

Briefing for the Public Petitions Committee on petition [PE2219](#): Review the mandatory minimum five-year prison sentence for firearms offences, lodged by Sharon Wilson

Brief overview of issues raised by the petition

The [petition](#) calls on the Scottish Parliament to urge the Scottish Government to review whether the mandatory minimum five-year prison sentence for possession of prohibited firearms under the Firearms Act 1968 (the 1968 Act) continues to deliver proportionate justice and effective public safety outcomes in all circumstances.

The background information provided by the petitioner states that the minimum sentence of five years was introduced in response to concerns about gang-related firearms and expresses concern about the limited flexibility this allows for situations where individuals have not used a firearm, have no link to organised crime, or have acquired firearms in unusual circumstances such as inheritance.

It states: “I believe there are cases where the current mandatory minimum may prevent courts from fully considering factors such as intent, risk posed to the public, personal circumstances, or the wider context of the offence”.

The petition notes that “aspects of firearms legislation are reserved to the UK Parliament”. Under Schedule 5 of the Scotland Act 1998, these reservations include the subject matter of the 1968 Act (subject to an exception relating to the regulation of air weapons). This means that changes to the provisions in the 1968 Act which provide for a minimum sentence for certain firearms offences (outlined below) can only be made by the UK Parliament.

However, this does not prevent relevant Scottish bodies looking at the implications of the mandatory sentence. As noted later, research commissioned by the Scottish Sentencing Council has included consideration of mandatory sentencing for firearms offences.

A response to the petition from the Scottish Government states that its view is that the subject matter of the petition is reserved and the ask is therefore not achievable. It confirms that the Scottish Government is not currently undertaking the requested review. It adds that:

“The Scottish Government respects the Committee's role in examining the issues raised by the petition. The Committee can gather evidence from relevant stakeholders and make representations directly on matters falling outwith devolved competence, including to the UK Government where it considers this appropriate.”

Minimum sentence for certain firearms offences

A minimum sentence for certain firearms offences in Scotland is set out in [section 51A](#) of the 1968 Act (section 51A was inserted by section 287 of the Criminal Justice Act 2003). It states:

“The court shall impose an appropriate custodial sentence (or order for detention) for a term of **at least the required minimum term** (with or without a fine) **unless the court is of the opinion that there are exceptional circumstances** relating to the offence or to the offender which justify its not doing so.” (emphasis added)

The “required minimum term” is five years for an offender aged 21 or over, and three years for an offender aged under 21 (but the minimum term only applies if the individual was 16 or over at the time of committing the offence).

The offences subject to the mandatory minimum sentence relate to “prohibited weapons” – those that are considered most dangerous. This includes machine guns, handguns, revolvers, self-loading shotguns, ammunition that contains explosives and firearms that are disguised as another object. All of the offences subject to the minimum sentence are set out in the **Annex** to this briefing. The petition appears to be concerned with the [section 5\(1\)](#) and [\(1A\)](#) offences (see points 1 and 2 in the Annex) as these criminalise simple possession of the firearm (whereas the offences in point 3 in the Annex require possession and another element, for example, possession with intent to injure).

These section 5 offences are constituted by possessing, purchasing or acquiring the relevant firearm “without authority”. Despite the 1968 Act being reserved to the UK Parliament, authority can be given in writing by the Scottish Ministers and can be subject to such conditions as the Scottish Ministers “think fit to impose for the purpose of securing that the prohibited weapon or ammunition to which the authority relates will not endanger the public safety or the peace” (see section 5(3) and (4)). The Scottish Government has produced [guidance on how to apply](#) for a section 5 authority. It states: “Section 5 authorities are usually only issued to businesses that have a specific commercial need”.

This is different from the more common licensing of firearms under section 1 of the 1968 Act, for which [Police Scotland is the licensing authority](#). This is due to the section 5 firearms being considered more dangerous weapons that require higher authorisation.

Scottish Sentencing Council

The [Scottish Sentencing Council](#) commissioned a [literature review](#) (published March 2025) to examine sentencing for firearms offences more generally.

The review looked at the position in Scotland, as well as considering comparative information from England and Wales, where relevant [sentencing guidelines](#) produced by their Sentencing Council are in place.

The review highlighted that there is limited data available about sentences for firearms offences in Scotland. However, it did suggest that guidelines can help with the complexity in sentencing firearms offences and commented that the guidelines in England and Wales take a “logical and consistent” approach in recognition of required minimum terms restricting the range of sentencing options.

The Scottish Sentencing Council has not produced Scottish sentencing guidelines for firearms offences and has confirmed that it has no plans under its current [business plan](#) to develop such guidelines.

It may be noted that some of the other sentencing guidelines which the Scottish Sentencing Council has published will be of relevance to the sentencing of firearms offences, as they are in relation to other offences (e.g. guidelines on the [principles and purposes of sentencing](#) and on the [sentencing process](#)).

