

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

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SC(18)SEP07 - Firearms
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1 ISSUE

1.1 This is the second meeting to consider the firearms guideline. It asks the Council to consider the aim of the guideline, as well as the factors at steps one and two for the four possession offences.

1.2 There are three further meetings scheduled to discuss the firearms guideline, including sign-off of the consultation version at the January 2019 Council meeting. Consultation is planned for April to July 2019.

1.3 It is intended to cover the factors for the remaining offences (the cluster of possession with intent offences, selling/transferring prohibited firearms, and possible guidelines on manufacturing prohibited firearms and possession of articles for conversion) at the October meeting, then sentencing levels across all the guidelines, generic guideline text and the guidance on the statutory minimum sentence in December.

2 RECOMMENDATION

- That the Council agrees the aim of the guideline is to reflect current sentencing levels.
- That the Council considers and agrees the culpability and harm factors in the four possession guidelines.
- That the Council considers and agrees the aggravating and mitigating factors in the four possession guidelines.

3 CONSIDERATION

Aim of the guideline

3.1 The Council is asked to consider whether the aim of the guideline ought to be to maintain current sentence levels for each offence, or whether the Council wishes to make any changes to sentencing practice. Based on this decision, draft sentencing tables for each guideline will be provided for the Council to consider in December, once the harm and culpability levels are agreed. Any changes to sentence levels would have an impact on resources in the system which would need to be addressed in the resource assessment.

3.2 **Annex A** sets out data showing current sentencing practice including sentencing outcomes, distribution of sentence lengths (estimated pre-guilty plea), and ACSLs (also estimated pre-guilty plea) for each offence. The figures for the higher-volume offences are based on 2017 data but in some cases several years have been used where required to get a bigger sample size. For the offence of transferring prohibited weapons (section 5(2A)(b)-(d)), the levels shown are from 2017 so post-date the *Stephenson* case in 2016 which raised sentence levels for that offence.¹

Question 1: Does the Council agree the aim of the guideline should be to maintain sentencing levels?

Draft guidelines for possession offences

3.3 Guidelines for possession offences have been developed first. There are four separate guidelines:

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

3.4 At this meeting, the Council is asked to consider the factors at step one and step two in each of these guidelines. Broadly, the factors are based on the four areas highlighted in the *Avis* case – that is, the type of weapon and whether it was loaded or has ammunition available; use of the firearm; intended use; and previous convictions.² Previous convictions have been incorporated as usual at step two, consistent with other guidelines. Other factors have also been identified from analysis of transcripts. For consistency, where possible the wording has been carried across from the *Bladed Articles and Offensive Weapons – possession (“Bladed Articles”)* guideline and is the same across the four firearms guidelines.

3.5 The approach to culpability and harm for these guidelines is broadly in line with that taken in *Bladed Articles*, with culpability factors focusing on the type of weapon and its use, and harm focusing on the circumstances of possession. The [MCSG guideline for the section 19 offence](#) of carrying in a public place included only the type of weapon and being loaded or with ammunition in step one, placing other factors such as use or intended use of the firearm and the location under aggravating/mitigating factors. For consistency with the approach in

¹ *Attorney-General’s Reference (Nos. 128-141 and 8-10 of 2015) (R v Stephenson)* [2016] 2 Cr. App. R. (S.) 12

² *R v Avis* (1998) 1 Cr. App. R. 420

Bladed Articles, and given the importance attached to use and intended use in the *Avis* case, these have been included in step one rather than step two.

Guideline 1: Possession of a prohibited weapon – culpability and harm factors

3.6 This guideline at **Annex B** covers possession, purchase or acquisition, without authority, of a prohibited firearm or ammunition under sections 5(1) and (1A). 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 C**.

3.7 As noted above, the culpability model broadly aligns with the approach taken in the *Bladed Articles* guideline. The factors relate to the type of weapon, whether it is loaded, and use or intended use, such as the weapon being used to threaten or being discharged. Some more serious cases involving use or intended use may be charged as simple possession where there is not sufficient evidence of the specific intention required to charge a possession with intent offence or other offence. Three levels of culpability have been used, rather than the four in *Bladed Articles*. It was considered three levels are sufficient to cover the range of culpability.

3.8 Also relating to the use of the firearm, the medium culpability level contains the factor 'Firearm produced (where not at culpability A)'. This factor is intended to catch those cases where the firearm is presented or brought out but not for a criminal purpose, for example to show off the weapon to friends as an act of bravado, or for cleaning the weapon. In most cases where the firearm is used or intended for use, this will be for a criminal purpose, though it is possible to conceive of other situations where the weapon is still produced, not merely stored passively in the person's possession, but falls short of a criminal purpose.

3.9 A central factor in culpability is the type of firearm. It is one of the areas highlighted in the *Avis* case. While all firearms and ammunition that are prohibited under section 5 are dangerous, there is a range in what is covered, from extremely dangerous weapons (such as an automatic weapon) through to a stun gun that may potentially be lethal on occasion but is significantly less dangerous than other section 5 weapons.

3.10 Currently the draft guideline uses a three-tier approach to the type of weapon. This directs sentencers to consider the spectrum of prohibited weapons and make a relative judgement to assess whether it is a:

- ‘Firearm or ammunition at the highest end of dangerousness* for prohibited weapon/ammunition’, with text explaining this is ‘capable of causing serious injury or death to a large number of people at once or in quick succession, over and above the harm posed by other prohibited weapons. For example, a rocket launcher under section 5(1)(ae) or automatic firearm under section 5(1)(a) are likely to fall into this category.’ (High culpability)
- ‘Firearm at higher end of dangerousness for prohibited weapon’ (High or medium culpability depending on whether it is loaded or with compatible ammunition)
- ‘Firearm at lower end of dangerousness for prohibited weapon (an example may include a stun gun under section 5(1)(b) Firearms Act 1968)’ (Medium or low culpability depending on whether it is loaded or with compatible ammunition)

3.11 This approach is considered preferable to one that designates particular types of weapon or subsections of section 5 as high, medium or lesser culpability (beyond the examples given). The types of weapons covered by section 5 will continue to be revised over time and weapon technology and design will continue to develop. Therefore a broader categorisation based on relative dangerousness seems more appropriate and able to accommodate future developments and legislative amendments. The *Bladed Articles* guideline took a similar approach, with ‘Possession of a highly dangerous weapon’ attracting the highest level of culpability. A description of ‘highly dangerous weapon’ was added to *Bladed Articles* after further explanation was called for during consultation.³ Ammunition not at the highest end of dangerousness has been included at medium or low culpability depending on quantity.

Question 2: Does the Council agree with the wording and approach for the type of firearm?

3.12 There are options around the level of detail of the factors. It would be helpful for the Council to indicate at this early stage whether it prefers the factors to be more specific and granular or higher-level and more concise. For instance, under high culpability, currently the last three bullet points are three separate factors relating to use or intended use. The factor ‘used to threaten or cause fear’ is taken from *Bladed Articles*. It would be possible instead to consolidate these factors into a single factor, for instance, ‘Use or intended use for criminal purpose’.

³ The *Bladed Articles* guideline provides: ‘NB an offensive weapon is defined in legislation as ‘any article made or adapted for use for causing injury, or is intended by the person having it with him for such use’. A highly dangerous weapon is, therefore, a weapon, including a corrosive substance (such as acid), whose dangerous nature must be substantially above and beyond this. The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case.’

