

Introduction

1. This circular draws attention to new legal provisions on firearms which are contained in Part 6 of the Policing and Crime Act 2017 (“the 2017 Act”), which received Royal Assent on 31 January.
2. These provisions bring into effect the majority of the recommendations made in the Law Commission’s report ‘*Firearms Law– Reforms to Address Pressing Problems*’¹ and make some further changes to the existing firearms legislation.
3. They will strengthen existing firearms legislation by introducing new legal definitions and new offences to close legal loopholes which are open to abuse by criminals and pose a risk to public safety, and will support more efficient law enforcement in relation to firearm and shotgun certificate holders.
4. This Circular sets out details of the amendments that the 2017 Act has made to existing firearms legislation and provides in Annex:
 - A: new offence codes and sanctions, and
 - B: additional resources and links to further guidance
5. Commencement Order SI No.399 (C.38)/2017 was laid before Parliament on 13 March 2017 to give effect to the following sections of the 2017 Act –
 - on 3 April 2017:
 - s.133 ‘Guidance to police officers in respect of firearms’, and
 - on 2 May 2017:
 - s.125 ‘Firearms Act 1968: meaning of “firearm” etc.’
 - s.127 ‘Possession of articles for conversion of imitation firearms’
 - s.128 ‘Controls on defectively deactivated weapons’
 - s.129 ‘Controls on ammunition which expands on impact’
 - s.130 ‘Authorised lending and possession of firearms for hunting etc.’
6. The remainder of the firearms provisions in the 2017 Act (s.126 ‘Firearms Act 1968: meaning of an “antique” firearm’, s.131 ‘Limited extension of firearm certificates etc’, and s.132 ‘Applications under the Firearms Acts: fees’) will come into effect separately by commencement order(s), which we will communicate through further Home Office Circular(s).

¹ www.lawcom.gov.uk/wp-content/uploads/2015/12/lc363_firearms.pdf, Law Commission, 16 December 2015

Legislative background

7. The Firearms Act 1968 (“the 1968 Act”) is the principal statute regulating the control of firearms in England, Wales and Scotland. Sections 1 and 2 prohibit the possession of a firearm or shotgun without an appropriate certificate issued by the local police force. Section 3 of the 1968 Act makes it an offence to engage in certain activities relating to firearms, their component parts, ammunition or air weapons by way of trade or business without being registered as a firearms dealer with the local police force. Section 5 of the 1968 Act prohibits the possession of specific types of weapons, their component parts and ammunition without the authority of the Secretary of State (either the Home Secretary or Scottish Ministers).

Section 125. Firearms Act 1968: meaning of “firearm” etc.

Amendments to subsection 57(1): Definition of a firearm

8. Subsection 57(1) of the 1968 Act currently provides for the legal definition of a ‘firearm’ to mean a “lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged”.
9. Section 125 of the 2017 Act amends subsection 57(1) of the 1968 Act to update the definition of a ‘firearm’ as being –
 - (a) a lethal barrelled weapon, as defined under new subsection 57(1B);
 - (b) a prohibited weapon (as currently defined under section 5(2) of the 1968 Act - no change);
 - (c) a relevant component part in relation to a lethal barrelled weapon or a prohibited weapon, which is a component part listed in new subsection 57(1D) and can be used as a part of a lethal barrelled weapon or prohibited weapon; or
 - (d) an accessory to a lethal barrelled weapon or a prohibited weapon where the accessory is designed or adapted to diminish the noise or flash caused by firing the weapon (no change).

Newsubsection 57(1B): Definition of the term “lethal”

10. Prior to the introduction of the 2017 Act, there was no legal definition of the term “lethal” used in the definition of a firearm in subsection 57(1) of the 1968 Act. The absence of such a definition had led to a lack of clarity as to whether a weapon is in fact lethal and meets the definition of a firearm.
11. New subsection 57(1B) is inserted in the 1968 Act to define lethality by reference to the kinetic energy level with which it can discharge a bullet, shot or missile, as measured at the muzzle of the weapon. As recommended by the Law Commission, the 1968 Act will now define a “lethal barrelled weapon” as a “barrelled weapon of any description from which a shot, bullet or other missile, with kinetic energy of more than one joule as measured at the muzzle of the weapon, can be discharged”.

12. New subsection 57(1C) excludes airsoft guns from the definition of a “lethal barrelled weapon” provided that they meet the definition of an “airsoft gun” under new section 57A.

Newsection 57A: Exception for airsoft guns

13. Airsoft is a skirmishing game in which players shoot small spherical plastic missiles at opponents from imitations firearms using compressed air. New section 57A is inserted in the 1968 Act to define the airsoft guns that are to be excluded from the definition of a firearm. This circular should be read in conjunction with Home Office circular 031 / 2007 (“The Violent Crime Reduction Act 2006 (Commencement No 3) Order 2007: Firearms Measures”²).

