

# Annex C: Draft guideline

## Bladed Articles and Offensive Weapons – Possession

### Possession of an offensive weapon in a public place

Prevention of Crime Act 1953 (section 1(1))

### Possession of an article with blade/point in a public place

Criminal Justice Act 1988 (section 139(1))

### Possession of an offensive weapon on school premises

Criminal Justice Act 1988 (section 139A(2))

### Possession of an article with blade/point on school premises

Criminal Justice Act 1988 (section 139A(1))

### Unauthorised possession in prison of a knife or offensive weapon

Prison Act 1952 (section 40CA)

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Triable either way

Maximum: 4 years' custody

Offence range: Fine – 2 years 6 months' custody

This guideline applies only to offenders aged 18 and older

**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

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Possession of a bladed article whether produced or not</li> <li>• Possession of a highly dangerous weapon whether produced or not</li> <li>• 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</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Weapon (other than a bladed article or a highly dangerous weapon) used to threaten or cause fear</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Possession of weapon falls just short of reasonable excuse</li> <li>• All other cases where characteristics for categories A or B are not present</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>• Offence committed at a school or other place where vulnerable people may be present</li> <li>• Offence committed in prison or other premises where there may be a risk of serious disorder</li> <li>• Serious alarm/distress</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Other cases where characteristics for categories 1 or 3 are not present</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Minimal risk of weapon being used to threaten or cause harm</li> <li>• No/minimal distress</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	C
Category 1	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> 9 months' custody	<b>Starting point</b> 3 months' custody
	<b>Category range</b> 1 year's custody – 2 years 6 months' custody	<b>Category range</b> 6 months' custody – 1 year 6 months' custody	<b>Category range</b> High level community order – 6 months' custody
Category 2	<b>Starting point</b> 9 months' custody	<b>Starting point</b> 3 months' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 6 months' custody – 1 year 6 months' custody	<b>Category range</b> High level community order – 6 months' custody	<b>Category range</b> Low level community order – 3 months' custody
Category 3	<b>Starting point</b> 3 months' 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 – 6 months' custody	<b>Category range</b> Low level community order – 3 months' custody	<b>Category range</b> Band C fine – High level community order

The table on the next page 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:**

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:**

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

Offender in a group or gang

Planning

Location of the offence (where not taken into account at step one)

Timing of the offence (where not taken into account at step one)

Attempts to conceal identity (for example, wearing a balaclava or hood)

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

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Failure to respond to warnings about behaviour

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

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

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

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

No planning

Sole or primary carer for dependent relatives

Co-operation with the police

**Minimum Terms – second or further relevant offence\***

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 6 months' imprisonment where this is a second or further relevant offence **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

**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 28 of the Criminal Justice and Courts Act 2015, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of 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.

**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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# Bladed Articles and Offensive Weapons – Threats

## **Threatening with an offensive weapon in a public place**

Prevention of Crime Act 1953 (section 1A)

## **Threatening with an article with blade/point in a public place**

Criminal Justice Act 1988 (section 139AA(1))

## **Threatening with an article with blade/point on school premises**

Criminal Justice Act 1988 (section 139AA(1))

## **Threatening with an offensive weapon on school premises**

Criminal Justice Act 1988 (section 139A(1))

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Triable either way

Maximum: 4 years' custody

Offence range: 6 months – 3 years' custody

This guideline applies only to offenders aged 18 and older

**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 – Higher culpability**

- Offence committed using a bladed article
- Offence committed using a highly dangerous weapon
- 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
- Significant degree of planning or premeditation

**B – Lower 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**

- Prolonged incident
- Serious alarm/distress
- Offence committed at a school or other place where vulnerable people may be present
- Offence committed in prison or other premises where there may be a risk of serious disorder

