

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(18)OCT03 – Firearms paper 1
Maura McGowan
Sophie Klinger
07976 300962

1 ISSUE

1.1 This is the third meeting to consider the firearms guideline. This paper (paper 1) asks the Council to consider the culpability and harm models for the possession guidelines. The aggravating and mitigating factors will be considered in a separate paper (paper 2) at the same meeting.

1.2 Currently, there are three further meetings scheduled to discuss the firearms guideline. An initial additional meeting has been added to the timetable due to the widened scope and complexity of the guideline. The tentative aim is now to sign off the consultation version at the March 2019 meeting, if possible, with consultation planned for late April to late July 2019. However, these timelines will continue to be monitored and amended as required.

1.3 Further guidelines (on possession with intent, transfer of prohibited weapons, and possible guidelines on manufacturing and possession of articles for conversion) will follow once the Council has agreed the basic culpability and harm models for the possession offences. The Council will also be asked to examine sentence levels, generic text and wording on the statutory minimum sentence at subsequent meetings.

2 RECOMMENDATION

- That the Council agrees the culpability model for the possession guidelines, with type of weapon as an initial step within culpability (paragraphs 3.3-3.11);
- That the Council agrees the harm model for the possession guidelines (paragraphs 3.28-3.32);
- That the Council agrees to explore options for addressing offences subject to the statutory minimum sentence at a later stage (3.33-3.34).

3 CONSIDERATION

3.1 There are four separate firearms guidelines covering possession offences:

1. Possession of a prohibited weapon (**Annex A**)

2. Possession without a certificate (**Annex B**)
3. Possession by a person prohibited because of previous conviction (**Annex C**)
4. Carrying a firearm in a public place (**Annex D**)

3.2 At the last meeting, the Council had an initial discussion about culpability and harm in the possession of a prohibited weapon guideline. The guidelines have been revised based on Council feedback. A revised draft of the possession of prohibited weapon guideline was circulated to a subset of Council members following the meeting. This revised draft had placed harm first in the guideline, ahead of culpability. The majority preferred the usual order of culpability then harm, so this order has been retained in these draft guidelines.

Culpability model – Guideline 1: Possession of prohibited weapon

3.3 This guideline at **Annex A** covers possession, purchase or acquisition, without authority, of a prohibited firearm or ammunition under sections 5(1) and (1A) Firearms Act 1968. Subsections under (1) and (1A) list the various types of firearms and ammunition that are prohibited. The mandatory minimum sentence applies to specified subsections. It should be noted that section 5 prohibited firearms can be possessed lawfully, either under authorisation from the Secretary of State, or under an exemption from this authority (per section 5A), although this is tightly controlled. Sections 5 and 5A are at **Annex D**.

3.4 At the last meeting, the Council considered the culpability model for this guideline. The Council agreed that three levels of culpability were appropriate. It was agreed that the type of weapon needed to be considered in a separate step. A possible model was shared with a subset of Council members, situating the type of weapon assessment as a step within harm rather than culpability. On balance, Council members preferred that the type of weapon assessment remain within culpability. These drafts are structured accordingly.

3.5 The model proposed in **Annex A** takes a two-pronged approach to culpability. There is assessment first of (A) Type of weapon, then (B) Other culpability factors. This then leads into a table that uses these two assessments to identify a final culpability category. There are three culpability categories, as in the previous draft. This two-pronged approach is similar to the model used in the Health and Safety guideline for harm, which included a table requiring consideration of both the seriousness of the harm risked and the likelihood of the harm arising. The table containing the final culpability category is arranged so that there is a lower limit of culpability B for the *most* serious type of weapon, and similarly an upper limit of culpability B for the *least* serious type of weapon.

3.6 Alternative approaches to culpability were considered, including one based more closely on the harm model in fraud guideline. Such an approach would have an initial

assessment based on the type of weapon, then a second step where the court could take into account other factors (in fraud, victim impact), to determine whether it warranted the sentence being moved to a different category, or moved within the range of the initial category. There is a concern that this approach would not give due weight to the important factors contained within culpability step B, and would anchor the overall culpability assessment too inflexibly to the type of weapon assessment. Analysis of transcripts has shown that the factors in culpability step B (such as whether the weapon was loaded and whether it was intended for use) are regarded as very significant, so should also drive the overall culpability assessment, rather than being relegated to a less influential status. For these reasons the proposed approach is preferred over the fraud guideline approach.

3.7 **Culpability A – Type of weapon:** There are three categories in this assessment, which Council were in favour of at the last meeting. The proposed drafting for the type of weapon section is as follows:

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 TWO.	
Type 1	<ul style="list-style-type: none"> Automatic weapon or other weapon (including component part) that is capable of being immediately lethal to more than one person
Type 2	<ul style="list-style-type: none"> All other weapons (including component part) falling between Type 1 and Type 3 Ammunition (where not at Type 3)
Type 3	<ul style="list-style-type: none"> Stun gun or other weapon (including component part) that is [usually non-lethal / not designed to be lethal] Very small quantity of ammunition

3.8 This section has been drafted to include a component part on an equal footing to a complete firearm in this assessment, as Council preferred; where the firearm is incomplete or incapable of being discharged, this will instead be a mitigating factor at step two, instead of featuring in culpability.

3.9 The Council appeared to support referring to certain specific types of weapons, so automatic weapons have been added under Type 1, and stun guns under type 3. There is also additional broad language under both Type 1 and Type 3. Some broad wording is required to enable other types of weapons to be covered that may be equally as serious, including new weapons that may be developed in future. It is preferable for this wording to

focus on the potential impact the weapon may have, rather than specific firing mechanisms, as this would likely become outdated.