14. New subsection 57A(2) defines an “airsoft gun” as a barrelled weapon of any description that:

- (a) is designed to discharge only a small plastic missile (whether or not it could be used to discharge another missile), and
- (b) is not capable of discharging a missile of any kind above the permitted kinetic energy thresholds.

15. New subsection 57A(3) defines a ‘small plastic missile’ as a missile that:

- a) is made wholly or partly from plastics,
- b) is spherical, and
- c) does not exceed 8 millimetres in diameter.

16. New subsection 57A(4) sets the maximum permitted kinetic energy levels at:

- a) 1.3 joules if the weapon is capable of discharging two or more missiles successively without repeated pressure on the trigger, and
- b) In any other case, 2.5 joules.

17. These definitions ensure that airsoft weapons that are commonly used in skirmishing activities and considered to be safe by industry and law enforcement are excluded from the definition of a firearm. However, weapons which are designed to discharge other missiles, including airsoft darts which carry a higher risk of serious (and potentially lethal) injury, with kinetic energy of more than one joule remain within the definition of a firearm.

18. Owners of airsoft weapons that meet the definition of an airsoft gun will have to ensure that any modifications made to the weapon do not cause it to no longer meet that definition.

² www.gov.uk/government/publications/the-violent-crime-reduction-act-2006-commencement-no-3-order-2007-firearms-measures, Home Office, 28 September 2007

Newssubsection 57(1D): Component parts of a firearm

19. New subsection 57(1D) lists those parts of a firearm that are relevant component parts for the purposes of new subsection 57(1)(c) of the 1968 Act as:
- (a) a barrel, chamber or cylinder,
 - (b) a frame, body or receiver,
 - (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber.
20. These parts must be capable of being used as part of a lethal barrelled weapon or prohibited weapon. These items are not defined in law and are therefore to be interpreted by reference to their commonly understood meaning.

Newssubsection 57B: Power to amend the list of component parts of a firearm

21. New section 57B confers the power to the Secretary of State (the Home Secretary) to amend the list of relevant component parts of a firearm or prohibited weapon in new subsection 57(1D) by way of regulations made by Parliament under the affirmative resolution procedure.

Section 127. Possession of articles for conversion of imitation firearms
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Newsection 4A: Possession of articles for use in connection with conversion

22. New section 4A is inserted in the 1968 Act to provide for the new offence of possession of an article intended for use to unlawfully convert an imitation firearm into a 'live' firearm. This gives effect to the Law Commission's recommendation to create a new offence "of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm".
23. Section 57(4) of the 1968 Act defines an "imitation firearm" as "any thing which has the appearance of being a firearm (...), whether or not it is capable of discharging any shot, bullet or other missile" (excluding any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing).
24. Registered firearms dealers, as defined under section 57(4) of the 1968 Act, are excluded from the scope of the new offence under section 4A(1).

Law enforcement

25. There are two limbs that need to be satisfied in order to secure a conviction under this new offence, as possession of the article(s) in question is not sufficient on its own:

- new subsection 4A(1)(a) provides for the conduct (*actus reus*) element of the offence, namely that a person (other than a registered firearms dealer) has in his or her possession or control an article can be used to convert an imitation firearm into a firearm, and
- new subsection 4A(1)(b) sets out the mental (*mens rea*) element of the offence, which is that the relevant person intends to use the article to convert an imitation firearm into a firearm.

Maximum penalties

26. New subsection 4A(2) sets out the maximum criminal sanctions for the new offence.
27. In England and Wales, sanctions of up to 6 months' imprisonment or a fine, or both, will apply on summary conviction. This will increase to 12 months when section 154(1) of the Criminal Justice Act 2003 comes into force.
28. In Scotland, maximum sanctions of up to 12 months' imprisonment or a fine not exceeding the statutory maximum, or both, will apply on summary conviction.
29. Criminal penalties following conviction on indictment are custodial sentences of up to 5 years' imprisonment or an unlimited fine, or both, in England, Wales and Scotland.

Section 128. Controls on defectively deactivated weapons
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Newsection 8A: Controls on defectively deactivated weapons

30. Section 8 of the Firearms (Amendment) Act 1988 provides that a firearm is presumed to have been rendered incapable of discharging any shot, bullet or other missile, and therefore is no longer considered to be a firearm, if certified by either of the Proof Houses that the work carried out to deactivate it has been done in a manner approved by the Secretary of State for these purposes. However, a weapon need not be so certified in order for it not to be considered as a firearm and accordingly deactivation standards are not mandatory.
31. New section 8A which is inserted in the Firearms (Amendment) Act 1988 provides for the new offence of unlawfully selling or gifting, or offering to sell or gift, a "defectively deactivated weapon" to another person in the UK or in any other Member State of the European Union.
32. The new offence will enable law enforcement to take action against the availability of firearms deactivated to standards below those approved by the Secretary of State and which, subsequently, may be 'reactivated' and used in crime. This is consistent with the Law Commission recommendation to enforce the approved standards to the European

Commission Implementing Regulation 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable.

