

CONSULTATION ON CHANGES TO FIREARMS CONTROLS SUMMARY OF RESPONSES



Home Office

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Introduction

The UK has some of the toughest firearms laws in the world and gun crime is a small proportion of all recorded crime. However, the police and the National Ballistics Intelligence Service (NABIS) have argued that the current legislation does not deal adequately with those who import and supply illegal firearms to criminals.

Evidence suggests that gun crime associated with illegal firearms is typified by a supply-chain involving ‘importers’, ‘middle men’ and those who store guns – ‘armourers’ – to be readily available for criminal use. The evidence suggests that the same firearms are passed between different criminal groups and used in different crimes. With a limited number of firearms in circulation among criminals in the UK, it is vital that there is a strong deterrent to those involved in the supply chain.

Representatives from the Association of Chief Police Officers (ACPO) and from NABIS gave evidence to the Home Affairs Select Committee (HASC) in November 2010. As a result, HASC recommended that the Government should **‘introduce new offences for supply and importation of firearms to ensure that those guilty of such offences face appropriate sentences.’** In response to this recommendation the Government agreed to undertake further scoping work, and in its Ending Gang and Youth Violence report, committed to consult on the need for the new offences.

On 8 February 2012 the Government launched a consultation seeking views of key partners, including the police, Crown Prosecution Service (CPS), victims groups, practitioners, the judiciary, the voluntary and community sector, other government departments, and organisations with a direct interest in the proposals to reform firearms legislation. We also invited views from members of the public.

We asked the following questions:

IMPORTATION OFFENCE

- Do you think that the current legal framework is sufficient to address the harm caused by the illegal importation of firearms?
- Very few people are currently convicted of an offence under section 170 of CEMA (2 convictions in 2010) and we would welcome views and evidence (where it is possible to obtain and share it) on why this may be happening.
- Criminal Justice System data show that successful prosecutions for the offence under section 170 of CEMA are rare, and convictions for this offence are not being given a custodial sentence towards the higher end of the penalty available. Why do you think this is? Do you think that this suggests that the current sentencing powers for this offence are sufficient? Please provide evidence.
- Do you think that section 170 of CEMA is being used appropriately and effectively to prosecute people who illegally import firearms or do you think other offences are being used instead? Please provide details, including what other offences are used and why you think this may be happening.
- Currently the importation of firearms is treated less seriously (in as much as the maximum penalty for the offence is less) than being in possession of a firearm with the intention of endangering life or the intention of enabling another person to endanger life. Do you agree with this? Please explain.
- Do you agree or disagree with the HASC recommendation that the maximum sentence for an offence of illegal importation/exportation of firearms (and ammunition) should be increased? Please explain your answer. What do you think the new maximum sentence should be and explain why?

NEW OFFENCE OF POSSESSION WITH INTENT TO SUPPLY

- Do you think that the current legal framework is sufficient to address the harm caused by illegal possession of firearms with intent to supply? Please explain your answer.
- Do you think people in illegal possession of firearms cases who have the intention to supply them are sometimes prosecuted under section 5 of the Firearms Act 1968 instead of under section 16? If so, do you think this causes any practical difficulties? Please explain why.
- Do you agree or disagree with the HASC recommendation that a new offence of possession of illegal firearms with intent to supply is needed and should be introduced? Please provide reasons including whether cases are currently resulting in convictions for other offence.
- If so, what do you think the prosecution should have to prove the defendant did in order to secure a conviction?
- What do you think that the maximum sentence for a new offence of 'possession of illegal firearms with intent to supply' should be and why?

The consultation closed on 8 May 2012 and this document provides a summary of the responses and findings and outlines the proposed next steps.

Overview of responses

We received 96 responses to the consultation, of which 76 were from the on-line questionnaire posted on the Home Office website, and the rest were received by post or via email.

