

Annex C: Draft guidelines

Unlawful act manslaughter

Common law

Triable only on indictment
Maximum: Life Imprisonment

Offence range: 1 – 24 years' custody

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.

Draft guideline - not in force

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

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors.

A – Very high culpability	Very high culpability may be indicated by: <ul style="list-style-type: none"> • the extreme character of one or more culpability B factors and /or • a combination of culpability B factors
B – Factors indicating high culpability	Death was caused in the course of an unlawful act which involved an intention to cause harm falling just short of GBH
	Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender
	Death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role
	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
C – Factors indicating medium culpability	Cases falling between high and lower including but not limited to <ul style="list-style-type: none"> • where death was caused in the course of an unlawful act which involved an intention to cause harm (or recklessness as to whether harm would be caused) that falls between high and lower culpability • where death was caused in the course of committing or escaping from a less serious offence but in which the offender played more than a minor role
D – Factors indicating lower culpability	Death was caused in the course of an unlawful act <ul style="list-style-type: none"> • which was in defence of self or other(s) (where not amounting to a defence) OR • where there was no intention to cause any harm and no obvious risk of anything more than minor harm OR • in which the offender played a minor role
	The offender's responsibility was substantially reduced by mental disorder,* learning disability or lack of maturity

**Little, if any, weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

HARM

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

Draft guideline - not in force

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.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability			
A	B	C	D
Starting point 18 years' custody	Starting point 12 years' custody	Starting point 6 years' custody	Starting point 2 years' custody
Category range 11 – 24 years' custody	Category range 8 – 16 years' custody	Category range 3 – 9 years' custody	Category range 1 – 4 years' custody

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

On the next page 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.

Draft guideline - not in force

Care should be taken to avoid double counting factors already taken into account in assessing culpability

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
(See step five for a consideration of dangerousness)

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:

History of significant violence or abuse towards victim by offender

Involvement of others through coercion, intimidation or exploitation

Victim particularly vulnerable due to age or disability

Significant mental or physical suffering caused to the deceased

Victim was providing a public service or performing a public duty

Commission of offence whilst under the influence of alcohol or drugs

Persistence of violence

Offence involved use of a weapon

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Blame wrongly placed on other(s)

Abuse of a position of trust

Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse

History of significant violence or abuse towards the offender by the victim

Lack of premeditation

Good character and/or exemplary conduct

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

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Draft guideline - not in force

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 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**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A 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**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 SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon 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 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 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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Draft guideline - not in force

Gross negligence manslaughter

Common law

Triable only on indictment
Maximum: Life imprisonment

Offence range: 1 – 18 years' custody

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.

Draft guideline - not in force

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

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors.

A – Very high culpability	Very high culpability may be indicated by: <ul style="list-style-type: none"> • the extreme character of one or more culpability B factors and /or • a combination of culpability B factors
B – Factors indicating high culpability	The offender persisted in the negligent conduct in the face of the obvious suffering of the deceased
	The negligent conduct was in the context of other serious criminality
	The negligent conduct was motivated by financial gain (or avoidance of cost)
	The negligent conduct persisted over a long period of time (weeks or months)
	The offender was in a dominant role if acting with others
	The offender was clearly aware of the risk of death arising from the offender's negligent conduct
C – Factors indicating medium culpability	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
	Cases falling between high and lower because: <ul style="list-style-type: none"> • factors are present in high and lower which balance each other out and/or • the offender's culpability falls between the factors as described in high and lower
D – Factors indicating lower culpability	The offender did not appreciate the risk of death arising from the negligent conduct
	The negligent conduct was a lapse in the offender's otherwise satisfactory standard of care
	The offender was in a lesser or subordinate role if acting with others
	The offender's responsibility was substantially reduced by mental disorder,* learning disability or lack of maturity

**Little, if any weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*

HARM

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

Draft guideline - not in force

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.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability			
A	B	C	D
Starting point 12 years' custody	Starting point 8 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
Category range 10 – 18 years' custody	Category range 6 – 12 years' custody	Category range 3 – 7 years' custody	Category range 1 – 4 years' custody

In cases of motor manslaughter regard should be had to the *Causing death by dangerous driving* definitive guideline to ensure that the sentence for manslaughter does not fall below what would be imposed under that guideline.

