

**Slavery, servitude and forced or compulsory labour  
Modern Slavery Act 2015 s1**

**Human trafficking  
Modern Slavery Act 2015 s2**

Triable either way  
Maximum: Life imprisonment  
Offence range: TBC

**Culpability**

A	<ul style="list-style-type: none"> <li>• Directing or organising offending</li> <li>• Expectation of substantial financial gain</li> <li>• High degree of planning/premeditation</li> <li>• Abuse of a significant degree of trust/responsibility</li> <li>• Use of violence</li> <li>• Victim’s movement physically restricted</li> </ul>
B	<ul style="list-style-type: none"> <li>• Operational or management role in the offending</li> <li>• Involves others in the offending whether by coercion, intimidation, exploitation or reward</li> <li>• Expectation of significant financial gain</li> <li>• Some planning/premeditation</li> <li>• Threats of violence towards victim(s) or their families</li> <li>• Other cases falling between A and C because:                             <ul style="list-style-type: none"> <li>○ Factors in both high and lesser categories are present which balance each other out and/or</li> <li>○ The offender’s culpability falls between the factors as described in A and C</li> </ul> </li> </ul>
C	<ul style="list-style-type: none"> <li>• Engaged by pressure, coercion or intimidation</li> <li>• Performs limited function under direction</li> <li>• Limited understanding/knowledge of the offending</li> <li>• Expectation of limited financial gain</li> <li>• Little or no planning/premeditation</li> <li>• Absence of violence/threats of violence</li> </ul>

**Harm**

A finding that the psychological harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim (from, for example, a support worker) that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological, developmental or emotional harm suffered by the victim is minor or trivial.

Category 1	<ul style="list-style-type: none"> <li>• Serious physical harm which has a substantial and/or long-term effect</li> <li>• Serious psychological harm which has a substantial and/or long-term effect</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Some physical harm</li> </ul>

	<ul style="list-style-type: none"> <li>• Some psychological harm</li> <li>• Significant financial loss to the victim(s)</li> <li>• Exposure of victim(s) to additional risk of serious physical or psychological harm</li> <li>• Other cases falling between categories 1 and 3 because:             <ul style="list-style-type: none"> <li>○ Factors in both high and lesser categories are present which balance each other out and/or</li> <li>○ The level of harm falls between the factors as described in categories 1 and 3</li> </ul> </li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Limited physical harm</li> <li>• Limited psychological harm</li> <li>• Limited financial loss to the victim(s)</li> </ul>

A sentence imposed for a Modern Slavery Act offence should be determined by the seriousness of the offence, not solely by the expressed wishes of the victim. In particular, the absence of a Victim Personal Statement (VPS) should not be taken to indicate the absence of harm. A court should consider, where available, a VPS which will help it assess the immediate and possible long-term effects of the offence on the victim (and any children, where relevant) as well as the harm caused, whether physical or psychological.

## **Step 2**

### **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 committed whilst on bail

### **Other aggravating factors**

A1 – Offending took place over a long period of time (in the context of these offences, this is likely to mean months or years)

A2 – Deliberate isolation of the victim, including steps taken to prevent the victim reporting the offence or obtaining assistance (above that which is inherent in the offence)

A3 – Deliberate targeting of vulnerable victims

A4 – Victim’s passport or identity documents removed

A5 – Gratuitous degradation of victim

A6 – Large-scale, sophisticated and/or commercial operation (where not taken into account at step 1)

### **Mitigating factors**

M1 – No recent or relevant convictions

M2 – Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)

M3 – Remorse

M4 – Sole/primary carer for dependent relatives

M5 - Age/lack of maturity (where linked to the commission of the offence)

M6 – Mental disorder or learning disability



Sentencing Guidelines Council

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# **Attempted Murder**

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**Definitive Guideline**



## FOREWORD


In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline.

By virtue of section 172 of the CJA 2003, every court must have regard to relevant guidelines. This guideline applies to the sentencing of offenders convicted of any of the offences dealt with herein who are sentenced on or after **27 July 2009**.

This guideline applies only to the sentencing of offenders aged 18 and older. The legislative provisions relating to the sentencing of youths are different; the younger the age, the greater the difference. A separate guideline setting out general principles relating to the sentencing of youths is planned.

The Council has appreciated the work of the Sentencing Advisory Panel in preparing the advice (published June 2007) on which this guideline is based and is grateful to those who responded to the consultation of both the Panel and Council.

The advice and this guideline are available on [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk) or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8–10 Great George Street, London SW1P 3AE.



Chairman of the Council  
July 2009



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## Introduction

1. This guideline covers the single offence of attempted murder. The Council has published a separate definitive guideline for offences of assault which do not result in the death of the victim.<sup>1</sup>
2. There are critical differences between murder and attempted murder; not only is the intended result not achieved but also, for attempted murder, there must have been an intention to kill whereas a charge of murder may arise where the intention was to inflict grievous bodily harm. These differences are reflected in the approach set out below which supersedes previous guidance from the Court of Appeal in *Ford*<sup>2</sup> and other judgments.

## A. Assessing seriousness

### (i) Culpability and harm

3. The culpability of the offender is the initial factor in determining the seriousness of an offence. It is an essential element of the offence of attempted murder that the offender had an intention to kill; accordingly an offender convicted of this offence will have demonstrated a high level of culpability. Even so, the precise level of culpability will vary in line with the circumstances of the offence and whether the offence was planned or spontaneous. The use of a weapon may influence this assessment.
4. In common with all offences against the person, this offence has the potential to contain an imbalance between culpability and harm.<sup>3</sup>
5. Where the degree of harm actually caused to the victim of an attempted murder is negligible, it is inevitable that this will impact on the overall assessment of offence seriousness.
6. However, although the degree of (or lack of) physical or psychological harm suffered by a victim may generally influence sentence, the statutory definition of harm encompasses not only the harm actually caused by an offence but also any harm that the offence was intended to cause or might foreseeably have caused; since the offence can only be committed where there is an intention to kill, an offence of attempted murder will always involve, in principle, the most serious level of harm.

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<sup>1</sup> *Assault and other offences against the person*, published 20 February 2008, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>2</sup> [2005] EWCA Crim 1358

<sup>3</sup> see *Overarching Principles: Seriousness*, para. 1.17, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

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**(ii) Aggravating and mitigating factors**

7. The most serious offences of attempted murder will include those which encompass the factors set out in schedule 21 to the Criminal Justice Act 2003, paragraphs 4 and 5 that, had the offence been murder, would make the seriousness of the offence “exceptionally high” or “particularly high”. For ease of reference, these provisions are reproduced at [Annex A](#).
8. The particular facts of the offence will identify the appropriate level. In all cases, the aggravating and mitigating factors that will influence the identification of the provisional sentence within the range follow those set out in schedule 21 with suitable adjustments. These factors are included in the guideline at page 7.
9. The *Seriousness* guideline<sup>4</sup> sets out aggravating and mitigating factors that are applicable to a wide range of cases; an extract is provided at [Annex B](#). Some are already reflected in the factors referred to above. Care needs to be taken to ensure that there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor. An additional statutory aggravating factor has been introduced by the Counter-Terrorism Act 2008 for prescribed offences which include attempted murder.<sup>5</sup>
10. This guideline is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy. Whilst the approach to assessing the seriousness of the offence may be similar, there are likely to be other factors present (relating to the offence and the offender) that would have to be taken into account and reflected in the sentence.

**B. Ancillary orders****Compensation orders**

11. A court must consider making a compensation order in respect of any personal injury, loss or damage occasioned. There is no limit to the amount of compensation that may be awarded in the Crown Court.

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<sup>4</sup> *Overarching Principles: Seriousness*, paras. 1.20–1.27 published on 16 December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>5</sup> s.30 and schedule 2. If a court determines that the offence has a terrorist connection, it must treat that as an aggravating factor, and state in open court that the offence was so aggravated.

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### C. Sentencing ranges and starting points

12. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. The starting points and ranges are based upon an adult “*first time offender*” who has been **convicted after a trial**. Within the guidelines, a “*first time offender*” is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
13. As an aid to consistency of approach, the guideline describes a number of levels or types of activity which would fall within the broad definition of the offence.
14. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the nature of the offence) to reach a **provisional sentence**.
15. The **sentencing range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
16. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
17. Once the provisional sentence has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence below the range given.
18. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the range provided.
19. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.

## D. Factors to take into consideration

1. Attempted murder is a serious offence for the purposes of the provisions in the Criminal Justice Act 2003<sup>6</sup> for dealing with dangerous offenders. When sentencing an offender convicted of this offence, in many circumstances a court may need to consider imposing a discretionary life sentence or one of the sentences for public protection prescribed in the Act.
2. The starting points and ranges are based upon a first time adult offender convicted after a trial (see paragraphs 12–19 above). They will be relevant when imposing a determinate sentence and when fixing any minimum term that may be necessary. When setting the minimum term to be served within an indeterminate sentence, in accordance with normal practice that term will usually be half the equivalent determinate sentence.<sup>7</sup>
3. Attempted murder requires an intention to kill. Accordingly, an offender convicted of this offence will have demonstrated a high level of culpability. Even so, the precise level of culpability will vary in line with the circumstances of the offence and whether the offence was planned or spontaneous. The use of a weapon may influence this assessment.
4. The level of injury or harm sustained by the victim as well as any harm that the offence was intended to cause or might foreseeably have caused, must be taken into account and reflected in the sentence imposed.
5. The degree of harm will vary greatly. Where there is low harm and high culpability, culpability is more significant.<sup>8</sup> Even in cases where a low level of injury (or no injury) has been caused, an offence of attempted murder will be extremely serious.
6. The most serious offences will include those which encompass the factors set out in schedule 21 to the Criminal Justice Act 2003, paragraphs 4 and 5 that, had the offence been murder, would make the seriousness of the offence “exceptionally high” or “particularly high”: see [Annex A](#).
7. The particular facts of the offence will identify the appropriate level. In all cases, the aggravating and mitigating factors that will influence the identification of the provisional sentence within the range follow those set out in schedule 21 with suitable adjustments. This guideline is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy.
8. When assessing the seriousness of an offence, the court should also refer to the list of general aggravating and mitigating factors in the Council guideline on *Seriousness* (see [Annex B](#)). Care should be taken to ensure there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor.

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<sup>6</sup> Sections 224–230 as amended

<sup>7</sup> *R v Szczerba* [2002] 2 Cr App R (S) 86

<sup>8</sup> *Overarching Principles: Seriousness*, para. 1.19, published on 16 December 2004; [www.sentencing.guidelines.gov.uk](http://www.sentencing.guidelines.gov.uk)

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## Attempted Murder

### Criminal Attempts Act 1981 (section 1(1))

#### THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

**Maximum penalty: Life imprisonment**

Nature of offence	Starting point	Sentencing range
<p><b>Level 1</b> <i>The most serious offences including those which (if the charge had been murder) would come within para. 4 or para. 5 of schedule 21 to the Criminal Justice Act 2003</i></p> <ul style="list-style-type: none"> <li>• Serious and long term physical or psychological harm</li> <li>• Some physical or psychological harm</li> <li>• Little or no physical or psychological harm</li> </ul>	<p><b>30 years custody</b> <b>20 years custody</b> <b>15 years custody</b></p>	<p><b>27–35 years custody</b> <b>17–25 years custody</b> <b>12–20 years custody</b></p>
<p><b>Level 2</b> <i>Other planned attempt to kill</i></p> <ul style="list-style-type: none"> <li>• Serious and long term physical or psychological harm</li> <li>• Some physical or psychological harm</li> <li>• Little or no physical or psychological harm</li> </ul>	<p><b>20 years custody</b> <b>15 years custody</b> <b>10 years custody</b></p>	<p><b>17–25 years custody</b> <b>12–20 years custody</b> <b>7–15 years custody</b></p>
<p><b>Level 3</b> <i>Other spontaneous attempt to kill</i></p> <ul style="list-style-type: none"> <li>• Serious and long term physical or psychological harm</li> <li>• Some physical or psychological harm</li> <li>• Little or no physical or psychological harm</li> </ul>	<p><b>15 years custody</b> <b>12 years custody</b> <b>9 years custody</b></p>	<p><b>12–20 years custody</b> <b>9–17 years custody</b> <b>6–14 years custody</b></p>

Specific aggravating factors	Specific mitigating factors
<p>(a) the fact that the victim was particularly vulnerable, for example, because of age or disability</p> <p>(b) mental or physical suffering inflicted on the victim</p> <p>(c) the abuse of a position of trust</p> <p>(d) the use of duress or threats against another person to facilitate the commission of the offence</p> <p>(e) the fact that the victim was providing a public service or performing a public duty</p>	<p>(a) the fact that the offender suffered from any mental disorder or mental disability which lowered his degree of culpability</p> <p>(b) the fact that the offender was provoked (for example, by prolonged stress)</p> <p>(c) the fact that the offender acted to any extent in self-defence</p> <p>(d) the age of the offender</p>

**The presence of one or more aggravating features will indicate a more severe sentence within the suggested range and, if the aggravating feature(s) are exceptionally serious, the case will move up to the next level.**

**Annex A: Extract from the Criminal Justice Act 2003, schedule 21\*****Determination of minimum term in relation to mandatory life sentence****Starting points**

## 4 (1) If—

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
- (b) the offender was aged 21 or over when he committed the offence, the appropriate starting point is a whole life order.

## (2) Cases that would normally fall within sub-paragraph (1)(a) include—

- (a) the murder of two or more persons, where each murder involves any of the following—
  - (i) a substantial degree of premeditation or planning,
  - (ii) the abduction of the victim, or
  - (iii) sexual or sadistic conduct,
- (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,
- (c) a murder done for the purpose of advancing a political, religious or ideological cause, or
- (d) a murder by an offender previously convicted of murder.

## 5 (1) If—

- (a) the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
- (b) the offender was aged 18 or over when he committed the offence, the appropriate starting point, in determining the minimum term, is 30 years.

## (2) Cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include—

- (a) the murder of a police officer or prison officer in the course of his duty,
- (b) a murder involving the use of a firearm or explosive,
- (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),
- (d) a murder intended to obstruct or interfere with the course of justice,
- (e) a murder involving sexual or sadistic conduct,
- (f) the murder of two or more persons,
- (g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, or
- (h) a murder falling within paragraph 4(2) committed by an offender who was aged under 21 when he committed the offence.

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\* As at June 2009

**Annex B: General aggravating and mitigating factors identified in the Council guideline *Overarching Principles: Seriousness***

**The factors below apply to a wide range of offences.**

**Not all will be relevant to attempted murder.**

**Factors indicating higher culpability:**

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

**Factors indicating a more than usually serious degree of harm:**

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

**Factors indicating significantly lower culpability:**

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

**Personal mitigation**

Section 166(1) Criminal Justice Act 2003 makes provision for a sentencer to take account of any matters that 'in the opinion of the court, are relevant in mitigation of sentence'.

When the court has formed an initial assessment of the seriousness of the offence, then it should consider any offender mitigation. The issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.







## Criminal Justice Act 2003 c. 44

### Schedule 21 DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE

#### Interpretation

This version in force from: **December 18, 2003 to present**

#### 1

In this Schedule—

*“child”* means a person under 18 years;

*“mandatory life sentence”* means a life sentence passed in circumstances where the sentence is fixed by law;

*“minimum term”*, in relation to a mandatory life sentence, means the part of the sentence to be specified in an order under [section 269\(2\)](#);

*“whole life order”* means an order under [subsection \(4\) of section 269](#).

Status:  Law In Force

#### 2

[Section 28](#) of the [Crime and Disorder Act 1998 \(c. 37\)](#) (meaning of “racially or religiously aggravated”) applies for the purposes of this Schedule as it applies for the purposes of [sections 29 to 32](#) of that Act.

This version in force from: **December 3, 2012 to present**

#### [3

For the purposes of this Schedule—

(a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(i\)](#) or [\(b\)\(i\)](#);

(b) an offence is aggravated by disability if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(ii\)](#) or [\(b\)\(ii\)](#);

(c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(iii\)](#) or [\(b\)\(iii\)](#).

#### Starting points

This version in force from: **April 13, 2015 to present**

#### 4

(1) If—

(a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and

(b) the offender was aged 21 or over when he committed the offence,

the appropriate starting point is a whole life order.

(2) Cases that would normally fall within sub-paragraph (1)(a) include—

(a) the murder of two or more persons, where each murder involves any of the following—

- (i) a substantial degree of premeditation or planning,
- (ii) the abduction of the victim, or
- (iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

[(ba) the murder of a police officer or prison officer in the course of his or her duty,]<sup>1</sup>

(c) a murder done for the purpose of advancing a political, religious [, racial]<sup>2</sup> or ideological cause, or

(d) a murder by an offender previously convicted of murder.

## 5

(1) If—

(a) the case does not fall within [paragraph 4\(1\)](#) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and

(b) the offender was aged 18 or over when he committed the offence,

the appropriate starting point, in determining the minimum term, is 30 years.

(2) Cases that (if not falling within [paragraph 4\(1\)](#)) would normally fall within sub-paragraph (1)(a) include—

[...] <sup>1</sup>

(b) a murder involving the use of a firearm or explosive,

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),

(d) a murder intended to obstruct or interfere with the course of justice,

(e) a murder involving sexual or sadistic conduct,

(f) the murder of two or more persons,

(g) a murder that is racially or religiously aggravated or aggravated by sexual orientation [, disability or transgender identity]<sup>2</sup>, or

(h) a murder falling within [paragraph 4\(2\)](#) committed by an offender who was aged under 21 when he committed the offence.

This version in force from: **March 2, 2010 to present**

**[5A.—**

(1) If—

(a) the case does not fall within [paragraph 4\(1\)](#) or [5\(1\)](#),

(b) the offence falls within sub-paragraph (2), and

(c) the offender was aged 18 or over when the offender committed the offence,

the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

(2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to—

(a) commit any offence, or

(b) have it available to use as a weapon,

and used that knife or other weapon in committing the murder.] <sup>1</sup>

This version in force from: **March 2, 2010 to present**

**6**

If the offender was aged 18 or over when he committed the offence and the case does not fall [within [paragraph 4\(1\)](#), [5\(1\)](#) or [5A\(1\)](#)] <sup>1</sup>, the appropriate starting point, in determining the minimum term, is 15 years.

This version in force from: **December 18, 2003 to present**

**7**

If the offender was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

**Aggravating and mitigating factors**

This version in force from: **December 18, 2003 to present**

**8**

Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

**9**

Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

This version in force from: **March 2, 2010 to present**

**10**

Aggravating factors (additional to those mentioned in [[paragraph 4\(2\)](#), [5\(2\)](#) and [5A\(2\)](#)] <sup>1</sup>) that may be relevant to the offence of murder include—

- (a) a significant degree of planning or premeditation,
- (b) the fact that the victim was particularly vulnerable because of age or disability,
- (c) mental or physical suffering inflicted on the victim before death,
- (d) the abuse of a position of trust,
- (e) the use of duress or threats against another person to facilitate the commission of the offence,
- (f) the fact that the victim was providing a public service or performing a public duty, and
- (g) concealment, destruction or dismemberment of the body.

This version in force from: **October 4, 2010 to present**

**11**

Mitigating factors that may be relevant to the offence of murder include—

- (a) an intention to cause serious bodily harm rather than to kill,
- (b) lack of premeditation,
- (c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within [section 2\(1\)](#) of the [Homicide Act 1957 \(c. 11\)](#)), lowered his degree of culpability,
- (d) the fact that the offender was provoked (for example, by prolonged stress) [...] <sup>1</sup>
- (e) the fact that the offender acted to any extent in self-defence [ or in fear of violence] <sup>2</sup>
- (f) a belief by the offender that the murder was an act of mercy, and
- (g) the age of the offender.

