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Reforming the law

## Firearms Law – Reforms to Address Pressing Problems

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# **The Law Commission**

(LAW COM No 363)

## **FIREARMS LAW – REFORMS TO ADDRESS PRESSING PROBLEMS**

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The Right Honourable Lord Justice Bean, *Chairman*  
Professor Nick Hopkins  
Stephen Lewis  
Professor David Ormerod QC  
Nicholas Paines QC

The Chief Executive of the Law Commission is Elaine Lorimer.

The Law Commission is located at 1st Floor, Tower, 52 Queen Anne's Gate, London SW1H 9AG.

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# THE LAW COMMISSION

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# THE LAW COMMISSION

## FIREARMS LAW – REFORMS TO ADDRESS PRESSING PROBLEMS

*To the Right Honourable Michael Gove MP, Lord Chancellor and Secretary of State for Justice*

### CHAPTER 1 INTRODUCTION

#### BACKGROUND

- 1.1 When we consulted on the content of the Law Commission's 12th Programme of Law Reform, a number of respondents suggested that the law regulating firearms was deeply problematic and in need of reform.
- 1.2 The National Ballistics Intelligence Service stated that:

The legislation presents a highly complex and confused picture. In addition, there are a number of areas in some of the older Acts that whilst fit for purpose when enacted, now produce serious anomalies.
- 1.3 The Metropolitan Police Service's Forensic Firearms Unit observed that:

The absence of definitions enables legal loopholes to be exploited and allows misapprehensions to exist amongst practitioners. It also permits national inconsistencies by allowing different interpretations of the law in the context of individual cases and by different forensic providers.
- 1.4 Organisations representing the licensed firearms community also expressed deep dissatisfaction with the current law – for example, the British Shooting Sports Council told us that the law is in need of both clarification and simplification and provided us with some examples of problems they believe need to be addressed.
- 1.5 We agreed the following terms of reference with the Home Office:
  - (1) To review the law relating to firearms with a view to understanding its limitations and the practical problems they cause or exacerbate. To publish a scoping paper setting out those problems and a range of options for further work, intended to inform recommendations for reform.
  - (2) The review will have regard to advances in firearms technology and their impact on effective firearms legislation, including but not limited to 3D printing. Any proposals for reform will aim to take account of contemporary firearms and their use, both legitimate and criminal, and provide sufficient flexibility for likely future developments.



(3) When conducting the review, the Law Commission will keep in mind the principle that all regulation should be fair and effective, and where appropriate the review will consider the simplification or reduction of over-complex or unnecessary regulation.

(4) This review will not be concerned with either the existing firearms licensing regime, or sentencing tariffs for firearms offences except where some consideration of them is necessary to analyse properly the rest of the relevant law.<sup>1</sup>

1.6 Work commenced on the project in January 2015. In July 2015 we published a scoping consultation paper on firearms law, which examined the most pressing problems with the law on firearms and provisionally proposed some ways to solve them.<sup>2</sup>

### **PROBLEMS WITH THE LAW**

1.7 The current law regulating firearms is contained primarily within the Firearms Act 1968. Further provisions, however, are to be found in an additional 33 Acts of Parliament. This number does not include the numerous pieces of secondary legislation that regulate the acquisition and possession of firearms.

1.8 The current legislative landscape has been the subject of a great deal of criticism, in particular because:

- (1) there is a lack of coherence between the 34 different sets of legislative provisions;
- (2) loopholes are being exploited by those with criminal intent;
- (3) the law is difficult to find, given that it is scattered across numerous statutes;
- (4) key terms within the legislation have been left undefined; and
- (5) overall, the law is so complex that even those who deal with it every day struggle to understand aspects of it.

1.9 The primary Act, the Firearms Act 1968, was a consolidating measure. The 1968 Act was hurried through Parliament. It has been suggested that the Act was enacted without sufficient consultation and preparation first being undertaken<sup>3</sup> – this perhaps explains some of the Act's deficiencies. Additionally, it incorporates provisions that have their origin in the Pistols Act 1903. It is questionable whether some of the language used is still fit for purpose over 100 years after it was first enacted.

<sup>1</sup> Firearms licensing was subject to a recent review by Her Majesty's Inspectorate of Constabulary. Available at <https://www.justiceinspectors.gov.uk/hmic/our-work/firearms-licensing/> (last accessed 7 December 2015).

<sup>2</sup> Firearms Law: A Scoping Consultation Paper (2015) Law Commission Consultation Paper 224, <http://www.lawcom.gov.uk/project/firearms/>.

<sup>3</sup> C Greenwood, *Firearms Control* (1972) p 79.

- 1.10 Public confidence in the criminal justice system is severely undermined when defendants walk free because the statutes designed to criminalise their behaviour are not fit for use in the modern age. It is further undermined when those who make every effort to comply with the law inadvertently commit an offence because of unduly complex and technical drafting.
- 1.11 As our scoping consultation paper explained, these issues are not academic: they have tangible consequences both in terms of public safety and cost.

