

Firearms – Possession of prohibited weapon

Possession, purchase or acquisition of a prohibited weapon or ammunition

Firearms Act 1968 (section 5(1), 5(1A))

Indictable only:

Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c)
Section 5(1A)(a)

Triable either way:

Section 5(1)(b)
Section 5(1A)(b), (c), (d), (e), (f), (g)

Maximum: 10 years' custody

Offence range: Discharge – 9 years' custody

This offence is subject to statutory minimum sentencing provisions.
See STEPS TWO AND THREE for further details.

STEP ONE
Determining the offence category

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

Culpability A – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

The categorisations below are indicative only and should not be applied mechanistically. Courts should take care to ensure the categorisation is appropriate for the specific weapon by moving up or down a category where necessary. Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

References to weapon below include a component part of such a weapon.

Type 1	Weapon that is capable of killing two or more people at the same time or in rapid succession <ul style="list-style-type: none"> • This would normally include a weapon under: <ul style="list-style-type: none"> ○ section 5(1)(a) ○ section 5(1)(ab) ○ section 5(1)(aba) ○ section 5(1)(ac) ○ section 5(1)(ad) ○ section 5(1)(ae) ○ section 5(1A)(c)
Type 2	All other weapons falling between Type 1 and Type 3 <ul style="list-style-type: none"> • This would normally include a weapon under: <ul style="list-style-type: none"> ○ section 5(1)(af) ○ section 5(1A)(a) Ammunition under section 5(1)(c), 5(1A)(b) and (d)-(g) (where not at Type 3)
Type 3	Weapon that is not designed to be lethal <ul style="list-style-type: none"> • This would normally include a weapon under section 5(1)(b) Very small quantity of ammunition

Culpability B – Other culpability factors

The court should weigh all the factors set out below in determining the offender’s culpability.

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:
<p>High culpability:</p> <ul style="list-style-type: none"> • Firearm discharged • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
<p>Medium culpability:</p> <ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition <u>or stun gun that is charged</u> • Firearm/ammunition intended for use (where not at High culpability)
<p>Lower culpability:</p> <ul style="list-style-type: none"> • No use or intention to use

Culpability category

Identify the final culpability category in the table below, considering both **A – Type of weapon** and **B – Other culpability factors**.

		A – Type of weapon		
		1	2	3
B – Other culpability factors	High	Culpability category A	Culpability category A	Culpability category B
	Medium	Culpability category A	Culpability category B	Culpability category C
	Lower	Culpability category B	Culpability category C	Culpability category C

Harm	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual alarm/distress caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
Category 1	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
Category 2	<ul style="list-style-type: none"> • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

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.			
Table 1 should be used if the offence is subject to statutory minimum sentencing provisions, unless there are exceptional circumstances. Table 2 should be used for all other cases. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
TABLE 1	Offences subject to the statutory minimum sentence (Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a))		
Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody Category range 7-9 years' custody	Starting point 7 years' custody Category range 6-8 years' custody	Starting point 6 years' custody Category range 5-7 years' custody
Category 2	Starting point 7 years' custody Category range 6-8 years' custody	Starting point 6 years' custody Category range 5-7 years' custody	Starting point 5 years 6 months' custody Category range 5-7 years' custody
Category 3	Starting point 6 years' custody Category range 5-7 years' custody	Starting point 5 years 6 months' custody Category range 5-7 years' custody	Starting point 5 years' custody Category range 5 – 6 years' custody
TABLE 2	Offences not subject to the statutory minimum sentence		
Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 6 months' custody Category range High level community order – 2 years' custody
Category 2	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 6 months' custody Category range High level community order – 2 years' custody	Starting point Medium level community order Category range Band D fine – High level community order
Category 3	Starting point 6 months' custody Category range High level community order – 1 year's custody	Starting point Medium level community order Category range Band D fine – High level community order	Starting point Band C fine Category range Discharge – Low level community order

The table below contains 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 sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified 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

Other aggravating factors:

