

Firearms importation guideline

Response to consultation

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November 2021

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Foreword



At the end of 2020, we published eight firearms guidelines following a consultation. The responses to that consultation included requests to develop an additional guideline for firearms importation offences. The Council agreed with that suggestion and consulted on the additional guideline from June to September 2021. On behalf of the Sentencing Council I would like to thank all those who responded to this second firearms consultation and to the judges who took part in a survey to assist with the development of the guideline.

As always, the Council has made changes to the guideline in the light of comments and the helpful suggestions from respondents to the consultation.

This guideline applies to offences that are not frequently prosecuted and so are unfamiliar to most sentencers. It will be particularly useful, therefore, for ensuring proportionate and consistent sentencing. The guideline has been designed to reflect the full range of offending that comes before the courts for firearms importation offences.

Lord Justice Holroyde
Chairman, Sentencing Council

Introduction

From June to September 2021 the Sentencing Council consulted on a single sentencing guideline for offences under the Customs and Excise Management Act 1979 of importation of firearms. This followed on from a consultation in 2019 on eight guidelines for offences under the Firearms Act 1968 which were published as definitive versions in December 2020 and came into force on 1 January 2021.

The 2019 consultation set out six offences that the Council had considered covering but had decided not to because of low volumes and sought views on whether any other offences should be covered. Several respondents including the National Crime Agency (NCA) and the Crown Prosecution Service (CPS) urged the Council to develop guidelines for firearms importation offences.

The Council had made the original decision not to proceed with guidelines for importation offences based on sentencing data from 2017. More recent data showed that volumes for importation offences under the Customs and Excise Management Act 1979 have increased. While the volumes are still low (around 40 offenders sentenced in 2020) they are higher than for some firearms offences for which guidelines had been developed. The Council also considered feedback from judges indicating that a guideline for importation offences would be useful and agreed to develop one.

Summary of responses

There were 14 responses to the consultation and although this is a low number, the responses received were helpful and included those from key interested parties. Most of the responses were from groups or organisations, though some were from individuals.

Breakdown of respondents

Type of respondent	Number of responses
Academic	1
Charity / not for profit organisations	1
Government / Select committee	2
Judiciary	3
Legal professional	2
Magistrate	3
Police/ Law enforcement	1
Prosecutor	1

Consultation event

The National Crime Agency held a meeting to discuss their response to the consultation which was attended by representatives of the Sentencing Council.

Overview

Most responses were broadly in support of the proposals although as detailed below several respondents raised objections or suggestions in relation to particular elements.

Step 1– Determining the offence category

Culpability

The guideline has a two-stage culpability assessment. The sentencer is first required to identify the type of weapon. In the draft guideline the type of weapon assessment was as follows:

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 or adapted to be capable of killing two or more people at the same time or in rapid succession

- This would normally include a weapon prohibited under the following sections of the Firearms Act 1968:
 - 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)

Type 2

All other weapons falling between Type 1 and Type 3

- This would normally include a weapon requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(af)

Ammunition (where not at Type 3)

- This would normally include ammunition under requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(c)
 - section 5(1A)(b) and (d)-(g)

Type 3

Weapon that is not designed to be lethal

This would normally include:

- a weapon prohibited under section 5(1)(b)
- or a stun gun prohibited under section 5(1A)(a)

Very small quantity of ammunition

The National Crime Agency (NCA) commented:

reference to a ‘weapon that is designed to be capable of killing two or more people at the same time or in rapid succession’ is ambiguous and subject to confusion and argument.

In relation to many of the firearms prohibited under subsections set out under ‘Type1’, there is scope for considerable disagreement and confusion as to whether they are capable of ‘killing two or more people at the same time or in quick succession’.

R v Rhodes [2015] 2 Cr.App.R. 16 suggests that the words ‘designed or adapted’ mean no more than ‘is capable of’ (in which case the words ‘designed to’ are redundant). However, elsewhere in firearms legislation and case law, ‘designed to be used’ is interpreted to import the intention of the designer.

