



SEXUAL OFFENCES (SENTENCING GUIDELINE - INDECENT PHOTOGRAPHS OF CHILDREN) (APPLICATION) ORDER 2025

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Statutory Document No. 2025/0101



Sexual Offences and Obscene Publications Act 2021

SEXUAL OFFENCES (SENTENCING GUIDELINE - INDECENT PHOTOGRAPHS OF CHILDREN) (APPLICATION) ORDER 2025¹

Laid before Tynwald: 22 April 2025

Coming into Operation in accordance with Article 2

The Department of Home Affairs, following consultation with the Deemsters and such other persons as it considers appropriate¹, makes the following Order under section 229 of the Sexual Offences and Obscene Publications Act 2021.

1 Title

This Order is the Sexual Offences (Sentencing Guideline - Indecent Photographs of Children) (Application) Order 2025.

2 Commencement

This Order comes into operation on 21 April 2025².

3 Interpretation

In this Order —

“**the Sentencing Council for England and Wales**” means the Sentencing Council for England and Wales as established under section 118 of, and Schedule 15 to, the Coroners and Justice Act 2009 (of Parliament)³; and

“**the sentencing guideline**” means the sentencing guideline titled “Possession of indecent photograph of child/Indecent photographs of children” issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009.

¹ In accordance with section 229(1) of the Sexual Offences and Obscene Publications Act 2021.

² Tynwald procedure – negative, in accordance with section 230(2) of the Sexual Offences and Obscene Publications Act 2021, and as set out in section 32 of the Legislation Act 2015.

³ 2009 c.25.

4 Application to the Island of the sentencing guideline

- (1) The sentencing guideline applies to the Island as part of the law of the Island subject to the exceptions, adaptations and modifications specified in the Schedule.
- (2) The text of the sentencing guideline, as applied, is set out in the Annex.
- (3) A court, in sentencing an offender charged on or after the date on which this Order comes into operation, must have regard to the sentencing guideline, as applied, which is relevant to the offender's case, unless the court is satisfied that it would be contrary to the interests of justice to do so.

5 Disregard of decision

The decision in *R v Oliver, Hartrey and Baldwin* [2003] 1 Criminal Appeal Reports 28 is to be disregarded⁴.

MADE**3 APRIL 2025**

⁴ In accordance with section 229(6) of the Sexual Offences and Obscene Publications Act 2021.

SCHEDULE

**EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS SUBJECT TO WHICH
THE SENTENCING GUIDELINE APPLIES TO THE ISLAND AS PART OF THE
LAW OF THE ISLAND**

[Regulation 4(1)]

The sentencing guideline applies to the Island, as part of the law of the Island, subject to the following exceptions, adaptations and modifications —

1. In the title “Possession of indecent photograph of child/Indecent photographs of children”, omit “Possession of indecent photograph of child/”.
2. For “Criminal Justice Act 1988, s.160, Protection of Children Act 1978 (section 1)”, substitute **“Sexual Offences and Obscene Publications Act 2021, s.71”**.
3. For “Guideline effective from: 01 April 2014”, substitute **“Guideline effective from 21 April 2025”**.
4. For the point headed “Possession of indecent photograph of child”, substitute —

“Offences under the Sexual Offences and Obscene Publications Act 2021, s.71(1)(a)
(on information) – 5 years’ custody, or a fine or both;
(summary) – 12 months’ custody, or a fine of level 5 on the standard scale or both. **”**
5. For the point headed “Indecent photographs of children”, substitute —

“Offences under the Sexual Offences and Obscene Publications Act 2021, s.71(1)(b) to (e)
(on information) – 10 years’ custody, or a fine or both;
(summary) – 12 months’ custody, or a fine of level 5 on the standard scale or both. **”**
6. Omit the sentences from the words “For section 1 offences” to “this offence”.
7. Omit the point beginning “Guideline users”.
8. Omit the section headed “Applicability”.
9. Omit the section headed “Structure, ranges and starting points”.
10. In the section headed “Step 1 – Determining the offence category” —
 - (a) in the heading, omit “Step 1 - ”;
 - (b) before the sentence beginning “The court”, insert —

Section 229(3) of the Sexual Offences and Obscene Publications Act 2021 provides that an Order made under section 229(1) may provide that a court, in sentencing an offender, must have regard to any sentencing guidelines applied by the Order which are relevant to the offender's case, unless the court is satisfied that it would be contrary to the interests of justice to do so.

