



The Sentencing Guidelines Committee

Differences in Maximum Sentence

1. Some offences in the Falkland Islands have different maximum sentences than the equivalent offence in England and Wales.
2. The fact that there are different maximum sentences for equivalent offences should not automatically be taken as an indication that the offence is seen as more or less serious by law makers in the Falkland Islands than in England and Wales.
3. The Falkland Islands and England and Wales are separate jurisdiction with a different court structure. The maximum sentence for an offence can have an impact on which of the criminal courts has jurisdiction to hear the case. Some offences have been given a different maximum sentence by law makers in the Falkland Islands which means that offences of that type can be allocated to certain courts, rather than because the offence itself is seen as more or less serious.
4. It is also the case that the maximum sentences for some offences have changed as a result of legislative review taking place in one jurisdiction that has not taken place in the other. It may therefore be the case that law makers in the Falkland Islands have not considered whether to adopt legislative changes from England and Wales one way or another.
5. Sentencers in the Falkland Islands must follow Falkland Islands sentencing guidelines unless it would not be in the interests of justice to do so¹. Where no Falkland Islands guideline exists, sentencers in the Falkland Islands should have regard to the guidelines of England and Wales, but are not bound to follow them if it is not in the interests of justice to do so². Where sentencers depart from following sentencing guidelines, including those guidelines from England and Wales, then reasons should be given.
6. If it is clear to sentencers that a difference between the maximum sentence available in the Falkland Islands and the equivalent offence in England and Wales would lead to injustice when applying the relevant sentencing guideline, then a departure from the guideline would be justified. The circumstances in which this could arise will be

¹ Section 482(3) Criminal Procedure and Evidence Ordinance 2014.

² Section 482(4) Criminal Procedure and Evidence Ordinance 2014.

rare and sentencers should remember that departure from either the Falkland Islands or England & Wales sentencing guidelines, would need to be justified when it arises and pronounced in open court.

7. When sentencers are applying offence specific guidelines from England and Wales for offences that have a different maximum sentence to the equivalent offence in the Falkland Islands then the following principles **must** be applied.
 - The maximum sentence for an offence sets the scope of the available length of sentence. The harm caused by the offence and the culpability of the offender are not made any more or less serious just because there is a different maximum sentence in the Falkland Islands than in England and Wales. The primary consideration of the sentencer should be an assessment of the seriousness of the offence committed, with regard to culpability and harm.
 - In many cases it will not be necessary to consider the possible effect of different maximum sentences because offending will not frequently warrant sentencing at, or close to, the statutory maximum.
 - The relevant offence specific guideline should be used to reach an appropriate sentence without reference to whether there is a different maximum sentence.
 - Sentencers should not seek to reduce or increase the relevant starting point and applicable sentence range on the basis that a different maximum sentence applies to the specific offence. An attempt to arithmetically scale up or down based on different maximum sentences does not reflect the primary considerations of culpability and harm.
 - The sentence passed **must not** exceed the statutory maximum available for the offence in the Falkland Islands.
 - If the maximum sentence in England and Wales is greater than the maximum sentence in the Falkland Islands and the specific offence guideline provides for a starting point in excess of the Falkland Island maximum, then the sentencer should take the Falkland Islands maximum, or close to it, as the starting point and must not make any upward adjustment beyond the available maximum sentence.
 - Where the maximum sentence in England and Wales is less than the maximum sentence in the Falkland Islands then the sentencer should take the starting point provided for in the England and Wales specific offence

guideline. The sentencer should not increase the starting point simply because the Falkland Islands has a greater maximum sentence.