

Firearms Importation Offences Guideline Consultation

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Consultation

Published on 17 June 2021

The consultation will end on 8 September 2021

About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From 17 June 2021 to 8 September 2021
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
Tel: 020 7071 5793
Email: info@sentencingcouncil.gov.uk
- How to respond:** Please send your response by 8 September 2021 to:
consultation@sentencingcouncil.gov.uk
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:
www.sentencingcouncil.org.uk
A series of consultation meetings is also taking place. For more information, please use the “Enquiries” contact details above.
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.
In addition, responses may be shared with the Justice Committee of the House of Commons.
Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on its proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

What is this consultation about?

The Council is proposing to issue a sentencing guideline for offences of importation of firearms. Currently, there are no sentencing guidelines for firearms importation offences for use in either magistrates' courts or the Crown Court.

The Council has produced this consultation paper in order to seek the views of as many people as possible interested in the sentencing of firearms importation offences.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Background

In October 2019 the Sentencing Council issued a consultation on eight guidelines for firearms offences. The Council revised the draft guidelines following consultation and published the definitive versions in December 2020 and they came into force on 1 January 2021. The guidelines cover the following offences under the Firearms Act 1968:

- [Possession, purchase or acquisition of a prohibited weapon or ammunition](#) – sections 5(1), 5(1A);
- [Possession, purchase or acquisition of a firearm/ammunition/shotgun without a certificate](#) – sections 1(1), 2(1);
- [Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition](#) – sections 21(4), 21(5);
- [Carrying a firearm in a public place](#) – section 19;
- [Possession of firearm with intent to endanger life](#) – section 16;
- [Possession of firearm or imitation firearm with intent to cause fear of violence](#) – section 16A;
- [Use of firearm or imitation firearm to resist arrest/possession of firearm or imitation firearm while committing a Schedule 1 offence/carrying firearm or imitation firearm with criminal intent](#) – sections 17(1), 17(2), 18; and
- [Manufacture/sell or transfer/possess for sale or transfer/purchase or acquire for sale or transfer prohibited weapon or ammunition](#) – section 5(2A).

The 2019 consultation set out six offences that the Council had considered covering but had decided not to because of low volumes and sought views on whether any other offences should be covered. Several respondents including the National Crime Agency (NCA) and the Crown Prosecution Service (CPS) urged the Council to develop guidelines for firearms importation offences.

The Council had made the original decision not to proceed with guidelines for importation offences based on sentencing data from 2017. More recent data show that volumes for importation offences under the Customs and Excise Management Act 1979 have increased. While the volumes are still low (around 30 offenders sentenced in 2019) they are higher than for some firearms offences for which guidelines have been developed. The Council also considered feedback from judges indicating that a guideline for importation offences would be useful and agreed to develop one.

In developing this guideline the Council has had regard to the purposes of sentencing and aims to provide sentencers with a structured approach to sentencing firearms importation offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences.

Which offences are covered by the draft guideline?

The Council is consulting on one guideline covering two offences under the Customs and Excise Management Act 1979: sections 50 (improper importation of goods) and 170 (fraudulent evasion of prohibition / restriction).

When issued as a definitive guideline it will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are in the Sentencing Council's definitive guideline, [Overarching Principles – Sentencing Children and Young People](#).

Responding to the consultation

Through this consultation process, the Council is seeking views on:

- the principal factors that make the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guideline;
- the sentences that should be passed for firearms importation offences; and
- anything else that you think should be considered.

In the following section the proposed guideline is outlined in detail and you will be asked to give your views. You can give your views by answering some or all of the questions below either by email to consultation@sentencingcouncil.gov.uk or by using the online [questionnaire](#).

What else is happening as part of the consultation process?

This is a 12 week public consultation. During the consultation stage, we intend to hold discussions with interested parties and 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. Once results of the consultation and the discussions have been considered, the final guidelines will be published and used by all courts.

Alongside this consultation paper, the Council has produced a statistical bulletin and a resource assessment. These can be found on the Sentencing Council website: <https://www.sentencingcouncil.org.uk/consultations/>

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Question 1: What is your name?

Question 2: What is your email address?

Question 3: What is your organisation?

Firearms – Importation guideline

Overview

Offences relating to importation are contained in the Customs and Excise Management Act 1979 (CEMA). There are two CEMA offences which are used for the prosecution of importation of firearms: section 50(1)(b) and s170(2)(b). These offences are technically different, but the Crown Prosecution Service (CPS) position is that there is no material difference in the way that the two offences are prosecuted, though in practice section 50 is more likely to be charged in respect of less dangerous weapons.

