

# Firearms Offences Guideline Consultation

9 October 2019

# **Firearms Offences Guideline**

## **Consultation**

Published on 9 October 2019

The consultation will end on 14 January 2020

# About this consultation

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| <b>To:</b>   | This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.   |
| <b>Duration:</b>   | From 9 October 2019 to 14 January 2020   |
| <b>Enquiries (including requests for the paper in an alternative format) to:</b> | <p>Office of the Sentencing Council<br/>Royal Courts of Justice<br/>(full address as below)</p> <p>Tel: 020 7071 5793<br/>Email: <a href="mailto:info@sentencingcouncil.gov.uk">info@sentencingcouncil.gov.uk</a></p>  |
| <b>How to respond:</b>   | <p>Please send your response by 14 January 2020 to:</p> <p>Ruth Pope<br/>Office of the Sentencing Council<br/>Room EB20<br/>Royal Courts of Justice<br/>Strand<br/>London WC2A 2LL</p> <p>Email: <a href="mailto:consultation@sentencingcouncil.gov.uk">consultation@sentencingcouncil.gov.uk</a></p>  |
| <b>Additional ways to feed in your views:</b>                                    | <p>This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:</p> <p><a href="http://www.sentencingcouncil.org.uk">www.sentencingcouncil.org.uk</a></p> <p>A series of consultation meetings is also taking place. For more information, please use the “Enquiries” contact details above.</p>   |
| <b>Response paper:</b>   | Following the conclusion of this consultation exercise, a response will be published at: <a href="http://www.sentencingcouncil.org.uk">www.sentencingcouncil.org.uk</a>  |
| <b>Freedom of information:</b>   | <p>We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.</p> <p>In addition, responses may be shared with the Justice Committee of the House of Commons.</p> <p>Our <a href="#">privacy notice</a> sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.</p> |



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# Introduction

## What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on its proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

## What is this consultation about?

The Council is proposing to issue sentencing guidelines for the most commonly sentenced firearms offences. Currently, there is only one sentencing guideline for firearms offences: that of carrying a firearm in a public place which is included in the Magistrates Courts Sentencing Guidelines (MCSG). There are no sentencing guidelines for firearms offences for use in the Crown Court.

The Council has produced this consultation paper in order to seek the views of as many people as possible interested in the sentencing of firearms offences.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

## Background

Although relatively low volume, firearms offences are regarded as serious with several offences carrying maximum sentences of 10 years or life. Firearms legislation is complex with 35 statutes governing the use of firearms as well as numerous pieces of secondary legislation. The Law Commission reviewed firearms legislation in 2015 and recommended codification, due to the complexity and volume of the legislative provisions. The Policing and Crime Act 2017 made some clarifying amendments to the main legislation, but there were no plans to pursue codification. The Council sought the views of sentencers and concluded that in the absence of steps to codify the law, sentencing guidelines would provide some helpful clarification in this difficult area of sentencing.

In the absence of sentencing guidelines courts rely on previous decisions of the Court of Appeal to give guidance on sentencing firearms cases. The leading firearms sentencing case is *R v Avis* (1998) 1 Cr. App. R. 420. *Avis* gives guidance on which offences will generally merit a custodial sentence and sets out a series of questions to consider in determining the appropriate level of sentence. Subsequent guideline decisions have covered possession with intent to endanger life (*R v Wilkinson* (2009) EWCA Crim 1925) and transfer of prohibited weapons and ammunition (*Attorney-General's Reference (Nos. 128-141 and 8-10 of 2015) (R v Stephenson)* [2016] 2 Cr. App. R. (S.) 12).

In developing these guidelines the Council has had regard to the purposes of sentencing and aims to provide sentencers with a structured approach to sentencing firearms offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences.

## Which offences are covered by the draft guidelines?

The eight draft guidelines cover the following offences under the Firearms Act 1968:

- Possession, purchase or acquisition of a prohibited weapon or ammunition – sections 5(1), 5(1A);
- Possession, purchase or acquisition of a firearm/ammunition/shotgun without a certificate – sections 1(1), 2(1);
- Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition – sections 21(4), 21(5);
- Carrying a firearm in a public place – section 19;
- Possession of firearm with intent to endanger life – section 16;
- Possession of firearm or imitation firearm with intent to cause fear of violence – section 16A;
- Use of firearm or imitation firearm to resist arrest/possession of firearm or imitation firearm while committing a Schedule 1 offence/carrying firearm or imitation firearm with criminal intent – sections 17(1), 17(2), 18; and
- Manufacture/sell or transfer/possess for sale or transfer/purchase or acquire for sale or transfer prohibited weapon or ammunition – section 5(2A).

It should be noted that the firearms offences above relate to matters such as possessing, carrying, making or transferring firearms but not causing injury (although this may be a consequence of the offences). Where a firearm is used to cause death or injury, other charges would be brought in addition to the firearms offence – such as murder, attempted murder, or causing grievous bodily harm.

## Which other offences did the Council consider including?

There are numerous firearms offences spread across at least 35 pieces of legislation some of which are rarely, if ever, prosecuted. In addition to the offences covered by the eight draft guidelines the Council considered including the following offences, but concluded that the low volumes did not justify doing so:

| Legislation   | Offence description   | Statutory maximum | Volumes (2018) <sup>1</sup>      |
|---|---|-------------------|----------------------------------|
| Firearms Act 1968, s4(1)  | Shorten shotgun barrel - less than 60.96 cm / 24 ins                                    | 7 years           | MC 0<br>CC 1                     |
| Firearms (Amendment) Act 1988, s6(1)  | Shorten smooth-bore gun barrel of section 1 firearm                                     | 5 years           | <b>Total 1</b>                   |
| Firearms Act 1968, s4(3)  | Convert thing / imitation firearm into a firearm  | 7 years           | <b>Total 0</b>                   |
| Firearms Act 1968, s4A(1) <sup>2</sup>  | Possession of articles for conversion of imitation firearms                             | 5 years           | <b>Total 0</b>                   |
| Customs and Excise Management Act 1979, ss50(3), (4), (5A)(a)                         | Import prohibited weapons / ammunition with intent to evade a prohibition / restriction | Life              | MC 14<br>CC 5<br><b>Total 19</b> |
| Customs and Excise Management Act 1979, ss170(1)(b) and (3), 170(2), (3), and (4A)(a) | Fraudulent evasion of prohibition / restriction   | Life              | MC 1<br>CC 10<br><b>Total 11</b> |

<sup>1</sup> Number of adult offenders sentenced in 2018 (principal offences) in magistrates' courts (MC) and Crown Courts (CC). Source: Court Proceedings Database, Ministry of Justice.

<sup>2</sup> New offence inserted by the Policing and Crime Act 2017; came into force 2 May 2018.



When sentencing a firearms offence not specifically covered by a sentencing guideline courts will be able to refer to any analogous guideline for assistance in sentencing in accordance with the [General guideline](#).

When issued as definitive guidelines these guidelines will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are in the Sentencing Council's definitive guideline, [Overarching Principles – Sentencing Children and Young People](#).

## **Responding to the consultation**

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guidelines more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the sentences that should be passed for firearms offences; and
- anything else that you think should be considered.

In the following sections each of the proposed guidelines is outlined in detail and you will be asked to give your views. You can give your views by answering some or all of the questions below either by email to [consultation@sentencingcouncil.gov.uk](mailto:consultation@sentencingcouncil.gov.uk) or by using the online [questionnaire](#).

## **What else is happening as part of the consultation process?**

This is a 14 week public consultation. During the consultation period, the Council will hold a number of consultation meetings to seek views from criminal justice organisations and other groups with an interest in this area as well as sentencers. We are conducting research interviews with a sample of Crown Court judges and magistrates to ascertain how they would apply the guideline and to identify whether the guideline presents any practical difficulties for sentencers. Once results of the consultation and the research has been considered, the final guidelines will be published and used by all courts.

Alongside this consultation paper, the Council has produced a statistical bulletin and a resource assessment. These can be found on the Sentencing Council's website: <https://www.sentencingcouncil.org.uk/consultations/>

***Question 1: What is your name?***

***Question 2: What is your email address?***

***Question 3: What is your organisation?***

***Question 4: Do you agree that the proposed guidelines cover the relevant firearms offences? If not, please state which other offence(s) you think should be covered.***

# Possession of a prohibited weapon

## Overview

Certain firearms and types of ammunition are prohibited by law. These are strict liability offences; a person can commit the offence without any criminal intention or without knowing that the item in their possession was a prohibited weapon. The weapon does not need to be complete or in working order. For more details see Crown Prosecution Service (CPS) [guidance](#). The statutory maximum sentence for this offence is 10 years' custody.

Section 5 of the Firearms Act 1968 sets out the types of weapon and ammunition that it is an offence to possess. Most cases sentenced come under one of the following:

- Section 5(1)(aba) – 'any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signalling apparatus';
- Section 5(1)(b) – 'any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing';
- Section 5(1A)(a) – 'any firearm which is disguised as another object'.

Some offences, including those under section 5(1)(aba) and section 5(1A)(a), are subject to a five year minimum sentence 'unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so'. These offences can only be sentenced in the Crown Court.

