

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

25 January 2019
SC(19)JAN03 – Firearms paper
Maura McGowan
Sophie Klinger
07976 300962

1 ISSUE

1.1 This is the fifth meeting to consider the firearms guideline. This paper asks the Council to consider culpability and harm in two further guidelines covering possession with intent offences. Step two factors and the rest of the guidelines will be considered at a subsequent meeting.

1.2 Currently, there are three further meetings scheduled to discuss the firearms guideline. The aim is to sign off the consultation version at the May 2019 meeting, if possible, with consultation planned for June to October 2019. These timelines will continue to be monitored and amended as required.

2 RECOMMENDATION

2.1 It is recommended that the Council:

- agrees to group the offences under S16, 17(1), 17(2) and 18 together in one guideline, with S16A in a separate guideline, due to the differing maximum penalty and sentence levels (see table at paragraph 3.2);
- considers the culpability model for each guideline (paragraph 3.6);
- considers the harm model for each guideline (paragraph 3.17).

3 CONSIDERATION

Offences to be covered

3.1 This paper focuses on possession with intent offences. It is proposed to cover the following five offences over two guidelines, grouped as follows:

1. **Guideline 5a (Annex A):** S16 (possession with intent to endanger life), S17(1) (use of firearm to resist arrest), S17(2) (possession while committing a Schedule 1 offence¹), S18 (carrying firearm with criminal intent)
2. **Guideline 5b (Annex B):** S16A (possession with intent to cause fear of violence)

¹ Schedule 1 includes certain offences against the person, arson and criminal damage, sexual offences, theft, robbery, burglary, blackmail and others (see **Annex C** for full schedule).

3.2 The Firearms Act provisions and Schedule 1 are included in full at **Annex C**. Details of the individual offences are set out below:

Offence	Description	Maximum penalty	Volumes (2017)
S16 Possession with intent to endanger life	Possession of any firearm or ammunition with intent to endanger life, or to enable another person to endanger life, whether injury caused or not.	Life	77
S16A Possession with intent to cause fear of violence	Possession of any firearm or imitation firearm with intent to cause, or to enable another person to cause, any person to believe that unlawful violence will be used against him or another person.	10 years	261
S17(1) Use of firearm to resist arrest	Making or attempting to make use of a firearm or imitation firearm with intent to resist or prevent the lawful arrest or detention of himself or another person.	Life	1
S17(2) Possession while committing a Schedule 1 offence	At the time of committing or being arrested for an offence in Schedule 1, having in possession a firearm or imitation firearm, unless possessed for a lawful object.	Life	16
S18(1) Carry firearm with criminal intent	Having a firearm or imitation firearm with intent to commit an indictable offence, or to resist arrest or prevent the arrest of another, while having the firearm or imitation firearm with him.	Life	16

3.3 All the offences are indictable only. The minimum term provisions will apply in any case where the firearm concerned is a specified firearm prohibited under S5.² There is no data available on the proportions of these offences where the minimum term applies. However, from the sentence levels and transcript analysis, it appears that the majority of offences under S16 involve firearms subject to the minimum term, while offences under S16A, S17 and S18 involve a mixture of genuine and imitation firearms, with smaller numbers of firearms attracting the minimum term.

3.4 It is worth noting that the S16 offence covers firearms and ammunition only, while S16A, S17 and S18 expressly cover both firearms and imitation firearms, but not ammunition. The majority of S16A cases (around 70% in 2017) involve imitation firearms (see data at **Annex D**). A set of short case summaries from transcripts is included at **Annex E**, to illustrate the various offences.

² The minimum term applies in respect of 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.

3.5 The S16A offence of possession with intent to cause fear of violence, which is the highest volume offence, has been placed in a separate guideline. All the offences have life imprisonment as the maximum penalty, except the S16A offence, which has a maximum of 10 years. The sentence levels for the S16A offence are also lower than the offences with the life maximum. The median ACSL for S16A is 2 years 6 months' custody, compared with 12 years for the S16 offence and ranging from 4 years 3 months to 7 years for the other offences (see **Annex D**). The different statutory maximum and sentence levels mean that it is necessary to have a separate guideline for the S16A offence.

Question 1: Does the Council agree with the groupings for these guidelines?

Culpability model

3.6 It is proposed to use the same overall culpability model for these guidelines as used in the other possession guidelines. This model involves a two-pronged approach, first considering the type of weapon at Culpability step A, then other culpability factors at Culpability step B. It is not proposed to change the number of levels in culpability for either guideline.

Question 2: Does the Council agree with the proposed culpability model?

Culpability step A – Type of weapon

3.7 These offences cover a range of types of weapon. They may include prohibited firearms under S5, firearms or shotguns requiring a licence, air weapons that do not require a certificate, ammunition and imitation firearms, depending on the offence.³ It is appropriate therefore for the type of weapon table to cover the full range of weapons.

3.8 It is proposed to use a type of weapon table similar to the table the Council previously agreed for the S19 offence (carrying a firearm in a public place). The two guidelines can be the same except with ammunition omitted from the table in the guideline for S16A. Imitation firearms need to be included for both guidelines as although the S16 offence does not extend to imitations, the offences under S17 or S18 may include them.

3.9 There are also two new additions to the table concerning imitation firearms. Certain imitation firearms are more sophisticated and realistic, with some convertible to live firing weapons, while others are more crude. In 2017 imitation firearms accounted for around 70% of the highest-volume possession with intent offence (S16A, possession with intent to cause fear of violence). Given this, it could be useful to draw a distinction between different types of

³ Per the table at paragraph 3.2 the section 16 offence covers ammunition but not imitation firearms; the offences under 16A, 17 and 18 cover firearms and imitation firearms but not ammunition.

imitation firearm. It is proposed the type of weapon table expressly incorporates two categories of more serious imitation firearm which already exist in legislation: realistic imitation firearms⁴ (which are prohibited, subject to certain exceptions⁵) and readily convertible imitation firearms⁶ (which require a certificate to possess), placing these in type 2 rather than type 3, with a drop-down box in the guideline to explain these terms further. Imitation firearms not falling in these categories would remain at type 3.

