

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

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SC(21)APR07 – Firearms importation
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1 ISSUE

1.1 At the February meeting the Council considered the scope and format of a firearms importation guideline. It was agreed that the scope of the guideline should be limited to the importation of firearms contrary to sections 50 and 170 of the Customs and Excise Management Act 1979.

1.2 The Council agreed that the format of the guideline should be loosely based on the [possession of a prohibited weapon guideline](#), but with elements taken from the [transfer and manufacture guideline](#).

1.3 It was agreed that the working group should consider the guideline in more detail and make recommendations the full Council to enable the guideline to be signed off for consultation at the April or May Council meeting. The working group met on 5 March to consider two versions of a draft guideline and the recommendations in this paper reflect the discussions at that meeting.

2 RECOMMENDATION

2.1 That the Council considers the proposed draft at **Annex A** and agrees a version of the importation guideline for consultation.

2.2 That the Council agrees a timetable for the consultation which would allow for the definitive guideline to come into force on 1 January 2022.

3 CONSIDERATION

Assessing culpability

3.1 Taking into account the suggestions made at the February Council meeting, several culpability models have been explored and tested against cases. A model that first considers the type of weapon and then considers the offender's role appears to work best for a wide range of cases.

3.2 In summary there are three types of weapon:

- Type 1: Weapon designed to be capable of killing two or more people at the same time or in rapid succession.
- Type 2: Weapons falling between 1 and 3 and most ammunition

- Type 3: Weapon that is not designed to be lethal and very small amounts of ammunition

3.3 Consideration was given to providing just that summary in the guideline, but on reflection it seemed preferable to be consistent with the other guidelines and give more detail. The difficulties of defining exactly which firearms and ammunition are covered by the offence means that the lists are not exhaustive but the wording used 'would **normally** include' should prevent the lists being treated as inflexible.

Culpability – Type of weapon

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

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

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

Type 1

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

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

Type 2

All other weapons falling between Type 1 and Type 3

- This would **normally** include a weapon requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(af)

Ammunition (where not at Type 3)

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

Type 3

Weapon that is not designed to be lethal

- This would **normally** include a weapon under section 5(1)(b) or a stun gun under section 5(1A)(a)

Very small quantity of ammunition

3.4 The 'other' culpability factors relate to role, planning and expectation of financial or other advantage. They are based on the culpability factors in the Transfer and manufacture guideline.

Culpability – other culpability factors	
The court should weigh all the factors set out below in determining the offender's culpability	
High culpability:	
<ul style="list-style-type: none"> • Leading role where offending is part of a group activity • Significant planning, including but not limited to significant steps to evade detection • Abuse of position of trust or responsibility, for example registered firearms dealer, customs official • Expectation of substantial financial or other advantage • Involves others through coercion, intimidation or exploitation 	
Medium culpability:	
<ul style="list-style-type: none"> • Significant role where offending is part of a group activity • Some degree of planning, including but not limited to some steps to evade detection • Expectation of significant financial or other advantage • Other cases falling between culpability A and C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender's culpability falls between the factors as described in A and C 	
Lower culpability:	
<ul style="list-style-type: none"> • 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 	

3.5 One concern raised by the NCA in response to the firearms consultation in 2020 was an impression that those who imported firearms by post had been dealt with less severely compared to accompanied importations. The evidence we have from transcripts does not indicate that this is an issue (for examples of importation by post receiving significant sentences see numbers 5 and 9 in Annex B). Although it is possible that importations by post may involve less planning than accompanied importations, there are other high culpability factors that would apply in appropriate cases.

3.6 These two elements of culpability have been combined to make one of four overall culpability levels:

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

3.7 This is a departure from other firearms guidelines where there are only three culpability levels. It has been done to cater for the very wide range of offending covered by this guideline.

Question 1: Does the Council agree with the proposed culpability model? Are the factors the right ones?