### **THE SCOPING CONSULTATION PAPER**

- 1.12 In our scoping consultation paper we examined the following issues and provisionally proposed solutions to them:
- (1) the failure in the Firearms Act 1968 to define “lethal”;
  - (2) the failure in the Firearms Act 1968 to define “component part”;
  - (3) the failure in the Firearms Act 1968 to define “antique”;
  - (4) the failure in the Firearms (Amendment) Act 1988 to impose a legal obligation for firearms to be certified as having been deactivated to a Home Office approved standard; and
  - (5) the fact that the test for “ready convertibility” in the Firearms Act 1982 does not reflect the ability in contemporary society to convert imitation firearms into live firearms.
- 1.13 We also examined the more systemic problems with the law governing the acquisition and possession of firearms and provisionally proposed codifying the law to remedy them. The final chapter of our scoping consultation paper examined some further problems that we also believed could be solved in a full scale codification exercise.
- 1.14 This report sets out some of the responses to our consultation and makes a number of recommendations.

### **THE CONSULTATION PROCESS**

- 1.15 We undertook a very thorough consultation exercise between July and September 2015, although we continued to accept responses after this date. We received 205 responses to our scoping consultation paper. Respondents ranged from individuals to representative organisations, experts, the Crown Prosecution Service and the police.
- 1.16 We attended a significant number of consultation meetings both within London and elsewhere, meeting dozens of stakeholders. These ranged from small meetings to large scale conferences. We held a symposium at Westminster University in September 2015, to give stakeholders the opportunity to discuss our provisional proposals in detail. This was attended by over 100 delegates.

- 1.17 To ensure we had a practical understanding of the issues, we visited both Proof Houses and also had numerous meetings with forensic firearms experts.<sup>4</sup>

## **ACKNOWLEDGEMENTS**

- 1.18 Producing this report would not have been possible without the wealth of experience and expertise that our stakeholders shared with us. We are grateful for the time and effort so many individuals spent in giving us practical insight into firearms. In particular, we would like to thank the experts, representatives of the police, practitioners and representatives of interests groups we have had informal discussions with to date. These include Chief Constable Andy Marsh and Mark Groothuis of Hampshire Constabulary; Detective Chief Superintendent Joanne Chilton and Martin Parker of NaBIS; Detective Chief Superintendent Gordon Allison, Detective Inspector Paul Dorey and Detective Inspector Rebecca Reeves of Trident Gang Crime Command; Alice Walters, Fiona Ritchie, Tony Miller and the rest of the team at the Metropolitan Police Forensic Firearms Unit; Chris Lynn and Andy Beaufoy of the National Crime Agency; HMI Stephen Otter and Mark Stainforth of Her Majesty's Inspectorate of Constabulary; Ian Elkins, Kirsten Foster and Nick Coates of the CPS; HHJ Nicholas Hilliard QC and the judges of the Central Criminal Court; Richard Whittam QC and the Treasury Counsel of the Central Criminal Court; John Batley of the Gun Trade Association; David Penn of the British Shooting Sports Council; Bill Harriman and the British Association for Shooting and Conservation; Derek Stimpson of the Historical Breechloading Smallarms Association; Graham Downing and James Legge of the Countryside Alliance; Mark Murray-Flutter of the Royal Armouries; Mark Mastaglio of Forensic Firearms Consultancy; Gill Marshall-Andrews and Professor Peter Squires of the Gun Control Network; Frank Bothamley, Dan Collins and Adrian Whiting of UKARA; Philip Alexander of Key Forensic Services Ltd; Rudi Fortson QC of 25 Bedford Row; Nick Doherty of 4 Kings Bench Walk; Peter Glenser of 9 Bedford Row; Laura Saunbury of Lewis Nedas Solicitors; Kevin O'Callaghan; Richard Mabbit of the Worshipful Company of Gunmakers; Roger Hancox and Sam Perry of the Birmingham Proof House; and Barry Johnson of the Deactivated Weapons Association.

## **STRUCTURE OF THIS REPORT**

- 1.19 This report follows the structure of our scoping consultation paper: it is divided thematically. Each of chapters 2 to 6 sets out key problems with a different aspect of the law, examines consultees' responses to our consultation questions and provisional proposals and makes final recommendations. Chapter 7 examines the response of consultees to our provisional proposal that the law relating to firearms be codified. Chapter 8 lists our recommendations and chapter 9 contains a glossary.

<sup>4</sup> By virtue of the Gun Barrel Proof Acts 1868 and 1978, the primary role of the London and Birmingham Proof Houses is to ensure firearms are safe before they are sold. This is achieved by test firing them with a greater charge than they are designed to use.

# CHAPTER 2

## LETHALITY

### INTRODUCTION

- 2.1 Section 57(1) of the Firearms Act 1968 defines a firearm as a “lethal barrelled weapon from which any shot, bullet or other missile can be discharged”. Unless a weapon is lethal, it will not be a “firearm” for the purposes of the Firearms Act 1968. The problem we examined in chapter 2 of our scoping consultation paper is the fact that the legislation fails to specify what lethal means in this context, or how lethality ought to be determined.