Question 3: Does the Council wish to retain three separate factors relating to use or intended use under high culpability in the possession of prohibited weapons guideline, or combine these into a single factor?

3.13 A feature of this offending is that sometimes the offender is acting as a custodian, holding the prohibited firearm or ammunition on behalf of another. Discussions with judges and law enforcement have indicated that greater guidance is required on assessing culpability in these cases. It is proposed that possession ‘on behalf of another under pressure, coercion, or intimidation’ and ‘on behalf of another as a result of naivety/exploitation’ be included as factors in lower culpability. This wording is adapted from the *Supplying or offering to supply a controlled drug* guideline. It is proposed that holding ‘on behalf of another without coercion, intimidation or exploitation’ be included under medium culpability.

Question 4: Does the Council agree with the culpability factors? Should any factors be amended, added or moved?

3.14 As with culpability, the approach to harm draws heavily on the *Bladed Articles* guideline. The focus is on the harm caused or risked by the circumstances of possession, rather than the weapon itself, which is covered under culpability. Factors adopted from *Bladed Articles* are: ‘offence committed at a school...’, ‘offence committed in circumstances where there is a risk of serious disorder’ and ‘serious alarm/distress’. This wording was preferred over that in the [MCSG carrying in a public place guideline](#) which used ‘person or people put in fear’ and ‘carrying a firearm in a busy place’.

3.15 Three levels of harm are proposed. The *Bladed Articles* guideline contains two levels but firearms possession appears to be more complex with additional factors at play. Because these possession offences can take place in a private place as well as a public one, and many offences involve the firearm being stored in a person’s residence or vehicle, there are additional factors about a public location, whether the firearm was in view and how it was stored. The factors ‘Firearm or ammunition in open view’ (category 2) and ‘Firearm or ammunition not in view’ (category 3) have been included in harm even though the factor ‘Firearm produced’ is already included in culpability. Although this could be seen as double-counting, most possession cases involve the firearm being recovered in a police search of a property. It is necessary to differentiate those cases where the weapon is left in a place where it could be seen or picked up by someone (although is not actually produced) compared with cases where it is stored out of sight.

3.16 The Council may wish to consider the order of the harm factors. The current order is based on the order in *Bladed Articles*, with factors relating to location first, then factors relating to the people who may be present and the impact on them. The Council may prefer to reorder the factors, in particular to put the factors relating to 'alarm/distress', at the top of the box in each level of harm. However it is desirable to keep the order consistent between guidelines where possible unless there is a strong reason for reordering specifically for this offence.

Question 5: Does the Council agree with the harm factors? Should any factors be amended, added or moved?

Guideline 1: Possession of a prohibited weapon – aggravating and mitigating factors

3.17 Again, a number of aggravating and mitigating factors have been incorporated from the *Bladed Articles* guideline:

- Aggravating factors: 2 (with 'or gang' omitted'), 4, 5, 6, 7, 8 from *Bladed Articles – Possession*, and 9 (significant degree of planning/premeditation) from *Bladed Articles – Threats*
- Mitigating factors: 1-7, 9 (with the addition of 'or came into possession involuntarily' to 9)

3.18 Additional aggravating factors for this firearms guideline include no. 1, that the offender was prohibited from possession because of a previous conviction (where not charged separately), 2 having contact with criminal associates, including through drug purchase or supply, 10 being a registered firearms dealer (as there are often not separate charges in relation to this, only revocation of the registration), 11 attempting to involve or implicate others in possession, and 12 possession as part of a stockpile of weapons. The factor 9 'significant degree of planning and premeditation' has been included as courts have considered it more serious when the offender has taken deliberate steps to obtain the weapon as opposed to coming across it incidentally (for example having found it in a public place) or being given it by another. Conversely 9 'little or no planning or came into possession involuntarily' has been included as a mitigating factor.

3.19 Mitigating factor 10 'Voluntary surrender of firearm/ammunition' has been included as a mitigating factor to address those occasional cases where the offender has recognised the need to take the weapon out of circulation and handed it in to the police.

3.20 Mitigating factor 8 'Firearm incomplete (except where component part or taken into account at step 1) or incapable of being discharged' has been included because sometimes the firearm is not in working order and cannot be fired, for example because it is broken or

rusted, or is missing a relevant part, and courts have regarded this as less serious than a fully-functioning weapon. This factor would also capture cases of stun guns that are not operational because they are de-charged. There may be some cases where the weapon is incapable of being discharged, but there is a simple modification that makes it fireable. These cases have not been excluded from the ambit of this factor, but the court can take into account what would be required to put the firearm into working order in deciding the level of discount that is appropriate.

3.21 There is also mitigating factor 11 'No knowledge or suspicion of presence of firearm/ammunition'. The offence is strict liability so possession offences do arise where a person is keeping an item as a custodian but the nature of the item is concealed, for example in a bag or box, or the firearm has been left at the offender's property without them being aware, for example an inherited firearm stored in an attic. Transcripts have shown courts regarding this as a mitigating factor but only when the offender lacks even suspicion that a firearm is involved.

3.22 Mitigating factor 12 'unaware firearm/ammunition is prohibited' tends to occur in cases involving stun guns, disguised stun guns and pepper spray. In some cases the offender has purchased the item online or overseas and was unaware it is classified as a prohibited firearm and its possession is illegal. This has been regarded as a mitigating factor in several of the transcripts sampled. In most cases it would not be possible for an offender to claim this factor is present as most prohibited weapons are clearly identified in section 5, but there appears to be low public awareness about stun guns and pepper spray being classified as prohibited weapons.

3.23 Because prohibited firearms and ammunition may occasionally be held under authority from the Secretary of State or certificate, mitigating factor 13 'Genuine mistake about whether covered by lawful authorisation' has been included.

**Question 6: Does the Council agree with the aggravating and mitigating factors?
Should any factors be amended, added or moved?**

Guideline 2: Possession without a certificate – culpability and harm factors

3.24 This guideline at **Annex D** 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.

3.25 There is an aggravated form of the section 1(1) offence where the firearm is a converted firearm or a shortened shotgun, with a statutory maximum of seven rather than five years. It is quite low volume (14 in 2017 compared with 97 for the non-aggravated form). To cater for the aggravated form, possession of these particular weapons has been placed in high culpability, and wording added to the sentence table to flag the different maximum penalty and that the court may go above the category range for the aggravated form of the offence. Where the offence is aggravated but other factors are present that fall under lower levels of culpability, the court should balance the different factors. Alternatively, a separate table of sentencing levels could be devised for the aggravated form, but there would be limited data for these levels given the low volumes, and the proposed approach is considered more straightforward.

Question 7: Does the Council agree with the proposed approach to addressing the aggravated form of the section 1(1) offence?

3.26 Offences under this guideline should not involve prohibited weapons, so there are no other distinctions proposed regarding the type of weapon within this guideline, other than designating the weapons for the aggravated form as very high culpability. Otherwise the culpability factors are the same as for the prohibited weapons guideline.

Question 8: Does the Council agree with the culpability factors? Should any factors be amended, added or moved?

3.27 The harm factors for this guideline are the same as for the prohibited weapon guideline.

Question 9: Does the Council agree with the harm factors? Should any factors be amended, added or moved?

Guideline 2: Possession without a certificate – aggravating and mitigating factors

3.28 Many of the aggravating and mitigating factors for this guideline are the same as for the prohibited firearms guideline, but there are additional factors relating to different circumstances that may arise under the licensing regime. For example, there are aggravating factors proposed of 13 ‘possession continued after certificate refused or revoked’ and 14 ‘poor record of firearms compliance’.