Within each offence, the Sentencing Council has specified different categories which reflect varying degrees of seriousness.

- (c) unless otherwise provided for, in each place, for "images" substitute indecent photographs or pseudo-photographs;
 - (d) in the table, in the row titled "Category C", for "images" substitute photographs or pseudo-photographs;
 - (e) for the point beginning "***Production", substitute —

****Production includes the taking or making of any indecent photographs or pseudo-photographs at source, for instance the original indecent photograph or pseudo-photograph. Making an indecent photograph or pseudo-photograph by simple downloading should be treated as possession for the purposes of sentencing.*
 - (f) in the sentence beginning "A lower", omit "(for example photographed)".
11. Omit from "Step 2 – Starting point and category range" to the end of the sentencing guideline.

ANNEX

TEXT OF THE SENTENCING GUIDELINE AS APPLIED TO THE ISLAND

[Regulation 4(2)]

SENTENCING COUNCIL OF ENGLAND AND WALES

~~Possession of indecent photograph of child~~/Indecent photographs of children

~~Criminal Justice Act 1988, s.160, Protection of Children Act 1978 (section 1)~~

Sexual Offences and Obscene Publications Act 2021, s.71

~~Guideline effective from: 01 April 2014~~

Guideline effective from 21 April 2025

~~Possession of indecent photograph of child, Criminal Justice Act 1988, s.160~~

~~Triable either way~~

~~Maximum: 5 years' custody~~

~~Offence range: Community order—3 years' custody~~

Offences under the Sexual Offences and Obscene Publications Act 2021, s.71(1)(a)

(on information) – 5 years' custody, or a fine or both;

(summary) – 12 months' custody, or a fine of level 5 on the standard scale or both.

~~Indecent photographs of children, Protection of Children Act 1978, s.1~~

~~Triable either way~~

~~Maximum: 10 years' custody~~

~~Offence range: Community order—9 years' custody~~

Offences under the Sexual Offences and Obscene Publications Act 2021, s.71(1)(b) to (e)

(on information) – 10 years' custody, or a fine or both;

(summary) – 12 months' custody, or a fine of level 5 on the standard scale or both.

~~For section 1 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 for certain violent, sexual or terrorism offences) of the Sentencing Code.~~

User guide for this offence

~~Guideline users should be aware that the Equal Treatment Bench Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.~~

Applicability

~~In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 1 April 2014.*~~

~~Section 59(1) of the Sentencing Code provides that:~~

~~“Every court—~~

- ~~a. — must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and~~
 - ~~b. — must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,~~
- ~~unless the court is satisfied that it would be contrary to the interests of justice to do so.”~~

~~This guideline applies only to offenders aged 18 and older. For sentencing children and young people, see:~~

~~Sentencing children and young people: sexual offences~~

~~Sentencing children and young people—overarching principles~~

Structure, ranges and starting points

~~For the purposes of of section 60 of the Sentencing Code, the guideline specifies offence ranges—the range of sentences appropriate for each type of offence. Within each offence, the Council has specified different categories which reflect varying degrees of seriousness. The offence range is split into category ranges—sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.~~

~~Starting points define the position within a category range from which to start calculating the provisional sentence. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.~~

~~*The maximum sentence that applies to an offence is the maximum that applied at the date of the offence. See Sexual offences—historical for more information.~~

Step 1— Determining the offence category

Section 229(3) of the Sexual Offences and Obscene Publications Act 2021 provides that an Order made under section 229(1) may provide that a court, in sentencing an offender, must have regard to any sentencing guidelines applied by the Order which are relevant to the offender's case, unless the court is satisfied that it would be contrary to the interests of justice to do so.

Within each offence, the Sentencing Council has specified different categories which reflect varying degrees of seriousness.

The court should determine the offence category using the table below.