33. Under new subsection 8A(4), a “defectively deactivated weapon” means a firearm which has ceased to be a firearm - or is a firearm only by virtue of the Firearms Act 1982 (readily convertible imitation firearms) - and has been rendered incapable of discharging any shot, bullet or other missile, but the way in which it has been made incapable does not meet the relevant technical specifications published by the Secretary of State for this purpose.
34. New subsection 8A(5) places the duty on the Secretary of State to publish a document setting out the technical specifications for the deactivation of weapons which apply.
35. Different technical specifications may apply to different types of weapon under new subsection 8A(6) and, under new subsection 8A(7), the Secretary of State may revise the technical specifications document and must publish the amended document including in it the date from which the specifications apply.
36. The technical standards for deactivating firearms which are currently in force in the UK³ are set out in the Implementing Regulation 2015/2403, which came into force on 8 April 2016. It should be noted that the deactivation standards set out in the Regulation do not cover all categories of firearm. Other categories of firearm therefore continue to be subject to deactivation standards in accordance with ‘*Specifications for the adaptation of shotgun magazines and the deactivation of firearms: revised 2010*’⁴. Such weapons should not to be considered as a ‘defectively deactivated firearm’. This offence only applies to the sale, gift or offer to sell/gift a defectively deactivated firearm. Accordingly, the possession of such weapons is not affected.

Law enforcement

37. Under new subsection 8A(1) of the Firearms (Amendment) Act 1988, it is an offence for a person who owns or claims to own a defectively deactivated weapon to:
 - make said weapon available for sale or as a gift to another person - new subsection 8A(1)(a), or
 - sell or give (as a gift) said weapon to another person - new subsection 8A(1)(b).

³ www.gov.uk/government/publications/the-adaptation-of-shotgun-magazines-and-the-deactivation-of-firearms-revised-2010, Home Office, 6 April 2016

⁴ www.gov.uk/government/publications/the-adaptation-of-shotgun-magazines-and-the-deactivation-of-firearms-revised-2010, Home Office.

38. New subsection 8A(9) defines the meaning of the term “sale” to include exchange or barter for the purposes of this section.
39. Under new subsections 8A(2) and 8A(3) the scope of the new offence is limited to activities undertaken within the EU. These subsections respectively provide for the exclusion from the scope of the offence, under new subsection 8A(1)(a), an offer to sell or give a defectively deactivated weapon to a person outside the EU provided that, under new subsection 8A(1)(b), if the sale or gift of a defectively deactivated weapon were to take place this would also be a transfer to a place outside the EU.
40. Museums which hold a museum firearms licence are excluded from the scope of the new offence under new subsection 8A(8), where the relevant weapon was deactivated prior to 8 April 2016. New subsection 8A(10) defines the term “museum firearms licence” to mean a licence granted by the Home Office or the Scottish Government under the Schedule to the Firearms (Amendment) Act 1988. Duly licensed museums can therefore offer to supply or give, and supply or give, defectively deactivated weapons (for example, weapons deactivated to obsolete technical specifications) to other licensed museums help preserve old weapons collected as part of our cultural heritage.

Maximum penalties

41. New subsection 8A(11) sets out the maximum criminal sanctions under the new offence.
42. In England and Wales, sanctions of up to 6 months’ imprisonment or a fine, or both, will apply on summary conviction. This will increase to 12 months when section 154(1) of the Criminal Justice Act 2003 comes into force.
43. In Scotland, maximum sanctions of up to 12 months’ imprisonment or a fine not exceeding the statutory maximum, or both, will apply on summary conviction.
44. Criminal penalties following conviction on indictment are custodial sentences of up to 5 years’ imprisonment or an unlimited fine, or both, in England, Wales and Scotland.

Section 129. Controls on ammunition which expands on impact

45. Section 129 of the 2017 Act amends subsection 5(1A)(f) of the 1968 Act to remove the prohibition on ammunition which incorporates a missile designed or adapted to expand on impact (‘expanding ammunition’) in respect of rifle ammunition only.
46. Section 5 of the 1968 Act specifically prohibits the possession, purchase or acquisition, and sale or transfer of expanding ammunition without the

authority of the Secretary of State in England and Wales, or Scottish Ministers in Scotland.