Harm assessment

3.8 The proposed harm model is based on the Transfer and manufacture guideline in that it refers to the scale and nature of the importation (regardless of the offender’s role).

<p>Harm Harm is assessed by reference to the scale and nature of the importation regardless of the offender’s role and regardless of whether the importation was intercepted.</p>
<p>Category 1</p> <ul style="list-style-type: none"> • Large-scale commercial enterprise – indicators may include: <ul style="list-style-type: none"> ○ Large number of firearms/ ammunition involved ○ Operation over significant time period ○ Close connection to organised criminal group(s)
<p>Category 2</p> <ul style="list-style-type: none"> • Medium-scale enterprise and/or some degree of sophistication, including 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"> • Smaller-scale and/or unsophisticated enterprise – indicators may include: <ul style="list-style-type: none"> ○ Limited number of firearms/ ammunition involved ○ Minimal/no connection to organised criminal group(s)

3.9 One potential issue with this harm model is that quite a wide range of offending could be encompassed by each category. In particular category 3 does not distinguish between the importation of one or two weapons where there is a real danger that they may be used and cases where there is a very low risk of the weapon causing any harm. Looking at the cases for which we have transcripts, the distinction between such cases is generally achieved by the difference in culpability. Aggravating and mitigating factors may provide for further distinction between such cases (see discussion below).

Question 2: Does the Council agree with the proposed harm model? Are the factors the right ones?

Sentence tables

3.10 The offence range is a fine to 28 years’ custody. There are two sentence tables (one for offences carrying life and one for those with a seven year statutory maximum). Culpability

A and B have been combined in Table 2 because culpability A will never apply and culpability B will rarely apply.

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

TABLE 1: Offences subject to the statutory maximum of a life sentence (offence relates to weapon or ammunition that is of a kind mentioned in Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a) Firearms Act 1968)

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

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

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

3.11 The boxes shaded orange in the sentence tables above are those that have been used in the resentencing exercise described at 3.15 below.

3.12 The working group also considered a version of the guideline with an extra low level of harm and only one sentence table. This carried the risk of the guideline leading to a sentence in excess of the statutory maximum and also involved having some boxes in the table that could never be used.

3.13 A key difference between having one or two tables, is that two tables could mark a clear distinction between very similar cases where one involves stun guns and the other involves disguised stun guns; whereas with one table they would be treated the same. A similar issue was encountered with the possession of a prohibited weapon guideline where there are two tables: one for offences subject to the minimum five year term (such as possession of a disguised firearm) and one for those that are not (such as possession of a stun gun). For that guideline, however, similar cases are likely to be treated the same because the CPS charging policy is that that possession of a disguised stun gun (absent aggravating features) will be charged under s5(1)(b) – to which the minimum term does not apply.

3.14 To take an example: D buys a low powered stun gun over the internet from a seemingly reputable on-line retailer which is shipped to him from outside the UK. Assuming that D is of good character, cooperates fully and it is accepted that he had no intention to use it: if charged with **possession**, the sentence is likely to be a fine or community order; if charged with **importation** the sentence would be similar. In the same scenario if the stun gun was disguised as a torch, there would be no change to the sentence for **possession** and if charged as **importation** the sentence using Table 2 would be unchanged but the sentence using Table 1 would be custody.

3.15 For the CEMA offences, the CPS is in the process of updating its charging policy so that in future the charge will specify the type of weapon with reference to the Firearms Act. The intention is that where a disguised stun gun is involved, the CPS will specify it as a weapon under s5(1)(b) Firearms Act to which the 7 year maximum applies unless there are aggravating features. So Table 2 would be used to sentence in our example above.

3.16 Annex B contains a summary of 26 sample cases that have been ‘resentenced’ using the proposed guideline and assuming that the change to CPS charging policy has been made. The final column in Annex B shows the comparable sentence using either the possession of a prohibited weapon guideline or the transfer and manufacture guideline. It is acknowledged that this ‘resentencing’ exercise is inexact and it is based on scant details in many cases but it gives an indication of how the guideline might operate.