In 2018, around 720 offenders were sentenced for possession of a prohibited weapon. Nearly half related to offences subject to the mandatory minimum five years' custody, and the other half related to offences which are not subject to the mandatory minimum term (mostly offences under section 5(1)(b), such as possession of a stun gun). Offences not subject to the minimum term can be sentenced in magistrates' courts or the Crown Court.

In 2018, the vast majority of offenders sentenced for offences subject to the minimum term were sentenced to immediate custody (90 per cent). For offences not subject to the minimum term, just under a third of offenders were sentenced to a community order (30 per cent), followed by a suspended sentence (26 per cent) and immediate custody (17 per cent). See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

In 2018, overall 31 per cent of cases where the minimum term applied received a sentence below the five year minimum term. This can be broken down as 67 per cent where it was a disguised firearm under section 5(1A)(a) (typically a stun gun disguised as a torch or a mobile phone) and 14 per cent of other cases (typically a hand gun).

There has been a recent change in charging practice in that the CPS will now generally charge possession of a disguised stun gun under section 5(1)(b) rather than section 5(1A)(a) where there are no significant aggravating features, which means that the minimum term will not apply to such cases. The expected consequence of this change is that exceptional circumstances will be found in fewer cases charged under section 5(1A)(a). See the [resource assessment](#) for more details.

## Developing the guideline

The draft guideline is available at [www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-of-prohibited-weapon-for-consultation-only](http://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-of-prohibited-weapon-for-consultation-only)

### Step 1 – Determining the offence category

The Council considered the general approach to sentencing firearms cases set out in the leading case of *Avis (R v Avis)* (1998) 1 Cr. App. R. 420) in which it was said that a court should ask itself the following questions:

1. What sort of weapon is involved?
2. What (if any) use has been made of the firearm?
3. With what intention (if any) did the defendant possess or use the firearm?
4. What is the defendant's record?

As with all Sentencing Council guidelines, at step 1 the court must assess culpability and harm. The Council decided that for this offence the type of weapon was a crucial factor in determining the seriousness of the offence and that this should be considered separately from the use to which the weapon was put and the intention of the offender. Consequently the Council has used a two stage model for assessing culpability. The first stage is to categorise the weapon into one of three types.

### Culpability – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Courts should take care to ensure the categorisation is appropriate for the specific weapon. Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in Step 2.

References to weapon below include a component part of such a weapon.

#### Type 1

Weapon that is designed to be capable of killing two or more people at the same time or in rapid succession

- This would **normally** include a weapon under:
  - section 5(1)(a)
  - section 5(1)(ab)
  - section 5(1)(aba)
  - section 5(1)(ac)
  - section 5(1)(ad)
  - section 5(1)(ae)
  - section 5(1A)(c)
  - [section 5(1)(ag) – not yet in force]
  - [section 5(1)(ba) – not yet in force]

#### Type 2

All other weapons falling between Type 1 and Type 3

- This would **normally** include a weapon under:
  - section 5(1)(af)
  - section 5(1A)(a)

Ammunition under section 5(1)(c), 5(1A)(b) and (d)-(g) (where not at Type 3)

#### Type 3

Weapon that is not designed to be lethal

- This would **normally** include a weapon under section 5(1)(b)

Very small quantity of ammunition

The categorisation will normally follow from the section under which the offence is charged, but the guideline aims to make it clear that this should not be applied inflexibly. It should also be clear that the categorisation applies whether or not the weapon is in working order and applies equally to component parts of a weapon. The guideline refers to two types of weapon under the Firearms Act that are not yet in force in respect of this offence. These were introduced by the Offensive Weapons Act 2019 and relate to rapid firing rifles and bump stock devices. They will only appear in the definitive guideline (and other guidelines to which they relate) if and when they are in force.

The next stage is to assess other culpability factors relating to the use of the weapon and the intention of the offender:

**Culpability – Other culpability factors**

The court should weigh all the factors set out below in determining the offender's culpability.

**High culpability**

- Firearm discharged
- Firearm loaded
- Firearm/ammunition used or intended for use for criminal purpose

**Medium culpability**

- Firearm/ammunition produced (where not at High culpability)
- Firearm held with compatible ammunition or stun gun that is charged
- Firearm/ammunition intended for use (where not at High culpability)

**Lower culpability**

- No use or intention to use

From this the court must then assess the overall culpability of the offender:

**Culpability category**

Identify the final culpability category in the table below, considering both the **Type of weapon** and **Other culpability factors**.

| Other culpability factors | Type of weapon         |                        |                        |
|---------------------------|------------------------|------------------------|------------------------|
|                           | 1                      | 2                      | 3                      |
| High                      | Culpability category A | Culpability category A | Culpability category B |
| Medium                    | Culpability category B | Culpability category B | Culpability category B |
| Lower                     | Culpability category B | Culpability category C | Culpability category C |

The allocation of the final culpability category has been set to try to reflect a fair assessment of overall culpability taking into account the type of weapon, any use to which it has been put and the offender's intention. The categories have been tested against transcripts of sentencing remarks to see how they would apply in real cases.

The court must then assess the harm caused or risked by the offence. This is assessed by reference to the risk of harm or disorder occurring and/or actual alarm or distress caused. The assessment of risk of harm can be difficult, and the guideline sets out relevant matters to take into account.

## Harm

Harm is assessed by reference to the **risk of harm or disorder** occurring and/or **actual alarm/distress** caused. When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.

### Category 1

- Serious alarm/distress caused
- High risk of death or serious physical or psychological harm
- High risk of serious disorder

### Category 2

- All other cases falling between category 1 and category 3 because:
  - Factors in both 1 and 3 are present which balance each other out; and/or
  - The harm falls between the factors as described in 1 and 3

### Category 3

- No/minimal alarm/distress caused
- No/minimal risk of death or serious physical or psychological harm
- No/minimal risk of serious disorder

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.

Other factors which might make the case more or less serious such as the weapon being incapable of being used, the weapon being modified to make it more dangerous, the offender being in contact with criminal associates, or the offender being involved through intimidation are included in aggravating and mitigating factors at step 2 below.

***Question 5: Do you have any comments on the assessment of culpability and harm at step 1 of the possession of a prohibited weapon guideline?***

## Step 2 – Starting point and category range

There are two sentence tables for this guideline: Table 1 for offences subject to the five year minimum term (the relevant subsections are listed in the sentence table) and Table 2 for other offences. As the maximum sentence is 10 years, the range of sentences is limited in Table 1.

### Step 2 – Starting point and category range

Having determined the category at step 1, 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.

Table 1 should be used if the offence is subject to statutory minimum sentencing provisions, unless there are exceptional circumstances. Table 2 should be used for all other cases. See STEP 3 for further details on the minimum sentencing provisions and exceptional circumstances.

TABLE 1: Offences subject to the statutory minimum sentence (Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a))

| Harm       | Culpability                             |   |   |
|------------|---|---|---|
|            | A                                       | B   | C   |
| Category 1 | Starting point<br>8 years' custody      | Starting point<br>7 years' custody          | Starting point<br>6 years' custody          |
|            | Category range<br>7 – 10 years' custody | Category range<br>6 – 8 years' custody      | Category range<br>5 – 7 years' custody      |
| Category 2 | Starting point<br>7 years' custody      | Starting point<br>6 years' custody          | Starting point<br>5 years 6 months' custody |
|            | Category range<br>6 – 8 years' custody  | Category range<br>5 – 7 years' custody      | Category range<br>5 – 7 years' custody      |
| Category 3 | Starting point<br>6 years' custody      | Starting point<br>5 years 6 months' custody | Starting point<br>5 years' custody          |
|            | Category range<br>5 – 7 years' custody  | Category range<br>5 – 7 years' custody      | Category range<br>5 – 6 years' custody      |

TABLE 2: Offences not subject to the statutory minimum sentence

| Harm       | Culpability  |  |  |
|------------|--|--|--|
|            | A  | B  | C  |
| Category 1 | Starting point<br>3 years' custody                                 | Starting point<br>2 years' custody                                 | Starting point<br>1 year's custody                                 |
|            | Category range<br>2 – 5 years' custody                             | Category range<br>1 – 3 years' custody                             | Category range<br>High level community order –<br>2 years' custody |
| Category 2 | Starting point<br>2 years' custody                                 | Starting point<br>1 year's custody                                 | Starting point<br>Medium level community<br>order                  |
|            | Category range<br>1 – 3 years' custody                             | Category range<br>High level community order –<br>2 years' custody | Category range<br>Band D fine – High level<br>community order      |
| Category 3 | Starting point<br>1 year's custody                                 | Starting point<br>Medium level community<br>order                  | Starting point<br>Band C fine                                      |
|            | Category range<br>High level community order –<br>2 years' custody | Category range<br>Band D fine – High level<br>community order      | Category range<br>Discharge – Low level<br>community order         |



The proposed starting points and sentence ranges have been set with reference to current sentencing practice. Information on current sentencing practice comes from data from the Ministry of Justice's Court Proceedings Database (CPD) and from the analysis of transcripts of sentencing remarks relating to cases of possession of a prohibited weapon. The Council's intention is that the guideline will not alter overall sentence levels for this offence.

