

# **Firearms – Possession with intent – other offences**

## **Use of firearm to resist arrest**

Firearms Act 1968 (section 17(1))

## **Possession while committing a Schedule 1 offence**

Firearms Act 1968 (section 17(2))

## **Carrying firearm with criminal intent**

Firearms Act 1968 (section 18)

Indictable only

Maximum: Life imprisonment

Offence range: High level community order – 16 years' custody

These are serious specified offences for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

These are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence).

These are specified offences 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.**

<b>Culpability</b> demonstrated by one or more of the following:
<p><b>A – High culpability:</b></p> <ul style="list-style-type: none"> <li>• Sophisticated nature of offence/significant planning</li> <li>• Leading role where offending is part of a group activity</li> <li>• Firearm discharged</li> <li>• Prolonged incident</li> <li>• Serious nature of intended offence</li> </ul>
<p><b>B – Medium culpability:</b></p> <ul style="list-style-type: none"> <li>• Firearm loaded or held with compatible ammunition but not discharged</li> <li>• Significant role where offending is part of a group activity</li> <li>• Some degree of planning</li> <li>• Other cases falling between high and lower culpability</li> </ul>
<p><b>C – Lower culpability:</b></p> <ul style="list-style-type: none"> <li>• No intention to cause injury to persons</li> <li>• Lesser role where offending is part of group activity</li> <li>• Little or no planning or unsophisticated offending</li> <li>• Conduct limited in scope and duration</li> <li>• Firearm not produced or visible</li> <li>• Less serious nature of intended offence</li> </ul>

<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> .	
This step is assessed by reference to the <b>risk of harm</b> or <b>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>• High risk of death or severe physical or psychological harm</li> <li>• High risk of serious disorder</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Alarm/distress caused</li> <li>• All other cases not falling into 1 or 2</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>			
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.			
This offence is subject to minimum sentence provisions. 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.			
<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> 12 years' custody <b>Category range</b> 10 – 16 years' custody	<b>Starting point</b> 9 years' custody <b>Category range</b> 7 – 11 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 5 – 9 years' custody
<b>Category 2</b>	<b>Starting point</b> 9 years' custody <b>Category range</b> 7 – 11 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 5 – 9 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 – 6 years' custody
<b>Category 3</b>	<b>Starting point</b> 7 years' custody <b>Category range</b> 5 – 9 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 – 6 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 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> 9 years' custody <b>Category range</b> 6 – 12 years	<b>Starting point</b> 7 years' custody <b>Category range</b> 5 – 9 years	<b>Starting point</b> 5 years' custody <b>Category range</b> 3 – 7 years
<b>Category 2</b>	<b>Starting point</b> 7 years' custody <b>Category range</b> 5 – 9 years' custody	<b>Starting point</b> 5 years' custody <b>Category range</b> 3 – 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> 5 years' custody <b>Category range</b> 3 – 7 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 4 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> High level community order – 3 years' 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 prohibited under section 5 and subject to minimum term (taking care to avoid double counting with minimum term provisions)
- A5. Firearm under section 5(1)(a) (automatic weapon)
- A6. Firearm modified to make it more 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 (See step seven on totality when sentencing for more than one offence.)
- 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. Offender's actions resulted in a suspect avoiding arrest
- 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 (See step seven on totality when sentencing for more than one offence.)
- 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 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 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 five years' custody irrespective of plea **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 the Firearms Act 1968, 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. [DROPDOWN BOX]

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).

3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of five years applies to offenders aged 18 or over at the date of conviction. See below for guidance when 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 particular circumstances of the offender.either of which may give rise to exceptional circumstances
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.
8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

#### Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
10. The circumstances must be truly exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.
11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.
12. 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

#### Where exceptional circumstances are found

13. 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.**

**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 three years' custody. Where the offender is under 16 when the offence was committed, the minimum term does not apply.
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 aged 16 or 17.

**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 **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 SIX**

**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 244A or 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 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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