CEMA provides powers and offences for enforcing prohibitions and restrictions established by other legislation or provisions. The Open General Import Licence (OGIL) is issued by the Department for International Trade (DIT) and renewed periodically by the Secretary of State as required¹. Under the OGIL most commodities are permitted to be imported to the UK without restriction except for an annex of exceptions contained within the licence. These exceptions are either ‘prohibited’ and may not be imported or ‘controlled’ and may be imported into the UK but only under the authority of a specific licence issued by DIT.

Some categories of firearms and ammunition are ‘prohibited’ and others are ‘controlled’. There are also other restrictions that apply to imports from particular countries to which trade sanctions apply. There is therefore no definitive list of firearms and ammunition to which the offences apply but most cases sentenced involve weapons or ammunition of a kind mentioned in section 5 of the Firearms Act 1968 and typically involve hand guns or stun guns.

It should be noted that offences prosecuted under CEMA are not subject to the minimum term provisions which relate to certain Firearms Act offences but weapons and ammunition that would be subject to the minimum term if prosecuted as possession² have a statutory maximum sentence of life as opposed to seven years for all other weapons or ammunition.

These are low volume offences. In 2019 less than 10 offenders were sentenced where the principal offence was section 170 and around 20 were sentenced under section 50 (since 2015, around 60 offenders have been sentenced in total for each of section 170 and section 50).

For the most part, section 170 offences are dealt with in the Crown Court (88 per cent of all offenders sentenced since 2009), whereas section 50 offences have been predominately dealt with in magistrates’ courts (78 per cent since 2015). Between 2015 and 2019, across the two offences the sentences passed ranged from a discharge to 22 years’ custody.

¹ The current OGIL came into force 31 December 2020
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948219/Open_General_Import_Licence_Final_December_2020.pdf.

² Offences relating 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

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See the [statistical bulletin](#) for more information on sentence volumes and outcomes.

Developing the guideline

The draft guideline is available at <https://www.sentencingcouncil.org.uk/offences/crown-court/item/firearms-importation-for-consultation-only>.

In developing the guideline the Council had regard to current sentencing practice and to the guidelines for other firearms offences, notably [Possession of a prohibited weapon](#) and [Transfer and manufacture](#).

Step 1 – Determining the offence category

At step 1 the court must assess culpability and harm. The Council decided that the type of weapon was a crucial factor in determining the seriousness of the offence and that this should be considered separately from factors relating to role, planning and expectation of financial or other advantage. Consequently the Council has used a two stage model for assessing culpability. The first stage is to categorise the weapon into one of three types:

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

The CPS intends to update its charging policy to ensure that the charge or indictment will specify the type of weapon or ammunition with reference to the Firearms Act which should assist the court in determining the type of weapon. The categorisation will normally follow from that specification of the firearm or ammunition, but the guideline aims to make it clear that this should not be applied inflexibly. It should also be clear that the categorisation applies whether or not the weapon is in working order and applies equally to component parts of a weapon.

The next stage is to assess other culpability factors relating to role, planning and expectation of financial or other advantage. These 'other' factors 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:

- 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

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These two elements of culpability have been combined to make one of four overall culpability levels. 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. The categories have been tested against transcripts of sentencing remarks to see how they would apply in real cases.

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

Question 4: Do you have any comments on the assessment of culpability?

The court must then assess the harm caused or risked by the offence. 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).

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)

Other factors which might make the case more or less serious such as an intention to use the weapon or the weapon being incapable of being used, are included in aggravating and mitigating factors at step 2 below.

Question 5: Do you have any comments on the assessment of harm?**Step 2 – Starting point and category range**

There are two sentence tables for this guideline: Table 1 for offences carrying life and Table 2 for offences 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	Starting point	Starting point

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	2 years' custody Category range 1 – 3 years' custody	1 year's custody Category range High level community order – 2 years' custody	Low level community order Category range Band A fine – High level community order
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The intention is that where a disguised stun gun is involved the CPS will specify it in the charge or indictment as a weapon under s5(1)(b) Firearms Act, to which the seven year maximum applies, unless there are aggravating features.

The proposed starting points and sentence ranges have been set with reference to current sentencing practice and guidelines for other firearms offences, notably [Possession of a prohibited weapon](#) and [Transfer and manufacture](#). Information on current sentencing practice comes from data from the Ministry of Justice's Court Proceedings Database (CPD) and from the analysis of transcripts of sentencing remarks. The Council's intention is that the guideline will not alter overall sentence levels for this offence but as current sentencing practice is variable, there may be some increases or decreases in particular cases.

The scenarios below are provided to give some context and to demonstrate how the guideline might work in practice. It is important to note that in reality the court would have much more information about the offence and the offender and so the examples give only an indication of the likely starting point and range using the guideline.