- A3. Firearm modified to make it more dangerous
- A4. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A5. Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step six on totality when sentencing for more than one offence.)
- A6. Offence was committed as part of a group (except where already taken into account at step one)
- A7. Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A8. Abuse of position as registered firearms dealer or certificate holder
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A11. Failure to comply with current court orders
- A12. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. No knowledge or suspicion that item possessed was firearm/ammunition
- M5. No knowledge or suspicion that firearm/ammunition is prohibited
- M6. Held on behalf of another through coercion, intimidation, or exploitation

- M7. Voluntary surrender of firearm/ammunition
- M8. Offender co-operated with investigation and/or made early admissions
- M9. Remorse
- M10. Serious medical condition requiring urgent, intensive or long-term treatment
- M11. Age and/or lack of maturity
- M12. Mental disorder or learning disability
- M13. Sole or primary carer for dependent relatives

STEP THREE

Minimum Term

1. Where the minimum term provisions under section 51A of the Firearms Act 1968 apply, a court must impose a sentence of at least 5 years' custody **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.**

Applicability

2. The minimum terms provisions apply when sentencing:
 - an offence under section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
 - certain other offences committed in respect of a firearm or ammunition specified in the provisions above.¹
3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of 5 years applies to offenders aged 18 or over at the date of conviction. [See below \[LINK\] for sentencing offenders aged under 18.](#)
5. Where the minimum term applies, this should be stated expressly.

Exceptional circumstances

6. In considering whether there are 'exceptional circumstances' that would justify not imposing the statutory minimum sentence, the court must have regard to the particular circumstances of the offence and the offender.
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing:² see Sentencing B in [Criminal Practice Directions](#) VII: Sentencing. Where the offender has sought to rely on exceptional circumstances, a clear justification should be given for why exceptional circumstances are found or not found.

Principles

8. [The circumstances must indeed be exceptional.](#)³ It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term by too readily accepting exceptional circumstances.⁴ The court should

¹ s51A(1)-(1A) Firearms Act 1968: The minimum term provisions also apply to the following offences in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a):

- section 5(2A) (manufacture, sale or transfer of firearm, or possession etc for sale or transfer);
- section 16 (possession of firearm with intent to injure);
- section 16A (possession of firearm with intent to cause fear of violence);
- section 17 (use of firearm to resist arrest);
- section 18 (carrying firearm with criminal intent);
- section 19 (carrying a firearm in a public place);
- section 20(1) (trespassing in a building carrying a firearm).

² [R v Rogers Re B 2016 EWCA Crim 801.](#)

³ [R Wilkinson \[2009\] EWCA Crim 1925.](#)

⁴ [R v Dawson 2017 EWCA Crim 2244.](#)

consider whether the imposition of the minimum term would result in an arbitrary and disproportionate sentence.⁵

9. The court should look at all of the circumstances as a whole. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.⁶
10. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:
 - One or more lower culpability factors;
 - The type of weapon or ammunition falling under type 2 or 3;
 - One or more mitigating factors;
 - A plea of guilty.⁷

Where exceptional circumstances are found

11. If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

12. The court may find it useful to refer to the range of sentences under culpability A of Table 2 (Offences not subject to the statutory minimum sentence) in STEP TWO above. The court should impose a sentence that is appropriate to the individual case.

Sentencing offenders aged under 18 [*DROPDOWN BOX*]

1. Where the offender is aged 16 or 17 when the offence was committed, the minimum term is 3 years' custody.⁸ Where the offender is under 16 when the offence was committed, the minimum term does not apply.⁹
2. Subject to the minimum term, the court should determine the sentence in accordance with the *Sentencing Children and Young People* guideline, particularly paragraphs 6.42-6.49 on custodial sentences.
3. This guidance states at paragraph 6.46: "When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age."
4. The considerations above on exceptional circumstances relating to the offence or offender apply equally when sentencing offenders under 18.

⁵ R v Rehman and Wood 2005 EWCA Crim 2056, 2006 1 Cr App R (S).

⁶ R v Rehman and Wood 2005 EWCA Crim 2056, 2006 1 Cr App R (S).

⁷ R v Shaw 2011 EWCA Crim 167.

⁸ Section 51A(5)(a).

⁹ Section 51A(1)(b).

STEP FOUR

Consider any factors which indicate a reduction for 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the required 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

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

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.