3.29 Similarly, the following have been included as mitigating factors:

- 12 ‘genuine misunderstanding about terms or validity of certificate’
- 13 ‘steps taken to obtain certificate’
- 14 ‘certificate not obtained/renewed due to genuine oversight’

- 15 ‘good record of firearms licensing compliance’.

Question 10: Does the Council agree with the aggravating and mitigating factors? Should any factors be amended, added or moved?

Guideline 3: Possession by a person previously convicted – culpability and harm factors

3.30 This guideline at **Annex E** 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.⁴ 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. In some cases involving a prohibited firearm, there is a charge of possession of a prohibited weapon and a charge under section 21. Accordingly this guideline needs to accommodate both prohibited weapons and other weapons. Prohibited firearms and ammunition have been placed under high culpability with the rest differentiated by whether or not they are loaded or with ammunition (for firearms) or quantity (ammunition). The other factors are the same as the other guidelines. Harm factors are also the same.

Question 11: Does the Council agree with the culpability factors? Should any factors be amended, added or moved?

Question 12: Does the Council agree with the harm factors? Should any factors be amended, added or moved?

Guideline 3: Possession by a person previously convicted – aggravating and mitigating factors

3.31 These factors are the same as for the prohibited weapons guideline except there is an additional mitigating factor at 11 of ‘genuine misunderstanding about terms of prohibition’ to address those cases where the offender did not understand they were prohibited from possession or the duration of the prohibition. Law enforcement stakeholders have highlighted that there are some cases, particularly where the sentence is suspended, where offenders are not made fully aware of the prohibition or its duration.

Question 13: Does the Council agree with the aggravating and mitigating factors? Should any factors be amended, added or moved?

⁴ 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.

Guideline 4: Carrying a firearm in a public place – culpability and harm factors

3.32 This guideline at **Annex F** covers carrying of a firearm in a public place under section 19. It will replace the [existing guideline in the MCSG](#). Section 19 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. 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).

3.33 The culpability factors correspond with the type of weapon and, where appropriate, whether or not it was loaded. The guideline continues a similar approach to the MCSG guideline in terms of the type of weapon, with firearms and shotguns regarded as higher culpability (with the highest level reserved for prohibited firearms); loaded firearms or shotguns or those with ammunition regarded as higher culpability than those without any ammunition; and imitation firearms and air weapons being at lower culpability. In lower culpability there is an additional factor ‘possession falls just short of reasonable excuse’ (consistent with *Bladed Articles*) to address those cases where the reasons for or circumstances of carrying the weapon did not amount to a defence but nonetheless have lowered the offender’s culpability.

3.34 The harm factors are the same as for the other guidelines except that possession in a public place has been removed from category 2, as this forms one of the elements of the offence, and ‘offence committed in an isolated place’ has been added to category 3.

Question 14: Does the Council agree with the culpability and harm factors? Should any factors be amended, added or moved?

Guideline 4: Carrying a firearm in a public place – aggravating and mitigating factors

3.35 The aggravating and mitigating factors are the same as for the other guidelines. Since there may be lawful authority to carry a firearm in a public place, mitigating factor 11 ‘Genuine mistake about whether covered by lawful authorisation’ has been included (consistent with the possession of prohibited weapons guideline).

Question 15: Does the Council agree with the aggravating and mitigating factors? Should any factors be amended, added or moved?

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 about the aim of the guideline at this meeting. If the Council decides that the aim of the guideline is to replicate current sentencing practice, then the impact on resources within the system is likely to be negligible.

5 RISK

5.1 There continues to be media interest about firearms, including a *BBC Panorama* programme on antique firearms that screened on 20 August. 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. The guidelines are being drafted to accommodate these and any future changes to the list of prohibited weapons.

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 As noted above, there are three further meetings scheduled for the Council to consider and agree the consultation version of these guidelines (October, December, and signoff in January 2019), with the consultation planned for April-July 2019. In July Council agreed a wide scope for offences to be covered by the guidelines. This widened scope has put these timelines under pressure but it is important to keep on track since the main staff resource is available through to May 2019, so the consultation needs to be launched by that time. The risk of timescales slipping will be partially mitigated by providing longer slots or multiple slots at meetings through to January 2019.

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Table 1: Number of adult offenders sentenced for firearms offences, by court type, 2007-2017

Guideline group	Legislation	Section	Offence	Court type	Number of adult offenders sentenced										
					2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Group 1	Firearms Act 1968	5(1)(a)-(af), (c)	Possess/purchase/acquire a prohibited weapon (automatic)/ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	MC	4	4	9	4	2	1	1	1	0	1	0
				CC	242	335	348	301	165	50	46	26	43	68	54
				Total	246	339	357	305	167	51	47	27	43	69	54
		5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	MC	639	625	637	610	531	431	410	313	303	289	204
				CC	174	232	226	215	213	173	153	151	156	173	143
				Total	813	857	863	825	744	604	563	464	459	462	347
		5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	MC	0	0	2	3	1	1	0	0	0	1	0
				CC	3	1	1	0	3	24	52	86	138	190	138
				Total	3	1	3	3	4	25	52	86	138	191	138
		5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment	MC	0	0	0	0	0	0	0	0	0	0	0
CC	7			22	23	12	57	121	124	161	192	218	220		
Total	7			22	23	12	57	121	124	161	192	218	220		
Group 2	Firearms Act 1968	1(1)	Possess a firearm/ammunition without a certificate ¹	MC	-	-	-	-	68	59	50	56	31	49	29
				CC	-	-	-	-	95	80	78	70	79	68	
				Total	-	-	-	-	163	139	128	126	101	128	97
		1(1)	Possess a shortened shotgun without a certificate; possess a thing converted into a firearm ¹	MC	-	-	-	-	0	1	0	2	0	0	0
				CC	-	-	-	-	13	12	6	13	8	6	14
				Total	-	-	-	-	13	13	6	15	8	6	14
2(1)	Possess shotgun without a certificate	MC	36	36	27	29	19	23	21	22	14	16	22		
		CC	15	19	12	25	19	12	9	15	22	15	19		
		Total	51	55	39	54	38	35	30	37	36	31	41		
Group 3	Firearms Act 1968	21(1) & (4) 21(2) & (4) & Sch 6	Possess a firearm/ shotgun/ air weapon/ ammunition when prohibited for life/ five years	MC	54	34	43	33	41	29	27	26	21	24	20
				CC	48	55	68	62	48	45	35	27	28	36	28
				Total	102	89	111	95	89	74	62	53	49	60	48
Group 4	Firearms Act 1968	19	Possess loaded/unloaded firearm and suitable ammunition in public place	MC	76	38	17	15	10	6	9	5	7	6	2
				CC	20	15	14	8	11	6	7	5	7	6	5
				Total	96	53	31	23	21	12	16	10	14	12	7
		19	Possess a loaded shotgun in a public place	MC	16	12	4	0	2	1	0	0	0	0	0
				CC	8	9	7	7	1	5	4	2	1	2	2
				Total	24	21	11	7	3	6	4	2	1	2	2
		19	Possess a loaded / unloaded air weapon in a public place	MC	340	243	218	178	123	117	95	87	96	62	68
				CC	26	31	32	43	28	10	6	5	7	7	6
				Total	366	274	250	221	151	127	101	92	103	69	74
		19	Possess an imitation firearm in a public place	MC	0	32	70	60	61	55	43	53	55	60	85
CC	0			15	26	24	23	32	46	50	43	52	35		
Total	0			47	96	84	84	87	89	103	98	112	120		