Scenario 1

The offender imported three hand guns and 20 rounds of ammunition from Eastern Europe concealed in a consignment of electrical goods, delivered to the address of a former girlfriend. There was evidence that he had enquired about buying other weapons from the same source.

Culpability: These are weapons prohibited under section 5(1)(aba) of the Firearms Act and so would be Type 1. Looking at 'other' culpability factors – the high culpability factor of significant planning would apply. Therefore the overall culpability assessment would be category A.

Harm: This would probably be assessed as a medium scale enterprise, so harm category 2

Starting point: Table 1 applies because the offence relates to weapons of a kind mentioned in Section 5(1)(aba) of the Firearms Act 1968. Based on the assessment above the starting point would be 14 years' custody with a range of 10 to 17 years.

Scenario 2

The offender ordered a stun gun disguised as a torch from a seemingly reputable online retailer for £5 using his own address and credit card. It was intercepted before it reached him.

Culpability: Assuming that there were no aggravating factors, the CPS would charge this as a weapon prohibited under section 5(1)(b) of the Firearms Act and so it would be Type 3. Looking at 'other' culpability factors – there appears to have been little or no planning and so lower culpability would apply. Therefore the overall culpability assessment would be category D.

Harm: This would be assessed as a smaller-scale enterprise, so harm category 3.

Starting point: Table 2 applies. Based on the assessment above the starting point would be a low level community order with a range of a fine to a high level community order.

Question 6: Do you have any comments on the sentence levels in the guideline?

Question 7: Do you have any comments on the application of the guideline to the scenarios?

Having arrived at a starting point using the relevant sentence table, the court should then consider aggravating and mitigating factors which may result in an increase or decrease in the sentence arrived at so far. The guideline notes that in some cases, having considered these factors, it may be appropriate to move outside the identified category range. As with all guidelines it is at this stage that any relevant previous convictions must be taken into account.

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:

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- 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

The Council's aim is to include the factors that are most likely to be relevant to the sentencing of this offence, although the lists are non-exhaustive.

Question 8: Do you have comments on the aggravating and mitigating factors for the guideline?

Steps 3 to 8

The remaining steps of the guideline follow the normal structure of Sentencing Council guidelines. The features that are particular to firearms offences are:

At step 6 – Ancillary orders, there is guidance on the forfeiture of firearms under section 170(6) CEMA or by making a deprivation order under section 153 of the Sentencing Code. There is also reference to imposition of a Serious Crime Prevention order.

Question 9: Are there any other matters that should be addressed in steps 3 to 8 of the guideline?

Overall considerations

Impact of the guidelines

As stated above, the guideline has been developed with current sentencing practice in mind and it is not the Council's intention to increase or decrease sentence levels overall. A [resource assessment](#) has been produced which sets out the likely impact of the draft guideline on prison and probation resources.

During the consultation, we will hold discussions with interested parties and sentencers to invite feedback and gauge whether the new guideline will work as anticipated. This should provide some further understanding of the likely impact of the guideline on sentencing practice. We would welcome comments from consultees on whether the draft guideline is likely to change sentence levels and whether any change would be desirable.

Question 10: Do you have views on the impact the guideline may have on sentence levels for firearms importation offences?

Equality and diversity

The Public Sector Equality Duty (PSED) is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have "due regard" to three "needs" or "limbs" when considering a new policy or operational proposals. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.

The second is the need to advance equality of opportunity between those who share a "protected characteristic" and those who do not.

The third is to foster good relations between those who share a "protected characteristic" and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

The Council has had regard to its duty under the Equality Act in drafting these proposals, specifically the effect of the proposals on victims and offenders with protected characteristics.

The volumes of these offences are too low for the Council to publish information on the demographic makeup of offenders or to draw any conclusions about whether there are any

issues of disparity in sentencing based on membership of one or more demographic group.

Sentencing guidelines ensure that there is a consistency of approach to sentencing which encourages fair and proportionate sentencing but guidelines alone cannot preclude disparity of outcomes for different groups. The Council is committed to taking steps to address concerns around equality and diversity in sentencing across all guidelines. Steps already taken include:

- Adding a reference to the Equal Treatment Bench Book in all guidelines:

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.

- Adding expanded explanations to many aggravating and mitigating factors. These include explanations for the mitigating factors for 'age and/or lack of maturity' and 'sole or primary carer for dependant relatives'.
- Testing draft guidelines with judges and magistrates to check that certain factors do not have a disproportionate influence on sentence outcomes.

The Council would welcome suggestions from consultees as to any equality and diversity matters that it should address in the development of this guideline.

Question 11: Are there any equality and diversity issues that can be addressed in the guideline?

General observations

We would also like to hear any other views you have on the proposals that you have not had the opportunity to raise in response to earlier questions.

Question 12: Are there any other comments you wish to make on the draft guideline?

