

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

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SC(21)OCT06 – Firearms importation
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1 ISSUE

1.1 This is the second meeting to discuss the responses to the consultation on a single guideline for importation of firearms which ran from 17 June to 8 September 2021.

1.2 The aim is to consider the issues raised by the responses relating to sentence levels, step 2 factors and remaining steps and to sign off the definitive guideline for publication on 24 November to come into effect on 1 January 2022.

2 RECOMMENDATION

2.1 That the Council:

- reviews and approves the changes made to step 1 factors at the September meeting;
- considers the responses to the draft guideline at **Annex A** relating to sentence levels and aggravating and mitigating factors and agrees any changes to be made;
- signs off the firearms importation guideline for publication;
- agrees the resource assessment at **Annex B** for publication.

3 CONSIDERATION

Changes agreed at the October meeting

3.1 The draft guideline at Annex A incorporates the changes agreed to harm and culpability factors at the September meeting (these are indicated by yellow highlighting).

Sentence levels

3.2 There are two sentence tables for this offence (table 1 for offences subject to the statutory maximum of a life sentence and table 2 for offences subject to the statutory maximum of seven years). The Justices' Clerks' Society(JCS) commented on Table 2:

There does seem to be quite a gap between Category 3D and the 3C and 2D guidelines. we note that for the other offences in Table 2 the ranges start at the starting point of the next offence down and finish at the starting point of the next offence up in seriousness. The range for the 3D offence finishes at High level community order which is the bottom of the range for 3C and 2D offences. The bottom end of that range with a Band A fine also seems very low as with credit for a guilty plea this could be as low as £40. Bearing in mind that even the lowest category of offence does involve the intentional evasion of the prohibition of importation of these weapons we believe that the starting point and range on this the lowest

category should be increased, with a starting point of either medium or high level community order and a range from Band C fine to 6 months custody. This keeps the matter within the powers of the magistrates' courts but keeps open the option of custody at the top end of that range.

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

3.3 The levels in table 2 (reproduced below) were set with regard to current sentencing practice and the sentence levels in the existing [Possession of a prohibited weapon](#) guideline.

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

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

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

3.5 Because of the element of intention or knowledge required for these offences, discharges were not included in the sentence table as it is difficult to envisage a situation

where it would be 'inexpedient to inflict punishment' (section 80 Sentencing Code) and the Council took the view that in an exceptional case a court could go outside the guideline.

3.6 In the Possession of a prohibited weapon guideline, (which is an offence of strict liability) a discharge is included. The lowest four boxes are reproduced below:

<p>Starting point 1 years' custody Category range High level community order – 2 years' custody</p>	<p>Starting point Medium level community order Category range Band C fine – High level community order</p>
<p>Starting point Medium level community order Category range Band C fine – High level community order</p>	<p>Starting point Band C fine Category range Discharge – Low level community order</p>

3.7 If the Council did want to change the sentence levels in D3 to mark the seriousness of this offence and to bring the range closer to D2 and C3, a suggestion would be to use the sentence levels at D2 / C3 in the Possession of a prohibited weapon guideline highlighted above. This would still represent an increase on current sentencing practice for some cases but as there is no custodial sentence in the range it would avoid significant sentence inflation.

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

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

Question 1: Should the sentence levels at D3 in table 2 be changed?

Question 2: Should any other changes be made to the sentence levels?

Aggravating and mitigating factors

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

3.11 These suggestions have not been adopted at step 1, but may be relevant to the factors at step 2. On a similar theme, a magistrate suggested an aggravating factor relating to the use of firearms supplied by the offender.

3.12 The aggravating factor A6 is relevant to this issue: '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)'. Bearing in mind that there is no reference at step 1 to the intended use of the firearm (although references to links to other serious criminal activity may allude to this), there may be a case for removing the words '(where not taken into account at step 1)' from this aggravating factor.

3.13 A magistrate took issue with the mitigating factor M5: 'Genuine belief that firearm/ammunition will not be used for criminal purpose' saying:

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

3.14 This is at odds with the suggestion from the Council of District Judges of a factor relating to the legitimate use of a firearm.

3.15 Two respondents (the CPS and JCS) pointed out that the mitigating factor M6: 'No knowledge or suspicion that importation was unlawful' amounts to a defence and therefore the mitigating factor should be removed. The CPS suggested 'No knowledge or suspicion that importation was of firearms' as an alternative citing a case where a courier imported weapons without knowing what they were (because he made no effort to find out what he was carrying) and this provided some (limited) mitigation. Allowing for the fact that step 2 factors are non-exhaustive and cases such as that cited by the CPS will be rare, it is proposed that the mitigating factor should be removed and not replaced.

