

Final Resource Assessment

Firearms Offences

Introduction

This document fulfils the Sentencing Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

In May 2008, the Sentencing Guidelines Council (SGC) published the Magistrates' Court Sentencing Guidelines (MCSG), covering most of the offences regularly going before a magistrates' court. This included guidance for the offence of carrying a firearm in a public place.

No current guideline exists for any of the other offences covered by the new guidelines (detailed below). The Council has published sentencing guidelines for all these offences, for use in all courts in England and Wales.

The Council's aim in developing the guideline is 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, and additionally to promote a consistent approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences, which are all covered by the Firearms Act 1968:

- Possession, purchase or acquisition of a prohibited weapon or ammunition;
- Possession, purchase or acquisition of a firearm/ammunition/shotgun without a certificate;

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

- Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition;
- Carrying a firearm in a public place;
- Possession of firearm with intent to endanger life;
- Possession of firearm or imitation firearm with intent to cause fear of violence;
- 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; and
- Manufacture weapon or ammunition specified in section 5(1)/sell or transfer prohibited weapon or ammunition/possess for sale or transfer prohibited weapon or ammunition/purchase or acquire for sale or transfer prohibited weapon or ammunition.

The *Firearms* guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the guidelines will encourage consistency of sentencing and in the majority of cases will not change overall sentencing practice. In order to develop a guideline that maintains current practice, knowledge of recent sentencing was required.

Sources of evidence have included the analysis of transcripts of judges' sentencing remarks, sentencing data from the MoJ Court Proceedings Database, and references to case law and news articles. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guideline.

During the consultation stage, qualitative research was conducted with sentencers, to gauge whether the new guidelines would work as anticipated. This research has provided some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for firearms offences covered by the guideline have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

Possession, purchase or acquisition of a prohibited weapon or ammunition – sections 5(1), 5(1A)

The statutory maximum sentence for possession of a prohibited weapon is 10 years' custody. In 2019, around 910 offenders were sentenced for these offences.² Over a

² The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified

third (36 per cent) of these cases related to offences subject to a mandatory minimum term of 5 years' custody,³ and the other 64 per cent related to offences which are not subject to a mandatory minimum term.⁴

In 2019, the vast majority of offenders sentenced for offences subject to the minimum term were sentenced to immediate custody (90 per cent). A further 6 per cent received suspended sentence orders and the remaining offenders received a discharge (1 per cent) community order (1 per cent) and were otherwise dealt with (1 per cent).^{5,6} The average (mean) custodial sentence length (ACSL) for those sentenced to immediate custody was 4 years 10 months, after any reduction for guilty plea.⁷

For offences not subject to the minimum term, community orders and suspended sentence orders were the most common outcomes (28 per cent each). One fifth of offenders were sentenced to immediate custody (20 per cent), with an ACSL of 1 year, a further 14 per cent of offenders received a fine, 8 per cent received a discharge and 3 per cent were otherwise dealt with.⁵

Possession, purchase or acquisition of a firearm/ammunition/shotgun without a certificate – sections 1(1), 2(1)

The statutory maximum sentence for these offences is 5 years' custody, or 7 years for the section 1(1) offence where it is aggravated. Around 140 offenders were sentenced for these offences in 2019. Just over a third of offenders (36 per cent) were sentenced to immediate custody, and 24 per cent received a suspended sentence order. A further 16 per cent received a fine, 12 per cent were discharged, 10 per cent were given a community order and 1 per cent were otherwise dealt with⁵. The ACSL in 2019 was 2 years 3 months.

Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition – section 21(4)

This offence is relatively low volume, with 50 offenders sentenced in 2019. Just under half of offenders were sentenced to immediate custody (48 per cent), a further 20 per cent received a suspended sentence order, 16 per cent received a community order, 8 per cent received a fine and 8 per cent received a discharge. The statutory

offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here:

<http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

³ Sections 5(1)(a)-(af), (c) and 5(1A)(a) of the Firearms Act 1968.