			MC	1	0	1	0	0	0	0	0	0	0	0	
		Possess a firearm/ ammunition with intent to endanger life / enable another to do so	CC	45	58	52	43	67	62	68	44	52	52	76	
			Total	46	58	53	43	67	62	68	44	52	52	76	
Firearms Act 1968	16	Possess shotgun with intent to endanger life / enable another to do so	MC	0	0	0	0	0	0	0	0	0	0	0	
			CC	1	3	1	5	0	1	2	0	2	1	1	
			Total	1	3	1	5	0	1	2	0	2	1	1	
		Possess air weapon with intent to endanger life / enable another to do so	MC	0	0	0	0	0	0	0	0	0	0	0	
			CC	1	2	0	0	2	1	0	0	0	0	0	
			Total	1	2	0	0	2	1	0	0	0	0	0	
Group 5	Firearms Act 1968	16A	Possess a firearm/ imitation firearm with intent to cause fear of violence	MC	0	0	0	0	0	0	0	0	0	0	
				CC	286	315	246	264	238	216	206	205	229	259	251
				Total	286	315	246	264	238	216	206	205	229	259	251
		Shotgun - possession with intent to cause fear of violence	MC	0	1	0	0	0	0	0	0	0	0	0	
			CC	4	5	1	6	0	5	1	3	3	7	6	
			Total	4	6	1	6	0	5	1	3	3	7	6	
		Air weapon - possession with intent to cause fear of violence	MC	0	0	2	0	0	0	0	0	0	0	0	
			CC	9	7	10	4	12	9	14	13	9	14	4	
			Total	9	7	12	4	12	9	14	13	9	14	4	
Firearms Act 1968	17(1)	Make use / attempt to make use of a firearm/ imitation firearm with intent to resist arrest	MC	0	0	0	0	0	0	0	0	0	0	0	
			CC	1	0	5	2	5	3	3	3	1	4	1	
			Total	1	0	5	2	5	3	3	3	1	4	1	
	17(2)	Possess firearm/ imitation firearm/ shotgun/ air weapon while committing Schedule 1 offence	MC	0	0	0	1	0	0	1	0	0	0	0	
			CC	52	55	34	24	24	20	13	24	13	13	16	
			Total	52	55	34	25	24	20	14	24	13	13	16	
	18(1)	Have a firearm/ imitation firearm with intent to commit an indictable offence/ resist arrest/ prevent the arrest of another	MC	0	0	0	0	0	0	0	0	0	0	0	
			CC	43	26	34	24	23	11	17	11	10	14	16	
			Total	43	26	34	24	23	11	17	11	10	14	16	
Group 6	Firearms Act 1968	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968	MC	0	0	0	0	0	0	0	0	0	0	
				CC	0	0	0	0	0	0	0	0	0	4	0
				Total	0	0	0	0	0	0	0	0	0	4	0
	5(2A)(b)	Sell / transfer prohibited weapon / ammunition	MC	0	0	0	0	0	0	0	1	0	0	0	
			CC	0	0	0	0	0	0	0	0	0	10	19	
			Total	0	0	0	0	0	0	0	1	0	10	19	
Group 7	Firearms Act 1968	5(2A)(c)	Possess prohibited weapon / ammunition for sale / transfer	MC	0	0	0	0	0	0	0	0	0	1	
				CC	0	0	0	0	0	0	0	0	0	4	5
				Total	0	0	0	0	0	0	0	0	0	5	5
	5(2A)(d)	Purchase / acquire prohibited weapon / ammunition for sale / transfer	MC	0	0	0	0	0	0	0	0	0	0	0	
			CC	0	0	0	0	0	0	0	0	0	0	1	
			Total	0	0	0	0	0	0	0	0	0	0	1	
Group 8	Firearms Act 1968	4A(1)	Possession of articles for conversion of imitation firearms ²	MC	-	-	-	-	-	-	-	-	-	-	
				CC	-	-	-	-	-	-	-	-	-	-	-
				Total	0	0	0	0	0	0	0	0	0	0	0

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Data for these offences not available prior to 2011.

2) New offence under the Policing and Crime Act 2017; came into force 2 May 2018.

Table 2: Sentence outcomes for adult offenders sentenced for offences under the Firearms Act 1968, 2017

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Group 1	5(1)(a)-(af), (c)	Possess/purchase/acquire a prohibited weapon (automatic)/ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	0	0	0	0	6	48	0	54
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	1	30	47	96	95	71	7	347
	5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	0	0	0	3	32	103	0	138
	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment	0	0	0	2	12	204	2	220
Group 2		Possess a firearm/ammunition without a certificate	2	11	12	5	27	39	1	97
	1(1)	Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)	0	0	0	0	2	12	0	14
	2(1)	Possess shotgun without a certificate	0	8	9	1	9	13	1	41
Group 3	21	Possess a firearm when prohibited for life / five years due to previous conviction	0	4	6	5	9	24	0	48
Group 4	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	0	10	25	75	48	43	2	203
Group 5	16	Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable an other to do so	0	0	0	0	0	72	5	77
	16A	Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence	0	1	0	10	62	185	6	264
	17(1)	Use of firearms to resist arrest	0	0	0	0	0	0	1	1
	17(2)	Possess firearm while committing a Schedule 1 offence	0	0	0	1	1	14	0	16
	18(1)	Carry firearm or imitation firearm with intent to commit indictable offence	0	0	1	0	1	15	0	17
Group 6	5(2A)(a)	Manufacture weapon / ammunition in section 5(1) ²	0	0	0	0	0	4	0	4
Group 7	5(2A)(b)	Sell / transfer prohibited weapon	0	0	0	0	0	19	0	19
	5(2A)(c)	Possess prohibited weapon for sale / transfer	0	0	0	0	0	5	0	5
	5(2A)(d)	Purchase / acquire for sale / transfer	0	0	0	0	0	1	0	1
Group 8	4A(1)	Possession of articles for conversion of imitation firearms ³	-	-	-	-	-	-	-	-

Source: Court Proceedings Database, Ministry of Justice

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Group 1	5(1)(a)-(af), (c)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	0%	0%	0%	0%	11%	89%	0%	100%
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	0%	9%	14%	28%	27%	20%	2%	100%
	5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	0%	0%	0%	2%	23%	75%	0%	100%
	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment	0%	0%	0%	1%	5%	93%	1%	100%
Group 2		Possess a firearm/ammunition without a certificate	2%	11%	12%	5%	28%	40%	1%	100%
	1(1)	Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)	0%	0%	0%	0%	14%	86%	0%	100%
	2(1)	Possess shotgun without a certificate	0%	20%	22%	2%	22%	32%	2%	100%
Group 3	21	Possess a firearm when prohibited for life / five years due to previous conviction	0%	8%	13%	10%	19%	50%	0%	100%
Group 4	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	0%	5%	12%	37%	24%	21%	1%	100%
Group 5	16	Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable an other to do so	0%	0%	0%	0%	0%	94%	6%	100%
	16A	Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence	0%	0%	0%	4%	23%	70%	2%	100%
	17(1)	Use of firearms to resist arrest	0%	0%	0%	0%	0%	0%	100%	100%
	17(2)	Possess firearm while committing a Schedule 1 offence	0%	0%	0%	6%	6%	88%	0%	100%
	18(1)	Carry firearm or imitation firearm with intent to commit indictable offence	0%	0%	6%	0%	6%	88%	0%	100%
Group 6	5(2A)(a)	Manufacture weapon / ammunition in section 5(1) ²	0%	0%	0%	0%	0%	100%	0%	100%
Group 7	5(2A)(b)	Sell / transfer prohibited weapon	0%	0%	0%	0%	0%	100%	0%	100%
	5(2A)(c)	Possess prohibited weapon for sale / transfer	0%	0%	0%	0%	0%	100%	0%	100%
	5(2A)(d)	Purchase / acquire for sale / transfer	0%	0%	0%	0%	0%	100%	0%	100%
Group 8	4A(1)	Possession of articles for conversion of imitation firearms ³	-	-	-	-	-	-	-	-

Source: Court Proceedings Database, Ministry of Justice

Notes

- 1) Includes a number of orders, for example hospital orders, confiscation orders and compensation orders.
- 2) The data shown for this offence covers the year 2016, as no offenders were sentenced for this offence in 2017.
- 3) New offence under the Policing and Crime Act 2017; came into force 2 May 2018.

