

# Firearms – Possession with intent to cause fear of violence

## **Possession with intent to cause fear of violence**

Firearms Act 1968 (section 16A)

Indictable only

Maximum: 10 years' custody

Offence range: Medium level community order – 9 years' custody

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

**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**.

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:

**A – High culpability:**

- Intention falling just short of intent to endanger life
- Conduct intended to maximise fear or distress
- Sophisticated nature of offence/significant planning
- Leading role where offending is part of a group activity
- Firearm or imitation firearm discharged
- Prolonged incident

**B – Medium culpability:**

- Firearm or imitation firearm loaded or held with compatible ammunition but not discharged
- Significant role where offending is part of a group activity
- Some degree of planning
- Other cases falling between high and lower culpability

**C – Lower culpability:**

- No intention to cause injury to persons
- Lesser role where offending is part of group activity
- Little or no planning or unsophisticated offending
- Firearm or imitation firearm not produced or visible
- Conduct limited in scope and duration

<b>Harm</b>	
The court should consider the steps set out below to determine the level of harm that has been <b>caused or was risked</b> .	
This step is assessed by reference to the <b>risk of injury/death or disorder</b> occurring and/or <b>actual harm</b> 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.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Severe physical harm caused</li> <li>• Severe psychological harm caused</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Serious physical harm caused</li> <li>• Serious psychological harm caused</li> <li>• Offence committed in circumstances where person(s) put at high risk of <u>death or serious physical or psychological injury or death</u></li> <li>• Offence committed in circumstances where there is a high risk of serious disorder</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• <u>Alarm/distress</u> caused</li> <li>• <u>All other cases</u></li> </ul>

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.

Where separate charges apply, for example in relation to any death or injury caused, the court should have regard to totality (see step seven).

<b>STEP TWO</b>			
<b>Starting point and category range</b>			
<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> <p>Table 1 should be used if the offence is in respect of a firearm. Table 2 should be used for an imitation firearm.</p> <p>The offence may be subject to a minimum sentence. Where the minimum sentence applies,<sup>1</sup> and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.</p>			
<b>TABLE 1</b>	<b>Firearm</b>		
<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 8 years' custody <b>Category range</b> 7 – 9 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 4 – 8 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 – 7 years' custody
<b>Category 2</b>	<b>Starting point</b> 6 years' custody <b>Category range</b> 4 – 8 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 – 7 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 4 years' custody
<b>Category 3</b>	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 – 7 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 4 years' custody	<b>Starting point</b> 1 year 6 months' custody <b>Category range</b> 6 months – 2 years' custody
<b>TABLE 2</b>	<b>Imitation firearm</b>		
<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 7 years' custody <b>Category range</b> 6 – 8 years' custody	<b>Starting point</b> 5 years' custody <b>Category range</b> 3 – 7 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 1 – 5 years' custody
<b>Category 2</b>	<b>Starting point</b> 5 years' custody <b>Category range</b> 3 – 7 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 1 – 5 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> 6 months – 2 years' custody
<b>Category 3</b>	<b>Starting point</b> 3 years' custody <b>Category range</b> 1 – 5 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> 6 months – 2 years' custody	<b>Starting point</b> 6 months' custody <b>Category range</b> Medium level community order – 1 year's custody

<sup>1</sup> The minimum term applies in respect of a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af), (c) or section 5(1A)(a) of the Firearms Act 1968.

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
- 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. Firearm is prohibited under section 5 and subject to minimum term (where not already increased to minimum term)
- A5. [Firearm under section 5\(1\)\(a\) \(automatic weapon\)](#)
- A6. Firearm modified to make it more ~~lethal~~ [dangerous](#)
- A7. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A8. Imitation firearm is readily convertible<sup>2</sup>
- A9. Steps taken to make imitation firearm appear more realistic (where not charged separately)
- A10. Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step seven on totality when sentencing for more than one offence.)
- A11. Offence was committed as part of a group (except where already taken into account at step one)
- A12. Offence committed to further organised criminal activity ([except where already taken into account at step one](#))
- A13. Expectation of substantial financial gain (except where already taken into account at step one)
- A14. Attempts to conceal or dispose of the firearm or other evidence

<sup>2</sup> [Drop-down box to show relevant statutory provision or link to statute - Section 1(6) Firearms Act 1982]

- A15. Serious damage to property caused (See step seven on totality when sentencing for more than one offence.)
- A16. Abuse of position as registered firearms dealer or certificate holder
- A17. Commission of offence whilst under the influence of alcohol or drugs
- A18. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A19. Failure to comply with current court orders
- A20. 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. Imitation firearm is ~~crude or unrealistic~~ unrealistic and unconvincing
- M5. Involved through coercion, intimidation, or exploitation
- M6. Voluntary surrender of firearm
- M7. Offender co-operated with investigation and/or made early admissions
- M8. Remorse
- M9. Serious medical condition requiring urgent, intensive or long-term treatment
- M10. Age and/or lack of maturity
- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

**STEP THREE**

**Minimum Terms**

[To come once finalised]

**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**

**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

**STEP SIX**

**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 **mandatory 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 mandatory minimum.

**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**

**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 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.

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