Exceptional circumstances

As noted above, the mandatory minimum sentence must be applied to the relevant offences “unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so”.

Among other things, the Scottish Sentencing Council literature review considered what may constitute “exceptional circumstances” (see paragraphs 93-109). The review looked at existing case law and suggested that “a strict interpretation” of exceptional circumstances is taken (paragraph 117).

The written [guidelines](#) by the Sentencing Council for England and Wales on sentencing for relevant firearms offences in those parts of the UK, include consideration of how “exceptional circumstances” should be interpreted (see Step 3 of the guidelines). This sets out a number of principles for determining whether exceptional circumstances exist:

- Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
- The circumstances must truly be exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.
- The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.
- The mere presence of one or more of the following should not in itself be regarded as exceptional:
 - One or more lower culpability factors
 - The type of weapon or ammunition falling under type 2 or 3

- One or more mitigating factors
- A plea of guilty.

Views on mandatory minimum sentences

The Scottish Sentencing Council literature review also explores academic commentary on mandatory sentences. A [guest blog](#) on the Scottish Sentencing Council's website written by Professor Gavin Dingwall (one of the academics involved in producing the literature review) summarises the academic criticism:

“Mandatory sentences have been subject to considerable academic criticism on two main grounds. Firstly, they undermine proportionality at sentencing, as the imposition of the same sentence on all offenders convicted of the same offence prevents a court from reflecting the culpability of an individual offender. Secondly, empirical studies have challenged the assumption that mandatory penalties serve as an effective deterrent.”

The literature review also gives the dissenting view: “Advocates of mandatory sentencing suggest that the limited deterrent effect of these laws is due to inadequate implementation or a high rate of judicial deviation from the statutory mandatory sentence” (paragraphs 125 and 126).

It also explored public views, though research outwith the US was limited. It concluded that “the public would appear to favour severe, and possibly mandatory, sentences for the more serious firearms offences” but noted several caveats:

- the surveys did not provide specific cases for respondents to consider and it was likely that the public had the most serious forms of gun crime in mind,
- this likely reflects a mistaken belief in the deterrent effect of these sentences,
- “if the public were sensitised to the threat to concepts such as proportionality, individualisation and parsimony, there may be greater support for more judicial discretion” (paragraph 129).

Key Organisations and relevant links

- [Crown Office and Procurator Fiscal Service](#)
- [Law Society of Scotland](#)
- [Police Scotland](#)
- [Scottish Government](#)
- [Scottish Sentencing Council](#)
- [Senators of the College of Justice](#)

Mhairi Gavin
Senior Researcher
14 August 2025

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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Annex – offences subject to the mandatory minimum sentence

1. An offence under section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (ag), (ba) or (c) of the 1968 Act

Section 5(1) states that “A person commits an offence if, without authority, he has in his possession, or purchases or acquires—

(a) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger;

(ab) any self-loading or pump-action rifled gun other than one which is chambered for .22 rim-fire cartridges;

(aba) any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signalling apparatus;

(ac) any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or is less than 40 inches in length overall;

(ad) any smooth-bore revolver gun other than one which is chambered for 9mm. rim-fire cartridges or a muzzle-loading gun;

(ae) any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus;

(af) any air rifle, air gun or air pistol which uses, or is designed or adapted for use with, a self-contained gas cartridge system;

(ag) any rifle with a chamber from which empty cartridge cases are extracted using—

i. energy from propellant gas, or

ii. energy imparted to a spring or other energy storage device by propellant gas, other than a rifle which is chambered for .22 rim-fire cartridges;

(b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing;¹

(ba) any device (commonly known as a bump stock) which is designed or adapted so that—

i. it is capable of forming part of or being added to a self-loading lethal barrelled weapon (as defined in section 57(1B) and (2A)), and

ii. if it forms part of or is added to such a weapon, it increases the rate of fire of the weapon by using the recoil from the weapon to generate repeated pressure on the trigger; and

(c) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in paragraph (b) above and, if capable of being used with a firearm of any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode as aforesaid.”

2. An offence under section 5(1A)(a) of the 1968 Act

Section 5(1A)(a) provides that, subject to [section 5A](#) of the 1968 Act, a person commits an offence if, without authority, they have in their possession, or purchase or acquire any firearm which is disguised as another object.

3. An offence under any of the provisions of the 1968 Act listed in section 51A(1A) in respect of a firearm or ammunition specified in points 1 and 2 above

The subsection (1A) provisions are:

(za) section 5(2A) (manufacture, sale or transfer of firearm, or possession etc for sale or transfer);

(a) section 16 (possession of firearm with intent to injure);

(b) section 16A (possession of firearm with intent to cause fear of violence);

(c) section 17 (use of firearm to resist arrest);

(d) section 18 (carrying firearm with criminal intent);

(e) section 19 (carrying a firearm in a public place);

(f) section 20(1) (trespassing in a building with firearm).