

SENTENCING ACADEMY

Sentencing Academy Response to Consultation: Firearms Importation Offences Guideline

3 September 2021

The Sentencing Academy welcomes this opportunity to respond to this guideline consultation.

In our view, the proposed structure could be improved. It is unwieldy and departs significantly from the structure used in most guidelines. While some variation between guidelines is useful or even necessary, consistency of structure, and a common platform is desirable.

The proposed guideline has two dimensions of culpability. We see no need to divide culpability in this fashion. The first dimension is described as ‘type of weapon’, but lethality would be a better description. Lethality is surely the appropriate dimension to distinguish between cases; it is obviously a more serious offence to import highly lethal rather than less lethal weapons. That said, lethality is more properly classified as a harm factor. We recognise that in its proposed guideline Council is following prior firearms offences guidelines such as possession of a prohibited weapon and is therefore unlikely to depart from the existing structure. However, at some future point the common structure of all these guidelines may be reviewed. If the type of weapon is considered to be a significant differentiating factor at sentencing then one option might be to separate out the types of weapons in a similar manner to the classification of drugs in the drug offences guidelines. This may be a clearer structure to follow than a ‘dual-aspect’ culpability model.

Starting Points and Sentence Ranges

We note that the starting points are inconsistently located within the guideline range. Intuitively one would expect the starting point to be the middle value of the category offence range. For most cells in Table 1 this is the case: e.g. 1C has a range of 8-12 years and the starting point is 10 years. However, some cells depart from this arrangement: 1A’s range midpoint is 22 years but the starting point is 20 years. Cell 2D has a midpoint of 3.5 years, and an starting point below this at the nearest integer: 3 years. Cell 2A has a midpoint of 13.5 years and an starting point *above* this value at the nearest integer: 14 years. The justification for this inconsistent pattern of midpoints is unclear.

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