	Possession	Distribution*	Production**
Category A	Possession of images <u>indecent photographs or pseudo-photographs</u> involving penetrative sexual activity.	Sharing images <u>indecent photographs or pseudo-photographs</u> involving penetrative sexual activity.	Creating images <u>indecent photographs or pseudo-photographs</u> involving penetrative sexual activity.
	Possession of images <u>indecent photographs or pseudo-photographs</u> involving sexual activity with an animal or sadism.	Sharing images <u>indecent photographs or pseudo-photographs</u> involving sexual activity with an animal or sadism.	Creating images <u>indecent photographs or pseudo-photographs</u> involving sexual activity with an animal or sadism.
Category B	Possession of images <u>indecent photographs or pseudo-photographs</u> involving non-penetrative sexual activity.	Sharing of images <u>indecent photographs or pseudo-photographs</u> involving non-penetrative sexual activity.	Creating images <u>indecent photographs or pseudo-photographs</u> involving non-penetrative sexual activity.
Category C	Possession of other indecent images <u>photographs or pseudo-photographs</u> not falling within categories A or B.	Sharing of other indecent images <u>photographs or pseudo-photographs</u> not falling within categories A or B.	Creating other indecent images <u>photographs or pseudo-photographs</u> not falling within categories A or B.

**Distribution includes possession with a view to distributing or sharing ~~images~~ indecent photographs or pseudo-photographs.*

***Production includes the taking or making of any image at source, for instance the original image. ~~Making an image by simple downloading should be treated as possession for the purposes of sentencing.~~*

***Production includes the taking or making of any indecent photographs or pseudo-photographs at source, for instance the original indecent photograph or pseudo-*

photograph. Making an indecent photograph or pseudo-photograph by simple downloading should be treated as possession for the purposes of sentencing.

In most cases the intrinsic character of the most serious of the offending ~~images~~ indecent photographs or pseudo-photographs will initially determine the appropriate category. If, however, the most serious ~~images~~ indecent photographs or pseudo-photographs are unrepresentative of the offender's conduct a lower category may be appropriate. A lower category will not, however, be appropriate if the offender has produced or taken (for example photographed) ~~images~~ indecent photographs or pseudo-photographs of higher category.

Step 2 — 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.~~

~~Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under part 3 of Schedule 9 of the Sentencing Code can be a proper alternative to a short or moderate length custodial sentence.~~

	Possession	Distribution	Production
Category A	Starting point 1 years' custody	Starting point 3 years' custody	Starting point 6 years' custody
	Category range 26 weeks'—3 years' custody	Category range 2—5 years' custody	Category range 4—9 years' custody
Category B	Starting point 26 weeks' custody	Starting point 1 year's custody	Starting point 2 years' custody
	Category range High level community order—18 months' custody	Category range 26 weeks'—2 years' custody	Category range 1—4 years' custody
Category C	Starting point High level community order	Starting point 13 weeks' custody	Starting point 18 months' custody
	Category range Medium level community order—26 weeks' custody	Category range High level community order—26 weeks' custody	Category range 1—3 years' custody

Community orders

~~For further information see Imposition of community and custodial sentences.~~

- ~~• The seriousness of the offence should be the initial factor in determining which requirements to include in a community order. Offence specific guidelines refer to three sentencing levels within the community order~~

~~band based on offence seriousness (low, medium and high). The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing levels within the community order band is appropriate. See below for non-exhaustive examples of requirements that might be appropriate in each.~~

- ~~• At least one requirement MUST be imposed for the purpose of punishment and/or a fine imposed in addition to the community order unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so.~~
- ~~• A suspended sentence MUST NOT be imposed as a more severe form of community order. A suspended sentence is a custodial sentence.~~
- ~~• Community orders can fulfil all of the purposes of sentencing. In particular, they can have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.~~
- ~~• A community order must not be imposed unless the offence is 'serious enough to warrant such a sentence'. Where an offender is being sentenced for a non-imprisonable offence, there is no power to make a community order.~~
- ~~• Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty. In particular, a Band D fine may be an appropriate alternative to a community order.~~
- ~~• The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.~~
- ~~• Sentences should not necessarily escalate from one community order range to the next on each sentencing occasion. The decision as to the appropriate range of community order should be based upon the seriousness of the new offence(s) (which will take into account any previous convictions).~~
- ~~• In many cases, a pre-sentence report will be pivotal in helping the court decide whether to impose a community order and, if so, whether particular requirements or combinations of requirements are suitable for an individual offender. Whenever the court reaches the provisional view that a community order may be appropriate, it should request a pre-sentence report (whether written or verbal) unless the court is of the opinion that a report is unnecessary in all the circumstances of the case.~~
- ~~• It may be helpful to indicate to the Probation Service the court's preliminary opinion as to which of the three sentencing ranges is relevant and the purpose(s) of sentencing that the package of requirements is expected to fulfil. Ideally a pre-sentence report should be completed on~~

