

# Burglary Offences Draft Guideline



# Burglary Offences Draft Guideline

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# Aggravated burglary

Theft Act 1968 (section 10)

AGGRAVATED

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This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Maximum: Life imprisonment

Offence range: 1–13 years' custody

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating greater harm**

Theft of/damage to property causing a significant degree of loss (economic, commercial, sentimental, or personal value) to the victim

Soiling, ransacking or vandalism of property

Victim at home or on the premises (or returns) while offender present

Significant physical or psychological injury or other significant trauma to the victim

Violence used or threatened against victim, particularly involving a weapon

**Factors indicating lesser harm**

No physical or psychological injury or other significant trauma to the victim

No violence used or threatened and a weapon is not produced

**Factors indicating higher culpability**

Offence 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 to the victim based on the victim's disability (or presumed disability)

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Victim or premises deliberately targeted

A significant degree of planning or organisation

Equipped for burglary (e.g. implements carried and/or use of vehicle)

Weapon present on entry

Member of a group or gang

**Factors indicating lower culpability**

Offender exploited by others

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

**STEP TWO****Starting point and category range**

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 or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	10 years' custody	9–13 years' custody
Category 2	6 years' custody	4–9 years' custody
Category 3	2 years' custody	1–4 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 starting point. **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:*

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 include:*

Child at home (or returns home) when offence committed

Offence committed at night

Abuse of power and/or position of trust

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution

In domestic violence cases, victim forced to leave their home

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

Subordinate role in a group or gang

Injuries caused recklessly

Nothing stolen or only property of very low value (economic, commercial, sentimental or personal) to the victim

Offender has made voluntary reparation to the victim

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

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

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

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relatives

**\* Where sentencing an offender for a qualifying third domestic burglary, the Court must apply Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000 and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.**

**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as 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.

Where a minimum mandatory sentence is imposed under section 111 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20%.

**STEP FIVE****Dangerousness**

An aggravated burglary is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, 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 offending behaviour.

**STEP SEVEN****Compensation and ancillary orders**

In all cases, courts 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Domestic burglary

## Theft Act 1968 (section 9)

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This is a serious specified offence for the purposes of section 224 Criminal Justice Act 2003 if it was committed with intent to:

- (a) inflict grievous bodily harm on a person, or
- (b) do unlawful damage to a building or anything in it.

Maximum: 14 years' custody

Offence range: Community order – 6 years' custody

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

**Category 1** Greater harm **and** higher culpability

**Category 2** Greater harm **and** lower culpability **or** lesser harm **and** higher culpability

**Category 3** Lesser harm **and** lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating greater harm**

Theft of/damage to property causing a significant degree of loss (economic, sentimental or personal value) to the victim

Soiling, ransacking or vandalism of property

Occupier at home (or returns home) while offender present

Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft

Violence used or threatened against victim

**Factors indicating lesser harm**

Nothing stolen or only property of very low value (economic, sentimental or personal) to the victim

Limited damage or disturbance to property

**Factors indicating higher culpability**

Offence 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 to the victim based on the victim's disability (or presumed disability)

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Victim deliberately targeted

A significant degree of planning or organisation

Knife or other weapon carried (where not charged separately)

Equipped for burglary (e.g. implements carried and/or use of vehicle)

Member of a group or gang

**Factors indicating lower culpability**

Offence committed on impulse, with limited intrusion into property

Offender exploited by others

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

**STEP TWO****Starting point and category range**

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 or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	3 years' custody	2–6 years' custody
Category 2	1 year's custody	High level community order – 2 years' custody
Category 3	High Level Community Order	Low level community order – 26 weeks' 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 starting point. **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.

When sentencing **category 2 or 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

#### 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 include:

Child at home (or returns home) when offence committed

Offence committed at night

Gratuitous degradation of the victim

Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution

In domestic violence cases, victim forced to leave their home

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

Offender has made voluntary reparation to the victim

Subordinate role in a group or gang

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

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

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

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relatives

\* Where sentencing an offender for a qualifying third domestic burglary, the Court must apply Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000 and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as 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.

Where a minimum mandatory sentence is imposed under section 111 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20%.

**STEP FIVE****Dangerousness**

A burglary offence under section 9 Theft Act 1986 is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, 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 offending behaviour.

**STEP SEVEN****Compensation and ancillary orders**

In all cases, courts 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Non-domestic burglary

## Theft Act 1968 (section 9)

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This is a serious specified offence for the purposes of section 224 Criminal Justice Act 2003 if it was committed with intent to:

- (a) inflict grievous bodily harm on a person, or
- (b) do unlawful damage to a building or anything in it.

Maximum: 10 years' custody

Offence range: Fine – 4 years' custody

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating greater harm**

Theft of/damage to property causing a significant degree of loss (economic, commercial, or personal value) to the victim

Soiling, ransacking or vandalism of property

Victim on the premises (or returns) while offender present

Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft

Violence used or threatened against victim

**Factors indicating lesser harm**

Nothing stolen or only property of very low value (economic, commercial or personal) to the victim

Limited damage or disturbance to property

**Factors indicating higher culpability**

Offence 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 to the victim based on the victim's disability (or presumed disability)

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Premises deliberately targeted (to include pharmacy or doctor's surgery)

A significant degree of planning or organisation

Knife or other weapon carried (where not charged separately)

Equipped for burglary (e.g. implements carried and/or use of vehicle)

Member of a group or gang

**Factors indicating lower culpability**

Offence committed on impulse, with limited intrusion into property

Offender exploited by others

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

**STEP TWO****Starting point and category range**

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 or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	2 years' custody	1–4 years' custody
Category 2	18 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band B fine – 18 weeks' 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 starting point. **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.

When sentencing **category 2 or 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community threshold as follows:

- has the community threshold been passed?

#### 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 include:*

Offence committed at night, particularly where staff present or likely to be present

Abuse of a position of trust

Gratuitous degradation of the victim

Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

Offender has made voluntary reparation to the victim

Subordinate role in a group or gang

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

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

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

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relatives

**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as 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**

A burglary offence under section 9 of the Theft Act 1986 is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, 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 offending behaviour.

**STEP SEVEN****Compensation and ancillary orders**

In all cases, courts 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