Many of the firearms that are both lawfully and unlawfully imported into the UK have been adapted in some way since their original manufacture []. There is scope for considerably more disagreement and confusion as to whether they were originally designed with that intention.

This ambiguity is likely to require forensic or other experts to seek to interpret the wording of the guidelines.

The wording ‘is designed to be capable’ is the same as that used in the existing *Possession of a prohibited weapon* guideline. The phrase was used to make it clear that even if the firearm was incomplete or not functioning, if it was of a type that would have that level of lethality if fully functional it should be in that category. No problems had been reported with the categorisation of type of weapon in the current guideline, but to test whether there was room for any misinterpretation a short survey was conducted among Crown Court judges.¹

The judges were given a short importation scenario to test the concern voiced by the NCA that a converted weapon might be categorised by sentencers according to its original design rather than its converted state. Of the 16 judges who answered all but one categorised the weapon as type 1 (as expected). The remaining judge wanted more information in order to decide.

¹ To test issues raised in responses to the consultation 68 judges were invited by email to complete a short online survey between 15 September and midnight on 22 September 2021. The number of responses received was small (16) and so the findings were treated as indicative only.

Judges were invited to comment on the categorisation of type of weapon and nine did so. There were some suggestions for changes to the wording in the guideline to avoid any uncertainty in the case of modified or converted weapons.

The Council agreed that it would be helpful to change the wording 'designed' to 'designed or adapted'.

There were other comments from the consultation about the type of weapon and two respondents (the Criminal Law Solicitors' Association (CLSA) and a magistrate) suggested that the guideline should provide more guidance on the type of weapon in each category.

The Council took the view that while it was helpful to list (by reference to the Firearms Act 1968) weapons that would normally fall under each type in the guideline, it was important not to be too prescriptive as the lethality of weapons can vary. In practice, importation offences usually relate to hand guns (s5(1)(aba)) or stun guns (s5(1)(b) or s5(1A)(a)) but within these categories there could be wide variation. The guideline specifically states **'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.'** The Justices' Legal Advisers and Court Officers' Service (JCS) suggested that this could be made even clearer by adding 'rather than relying on purely the subsection which prohibits the weapon' to the first sentence.

The Sentencing Academy commented that the two stage culpability process is unwieldy and suggested that the lethality of the weapon relates to harm rather than to culpability.

The Council sought the views of judges in the survey who had sentenced cases using the *Possession of a prohibited weapon* guideline (which has a similar format). The majority of respondents (nine out of ten), found the guideline useable (four selected 'clear and useable', five selected 'somewhat complicated but useable'), with only one finding it to be 'complicated and difficult to use'. When asked about identifying the type of weapon using that guideline, eight of the ten found it straightforward. Of the two who did not find it straightforward, one said that it varied and commented that there was some uncertainty relating to weapons that had to be reloaded (such as antique firearms).

Based on the responses to consultation and the findings of the survey the Council decided not to change the overall approach to assessing culpability.

The Crown Prosecution Service (CPS) and the JCS pointed out an inconsistency between the *Importation* guideline and the *Possession of a prohibited weapon* guideline in the way that disguised stun guns were dealt with in the type of weapon table. Disguised weapons are prohibited under s5(1A)(a) of the Firearms Act 1968. Where the disguised weapon is a stun gun (which it will be in the vast majority of cases), the CPS will charge it as if it is an undisguised stun gun under s5(1)(b) unless there are aggravating circumstances.² This is significant because s5(1A)(a) weapons are subject to a minimum five year term for the possession offence and to a maximum life sentence for the importation offence. Both guidelines seek to ensure that stun guns are categorised appropriately, but the draft version of the importation guideline took a slightly different approach.