~~the same day to avoid adjourning the case. If an adjournment cannot be avoided, the information should be provided to the Probation Service in written form and a copy retained on the court file for the benefit of the sentencing court. However, the court must make clear to the offender that all sentencing options remain open including, in appropriate cases, committal for sentence to the Crown Court.~~

Low	Medium	High
<p>Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate</p> <p>In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary</p>	<p>Offences that obviously fall within the community order band</p>	<p>Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances</p> <p>More intensive sentences which combine two or more requirements may be appropriate</p>
<p>Suitable requirements might include:</p> <ul style="list-style-type: none"> Any appropriate rehabilitative requirement(s) 40–80 hours of unpaid work Curfew requirement for example up to 16 hours per day for a few weeks** Exclusion requirement, for a few months Prohibited activity requirement 	<p>Suitable requirements might include:</p> <ul style="list-style-type: none"> Any appropriate rehabilitative requirement(s) 80–150 hours of unpaid work Curfew requirement for example up to 16 hours per day for 2–3 months** Exclusion requirement lasting in the region of 6 months Prohibited activity requirement 	<p>Suitable requirements might include:</p> <ul style="list-style-type: none"> Any appropriate rehabilitative requirement(s) 150–300 hours of unpaid work Curfew requirement for example up to 16 hours per day for 4–12 months** Exclusion requirement lasting in the region of 12 months
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
Band A fine	Band B fine	Band C fine

***Note: Changes to the curfew requirements brought in by the Police, Crime, Sentencing and Courts Act 2022 are set out in the Requirements section in the Overarching Guideline: Imposition of community and custodial sentences, but are not reflected in the ranges above.*

Custodial sentences

Sentencing flowcharts are available at Imposition of Community and Custodial Sentences definitive guideline.

The approach to the imposition of a custodial sentence should be as follows:

1) — Has the custody threshold been passed?

- A custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence.
- There is no general definition of where the custody threshold lies. The circumstances of the individual offence and the factors assessed by offence specific guidelines will determine whether an offence is so serious that neither a fine alone nor a community sentence can be justified. Where no offence specific guideline is available to determine seriousness, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment.
- The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

2) — Is it unavoidable that a sentence of imprisonment be imposed?

- Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Custody should not be imposed where a community order could provide sufficient restriction on an offender's liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.
- For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

3) — What is the shortest term commensurate with the seriousness of the offence?

- In considering this the court must NOT consider any licence or post sentence supervision requirements which may subsequently be imposed upon the offender's release.

4) — Can the sentence be suspended?

- A suspended sentence MUST NOT be imposed as a more severe form of community order. A suspended sentence is a custodial sentence. Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available. If not, a non-custodial sentence should be imposed.

The following factors should be weighed in considering whether it is possible to suspend the sentence:

Factors indicating that it would not be appropriate to suspend a custodial sentence	Factors indicating that it may be appropriate to suspend a custodial sentence
Offender presents a risk/danger to the public	Realistic prospect of rehabilitation
Appropriate punishment can only be achieved by immediate custody	Strong personal mitigation
History of poor compliance with court orders	Immediate custody will result in significant harmful impact upon others

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Pre-sentence report

Whenever the court reaches the provisional view that:

- the custody threshold has been passed; and, if so
- the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence;

the court should obtain a pre-sentence report, whether verbal or written, unless the court considers a report to be unnecessary. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case.

Magistrates: Consult your legal adviser before deciding to sentence to custody without a pre-sentence report.

Suspended Sentences: General Guidance

- i) — The guidance regarding pre-sentence reports applies if suspending custody.
- ii) — If the court imposes a term of imprisonment of between 14 days and 2 years (subject to magistrates' courts sentencing powers), it may suspend the sentence for between 6 months and 2 years (the 'operational period'). The time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months.
- iii) — Where the court imposes two or more sentences to be served consecutively, the court may suspend the sentence where the aggregate of the terms is between 14 days and 2 years (subject to magistrates' courts sentencing powers).
- iv) — When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements are identical to those available for community orders, see the guideline on Imposition of Community and Custodial Sentences.

