

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

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SC(21)SEP08 – Firearms importation
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1 ISSUE

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

1.2 The aim is to consider the issues raised by the responses relating to harm and culpability at this meeting and the sentence levels, step 2 factors and remaining steps at the October meeting. The definitive guideline can then be published towards the end of November to come into effect on 1 January 2022.

2 RECOMMENDATION

2.1 That the Council considers the responses to the draft guideline at **Annex A** relating to harm and culpability and agrees any changes to be made.

3 CONSIDERATION

The consultation and summary of responses

3.1 There are 14 responses to the consultation from:

- three individual magistrates
- the Legal Committee of HM Council of District Judges
- the Justices' Legal Advisers and Court Officers' Service (formerly the Justices' Clerks' Society or JCS)
- the Chief Magistrate
- the Criminal sub-committee of the Council of HM Circuit Judges (CHMCJ)
- the Sentencing Academy
- the National Crime Agency (NCA)
- the Criminal Law Solicitors' Association (CLSA)
- the Lord Chancellor
- the Justice Select Committee
- the Crown Prosecution Service (CPS)
- the Transition to Adulthood Alliance (T2A)

3.2 The NCA hosted a consultation event on 3 September to consider their response which was attended by Ruth and Maura.

3.3 The responses to the consultation are largely supportive of the draft guideline, although several respondents raise objections or suggest changes.

Culpability – type of weapon

3.4 The guideline has a two stage culpability assessment. The sentencer is first required to identify the type of weapon from the table:

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)
 - section 5(1A)(b) and (d)-(g)

Type 3

Weapon that is not designed to be lethal

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

Very small quantity of ammunition

3.5 The NCA have concerns that the:

reference to a 'weapon that is designed to be capable of killing two or more people at the same time or in rapid succession' is ambiguous and subject to confusion and argument.

In relation to many of the firearms prohibited under subsections set out under 'Type1', there is scope for considerable disagreement and confusion as to whether they are capable of 'killing two or more people at the same time or in quick succession'.

R v Rhodes [2015] 2 Cr.App.R. 16 suggests that the words 'designed or adapted' mean no more than 'is capable of' (in which case the words 'designed to' are redundant). However, elsewhere in firearms legislation and case law, 'designed to be used' is interpreted to import the intention of the designer.

Many of the firearms that are both lawfully and unlawfully imported into the UK have been adapted in some way since their original manufacture []. There is scope for considerably more disagreement and confusion as to whether they were originally designed with that intention.

This ambiguity is likely to require forensic or other experts to seek to interpret the wording of the guidelines.

3.6 The wording 'is designed to be capable' is used in the existing [Possession of a prohibited weapon](#) guideline. That phrase was used to make it clear that even if the firearm was incomplete or not functioning if it was of a type that would have that level of lethality if fully functional it should be in that category. We are unaware of any issues with the categorisation of type of weapon in the current guideline, but have sent a short survey to some judges in the research pool to test whether the issue identified by the NCA could cause problems in practice. We will report on the findings at the meeting.

3.7 The CLSA commented on 'Weapon that is designed to be capable of killing two or more people at the same time or in rapid succession', stating:

This could easily include pump action shotguns, double barrelled shot guns all of which can be held by a license holder. It is the view of the CLSA that this term needs to be properly defined and explained. A bland definition is not adequate.

Clearly there is a huge discrepancy between smooth bore shotguns with two barrels and a machine gun or rapid-fire pistol. These are weapons which can never be lawfully held in England and Wales, and this should be noted in the consultation document.

Consequently, it is the view of the Criminal Law Solicitors' Association that the assessment of culpability must specifically identify the type of weapon.

3.8 A magistrate queried the definition of a stun gun noting that they vary in dangerousness and can be lethal – the implication being that the guideline should provide more guidance on the definition of the different types.