Table 3: Estimated average custodial sentence lengths (pre guilty plea) for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, 2017

Guideline group	Section	Offence	Mean sentence length ^{1,3}	Median sentence length ^{2,3}
Group 1	5(1)(a)-(af), (c)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	7 years 9 months	8 years
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	1 year 4 months	11 months
	5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	4 years 11 months	5 years
	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment	6 years 11 months	7 years 6 months
Group 2	1(1)	Possess a firearm/ammunition without a certificate Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) ⁴	3 years 1 month 2 years 5 months	3 years 1 year 11 months
	2(1)	Possess shotgun without a certificate ⁴	2 years 10 months	2 years 3 months
Group 3	21	Possess a firearm when prohibited for life / five years due to previous conviction	1 year 8 months	1 year 3 months
Group 4	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	10 months	6 months
Group 5	16	Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable an other to do so	12 years 5 months	12 years
	16A	Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence	3 years 4 months	2 years 6 months
	17(1)	Use of firearms to resist arrest ^{4,5}	4 years 7 months	4 years 8 months
	17(2)	Possess firearm while committing a Schedule 1 offence ⁵	4 years 8 months	4 years
	18(1)	Carry firearm or imitation firearm with intent to commit indictable offence ⁵	8 years	7 years 3 months
Group 6	5(2A)(a)	Manufacture weapon / ammunition in section 5(1) ^{4,6}	17 years 9 months	20 years 3 months
Group 7 (combined)	5(2A)(b)-(d)	Sell / transfer prohibited weapon, Possess prohibited weapon for sale / transfer, Purchase / acquire for sale / transfer	12 years	9 years
Group 8	4A(1)	Possession of articles for conversion of imitation firearms ⁷	-	-

Source: Court Proceedings Database, Ministry of Justice

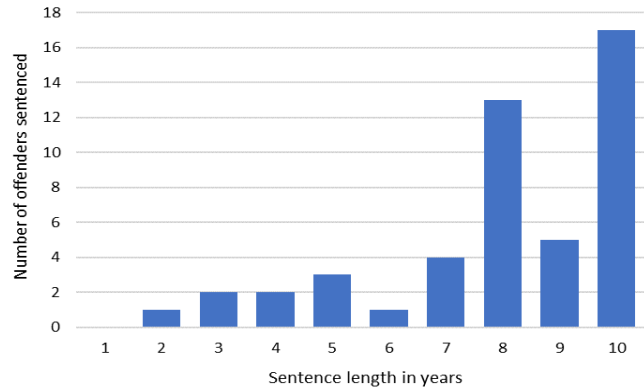
Notes

- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values.
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order.
- 3) Excludes life and indeterminate sentences.
- 4) These figures should be treated with caution, due to the low number of offenders sentenced to immediate custody for this offence.
- 5) The ACSLs shown for this offence cover the period 2013-2017, due to the low number of offenders sentenced for these offences.
- 6) The ACSLs shown for this offence cover the year 2016, as no offenders were sentenced for this offence in 2017.
- 7) New offence under the Policing and Crime Act 2017; came into force 2 May 2018.

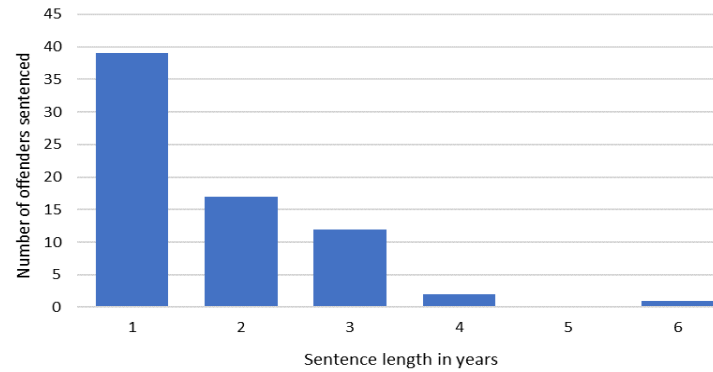
Figure 1: Estimated distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea, 2017

Group 1

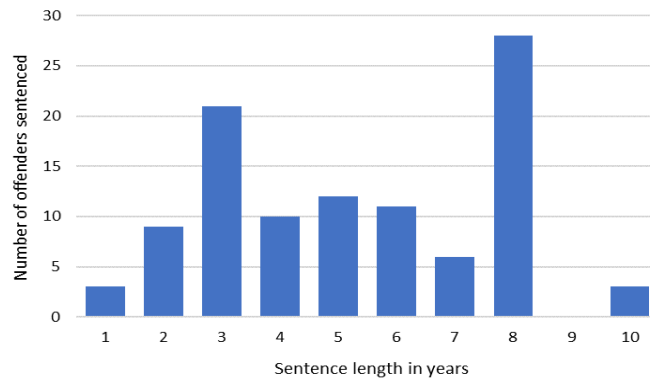
5(1)(a)-(af), (c) - Possess/purchase/acquire a prohibited weapon (automatic)/ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle, 2017



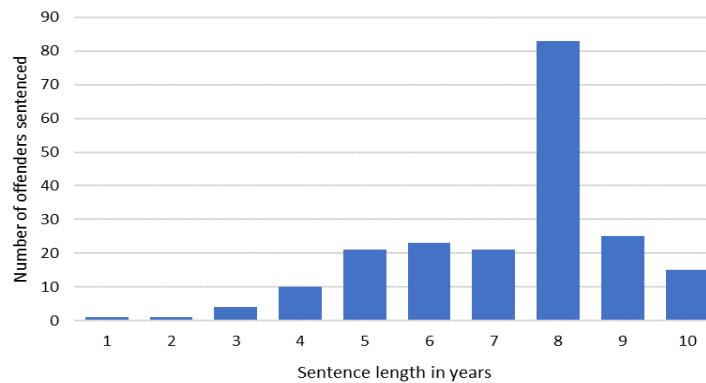
5(1)(b) - Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing, 2017