The Council agreed that it would be preferable to take a consistent approach across the two guidelines and has modified the importation guideline accordingly. In type 1 sections

² <https://www.cps.gov.uk/legal-guidance/firearms> updated 29 October 2021

5(1)(ag) and 5(1)(ba) have been added to reflect a change in the law brought about by the Offensive Weapons Act 2019 which came into force on 14 July 2021.

The revised type of weapon assessment is:

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 or adapted to be capable of killing two or more people at the same time or in rapid succession

- This would **normally** include a weapon prohibited under the following sections of the Firearms Act 1968:
 - 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)
 - section 5(1)(ba)

Type 2

All other weapons falling between Type 1 and Type 3

- This would **normally** include a weapon requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(af)
 - section 5(1A)(a) (including disguised stun guns when charged under that section)

Ammunition (where not at Type 3)

- This would **normally** include ammunition requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(c)
 - section 5(1A)(b) and (d)-(g)

Type 3

Weapon that is not designed or adapted to be lethal

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

Very small quantity of ammunition

The next stage is to assess other culpability factors relating to role, planning and expectation of financial or other advantage. The ‘other’ factors consulted on were based on the culpability factors in the *Transfer and manufacture* guideline:

<p>Culpability – other culpability factors The court should weigh all the factors set out below in determining the offender’s culpability.</p>
<p>High culpability:</p> <ul style="list-style-type: none"> • Leading role where offending is part of a group activity • Significant planning, including but not limited to significant steps to evade detection • Abuse of position of trust or responsibility, for example registered firearms dealer, customs official • Expectation of substantial financial or other advantage • Involves others through coercion, intimidation or exploitation
<p>Medium culpability:</p> <ul style="list-style-type: none"> • Significant role where offending is part of a group activity • 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 higher and lower culpability because: <ul style="list-style-type: none"> ○ Factors are present in higher and lower which balance each other out and/or ○ The offender’s culpability falls between the factors as described in higher and lower
<p>Lower culpability:</p> <ul style="list-style-type: none"> • 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 JCS suggested some additional ‘other’ culpability factors:

We can understand why the culpability factors have been based on the transfer and manufacture guideline however often importation may often relate to single items brought into the country for personal use/possession etc. We believe that there should therefore be some mention of the factors from the possession guideline of High Culpability -“Offender intends firearm/ammunition to be used for a criminal purpose, or is reckless as to whether it would be so used”, Medium Culpability – “Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not at High culpability)” and Lower Culpability- “No intention to use”

While the Council recognised that the intended purpose or likely use of the firearm could be relevant, it was not convinced that the appropriate way of doing this was by adding culpability factors. This is discussed further below under harm and aggravating and mitigating factors.

The two stages of the culpability assessment (type of weapon and ‘other’) combined in the draft guideline to give one of four overall culpability levels:

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

The Council of District Judges and the Chief Magistrate pointed out that in the guideline as consulted on it makes no difference to the overall categorisation of culpability if a weapon is type 2 (for example a shot gun) or type 3 (for example a stun gun) unless the ‘other culpability’ is high.

The Chief Magistrate suggested creating an additional level of A* to enable more distinction and adjusting the other levels so that only type 3/lower culpability fell into category D.

The Council reflected on these points. Prior to consultation the guideline was tested against transcripts of sentencing remarks to ensure that it worked as intended. All of the cases related to prohibited firearms and so the position relating to shot guns was not fully explored. The Council considered that the guideline should distinguish between lethal and non-lethal weapons, but did not think it necessary to introduce a fifth level of culpability. It was decided to change the culpability category for type 2/ lower culpability to category C:

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

This means that only non-lethal weapons will ever fall into the lowest starting point/ category range and that consequently where a lethal weapon is involved there will always be a custodial sentence within the category range.

Harm

The factors consulted on were based on the *Transfer and manufacture* guideline in that they refer to the scale and nature of the importation (regardless of the offender's role):

Harm

Harm is assessed by reference to the scale and nature of the importation regardless of the offender's role and regardless of whether the importation was intercepted.