3.10 The wording under Type 3 contains two alternative options for the Council to consider: 'usually non-lethal' or 'not designed to be lethal'. This wording reflects the fact that stun guns and similar devices can be lethal on occasion. There is a catch-all category, 'All other weapons (including component part) falling between Type 1 and Type 3' at Type 2. Currently Type 3 as drafted is not limited to stun guns charged under section 5(1)(b) so would also capture stun guns falling under section 5(1A)(a) (disguised weapons), which is subject to the minimum sentence. If the Council would like to draw this distinction, stun guns falling under 5(1A)(a) could be excluded from Type 3.

3.11 Section 5 covers both firearms and ammunition so ammunition also needs to be classified in this section. Ammunition has been placed in the middle category except where it is only present in a very small quantity, which is in the lowest category.

3.12 **Culpability B – Other culpability factors:** This step covers the other factors that were under culpability in the previous draft. There are still three levels of culpability in this section. Factors are included relating to whether the weapon was loaded or kept with ammunition. The Council preferred these to remain alongside the other culpability factors, rather than in the type of weapon assessment. A loaded firearm has been placed at high culpability while possession with compatible ammunition has been placed at medium culpability. The Council may agree with this categorisation, or may prefer to have these two factors at the same level.

3.13 The factors relating to use or intended use have been simplified, as agreed. Use or intended use for a criminal purpose is at high culpability, and no use or intention to use is at lower culpability. The middle category contains 'Firearm/ammunition produced (where not at High culpability)' to cover the narrow set of instances where there is production for non-criminal reasons, such as to show off the item to a friend. There is also 'Firearm/ammunition intended for use (where not at High culpability)' to cover the again narrow set of instances where the item is not intended for a criminal purpose. Alternatively, these two factors could be replaced with an 'All other cases' factor, though it is preferable to have some specific factors in the middle category. Our analysis of previous guidelines has shown that a lack of detail in the middle category can lead to overuse of the top and bottom categories. The factors previously under culpability, relating to custodians holding the weapon under pressure, coercion etc, have been shifted to step two, as agreed.

Question 1: Does the Council agree with the proposed culpability model for the possession of prohibited weapons guideline?

Culpability model – Guideline 2: Possession without a certificate

3.14 This guideline at **Annex B** covers the possession, purchase or acquisition of a firearm or ammunition under section 1(1), and possession of a shotgun under 2(1), without a certificate. The offences occur when the firearm, shotgun or ammunition is possessed, purchased or acquired without holding a certificate in force at the time, or otherwise than as authorised by the certificate, or (for ammunition) in quantities in excess of what is authorised.

3.15 There is an aggravated form of the section 1(1) offence where the firearm is a converted firearm or a shortened shotgun. This aggravated form has a statutory maximum of seven years rather than five years. It is quite low volume (14 in 2017 compared with 97 for the non-aggravated form).

3.16 This guideline will require a slightly different approach to culpability, compared with the possession of prohibited weapon guideline, because it only covers firearms and ammunition for which a certificate is required, not weapons prohibited under section 5.

3.17 It is proposed to retain a two-pronged approach to culpability with (A) an initial assessment of the type of weapon, then (B) an assessment of other culpability factors, and again a table to identify the final culpability category. The wording for the type of weapon assessment needs to be tailored to the weapons covered under this offence. It is suggested that shortened shotguns and firearms which have been converted (i.e. the aggravated form) fall in the top category. The following wording is proposed:

Type 1	<ul style="list-style-type: none">• Shotgun which has been shortened within the meaning of section 4(4)• Firearm which has been converted within the meaning of section 4(4)
Type 2	<ul style="list-style-type: none">• All other firearms or shotguns• Ammunition (where not at Type 3)
Type 3	<ul style="list-style-type: none">• Very small quantity of ammunition

3.18 Based on the current volumes, the majority of cases would fall into Type 2 rather than Type 1 or Type 3. This can be taken into account when developing the sentence levels.

3.19 In terms of other culpability factors under the second culpability step, it is proposed the same factors are used as for the possession of prohibited weapons guideline, with two minor amendments. First, there is the addition of wording to clarify that the discharge of the weapon falls at high culpability where the weapon is discharged ‘other than for a lawful

purpose', since there are various non-criminal purposes for the firearms and ammunition that can be held under certificate (from sporting uses to vermin control). It is also suggested the middle category factor cover use as well as intended use, other than for a criminal purpose.

Question 2: Does the Council agree with the proposed culpability model for the possession without a certificate guideline?

Culpability model – Guideline 3: Possession by person prohibited

3.20 This guideline at **Annex C** covers possession by persons prohibited from possessing a firearm or ammunition due to a previous conviction under section 21. Upon conviction, persons are prohibited from possession firearms for either five years or life depending on the length of the sentence.¹ This guideline covers the offence that occurs when the prohibition is contravened. The prohibition covers any firearm or ammunition at all, so it may include an item prohibited under section 5 or one for which a certificate is required. It appears in practice the offence is also charged for items for which no certificate is required, such as imitation firearms or lower-grade air weapons.