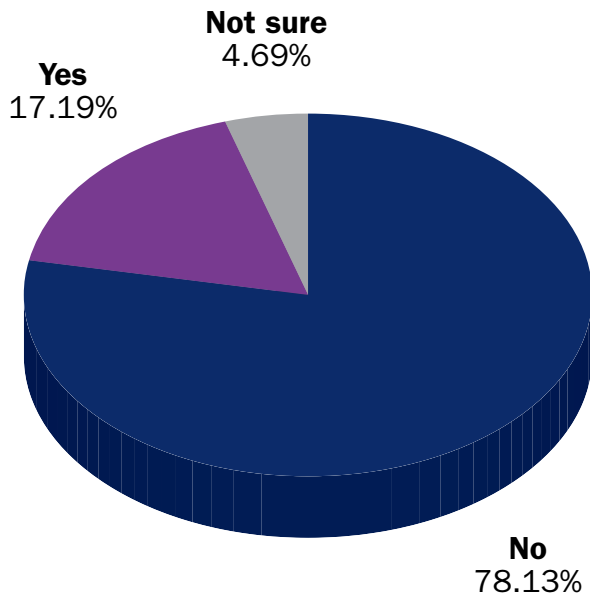
The profile of respondents was as follows:

Profile	Number
Members of the public	38
Local authorities and community safety partnerships	15
Legal experts	2
Judiciary	3
Other government departments	2
Charitable and voluntary service	3
Representative bodies	3
Victims (as self-identified in the on-line questionnaire)	1

Analysis and summary of responses

RAISING THE PENALTY FOR IMPORTATION OFFENCES

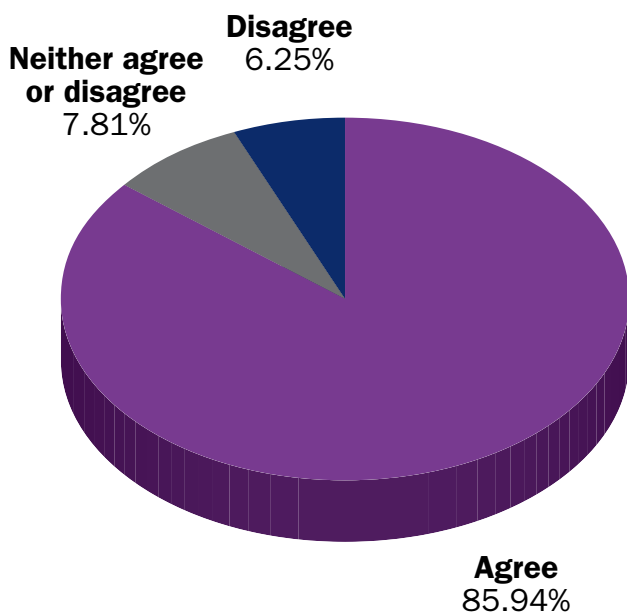
Do you think that the current legal framework is sufficient to address the harm caused by the illegal importation of firearms?



Of the total number of responses:

- 78.13% of respondents considered that **the current legal framework is not sufficient** to address the harm caused by the illegal importation of firearms.
- 17.19% considered that it is sufficient.
- 4.69% were not sure.

Do you agree or disagree with the HASC recommendation that the maximum sentence for an offence of illegal importation/exportation of firearms (and ammunition) should be increased?

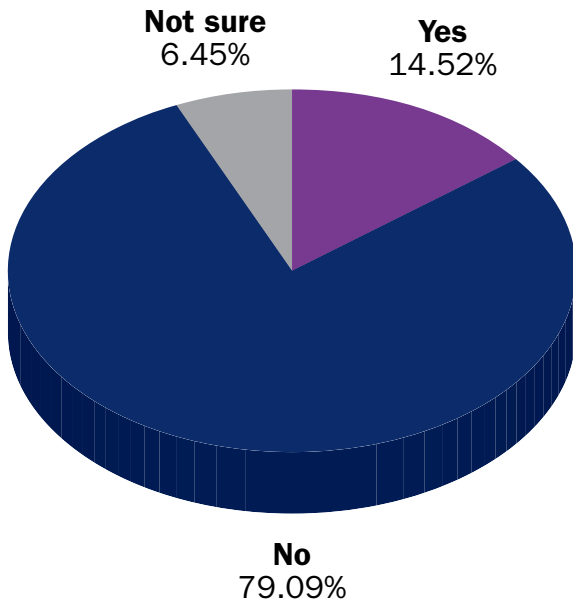


- 85.94% of respondents agreed that **the maximum sentence for illegal importation/exportation** of firearms (and ammunition) **should be increased**.
- 6.25% disagree.
- 7.81% of respondents were undecided.

