



Ministry  
of Justice

Lord (David) Wolfson of Tredegar, QC  
Parliamentary Under-Secretary of State

Lord German  
House of Lords  
London  
SW1A 0PW

MoJ ref: SUB92504

22 November 2021

Dear Lord German,

### MINIMUM SENTENCES

I made a commitment to write to you during the Committee stage of the Police, Crime, Sentencing and Courts (PCSC) Bill on 10 November 2021, in relation to the minimum sentences which apply to certain offences. The Government has brought forward measures in the Bill to align such provisions with the criteria for passing a sentence below the minimum term in relation to certain offences involving firearms, so that the court may depart from passing a minimum sentence only where there are exceptional circumstances relating to the offender, the offence or, where relevant, the previous offence, which justify not doing so. You asked for the definition of “exceptional” in this context.

It may help if I explain that the absence of a statutory definition is intentional, as its inclusion would be overly prescriptive. It is, rightly, for the court to consider the full facts of the case before it, and to determine whether there are exceptional circumstances which would make it unjust to apply the minimum sentence.

In determining whether there are exceptional circumstances, the courts may be assisted by case law relating to the minimum sentence for certain offences involving firearms, which applies unless there are exceptional circumstances. In particular, in *R v Nancarrow (Sean John) [2019] EWCA Crim 470*, the Court of Appeal established a number of relevant principles at paragraph 19. I would encourage you to read this judgment in full, but would particularly like to draw your attention to the second principle, which sets out that circumstances are exceptional if the imposition of the minimum sentence would be arbitrary and disproportionate, and the fourth, which sets out that the court should take a holistic approach and consider whether the collective impact of all the relevant circumstances make the case exceptional.

The principles established in relevant case law are also reflected in offence-specific sentencing guidelines, which encourage consistency in sentencing. For example, see [Firearms – Carrying in a public place – Sentencing \(sentencingcouncil.org.uk\)](#). Any new legislation with an impact on sentencing will usually result in the independent Sentencing Council making an assessment as to whether this necessitates a revision to their sentencing guidelines, or additional guidelines to be produced. As and when any legislative changes are made, my officials stand ready to engage with the Council to support any such assessment. I will place a copy of this letter in the House of Lords Library.

Yours sincerely,

LORD (DAVID) WOLFSON  
OF TREDEGAR, QC