3.17 In Annex B, **blue** highlighting in either of the last two columns indicates that the relevant guideline would produce a sentence lower than that actually passed and **yellow**

highlighting indicates a sentence higher than was actually passed (if the actual sentence is within the range of the category it has not been highlighted).

3.18 The sentence levels in the guideline have been set with current sentencing practice in mind. Most s170 offences are dealt with in the Crown Court (88% of all offenders sentenced since 2009). Whereas s50 offences have been predominately dealt with in magistrates' courts (78% since 2014).

3.19 Sentences passed in 2019 were as follows:

Offence	Discharge	Fine	Community order	Suspended sentence	Immediate custody	Range
s50 CEMA	2	7	1	5	2	Discharge – 3 years' custody
s170 CEMA		1	1	2	4	Fine - 14 years' custody

3.20 Both versions of the guideline appear 'top heavy' when compared to 2019 sentencing data but it seems likely this is because a high proportion of prosecutions (particularly under s50) are cases of relatively low seriousness. We don't have any information about the cases sentenced in magistrates' courts but it is assumed that those cases receiving fines and discharges are similar to the example described at 3.13 above. Discharges have not been included in the sentence table as it is difficult to envisage a situation where it would be 'inexpedient to inflict punishment' (section 80 Sentencing Code) but in an exceptional case a court could go outside the guideline.

3.21 It is apparent from the 2019 figures that suspended sentence orders (SSOs) are relatively frequently imposed for these offences. Using the proposed guideline, it seems likely that in a number of cases these would be replaced with community orders (there are eight examples of this at Annex B). In practical terms from the offender's point of view the effect of the sentence might not be very different. The effect on prison and probation resources of the change from a short SSO to a community order might also be minimal. One difference that might be relevant is that a custodial sentence (including one that is suspended) of three months or longer means that the offender is prohibited from possession any firearm or ammunition for a minimum of 5 years (section 21 Firearms Act 1968).

Question 3: Does the Council agree with having two sentence tables? Are the sentence levels appropriate?

Aggravating and mitigating factors

3.22 These are similar to those in the transfer and manufacture guideline.

3.23 An additional mitigating factor (M4) has been added to cater for very low harm cases:

- Very small scale importation **and** very low risk of harm to others

3.24 Consideration of the cases at Annex B suggests that there may be a requirement for a balancing aggravating factor to take account of situations where there is recklessness as to harm from the weapon. The suggested factor (A6) is:

- Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not taken into account at step 1)

Question 4: Does the Council have any comments on the proposed aggravating and mitigating factors?

Other steps

3.25 The remaining steps of the draft guideline are fairly standard. Step 6 – Ancillary is the only one which contains information specific to this guideline. Other firearms guidelines contain a reference to forfeiture orders under section 52 of the Firearms Act 1968 but this does not apply to these offences. For s170 offences there is a power to order forfeiture under s170(6) CEMA. Otherwise, there is a general power to order deprivation of property under section 153 of the Sentencing Code. Reference is also made to a Serious Crime Prevention Order which is available for s170 offences.

Step 6 – Ancillary orders

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

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

Forfeiture of firearms

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

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

Serious Crime Prevention Order

Where the offender is convicted of an offence contrary to section 170 Customs and Excise Management Act 1979, the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

Question 5: Does the Council have any comments on the ancillary orders step?

Timetable

3.26 If the guideline is signed off for consultation at this meeting, the plan is to launch the consultation on 23 June to run for 12 weeks until 8 September. The previous consultation on firearms guidelines received only 21 responses and a similar number is expected for this guideline. The consultation responses could then be discussed at the September and October Council meetings and the definitive guideline published in November to come into force on 1 January 2022.