This version in force from: **October 31, 2009 to present**

**12**

Nothing in this Schedule restricts the application of—

- (a) [section 143\(2\)](#) (previous convictions),
- (b) [section 143\(3\)](#) (bail), or
- (c) [section 144](#) (guilty plea) [,] <sup>1</sup>  
[or of [section 238\(1\)\(b\) or \(c\)](#) or [239](#) of the [Armed Forces Act 2006](#).]  
] <sup>1</sup>

Case name and reference	Facts	Offence category and sentence	Revised guideline categorisation and starting point
AG Reference Bowen [2018] EWCA Crim 1682	<p>Described as horrific and shocking case. Victim (V) was neighbour of offender and his partner, spent the evening with them and became concerned offender's partner, L, was having a fit. Offender became angry and accused her of interfering. V returned home but wanted to go to the offender's flat to check on L and also to get her phone back, so she went back with her partner for a second time. V went into the offender's flat. In the interim the offender had gone outside to a garden shed and had obtained petrol in a container, he then came back brandishing the petrol container and there was then a conversation between the three adults as to whether the offender would "do it"; that is to say, attack V with the petrol (she at that stage not anticipating that he would). He then walked up to V, poured the petrol over her body and ignited the fuel with a cigarette lighter. The offender then watched her burn without helping at all whilst he smoked a cigarette. V's partner was outside and with neighbours gained entry to flat upon hearing V screaming; her clothes and flesh were still burning and she was screaming in agony. Offender fled scene and went to sister's house and washed his clothes. Injuries wholly life changing. A series of major surgical procedures had to be performed on V's upper body to deal with the immediate effect of the burns. Those involved removing burnt skin and flesh from affected areas. She remained in the Burns Intensive Care Unit for a month. Major treatment required to her eyelid regions, her face and nasal regions, her ear regions, her neck regions, her breast regions and her hands. She lost the most part of her ears, some of her fingers have had to be amputated and the likelihood of any movement of her hands is minimal. Psychological evidence set out the effects of the trauma that V has suffered and will continue to suffer. Pressure garments need to be worn and a face mask for almost the entire period of the day and night for approximately 2 years for burns scarring. There will be further skin graft operations needed. She remains in constant high levels of pain with the pain being very difficult to manage.</p>	<p>1<sup>st</sup> instance judge found to be a cat 2 att murder case, with SP of 24 years. 20% discount given for early G plea, so SP reduced to 19 years plus 5 years extended sentence. C of A found unduly lenient, and should have been a category 1 case. Case involved sadistic conduct and C of A mentioned weapon (petrol) taken to scene, although noted latter not provided for by existing guideline. Said as cat 1 case life sentence should have been considered, and notional determinate should have been 24 years. Substituted sentence for life with minimum term of 12 years.</p>	<p>A1 if sadistic conduct most prominent culpability factor, B2 if weapon taken to scene. SP 35/30 years – if life 17.5/15 year minimum term.</p>

## ANNEX C

<p>Ryan [2014] EWCA Crim 1351</p>	<p>Drugs dispute between the applicant and the victim and there had been a build-up of threat and counter threat between them. A fight was arranged when the applicant attended with a firearm capable of firing shotgun pellets and the victim had a large dog and a baseball bat. A co-accused was involved on the applicant's side and he was armed with a baton and a knife. However he tried to diffuse the situation and the applicant had the leading role. The confrontation developed rapidly and the victim set his dog onto the applicant. At that point the applicant fired the gun at the victim but missed. He then pursued him and caught him at close quarters when he discharged the weapon into his body. The victim had 70 puncture wounds and about 100 pellets in his stomach, his liver and gall bladder. He would have died without skilled medical intervention and had to undergo a number of operations over a period of months. The applicant had a number of previous convictions involving drugs, weapons and public order offences. It was argued the offence should have been in a lower category and there was too great a disparity with the sentence of six years imposed on the co-accused for possessing a firearm with intent to endanger life.</p> <p>CACD: There were a number of aggravating features putting the offence well within level 1 of the guidelines. The only mitigation was a degree of provocation. If the offence had resulted in death the starting point for the minimum term would have been 30 years. The sentence was fully justified and there was nothing in the disparity argument.</p>	<p>1<sup>st</sup> instance – Cat 1 - 30 year SP. CACD: upheld</p>	<p>A1 – (firearm, victim nearly died) 35 years determinate</p>
<p>Deer [2013] EWCA Crim 1010</p>	<p>The applicant and the victim had a relationship but by the time she gave birth to his son they had separated. The relationship had been dominated by his controlling and violent behaviour. Whilst she was pregnant the police attended five incidents involving violence by him towards her. The applicant was on bail for committing an assault upon her when he committed the present offence. This occurred when she visited his house to discuss the child and he punched her heavily to the face and used a Taser to her back. When she was on the floor he placed a cord around her neck and tightened it until she lost consciousness. He repeated the strangulation on two further</p>	<p>1<sup>st</sup> instance – 15 year SP, imposed IPP 8 year minimum</p>	<p>C1/2 (use of weapon other than cat A or B, planning not mentioned. High or Medium level of harm: 25/20 year SP</p>



	<p>occasions and when she tried to escape, he attacked her with a baseball bat. When a friend arrived at the house it appeared the victim was dead. She suffered multiple lacerations to the back of the head, multiple bruises to the face and body, and signs of strangulation. Her hands were grossly swollen and three fingers were fractured. The applicant had no previous convictions for violence but in a pre-sentence report and a psychiatric report was assessed as being dangerous to women. It was not argued an indeterminate sentence was not appropriate but that the specified term was excessive. The judge put the case at the very top of level 3 and gave 20% credit for the plea as it was entered at a late stage.</p> <p>CACD: The question for the judge was not whether she could envisage worse level 3 offences, but whether, having taken account of the aggravating and mitigating factors, the offence fell at or near the top of the category. Application refused.</p>		
Hardacre [2011] EWCA Crim 2791	<p>The applicant and victim lived on the third floor of an apartment block. During an argument, he threw her over the balcony. She was found on the pavement unconscious having suffered a severe brain injury, fractures of the pelvis and lower spine, and had strangulation marks on her neck. She was in hospital for over 3 months. The applicant had a previous conviction for assaulting an ex-girlfriend who had ended their relationship because of his violent behaviour. The applicant entered a guilty plea on the day of the trial.</p> <p>The Judge sentenced on the basis of it being a spontaneous attempt to kill with long term serious harm. He took a 15 year starting point and gave a 10% deduction for the late guilty plea.</p> <p>CACD: The judge's approach was correct.</p>	SP 15 yrs, 10% credit for plea – 13.5 yrs	C1 – medium (no premeditation), high level of harm SP 20 years
WADE [2012] EWCA Crim 2605	<p>The victim was the appellant's ex-wife and although they were divorced they remained close. She became seriously ill with a blood clot and the appellant looked after her but her condition deteriorated. Both had alcohol issues. The victim had episodes when she defecated and urinated in the bed and the appellant had to clear up the mess. The appellant was at the end of his tether and tried to smother her.</p>	Exceptional case 2 years 6 months reduced to 16 mths on appeal	C3 10 year SP

	<p>Paramedics found her lying in urine and faeces and the appellant told them he had tried to kill her. A couple of days later there was an argument when the police were called and he admitted to them he had tried to kill her a few days before. The appellant pleaded guilty on the basis he was under a great deal of pressure as the main carer for his wife and due to her alcohol consumption her behaviour had become more difficult. She was drunk and had defecated so he snapped and put a quilt over her head but then came to his senses. The appellant was only prosecuted because of what he said to the police.</p> <p>The Judge recognised this was an exceptional case though the situation was not akin to a mercy killing. However he said it is difficult to imagine any case of attempted murder which would fall below the custody threshold.</p> <p>CACD: The judge was correct to say a custodial sentence was inevitable and what the appellant did to his wife cannot ever be the way out of a situation such as he faced. However the sentence of two and half years imprisonment was excessive and a proper sentence following trial would have been 2 years imprisonment. The appellant was entitled to the fullest credit for the plea of guilty and given the time spent in custody could be released immediately.</p>		
Transcript 70 – John Way (1 <sup>st</sup> instance)	<p>Arrived, uninvited, at his estranged wife’s address who was now married to V. They were packing to move and 2 removal men were there. His ex-partner was in the house, but V was in the garage. D entered the house; by this time had armed himself with a 6-inch bladed knife from his car (was up a sleeve). His ex-partner asked what he was doing there and asked that he leave; D refused and asked where V was. V came in and D attacked him immediately; stabbed him with a downwards motion four times around the chest. D is larger and heavier than V so carried on despite a removal man and his ex-partner trying to intervene. His ex-partner was also injured, sustaining 2 cuts to her hand. V fell to the floor, bleeding heavily. D drove off. Ongoing trauma (ex-wife feels guilty about her husband; her children are having nightmares, the punches to her head have aggravated an old injury causing her headaches, earache and blurred</p>	<p>GP on the day of trial</p> <p>Level 2 – SP=15 years</p> <p>Final sentence =14 years (16 years pre GP).</p>	<p>B2 – (knife taken to scene, medium harm)</p> <p>25 years determinate</p>

	<p>vision, anxiety). V is still physically scarred, he has difficulty lifting – has had a major negative impact on his work and income as a self-employed person. Has pins and needles in hand, a tight chest, shortness of breath, flashbacks, lack of confidence and anxiety. Judge considered: D armed himself in a pre-mediated fashion. D had been violent towards V some months before – assaulted him (punched him in the face). Received a caution and later a harassment warning. Had written letters to family members showing he intended to harm V in a manner likely to lead to his incarceration. Was unprovoked and premeditated involving a weapon. Sustained attack. Culpability is very high. Agg-was under a caution and harassment warning. Mit-was depressed and stressed (night sedation did not work, was drinking and anti-depressants did not work – although there did appear to be a time when D was a bit better). Until this was a man of good character, has made progress in prison, appreciates the severity of his actions</p>		
<p>Transcript 68 – Glyn Sullivan (1<sup>st</sup> instance)</p>	<p>Entered on his own, or with someone else, V's house to burgle it. V was 66 and in poor health; a well-respected member of the community. Had few valuables at home. Even if with another person, D took the lead and was responsible for the injuries on V – placed a cord around his neck, repeatedly hit him with many objects (including an iron, his walking stick, fists and feet), and used a knife – used as torture to try and find out where his valuables were. Was after valuables to buy drugs. Inflicted terrible injuries – graphic photos in court. Numerous injuries to head, including lacerations, incised wounds, extensive facial bruising to face and scalp, fractures of cheekbones and left lateral orbit and orbital floor and sub-arachnoid haemorrhage in brain and right subdural haemorrhage on surface of the brain. Depth of wounds with the knife cannot be assessed, but consistent with prodding with the tip. Also, extensive injuries to the torso and arms and hands. Also injuries representing restraint and defence.</p> <p>Ransacked the house and left V for dead and lay there for 24 hours before being discovered. When D left the flat was indifferent as to</p>	<p>Had it been murder, the SP would have been 30 years. SP therefore 20 years.</p> <p>Dangerousness found. Final sentence=life imprisonment with minimum term of 11 years</p>	<p>A2 – offence involved sadistic conduct (torture), medium harm SP (determinate) 30 years (if life min term 15 years)</p>

	<p>whether V was alive or dead. In interview D said he “didn’t give a shit about him”.</p> <p>Has precons, but is an absence of violence.</p> <p>No long-term physical or psychological injury – V had made a good recovery</p> <p>Agg – carried out in pursuance of a burglary and robbery; was planned; V was particularly vulnerable because of age and health; prolonged attack; use of weapons</p>		
Transcript 13 – Aweis, Aweis and Hersi	<p>3 d’s acting together and with others unknown made a determined attempt to kill V during a planned attack from which he had no possibility of escape. They did so not only using force of numbers, but also a variety of weapons the most lethal of which was a loaded gun from which one bullet was fired, pointed at V’s head but narrowly missing. Further attempt then made to shoot V dead. Gun misfired and live round ejected and found outside of shop later on. If successfully shot would have killed V. Attackers then set about V with feet and fists, some using hammers to deliver repeated blows to V’s head, ferocious assault. Injuries not described but Judge said “it is only through good fortune and despite the determined efforts of his attackers that victim survived with his life”.</p>	<p>Aweis &amp; Aweis – planning but no evidence either used weapon, 20 years each.</p> <p>Hersi – CCTV showed him raining down blows savagely, went armed and ready with a weapon and used without hesitation being one of first to get ‘stuck in’. No dangerousness finding. 23 years custody.</p>	<p>Aweis &amp; Aweis B2/3 if sentenced on basis of planning only, Medium or low level of harm 25/20 SP</p> <p>Hersi A2/3 – Use of firearm; planning, assume medium/low level harm 30/25 year SP</p>
Transcript 34 – Julia Knight (1 <sup>st</sup> instance).	<p>D had close relationship with V, her mother – visited 2/3 x a week and regularly telephoned. 15 years ago mother was found to have leukaemia and 3 years’ ago, health deteriorated. Had a fall at home and fractured spine; had a heart attack and suffered fibrosis of the lungs; developed pseudogout which affected mobility; had subarachnoid haemorrhage. Found it hard to cope and was probably discharged from hospital too early. Suffered another fall and readmitted to hospital. D visited to discover the hospital were thinking of discharging her again. D went to work, accessed internet records about insulin and records of patients with diabetes. Printed</p>	<p>Level 2, with some elements of level 3. Convicted after trial – 14 years</p>	<p>A3 – Substantial planning (obtained prescription, forged signature of doctor.) Assumed harm 3. SP 25 years.</p>

	<p>prescription for insulin and forged a doctor's signature. Took a syringe from work. Went to hospital and injected mother in the stomach (had taken steps to avoid arousing suspicion in mother). Effect was fast but staff managed to stabilise mother.</p> <p>Is context for choice of insulin – after becoming depressed after her marriage breakdown, D injected herself with insulin to kill herself – so had knowledge of the effects of injecting insulin into someone without diabetes (had been told was the best way to commit suicide in a painless way).</p> <p>Failed to admit offence – suspicion initially fell on nursing staff and mother's partner. Finally admitted it, but said intention was never to do serious harm and certainly not to kill. Judge recognises effect of a prison sentence on V will be devastating – is of good character, with no precons or cautions etc. Was nurse for most of adult life, well regarded. Defence says was an act of immense stupidity; D under stress and concerned for mother's treatment. Agg – mother's age (80s), unwell and vulnerable. Abused position of trust – daughter and nurse.</p>		
<p>Transcript 45 – Jacqueline Patrick (1<sup>st</sup> instance).</p>	<p>Concerted, planned, persistent attempt to poison husband with antifreeze. Intention that its effects would be disguised as an adverse reaction to medication/a suicide attempt. D married to V for nearly 30 years – first attempt in the October. Daughter encouraged her. Deleted text messages showed D mixed illicit painkillers/ prescription medication with V's drink to overdose him. May have also used antifreeze. V was admitted to hospital for 8 days – no blood samples taken but there was kidney damage and high levels of ibuprofen. Further text messages show planning and more poison being given. On Xmas Day was a family argument and V spent most of his time alone; D put anti-freeze into a bottle of liqueur; V probably drank 2.5 glasses. D called ambulance on Boxing Day saying his kidney condition had flared up (setting up false pre-existing condition). Paramedics found a fabricated typed DNR note. D went into a coma;</p>	<p>Sentenced for 2 att murders. GP at PCMH – 25% discount.</p> <p>Higher end of Level 2 for either of counts – but totality of offending is equivalent to Level 1/top end of 2</p> <p>For each count 15 years' concurrent</p>	<p>A1 – substantial degree of planning/premeditation. High harm as life threatening injuries. SP 35 years (in region of 26 years custody after 25% discount for plea)</p>

	<p>ethylene glycol found in blood (100ml is fatal) – did not regain consciousness for 10 days and slim chances of survival at first. D could not speak for some time after leaving hospital, neck was swollen, severe pains in legs; took over 3 months to walk properly. Another 3 months to walk with a stick. Cried all the time. Had a catheter for a month, was a renal outpatient for a year, in constant pain and discomfort. Problems sleeping, lost 3 stone in weight. Has recovered a lot but less able to move than before; is exhausted, with little motivation.</p> <p>Mitigation: Good character; unhappy marriage; has done some volunteer work after the offences.</p>		
<p>Transcript 48 – Zack Davies (1<sup>st</sup> instance).</p>	<p>A planned racially motivated attack which followed from D seeking out racist and extremist literature and images. Extreme racist and right-wing views. Evidence of internet searches and postings (incl. for material related to Isis and Taliban beheadings and mutilations). V tried to defend himself and there was intervention of a bystander – otherwise victims would have been killed in front of many shoppers at lunchtime. Used a machete and hammer (also had a small lock knife). Other weapons found in room as well – Stanley knife, lock knife, hammer. When arrested spoke of violent thoughts and thoughts about killing people (had intended to behead V for public sympathy and spoke of plans to behead mother’s partner). Had told a family member to watch the news – “something big was about to happen”. Had been expelled from school for carrying a knife and for the last 10 years regularly carried a knife. Played violent video games. Re: offence, armed himself, intending to go and attack mother’s partner in Post Office – he wasn’t there and came across V, followed him and attacked him inside Tesco’s, chasing him through aisles. Blows to back of head, shouting “white power”, “justice for whites”, “remember Lee Rigby”. V ended up on floor, D standing over him – raised machete above head and struck down in slashing motion. V managed to get away; D followed. A bystander stood in front of D blocking his path, persuading him to put weapons down. Sustained attack using weapons – horrific injuries to V. Major injury to left hand (almost</p>	<p>Doctors/ psychiatrists disagree on type of disorder he has/ whether suitable for a hospital order. Judge doesn’t think is appropriate – thinks knew full well what he was doing</p> <p>Level 1 -If had been a murder would have been 30 years SP Discretionary life sentence – minimum term 14 years</p>	<p>A1/2 Racially motivated, serious injuries but not clear if level 1 harm. SP 35/30 (17.5-15 in custody if life)</p>

	<p>severed); 2 wounds to back of head, further wounds to back and side of foot; recovering well and expected to return to work soon but was hospitalised and unable to work for 9 months.</p> <p>Agg – planned attack; armed himself with 3 weapons; initial plan was to attack someone else but when he couldn't find him attacked V; had been planning to commit such an atrocity for some time; also sustained attacked, struck in front of others (including elderly and young), causing panic to others; racially motivated attack – V says the racist attack has had an effect on his family and the wider Sikh community; injuries have meant V has been unable to pursue his career for 9 months</p> <p>Mit – age (26), no precons (although admitted to carrying a knife); admitted alternative offence of wounding</p>		
<p>Transcript case 8 – Fox (1<sup>st</sup> instance).</p>	<p>Attack on former partner, described as frenzied attack of dreadful ferocity. Said intent was of short duration and formed only shortly before attack. Used scissors, said didn't bring to scene and judge dealt with on that basis. Lay in wait in her garden, then entered her home and used terrifying violence, stabbing repeatedly with a pair of scissors about the neck and head aiming for her eyes, threatening to blind her to kill her and her children who were upstairs. She tried to crawl away and he dragged her back, stabbing her again and again. She sustained 12 stab wounds to the head and neck and further injuries to arms, legs and torso. Would certainly have died if not for the skill of surgeons. Injuries caused a stroke and she is now wheelchair bound and paralysed to left side. She said the life she knew has been taken from her. Victim deaf and without speech so uses sign language, and now struggles to communicate as left arm does not work. She is only 26. Agg; Pre cons for violence. Sustained and brutal attack. Victim particularly vulnerable; she was deaf so did not hear him entering her home so was unprepared to take defensive action. Threats to blind her and kill her children. Attack in her own home in</p>	<p>Makes hospital order with limitation direction under s45a as HO not sufficient to punish. Extended sentence for public protection. 25 years. Plea on first day of trial, 20% discount as was waiting for a report before pleading. Reduced to 20 for plea. Further five on licence, so 25 years (20 custodial and 5 on licence)</p>	<p>C1 – SP 25 years</p>

	<p>presence of others (new boyfriend) and children upstairs. Use of a weapon and planning. Culp extremely high.</p> <p>Has personality disorder but not mental disorder. Considered Vowles and nature of mental disorder, the extent to which it is attributable to the offence. Judge finds mental disorder does not diminish culp. Long term impact on V. V little mitigation</p>		
<p>Transcript case 1 – Harris Bennett (1<sup>st</sup> instance).</p>	<p>Minor incident in a shop, offender felt 'slighted' and summoned a gunman who arrived within minutes and shot victim outside shop. First shot deflected and bullet bounced off of a van, victim ran and was chased by offender and gunman and shot in the back. He was terribly injured, shot went through his back and exited his chest. He has been left paralysed from waist down, lost a lung and has spinal damage. He has a young family he cannot care for; judge says his grief cannot be understated. Gun used. No imbalance between culp and harm – both extremely high.</p> <p>Not being gunman does not mitigate, able to summon a gunman to side within minutes. Acted as if it was his area and he was in charge. No pre cons.</p>	<p>Final sentence 30 years</p>	<p>A1 – SP 35 years</p>
<p>Transcript case 5 – MacMillan</p>	<p>Offender drunk and attacked innocent man in street. Took a stone from a wall, large sharp edged and made of concrete. Plainly a potentially deadly weapon. Followed victim shouting and swearing at him aggressively holding stone in a raised position above head. V pleading with him and offering no threat whatsoever. V began crying and he taunted him. Brought stone over his head and struck V on head. Blow delivered with full force and immediately sent V to ground and rendered him unconscious. Struck him again, swinging the stone like a golf club and striking V in head with full force. Intent was to kill V. Believing that he had succeeded he then ran from scene. Injuries of upmost gravity. He suffered multiple skull and facial fractures, a traumatic brain injury involving bruising on the brain, and bleeding over the brain. Required surgery and was comatose for a month. Brain injury has left him with difficulties with balance, coordination, hearing loss and double vision. Has cognitive problems including confusion,</p>	<p>10% credit for plea on day of trial.</p> <p>Dangerousness found. SP 19 years, 17 years after discount for plea. Extended sentence imposed of 22 years (17 custody, 5 extended licence)</p>	<p>C1 – weapon not in cat A or B, lack of premeditation. High harm. SP 25 years</p>