Half of the respondents who stated that the maximum sentence for importation should be increased supported a maximum sentence of life.

CREATION OF A NEW OFFENCE OF 'POSSESSION WITH INTENT TO SUPPLY'

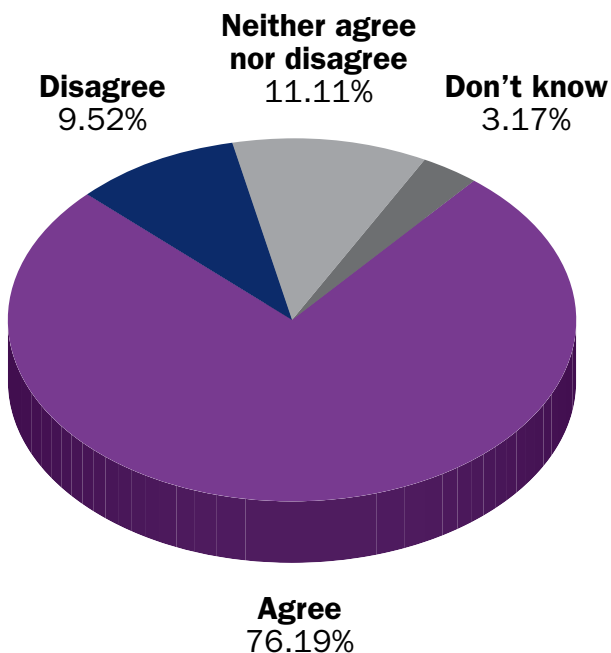
Do you think the current legal framework is sufficient to address the harm caused by illegal possession of firearms with intent to supply?



Of the total number of responses:

- 79.03% of respondents considered that **the current legal framework is not sufficient** to address the harm caused by illegal possession of firearms with intent to supply.
- 14.52% considered that it is sufficient.
- 6.45% were not sure.

Do you agree or disagree with the HASC recommendation that a new offence of possession of illegal firearms with intent to supply is needed and should be introduced?



- 76.19% of respondents agreed that a **new offence of possession of illegal firearms with intent to supply is needed** and should be introduced.
- 9.52% disagreed.
- 14.28% of respondents were undecided.

There was a high level of support for the proposals among respondents identifying themselves as members of the public. The main reasons mentioned were the need for having strong deterrents, that current punishments associated with the importation and supply of firearms do not meet the level of criminality involved, and that the level of punishment should be commensurate with the harm caused to communities.

The consultation also received responses from police forces, the Serious Organised Crime Agency, Border Force, CPS, the Justices' Clerks' Society, the Council of H.M. Circuit Justices, the London Probation Trust and the London Criminal Courts Solicitors' Associations, community safety partnerships and individuals identifying themselves as legal practitioners. They expressed the view that there was a gap in legislation in relation to those who possess firearms with the intention of supplying them to another, and that it should be filled with the creation of a new offence. With regards to the importation offence, the majority of respondents were of the view that the current maximum sentence does not reflect the level of criminality involved in the offence.

A common issue mentioned by respondents was that the importation and supply of firearms is no less criminal than the importation and supply of class A drugs, which both carry a maximum sentence of life imprisonment. It was suggested that disparity between sentences for drugs and firearms offences needed to be remedied.

The consultation also received responses from the British Shooting Sport Council (BSSC), the British Association for Shooting and Conservation (BASC) and the Gun Trade Association (GTA), which are of the view that the current legislation deals adequately with the illegal importation and supply of firearms. They expressed concerns that genuine traders and users might be unduly punished for honest mistakes such as not filling the right paperwork for importation purposes. They also expressed concerns that firearms certificate holders may be unduly punished for trying to import de-activated or antique firearms bought legally in other countries but that, unbeknown to them, do not meet the rules and regulations in place in the UK.

IMPORTATION OFFENCE

A majority of respondents (78%) agreed with the view that the current legal framework does not address the current harm caused by illegal importation of firearms and that the maximum sentence for the offence should be increased.

