

Criminal damage/arson with intent to endanger life or reckless as to whether life endangered

Criminal Damage Act 1971, s.1(2)

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

Triable only on indictment
Maximum: Life imprisonment

Offence range: High level Community order- 12 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**.

Within this offence, culpability is fixed, culpability A is for intent, culpability B is for recklessness.

Culpability A:

- Offender intended to endanger life

Culpability B:

- Offender was reckless as to whether life was endangered

Harm

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

Category 1

- Very serious physical and/or psychological harm caused
- High risk of very serious physical and/or psychological harm
- Serious consequential economic, cultural or social impact of offence caused
- Very high value of damage caused

Category 2

- Significant physical and/or psychological harm caused
- Significant risk of serious physical and/ or psychological harm
- Significant value of damage caused
- All other harm that falls between categories 1 and 3

Category 3

- No or minimal physical and/or psychological harm caused
- Low risk of serious physical and/or psychological harm
- Low value of damage caused

STEP TWO**Starting point and category range**

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.

In exceptional cases within category 1A, sentences of above 12 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
Category 1	Starting point 8 years' custody Category range 5 years to 12 years' custody	Starting point 6 years' custody Category range 4 years to 10 years' custody
Category 2	Starting point 6 years' custody Category range 4 to 8 years' custody	Starting point 4 years' custody Category range 2 to 6 years' custody
Category 3	Starting point 2 years' custody Category range 6 months custody to 3 years' custody	Starting point 1 years' custody Category range High level Community order- 2 years 6 months' custody

~~In appropriate cases, the court should order a psychiatric report in order to ascertain whether the offence is linked to an underlying mental disorder and, if it is, whether any mental health disposal should be considered (see Step Three.)~~

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.

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

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. Revenge attack
- A6. Significant degree of planning or premeditation
- A7. Use of accelerant
- A8. Fire set in or near a public amenity
- A9. Victim is particularly vulnerable
- A10. Damage caused to heritage assets
- A11. Multiple people endangered
- A12. Significant impact on emergency services or resources
- A13. Established evidence of community/wider impact
- A14. Failure to comply with current court orders
- A15. Offence committed on licence or post sentence supervision
- A16. Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Offender's responsibility substantially reduced by mental disorder or learning disability (if this factor provides strong mitigation it may be appropriate to go down

a category)

- M3. Lack of premeditation
- M4. Involved through coercion, intimidation or exploitation
- M5. Remorse
- M6. Good character and/or exemplary conduct
- M7. Serious medical condition requiring urgent, intensive or long-term treatment
- M8. Age and/or lack of maturity where it affects the responsibility of the offender
- M9. Sole or primary carer for dependent relatives
- M10. Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

~~*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.~~

STEP THREE

Consideration of mental health disposals

Where custody is being considered:

Where:

- (i) the evidence of medical practitioners suggests that the offender is currently suffering from a mental disorder,
- (ii) that the offending is wholly or in significant part attributable to that disorder,
- (iii) treatment is available, and
- (iv) the court considers that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case,

the court should consider these matters in the following order:

Section 45A hospital and limitation direction

- a. Before a hospital order is made under s.37 MHA (with or without a restriction order under s41), consider whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under s.45A MHA. In deciding whether a s.45A direction is appropriate the court should bear in mind that the direction will cease to have effect at the end of a determinate sentence.
- b. If the mental disorder can appropriately be dealt with by a direction under s.45A(1), then the judge should make such a direction. (Not available for a person under the age of 21 at the time of conviction).

Section 37 hospital order and s41 restriction order

- c. If a s.45A direction is not appropriate the court must then consider, before going further, whether: (1) the mental disorder is treatable, (2) once treated there is no evidence the offender would be dangerous, and (3) the offending is due to that mental disorder. If these conditions are met a hospital order under s.37/41 is likely to be the correct disposal.

Section 47 transfer to hospital

- d. The court must also have regard to the question of whether other methods of dealing with the offender are available including consideration of whether the powers under s47 MHA for transfer from custody to hospital for treatment would, taking in to consideration all of the circumstances, be appropriate.
- There must always be sound reasons for departing from the usual course of imposing a custodial sentence and where a custodial sentence is not imposed, the judge must set out these reasons.

Non-custodial option:

If a non-custodial option is considered, and where an 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 appropriate. The offender should express a willingness to comply with the requirement.

STEP FOUR

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 FIVE

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 SIX

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 SEVEN

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 EIGHT**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 NINE**Reasons**

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

STEP TEN**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.

Blank page