

# Annex E

## Aggravated burglary

Theft Act 1968 (section 10)

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 – 13 years' custody

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and section [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

## STEP ONE

### Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **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>A-</b> High Culpability	<ul style="list-style-type: none"><li>• Targeting of vulnerable victim</li><li>• A significant degree of planning or organisation</li></ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"><li>• Some degree of planning or organisation</li><li>• Other cases that fall between categories A and C because:<ul style="list-style-type: none"><li>○ Factors are present in A and C which balance each other out <b>and/or</b></li><li>○ The offender's culpability falls between the factors described in A and C</li></ul></li></ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"><li>• Involved through coercion, intimidation or exploitation</li><li>• Mental disorder or learning disability, where linked to the commission of the offence</li></ul>

## Harm

**The level of harm is assessed by weighing up all the factors of the case**

<b>Category 1</b>	<ul style="list-style-type: none"><li>• Substantial physical or psychological injury or other substantial impact on the victim</li><li>• Victim at home or on the premises (or returns) while offender present</li><li>• Violence used or threatened against the victim, particularly involving a weapon</li><li>• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)</li><li>• Soiling of property and/or extensive damage or disturbance to property</li><li>• Context of public disorder</li></ul>
<b>Category 2</b>	<ul style="list-style-type: none"><li>• Some physical or psychological injury or some other impact on the victim</li><li>• Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value)</li></ul>

	<ul style="list-style-type: none"> <li>• Ransacking or vandalism to the property</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• No violence used or threatened and a weapon is not produced</li> <li>• Limited physical or psychological injury or other limited impact on the victim</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 conditions

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting Point</b> 10 years' custody <b>Category Range</b> 9 -13 years' custody	<b>Starting Point</b> 8 years' custody <b>Category Range</b> 6 -11 years' custody	<b>Starting Point</b> 6 years' custody <b>Category Range</b> 4 – 9 years' custody
<b>Category 2</b>	<b>Starting Point</b> 8 years' custody <b>Category Range</b> 6 -11 years' custody	<b>Starting Point</b> 6 years' custody <b>Category Range</b> 4– 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> 6 years' custody <b>Category Range</b> 4-9 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> 1-4 years' custody

<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/imposition-of-community-and-custodial-sentences/>.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account at step one

## 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 or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

### *Other aggravating factors:*

- Weapon carried when entering premises  
Care should be taken to avoid double counting in these cases. If an offender commits an aggravated burglary with intent to steal/inflict GBH/ do criminal damage [a 9(1)(a) burglary], they commit the offence at the point of the trespass when they enter the building. So for these offences, all aggravated burglaries would have the weapon present on entry. For the aggravated version of s.9(1)(b) the offence is not committed until the point of the theft/attempted theft or GBH/attempt GBH and therefore the offender may have the weapon on entry or have picked it up in the address. *R v Sage (AG's ref SAGE [2019] EWCA Crim 934, [2019] 2 Cr App R (S) 50)* sets out that having a weapon present on entry is an essential element of an aggravated s.9(1)(a) offence and so care needs to be taken in s.9(1)(a) cases that the fact the offender has a weapon present on entry is not taken into account a second time. In s.9(1)(b) cases, however, the fact that the offender had taken a weapon to the premises, and was in possession of it when entering, will normally aggravate the offence (unless already taken into account at step 1).
- Use of face covering or disguise
- Offence committed in a dwelling
- Child at home (or returns home) when offence committed
- Offence committed at night
- Abuse of power and/or position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not captured at category one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

### **Factors reducing seriousness or reflecting personal mitigation**

- Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)
- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- 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 [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline.

### **STEP FIVE**

#### **Dangerousness**

The court should consider whether having regard to the criteria contained in [section 308 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#)) or an extended sentence (sections [266](#) and [279](#)). 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 Totality guideline.

### **STEP SEVEN**

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

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation. ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

### **STEP EIGHT**

#### **Reasons**

[Section 52 of the Sentencing Code](#) 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 and [section 325 of the Sentencing Code](#).