3.10 The proposed type of weapon table is below, with additions relating to imitation firearms underlined:

Type 1	<ul style="list-style-type: none"> • Firearm or shotgun prohibited under section 5 (whether or not the mandatory minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm, shotgun or air weapon for which a certificate is required • <u>Realistic imitation firearm or readily convertible imitation firearm</u>⁷ • Ammunition (where not at Type 3)⁸
Type 3	<ul style="list-style-type: none"> • Air weapon that is not prohibited and for which no certificate is required • Imitation firearm (<u>where not at Type 2</u>) • Very small quantity of ammunition⁹

Question 3: Does the Council agree with the type of weapon table, including changes relating to imitation firearms?

⁴ The Violent Crime Reduction Act 2008 made it an offence to manufacture, import or sell realistic imitation firearms (section 36). A realistic imitation firearm is defined as an imitation firearm which has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm (section 38).

⁵ It is a defence if the realistic imitation firearm was available for a museum or gallery, theatrical performances, film/tv production, historical re-enactments, or for exercising a function of a crown servant; additionally, a person in trade may import realistic imitations for the purpose of modifying them to make them non-realistic (section 37 Violent Crime Reduction Act 2006). There are two further defences: permitted activities, which are generally airsoft skirmishing, and permitted events, which are for the purpose of display at arms fairs (Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007).

⁶ Section 1 Firearms Act 1968 applies to an imitation firearm (i.e. requiring a firearms certificate) if: (a) it has the appearance of being a firearm to which section 1 of the 1968 Act applies; and (b) it is so constructed or adapted as to be readily convertible into a firearm to which that section applies (section 1(1) of the Firearms Act 1982). The firearm is readily convertible if: (a) it can be so converted without any special skill on the part of the person converting it in the construction or adaptation of firearms of any description; and (b) the work involved in converting it does not require equipment or tools other than such as are in common use by persons carrying out works of construction and maintenance in their own homes (section 1(6) of 1982 Act).

⁷ Drop-down box in guideline to link to the relevant legislative definitions.

⁸ Guideline 5a only, as the section 16A offence in guideline 5b does not cover ammunition.

⁹ Guideline 5a only.

Guideline 5a (Possession with intent) – Culpability step B – Other culpability factors

3.11 This paper first addresses culpability step B in Guideline 5a at **Annex A** (Possession with intent). The factors under culpability step B are similar to those in the possession guidelines already considered. There have been some additions and amendments to address features relating to intent and use. In most of these cases the firearm will have been produced.

3.12 The following factors are retained from the earlier possession guidelines:

- High culpability: ‘Firearm discharged’ – this continues to make a case more serious although it is more common in these cases than in simple possession. In some cases there is injury or damage that results from the discharge (see discussion below under harm).
- Medium culpability: ‘Other cases falling between high and lower culpability’
- Lower culpability: ‘No use or intention to use’ – this is for the rare case under section 17(2) where the person is arrested for or commits a schedule 1 offence while in possession of a firearm which they do not use or intend to use, e.g. has it out of sight in their backpack while committing a street robbery.

3.13 Various factors have been added or changed. In high culpability:

- ‘Intent to endanger life or enable another to do so’ – this new factor recognises that this intention is more serious compared with the intention for the S17 and S18 offences. Although this factor will be present in all S16 offences, the court will need to balance it with other factors in different levels to select the appropriate category. This is necessary to guard against too many S16 cases falling into high culpability. Road-testing can explore whether this works well in practice.
- ‘Sophisticated nature of the offence/significant planning’ – transcripts indicated that cases where there is a great deal of planning, organisation or forethought were more serious. Some possession with intent to endanger life cases also involve large-scale use, often in the context of organised criminal offending and drug supply. The wording for this factor is used in the fraud and theft guidelines. There are corresponding factors of ‘some degree of planning’ and ‘little or no planning or unsophisticated offending’ in medium and lower culpability.

- 'Leading role where offending is part of a group activity' – where offending was in a group, transcripts differentiated between offenders based on their role. The wording of this factor is based on the robbery guideline. There are corresponding factors of 'significant role' and 'lesser role' in medium and lower culpability.
- 'Prolonged incident' – transcripts tended to differentiate between offending where the offender's conduct involving the firearm was sustained over a longer period, compared with a less serious incident that was over very quickly (although a short incident could still be very serious). There is a corresponding factor of 'conduct limited in scope and duration' in lower culpability.

3.14 Medium culpability:

- 'Firearm/ammunition produced with threats of violence (where not at high culpability)' – this factor is intended to differentiate those cases where the firearm is produced accompanied by threats as opposed to being produced without threats or not produced at all. There is a corresponding factor in lower culpability of 'other cases where firearm produced or visible'.
- 'Firearm loaded or held with compatible ammunition but not discharged' – the firearm being loaded has been shifted to medium culpability, alongside being held with ammunition, to avoid too many cases falling into high culpability.

3.15 Lower culpability:

- 'No intention to cause injury to persons' – this factor would mainly be relevant in the S17 and S18 offences (since it is not compatible with an intention to endanger life).

Question 4: Does the Council agree with the proposed culpability B factors in guideline 5a?

Guideline 5b (Possession with intent to cause fear of violence) – Culpability step B – Other culpability factors

3.16 The factors in this guideline (at **Annex B**) are similar to guideline 5a but with some specific factors relating to intent:

- 'Intention falling just short of intent to endanger life' (higher culpability) – there is some overlap between the possession with intent to endanger life offence (S16) and possession with intent to cause fear of violence (S16A), where the case is similar but the more serious intention cannot be made out or falls just short. This factor recognises those cases as more serious than other causing fear of violence cases.

- ‘Conduct intended to maximise fear or distress’ (higher culpability) – transcripts have indicated that in certain cases the offender will take actions to exacerbate the fear caused by use of a firearm, for example by pointing it at a person’s face for a prolonged period of time.
- ‘No use’ (lower culpability) – compared with guideline 5a (**Annex A**), ‘or intention to use’ has been omitted from this factor since all cases in guideline 5b will involve the intention to cause fear of violence.

Question 5: Does the Council agree with the proposed culpability B factors in guideline 5b?

Harm model

3.17 It is proposed to use a model for harm that is similar to that for the possession guidelines. The proposed harm model is the same for both possession with intent guidelines. In the text above the harm factors, harm is described as being assessed by reference to the **risk of injury/death** or **disorder** occurring (as in simple possession) and/or **actual harm** caused.