***Question 6: Do you have any comments on the sentence levels in the possession of a prohibited weapon guideline?***

Having arrived at a starting point using the relevant sentence table, the guideline then requires the court to consider aggravating and mitigating factors which may result in an increase or decrease in the sentence arrived at so far. As with all guidelines it is at this stage that any relevant previous convictions must be taken into account. The guideline also includes standard aggravating and mitigating factors that appear across guidelines.

There are a number of aggravating factors specific to firearms offences:

- Firearm modified to make it more dangerous
- Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step 6 on totality when sentencing more than one offence.)
- Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step 1)
- Abuse of position as registered firearms dealer or certificate holder
- Offender prohibited from possessing weapon or ammunition because of previous conviction (See step 6 on totality when sentencing more than one offence.)

There are also mitigating factors specific to firearms offences:

- Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- No knowledge or suspicion that item possessed was firearm/ammunition
- No knowledge or suspicion that firearm/ammunition is prohibited
- Held on behalf of another through coercion, intimidation, or exploitation
- Voluntary surrender of firearm/ammunition

The Council's aim is to include the factors that are most likely to be relevant to the sentencing of this offence, although the lists are non-exhaustive.

***Question 7: Do you have comments on the aggravating and mitigating factors for the possession of a prohibited weapon guideline?***

**Step 3 – Minimum term**

This is an additional step for courts to follow where the five year minimum term applies. It explains when the minimum term applies and the effect on the sentence. It then sets out in detail how the court should determine whether there are exceptional circumstances that would justify **not** imposing the minimum term.

At paragraph 2 the list of offences to which the minimum term applies, includes in square brackets those relating to the two weapons which are not yet in force and to which the minimum term provisions have not yet been applied - these will be included in the definitive guideline only if and when they take effect.



Paragraph 4 of the guidance refers to the fact that the minimum term provisions are different where the offender was under 18 when the offence was committed. While this guideline is applicable only to offenders aged 18 or over at the date of conviction, courts may refer to adult sentencing guidelines when sentencing under 18s in accordance with the guideline [Overarching Principles – Sentencing Children and Young People](#). The Council therefore considered that it would assist courts to include information on the applicability of the minimum term to offenders aged under 18. Additionally, there may be cases of offenders who are under 18 at the date of the offence but 18 by the time of conviction to which adult sentencing guidelines apply, but to which the under 18 minimum term provisions apply. Details of the approach to be taken in sentencing offenders aged under 18 when the offence was committed are provided in a drop down section in the digital guideline.

Paragraphs 6-14 provide detailed guidance on the consideration of exceptional circumstances. In developing this the Council drew on case law, in particular the recent case of *R v Nancarrow* [2019] EWCA 470 which set out a summary of the principles. The Council was surprised to note that exceptional circumstances were being found in around two thirds of disguised weapons cases (section 5(1A)(a)) which appeared to run counter to the principle that in order to justify the disapplication of the five year minimum, the circumstances of the case must be truly exceptional.

Setting out the principles in a guideline is likely to lead to them being more consistently applied, which in turn could lead to exceptional circumstances being found in fewer cases. However, the recent change in CPS charging practice (see page 6 above) should mean that only the more serious cases will be charged under section 5(1A)(a) and many of the cases where exceptional circumstances had previously been found would now be prosecuted under section 5(1)(b) to which the minimum term provisions do not apply.

The guidance (at paragraph 14) suggests that where exceptional circumstances are found the court could sentence with reference to the range of sentences under culpability A of Table 2.

### Step 3 – Minimum term

1. Where the minimum term provisions under section 51A of the Firearms Act 1968 apply, a court must impose a sentence of at least five years' custody irrespective of plea **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.**

#### Applicability

2. The minimum term provisions apply when sentencing an offence under the Firearms Act 1968, section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) [(ag, (ba))] or (c) or section 5(1A)(a).
3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of five years applies to offenders aged 18 or over **when the offence was committed**. See below for guidance when sentencing offenders aged under 18 when the offence was committed.
5. Where the minimum term applies, this should be stated expressly.

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6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:

- the particular circumstances of the offence **and**
- the particular circumstances of the offender

either of which may give rise to exceptional circumstances

7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.

8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

### Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

10. The circumstances must be truly exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.

11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

12. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- The type of weapon or ammunition falling under type 2 or 3
- One or more mitigating factors
- A plea of guilty

### Where exceptional circumstances are found

13. If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

14. The court may find it useful to refer to the range of sentences under culpability A of Table 2 (Offences not subject to the statutory minimum sentence) in STEP 2 above. The court should impose a sentence that is appropriate to the individual case.

### Sentencing offenders aged under 18 at the date of the offence



1. Where the offender is aged 16 or 17 **when the offence was committed**, the minimum term is three years' custody. Where the offender is under 16 **when the offence was committed**, the minimum term does not apply.
2. Subject to the minimum term, where the offender is aged under 18 **at the date of conviction** the court should determine the sentence in accordance with the *Sentencing Children and Young People* guideline, particularly paragraphs 6.42-6.49 on custodial sentences.
3. This guidance states at paragraph 6.46: "When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the 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 mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age."
4. The considerations above on exceptional circumstances relating to the offence or offender apply equally when sentencing offenders aged 16 or 17 at the date of the offence.

***Question 8: Do you have any comments on the minimum term and exceptional circumstances guidance in step 3 of the possession of a prohibited weapon guideline?***

**Steps 4 to 9**

The remaining steps of the guideline follow the normal structure of Sentencing Council guidelines. The features that are particular to firearms offences are:

At step 5 – Reduction for guilty pleas, the guidance notes that where the minimum term provisions apply the guilty plea cannot reduce the sentence to less than five years.

At step 7 – Ancillary orders, there is guidance on the forfeiture and disposal of firearms and on the cancellation of firearms or shotgun certificates. There is also a reference to considering imposing a Serious Crime Prevention order.

***Question 9: Are there any other matters that should be addressed in steps 4 to 9 of the possession of a prohibited weapon guideline?***

# Possession without certificate

## Overview

Certain firearms, ammunition and shotguns can be lawfully obtained and kept if the relevant certificate is held. However, it is an offence under section 1 or section 2 of the Firearms Act 1968 to possess these items without a valid certificate. These are strict liability offences. For more details see [CPS guidance](#). The maximum sentence for these offences is five years' custody unless it is the aggravated offence (shortened shotgun or converted firearm) in which case the maximum is 7 years' custody.

In 2018, 140 offenders were sentenced for possession without a certificate. These offences can be sentenced in magistrates' courts or the Crown Court. In 2018, the majority of offenders received a custodial sentence (43 per cent were sentenced to immediate custody, and a further 20 per cent received a suspended sentence). See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

## Developing the guideline

The draft guideline is available at [www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-without-certificate-for-consultation-only](http://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-without-certificate-for-consultation-only)

### Step 1 – Determining the offence category

As with the possession of a prohibited weapon guideline, the Council decided that for this offence the type of weapon was a crucial factor in determining the seriousness of the offence and that this should be considered separately from the use to which the weapon was put and the intention of the offender. Consequently the Council has used a two stage model for assessing culpability. The first stage is to categorise the weapon into one of three types.

## Step 1 – 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**.

| Culpability – Type of weapon   |  |
|--|--|
| Use the table below to identify an initial culpability category based on the <b>type of weapon</b> only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order. Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP 2. |  |
| Type 1   | <ul style="list-style-type: none"> <li>• Shotgun which has been shortened within the meaning of section 4(4)</li> <li>• Firearm which has been converted within the meaning of section 4(4)</li> </ul> |
| Type 2   | <ul style="list-style-type: none"> <li>• All other firearms or shotguns</li> <li>• Ammunition (where not at Type 3)</li> </ul>   |
| Type 3   | <ul style="list-style-type: none"> <li>• Very small quantity of ammunition</li> </ul>  |

For this offence most cases will be type 2: typically a shotgun or rifle that has not been converted or shortened.

The next stage is to assess other culpability factors relating to the use of the weapon and the intention of the offender:

| Culpability – Other culpability factors   |   |
|---|---|
| The court should weigh all the factors set out below in determining the offender's culpability. |   |
| High culpability  | <ul style="list-style-type: none"> <li>• Firearm discharged, other than for lawful purpose</li> <li>• Firearm loaded</li> <li>• Firearm/ammunition used or intended for use for criminal purpose</li> </ul>   |
| Medium culpability  | <ul style="list-style-type: none"> <li>• Firearm/ammunition produced (where not at High culpability)</li> <li>• Firearm held with compatible ammunition</li> <li>• Firearm/ammunition used or intended for use (where not at High culpability)</li> </ul> |
| Lower culpability   | <ul style="list-style-type: none"> <li>• No use or intention to use</li> </ul>  |

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.

These 'other' culpability factors are effectively the same as those for possession of a prohibited weapon.

The draft guideline was tested against transcripts of sentencing remarks to assess how to balance the type of weapon and 'other' culpability factors to arrive at the culpability

category and this had resulted in a different categorisation for 'medium' culpability cases compared to the possession of a prohibited weapon guideline.

### Culpability category

Identify the final culpability category in the table below, considering both the **Type of weapon** and **Other culpability factors**.

| Other culpability factors | Type of weapon         |                        |                        |
|---------------------------|------------------------|------------------------|------------------------|
|                           | 1                      | 2                      | 3                      |
| High                      | Culpability category A | Culpability category A | Culpability category B |
| Medium                    | Culpability category A | Culpability category B | Culpability category C |
| Lower                     | Culpability category B | Culpability category C | Culpability category C |

The assessment of harm is the same as for the possession of a prohibited weapon guideline and, as with that guideline, other factors which might make the case more or less serious, are included in aggravating and mitigating factors at step 2 below.

