



### Restrictions on the Possession, Handling and Distribution of Firearms and Ammunition

5.1 This Chapter sets out some of the general requirements and prohibitions of the law on possession, purchase and acquisition of firearms and ammunition. It should be noted that additional information on many of these areas can be found in other parts of the Guidance.

#### Definitions

- 5.2 Under sections 1 and 2 of the 1968 Act, it is an offence for a person “to have in their possession or to purchase or acquire” a firearm or ammunition to which section 1 applies or a shot gun (but not shot gun cartridges) without holding the appropriate certificate. The case law suggests that possession is an absolute offence. It is not a valid defence that the defendant does not know that a bag in their possession contains a firearm (R v Steele 1993) or that a supposedly antique firearm is subject to certification (R v Howells 1997). Possession may be constructive (that is, having free access to the firearms rather than physically possessing them) (Sullivan v Earl of Caithness 1976).
- 5.3 In some (very restricted) circumstances certain categories of people may be authorised by the Act to “have in their possession” firearms and/or ammunition without a certificate, but not to purchase or acquire. Such people might include licensed slaughterers, a person taking part in theatrical, television or film productions, warehouse operatives or carriers (see Chapter 6) and those authorised under section 7 of the Firearms Act 1968. See also Chapter 6, paragraph 6.13 and Chapter 25, paragraph 25.9, about firearms that may have been found amongst the property of somebody who has died. Chapter 6 also includes details of other exemptions from the need to have a certificate, including the use of borrowed rifles on private premises, as does Chapter 18 on clubs. See also chapters 15 and 27.
- 5.4 The word “sell” is often used throughout the Act in conjunction with the word “transfer”. Transfer is defined in section 57(4) of the 1968 Act as including letting on hire, giving, lending and parting with possession.

#### General prohibitions

- 5.5 Persons prohibited under section 21 of the 1968 Act (see paragraph 12.4 for its terms) may not possess any firearms or ammunition, not just those for which a certificate is required. Thus the prohibition extends to all air weapons, air gun pellets and shot gun ammunition. It should also be noted that:
- (a) The prohibition applies to persons sentenced in all parts of the United Kingdom, including those sentenced in Northern Ireland. Section 29 of the Criminal Justice Act 1972 amended section 21 of the 1968 Act. In its unamended form, section 21 applied

the prohibition only to those sentenced in England, Wales and Scotland; the amendment in section 29 of the Criminal Justice Act 1972 made the similar prohibition on possessing firearms and ammunition in Northern Ireland (previously section 19 of the Firearms Act (Northern Ireland) 1969, now Article 63 of the Firearms (Northern Ireland) Order 2004) effective in England, Wales and Scotland.

(b) The prohibition includes detention in a young offender institution, or in youth custody. Paragraph 24 of Schedule 14 to the Criminal Justice Act 1982 added the words “or to youth custody for such a term” to subsections (1) (after “three years or more”) and (2) (after “less than three years”) of section 21 of the 1968 Act. Paragraph 6 of Schedule 8 to the Criminal Justice Act 1988 amended section 21(1) and (2) of the 1968 Act by substituting “detention in a young offender institution” in place of “youth custody”.

5.6 The courts have taken the view that a suspended sentence (a disposal not applicable to Scotland) does **not** attract the prohibition imposed by section 21 of the 1968 Act unless the sentence is ordered to take effect. Under Section 189 of the Criminal Justice Act 2003, as amended by section 68 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, a suspended sentence is a “sentence of imprisonment” for the purpose of other provisions in the 1968 Act. The difficulty of so construing section 21 arises because subsection (2) uses the word “release” and so presupposes that the offender to whom the section applies is one who has been detained under sentence. Convictions overseas and periods of detention under the Mental Health Act or the Mental Health (Care and Treatment) Scotland Act 2003 do not count towards prohibition, although they might be relevant to fitness and public safety.

5.7 A court in England and Wales that imposes a suspended sentence may order the forfeiture of a firearm or cancel a firearm or shot gun certificate. Even if a court does not make such an order, chief officers of police have the power to revoke a firearm or shot gun certificate in certain circumstances. In particular, when they are satisfied that the holder is of intemperate habits or unsound mind, is otherwise unfit to be entrusted with a firearm or can no longer be permitted to have the firearm or ammunition without danger to the public safety or to the peace. The fact that an order has been made under section 52 of the 1968 Act in respect of the applicant (notwithstanding that only a suspended sentence was passed) might also be regarded by chief officers as giving them reason to believe that the applicant is unfit to be entrusted with a firearm or possess a firearm or shot gun without danger to the public safety or to the peace.