### PROBLEMS WITH THE CURRENT LAW

- 2.2 In the absence of legislative guidance, the courts have failed to define the term “lethal” with any degree of precision. The current test can be found in *Thorpe*.<sup>1</sup> In that case the judge, Mr Recorder Langley, instructed the jury that “The test is this. It must be capable of causing injury from which death might – and the word is ‘might’ – result if it is misused.” This direction was approved by the Court of Appeal. This test, however, is very imprecise. Chapter 2 of our scoping consultation paper provisionally proposed a way to remedy this imprecision by using a test based on the kinetic energy of a projectile fired from the weapon at the moment it leaves the barrel as a proxy for “lethal”. We asked consultees for their views on what that muzzle kinetic energy threshold ought to be.

### DEFINE “LETHAL” BY REFERENCE TO A FIXED MUZZLE KINETIC ENERGY<sup>2</sup>

- 2.3 In our scoping consultation paper we provisionally proposed defining “lethal” by reference to a fixed muzzle kinetic energy.<sup>3</sup>
- 2.4 At the outset we believe it is important to clarify that the muzzle kinetic energy thresholds we consulted upon would act as *proxies* for lethality. If a firearm discharges a projectile above one of the muzzle kinetic energy thresholds set out in our scoping paper, under our provisional proposal it would be *deemed* to be lethal despite the fact there might be disagreement over whether it is in fact capable of inflicting a wound from which someone could die. This would be an exhaustive test in the sense that a weapon that discharged a projectile below the kinetic energy threshold would be conclusively deemed not to be lethal.

### Consultation

- 2.5 A significant number of consultees agreed with this provisional proposal. For example, the Scottish Association for Country Sports stated:

<sup>1</sup> [1987] 1 WLR 383, [1987] 2 All ER 108.

<sup>2</sup> Provisional proposal 1.

<sup>3</sup> As we explained in detail at paragraph 2.20 of our scoping consultation paper, muzzle kinetic energy provides an indication of the overall power of a missile as it leaves the barrel of a weapon.

[We] agree that the meaning of lethal does require definition and a sensible muzzle kinetic energy level would be an appropriate means [of] achieving this.

- 2.6 The Crown Prosecution Service suggested that this approach would be a way of reducing the cost of prosecutions:

The CPS considers it to be important to establish a lethality threshold which is standard across all firearms. We anticipate that a standard lethality threshold would be easy to understand and lead to a consistent approach and interpretation by practitioners; would increase public confidence in terms of safety; and may reduce the unnecessary attendance of expert witnesses at court.

- 2.7 We agree with this assessment because anecdotal evidence suggests that a substantial amount of court time is devoted to resolving the issue of whether a firearm is “lethal”.
- 2.8 That is not to say that our provisional proposals would eliminate the need for expert evidence altogether. They would, however, facilitate the giving of expert evidence as there would be a common point of reference for the experts. The question would simply be whether the weapon in question discharges a projectile above a specified kinetic energy. Experts tell us that this would be a relatively simple enquiry. At present, because there is no agreed definition, courts are faced with different experts offering opinions on lethality using completely different tests.
- 2.9 We note that some consultees favoured moving away from the concept of lethality altogether, following the approach taken in New South Wales, Australia, for example.<sup>4</sup> The Gun Trade Association expressed the view that this approach would be a way of avoiding the difficulties associated with defining a firearm by reference to lethality.

### **Discussion**

- 2.10 There was very little disagreement with our provisional proposal that the term “lethal” be defined by reference to a specified muzzle kinetic energy threshold.
- 2.11 Some consultees disagreed with this provisional proposal as they were under the misapprehension that what we had provisionally proposed was that any firearm above the lethality threshold ought to be held on certificate. This is not, however, the case. The Firearms (Dangerous Air Weapons) Rules 1969<sup>5</sup> provide that only those air pistols with a kinetic energy above 6 ft lb and air rifles above 12 ft lb must be held on a firearm certificate.<sup>6</sup>

<sup>4</sup> New South Wales Firearms Act 1996, s 4.

<sup>5</sup> SI 1969 No 47.

<sup>6</sup> Converted into SI units, these figures are 8.13 joules and 16.27 joules. The conversion factor from foot-pounds to joules is to multiply by 1.3558.