We asked for views and evidence of why there are very few convictions under section 170 of CEMA (importation) and why very few convictions are near the top end of the penalty (10 years). Respondents identifying themselves as members of the public stated that they did not know. Respondents identifying themselves as legal practitioners or involved in law enforcement agreed with ACPO's and NABIS's view that individuals caught at the border trying to smuggle firearms are being charged with offences under the Firearms Act, rather than or in addition to CEMA, because the current maximum sentence of 10 years for the importation offence is not seen as truly reflecting the seriousness of the criminal behaviour. The CPS stated that currently alternative offences may be more appropriate in terms of presenting the case to a jury and providing the court with sufficient sentencing powers.

A majority of respondents were of the view that the importation of firearms should not be treated less seriously than being in possession of a firearm with intent to endanger life. Statements such as "You only have a gun for one reason – to maim or murder" and "A child knows what a gun can do so how can anyone pretend that they did not know what could happen with the firearms they are importing" were common.

To the question of whether the maximum sentence for importation should be increased, a majority of respondents (86%) agreed. Of these, 50% stated that the maximum sentence should be life. A common theme was that sentencing provisions should be in line with similar offences for class A drugs, to give recognition to the dangerous nature of prohibited firearms and their potential impact on our communities.

The Council of H.M. Circuit Judges (representing over 700 Circuit Judges sitting in England and Wales) stated that the present maximum is too restrictive especially where there are a number of firearms involved and consecutive sentences would be inappropriate. They argued that a maximum sentence of life in prison will give judges the ability to give penalties that address appropriately the potential harm that importation of firearms may cause.

A SUMMARY OF COMMENTS BY RESPONDENTS TO KEY QUESTIONS IN THE CONSULTATION CAN BE FOUND BELOW.

Views in support of an increase of the maximum sentence

“The Customs and Excise Management Act’s maximum sentence of 7 years imprisonment (10 years for certain weapons) is inadequate to reflect the harm which could be caused by such offences. Many of the firearms could be used to commit serious offences, including murder, so we take the view the maximum sentence is too low. We believe that a maximum sentence of life imprisonment would be appropriate, due to the potential harm which could result from the offence.”

SOURCE: Justices’ Clerks’ Society

“An increase in the maximum sentence available would assist prosecutors in their selection of charges. We respectfully support the view set out by the Lord Chief Justice in *R v Grant Wilkinson* [2010] 1 Cr.App.R.(S) 100, namely:

‘We respectfully suggest that the offence of importing firearms, or being in possession of firearms with intent to supply them, whether manufactured by someone else or not, is not less criminally reprehensible than the importation of drugs or possession of drugs with intent to supply them. It is indeed difficult to anticipate many such cases where an imminent risk to life is not an inevitable concomitant of the offence. If so, the availability of a discretionary life sentence should not be dependant on proof of the specific intent required by section 16 of the Firearms Act.’

SOURCE: Crown Prosecution Service

“The current legal framework does not provide assurance that penalties are commensurate with the harm caused to the UK from importation of firearms. In SOCA’s view, sentencing for importation of firearms should correspond with sentencing for importation of Class A drugs. Evidence shows that weapons are moved around the country by different criminal groups, so any importation of firearms is significant in terms of the general availability of firearms in the UK.”

SOURCE: Serious Organised Crime Agency (SOCA)

“The importation clearly facilitates further offending. Without the importation in the first instance it would be more difficult for an offender to possess a firearm with intent to endanger life. The importation element should therefore have a “preventative legislation” mindset. The higher level sentencing should reflect that of importation of Class A drugs, i.e. life imprisonment.”

SOURCE: Unidentified respondent

“At the moment the sentence levels are not a deterrent – with early release the offender can end up doing very little time in prison. Sentences should be mandatory and full term – those who supply weapons are as guilty as those who use them. I think the sentence should be 15 years – lighter sentences mean that offenders just come out and start up where they left off again. 15 years is a sentence which means life and contacts have moved on and the trail has dried up.”