3.9 The Council took the view that while it would be helpful to list (by reference to the Firearms Act 1968) weapons that would normally fall under each type in the guideline, it was important not to be too prescriptive as the lethality of weapons can vary. In practice, importation offences usually relate to hand guns (s5(1)(aba)) or stun guns (5(1)(b) or 5(1A)(a)) but within these categories there could be wide variation. The guideline specifically states ‘**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.**’ The JCS suggest that this could be made even clearer by adding ‘rather than relying on purely the subsection which prohibits the weapon’ to the first sentence.

Question 1: Does the Council agree not to change the approach to categorising the type of weapon?

3.10 The CPS and the JCS point out an inconsistency with the *Possession of a prohibited weapon* guideline in the way that disguised stun guns are dealt with in the type of weapon table. Disguised weapons are prohibited under s5(1A)(a) of the Firearms Act 1968. Where the disguised weapon is a stun gun (which it will be in the vast majority of cases), the CPS will charge it as if it is an undisguised stun gun under s5(1)(b) unless there are aggravating circumstances. The CPS policy currently applies to the possession of a prohibited weapon offence and will shortly be in place for the importation offence. This is significant because s5(1A)(a) weapons are subject to a minimum five year term for the possession offence and to a maximum life sentence for the importation offence. Both guidelines seek to ensure that stun guns are categorised appropriately, but take a slightly different approach. The relevant parts of each guideline are reproduced side by side below:

Importation	Prohibited weapon
<p>Type 2 All other weapons falling between Type 1 and Type 3</p> <ul style="list-style-type: none"> • This would normally include a weapon requiring certification or prohibited under the following sections of the Firearms Act 1968: <ul style="list-style-type: none"> ○ section 1 ○ section 5(1)(af) 	<p>Type 2 All other weapons falling between Type 1 and Type 3</p> <ul style="list-style-type: none"> • This would normally include a weapon under: <ul style="list-style-type: none"> ○ section 5(1)(af) ○ section 5(1A)(a) (including disguised stun guns when charged under that section)
<p>Type 3 Weapon that is not designed to be lethal</p> <ul style="list-style-type: none"> • This would normally include: <ul style="list-style-type: none"> ○ a weapon prohibited under section 5(1)(b) ○ or a stun gun prohibited under section 5(1A)(a) 	<p>Type 3 Weapon that is not designed to be lethal</p> <ul style="list-style-type: none"> • This would normally include a weapon under section 5(1)(b)

3.11 Looking back through Council papers and the record of decisions, there does not appear to have been a discussion about taking a different approach in the importation guideline. A consistent approach seems preferable unless there is a reason to diverge.

3.12 The suggested approach would be to align with the existing guideline to read:

Type 2

All other weapons falling between Type 1 and Type 3

- This would **normally** include a weapon requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(af)
 - section 5(1A)(a) (including disguised stun guns when charged under that section)

Ammunition (where not at Type 3)

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

Type 3

Weapon that is not designed to be lethal

- This would **normally** include a weapon prohibited under section 5(1)(b)

Very small quantity of ammunition

Question 2: Does the Council agree to align the wording relating to stun guns with the possession of a prohibited weapon guideline as shown above?

Culpability – ‘other’ and harm

3.13 The second stage of the culpability assessment considers factors such as role and planning:

Culpability – other culpability factors

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

High culpability:

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

Medium culpability:

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

Lower culpability:

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

3.14 The harm factors relate to the scale of the importation regardless of role:

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)

3.15 The JCS suggest some additional 'other' culpability factors:

We can understand why the culpability factors have been based on the transfer and manufacture guideline however often importation may often relate to single items brought into the country for personal use/possession etc. We believe that there should therefore be some mention of the factors from the possession guideline of High Culpability - "Offender intends firearm/ammunition to be used for a criminal purpose, or is reckless as to whether it would be so used", Medium Culpability – "Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not at High culpability)" and Lower Culpability- "No intention to use"