	<p>poor memory and poor problem solving skills. Mobility impacted and needs a wheelchair or two sticks and a carer. Cannot bath or dress himself. His life will never be the same again. Expectation is that he will continue to suffer significant cognitive, neurological and physical problems. Aggravating; ferocious attack on unarmed and helpless man. Followed victim and struck two blows in circumstances when paused to consider actions. Not a sudden explosion of anger but a cold and calculated intent to kill. Happened in public at midday (location and timing). Under influence of alcohol and drugs. Injuries profound. Pre cons for wounding and possession of weapons. On licence at time of offence.</p> <p>Mitigation – age, 25. Pleaded G on day of trial.</p>		
Transcript case 6 - Poselay	<p>Offender was ex neighbour of V and suspected him of stealing a laptop from his bedsit some 6 months previously. Issue over whether offender took knife to scene or picked knife up at the scene, as would affect sentence. Judge was sceptical picked up at scene in communal kitchen but no evidence he took it so dealt with him on basis that he did not take (as in Kelly) but picked it up with intention of using it later, so some premeditation. V preparing his dinner and offered some to offender, they then spent evening watching TV together. At end of eve offender brought up issue of laptop, V denied stealing. Offender became angry and says returned his plate to kitchen and this is when he picked up knife. Upon leaving he stabbed victim at door a number of times, first in the back and then approximately 8 further times, penetrating wounds to chest, collapsed lung, lacerated kidney and spleen, stabbed to armpit and lacerations to arms and wrists (defensive). Life was in serious danger. Good recovery from physical injuries, but judge notes lasting psychological impact. Aggravating – fled the scene, discarded the knife and not recovered, burned clothes to hide evidence. Ran from police when they arrived. Pre cons, offence committed during currency of SSO. Knife used and victim stabbed in his own home. Persistent attack. Mitigation G plea but trial still necessary as he said not a S18 (intent had to be put to jury). Cat 2B -planned attempt to kill</p>	<p>G plea but only 10% discount because trial not avoided SP 15 years, would be 18 with aggravating but provides for discount and imposes 16 years – 13 years custody 3 years extended licence. Dangerousness found. Smiled at times during trial, doesn't regard what he did as excessive.</p>	<p>On cusp of B/C – some premeditation (B), weapon not in A or B used (C) Harm 1. SP if top end of C/bottom of B 25 years. 10% discount for plea – 22.5</p>

Transcript case 6 - Webster	<p>Att murder of ex partner and mother of his three children. Couple estranged and she was in Sctoland with children, but brought them down to have a few family days together. Planned family day out, she was late he went in pub. Argument started when she arrived. He threw a glass which smashed and shards went into hair of victim and one of children. She took children to a friends and ignored his messages. Knew that her and children were staying at a friends house, went there in morning and carried attack out knowing children and others would witness. She came out to speak to him and he attacked her, first with knife taken to scene then with a glass. Knife broke during attack such was ferocity, so he continued kicking and punching V. Neighbour stopped it and victim went inside, he kicked the door in to get to her again, taking broken glass from front door to use as a weapon. Friend took children and jumped out of window, everyone petrified. Inflicted 22 stab wounds, three to side of her face, multiple to her neck, four to shoulder, one to chest wall and defensive injuries. Cat 1. Planned, knife taken to scene, sustained and vicious. Some blows aimed at her neck. Left with lifelong scars, fracture to orbit of eye and possibility of blood clot and injury to vein in neck. Pre cons for attacking another woman (ABH reduced from GBH/Att murder) and other convictions for violence. Also DV related. Impact on children. Offence committed on bail for assault against victim and criminal damage. Mitigating; mental disorder as diagnosed with paranoid schizophrenia.</p>	<p>Considered Vowles, but also circumstances of offence and did not think hospital order appropriate so imposed HO with limitation direction under s45a. 25 year SP aggravated up to 27, reduced by 8 for mitigating and one extra for remorse. Final sentence 18 years. No dangerousness finding but considered.</p>	<p>B (weapon taken to scene, planning) Harm cat 1 or 2 (not specified if injuries life threatening or ongoing impact). SP 30/25 years</p>
Transcript case 33 –	<p>V had been D's partner for 6 mths. Attended Halloween party and D described by witnesses as acting strangely; returned home, having consumed alcohol, and embarked on unprovoked, murderous, frenzied and sustained attack on V – attempted to butcher her to death with a meat cleaver, deliberately targeting her neck shouting "I'm going to cut your fucking throat. I'm going to shred your throat". Continued until thought had killed her. Injuries - horrific, including a severe gaping wound around neck from ear to ear, the tissues, tendons and muscle tissue being exposed. Multiple lacerations to face, chest and arms as she tried to fight D off. Judge said but for the intervention of the skilled medical personnel, there can be no doubt that she would have died - V's survival miraculous. V cannot not use right arm and there is an</p>	<p>GP – late plea, 10% Says seriousness warrants a life sentence  If passed determinate sentence would have started at Level 3 and after taking account of agg and mit would have come to 20</p>	<p>C – weapon not in cat A or B. Harm 1 – life threatening injuries  SP – 25 years. Life minimum 12.5</p>

	<p>ongoing effect on her mental health. V's daughter witnessed and has nightmares and is scared to cut her food up. Aggravated by being in the presence of V's daughter, previous convictions (reckless arson in respect of a previous partner – received 6 years for this and this offence was whilst on licence for this).</p> <p>Mitigation: remorse; also mentions personal mitigation but doesn't say what this is.</p>	<p>years; After plea=18 years. So life with minimum term=9 years</p>	
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**STEP ONE**  
**Determining the offence category**

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors

**For offences involving an extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors a sentence higher than the offence category range or an extended or life sentence may be appropriate. Extended and life sentences are dealt with at Step 5 of the guideline.**

**Culpability demonstrated by one or more of the following:**

A – Very High culpability	<ul style="list-style-type: none"> <li>• Substantial degree of premeditation or planning of murder</li> <li>• Abduction of the victim with intent to murder</li> <li>• Attempted murder of a child</li> <li>• Offence motivated by or involves sexual or sadistic conduct</li> <li>• Offence involves the use of a firearm or explosive</li> <li>• Offence committed for financial gain</li> <li>• Attempted murder of a police officer or prison officer in the course of their duty</li> <li>• Offence committed for the purpose of advancing a political, religious, racial or ideological cause</li> <li>• Offence intended to obstruct or interfere with the course of justice</li> <li>• Offence racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity</li> </ul>
B- High culpability	<ul style="list-style-type: none"> <li>• Offender took a knife or other weapon to the scene intending to and using that knife or other weapon in committing the offence</li> <li>• Some planning or premeditation of murder</li> </ul>
C - Medium culpability	<ul style="list-style-type: none"> <li>• Use of weapon not in category A or B</li> <li>• Lack of premeditation</li> </ul>
D- Lesser culpability	<ul style="list-style-type: none"> <li>• Excessive self defence</li> <li>• Offender acted in response to prolonged or extreme violence or abuse by victim</li> <li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li> </ul>

<b>Harm</b>	
<b>Category 1</b>	Particularly grave or life-threatening injury caused  Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment  Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work
<b>Category 2</b>	Serious physical or psychological harm not in category 1
<b>Category 3</b>	All other cases

**STEP TWO**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point or a sentence at the top of the category range before further adjustment for aggravating or mitigating features, set out below.

**Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse' and any aggravating features appropriately reflected in the sentence.**

HARM	CULPABILITY			
	A	B	C	D
<b>Harm 1</b>	<b>Starting point</b> 35 years  <b>Category Range</b> 30 - 40	<b>Starting point</b> 30  <b>Category Range</b> 25-35	<b>Starting point</b> 25  <b>Category Range</b> 20-30	<b>Starting point</b> 14  <b>Category Range</b> 10-20
<b>Harm 2</b>	<b>Starting point</b> 30 years  <b>Category Range</b> 25-35	<b>Starting point</b> 25  <b>Category Range</b> 20-30	<b>Starting point</b> 20  <b>Category Range</b> 15-25	<b>Starting point</b> 8  <b>Category Range</b> 5-12
<b>Harm 3</b>	<b>Starting point</b> 25  <b>Category Range</b> 20-30	<b>Starting point</b> 20  <b>Category Range</b> 15-25	<b>Starting point</b> 10  <b>Category Range</b> 7-15	<b>Starting point</b> 5  <b>Category Range</b> 3-6

Note: The table is for a single offence against a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality guideline*.

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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### 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 committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

#### ***Other aggravating factors:***

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

History of violence or abuse towards victim by offender (where not taken into account at step one)

Presence of children

Gratuitous degradation of victim

Victim vulnerable

Revenge attack

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Steps taken to prevent the victim from seeking or receiving medical assistance,

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders



**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence (where not taken into account at step one)

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

**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 a life sentence (section 224A 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 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.

Where the offence involves a firearm, an imitation firearm or an offensive weapon 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.

# 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 – 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. 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.

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

**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</b> demonstrated by one or more of the following:	
<b>High culpability:</b>	<ul style="list-style-type: none"> <li>• Firearm discharged</li> <li>• Firearm loaded</li> <li>• Firearm/ammunition used or intended for use for criminal purpose</li> </ul>
<b>Medium culpability:</b>	<ul style="list-style-type: none"> <li>• Firearm/ammunition produced (where not at High culpability)</li> <li>• Firearm held with compatible ammunition or stun gun that is charged</li> <li>• Firearm/ammunition intended for use (where not at High culpability)</li> </ul>
<b>Lower culpability:</b>	<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

<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 harm</b> or <b>disorder</b> occurring and/or <b>actual alarm/distress</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>• 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>
<b>Category 2</b>	<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>
<b>Category 3</b>	<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.			
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.			
<b>TABLE 1</b>	<b>Offences subject to the statutory minimum sentence (Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a))</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> 7 years' custody <b>Category range</b> 6-8 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 5-7 years' custody
<b>Category 2</b>	<b>Starting point</b> 7 years' custody <b>Category range</b> 6-8 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 5-7 years' custody	<b>Starting point</b> 5 years 6 months' custody <b>Category range</b> 5-7 years' custody
<b>Category 3</b>	<b>Starting point</b> 6 years' custody <b>Category range</b> 5-7 years' custody	<b>Starting point</b> 5 years 6 months' custody <b>Category range</b> 5-7 years' custody	<b>Starting point</b> 5 years' custody <b>Category range</b> 5 – 6 years' custody

<b>TABLE 2</b>	<b>Offences not subject to the statutory minimum sentence</b>		
<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 – 5 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 D fine – High level community order
<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 D fine – High level community order	<b>Starting point</b> Band C fine <b>Category range</b> 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 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 (See step six on totality when sentencing more than one offence.)
- 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 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.**
14. 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 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 **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 of Part II to Schedule 6 of the 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 (tagged curfew)**

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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## **Firearms – Possession without certificate**

### **Possession, purchase or acquisition of a firearm without a certificate**

Firearms Act 1968 (section 1(1)(a))

### **Possession, purchase or acquisition of ammunition without a certificate**

Firearms Act 1968 (section 1(1)(b))

### **Possession, purchase or acquisition of a shotgun without a certificate**

Firearms Act 1968 (section 2(1))

Triable either way

Maximum: 5 years' custody, or 7 years for the section 1(1) offence where it is aggravated within the meaning of section 4(4) of the Act (shortened shotgun or converted firearm)

Offence range: Discharge – 4 years 6 months' 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>• Shotgun which has been shortened within the meaning of section 4(4)</li> <li>• Firearm which has been converted within the meaning of section 4(4)</li> </ul>
<b>Type 2</b>	<ul style="list-style-type: none"> <li>• All other firearms or shotguns</li> <li>• Ammunition (where not at Type 3)</li> </ul>
<b>Type 3</b>	<ul style="list-style-type: none"> <li>• Very small quantity of ammunition</li> </ul>

**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:

**High culpability:**

- Firearm discharged, other than for lawful purpose
- Firearm loaded
- Firearm/ammunition used or intended for use for criminal purpose

**Medium culpability:**

- Firearm/ammunition produced (where not at High culpability)
- Firearm held with compatible ammunition
- Firearm/ammunition used or intended for use (where not at High culpability)

**Lower culpability:**

- No use or intention to use

**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 or 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 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>The table below refers to offences for which the maximum sentence is five years. Where the offence is aggravated under section 4(4) (i.e. the weapon is a converted firearm or shortened shotgun), the maximum penalty is seven years and sentencers should consider increasing the sentences shown.</b>			
<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 6 months' 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> Discharge – 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



- 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. Abuse of position as registered firearms dealer or certificate holder
- A9. Possession continued after certificate refused or revoked
- A10. Poor record of firearms compliance
- A11. Commission of offence whilst under the influence of alcohol or drugs
- A12. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step five on totality when sentencing more than one offence)
- A13. Failure to comply with current court orders
- A14. 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. Held on behalf of another through coercion, intimidation, or exploitation
- M6. Steps taken to obtain certificate
- M7. Certificate not obtained/renewed due to genuine oversight or misunderstanding
- M8. Good record of firearms licensing compliance
- M9. Voluntary surrender of firearm/ammunition
- M10. Offender co-operated with investigation and/or made early admissions
- M11. Remorse
- M12. Serious medical condition requiring urgent, intensive or long-term treatment
- M13. Age and/or lack of maturity
- M14. Mental disorder or learning disability
- M15. 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.

## **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>
<b>High culpability:</b> <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>
<b>Medium culpability:</b> <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>
<b>Lower culpability:</b> <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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# Firearms – Carrying in a public place

## Carrying a firearm in a public place

Firearms Act 1968 (section 19)

- (a) a loaded shot gun
- (b) an air weapon (whether loaded or not)
- (c) any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm
- (d) an imitation firearm

Triable either way:

Indictable only if the firearm is a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af) or section 5(1A)(a) of the Firearms Act 1968

Summary only if the firearm is an air weapon

Maximum: 7 years' custody (12 months' custody for imitation firearms, 6 months' custody for an air weapon)

Offence range: Discharge – 4 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– 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 shotgun prohibited under section 5 (whether or not the mandatory 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> </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> </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>
<b>High culpability:</b> <ul style="list-style-type: none"> <li>• Firearm or imitation firearm discharged, other than for lawful purpose</li> <li>• Firearm or imitation firearm loaded</li> <li>• Firearm/imitation firearm used or intended for use for criminal purpose</li> </ul>
<b>Medium culpability:</b> <ul style="list-style-type: none"> <li>• Firearm/imitation firearm produced (where not at High culpability)</li> <li>• Firearm or imitation firearm held with compatible ammunition</li> <li>• Firearm/imitation firearm used or intended for use (where not at High culpability)</li> </ul>
<b>Lower culpability:</b> <ul style="list-style-type: none"> <li>• No use or intention to use</li> <li>• Possession falls just short of reasonable excuse</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></p> <p>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>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>	
<b>Category 1</b>	<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>
<b>Category 2</b>	<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>
<b>Category 3</b>	<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>			
<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>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>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<p><b>Starting point</b> 2 years custody</p> <p><b>Category range</b> 1 – 4 years' custody</p>	<p><b>Starting point</b> 1 years' custody</p> <p><b>Category range</b> 6 months' – 2 years' custody*</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Low level community order – 1 year's custody*</p>
<b>Category 2</b>	<p><b>Starting point</b> 1 years' custody</p> <p><b>Category range</b> 6 months' – 2 years' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Low level community order – 1 year's custody*</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> Band A fine – High level community order</p>
<b>Category 3</b>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Low level community order – 1 year's custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> Band A fine – High level community order</p>	<p><b>Starting point</b> Band A fine</p> <p><b>Category range</b> Discharge – Band C Fine</p>

\* Where the firearm is an imitation firearm, the maximum penalty is 12 months' custody.

\* Where the firearm is an air weapon, the maximum penalty is 6 months' custody

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.

<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.

### 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. Steps taken to make imitation firearm appear more realistic (See step six on totality when sentencing for more than one offence.)
- A6. Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step six on totality when sentencing more than one offence)
- A7. Offence was committed as part of a group (except where already taken into account at step one)
- A8. Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A9. Abuse of position as registered firearms dealer or certificate holder
- A10. Commission of offence whilst under the influence of alcohol or drugs
- A11. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step six on totality when sentencing more than one offence)
- A12. Failure to comply with current court orders
- A13. 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. Genuine mistake about whether covered by lawful authorisation
- 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****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**

**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.

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# Firearms – Possession with intent to endanger life

## **Possession with intent to endanger life**

Firearms Act 1968 (section 16)

Indictable only

Maximum: Life imprisonment

Offence range: 4 – 22 years' custody

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence).

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.**

<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>• Distribution or supply of firearms on a large scale</li> <li>• Firearm or imitation firearm discharged</li> <li>• Prolonged incident</li> </ul>
<p><b>B – Medium culpability:</b></p> <ul style="list-style-type: none"> <li>• Significant role where offending is part of a group activity</li> <li>• Some degree of planning</li> <li>• Firearm or imitation firearm loaded or held with compatible ammunition but not discharged</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>• Lesser role where offending is part of group activity</li> <li>• Little or no planning or unsophisticated offending</li> <li>• Firearm or imitation firearm not produced or visible</li> <li>• Conduct limited in scope and duration</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</li> <li>• Serious psychological harm</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>			
<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>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.</p>			
<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 18 years' custody <b>Category range</b> 16 – 22 years' custody	<b>Starting point</b> 14 years' custody <b>Category range</b> 11 – 17 years' custody	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody
<b>Category 2</b>	<b>Starting point</b> 14 years' custody <b>Category range</b> 11 – 17 years' custody	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 5 – 9 years' custody
<b>Category 3</b>	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody	<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> 4 – 7 years' custody

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

<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.



- 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 under section 5(1)(a) (automatic weapon)
- A5. Firearm modified to make it more dangerous
- A6. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A7. Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step seven on totality when sentencing more than one offence)
- A8. Offence was committed as part of a group (except where already taken into account at step one)
- A9. Offence committed to further organised criminal activity (except where already taken into account at step one)
- A10. Expectation of substantial financial gain (except where already taken into account at step one)
- A11. Attempts to conceal or dispose of the firearm or other evidence
- A12. Serious damage to property caused (See step seven on totality when sentencing more than one offence)
- A13. Abuse of position as registered firearms dealer or certificate holder
- A14. Commission of offence whilst under the influence of alcohol or drugs
- A15. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step seven on totality when sentencing more than one offence)
- A16. Failure to comply with current court orders
- A17. 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. Firearm/ammunition not prohibited under section 5
- M5. Involved through coercion, intimidation, or exploitation
- M6. Voluntary surrender of firearm/ammunition
- 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 mechanically. 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.

# **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.**

<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>• Intention falling just short of intent to endanger life</li> <li>• Conduct intended to maximise fear or distress</li> <li>• Sophisticated nature of offence/significant planning</li> <li>• Leading role where offending is part of a group activity</li> <li>• Firearm or imitation firearm discharged</li> <li>• Prolonged incident</li> </ul>
<p><b>B – Medium culpability:</b></p> <ul style="list-style-type: none"> <li>• Firearm or imitation 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>• Firearm or imitation firearm not produced or visible</li> <li>• Conduct limited in scope and duration</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.
Table 1 should be used if the offence is in respect of a firearm. Table 2 should be used for an imitation firearm.
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.

<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.

<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> 3 – 6 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> 3 – 6 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> 3 – 6 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> 6 years' custody <b>Category range</b> 4 – 8 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 3 – 6 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 4 years' custody
<b>Category 2</b>	<b>Starting point</b> 4 years' custody <b>Category range</b> 3 – 6 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>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

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 (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. 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
- 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.)

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

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

#### **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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# **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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## **Firearms – Transfer and manufacture**

### **Manufacture weapon or ammunition specified in section 5(1)**

Firearms Act 1968 (section 5(2A)(a))

### **Sell or transfer prohibited weapon or ammunition**

Firearms Act 1968 (section 5(2A)(b))

### **Possess for sale or transfer prohibited weapon or ammunition**

Firearms Act 1968 (section 5(2A)(c))

### **Purchase or acquire for sale or transfer prohibited weapon or ammunition**

Firearms Act 1968 (section 5(2A)(d))

Indictable only

Maximum: Life imprisonment

Offence range: 5 – 28 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**.