4 EQUALITY AND DIVERSITY

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

4.2 The factors in the guideline have been drawn up with fairness and proportionality in mind and the consultation will ask for views on whether there are any equality issues that should be addressed.

5 IMPACT AND RISKS

5.1 A draft resource assessment is attached at Annex C. As has been noted above, these are low volume offences and the sentence levels in the draft guideline broadly reflect current sentencing practice and so any impact is likely to be small.

Question 6: Does the Council agree to sign off the guideline for consultation and, if so, is the proposed timetable suitable?

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Firearms – Importation

Improper importation of goods

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

Fraudulent evasion of prohibition / restriction

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

Triable either way

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

Offence range: x –x years' custody

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

Step 1 – Determining the offence category

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

Culpability – Type of weapon

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

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

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

Type 1

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

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

Type 2

All other weapons falling between Type 1 and Type 3

- This would **normally** include a weapon requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(af)

Ammunition (where not at Type 3)

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

Type 3

Weapon that is not designed to be lethal

- This would **normally** include a weapon under section 5(1)(b) or a stun gun under section 5(1A)(a)

Very small quantity of ammunition

Culpability – other culpability factors

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

High culpability:

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

Medium culpability:

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

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

Harm

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

Category 1

- Large-scale commercial enterprise – indicators may include:
 - Large number of firearms/ ammunition involved
 - Operation over significant time period
 - Close connection to organised criminal group(s)

Category 2

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

Category 3

- Smaller-scale and/or unsophisticated enterprise – indicators may include:
 - Limited number of firearms/ ammunition involved
 - Minimal/no connection to organised criminal group(s)

Step 2 – Starting point and category range

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

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

TABLE 1: Offences subject to the statutory maximum of a life sentence (offence relates to weapon or ammunition that is of a kind mentioned in Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a) Firearms Act 1968)

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

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

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- A3. Firearm under section 5(1)(a) (automatic weapon)
- A4. Compatible ammunition and/or silencer(s) imported with firearm (See step 6 on totality when sentencing for more than one offence)
- A5. Others put at risk of harm by method of importation
- A6. Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not taken into account at step 1)
- A7. Use of business as a cover
- A8. Attempts to dispose of the firearm or other evidence
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step six on totality when sentencing for more than one offence)
- A11. Failure to comply with current court orders
- A12. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

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

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

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

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

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 6 – Ancillary orders

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

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

Forfeiture of firearms

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

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

Serious Crime Prevention Order

Where the offender is convicted of an offence contrary to section 170 Customs and Excise Management Act 1979, the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

Step 7 – Reasons

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

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

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

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
1.	3 handguns and ammunition hidden in a TV and speaker which was due to be delivered to offender. In a search of his home police seized class B drugs with a street value of over £1,000, £600 in cash, a gas canister, two stun guns, pepper spray, six brass bullets, a cannabis grinder and a laptop. The guns had been adapted to fire live ammunition and the bullets found in his bedroom were identical to those seized from the delivery van	Possession guns and ammunition. Drugs offences	14 years	14 years 4 months Various concurrent sentences including 15 months for drug offences. 4 months consecutive for FTS	Culp: Type 1 High = A Harm 2 A2 Table 1 SP 14 years	Transfer: A2 SP 14 years
2.	Offender arranged for an innocent driver to travel to Czech Republic and drive back to UK in van in which semi-automatic firearm and ammo had been professionally concealed. Sophisticated importation of very dangerous weapon and he was the principal.	Importation of 3 boxes of 50 rounds of live ammunition and silencer	22 years	22 years	Culp: Type 1 High = A Harm 1 or 2 A1/A2 Table 1 SP 14 years +	Transfer: A1/A2 SP 14+ years
3.	Stopped driving vehicle with 60 handguns concealed inside. Acted as courier for money - knew what he was carrying	-	9 years	9 years	Culp: Type 1 Med = B Harm 1 B1 Table 1 SP 14 years	Transfer: B1 SP 14 years
4.	Importation of 34kg class A drugs and firearms (10 handguns, ammunition and silencers). Transferred guns and drugs from co-conspirator's car into his van. Offender was border force officer and had significant role and expected significant financial gain	Drugs Misconduct in public office	12 years	23 years	Culp: Type 1 High = A Harm 1 A1 Table 1 SP 20 years	Transfer: A1 SP 20 years