47. Under section 5A(4) of the 1968 Act, an exemption from the general prohibition of expanding ammunition is made for the following purposes:
- the lawful shooting of deer;
 - the shooting of vermin or other wildlife in land management;
 - the humane killing of animals; and,
 - the shooting of animals for the protection of other animals or humans.
48. To date, the police include a condition on certificates as required to give effect to this.
49. Subsection 129(2) of the 2017 Act amends subsection 5(1A)(f) of the 1968 Act to restrict the prohibition on expanding ammunition to ammunition designed to be used only with a pistol. Retaining these controls will continue to give effect to the European Council Directive on control of the acquisition and possession of weapons (91/477 EEC) which sets out that pistol and revolver ammunition with expanding projectiles are to be prohibited.
50. Consequently, section 9 of the Firearms (Amendment) Act 1997 is omitted, while subsection 5A(8)(a) of the 1968 Act is amended by subsection 129(3) of the 2017 Act for the exemption to continue to apply to expanding ammunition designed for use with a pistol.
51. Revisions to the general condition relating to expanding ammunition are being considered by the Firearms and Explosives Licensing Working Group. Forces will be notified in due course of the new condition which should be applied as and when a certificate is due for renewal or variation or for any other reason. Forces are not expected to recall certificates specifically for amendment.

Section 130. Authorised lending and possession of firearms for hunting etc.

52. Section 130 inserts new section 11A in the 1968 Act to provide for a new regime to permit the lawful borrowing and possession of a firearm by non-certificate holders on private land. There are also a number of other conditions that must be met.
53. New section 11A(1) provides that a non-certificate holder ('the borrower') may borrow and possess a rifle or a shotgun from another person ('the lender') on private premises lawfully only if they meet the following four conditions and if, in the case of a rifle, the borrower is aged 17 or over:
- (i) Under new section 11A(2), the borrowing and possession are for either hunting animals or shooting game or vermin, and/or for shooting at artificial targets – under subsections 11A(2)(a) and (b), respectively;

- (ii) Under new section 11A(3), the lender must be aged 18 or over, have a certificate for the borrowed firearm and either have the legal right to allow others to enter the premises for hunting animals or shooting game or vermin, or have a written authorisation from such a person to lend the rifle or shotgun on the premises;
- (iii) Under new section 11A(4), the borrower's possession and use of the rifle or shotgun must comply with the conditions placed on the lender's certificate; and
- (iv) Under new section 11A(5), the lender must be present during the period during which the rifle or shotgun is borrowed. Alternatively, the borrower must be in the presence of another person who is aged 18 or over and described under either subsection 11A(3)(c)(i) or (ii) of the 1968 Act, provided that they hold a certificate in respect of the borrowed rifle or shotgun borrowed – under subsections 11A(5)(a) or (b).

54. New subsection 11A(6) further provides for the lawful purchase or acquisition and possession of ammunition by the borrower of a rifle on the same premises if:

- The ammunition is for use with the same firearm;
- The ammunition purchased or acquired by the borrower does not exceed the quantity of ammunition that the lender is authorised to possess at the time; and
- The borrower's possession and use of the ammunition complies with the conditions placed on the lender's certificate.

55. In consequence of these new provisions, section 11(5) of the 1968 Act and section 16 of the Firearms (Amendment) Act 1988 will no longer apply.

Section 133. Guidance to police officers in respect of firearms

56. Subsection 133(2) of the 2017 Act inserts new section 55A in the 1968 Act which provides the power to the Secretary of State to issue, revise and publish "statutory" guidance to chief officers of police on the exercise of their functions under, or in connection with, that Act. When the guidance is issued, new subsection 55A(4) places a duty on chief officers of police to have regard to it when exercising their functions.

57. Before issuing the guidance, the Secretary of State must consult the National Police Chiefs' Council and the chief constable of the Police Service of Scotland before issuing guidance under subsection 55A(5)(a) and (b), respectively. The Government also intends to consult publicly on the contents of the guidance, which is expected to be published later this year.

58. The Home Office's non-statutory "Guide on Firearms Licensing Law" will remain in its current form until the statutory guidance is published.

Annex A

New offence codes and sanctions

127	Possession of articles for conversion of imitation firearms	81/90
128	Controls on defectively deactivated weapons	81/91

Annex B

Sources of further guidance

- The Policing and Crime Act 2017 and Explanatory Notes:
www.legislation.gov.uk/ukpga/2017/3/contents/enacted
- Home Office guide on firearms licensing law:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/518193/Guidance_on_Firearms_Licensing_Law_April_2016_v20.pdf
- Home Office Circular 031 / 2007 “The Violent Crime Reduction Act 2006 (Commencement No 3) Order 2007: firearms measures”:
www.gov.uk/government/publications/the-violent-crime-reduction-act-2006-commencement-no-3-order-2007-firearms-measures, Home Office, 28 September 2007
- Law Commission publications available at:
<http://www.lawcom.gov.uk/firearms-making-the-law-more-balanced-and-more-effective/>

Annex C

Policy contacts for further advice

Policy contacts	Telephone	E-mail
Team	020 7035 3538	Firearms@homeoffice.gsi.gov.uk