**Category 2**

- Other cases where characteristics for categories 1 or 3 are not present

**Category 3**

- Fleeting incident and no/minimal distress



**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> 2 years' custody	<b>Starting point</b> 1 year 6 months' custody
	<b>Category range</b> 1 year 6 months' custody – 3 years' custody	<b>Category range</b> 1 year's custody – 2 years' custody
Category 2	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 1 year's custody – 2 years' custody	<b>Category range</b> 9 months' custody – 1 year 6 months' custody
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 9 months' custody
	<b>Category range</b> 9 months' custody – 1 year 6 months' custody	<b>Category range</b> 6 months' custody – 1 year's custody

The table on the next page 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:**

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:**

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

Offender in a group or gang

Offender under the influence of alcohol or drugs

Location of the offence (where not taken into account at step one)

Timing of the offence (where not taken into account at step one)

Attempts to conceal identity (for example, wearing a balaclava or hood)

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

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Failure to respond to warnings about behaviour

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

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

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

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

Little or no planning

Sole or primary carer for dependent relatives

Co-operation with the police

**Minimum Terms**

When sentencing these offences a court must impose a sentence of at least 6 months' imprisonment **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

**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 28 of the Criminal Justice and Court Act 2015, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of 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.

**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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# Bladed Articles and Offensive Weapons – Youths

This guideline should be read alongside the *Overarching Principles – Sentencing Youths* definitive guideline which provides comprehensive guidance on the full range of sentences that are available by age. The guideline also includes details on issues such as grave crime determination and dangerousness.

## Mandatory Minimum Sentences – for 16 and 17 year olds only

### Possession of Bladed Articles or Offensive Weapons

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 4 months' Detention and Training Order where this is a second or further relevant offence **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

### Threatening with Bladed Articles or Offensive Weapons

When sentencing these offences a court must impose a sentence of at least 4 months Detention and Training Order **unless the court is of the opinion that there are particular circumstances relating to the offence or the offender which make it unjust to do so in all the circumstances.**

Where the offender is not subject to a mandatory minimum sentence the first step in determining the sentence is to assess the seriousness of the offence. This assessment is made by considering the nature of the offence and any aggravating and mitigating factors relating to the offence itself. **The fact that a sentence threshold is crossed does not necessarily mean that that sentence should be imposed.**

**STEP ONE****Offence Seriousness – Nature of the offence**

The boxes below give **examples** of the type of culpability and harm factors that may indicate that a particular threshold of sentence has been crossed.

**A non-custodial sentence\* may be the most suitable disposal where one or more of the following factors apply:**

- Possession of weapon falls just short of reasonable excuse
- No/minimal risk of weapon being used to threaten or cause harm
- Fleeting incident and no/minimal distress

**A custodial sentence or Youth Rehabilitation Order with Intensive Supervision and Surveillance\* or Fostering\* may be justified where one or more of the following factors apply:**

- Possession of a bladed article whether produced or not
- Possession of a highly dangerous weapon whether produced or not
- 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
- Prolonged incident and serious alarm/distress
- Offence committed at a school or other place where vulnerable people may be present

\* Where the young offender appears in the magistrates' court, and the conditions for a compulsory referral order apply, a referral order must be imposed unless the court is considering imposing a discharge, hospital order or custody.

**STEP TWO****Offence Seriousness – Aggravating and mitigating factors**

To complete the assessment of seriousness the court should consider the aggravating and mitigating factors relevant to the offence.

**Aggravating factors (non-exhaustive)**

Previous findings of guilt, 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

Offender in a group or gang

Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups

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

Location of the offence (where not taken into account at step one)

Timing of the offence (where not taken into account at step one)

Attempts to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

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

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Established evidence of community/wider impact

Failure to comply with current court orders

Failure to respond to warnings about behaviour

Significant degree of planning/premeditation

**Mitigating factors (non-exhaustive)**

No findings of guilt **or** no relevant/recent findings of guilt

Good character and/or exemplary conduct

Participated in offence due to peer pressure/bullying

Little or no planning

Co-operation with the police

### STEP THREE

#### Offender mitigation

Having assessed the offence seriousness the court should then consider the mitigation personal to the offender to determine whether a custodial sentence or a community sentence is necessary. The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one or a community sentence to a different means of disposal.