5.8 A person who has served a custodial sentence is informed of the provisions of section 21 of the 1968 Act on release. Section 21(6) of the 1968 Act enables a person who is prohibited by the provisions of the section to apply to the Crown Court (or the Sheriff in Scotland) in accordance with the provisions of Schedule 3 to the 1968 Act for the removal of the prohibition. This is usually done where the offence has not involved violence or firearms. Nevertheless, the removal of the prohibition can be opposed by the police and courts have ruled that possession of a firearm certificate presupposed an element of trust (*Gordon v Northampton Crown Court* 1999).

5.9 Under section 25 of the 1968 Act it is an offence for a person to sell or transfer a firearm or ammunition to, or to repair, prove or test any firearm or ammunition for another person whom they know, or have reasonable cause to believe, to be drunk or of unsound mind.

5.10 Restrictions on the possession, purchase and acquisition of firearms and ammunition by young people and on the sale and transfer to them are dealt with separately in Chapter 7.

## Firearms and ammunition for which a certificate is required

5.11 Any person wishing to possess, purchase or acquire any firearm or ammunition must hold a valid firearm or shot gun certificate (as appropriate) unless exempt under sections 7 to 13, 15, 54 or 58(1) of the 1968 Act or sections 15 to 19 of the 1988 Act, except:

- a) an air weapon or a weapon powered by compressed carbon dioxide (not of a type declared by the Secretary of State under the Dangerous Air Weapons Rules 1969 (as amended) to be specially dangerous);
- b) ammunition for air weapons;
- c) cartridges containing five or more shot, none of which exceeds .36 inches in diameter (the exemption does not extend to the purchase of such ammunition);
- d) blank cartridges not more than one inch in diameter.

5.12 Section 5 of the 1988 Act prohibits the sale of ammunition for a shot gun or smooth-bore gun, and for which a firearm certificate is not required, to a person who is neither a registered firearms dealer nor a person who sells such ammunition by way of trade or business unless that person:

- a) produces a shot gun certificate or a firearm certificate (the original, not a photocopy) authorising them to possess a smooth-bore gun;
- b) shows that they are entitled to possess a shot gun or smooth-bore gun without holding a certificate; or
- c) produces a certificate (the original, not a photocopy) of some other person together with a written authority from the holder of the certificate to purchase the ammunition on their behalf.

This section only applies to ammunition not subject to control under section 1 of the 1968 Act. There is no requirement for a vendor of shot gun cartridges to be registered as a firearms dealer.

5.13 Unless exempt, a special authority from the Secretary of State or the Scottish Ministers is needed in addition to a firearm certificate for the possession of a prohibited weapon or prohibited ammunition (see Chapter 3).

## Primers

5.14 The Violent Crime Reduction Act 2006 introduced controls on the purchase and sale of cap-type primers designed for use in metallic ammunition for a firearm, including empty cartridge cases incorporating such a primer. Section 35 of the 2006 Act makes it an offence to sell these items unless the purchaser:

- a) is a registered dealer;
- b) sells by way of any trade or business either primers or empty cartridge cases incorporating primers;

- c) produces a certificate (i.e. the original, not a photocopy) authorising them to possess a firearm of a relevant kind (i.e. a firearm other than a shotgun, an air weapon or a firearm chambered for rim-fire ammunition) or ammunition for such a firearm;
- d) is a duly authorised Crown servant;
- e) shows that they are entitled in law to possess a firearm or ammunition of a relevant kind without a certificate;
- f) produces a certificate (the original, not a photocopy) authorising another person to possess such a firearm, or such ammunition, together with that other person's authority to purchase primers on their behalf; or
- g) shows that they are authorised by regulations to purchase primers. To date no such regulations have been made.

Section 35 also makes it an offence to buy, or attempt to buy, primers unless the purchaser meets the same criteria.

The definitions used in section 35 mean that the offences do not apply to the purchase or sale of blank ammunition, shotgun primers or to percussion caps for muzzle-loading firearms.

## Business and other transactions

5.15 A person commits an offence, if by way of trade or business that person is engaged in the manufacture, sale or transfer of shot guns or firearms or ammunition to which section 1 of the 1968 Act applies and is not registered as a firearms dealer. This requirement extends to persons who repair, test or prove such firearms or ammunition. A person also commits an offence if they expose for sale or transfer or have in their possession for sale, transfer, repair, test, or proof any such firearm or ammunition, or a shot gun.