3.16 The Council of District Judges make a related point but in relation to harm:

We agree that the volume of the firearms imported should be a significant feature when determining the harm caused. We also agree that connections with organised crime should be a factor. We believe that the intention as to the use of the firearms, particularly where the number is limited may be a relevant feature when determining harm. We accept that establishing such intention may be difficult, and often this may fall to the accused – the court will be sceptical of a person’s explanations for importing firearms for otherwise “legitimate” use, noting the offender could chose to acquire them in a legitimate manner. Nevertheless, a person importing a shotgun to shoot game may be regarded as causing less harm than someone importing that weapon for no legitimate reason (even if it cannot be established the importer has any connection with organised crime). We would suggest that category 3 harm might include a further bullet point

- For personal use for otherwise legitimate purposes (considering reasonableness of account in all the circumstances)

We do acknowledge that such an addition may be otiose as such cases are likely to be caught by the “Smaller-scale and/or unsophisticated enterprise harm” classification and we note that the list of examples given is not closed in any event.

3.17 A magistrate also makes a point relating to the purpose of the weapon:

Harm is defined here purely in terms of the commercial size of the operation. But if there is additional evidence as to why the weapons are being imported (eg for the specific purpose of harm to a specific individual (s)) or there is evidence that the commercial operation has supplied arms known to have been used to harm others, then this should be considered

3.18 In this guideline (as with other firearms guidelines) the distinction between harm and culpability is not clear cut. The Sentencing Academy comment that the two stage culpability process is unwieldy and suggest that the lethality of the weapon relates to harm rather than to culpability. The NCA are concerned about a single weapon being categorised as lower harm when it could still cause great harm and suggest that lower harm should be reserved for ‘Firearms which are not capable of producing live fire and which have not been converted (successfully or unsuccessfully) from blank firing.’

3.19 The Chief Magistrate is concerned about the wording in the lower harm category – ‘minimal/no connection to organised criminal group(s)’:

it may give an improper perception to the general public to see that any connection to organised criminal groups might be considered “low harm” when concerned with the illegal importation of firearms – whether lethal or not. Surely it would be more appropriate if that category was reserved for cases where it could be positively shown that there was no connection to OCG(s).

3.20 At the consultation event the NCA were concerned that judges may interpret the term ‘organised criminal groups’ in the harm factors as relating solely to serious organised crime.

3.21 In developing the guideline the intention was that any organised criminal activity (such as being involved in drug dealing) would be captured by the factor but where the connection was minimal (such as being the customer of a drug dealer) the lowest category could still apply. We have included a question relating to harm in our survey and will report back on the findings.

3.22 In order to determine whether any of these concerns are valid it is necessary to put all of the step one elements together to assess whether the guideline produces a fair and consistent categorisation and thereby sentence range.

Culpability category

3.23 The two stages of the culpability assessment (type of weapon and ‘other’) combine to give one of four overall culpability levels:

Type of weapon			
Other culpability factors	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

3.24 The Council of District Judges and the Chief Magistrate point out that in the guideline as currently constructed it makes no difference to the overall categorisation of culpability if a weapon is type 2 (for example a shot gun) or type 3 (for example a stun gun) unless the ‘other culpability’ is high.

3.25 The Chief Magistrate suggests creating an additional level of A* to enable more distinction and adjusting the other levels as shown:

Other Culpability Factors	Weapon Type		
	1	2	3
High	A*	A	B
Medium	A	B	C
Low	B	C	D

3.26 Prior to consultation the guideline was tested against transcripts of sentencing remarks to ensure that it worked as intended. All of the cases related to prohibited firearms and so the position relating to shot guns was not fully explored.

3.27 To take a theoretical example:

D has been clearing out the home of a deceased relative in France and drives back to the UK with a shot gun and cartridges alongside other personal effects of the deceased in their car.

It would be a type 2 weapon;

If the court was satisfied that there was little planning and no intention to sell it could be lower culpability;

Leading to an overall culpability level of D.