#### Harm

Harm is assessed by reference to the **risk of harm or disorder** occurring and/or **actual alarm/distress** caused. When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.

##### Category 1

- Serious alarm/distress caused
- High risk of death or serious physical or psychological harm
- High risk of serious disorder

##### Category 2

- All other cases falling between category 1 and category 3 because:
  - Factors in both 1 and 3 are present which balance each other out; and/or
  - The harm falls between the factors as described in 1 and 3

##### Category 3

- No/minimal alarm/distress caused
- No/minimal risk of death or serious physical or psychological harm No/minimal risk of serious disorder

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.

**Question 10: Do you have any comments on the assessment of culpability and harm at step 1 of the possession without a certificate guideline?**

### Step 2 – Starting point and category range

There is only one sentence table for this guideline, but users are instructed to consider increasing the sentences shown where the seven year maximum applies (in 2018 this was

about six per cent of cases). The starting points and ranges have been set to reflect current sentencing practice with most cases expected to fall into culpability B or C.

Having determined the category at step 1, 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.

The table below refers to offences for which the maximum sentence is five years. Where the offence is aggravated under section 4(4) (i.e. the weapon is a converted firearm or shortened shotgun), the maximum penalty is seven years and sentencers should consider increasing the sentences shown.

(see next page for the sentence table)

| Harm       | Culpability   |   |   |
|------------|---|---|---|
|            | A   | B   | C   |
| Category 1 | Starting point<br>3 years 6 months' custody                     | Starting point<br>2 years 6 months' custody                     | Starting point<br>1 year's custody                              |
|            | Category range<br>2 years 6 months' – 4 years 6 months' custody | Category range<br>1 – 3 years 6 months' custody                 | Category range<br>High level community order – 2 years' custody |
| Category 2 | Starting point<br>2 years 6 months' custody                     | Starting point<br>1 year's custody                              | Starting point<br>Medium level community order                  |
|            | Category range<br>1 – 3 years 6 months' custody                 | Category range<br>High level community order – 2 years' custody | Category range<br>Discharge – 6 months' custody                 |
| Category 3 | Starting point<br>1 year's custody                              | Starting point<br>Medium level community order                  | Starting point<br>Band A fine                                   |
|            | Category range<br>High level community order – 2 years' custody | Category range<br>Band A fine – 6 months' custody               | Category range<br>Discharge – Band C Fine                       |

**Question 11: Do you have any comments on the sentence levels in the possession without a certificate guideline?**

The aggravating and mitigating factors in this guideline are similar to those in the possession of a prohibited weapon guideline with a few additions:

Aggravating factors specific to this offence:

- Possession continued after certificate refused or revoked
- Poor record of firearms compliance

Mitigating factors specific to this offence:

- Steps taken to obtain certificate
- Certificate not obtained/renewed due to genuine oversight or misunderstanding
- Good record of firearms licensing compliance



***Question 12: Do you have comments on the aggravating and mitigating factors for the possession without a certificate guideline?***

**Steps 3 to 8**

The minimum term provisions do not apply to this guideline, but in other respects the remaining steps are the same as for the possession of a prohibited weapon guideline.



# Possession by person prohibited

## Overview

Section 21 of the Firearms Act 1968 prohibits a person who has been sentenced to custody from possessing any firearm or ammunition for certain periods. In summary: a person who has been sentenced to custody for three years or more is permanently prohibited from possessing a firearm or ammunition; a person sentenced to imprisonment for three months or more but less than three years is prohibited for five years from the date of release, or from the date of sentence in the case of a suspended sentence. For more details see [CPS guidance](#). It is also an offence for someone to supply a firearm or ammunition to a person he knows or has reasonable grounds for believing to be prohibited.

This is a strict liability offence. The maximum sentence is five years' custody.

In 2018, around 60 offenders were sentenced for possession by a person prohibited. These offences can be sentenced in magistrates' courts or the Crown Court. In 2018, the majority of offenders received a custodial sentence (52 per cent were sentenced to immediate custody, and a further 28 per cent received a suspended sentence). See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

## Developing the guideline

The draft guideline is available at [www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-by-person-prohibited-for-consultation-only](http://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-by-person-prohibited-for-consultation-only)

### Step 1 – Determining the offence category

As with the other possession guidelines, the Council decided that for this offence the type of weapon was a crucial factor in determining the seriousness of the offence and that this should be considered separately from the use to which the weapon was put and the intention of the offender. Consequently the Council has used a two stage model for assessing culpability. The first stage is to categorise the weapon into one of three types.

#### Culpability – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP 2.

|   |
|---|
| <b>Type 1</b> <ul style="list-style-type: none"> <li>Firearm or ammunition prohibited under section 5 (where not at Type 2)</li> </ul>  |
| <b>Type 2</b> <ul style="list-style-type: none"> <li>Weapon prohibited under section 5(1)(b)</li> <li>Firearm, shotgun or air weapon for which a certificate is required</li> <li>Ammunition for which a certificate is required (where not at Type 3)</li> </ul> |
| <b>Type 3</b> <ul style="list-style-type: none"> <li>Air weapon that is not prohibited and for which no certificate is required</li> <li>Very small quantity of ammunition</li> </ul>   |

Weapons that fall into type 1 or type 2 could be prosecuted as possession of a prohibited weapon or possession without a certificate respectively and therefore many cases prosecuted as possession by a person prohibited will involve type 3 weapons (typically air weapons).

The assessment of other culpability factors relating to the use of the weapon and the intention of the offender is identical to the possession without a certificate guideline:

| <b>Culpability- Other culpability factors</b><br>The court should weigh all the factors set out below in determining the offender's culpability   |
|---|
| <b>High culpability</b> <ul style="list-style-type: none"> <li>Firearm discharged, other than for lawful purpose</li> <li>Firearm loaded</li> <li>Firearm/ammunition used or intended for use for criminal purpose</li> </ul>   |
| <b>Medium culpability</b> <ul style="list-style-type: none"> <li>Firearm/ammunition produced (where not at High culpability)</li> <li>Firearm held with compatible ammunition</li> <li>Firearm/ammunition used or intended for use (where not at High culpability)</li> </ul> |
| <b>Lower culpability</b> <ul style="list-style-type: none"> <li>No use or intention to use</li> </ul>   |

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.

The categorisation of culpability and the assessment of harm are the same as for the possession without a certificate guideline and other factors which might make the case more or less serious, are included in aggravating and mitigating factors at step 2 below.

## Culpability category

Identify the final culpability category in the table below, considering both the **Type of weapon** and **Other culpability factors**.

| Other culpability factors | Type of weapon         |                        |                        |
|---------------------------|------------------------|------------------------|------------------------|
|                           | 1                      | 2                      | 3                      |
| High                      | Culpability category A | Culpability category A | Culpability category B |
| Medium                    | Culpability category A | Culpability category B | Culpability category C |
| Lower                     | Culpability category B | Culpability category C | Culpability category C |

### Harm

Harm is assessed by reference to the **risk of harm or disorder** occurring and/or **actual alarm/distress** caused.

When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.

#### Category 1

- Serious alarm/distress caused
- High risk of death or serious physical or psychological harm
- High risk of serious disorder

#### Category 2

- All other cases falling between category 1 and category 3 because:
  - Factors in both 1 and 3 are present which balance each other out; and/or
  - The harm falls between the factors as described in 1 and 3

#### Category 3

- No/minimal alarm/distress caused
- No/minimal risk of death or serious physical or psychological harm
- No/minimal risk of serious disorder

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.

**Question 13: Do you have any comments on the assessment of culpability and harm at step 1 of the possession by person prohibited guideline?**

## Step 2 – Starting point and category range

The sentence table for this guideline is very similar to that for the possession without a certificate guideline. Overall sentence levels for this offence are lower than for the possession with a certificate offence, but the lower sentences are due to the fact that these offences are more likely to involve type 3 weapons. The starting points and ranges have been tested against transcripts of sentencing remarks and reflect current sentencing practice.

## Step 2 – 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.

| Harm       | Culpability   |   |   |
|------------|---|---|---|
|            | A   | B   | C   |
| Category 1 | Starting point<br>3 years 6 months' custody                     | Starting point<br>2 years 6 months' custody                     | Starting point<br>1 year's custody                              |
|            | Category range<br>2 years 6 months – 4 years 6 months' custody  | Category range<br>1 – 3 years 6 months' custody                 | Category range<br>High level community order – 2 years' custody |
| Category 2 | Starting point<br>2 years 6 months' custody                     | Starting point<br>1 year's custody                              | Starting point<br>Medium level community order                  |
|            | Category range<br>1 – 3 years 6 months' custody                 | Category range<br>High level community order – 2 years' custody | Category range<br>Band A fine – 6 months' custody               |
| Category 3 | Starting point<br>1 year's custody                              | Starting point<br>Medium level community order                  | Starting point<br>Band A fine                                   |
|            | Category range<br>High level community order – 2 years' custody | Category range<br>Band A fine – 6 months' custody               | Category range<br>Discharge – Band C Fine                       |

### ***Question 14: Do you have any comments on the sentence levels in the possession by person prohibited guideline?***

The aggravating and mitigating factors in this guideline are similar to those in the possession of a prohibited weapon guideline with just one mitigating factor specific to this offence:

- Genuine misunderstanding about terms of prohibition

### ***Question 15: Do you have comments on the aggravating and mitigating factors for the possession by person prohibited guideline?***

## Steps 3 to 8

The minimum term provisions do not apply to this guideline, but in other respects the remaining steps are the same as for the possession of a prohibited weapon guideline except that Serious Crime Prevention Orders do not apply to this offence.

