

## Possession of a firearm

This is a **simplified version** of the guideline **Firearms – Possession of prohibited weapon**. You can see the full version of the guideline on the Sentencing Council website.

Firearms Act 1968, s.5(1)(aba)

Indictable only

Maximum: 10 years' custody

Offence range: Discharge – 10 years' custody

It applies to all offenders aged 18 and older, who are sentenced on or after the effective date of this guideline, regardless of the date of the offence. The maximum sentence that applies to an offence is the maximum that applied at the date of the offence.

Guideline users should be aware that the Equal Treatment Bench Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

**This offence is subject to statutory minimum sentencing provisions which are taken into account at steps 2 and 3. Sentencers should follow each step of the guideline to ensure that all relevant factors are considered.**

### Step 1 – 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 information 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.

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 2.

References to weapon below include a component part of such a weapon.

### Type 1

Weapon that is designed or adapted to be capable of killing two or more people at the same time or in rapid succession

### Type 2

All other weapons falling between Type 1 and Type 3

### Type 3

Weapon that is not designed or adapted to be lethal

## Culpability – Other culpability factors

The court should weigh all the factors set out below in determining the offender's culpability.

### High culpability

- Offender uses firearm/ammunition for a criminal purpose
- Offender intends firearm/ammunition to be used for a criminal purpose, or is reckless as to whether it would be so used

## Medium culpability

- Firearm/ammunition produced or used (where not at High culpability)
- Firearm loaded or held with compatible ammunition or stun gun that is charged (where not at High culpability)
- Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not at High culpability)

## Lower culpability

- No use or intention to use

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 category

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

|                           |                        | Type of weapon         |                        |
|---------------------------|------------------------|------------------------|------------------------|
| Other culpability factors | 1                      | 2                      | 3                      |
| High                      | Culpability category A | Culpability category A | Culpability category B |
| Medium                    | Culpability category B | Culpability category B | Culpability category B |
| Lower                     | Culpability category B | Culpability category C | Culpability category C |

## Harm

Harm is assessed by reference to the **risk of harm** or **disorder** occurring and/or **actual alarm/distress** caused.

When considering the risk of harm, relevant considerations may include the location of the offence, the number and vulnerability of people exposed, especially children, and the accessibility and visibility of the weapon.

## Category 1

- Serious alarm/distress caused
- High risk of death or serious physical or psychological harm
- High risk of serious disorder

## Category 2

- All other cases falling between category 1 and category 3 because:
  - Factors in both 1 and 3 are present which balance each other out; and/or
  - The harm falls between the factors as described in 1 and 3

## Category 3

- No/minimal alarm/distress caused
- No/minimal risk of death or serious physical or psychological harm
- No/minimal risk of serious disorder

**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.**

## Step 2 – Starting point and category range

Having determined the category at step 1, 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.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that where the minimum term applies, a higher proportion of White offenders receive a sentence below the mandatory minimum term, and as a result less severe sentences compared to Black, Asian and Other ethnicity offenders. Where the minimum term does not apply, a slightly

lower proportion of White offenders receive an immediate custodial sentence compared to Black, Asian and Other minority ethnic offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 152 to 167 of the Equal Treatment Bench Book.

Table 1 should be used if the offence is subject to statutory minimum sentencing provisions.

Table 2 should be used for all other cases.

See step 3 for details of the minimum sentencing provisions and the approach to be taken to consideration of exceptional circumstances.

**TABLE 1: Offences subject to the statutory minimum sentence (includes Section 5(1)(aba))**

| <b>Harm</b>       |  | <b>Culpability</b>                                 |  |
|-------------------|--|--|--|
|                   | <b>A</b>                                       | <b>B</b>   | <b>C</b>   |
| <b>Category 1</b> | <b>Starting point</b><br>8 years' custody      | <b>Starting point</b><br>7 years' custody          | <b>Starting point</b><br>6 years' custody          |
|                   | <b>Category range</b><br>7 – 10 years' custody | <b>Category range</b><br>6 – 8 years' custody      | <b>Category range</b><br>5 – 7 years' custody      |
| <b>Category 2</b> | <b>Starting point</b><br>7 years' custody      | <b>Starting point</b><br>6 years' custody          | <b>Starting point</b><br>5 years 6 months' custody |
|                   | <b>Category range</b><br>6 – 8 years' custody  | <b>Category range</b><br>5 – 7 years' custody      | <b>Category range</b><br>5 – 7 years' custody      |
| <b>Category 3</b> | <b>Starting point</b><br>6 years' custody      | <b>Starting point</b><br>5 years 6 months' custody | <b>Starting point</b><br>5 years' custody          |

|  |   |   |   |
|--|---|---|---|
|  | <b>Category range</b><br>5 – 7 years' custody | <b>Category range</b><br>5 – 7 years' custody | <b>Category range</b><br>5 – 6 years' custody |
|--|---|---|---|