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

On the next page 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.

Draft guideline - not in force

Care should be taken to avoid double counting factors already taken into account in assessing culpability

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
(See step five for a consideration of dangerousness)

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:

History of significant violence or abuse towards victim by offender

Involvement of others through coercion, intimidation or exploitation

Significant mental or physical suffering caused to the deceased

Commission of offence whilst under the influence of alcohol or drugs

Offence involved use of a weapon

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Blame wrongly placed on other(s)

The duty of care arose from a close or familial relationship where the deceased was dependent on the offender

Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse

The duty of care was a temporary one created by the particular circumstances

Good character and/or exemplary conduct

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

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Draft guideline - not in force

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.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A 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**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 SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon 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 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 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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Draft guideline - not in force

Manslaughter by reason of loss of control

Common law and Coroners and Justice Act 2009 (sections 54 and 55)

Triable only on indictment
Maximum: Life imprisonment

Offence range: 3 – 20 years' custody

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.

Draft guideline - not in force

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

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors.

A – High culpability	Planning of criminal activity (including the carrying of a weapon) before the loss of control
	Offence committed in the context of other serious criminal activity
	Use of a firearm (whether or not taken to the scene)
	Loss of self control in circumstances which only just met the criteria for a qualifying trigger
	Concealment, destruction, defilement or dismemberment of the body (where not separately charged)
B – Medium culpability:	Cases falling between high and lower because: <ul style="list-style-type: none"> • factors are present in high and lower which balance each other out and/or • the offender's culpability falls between the factors as described in high and lower
C – Lower culpability	Qualifying trigger represented an exceptionally high degree of provocation

HARM

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

Draft guideline - not in force

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.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability		
A	B	C
Starting point 14 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
Category range 10 – 20 years' custody	Category range 5 – 12 years' custody	Category range 3 – 6 years' custody

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

On the next page 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.

Draft guideline - not in force

Care should be taken to avoid double counting factors already taken into account in assessing culpability or in the finding of a qualifying trigger

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
(See step five for a consideration of dangerousness)

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:

History of significant violence **or** abuse towards victim by offender

Significant mental or physical suffering caused to the deceased

Commission of offence whilst under the influence of alcohol or drugs

Offence involved use of a weapon

Persistence of violence

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Blame wrongly placed on other(s)

Involvement of others through coercion, intimidation or exploitation

Victim was providing a public service or performing a public duty

Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse

Intention to cause serious bodily harm rather than to kill

History of significant violence or abuse towards the offender by the victim

Violence initiated by the victim

Good character and/or exemplary conduct

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

Age and/or lack of maturity

Sole or primary carer for dependent relatives

Mental disorder* or learning disability

*Little, if any weight should be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice

Draft guideline - not in force

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.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A 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**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 SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon 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 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 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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Draft guideline - not in force

Manslaughter by reason of diminished responsibility

Common law and Homicide Act 1957 (section 2)

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 – 40 years' custody

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.

Draft guideline - not in force

STEP ONE**Determining the offence category****Assessing the degree of responsibility retained: high medium or lower**

- A conviction for manslaughter by reason of diminished responsibility necessarily means that the offender's ability to understand the nature of the conduct, form a rational judgment and/or exercise self control was substantially impaired.
- The court should reach a determination as to the level of responsibility the offender **retained**:
 - High;
 - Medium; or
 - Lower
- The court should consider the extent to which the offender's responsibility was diminished by the mental disorder **at the time of the offence** with reference to the medical evidence and all the relevant information available to the court.
- The degree to which the offender's actions or omissions contributed to the seriousness of the mental disorder at the time of the offence will be a relevant consideration. For example:
 - where an offender exacerbates the mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice this will increase responsibility.

HARM

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is already taken into account in the sentencing levels at step two.