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

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

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

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

“Has attempted to convert, contrary to section 4”

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

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

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

3.18 The second suggestion ‘Has attempted to convert, contrary to section 4’ would amount to a separate offence. The Possession of a prohibited weapon guideline has the following aggravating factor:

- Firearm modified to make it more dangerous

3.19 This factor could be included in the importation guideline but it could result in double counting as this may already have been taken into account at step 1, particularly with the addition of the wording ‘or adapted’ in the description of the type of weapon. It is not clear why importation of a weapon that has been adapted to make it dangerous is more serious than the importation of one that is inherently very dangerous without adaptation. If the implication is that the offender has been involved in the process of modifying the weapon – that would be a separate offence. However the Council of HM Circuit Judges made a similar point stating: ‘We would suggest that the importation of weapons that have been modified to be more dangerous should be an aggravating factor’.

3.20 The third suggestion from the NCA: ‘Has purchased the firearm from an unauthorised seller/non legitimate means’, would apply in most cases and is arguably already covered by the culpability factors relating to planning.

3.21 The Council of HM Circuit Judges suggested that A3: ‘Firearm under s5(1)(a) (automatic weapon)’ runs the risk of double counting because it would be categorised as a Type 1 weapon. There is merit in this point; this aggravating factor appears in the transfer and manufacture guideline (where the type of weapon is not part of the culpability assessment) but not in the Possession of a prohibited weapon guideline (where the type of weapon is part of the culpability assessment).

3.22 The CLSA queried the relevance of M12: 'Sole or primary carer for dependent relatives' in the context of this offence. This is a factor that is included in almost all guidelines and it could be relevant, particularly for offenders on the cusp of custody.

3.23 The CPS queried M4: 'Very small scale importation and very low risk of harm to others' stating that this would already have been taken into account in the assessment of harm at step 1. This factor was included to distinguish the small scale importation where there is a real risk of a dangerous weapon going into circulation (even if not intended), from the situation where there is little or no risk of that happening. The NCA commented:

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

3.24 It is difficult to envisage a case where this factor would be applied by a court in relation to a lethal weapon prohibited under section 5 (though perhaps it could apply in the case of a collector who held weapons securely and in a non-functioning condition) – which should deal with the NCA's concerns.

3.25 The NCA commented on M3: 'Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)', stating:

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

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

Question 3: Should the wording '(where not taken into account at step 1)' be removed from A6?

Question 4: Should the mitigating factor M6 'No knowledge or suspicion that importation was unlawful' be removed?

Question 5: Should the aggravating factor A3: 'Firearm under s5(1)(a) (automatic weapon)' be removed?

Question 6: Should any other changes be made to aggravating or mitigating factors?

General points

3.27 The NCA made some general points about converted or reactivated weapons and about the method of importation:

The NCA has actively lead intelligence gathering and tasking's on projects which identifies the illicit sale and importation of Firearms into the UK. The Firearms Strategic Action Plan 418 ("Law enforcement Interventions against OCGs involved in converting firearms and ammunition in the UK") works alongside LE agencies during a number of recent law enforcement investigations nationally where lawful blank firing handguns have been recovered in a converted state and/or used in violent offences. NABIS reporting from ROCU's and Forces in regards to these Firearms has identified these as a threat and is a priority for the Agency.

Legislation has recently changed in regards to Antique Firearms and ammunition with the transition period to register or surrender ceasing imminently. Antique Firearms which have been reactivated or attempted to have been converted back to OLP have been assessed by the NAC and is a priority for the Agency.

We recommend that sentencing should reflect the impact these converted weapons have on not only Law Enforcement partners but to the communities we serve and should be categorised as such.

Sentencing should remain constant whether the import is by person at a border or by post. For example a section (50) or (170) CEMA 1979 offence for the same category firearm prohibited at import by post should hold the same prevalence as if the subject had attempted to evade the controls at the border.

In order to mitigate and reduce the importation of illicit firearms into the Agency welcomes the review of charging of offences by the CPS as highlighted in the guidelines

3.28 The guideline has been designed to ensure that sentencing reflects the danger represented by lethal weapons whether in their original condition or converted. This will depend to some extent on how offences are charged (the CPS is in the process of updating its legal guidance and aims to publish this by the end of October). The guideline is also designed to work across a range of methods of importation.

Question 7: Should any other changes be made to cover the general point made by the NCA?

Steps 3 to 8

3.29 The consultation asked whether there were any other matters that should be addressed at steps 3 to 8. There were no suggestions.