# Carrying in a public place

## Overview

Section 19 of the Firearms Act 1968 makes it an offence to carry (a) a loaded shotgun; (b) an air weapon (whether loaded or not); (c) any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm or (d) an imitation firearm in a public place. Subject to a defence of lawful authority or reasonable excuse this is a strict liability offence.

The maximum sentence depends upon the type of weapon. If the weapon is an air weapon, the maximum sentence is 6 months' custody and the offence can only be sentenced in magistrates' courts. If the weapon is an imitation firearm, the maximum sentence is 12 months' custody and the offence can be sentenced in magistrates' courts or the Crown Court. For other firearms the maximum sentence is seven years' custody and the offence can be sentenced in magistrates' courts or the Crown Court (unless the firearm is a prohibited weapon to which the five year minimum term applies in which case it can only be sentenced in the Crown Court).

This is the only firearms offence for which there is currently a [guideline](#), though this only covers magistrates' courts.

In 2018, 200 offenders were sentenced for this offence; 68 per cent of whom were sentenced in magistrates' courts. In 2018, 39 per cent of offenders received a community sentence, and 21 per cent were sentenced to immediate custody. See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

## Developing the guideline

The draft guideline is available at [www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-carrying-in-a-public-place-for-consultation-only](http://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-carrying-in-a-public-place-for-consultation-only)

### Step 1 – Determining the offence category

As with other possession offences, the Council decided that for this offence the type of weapon was a crucial factor in determining the seriousness of the offence and that this should be considered separately from the use to which the weapon was put and the intention of the offender. Consequently the Council has used a two stage model for assessing culpability. The first stage is to categorise the weapon into one of three types.

#### Culpability- Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP 2.

**Type 1**

- Firearm or shotgun prohibited under section 5 (whether or not the mandatory minimum sentence applies) (where not at Type 2)

**Type 2**

- Weapon prohibited under section 5(1)(b)
- Firearm, shotgun or air weapon for which a certificate is required

**Type 3**

- Air weapon that is not prohibited and for which no certificate is required
- Imitation firearm

Weapons that fall into type 1 or type 2 could be prosecuted as possession of a prohibited weapon or possession without a certificate and therefore most cases prosecuted as carrying in a public place will be type 3 weapons. In 2018, for this offence 54 per cent of cases involved imitation firearms and 36 per cent of cases involved air weapons.

The assessment of other culpability factors relating to the use of the weapon and the intention of the offender is similar to other possession guidelines, with the addition of a low culpability factor 'possession falls just short of reasonable excuse':

**Culpability – Other culpability factors**

The court should weigh all the factors set out below in determining the offender's culpability.

**High culpability**

- Firearm or imitation firearm discharged, other than for lawful purpose
- Firearm or imitation firearm loaded
- Firearm/imitation firearm used or intended for use for criminal purpose

**Medium culpability**

- Firearm/imitation firearm produced (where not at High culpability)
- Firearm or imitation firearm held with compatible ammunition
- Firearm/imitation firearm used or intended for use (where not at High culpability)

**Lower culpability**

- No use or intention to use
- Possession falls just short of reasonable excuse

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.

The categorisation of culpability and the assessment of harm are the same as for the possession without a certificate and possession by a person prohibited guidelines and other factors which might make the case more or less serious, are included in aggravating and mitigating factors at step 2 below.

### Culpability category

Identify the final culpability category in the table below, considering both the **Type of weapon** and **Other culpability factors**.

| Other culpability factors | Type of weapon         |                        |                        |
|---------------------------|------------------------|------------------------|------------------------|
|                           | 1                      | 2                      | 3                      |
| High                      | Culpability category A | Culpability category A | Culpability category B |
| Medium                    | Culpability category A | Culpability category B | Culpability category C |
| Lower                     | Culpability category B | Culpability category C | Culpability category C |

### Harm

Harm is assessed by reference to the **risk of harm or disorder** occurring and/or **actual alarm/distress** caused. When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.

#### Category 1

- Serious alarm/distress caused
- High risk of death or serious physical or psychological harm
- High risk of serious disorder

#### Category 2

- All other cases falling between category 1 and category 3 because:
  - Factors in both 1 and 3 are present which balance each other out; and/or
  - The harm falls between the factors as described in 1 and 3

#### Category 3

- No/minimal alarm/distress caused
- No/minimal risk of death or serious physical or psychological harm
- No/minimal risk of serious disorder

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.

**Question 16: Do you have any comments on the assessment of culpability and harm at step 1 of the carrying in a public place guideline?**

### Step 2 – Starting point and category range

Having determined the category at step 1, 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.

The offence may be subject to a minimum sentence.

Where the minimum sentence applies, and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP 3 for further details on the minimum sentencing provisions and exceptional circumstances.



Clicking on the underlined wording displays the following:

The minimum term applies in respect of a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af), (c) or section 5(1A)(a) of the Firearms Act 1968.

The sentence levels for this guideline are lower than those for the other possession offences to reflect the range of weapons to which it applies. Non-custodial sentence options are available in all but three of the nine boxes in the sentence table. The starting points and ranges have been tested against transcripts of sentencing remarks in the Crown Court, but as the majority of cases are sentenced in magistrates' courts, research will be conducted with groups of magistrates to test the sentence levels further.

| Harm       | Culpability  |   |   |
|------------|--|---|---|
|            | A  | B   | C   |
| Category 1 | Starting point<br>2 years' custody                             | Starting point<br>1 years' custody                              | Starting point<br>High level community order                    |
|            | Category range<br>1 – 4 years' custody                         | Category range<br>6 months' – 2 years' custody*                 | Category range<br>Low level community order – 1 year's custody* |
| Category 2 | Starting point<br>1 year's custody                             | Starting point<br>High level community order                    | Starting point<br>Medium level community order                  |
|            | Category range<br>6 months' – 2 years' custody                 | Category range<br>Low level community order – 1 year's custody* | Category range<br>Band B fine – High level community order      |
| Category 3 | Starting point<br>High level community order                   | Starting point<br>Medium level community order                  | Starting point<br>Band B fine                                   |
|            | Category range<br>Low level community order – 1 year's custody | Category range<br>Band B fine – High level community order      | Category range<br>Discharge – Band C Fine                       |

\* Where the weapon is an imitation firearm, the maximum penalty is 12 months' custody

\* Where the weapon is an air weapon, the maximum penalty is 6 months' custody

### ***Question 17: Do you have any comments on the sentence levels in the carrying in a public place guideline?***

The aggravating and mitigating factors in this guideline are similar to those in the other possession guidelines with just one additional aggravating factor which reflects the fact that this offence can be committed with an imitation firearm:

- Steps taken to make imitation firearm appear more realistic (See step 6 on totality when sentencing for more than one offence.)



***Question 18: Do you have comments on the aggravating and mitigating factors for the carrying in a public place guideline?***

**Steps 3 to 9**

The minimum term provisions could apply to this guideline and so step 3 of this guideline relates to the minimum term and exceptional circumstances (as discussed at page 5 above). The guidance at step 3 is modified slightly to reflect differences in the guidelines. In practice it will only be in rare cases that the carrying of a weapon to which the minimum term applies will be prosecuted as this offence. In other respects the remaining steps are the same as for the possession of a prohibited weapon guideline except that Serious Crime Prevention Orders do not apply to this offence.

# Possession with intent to endanger life

## Overview

Section 16 of the Firearms Act 1968 makes it an offence to possess a firearm or ammunition with intent to endanger life. This offence can occur when the offender intends to endanger life (not necessarily to kill) by means of a firearm in his possession, or when the offender intends to enable another person to endanger life by, for example, making a firearm available to him. See [CPS guidance](#) for more details.

The maximum sentence is life imprisonment and this is a serious specified offence to which life sentences and extended sentences can apply if the relevant criteria are met. The offence can only be sentenced in the Crown Court.

In 2018, around 60 offenders were sentenced for this offence all of whom were sentenced to immediate custody. See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

## Developing the guideline

The draft guideline is available at [www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-with-intent-to-endanger-life-for-consultation-only](http://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-with-intent-to-endanger-life-for-consultation-only)

### Step 1 – Determining the offence category

Unlike the simple possession offences, the Council decided that for this offence there was no requirement for a separate consideration of the type of weapon at step 1. In practice this offence is nearly always committed using a prohibited firearm and consequently factors relating to the type of weapon are at step 2. The Council considered that the key determinants of culpability for this offence are the role of the offender, the circumstances of the possession and any use made of the firearm.