SOURCE: Mother of a victim

“There should be specific legislation to deal with the threat posed by prohibited firearm in line with that which controls the more dangerous drugs. Within that legislation there should be offences specifically dealing with those that possess prohibited firearms with intent to supply to another; those that arrange for the supply of such firearms without ever actually possessing them; and those that import prohibited firearms. Sentencing should be in line with that for offences relating to the more dangerous i.e. Class A drugs.”

SOURCE: Trade Union representing Law Enforcement Officers

“The Birmingham Reducing Gang Violence Team strongly holds the view that there is serious inadequacy in the penalty provided for importation of firearms, especially when compared to those available for controlled drugs.”

SOURCE: Birmingham community safety partnership.

“People that use firearms legally for sport or for work can buy a firearm. If you want to buy one from an illegal source then it is obvious that you want to use it in crime. A firearm is designed to kill or make someone believe they will be killed.”

SOURCE: Unidentified respondent

Views opposing an increase to the maximum sentence

“There is already a wide range of extant law to deal with the problem of the illegal importation of firearms. The evidence provided in the consultation gives no indication about the scale of the problem. Consequently, it is not possible to say if any proposed change to the law is likely to have any substantial effect on it. BASC believes that the vigorous enforcement of existing law would be more effective.”

SOURCE: British Association for Shooting and Conservation (BASC)

“There are many individuals, including some Registered Firearms Dealers who import on irregular basis. These individuals are not as familiar with the necessary import paperwork and it would be a huge injustice if any of them were to be subject to a ‘potential life sentence’ for the mere bureaucratic offence of incorrect paperwork.”

SOURCE: The Gun Trade Association (GTA)

“The Judiciary need to look closely at their imposition of the maximum sentence and its potential deterrent effect. There is absolutely no point in increasing the maximum penalty if the existing maximum is not (has not) been used. Quoting a maximum penalty does not have a deterrent effect; imposing it will.”

SOURCE: Unidentified respondent

CREATING A NEW OFFENCE OF POSSESSION WITH INTENT TO SUPPLY

A majority of respondents (79%) supported the creation of the new offence. Of those, 53% stated that the maximum sentence should be life, and 15% suggested different maximum sentences ranging from 14 to 20 years. As with the importation offence, parallels were drawn between the supply of illegal drugs and firearms.

Respondents identifying themselves as practitioners were of the view that the lack of an offence, with an appropriate power of punishment, for the possession with intent to supply firearms should be addressed. Those who supply firearms to criminals should be punished by the act of supplying the firearm itself rather than trying to rely on possession with intent to endanger life.

To the question of what the prosecution would need to prove in order to secure a conviction most respondents stated that the requirements should be similar to those in relation to the possession of controlled drugs.

A SUMMARY OF COMMENTS BY RESPONDENTS CAN BE FOUND BELOW.

Views in support of creating a new offence of possession with intent to supply

“We consider that there is a lacuna which should be filled especially as firearms are passed amongst criminals as is mentioned in the consultation paper. We do not consider that the offence of possession with intent to endanger life provides an adequate alternative. The directions of law which are required for the offence of possession with intent to endanger life are often difficult to formulate and lead to an artificiality when trying to cover supplying firearms. Moreover, the intention of the person who is to be supplied with the firearm may not be to endanger life. The suggested offence could be simple in its definition as is the case of possession with intent to supply drugs.”

SOURCE: The Council of H.M. Circuit Judges

“The CPS agrees that the current legal framework does not adequately address those who possess firearms with intent to supply another but who lack the specific intent that life would be endangered. Nor does the current legal framework address those who are indifferent as to whether or not life is endangered. [...] We suggest that the evidential requirements should be similar to those in relation to the possession of controlled drugs with intention to supply.

SOURCE: Crown Prosecution Service (CPS)

“The current legal framework is inadequate in that it does not differentiate between offences of simple possession and those of possession with intent to supply. [...] our experience is that those in illegal possession of firearms with the intention to supply them to others are far more likely to be prosecuted for the simple possession offence under section 5 than the section 16 offence (possession with intent to endanger life). We believe this is undoubtedly because section 5 offences are much simpler for the Crown to prove since there is no requirement to establish any criminal intent whatsoever on the part of the offender or even knowledge that the item is prohibited.