5(1A)(a) - Possess/ purchase prohibited weapon (disguised firearm), 2017

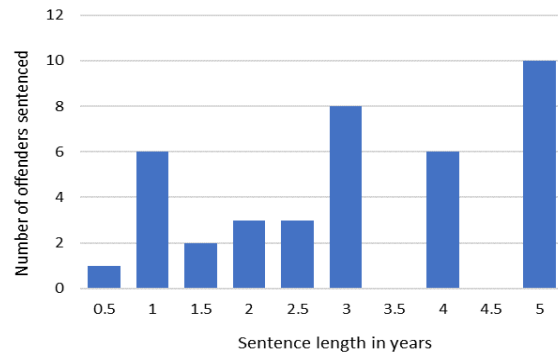


5(1A)(b)-(g) - Possess/ purchase/ sell or transfer military equipment, 2017

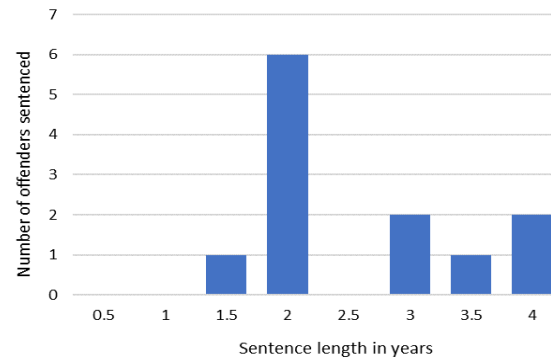


Group 2

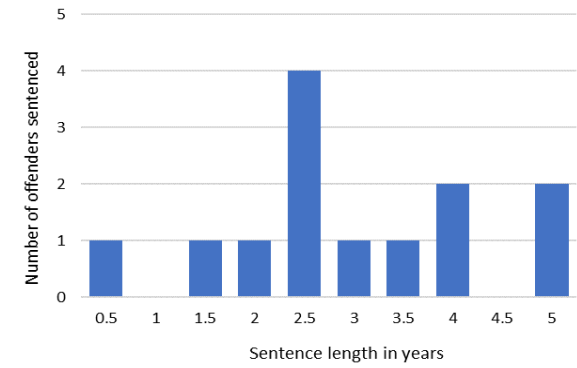
1(1) - Possess a firearm/ammunition without a certificate, 2017



1(1) (aggravated form) - Possess a shortened shotgun without a certificate; possess a thing converted into a firearm, 2017

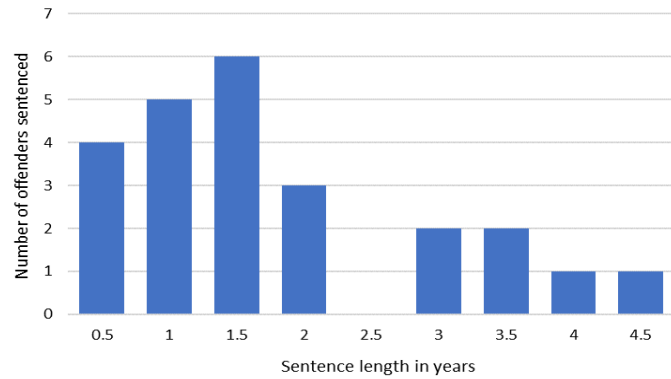


2(1) - Possess shotgun without a certificate, 2017



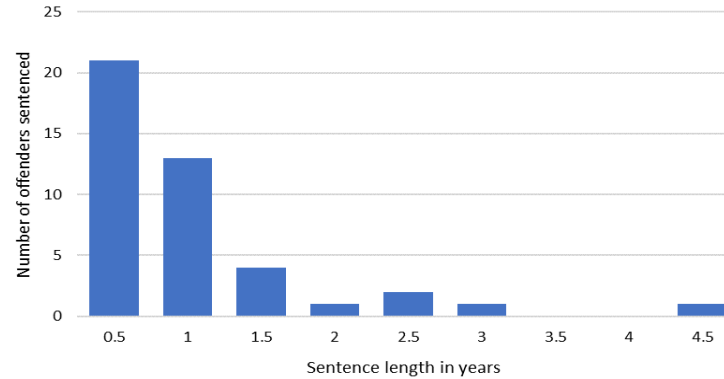
Group 3

21 - Possess a firearm when prohibited for life / five years due to previous conviction, 2017



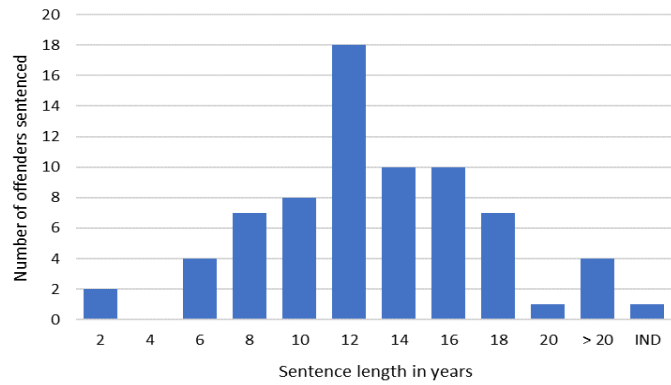
Group 4

19 - Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place, 2017

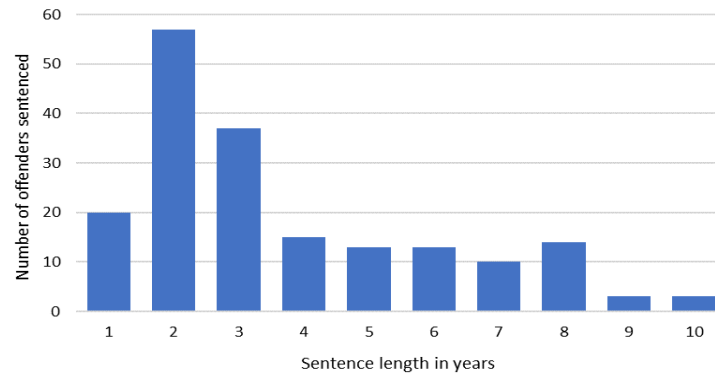


Group 5

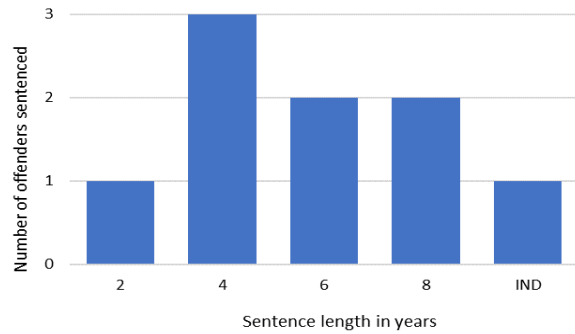
16 - Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable an other to do so, 2017



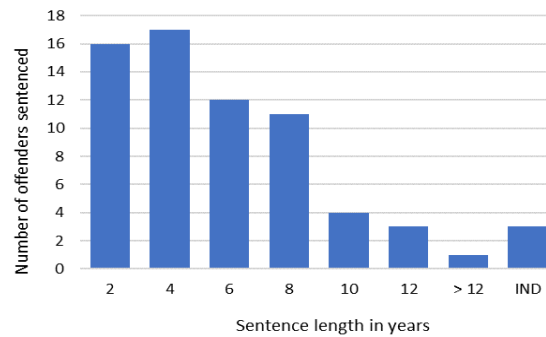
16A - Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence, 2017



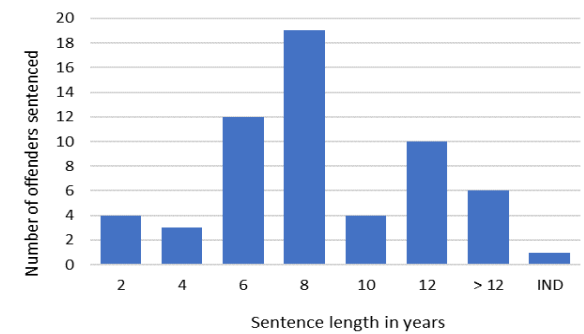
17(1) - Use of firearms to resist arrest, 2013-2017¹