3.18 There are some additional factors and amendments to reflect the actual harm present in some of these cases, in addition to the risk of harm which was the main focus of the simple possession guidelines. The weapon is often produced in front of other persons and discharge of the firearm is more frequent, particularly in the intent to endanger life offence. Consequently, alarm and distress is much more common and there are some instances of psychological harm. Where the firearm is discharged, in assessing seriousness the court should consider the location, who and how many persons were exposed to danger and the seriousness of any injury or damage to property (per *R v Sheen*¹⁰).

Question 6: Does the Council agree with the proposed harm model for both guidelines 5a and 5b?

3.19 The main changes to harm factors compared with the possession guidelines are set out below.

¹⁰ *R v Sheen* [2011] EWCA Crim 2461. This was a possession with intent to endanger life case (S16), where the firearm was discharged. It held that where the firearm is discharged, in addition to the four questions in *Avis* (on type of weapon, use, intended use, previous convictions) there should also be consideration of two further questions: (1) Where was the firearm (or were the firearms) discharged, and who and how many were exposed to danger by its or their use? (2) Was any injury or damage caused by the discharge of the firearm or firearms, and if so how serious was it?

- Category 1: ‘Serious physical and/or psychological harm caused’ – this new factor is aimed at the most serious type of harm that may result. Category 1 also includes the two risk-related factors from the possession guidelines.
- Category 2: This category includes two new factors, ‘Less serious physical harm and/or serious alarm/distress caused’ and ‘Serious property damage caused’. These are aimed at capturing actual harm that is less serious than that falling in category 1. Category 2 also includes the catch-all factor from the possession guidelines.
- Category 3: Two new factors are included, ‘Limited alarm/distress caused’ and ‘Limited property damage caused’, to reflect the lower end of possible actual harm. This category also continues to include the lower-end two risk-related factors from the possession guidelines.

3.20 After the harm table, there is wording to ensure the court considers totality where there are separate charges:

Where separate charges apply, for example in relation to any injury caused, the court should have regard to totality (see step seven).

Question 7: Does the Council agree with the proposed harm factors?

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 at the September 2018 meeting that the guideline should aim to replicate current sentencing practice (subject to consideration of the sentencing tables and any future decisions around the objective of the exceptional circumstances guidance). The impact on resources within the system is likely to be negligible if the guideline continues to be developed in line with the aim of replicating current practice.

5 RISK

5.1 The Offensive Weapons Bill had its second reading in the House of Lords on 7 January 2019. The Lords Committee stage has yet to be scheduled. As noted previously, the Bill will prohibit two further items: rapid firing rifles¹¹ and bump stock devices.¹² Both items will be subject to the minimum term.

¹¹ Certain chambered weapons from which cartridge cases are extracted by propellant gas. According to the Home Office, these fire at a rate that is significantly greater than a conventional bolt-action rifle, making them closer to self-loading rifles, which are already prohibited.

¹² A bump stock device is an attachment that increases the rate of fire, so that a semi-automatic weapon can fire almost as quickly as an automatic weapon.

5.2 I will come back to the Council for confirmation once the legislation is passed, but in light of the nature of the items and the minimum term applying, it is provisionally intended to include them both under type 1. It is understood that bump stocks are not currently in circulation in the United Kingdom and the rapid firing rifles are infrequently used, if at all, in criminal activity. Therefore it is anticipated adding these two items to type 1 will not have a significant impact on overall volumes.

Blank page

Firearms – Possession with intent

Possession with intent to endanger life

Firearms Act 1968 (section 16)

Use of firearm to resist arrest

Firearms Act 1968 (section 17(1))

Possession while committing a Schedule 1 offence

Firearms Act 1968 (section 17(2))

Carrying firearm with criminal intent

Firearms Act 1968 (section 18)

Indictable only

Maximum: Life imprisonment

Offence range: [To come]

These are serious specified offences for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

These are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence).

These are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

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**.

Culpability A – Type of weapon

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

The categorisations below are indicative only and should not be applied mechanistically. Courts should take care to ensure the categorisation is appropriate for the specific weapon by moving up or down a category where necessary. Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

Type 1	<ul style="list-style-type: none"> • Firearm or shotgun prohibited under section 5 (whether or not the mandatory minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm, shotgun or air weapon for which a certificate is required • Realistic imitation firearm¹ or readily convertible imitation firearm² • Ammunition (where not at Type 3)
Type 3	<ul style="list-style-type: none"> • Air weapon that is not prohibited and for which no certificate is required • Imitation firearm (where not at Type 2) • Very small quantity of ammunition

¹ Drop-down box to link to relevant legislative definitions.

² Drop-down box to link to relevant legislative definitions.

Culpability B – Other culpability factors

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:	
High culpability:	
<ul style="list-style-type: none"> • Intent to endanger life or enable another to do so • Sophisticated nature of offence/significant planning • Leading role where offending is part of a group activity • Firearm discharged • Prolonged incident 	
Medium culpability:	
<ul style="list-style-type: none"> • Firearm/ammunition produced with threats of violence (where not at high culpability) • Firearm loaded or held with compatible ammunition but not discharged • Significant role where offending is part of a group activity • Some degree of planning • Other cases falling between high and lower culpability 	
Lower culpability:	
<ul style="list-style-type: none"> • No use or intention to use • No intention to cause injury to persons • Other cases where firearm produced or visible • Lesser role where offending is part of group activity • Little or no planning or unsophisticated offending • Conduct limited in scope and duration 	

Culpability category

Identify the final culpability category in the table below, considering both **A – Type of weapon** and **B – Other culpability factors**.

		A – Type of weapon		
		1	2	3
B – Other culpability factors	High	Culpability category A	Culpability category A	Culpability category B
	Medium	Culpability category A	Culpability category B	Culpability category C
	Lower	Culpability category B	Culpability category C	Culpability category C

Harm	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual harm caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused • Offence committed in circumstances where person(s) put at high risk of serious physical injury or death • Offence committed in circumstances where there is a high risk of serious disorder
Category 2	<ul style="list-style-type: none"> • Less serious physical harm and/or serious alarm/distress caused • Serious property damage caused • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • Limited alarm/distress caused • Limited property damage caused • Offence committed in circumstances where person(s) put at no/minimal risk of serious physical injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

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.

Where separate charges apply, for example in relation to any injury caused, the court should have regard to totality (see step seven).

