

Title: Potential impact (subject to consultation) of Legislative Changes to Firearms Controls: i. Increasing the maximum sentence for importation of illegal firearms; and ii. Introducing a new offence of possession of illegal firearms with intent to supply IA No: HO0062 Lead department or agency: Home Office Other departments or agencies: Ministry of Justice	Impact Assessment (IA)				
	Date: 08/02/2012				
	Stage: Consultation				
	Source of intervention: Domestic				
	Type of measure: Primary legislation				
Contact for enquiries: Violent and Youth Crime Prevention Unit, Home Office					

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
N/A	N/A	N/A	NO	N/A

What is the problem under consideration? Why is government intervention necessary?

In response to submissions by the Association of Chief Police Officers Criminal Use of Firearms group (ACPO CUF) and the National Ballistics Intelligence Service (NABIS), the Home Affairs Select Committee (HASC) on firearms made the recommendation to 'introduce new offences for supply and importation of firearms to ensure that those guilty of such offences face appropriate penalties.' NABIS and ACPO argue that prosecutors use section 16 of the Firearms Act 1968 to give the court the possibility of life imprisonment, when the acts of importing and supplying firearms to criminals should by themselves have maximum sentences reflecting the level of criminality involved and the damage done to communities. The HASC recommendation would require primary legislation and the Government has made a commitment to consult on the need for these changes. This initial assessment sets out the potential impact if, following consultation, the Government decided to make these legislative changes.

What are the policy objectives and the intended effects?

The argument is being made that the current sentencing framework does not always enable offenders to be convicted of offences which carry penalties that reflect the full extent of the harm caused by illegal importation of firearms, supply of illegal firearms and possession of firearms with intent to supply them. At the moment there is no specific offence in relation to possession of firearms with intent to supply, however such cases can be prosecuted under existing offences of importation and possession of firearms, which both carry a maximum sentence of 10 years. The objective is to consult on whether the current structure is fair and balanced or whether there is a need to amend the existing legislation. If, subject to consultation, any changes were implemented, there would be a number of potential effects. For example, prosecutors could have a wider range of offences to charge, courts could have higher maximum penalties to impose for some offences than currently available, or both.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. Do nothing: We understand that in some cases prosecutors use section 16 of the Firearms Act 1968 (possession with intent to endanger life/enable other to endanger life) to give the court the possibility of imposing a sentence of up to life imprisonment in illegal importation and trafficking of firearms cases. Where the elements of that offence cannot be made out, there are other less serious offences that can be relied on.
2. Amend the current legal framework by increasing the maximum penalty for importation offences.
3. Amend the current legal framework by creating a new offence of possession of firearms with intent to supply.

The Government will consider the preferred option following consultation.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/12					
Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 1013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -7.5	High: 0	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		0	0
High		0.9	7.5
Best Estimate			N/A

Description and scale of key monetised costs by 'main affected groups'

Cost to prisons and probation services from increased sentences served for illegal importation of firearms vary by scenario (impact on prison/probation places set out in Section E):

Scenario 1: high cost – (offenders currently sentenced under s170): average annual cost = £0.9m, PV cost = £7.5m

Scenario 2: (offenders currently sentenced to s5): average annual cost = 0.5m, PV cost = £3.9m

Scenario 3: (offenders currently sentenced under s16): average annual cost = £0m, PV cost = £0m

Other key non-monetised costs by 'main affected groups'

There may be impacts on other offenders currently sentenced under s.170 of the Customs and Excise Management Act 1979 through an "up-tariffing" of their sentences due to a new higher maximum sentence length for the offence. It has not been possible to quantify this impact.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			N/A

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify any monetised benefits.

Other key non-monetised benefits by 'main affected groups'

There may be possible benefits to CJS agencies and society through reduction in firearms offences from deterrence and possible short term reductions in offences due to incarceration of offenders. However the evidence of the existence and scale of deterrent and incarceration effects is mixed. As a result we have not quantified this.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

Numbers of offenders affected by the changes are based on estimates from NABIS. It is assumed that there will not be additional offenders/offences. Rather, that offenders currently going through the CJS will be charged with different offences and/or given longer sentences.