SOURCE: London Criminal Courts Solicitors' Association

“For criminal ‘armourers’ who hold several firearms on behalf of others, the most appropriate offence currently is s16 of the Firearms Act 1968; possession of a firearms with intent to endanger life (as opposed to s5 of the same Act – simple possession of the firearm). However, to prove this offence is not sufficient to prove possession of a firearm for someone known to be involved in general criminal activities. It requires the person in possession of the firearm to be holding it specifically intending that the other should endanger life. This obstacle would be overcome with a new possession with intent to supply offence for firearms. [...] Any new possession with intent to supply offence for firearms should be modelled on s4 of the Misuse of Drugs Act 1971. Although the intent needs to be proven it is of a lesser standard than for drugs as there is no point to prove in relation to ‘personal use’. If ‘personal use’ is offered as a defence, the defendant would be charged with one of the existing possession offences e.g. s5 or s16 of the Firearms Act.

SOURCE: Serious Organised Crime Agency (SOCA)

“It appears anomalous that the maximum sentence for those trafficking class A drugs is life, whereas those that illicitly supply or import firearms are subject to a 10 year maximum. This in no way gives recognition of the potential serious harm that can be caused by prohibited firearms. Neither does it offer a significant deterrent to those who might consider involving themselves in such activity. In line with the Misuse of Drugs Act, the new offence should carry a maximum sentence of life.”

SOURCE: Trading Union representing Law Enforcement Officers

“Penalties for all instances of handling illegal weapons or ammunition that have been used for criminal purposes must be the more severe that our judicial system can deliver. As with drugs, deaths of the innocent can easily be caused.”

SOURCE: Member of the public.

Views opposing the need to create a new offence

“Possession is generally easy to prove and as many of the offences within the Firearms Acts are absolute, it seems that existing legislation already deals with this. Intent is far more difficult to prove and it is likely that such a twin limbed offence would present serious evidential problems. [...] BASC can see no justification for creating a new offence that will be difficult to prove. Existing penalties for offences under the Firearms Acts are adequate. Sentencing must always be a matter for the discretion of the trial judge.”

SOURCE: British Association for Shooting and Conservation

A NUMBER OF GENERAL THEMES AND ISSUES EMERGED FROM THE CONSULTATION RESPONSES.

- Concerns were raised about criminals using vulnerable people (partners, siblings etc) to store their guns and that it would be unfair that these individuals could get the same sentence than those who made a considered decision to supply firearms to the criminal underworld.
- Concerns were also raised about the need to protect legitimate firearms retailers and their customers, and that adequate safeguards should be built into the legislation so the unsuspecting and ignorant are not disproportionately treated by the courts. It was pointed out that the trade in antique firearms is valuable and that any controls on firearms and related matters must strike a balance between the legitimate aspirations of firearms users and the need to ensure the safety of the public.
- Concerns were raised that fixing a maximum sentence of life imprisonment for the most serious offences may provide an indicator of the penalty to be imposed in cases which are considered by the court to be less serious effectively “raising the stakes” for all relevant offenders.

Government response to the consultation

We would like to take this opportunity to thank all respondents who have contributed to the consultation. We will continue to engage with partners as we move forward on the issues raised throughout the document.

The majority view expressed through the consultation was that the maximum sentence for the importation offence should be increased, and that a new offence of possession with intent to supply should be introduced. Furthermore, a majority of those who supported the changes to legislation expressed the view that a maximum sentence of life would be commensurate to the harm caused to victims, their families and society by those who import and supply illegal firearms to criminals.

Having carefully considered all of the responses, we agree that a new offence of possessing a firearm with intent to supply should be introduced, with a maximum penalty of life, and that the maximum sentence for importation of illegal firearm should be increased to life. We will therefore seek to start developing the new offences and to legislate as soon as parliamentary time allows.

We recognise the concerns expressed that vulnerable young people and adults may be coerced to keep weapons to be later used in crime. We also recognise that there is a legitimate firearm trade which is valuable for our economy. We will work with stakeholders to raise awareness and better equip practitioners, legitimate firearms users and the firearm trade to understand the changes in the law.



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