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:

- 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:

Factors reducing seriousness or reflecting personal mitigation

STEP THREE

Minimum Terms

[To come once finalised]

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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 244A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

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 SEVEN

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 EIGHT

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 NINE

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN

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.

Blank page

Firearms – Possession with intent to cause fear of violence

Possession with intent to cause fear of violence

Firearms Act 1968 (section 16A)

Indictable only

Maximum: 10 years' custody

Offence range: [To come]

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

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**.

Culpability A – Type of weapon

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

The categorisations below are indicative only and should not be applied mechanistically. Courts should take care to ensure the categorisation is appropriate for the specific weapon by moving up or down a category where necessary. Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

Type 1	<ul style="list-style-type: none"> • Firearm or shotgun prohibited under section 5 (whether or not the mandatory minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm, shotgun or air weapon for which a certificate is required • Realistic imitation firearm¹ or readily convertible imitation firearm²
Type 3	<ul style="list-style-type: none"> • Air weapon that is not prohibited and for which no certificate is required • Imitation firearm (where not at Type 2)

¹ Drop-down box to link to relevant legislative definitions.

² Drop-down box to link to relevant legislative definitions.

Culpability B – Other culpability factors

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:	
High culpability:	<ul style="list-style-type: none"> • Intention falling just short of intent to endanger life • Conduct intended to maximise fear or distress • Sophisticated nature of offence/significant planning • Leading role where offending is part of a group activity • Firearm discharged • Prolonged incident
Medium culpability:	<ul style="list-style-type: none"> • Firearm produced with threats of violence (where not at high culpability) • Firearm loaded or held with compatible ammunition but not discharged • Significant role where offending is part of a group activity • Some degree of planning • Other cases falling between high and lower culpability
Lower culpability:	<ul style="list-style-type: none"> • No use • No intention to cause injury to persons • Other cases where firearm produced or visible • Lesser role where offending is part of group activity • Little or no planning or unsophisticated offending • Conduct limited in scope and duration

Culpability category

Identify the final culpability category in the table below, considering both **A – Type of weapon** and **B – Other culpability factors**.

		A – Type of weapon		
		1	2	3
B – Other culpability factors	High	Culpability category A	Culpability category A	Culpability category B
	Medium	Culpability category A	Culpability category B	Culpability category C
	Lower	Culpability category B	Culpability category C	Culpability category C

<p>Harm</p> <p>The court should consider the steps set out below to determine the level of harm that has been caused or was risked.</p>	
<p>This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual harm caused.</p> <p>When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.</p>	
<p>Category 1</p>	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused • Offence committed in circumstances where person(s) put at high risk of serious physical injury or death • Offence committed in circumstances where there is a high risk of serious disorder
<p>Category 2</p>	<ul style="list-style-type: none"> • Less serious physical harm and/or serious alarm/distress caused • Serious property damage caused • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
<p>Category 3</p>	<ul style="list-style-type: none"> • Limited alarm/distress caused • Limited property damage caused • Offence committed in circumstances where person(s) put at no/minimal risk of serious physical injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

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.

Where separate charges apply, for example in relation to any injury caused, the court should have regard to totality (see step seven).

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:

- 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:

Factors reducing seriousness or reflecting personal mitigation

STEP THREE

Minimum Terms

[To come once finalised]

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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX

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 SEVEN

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 EIGHT

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 NINE

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN

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.

Blank page

FIREARMS ACT 1968 – SECTIONS 16-18 AND SCHEDULE 1**16. Possession of firearm with intent to injure.**

It is an offence for a person to have in his possession any firearm or ammunition with intent by means thereof to endanger life, or to enable another person by means thereof to endanger life, whether any injury has been caused or not.

16A. Possession of firearm with intent to cause fear of violence.

It is an offence for a person to have in his possession any firearm or imitation firearm with intent—

(a) by means thereof to cause, or

(b) to enable another person by means thereof to cause,

any person to believe that unlawful violence will be used against him or another person.

17.— Use of firearm to resist arrest.

(1) It is an offence for a person to make or attempt to make any use whatsoever of a firearm or imitation firearm with intent to resist or prevent the lawful arrest or detention of himself or another person.

(2) If a person, at the time of his committing or being arrested for an offence specified in Schedule 1 to this Act, has in his possession a firearm or imitation firearm, he shall be guilty of an offence under this subsection unless he shows that he had it in his possession for a lawful object.

[(3) repealed]

(4) For purposes of this section, the definition of “firearm” in section 57(1) of this Act shall apply without paragraphs (b) and (c) of that subsection, and “*imitation firearm*” shall be construed accordingly.

(5) In the application of this section to Scotland, a reference to Schedule 2 to this Act shall be substituted for the reference in subsection (2) to Schedule 1.

18.— Carrying firearm with criminal intent.

(1) It is an offence for a person to have with him a firearm or imitation firearm with intent to commit an indictable offence, or to resist arrest or prevent the arrest of another, in either case while he has the firearm or imitation firearm with him.

(2) In proceedings for an offence under this section proof that the accused had a firearm or imitation firearm with him and intended to commit an offence, or to resist or prevent arrest, is evidence that he intended to have it with him while doing so.

(3) In the application of this section to Scotland, for the reference to an indictable offence there shall be substituted a reference to any offence specified in paragraphs 1 to 18 of Schedule 2 to this Act.