17(2) - Possess firearm while committing a Schedule 1 offence, 2013-2017¹



18(1) - Carry firearm or imitation firearm with intent to commit indictable offence, 2013-2017¹

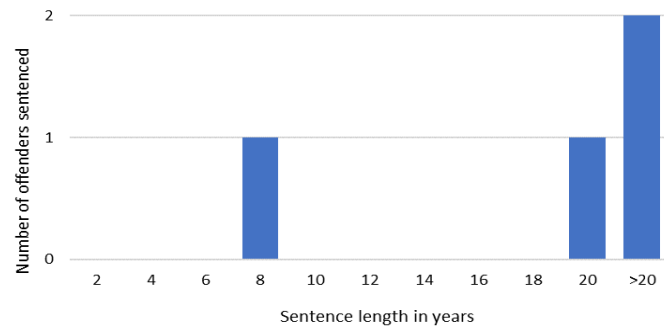


Note:

1) The data shown for sections 17(1), 17(2) and 18(1) covers the period 2013-2017, due to the low number of offenders sentenced for these offences.

Group 6

5(2A)(a) - Manufacture weapon / ammunition in section 5(1), 2016²



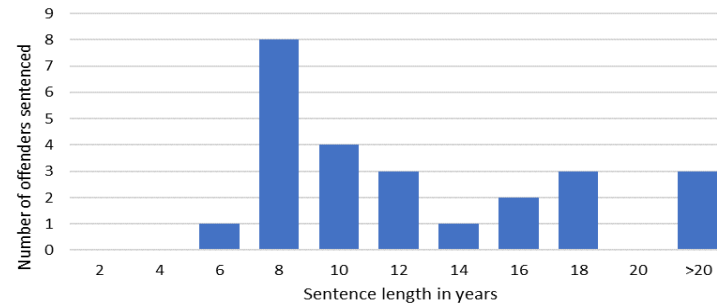
Note:

2) The data shown for section 5(2A)(a) covers the year 2016, as no offenders were sentenced for this offence in 2017.

Source: Court Proceedings Database, Ministry of Justice

Group 7 (combined)

5(2A)(b)-(d) - Sell / transfer prohibited weapon, Possess prohibited weapon for sale / transfer, Purchase / acquire for sale / transfer, 2017



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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 STEP 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**.

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:

A - High culpability:

- Firearm or ammunition at the highest end of dangerousness,* for prohibited weapon/ammunition, whether loaded or not
- Firearm at higher end of dangerousness for prohibited weapon – loaded or with compatible ammunition
- Firearm discharged
- Firearm used to threaten or cause fear
- Firearm used for other criminal purpose
- Firearm or ammunition intended for use in criminal activity or to transfer to possession of criminal associate

B - Medium culpability:

- Firearm at higher end of dangerousness for prohibited weapon – unloaded and without compatible ammunition
- Ammunition (where not at culpability A or C)
- Firearm at lower end of dangerousness for prohibited weapon – loaded or with compatible ammunition
- Firearm produced (where not at culpability A)
- Held on behalf of another without coercion, intimidation or exploitation
- Intended for use including for self-protection (where not at culpability A)

C - Lower culpability:

- Firearm at lower end of dangerousness for prohibited weapon (examples may include a stun gun under section 5(1)(b) Firearms Act 1968) – unloaded and without ammunition
- Component part of firearm
- Very small quantity of prohibited ammunition
- Firearm not produced
- No intention to use
- Held on behalf of another as a result of pressure, coercion, intimidation
- Held on behalf of another as a result of naivety/exploitation

* NB a firearm or ammunition at the highest end of dangerousness is one that is capable of causing serious injury or death to a large number of people at once or in quick succession, over and above the harm posed by other prohibited weapons. For example, an automatic firearm under section 5(1)(a) or a rocket launcher under section 5(1)(ae) are likely to fall into this category.

<p>Harm 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>Category 1</p>	<ul style="list-style-type: none"> • Offence committed at a school or other place where vulnerable people are likely to be present • Offence committed in circumstances where there is a risk of serious disorder • Serious alarm/distress • Presence of children
<p>Category 2</p>	<ul style="list-style-type: none"> • Offence committed in public place not falling into category 1 • Firearm or ammunition in open view • Presence of others • Some alarm/distress
<p>Category 3</p>	<ul style="list-style-type: none"> • Firearm or ammunition not in view • Firearm or ammunition stored securely • Possession of very short duration • No/minimal alarm/distress

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.			
This offence is subject to statutory minimum sentencing provisions. See STEP THREE for further details.			
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:

- 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
- Offence committed whilst on bail

Other aggravating factors:

1. Offender prohibited from possessing weapon because of previous conviction (where not charged separately)
2. Offence was committed as part of a group
3. Offender has contact with criminal associates, including through the purchase or supply of drugs

4. Commission of offence whilst under the influence of alcohol or drugs
5. Attempts to conceal/dispose of evidence
6. Failure to comply with current court orders
7. Offence committed on licence or post sentence supervision
8. Offences taken into consideration
9. Significant degree of planning/premeditation
10. Registered firearms dealer
11. Attempt to involve or implicate others in possession
12. Firearm/ammunition kept as part of a stockpile of weapons

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Good character and/or exemplary conduct
3. Serious medical condition requiring urgent, intensive or long-term treatment
4. Age and/or lack of maturity where it affects the responsibility of the offender
5. Mental disorder or learning disability
6. Sole or primary carer for dependent relatives
7. Co-operation with the police
8. Firearm incomplete (except where component part taken into account at step 1) or incapable of being discharged
9. Little or no planning or came into possession involuntarily
10. Voluntary surrender of firearm/ammunition
11. No knowledge or suspicion of presence of firearm/ammunition
12. Unaware firearm/ammunition is prohibited
13. Genuine mistake about whether covered by lawful authorisation

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[...] ¹⁰incorporates 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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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**.

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:

A - High culpability:

- Shotgun which has been shortened within the meaning of section 4(4)
- Firearm which has been converted within the meaning of section 4(4)
- Firearm – loaded
- Firearm discharged, other than for lawful purpose
- Firearm used to threaten or cause fear
- Firearm used for other criminal purpose
- Firearm intended for use in criminal activity or to transfer to possession of criminal associate

B - Medium culpability:

- Firearm – unloaded with compatible ammunition
- Ammunition (where not at culpability C)
- Firearm produced (where not at culpability A)
- Held on behalf of another without coercion, intimidation or exploitation
- Intended for use including for self-protection (where not at culpability B)

C - Lower culpability:

- Firearm – unloaded and without ammunition
- Component part of firearm
- Very small quantity of ammunition
- Firearm not used or used for lawful purpose only
- No intention to use or intention to use for lawful purpose only
- Firearm/ammunition held on behalf of another as a result of pressure, coercion, intimidation
- Firearm/ammunition held on behalf of another as a result of naivety/exploitation