Category 1

- Large-scale commercial enterprise – indicators may include:
 - Large number of firearms/ ammunition involved
 - Operation over significant time period
 - Close connection to organised criminal group(s)

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

Category 3

- Smaller-scale and/or unsophisticated enterprise – indicators may include:
 - Limited number of firearms/ ammunition involved
 - Minimal/no connection to organised criminal group(s)

Reflecting the point made above by the JCS relating to culpability, the Council of District Judges said:

We agree that the volume of the firearms imported should be a significant feature when determining the harm caused. We also agree that connections with organised crime should be a factor. We believe that the intention as to the use of the firearms, particularly where the number is limited may be a relevant feature when determining harm. We accept that establishing such intention may be difficult, and often this may fall to the accused – the court will be sceptical of a person's explanations for importing firearms for otherwise "legitimate" use, noting the offender could chose to acquire them in a legitimate manner. Nevertheless, a person importing a shotgun to shoot game may be regarded as causing less harm than someone importing that weapon for no legitimate reason (even if it cannot be established the importer has any connection with organised crime). We would suggest that category 3 harm might include a further bullet point

- For personal use for otherwise legitimate purposes (considering reasonableness of account in all the circumstances)

We do acknowledge that such an addition may be otiose as such cases are likely to be caught by the "Smaller-scale and/or unsophisticated enterprise harm" classification and we note that the list of examples given is not closed in any event.

A magistrate also made a point relating to the purpose of the weapon:

Harm is defined here purely in terms of the commercial size of the operation. But if there is additional evidence as to why the weapons are being imported (eg for the

specific purpose of harm to a specific individual (s)) or there is evidence that the commercial operation has supplied arms known to have been used to harm others, then this should be considered

The NCA were concerned about a single weapon being categorised as lower harm when it could still cause great harm and suggested that lower harm should be reserved for 'Firearms which are not capable of producing live fire and which have not been converted (successfully or unsuccessfully) from blank firing.'

The Chief Magistrate was concerned about the wording in the lower harm category – 'minimal/no connection to organised criminal group(s)':

it may give an improper perception to the general public to see that any connection to organised criminal groups might be considered "low harm" when concerned with the illegal importation of firearms – whether lethal or not. Surely it would be more appropriate if that category was reserved for cases where it could be positively shown that there was no connection to OCG(s).

At the consultation event the NCA were concerned that judges may interpret the term 'organised criminal groups' in the harm factors as relating solely to serious organised crime groups.

In developing the guideline the Council's intention was that any organised criminal activity (such as being involved in drug dealing) would be captured by the factor but where the connection was minimal (such as being the customer of a drug dealer) the lowest category could still apply.

To test whether the concerns noted above that: a) a single weapon would always be assessed as category 3 harm regardless of the harm it could cause; and b) there could be inconsistency in how 'organised criminal group' is interpreted, judges in the survey were asked to consider a short scenario and decide on the level of harm.

The responses to the survey indicated that there could be inconsistency in how the factors are applied. While eight judges selected category 2 (as expected), four chose category 3, and the remaining two chose category one/were unsure. The reasons given for the categorisation suggested that there may be a lack of clarity around what is meant by 'organised criminal group'.

In order to address the concern that smaller scale importations could be inappropriately assessed as category 3 the Council changed the wording so that instead of saying 'Smaller-scale and/or unsophisticated enterprise' it says 'Smaller-scale **and** unsophisticated enterprise'. To address the lack of clarity around what is meant by 'organised criminal group', the guideline now refers to 'serious criminal activity'.

Harm

Harm is assessed by reference to the **scale** and **nature of the importation** regardless of the offender's role and regardless of whether the importation was intercepted.

