6–24 months
CUSTODY THRESHOLD		
Any form of sexual activity (non-penetrative or penetrative) not involving any aggravating factors	Community order	An appropriate non-custodial sentence*

* 'Non-custodial sentence' in this context suggests a youth community order (as defined in the Criminal Justice Act 2003, section 147(2)) or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.

Aggravating factors	Mitigating factors
<ol style="list-style-type: none"> 1. Background of intimidation or coercion 2. Use of drugs, alcohol or other substance to facilitate the offence 3. Threats to prevent victim reporting the incident 4. Abduction or detention 5. Offender aware that he or she is suffering from a sexually transmitted infection 	<ol style="list-style-type: none"> 1. Relationship of genuine affection 2. Offender intervenes to prevent incited offence from taking place 3. Youth and immaturity of offender

An offender convicted of this offence is automatically subject to notification requirements when sentenced to imprisonment for a term of at least 12 months.⁷

⁷ In accordance with the SOA 2003, s.80 and schedule 3

Engaging in sexual activity in the presence of a child

(when committed by a person under the age of 18)

THIS IS A SPECIFIED OFFENCE FOR THE PURPOSES OF SECTION 224 CJA 2003

Intentionally, and for the purpose of obtaining sexual gratification, engaging in sexual activity in the presence of a person under 16, knowing or believing that the child is aware of the activity (section 11 and section 13)

Maximum penalty: 5 years (10 years if offender is 18 or over)

The starting points below are based upon a first-time offender aged 17 years old who pleaded not guilty. For younger offenders, sentencers should consider whether a lower starting point is justified in recognition of the offender's age or immaturity.

Type/nature of activity	Starting points	Sentencing ranges
Sexual activity involving penetration where one or more aggravating factors exist	Detention and Training Order 12 months	Detention and Training Order 6–24 months
CUSTODY THRESHOLD		
Any form of sexual activity (non-penetrative or penetrative) not involving any aggravating factors	Community order	An appropriate non-custodial sentence*

* 'Non-custodial sentence' in this context suggests a youth community order (as defined in the Criminal Justice Act 2003, section 147(2)) or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.

Aggravating factors	Mitigating factors
<ol style="list-style-type: none"> 1. Background of intimidation or coercion 2. Use of drugs, alcohol or other substance to facilitate the offence 3. Threats to prevent victim reporting the incident 4. Abduction or detention 	<ol style="list-style-type: none"> 1. Youth and immaturity of offender

An offender convicted of this offence is automatically subject to notification requirements when sentenced to imprisonment for a term of at least 12 months.⁸

⁸ In accordance with the SOA 2003, s.80 and schedule 3

Causing a child to watch a sexual act

(when committed by a person under the age of 18)

THIS IS A SPECIFIED OFFENCE FOR THE PURPOSES OF SECTION 224 CJA 2003

Intentionally causing a person under 16 to watch sexual activity or look at a photograph or pseudo-photograph of sexual activity, for the purpose of obtaining sexual gratification (section 12 and section 13)

Maximum penalty: **5 years (10 years** if offender is 18 or over)

The starting points below are based upon a first-time offender aged 17 years old who pleaded not guilty. For younger offenders, sentencers should consider whether a lower starting point is justified in recognition of the offender’s age or immaturity.

Type/nature of activity	Starting points	Sentencing ranges
Live sexual activity	Detention and Training Order 8 months	Detention and Training Order 6–12 months
CUSTODY THRESHOLD		
Moving or still images of people engaged in sexual acts involving penetration	Community order	An appropriate non-custodial sentence*
Moving or still images of people engaged in sexual acts other than penetration	Community order	An appropriate non-custodial sentence*

* ‘Non-custodial sentence’ in this context suggests a youth community order (as defined in the Criminal Justice Act 2003, section 147(2)) or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.

Aggravating factors	Mitigating factors
<ol style="list-style-type: none"> 1. Background of intimidation or coercion 2. Use of drugs, alcohol or other substance to facilitate the offence 3. Threats to prevent victim reporting the incident 4. Abduction or detention 5. Images of violent activity 	<ol style="list-style-type: none"> 1. Youth and immaturity of offender

An offender convicted of this offence is automatically subject to notification requirements when sentenced to imprisonment for a term of at least 12 months.⁹

⁹ In accordance with the SOA 2003, s.80 and schedule 3

Sexual activity with a child family member and Inciting a child family member to engage in sexual activity

(when committed by a person under the age of 18)

THESE ARE SERIOUS OFFENCES FOR THE PURPOSES OF SECTION 224 CJA 2003

Intentional sexual touching with a child family member (section 25)

Intentionally inciting sexual touching by a child family member (section 26)

Maximum penalty for both offences: 5 years (14 years if offender is 18 or over)

The starting points below are based upon a first-time offender aged 17 years old who pleaded not guilty. For younger offenders, sentencers should consider whether a lower starting point is justified in recognition of the offender's age or immaturity.

Type/nature of activity	Starting points	Sentencing ranges
Offence involving penetration where one or more aggravating factors exist or where there is a substantial age gap between the parties	Detention and Training Order 18 months	Detention and Training Order 6–24 months
CUSTODY THRESHOLD		
Any form of sexual activity that does not involve any aggravating factors	Community order	An appropriate non-custodial sentence*

* 'Non-custodial sentence' in this context suggests a youth community order (as defined in the Criminal Justice Act 2003, section 147(2)) or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> Background of intimidation or coercion Use of drugs, alcohol or other substance Threats deterring the victim from reporting the incident Offender aware that he or she is suffering from a sexually transmitted infection 	<ol style="list-style-type: none"> Small disparity in age between victim and offender Relationship of genuine affection Youth and immaturity of offender

An offender convicted of this offence is automatically subject to notification requirements when sentenced to imprisonment for a term of at least 12 months.¹⁰

¹⁰ In accordance with the SOA 2003, s.80 and schedule 3