SCHEDULE 1 – OFFENCES TO WHICH SECTION 17(2) APPLIES

- 1.** Offences under section 1 of the Criminal Damage Act 1971
- 2.** Offences under any of the following provisions of the Offences Against the Person Act 1861:—
 - sections 20 to 22 (inflicting bodily injury; garrotting; criminal use of stupefying drugs);
 - section 30 (laying explosive to building etc.);
 - section 32 (endangering railway passengers by tampering with track);
 - section 38 (assault with intent to commit felony or resist arrest);
 - section 47 (criminal assaults);
- 2A.** Offences under Part I of the Child Abduction Act 1984 (abduction of children).
[paragraph 3 repealed]
- 4.** Theft, robbery, burglary, blackmail and any offence under section 12(1) (taking of motor vehicle or other conveyance without owner's consent) of the Theft Act 1968
- 5.** Offences under section 89(1) of the Police Act 1996 or section 90 of the Police and Fire Reform (Scotland) Act 2012 (assaulting or impeding police).
- 5A.** An offence under section 90(1) of the Criminal Justice Act 1991 (assaulting prisoner custody officer).
- 5B.** An offence under section 13(1) of the Criminal Justice and Public Order Act 1994 (assaulting secure training centre custody officer).
- 6.** Offences under any of the following provisions of the Sexual Offences Act 2003—
 - (a) section 1 (rape);
 - (b) section 2 (assault by penetration);
 - (c) section 4 (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within subsection (4)(a) to (d) of that section;
 - (d) section 5 (rape of a child under 13);
 - (e) section 6 (assault of a child under 13 by penetration);
 - (f) section 8 (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused;
 - (g) section 30 (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within subsection (3)(a) to (d) of that section;
 - (h) section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within subsection (3)(a) to (d) of that section was caused.
- 6A.** An offence under paragraph 14 or 24 of Schedule 10 to the Criminal Justice and Courts Act 2015 (assaulting secure college custody officer).
[paragraph 7 repealed]
- 8.** Aiding or abetting the commission of any offence specified in [paragraphs 1 to 6A]¹ of this Schedule.
- 9.** Attempting to commit any offence so specified.

Table 1: Number of adult offenders sentenced for offences under the Firearms Act 1968, by type of weapon, 2007-2017

Guideline group	Legislation	Section	Offence	Number of adult offenders sentenced												
				2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017		
Group 5a (Maximum: 10 years)	Firearms Act 1968	16	Possess a firearm with intent to endanger life / enable another to do so ¹	-	-	-	-	52	49	42	31	45	50	73		
			Possess ammunition with intent to endanger life / enable another to do so ¹	-	-	-	-	2	1	0	1	1	1	0		
			Possess a shotgun with intent to endanger life / enable another to do so	1	3	1	5	0	1	2	0	2	1	1		
			Possess an air weapon with intent to endanger life / enable another to do so	1	2	0	0	2	1	0	0	0	0	0		
			TOTAL SECTION 16 OFFENCES	47	63	53	48	69	64	70	44	54	53	77		
		17(1)	Make use / attempt to make use of a firearm/ imitation firearm with intent to resist arrest	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	52	55	34	24	24	20	13	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	43	26	34	24	23	11	17	11	10	14	16		
		Group 5b (Maximum: 10 years)	Firearms Act 1968	16A	Possess a firearm with intent to cause fear of violence ¹	-	-	-	-	101	76	81	71	74	91	68
					Possess an imitation firearm with intent to cause fear of violence ¹	-	-	-	-	134	130	124	132	153	166	183
Possess a shotgun with intent to cause fear of violence	4				5	1	6	0	5	1	3	3	7	6		
Possess an air weapon with intent to cause fear of violence	9				7	10	4	12	9	14	13	9	14	4		
TOTAL SECTION 16A OFFENCES	299				327	257	274	250	230	221	221	241	280	261		

Source: Court Proceedings Database, Ministry of Justice

Note

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

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 5a (Maximum: Life)	16	Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable another to do so	0	0	0	0	0	72	5	77
	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	0	0	1	15	0	16
Group 5b (Maximum: 10 years)	16A	Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence	0	1	0	9	61	184	6	261

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 5a (Maximum: Life)	16	Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable another to do so	0%	0%	0%	0%	0%	94%	6%	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%	0%	0%	6%	94%	0%	100%
Group 5b (Maximum: 10 years)	16A	Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence	0%	<0.5%	0%	3%	23%	70%	2%	100%

Source: Court Proceedings Database, Ministry of Justice

Note

1) Includes a number of orders, for example hospital orders, confiscation orders and compensation orders.

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

Guideline group	Section	Offence	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Sentence range (using estimated pre GP sentence lengths)	
Group 5a (Maximum: Life)	16	Possess a firearm with intent to endanger life / enable another to do so	12 years 5 months	12 years	1 year 8 months - 27 years' custody (and indeterminate)	
		Possess ammunition with intent to endanger life / enable another to do so ^{4,5}	11 years 6 months	12 years	5 years 6 months - 16 years 2 months' custody (and indeterminate)	
		Possess a shotgun with intent to endanger life / enable another to do so ^{4,5}	11 years 2 months	10 years	9 years - 16 years' custody	
		Possess an air weapon with intent to endanger life / enable another to do so ⁴	*	*	4 years 2 months - 7 years 6 months' custody	
	TOTAL SECTION 16 OFFENCES			12 years 5 months	12 years	1 year 8 months - 27 years' custody (and indeterminate)
	17(1)	Use of firearms to resist arrest ⁴	4 years 5 months	4 years 3 months	6 months - 10 years 8 months' custody (and indeterminate)	
17(2)	Possess firearm while committing a Schedule 1 offence	5 years 10 months	5 years 8 months	CO - 12 years' custody		
18(1)	Carry firearm or imitation firearm with intent to commit indictable offence	8 years 8 months	7 years	SSO - 24 years' custody		
Group 5b (Maximum: 10 years)	16A	Possess a firearm with intent to cause fear of violence	4 years 9 months	4 years 6 months	CO - 10 years' custody	
		Possess an imitation firearm with intent to cause fear of violence	2 years 8 months	2 years 3 months	Discharge - 9 years 9 months' custody	
		Possess a shotgun with intent to cause fear of violence ⁴	5 years 4 months	6 years	SSO - 10 years' custody	
		Possess an air weapon with intent to cause fear of violence ⁴	3 years	3 years	SSO - 6 years 9 months' custody	
TOTAL SECTION 16A OFFENCES			3 years 4 months	2 years 6 months	Discharge - 10 years' custody	