Category 1

- Large-scale commercial enterprise – indicators may include:
 - Large number of firearms/ ammunition involved
 - Operation over significant time period
 - Close connection to other serious criminal activity

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

Category 3

- Smaller-scale **and** unsophisticated enterprise – indicators may include:
 - Limited number of firearms/ ammunition involved
 - Minimal/no connection to other serious criminal activity

Regarding the comments and suggestions made above on including factors relating to the intention of the offender, the Council noted that an element of intention or recklessness as to the use of the weapon is implicit in the factors in harm categories 1 and 2. The Council considered that any more explicit reference could be considered at step 2 (see further below).

Step 2 – Starting point and category range

Sentence levels

There are two sentence tables for this guideline (table 1 for offences subject to the statutory maximum of a life sentence and table 2 for offences subject to the statutory maximum of seven years). The JCS commented on table 2:

There does seem to be quite a gap between Category 3D and the 3C and 2D guidelines. We note that for the other offences in Table 2 the ranges start at the starting point of the next offence down and finish at the starting point of the next offence up in seriousness. The range for the 3D offence finishes at High level community order which is the bottom of the range for 3C and 2D offences. The bottom end of that range with a Band A fine also seems very low as with credit for a guilty plea this could be as low as £40. Bearing in mind that even the lowest category of offence does involve the intentional evasion of the prohibition of importation of these weapons we believe that the starting point and range on this the lowest category should be increased, with a starting point of either medium or high level community order and a range from Band C fine to 6 months custody. This keeps the matter within the powers of the magistrates' courts but keeps open the option of custody at the top end of that range.

From our experience magistrates are more likely to find factors which lead them to reduce a sentence from the starting point rather than factors which will increase that sentence and in some cases they will sentence outside the lower end of the guideline if they believe there are good reasons. We therefore believe that setting the starting point and the bottom end of the range at such a low level will bring about lower sentences for offences at the bottom end of the guidelines.

The JCS correctly point out that D3 is out of step with the rest of the table but their suggestion runs the risk of more custodial sentences being passed. The sentences at D3 of the draft guideline are already higher than the lowest sentences passed in 2019 and 2020:

Year	Discharge	Fine	Community order	Suspended sentence	Immediate custody	Range
2019	2	8	2	7	6	Discharge – 12 years' custody
2020	4	10	3	10	8	Discharge – 14 years' custody

The levels as consulted on in table 2 (reproduced below) were set with regard to current sentencing practice and the sentence levels in the *Possession of a prohibited weapon* guideline.

Harm	Culpability		
	A / B	C	D
Category 1	Starting point 5 years' custody Category range 4 – 7 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody
Category 3	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody	Starting point Low level community order Category range Band A fine – High level community order

The Council had decided not to include discharges in the range because as there is an element of intention or knowledge required for these offences it was difficult to envisage a situation where it would be 'inexpedient to inflict punishment' (section 80 Sentencing Code) and the Council took the view that in an exceptional case a court could go outside the guideline.

The Council decided that in order to mark the seriousness of the offences and to bring the range for D3 closer to the adjacent categories (i.e. C3 and D2) while having regard to current sentencing practice, the starting point and bottom of the range would be increased but the top of the range would remain unchanged and not include a custodial sentence.

Harm	Culpability		
	A / B	C	D
Category 1	Starting point 5 years' custody Category range 4 – 7 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody
Category 3	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody	Starting point Medium level community order Category range Band C fine – High level community order

The Sentencing Academy pointed out some inconsistencies in the location of the starting points within the ranges in the sentence tables. The Council considered that while it is desirable for sentence tables to follow a logical pattern, this is not the most important consideration. The starting points and ranges in table 1 are based on those in the *Transfer and manufacture* guideline and any attempt to place starting points consistently at the mid-point would introduce unintended differences with that guideline.

There were no other suggestions for changes to sentence levels in response to the consultation.