For the purposes of modelling, it has been assumed that the maximum sentence would be increased to life imprisonment. However, any new maximum sentence may be lower than life imprisonment. The precise length of current and future sentences for targeted offenders is unknown – various scenarios have been modelled.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Summary: Analysis & Evidence

Policy Option 3

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 1013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -11.3	High: -5.6	Best Estimate: -8.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		0.68	5.6
High		1.37	11.3
Best Estimate	0	1.02	8.5

Description and scale of key monetised costs by 'main affected groups'

Cost of additional 31 prison and probation places per year in steady state (for best estimate); average annual cost of £1.02m and present value cost over 10 years of £8.5m.

Other key non-monetised costs by 'main affected groups'

Training and familiarisation costs to police forces and the Crown Prosecution Service.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			N/A

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify any monetised benefits.

Other key non-monetised benefits by 'main affected groups'

There may be possible benefits to CJS agencies and society through reduction in firearms offences from deterrence and possible short term reductions in offences due to incarceration of offenders. However the evidence of the existence and scale of deterrent and incarceration effects is mixed. As a result we have not quantified this.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Numbers of offenders affected by the changes are based on estimates from NABIS. It is assumed that there will not be additional offenders/offences. Rather, that offenders currently going through the CJS will be charged with different offences and/or given longer sentences.

For the purposes of modelling, it has been assumed that the maximum sentence would be increased to life imprisonment. However, any new maximum sentence may be lower than life imprisonment. The precise length of current and future sentences for targeted offenders is unknown – various scenarios have been modelled.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The HASC report on Firearms Control, which made a range of recommendations in relation to the control of legal firearms, also included a recommendation to **'introduce new offences for supply and importation of firearms to ensure that those guilty of such offences face appropriate penalties.'** This recommendation followed submission of evidence from ACPO CUF and NABIS to the Committee, in which they argued that sentencing powers for cases involving firearms trafficking should be increased.

The maximum sentence for importation of illegal firearms (an offence that captures a wide range of behaviours) is ten years imprisonment. Currently there is no specific offence in relation to possession of firearms with intent to supply; however, such cases can be prosecuted under existing offences of importation and possession of firearms, which both carry a maximum sentence of ten years.

ACPO and NABIS have identified a supply chain involving 'middle men' and those who store guns readily accessible for criminal use. The case being made is that in order to achieve the sentences that ACPO and NABIS feel would reflect the extent of the damage suspects these offences caused to the victims of gun crime and their communities, prosecutors are charging with possession of firearms with intent to endanger life in straightforward trafficking cases, as this has a maximum sentence of life imprisonment. However, it is arguable that the very act of firearms trafficking (importation, supply and possession with intent to supply) should be an offence in itself, and that the level of criminality and potential harm involved justifies a higher sentence than the one currently available.

NABIS estimates show that there are a relatively small number of firearms available to criminals, which results in these weapons being used in multiple crimes. This demonstrates the prominent role played by 'middle men' and 'minders' in gun crime. NABIS and ACPO make the case is that having an appropriate sentencing framework to punish the actions of these middle men is key to maintaining the level of gun crime in the UK at the current low levels.

Following consultation, the Government will decide whether to proceed with any changes to the existing legislation

A.2 Groups Affected

The Ministry of Justice is the main government department affected by the changes to the legislation, should they be implemented. For the Prison Service, the issue would be an increase in pressure on prison places due to longer average prison sentences. However, it is expected that the additional cost and pressure on the prison estate due to longer sentences would be relatively small as most of the offenders will already be going through the Criminal Justice System. In addition, there may be impacts on probation services.

There will also be an impact on the police, who will need to undertake training in the new provisions, as would the Crown Prosecution Service, if a new offence were created.

B. Rationale

Although there are no available estimates for the total costs of gun-related crime, the figure is likely to be very significant. The Government therefore has a key role to play in ensuring that suitable sanctions are imposed, not only on those who use firearms, but also on those who import, supply and possess with the intention to supply firearms.

As described in the summary above, the issue has been raised of whether the current firearms sentencing framework reflects appropriately the level of criminality involved in firearms trafficking. The consultation seeks views on whether the current law strikes the right balance.