3.21 As with the other guidelines, it is proposed to take a two-pronged approach to culpability with (A) an initial assessment of the type of weapon, then (B) an assessment of other culpability factors, and again a table to identify the final culpability category. The following wording is proposed for type of weapon under this guideline:

Type 1	<ul style="list-style-type: none"> • Firearm or ammunition prohibited under section 5 (whether or not the minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm for which a certificate is required • Ammunition for which a certificate is required (where not at Type 3)
Type 3	<ul style="list-style-type: none"> • Air weapon or imitation firearm • Very small quantity of ammunition

3.22 A small number of offences under this guideline will involve prohibited weapons. On the weapons to be included under Type 1, the Council may agree to include all prohibited weapons under section 5, including the section 5(1)(b) category which includes stun guns and similar devices. Alternatively, the Council may prefer to draw a distinction between those

¹ A person who has been sentenced to life or imprisonment 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.

to which the minimum sentence applies and those to which it does not, placing the latter at Type 2. It should be noted that the weapons where the minimum sentence does *not* apply vary greatly in their seriousness, from stun guns under section 5(1)(b) to weapons for military use under section 5(1A)(b)-(g). To ensure these categories are properly targeted, it is proposed that section 5(1)(b) only is carved out of Type 1 and moved to Type 2.

3.23 Although this offence does not expressly cover air weapons or imitation firearms, it appears from the transcripts that sometimes this offence does involve these types of weapons. They have been included as Type 3 weapons.

Question 3: Does the Council agree with the proposed culpability model for the possession by person prohibited guideline?

Culpability model – Guideline 4: Carrying in a public place

3.24 This guideline at **Annex D** covers the carrying of a firearm in a public place under section 19. It will replace the [existing guideline in the MCSG](#). The offence involves a person having with them in a public place:

- (a) a loaded shotgun;
- (b) an air weapon (whether loaded or not);
- (c) any other firearm together with ammunition for it; or
- (d) an imitation firearm.

3.25 There is a defence of lawful authority or reasonable excuse. The mandatory minimum sentence applies where the firearm is a specified prohibited weapon from section 5(1) or (1A).

3.26 The same two-pronged approach is proposed for culpability for this guideline. The following is suggested for the assessment under Culpability A - Type of weapon (with the question of whether the weapon is loaded or with ammunition to remain under Culpability B – Other culpability factors):

Type 1	<ul style="list-style-type: none"> • Firearm or shotgun prohibited under section 5 (whether or not the mandatory minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm, shotgun or air weapon for which a certificate is required
Type 3	<ul style="list-style-type: none"> • Air weapon that is not prohibited and for which no certificate is required • Imitation firearm

3.27 The factors under Culpability B – Other culpability factors are proposed to be the same as the other guidelines, with the addition of another lower culpability factor

'Possession falls just short of reasonable excuse'. This factor is intended to address those cases where the reasons for carrying the weapon did not amount to a defence but have nonetheless lowered the offender's culpability.

Question 4: Does the Council agree with the proposed culpability model for the carrying in a public place guideline?

Harm model – Guideline 1: Possession of prohibited weapon

3.28 The harm model is set out at page 4 of **Annex A**. The Council considered an earlier draft of the harm factors at the last meeting. This section has since been revised to make it higher level and more thematic. It is still proposed to have three levels of harm. There is new introductory wording stating that harm is assessed by reference to the **risk of injury/death** or **disorder** occurring and/or **actual alarm/distress** caused. Similar thematic introductory wording is found in other guidelines such as theft, drugs, and environmental offences. There is also additional wording providing guidance on considerations that may be relevant when considering the risk of harm, including 'the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence'.

3.29 One area related to harm but not included is the risk that the weapon will fall into criminal possession. It was considered that the factor is sufficiently covered under the culpability factors relating to criminal use or intended use, and aggravating factors relating to offending in a group or having contact with criminal associates.

3.30 The harm factors are then higher level and aligned with the thematic areas set out in the introductory wording, focusing on the circumstances in which the offence was committed. The benefit of this approach compared with one spelling out more specific factors (such as the location of offending at a school, or children being present) is that it focuses the assessment on the harm itself, whether actual or risked, rather than using specific factors that may not always correspond to harm or risk of harm.

3.31 Circumstances where there is a high risk of serious injury or death, or of serious disorder, are placed at category 1, while low/minimal risk of the same is at category 3. Similarly, serious alarm/distress is at category 1 and no/minimal alarm/distress is at category 3. Category 2 contains 'limited alarm/distress caused' and a catch-all factor. This catch-all factor has been used instead of including a 'medium' factor for risk of serious injury/death and serious disorder, as feedback indicated that 'medium risk' was considered problematic. A 'medium risk' factor was included in the food safety guideline so there is a precedent to include this if the Council prefers.

Question 5: Does the Council agree with the harm model for the possession of prohibited weapon guideline?

Harm model – Guidelines 2-4

3.32 It is proposed that the harm model and factors for guidelines 2-4 be consistent with those for the possession of prohibited weapons guideline. The broader, more thematic framing of the harm model and the similarities in terms of harm between the offences of possession without a certificate, possession by person prohibited, and carrying in a public place, mean that the same harm factors should be suitable across these guidelines.

Question 6: Does the Council agree to use the same harm model and factors for the remaining possession guidelines?

Approaches to addressing cases where the minimum sentence applies

3.33 Certain offences falling under the possession of prohibited weapons guideline and the carrying in a public place guideline will be subject to the mandatory minimum sentence² (as will future guidelines to be considered on transfer and manufacture of prohibited weapons). For possession of prohibited weapons offences, by volume, the offences where the minimum sentence was engaged formed around 25 per cent of cases in 2017. In the remaining 75 per cent of cases the minimum sentence was not applicable.