Aggravating and mitigating factors

As noted above the JCS suggested some additional ‘other’ culpability factors relating to the intended use of the firearm (such as “Offender intends firearm/ammunition to be used for a criminal purpose, or is reckless as to whether it would be so used”); the Council of District Judges suggested a low harm factor relating to legitimate personal use of the firearm – “For personal use for otherwise legitimate purposes (considering reasonableness of account in all the circumstances)”; and a magistrate said that the harm assessment should consider if “there is evidence that the commercial operation has supplied arms known to have been used to harm others”.

These suggestions were not adopted at step 1, but were considered by the Council in relation to the factors at step 2. On a similar theme, a magistrate suggested adding an aggravating factor relating to the use of firearms supplied by the offender.

The draft guideline for consultation contained an aggravating factor:

- Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not taken into account at step 1)

As there is no reference at step 1 to the intended use of the firearm (although references to links to other serious criminal activity may allude to this), the Council decided to remove the words ‘(where not taken into account at step 1)’ from this aggravating factor. The Council was satisfied that this factor addresses the points relating to the use of the firearm.

A magistrate took issue with the mitigating factor:

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

The idea that someone genuinely did not believe the object(s) would not be used for criminal purposes is flawed, even if I do not expect it to be used unlawfully I am enabling that to potentially happen by importing the objects. This cannot be a reason to reduce my culpability. This does not reduce their offending at best it does not aggravate it and so is neutral. this should be removed from the reducing seriousness list.

This is at odds with the suggestion from the Council of District Judges of a factor relating to the legitimate use of a firearm. The Council considered that this mitigating factor should be retained.

Two respondents (the CPS and JCS) pointed out that the mitigating factor: ‘No knowledge or suspicion that importation was unlawful’ amounts to a defence and therefore the mitigating factor should be removed. The CPS suggested ‘No knowledge or suspicion that importation was of firearms’ as an alternative, citing a case where a courier imported weapons without knowing what they were (because he made no effort to find out what he

was carrying) and this provided some limited mitigation. Allowing for the fact that step 2 factors are non-exhaustive and cases such as that cited by the CPS will be rare, the Council decided that the mitigating factor should be removed and not replaced.

The NCA commented on several of the aggravating factors and suggested adding some more:

“Intent to evade/conceal” We suggest this factor covers both at import in person and by post. This can be assessed by a subject making an un-true declaration to a customs officer or postal customs declaration at import. Concealment; Where the firearm is placed in packaging intending to evade x-ray control, ghosting, substitution, cover loads, misdeclaration, fraudulent accounting.

Border Force have reported highly sophisticated concealment seizures which include adaptation of vehicles and petrol tanks and recent loads where firearms have been deconstructed and declared as car parts.

Most illicit commodities detected at the Border have been subject to concealment methods intended to evade Customs Control.

“Has attempted to convert, contrary to section 4”

“Has purchased the firearm from an unauthorised seller/non legitimate means” Although the use of the Dark web is not unlawful, consideration into malign intent should be taken when purchasing from such platform.

The Council considered that the first suggestion by the NCA relating to attempts to evade/conceal is covered at step 1 in the ‘other’ culpability factors:

- Significant planning, including but not limited to significant steps to evade detection (high)
- Some degree of planning, including but not limited to some steps to evade detection (medium)

The second suggestion ‘Has attempted to convert, contrary to section 4’ was similar to a suggestion from the Council of HM Circuit Judges who said: ‘We would suggest that the importation of weapons that have been modified to be more dangerous should be an aggravating factor’.

The Council noted that the *Possession of a prohibited weapon* guideline has the following aggravating factor:

- Firearm modified to make it more dangerous

Consideration was given to adding this to the importation guideline but on balance the Council decided not to do so as this may already have been taken into account at step 1, particularly with the addition of the wording ‘or adapted’ in the description of the type of weapon and so could result in double counting. There is also the question of why importation of a weapon that has been adapted to make it dangerous is more serious than the importation of one that is inherently very dangerous without adaptation.