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
5.	Leading role in importation from Spain via UPS and supply of 46 live 9mm calibre cartridges, fully functioning firearm and other ammunition.	-	14 years	12 years (5 counts in total including one to which min term applies)	Culp: Type 1 High = A Harm 2 A2 Table 1 SP 14 years	Transfer: A2 SP 14 years
6.	Ordered components of a Glock pistol from US on dark web for £900 in bit coins	-	15 months	10 months	Culp: Type 1 Med = B Harm 3 B3 Table 1: SP 5 years	Possession: Type 1 Med = B, Harm 2, B2 Table 1 SP 6 years
7.	Imported automatic pistol and 50 rounds of ammunition concealed in speaker cabinet. Package was intercepted and a dummy parcel sent in its place which he took delivery of. Was in possn of stun gun, cartridges and equipment for cloning credit cards, Had also enquired about buying machine pistol, ammo and sawn off shotgun		10 years	6 years 8 months	Culp: Type 1 High = A Harm 2 A2 Table 1 SP 14 years	Transfer: A2 SP 14 years
8.	Police raided a flat in London and found 11 Soviet era hand guns , with serial numbers removed which had been re-barrelled, and silencers and ammo for them. Also Kalashnikov machine gun and large amount of cash. Co-accused convicted of sale or transfer offences. This offender had brought the weapons in from Lithuania in a minivan but not part of main conspiracy	-	10 years	10 years (co-accused sentenced to 18 years)	Culp: Type 1 Med = B Harm 1 B1 Table 1 SP 14 years	Transfer: B1 SP 14 years

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
9.	3 semi-automatic and one fully automatic pistols imported by post from Slovenia. He sourced and paid for the weapons, and had them sent to him and also obtained a package of 100 improvised projectiles which could have been used in these weapons. Played an essential part in a wider enterprise.	4 counts	10 years	10 years	Culp: Type 1 Med = B Harm 2 B2 Table 1 SP 10 years	Transfer: B2 SP 10 years
10.	Used dark web to source Glock 19 handgun and ammunition from US to be delivered to a former address hidden inside a music speaker. Police intercepted delivery and substituted dummy items. Took delivery and went to partner's home where there were young children.	Ammunition	14 years	10.5 years	Culp: Type 1 High = A Harm 2 or 3 A2/A3 Table 1 SP 10 years +	Transfer: A2/A3 SP 10 years +
11.	Imported gun and 250 rounds of ammunition by post, stated intention was to use it for target practice and for interest. Was a collector of weapons (knives and air weapons held legally). Used false name to buy gun. Was intercepted by FBI		4 years	30 months	Culp: Type 1? Med = B Harm 3 B3 Table 1: SP 5 years	Transfer: B3 SP 5 years Possession: Type 1? Med = B, Harm 2, B2 Table 1: SP 6 years
12.	Tried to import a Glock 19 handgun through dark web using crypto currency	-	4.5 years	3 years	Culp: Type 1 Med = B Harm 3 B3 Table 1: SP 5 years	Possession: Type 1 Med = B, Harm 1/2, B1/B2 Table 1: SP 6+ years