⁴ Sections 5(1)(b) and 5(1A)(b)-(g) of the Firearms Act 1968.

⁵ 'Otherwise dealt with' includes restriction orders, hospital orders, victim surcharges, forfeitures, police cells, hospital and limitation directions and those otherwise dealt with on conviction.

⁶ Percentages may not sum to 100 per cent due to rounding.

⁷ Although these offences are subject to a statutory minimum sentence of 5 years' custody, it is possible for the court to impose a less severe sentence if it finds that there are exceptional circumstances.

maximum sentence for this offence is 5 years' custody, and the ACSL in 2019 was 1 year.

Carrying a firearm in a public place – section 19

In 2019, around 200 offenders were sentenced for carrying a firearm in a public place, and the majority were sentenced in magistrates' courts (68 per cent). The most frequently used sentencing outcome for this offence is a community order, with 44 per cent of offenders sentenced to a community order in 2019. Additionally, 17 per cent of offenders received a suspended sentence order, 11 per cent received a fine, 7 per cent were discharged and 2 per cent were otherwise dealt with.⁵ The remaining 20 per cent were sentenced to immediate custody, with an ACSL of 9 months. The statutory maximum sentence is 7 years' custody for carrying a firearm or shotgun in a public place, 12 months' custody for an imitation firearm, and 6 months' custody for an air weapon.

Possession of firearm with intent to endanger life – section 16

This offence is relatively low volume, with 81 offenders sentenced in 2019. Almost all offenders (96 per cent) were sentenced to immediate custody in 2019, a further four per cent were otherwise dealt with.⁵ The ACSL was 11 years 3 months and the statutory maximum sentence for this offence is life imprisonment.

Possession of firearm or imitation firearm with intent to cause fear of violence – section 16A

In 2019, around 230 offenders were sentenced for possession with intent to cause fear of violence, which has a statutory maximum sentence of 10 years' custody. The majority of offenders were sentenced to immediate custody (72 per cent) with an ACSL of 2 years 8 months. A further 19 per cent received a suspended sentence order, 5 per cent received a community order and 3 per cent were otherwise dealt with.⁵

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

These offences are relatively low volume, with 23 offenders sentenced overall in 2019. Most offenders were sentenced to immediate custody (87 per cent), a further four per cent received a suspended sentence order and 9 per cent were otherwise dealt with.⁵ The statutory maximum sentence for these offences is life imprisonment, and in 2019 the ACSL was 5 years 3 months.

Manufacture/sell or transfer/possess for sale or transfer/purchase or acquire for sale or transfer prohibited weapon or ammunition – section 5(2A)

These offences are very low volume, with 18 offenders sentenced in 2019. Most offenders were sentenced to immediate custody (89 per cent) and the remaining 11 per cent received a suspended sentence order. The ACSL was 10 years 10 months. The statutory maximum sentence for these offences is life imprisonment.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guidelines and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guidelines are therefore subject to a large degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in a definitive guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the guideline are therefore not included in the estimates.

In developing sentence levels for the different guidelines, data on current sentence levels have been considered. Existing guidance and transcripts of judges' sentencing remarks have also been reviewed.

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guidelines.

To support the development of the guidelines and mitigate the risk of the guidelines having an unintended impact, findings from the consultation stage research were considered in the development of the definitive guidelines.⁸ However, despite this, it remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources.

Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/>.

⁸ During the consultation stage of guideline development, qualitative research was carried out to help gauge how the guideline might work in practice. Twenty-six interviews were conducted with Crown Court judges on the draft guidelines for possession of prohibited weapon, possession with intent to cause fear of violence and possession with intent to endanger life. Several research exercises were carried out at an event with around 60 magistrates on the draft guideline for carrying a firearm in a public place.

Summary

The expected impact of each guideline is provided in detail below. Overall, the guidelines aim to improve consistency of sentencing, but not to change sentencing practice.