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:**

- Sophisticated nature of offence/significant planning
- Leading role where offending is part of a group activity
- Distribution or supply of firearms on a large scale
- Firearm discharged
- Prolonged incident

**B – Medium culpability:**

- Significant role where offending is part of a group activity
- Some degree of planning
- Firearm loaded or held with compatible ammunition but not discharged
- Other cases falling between culpability A and C because:
  - Factors are present in A and C which balance each other out and/or
  - The offender's culpability falls between the factors as described in A and C

**C – Lower culpability:**

- Lesser role where offending is part of group activity
- Little or no planning or unsophisticated offending
- Firearm not produced or visible
- Conduct limited in scope and duration

The harm categories for this offence recognise that for this offence actual physical harm could occur and that there will always be the risk of at least some harm.

**Harm**

Harm is assessed by reference to the **risk of harm** or **disorder** occurring and/or **actual harm** caused. When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.

**Category 1**

- Severe physical harm caused
- Severe psychological harm caused

**Category 2**

- Serious physical harm caused
- Serious psychological harm caused
- High risk of death or severe physical or psychological harm
- High risk of serious disorder

**Category 3**

- Alarm/distress caused
- All other cases not falling into 1 or 2

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.

There is a note below the harm table to reflect the fact that this offence is often charged with other offences (typically robbery, GBH with intent or attempted murder) which reminds sentencers to consider totality where this applies.

Where separate charges apply, for example in relation to any death or injury caused, the court should have regard to totality (see step 7).

**Question 19: Do you have any comments on the assessment of culpability and harm at step 1 of the possession with intent to endanger life guideline?**

## Step 2 – Starting point and category range

The sentence table for this guideline reflects the seriousness of the offence. The text above the sentence table notes that the statutory minimum sentence may apply and sentencers are referred to the guidance at step 3. Sentence levels have been set in line with current sentencing practice.

Having determined the category at step 1, 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 minimum sentence provisions.

Where the minimum sentence applies, and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP 3 for further details on the minimum sentencing provisions and exceptional circumstances.

| Harm       | Culpability                              |  |   |
|------------|--|--|---|
|            | A  | B  | C                                       |
| Category 1 | Starting point<br>18 years' custody      | Starting point<br>14 years' custody      | Starting point<br>10 years' custody     |
|            | Category range<br>16 – 22 years' custody | Category range<br>11 – 17 years' custody | Category range<br>8 – 12 years' custody |
| Category 2 | Starting point<br>14 years' custody      | Starting point<br>10 years' custody      | Starting point<br>7 years' custody      |
|            | Category range<br>11 – 17 years' custody | Category range<br>8 – 12 years' custody  | Category range<br>5 – 9 years' custody  |
| Category 3 | Starting point<br>10 years' custody      | Starting point<br>7 years' custody       | Starting point<br>5 years' custody      |
|            | Category range<br>8 – 12 years' custody  | Category range<br>5 – 9 years' custody   | Category range<br>4 – 7 years' custody  |

***Question 20: Do you have any comments on the sentence levels in the possession with intent to endanger life guideline?***

There are additional aggravating factors in this guideline to reflect the fact that intention is an element of this offence and to distinguish between types of weapon.

An additional statutory aggravating factor has been included as potentially relevant to this offence:

- 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:

- Firearm under section 5(1)(a) (automatic weapon)
- Firearm modified to make it more dangerous
- Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- Expectation of substantial financial gain (except where already taken into account at step 1)
- Attempts to conceal or dispose of the firearm or other evidence
- Serious damage to property caused (See step 7 on totality when sentencing more than one offence)

There is an additional mitigating factor for this guideline which will apply to those cases where the weapon is not a prohibited firearm:

- Firearm/ammunition not prohibited under section 5

***Question 21: Do you have comments on the aggravating and mitigating factors for the possession with intent to endanger life guideline?***

**Steps 3 to 10**

The minimum term provisions apply to this guideline and so step 3 of this guideline relates to the minimum term and exceptional circumstances (as discussed at page 5 above). The guidance at step 3 is modified slightly to reflect differences in the guidelines. In practice most sentences under this guideline will be in excess of five years even without the application of the minimum term.

At step 6 of this guideline the court is required to consider dangerousness. In other respects the remaining steps are the same as for the possession of a prohibited weapon guideline except that Serious Crime Prevention Orders do not apply to this offence.

# Possession with intent to cause fear of violence

## Overview

Section 16A of the Firearms Act 1968 makes it an offence to possess a firearm or imitation firearm with intent to cause fear of violence. This offence can occur when the offender has a firearm in his possession and intends to cause another to believe that unlawful violence will be used (or when the offender intends to enable another person to do so). See [CPS guidance](#) for more details.

The maximum sentence is 10 years' custody and this is a specified offence to which extended sentences can apply if the relevant criteria are met. The offence can only be sentenced in the Crown Court.

In 2018, around 240 offenders were sentenced for this offence, 75 per cent of whom were sentenced to immediate custody and a further 18 per cent received suspended sentences. See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

## Developing the guideline

The draft guideline is available at [www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-with-intent-to-cause-fear-of-violence-for-consultation-only](http://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-with-intent-to-cause-fear-of-violence-for-consultation-only)

### Step 1 – Determining the offence category

As with the possession with intent to endanger life offence, the Council decided that for this offence there was no requirement for a separate consideration of the type of weapon at step 1. Instead there are separate sentencing tables for when the weapon is a firearm and when it is an imitation firearm. Other factors relating to the type of weapon are covered by aggravating and mitigating factors at step 2. The Council considered that the key determinants of culpability for this offence are the nature of the intention, the role of the offender, the circumstances of the possession and any use made of the firearm.

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

- Intention falling just short of intent to endanger life
- Conduct intended to maximise fear or distress
- Sophisticated nature of offence/significant planning
- Leading role where offending is part of a group activity
- Firearm or imitation firearm discharged
- Prolonged incident

#### B – Medium culpability

- Firearm or imitation firearm loaded or held with compatible ammunition but not discharged
- Significant role where offending is part of a group activity
- Some degree of planning
- Other cases falling between culpability A and C because:
  - Factors are present in A and C which balance each other out and/or
  - The offender's culpability falls between the factors as described in A and C

#### C – Lower culpability

- No intention to cause injury to persons
- Lesser role where offending is part of group activity
- Little or no planning or unsophisticated offending
- Firearm or imitation firearm not produced or visible
- Conduct limited in scope and duration

The harm categories for this offence are the same as those for the possession with intent to endanger life offence. For this offence actual physical harm could occur and there will always be the risk of at least some harm. There is a note below the harm table to reflect the fact that this offence may be charged with other offences (such as affray or ABH) which reminds sentencers to consider totality where this applies.

## Harm

Harm is assessed by reference to the **risk of harm or disorder** occurring and/or **actual harm** caused. When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.

### Category 1

- Severe physical harm caused
- Severe psychological harm caused

### Category 2

- Serious physical harm caused
- Serious psychological harm caused
- High risk of death or severe physical or psychological harm
- High risk of serious disorder

### Category 3

- Alarm/distress caused
- All other cases not falling into 1 or 2

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.

Where separate charges apply, for example in relation to any injury caused, the court should have regard to totality (see step 7).

***Question 22: Do you have any comments on the assessment of culpability and harm at step 1 of the possession with intent to cause fear of violence guideline?***

## Step 2 – Starting point and category range

There are two sentence tables for this guideline: one for offences involving a firearm and one for those involving an imitation firearm. There is an overlap between the two tables; offences involving an imitation firearm will always be less serious, but may nevertheless justify substantial sentences of imprisonment where harm and/or culpability are high. The range of sentences reflects current sentencing practice. The text above the sentence table notes that the statutory minimum sentence may apply and sentencers are referred to the guidance at step 3.



Having determined the category at step 1, 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.

Table 1 should be used if the offence is in respect of a firearm. Table 2 should be used for an imitation firearm.

The offence may be subject to a minimum sentence.

Where the minimum sentence applies, and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP 3 for further details on the minimum sentencing provisions and exceptional circumstances.