- 2.12 As we explained in our scoping consultation paper, our provisional proposal would not alter this situation. It is recognised in the Firearms Act 1968 that a weapon can be “lethal” and yet not subject to the licensing regime.
- 2.13 Under our provisional proposal, a weapon below the lethality threshold would not be a firearm for the purposes of the Firearms Act 1968. A weapon above the lethality threshold but below 6 ft lb or 12 ft lb (as appropriate) would be a firearm, but would not need to be held on certificate. A weapon above 6 ft lb or 12 ft lb would need to be held on certificate.
- 2.14 Whilst we recognise that the current state of the law may appear unsatisfactory to some, we reiterate that an assessment of the licensing regime falls outside the scope of the project. Further, suggestions to remove the concept of lethality from the legislation altogether would entail a radical change to the current legislative regime.
- 2.15 Overall, we take the view that the definition of “firearm” contained in section 57(1) of the Firearms Act 1968 is longstanding and is one with which many are familiar. We, therefore, recommend retaining the reference to “lethal” in the legislation and specifying a muzzle kinetic energy above which a firearm would be *deemed* to be lethal.

### **Recommendation 1**

- 2.16 **We recommend that section 57(1) of the Firearms Act 1968 be amended to define “lethal” by reference to a specified muzzle kinetic energy.**

### **WHAT SHOULD THE MUZZLE KINETIC ENERGY THRESHOLD BE?<sup>7</sup>**

- 2.17 Our scoping consultation paper asked for consultees’ views on two options with three muzzle kinetic energy thresholds: 1 joule for all weapons or 1.3 joules for automatic weapons / 2.5 joules for single shot weapons.

### **Consultation**

- 2.18 There was disagreement amongst consultees on which of the thresholds set out in our scoping consultation paper is the most suitable. In addition, some consultees, such as the British Association for Shooting and Conservation and the Metropolitan Police Service Forensic Firearms Unit, suggested that neither threshold is appropriate as neither is scientifically accurate as a test for what is in fact lethal.
- 2.19 It is clear that the question of whether a projectile discharged from the barrel of a weapon at a given kinetic energy is in fact lethal (in the sense of it being capable of causing injury that could lead to death) is a controversial question that depends upon a number of scientific variables.<sup>8</sup>
- 2.20 We were, therefore, not surprised that consultees expressed disagreement on the suitability of the thresholds we set out in our scoping consultation paper. It is

<sup>7</sup> Consultation question 1.

<sup>8</sup> For example, the material the projectile is made from, the distance from the target, the vulnerability of the target material etc.

for this reason we have recommended that a weapon should be *deemed* to be lethal if it discharges a projectile above a fixed muzzle kinetic energy. We believe this is a way of overcoming the lack of consensus amongst the scientific community on this first issue.

- 2.21 Many consultees favoured the threshold being set at 1 joule. The Scottish Government, which is in favour of this threshold, stated that:

This ties in with legislation in Scotland, Northern Ireland and the Republic of Ireland ... the 1.3 and 2.5 joule levels have only been applied to "BB" guns in the past and are not considered appropriate for other firearms.

- 2.22 Similar points were made by the Gun Trade Association:

The lower the muzzle energy the less likely [firearms] are to cause injury and risk bringing the gun trade into disrepute for selling items which are intended to be used in contact games and sports.

Further to this, and very important, the Scotland Air Weapons Licensing Act is now enshrined in law and determines any air powered item above 1 joule muzzle energy as an air weapon. In addition, any airgun capable of a muzzle energy of 1 joule or more is subject to certification in Northern Ireland.

- 2.23 If a muzzle kinetic energy threshold higher than 1 joule were to be adopted, this would lead to the situation that some air weapons that must be held on certificate in both Scotland and Northern Ireland would not be "firearms" for the purposes of the Firearms Act 1968. We agree that such an outcome would be undesirable.

- 2.24 Other consultees, including the National Ballistics Intelligence Service and the Countryside Alliance, suggested that a higher threshold than 1 joule was more appropriate.

- 2.25 Those consultees with an interest in airsoft skirmishing, in particular both the United Kingdom Airsoft Retailers' Association and the United Kingdom Airsoft Players' Union, expressed concern about the implications a 1 joule threshold would have for the trade in airsoft guns and the consequential impact upon numerous businesses.<sup>9</sup> This is because it would mean that airsoft guns would have to be sold on a face-to-face basis by Registered Firearms Dealers.<sup>10</sup>

## **Discussion**

- 2.26 We take the concerns raised by members of the airsoft skirmishing community seriously and will consider them in greater detail later on. On balance, however, we agree with the Scottish Government on the need to ensure harmonisation between the approaches taken in different parts of the United Kingdom. If a threshold higher than 1 joule were to be adopted, it could have negative

<sup>9</sup> Airsoft skirmishing involves the acting out of military or law enforcement scenarios for the purposes of recreation.

<sup>10</sup> Violent Crime Reduction Act 2006 s 32 mandates that sale or transfer of air weapons in the course of trade or business must take place on a face-to-face basis.

consequences in Scotland. This would frustrate our efforts to make the law simpler and more coherent.

- 2.27 Aside from this point, there was support from consultees who favoured a 1 joule threshold on the basis that it would be simple to measure and that it is relatively easy to distinguish those guns that discharge a projectile above 1 joule from those that do not.
- 2.28 In addition, as the Scottish Government pointed out, there might be public safety concerns in setting the lethality threshold higher than 1 joule. Although this is a deeming provision, we want a threshold which does offer the protection which is the purpose of the term “lethal” in the Act. As we are unaware of anyone being injured through misuse of an air weapon at or below the 1 joule threshold, we consider this an appropriate method of achieving our aim.