Harm would be assessed as category 3.

Sentence table 2 would apply leading to a starting point of a low level community order.

3.28 This would be exactly the same outcome if the weapon had been a non-lethal stun gun. If the Council feels that there should be a distinction, the overall culpability level for a type 2/ lower case could be changed to C which (all other things being equal in the scenario) would give a starting point of 1 year's custody (with a community order in the range). This would mean that only non-lethal weapons would ever fall into the lowest starting point/ category range.

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

3.29 If this change were made culpability C would apply in five of the nine categories – but in practice most of these categories do not apply very often.

Question 3: Should the category level for type 3 weapon/ lower culpability be changed to C?

3.30 Considering the NCA's concern that a single lethal weapon would fall into low harm even though it could go on to be used in multiple shootings – again it may be helpful to consider how the guideline would work in practice. There are several examples of such cases in the transcripts and the guideline appears to work well for them.

Facts	Sentence (pre plea)	Sentence using guideline
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.	14 years	Culp: Type 1/ High = A Harm 2 or 3 A2/A3 Table 1 SP A2 14 years A3 10 years

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. Intercepted by FBI	4 years	Culp: Type 1/ Med = B Harm 3 B3 Table 1 SP 5 years
Tried to import a Glock 19 handgun through dark web using crypto currency	4.5 years	Culp: Type 1/ Med = B Harm 3 B3 Table 1 SP 5 years

3.31 If the Council wanted to ensure that a single weapon did not automatically equate to low harm, a slight change could be made to the wording of Category 3 so that instead of saying 'Smaller-scale and/or unsophisticated enterprise' it says 'Smaller-scale **and** unsophisticated enterprise'.

3.32 Regarding the comments/ suggestions made above on including factors relating to the intention of the offender, consideration was given to this in developing the guideline but it was found to be difficult to incorporate. An element of intention/ recklessness as to the use of the weapon is implicit in the factors in harm 1 and 2. Anything more specific than that may cause evidential issues. There is a mitigating factor 'Genuine belief that firearm/ammunition will not be used for criminal purpose' which allows the court to distinguish the cases of lowest criminal intent.

Question 4: Should the Category 3 harm factor be changed as suggested?

Question 5: Should any other changes to harm or culpability factors?

4 EQUALITY AND DIVERSITY

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

4.2 Only one respondent has raised substantive issues relating to equality: T2A have included suggestions relating to the sentencing of young adults. This will be considered at the October meeting.

5 IMPACT AND RISKS

5.1 A resource assessment will be provided for the October meeting which is unlikely to change much from the one published with the consultation which anticipated that any impact on prison and probation resources from the guideline would be small.

Firearms – Importation

Improper importation of goods

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

Fraudulent evasion of prohibition / restriction

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

Triable either way

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

Offence range: Fine – 28 years' custody

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

Step 1 – Determining the offence category

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

Culpability – Type of weapon

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

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

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

Type 1

Weapon that is designed 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 requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(c)
 - section 5(1A)(b) and (d)-(g)

Type 3

Weapon that is not designed to be lethal

- This would **normally** include:
 - a weapon under section 5(1)(b)
 - 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 higher and lower culpability because:
 - Factors are present in higher and lower which balance each other out and/or
 - The offender's culpability falls between the factors as described in higher and lower

Lower culpability:

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

	Type of weapon		
	1	2	3
Other culpability factors			
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:

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

Other aggravating factors:

- Firearm under section 5(1)(a) (automatic weapon)
- Compatible ammunition and/or silencer(s) imported with firearm (See step 6 on totality when sentencing for more than one offence)
- Others put at risk of harm by method of importation
- 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)
- Use of business as a cover
- Attempts to dispose of the firearm or other evidence
- Commission of offence whilst under the influence of alcohol or drugs
- Offender prohibited from possessing weapon or ammunition because of previous conviction (See step six on totality when sentencing for more than one offence)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

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