

# Annex E

## Domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 14 years' custody

Offence range: Low level community order- six years' custody

This is a **specified offence** for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code 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.

This offence is **indictable only** where:

- a. it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment; or
- b. any person in the dwelling was subjected to violence or the threat of violence; or
- c. if the defendant were convicted, it would be a third qualifying conviction for domestic burglary.

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) 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 ONE

### Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **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**

<b>Culpability</b> demonstrated by one or more of the following:	
<b>A-</b> High Culpability	<ul style="list-style-type: none"><li>• Targeting of vulnerable victim</li><li>• A significant degree of planning or organisation</li><li>• Knife or other weapon carried (<u>see step six on totality when sentencing more than one offence</u>)</li></ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"><li>• Some degree of planning or organisation</li><li>• Equipped for burglary (where not in high culpability)</li><li>• Other cases that fall between categories A and C because:<ul style="list-style-type: none"><li>○ Factors are present in A and C which balance each other out <b>and/or</b></li><li>○ The offender's culpability falls between the factors described in A and C</li></ul></li></ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"><li>• Offence committed on impulse, with limited intrusion into property</li><li>• Involved through coercion, intimidation or exploitation</li><li>• Mental disorder or learning disability, where linked to the commission of the offence</li></ul>

## Harm

**The level of harm is assessed by weighing up all the factors of the case**

Category 1	<ul style="list-style-type: none"><li>• Much greater emotional impact on the victim than would normally be expected</li><li>• Occupier at home (or returns home) while offender present</li><li>• Violence used or threatened against the victim</li><li>• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)</li><li>• Soiling of property and/or extensive damage or disturbance to property</li><li>• Context of public disorder</li></ul>
Category 2	<ul style="list-style-type: none"><li>• Greater emotional impact on the victim than would normally be expected</li></ul>

	<ul style="list-style-type: none"> <li>• Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value)</li> <li>• Ransacking or vandalism to the property</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)</li> <li>• Limited damage or disturbance to property</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 conditions

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) 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.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

For cases of particular gravity, sentences above the top of the range may be appropriate.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting Point</b> 3 years' custody <b>Category Range</b> 2 -6 years' custody	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 year 6 months' custody <b>Category Range</b> 6 months – 3 years' custody
<b>Category 2</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 year 6 months' custody <b>Category Range</b> 6 months – 3 years' custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> High level community order-2 years' custody

<b>Category 3</b>	<b>Starting Point</b> 1 year 6 months' custody <b>Category Range</b> 6 months - 3 years' custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> High level community order-2 years' custody	<b>Starting Point</b> High level community order <b>Category Range</b> Low level community order-6 months custody
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Below 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.

### **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
- 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:*

- Child at home (or returns home) when offence committed
- Offence committed at night
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not already taken into account at step one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

### **Factors reducing seriousness or reflecting personal mitigation**

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction

- 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
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline. Where a minimum sentence is imposed under [section 314 of the Sentencing Code](#), the sentence must not be less than 80 percent of the appropriate custodial period after any reduction for a guilty plea.

### **STEP FIVE**

#### **Dangerousness**

A burglary offence under section 9 Theft Act 1968 is a specified offence 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 [section 308 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

### **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 Totality guideline.

### **STEP SEVEN**

#### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

### **STEP EIGHT**

#### **Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP NINE**

#### **Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).