In relation to air weapons; a person commits an offence if, by way of trade or business, they sell or transfer, expose for sale or transfer; or possess for sale or transfer air weapons without being registered as a firearms dealer (see Chapter 16).

5.16 Persons who dispose of firearms or ammunition otherwise than by way of trade and business need not register, but all persons, including dealers, must observe the provisions of the Act regarding:

- a) persons to whom firearms and ammunition may be sold or transferred (section 3(2) of the 1968 Act and section 5(2) of the 1988 Act) namely;
  - 1) a person producing a firearm certificate authorising them to acquire that firearm or section 1 ammunition;
  - 2) a registered firearms dealer;
  - 3) in the case of a shot gun, a person with a current shot gun certificate or a firearm certificate holder who possesses a section 1 shot gun;

- 4) in the case of section 2 (shot gun) ammunition, someone who produces another person's valid shot gun certificate, together with written authority from the certificate holder to allow them to purchase or acquire the ammunition;
  - 5) someone who shows that by virtue of the Act they are entitled to purchase or acquire the firearm or ammunition without a certificate.
- b) instructions in firearm and shot gun certificates and notification to the chief officer of police of the sale etc. of a firearm or shot gun to a person who is neither a firearms dealer nor otherwise exempt from holding a certificate (section 32(2)(b), 33(2) and (3) of the 1997 Act).

Though not a statutory requirement, it is desirable that police forces should also comply with these requirements if they transfer a firearm or shot gun to a certificate holder from another force area, completing Table 1 on a firearm certificate and/or Table 2 on a shot gun certificate.

- 5.17 Section 33 of the 1997 Act requires that, within seven days of the transaction, the transferor and transferee must send, electronically (for example, by e-mail or fax) or by recorded or special delivery, notification to the chief officers of police who issued their own certificates. The transferor is the person who originally possessed the gun, and the transferee is the recipient (and it is the transferor who must write the details of the gun and its transfer onto the certificate of the transferee). The notice of the transaction must contain a description of the firearm or shot gun (including any identification number), state the nature of the transaction and give the name and address of the other person concerned. A firearm or shot gun placed with a registered firearms dealer or auctioneer for sale or return is not regarded as a transfer. Notification is only required once the transfer is complete when all three parties notify the police. As the transferor may not know the name of the ultimate transferee, it is sufficient for the transferor only to notify the police of disposal to the dealer or auctioneer.
- 5.18 Section 34 of the 1997 Act requires that, on the de-activation, destruction or loss of any firearm to which a firearm or shot gun certificate or a visitor's firearm or shot gun permit relates, the chief officer of police who granted the certificate or permit must be notified within seven days of the event. The notification must be sent electronically (for example, by e-mail or fax) or by recorded or special delivery and must describe the firearm in question (including any identification number) and the nature of the event. Similarly, if any ammunition to which section 1 of the 1968 Act applies and a firearm certificate or visitor's permit relates is lost (whether by theft or otherwise), the chief officer who granted the certificate or permit must be notified within seven days by recorded or special delivery. The actual methods of destruction of firearms are not covered by legislation but to provide adequate safeguards it is generally more appropriate for certificate holders to surrender it either to a registered firearms dealer or to the police rather than to destroy it themselves (see Chapter 25 for further information).
- 5.19 Section 35 of the 1997 Act requires that if a firearm or shot gun is sold or otherwise disposed of outside Great Britain by a person whose acquisition or purchase of the firearm or shot gun was authorised by a firearm certificate or shot gun certificate, the person holding the certificate must notify the chief officer of police within fourteen days by electronic notification (for example, by e-mail or fax) or recorded or special delivery, or, if they are abroad, by the nearest available equivalent. The notification must contain a description of the firearm or shot gun (including any identification number) and the name and address of the person to whom the gun was sold or disposed of.