- v) ~~A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately.~~

~~Below is 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 B or C 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,~~

~~Effective from: 01 October 2019~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

~~Guidance on the use of previous convictions~~

~~The following guidance should be considered when seeking to determine the degree to which previous convictions should aggravate sentence:~~

~~Section 65 of the Sentencing Code states that:~~

- ~~(1) This section applies where a court is considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more relevant previous convictions.~~
 - ~~(2) The court must treat as an aggravating factor each relevant previous conviction that it considers can reasonably be so treated, having regard in particular 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.~~
 - ~~(3) Where the court treats a relevant previous conviction as an aggravating factor under subsection (2) it must state in open court that the offence is so aggravated.~~
- ~~1. Previous convictions are considered at step two in the Council’s offence specific guidelines.~~

- ~~2. The primary significance of previous convictions (including convictions in other jurisdictions) is the extent to which they indicate trends in offending behaviour and possibly the offender's response to earlier sentences.~~
- ~~3. Previous convictions are normally of relevance to the current offence when they are of a similar type.~~
- ~~4. Previous convictions of a type different from the current offence may be of relevance where they are an indication of persistent offending or escalation and/or a failure to comply with previous court orders.~~
- ~~5. Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively in the community and will not necessarily indicate that a custodial sentence is necessary.~~
- ~~6. If the offender received a non-custodial disposal for the previous offence, a court should not necessarily move to a custodial sentence for the fresh offence.~~
- ~~7. In cases involving significant persistent offending, the community and custody thresholds may be crossed even though the current offence normally warrants a lesser sentence. If a custodial sentence is imposed it should be proportionate and kept to the necessary minimum.~~
- ~~8. The aggravating effect of relevant previous convictions reduces with the passage of time; older convictions are of less relevance to the offender's culpability for the current offence and less likely to be predictive of future offending.~~
- ~~9. Where the previous offence is particularly old it will normally have little relevance for the current sentencing exercise.~~
- ~~10. The court should consider the time gap since the previous conviction and the reason for it. Where there has been a significant gap between previous and current convictions or a reduction in the frequency of offending this may indicate that the offender has made attempts to desist from offending in which case the aggravating effect of the previous offending will diminish.~~
- ~~11. Where the current offence is significantly less serious than the previous conviction (suggesting a decline in the gravity of offending), the previous conviction may carry less weight.~~
- ~~12. When considering the totality of previous offending a court should take a rounded view of the previous crimes and not simply aggregate the individual offences.~~
- ~~13. Where information is available on the context of previous offending this may assist the court in assessing the relevance of that prior offending to the current offence 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~~

~~Effective from: 01 October 2019~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

~~Section 64 of the Sentencing Code states:~~

~~In considering the seriousness of any offence committed while the offender was on bail, the court must — (a) treat the fact that it was committed in those circumstances as an aggravating factor and (b) state in open court that the offence is so aggravated.~~

~~Other aggravating factors~~

~~Failure to comply with current court orders~~

~~Effective from: 01 October 2019~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

- ~~• Commission of an offence while subject to a relevant court order makes the offence more serious.~~
- ~~• The extent to which the offender has complied with the conditions of an order (including the time that has elapsed since its commencement) will be a relevant consideration.~~
- ~~• Where the offender is dealt with separately for a breach of an order regard should be had to totality~~
- ~~• Care should be taken to avoid double counting matters taken into account when considering previous convictions.~~

~~When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and/or lack of maturity when considering the significance of this factor.~~

~~Offence committed whilst on licence~~

~~Effective from: 01 October 2019~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

- ~~• An offender who is subject to licence or post sentence supervision is under a particular obligation to desist from further offending.~~
- ~~• The extent to which the offender has complied with the conditions of a licence or order (including the time that has elapsed since its commencement) will be a relevant consideration.~~
- ~~• Where the offender is dealt with separately for a breach of a licence or order regard should be had to totality.~~

- ~~Care should be taken to avoid double counting matters taken into account when considering previous convictions.~~

~~When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and/or lack of maturity when considering the significance of this factor.~~

~~Age and/or vulnerability of the child depicted*~~

~~Effective from: 01 October 2019~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