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
13.	Brought a blank unloaded hand gun into UK from Poland	Mention of pepper gas, blanks and fireworks	18 months	SSO 12 months	Culp: Type 3 Low = D Harm 3 D3 Table 1: 2 years Table 2: SP CO	Possession: Type 3 Med = B, Harm 2, B2 Table 1: SP 6 years Table 2: SP 1 year
14.	Driver of a van into UK stuffed with ammunition - to be sold, at great profit for use in criminal enterprises. Included 100 prohibited cartridges which would expand on impact , with 270 further cartridges for use in rifles and/or hand guns. His fingerprints were on packaging of the prohibited ammunition. Assessed as between lesser and significant role	-	4.5 years	3 years	Culp: Type 2 Med/Low = C/D Harm 1 C1 or D1 Table 1 SP 6 years +	Transfer: B1/C1 SP 10+ years
15.	Tried to import a stun gun/ torch by ordering it online. It was intercepted by Customs before it was delivered		18 months?	SSO 1 year susp for 1 year 150 hours unpaid work	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2/3, C2/C3 Table 2: SP fine/CO
16.	Very few details - ordered a disguised stun gun not realising that it was unlawful		?	CO 12 months with 120 hours unpaid work	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 3, C3 Table 2 SP fine
17.	Took delivery of 2 weapons one of which was a disguised stun gun . Had 5 CS cannisters - not clear if this is separate to the above	Possn of cannabis	3 years 6 months	2 years 4 months	Culp: Type 3 Low = D Harm 3 D3 Table 1: SP 2 years Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2, C2 Table 1: SP 5.5 years Table 2: SP CO

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
18.	Brought 3 stun guns disguised as torches into UK from Slovakia where they are legal		SSO 18 months suspended 2 years	SSO 12 months susp for 2 years with unpaid work	Culp: Type 3 Low = D Harm 3 D3 Table 1: SP 2 year Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2, C2 Table 1: SP 5.5 years Table 2: SP CO
19.	Bought a baton, a butterfly knife and CS gas on holiday in Bulgaria and brought them back to UK	3 counts		SSO 6 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2, C2 Table 2: SP CO
20.	Ordered CS spray cannisters online for delivery to his home. Claims he had been the subject of threats and needed them for protection		9 months	SSO 6 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med/Low = C Harm 2, C2 Table 2: SP CO
21.	Very few facts - importation of non-lethal weapons as collector, no ammunition, no risk of harm. Failed to check whether they were legal		CO	CO	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Low = C Harm 3, C3 Table 2: SP fine
22.	Imported stun gun and knives for his collection via internet over a period of a year unaware that it was illegal. No criminal intent. Kept weapons secure. Cooperated with police	Possession and importation of knives	18 months	SSO 12 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Low = C Harm 3, C3 Table 2: SP fine
23.	Ordered a stun gun capable of administering 9,500 volts online at the request of a friend, not realising it was illegal. Dangerous weapon but intercepted before it reached him	-	18 months	SSO 12 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med = B Harm 2, B2 Table 2: SP 1 year

Ref	Summary of main incident/offence	Additional offence	Sentence before GP discount	Final sentence combining all offences	Resentence for firearms offence(s) only	Comparable sentence for possession or transfer offence
24.	Very few details given - Importation of 2 CS cannisters , possession of a third and possession w/o cert of air weapon	Possession of air pistol w/o cert	SSO 9 months	SSO 6 months	Culp: Type 3 Low = D Harm 3 D3 Table 2: SP CO	Possession: Type 3 Med = B Harm 2, B2 Table 2: SP 1 year
25.	Ordered 2 stun guns on internet. Took delivery of one and the other was intercepted by customs. Also ordered knuckle dusters	Knuckle dusters	3 years 9 months (assumed)	2 years 6 months	Culp: Type 3 Med = C Harm 3 C3 Table 2: SP 1 year	Possession: Type 3 Med = B Harm 2, B2 Table 2: SP 1 year
26.	Importing prohibited Walther PKK hand gun designed to fire blanks , a pyrotechnic device and 50 blank rounds while on bail for other offences. Importation intercepted	Possession of Taser, baton, knuckle duster and cannabis		CO	Culp: Type 3 Med = C Harm 3 C3 Table 2 SP 1 year	Possession: Type 3 Med = B Harm 2, B2 Table 2: 1 year

Consultation Stage Resource Assessment

Firearms Importation Offences

Introduction

This document fulfils the Sentencing Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

In December 2020, the Sentencing Council published the definitive Firearms offences guidelines, relating to firearms offences covered by the Firearms Act 1968. These included a guideline for the offences of transferring and manufacturing of firearms or ammunition.

