



House of Commons
Justice Committee

Sentencing Council consultation on sentencing guidelines for firearms offences

Tenth Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 20 October 2020*

Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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[Kieran Mullan MP](#) (*Conservative, Crewe and Nantwich*)

[Andy Slaughter MP](#) (*Labour, Hammersmith*)

The following were also Members of the Committee during this session.

[Ellie Reeves MP](#) (*Labour, Lewisham West and Penge*) and [Ms Marie Rimmer MP](#) (*Labour, St Helens South and Whiston*).

Powers

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and in print by Order of the House.

Committee staff

The current staff of the Committee are Nony Ardill (Legal Specialist), Chloë Cockett (Senior Specialist), Mark Doyle (Committee Media Officer), Alison Hill (Assistant Counsel), Su Panchanathan (Committee Operations Officer), Tracey Payne (Committee Specialist), Christine Randall (Committee Operations Manager), Jack Simson Caird (Assistant Counsel), Holly Tremain (Committee Specialist), and David Weir (Clerk).

Contacts

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You can follow the Committee on Twitter using [@CommonsJustice](https://twitter.com/CommonsJustice)

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1 Sentencing guidelines for firearms offences

The Sentencing Council

1. The Sentencing Council for England and Wales is an independent non-departmental body of the Ministry of Justice, set up to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary. The Council's primary role is to issue guidelines on sentencing, which the courts must follow unless it is in the interests of justice not to do so. The Council also assesses the effect of its guidelines on sentencing practice and promotes public awareness of sentencing in the magistrates' courts and the Crown Court.
2. Under Section 120 of the Coroners and Justice Act 2009, the Sentencing Council is required to publish new sentencing guidelines in draft before they are finalised. The Justice Committee is listed as a statutory consultee on draft guidelines under section 120(6) of the 2009 Act. The Council must also consult the Lord Chancellor and any person that the Lord Chancellor directs should be consulted, together with other persons considered appropriate by the Council. In setting guidelines, the Council is required to have regard to various factors, including the sentences imposed by courts in England and Wales for particular offences and the need to promote consistency in sentencing.

Our response to consultation on changes to firearms offences sentencing guidelines

3. The Sentencing Council launched a consultation on its Firearms Offences Guideline (the Guideline) in October 2019. The Guideline contains eight individual guidelines for sentencing offences under the Firearms Act 1968. Several of the offences covered are strict liability offences, and the content of the guideline is technical.
4. Currently there is only one sentencing guideline for firearms offences: that of carrying a firearm in a public place which is included in the Magistrates Courts Sentencing Guidelines. There are no sentencing guidelines for firearms offences for use in the Crown Court.
5. The Guideline consists of 8 individual guidelines, covering 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 possession a firearm or ammunition – sections 21(4), 21 (5);
 - carrying a firearm in a public place – section 19;
 - possession of a firearm with intent to endanger life – section 16;

- possession of a 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).

6. There are numerous other firearms offences in addition to those listed above; however, as these are rarely prosecuted, the Sentencing Council decided to focus the Guideline on the above offences. The Guideline will apply only to sentencing adults; it will not directly apply to the sentencing of children and young people.

7. Firearm offences are relatively low in volume; however, they are regarded as serious, with several carrying maximum sentences of 10 years or life. Firearms legislation is complex; the consultation notes that 35 statutes govern the use of firearms as well as numerous pieces of secondary legislation.

8. As mentioned above, several of the offences are strict liability: there is no need for criminal intent. For some offences, the weapon does not need to be complete or in working order.

9. When sentencing the offence, as with all Sentencing Council guidelines, the Court must start with assessing culpability and harm. For possession offences, the Guideline requires a two-stage model for assessing culpability; first the weapon must be categorised, and secondly the court must assess other culpability factors relating to the use of the weapon and the intention of the offender. The court must then assess the harm caused or risked by the offence.

10. The court will then decide the sentencing starting point (which has a corresponding category range); and then consider aggravating and mitigating factors which may result in an increase or decrease in the sentence. The Guideline includes standard aggravating and mitigating factors that appear across guidelines; and includes additional factors specific to firearms offences.

11. There is an additional step for the courts to follow where the five-year minimum term applies. The court must consider when the minimum term applies and the effect on sentence. It must then determine whether there are exceptional circumstances that would justify not imposing the minimum term. The consultation noted that the Sentencing Council was surprised that exceptional circumstances were being found in around two thirds of disguised weapon cases (section 5(1A)(a)). However, a change in CPS charging practice should mean that such cases will now be prosecuted under section 5(1)(b) to which the minimum term provisions do not apply.

12. The remaining steps follow the normal structure of Sentencing Council guidelines, with the addition of the following:

- Step 5 – reduction for guilty pleas, the guidance notes that where the minimum term provisions apply, the guilty plea cannot reduce the sentence to less than five years.

- Step 7 – ancillary orders, there is guidance on the forfeiture and disposal of firearms and on the cancellation of firearms or shotgun certificates. There is also a reference to considering imposing a Serious Crime Prevention order.

