

Arson (criminal damage by fire)

Criminal Damage Act 1971, s.1

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months' custody

Maximum when tried on indictment: Life

Offence range: Discharge – 8 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

Courts should consider requesting a report from liaison and development services, or from a medical practitioner, or in appropriate cases, ordering a psychiatric report in order to both ascertain whether the offence is linked to an underlying mental disorder or learning disability (and so assist in the assessment of culpability) and whether any mental health disposal should be considered

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A - High culpability:

- High degree of planning or premeditation
- Revenge attack
- Use of accelerant
- Intention to cause very serious damage to property
- ~~Recklessness or~~ Intention to create a high risk of injury to persons

B - Medium culpability:

- ~~All other~~ Cases that fall between categories A and C because:
- Factors are present in A and C which balance each other out and/or
- The offender's culpability falls between the factors described in A and C
- ~~Intention to cause significant damage to property~~
- ~~Recklessness or intention to create a significant risk of injury to persons~~
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C - Lesser culpability:

- Little or no planning; offence committed on impulse
- Offender's responsibility substantially reduced by mental disorder* or learning disability
- Involved through coercion, intimidation or exploitation

~~* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice~~

Harm

The level of harm is assessed by weighing up all the factors of the case.

<p>Category 1</p> <ul style="list-style-type: none"> • Serious physical and/or psychological harm caused • Serious consequential economic, <u>cultural</u> or social impact of offence • High value of damage caused
<p>Category 2</p> <ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
<p>Category 3</p> <ul style="list-style-type: none"> • No or minimal physical and/or psychological harm caused • Low value of damage caused
<p>STEP TWO Starting point and category range</p> <p>Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.</p>

In exceptional cases within category 1A, sentences of above 8 years may be appropriate.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol, **which is linked to the offending**, and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Harm	Culpability		
	A	B	C
<p>Category 1</p>	<p>Starting point 4 years' custody</p> <p>Category range 2 to 8 years' custody</p>	<p>Starting point 1 year 6 months' custody</p> <p>Category range 9 months to 3 years' custody</p>	<p>Starting point 9 months' custody</p> <p>Category range 6 months – 1 year 6 months' custody</p>
<p>Category 2</p>	<p>Starting point 2 years' custody</p> <p>Category range 1 to 4 years'</p>	<p>Starting point 9 months' custody</p> <p>Category range 6 months- 1 year 6</p>	<p>Starting point High level Community order</p> <p>Category range Medium level</p>

	custody	months' custody	Community order-9 months' custody
Category 3	Starting point 1 years' custody Category range 6 months - 2 years' custody	Starting point High level Community order Category range Medium level Community order-9 months' custody	Starting point Low level Community order Category range Discharge- High level Community order

~~Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this may be relevant. Where a mental health disposal is indicated refer to Step 3 of the Criminal Damage/ Arson with intent to endanger life or reckless as to whether life endangered guideline.~~

The court should then consider any adjustment for any aggravating or mitigating factors. 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.

Factors increasing seriousness

Statutory aggravating factors:

- A1. 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
- A2. Offence committed whilst on bail
- A3. Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation, or transgender identity.

Other aggravating factors:

- A4. Commission of offence whilst under the influence of alcohol or drugs
- A5. Offence committed for financial gain
- A6. Offence committed to conceal other offences
- A7. Victim is particularly vulnerable
- A8. Fire set in or near a public amenity
- A9. Damage caused to heritage assets
- A10. Significant impact on emergency services or resources

- A11. Established evidence of community/wider impact
- A12. Failure to comply with current court orders
- A13. Offence committed on licence or post sentence supervision
- A14. Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Offender lit fire accidentally and/or tried to minimise its effect
- M3. Remorse
- M4. Good character and/or exemplary conduct
- M5. Serious medical condition requiring urgent, intensive or long-term treatment
- M6. Age and/or lack of maturity where it affects the responsibility of the offender
- M7. Sole or primary carer for dependent relatives
- M8. Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 225) or an extended sentence (section 226A). 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 SIX**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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

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