### **Recommendation 2**

- 2.29 **We recommend that for the purposes of section 57(1) a weapon should be considered lethal if it is capable of discharging a projectile with a kinetic energy of more than 1 joule as measured at the muzzle of the weapon for the purposes of section 57(1) of the Firearms Act 1968.**
- 2.30 A number of stakeholders pointed out that if muzzle kinetic energy were to be relied upon, it would be necessary to formulate a standardised way of measuring that value in order to maintain consistency. We agree with this observation and believe that an appropriate way of achieving consistency would be to include guidance on how muzzle kinetic energy ought to be tested within revised versions of the Home Office *Guide on Firearms Licensing Law*.

### **WOULD A 1 JOULE THRESHOLD HAVE A DISPROPORTIONATE IMPACT UPON THE LEGITIMATE TRADE IN AIR WEAPONS?<sup>11</sup>**

- 2.31 A majority of consultees who responded to this consultation question did not believe a 1 joule threshold would have a disproportionate impact upon the legitimate trade in air weapons.
- 2.32 Those consultees who answered this question in the affirmative were under the misapprehension that any air weapon above 1 joule would need to be held on certificate. As we explained earlier at para 2.12 this is not in fact the case.

### **IF THE THRESHOLD OF LETHALITY WAS SET AT 1 JOULE SHOULD THERE BE A SPECIFIC EXEMPTION FOR AIRSOFT GUNS?<sup>12</sup>**

- 2.33 As we have already pointed out, groups representing both airsoft retailers and players suggested that a 1 joule threshold would be detrimental to the trade in airsoft guns for a number of reasons. It is important for us to point out that we are aware of the fact that the use of airsoft guns is not confined to airsoft skirmishers.

<sup>11</sup> Consultation question 2.

<sup>12</sup> Consultation question 3.



The analysis in this section is applicable to anyone who uses an airsoft gun in furtherance of a “permitted activity”.<sup>13</sup>

- 2.34 First, the United Kingdom Airsoft Retailers’ Association estimated that 85% of its members’ sales take place online and a requirement for airsoft guns to be sold face-to-face would undermine the viability of a significant number of retail businesses.
- 2.35 Secondly, the lawfulness of possessing a realistic imitation firearm (which includes airsoft guns), is dependent upon the possession of third party liability insurance.<sup>14</sup> Both the United Kingdom Airsoft Retailers’ Association and the United Kingdom Airsoft Players’ Union pointed out that an insurance company would be unlikely to insure an activity that involves players shooting each other with what the law classifies as firearms.
- 2.36 Thirdly, the United Kingdom Airsoft Players’ Union also made the point that many airsoft guns are capable of automatic fire and have a muzzle kinetic energy of more than 1 joule. If a 1 joule threshold were to be adopted it was suggested that this would have the consequence that such airsoft guns would become prohibited weapons by virtue of section 5(1)(a) of the Firearms Act 1968.<sup>15</sup> Possession of such a firearm without the authority of the Secretary of State carries a mandatory minimum five year prison sentence. The United Kingdom Airsoft Players’ Union said that it is highly questionable that Parliament intended for such low powered air weapons to be classified as prohibited weapons.
- 2.37 Finally, both the United Kingdom Airsoft Retailers’ Association and the United Kingdom Airsoft Players’ Union suggested that there are no reported instances of potentially deadly injury occurring through misuse of an airsoft gun.
- 2.38 Consultees from outside the airsoft skirmishing community also stated that there ought to be some form of exemption for airsoft if a 1 joule threshold were to be adopted. For example, the Crown Prosecution Service said:

<sup>13</sup> A “permitted activity” is defined in the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 as “the acting out of military or law enforcement scenarios for the purposes of recreation”.

<sup>14</sup> Airsoft guns are classified as realistic imitation firearms by virtue of the Violent Crime Reduction Act 2006, s 36. A person is guilty of an offence if he or she: manufactures a realistic imitation firearm; modifies an imitation firearm so that it becomes a realistic imitation firearm; sells a realistic imitation firearm or; brings or causes to be brought into the United Kingdom a realistic imitation firearm. By virtue of s 36(3), the Secretary of State by way of regulation may provide for exemptions from the offences in s 36(1). The Secretary of State exercised this power by enacting the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007. Under these regulations, it is a defence if a person charged with an offence under section 36 has only made a realistic imitation firearm available for a specified purpose. These purposes are the organisation or holding of a “permitted activity” for which there is public liability insurance or the purposes of display at a permitted event. A “permitted activity” is defined as “the acting out of military or law enforcement scenarios for the purposes of recreation”.