Analysis of Crown Court judges' sentencing remarks has been undertaken, to assess how sentences might change under the guideline. For the majority of offences, no particular issues were identified with sentence levels which would be likely to cause an impact on prison and probation resources (although this finding is tentative due to the small sample of cases analysed for each offence).

For some offences, analysis of the limited data available indicated that current sentence levels vary within offences, with the likelihood being that some sentences will increase under the new guideline, some will decrease, and others will remain the same. Overall, these effects may offset one another, although it is not possible to say for certain what the net effect will be. It is, however, anticipated that sentencing for these offences will become more consistent under the definitive guideline.

Possession, purchase or acquisition of a prohibited weapon or ammunition – sections 5(1), 5(1A)

There are no existing guidelines for these offences, which have a statutory maximum sentence of 10 years' custody. The new guideline covers a number of offences: sections 5(1)(a)-(af),(c) and 5(1A)(a) of the Firearms Act 1968, which are subject to a mandatory minimum sentence of 5 years' custody; and sections 5(1)(b) and 5(1A)(b)-(g), which are not subject to a mandatory minimum sentence.

The guideline has a two-step approach to assessing culpability; the sentencer is first required to assess the type of weapon involved in the offence, and then consider other culpability factors (such as whether or not the firearm was used or intended for a criminal purpose). The combination of these two features determines the appropriate culpability category. The guideline contains three levels of culpability, three levels of harm, and two separate sentencing tables: one for those offences subject to the mandatory minimum sentence (with a sentencing range from 5 – 10 years' custody), and the other for those which are not (sentencing range from a discharge up to 5 years' custody).

For offences with a mandatory minimum sentence, it is possible for the court to impose a less severe sentence if it finds that there are exceptional circumstances. Analysis of sentencing data for offences subject to the minimum term found that in 2019, overall 29 per cent of offenders received a sentence below the minimum term of 5 years' custody. For offenders sentenced under 5(1)(a)-(af),(c), the proportion receiving a sentence below the minimum term was 17 per cent, whereas for those sentenced under 5(1A)(a) the proportion was much higher, at 56 per cent.

Firearms which are disguised as another object (such as stun guns disguised as torches or mobile phones) are prohibited weapons contrary to section 5(1)(b) and 5(1A)(a). The latter offence attracts a mandatory minimum sentence, whereas the former does not. In May 2019, the Crown Prosecution Service (CPS) changed its guidance on charging practice, which now advises prosecutors to charge offences

involving disguised stun guns under 5(1)(b), unless the case contains significant aggravating features.⁹

It was expected that if offences were charged under 5(1)(b) rather than 5(1A)(a), then sentences would be lower, given that there may be cases which previously received the 5 year minimum term which would now be sentenced using the sentence table for offences not subject to the minimum term (ranging from a discharge up to 5 years' custody). Figures for 2019 show that while there has been an increase in the number of offenders sentenced under 5(1)(b) - an increase of 58 per cent from around 370 in 2018 to 590 in 2019 - a similar sized decline has not been seen in 5(1A)(a). This suggests that the changes seen in sentencing occurred independently of the CPS change in charging practice. However, it is important to note that very small volumes of offenders are currently sentenced for 5(1A)(a) (about 100 in 2019) and therefore it is difficult to fully ascertain the effect of the change in the CPS charging decision and whether it will influence future sentencing decisions.

Furthermore, it was expected that this change in CPS charging practice would result in a reduction of the proportion of 5(1A)(a) offences receiving a sentence below the 5 year minimum term, given that those offences now charged under 5(1A)(a) are likely to be cases which would not previously have been found to have exceptional circumstances. However, the proportion of offenders receiving below the minimum term for 5(1A)(a) increased slightly in the latter half of 2019, from 53 percent in April to June when the changes came into force, to 67 per cent in July to September and 70 per cent in October to December.¹⁰ This suggests that the expected impact of the CPS change in charging practice has not occurred; however it may have an impact in the future.

