

Firearms – Transfer and manufacture

Manufacture weapon or ammunition specified in section 5(1)

Firearms Act 1968 (section 5(2A)(a))

Sell or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(b))

Possess for sale or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(c))

Purchase or acquire for sale or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(d))

Indictable only

Maximum: Life imprisonment

Offence range: 5 – 26 years' custody

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

**STEP ONE
Determining the offence category**

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

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:

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

B – Medium culpability:

- Significant role where offending is part of a group activity, including but not limited to a purchaser or a provider of significant assistance in facilitating transfer or manufacture
- Some degree of planning, including but not limited to some steps to evade detection
- Expectation of significant financial or other advantage
- Other cases falling between high and lower culpability

C – Lower culpability:

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

Harm	
The court should consider the steps set out below to determine the level of harm caused.	
This step is assessed by reference to the scale and nature of the enterprise and any actual harm caused, regardless of the offender's role.	
Category 1	<ul style="list-style-type: none"> • <u>Large-scale commercial and/or highly sophisticated enterprise – indicators may include:</u> <ul style="list-style-type: none"> ○ <u>Large number of prohibited weapons/ammunition involved</u> ○ <u>Operation over significant time period</u> ○ <u>Operation over significant geographic range</u> ○ <u>Close connection to organised criminal group(s)</u> • Evidence firearm/ammunition <u>subsequently</u> used to cause serious injury or death
Category 2	<ul style="list-style-type: none"> • <u>Medium-scale enterprise and/or some degree of sophistication, including cases falling between category 1 and category 3 because:</u> <ul style="list-style-type: none"> ○ <u>Factors in both 1 and 3 are present which balance each other out; and/or</u> ○ <u>The harm falls between the factors as described in 1 and 3</u> • Evidence firearm/ammunition <u>subsequently</u> used in <u>serious</u> criminal offending (where not at category 1)
Category 3	<ul style="list-style-type: none"> • <u>Smaller-scale and/or unsophisticated enterprise – indicators may include:</u> <ul style="list-style-type: none"> ○ <u>Limited number of prohibited weapons/ammunition involved</u> ○ <u>Operation over limited time period</u> ○ <u>Operation over limited geographic range</u> ○ <u>Minimal/no connection to organised criminal group(s)</u> • Evidence firearm/ammunition not <u>subsequently</u> used in criminal offending

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.			
This offence may be subject to minimum sentencing provisions. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
Harm	Culpability		
	A	B	C
Category 1	Starting point 20 years Category range 16 – 26 years	Starting point 14 years Category range 12 – 18 years	Starting point 10 years Category range 8 – 14 years
Category 2	Starting point 14 years Category range 12 – 18 years	Starting point 10 years Category range 8 – 14 years	Starting point 8 years Category range 6 – 12 years
Category 3	Starting point 10 years Category range 8 – 14 years	Starting point 8 years Category range 6 – 12 years	Starting point 6 years Category range 5 – 8 years

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

Factors increasing seriousness

Statutory aggravating factors:

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Firearm under section 5(1)(a) (automatic weapon)
- A4. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A5. Compatible ammunition and/or silencer(s) supplied with firearm ([See step six on totality when sentencing for more than one offence.](#))

- A6. Others put at risk of harm, including by location or method of manufacture or transfer
- A7. Use of business as a cover
- A8. Attempts to conceal or dispose of the firearm or other evidence
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. ~~Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step six on totality when sentencing for more than one offence.)~~
- A11. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A12. Failure to comply with current court orders
- A13. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm/ammunition not prohibited weapon subject to minimum term
- M4. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M5. Genuine belief that firearm will not be used for criminal purpose
- M6. No knowledge or suspicion that item possessed was firearm/ammunition
- M7. No knowledge or suspicion that firearm/ammunition is prohibited
- M8. Voluntary surrender of firearm/ammunition
- M9. Offender co-operated with investigation and/or made early admissions
- M10. Remorse
- M11. Serious medical condition requiring urgent, intensive or long-term treatment
- M12. Age and/or lack of maturity
- M13. Mental disorder or learning disability
- M14. Sole or primary carer for dependent relatives

STEP THREE
Minimum Term
[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 **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 required minimum term.

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.