

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS

SUPPLEMENTARY MEMORANDUM BY THE HOME OFFICE

The Home Office published an ECHR memorandum on introduction of the Anti-social Behaviour, Crime and Policing Bill in the House of Commons on 9 May 2013. This further supplementary memorandum addresses the issues arising from Government amendments tabled on 26 November 2013 for Lords Committee Stage.

New Clause: “*Possession of firearms by persons previously convicted of crime*”

2. This new clause achieves two main changes. The first is to ensure that the prohibition on possession of firearms by persons previously convicted of crime in section 21 of the Firearms Act 1968 also applies to persons who have received suspended sentences. Subsection (3) of the new clause sets out a transitional provision which secures the result that, where a person is in possession of a firearm before the day on which this clause comes into effect, and by reason of a suspended sentence imposed before that day, their possession of a firearm would otherwise have become prohibited, the prohibition will not apply to them if they have an extant certificate.

3. The second change is to ensure that this same prohibition in section 21 of the Firearms Act 1968 applies to antique firearms, which have until now been covered by a very broad exemption in section 58(2) of that Act. At present, it is possible to possess an antique firearm by virtue of section 58(2), which provides that the provisions in the Act do not apply to an antique firearm which is possessed as a curiosity or ornament. The amendment would apply to individuals who currently possess antique firearms lawfully, but who have been convicted and sentenced to a term of imprisonment for three years or more. When the new law comes into force, their possession of the antique firearm would become a criminal offence for which they could be prosecuted. The firearm could be seized under section 46 of the Firearms Act 1968, or subject to a forfeiture order upon conviction for the offence in section 21.

ECHR Article 1 Protocol 1

4. Article 1 Protocol 1 (A1P1) provides that no one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law. It also protects controls on the use of the property by the state, except where such controls are necessary in accordance with the general interest.

5. The Government accepts that the change in the legal position in respect of antique firearms may engage A1P1, in that the change in the law will mean that what has hitherto been lawful possession of an antique firearm by a person with a previous conviction will constitute a criminal offence.

6. The Government's position is that any interference with A1P1 is in pursuit of a legitimate public interest, because the aim is to prevent persons with criminal convictions from possessing antique firearms in order to protect the public from the threat of firearms being used for criminal purposes.

7. Further, the Government considers that any interference would be in accordance with the law, in that there would be an underpinning in primary legislation (via this Bill), stating that the criminal offence in section 21 of the Firearms Act 1968 applies to antique firearms, and that the other provisions of the same Act, so far as they apply to an offence under section 21, would apply to antique firearms (powers relating to seizure and forfeiture orders in sections 46 and 52 respectively).

8. The case law on A1P1 draws a distinction between deprivations of property and controls on the use of property. This distinction is an important one, because a deprivation gives rise to a right to compensation, save in the most exceptional circumstances, whereas a control of use does not, albeit that the availability of compensation will be taken into account when deciding whether a fair balance has been struck between the general interest and the right of the individual to peaceful enjoyment of possessions.

9. Taking into account the relevant case law, the Government's view is that the proposed interference represents a "control of use" rather than a "deprivation". This is because the owners of antique firearms affected by this change in the law will be able to sell the firearm at market value before the provisions come into force, or to place the firearm into the possession of someone else who could sell it on their behalf.

10. It will also be possible (under section 21 of the Firearms Act 1968) for the person subject to the prohibition to apply to the Crown Court (or, in Scotland, to the Sheriff) to have the prohibition on possession removed. Therefore it is not the case that all the person's ownership rights have been extinguished or that the antique firearm has become unusable. What flows from this analysis is that, in the Government's view, payment of compensation is not necessary to render the measures compatible with A1P1.

11. More generally, the Government considers that the proposed approach is proportionate for a number of reasons. Firstly, there is a graduated approach to the prohibition on antique firearms. This is because it only applies to persons sentenced to 3 months imprisonment or more, which ensures that the offending behaviour is of a minimum level of severity. Similarly, for those sentenced to three months or more but less than three years, the prohibition is limited to five years, rather than indefinite.

12. Secondly, there is provision in section 21 of the Firearms Act 1968 for a prohibited person to apply to a court to have the prohibition removed, which adds a layer of independent scrutiny and acts as an important safeguard. In applying its discretion as to whether to remove the prohibition, the court would be bound by section 6 of the Human Rights Act 1998 to act compatibly with convention rights.

13. Thirdly, the Government intends to give persons likely to be affected advance notice of the change in the law to enable them to make arrangements to avoid

committing a criminal offence, including by enabling them to sell the firearm prior to commencement, so as to realise its value and therefore mitigate any loss.

14. Lastly, there is a degree of fault on the part of the antique firearm owner, in that they have committed an offence which is sufficiently serious to attract a penalty of at least 3 months imprisonment.

15. In conclusion, it is therefore the Government's view that the new clause is compatible with A1P1.

Home Office
26 November 2013