

# A Sentencing Guideline for Firearm offences within the ECSC

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.<sup>1</sup>

## Introduction

Within the ECSC, in the nine member states and territories there are different offences for the prohibited possession, carriage or use of firearms and ammunition with different maximum sentences. For the purposes of this guideline, the expression 'firearm offence' will be used to cover all types of firearm and ammunition offences.

## Applicability of Guideline

In sentencing for these offences, the Chief Justice and two other judges have issued guidelines<sup>2</sup> and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interest of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders<sup>3</sup>

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<sup>1</sup> Made pursuant to Rule 7(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and Made pursuant to Rule 8(1) for Anguilla.

<sup>2</sup> On 30 July 2020.

<sup>3</sup> For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines No. 4 of 2019**.

whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

### **Step 1**

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

### **Step 2**

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

### **Step 3**

Adjust the figure on assessing discount for any plea of guilty, if applicable.

### **Step 4**

Adjust the figure on assessing totality if sentencing for more than one offence.

### **Step 5**

Give credit for time served on remand.

### **Step 6**

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

### **Pass the Sentence**

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

## CONSTRUCTING THE SENTENCE

### STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A firearm case requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

### FIRST STAGE

The first stage is to determine the offence category based on consequence.

CONSEQUENCE may be demonstrated for example by the following:

- Causing injury or damage to property with a firearm
- Discharging a firearm to cause terror
- Threatening with a firearm to cause intimidation
- Showing a firearm to be assertive
- The number of firearms
- Dealing in firearms
- Quantities and types of ammunition

Categories arising from consequence are as follows:

**CONSEQUENCE - category 1 - highest**

- Causing or attempting injury with a firearm
- Discharging a firearm to cause terror
- Renting or supplying or dealing or trafficking in five or more firearms
- The firearm is particularly dangerous (eg is an assault rifle or submachine gun)

**CONSEQUENCE - category 2 – high**

- There is more than one concealed firearm
- Renting or supplying or dealing or trafficking in less than five firearms
- Causing extensive damage to property with a firearm
- Carrying a firearm openly
- Presence of a firearm during the commission of an offence

**CONSEQUENCE - category 3 – lesser**

- The firearm is at all times concealed
- Ammunition not in a firearm
- None of categories 1 and 2 applies

## SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

### **SERIOUSNESS – level A - high**

- Gang membership
- Group activity
- The firearm is associated with drugs supply
- The firearm contains more than two rounds
- The firearm has a round in the chamber
- More than 20 rounds of ammunition not in a firearm
- Any recovered ammunition is prohibited and impermissible under any licence
- There is an intention to cause injury (which is not caused)
- The firearm is carried at or near a place of worship, educational institution, or substantial public gathering

### **SERIOUSNESS – level B - medium**

- The firearm is an imitation and brandished
- The firearm though threatened remains concealed
- Recovered ammunition separately fits an associated recovered firearm
- More than 5 rounds of ammunition not in a firearm
- The firearm is carried in any other public place

### **SERIOUSNESS – level C - lesser**

- The presence of a firearm not in a public place is unknown to others
- Ammunition is non-live eg spent shell casing
- None of the above levels A and B applies

**THIRD STAGE**

Having determined the consequence and level of seriousness find the starting point by consulting the grid below<sup>4</sup>.

Maximum sentence is 'x'<sup>5</sup>.

Percentages are approximations and may not divide neatly, so that some adjustment is permissible.

When sentencing for ammunition alone, the starting point will usually be at the bottom of the range.

<b>CONSEQUENCE</b>	<b>High Seriousness - level A</b>	<b>Medium Seriousness - level B</b>	<b>Lesser Seriousness - level C</b>
<b>CATEGORY 1</b>	Starting point 75% x Range 60-90% x	Starting point 65% x Range 50-80% x	Starting point 50% x Range 35-65% x
<b>CATEGORY 2</b>	Starting point 65% x Range 50-80% x	Starting point 50% x Range 35-65% x	Starting point 40% x Range 25-55% x
<b>CATEGORY 3</b>	Starting point 50% x Range 35-65% x	Starting point 40% x Range 25-55% x	Starting point 30% x Non-custodial-45% x

<sup>4</sup> Where there is a mandatory minimum sentence, this may in appropriate cases be the starting point if it is greater than the starting point assessed under these guidelines.

<sup>5</sup> Where the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

## FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

### **AGGRAVATING FACTORS** of the offence

- Firearm is modified to make it more dangerous
- Being in a position of authority
- Steps taken to prevent the victim reporting
- Possession motivated by revenge
- Possession committed over sustained period of time
- Attempts to conceal/dispose of evidence
- The firearm is unrecovered and still at large

### **MITIGATING FACTORS** of the offence

- Voluntary surrender of firearm and/or ammunition
- Genuine belief firearm did not require a licence (eg is an antique)
- Genuine mistaken belief item is not a firearm
- Possession as a result of coercion, intimidation or exploitation
- Serious medical condition if it helps to explain why the offence occurred

## **STEP 2**

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

### **AGGRAVATING FACTORS** of offender

- Previous convictions for firearms offences
- Relevant convictions for other offences
- Offence committed whilst on bail

### **MITIGATING FACTORS** of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

## **STEP 3**

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

## **STEP 4**

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.



### **STEP 5**

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision<sup>6</sup>.

### **STEP 6**

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

### **Pass the Sentence**

The court must give reasons explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

### **Effective Date**

This Practice Direction will come into effect on the 1<sup>st</sup> day of September, 2020.

Made this 30<sup>th</sup> day of July, 2020.

Sgd.

Dame Janice M. Pereira

Chief Justice

Sgd.

Mde Gertel Thom

Justice of Appeal

Sgd.

Mde Kimberly Cenac-Phulgence

High Court Judge

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<sup>6</sup> See the requirements for assessing time on remand in *Gomes v The State* 2015 UKPC 8, at para 12; *Shonovia Thomas v The Queen* Appeal No.6 of 2010; and *Romeo Da Costa Hall v The Queen* 2011 CCJ 6.

This guideline should be read in conjunction with Practice Directions 8 A-D, numbers 1 to 4 of 2019 [7 A-D Anguilla]