Step three of the guideline provides guidance on minimum term provisions and exceptional circumstances for these offences. As there is currently no specific guidance in place on this topic, the guidance in the new guideline was produced to reflect current case law. Research was conducted with sentencers to explore this aspect of the guideline; however, little evidence was found to suggest that this change will impact the sentencing outcomes.

In addition, analysis of a small sample of transcripts of sentencing remarks indicated that if the CPS charging practice changed, it was likely that some cases previously granted exceptional circumstances (i.e. those who received either a non-custodial sentence or a custodial sentence of less than 5 years) would also receive lower sentences under the new guideline (for example, community orders rather than suspended sentence orders). While these impacts have not been observed so far, these changes to sentencing levels may still occur as a result of the change in CPS charging practice in the future. However, the analysis indicated that if this change occurred, any impact on prison resources would be minimal and any of changes highlighted above would be attributable to the change in CPS charging practice and not to the guidelines.

⁹ <https://www.cps.gov.uk/legal-guidance/firearms>

¹⁰ Please note, these proportions are based on very small number of offenders, therefore care should be taken when interpreting these figures.

Possession, purchase or acquisition of a firearm/ammunition/shotgun without a certificate – sections 1(1), 2(1)

There are no existing guidelines for these offences. The new guideline has three levels of harm and three levels of culpability and, as with possession of a prohibited weapon, there is a two-step approach to assessing culpability.

The sentencing range for these offences has been set with evidence of current sentencing practice in mind,¹¹ spanning from a discharge to 4 years 6 months' custody. The statutory maximum sentence for this offence is 5 years' custody, or 7 years for the section 1(1) offence where it is aggravated (i.e. a shortened shotgun or converted firearm).

Given that sentence ranges have been based on current sentencing practice, it is not anticipated that the guideline will have an impact on correctional resources.

Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition – section 21(4)

There are no existing guidelines for this offence, which has a statutory maximum sentence of 5 years' custody. The new guideline has three levels of harm and three levels of culpability, with a two-step approach to assessing culpability.

The sentencing table in this guideline has been set with current sentencing practice in mind (based on an analysis of judges' sentencing remarks) and spans from a discharge to 4 years six months' custody.

As sentence ranges have been based on current sentencing practice, it is not anticipated that the guideline will have an impact on correctional resources.

Carrying a firearm in a public place – section 19

The existing MCSG guideline for carrying a firearm in a public place contains three categories of seriousness reflecting the 'nature of activity'. For offences that fall into the highest level of seriousness (carrying loaded shotgun/carrying shotgun/firearm together with ammunition) the existing guideline advises the sentencer to send the offender to the Crown Court for sentencing. The new guideline is for use at all courts and is therefore more comprehensive for sentencing the most serious offences.

The guideline is based on three levels of harm and three levels of culpability (with a two-step approach to culpability), and has a sentencing range from a discharge up to 4 years' custody. The statutory maximum sentence is 7 years' custody for carrying a firearm or shotgun in a public place, 12 months' custody for an imitation firearm, and 6 months' custody for an air weapon.

Just under a third of offenders sentenced for carrying a firearm in a public place are sentenced in the Crown Court, where there is no existing guideline in place.

Transcripts of Crown Court judges' sentencing remarks for a sample of these cases were used to assess how sentences might change under the new guideline. This analysis indicates that some offenders would receive a less severe sentence under

¹¹ Transcripts of Crown Court judges' sentencing remarks were analysed to assess the potential impact of the guideline.

the new guideline; specifically, some offenders who previously received a suspended sentence order would instead receive a community order. In addition, some offenders who were previously sentenced to immediate custody would also receive a community order, resulting in a small impact on correctional resources (an estimated reduction of fewer than five prison places per year, and a small requirement for additional probation resources).