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:**

- Leading role where offending is part of a group activity, including but not limited to head of enterprise, a lead armourer or a key facilitator
- Significant planning, including but not limited to significant steps to evade detection
- Abuse of position of trust or responsibility, for example registered firearms dealer
- Expectation of substantial financial or other advantage
- Involves others through coercion, intimidation or exploitation

**B – Medium culpability:**

- Significant role where offending is part of a group activity, including but not limited to a purchaser or a provider of significant assistance in facilitating transfer or manufacture
- Some degree of planning, including but not limited to some steps to evade detection
- Expectation of significant financial or other advantage
- Other cases falling between high and lower culpability

**C – Lower culpability:**

- Lesser role where offending is part of a group activity, including but not limited to performing a limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Expectation of limited, if any, financial or other advantage

<b>Harm</b>	
The court should consider the steps set out below to determine the level of harm caused.	
This step is assessed by reference to the <b>scale</b> and <b>nature of the enterprise</b> and any <b>actual harm</b> caused, regardless of the offender's role.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Large-scale commercial and/or highly sophisticated enterprise – indicators may include: <ul style="list-style-type: none"> <li>○ Large number of prohibited weapons/ammunition involved</li> <li>○ Operation over significant time period</li> <li>○ Operation over significant geographic range</li> <li>○ Close connection to organised criminal group(s)</li> </ul> </li> <li>• Evidence firearm/ammunition subsequently used to cause serious injury or death</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Medium-scale enterprise and/or some degree of sophistication, including 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> <li>• Evidence firearm/ammunition subsequently used in criminal offending (where not at category 1)</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Smaller-scale and/or unsophisticated enterprise – indicators may include: <ul style="list-style-type: none"> <li>○ Limited number of prohibited weapons/ammunition involved</li> <li>○ Operation over limited time period</li> <li>○ Operation over limited geographic range</li> <li>○ Minimal/no connection to organised criminal group(s)</li> </ul> </li> <li>• Evidence firearm/ammunition not subsequently used in criminal offending</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.			
This offence may be subject to minimum sentencing provisions. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 20 years' custody <b>Category range</b> 16 – 28 years' custody	<b>Starting point</b> 14 years' custody <b>Category range</b> 12 – 18 years' custody	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 14 years' custody
<b>Category 2</b>	<b>Starting point</b> 14 years' custody <b>Category range</b> 12 – 18 years' custody	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 14 years' custody	<b>Starting point</b> 8 years' custody <b>Category range</b> 6 – 12 years' custody
<b>Category 3</b>	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 14 years' custody	<b>Starting point</b> 8 years' custody <b>Category range</b> 6 – 12 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 5 – 8 years' custody

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 under section 5(1)(a) (automatic weapon)
- A4. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A5. Compatible ammunition and/or silencer(s) supplied with firearm (See step six on totality when sentencing for more than one offence.)

- A6. Others put at risk of harm, including by location or method of manufacture or transfer
- A7. Use of business as a cover
- A8. Attempts to conceal or dispose of the firearm or other evidence
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step six on totality when sentencing for more than one offence.)
- 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/ammunition not prohibited under section 5
- M4. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M5. Genuine belief that firearm will not be used for criminal purpose
- M6. No knowledge or suspicion that item possessed was firearm/ammunition
- M7. No knowledge or suspicion that firearm/ammunition is prohibited
- 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**  
**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 **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.



Table 1: Number of adult offenders sentenced for offences under the Firearms Act 1968, all courts, 2008-2018

Guideline group	Legislation	Section	Offence	Number of adult offenders sentenced										
				2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Group 1 (Maximum: 10 years)	Firearms Act 1968	5(1)(a)-(af), (c) 5(1A)(a)	Minimum term applies Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	340	360	308	207	172	206	253	364	463	402	345
			5(1A)(a) Possess/ purchase disguised firearm											
		Minimum term does not apply 5(1)(b) 5(1A)(b)-(g)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing Possess/ purchase/ sell or transfer military equipment	889	896	840	771	634	581	485	469	482	358	375
<b>TOTAL SECTION 5 OFFENCES</b>				<b>1,229</b>	<b>1,256</b>	<b>1,148</b>	<b>978</b>	<b>806</b>	<b>787</b>	<b>738</b>	<b>833</b>	<b>945</b>	<b>760</b>	<b>720</b>
Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)	Firearms Act 1968	1(1)	Possess a firearm/ammunition without a certificate <sup>1</sup>	-	-	-	163	139	128	126	101	128	97	105
			Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) <sup>1</sup>	-	-	-	13	13	6	15	8	6	14	8
			2(1) Possess shotgun without a certificate	55	39	54	38	35	30	37	36	31	41	31
<b>TOTAL 1(1) &amp; 2(1) OFFENCES</b>				<b>240</b>	<b>230</b>	<b>251</b>	<b>216</b>	<b>194</b>	<b>164</b>	<b>178</b>	<b>145</b>	<b>168</b>	<b>152</b>	<b>144</b>
Group 3 (Maximum: 5 years)	Firearms Act 1968	21(1) & (4) 21(2) & (4) & Sch 6	Possess a firearm/ shotgun/ air weapon/ ammunition when prohibited for life/ five years	89	111	95	89	74	62	53	49	60	48	61
Group 4 (Maximum: 7 years, or 12 months for imitation)	Firearms Act 1968	19	Possess loaded/unloaded firearm and suitable ammunition in public place	53	31	23	21	12	16	10	14	12	7	14
			Possess a loaded shotgun in a public place	21	11	7	3	6	4	2	1	2	2	6
			Possess a loaded / unloaded air weapon in a public place	274	250	221	151	127	101	92	103	69	74	72
			Possess an imitation firearm in a public place	47	96	84	84	87	89	103	98	112	120	107
<b>TOTAL SECTION 19 OFFENCES</b>				<b>395</b>	<b>388</b>	<b>335</b>	<b>259</b>	<b>232</b>	<b>210</b>	<b>207</b>	<b>216</b>	<b>195</b>	<b>203</b>	<b>199</b>
Group 5 (Maximum: Life)	Firearms Act 1968	16	Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so	63	53	48	69	64	70	44	54	53	77	63
Group 6 (Maximum: 10 years)	Firearms Act 1968	16A	Possess a firearm with intent to cause fear of violence <sup>1</sup>	-	-	-	101	81	82	74	77	98	74	76
			Possess an imitation firearm with intent to cause fear of violence <sup>1</sup>	-	-	-	146	139	138	145	162	180	187	164
			<b>TOTAL SECTION 16A OFFENCES</b>	<b>327</b>	<b>257</b>	<b>274</b>	<b>250</b>	<b>230</b>	<b>221</b>	<b>221</b>	<b>241</b>	<b>280</b>	<b>261</b>	<b>240</b>
Group 7 (Maximum: Life)	Firearms Act 1968	17(1), 17(2), 18(1)	Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence <sup>1</sup>	-	-	-	18	15	13	10	7	11	5	22
			Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence <sup>1</sup>	-	-	-	34	17	20	28	17	20	27	20
			<b>TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES</b>	<b>81</b>	<b>73</b>	<b>50</b>	<b>52</b>	<b>34</b>	<b>33</b>	<b>38</b>	<b>24</b>	<b>31</b>	<b>33</b>	<b>42</b>
Group 8 (Maximum: Life)	Firearms Act 1968	5(2A)(a) 5(2A)(b) 5(2A)(c) 5(2A)(d)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 <sup>2</sup>	-	-	-	-	-	-	0	0	4	0	1
			Sell / transfer prohibited weapon / ammunition <sup>2</sup>	-	-	-	-	-	-	0	0	10	19	5
			Possess prohibited weapon / ammunition for sale / transfer <sup>2</sup>	-	-	-	-	-	-	0	0	4	5	4
			Purchase / acquire prohibited weapon / ammunition for sale / transfer <sup>2</sup>	-	-	-	-	-	-	0	0	0	1	0
<b>TOTAL SECTION 5(2A) OFFENCES</b>				<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>0</b>	<b>0</b>	<b>18</b>	<b>25</b>	<b>10</b>

## Notes

1) Data for these specific offences not available prior to 2011

2) These offences came into force on 14 July 2014. Cases in 2016 may have been sentenced prior to the Stephenson judgment

Table 2: Sentence outcomes for adult offenders sentenced for offences under the Firearms Act 1968, 2018

Guideline group	Section	Offence	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with <sup>1</sup>	Total
Group 1 (Maximum: 10 years)	<b>Minimum term applies</b> 5(1)(a)-(af), (c)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	0	2	1	30	309	3	<b>345</b>
	5(1A)(a)	Possess/ purchase disguised firearm							
	<b>Minimum term does not apply</b> 5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	31	67	111	98	62	6	<b>375</b>
	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment							
		<b>TOTAL SECTION 5 OFFENCES</b>	<b>31</b>	<b>69</b>	<b>112</b>	<b>128</b>	<b>371</b>	<b>9</b>	<b>720</b>
Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)	1(1)	Possess a firearm/ammunition without a certificate Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)	10	17	16	17	44	1	<b>105</b>
	2(1)	Possess shotgun without a certificate	2	2	3	12	11	1	<b>31</b>
		<b>TOTAL 1(1) &amp; 2(1)</b>	<b>12</b>	<b>19</b>	<b>19</b>	<b>29</b>	<b>62</b>	<b>3</b>	<b>144</b>
Group 3 (Maximum: 5 years)	21	Possess a firearm when prohibited for life / five years due to previous conviction	1	3	7	17	32	1	<b>61</b>
Group 4 (Maximum: 7 years, or 12 months for imitation)	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	6	33	78	34	41	7	<b>199</b>
Group 5 (Maximum: Life)	16	Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so	0	0	0	0	63	0	<b>63</b>
Group 6 (Maximum: 10 years)		Possess a firearm with intent to cause fear of violence	0	0	1	10	61	4	<b>76</b>
	16A	Possess an imitation firearm with intent to cause fear of violence	0	0	5	32	120	7	<b>164</b>
		<b>TOTAL SECTION 16A OFFENCES</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>42</b>	<b>181</b>	<b>11</b>	<b>240</b>
Group 7 (Maximum: Life)		Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	0	0	0	3	17	2	<b>22</b>
	17(1), 17(2), 18(1)	Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	0	0	0	2	17	1	<b>20</b>
		<b>TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>34</b>	<b>3</b>	<b>42</b>
Group 8 (Maximum: Life)	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 <sup>2</sup>	0	0	0	0	5	0	<b>5</b>
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	0	0	0	0	9	0	<b>9</b>

Source: Court Proceedings Database, Ministry of Justice

Guideline group	Section	Offence	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with <sup>1</sup>	Total
Group 1 (Maximum: 10 years)	<b>Minimum term applies</b>	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	0%	1%	<0.5%	9%	90%	1%	100%
	5(1)(a)-(af), (c)	Possess/ purchase disguised firearm							
	5(1A)(a)	<b>Minimum term does not apply</b>							
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	8%	18%	30%	26%	17%	2%	100%
	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment							
		<b>TOTAL SECTION 5 OFFENCES</b>	<b>4%</b>	<b>10%</b>	<b>16%</b>	<b>18%</b>	<b>52%</b>	<b>1%</b>	<b>100%</b>
Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)	1(1)	Possess a firearm/ammunition without a certificate	10%	16%	15%	16%	42%	1%	100%
		Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)	0%	0%	0%	0%	88%	13%	100%
	2(1)	Possess shotgun without a certificate	6%	6%	10%	39%	35%	3%	100%
		<b>TOTAL 1(1) &amp; 2(1)</b>	<b>8%</b>	<b>13%</b>	<b>13%</b>	<b>20%</b>	<b>43%</b>	<b>2%</b>	<b>100%</b>
Group 3 (Maximum: 5 years)	21	Possess a firearm when prohibited for life / five years due to previous conviction	2%	5%	11%	28%	52%	2%	100%
Group 4 (Maximum: 7 years, or 12 months for imitation firearms)	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	3%	17%	39%	17%	21%	4%	100%
Group 5 (Maximum: Life)	16	Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so	0%	0%	0%	0%	100%	0%	100%
		Possess a firearm with intent to cause fear of violence	0%	0%	1%	13%	80%	5%	100%
Group 6 (Maximum: 10 years)	16A	Possess an imitation firearm with intent to cause fear of violence	0%	0%	3%	20%	73%	4%	100%
		<b>TOTAL SECTION 16A OFFENCES</b>	<b>0%</b>	<b>0%</b>	<b>3%</b>	<b>18%</b>	<b>75%</b>	<b>5%</b>	<b>100%</b>
Group 7 (Maximum: Life)		Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	0%	0%	0%	14%	77%	9%	100%
	17(1), 17(2), 18(1)	Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	0%	0%	0%	10%	85%	5%	100%
		<b>TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>12%</b>	<b>81%</b>	<b>7%</b>	<b>100%</b>
Group 8 (Maximum: Life)	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 <sup>2</sup>	0%	0%	0%	0%	100%	0%	100%
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	0%	0%	0%	0%	100%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

## Notes

1) Includes a number of orders, for example hospital orders, confiscation orders and compensation orders.

2) Data shown for this offence covers the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment.

Table 3: Estimated average custodial sentence lengths (pre guilty plea) for adult offenders sentenced to immediate custody, and sentence ranges for offences under the Firearms Act 1968, 2018

Guideline group	Section	Offence	Mean sentence length <sup>1,3</sup>	Median sentence length <sup>2,3</sup>	Sentence range (using estimated pre GP sentence lengths)
Group 1 (Maximum: 10 years)	Minimum term applies 5(1)(a)-(af), (c) 5(1A)(a)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	6 years 4 months	7 years	Fine - 10 years' custody
		Possess/ purchase disguised firearm			
	Minimum term does not apply 5(1)(b) 5(1A)(b)-(g)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	1 year 8 months	1 year 2 months	Discharge - 8 years 3 months' custody
		Possess/ purchase/ sell or transfer military equipment			
		<b>TOTAL SECTION 5 OFFENCES</b>	<b>5 years 6 months</b>	<b>6 years 6 months</b>	<b>Discharge - 10 years' custody</b>
Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)	1(1)	Possess a firearm/ammunition without a certificate	2 years 5 months	2 years 1 month	Discharge - 5 years' custody
		Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) <sup>4</sup>	4 years 1 month	4 years	1 year 9 months - 5 years 9 months' custody
	2(1)	Possess shotgun without a certificate <sup>5</sup>	2 years 6 months	3 years	Discharge - 4 years' custody
		<b>TOTAL 1(1) &amp; 2(1)</b>	<b>2 years 8 months</b>	<b>2 years 7 months</b>	<b>Discharge - 5 years 9 months' custody</b>
Group 3 (Maximum: 5 years)	21	Possess a firearm when prohibited for life / five years due to previous conviction	1 year 6 months	1 year 4 months	Discharge - 5 years' custody
Group 4 (Maximum: 7 years, or 12 months for imitation)	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	1 year 6 months	9 months	Discharge - 7 years' custody
Group 5 (Maximum: Life)	16	Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so	12 years 4 months	12 years	2 years 3 months - 30 years' custody (and indeterminate)
Group 6 (Maximum: 10 years)	16A	Possess a firearm with intent to cause fear of violence	4 years 11 months	4 years 6 months	CO - 10 years' custody
		Possess an imitation firearm with intent to cause fear of violence	2 years 8 months	2 years 3 months	CO - 7 years 9 months' custody
		<b>TOTAL SECTION 16A OFFENCES</b>	<b>3 years 5 months</b>	<b>2 years 6 months</b>	<b>CO - 10 years' custody</b>
Group 7 (Maximum: Life)	17(1), 17(2), 18(1)	Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence <sup>5</sup>	8 years 11 months	8 years	SSO - 26 years 8 months' custody
		Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence <sup>5</sup>	7 years	5 years	SSO - 18 years' custody
		<b>TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES</b>	<b>7 years 11 months</b>	<b>6 years</b>	<b>SSO - 26 years 8 months' custody</b>
Group 8 (Maximum: Life)	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 <sup>4,6</sup>	14 years 9 months	19 years 7 months	4 years - 22 years' custody
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	11 years 2 months	9 years	3 years 9 months - 23 years' custody

Source: Court Proceedings Database, Ministry of Justice

## Notes

- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order.
- 3) Excludes life and indeterminate sentences.
- 4) These figures should be treated with caution, due to the low number of offenders sentenced for this offence.
- 5) These figures should be treated with some caution, due to the relatively low number of offenders sentenced for this offence
- 6) The ACSLs and ranges shown for this offence cover the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment

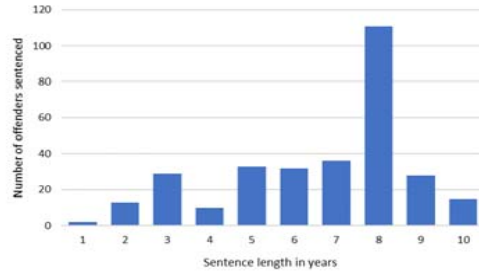
Figure 1: Estimated distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea, 2018

Note: Sentence length intervals include the upper bound sentence length. For example, the category "1" includes sentence lengths less than, and equal to, 1 year, and "2" includes sentence lengths over 1 year, and up to and including 2 years.

**Group 1 (Maximum: 10 years)**

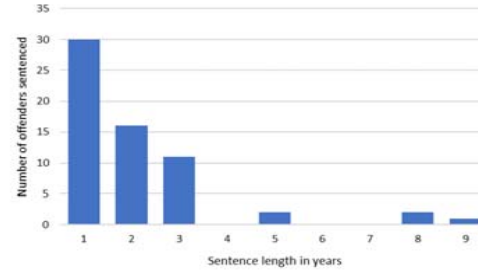
**Minimum term applies**

Sections 5(1)(a)-(af),(c) & 5(1A)(a) combined, 2018



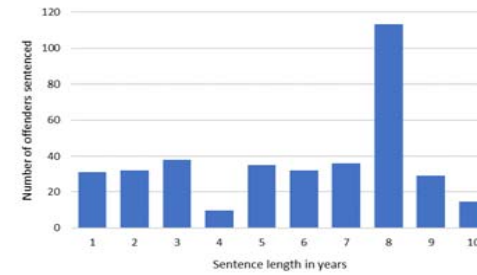
**Minimum term does not apply**

Sections 5(1)(b) & 5(1A)(b)-(g) combined, 2018



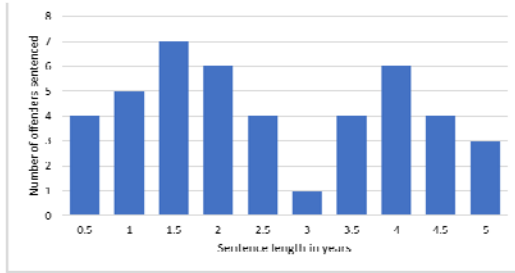
**All Group 1 offences**

Sections 5(1)(a)-(af),(c), 5(1A)(a), 5(1)(b) & 5(1A)(b)-(g) combined, 2018

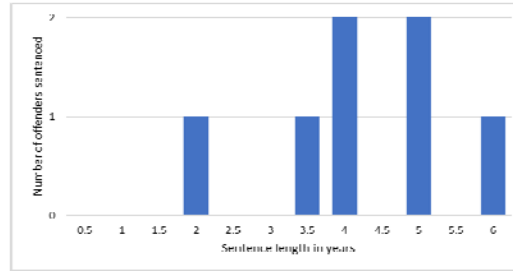


**Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)**

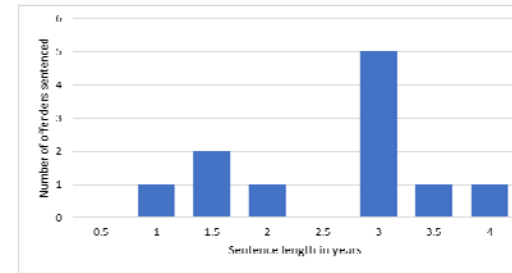
Section 1(1) - Possess a firearm/ammunition without a certificate, 2018



Section 1(1) - Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form), 2018

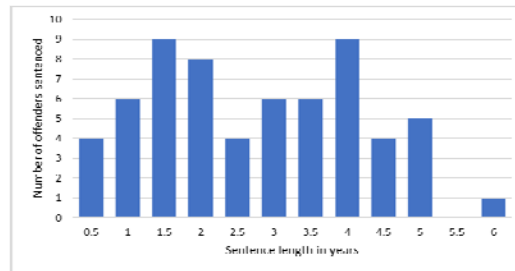


Section 2(1) - Possess shotgun without a certificate, 2018



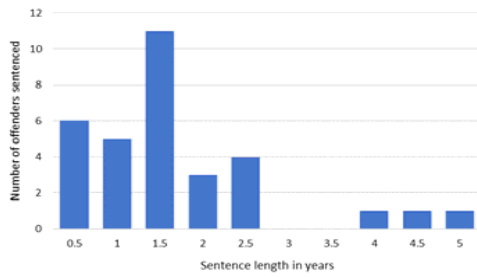
**All Group 2 offences**

Sections 1(1) & 2(1) combined - Possess a firearm/ ammunition/ shortened shotgun/ shotgun without a certificate, 2018