Offences involving the use of firearms continue to make up a small proportion of recorded crime. However, we cannot be complacent: the use of illegal firearms by urban street gangs and organised criminal groups continues to cause concern, particularly in our largest cities. We must be satisfied that the sentences available to the courts for trafficking and supply offences are appropriate for this type of crime and that sentence length reflects the level of criminality involved.

C. Objectives

The objective is to consult on whether the current structure is fair and balanced or whether there is a need to amend the existing legislation.

D. Options

Option 1 is to make no changes (do nothing)

Section 16 of the Firearms Act 1968 will continue to be used in cases where the seriousness of the offence merits giving the court the option of a maximum sentence of life in prison.

Option 2: Amend the current legal framework by increasing the maximum penalty for importation offences.

Option 3: Amend the current legal framework by creating a new offence of possession of firearms with intent to supply.

Both Options 2 and 3 have been recommended by the HASC. The Home Office agreed to undertake further scoping work to establish whether it is necessary and proportionate to introduce either or both of these changes to legislation in respect of criminal supply and importation of firearms, and, if so, what would be an appropriate maximum penalty. In 2011 the Government made a commitment to consult on whether there is a need for change.

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

Option 2

- It is estimated that the increased sentence for Option 2 would affect between five and ten offenders per year (NABIS). There are no official data to support this assumption but the expert operational knowledge of NABIS is taken to be the next best alternative.
- There is uncertainty around precisely how those targeted under the importation proposal (Option 2) are currently sentenced. It is believed that those individuals may currently be sentenced under section 170 of the Customs and Excise Management Act 1979, and sections 5 and 16 of the Firearms Act 1968. Three scenarios have therefore been modelled with baseline average sentence lengths as follows:
 - the average sentence length for s170 importation offences was ten months in 2006 (due to small sample sizes there is no more recent data on average custodial sentence length);
 - the average sentence length for s5 offences was 42 months in 2010; and
 - the average sentence length for s16 offences was 92 months in 2010 (MoJ sentencing data).

- The s170 scenario is subject to particular uncertainty, given very low volumes involved and low average sentences imposed, suggesting that this offence is currently used for cases of low seriousness.
- Under each scenario it is assumed that targeted individuals will now be sentenced under an amended s170 offence with a higher maximum sentence. For the purposes of modelling, it is assumed that the new maximum sentence length would be life imprisonment. For this reason, it is assumed that these individuals will receive an average custodial sentence of 92 months – which uses the average sentence for s16 offences (which also has a maximum sentence of life) as a proxy for the new offence (MoJ 2010 sentencing data). However it should be noted that no decision has been made on what would be the appropriate maximum penalty if the decision was made to increase the maximum in the first place. Both issues are subject to consultation.

Option 3

- It is estimated that the new offence proposed under Option 3 would affect between ten and 20 offenders per year (NABIS). Again, there are no official data to support this assumption so the expert operational knowledge of NABIS is taken to be the next best alternative.
- It is assumed that those targeted by Option 3 are currently sentenced under s5 of the Firearms Act 1968 and therefore receive an average sentence of 42 months – the average sentence for s5 offences in 2010. This may be as result of the individuals being acquitted of the s16 Firearms Act 1968 offence, but being convicted of the less serious s5 possession offence.
- It is estimated that the average sentence length will increase to 92 months – using the average for s16 offences in 2010 as a proxy for the new offence (MoJ sentencing data). We consider this an appropriate proxy since the new offence would presumably be considered more serious than s5 offences and would carry a maximum sentence of life imprisonment. However it should be noted that no decision has been made on what would be the appropriate maximum penalty if the decision was made to create a new offence. Both issues are subject to consultation. There are risks that this assumed increase in sentence length could be too low or too high – see Risks Section for more detail.