Source: Court Proceedings Database, Ministry of Justice

Notes

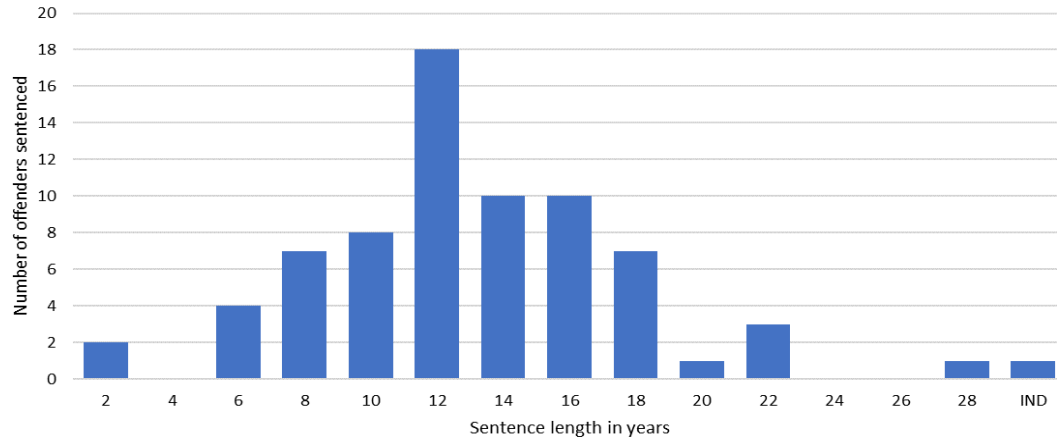
- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values.
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order.
- 3) Excludes life and indeterminate sentences.
- 4) The ACSLs and ranges shown for these offences cover the period 2011-2017, due to the very low number of offenders sentenced for these offences.
- 5) These figures should be treated with caution, due to the low number of offenders sentenced to immediate custody for this offence.

* Figures not shown due to the very low number of offenders sentenced to immediate custody for this offence.

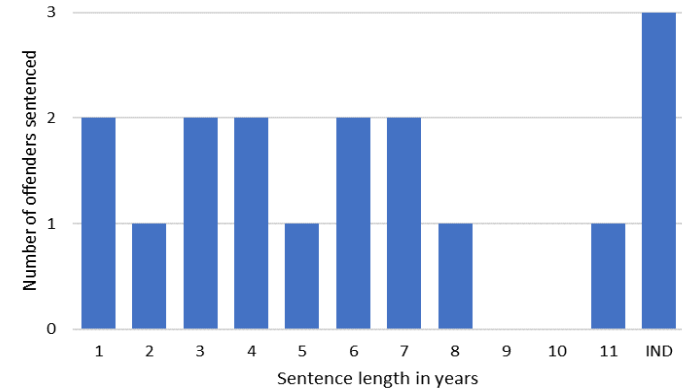
Figure 1: Estimated distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea

Group 5a (Maximum: Life)

Section 16 offences (total) - Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable another to do so, 2017



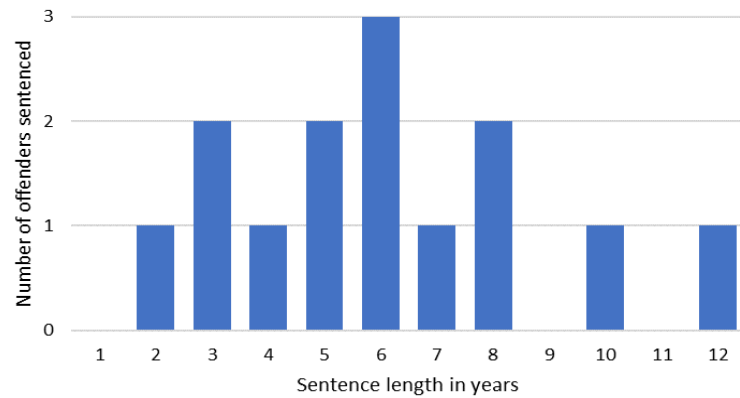
17(1) - Use of firearms to resist arrest, 2011-2017¹



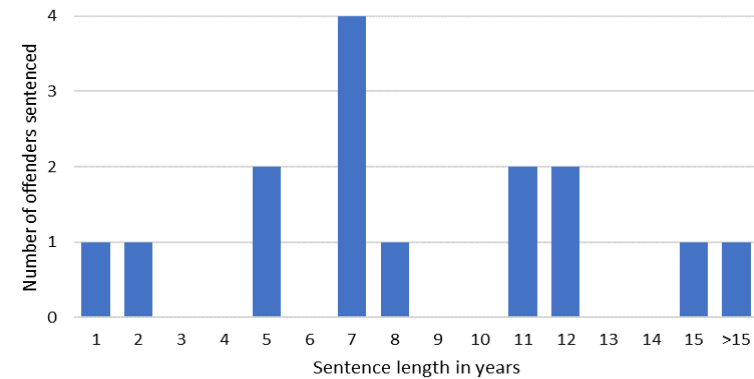
Note:

1) The data shown for section 17(1) covers the period 2011-2017, due to the low number of offenders sentenced.

17(2) - Possess firearm while committing a Schedule 1 offence, 2017

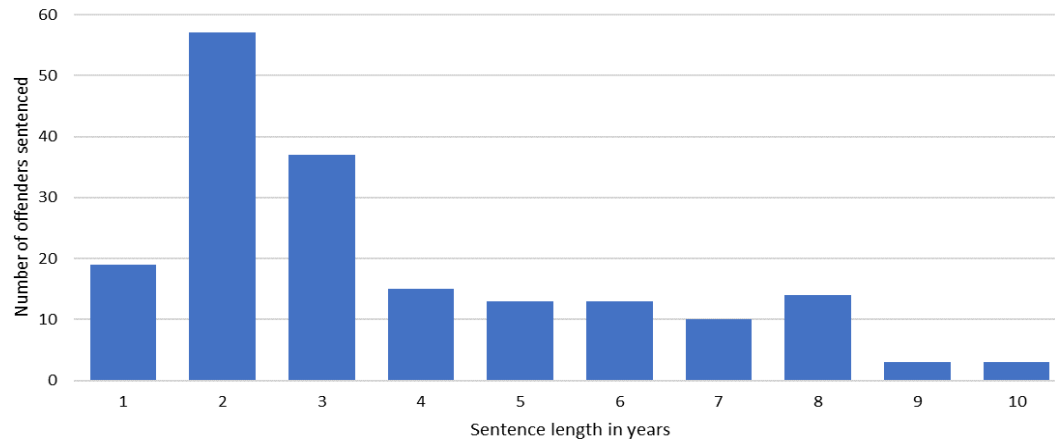


18(1) - Carry firearm or imitation firearm with intent to commit indictable offence, 2017