<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>Category 1</p>	<ul style="list-style-type: none"> • Offence committed at a school or other place where vulnerable people are likely to be present • Offence committed in circumstances where there is a risk of serious disorder • Serious alarm/distress • Presence of children
<p>Category 2</p>	<ul style="list-style-type: none"> • Offence committed in public place not falling into category 1 • Firearm in open view • Presence of others • Some alarm/distress
<p>Category 3</p>	<ul style="list-style-type: none"> • Firearm or ammunition not in view • Firearm or ammunition stored securely • Possession of very short duration • No/minimal alarm/distress

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:

- 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
- Offence committed whilst on bail

Other aggravating factors:

1. Offender prohibited from possessing weapon because of previous conviction (where not charged separately)
2. Offence was committed as part of a group

3. Offender has contact with criminal associates, including through the purchase or supply of drugs
4. Commission of offence whilst under the influence of alcohol or drugs
5. Attempts to conceal/dispose of evidence
6. Failure to comply with current court orders
7. Offence committed on licence or post sentence supervision
8. Offences taken into consideration
9. Significant degree of planning/premeditation
10. Registered firearms dealer
11. Attempt to involve or implicate others in possession
12. Firearm/ammunition kept as part of a stockpile of weapons
13. Possession continued after certificate refused or revoked
14. Poor record of firearms licensing compliance

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Good character and/or exemplary conduct
3. Serious medical condition requiring urgent, intensive or long-term treatment
4. Age and/or lack of maturity where it affects the responsibility of the offender
5. Mental disorder or learning disability
6. Sole or primary carer for dependent relatives
7. Co-operation with the police
8. Firearm incomplete (except where component part taken into account at step 1) or incapable of being discharged
9. Little or no planning or came into possession involuntarily
10. Voluntary surrender of firearm/ammunition
11. No knowledge or suspicion of presence of firearm/ammunition
12. Genuine misunderstanding about terms or validity of certificate
13. Steps taken to obtain certificate
14. Certificate not obtained/renewed due to genuine oversight
15. Good record of firearms licensing compliance

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.

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**.

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>A - High culpability:</p> <ul style="list-style-type: none"> • Firearm or ammunition prohibited under section 5, whether loaded or not • Other firearm – loaded • Firearm discharged, other than for lawful purpose • Firearm used to threaten or cause fear • Firearm used for other criminal purpose • Firearm intended for use in criminal activity or to transfer to possession of criminal associate
<p>B - Medium culpability:</p> <ul style="list-style-type: none"> • Other firearm – unloaded with compatible ammunition • Ammunition (where not at culpability A or C) • Firearm produced (where not at culpability A) • Held on behalf of another without coercion, intimidation or exploitation • Intended for use including for self-protection (where not at culpability A)
<p>C - Lower culpability:</p> <ul style="list-style-type: none"> • Other firearm – unloaded and without ammunition • Component part of firearm • Very small quantity of ammunition • Firearm not produced • No intention to use or intention to use for lawful purpose only • Held on behalf of another as a result of pressure, coercion, intimidation • Held on behalf of another as a result of naivety/exploitation

<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>	
Category 1	<ul style="list-style-type: none"> • Offence committed at a school or other place where vulnerable people are likely to be present • Offence committed in circumstances where there is a risk of serious disorder • Serious alarm/distress • Presence of children
Category 2	<ul style="list-style-type: none"> • Offence committed in public place not falling into category 1 • Firearm or ammunition in open view • Presence of others • Some alarm/distress
Category 3	<ul style="list-style-type: none"> • Firearm or ammunition not in view • Firearm or ammunition stored securely • Possession of very short duration • No/minimal alarm/distress

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:

- 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
- Offence committed whilst on bail

Other aggravating factors:

1. Offender prohibited from possessing weapon because of previous conviction (where not charged separately)
2. Offence was committed as part of a group
3. Offender has contact with criminal associates, including through the purchase or supply of drugs
4. Commission of offence whilst under the influence of alcohol or drugs
5. Attempts to conceal/dispose of evidence

6. Failure to comply with current court orders
7. Offence committed on licence or post sentence supervision
8. Offences taken into consideration
9. Significant degree of planning/premeditation
10. Registered firearms dealer
11. Attempt to involve or implicate others in possession
12. Firearm/ammunition kept as part of a stockpile of weapons

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Good character and/or exemplary conduct
3. Serious medical condition requiring urgent, intensive or long-term treatment
4. Age and/or lack of maturity where it affects the responsibility of the offender
5. Mental disorder or learning disability
6. Sole or primary carer for dependent relatives
7. Co-operation with the police
8. Firearm incomplete (except where component part taken into account at step 1) or incapable of being discharged
9. Little or no planning or came into possession involuntarily
10. Voluntary surrender of firearm/ammunition
11. Genuine misunderstanding about terms of prohibition

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.

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 STEP 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**.

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:

A - High culpability:

- Firearm or shotgun prohibited under section 5, whether loaded or not
- Firearm discharged, other than for lawful purpose
- Firearm used to threaten or cause fear
- Firearm used for other criminal purpose
- Firearm intended for use in criminal activity or to transfer to possession of criminal associate

B - Medium culpability:

- Other shotgun – loaded (where not at culpability A)
- Other firearm – loaded or with compatible ammunition (where not at culpability A)
- Firearm produced (where not at culpability A)
- Held on behalf of another without coercion, intimidation or exploitation
- Intended for use including for self-protection (where not at culpability A)

C - Lower culpability:

- Air weapon that is not prohibited and for which no certificate is required
- Imitation firearm
- Other firearm or shotgun – unloaded and without ammunition
- Component part of firearm
- Firearm not produced
- No intention to use or intention to use for lawful purpose only (not amounting to a defence)
- Held on behalf of another as a result of pressure, coercion, intimidation
- Held on behalf of another as a result of naivety/exploitation
- Possession falls just short of reasonable excuse

<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>	
Category 1	<ul style="list-style-type: none"> • Offence committed at a school or other place where vulnerable people are likely to be present • Offence committed in circumstances where there is a risk of serious disorder • Serious alarm/distress • Presence of children
Category 2	<ul style="list-style-type: none"> • Presence of others • Firearm or ammunition in open view • Some alarm/distress
Category 3	<ul style="list-style-type: none"> • Offence committed in isolated place • Firearm or ammunition not in view • In public place for very short duration • No/minimal alarm/distress

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.			
This offence is subject to statutory minimum sentencing provisions. See STEP THREE for further details.			
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:

- 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
- Offence committed whilst on bail

Other aggravating factors:

1. Offender prohibited from possessing weapon because of previous conviction (where not charged separately)
2. Offence was committed as part of a group
3. Offender has contact with criminal associates, including through the purchase or supply of drugs

4. Commission of offence whilst under the influence of alcohol or drugs
5. Attempts to conceal/dispose of evidence
6. Failure to comply with current court orders
7. Offence committed on licence or post sentence supervision
8. Offences taken into consideration
9. Significant degree of planning/premeditation
10. Registered firearms dealer
11. Attempt to involve or implicate others in possession
12. Firearm/ammunition carried as part of a stockpile of weapons

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Good character and/or exemplary conduct
3. Serious medical condition requiring urgent, intensive or long-term treatment
4. Age and/or lack of maturity where it affects the responsibility of the offender
5. Mental disorder or learning disability
6. Sole or primary carer for dependent relatives
7. Co-operation with the police
8. Firearm incomplete (except where component part or taken into account at step 1) or incapable of being discharged (except where imitation firearm taken into account at step one)
9. Little or no planning or came into possession involuntarily
10. Voluntary surrender of firearm/ammunition
11. Genuine mistake about whether covered by lawful authorisation

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.