No current guideline exists for offences relating to importing firearms or ammunition or fraudulent evasion of prohibition under the Customs and Excise Management Act 1979 (detailed below). The Council is consulting on a new draft sentencing guideline to cover both offences, for use in all courts in England and Wales.

The Council's aim in developing the guideline is to provide sentencers with a structured approach to sentencing these offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences. It should also promote a consistent approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences under the Customs and Excise Management Act 1979 (CEMA), which will be covered by a single guideline:

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

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

- Fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170(1)(b) and (3), 170(2),(3), and (4A)(a).

This guideline applies to sentencing adults only; it will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guideline, the Council has carried out analytical and research work in support.

The intention is that the guideline will encourage consistency of sentencing and in the majority of cases will not change overall sentencing practice. In order to develop a guideline that maintains current practice, knowledge of recent sentencing was required.

Sources of evidence have included the analysis of transcripts of judges' sentencing remarks and sentencing data from the MoJ Court Proceedings Database.²

During the consultation stage, we intend to hold discussions with sentencers to invite feedback and gauge whether the new guideline would work as anticipated. This should provide some further understanding of the likely impact of the guideline on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the draft guideline have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

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

Between 2015 and 2019,⁴ around 60 offenders were sentenced for this offence. The most common outcome was a fine (42 per cent) and just under a quarter (24 per cent) were given a suspended sentence order. A further 16 per cent were given a

² The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

³ Within the CPD data, it is not possible to identify the weapon present, therefore, care should be taken when interpreting these statistics as they may include cases in which the weapon present was not a firearm and as such may influence the volumes of offenders sentenced or the sentence given.

⁴ Due to the small number of offenders sentenced for these offences, 5 years of data have been presented.

community order, 11 per cent were sentenced to immediate custody and 7 per cent were given a discharge.

For those that were sentenced to immediate custody between 2015 and 2019, the average (mean) custodial sentence length (ACSL) was 2 years 11 months.⁵

Fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170(1)(b) and (3), 170(2),(3), and (4A)(a)³

Between 2015 and 2019⁴, around 60 offenders were sentenced for this offence. Nearly half (48 per cent) were sentenced to immediate custody and 35 percent were given a suspended sentenced order. A further 10 per cent received a community order, 5 per cent received a fine and 2 per cent were given a discharge.

For those sentenced to immediate custody between 2015 and 2019, the ACSL was 6 years 9 months.⁵

Key assumptions

To estimate the resource effect of a guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the draft guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the draft guidelines are therefore subject to a large degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed draft guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impact of the draft guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the guideline are therefore not included in the estimates.

In developing sentence levels for the draft guideline, data on current sentence levels have been considered. Existing guidance and transcripts of judges' sentencing remarks have also been reviewed.

⁵ The statutory maximum sentence for this offence is 7 years' custody unless the offence relates to a weapon or ammunition that is of a kind mentioned in Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a) of the Firearms Act 1968 in which case the statutory maximum sentence is life imprisonment (more information about the weapons that fall into this category can be found here: <https://www.legislation.gov.uk/ukpga/1968/27/section/5>). It is not possible to distinguish the actual weapon used within our data and therefore we are unable to identify if any sentence has been incorrectly recorded as above the statutory maximum.

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guideline, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guideline.

It remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, discussions with sentencers will be undertaken during the consultation stage to provide more information on which to base the final resource assessment accompanying the definitive guideline.