The Council considered that the third suggestion from the NCA: 'Has purchased the firearm from an unauthorised seller/non legitimate means' is already covered by the culpability factors relating to planning.

The Council of HM Circuit Judges suggested that the aggravating factor 'Firearm under s5(1)(a) (automatic weapon)' runs the risk of double counting because it would be categorised as a Type 1 weapon:

The Council saw merit in this point; this aggravating factor appears in *the Transfer and manufacture* guideline (where the type of weapon is not part of the culpability assessment) but not in the *Possession of a prohibited weapon* guideline (where the type of weapon is part of the culpability assessment). The Council therefore decided to remove it.

The CLSA queried the relevance of the mitigating factor 'Sole or primary carer for dependent relatives' in the context of this offence. The Council noted that this factor is included in almost all guidelines and it could be relevant for this offence, particularly for offenders on the cusp of custody.

The CPS queried the following mitigating factor stating that this would already have been taken into account in the assessment of harm at step 1:

- Very small scale importation and very low risk of harm to others

This factor was included to distinguish the small scale importation where there is a real risk of a dangerous weapon going into circulation (even if not intended), from the situation where there is little or no risk of that happening.

The NCA also commented on this factor:

We do understand that this may have been included in cases where a subject has purchased one stun gun however we ask the Council that consideration should not be taken into mitigating factors with any firearm categorised as a section 5 OLP [original lethal purpose] or converted/unlawful blank firearm.

The Council considered that it was difficult to envisage a case where this factor would be applied by a court in relation to a lethal weapon prohibited under section 5 (apart perhaps from in the case of a collector who held weapons securely and in a non-functioning condition) – which should deal with the NCA's concerns. The Council decided to retain the factor.

The NCA commented on the mitigating factor: 'Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)', stating:

Unsuccessful conversion of a blank firing firearm should not be included. The attempted conversion, whether capable or not to live fire indicates an intent to convert into a OLP and becomes an offence under section 4.

The Council noted that the reason for including this mitigating factor is because the identification of the type of weapon at step 1 disregards the fact that the weapon may not be complete or in working order. The extent to which this would mitigate the sentence would depend on the facts of an individual case but, all other things being equal, a non-functioning weapon is less immediately dangerous than a functioning one and therefore a degree of mitigation may be appropriate.

After consideration of the responses to the consultation the aggravating and mitigating factors are as follows:

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Compatible ammunition and/or silencer(s) imported with firearm (See step 5 on totality when sentencing for more than one offence)
- Others put at risk of harm by method of importation
- Offender intends firearm/ammunition to be used or is reckless as to whether it would be used
- Use of business as a cover
- Attempts to dispose of the firearm or other evidence
- Commission of offence whilst under the influence of alcohol or drugs
- Offender prohibited from possessing weapon or ammunition because of previous conviction (See step 5 on totality when sentencing for more than one offence)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- Very small scale importation **and** very low risk of harm to others
- Genuine belief that firearm/ammunition will not be used for criminal purpose
- Offender co-operated with investigation and/or made early admissions
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

Steps 3 to 8 and general comments

Steps 3 to 8

Steps 3 to 8 of the guideline follow the normal structure of Sentencing Council guidelines. The features that are particular to firearms offences are:

At step 6 – Ancillary orders, there is guidance on the forfeiture of firearms under section 170(6) CE(MA) or by making a deprivation order under section 153 of the Sentencing Code. There is also reference to imposition of a Serious Crime Prevention order.

The consultation asked whether there were any other matters that should be addressed at steps 3 to 8. There were no suggestions. And therefore no changes have been made.

General comments

The NCA made some general points: they were concerned that sentencing should reflect the impact that converted or reactivated weapons can have and also that sentencing should not distinguish between an import by person at a border and an import by post.

Then Council reviewed the guideline in the light of these comments and was satisfied that guideline would ensure that sentencing reflects the danger represented by lethal weapons whether in their original condition or converted. This would depend to some extent on how offences are charged. The Council was also satisfied that the guideline will apply equally across a range of methods of importation.

