

## **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

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**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 diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to 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
- Intention to create a high risk of injury to persons

**B - Medium culpability:**

- Some planning
- Recklessness as to whether very serious damage caused to property
- Recklessness as to whether serious injury caused to persons
- 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

**C - Lesser culpability:**

- Little or no planning; offence committed on impulse
- Recklessness as to whether some damage to property caused
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Involved through coercion, intimidation or exploitation

**Harm**

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

**Category 1**

- Serious physical and/or psychological harm caused
- Serious consequential economic or social impact of offence
- High value of damage caused

**Category 2**

- Harm that falls between categories 1 and 3

### Category 3

- No or minimal physical and/or psychological harm caused
- 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.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol, which **is linked to the offending**, 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.

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

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

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, including outside the category range.

### **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.** Offence committed within a domestic abuse context
- A9.** Fire set in or near a public amenity
- A10.** Damage caused to heritage and /or cultural assets
- A11.** Significant impact on emergency services or resources
- A12.** Established evidence of community/wider impact
- A13.** Failure to comply with current court orders
- A14.** Offence committed on licence or post sentence supervision
- A15.** Offences taken into consideration

### **Factors reducing seriousness or reflecting personal mitigation**

- M1.** No previous convictions **or** no relevant/recent convictions
- M2.** Steps taken to minimise the effect of the fire or summon assistance
- 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

- M7.** Mental disorder or learning disability (where not taken into account at step one)
- M8.** Sole or primary carer for dependent relatives
- M9.** 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 *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 (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.