#### Offender mitigating factors (non-exhaustive)

Particularly young or immature offender

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

Unstable upbringing including but not limited to numerous care placements, exposure to drug and alcohol abuse, lack of attendance at school, lack of familial presence or support, victim of neglect and/or abuse, exposure to familial criminal behaviour

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

### 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 *Overarching Principles – Sentencing Youths* guideline.

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence, or
- by reducing a community sentence to a different means of disposal.

See the *Overarching Principles – Sentencing Youths* definitive guideline for details of other available sentences including Referral Orders and Reparation Orders.

### STEP FIVE

#### Review the sentence

The court must now review the sentence to ensure it is the most appropriate one for the young offender. This will include an assessment of the likelihood of reoffending and the risk of causing serious harm. A report from the Youth Offending Team may assist.



## Youth Rehabilitation Order

The following non-custodial sentences are available under a Youth Rehabilitation Order:

	Offender profile	Requirements of order
<b>Standard</b>	Low likelihood of re-offending <b>and</b> a low risk of serious harm	Primarily seek to repair harm caused through, for example: <ul style="list-style-type: none"> <li>• reparation;</li> <li>• unpaid work;</li> <li>• supervision; and/or</li> <li>• attendance centre.</li> </ul>
<b>Enhanced</b>	Medium likelihood of re-offending <b>or</b> a medium risk of serious harm	Seek to repair harm caused and to enable help or change through, for example: <ul style="list-style-type: none"> <li>• supervision;</li> <li>• reparation;</li> <li>• requirement to address behaviour e.g. drug treatment, offending behaviour programme, education programme; and/or</li> <li>• a combination of the above.</li> </ul>
<b>Intensive</b>	High likelihood of re-offending <b>or</b> a very high risk of serious harm	Seek to ensure the control of the young person through, for example: <ul style="list-style-type: none"> <li>• supervision;</li> <li>• reparation;</li> <li>• requirement to address behaviour;</li> <li>• requirement to monitor or restrict movement, e.g. prohibited activity, curfew, exclusion or electronic monitoring; and/or</li> <li>• a combination of the above.</li> </ul>

### YRO with Intensive Supervision and Surveillance (ISS) or YRO with fostering

A YRO with an ISS or fostering requirement can only be imposed where the court is of the opinion that the offence has crossed the custody threshold.

The YRO with ISS includes an extended activity requirement, a supervision requirement and curfew. The YRO with fostering requires the offender to reside with a local authority foster parent for a specified period of up to 12 months.

### Custodial Sentences

Where a custodial sentence is **unavoidable** the length of custody imposed must be commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate 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. The individual factors relating to the offence and the offender are of the greatest importance and may present good reason to impose a sentence outside of this range.

# Annex D:

## Fine bands and community orders

### FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B, C).

Fine Band	Starting point ( <i>applicable to all offenders</i> )	Category range ( <i>applicable to all offenders</i> )
<b>Band A</b>	50% of relevant weekly income	25–75% of relevant weekly income
<b>Band B</b>	100% of relevant weekly income	75–125% of relevant weekly income
<b>Band C</b>	150% of relevant weekly income	125–175% of relevant weekly income

### COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>• 40–80 hours of unpaid work;</li> <li>• prohibited activity requirement;</li> <li>• curfew requirement within the lowest range (for example, up to 16 hours per day for a few weeks);</li> <li>• attendance centre requirement (where available);</li> <li>• exclusion requirement, without electronic monitoring, for a few months</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• greater number of hours of unpaid work (for example, 80–150 hours);</li> <li>• prohibited activity requirement;</li> <li>• curfew requirement within the middle range (for example, up to 16 hours for 2–3 months);</li> <li>• exclusion requirement lasting in the region of 6 months</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• 150–300 hours of unpaid work;</li> <li>• curfew requirement up to 16 hours per day for 4–6 months;</li> <li>• exclusion order lasting in the region of 12 months</li> </ul>

The tables are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.