3.34 There is concern about how the possession of prohibited weapon guideline will cater for offences where the statutory minimum sentence applies as well as those where it does not. Some Council members wanted consideration to be given to separate tables or sections of the guideline for dealing with minimum sentence cases. Council members were interested in understanding how the sentencing tables would accommodate the minimum five year sentence. The detail of the sentencing tables will be developed at subsequent meetings. In the proposed guideline at **Annex B**, separate sentencing tables have been included in step two, as a possible option. It is proposed that further work is done to explore how best to address this issue and to develop a coherent approach to apply across the relevant guidelines.

Question 7: Does the Council agree to explore options for addressing offences subject to the statutory minimum sentence at a later stage?

² The minimum sentence provisions apply where a person is convicted under section 5(1)(a)-(af) or (c), or section 5(1A)(a). They also apply where a person commits one of a number of other offences with a firearm or ammunition specified in those same subsections, including carrying in a public place, possession with intent offences, and manufacture or transfer of a prohibited weapon.

4 IMPACT

4.1 A draft resource assessment will be considered in due course. The resource assessment will be developed in line with the Council's decision at the September meeting that the guideline should aim to replicate current sentencing practice (subject to consideration of the sentencing tables for the specific offences). The impact on resources within the system is likely to be negligible if the guideline continues to be developed in line with this aim.

5 RISK

5.1 There are various legislative changes in train around firearms. The Home Office is still working on regulations that will prohibit certain antique firearms. The Offensive Weapons Bill is due to have its report stage and third reading on Monday 15 October 2018. This Bill will reclassify two further types of firearm and bump stock devices as prohibited weapons. It is necessary to ensure the wording in the guideline is future-proofed to accommodate these and any future changes to the list of prohibited weapons. Other proposed amendments to the Bill are also being monitored, including an amendment that would create a specific new offence for the possession of component parts of ammunition with intent to manufacture.

5.2 As expected, some complexities and technical questions have arisen in developing the guideline. Input is being sought from CPS, the National Ballistics Intelligence Service and firearms technical specialists at the Metropolitan Police Service where needed to inform the development of the guidelines and ensure technical accuracy.

5.3 There has been some pressure on timelines for this guideline due to the main staff resource being available through to May 2019. In light of the widened scope and complexities involved in the guideline, an initial additional Council meeting has been added to the timetable. Sign-off is now planned for March 2019 rather than January. The consultation will still be launched in late April if timescales permit. Drafts may be circulated to Council members to seek additional feedback in between meetings. This plan will be kept under review as the guideline progresses.

Firearms – Possession of prohibited weapon

Possession, purchase or acquisition of a prohibited weapon or ammunition

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

Indictable only:

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

Triable either way:

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

Maximum: 10 years' custody

Offence range: [To come]

This offence is subject to statutory minimum sentencing provisions.
See STEPS TWO AND THREE for further details.

STEP ONE
Determining the offence category

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

Culpability A – 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 TWO.

Type 1	<ul style="list-style-type: none"> Automatic weapon or other weapon (including component part) that is capable of being immediately lethal to more than one person
Type 2	<ul style="list-style-type: none"> All other weapons (including component part) falling between Type 1 and Type 3 Ammunition (where not at Type 3)
Type 3	<ul style="list-style-type: none"> Stun gun or other weapon (including component part) that is [usually non-lethal / not designed to be lethal] Very small quantity of ammunition

Culpability B – Other culpability factors

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:	
High culpability:	<ul style="list-style-type: none"> • Firearm discharged • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
Medium culpability:	<ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition • Firearm/ammunition intended for use (where not at High culpability)
Lower culpability:	<ul style="list-style-type: none"> • Firearm/ammunition not produced • No use or intention to use

Final culpability category

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

		A – Type of weapon		
		1	2	3
B – Other culpability factors	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	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death 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	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
Category 2	<ul style="list-style-type: none"> • Limited alarm/distress caused • All other cases falling between category 1 and category 3
Category 3	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is 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.

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.			
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 THREE 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	Starting point	Starting point
	Category range	Category range	Category range
Category 2	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 3	Starting point	Starting point	Starting point
	Category range	Category range	Category range

TABLE 2	Offences not subject to the statutory minimum sentence		
Harm	Culpability		
	A	B	C
Category 1	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 2	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 3	Starting point	Starting point	Starting point
	Category range	Category range	Category range

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Offence was committed as part of a group or offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A4. Commission of offence whilst under the influence of alcohol or drugs
- A5. Firearm/ammunition kept as part of a large-scale accumulation of weapons
- A6. Firearm modified to increase lethality and/or to conceal, or firearm under section 5(1)(b) able to be converted to live firing weapon
- A7. Abuse of position of registered firearms dealer
- A8. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A9. Offences taken into consideration
- A10. Failure to comply with current court orders
- A11. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged
- M4. Came into possession involuntarily
- M5. Voluntary surrender of firearm/ammunition
- M6. No knowledge or suspicion of presence of firearm/ammunition
- M7. Unaware firearm/ammunition is prohibited
- M8. Genuine mistake about whether covered by lawful authorisation
- M9. Held on behalf of another through coercion, intimidation, or exploitation

- M10. Serious medical condition requiring urgent, intensive or long-term treatment
- M11. Age and/or lack of maturity
- M12. Mental disorder or learning disability
- M13. Sole or primary carer for dependent relatives
- M14. Co-operation with the police