- ~~An offence is more serious if the victim is vulnerable because of personal circumstances such as (but not limited to) age, illness or disability (unless the vulnerability of the victim is an element of the offence).~~
- ~~Other factors such as the victim being isolated, incapacitated through drink or being in an unfamiliar situation may lead to a court considering that the offence is more serious.~~
- ~~The extent to which any vulnerability may impact on the sentence is a matter for the court to weigh up in each case.~~
- ~~Culpability will be increased if the offender targeted a victim because of an actual or perceived vulnerability.~~
- ~~Culpability will be increased if the victim is made vulnerable by the actions of the offender (such as a victim who has been intimidated or isolated by the offender).~~
- ~~Culpability is increased if an offender persisted in the offending once it was obvious that the victim was vulnerable (for example continuing to attack an injured victim).~~
- ~~The level of harm (physical, psychological or financial) is likely to be increased if the victim is vulnerable.~~
 - ~~Discernible pain or distress suffered by child depicted~~
 - ~~Period over which images were possessed, distributed or produced~~
 - ~~High volume of images possessed, distributed or produced~~
 - ~~Placing images where there is the potential for a high volume of viewers Collection includes moving images~~

~~Attempts to dispose of or conceal evidence~~

~~Effective from: 01 October 2019~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

~~The more sophisticated, extensive or persistent the actions after the event, the more likely it is to increase the seriousness of the offence.~~

~~When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and lack of maturity when considering the significance of such conduct.~~

~~Where any such actions are the subject of separate charges, this should be taken into account when assessing totality.~~

~~Abuse of trust~~

~~Effective from: 01 October 2019~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

- ~~• A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.~~
- ~~• In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.~~
- ~~• Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, employer and employee, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.~~
- ~~• Additionally an offence may be made more serious where an offender has abused their position to facilitate and/or conceal offending.~~
- ~~• Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.~~
 - ~~○ Child depicted known to the offender~~
 - ~~○ Active involvement in a network or process that facilitates or commissions the creation or sharing of indecent images of children~~
 - ~~○ Commercial exploitation and/or motivation~~
 - ~~○ Deliberate or systematic searching for images portraying young children, category A images or the portrayal of familial sexual abuse~~
 - ~~○ Large number of different victims~~
 - ~~○ Child depicted intoxicated or drugged~~

Mitigating factors

No previous convictions or no relevant/recent convictions

Effective from: 01 October 2019

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm~~

- ~~• First time offenders usually represent a lower risk of reoffending. Reoffending~~
- ~~• rates for first offenders are significantly lower than rates for repeat offenders. In addition, first offenders are normally regarded as less blameworthy than offenders who have committed the same crime several times already. For these reasons first offenders receive a mitigated sentence.~~
- ~~• Where there are previous offences but these are old and /or are for offending of a different nature, the sentence will normally be reduced to reflect that the new offence is not part of a pattern of offending and there is therefore a lower likelihood of reoffending.~~
- ~~• When assessing whether a previous conviction is ‘recent’ the court should consider the time gap since the previous conviction and the reason for it.~~
- ~~• Previous convictions are likely to be ‘relevant’ when they share characteristics with the current offence (examples of such characteristics include, but are not limited to: dishonesty, violence, abuse of position or trust, use or possession of weapons, disobedience of court orders). In general the more serious the previous offending the longer it will retain relevance.~~

Remorse

Effective from: 01 October 2019 (revised 1 April 2024)

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm~~

~~The court will need to be satisfied that the offender is genuinely remorseful for the offending behaviour in order to reduce the sentence (separate from any guilty plea reduction).~~

~~Lack of remorse should never be treated as an aggravating factor.~~

~~Remorse can present itself in many different ways. A simple assertion of the fact may be insufficient.~~

~~The court should be aware that the offender’s demeanour in court or the way they articulate their feelings of remorse may be affected by, for example:~~

- ~~• nervousness~~
- ~~• a lack of understanding of the system~~
- ~~• mental disorder~~
- ~~• learning disabilities~~
- ~~• communication difficulties (including where English is not their first language)~~

- a belief that they have been or will be discriminated against
- peer pressure to behave in a certain way because of others present
- age and/or a lack of maturity etc.

If a PSR has been prepared it may provide valuable assistance in this regard.

Guideline users should be aware that the Equal Treatment Bench Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Positive character and/or exemplary conduct (regardless of previous convictions)**

Effective from: 01 October 2019 (revised 1 April 2024)

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm

Evidence that an offender has demonstrated a positive side to their character may reduce the sentence.

This factor may apply whether or not the offender has previous convictions.

