

# **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 steps set out below to determine the level of harm that has been <b>caused or was risked</b> .	
This step is assessed by reference to the <b>risk of injury/death or disorder</b> occurring and/or <b>actual harm</b> caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Severe physical harm caused</li> <li>• Severe psychological harm caused</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Serious physical harm caused</li> <li>• Serious psychological harm caused</li> <li>• Offence committed in circumstances where person(s) put at high risk of serious physical injury or death</li> <li>• Offence committed in circumstances where there is a high risk of serious disorder</li> <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>• Alarm/distress caused</li> <li>• Offence committed in circumstances where person(s) put at no/minimal risk of serious physical injury or death</li> <li>• Offence committed in circumstances where there is 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.**

**Where separate charges apply, for example in relation to any 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>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 <b>Category range</b> 10 – 16 years	<b>Starting point</b> 9 years <b>Category range</b> 7 – 11 years	<b>Starting point</b> 7 years <b>Category range</b> 5 - 9
<b>Category 2</b>	<b>Starting point</b> 9 years <b>Category range</b> 7 – 11 years	<b>Starting point</b> 7 years <b>Category range</b> 5 – 9 years	<b>Starting point</b> 4 years <b>Category range</b> 2 – 6 years
<b>Category 3</b>	<b>Starting point</b> 7 years <b>Category range</b> 5 – 9 years	<b>Starting point</b> 4 years <b>Category range</b> 2 – 6 years	<b>Starting point</b> 2 years <b>Category range</b> 1 – 3 years
<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 <b>Category range</b> 6 – 12 years	<b>Starting point</b> 7 years <b>Category range</b> 5 – 9 years	<b>Starting point</b> 5 years <b>Category range</b> 3 – 7 years
<b>Category 2</b>	<b>Starting point</b> 7 years <b>Category range</b> 5 – 9 years	<b>Starting point</b> 5 years <b>Category range</b> 3 – 7 years	<b>Starting point</b> 2 years <b>Category range</b> 1 – 4 years
<b>Category 3</b>	<b>Starting point</b> 5 years <b>Category range</b> 3 – 7 years	<b>Starting point</b> 2 years <b>Category range</b> 1 – 4 years	<b>Starting point</b> 1 year <b>Category range</b> High level community order – 3 years

<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. Offence was committed as part of a group (except where already taken into account at step one)
- A5. Commission of offence whilst under the influence of alcohol or drugs
- A6. Offender's actions resulted in a suspect avoiding arrest
- A7. Offender's actions resulted in a significant waste of resources
- A8. Firearm/ammunition held with multiple weapons (See step seven on totality when sentencing for more than one offence.)
- A9. Firearm prohibited under section 5 and subject to minimum term
- A10. Imitation firearm is readily convertible<sup>2</sup>
- A11. Firearm modified to make it more lethal
- A12. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A13. Steps taken to make imitation firearm appear more realistic (where not charged separately)
- A14. Serious damage to property caused (where not charged separately)
- A15. Abuse of position as registered firearms dealer or certificate holder
- A16. Expectation of substantial financial gain (except where already taken into account at step one)

<sup>2</sup> [Drop-down box to show relevant statutory provision or link to statute]

- A17. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A18. Offences taken into consideration
- A19. Failure to comply with current court orders
- A20. Offence committed on licence or post sentence supervision

**Factors reducing seriousness or reflecting personal mitigation**

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. Imitation firearm is crude or unrealistic
- M5. Voluntary surrender of firearm
- M6.
- M7. Involved through coercion, intimidation, or exploitation
- M8. Serious medical condition requiring urgent, intensive or long-term treatment
- M9. Age and/or lack of maturity
- M10. Mental disorder or learning disability
- M11. Sole or primary carer for dependent relatives
- M12. Co-operation with the police

**STEP THREE**

**Minimum Terms**

[To come once finalised]

**STEP FOUR**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FIVE**

**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 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 SIX**

**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

**STEP SEVEN**

**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP EIGHT**

**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**Forfeiture and destruction of firearms and cancellation of certificate**

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP NINE**

**Reasons**

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

**STEP TEN**

**Consideration for time spent on bail**

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

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