<sup>15</sup> Firearms Act 1968 s 5(1)(a) provides that “any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger” is a prohibited weapon and therefore unlawful to possess without the authority of the Secretary of State.

If the threshold of lethality was set at 1 joule, the CPS considers it appropriate for there to be a specific exemption for the airsoft trade. Such an exemption, similar to that already contained within the Violent Crime Reduction Act 2006, would allow the operation of the 1 joule setting for lethality for all other firearms, without having a disproportionate impact on the airsoft trade.

- 2.39 This view was also expressed by, amongst others, Her Majesty's Council of Circuit Judges, the Gun Trade Association and the British Association for Shooting and Conservation.

### **Discussion**

- 2.40 In evaluating whether there ought to be an exemption for airsoft guns, we agree that it is necessary to consider the impact imposing a 1 joule threshold might have on businesses. On the basis of information provided by representative organisations, it is clear that there could be quite a significant impact.

- 2.41 We therefore agree that classifying airsoft guns as firearms (because they have a muzzle kinetic energy above 1 joule) could have a number of undesirable consequences. These would appear to be disproportionate given that it is unclear whether there would be any corresponding benefit to public safety: we are not aware of any reported instances of serious injury being caused through misuse of an airsoft gun.

- 2.42 We do not believe, therefore, that creating an exemption for airsoft guns would be detrimental to public safety and believe this would be a proportionate approach.

### **Recommendation 3**

- 2.43 **We recommend the creation of an exempting provision in the Act exempting airsoft guns from the scope of the 1 joule kinetic energy threshold which deems a barrelled weapon to be lethal.**

- 2.44 In making this recommendation, we believe it is important to examine how such an exemption could be crafted. Our aim is to minimise the impact upon the airsoft trade whilst also ensuring public safety is not compromised.

- 2.45 We believe that a suitable approach is to define in law what an airsoft gun is. Currently there is no legal definition. The United Kingdom Airsoft Retailers' Association suggested the following definition:

An airsoft imitation firearm is an imitation firearm (whether a realistic imitation firearm or not) designed for use in permitted activities<sup>16</sup> and which is;

(1) Only capable of discharging a spherical plastic pellet not exceeding 8mm in diameter and,

<sup>16</sup> A "permitted activity" is defined in the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 as "the acting out of military or law enforcement scenarios for the purposes of recreation".

(2) When discharging such a pellet does not impart kinetic energy, measured at the muzzle, which exceeds 2.5 joules if firing single shots with each operation of the trigger or 1.3 joules if firing successive shots whilst the trigger is held.

- 2.46 We believe that this definition creates an exemption for airsoft guns without compromising public safety. Public safety is ensured in three ways. First, there is research to suggest that these are safe kinetic energy thresholds within which airsoft guns can operate;<sup>17</sup> secondly, the definition limits airsoft guns to those guns that are only capable of firing small plastic pellets; thirdly, it defines airsoft guns by reference to the “permitted activities” listed in The Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007, placing a constraint on the types of activity airsoft guns can be used for.
- 2.47 The other public safety benefits are that this definition places a legal limit upon the maximum muzzle kinetic energy at which an airsoft gun may operate. Currently no such limit exists. It would also limit the exemption to those guns that use plastic, as opposed to metal pellets. Again, there is currently no legal restriction on the type of ammunition an airsoft gun may fire.
- 2.48 Having consulted other stakeholders on the merits of this tentative definition, we are confident that it is sufficiently precise to avoid unintended consequences.

#### **Recommendation 4**

- 2.49 **We recommend that if a deemed lethality threshold of 1 joule kinetic muzzle energy be created, a statutory exemption for airsoft guns should also be created. The exemption should be defined:**
- (1) by reference to safe kinetic energy thresholds for airsoft guns to operate within;**
  - (2) so as to exempt those guns that are only capable of firing small plastic pellets; and**
  - (3) having regard to the “permitted activities” listed in The Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007.**

<sup>17</sup> See letter sent by then-Deputy Chief Constable Andy Marsh to firearms licensing managers. Available at: [http://www.airsoft-forums.co.uk/uploads/lethality\\_UKARA.pdf](http://www.airsoft-forums.co.uk/uploads/lethality_UKARA.pdf) (last visited 7 December 2015).

# CHAPTER 3

## COMPONENT PARTS

### INTRODUCTION

- 3.1 Section 57(1)(b) of the Firearms Act 1968 provides that the definition of “firearm” includes “any component part of such a lethal or prohibited weapon”. Whenever the legislation refers to a firearm, therefore, it also refers to a component part of a firearm. This means that the component parts of rifles, for example, must be included as a separate entry on a firearm certificate.<sup>1</sup> Failure to do so constitutes an offence under section 1 of the Firearms Act 1968.
- 3.2 The issue that was identified for us as a significant problem is that the legislation fails to define the term “component part”. As we discussed fully in our scoping consultation paper the courts have decided that the meaning of this term is a question of fact for the jury. In *R v Secretary of State for the Home Department, ex parte Impower Ltd*, Mr Justice Jowitt stated that these are “ordinary English words”.<sup>2</sup> More recently, in *Rogers*, the Court of Appeal quashed the defendant’s conviction on the basis that the judge should have left to the jury the issue of whether the items in his possession were component parts given that it is solely a question for them.<sup>3</sup>