**TABLE 1: Firearm**

| Harm       | Culpability                            |  |   |
|------------|--|--|---|
|            | A                                      | B                                      | C   |
| Category 1 | Starting point<br>8 years' custody     | Starting point<br>6 years' custody     | Starting point<br>4 years' custody            |
|            | Category range<br>7 – 9 years' custody | Category range<br>4 – 8 years' custody | Category range<br>3 – 6 years' custody        |
| Category 2 | Starting point<br>6 years' custody     | Starting point<br>4 years' custody     | Starting point<br>2 years' custody            |
|            | Category range<br>4 – 8 years' custody | Category range<br>3 – 6 years' custody | Category range<br>1 – 4 years' custody        |
| Category 3 | Starting point<br>4 years' custody     | Starting point<br>2 years' custody     | Starting point<br>1 year 6 months' custody    |
|            | Category range<br>3 – 6 years' custody | Category range<br>1 – 4 years' custody | Category range<br>6 months – 2 years' custody |

TABLE 2: Imitation firearm

| Harm       | Culpability                            |   |   |
|------------|--|---|---|
|            | A                                      | B   | C   |
| Category 1 | Starting point<br>6 years' custody     | Starting point<br>4 years' custody            | Starting point<br>2 years' custody                                |
|            | Category range<br>4 – 8 years' custody | Category range<br>3 – 6 years' custody        | Category range<br>1 – 4 years' custody                            |
| Category 2 | Starting point<br>4 years' custody     | Starting point<br>2 years' custody            | Starting point<br>1 year 6 months' custody                        |
|            | Category range<br>3 – 6 years' custody | Category range<br>1 – 4 years' custody        | Category range<br>6 months – 2 years' custody                     |
| Category 3 | Starting point<br>2 years' custody     | Starting point<br>1 year 6 months' custody    | Starting point<br>6 months' custody                               |
|            | Category range<br>1 – 4 years' custody | Category range<br>6 months – 2 years' custody | Category range<br>Medium level community order – 1 year's custody |

**Question 23: Do you have any comments on the sentence levels in the possession with intent to cause fear of violence guideline?**

As with the possession with intent to endanger life guideline, there are aggravating factors in this guideline to reflect the fact that intention is an element of this offence and to distinguish between types of weapon. In addition to those in the possession with intent to endanger life guideline, the following factors appear:

- Firearm is prohibited under section 5 and subject to minimum term (taking care to avoid double counting with minimum term provisions)
- Imitation firearm is readily convertible [Clicking on the factor displays the following:]

Section 1(6) Firearms Act 1982 states:

For the purposes of this section an imitation firearm shall be regarded as readily convertible into a firearm to which section 1 of the 1968 Act applies if—

- it can be so converted without any special skill on the part of the person converting it in the construction or adaptation of firearms of any description; and
- the work involved in converting it does not require equipment or tools other than such as are in common use by persons carrying out works of construction and maintenance in their own homes.



There is a balancing mitigating factor for this guideline:

- Imitation firearm is unrealistic and unconvincing

***Question 24: Do you have comments on the aggravating and mitigating factors for the possession with intent to cause fear of violence guideline?***

### **Steps 3 to 10**

The minimum term provisions apply to this guideline and so step 3 of this guideline relates to the minimum term and exceptional circumstances (as discussed at page 5 above). The guidance at step 3 is modified slightly to reflect differences in the guidelines.

At step 6 of this guideline the court is required to consider dangerousness. In other respects the remaining steps are the same as for the possession of a prohibited weapon guideline except that Serious Crime Prevention Orders do not apply to this offence.

# Possession with intent – other offences

## Overview

This guideline covers three offences under the Firearms Act 1968: section 17(1) use or attempted use of a firearm or imitation firearm to resist arrest; section 17(2) possession of a firearm or imitation firearm while committing or being arrested for a Schedule 1 offence; and section 18 carrying a firearm or imitation firearm with criminal intent. There is some overlap between these offences; see [CPS guidance](#) for more details.

The maximum sentence is life imprisonment and these are serious specified offences to which life and extended sentences can apply if the relevant criteria are met. The offences can only be sentenced in the Crown Court.

These are low volume offences with around 40 offenders sentenced in 2018. The majority received custodial sentences (81 per cent of offenders were sentenced to immediate custody and 12 per cent received a suspended sentence). See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

## Developing the guideline

The draft guideline is available at [www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-with-intent-other-offences-for-consultation-only](http://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-possession-with-intent-other-offences-for-consultation-only)

### Step 1 – Determining the offence category

As with the other possession with intent offences, the Council decided that for this offence there was no requirement for a separate consideration of the type of weapon at step 1. Instead there are separate sentencing tables for when the weapon is a firearm and when it is an imitation firearm. Other factors relating to the type of weapon are covered by aggravating and mitigating factors at step 2. The Council considered that the key determinants of culpability for this offence are: the nature of the intention, the seriousness of the intended offence, the role of the offender, and any use made of the firearm. Not all of the factors may be relevant to each of the three offences covered by the guideline.

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**

- Sophisticated nature of offence/significant planning
- Leading role where offending is part of a group activity
- Firearm discharged
- Prolonged incident
- Serious nature of intended offence

##### **B – Medium culpability**

- Firearm loaded or held with compatible ammunition but not discharged
- Significant role where offending is part of a group activity
- Some degree of planning
- Other cases falling between culpability A and C because:
  - Factors are present in A and C which balance each other out and/or
  - The offender's culpability falls between the factors as described in A and C

##### **C – Lower culpability**

- No intention to cause injury to persons
- Lesser role where offending is part of group activity
- Little or no planning or unsophisticated offending
- Conduct limited in scope and duration
- Firearm not produced or visible
- Less serious nature of intended offence

The harm categories for this offence are the same as those for the possession with intent to cause fear of violence offence. There is a note below the harm table to reflect the fact that this offence may be charged with other offences which reminds sentencers to consider totality where this applies.

**Harm**

Harm is assessed by reference to the **risk of harm or disorder** occurring and/or **actual harm** caused. When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.

**Category 1**

- Severe physical harm caused
- Severe psychological harm caused

**Category 2**

- Serious physical harm caused
- Serious psychological harm caused
- High risk of death or severe physical or psychological harm
- High risk of serious disorder

**Category 3**

- Alarm/distress caused
- All other cases not falling into 1 or 2

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.

Where separate charges apply, for example in relation to any death or injury caused, the court should have regard to totality (see step 7).

***Question 25: Do you have any comments on the assessment of culpability and harm at step 1 of the possession with intent – other offences guideline?***

**Step 2 – Starting point and category range**

There are two sentence tables for this guideline: one for offences involving a firearm and one for those involving an imitation firearm. There is an overlap between the two tables; offences involving an imitation firearm will always be less serious, but may nevertheless justify substantial sentences of imprisonment where harm and/or culpability are high. The sentences are higher than for the possession with intent to cause fear of violence guideline which reflects the potential seriousness of the offending and current sentencing practice. The text above the sentence table notes that the statutory minimum sentence may apply and sentencers are referred to the guidance at step 3.

Having determined the category at step 1, 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 minimum sentence provisions.

Where the minimum sentence applies, and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP 3 for further details on the minimum sentencing provisions and exceptional circumstances.

**TABLE 1: Firearm**

| Harm       | Culpability                              |   |  |
|------------|--|---|--|
|            | A  | B                                       | C                                      |
| Category 1 | Starting point<br>12 years' custody      | Starting point<br>9 years' custody      | Starting point<br>7 years' custody     |
|            | Category range<br>10 – 16 years' custody | Category range<br>7 – 11 years' custody | Category range<br>5 – 9 years' custody |
| Category 2 | Starting point<br>9 years' custody       | Starting point<br>7 years' custody      | Starting point<br>4 years' custody     |
|            | Category range<br>7 – 11 years' custody  | Category range<br>5 – 9 years' custody  | Category range<br>2 – 6 years' custody |
| Category 3 | Starting point<br>7 years' custody       | Starting point<br>4 years' custody      | Starting point<br>2 years' custody     |
|            | Category range<br>5 – 9 years' custody   | Category range<br>2 – 6 years' custody  | Category range<br>1 – 3 years' custody |

TABLE 2: Imitation firearm

| Harm       | Culpability                             |  |  |
|------------|---|--|--|
|            | A                                       | B                                      | C  |
| Category 1 | Starting point<br>9 years' custody      | Starting point<br>7 years' custody     | Starting point<br>4 years' custody                                 |
|            | Category range<br>7 – 11 years' custody | Category range<br>5 – 9 years' custody | Category range<br>2 – 6 years' custody                             |
| Category 2 | Starting point<br>7 years' custody      | Starting point<br>4 years' custody     | Starting point<br>2 years' custody                                 |
|            | Category range<br>5 – 9 years' custody  | Category range<br>2 – 6 years' custody | Category range<br>1 – 3 years' custody                             |
| Category 3 | Starting point<br>4 years' custody      | Starting point<br>2 years' custody     | Starting point<br>1 year's custody                                 |
|            | Category range<br>2 – 6 years' custody  | Category range<br>1 – 3 years' custody | Category range<br>High level community<br>order – 2 years' custody |

**Question 26: Do you have any comments on the sentence levels in the possession with intent – other offences guideline?**

As with the other possession with intent guidelines, there are aggravating factors in this guideline to reflect the fact that intention is an element of this offence and to distinguish between types of weapon. In addition the following factor is unique to this guideline:

- Offender's actions resulted in a suspect avoiding arrest

**Question 27: Do you have comments on the aggravating and mitigating factors for the possession with intent – other offences guideline?**

### Steps 3 to 10

The minimum term provisions apply to this guideline and so step 3 of this guideline relates to the minimum term and exceptional circumstances (as discussed at page 5 above). The guidance at step 3 is modified slightly to reflect differences in the guidelines.

At step 6 of this guideline the court is required to consider dangerousness. In other respects the remaining steps are the same as for the possession of a prohibited weapon guideline except that Serious Crime Prevention Orders do not apply to this offence.



# Transfer and manufacture

## Overview

Section 5(2A) of the Firearms Act 1968 makes it an offence to (a) manufacture a weapon or ammunition specified in section 5(1); (b) sell or transfer a prohibited weapon or ammunition; (c) possess for sale or transfer a prohibited weapon or ammunition; and (d) purchase or acquire for sale or transfer a prohibited weapon or ammunition. These are relatively new offences having come into effect in 2014.

The maximum sentence is life imprisonment and the offence can only be sentenced in the Crown Court.

