

Firearms – Possession of prohibited weapon

Possession, purchase or acquisition of a prohibited weapon or ammunition

Firearms Act 1968 (section 5(1), 5(1A))

Indictable only:

Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c)
Section 5(1A)(a)

Triable either way:

Section 5(1)(b)
Section 5(1A)(b), (c), (d), (e), (f), (g)

Maximum: 10 years' custody

Offence range: [To come]

This offence is subject to statutory minimum sentencing provisions. See STEP THREE for further details.

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 - High culpability:

- Firearm or ammunition at the highest end of dangerousness,* for prohibited weapon/ammunition, whether loaded or not
- Firearm at higher end of dangerousness for prohibited weapon – loaded or with compatible ammunition
- Firearm discharged
- Firearm used to threaten or cause fear
- Firearm used for other criminal purpose
- Firearm or ammunition intended for use in criminal activity or to transfer to possession of criminal associate

B - Medium culpability:

- Firearm at higher end of dangerousness for prohibited weapon – unloaded and without compatible ammunition
- Ammunition (where not at culpability A or C)
- Firearm at lower end of dangerousness for prohibited weapon – loaded or with compatible ammunition
- Firearm produced (where not at culpability A)
- Held on behalf of another without coercion, intimidation or exploitation
- Intended for use including for self-protection (where not at culpability A)

C - Lower culpability:

- Firearm at lower end of dangerousness for prohibited weapon (examples may include a stun gun under section 5(1)(b) Firearms Act 1968) – unloaded and without ammunition
- Component part of firearm
- Very small quantity of prohibited ammunition
- Firearm not produced
- No intention to use
- Held on behalf of another as a result of pressure, coercion, intimidation
- Held on behalf of another as a result of naivety/exploitation

* NB a firearm or ammunition at the highest end of dangerousness is one that is capable of causing serious injury or death to a large number of people at once or in quick succession, over and above the harm posed by other prohibited weapons. For example, an automatic firearm under section 5(1)(a) or a rocket launcher under section 5(1)(ae) are likely to fall into this category.

<p>Harm The court should consider the factors set out below to determine the level of harm that has been caused or was risked.</p> <p>Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.</p>	
<p>Category 1</p>	<ul style="list-style-type: none"> • Offence committed at a school or other place where vulnerable people are likely to be present • Offence committed in circumstances where there is a risk of serious disorder • Serious alarm/distress • Presence of children
<p>Category 2</p>	<ul style="list-style-type: none"> • Offence committed in public place not falling into category 1 • Firearm or ammunition in open view • Presence of others • Some alarm/distress
<p>Category 3</p>	<ul style="list-style-type: none"> • Firearm or ammunition not in view • Firearm or ammunition stored securely • Possession of very short duration • No/minimal alarm/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.			
This offence is subject to statutory minimum sentencing provisions. See STEP THREE for further details.			
Harm	Culpability		
	A	B	C
Category 1	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 2	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 3	Starting point	Starting point	Starting point
	Category range	Category range	Category range

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In 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:

1. Offender prohibited from possessing weapon because of previous conviction (where not charged separately)
2. Offence was committed as part of a group
3. Offender has contact with criminal associates, including through the purchase or supply of drugs

4. Commission of offence whilst under the influence of alcohol or drugs
5. Attempts to conceal/dispose of evidence
6. Failure to comply with current court orders
7. Offence committed on licence or post sentence supervision
8. Offences taken into consideration
9. Significant degree of planning/premeditation
10. Registered firearms dealer
11. Attempt to involve or implicate others in possession
12. Firearm/ammunition kept as part of a stockpile of weapons

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Good character and/or exemplary conduct
3. Serious medical condition requiring urgent, intensive or long-term treatment
4. Age and/or lack of maturity where it affects the responsibility of the offender
5. Mental disorder or learning disability
6. Sole or primary carer for dependent relatives
7. Co-operation with the police
8. Firearm incomplete (except where component part taken into account at step 1) or incapable of being discharged
9. Little or no planning or came into possession involuntarily
10. Voluntary surrender of firearm/ammunition
11. No knowledge or suspicion of presence of firearm/ammunition
12. Unaware firearm/ammunition is prohibited
13. Genuine mistake about whether covered by lawful authorisation

STEP THREE **Minimum Terms** [To come]

STEP FOUR
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 FIVE **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 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

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

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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.