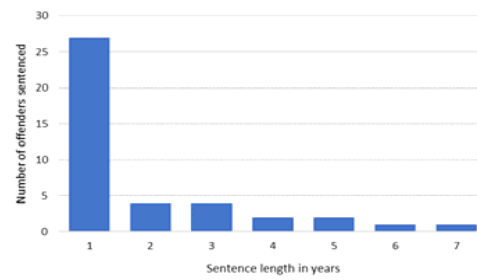
**Group 3 (Maximum: 5 years)**

Section 21 - Possess a firearm when prohibited for life / five years due to previous conviction, 2018



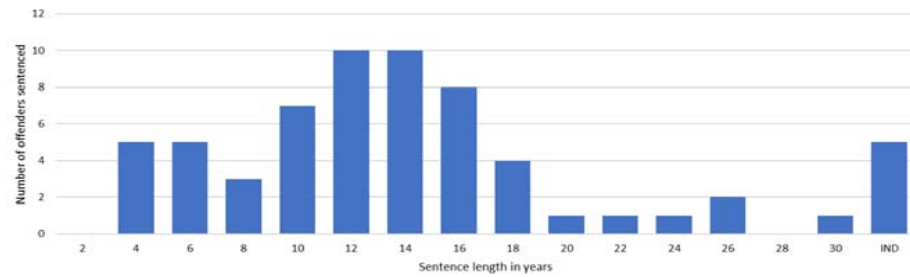
**Group 4 (Maximum: 7 years, or 12 months for imitation)**

Section 19 - Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place, 2018



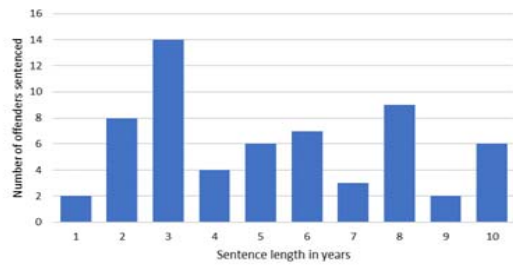
**Group 5 (Maximum: Life)**

Section 16 (all) - Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so, 2018

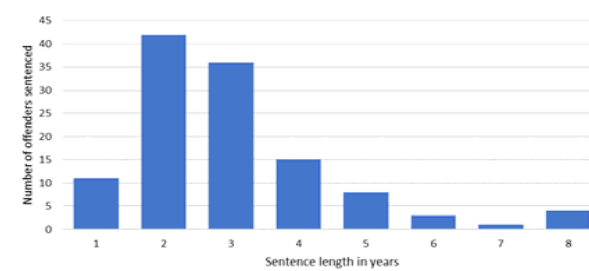


**Group 6 (Maximum: 10 years)**

Section 16A - Possess a firearm with intent to cause fear of violence, 2018

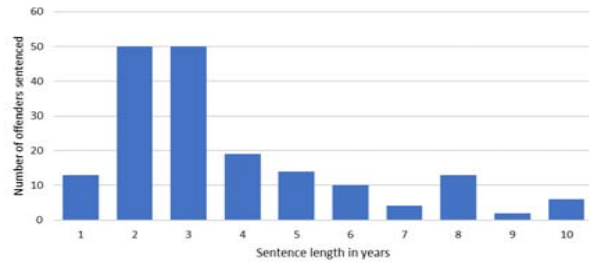


Section 16A - Possess an imitation firearm with intent to cause fear of violence, 2018



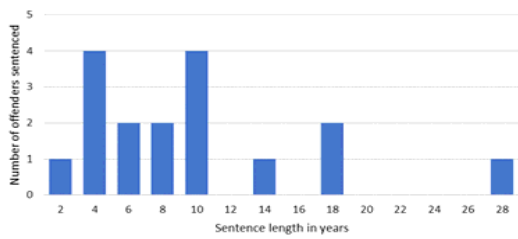
**All Group 6 offences**

Section 16A - Possess a firearm/ imitation firearm with intent to cause fear of violence, 2018

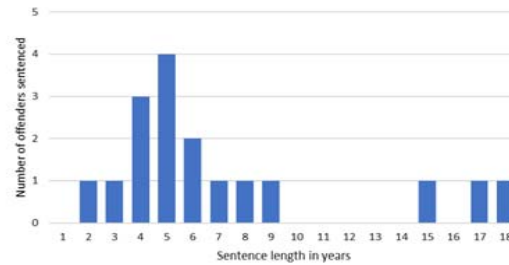


**Group 7 (Maximum: Life)**

Sections 17(1), 17(2), 18(1) - Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

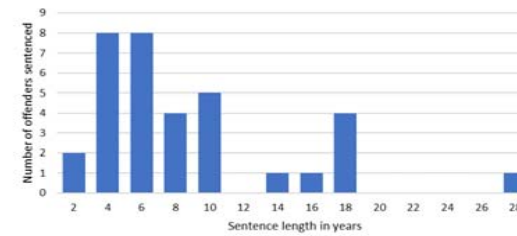


Sections 17(1), 17(2), 18(1) - Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018



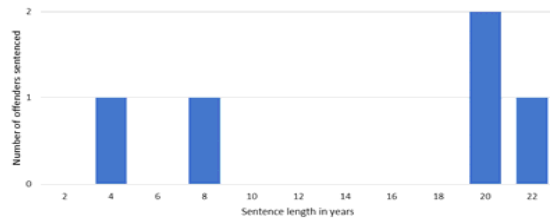
**All Group 7 offences**

Sections 17(1), 17(2), 18(1) - Possess a firearm/ imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

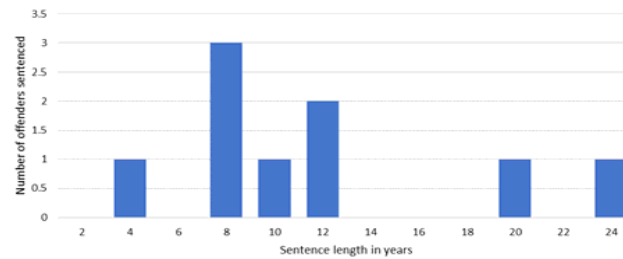


**Group 8 (Maximum: Life)**

Section 5(2A)(a) offences - Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968, 2016-2018<sup>1</sup>



Section 5(2A)(b)-(d) offences - Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer, 2018<sup>1</sup>



Note:

1) The data shown for this offence covers the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment.

Note:

1) Separate sentence length breakdowns for section 5(2A)(b)-(d) offences have not been shown due to low volumes.

**Table 4: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea, 2018**

Note: Sentence length intervals include the upper bound sentence length. For example, the category "1" includes sentence lengths less than, and equal to, 1 year, and "2" includes sentence lengths over 1 year, and up to and including 2 years.

**Group 1 (Maximum: 10 years)****Minimum term applies**

Sections 5(1)(a)-(af),(c) &amp; 5(1A)(a) combined, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	2	1%
2	13	4%
3	29	9%
4	10	3%
5	33	11%
6	32	10%
7	36	12%
8	111	36%
9	28	9%
10	15	5%
<b>Total</b>	<b>309</b>	<b>100%</b>

**Minimum term does not apply**

Sections 5(1)(b) &amp; 5(1A)(b)-(g) combined, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	30	48%
2	16	26%
3	11	18%
4	0	0%
5	2	3%
6	0	0%
7	0	0%
8	2	3%
9	1	2%
<b>Total</b>	<b>62</b>	<b>100%</b>

**All Group 1 offences**

Sections 5(1)(a)-(af),(c), 5(1A)(a), 5(1)(b) &amp; 5(1A)(b)-(g) combined, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	31	8%
2	32	9%
3	38	10%
4	10	3%
5	35	9%
6	32	9%
7	36	10%
8	113	30%
9	29	8%
10	15	4%
<b>Total</b>	<b>371</b>	<b>100%</b>

**Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)**

Section 1(1) - Possess a firearm/ammunition without a certificate, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	4	9%
1	5	11%
1.5	7	16%
2	6	14%
2.5	4	9%
3	1	2%
3.5	4	9%
4	6	14%
4.5	4	9%
5	3	7%
<b>Total</b>	<b>44</b>	<b>100%</b>

Section 1(1) - Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form), 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	0	0%
1	0	0%
1.5	0	0%
2	1	14%
2.5	0	0%
3	0	0%
3.5	1	14%
4	2	29%
4.5	0	0%
5	2	29%
5.5	0	0%
6	1	14%
<b>Total</b>	<b>7</b>	<b>100%</b>

Section 2(1) - Possess shotgun without a certificate, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	0	0%
1	1	9%
1.5	2	18%
2	1	9%
2.5	0	0%
3	5	45%
3.5	1	9%
4	1	9%
4.5	0	0%
5	0	0%
<b>Total</b>	<b>11</b>	<b>100%</b>



**All Group 2 offences**

Sections 1(1) & 2(1) combined - Possess a firearm/ ammunition/ shortened shotgun/ shotgun without a certificate, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	4	6%
1	6	10%
1.5	9	15%
2	8	13%
2.5	4	6%
3	6	10%
3.5	6	10%
4	9	15%
4.5	4	6%
5	5	8%
5.5	0	0%
6	1	2%
<b>Total</b>	<b>62</b>	<b>100%</b>

**Group 3 (Maximum: 5 years)**

Section 21 - Possess a firearm when prohibited for life / five years due to previous conviction, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	6	19%
1	5	16%
1.5	11	34%
2	3	9%
2.5	4	13%
3	0	0%
3.5	0	0%
4	1	3%
4.5	1	3%
5	1	3%
<b>Total</b>	<b>32</b>	<b>100%</b>

**Group 4 (Maximum: 7 years, or 12 months for imitation)**

Section 19 - Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	13	32%
1	14	34%
1.5	4	10%
2	0	0%
2.5	0	0%
3	4	10%
3.5	1	2%
4	1	2%
4.5	2	5%
5	0	0%
5.5	0	0%
6	1	2%
6.5	0	0%
7	1	2%
<b>Total</b>	<b>41</b>	<b>100%</b>

**Group 5 (Maximum: Life)**

Section 16 (all) - Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	0	0%
4	5	8%
6	5	8%
8	3	5%
10	7	11%
12	10	16%
14	10	16%
16	8	13%
18	4	6%
20	1	2%
22	1	2%
24	1	2%
26	2	3%
28	0	0%
30	1	2%
Indeterminate	5	8%
<b>Total</b>	<b>63</b>	<b>100%</b>

**Group 6 (Maximum: 10 years)**

Section 16A - Possess a firearm with intent to cause fear of violence, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	2	3%
2	8	13%
3	14	23%
4	4	7%
5	6	10%
6	7	11%
7	3	5%
8	9	15%
9	2	3%
10	6	10%
<b>Total</b>	<b>61</b>	<b>100%</b>

**Group 7 (Maximum: Life)**

Sections 17(1), 17(2), 18(1) - Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	1	6%
4	4	24%
6	2	12%
8	2	12%
10	4	24%
12	0	0%
14	1	6%
16	0	0%
18	2	12%
20	0	0%
22	0	0%
24	0	0%
26	0	0%
28	1	6%
<b>Total</b>	<b>17</b>	<b>100%</b>

Section 16A - Possess an imitation firearm with intent to cause fear of violence, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	11	9%
2	42	35%
3	36	30%
4	15	13%
5	8	7%
6	3	3%
7	1	1%
8	4	3%
9	0	0%
10	0	0%
<b>Total</b>	<b>120</b>	<b>100%</b>

Sections 17(1), 17(2), 18(1) - Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	0	0%
2	1	6%
3	1	6%
4	3	18%
5	4	24%
6	2	12%
7	1	6%
8	1	6%
9	1	6%
10	0	0%
11	0	0%
12	0	0%
13	0	0%
14	0	0%
15	1	6%
16	0	0%
17	1	6%
18	1	6%
<b>Total</b>	<b>17</b>	<b>100%</b>

**All Group 6 offences**

Section 16A - Possess a firearm/ imitation firearm with intent to cause fear of violence, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	13	7%
2	50	28%
3	50	28%
4	19	10%
5	14	8%
6	10	6%
7	4	2%
8	13	7%
9	2	1%
10	6	3%
<b>Total</b>	<b>181</b>	<b>100%</b>

**All Group 7 offences**

Sections 17(1), 17(2), 18(1) - Possess a firearm/ imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	2	6%
4	8	24%
6	8	24%
8	4	12%
10	5	15%
12	0	0%
14	1	3%
16	1	3%
18	4	12%
20	0	0%
22	0	0%
24	0	0%
26	0	0%
28	1	3%
<b>Total</b>	<b>34</b>	<b>100%</b>

**Group 8 (Maximum: Life)**

Section 5(2A)(a) offences - Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968, 2016-2018<sup>1,2</sup>

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	0	0%
4	1	20%
6	0	0%
8	1	20%
10	0	0%
12	0	0%
14	0	0%
16	0	0%
18	0	0%
20	2	40%
22	1	20%
<b>Total</b>	<b>5</b>	<b>100%</b>

Section 5(2A)(b)-(d) offences - Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer, 2018

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	0	0%
4	1	11%
6	0	0%
8	3	33%
10	1	11%
12	2	22%
14	0	0%
16	0	0%
18	0	0%
20	1	11%
22	0	0%
24	1	11%
<b>Total</b>	<b>9</b>	<b>100%</b>

## Notes:

1) The data shown for this offence covers the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment.

2) These proportions should be treated with caution, due to the low number of offenders sentenced for this offence.

Source: Court Proceedings Database, Ministry of Justice

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Annex A – Case Summaries

Collection (Section 58 TACT 00)

PRE- GUIDELINE			
Name	Description	Actual Sentence	Predicted guideline starting point
Mohammed REHMAN Feb 2017	Serving prisoner for a previous s5 TACT offence. Found to be in possession of a handwritten document detailing instructions on how to make HMTD (explosives). The offender's s5 case had involved planning to use explosive devices somewhere in London	<b>3 years</b> (pleaded guilty- without reduction would have been 4.5 years)	B2 *
Jade CAMPBELL Apr 2017	Young female offender pleads guilty to falsely obtaining a passport and being in possession of the first edition of Inspire (includes articles such as 'how to build a bomb in the home of your mom'). Has clear terrorist connections and motivations; the year before her husband left the country to travel to Syria	<b>12 months</b> but Judge said starting point was 16 months	B2*
Roger SMITH January 2017	Convicted after trial of 2 possession of explosive substance offences and 1 s58 offence- namely possession of the anarchist handbook. The offender claims to be preparing to defend himself against an Islamist uprising. He has in his possession a quantity of black powder and chemicals. He has no immediate plans for their use but would use them should the need arise. The anarchist handbook contains instructions useful for a terrorist attack.	Explosive offensive 5 years and 2 years concurrent. Collection of terrorist information: <b>2 years</b> concurrent	B2*
Nathan SAUNDERS May 2017	5 counts of possession of Daesh publications. One includes the article: 'Just Terror Tactics: Choosing the right weapon'. It focuses on the knife as a weapon of choice for carrying out lone-wolf attacks, which it calls 'a just terror operation'. Count two, includes an article entitled 'Just Terror Tactics'. The article gives advice on how to plan a vehicle attack using a truck to drive at large crowds of people in order to kill and maim them. count three, contains an article entitled 'Just Terror Tactics – knife attacks' and provides advice on how knife attacks can be carried out with the greatest effect in terms of technique and choice of weapons, and where and when such attacks should be conducted.	<b>3.5 years</b> on each concurrent	B2*

## Annex A – Case Summaries

	<p>Count four, contains instructions on how to make Molotov cocktails and napalm bombs. The instructions provide sufficient information to make viable devices, as well as identifying targets to be attacked, including places of worship of non-Muslims. Count five relates to possession of the anarchists' cookbook.</p> <p>The offender had terrorist motivations.</p>		
Hussein YUSEF September 2017	<p>Offender shared on Facebook a post stating 'all praise to Allah alone date 700 US army pigs completely hacked'. He added his own words, 'God be praised'. The material contained the names and addresses of the United States armed forces. It was said that the offender knew very well that his audience contained a number of people who, if not disposed to carry out attacks themselves, were in touch with those who were.</p>	<b>7.5 years</b>	B1/2
Mohamed AWAN December 2017	<p>3 counts; 2 x s58 and 1 x s5.</p> <p>The possession of information offences related to a guidebook which explains how to become a sleeper cell. The second was a half hour instructional video depicting techniques for garrotting, beheading and other instructions for kidnapping, firing weapons et cetera.</p> <p>The s5 offence related to conduct in researching, planning and sourcing materials with a view to the commission of some unspecified act of terrorism. The allegation related to a great deal of extremist material found on the offender's USB, mobile phone and laptop and material of a more practical nature such as instructional videos on the making of a folding ring knife, a matchbox fuse igniter and a booby-trap wire. Finally, the offender had ordered, amongst other things, a large number of ball bearings, which had been specifically identified in 'How to Survive in the West' as suitable for use as shrapnel in the bomb-making process.</p>	<p>For the s5 offence an extended sentence of 13 years' imprisonment.</p> <p>S58 offences: <b>4 years</b> on each count, concurrent with one another and concurrent with the first count.</p>	B2

Annex A – Case Summaries

POST GUIDELINE			
Name	Description	Actual Sentence	Actual starting point
Christopher PARTINGTON December 2018	<p>6 offences under s58 and 1 firearms offence.</p> <p>The s58 offences related to a document; “How to make black powder and other explosives”. The second item was a file entitled “FM5-31 booby trap”, a document describing how charges and materials intended innocently for use in demolition can be employed to make explosive booby trap devices.</p> <p>The third item, entitled “Poor man’s James Bond, volume 1”, contained information on DIY explosives, related electronics, automatic weapons, unarmed combat and the use of poisons. The 4th item entitled “Poor man’s James Bond, volume 4”, a document covering techniques of warfare including explosives, booby traps, ballistics and survival techniques. The 5th item “Improvised munitions handbook”, a reference book concerning IEDs and other weapons, timing devices and an altimeter switch which could be used to detonate a device in an aircraft in flight. The 6th item “Amateur pyrotechnics by Dan Williams”, a document which included instructions on the application of black powder.</p> <p>The firearms offence related to the possession of two live or unfired shotgun cartridges.</p> <p>In addition, the offender had a great number of IRA related documents. He had expressed to the probation service his support for the IRA, apparent hatred of the British Government and the Crown.</p>	<p><b>4 years</b> on each s58 offence to run concurrently. 2months for the firearms offence (concurrent)</p>	B2
Jack COULSON July 2018	<p>19-year-old defendant pleads guilty (just before trial) to 1 x s58. The book in the offender’s possession (‘Big Book of Mischief’) provides sufficient detail to assist in the preparation and use of component parts necessary to form an IED. There are practical tips on how to acquire the materials, a list of suppliers is provided and a list of chemicals available to buy. It</p>	<p><b>Five and a half years’</b> (before reduction for guilty plea)</p>	B1

**Annex A – Case Summaries**

<b>PRE- GUIDELINE</b>			
	<p>also advises that orders should be placed for large quantities of a few unrelated chemicals at each of several companies and that separate addresses should be used for each order. This book clearly contains instructions for specific terrorist activity, endangering life and harm is very likely to be caused. Those reading this material are unlikely to be discouraged by warnings as to illegality, etc.</p> <p>The offender came to the attention of the police after posting on a social media site of images of him wearing a camouflage jacket with a German flag alongside an exploding mosque with the words “It’s time to enact retribution upon the Muslim filth”. There were other images of a racist nature and the pictures included a Nazi swastika.</p>		

**Encouragement (Sections 1 & 2 TACT 06)**

<b>Name</b>	<b>Description</b>	<b>Actual Sentence</b>	<b>Predicted guideline starting point</b>
Mijanul HAQUE December 2017	Convicted of three counts. The first related to material circulated to friends clearly intended to encourage them to commit or prepare or instigate similar acts within this country. The material included messages such as assassination is allowed in Islam; killing somebody who insults Mohammad is a religious duty; anybody who insults Mohammad is Kafir. The message	<b>Three and a half years</b> (counts one and five concurrent), reduced to three years due to the age of the offences. Two years on count four (concurrent)	<b>A2*</b>