Overall assumptions applicable to both Option 2 and 3

- It is assumed that half the sentence is served in prison, and half on probation
- The cost of a prison place for one year is estimated to be £30,000 in the current spending review period (until 2014/15) and £40,000 in future periods (MoJ assumption).
- The unit cost of probation resource over one year is estimated to be £2,800 (MoJ assumption).
- The profile of costs over time is based on the time at which *additional* prison places would be needed and a uniform distribution of sentences over each year. Therefore, costs take several years to reach a ‘steady state’ level. Work is continuing to model these profiles as accurately as possible and some minor updates may be implemented at a later date.
- No additional impact is assumed on HMCTS, CPS or legal aid services because the volume of offenders and the average court time is estimated to remain the same, only the sentences imposed are expected to change.
- Increased sentences could have a deterrent effect, leading to fewer offenders entering the CJS than in the baseline. However, the evidence on deterrent effects is mixed so no effect has been modelled.

OPTION 2 – Amend the current legal framework by increasing the maximum penalty for importation offences

COSTS

The primary costs fall on HM Prison Service with some additional costs to probation services. Increasing the sentence served under the three scenarios modelled is expected to impact on five to ten offenders per year, leading to additional costs as shown in table 1 below. These are based on an increase in both prison and probation places of between 0 (for scenario 3) and 24 (for scenario 1) per year in the steady state. The discounted present value of those costs over a ten year period is £5.0m to £10.0m, with a central estimate of **£7.5m** for scenario 1 (individuals currently charged under s170); £2.6m to £5.2m with a central estimate of **£3.9m** for scenario 2 (individuals currently charged under s5) and £0 under scenario 3 (individuals currently charged under s16) as no change in sentence served would result.

Additional costs take a number of years to reach a steady state since they do not become additional until the sentences served in the baseline (that is, what would have happened without a change in policy) have been completed. In the central estimate, the steady state annual total cost is £1.10m for scenario 1 and £0.63m for scenario 2 and any costs which continue beyond the ten year period modelled will be at this level. The *average* annual total cost over the ten years is £0.90m for scenario 1 and £0.47m for scenario 2.

Table 1. Centrally estimated costs for 3 scenarios under Option 2 (£m)

	Y0	Y1	Y2	Steady state	Average annual	NPV
Scenario 1: s170	0.13	0.37	0.81	1.10	0.90	7.5
Scenario 2: s5	0	0.03	0.34	0.63	0.47	3.9
Scenario 3: s16	0	0	0	0	0	0

There may also be costs associated with the up-tariffing of other offenders currently sentenced under s.170 due to a new higher maximum sentence length for the offence, or an amended offence. It has not been possible to quantify this impact.

BENEFITS

The measure may result in a decrease in firearms offences due to a deterrent effect from longer sentences. Any benefits from crime reduction would fall primarily on communities since the harms associated with firearm offences tend to be significant. Benefits could also fall on the public sector if fewer prosecutions were brought to court due to a deterrent effect on offenders. This would potentially result in a reduction in costs to the Prison and Probation Services.

However, the evidence to support such deterrent effects is mixed and as a result it has not been possible to quantify this.

Communities and the public sector could also benefit, if the longer incarceration of offenders led to a reduction in crime. However, there is no robust supporting evidence for this type of effect and any reduction would probably be temporary, with the gap in the firearms market likely to be filled by other individuals.

ONE-IN-ONE-OUT (OIOO)

N/A. These proposals do not impact on business.

Option 3: Amend the current legal framework by creating a new offence of possession of firearms with intent to supply

COSTS

Increasing the sentence length served for possession with intent to supply is expected to impact on ten to 20 offenders per year. Resulting additional costs, discounted over ten years, are estimated at between £5.6m and £11.3m, with a central estimate of **£8.5m**.

For the central estimate, these costs are based on an increase in both prison and probation places of around 31 per year in the steady state. The annual steady state cost is £1.3m and the annual *average* cost (over 10 years) is £1.0m.

There may be additional costs to the police and the Crown Prosecution Service from training and familiarisation with the new offence. Such costs are likely to be “opportunity” in nature and would not require additional funding.

BENEFITS

The measure may result in a decrease in firearms offences due to a deterrent effect from longer sentences. Any benefits from crime reduction would fall primarily on communities since the harms associated with firearm offences tend to be significant. Benefits could also fall on the public sector if fewer prosecutions were brought to court due to a deterrent effect on offenders. This would potentially result in a reduction in costs to the Prison and Probation Services.