However:

- This factor is less likely to be relevant where the offending is very serious
- Where an offender has used their positive character or status to facilitate or conceal the offending it could be treated as an aggravating factor.

Age and/or lack of maturity (which may be applicable to offenders aged 18-25)

Effective from: 01 October 2019 (revised 1 April 2024)

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm

Where a person has committed the offence under the age of 18, regard should be had to the overarching guideline for sentencing children and young people. That guideline may also be relevant to offending by young adults.

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to:

- evaluate the consequences of their actions

- limit impulsivity
- limit risk taking

~~Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.~~

~~Immaturity can also result from atypical brain development. Environment plays a role in neurological development and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.~~

~~An immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.~~

~~An immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support.~~

~~There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.~~

~~Many young people who offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore a young adult's previous convictions may not be indicative of a tendency for further offending.~~

~~Where the offender is in care experienced or a care leaver the court should enquire as to any effect a sentence may have on the offender's ability to make use of support from the local authority. (Young adult care leavers are entitled to time limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).~~

~~Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but applying the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).~~

~~When considering a custodial or community sentence for a young adult the Probation Service should address these issues in a PSR.~~

~~Mental disorder or learning disability, particularly where linked to the commission of the offence~~

~~Effective from: 01 October 2020~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

~~Refer to the Sentencing offenders with mental disorders, developmental disorders, or neurological impairments guideline.~~

~~Note in particular paragraph 5 for Black, Asian and Minority Ethnic offenders.~~

~~Demonstration of steps taken to address offending behaviour~~

~~Effective from: 01 October 2019 (revised 1 April 2024)~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence. Where offending is driven by or closely associated with drug or alcohol abuse (for example stealing to feed a habit, or committing acts of disorder or violence whilst drunk) a commitment to address the underlying issue (including where the offender has actively sought support but, for reasons outside their control, it has not been received) may justify a reduction in sentence. This will be particularly relevant where the court is considering whether to impose a sentence that focuses on rehabilitation.~~

~~Similarly, a commitment to address other underlying issues that may influence the offender's behaviour (including where the offender has actively sought support but, for reasons outside their control, it has not been received) may justify the imposition of a sentence that focusses on rehabilitation.~~

~~The court will be assisted by a PSR in making this assessment.~~

~~Physical disability or serious medical condition requiring urgent, intensive or long term treatment~~

~~Effective from: 01 October 2019~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence~~

- ~~• The court can take account of physical disability or a serious medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the offender, or as a matter of generally expressed mercy in the individual circumstances of the case.~~
- ~~• However, such a condition, even when it is difficult to treat in prison, will not automatically entitle the offender to a lesser sentence than would otherwise be appropriate.~~
- ~~• There will always be a need to balance issues personal to an offender against the gravity of the offending (including the harm done to victims), and the public interest in imposing appropriate punishment for serious offending.~~
- ~~• A terminal prognosis is not in itself a reason to reduce the sentence even further. The court must impose a sentence that properly meets the aims of sentencing even if it will carry the clear prospect that the offender will die in custody. The prospect of death in the near future will be a matter considered by the prison authorities and the Secretary of State under the early release on compassionate grounds procedure (ERCG).~~
- ~~• But, an offender's knowledge that he will likely face the prospect of death in prison, subject only to the ERCG provisions, is a factor that can be considered by the sentencing judge when determining the sentence that it would be just to impose.~~

~~Difficult and/or deprived background or personal circumstances~~

~~Effective from: 01 April 2024~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm~~

~~The court may be assisted by a pre-sentence report in assessing whether there are factors in the offender's background or current personal circumstances which may be relevant to sentencing. Such factors may be relevant to:~~

- ~~• the offender's responsibility for the offence and/or~~
- ~~• the effect of the sentence on the offender.~~

~~Courts should consider that different groups within the criminal justice system have faced multiple disadvantages which may have a bearing on their offending. Such disadvantages include but are not limited to:~~

- ~~• experience of discrimination~~
- ~~• negative experiences of authority~~
- ~~• early experience of loss, neglect or abuse~~
- ~~• early experience of offending by family members~~
- ~~• being care experienced or a care leaver~~
- ~~• negative influences from peers~~
- ~~• difficulties relating to the misuse of drugs and/or alcohol (but note: being voluntarily intoxicated at the time of the offence is an aggravating factor)~~
- ~~• low educational attainment~~
- ~~• insecure housing~~
- ~~• mental health difficulties~~
- ~~• poverty~~
- ~~• direct or indirect victim of domestic abuse~~