Changes to existing firearms guidelines

Possession of a prohibited weapon

The changes agreed in the importation guideline to the wording of the culpability – type of weapon assessment (i.e. changing ‘designed’ to ‘designed or adapted’) are also being made to the *Possession of a prohibited weapon* guideline for clarity and consistency.

Manufacture and transfer

The change in wording in the importation guideline in the harm assessment from ‘organised criminal group(s)’ to ‘other serious criminal activity’ is also being made to the *Transfer and manufacture* guideline for clarity and consistency.

Impact of the changes

Resource impact

The Council anticipates that any impact on prison and probation resources from the guideline would be small. This is explored in more detail in a resource assessment published by the Council.

Equality and diversity

As a public body the Council is subject to the Public Sector Equality Duty (PSED) which means it has a legal duty to have due regard to:

- the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010;
- the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not;
- the need to foster good relations between those who share a “protected characteristic” and those who do not;

Under the PSED the relevant protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment.

Alongside the draft guideline the Council published information on the demographic makeup (specifically age, ethnicity and sex) of offenders for firearms importation offences which has subsequently been updated for the definitive guideline.

The volumes for these offences are too low to draw any conclusions about whether there are any issues of disparity in sentencing based on membership of one or more demographic group.

The consultation sought suggestions from respondents as to how issues of equality and diversity could be addressed by the guidelines.

Only one respondent raised a substantive issue relating to equality: Transition to Adulthood Alliance (T2A) made suggestions relating to the sentencing of young adults and how this is presented in our published statistics:

In relation to age, T2A is concerned that the way the data is presented in the statistical tables accompanying the statistical bulletin means it is not possible to break the data down according to the Council's own definition of young adulthood as specified in the General guideline: overarching principles. That Guideline—under the mitigating factor of age and/or lack of maturity—defines young adults as typically aged between 18 and 25. The data included in the statistical tables differentiates between 18-21 and 22-29 year olds. Without such data it will not be possible to monitor the impact of guidance on the young adult cohort which the Council itself has acknowledged is distinct on the basis of neurological maturational development. We propose that this group should therefore be given dedicated consideration in the data tables with the protected characteristic of age under the Equality Act 2010.

According to the current data, young adults aged 18-29 represent a significant proportion of people sentenced for firearms importation offences, accounting for 37% (fraudulent evasion of prohibition/restriction) and 38% (improper importation of goods) of those sentenced for such offences between 2015 and 2019. T2A therefore welcomes the specific reference to the mitigating factor of “age/lack of maturity” when referring to equalities on p.15 of the consultation paper.

The Council’s response

The Council has considered T2A’s comments and has made the decision to move to a more detailed age group breakdown. This change has been applied to the data tables accompanying the definitive *Firearms importation offences* guideline and will apply to all future published data tables. Further information can be found in the explanatory note published alongside the data tables.

The full data tables and explanatory note are published on the [Council’s website](#).

Conclusion and next steps

As a result of the consultation the Council has made the changes set out above. The amended version of the guideline is published on the Council's website (<https://www.sentencingcouncil.org.uk>) on 24 November 2021 to come into force on 1 January 2022.

The final resource assessment is published on 24 November 2021 on the Council's website.

Following the implementation of the definitive guideline, the Council will monitor its impact.

Consultation respondents

Chief Magistrate

Criminal Law Solicitors' Association

Criminal Sub-Committee of the Council of Her Majesty's Circuit Judges

Crown Prosecution Service

Justice Select Committee

Justices' Legal Advisers and Court Officers' Service

Legal Committee of HM Council of District Judges (Magistrates' Courts)

Lord Chancellor

Martin Alderman

National Crime Agency

Peter Wilson

Sentencing Academy

Tony Pratt

Transition to Adulthood Alliance