Draft guideline - not in force

STEP TWO**Starting point and category range**

Having determined the level of responsibility retained 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.

Level of responsibility retained		
High	Medium	Lower
Starting point 24 years' custody	Starting point 15 years' custody	Starting point 7 years' custody
Category range 15 – 40 years' custody	Category range 10 – 25 years' custody	Category range 3 – 12 years' custody

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

On the next page is a **non-exhaustive** list of additional factual 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.

Draft guideline - not in force

Care should be taken to avoid double counting factors already taken into account in assessing the level of responsibility retained

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
(See step five for a consideration of dangerousness)

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:

A significant degree of planning or premeditation

Victim particularly vulnerable due to age or disability

Significant mental or physical suffering caused to the deceased

Abuse of a position of trust

History of significant violence or abuse towards victim by offender

Commission of offence whilst under the influence of alcohol or drugs

Other(s) put at risk of harm by the offending

Death occurred in the context of dishonesty or the pursuit of financial gain

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Involvement of others through coercion, intimidation or exploitation

Victim was providing a public service or performing a public duty

Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

Offence involved use of a weapon

Blame wrongly placed on other(s)

Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse

Intention to cause serious bodily harm rather than to kill

Lack of premeditation

History of significant violence or abuse towards the offender by the victim

The offender acted in self-defence or in fear of violence (where not amounting to a defence)

The offender made genuine and sustained attempts to seek help for the mental disorder

Belief by the offender that the killing was an act of mercy

Good character and/or exemplary conduct

Draft guideline - not in force

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

Age and/or lack of maturity

Sole or primary carer for dependent relatives

STEP THREE

Consideration of dangerousness

- The court should then go on to consider whether having regard to the criteria contained in Chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a **life sentence** (section 224A or section 225) or an **extended sentence** (section 226A).
- When sentencing to a life sentence the notional determinate term (identified at step two above) should be used as the basis for setting the minimum term.

STEP FOUR

Consideration of mental health disposals

Where:

- (i) the evidence of medical practitioners suggests that the offender is currently suffering from a mental disorder,
- (ii) treatment is available, and
- (iii) the court considers that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case,

the court should consider these matters in the following order:

Section 45A hospital and limitation direction

- a. Before a hospital order is made under s.37 MHA (with or without a restriction order under s.41), consider whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under s.45A MHA. In deciding whether a s.45A direction is appropriate the court should bear in mind that the direction will cease to have effect at the end of a determinate sentence.
- b. If the mental disorder can appropriately be dealt with by a direction under s.45A(1), then the judge should make such a direction. (Not available for a person under the age of 21 at the time of conviction).

Section 37 hospital order and section 41 restriction order

- c. If a s.45A direction is not appropriate the court must then consider, before going further, whether:
 - (1) the mental disorder is treatable, (2) once treated there is no evidence the offender would be dangerous, and (3) the offending is due to that mental disorder. If these conditions are met a hospital order under s.37/41 is likely to be the correct disposal.

Draft guideline - not in force

Section 47 transfer to hospital

- d. The court must also have regard to the question of whether other methods of dealing with the offender are available including consideration of whether the powers under s.47 MHA for transfer from custody to hospital for treatment would, taking in to consideration all of the circumstances, be appropriate.
- There must always be sound reasons for departing from the usual course of imposing a custodial sentence and where a custodial sentence is not imposed, the judge must set out these reasons.

STEP FIVE**IN ALL CASES consider factors that may warrant an adjustment to the sentence**

Cases of manslaughter by reason of diminished responsibility vary considerably on the facts of the offence and on the circumstances of the offender.

- The court should review whether the sentence as a whole meets the objectives of punishment, rehabilitation and protection of the public in a fair and proportionate way.
- Relevant factors will include the psychiatric evidence and the regime on release.
- An adjustment may require a departure from the sentence range identified at step two above.

STEP SIX**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 SEVEN**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. Note: the limitations on reductions for murder do not apply to manslaughter.

STEP EIGHT**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 NINE**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

Draft guideline - not in force

STEP TEN**Reasons**

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

STEP ELEVEN**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.