STEP THREE
Minimum Terms
 [To come]

STEP FOUR
Consider any factors which indicate a reduction for assistance to the prosecution
 The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE
Reduction for guilty pleas
 The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

STEP SIX
Totality principle
 If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

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

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

Serious Crime Prevention Order
 The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Firearms – Possession without certificate

Possession, purchase or acquisition of a firearm without a certificate

Firearms Act 1968 (section 1(1)(a))

Possession, purchase or acquisition of ammunition without a certificate

Firearms Act 1968 (section 1(1)(b))

Possession, purchase or acquisition of a shotgun without a certificate

Firearms Act 1968 (section 2(1))

Triable either way

Maximum: 5 years' custody, or 7 years for the section 1(1) offence where it is aggravated within the meaning of section 4(4) of the Act (shortened shotgun or converted firearm)

Offence range: [To come]

STEP ONE
Determining the offence category

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

Culpability A – 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 TWO.

Type 1	<ul style="list-style-type: none"> • Shotgun which has been shortened within the meaning of section 4(4) • Firearm which has been converted within the meaning of section 4(4)
Type 2	<ul style="list-style-type: none"> • All other firearms or shotguns • Ammunition (where not at Type 3)
Type 3	<ul style="list-style-type: none"> • Very small quantity of ammunition

Culpability B – Other culpability factors

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:	
High culpability:	<ul style="list-style-type: none"> • Firearm discharged, other than for lawful purpose • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
Medium culpability:	<ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition • Firearm/ammunition used or intended for use (where not at High culpability)
Lower culpability:	<ul style="list-style-type: none"> • Firearm/ammunition not produced • No use or intention to use

Final culpability category

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

		A – Type of weapon		
		1	2	3
B – Other culpability factors	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

<p>Harm</p> <p>The court should consider the factors set out below to determine the level of harm that has been caused or was risked.</p> <p>Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.</p> <p>This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual alarm/distress caused.</p> <p>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.</p>	
<p>Category 1</p>	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
<p>Category 2</p>	<ul style="list-style-type: none"> • Limited alarm/distress caused • All other cases falling between category 1 and category 3
<p>Category 3</p>	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is 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.

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.			
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 it may be appropriate to go above the top of the category range.			
Harm	Culpability		
	A	B	C
Category 1	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 2	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 3	Starting point	Starting point	Starting point
	Category range	Category range	Category range

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Offence was committed as part of a group or offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A4. Commission of offence whilst under the influence of alcohol or drugs

- A5. Firearm/ammunition kept as part of a large-scale accumulation of weapons
- A6. Firearm modified to increase lethality and/or to conceal (where not taken into account in type of weapon at step one)
- A7. Abuse of position of registered firearms dealer
- A8. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A9. Offences taken into consideration
- A10. Failure to comply with current court orders
- A11. Offence committed on licence or post sentence supervision
- A12. Possession continued after certificate refused or revoked
- A13. Poor record of firearms compliance

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged
- M4. Came into possession involuntarily
- M5. Voluntary surrender of firearm/ammunition
- M6. No knowledge or suspicion of presence of firearm/ammunition
- M7. Genuine misunderstanding about terms or validity of certificate
- M8. Steps taken to obtain certificate
- M9. Certificate not obtained/renewed due to genuine oversight
- M10. Good record of firearms licensing compliance
- M11. Held on behalf of another through coercion, intimidation, or exploitation
- M12. Serious medical condition requiring urgent, intensive or long-term treatment
- M13. Age and/or lack of maturity
- M14. Mental disorder or learning disability
- M15. Sole or primary carer for dependent relatives
- M16. Co-operation with the police

STEP THREE

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

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

Forfeiture and destruction of firearms and cancellation of certificate

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

Serious Crime Prevention Order

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Firearms – Possession by person previously convicted

Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition

Firearms Act 1968 (section 21(4))

Triable either way

Maximum: 5 years' custody

Offence range: [To come]

STEP ONE
Determining the offence category

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

Culpability A – 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 TWO.

Type 1	<ul style="list-style-type: none"> • Firearm or ammunition prohibited under section 5 (whether or not the minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm for which a certificate is required • Ammunition for which a certificate is required (where not at Type 3)
Type 3	<ul style="list-style-type: none"> • Air weapon or imitation firearm • Very small quantity of ammunition

Culpability B – Other culpability factors

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:
<p>High culpability:</p> <ul style="list-style-type: none"> • Firearm discharged, other than for lawful purpose • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
<p>Medium culpability:</p> <ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition • Firearm/ammunition used or intended for use (where not at High culpability)
<p>Lower culpability:</p> <ul style="list-style-type: none"> • Firearm/ammunition not produced • No use or intention to use

Final culpability category

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

		A – Type of weapon		
		1	2	3
B – Other culpability factors	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

<p>Harm</p> <p>The court should consider the factors set out below to determine the level of harm that has been caused or was risked.</p> <p>Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.</p> <p>This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual alarm/distress caused.</p> <p>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.</p>	
<p>Category 1</p>	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
<p>Category 2</p>	<ul style="list-style-type: none"> • Limited alarm/distress caused • All other cases falling between category 1 and category 3
<p>Category 3</p>	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is 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.