### PROBLEMS WITH THE CURRENT LAW

- 3.3 In our scoping consultation paper we examined how the current state of the law creates unnecessary confusion for both the police and border agencies in addition to the licensed firearms community. In relation to the former, there may be uncertainty over whether an item uncovered at the border requires a firearm certificate and an import licence before it can lawfully be imported. Similarly, members of the licensed firearms community might inadvertently find themselves in possession of something they do not have the authority to possess. This might occur, for example, if a person lawfully in possession of a rifle wished to hold spare parts for it. If that person wished to possess a spare firing pin, for example, there is currently ambiguity over whether it must be included as a separate entry on his or her firearm certificate.
- 3.4 A substantial number of consultees agreed that there is a significant lack of clarity in this area. For example, the Council of Her Majesty’s Circuit Judges stated that reform would:
- make it far easier to direct juries on this and will introduce much-needed clarity and consistency into the law.
- 3.5 Both the Countryside Alliance and the Gun Trade Association, amongst other organisations representing the licensed firearms community, agreed that there should be a definition of component part in statute.

<sup>1</sup> This would occur, for example, if an individual wished to keep spare parts to replace ones that became damaged.

<sup>2</sup> CO/539/98.

<sup>3</sup> [2011] EWCA Crim 1459.

- 3.6 The London Criminal Courts Solicitors' Association stated that the current state of the law has negative consequences for members of the licensed firearms community:

[the current law] does not assist the legitimate shooting community, whether firearms dealers or individual certificate holders, in providing them with any clarity or certainty in advance as to whether an item is or is not a component part, so that they can attempt to stay on the right side of the law. Leaving it open to the jury to decide on the facts of the particular case also overlooks the personal human cost to those unfortunate individuals (and their families), who find themselves facing criminal prosecution, and quite possibly the potential loss of their good character, their livelihood and income, and perhaps even their liberty, while the lawyers and the expert witnesses have an esoteric debate about the interpretation of the law.

- 3.7 In its consultation response, the British Association of Shooting and Conservation queried the extent to which this omission does in fact cause difficulties in practice. This was on the basis that the licensed firearms community understands component part to be synonymous with "pressure bearing part". That definition, on which it seems the licensed firearms community is placing reliance, does not, however, have the authority of law. This means that a prosecutor (and ultimately a jury) would be free to attribute any meaning to component part they see fit.

#### **MAKING THE FIREARMS CONSULTATIVE COMMITTEE'S LIST STATUTORY<sup>4</sup>**

- 3.8 In order to remedy the lack of certainty surrounding this term, our scoping consultation paper suggested that listing those parts that ought to be considered "component parts" for the purposes of the law would maximise certainty.
- 3.9 Therefore, in our scoping consultation paper we provisionally proposed that the Firearms Consultative Committee's list of component parts should be made statutory.<sup>5</sup> As a consequence of this, the term "component part" would be defined as:
- (1) The barrel, chamber, cylinder.
  - (2) Frame, body or receivers upper and lower.
  - (3) Breech block, bolt or other mechanism for containing the charge at the rear of the chamber.
- 3.10 This would ensure that those parts that have the potential for criminal misuse are subject to control whilst not requiring every washer and screw to be included as a separate entry on a firearm certificate.

<sup>4</sup> Provisional Proposal 2.

<sup>5</sup> The Firearms Consultative Committee was created by section 22 of the Firearms (Amendment) Act 1988. The list was contained within the Committee's Ninth Report, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235402/0977.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235402/0977.pdf) (last visited 9 December 2015), Annex C, para 6 (p 41).

- 3.11 We did not propose including the phrase, which the Firearms Consultative Committee had included, “any other part of the firearm upon which the pressure caused by firing the weapon impinges directly” on the basis that it would undermine our goal of maximising clarity.

### **Consultation**

- 3.12 A significant number of consultees agreed that the Firearms Consultative Committee’s list ought to be made statutory. The National Ballistics Intelligence Service said that, “This proposal is fully supported”. The Crown Prosecution Service also agreed with this provisional proposal.

- 3.13 Consultees from the licensed firearms community also expressed agreement with this provisional proposal. For example, firearms blogger Gareth Corfield stated:

The definition in this proposal avoids the pitfalls of an imprecise definition, or a definition which would leave the question open to be decided by a jury, with the inevitable uncertainty inherent in that system. The approach outlined in the consultation scoping paper at paragraph 3.27 is broadly sensible and ensures public safety while not inadvertently criminalising members of the licensed firearms community.

- 3.14 The Countryside Alliance made the point that the cylinder and breech are technically voids rather than parts but did:

accept within the definition of ‘component parts’ the barrel, cylinder, frame, body or receivers upper and lower, breech block, bolt or other mechanism for containing the charge at the rear of the chamber.