Research was conducted with magistrates' court sentencers to understand the impact of the new guideline on sentencing practice in magistrates' courts. As seen in analysis of Crown Court sentencing, the research suggested that some offenders may receive less severe sentences at the magistrates' court, specifically that more offenders may receive a fine instead of a community order. The analysis indicates this may have the largest impact on sentencing outcomes for those offenders sentenced for carrying an imitation firearm; which account for 63 per cent of those sentenced for carrying a firearm in a public place. Of these offenders, 41 per cent were sentenced to a community order while only 6 per cent received a fine,¹² suggesting the guideline may cause a shift in sentencing outcomes as few offenders currently receive a fine. However, it is not anticipated that the guideline will have an impact on correctional resources as most offenders dealt with at the magistrates' court receive a sentence other than immediate custody (88 per cent in 2019).

Possession of firearm with intent to endanger life – section 16

There is currently no guideline for the offence of possession of a firearm with intent to endanger life. The guideline has three levels of culpability and three levels of harm, with a sentencing range from 4 to 22 years' custody. The statutory maximum sentence for this offence is life imprisonment.

Transcripts of judges' sentencing remarks were analysed for a sample of these cases, to assess how sentences might change under the definitive guideline. This analysis of a small sample of cases did not identify any particular issues with sentence levels in the guideline (although this finding is tentative due to the small number of cases analysed).

It is therefore not anticipated that the guideline for this offence will result in an impact on prison and probation resources.

Possession of firearm or imitation firearm with intent to cause fear of violence – section 16A

There is currently no guideline for the offence of possession of a firearm or imitation firearm with intent to cause fear of violence. The guideline has three levels of culpability, three levels of harm, and two separate sentencing tables: one for offences involving a firearm (with a sentencing range from 6 months – 9 years' custody), and the other for offences involving an imitation firearm (sentencing range from a medium level community order up to 8 years' custody). The statutory maximum sentence for this offence is 10 years' custody.

¹² This is compared to those sentenced for carrying an air weapon, of whom, 53 per cent received a community order and 22 per cent received a fine. (This data is sourced from the Court Proceedings Database (CPD)).

As the sentencing ranges have been set with current sentencing practice in mind (using sentencing data from the Court Proceedings Database), it is not anticipated that there will be any impact on prison and probation resources.

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

There is currently no guideline for these offences, which are relatively low volume. The new guideline has three levels of culpability, three levels of harm, and two separate sentencing tables: one for offences involving a firearm (with a sentencing range from 1 – 16 years' custody), and the other for offences involving an imitation firearm (sentencing range from a high level community order up to 11 years' custody). The statutory maximum sentence for these offences is life imprisonment.

This guideline has been set with current sentencing practice in mind, and so in general there is not expected to be any impact on prison or probation resources.

Manufacture/sell or transfer/possess for sale or transfer/purchase or acquire for sale or transfer prohibited weapon or ammunition – section 5(2A)

There is currently no guideline for these offences, which are low in volume; since 2016 between 10 and 30 offenders in total have been sentenced each year. The new guideline has three levels of culpability and three levels of harm, with a sentencing range from 3– 28 years' custody. The statutory maximum sentence for these offences is life imprisonment.

Transcripts of judges' sentencing remarks for these offences were used to assess how sentences might change under the new guideline. The analysis found that some sentences would be likely to increase under the new guideline, some would be likely to decrease, and some would remain the same. The lack of a clear pattern indicates there is currently some variation in sentencing for these offences. Due to a lack of data available it is not possible to say whether the guideline for these offences will have an impact on prison and probation resources overall. It is anticipated, however, that sentencing will become more consistent following the introduction of the guideline.

Risks

In attempting to estimate the likely resource impacts of this guideline, there are two main risks to consider:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

This risk has been mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This included conducted research interviews with sentencers, where case scenarios were used to test whether the guideline has the intended effect and to test sentencers understanding and use of the guideline. However, there are limitations on the number of scenarios which can be explored, so the risk cannot be fully eliminated.

Risk 2: Sentencers do not interpret the new guideline as intended

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks for firearms cases have also been studied to ensure that the guideline is developed with current sentencing practice in mind. Research carried out with sentencers has enabled issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

Analysis of data from the Ministry of Justice and other research will be used to monitor the effect of the guidelines once they are in force to ensure any divergence from its aims is identified as quickly as possible.