**Annex A – Case Summaries**

	<p>the offender was conveying was that the activities of the terrorists in Paris were justified and should be emanated.</p> <p>Count five related to the offender sending a 38-minute video to another WhatsApp group of friends which clearly sought to glorify the acts of ISIS. In his comments the offender defended the killing of a police officer in Paris as being justified because the officer was enforcing the laws of the Kafir and was implementing democracy which the offender denounced as being a sin. Count four relates to recklessly distributing the live link video entitled 'Blood of Jihad 2'.</p> <p>The volume and content of the material disseminated was small and the immediate target audience was also small.</p>		
<p>Farhana AHMED November 2017</p>	<p>Opened a FaceBook account in a false name. In the two months that followed the offender published statements which were direct and indirect encouragement to others to commit acts of terrorism. (Count 1). Counts two, three and four concern dissemination of terrorist publications. The offender circulated terrorist publications on a Facebook page which attracted a large number of followers. The posts were made within a closed Facebook group known as Power Strangers. As part of that group the offender overtly extolled the aims of the so-called Islamic State. It is clear that at the time she shared the group's ideology and aims, which were all published in the name of terrorism.</p>	<p>For all counts <b>3 years</b> (concurrent). Reduced due to guilty plea and significant mitigation to a two year sentence suspended for two years.</p>	<p><b>B2</b></p>
<p>Zameer GHUMRA October 2017</p>	<p>The defendant showed to a child aged 8 ISIS propaganda videos of beheadings. It was part of a determined effort to indoctrinate and to radicalise the child, and to turn this small boy, into a terrorist. The jury was sure that Zameer Ghumra showed to the child a recording of an Islamic State beheading and that it was his intention to encourage the child to commit an act of terrorism within the foreseeable future, once he was old enough to do so. The defendant created a Twitter account for the boy. It was set up to follow hate preachers such as Abu Baraa and Anjem Choudrey. The defendant spoke of taking the boy to Syria. He taught him how to punch and kick, and to throw a knife.</p>	<p><b>6 years</b></p>	<p>A1</p>

**Annex A – Case Summaries**

<p>Saer SHAKER September 2017</p>	<p>Two Counts; count 1, related to a posting on Facebook of a three-and-a-half-minute video with the headline “Who are the Sahawat?” This was reference to a body opposed to the Islamic State. The video depicted images of these opposition leaders; also images of individuals who have been murdered or beheaded. The video contained moving-footage depicting the execution, by shooting, of a number of Iraqi officers. The last piece of footage was both graphic and shocking. When captured by the authorities, the video had been viewed 92 times and had been “liked” on three occasions.</p> <p>Count 2 related to a posting on Facebook of a still image from a video film entitled “Nights of Bureaucracy”. This was a 38-minute video containing propaganda in support of the ISIS cause. In particular, it extolled the asserted virtues of those involved in suicide bombing attacks. Following the posting, the offender engaged in an online dialogue with an audience which evidently approved of his message.</p> <p>His social media accounts, interrogated by investigating officers, contained clear evidence of approval of extremist activity.</p>	<p><b>3 years</b> on each (concurrent)</p>	<p>A2*</p>
<p>Taha HUSSEIN September 2017</p>	<p>Seven offences of disseminating terrorist publications.</p> <p>Count one posted the link to a post which called for the destruction of the tyrants and the disbelievers, tyrants being Muslim states who are not governing according to Sharia law.</p> <p>Count two relates to a communication celebrating the fighters of so-called Islamic State.</p> <p>Count three was a lecture attempting to justify the killings in Paris by reference to Islamic law.</p> <p>Counts four and five contain information likely to be of use to those contemplating fighting in Syria. The publication gives specific advise to would-be fighters, amongst other things, on how to prepare, how to get past airport security, how to conceal their intention from their parents and how to behave when they arrive in Syria. Chapter eight contains advice to those who could not go to Syria. The advice includes to wait a few months and try again; steal from the Kufar, kill local Kufar in their own</p>	<p><b>Six years’</b> (counts 4 and 5), <b>4 years</b> on the remaining counts – all concurrent</p>	<p>A2</p>

**Annex A – Case Summaries**

	<p>land. It states: ‘The best of all people to kill are those who work with the government, the politicians, those who have worked in the army, the police officers or anyone else who has any links or ties to the government. You do not need to know much. The kitchen knife is sufficient to send the Kufar to the hereafter, even a petrol bomb is an easy tool one can make and use without the need for research online.’</p> <p>Count five was a document in similar terms.</p> <p>Count six was a video justifying the attack on Charlie Hebdo and count seven was a link that enabled the reader to open and read Dabiq, which was the magazine containing ISIS propaganda.</p> <p>The offender clearly intended to encourage others to engage in terrorist activity.</p>		
<p>Mehdi BIRA September 2017</p>	<p>Two offences of distributing a terrorist publication relating to section 2 of the Terrorism Act 2006. two videos were posted on his Facebook account on separate days. The defendant also researched and downloaded issues of Dabiq, a terrorist publication. ‘I come to the conclusion that it is appropriate to sentence you on the basis of recklessness, rather than intention’.</p>	<p><b>12 months</b> custody on each concurrent.</p>	<p>B2*</p>
<p>Sabbir MIAH June 2017</p>	<p>Counts 1-3 relate to the dissemination of three separate films on Facebook which had some 500 followers. The Judge commented that ‘one at least is gruesome’.</p> <p>The offender maintained that the comments and postings were either conceived by him or were copies of quotes from the Koran, and the postings were sent to him by friends via a WhatsApp chat group, whose details he would not provide.</p> <p>The offender had an Internet-enabled mobile phone in his possession, in contravention of a bail condition. It was found that he was in flagrant breach of the condition of bail because he disseminated two more videos, via Instagram. And that is the conduct reflected in counts four to five.</p> <p>At the time the offender disseminated a terrorist publication, he was reckless as to whether his conduct would have the effect of directly or</p>	<p>Counts 1-3 - <b>Two and a half years’</b> imprisonment on each concurrent.</p> <p>Counts 4-5: <b>Three years’ imprisonment</b>, (concurrent but consecutive to the sentences on counts 1-3).</p> <p>Five and a half years total</p>	<p>B2</p>

**Annex A – Case Summaries**

	indirectly encouraging, or other inducement to the commission preparation or instigation of acts of terrorism’		
Ashvin GOHILL May 2017	<p>Two counts of dissemination of terrorist publication. The offender used his Facebook and twitter account to distribute material that could have influenced one of its recipients to act in a way that could have had catastrophic consequences.</p> <p>Count one concerns the Facebook account. On 27 December 2015 he posted a summary of a speech by Abu Bakr al-Baghdadi, the leader of Islamic State. The speech entitled ‘So wait, indeed we, along with you are waiting’. The content of the speech is aimed at Muslims and states that those fighting in Syria are doing so out of obedience to Allah. It goes on to say that from its creation, 10 years ago, the Islamic State is the pillar of the fight against the enemies of Allah and urges those who are fighting on behalf of Daesh, to crush all absolute apostates. It goes on, ‘come to the rescue of your brothers in Sham, Iraq, Egypt, Libya and Turkistan. The material posted, ends with ‘Oh mujahidin, stay firm, you have in front of you, two options, victory or martyrdom. No honour for us if we do not live under Allah’s laws. Read the Quran a lot, repent from your sins, be aware of oppression and obey your messengers. Be patient, for victory comes after patience.’</p> <p>Of particular concern, are the passages that state that every muslim is obliged to carry out Allah’s commands and participate in jihad and those who obey will receive salvation in the name of Allah, but those who disobey will be destroyed and incur Allah’s wrath. Secondly, that every muslim is obliged to engage in war, to defend the religion of Allah and support the oppressed men, women and children. It is an obligation on all Muslims to participate, and if they do not, Allah will punish them and that there are only two good ends to fighters, victory or martyrdom. The speech tells fighters not to fear death and to obey their commanders.</p>	<b>2 years</b> (reduced to 18 months due to guilty plea)	B2*

**Annex A – Case Summaries**

	<p>There are references to religious texts throughout the speech which are used to justify the speaker’s views. This post was liked 30 times and was shared by 15 followers. This shows the impact that your post had on others.</p> <p>Count two: the offender published a link on his twitter account to a YouTube video- an hour and ninety minutes long. It encourages and justifies extreme violence and the murder of those who commit blasphemy against Allah. The words are persuasive, the voice and the delivery, seductive. ‘Whoever insults the prophet must be killed regardless of who they are and historic texts and stories are used to justify such actions.’</p> <p>Sentenced on a basis of plea that when he disseminated both of these terrorist publications he was acting recklessly and had no specific intent to encourage the commission, preparation or instigation of act of terrorism.</p>		
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<b>POST GUIDELINE</b>			
<b>Name</b>	<b>Description</b>	<b>Actual Sentence</b>	<b>Actual starting point</b>
Nourdeen ABDULLAH June 2018	4 Counts. Count one related to three videos posted to a YouTube account taking the form of a question and answer session created with Anwar Al-Alaki, using extracts from his speeches to answer questions posed by the offender. They referred to ways to support jihad, providing physical and financial support to ‘our brothers in Afghanistan’. There was a statement that fighting is a duty on all Muslims to free the Muslim lands of occupiers and that the defamation of the prophet will be met by the sword. The most popular of the videos was viewed 1,698 times before its capture by the police.	<b>3 years</b> for count 2, 20 months on all other counts concurrent	A3 for count 2, B3 for the other counts

**Annex A – Case Summaries**

	<p>Count two concerns communications via WhatsApp between late-2016 and early 2017, with an acquaintance who had travelled to Syria to become involved in fighting. It is plain that he was sympathetic to the group called Islamic State. The videos sent included men covered in dust after an attack, reference to a good death is the ultimate success and one video featuring a mass execution. On 8 January he sent a voice message that the State was the people answering Allah’s cause.</p> <p>Counts three and four, in effect subsidiary counts because they relate to the same piece of video, or extracts from the same video footage referred to in count 1, but posted in other ways.</p>		
<p>Mohammed KILJI June 2018</p>	<p>Convicted of eight counts of sending links to Islamic State propaganda videos by social media so as to encourage support for their terrorist atrocities. The videos glorify terrorism and applaud the brutal and barbaric behaviour for which Islamic State have become infamous. They show, in gruesome and graphic detail, executions by shooting and beheading and celebrate the death and destruction caused by suicide bombers driving vehicle-borne improvised explosive devices.</p> <p>Count eight was a link to a video entitled, ‘We will surely guide them in our way’. It showed vehicle-borne improvised explosive devices being prepared and focused on two particular suicide bombers, one of whom uses scripture to endorse his acts and encourages others to do the same after him.</p> <p>There are further images from the attack on Brussels’ Airport, the Boston Marathon, and the very recently conducted Westminster Bridge attack. The narrator says, ‘Those who cannot get to the Caliphate to fight, you live in the land of Kufr and can strike them in their heartlands’. And the narrator encourages attacks by lone wolves.</p> <p>This video also includes an Islamic State instruction on the best type of truck to use, on having a slightly raised chassis and bumper, being heavy in weight, with a double-wheeled rear axle, and the targets in which to drive it, so as to achieve maximum carnage when driven into pedestrians in a terrorist attack.</p>	<p><b>6 years</b> (reduced to 5 due to his young age) for count 8, 4.5 years’ on counts one to four, (concurrent), for counts 5-7 concurrent</p>	<p>A1 (for count 8), A2 and C2 for the others</p>

Annex A – Case Summaries

**Failure to Disclose Information (section 38B TACT 00)**

<b>PRE- GUIDELINE</b>			
<b>Name</b>	<b>Description</b>	<b>Actual Sentence</b>	<b>Predicted guideline starting point</b>
<b>Siraj ALI</b> November 2018	<p>Ali failed to disclose information about the attempted detonation of a suicide bomb by Yassin Omar on an underground train near Warren Street station and by Muktar Ibrahim on the number 26 bus. Ali was convicted of two offences of failure to disclose information that he had prior to the intended bombings, two offences of failing to disclose information after the intended bombings, and one offence of assisting Ibrahim, namely by removing and disposing of incriminating property.</p> <p>Ali was a good friend of Omar and both were very good friends of Ibrahim. Ali allowed Omar and Ibrahim to stay at his flat when the concentrating process necessary to build the bombs had rendered Omar's flat uninhabitable. Found in Ali's flat was a notepad bearing Ibrahim's fingerprints, with calculations relating to detonators, as well as a note detailing the steps to 'martyrdom', a list of bomb making equipment and business cards from two different suppliers of hydrogen peroxide, the essential ingredient in the men's explosives.</p>	Total of 9 years: <b>5 years</b> for each of the two prior knowledge offence (concurrent); <b>4 years</b> for each of the two post event offences (consecutive to the first offences but concurrently to each other) and 2 years for assisting an offender (concurrent). (After trial)	A1
<b>Ismail ABDURAHMAN</b> November 2018	<p>Convicted of one charge of assisting Osman (who attempted to detonate a suicide bomb at Shepherd's Bush), and four charges of failing to disclose information after the event, relating to all the bombers.</p> <p>The offender met Osman at Clapham Junction station on 23/7/05 and took him to his home where Osman stayed for a couple of days. He also collected Abdul Sherif's passport and a video camera that had been used by the bombers to record suicide messages and gave them both to Osman.</p>	Total of 8 years: 4 years for assisting an offender and <b>4 years</b> for failing to provide information (on each concurrent, but consecutive to the assisting an offender conviction). (After trial)	B1
<b>Abdul SHERIF</b> November 2008	<p>Brother of Osman, convicted of one count of assisting him, and one count of failing to disclose information after the bombings. Provided a passport to his brother which assisted him to escape to Italy. The prosecution demonstrated</p>	Total of 6 years and 9 months: 6 years 9 months for assisting an offender and <b>4 years</b> for failing to disclose information	B1

**Annex A – Case Summaries**

	that Sherif had relevant knowledge about the terrorist offences due to the numerous phone calls and attempted calls between him and Osman.	after the event (concurrent). (After trial)	
<b>Wahbi MOHAMED</b> November 2008	<p>Convicted of four counts of offences concerning prior knowledge relating to each of the 4 bombers. Convicted on two counts of assisting an offender, one relating to Osman and the second relating to his brother, Ramzi Mohamed (who had attempted to detonate a bomb on an underground train near Oval). Convicted of one count of failing to provide information post event.</p> <p>The Crown’s case was that he was present at the same address as the bombers on the morning of the 21<sup>st</sup> July as the bombers prepared to set off. He took away the video camera used by them to make their suicide videos and handed the camera to Abdurahman to give to Osman after the bombings. Also after the bombings he provided his brother with a mobile phone, SIM card, charger and food whilst he was in hiding. There was also evidence of considerable telephone contact between him and his brother and with Osman before the bombings.</p>	Total 17 years: <b>5 years</b> for each of the prior knowledge offences (concurrent), 2 years for one offence of assisting an offender, 5 years for another offence of assisting an offender and <b>5 years</b> for failing to give information post event. (After trial)	A1
<b>Muhedin ALI</b> November 2018	Convicted of one count of assisting an offender which related to Osman and two counts of failing to disclose information after the bombings, relating to Osman and Ramzi Mohamed. The offender was a close friend of Osman’s. He received Ramzi Mohammed’s suicide note. In the hours and days after the bombings he was involved in a number of telephone calls with Ramzi Mohamed and Osman’s wife. He also offered Osman the opportunity to stay in his flat- which formed the basis of the count of assisting an offender.	Total 7 years: 2 years for assisting an offender and <b>5 years</b> for failure to give information post event. After trial	B1
<b>Yashiemebet GIRMA</b> May 2009	Convicted in June 2008 of failing to disclose information that might have prevented an act of terrorism by her husband, Hussain Osman, namely the attempted detonation of a suicide bomb at Shepherd’s Bush Underground station. She was also convicted of assisting him, namely by collecting him from Wandsworth and, with her brother, driving him to the house of their sister in Brighton; providing him with a SIM card; removing evidence from his flat in London and withdrawing cash for him. She was also convicted of failing to disclose information after the attacks.	Total 11 years 9 months: 6 years 9 months for assisting an offender and 2x <b>5 years</b> for failing to disclose information after the attacks. (After trial).	B1



**Annex A – Case Summaries**

<b>POST GUIDELINE</b>			
<b>Name</b>	<b>Description</b>	<b>Actual Sentence</b>	<b>Actual starting point</b>
<b>Khwala BARGHOOTH</b> June 2018	The offender had befriended another woman, Rizlaine Boular, who was a supporter of ISIS and had developed a plan to carry out a knife attack on members of the public in London, even becoming a martyr herself if that proved necessary. Boular had told Barghouth of her plans and they had met on a number of occasions, on one occasion Boular practised getting the knife out of her rucksack and stabbing, using Barghouth as a pretend victim.	Starting point of <b>four years</b> , reduced by a third for the guilty plea and adjustments for aggravating and mitigating features.	A1

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**Annex B Sentence Comparison**

<b>S58 Collection (increased from 10 to 15 yrs)</b>		<b>S1&amp;2 Encouragement (increased from 7 to 15 yrs)</b>		<b>S57 Possession for terrorist purposes</b>	
<b>A:</b> • Offender collected, made a record of, or was in possession of information for use in a specific terrorist act	<b>A1:</b> <b>Proposed</b> 10 years' (8-14 years')	<b>A:</b> • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete • Offender is a significant participant in the commission, preparation or instigation of an act of terrorism	<b>A1:</b> <b>Proposed</b> 10 years' (8-14 years')	<b>A:</b> • Offender in position of trust, authority or influence and abuses their position to encourage others • Intended to encourage others to engage in any form of terrorist activity • Intended to provide assistance to others to engage in terrorist activity	<b>A1:</b> <b>Current</b> 12 years' (9-14 years')
<b>1:</b> • Material provides instruction for specific terrorist activity endangering life and harm is very likely to be caused	<b>Current</b> 7 years' (5-9 years')	<b>1:</b> • Article(s) had potential to facilitate an offence endangering life and harm is very likely to be caused	<b>Current</b> 5 years' (4 – 6 years')	<b>1:</b> • Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life • Statement or publication provides instruction for specific terrorist activity endangering life	
<b>A:</b> • Offender collected, made a record of, or was in possession of information for use in a specific terrorist act	<b>A2:</b> <b>Proposed</b> 7 years' (5-9 years')	<b>A:</b> • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete • Offender is a significant participant in the commission, preparation or instigation of an act of terrorism	<b>A2:</b> <b>Proposed</b> 7 years' (5-9 years')	<b>A:</b> • Offender in position of trust, authority or influence and abuses their position to encourage others • Intended to encourage others to engage in any form of terrorist activity • Intended to provide assistance to others to engage in terrorist activity	<b>A2:</b> <b>Current</b> 8 years' (7-9 years')
<b>2:</b> • Material provides instruction for specific terrorist activity endangering life but harm is not very likely to be caused • Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property,	<b>Current</b> 6 years' (4 – 8 years')	<b>2:</b> • Article(s) had potential to facilitate an offence endangering life but harm is not very likely to be caused • Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure	<b>Current</b> 4 years' (3 – 5 years')	<b>2:</b> • Evidence that others have acted on or been assisted by the encouragement to carryout activities not endangering life • Statement or publication provides non-specific content encouraging support for terrorist activity endangering life	

## Annex B Sentence Comparison

or economic interest or substantial impact upon civic infrastructure				<ul style="list-style-type: none"> <li>Statement or publication provides instruction for specific terrorist activity not endangering life</li> </ul>	
A: • Offender collected, made a record of, or was in possession of information for use in a specific terrorist act	<b>A3: Proposed</b> 5 years' (3 – 6 years')	A: • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete • Offender is a significant participant in the commission, preparation or instigation of an act of terrorism	<b>A3: Proposed</b> 4 years' (3-5 years')	A: • Offender in position of trust, authority or influence and abuses their position to encourage others • Intended to encourage others to engage in any form of terrorist activity • Intended to provide assistance to others to engage in terrorist activity	<b>A3: Current</b> 6 years' (4-7 years')
3: • All other cases	<b>Current</b> 5 years' (3 – 6 years')	3: • All other cases	<b>Current</b> 3 years' (2-4 years')	3: • Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life • Other cases where characteristics for categories 1 or 2 are not present	
B: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations • Offender repeatedly accessed extremist material (where not falling within A)	<b>B1: Proposed</b> 7 years' (5-9 years')  <b>Current</b> 5 years' (3 – 6 years')	B: • Cases falling between A and C	<b>B1: Proposed</b> 7 years' (5-9 years')  <b>Current</b> 4 years' (3-5 years')	B: • Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/disseminated publication widely to a large or targeted audience (if via social media this can include both open or closed groups)	<b>B1: Current</b> 7 years' (6-9 years')
1: • Material provides instruction for specific terrorist activity endangering life and harm is very likely to be caused		1: • Article(s) had potential to facilitate an offence endangering life and harm is very likely to be caused		1: • Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life • Statement or publication provides instruction for specific terrorist activity endangering life	