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.			
Harm	Culpability		
	A	B	C
Category 1	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 2	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 3	Starting point	Starting point	Starting point
	Category range	Category range	Category range

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Offence was committed as part of a group or offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A4. Commission of offence whilst under the influence of alcohol or drugs
- A5. Firearm/ammunition kept as part of a large-scale accumulation of weapons
- A6. Firearm modified to increase lethality and/or to conceal
- A7. Abuse of position of registered firearms dealer

- A8. Offences taken into consideration
- A9. Failure to comply with current court orders
- A10. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged
- M4. Came into possession involuntarily
- M5. Voluntary surrender of firearm/ammunition
- M6. No knowledge or suspicion of presence of firearm/ammunition
- M7. Unaware firearm/ammunition is prohibited
- M8. Genuine misunderstanding about terms of prohibition
- M9. Held on behalf of another through coercion, intimidation, or exploitation
- M10. Serious medical condition requiring urgent, intensive or long-term treatment
- M11. Age and/or lack of maturity
- M12. Mental disorder or learning disability
- M13. Sole or primary carer for dependent relatives
- M14. Co-operation with the police

STEP THREE

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX

Ancillary orders

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

Forfeiture and destruction of firearms and cancellation of certificate

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

Serious Crime Prevention Order

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Firearms – Carrying in a public place

Carrying a firearm in a public place

Firearms Act 1968 (section 19)

- (a) a loaded shot gun
- (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
- (d) an imitation firearm

Triable either way:

Indictable only if the firearm is a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af) or section 5(1A)(a) of the Firearms Act 1968

Summary only if the firearm is an air weapon

Maximum: 7 years' custody (12 months' custody for imitation firearms)

Offence range: [To come]

This offence is subject to statutory minimum sentencing provisions. See STEPS TWO and THREE for further details.

STEP ONE
Determining the offence category

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

Culpability A – 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 TWO.

Type 1	<ul style="list-style-type: none"> • Firearm or shotgun prohibited under section 5 (whether or not the mandatory minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm, shotgun or air weapon for which a certificate is required
Type 3	<ul style="list-style-type: none"> • Air weapon that is not prohibited and for which no certificate is required • Imitation firearm

Culpability B – Other culpability factors

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:
High culpability: <ul style="list-style-type: none"> • Firearm discharged, other than for lawful purpose • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
Medium culpability: <ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition • Firearm/ammunition used or intended for use (where not at High culpability)
Lower culpability: <ul style="list-style-type: none"> • Firearm/ammunition not produced • No use or intention to use • Possession falls just short of reasonable excuse

Final culpability category

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

		A – Type of weapon		
		1	2	3
B – Other culpability factors	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	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death 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	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
Category 2	<ul style="list-style-type: none"> • Limited alarm/distress caused • All other cases falling between category 1 and category 3
Category 3	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is 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.

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.			
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 THREE 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	Starting point	Starting point
	Category range	Category range	Category range
Category 2	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 3	Starting point	Starting point	Starting point
	Category range	Category range	Category range

TABLE 2	Offences not subject to the statutory minimum sentence		
Harm	Culpability		
	A	B	C
Category 1	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 2	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 3	Starting point	Starting point	Starting point
	Category range	Category range	Category range

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Offence was committed as part of a group or offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A4. Commission of offence whilst under the influence of alcohol or drugs
- A5. Firearm/ammunition kept as part of a large-scale accumulation of weapons
- A6. Firearm modified to increase lethality and/or to conceal, or firearm under section 5(1)(b) able to be converted to live firing weapon
- A7. Abuse of position of registered firearms dealer
- A8. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A9. Offences taken into consideration
- A10. Failure to comply with current court orders
- A11. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged
- M4. Came into possession involuntarily
- M5. Voluntary surrender of firearm/ammunition
- M6. No knowledge or suspicion of presence of firearm/ammunition
- M7. Unaware firearm/ammunition is prohibited
- M8. Genuine mistake about whether covered by lawful authorisation

- M9. Held on behalf of another through coercion, intimidation, or exploitation
- M10. Serious medical condition requiring urgent, intensive or long-term treatment
- M11. Age and/or lack of maturity
- M12. Mental disorder or learning disability
- M13. Sole or primary carer for dependent relatives
- M14. Co-operation with the police

STEP THREE
Minimum Terms
[To come]

STEP FOUR
Consider any factors which indicate a reduction for assistance to the prosecution
The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE
Reduction for guilty pleas
The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

STEP SIX
Totality principle
If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

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

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

Serious Crime Prevention Order

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Firearms Act 1968

5.— Weapons subject to general prohibition.

(1) A person commits an offence if, [without authority] ¹, he has in his possession, or purchases or acquires [...] ² —

[(a) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger;

(ab) any self-loading or pump-action [rifled gun] ⁴ other than one which is chambered for .22 rim-fire cartridges;

[(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, [...] ⁶ a muzzle-loading gun or a firearm designed as signalling apparatus;] ⁵

(ac) any self-loading or pump-action smooth-bore gun which is not [an air weapon or] ⁷ chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or [...] ⁸ is less than 40 inches in length overall;

(ad) any smooth-bore revolver gun other than one which is chambered for 9mm. rim-fire cartridges or [a muzzle-loading gun] ⁹ ;

(ae) any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus;] ³

[(af) any air rifle, air gun or air pistol which uses, or is designed or adapted for use with, a self-contained gas cartridge system;] ¹⁰

(b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing; and

[(c) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in paragraph (b) above and, if capable of being used with a firearm of any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode as aforesaid.] ¹¹

[(1A) Subject to section 5A of this Act, a person commits an offence if, [without authority] ¹, he has in his possession, or purchases or acquires [...] ¹³ -