However the evidence to support such deterrence effects is mixed and as a result it has not been possible to quantify this.

Communities and the public sector could also benefit, if the longer incarceration of offenders led to a reduction in crime. However, there is no robust supporting evidence for this type of effect and any reduction would probably be temporary, with the gap in the firearms market likely to be filled by other individuals.

ONE-IN-ONE-OUT (OIOO)

N/A. These proposals do not impact on business.

F. Risks

Option 1- Do Nothing

There is a risk that Government is perceived to be tackling crime inadequately, and is seen as unresponsive to concerns expressed by the police and ballistic experts. This consultation is expected to address this risk.

Options 2 and 3 – Amend the current legislation to increase the maximum sentence for importation and to introduce a new offence of possession with intent to supply

There is a risk that the **numbers affected** by changed legislation could be significantly different from those estimated in the appraisal section. The risk has been mitigated by drawing upon the expert operational knowledge of NABIS in deriving estimates. However, in the absence of solid data, the possibility remains that these estimates might be wrong. We hope that consultation responses will verify or challenge the estimates used.

A related risk is that those individuals targeted by the proposals are **not currently prosecuted** for any offence and therefore serve zero prison and probation time in the baseline. If this was the case, then prison/probation costs would be higher than assumed. In addition, if targeted individuals are not currently taking up court time, then the proposals could entail additional HMCTS, legal aid and CPS costs that have not been modelled. However so far the consulted agencies have not raised any concerns in this regard.

There is a risk that the **increase in sentences** will be different from that assumed. We have used the average sentence lengths for the offences we think those being targeted are currently being convicted of. However, in reality, these targeted cases may be getting a higher than average sentence length, and hence the impact on prison and probation places may be overestimated. In addition it is not clear what maximum sentence might be appropriate for any new or amended offences, which will to some degree be dependent on the definition and scope of any new or amended offence. As a result, prison and probation places affected each year could be higher or lower than estimated so the results should be treated with caution.

There is a risk that the proposals might lead to knock-on effects of '**up-tariffing**' in the sentencing of current or other firearms offences. For example, if the maximum sentence for s170 was raised to life, those currently sentenced under s170 may see an element of up-tariffing in their sentences. This would place an additional burden on the CJS, which has not been modelled.

G. Enforcement

Any revision to legislation that may be proposed following this consultation would complement the existing legislative framework and operational law enforcement. Any changes would seek to ensure that the level of punishment available for those involved in the supply chain is appropriate.

H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes over a 10 year period.

Table H.1 Costs and Benefits		
Option	Costs	Benefits
2	£0m to £7.5m depending on scenario (costs to prison and probation services)	It has not been possible to quantify benefits
	Costs (not quantified)	The proposed changes may act as a deterrent to those involved in firearms trafficking. However, evidence for this is mixed. (not quantified)
3	£8.5m (costs to prison and probation services)	It has not been possible to quantify benefits
	Opportunity cost of training/familiarisation to the police and the Crown Prosecution Service (not quantified)	The proposed changes may act as a deterrent to those involved in firearms trafficking. However, evidence for this is mixed. (not quantified)
Source: HO modelling		

At this point the Home Office is purely committed to consult on the need for changes. Following the consultation process, the Home Office will publish its response.

I. Implementation

At this stage we are seeking views on whether the changes are needed and if so what would be proportionate. A Government Response to the Consultation paper will be published after the consultation process has been completed and the Government has taken a view on how to proceed.

J. Monitoring and Evaluation

If, following consultation, the Government decides to opt for legislative change objectives would be set and normal post-legislative scrutiny would be undertaken to establish whether those objectives had been met.

K. Feedback

The consultation seeks views on the need for the proposed legislative changes. As part of the process we will seek feedback from the police, CPS, the judiciary, victims' groups, the Attorney General's Office and the legitimate users of firearms. We have been working and will continue to work closely with the Ministry of Justice to take their views into account.

L. Specific Impact Tests

See Annex 1.

Annex 1. Specific Impact Tests

Statutory Equality Duties

A Policy Equality Assessment will be produced as a separate document before the consultation paper is published

Social Impacts

Justice

A Justice Impact Test will be produced as a separate document before the consultation paper is published.