13. The Committee agreed with the overall content of the guideline and made a few minor comments and observations to the Sentencing Council. These related to:

- accessibility on the digital version of the guideline;
- clarification of what would constitute a ‘reasonable excuse’ in the culpability table; and
- a suggestion that in the case of the carrying in a public place guideline, the inclusion of further explanation of what would constitute an unrealistic or unconvincing imitation firearm or examples of factual situations where this factor could be relevant would be helpful.

14. Our response to the consultation was made by way of a letter from the Chair to the Chairman of the Sentencing Council Lord Justice Holroyde, dated 2 October 2020. We received the Council’s response on the same day. We have decided to publish this short report to draw the attention of both the House and other interested parties to proposed changes in the sentencing guidelines and to our own response to them. The letters from the Chair to the Council and the Council’s response may be found in the Annex and Appendix to this Report.

Annex: Letter from the Chair of the Justice Committee to the Chairman of the Sentencing Council, dated 2 October 2020

Firearms offences guideline

The Justice Committee thanks the Sentencing Council for giving it the opportunity of responding to the consultation regarding the introduction of the Firearms Offences Guideline (the Guideline).

We should start by saying that overall we agreed with the contents of the guideline detailed in the consultation and only have a few minor comments and observations which are listed below.

We are aware that this was a particularly complex and challenging piece of work for the Sentencing Council and pay tribute to the efforts of both officials and members for producing such clear and thorough guidelines.

Question 5: Do you have any comments on the assessment of culpability and harm at step 1 of the possession of a prohibited weapon guideline?

The table categorising culpability by reference to type of weapon cross-refers to sections of the Firearms Act. The Committee considers that it might be helpful for users of the digital version of the guideline to be able to click on the text and for the wording of the statute to be displayed (as per the aggravating factor in the for “possession with intent to cause fear of violence” guideline). This would be beneficial for accessibility and transparency purposes.

This observation applies to the other “Type of weapon” tables included in the Guideline.

Question 16: Do you have any comments on the assessment of culpability and harm at step 1 of the carrying in a public place guideline?

The “lower culpability” section of the culpability table refers to the factor “possession falls just short of reasonable excuse”. Carrying a firearm in a public place is a strict liability offence; it would in our view be helpful if there could be further clarification of what would constitute a ‘reasonable excuse’, perhaps by reference to examples.

Question 24: Do you have comments on the aggravating and mitigating factors for the possession with intent to cause fear of violence guideline?

The Guideline refers to the following mitigating factor “imitation firearm is unrealistic and unconvincing”. The Committee notes that this will be of limited application, and sentencers will have to be cautious with how much weight they attach to the factor. The Committee suggests that the Council should consider whether the inclusion of further explanation of what would constitute an unrealistic or unconvincing imitation firearm or examples of factual situations where this factor could be relevant would be helpful.

I hope that you will find these comments and observations of some help to you in developing the guideline.

Appendix: Letter from the Chairman of the Sentencing Council to the Chair of the Justice Committee, dated 2 October 2020

Firearms offences guideline

Thank you for your letter responding to the recent consultation on sentencing guidelines for firearms offences. We welcome the Justice Committee's support for the project and the useful comments made on points of detail. Those points will be taken into account by the Council together with other consultation responses.

Formal minutes

Tuesday 20 October 2020

Members present:

Sir Robert Neill, in the Chair

| | |
|----------------|------------------|
| Paula Barker | John Howell |
| Richard Burgon | Dr Kieran Mullan |
| Rob Butler | Andy Slaughter |
| Maria Eagle | |

Draft Report (*Sentencing Council consultation on sentencing guidelines for firearms offences*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 14 read and agreed to.

Annex agreed to.

A Paper was appended to the Report.

Resolved, That the Report be the Tenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 3 November at 1.45 pm]

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2019–21

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| Second Report | Sentencing Council consultation on changes to magistrates' court sentencing guidelines | HC 460 |
| Third Report | Coronavirus (COVID-19): The impact on probation services | HC 461 |
| Fourth Report | Coronavirus (COVID-19): The impact on prisons | HC 299 |
| Fifth Report | Ageing prison population | HC 304 |
| Sixth Report | Coronavirus (COVID-19): The impact on courts | HC 519 |
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| First Special Report | Prison Governance: Government Response to the Committee's First Report of Session 2019 | HC 150 |
| Second Special Report | Court and Tribunal Reforms: Government Response to the Committee's Second Report of Session 2019 | HC 151 |
| Third Special Report | Transforming Rehabilitation: Follow-up: Government Response to the Committee's Nineteenth Report of Session 2017–19 | HC 152 |
| Fourth Special Report | Coronavirus (COVID-19): The impact on probation systems: Government Response to the Committee's Third Report of Session 2019–21 | HC 826 |
| Fifth Special Report | Coronavirus (Covid 19): The impact on the legal professions in England and Wales: Government Response to the Committee's Seventh Report | HC 898 |