**TABLE 2: Offences not subject to the statutory minimum sentence**

| <b>Harm</b>       | <b>Culpability</b>   |  |  |
|-------------------|--|--|--|
|                   | <b>A</b>   | <b>B</b>   | <b>C</b>   |
| <b>Category 1</b> | <b>Starting point</b><br>3 years' custody                                    | <b>Starting point</b><br>2 years' custody                                    | <b>Starting point</b><br>1 year's custody                                    |
|                   | <b>Category range</b><br>2 – 5 years' custody                                | <b>Category range</b><br>1 – 3 years' custody                                | <b>Category range</b><br>High level<br>community order –<br>2 years' custody |
| <b>Category 2</b> | <b>Starting point</b><br>2 years' custody                                    | <b>Starting point</b><br>1 year's custody                                    | <b>Starting point</b><br>Medium level<br>community order                     |
|                   | <b>Category range</b><br>1 – 3 years' custody                                | <b>Category range</b><br>High level<br>community order –<br>2 years' custody | <b>Category range</b><br>Band C fine – High<br>level community<br>order      |
| <b>Category 3</b> | <b>Starting point</b><br>1 year's custody                                    | <b>Starting point</b><br>Medium level<br>community order                     | <b>Starting point</b><br>Band C fine   |
|                   | <b>Category range</b><br>High level<br>community order –<br>2 years' custody | <b>Category range</b><br>Band C fine – High<br>level community<br>order      | <b>Category range</b><br>Discharge – Low<br>level community<br>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 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:

- Firearm modified to make it more dangerous
- Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step 6 on totality when sentencing more than one offence.)
- Offence was committed as part of a group
- Involvement by the offender of others through coercion, intimidation or exploitation
- Abuse of position as registered firearms dealer, certificate holder or other authorised user
- Commission of offence whilst under the influence of alcohol or drugs
- Offender prohibited from possessing weapon or ammunition because of previous conviction (Care should be taken to avoid double counting matters taken into account when considering previous convictions. See step 6 on totality when sentencing more than one offence.)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

## Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Positive character and/or exemplary conduct (regardless of previous convictions)
- Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- No knowledge or suspicion that item possessed was firearm/ammunition
- No knowledge or suspicion that firearm/ammunition is prohibited
- Held on behalf of another through coercion, intimidation, or exploitation
- Voluntary surrender of firearm/ammunition

- Offender co-operated with investigation and/or made early admissions
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Pregnancy, childbirth and post-natal care
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education

## Step 3 – Minimum term and exceptional circumstances

### Minimum term

1. Where the minimum term provisions under section 311 and Schedule 20 of the Sentencing Code 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 term provisions apply when sentencing an offence under the Firearms Act 1968, section 5(1)(aba) committed on or after 22 January 2004. Note: the minimum term provisions do **not** apply to offences charged as conspiracies.
3. The minimum term applies to *all* such offences including the first offence. Where it applies the sentence cannot be reduced below the minimum term for a guilty plea (see step 5 – Reduction for guilty pleas).
4. The minimum term of five years applies to offenders aged 18 or over **when the offence was committed**. See below for guidance when sentencing offenders aged under 18 when the offence was committed.
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 9.3.3 Sentencing.
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 truly be 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**. Note: a guilty plea reduction applies in the normal way if the minimum term is not imposed (see step 5 – Reduction for guilty pleas).
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 2 above. The court should impose a sentence that is appropriate to the individual case.

## Step 4 – 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 5 – 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. Where a **minimum sentence** has been imposed under section 311 of the Sentencing Code, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the required minimum term.

## Step 6 – 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.

## Step 7 – 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 of the 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 this offence **and** is given a custodial sentence **or** a community order containing a requirement not to possess, use or carry a firearm.

### **Serious Crime Prevention Order**

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

## Step 8 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

## Step 9 – 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.

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