- 5.20 Section 35 of the 1997 Act requires that if a firearm to which a firearm or shot gun certificate relates is de-activated, destroyed or lost (whether by theft or otherwise) or if any ammunition to which section 1 of the 1968 Act applies is lost outside Great Britain, the chief officer of police who issued the certificate must be notified within fourteen days. The notice must contain the same information as the notice of sale or disposal and be sent electronically (for example, by e-mail or fax) or by recorded or special delivery.
- 5.21 A firearms dealer is also required to send a notification of a transaction involving a visitor under section 18(1) of the 1988 Act to the chief officer of police for the area in which they are registered. The notice must be sent within forty-eight hours of the transaction, electronically (for example, by e-mail or fax) or by recorded or special delivery, and contain all the particulars entered in the register of transactions including the details of the purchaser's passport, if any.
- 5.22 Section 8(2)(a) of the 1968 Act also provides specifically that it is not an offence to part with possession, otherwise than by sale, hire, gift or loan, to a person who is entitled to possess the firearm or ammunition without a certificate.
- 5.23 Further exemptions from the need to produce a certificate are made for persons collecting a shot gun from a dealer who has had it for repair, test or proof (section 8(2)(b) of the 1968 Act). It would be good practice for the dealer and persons to whom carriers or warehousemen or their servants are delivering a firearm or ammunition in the ordinary course of business to ask to see a certificate (section 9(4) of the 1968 Act) or proof that the person collecting the shot gun is entitled to possess it without a certificate.

## Pawnbrokers

- 5.24 Whilst section 3(6) of the 1968 Act prohibits pawnbrokers from taking in pawn any firearm or ammunition to which section 1 of the 1968 Act applies, or any shot gun, a pawnbroker is not debarred from registration as a firearms dealer. In these circumstances, the police will wish to consider an application under the same terms as any other dealer.

## Sales of firearms unproven or out of proof

- 5.25 The provisions of the Gun Barrel Proof Acts are explained in Chapter 24.

## Records of transactions

- 5.26 Persons who by way of trade or business manufacture, sell or transfer firearms or ammunition to which section 1 of the 1968 Act applies, shot guns, or air weapons, are required by section 40 of the 1968 Act to keep a register of transactions and to enter in it the particulars specified in Schedule 4 to the 1968 Act, as amended by the Firearms (Amendment) Rules 2007. The Act does not specifically require a registered dealer to be satisfied before purchasing a firearm to which section 1 applies, or a shot gun, that the vendor is in possession of a certificate for that firearm, but the dealer is required to record the transaction in the register.
- 5.27 It is good practice for Firearms Dealers to notify their local police where they take in firearms, including shot guns, which are not held lawfully on a firearm or shot gun certificate. This will enable the police to make checks to ensure they are not recorded as lost or stolen.

5.28 Section 18(1) of the 1988 Act allows a visitor who has not been in Great Britain for more than thirty days in the preceding twelve months to purchase a firearm from a firearms dealer for the purpose only of it being exported without first coming into their possession without the need for a certificate. A firearms dealer is required to record the transaction in their register together with the number and place of issue of any passport in the purchaser's possession. A passport will normally provide evidence for a firearms dealer that a visitor satisfies the thirty day criterion. Section 40(7) of the 1968 Act empowers the Secretary of State to make rules varying or adding to Schedule 4 of the 1968 Act. Such changes were made by Rule 10(5) of the Firearms Rules 1988 and by the Firearms (Amendment) Rules 2007.

5.29 Section 38(8) of the 1968 Act provides for the surrender of a dealer's register (or, if the register is kept electronically, a visible and legible copy of the information) and certificate of registration if their name is removed from the register of firearms dealers. It is an offence for the dealer not to comply within twenty-one days of a notice in writing requiring them to surrender the register.

## Inspection of dealers' records

5.30 Persons who by way of trade or business manufacture, sell or transfer firearms or ammunition to which section 1 of the 1968 Act applies, shot guns, or air weapons, are required by section 40(4) of the 1968 Act to allow any police officer (including civilian officers) duly authorised in writing by the chief officer of police to enter their premises and inspect all stock in hand and the register of transactions. In all cases, the inspecting officer must produce such written authority on demand. Form 122 is a convenient form of authorisation for this purpose. Under section 40(3A) of the 1968 Act, dealers are required to keep their register of transactions so that entries made in the register are available for inspection for a period of at least five years. If the register is kept on computer, dealers must ensure that a copy of the information contained therein can be produced in a visible and legible form which can be taken away by the inspecting officer. The register should include firearms taken in for repair or storage, although these are not regarded as transfers and consequently notification to the police is not required.

5.31 Section 41 of the 1968 Act enables chief officers of police, at their discretion, to exempt from all or any of the provisions about keeping records persons who manufacture, test or repair components for manufacturers of shot guns but do not handle complete shot guns. Chief officers should satisfy themselves as to the facts in each case, including the type of work carried on and the extent of the danger that each situation presents as a possible source of firearms for criminals. Each case should be reviewed at regular intervals.