Resource impacts

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

The draft guideline covers both offences of importation under section 50(3),(4),(5A)(a) and offences of fraudulent evasion under section 170(1)(b) and (3), 170(2),(3), and (4A)(a) of CEMA and has been produced with current sentencing practices in mind. Due to the similar nature of these offences and because they are covered by the same guideline, the resource impact has been assessed and presented for both section 50 and section 170 offences collectively.

It is expected that these offences will be sentenced in the same way under the draft guideline and that overall, the draft guideline will improve consistency of sentencing.

There is currently no guideline for these offences which are low in volume and the limited data available suggests that current sentencing practice varies. The draft guideline has four levels of culpability (this is assessed by considering culpability factors similar to those in the transfer and manufacture guideline in conjunction with the type of weapon or ammunition) and three levels of harm. There are two sentencing tables, with different sentencing ranges depending on the maximum sentence for the type of weapon or ammunition. For offences subject to the statutory maximum of life, the range is a high level community order to 28 years' custody. For offences subject to the statutory maximum sentence of 7 years, the range is a Band A fine to 7 years' custody.

The offences under section 50 and section 170 of the CEMA 1979 relate to more than firearms and ammunition and it is not possible to identify the type of weapon to which the offending relates within the limited data we have available; it is therefore possible that some of the sentences presented are for weapons other than firearms. However, analysis of transcripts of Crown Court judges' sentencing remarks⁶ suggests that of those cases seen in the Crown Court, all related to firearms or ammunition (it is not possible to verify this for cases sentenced in the magistrates' court as no transcripts are available). During the same time period, most offenders

⁶ Twenty-six transcripts of Crown Court sentencing remarks from 2018 and 2019 were analysed to assess the impact this guideline may have on prison and probation services. Of these, 10 related to section 50 offences and 16 related to section 170 offences.

(84 per cent) sentenced for fraudulent evasion of prohibition or restriction on prohibited weapon or ammunition (section 170) were sentenced at the Crown Court, suggesting that it is likely that this is representative of the types of cases seen.

However, for offenders sentenced for importing prohibited weapons or ammunition with intent to evade a prohibition or restriction (section 50), most were sentenced at magistrates' courts (78 per cent), for which there are no sentencing transcripts available. As such, it is difficult to establish whether this offence generally involves firearms and ammunition or other types of weapons. It is therefore possible that the guideline may have a greater or lesser impact than expected because it is unclear how many offenders are sentenced for these offences specifically relating to firearms. However, it is anticipated that the draft guideline will enable more consistent sentencing of these offences.

Analysis of transcripts of Crown Court judges' sentencing remarks was conducted to assess how sentences might change under the new guideline. The analysis suggests that for the most serious offences (generally those sentenced to immediate custody), sentences under the new guideline will remain broadly similar to current sentencing practice. For less serious offences (typically involving non-lethal weapons) the analysis suggested that some offenders previously sentenced suspended sentence orders may receive community orders under the draft guideline but it is anticipated that this change would have minimal impact on prison and probation services.

Due to a lack of available data, the small number of offenders sentenced for this offence and the current varied sentencing practice, it is not possible to say whether the guideline for these offences will have an impact on prison and probation resources overall but it is anticipated that any impact would be small and sentencing will become more consistent following the introduction of the guideline.

Further work during the consultation should provide further evidence on which to base the final resource assessment.

Risks

In attempting to estimate the likely resource impacts of this guideline, there are two main risks to consider:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the consultation phase. This includes interviews and discussions with sentencers, to test whether the guideline has the intended effect. However, there are limitations on the number of scenarios which can be explored, so the risk cannot be fully eliminated. The Council has also included a question in the consultation document, asking for

consultees' views on the potential impact of the proposals. This information will provide further information on which to base the final resource assessment.

Risk 2: Sentencers do not interpret the new guideline as intended

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks have also been studied to ensure that the guideline is developed with current sentencing practice in mind. Research carried out with sentencers should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

Consultees can also feed back their views of the likely effect of the guideline, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.