

## **Firearms – Possession by person prohibited**

### **Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition**

Firearms Act 1968 (section 21(4))

Triable either way

Maximum: 5 years' custody

Offence range: Discharge – 4 years' custody

**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 – 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.

Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

<b>Type 1</b>	<ul style="list-style-type: none"> <li>• Firearm or ammunition prohibited under section 5 (whether or not the minimum sentence applies) (where not at Type 2)</li> </ul>
<b>Type 2</b>	<ul style="list-style-type: none"> <li>• Weapon prohibited under section 5(1)(b)</li> <li>• Firearm, shotgun or air weapon for which a certificate is required</li> <li>• Ammunition for which a certificate is required (where not at Type 3)</li> </ul>
<b>Type 3</b>	<ul style="list-style-type: none"> <li>• Air weapon that is not prohibited and for which no certificate is required</li> <li>• Imitation firearm</li> <li>• Very small quantity of ammunition</li> </ul>

**Culpability– 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.**

<b>Culpability demonstrated by one or more of the following:</b>
<p><b>High culpability:</b></p> <ul style="list-style-type: none"> <li>• Firearm discharged, other than for lawful purpose</li> <li>• Firearm loaded</li> <li>• Firearm/ammunition used or intended for use for criminal purpose</li> </ul>
<p><b>Medium culpability:</b></p> <ul style="list-style-type: none"> <li>• Firearm/ammunition produced (where not at High culpability)</li> <li>• Firearm held with compatible ammunition</li> <li>• Firearm/ammunition used or intended for use (where not at High culpability)</li> </ul>
<p><b>Lower culpability:</b></p> <ul style="list-style-type: none"> <li>• No use or intention to use</li> </ul>

**Culpability category**

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

		Type of weapon		
		1	2	3
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

<p><b>Harm</b> The court should consider the factors set out below to determine the level of harm that has been <b>caused or was risked</b>.</p> <p>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.</p> <p>This step is assessed by reference to the <b>risk of harm</b> or <b>disorder</b> occurring and/or <b>actual alarm/distress</b> caused.</p> <p>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.</p>	
<p><b>Category 1</b></p>	<ul style="list-style-type: none"> <li>• Serious alarm/distress caused</li> <li>• High risk of death or serious physical or psychological harm</li> <li>• High risk of serious disorder</li> </ul>
<p><b>Category 2</b></p>	<ul style="list-style-type: none"> <li>• All other cases falling between category 1 and category 3 because:             <ul style="list-style-type: none"> <li>○ Factors in both 1 and 3 are present which balance each other out; and/or</li> <li>○ The harm falls between the factors as described in 1 and 3</li> </ul> </li> </ul>
<p><b>Category 3</b></p>	<ul style="list-style-type: none"> <li>• No/minimal alarm/distress caused</li> <li>• No/minimal risk of death or serious physical or psychological harm</li> <li>• No/minimal risk of serious disorder</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.**

<b>STEP TWO</b>			
<b>Starting point and category range</b>			
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.			
<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 4 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> High level community order – 2 years' custody
<b>Category 2</b>	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> High level community order – 2 years' custody	<b>Starting point</b> Medium level community order <b>Category range</b> Band A fine – 6 months' custody
<b>Category 3</b>	<b>Starting point</b> 1 year's custody <b>Category range</b> High level community order – 2 years' custody	<b>Starting point</b> Medium level community order <b>Category range</b> Band A fine – 6 months' custody	<b>Starting point</b> Band A fine <b>Category range</b> Discharge – Band C Fine

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 five on totality when sentencing 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. Commission of offence whilst under the influence of alcohol or drugs
- A9. Failure to comply with current court orders
- A10. 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
- 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. Genuine misunderstanding about terms of prohibition
- M8. Voluntary surrender of firearm/ammunition
- M9. Offender co-operated with investigation and/or made early admissions
- M10. Remorse
- M11. Serious medical condition requiring urgent, intensive or long-term treatment
- M12. Age and/or lack of maturity
- M13. Mental disorder or learning disability
- M14. Sole or primary carer for dependent relatives

**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 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 FIVE**

**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 SIX**

**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 SEVEN**

**Reasons**

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

**STEP EIGHT**

**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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