**Annex B Sentence Comparison**

<p>B: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations</p> <ul style="list-style-type: none"> <li>• Offender repeatedly accessed extremist material (where not falling within A)</li> </ul>	<p><b>B2:</b> <b>Proposed</b> 4 years' (3-5 years')</p>	<p>B: • Cases falling between A and C</p>	<p><b>B2:</b> <b>Proposed</b> 4 years' (3-5 years')</p>	<p>B: • Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/disseminated publication widely to a large or targeted audience (if via social media this can include both open or closed groups)</p>	<p><b>B2:</b> <b>Current</b> 6 years' (4-7 years')</p>
<p>2: • Material provides instruction for specific terrorist activity endangering life but harm is not very likely to be caused</p> <ul style="list-style-type: none"> <li>• Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure</li> </ul>	<p><b>Current</b> 4 years' (3-5 years')</p>	<p>2: • Article(s) had potential to facilitate an offence endangering life but harm is not very likely to be caused</p> <ul style="list-style-type: none"> <li>• Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure</li> </ul>	<p><b>Current</b> 3 years' (2-4 years')</p>	<p>2: • Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life</p> <ul style="list-style-type: none"> <li>• Statement or publication provides non-specific content encouraging support for terrorist activity endangering life</li> <li>• Statement or publication provides instruction for specific terrorist activity not endangering life</li> </ul>	
<p>B: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations</p> <ul style="list-style-type: none"> <li>• Offender repeatedly accessed extremist material (where not falling within A)</li> </ul>	<p><b>B3:</b> <b>Proposed</b> 3 years' (2-5 years')</p>	<p>B: • Cases falling between A and C</p>	<p><b>B3:</b> <b>Proposed</b> 2 years' (1-3 years')</p>	<p>B: • Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/disseminated publication widely to a large or targeted audience (if via social media this can include both open or closed groups)</p>	<p><b>B3:</b> <b>Current</b> 4 years' (2-5 years')</p>

**Annex B Sentence Comparison**

3: • All other cases	<b>Current</b> 3 years' (2-5 years')	3: • All other cases	<b>Current</b> 2 years' (1-3 years')	3: • Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life • Other cases where characteristics for categories 1 or 2 are not present	
C: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations	<b>C1: Proposed</b> 3 years' (1-5 years')	C: • Possession of article(s) indicates that offender has engaged in limited preparation toward terrorist activity • Offender is of limited assistance or encouragement to others who are preparing for terrorist activity	<b>C1: Proposed</b> 3 years' (2-4 years')	C: • Other cases where characteristics for categories A or B are not present	<b>C1: Current</b> 4 years' (3-6 years')
1: • Material provides instruction for specific terrorist activity endangering life and harm is very likely to be caused		1: • Article(s) had potential to facilitate an offence endangering life and harm is very likely to be caused		<b>Current</b> 3 years' (2-4 years')	
C: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations	<b>C2: Proposed</b> 1 year 6 mths (6mth - 3 years')	C: • Possession of article(s) indicates that offender has engaged in limited preparation toward terrorist activity • Offender is of limited assistance or encouragement to others who are preparing for terrorist activity	<b>C2: Proposed</b> 2 years' (1-3 years')	C: • Other cases where characteristics for categories A or B are not present	<b>C2: Current</b> 3 years' (2-4 years')
2: • Material provides instruction for specific terrorist activity endangering life but harm is not very likely to be caused • Material provides instruction for specific terrorist activity		2: • Article(s) had potential to facilitate an offence endangering life but harm is not very likely to be caused • Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic		<b>Current</b> 2 years' (1-3 years')	

**Annex B Sentence Comparison**

intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure	(6mth - 3 years')	interest or substantial impact upon civic infrastructure		support for terrorist activity endangering life • Statement or publication provides instruction for specific terrorist activity not endangering life	
C: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations	<b>C3:</b> <b>Proposed</b> 1 year (High CO – 2 years)	C: • Possession of article(s) indicates that offender has engaged in limited preparation toward terrorist activity • Offender is of limited assistance or encouragement to others who are preparing for terrorist activity	<b>C3:</b> <b>Proposed</b> 1 year (High CO – 2 years)	C: • Other cases where characteristics for categories A or B are not present	<b>C3:</b> <b>Current</b> 2 years' (1-3 years')
3: • All other cases	<b>Current</b> 1 year (High CO – 2 years)	3: • All other cases	<b>Current</b> 1 year (High CO – 2 years)	<b>3:</b> • Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life • Other cases where characteristics for categories 1 or 2 are not present	

**Annex B Sentence Comparison**

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# Draft guidelines

## Riot Public Order Act 1986 (section 1)

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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:

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

\* *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.

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

**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	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 6 years' custody
	<b>Category range</b> 6 – 9 years' custody	<b>Category range</b> 4 – 7 years' custody
Category 2	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 4 – 7 years' custody	<b>Category range</b> 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)

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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

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

\* *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.

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



**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	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> High level community order – 2 years
Category 2	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 1 – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> 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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# Affray

## Public Order Act 1986 (section 3)

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Triable either way  
Maximum: 3 years' custody

Offence range: Band C fine – 2 years' 6 months' 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:

<b>A</b>	<ul style="list-style-type: none"> <li>• Targeting of individual(s) by a group</li> <li>• Use of a weapon to inflict violence</li> <li>• Use of serious or sustained violence</li> <li>• Intention to cause fear of very serious violence</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>• Threat of violence by any weapon (whether or not produced)</li> <li>• Threat or use of violence falling between levels in categories A and C</li> </ul>
<b>C</b>	<ul style="list-style-type: none"> <li>• Threat or use of minimal violence</li> <li>• The offender acted in self-defence or in fear of violence (where not amounting to a defence)</li> </ul>

**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.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical injury to others</li> <li>• Very serious fear/distress caused</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Harm falling between categories 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Little or no physical injury to others</li> <li>• Minimal fear/distress caused</li> </ul>

**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	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 years' custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 1 year 6 months' – 2 years 6 months' custody	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> Medium level community order – 1 year's custody
Category 2	<b>Starting point</b> 1 years' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 36 weeks' custody
Category 3	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 36 weeks' custody	<b>Category range</b> Band C fine – High level community order

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.

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:***

Incident occurred in busy public area

Leading role where offending is part of group activity

Offender threw missiles/objects

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

Prolonged incident

Planning

Significant impact on public resources

Threats or violence directed towards public servants in the course of their duty

Large number of persons affected

Offence committed while on licence or subject to post sentence supervision

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions

Previous good character

Remorse

Incident shortlived

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role where offending is part of group activity

No members of public present other than those participating in violence

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

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 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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# Threatening behaviour – fear or provocation of violence Public Order Act 1986 (section 4)

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Triable summarily

Maximum: 6 months' custody

Offence range: Discharge – 26 weeks' custody

# Racially or religiously aggravated threatening behaviour – fear or provocation of violence Crime and Disorder Act 1998 (section 31(1)(a))

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Triable either way

Maximum: 2 years' custody

Offence range: Fine – 1 year 6 months' custody

The racially or religiously aggravated offence 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**.

**For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.**

**Culpability** demonstrated by one or more of the following:

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Targeting of individual(s) by a group</li> <li>• Intention to cause fear of serious violence</li> <li>• Sustained incident</li> <li>• Use of substantial force</li> <li>• Production of weapon</li> <li>• Missiles thrown</li> </ul>
<b>B – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Victim feared serious violence</li> <li>• Fear of immediate violence caused to multiple persons present</li> <li>• Incident escalated into violence</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
Category 1	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band C fine – 12 weeks' custody
Category 2	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> Band C fine – 12 weeks' custody	<b>Category range</b> Discharge – Medium level community order

**RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY**

**Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months).**

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

**HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION**

- Racial or religious aggravation was the predominant motivation for the offence
- Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)
- Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused serious fear and distress throughout local community or more widely

**MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION**

- Racial or religious aggravation formed a significant proportion of the offence as a whole
- Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused some fear and distress throughout local community or more widely

**LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION**

- Aggravated element formed a minimal part of the offence as a whole
- Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one)

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below:

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 16 weeks' custody
	<b>Category range</b> 16 weeks' – 1 year 6 months' custody	<b>Category range</b> 6 weeks' – 1 year's custody	<b>Category range</b> High level community order – 36 weeks' custody
A2 or B1	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> 6 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 6 weeks' – 1 year's custody	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Low level community order – 16 weeks' custody
B2	<b>Starting point</b> 6 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band C fine – High level community order

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### 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: disability, sexual orientation or transgender identity

Offence committed whilst on bail

##### *Other aggravating factors:*

Planning

Offence committed against those working in the public sector or providing a service to the public

Leading role where offending is part of group activity

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation

History of antagonising the victim

Victim had no opportunity to escape situation (ie: on public transport)

Commission of offence whilst under the influence of alcohol or drugs

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

#### Factors reducing seriousness or reflecting personal mitigation

Minor/peripheral role where offending is part of group activity

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

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

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 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**

For **racially or religiously aggravated offences only** 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.



# Disorderly behaviour with intent to cause harassment, alarm or distress Public Order Act 1986 (section 4A)

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Triable summarily

Maximum: 26 weeks' custody

Offence range: Discharge – 26 weeks' custody

# Racially or religiously aggravated disorderly behaviour with intent to cause harassment, alarm or distress Crime and Disorder Act 1998 (section 31(1)(b))

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Triable either way

Maximum: 2 years' custody

Offence range: Fine – 1 year 3 months' custody

The racially or religiously aggravated offence 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**.

**For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.**

**Culpability** demonstrated by one or more of the following:

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Targeting of individual(s) by a group</li> <li>• Sustained incident</li> <li>• Use of substantial force</li> <li>• Production of weapon</li> <li>• Missiles thrown</li> </ul>
<b>B – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious distress or alarm caused</li> <li>• Distress or alarm caused to multiple persons present</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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.

Harm	Culpability	
	A	B
Category 1	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band C fine – 12 weeks' custody
Category 2	<b>Starting point</b> Low level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> Band C Fine – 12 weeks' custody	<b>Category range</b> Discharge – Low level community order

**RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY**

**Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months).**

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

**HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION**

- Racial or religious aggravation was the predominant motivation for the offence
- Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)
- Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused serious fear and distress throughout local community or more widely

**MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION**

- Racial or religious aggravation formed a significant proportion of the offence as a whole
- Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused some fear and distress throughout local community or more widely

**LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION**

- Aggravated element formed a minimal part of the offence as a whole
- Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one)

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below;

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> 6 weeks' custody
	<b>Category range</b> 6 weeks' – 1 year 3 months' custody	<b>Category range</b> High level community order – 36 weeks' custody	<b>Category range</b> Medium level community order – 26 weeks' custody
A2 or B1	<b>Starting point</b> 6 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> High level community order – 36 weeks' custody	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band C fine – 16 weeks' custody
B2	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> Medium level community order – 12 weeks' custody	<b>Category range</b> Band C fine – 6 weeks' custody	<b>Category range</b> Band B fine – High level community order

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### 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: disability, sexual orientation or transgender identity

Offence committed whilst on bail

##### *Other aggravating factors:*

Planning

Leading role where offending is part of group activity

Offence committed against those working in the public sector or providing a service to the public

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability)

History of antagonising the victim

Victim had no opportunity to escape situation (ie: on public transport)

Commission of offence whilst under the influence of alcohol or drugs

Offence committed whilst on licence or post sentence supervision

History of failure to comply with court orders

#### Factors reducing seriousness or reflecting personal mitigation

Minor/peripheral role in group activity

No previous convictions or no relevant/recent convictions

Remorse

Previous good character

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

Mental disorder or learning disability where related to the commission of the offence

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 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**

For **racially or religiously aggravated offences only** 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.

# Disorderly behaviour Public Order Act 1986 (section 5)

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Triable summarily  
Maximum: Level 3 fine

Offence range: Discharge – Fine

# Racially or religiously aggravated disorderly behaviour Crime and Disorder Act 1998 (section 31(1)(c))

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Triable summarily  
Maximum: Level 4 fine

Offence range: Discharge – Fine

**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**.

**For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.**

**Culpability** demonstrated by one or more of the following:

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Targeting of individual(s) by group</li> <li>• Sustained incident</li> <li>• Use of force</li> </ul>
<b>B – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious distress or alarm caused</li> <li>• Distress or alarm caused to multiple persons present</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>



**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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
Category 1	<b>Starting point</b> Band C fine	<b>Starting point</b> Band B fine
	<b>Category range</b> Band B – Band C fine	<b>Category range</b> Band A – Band C fine
Category 2	<b>Starting point</b> Band B fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Band A – Band C fine	<b>Category range</b> Conditional discharge – Band B fine

**RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY****Summary only offence. Maximum sentence for the aggravated offence is level 4 fine.**

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following table includes a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence, and apply the appropriate uplift to the sentence.

<p><b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p> <ul style="list-style-type: none"> <li>• Racial or religious aggravation was the predominant motivation for the offence</li> <li>• Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)</li> <li>• Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one)</li> <li>• Aggravated nature of the offence caused serious fear and distress throughout local community or more widely</li> </ul>	<p><b>SENTENCE UPLIFT</b></p> <ul style="list-style-type: none"> <li>• Fine for basic offence: Multiply basic fine by 2.5</li> <li>• Discharge for basic offence: impose fine at top of basic offence category range or for particularly severe cases move to sentence in next basic offence category</li> </ul>
<p><b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p> <ul style="list-style-type: none"> <li>• Racial or religious aggravation formed a significant proportion of the offence as a whole</li> <li>• Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one)</li> <li>• Aggravated nature of the offence caused some fear and distress throughout local community or more widely</li> </ul>	<p><b>SENTENCE UPLIFT</b></p> <ul style="list-style-type: none"> <li>• Fine for basic offence: Multiply basic fine by 2</li> <li>• Discharge for basic offence: impose fine at mid-top of basic offence category range</li> </ul>
<p><b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p> <ul style="list-style-type: none"> <li>• Aggravated element formed a minimal part of the offence as a whole</li> <li>• Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (over and above the distress already considered at step one)</li> </ul>	<p><b>SENTENCE UPLIFT</b></p> <ul style="list-style-type: none"> <li>• Fine for basic offence: Multiply basic fine by 1.5</li> <li>• Discharge for basic offence: impose fine at low-mid of basic offence category range</li> </ul>

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### 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: disability, sexual orientation or transgender identity

Offence committed whilst on bail

##### *Other aggravating factors:*

Planning

Leading role where offending is part of group activity

Offence committed against those working in the public sector or providing a service to the public

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability)

History of antagonising the victim

Commission of offence whilst under the influence of alcohol or drugs

Victim(s) had no opportunity to escape situation (eg: offence occurred on public transport)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

#### Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Minor/peripheral role where offending is part of group activity

Remorse

Previous good character

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

Mental disorder or learning disability where related to the commission of the offence

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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**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****Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

**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.

# Racial hatred offences Public Order Act 1986 (sections 18-23(3))

# Hatred against persons on religious grounds or grounds of sexual orientation Public Order Act 1986 (sections 29B-29G(3A)(3))

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Triable either way  
Maximum: 7 years' custody

Offence range: Fine – 6 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** demonstrated by one or more of the following

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Offender in position of trust, authority or influence and abuses their position to stir up hatred</li> <li>• Intention to incite serious violence</li> <li>• Persistent activity</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Other cases falling between categories A and C</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Reckless as to whether hatred would be stirred up</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim:

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life</li> <li>• Widespread dissemination of statement/publication/performance or broadcast and/or strong likelihood that many would be influenced</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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.

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

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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### 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 committed whilst on bail

#### *Other aggravating factors:*

Planning of event or campaign designed to stir up hatred

Timing of incident – particularly sensitive social climate

Vulnerable/impressionable audience

Significant volume of publications published or disseminated (where not taken into account at step one)

Used multiple social media platforms to reach a wider audience (where not taken into account at step one)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

### Factors reducing seriousness or reflecting personal mitigation

Peripheral role in group activity

Previous good character

No previous convictions or no relevant/recent convictions

Remorse

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

Mental disorder or learning disability where linked to the commission of the offence

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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**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****Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

**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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# **PUBLIC ORDER – AGREED DEFINITIVE GUIDELINES**

# **Riot**

**Public Order Act 1986 (section 1)**

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**Triable only on indictment**

**Maximum: 10 years' custody**

**Offence range: 3 – 9 years' custody**

**This is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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**.

<b>Culpability</b>	
A	<ul style="list-style-type: none"> <li>• Offender used or intended to use petrol bomb or incendiary device</li> <li>• Offender used or intended to use firearm or other highly dangerous weapon*</li> <li>• Offender was an instigator or carried out a leading role</li> <li>• Offenders actions escalated level of violence and/or disorder</li> </ul>
B	<ul style="list-style-type: none"> <li>• Any incident of riot not including category A factors</li> </ul>
<p><i>* 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'.</i></p>	

<b>Harm</b>	
<p>The level of <b>harm</b> 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.</p>	
<b>Category 1</b>	<p><b>Multiple or extreme examples of the following:</b></p> <ul style="list-style-type: none"> <li>• Incident results in serious physical injury or very serious fear and/or distress</li> <li>• Incident causes serious disruption or severe detrimental impact to community</li> <li>• Incident causes loss of livelihood or substantial costs to businesses</li> <li>• Incident causes substantial costs to be incurred to public purse</li> <li>• Incident involves attacks on police or public servants</li> <li>• Incident results in extensive damage to property</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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.

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

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.

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

**Care should be taken not to double count aggravating factors which were relevant to the culpability assessment, particularly in cases where culpability is assessed as high.**

### 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

Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

Low level involvement

No previous convictions or no relevant/recent convictions

Remorse

Age and/or lack of maturity

Mental disorder or learning disability

Good character and/or exemplary conduct

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 (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.



## **Violent disorder**

### **Public Order Act 1986 (section 2)**

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**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community order – 4 years 6 months' custody**

**This is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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	
A	<p>Factors in Category B present <b>AND</b> any of;</p> <ul style="list-style-type: none"> <li>• Offender used or intended to use petrol bomb or incendiary device</li> <li>• Offender used or intended to use firearm or other highly dangerous weapon*</li> <li>• Offender was an instigator or carried out a leading role</li> <li>• Targeting of individual(s) by a group</li> </ul>
B	<ul style="list-style-type: none"> <li>• Offender participated in incident which involved widespread and/or large scale acts of violence on people and/or property</li> <li>• Offender participated in incident involving serious acts of violence</li> <li>• Offender participated in incident involving significant planning of unlawful activity</li> <li>• Offender participated in incident involving persistent and/or sustained unlawful activity</li> </ul>
C	<ul style="list-style-type: none"> <li>• Offence involved threats of violence only</li> <li>• Offence involved lower level of violence or activity than included in Category B</li> </ul>
<p><i>* 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'.</i></p>	

<b>Harm</b> The level of <b>harm</b> 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.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Cases involving multiple or extreme category 2 factors</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Incident results in serious physical injury or serious fear and/or distress and/or disruption</li> <li>• Incident causes serious disruption or severe detrimental impact to community</li> <li>• Incident causes loss of livelihood or substantial costs to businesses</li> <li>• Incident causes substantial costs to be incurred to public purse</li> <li>• Incident results in attacks on police or public servants</li> <li>• Incident results in extensive damage to property</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Offence involved threats of violence only</li> <li>• Offence involved lower level of violence or activity than included in category 2</li> </ul>

**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
<b>Category 1</b>	<b>Starting point</b> 4 year's custody  <b>Category range</b>  3 – 4 years 6 months	<b>Starting point</b> 3 year's custody  <b>Category range</b>  2 – 4 years	<b>Starting point</b> 2 year's custody  <b>Category range</b>  1 – 3 years
<b>Category 2</b>	<b>Starting point</b> 3 year's custody  <b>Category range</b>  2 – 4 years	<b>Starting point</b> 2 year's custody  <b>Category range</b>  1 – 3 years	<b>Starting point</b> 1 year's custody  <b>Category range</b>  HL CO- 2 yrs custody
<b>Category 3</b>	<b>Starting point</b> 2 year's custody  <b>Category range</b>  1 – 3 years	<b>Starting point</b> 1 year's custody  <b>Category range</b>  HL CO - 2 years	<b>Starting point</b> 26 weeks' custody  <b>Category range</b>  ML CO – 1 year

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.

