

[To be inserted into the sexual offences compendium guideline]

INCEST

Within the ECSC, in the nine member states and territories, the offence of incest carries different maximum sentences.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines¹ and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence².

It is required that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders³ whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

¹ As at **Easter 2020**.

² Incest can be committed in many different ways within the ECSC, dependent on local legislation, with greatly varying maxima, so that this is an offence where it is understood there may from time to time be good reason not to adhere strictly to the guideline, and if so should be explained in the sentencing remarks.

³ For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines no. 4 of 2019**.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence.

Step 5

Give credit for time served on remand.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

Constructing the Sentence

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

An incest case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence.

Categories arising from consequence are as follows:

CONSEQUENCE - category 1 – High

The victim is a child under 13 years

The victim is particularly vulnerable

Pregnancy results

STI results

Substantial psychological harm is caused

CONSEQUENCE - category 2 - medium

Victim is a child under 16 years of age

Significant psychological harm caused

CONSEQUENCE - category 3 - lesser

Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of seriousness may be demonstrated by one or more of the following:

SERIOUSNESS – level A - high

- Grooming of the victim
- Abuse of trust
- Specifically targeting a vulnerable child
- The offence has been frequently repeated
- Violence or threats of violence

SERIOUSNESS – level B – medium

- Any other case

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'⁴.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

	High Seriousness – level A	Medium Seriousness – level B
Consequence – category 1	SP 65% x Range 50-80% x	SP 45% x Range 30-60% x
Consequence – category 2	SP 50% x Range 35-65% x	SP 35% x Range 20-50% x
Consequence – category 3	SP 35% x Range 20-50%	SP Likely non-custodial

⁴ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- The act has been accompanied by perversions
- Use of threats including blackmail
- Use of alcohol/drugs to facilitate offence
- Significant degree of planning
- Recording of incident, and/or distribution, including uploading it to the internet

MITIGATING FACTORS of the offence

- Conciliation

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Relevant previous convictions
- Significant age disparity

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- Genuine remorse
- Steps taken to address offending behaviour
- Youth and/or lack of maturity where it explains offending

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁵.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁵ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6.