

Consultation Stage Resource Assessment

Firearms Importation 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 December 2020, the Sentencing Council published the definitive Firearms offences guidelines, relating to firearms offences covered by the Firearms Act 1968. These included a guideline for the offences of transferring and manufacturing of firearms or ammunition.

No current guideline exists for offences relating to importing firearms or ammunition or fraudulent evasion of prohibition under the Customs and Excise Management Act 1979 (detailed below). The Council is consulting on a new draft sentencing guideline to cover both 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 these offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences. It should also 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 under the Customs and Excise Management Act 1979 (CEMA), which will be covered by a single guideline:

- Import prohibited weapons or ammunition with intent to evade a prohibition or restriction (section 50(3),(4), (5A)(a)).

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

- Fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170(1)(b) and (3), 170(2),(3), and (4A)(a).

This guideline applies to sentencing adults only; it 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 guideline, the Council has carried out analytical and research work in support.

The intention is that the guideline 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 and sentencing data from the MoJ Court Proceedings Database.²

During the consultation stage, we intend to hold discussions with sentencers to invite feedback and gauge whether the new guideline would work as anticipated. This should provide some further understanding of the likely impact of the guideline on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the draft 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>.

Import prohibited weapons or ammunition with intent to evade a prohibition or restriction (section 50(3),(4), (5A)(a))³

Between 2015 and 2019,⁴ around 60 offenders were sentenced for this offence. The most common outcome was a fine (42 per cent) and just under a quarter (24 per cent) were given a suspended sentence order. A further 16 per cent were given 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 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 Within the CPD data, it is not possible to identify the weapon present, therefore, care should be taken when interpreting these statistics as they may include cases in which the weapon present was not a firearm and as such may influence the volumes of offenders sentenced or the sentence given.

⁴ Due to the small number of offenders sentenced for these offences, 5 years of data have been presented.

community order, 11 per cent were sentenced to immediate custody and 7 per cent were given a discharge.

For those that were sentenced to immediate custody between 2015 and 2019, the average (mean) custodial sentence length (ACSL) was 2 years 11 months.⁵

Fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170(1)(b) and (3), 170(2),(3), and (4A)(a)³

Between 2015 and 2019⁴, around 60 offenders were sentenced for this offence. Nearly half (48 per cent) were sentenced to immediate custody and 35 percent were given a suspended sentenced order. A further 10 per cent received a community order, 5 per cent received a fine and 2 per cent were given a discharge.

For those sentenced to immediate custody between 2015 and 2019, the ACSL was 6 years 9 months.⁵

Key assumptions

To estimate the resource effect of a guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the draft guideline 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 draft 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 the proposed draft 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 draft 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 draft guideline, data on current sentence levels have been considered. Existing guidance and transcripts of judges' sentencing remarks have also been reviewed.

⁵ The statutory maximum sentence for this offence is 7 years' custody unless the offence relates to a weapon or ammunition that is of a kind mentioned in Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a) of the Firearms Act 1968 in which case the statutory maximum sentence is life imprisonment (more information about the weapons that fall into this category can be found here: <https://www.legislation.gov.uk/ukpga/1968/27/section/5>). It is not possible to distinguish the actual weapon used within our data and therefore we are unable to identify if any sentence has been incorrectly recorded as above the statutory maximum.

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 guideline, 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 guideline.

It remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, discussions with sentencers will be undertaken during the consultation stage to provide more information on which to base the final resource assessment accompanying the definitive guideline.

Resource impacts

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

The draft guideline covers both offences of importation under section 50(3),(4),(5A)(a) and offences of fraudulent evasion under section 170(1)(b) and (3), 170(2),(3), and (4A)(a) of CEMA and has been produced with current sentencing practices in mind. Due to the similar nature of these offences and because they are covered by the same guideline, the resource impact has been assessed and presented for both section 50 and section 170 offences collectively.

It is expected that these offences will be sentenced in the same way under the draft guideline and that overall, the draft guideline will improve consistency of sentencing.

There is currently no guideline for these offences which are low in volume and the limited data available suggests that current sentencing practice varies. The draft guideline has four levels of culpability (this is assessed by considering culpability factors similar to those in the transfer and manufacture guideline in conjunction with the type of weapon or ammunition) and three levels of harm. There are two sentencing tables, with different sentencing ranges depending on the maximum sentence for the type of weapon or ammunition. For offences subject to the statutory maximum of life, the range is a high level community order to 28 years' custody. For offences subject to the statutory maximum sentence of 7 years, the range is a Band A fine to 7 years' custody.

The offences under section 50 and section 170 of the CEMA 1979 relate to more than firearms and ammunition and it is not possible to identify the type of weapon to which the offending relates within the limited data we have available; it is therefore possible that some of the sentences presented are for weapons other than firearms. However, analysis of transcripts of Crown Court judges' sentencing remarks⁶ suggests that of those cases seen in the Crown Court, all related to firearms or ammunition (it is not possible to verify this for cases sentenced in the magistrates' court as no transcripts are available). During the same time period, most offenders

⁶ Twenty-six transcripts of Crown Court sentencing remarks from 2018 and 2019 were analysed to assess the impact this guideline may have on prison and probation services. Of these, 10 related to section 50 offences and 16 related to section 170 offences.

(84 per cent) sentenced for fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170) were sentenced at the Crown Court, suggesting that it is likely that this is representative of the types of cases seen.

However, for offenders sentenced for importing prohibited weapons or ammunition with intent to evade a prohibition or restriction (section 50), most were sentenced at magistrates' courts (78 per cent), for which there are no sentencing transcripts available. As such, it is difficult to establish whether this offence generally involves firearms and ammunition or other types of weapons. It is therefore possible that the guideline may have a greater or lesser impact than expected because it is unclear how many offenders are sentenced for these offences specifically relating to firearms. However, it is anticipated that the draft guideline will enable more consistent sentencing of these offences.

Analysis of transcripts of Crown Court judges' sentencing remarks was conducted to assess how sentences might change under the new guideline. The analysis suggests that for the most serious offences (generally those sentenced to immediate custody), sentences under the new guideline will remain broadly similar to current sentencing practice. For less serious offences (typically involving non-lethal weapons) the analysis suggested that some offenders previously sentenced suspended sentence orders may receive community orders under the draft guideline but it is anticipated that this change would have minimal impact on prison and probation services.

Due to a lack of available data, the small number of offenders sentenced for this offence and the current varied sentencing practice, it is not possible to say whether the guideline for these offences will have an impact on prison and probation resources overall but it is anticipated that any impact would be small and sentencing will become more consistent following the introduction of the guideline.

Further work during the consultation should provide further evidence on which to base the final resource assessment.

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 is mitigated by information that is gathered by the Council as part of the consultation phase. This includes interviews and discussions with sentencers, to test whether the guideline has the intended effect. However, there are limitations on the number of scenarios which can be explored, so the risk cannot be fully eliminated. The Council has also included a question in the consultation document, asking for

consultees' views on the potential impact of the proposals. This information will provide further information on which to base the final resource assessment.

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 have also been studied to ensure that the guideline is developed with current sentencing practice in mind. Research carried out with sentencers should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

Consultees can also feed back their views of the likely effect of the guideline, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.