(a) any firearm which is disguised as another object;

(b) any rocket or ammunition not falling within paragraph (c) of subsection (1) of this section which consists in or incorporates a missile designed to explode on or immediately before impact and is for military use;

(c) any launcher or other projecting apparatus not falling within paragraph (ae) of that subsection which is designed to be used with any rocket or ammunition falling within paragraph (b) above or with ammunition which would fall within that paragraph but for its being ammunition falling within paragraph (c) of that subsection;

(d) any ammunition for military use which consists in or incorporates a missile designed so that a substance contained in the missile will ignite on or immediately before impact;

(e) any ammunition for military use which consists in or incorporates a missile designed, on account of its having a jacket and hard-core, to penetrate armour plating, armour screening or body armour;

[(f) any ammunition which is designed to be used with a pistol and incorporates a missile designed or adapted to expand on impact;] ¹⁴

(g) anything which is designed to be projected as a missile from any weapon and is designed to be, or has been, incorporated in-

(i) any ammunition falling within any of the preceding paragraphs; or

(ii) any ammunition which would fall within any of those paragraphs but for its being specified in subsection (1) of this section.] ¹²

(2) The weapons and ammunition specified in [subsections (1) and (1A) of this section (including, in the case of ammunition, any missiles falling within subsection (1A)(g) of this section)] ¹⁵ are referred to in this Act as "*prohibited weapons*" and "*prohibited ammunition*" respectively.

[(2A) A person commits an offence if without authority—

(a) he manufactures any weapon or ammunition specified in subsection (1) of this section,

(b) he sells or transfers any prohibited weapon or prohibited ammunition,

(c) he has in his possession for sale or transfer any prohibited weapon or prohibited ammunition, or

(d) he purchases or acquires for sale or transfer any prohibited weapon or prohibited ammunition.] ¹⁶

[(3) In this section "*authority*" means an authority given in writing by—

(a) the Secretary of State (in or as regards England and Wales), or

(b) the Scottish Ministers (in or as regards Scotland).] ¹⁷

(4) [An authority shall be subject to conditions specified in it, including such as the Secretary of State or the Scottish Ministers (as appropriate)] ¹⁸ having regard to the circumstances of each particular case, [thinks] ¹⁹ fit to impose for the purpose of securing that the prohibited weapon or ammunition to which the authority relates will not endanger the public safety or the peace.

(5) It is an offence for a person to whom an authority is given under this section to fail to comply with any condition of the authority.

(6) [The Secretary of State or the Scottish Ministers (as appropriate) may at any time, if they think fit,] ²⁰ revoke an authority given to a person under this section

by notice in writing requiring him to deliver up the authority to such person as may be specified in the notice within twenty-one days from the date of the notice; and it is an offence for him to fail to comply with that requirement.

[(7) For the purposes of this section and section 5A of this Act-

(a) any rocket or ammunition which is designed to be capable of being used with a military weapon shall be taken to be for military use;

(b) references to a missile designed so that a substance contained in the missile will ignite on or immediately before impact include references to any missile containing a substance that ignites on exposure to air; and

(c) references to a missile's expanding on impact include references to its deforming in any predictable manner on or immediately after impact.] ²¹

[(8) For the purposes of subsection (1)(aba) and (ac) above, any detachable, folding, retractable or other movable butt-stock shall be disregarded in measuring the length of any firearm.

(9) Any reference in this section to a muzzle-loading gun is a reference to a gun which is designed to be loaded at the muzzle end of the barrel or chamber with a loose charge and a separate ball (or other missile).] ²²

Notes

- [1](#) . Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.109(1)(a) (July 14, 2014)
- [2](#) . Words repealed by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(2)(a) (July 14, 2014)
- [3](#) . S. 5(1)(a)-(ae) substituted for s. 5(1)(a) by Firearms (Amendment) Act 1988 (c.45), s. 1(2)
- [4](#) . Words substituted subject to savings specified in SI 1997/1535 art.5 by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(3) (July 1, 1997: substitution has effect subject to savings specified in SI 1997/1535 art.5)
- [5](#) . Added by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(2) (July 1, 1997: insertion has effect from July 1, 1997 for purposes specified in SI 1997/1535 art.4; October 1, 1997 otherwise)
- [6](#) . Words repealed by Firearms (Amendment) (No. 2) Act 1997 c. 64 Sch.1 para.1 (February 1, 1998 as SI 1997/3114)
- [7](#) . Words added by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(4) (July 1, 1997)
- [8](#) . Words repealed by Firearms (Amendment) Act 1997 c. 5 Sch.3 para.1 (July 1, 1997 as SI 1997/1535)
- [9](#) . Words substituted by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(5) (July 1, 1997)
- [10](#) . Inserted subject to transitional provisions specified in SI 2003/3300 art.5 by Anti-social Behaviour Act 2003 c. 38 Pt 5 s.39(3) (January 20, 2004: insertion has effect from January 20, 2004 for purposes specified in SI 2003/3300 art.2(c)(iii); April 30, 2004 subject to transitional provisions specified in SI 2003/3300 art.5 otherwise)
- [11](#) . S. 5(1)(c) substituted by Firearms (Amendment) Act 1988 (c.45), s. 1(3)
- [12](#) . Added by Firearms Acts (Amendment) Regulations 1992/2823 reg.3(1) (January 1, 1993)
- [13](#) . Words repealed by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(2)(b) (July 14, 2014)
- [14](#) . Substituted by Policing and Crime Act 2017 c. 3 Pt 6 s.129(2) (May 2, 2017)
- [15](#) . Words substituted by Firearms Acts (Amendment) Regulations 1992/2823 reg.3(2) (January 1, 1993)
- [16](#) . Added by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(3) (July 14, 2014)
- [17](#) . Substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(4) (July 14, 2014)
- [18](#) . Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.109(1)(b) (July 14, 2014)
- [19](#) . Words substituted by virtue of S.I. 1968/1200, arts. 2, 3
- [20](#) . Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.109(1)(c) (July 14, 2014)
- [21](#) . Added by Firearms Acts (Amendment) Regulations 1992/2823 reg.3(3) (January 1, 1993)
- [22](#) . Added by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(6) (July 1, 1997)