~~There are a wide range of personal experiences or circumstances that may be relevant to offending behaviour. The Equal Treatment Bench Book contains useful information on social exclusion and poverty (see in particular Chapter 11, paragraphs 58 to 71). The Sentencing offenders with mental disorders, developmental disorders, or neurological impairments guideline may also be of relevance.~~

~~Prospects of or in work, training or education~~

~~Effective from: 01 April 2024~~

~~Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm~~

~~This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. See also the Imposition of community and custodial sentences guideline.~~

~~Where an offender is in, or has a realistic prospect of starting, work, education or training this may indicate a willingness to rehabilitate and desist from future offending.~~

~~Similarly, the loss of employment, education or training opportunities may have a negative impact on the likelihood of an offender being rehabilitated or desisting from future offending.~~

~~The court may be assisted by a pre-sentence report in assessing the relevance of this factor to the individual offender.~~

~~The absence of work, training or education should never be treated as an aggravating factor.~~

~~The court may ask for evidence of employment, training etc or the prospects of such, but should bear in mind any reasonable practical difficulties an offender may have in providing this.~~

~~For more serious offences where a substantial period of custody is appropriate, this factor will carry less (if any) weight.~~

~~** Age and/or vulnerability of the child should be given significant weight. In cases where the actual age of the victim is difficult to determine sentencers should consider the development of the child (infant, pre-pubescent, post-pubescent).*~~

~~*** 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.*~~

Step 3—Consider any factors which indicate a reduction, such as assistance to the prosecution

~~The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 4—Reduction for guilty pleas

~~The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.~~

Step 5—Dangerousness

The court should consider:

- ~~1) whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279) and~~

- 2) ~~whether having regard to sections 273 and 283 of the Sentencing Code it would be appropriate to impose a life sentence.~~

~~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 6—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. See Totality guideline.~~

Step 7—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.~~

- ~~• Ancillary orders—Magistrates' Court~~
- ~~• Ancillary orders—Crown Court Compendium~~

Additional ancillary orders—sexual offences

Sexual harm prevention orders (SHPOs) Sexual Offences Act 2003, s103A

~~To make an SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk. The only prohibitions which can be imposed by an SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the offender.~~

~~The order may have effect for a fixed period (not less than five years) or until further order, with the exception of a foreign travel prohibition which must be a fixed period of no more than five years (renewable). Different time periods may be specified for individual restrictions and requirements.~~

~~Where an SHPO is made in respect of an offender who is already subject to an SHPO, the earlier SHPO ceases to have effect. If the offender is already subject to a Sexual Offences Prevention Order or Foreign Travel Order made in Scotland or Northern Ireland, that order ceases to have effect unless the court orders otherwise.~~

~~Chapter 2 of Part 11 of the Sentencing Code sets out further matters related to making SHPOs.~~

Slavery and trafficking prevention orders

Modern Slavery Act 2015, s14

A court may make a slavery and trafficking prevention order against an offender convicted of a slavery or human trafficking offence, if satisfied that:

- there is a risk the offender may commit a slavery or human trafficking offence; and
- it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence.

Automatic orders on conviction

The following requirements or provisions are not part of the sentence imposed by the court but apply automatically by operation of law. The role of the court is to inform the offender of the applicable requirements and/or prohibition.

Requirement or provision	Statutory reference
<p>Notification requirements</p> <p>A relevant offender automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The court should inform the offender accordingly.</p> <p><i>The operation of the notification requirement is not a relevant consideration in determining the sentence for the offence.</i></p>	<p>Sections 80 to 88 and Schedule 3 of the Sexual Offences Act 2003</p>
<p>Protection for children and vulnerable adults</p> <p>A statutory scheme pursuant to which offenders will or may be barred from regulated activity relating to children or vulnerable adults, with or without the right to make representations, depending on the offence. The court should inform the offender accordingly.</p>	<p>Section 2 and Schedule 3 of the Safeguarding Vulnerable Groups Act 2006</p> <p>Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37) (as amended)</p>

Step 8—Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

~~Step 9 – Consideration for time spent on bail (tagged curfew)~~

~~The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.~~

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.