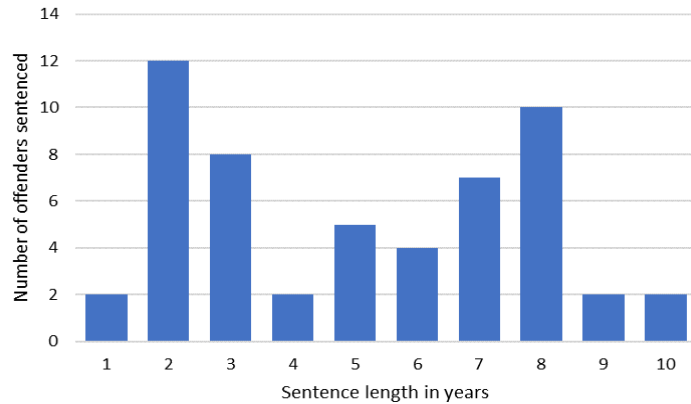


Group 5b (Maximum: 10 years)

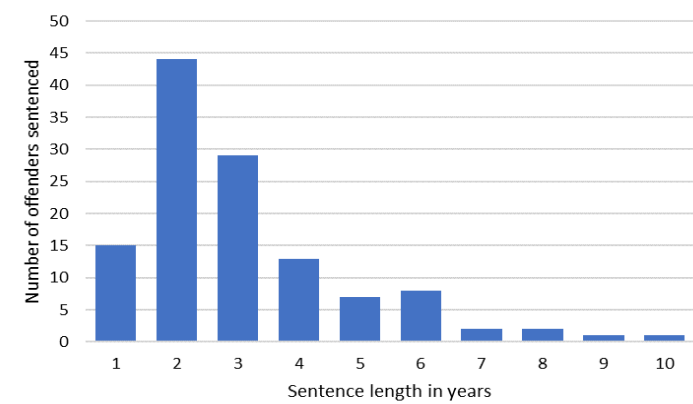
Section 16A (total) - Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence, 2017



16A - Possess a firearm with intent to cause fear of violence, 2017



16A - Possess an imitation firearm with intent to cause fear of violence, 2017



Source: Court Proceedings Database, Ministry of Justice

Note:

Separate sentence length breakdowns for section 16A offences involving shotguns and air weapons have not been shown due to low volumes.

Blank page

FIREARMS – POSSESSION WITH INTENT EXAMPLES**Possession with intent to endanger life (section 16 – life maximum)**Boyd

Two counts of possession with intent to endanger life, one for ammunition and one for the handgun. There were at least two handguns and ammunition involved. The victim was surrounded by a group of 5 men including B, as he got out of his car at a restaurant. They were near other people in a party-type situation. B shot at the victim at close range. The evidence was inconclusive as to whether an unknown male had also shot at the victim with another handgun. The victim was wounded in the leg – the tibia and fibula fractured and required surgery. The injuries were serious but not life-threatening. (B was acquitted of attempted murder – the judge considered it would have been a level 1 attempted murder case at top end of second category, i.e. starting point of 20 years.)

Final sentence (no guilty plea): 16 years' custody (concurrent on both counts)

Harwozinski

H purchased more than 80 blank firing handguns, at least 19 of which were fully automatic, and over 1800 rounds of blank ammunition from the Czech Republic. G then modified the handguns to enable them to fire live ammunition. The weapons and ammunition were supplied to criminals in various urban centres. The weapons had been discharged in public on a number of occasions in circumstances where the lives of members of the public were or could have been endangered. At least once a gun was used to cause injury, said to amount to something approaching attempted murder. The weapons had been found closely linked to the supply of large quantities of class A drugs. H had imported the guns/ammunition, sourced the lathe and was responsible for the onward transfer of the weapons. H was also charged with importation of firearms and ammunition, conspiracy to convert, and conspiracy to manufacture. A 30 year determinate sentence would have been appropriate after trial.

Sentence after guilty plea: Life with 11 year 8 month minimum term

Smith

Prohibited firearms were loaded and used on a number of occasions in order to enforce the supply of controlled drugs. The offending was in the context of gang activity. In this case, three firearms and related ammunition were recovered, which were lethal weapons ready for use, but there was evidence of two further firearms which were not recovered - one revolver and one machine pistol. There were four shooting incidents. In three, four people were seriously injured and in the fourth, there were life changing injuries to victim. In three cases the shootings were in residential areas, one with shots going into a house, narrowly missing the occupants, and in some cases at a time when people including children were on the street. Innocent members of the public were traumatised. Other charges of drug supply.

Sentences ranging from: 6 years 6 months' custody (no plea) – life with minimum term of 12 years, mainly depending on role in shooting incidents and plea

Possession with intent to cause fear of violence (section 16A – 10 year maximum)Tray

T had been drinking at a party at his house. Fighting broke out amongst the friends. He collected an imitation rifle from his room, which had been left there by somebody else as part of a fancy dress outfit. He walked back into group and started waving the weapon around, with the intent of stopping the fight that was in progress.

Sentence after guilty plea: Community order with 200 hours' UPW

Forrest

At 1.10am F heard a noise outside his house. He believed his neighbour's vehicle was being damaged, and decided to do something. He went out on the street with his air rifle (imitation firearm), with a torch and sights attached to it. The weapon was such that it was not easy to see straightaway that it was an air rifle and not a proper firearm. Anyone seeing it would have been put in fear, which was his intention. It was loaded although it was not fired and was not put to use aside from F taking it into the street.

Sentence after guilty plea: 10 months' SSO (suspended for 2 years) with 20 days' RAR

Wisniewski

W was driving on the motorway with his nephew in passenger seat, running late. The victim's vehicle was driving in the outside/passing lane. W flashed his headlights. The victim was moving into the slow lane, when W also pulled into the inner lane intending to undertake. W then went back into the overtaking lane. W slowed his speed deliberately so the cars were alongside. The lighting was getting towards dark. W was angry and turned on the vehicle's interior light. He reached for the gun (an air pistol in shape of handgun) and held it at right angles to the victim – the gun was not pointed at the victim but it was made clear to the victim that W had a gun. W deliberately wanted to frighten/intimidate the victim. The judge found no provocation in the victim's earlier driving behaviour.

Sentence after guilty plea with dispute as to basis of plea: 6 months' custody

Evans

There was a history of bad blood between J and E. They were arguing on doorstep and began to trade insults and threats. E followed J down the road trying to goad him into a fight. There were aggressive movements and gestures. E attacked J and punched him. J went to his house and got a knife. He stabbed E with a knife - 3 wounds. E demanded his son get E's BB gun from the house. The son tried to calm the situation and E beat/punched him to make him get the gun, which he eventually did. E then searched for J, brandishing the firearm at anyone in his path, including at a heavily pregnant woman. The offence was committed in front of children (his own and neighbours) and other people in the street.