[5A.— Exemptions from requirement of authority under s.5.

(1) Subject to subsection (2) below, the authority of the Secretary of State [or the Scottish Ministers] ² shall not be required by virtue of [section 5] ³ of this Act for any person to have in his possession, or to purchase, acquire, sell or transfer, [any weapon, ammunition or missile specified in subsection (1A) of that section] ⁴ if he is authorised by a certificate under this Act to possess, purchase or acquire that weapon or ammunition subject to a condition that he does so only for the purpose of its being kept or exhibited as part of a collection.

(2) No sale or transfer may be made under subsection (1) above except to a person who-

(a) produces the authority of the Secretary of State [or the Scottish Ministers] ² under section 5 of this Act for his purchase or acquisition; or

(b) shows that he is, under this section or a licence under the Schedule to the Firearms (Amendment) Act 1988 (museums etc.), entitled to make the purchase or acquisition without the authority of the Secretary of State [or the Scottish Ministers] ².

(3) The authority of the Secretary of State [or the Scottish Ministers] ² shall not be required by virtue of [section 5] ³ of this Act for any person to have in his possession, or to purchase or acquire, [any weapon, ammunition or missile specified in subsection (1A) of that section] ⁴ if his possession, purchase or acquisition is exclusively in connection with the carrying on of activities in respect of which-

(a) that person; or

(b) the person on whose behalf he has possession, or makes the purchase or acquisition,

is recognised, for the purposes of the law of another member State relating to firearms, as a collector of firearms or a body concerned in the cultural or historical aspects of weapons.

(4) The authority of the Secretary of State [or the Scottish Ministers] ² shall not be required by virtue of [section 5] ³ of this Act for any person to have in his possession, or to purchase or acquire [, or to sell or transfer] ⁵, any expanding ammunition or the missile for any such ammunition if-

[(a) he is authorised by a firearm certificate or visitor's firearm permit to possess, or purchase or acquire, any expanding ammunition; and

(b) the certificate or permit is subject to a condition restricting the use of any expanding ammunition to use in connection with any one or more of the following, namely—

(i) the lawful shooting of deer;

(ii) the shooting of vermin or, in the course of carrying on activities in connection with the management of any estate, other wildlife;

(iii) the humane killing of animals;

(iv) the shooting of animals for the protection of other animals or humans.] ⁶

(5) The authority of the Secretary of State [or the Scottish Ministers] ² shall not be required by virtue of [section 5] ³ of this Act for any person to have in his possession any expanding ammunition or the missile for any such ammunition if-

(a) he is entitled, under section 10 of this Act, to have a slaughtering instrument and the ammunition for it in his possession; and

(b) the ammunition or missile in question is designed to be capable of being used with a slaughtering instrument.

(6) The authority of the Secretary of State [or the Scottish Ministers] ² shall not be required by virtue of [section 5] ³ of this Act for the sale or transfer of any expanding ammunition or the missile for any such ammunition to any person who produces a certificate by virtue of which he is authorised under subsection (4) above to purchase or acquire it without the authority of the Secretary of State [or the Scottish Ministers (as appropriate)] ⁷.

[(7) The authority of the Secretary of State [or the Scottish Ministers] ² shall not be required by virtue of [section 5] ³ of this Act for a person carrying on the business of a firearms dealer, or any servant of his, to have in his possession, or to purchase, acquire, sell or transfer, any expanding ammunition or the missile for any such ammunition in the ordinary course of that business.] ⁸

(8) In this section-

(a) references to expanding ammunition are references to any ammunition which [is designed to be used with a pistol and] ⁹[...] ¹⁰ incorporates a missile which is designed to expand on impact; and

(b) references to the missile for any such ammunition are references to anything which, in relation to any such ammunition, falls within section 5(1A)(g) of this Act.] ¹

Notes

- ¹. Added by Firearms Acts (Amendment) Regulations 1992/2823 reg.3(4) (January 1, 1993)
- ². Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.109(2)(a) (July 14, 2014)
- ³. Words repealed by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(5)(a) (July 14, 2014)
- ⁴. Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(5)(b) (July 14, 2014)
- ⁵. Words added by Firearms (Amendment) Act 1997 c. 5 Pt I s.10(2)(a) (July 1, 1997)
- ⁶. Substituted by Firearms (Amendment) Act 1997 c. 5 Pt I s.10(2)(b) (July 1, 1997)
- ⁷. Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.109(2)(b) (July 14, 2014)
- ⁸. Substituted by Firearms (Amendment) Act 1997 c. 5 Pt I s.10(3) (July 1, 1997)
- ⁹. Words inserted by Policing and Crime Act 2017 c. 3 Pt 6 s.129(3) (May 2, 2017)

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