

# Firearms – Importation

## **Improper importation of goods**

Customs and Excise Management Act 1979 (section 50(3), (4) and (5A)(a))

## **Fraudulent evasion of prohibition / restriction**

Customs and Excise Management Act 1979 (section 170(1)(b), (2), (3) and (4A)(a))

Triable either way

Maximum: 7 years unless committed in Great Britain in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968 in which case the maximum is life imprisonment

Offence range: Fine – 28 years' custody

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

## Step 1 – Determining the offence category

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

### Culpability – Type of weapon

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

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

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

#### Type 1

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

- This would **normally** include a weapon prohibited under the following sections of the Firearms Act 1968:
  - section 5(1)(a)
  - section 5(1)(ab)
  - section 5(1)(aba)
  - section 5(1)(ac)
  - section 5(1)(ad)
  - section 5(1)(ae)
  - section 5(1A)(c)

#### Type 2

All other weapons falling between Type 1 and Type 3

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

Ammunition (where not at Type 3)

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

#### Type 3

Weapon that is not designed **or adapted** to be lethal

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

Very small quantity of ammunition

**Culpability – other culpability factors**

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

**High culpability:**

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

**Medium culpability:**

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

**Lower culpability:**

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

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

**Harm**

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

**Category 1**

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

**Category 2**

- Medium-scale enterprise and/or some degree of sophistication, including cases falling between category 1 and category 3 because:
  - Factors in both 1 and 3 are present which balance each other out; and/or
  - The harm falls between the factors as described in 1 and 3

**Category 3**

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

## Step 2 – Starting point and category range

Having determined the category at step 1, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Table 1 should be used if the offence is subject to a maximum life sentence  
Table 2 should be used if the offence is subject to a maximum 7 year sentence

**TABLE 1: Offences subject to the statutory maximum of a life sentence (offence relates to 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) Firearms Act 1968)**

Harm	Culpability			
	A	B	C	D
<b>Cat 1</b>	<b>Starting point</b> 20 years' custody <b>Category range</b> 16 – 28 years' custody	<b>Starting point</b> 14 years' custody <b>Category range</b> 10 – 17 years' custody	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 4 – 8 years' custody
<b>Cat 2</b>	<b>Starting point</b> 14 years' custody <b>Category range</b> 10 – 17 years' custody	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 4 – 8 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 5 years' custody
<b>Cat 3</b>	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 – 12 years' custody	<b>Starting point</b> 5 years' custody <b>Category range</b> 3 – 8 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 years' custody

**TABLE 2: Offences subject to the statutory maximum sentence of 7 years**

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

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 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. Firearm under section 5(1)(a) (automatic weapon)
- A4. Compatible ammunition and/or silencer(s) imported with firearm (See step 6 on totality when sentencing for more than one offence)
- A5. Others put at risk of harm by method of importation
- A6. Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not taken into account at step 1)
- A7. Use of business as a cover
- A8. Attempts to dispose of the firearm or other evidence
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step six on totality when sentencing for more than one offence)
- A11. Failure to comply with current court orders
- A12. 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 (including stun gun that is not charged and not held with a functioning charger)
- M4. Very small scale importation **and** very low risk of harm to others
- M5. Genuine belief that firearm/ammunition will not be used for criminal purpose
- M6. No knowledge or suspicion that importation was unlawful
- M7. Offender co-operated with investigation and/or made early admissions
- M8. Remorse
- M9. Serious medical condition requiring urgent, intensive or long-term treatment
- M10. Age and/or lack of maturity
- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

### **Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in sentence for a guilty plea guideline](#).

### **Step 5 – 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 [Totality](#) guideline.

### **Step 6 – Ancillary orders**

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

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

### **Forfeiture of firearms**

Where the offender is convicted of an offence contrary to section 170 of the Customs and Excise Management Act 1979 the court may consider making an order for forfeiture under section 170(6).

For any offence, the court may consider making an order for deprivation under [section 153 of the Sentencing Code](#) of any property used in the commission of the offence.

### **Serious Crime Prevention Order**

Where the offender is convicted of an offence contrary to section 170 Customs and Excise Management Act 1979, 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 7 – Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### **Step 8 – Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).