4 EQUALITY AND DIVERSITY

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

4.2 Only one respondent has raised substantive issues relating to equality: T2A have made suggestions relating to the sentencing of young adults and how this is presented in our published statistics. In light of this response and further analysis by the A&R team, we have made the decision to alter our published statistics on age groups to allow for more detailed

breakdown of the younger age groups. This change will be applied to the data tables accompanying the Firearms Importation offences guideline and all future published data tables and has been approved by the Analysis and Research subgroup.

5 IMPACT AND RISKS

5.1 The resource assessment is at Annex B which anticipates that any impact on prison and probation resources from the guideline would be small.

Question 8: Is the Council content to sign off the resource assessment for publication?

Question 9: Is the Council content to sign off the guideline for publication in November, to come into force on 1 January 2022?

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
High	Culpability category A	Culpability category B	Culpability category C
Medium	Culpability category B	Culpability category C	Culpability category C
Lower	Culpability category C	Culpability category C	Culpability category D

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
Cat 1	Starting point 20 years' custody Category range 16 – 28 years' custody	Starting point 14 years' custody Category range 10 – 17 years' custody	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 6 years' custody Category range 4 – 8 years' custody
Cat 2	Starting point 14 years' custody Category range 10 – 17 years' custody	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 6 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody
Cat 3	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody

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

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

The 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](#).

Final 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 for fraudulent evasion of prohibition under the Customs and Excise Management Act 1979 (detailed below). The Sentencing Council has produced a new 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 guideline are realised, and to understand better the potential resource impacts of the guideline, the Council has carried out analytical and research work

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 A survey was also conducted with sentencers to gain feedback on the guideline and to understand if it would function as anticipated.

Detailed sentencing statistics for the offences covered by the guideline have been published on the Sentencing Council website at the following link:

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

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

Between 2016 and 2020,^{4,5} around 80 offenders were sentenced for this offence. The most common outcome was a fine (36 per cent), followed by a suspended sentence order (29 per cent). A further 13 per cent were given a community order, 12 per cent were sentenced to immediate custody and 10 per cent were given a discharge.

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.

⁵ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

For those that were sentenced to immediate custody between 2016 and 2020, the average (mean) custodial sentence length (ACSL) was 2 years 3 months.⁶

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 2016 and 2020,⁴ around 50 offenders were sentenced for this offence. Just under half (47 per cent) were sentenced to immediate custody and 39 per cent were given a suspended sentence order. A further eight per cent received a fine and six per cent were given a community order.

For those sentenced to immediate custody between 2016 and 2020, the ACSL was 8 years 3 months.⁶

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 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 guideline is 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 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 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 guideline, data on current sentence levels have been considered. Existing guidance and transcripts of judges' sentencing remarks have also been reviewed and a survey with sentencers was undertaken to understand if the guideline would be applied as intended.

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across

⁶ 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.

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 and it remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources.

Resource impacts

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

The 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 the guideline will improve consistency of sentencing for these offences, but it is not anticipated that it will lead to any notable changes in 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 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 sentencing range is from 1 to 28 years' custody. For offences subject to the statutory maximum sentence of 7 years, the range is a Band A fine⁷ 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 remarks⁸ conducted during the development of the guideline, 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). Between 2016 and 2020, most offenders (86 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.

⁷ The starting point for a Band A fine is 50 per cent of the offender's relevant weekly income.

⁸ 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.

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 (72 per cent between 2016 and 2020), 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 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 to suspended sentence orders may receive community orders under the guideline, but it is anticipated that this change would have minimal impact on prison and probation services.

Research with sentencers was conducted⁹ to support the development of the guideline and mitigate the risk of the guideline having an unintended effect. As a result of this work, some minor amendments were made to the draft guideline to ensure that the definitive guideline is interpreted as expected. Therefore, it is not anticipated that these changes will alter the expected impact on resources, rather that they will ensure a consistent interpretation of the guidelines and thereby a consistent approach to sentencing.

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.

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.

⁹ The research involved a survey conducted with 16 sentencers during September 2021; the results were analysed to assess whether the guidelines were being interpreted as anticipated. Questions focused on how useable sentencers found the guideline and ensuring the correct categorisation of certain factors was applied.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes research with sentencers, providing them with scenarios, to test whether the guideline is being interpreted as intended. However, there are limitations on the number of scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for these offences, which has formed a large part of the evidence base on which the resource impacts have been estimated. However it should be noted that these are rough estimates which should be interpreted as indicative of the direction and approximate magnitude of any change only.

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 during the consultation period has helped to identify possible issues with the interpretation and application of the guideline, and amendments have subsequently been made to the definitive guideline.