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

**Care should be taken not to double count aggravating factors which were relevant to the culpability assessment, particularly in cases where culpability is assessed as high.**

### 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

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

Attack by animal used or threatened in commission of offence

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed while on licence or subject to post sentence supervision

### Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role

Remorse

Good character and/or exemplary conduct

Sole or primary carer for dependent relatives

Age and/or lack of maturity

Mental disorder or learning disability

### **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 (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

## **Affray**

**Public Order Act 1986 (section 3)**

---

**Triable either way**

**Maximum: 3 years' custody**

**Offence range: Fine – 2 years 9 months' custody**

**This is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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**.

<b>Culpability</b> demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> <li>• Targeting of individual(s) by a group</li> <li>• Use of a weapon to inflict violence</li> <li>• Use of serious or sustained violence</li> <li>• Intention to cause fear of very serious violence</li> </ul>
B	<ul style="list-style-type: none"> <li>• Threat of violence by any weapon (whether or not produced)</li> <li>• Threat or use of violence falling between levels in categories A and C</li> </ul>
C	<ul style="list-style-type: none"> <li>• Threat or use of minimal violence</li> <li>• The offender acted in self-defence or in fear of violence (where not amounting to a defence)</li> </ul>

**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.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical injury to others</li> <li>• Serious fear/distress caused</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Harm falling between categories 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Little or no physical injury to others</li> <li>• Some fear/distress caused</li> </ul>



**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
<b>Category 1</b>	<p><b>Starting point</b> 2 years</p> <p><b>Category range</b> 1 year 6 months - 2 years 9 months</p>	<p><b>Starting point</b> 1 year</p> <p><b>Category range</b> 26 weeks' - 1 year 6 months custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> ML CO - 1 year's custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 26 weeks' - 1 year 6 months' custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> ML CO - 1 year's custody</p>	<p><b>Starting point</b> HL CO</p> <p><b>Category range</b> LL CO – 9 months custody</p>
<b>Category 3</b>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> ML CO - 1 year's custody</p>	<p><b>Starting point</b> HL CO</p> <p><b>Category range</b> LL CO – 36 weeks' custody</p>	<p><b>Starting point</b> ML CO</p> <p><b>Category range</b> Band C Fine - HL CO</p>

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.

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:**

Incident occurred in busy public area

Leading role where offending is part of group activity

Offender threw missiles/objects

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

Prolonged incident

Significant impact on public resources

Threats or violence directed towards public servants in the course of their duty

Injury to animal carrying out public duty

Commission of offence whilst under the influence of alcohol or drugs

Large number of persons affected

Offence committed while on licence or subject to post sentence supervision

Failure to comply with current court orders

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Good character and/or exemplary conduct

Remorse

Incident shortlived

Evidence of steps initially taken to defuse incident

Significant degree of provocation

Low level involvement

Minor/peripheral role in group activity

No members of public present other than those participating in violence

Age and/or lack of maturity

Mental disorder or learning disability

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 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.

**Threatening behaviour – fear or provocation of violence**

**Public Order Act 1986 (section 4)**

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**Triable only summarily**

**Maximum: 6 months' custody**

**Offence range: Discharge – 26 weeks' custody**

**Racially or religiously aggravated threatening behaviour – fear or provocation of violence**

**Crime and Disorder Act 1998 (section 31(1)(a))**

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**Triable either way**

**Maximum: 2 years' custody**

**The racially or religiously aggravated offence is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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 - High culpability:**

- Targeting of individual(s) by a group
- Intention to cause fear of serious violence
- Sustained incident
- Use of substantial force
- Production of weapon
- Missiles thrown

**B – Lesser culpability**

- All other cases

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

**Category 1**

- Victim feared serious violence
- Fear of violence caused to multiple persons present
- Incident escalated into violence

**Category 2**

- All other cases

**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.

<b>Culpability</b>		
<b>Harm</b>	<b>A</b>	<b>B</b>
<b>Category 1</b>	<p><b>Starting point</b> High level community order</p> <p><b>Range</b> Low Level community order - 26 weeks' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Range</b> Band C Fine – 12 weeks' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> Medium level community order</p> <p><b>Range</b> Band C Fine – 12 weeks' custody</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Range</b> Discharge - Medium level community order</p>

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.

### 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 committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: sex, disability, sexual orientation or transgender identity

#### ***Other aggravating factors:***

- Planning
- Offence committed against those working in the public sector or providing a service to the public
- Leading role where offending is part of group activity
- Vulnerable persons or children present
- Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation
- History of antagonising the victim
- Victim had no opportunity to escape situation (ie: on public transport)
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on licence or post sentence supervision
- Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

- Minor/peripheral role in group activity
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives



<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 6 months' custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one
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HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused some fear and distress</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

throughout local community or more widely.	
<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> </ul>	Consider a more onerous penalty of the same type identified for the basic offence.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

**The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.**

#### **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 (RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY)**

##### **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.

**Disorderly behaviour with intent to cause harassment, alarm or distress**

**Public Order Act 1986 (section 4A)**

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**Triable only summarily**

**Maximum: 6 months' custody**

**Offence range: Discharge – 26 weeks' custody**

**Racially or religiously aggravated disorderly behaviour with intent to cause harassment, alarm or distress Crime and Disorder Act 1998 (section 31(1)(b))**

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**Triable either way**

**Maximum: 2 years' custody**

**The racially or religiously aggravated offence is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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 - High culpability:**

- Targeting of individual(s) by a group
- Sustained incident
- Use of substantial force
- Substantial disturbance
- Production of weapon
- Missiles thrown

**B – Lesser culpability**

- All other cases

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

**Category 1**

- Serious distress or alarm caused
- Distress or alarm caused to multiple persons present

**Category 2**

- All other cases

**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.

Harm	Culpability	
	A	B
<b>Category 1</b>	<p><b>Starting point</b> High level community order</p> <p><b>Range</b> Low Level community order - 26 weeks' custody</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Range</b> Band C Fine – 12 weeks' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> Low level community order</p> <p><b>Range</b> Band C Fine – 12 weeks' custody</p>	<p><b>Starting point</b> Band C fine</p> <p><b>Range</b> Discharge - Low level community order</p>

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.

### 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 committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: sex, disability, sexual orientation or transgender identity

#### Other aggravating factors:

- Planning
- Offence committed against those working in the public sector or providing a service to the public
- Leading role in group
- Vulnerable persons or children present
- Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation
- History of antagonising the victim
- Victim had no opportunity to escape situation (ie: on public transport)
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on licence or post sentence supervision
- Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

- Peripheral role in group activity
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 6 months' custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one
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HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused some fear and distress</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>



throughout local community or more widely.	
<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> </ul>	Consider a more onerous penalty of the same type identified for the basic offence.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

**The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.**

#### **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 (RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY)**

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.

## **Disorderly behaviour**

### **Public Order Act 1986 (section 5)**

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**Triable only summarily**

**Maximum: Level 3 fine**

**Offence range: Discharge – Fine**

## **Racially or religiously aggravated disorderly behaviour Crime and Disorder Act 1998 (section 31(1)(c))**

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**Triable only summarily**

**Maximum: Level 4 fine**

**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 - High culpability:**

- Targeting of individual(s) by a group
- Sustained incident
- Use of force
- Substantial disturbance

**B – Lesser culpability**

- All other cases

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious distress or alarm caused</li> <li>• Distress or alarm caused to multiple persons present</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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.

<b>Culpability</b>		
<b>Harm</b>	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting point</b> Band C fine  <b>Range</b> Band B – Band C fine	<b>Starting point</b> Band B fine  <b>Range</b> Band A – Band C fine
<b>Category 2</b>	<b>Starting point</b> Band B fine  <b>Range</b> Band A – Band C fine	<b>Starting point</b> Band A fine  <b>Range</b> Conditional discharge – Band B 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.

### 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 committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: sex, disability, sexual orientation or transgender identity

#### ***Other aggravating factors:***

- Planning
- Offence committed against those working in the public sector or providing a service to the public
- Commission of offence whilst under the influence of alcohol/drugs
- Vulnerable persons or children present
- Victim is targeted due to a vulnerability (or a perceived vulnerability)
- History of antagonising the victim
- Victim(s) had no opportunity to escape situation (eg: offence occurred on public transport)
- Offence committed whilst on licence or post sentence supervision
- Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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**Summary only offence. Maximum sentence for the aggravated offence is level 4 fine.**

Having determined the category of the basic offence to identify the sentence of a non aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

<b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Fine for basic offence: Multiply basic fine by 2.5</p> <p>Discharge for basic offence: impose fine at top of basic offence category range or for particularly severe cases move to sentence in next basic offence category</p>
<b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> </ul>	<p>Fine for basic offence: Multiply basic fine by 2</p>

<ul style="list-style-type: none"> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	<p>Discharge for basic offence: impose fine at mid-top of basic offence category range</p>
<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one).</li> </ul>	<p>Fine for basic offence: Multiply basic fine by 1.5</p> <p>Discharge for basic offence: impose fine at low-mid of basic offence category range</p>

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

### **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**

**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**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

**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.

**Racial hatred offences**

**Public Order Act 1986**

**(sections 18-23(3))**

**Hatred against persons on religious grounds or grounds of sexual orientation Public Order Act 1986 (sections 29B-29G(3A)(3))**

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**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Community order – 6 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** demonstrated by one or more of the following:

**A - High culpability:**

- Offender uses position of trust, authority or influence to stir up hatred
- Intention to incite serious violence
- Persistent activity

**B – Medium culpability**

- Factors in categories A and C not present

**C – Lesser culpability**

- Reckless as to whether hatred would be stirred up (applicable to racial hatred offences only)

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

**Category 1**

- Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life
- Widespread dissemination of statement/publication/performance broadcast

**Category 2**

- All other cases

**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

Harm	Culpability		
	A	B	C
<b>CATEGORY 1</b>	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2 – 6 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 – 4 years' custody	<b>Starting point</b> 1 years' custody  <b>Category range</b> 1 – 3 years' custody
<b>CATEGORY 2</b>	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 – 4 years' custody	<b>Starting point</b> 1 years' custody  <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> HL CO  <b>Category range</b> LL CO – 1 years' custody

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.

### 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 committed whilst on bail

#### ***Other aggravating factors:***

- Planning of event or campaign designed to stir up hatred
- Timing of incident – particularly sensitive social climate
- Vulnerable/impressionable audience
- Significant volume of publications published or disseminated (where not taken into account at Step One)
- Used multiple social media platforms to reach a wider audience (where not taken into account at Step One)
- Offence committed whilst on licence or subject to post sentence supervision
- Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

- Minor/peripheral role in group activity
- Previous good character
- No previous convictions **or** no relevant/recent convictions
- Offender took steps to limit dissemination
- Remorse
- Age and/or lack of maturity
- Mental disorder or learning disability
- 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 potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

**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**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

**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.

**Sentencing Council meeting:**  
**Paper number:**

**Lead Council members:**  
**Lead officials:**

**26 July 2019**  
**Annex C – Public Order Offences**  
**Resource Impact**  
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## **1 ISSUE**

1.1 This paper details the expected resource impact of the definitive public order guideline, using the guidelines agreed post consultation at January - May Council meetings. This has drawn on analysis of updated sentencing statistics, results from a road testing exercise and analysis of Crown Court sentencing transcripts.

## **2 RECOMMENDATION**

2.1 That the Council:

- considers the resource impact for these offences; and
- confirms it is content to sign off these guidelines bearing in mind the expected resource impact.

## **3 CONSIDERATION**

3.1 A summary of the expected impact of the guidelines is provided below for each offence.

### *Riot*

3.2 Riot is a very low volume offence, with 30 offenders sentenced over the past decade. The sentencing ranges in the guideline have been based on a number of transcripts of sentencing remarks and therefore it is not anticipated that there will be any impact on prison and probation resources.

## *Violent disorder*

3.3 For violent disorder, the road testing found that some judges felt sentences in the draft guideline were too low, and that the guideline should provide more adequately for the most serious offences. Therefore, for the definitive guideline, an additional higher harm category ('category 1') was included, with higher sentences than in the draft guideline (for example, the starting point for a category 1A offence in the draft guideline was three years, while the starting point for a category 1A offence in the definitive guideline is four years).

3.4 The draft guideline was developed using the latest available sentencing statistics at the time (these were for 2016). Since guideline development, statistics have become available for 2017 and 2018. These show that sentences are now higher than they were during the early stages of guideline development. For example, the table below illustrates that an estimated 26% of immediate custodial sentences imposed in 2017 were above 3 years (pre guilty plea), compared to 13% in 2016:

Sentence length band <sup>1</sup>	Number of offenders sentenced		Proportion of offenders sentenced	
	2016	2017	2016	2017
Up to and including 1 year	38	18	16%	10%
1 to 2	108	55	46%	32%
2 to 3	58	55	25%	32%
3 to 4	24	27	10%	16%
4 to 5	8	17	3%	10%
<b>Total</b>	<b>236</b>	<b>172</b>	<b>100%</b>	<b>100%</b>

3.5 A review of transcripts of sentencing remarks, and the latest available sentencing statistics, suggest that the definitive guideline is reflective of current sentencing practice, and therefore it is not expected to have an impact on prison or probation resources.

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<sup>1</sup> Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to and including 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.



## *Affray*

3.6 The sentencing ranges for the affray guideline were set with current sentencing practice in mind, and the road testing found that sentencing was generally similar under the existing guideline and under the draft guideline. Sentence levels in the definitive guideline are the same as in the draft guideline, and therefore it is not expected to have an impact on prison or probation resources.

### *S4 - Threatening behaviour*

3.7 At the April Council meeting, it was agreed that the starting point for the highest level of offending for threatening behaviour would be reduced from 12 weeks (the starting point in the draft guideline and in the existing guideline) to a high level community order. This was changed in view of the relativity of this offence to common assault - the starting point for the highest level of offending in the draft common assault guideline is a high level community order. Some of the other starting points and lower ends of the category ranges are also lower than in the existing guideline.

3.8 The table below illustrates the current sentencing distribution for threatening behaviour; around 30 per cent of offenders received a custodial sentence in 2017:

#### Threatening behaviour – sentence distribution

<b>Year</b>	<b>Absolute &amp; Conditional Discharge</b>	<b>Fine</b>	<b>Community Order</b>	<b>Suspended Sentence</b>	<b>Immediate Custody</b>	<b>Otherwise dealt with<sup>1</sup></b>	<b>Total</b>
<b>2013</b>	13%	24%	37%	11%	12%	2%	<b>100%</b>
<b>2014</b>	12%	25%	36%	11%	12%	4%	<b>100%</b>
<b>2015</b>	13%	25%	35%	13%	12%	2%	<b>100%</b>
<b>2016</b>	12%	23%	35%	14%	14%	2%	<b>100%</b>
<b>2017</b>	11%	23%	34%	15%	15%	2%	<b>100%</b>

3.9 It is possible that the decrease to sentence levels in the guideline could lead to a decrease in sentencing severity for threatening behaviour, whereby some individuals who currently receive a custodial sentence may now receive a community order.

3.10 It is difficult to quantify the magnitude of this impact, because there is limited information available about current sentencing practice (as this is a summary only offence it is usually sentenced at magistrates' courts, where transcripts of sentencing

remarks are not available) and therefore it is difficult to estimate how sentences may be impacted by the change.

3.11 If it is assumed that no more than a third of offenders who are currently given immediate custodial sentences will now receive community orders, then there may be a reduction in the requirement for prison places by up to 30 prison places. However, it is expected that many of the offenders who currently receive immediate custodial sentences will continue to receive such sentences given that the upper end of the sentencing range for the highest level of offending is the same as under the existing guideline (at 26 weeks' custody), and it is possible that much of the decrease in sentencing severity could come from offenders who currently receive suspended sentence orders now receiving community orders. Therefore there is an upper estimate that the guideline will not have an impact on the requirement for prison places, and a lower estimate that the guideline could lead to a reduction in the requirement for up to 30 prison places.

*S4A - Disorderly behaviour with intent*

3.12 Similarly to the offence of threatening behaviour, the starting point for the highest level of offending for the definitive guideline (high level community order) is lower than the starting point under the current guideline (12 weeks' custody). The starting points and most sentence ranges are unchanged compared to the draft guideline.

3.13 The table below illustrates the current sentencing distribution for disorderly behaviour with intent; around 18 per cent of offenders received a custodial sentence in 2017:

Disorderly behaviour with intent – sentence distribution

<b>Year</b>	<b>Absolute Discharge</b>	<b>Conditional Discharge</b>	<b>Fine</b>	<b>Community Order</b>	<b>Suspended Sentence</b>	<b>Immediate Custody</b>	<b>Otherwise dealt with<sup>1</sup></b>
<b>2013</b>	0%	17%	38%	26%	6%	9%	4%
<b>2014</b>	0%	18%	40%	23%	6%	8%	4%
<b>2015</b>	0%	18%	38%	25%	7%	9%	3%
<b>2016</b>	0%	15%	39%	25%	7%	10%	3%
<b>2017</b>	0%	15%	40%	24%	7%	11%	3%

3.14 Again, it is possible that the reduction in the starting point for this offence could lead to a reduction in the proportion of offenders receiving a custodial sentence, and an increase in the proportion receiving a community order.

3.15 Again, if it is assumed that no more than a third of offenders who are currently given immediate custodial sentences will now receive community orders, then there may be a reduction in the requirement for prison places by up to 10 places. However, as with the offence of threatening behaviour, it is expected that many of the offenders who currently receive immediate custodial sentences will continue to receive such sentences given that the upper end of the sentencing range for the highest level of offending is the same as under the existing guideline (at 26 weeks' custody), so much of the decrease in sentencing severity could come from offenders who currently receive suspended sentence orders now receiving community orders. Therefore there is an upper estimate that the guideline will not have an impact on the requirement for prison places, and a lower estimate that the guideline could lead to a reduction in the requirement for up to 10 prison places.

*Racially or religiously aggravated threatening behaviour and racially or religiously aggravated disorderly behaviour with intent*

3.16 For these offences, the road testing found that a large majority of magistrates felt that the sentences arrived at under the draft guideline were too high. It was decided instead to use the less prescriptive uplift approach that was agreed for the Arson and Criminal Damage guideline.

3.17 The uplift approach has previously been road tested for Arson and Criminal Damage, and the research found that there remains a risk that the guideline could result in slightly higher sentences.

3.18 It is therefore anticipated that the guideline could cause an increase to sentencing severity. As a higher estimate, if the number of offenders sentenced to immediate custody increased by around 50 per cent, then there would be a requirement for up to 30 additional prison places. However, as noted above, the starting point for the highest level of offending under the definitive guideline is lower than the starting point under the current guideline. It is possible that this change may offset the potential increases to sentencing due to the uplift approach, and therefore there is a lower estimate that the guideline will not have an impact on the

requirement for prison places, and an upper estimate that the guideline could lead to a requirement for up to 30 additional prison places.

*S5 - Disorderly behaviour and racially or religiously aggravated disorderly behaviour*

3.19 The maximum sentence for these offences is a fine, and therefore the guideline will not have an impact on prison and probation resources.

3.20 For the offence of disorderly behaviour, the definitive guideline introduces a new higher category of offending with a higher level of fine than in the existing MCSG guidance (a Band C fine). The guideline may therefore increase fine values for this offence. Also, because a fine is included for all levels of offending for racially or religiously aggravated disorderly behaviour - whereas data suggests that around 14 per cent of offenders sentenced for this offence received an absolute or conditional discharge in 2017 (after any reduction for guilty plea) – it is also possible that the draft guideline could increase the number of offenders sentenced to a fine for this offence.

*Stirring up racial or religious hatred, or hatred towards sexual orientation*

3.21 Fewer than 10 offenders per year were sentenced for this offence over the period 2008-2017, however in the latest year has been an increase, with 23 offenders sentenced in 2018:

Number of offenders sentenced for stirring up racial or religious hatred, or hatred towards sexual orientation, 2008-2018<sup>2</sup>

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
11	8	9	5	3	4	6	10	3	7	23

3.22 The sentencing ranges in the guideline have been based on a number of transcripts of sentencing remarks for these offences, and therefore the guideline is not expected to have an impact on prison or probation resources.

**Question 1: Does the Council have any comments on these findings?**

<sup>2</sup> These figures should be treated with caution due to potential data quality issues for this offence.

## **4 RISKS**

4.1 Two main risks have been identified:

### **Risk 1: The Council's assessment of current sentencing practice is inaccurate**

4.2 Inaccuracies in the Council's assessment of the impact of the guideline could cause unintended changes in sentencing practice when the new guideline comes into effect.

4.3 This risk has been mitigated by testing the guideline with sentencers during the consultation phase, inviting views on the guideline, and the collection and analysis of sentencing information. By comparing sentence outcomes to those that may have resulted from the draft guideline, it has been possible to detect and amend problematic areas of the guideline. However, there were limitations on the extent of the testing and analysis, so the risk cannot be fully eliminated.

### **Risk 2: Sentencers do not interpret the new guidelines as intended**

4.4 If sentencers do not interpret the guidelines as intended, this could cause a change in the average (mean) severity of sentencing, with associated resource effects.

4.5 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period have also enabled issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

4.6 The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

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