These are low volume offences with 10 offenders sentenced in 2018, all of whom were sentenced to immediate custody. See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

## Developing the guideline

The draft guideline is available at [www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-transfer-and-manufacture-for-consultation-only](http://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-transfer-and-manufacture-for-consultation-only)

### Step 1 – Determining the offence category

This guideline has been developed with reference to the leading case of *Stephenson (Attorney-General's Reference (Nos. 128-141 and 8-10 of 2015) [2016] 2 Cr. App. R. (S.) 12)* and a small sample of transcripts of sentencing remarks for these offences. Offending of this type typically involves a degree of sophistication and a network of offenders, although there are cases of 'hobbyists' operating alone making weapons with no criminal intention. Culpability factors focus on the role of the offender, the degree of planning and expectation of financial reward.

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

- Leading role where offending is part of a group activity, including but not limited to head of enterprise, a lead armourer or a key facilitator
- Significant planning, including but not limited to significant steps to evade detection
- Abuse of position of trust or responsibility, for example registered firearms dealer
- Expectation of substantial financial or other advantage
- Involves others through coercion, intimidation or exploitation

**B – Medium culpability**

- Significant role where offending is part of a group activity, including but not limited to a purchaser or a provider of significant assistance in facilitating transfer or manufacture
- Some degree of planning, including but not limited to some steps to evade detection
- Expectation of significant financial or other advantage
- Other cases falling between culpability A and C because:
  - Factors are present in A and C which balance each other out and/or
  - The offender's culpability falls between the factors as described in A and C

**C – Lower culpability**

- Lesser role where offending is part of a group activity, including but not limited to performing a limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Expectation of limited, if any, financial or other advantage

The harm factors for this offence focus on the scale and nature of the operation (which reflect the risk of harm from the offending) and any actual harm caused. Suggestions are given of what may indicate large, medium and smaller scale offending. The assessment of harm should disregard the offender's role, which is taken into account in the assessment of culpability.

**Harm**

Harm is assessed by reference to the **scale and nature of the enterprise** and any actual harm caused, regardless of the offender's role.

**Category 1**

- Large-scale commercial and/or highly sophisticated enterprise – indicators may include:
  - Large number of prohibited weapons/ ammunition involved
  - Operation over significant time period
  - Operation over significant geographic range
  - Close connection to organised criminal group(s)
- Evidence firearm/ammunition subsequently used to cause serious injury or death

**Category 2**

- Medium-scale enterprise and/or some degree of sophistication, including cases falling between category 1 and category 3 because:
  - Factors in both 1 and 3 are present which balance each other out; and/or
  - The harm falls between the factors as described in 1 and 3
- Evidence firearm/ammunition subsequently used in criminal offending (where not at category 1)

**Category 3**

- Smaller-scale and/or unsophisticated enterprise – indicators may include:
  - Limited number of prohibited weapons/ ammunition involved
  - Operation over limited time period
  - Operation over limited geographic range
  - Minimal/no connection to organised criminal group(s)
- Evidence firearm/ammunition not subsequently used in criminal offending

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.

**Question 28: Do you have any comments on the assessment of culpability and harm at step 1 of the transfer and manufacture guideline?**

## Step 2 – Starting point and category range

The sentence table for this guideline reflects the seriousness of the offence. The text above the sentence table notes that the statutory minimum sentence may apply and sentencers are referred to the guidance at step 3. Sentence levels have been set in line with *Stephenson* and current sentencing practice. The Council notes that there have been a few very serious cases involving multiple offences where the sentence passed was in excess of 28 years. In such cases the Council considers that the guideline would not preclude the court from taking into account the totality of offending to pass appropriate sentences.

## Step 2 – Starting point and category range

Having determined the category at step 1, 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 may be subject to minimum sentencing provisions. See STEP 3 for further details on the minimum sentencing provisions and exceptional circumstances.

| Harm       | Culpability                              |  |   |
|------------|--|--|---|
|            | A  | B  | C                                       |
| Category 1 | Starting point<br>20 years' custody      | Starting point<br>14 years' custody      | Starting point<br>10 years' custody     |
|            | Category range<br>16 – 28 years' custody | Category range<br>12 – 18 years' custody | Category range<br>8 – 14 years' custody |
| Category 2 | Starting point<br>14 years' custody      | Starting point<br>10 years' custody      | Starting point<br>8 years' custody      |
|            | Category range<br>12 – 18 years' custody | Category range<br>8 – 14 years' custody  | Category range<br>6 – 12 years' custody |
| Category 3 | Starting point<br>10 years' custody      | Starting point<br>8 years' custody       | Starting point<br>6 years' custody      |
|            | Category range<br>8 – 14 years' custody  | Category range<br>6 – 12 years' custody  | Category range<br>4 – 8 years' custody  |

***Question 29: Do you have any comments on the sentence levels in the transfer and manufacture guideline?***

There are fewer aggravating factors for this guideline as most relevant factors are taken into account at step 1.

Aggravating factors that are particular to this guideline are:

- Compatible ammunition and/or silencer(s) supplied with firearm (See step 6 on totality when sentencing for more than one offence)
- Others put at risk of harm, including by location or method of manufacture or transfer

There is an additional mitigating factor for this guideline which will apply to those cases where the offender is not involved in criminality:

- Genuine belief that firearm will not be used for criminal purpose

***Question 30: Do you have comments on the aggravating and mitigating factors for the transfer and manufacture guideline?***

**Steps 3 to 9**

The minimum term provisions apply to this guideline and so step 3 of this guideline relates to the minimum term and exceptional circumstances (as discussed at page 5 above). The guidance at step 3 is modified slightly to reflect differences in the guidelines. In practice most sentences under this guideline will be in excess of five years even without the application of the minimum term.

The remaining steps are the same as for the possession of a prohibited weapon guideline.

# Overall considerations

The preceding sections have outlined the Council's proposals for firearms guidelines and have invited comments on each draft guideline. This section considers issues that cut across the guidelines.

## Impact of the guidelines

The guidelines have been developed with current sentencing practice in mind and it is not the Council's intention to increase or decrease sentence levels overall. A [resource assessment](#) has been produced which sets out the likely impact of the draft guidelines on prison and probation resources.

The Council is carrying out research with judges and magistrates to test whether the guidelines work as expected, but would welcome comments from consultees on whether any of the draft guidelines are likely to change sentence levels and whether any change would be desirable.

***Question 31: Do you have views on the impact these guidelines may have on sentence levels for firearms offences?***

## Equality and diversity

The Public Sector Equality Duty (PSED) is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have "due regard" to three "needs" or "limbs" when considering a new policy or operational proposals. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.

The second is the need to advance equality of opportunity between those who share a "protected characteristic" and those who do not.

The third is to foster good relations between those who share a "protected characteristic" and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

The Council has had regard to its duty under the Equality Act in drafting these proposals, specifically the effect of the proposals on victims and offenders with protected characteristics.

The Council has produced information on the demographic makeup (specifically age, ethnicity and sex) of offenders for firearms offences available at [Annex A](#).

Broadly speaking convictions for firearms offences are most likely to be committed by white males under the age of 40. However, when compared with the demographics of the population as a whole, there is a significant over-representation of BAME offenders. The proportion of BAME offenders is also higher for firearms offences than for all offences. There is a large over-representation of young adults compared to the population as a whole and to a lesser extent compared to offenders across all offences.

In 2018, for possession offences to which the mandatory minimum applies, 41 per cent of offenders were BAME and 53 per cent were under the age of 30. Females were much less likely to be convicted of these offences (only about one in 20 offenders sentenced were female) and about 50 per cent of females who were convicted received a sentence less than the minimum term.


One potential consequence of this is that if the guidelines were to increase sentences for these offences generally (which is not the expected outcome), there is a risk that the increase may fall disproportionately on young adult and BAME offenders.

Consideration of demographic information on offenders who received sentences below the minimum term for possession offences to which the minimum term applied, reveals that 38 per cent of White offenders received a sentence less than the minimum term whereas the figures for Black and Asian offenders were 18 per cent and 21 per cent respectively.

It should be noted that there are limitations on the reliability of the demographic data (see Annex A for details) and therefore the figures quoted above should be regarded as indicative only.

Sentencing guidelines ensure that there is a consistency of approach to sentencing which encourages fair and proportionate sentencing but guidelines alone cannot preclude disparity of outcomes for different groups. The Council is committed to taking steps to address concerns around equality and diversity in sentencing across all guidelines. Steps already taken include:

- Adding a reference to the Equal Treatment Bench Book in all guidelines:

Guideline users should be aware that the  [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

- Adding expanded explanations to many aggravating and mitigating factors. These include explanations for the mitigating factors for 'age and/or lack of maturity' and 'sole or primary carer for dependant relatives'.
- Testing draft guidelines with judges and magistrates to check that certain factors do not have a disproportionate influence on sentence outcomes.

The Council would welcome suggestions from consultees as to any equality and diversity matters that it should address in the development of these guidelines.

***Question 32: Are there any equality and diversity issues that can be addressed in these guidelines?***

## **General observations**

We would also like to hear any other views you have on the proposals that you have not had the opportunity to raise in response to earlier questions.

***Question 33: Are there any other comments you wish to make on draft firearms guidelines?***





