

Annex C: Draft guidelines

Riot Public Order Act 1986 (section 1)

Triable only on indictment
Maximum: 10 years' custody

Offence range: 3 years' – 9 years' custody

This is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

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 demonstrated by one or more of the following:

A	<p>Factors in Category B present AND any of;</p> <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon* • Offender was a ringleader or carried out a leading role • Offenders actions escalated level of violence and/or disorder
B	<ul style="list-style-type: none"> • Offender participated in incident which caused widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity in a public place

* *The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon, which is 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'.*

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident involves attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability	
	A	B
Category 1	Starting point 7 years' custody	Starting point 6 years' custody
	Category range 6 – 9 years' custody	Category range 4 – 7 years' custody
Category 2	Starting point 6 years' custody	Starting point 5 years' custody
	Category range 4 – 7 years' custody	Category range 3 – 6 years' custody

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

Relevant mitigating factors should then be considered to determine if further adjustment to the sentence is required.

Factors increasing seriousness***Statutory aggravating factors:***

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

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

Offence committed whilst on bail

Other aggravating factors:

Active and persistent participant

Incitement of others

Offender masked or disguised to evade detection

Incident occurred in busy public area

Took steps to prevent emergency services from carrying out their duties

Offender used weapon

Offender threw missiles/objects

Use of significant physical violence

Injury to animal carrying out public duty

Actively recruited other participants

Possession of weapon or article intended to injure

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

Ignored warnings or exclusion notices

Offence committed while on licence or subject to post sentence supervision

History of failing to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Low level involvement

No previous convictions

Remorse

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to commission of offence

Previous good character

Sole or primary carer for dependent relatives

Other offences committed within incidents of riot

Where sentencing other offences committed in the context of riot, the court should treat the context of the offending as a severely aggravating feature of any offence charged.

STEP THREE

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 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 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

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 should consider whether to make compensation and/or other ancillary orders.

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.

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Violent disorder Public Order Act 1986 (section 2)

Triable either way
Maximum: 5 years' custody

Offence range: Community order – 4 years' custody

This is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

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 demonstrated by one or more of the following

A	Factors in Category B present AND any of: <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon* • Offender was a ringleader or carried out a leading role • Targeting of individual(s) by a group
B	<ul style="list-style-type: none"> • Offender participated in incident which involved widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving serious acts of violence • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity
C	<ul style="list-style-type: none"> • Offence involved threats of violence only • Offence involved lower level of violence or activity than included in Category B

* *The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon, which is ‘any article made or adapted for use for causing injury, or is intended by the person having it with him for such use’.*

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident results in attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 4 years' custody	Category range 1 – 3 years' custody	Category range High level community order – 2 years
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 – 3 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year 6 months' custody

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

Factors increasing seriousness***Statutory aggravating factors:***

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

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

Offence committed whilst on bail

Other aggravating factors:

Active and persistent participant

Offender's actions escalated level of violence and/or disorder

Incitement of others

Offender masked or disguised to evade detection

Incident occurred in busy public area

Offender used weapon

Offender threw missiles/objects

Use of significant physical violence

Injury to animal carrying out public duty

Possession of weapon or article intended to injure

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

History of failing to comply with court orders

Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

No previous convictions

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role

Remorse

Previous good character

Sole or primary carer for dependent relatives

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to commission of offence

STEP THREE**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 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 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

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 should consider whether to make compensation and/or other ancillary orders.

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.

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