Sentence (no guilty plea): 2 years 6 months' custody (plus 12 months consecutive for affray, to a total of 3 years 6 months)

Neza

A group of defendants were in a vehicle which was observed jumping red lights in pursuit of a van. One defendant was seen to be occupied with an item in his lap. The defendants had armed themselves with a Luger 9mm handgun with a magazine loaded with live ammunition. Their purpose was to follow the occupants of the van with hostile intention for a prolonged period of time and over a substantial distance on motorway. In pursuit they jumped red lights and drove at high speed in a dangerous manner. The driving was part of the intention to cause fear of violence. Police moved to stop the car. The car slowed to enable one person to exit the car and take the weapon. That person was not detained but police recovered the firearm. The firearm had been fired from the car. One defendant additionally charged with dangerous driving

Sentence (no guilty plea): 6 years 9 months' custody (plus 12 months concurrent for one defendant with driving charge)

Belete

In early hours B took himself to hospital with gunshot wound to his upper thigh. A spent cartridge and a live round were found in his trousers. Police found a BMW with blood soaked seats and a firearm (a Baikal, a Russian-made pistol with a silencer) with a number of rounds of ammunition. Three rounds had been fired into the door of MH, who was in some form of relationship with B. The sentencing judge considered this case to be at or near the maximum seriousness for this offence, before discount for the guilty plea. Other charges of

Sentence after guilty plea: 6 years 8 months' custody

Use of firearm to resist arrest (section 17(1) – life maximum)

Hodge

A police officer tried to arrest H at his home. H resisted the arrest, threatening with a taser which is a non-lethal weapon. He was unable to work out how to operate it. Although over a relatively short timeframe, and not calculated or premeditated, this was an incident of persistent and aggressive resistance to the arrest. H used and threatened violence towards the police officer, both when he was standing and when he was on the floor. Bystanders who witnessed the incident would have been upset. Captor spray had to be deployed and others nearby would have been caught by it. A firearms officer was deployed with a Glock pistol, which could have been fired leading to H's injury or death.

Sentence after guilty plea: 2 years 4 months

Gerrard

G's girlfriend told the police that had left carrying a gun, saying if he was stopped there would be a stand-off. Police pursued G's car and he drove erratically. A police officer went to the driver's door. G got out of car, stood side-on to the officer and stepped on the sill of the car to gain height. He took a silver handgun (imitation) from his waistband and pointed it at the officer's face. The officer thought he was about to be shot in face. G held it at his face to make him believe he would be shot. Another officer arrived. G pointed the gun at that officer, again in the vicinity of his face. That officer heard a clicking sound - he thought an attempt to pull trigger. G was ratcheting the gun at one stage. Other officers arrived and G brandished the gun in a way which would have put them in fear for their lives as well. G then ran off, carrying the gun. He tried to scale a gate and was pulled back. Again he pointed the gun at officers. G was taken to the ground and disarmed. G then called out that it was not a real gun. His intention was to use the gun to frighten the officers.

Sentence after guilty plea: 5 years (plus 16 month consecutive sentence for separate AOABH and driving offence)

Possession while committing a Schedule 1 offence (section 17(2) – life maximum)

Boyd

B was arrested for attempted aggravated burglary with another person. He was never prosecuted for the burglary. He had a rucksack with him containing an imitation firearm which could fire blanks. It is not suggested, in fact, that they were committing a burglary. The firearm was inside the rucksack. There was no suggestion B had removed it from the rucksack to use it and no suggestion he had it with him for any criminal purpose.

Sentence after guilty plea: 12 months' community order with 140 hours UPW

Mohammed

M was armed with a revolver that has not been recovered - taken to be an imitation revolver. M robbed the victim of £10,000 and his phone and took his car and damaged it. M threatened the victim and three other people with violence. The background to the offence was unclear – there was some suggestion of planning but this was not sentenced on basis that it was a significantly planned attack. M said he questioned who was ‘on his area’ in such a car and had a gun with him to deal with people on his area. Other charges of robbery and a driving offence.

Sentence (no guilty plea): 7 years’ custody (concurrent 7 years for robbery, 18 months for driving offence)

Carry firearm with criminal intent (section 18(1) – life maximum)

Brent

B pleaded guilty to possession of an imitation firearm with intent to commit affray. B looked out of his window and saw youths urinating near his garden boundaries. Previously there had been pestering by youths from a nearby traveller's site. B had purchased a BB cylinder powered air pistol that looked exactly like a real firearm, for the purpose of protecting himself by brandishing it if necessary at the youths. He intended to see the youths off. The court considered B had made a mistake under provocation from the youths.

Sentence after guilty plea: 12 months’ community order with 60 hours UPW

Heath

Two defendants went to a shop early in the morning when the victim was at work at a small newsagents. H had an imitation firearm. The victim was approached and was threatened with a gun. The gun was held above her head while she was threatened, shouted at, sworn at, and asked for the keys to the safe. She did not have them or did not hand them over. P had a bottle, which the victim thought she was going to be hit by. H hit her with the gun. She was hit about the face and lower jaw, sustaining injury, and bruising to breast area and a hand injury. She also experienced psychological suffering and anxiety. The defendants left in a nearby car. An imitation firearm was recovered including other items such as balaclavas. Also one charge of attempted robbery.

Sentence after guilty plea: 6 years’ custody (concurrent with extended sentence for attempted robbery of 6 years’ custody, plus 2 years licence)

Hussain

There was a short pursuit of defendants in a vehicle one evening. Two firearms were found in the vehicle, both loaded with ammunition. The sawn off smooth shotgun (automatic) had a cartridge jammed in the mechanism. It was wrapped in bags, in the footwell behind the front seats. The handgun had five bullets in the magazine; it was found under the passenger seat. The jury had concluded the purpose of weapons was to commit an indictable offence e.g. robbery, but the exact offence was uncertain. Two counts of possession with intent to commit an indictable offence. Other charges of possession of prohibited firearm and possession of ammunition without firearms certificate.

Sentence (no guilty plea): 12 years concurrent on each count (8 years concurrent for other possession offences)