- 3.15 A number of consultees, for example the Scottish Government and the Gun Trade Association, agreed with our provisional proposal to enshrine the Firearms Consultative Committee’s list into law but queried whether the term “any other pressure bearing part” ought to be included. As the scoping consultation paper explained, we suggested that including the term would undermine the certainty and clarity we are aiming to achieve. This view was echoed by the London Criminal Courts Solicitors’ Association, who stated:

On balance we would therefore agree that component parts should be defined by enshrining in law the first three elements of the FCC’s list, and excluding the fourth part, i.e. any other “pressure bearing part” since that in itself is a term which carries difficulties in defining and interpreting it.

- 3.16 In its response, the Scottish Government also accepted that the term “pressure bearing part” is vague and could undermine certainty.

- 3.17 In their consultation responses, the Countryside Alliance and the National Rifle Association queried at what stage in the manufacturing process something would be capable of constituting, for example, a barrel and therefore a component part. Under our approach, a part would only be a “component part” if it was sufficiently far along the manufacturing process that it could accurately be described as a barrel, frame etc. and is capable of fulfilling its function as part of a lethal

barrelled weapon. This would ultimately be a question of fact for the jury to resolve.

### **Discussion**

- 3.18 Consultation responses supported the view that listing those parts that ought to be considered “component parts” for the purposes of the law would maximise certainty. Having a list would also ensure that those parts that have the potential for criminal misuse are subject to control whilst not requiring every washer and screw to be included as a separate entry on a firearm certificate. We believe that this approach is a proportionate one.
- 3.19 On balance, consultees agreed that giving legal effect to the Firearms Consultative Committee’s list will bring much-needed clarity for both the licensed firearms community and law enforcement.

### **Recommendation 5**

- 3.20 **We recommend that the term “component part” in the Firearms Act 1968 be defined as:**
- (1) The barrel, chamber, cylinder.**
  - (2) Frame, body or receivers;**
  - (3) Breech block, bolt or other mechanism for containing the charge at the rear of the chamber.**

### **GIVING THE SECRETARY OF STATE THE POWER TO AMEND THE LIST<sup>6</sup>**

- 3.21 In keeping with the recommendations in the Firearms Consultative Committee’s Ninth Report, we also provisionally proposed giving the Secretary of State the power to amend the list by way of statutory instrument.

### **Consultation**

- 3.22 Consultees disagreed on the merits of this provisional proposal. A significant number of those who did agree added the caveat that the power should only be exercised to take account of changes in technology. For example, the Countryside Alliance stated:

If such powers were to be given to the Secretary of State, then any amendments would in our view need to be restricted to those required as a result of technological change or development.

- 3.23 The Gun Trade Association made a similar point:

Yes [we agree], provided that there is consultation with an expert panel before any changes are made and changes should be made available online.

<sup>6</sup> Provisional Proposal 3.

- 3.24 Some consultees expressed reservations about this provisional proposal. For example, the London Criminal Courts Solicitors' Association suggested that since being in unlawful possession of a component part constitutes a serious offence, primary legislation ought to be the means by which a part is added to any statutory list.

### **Discussion**

- 3.25 It is evident that some consultees were worried about the breadth of any power given to the Secretary of State. We believe that a suitable way to address the concerns expressed by these consultees is for the Secretary of State's power to be made subject to the affirmative resolution procedure. This means that a part could not be added to the list unless both Houses of Parliament agreed. This would ensure Parliamentary scrutiny of any potential addition.
- 3.26 Our terms of reference stipulated that we were to take account of advances in firearms technology. Enshrining an exhaustive list of component parts into law runs the risk that it could quickly become obsolete. We believe that giving the Secretary of State the power to amend the list is an effective way of ensuring that it can be amended rapidly to reflect future developments. This is similar to the mechanism by which the Misuse of Drugs Act 1971 is updated, a point that was made by Her Majesty's Council of Circuit Judges:

We also agree with the Secretary of State having the power to amend the list by way of order. This would ensure that firearms law retains the flexibility to keep abreast of new technology without the need for constant revision of primary legislation and the Parliamentary time involved. This is very similar to the procedure for drugs classification.

- 3.27 We agree entirely with this observation and believe that consultees' concerns about this power can be addressed by making it subject to the affirmative resolution procedure.

### **Recommendation 6**

- 3.28 **We recommend that the Secretary of State be given the power to amend the statutory list of component parts by way of statutory instrument, subject to the affirmative resolution procedure.**

### **A COMPONENT PART SHOULD REMAIN SUBJECT TO CONTROL SO LONG AS IT IS CAPABLE OF FULFILLING ITS FUNCTION AS PART OF A LETHAL BARRELED WEAPON<sup>7</sup>**

- 3.29 In our consultation paper we also examined a further problem with the law, namely a conflict between the decisions of the Court of Appeal in *Ashton*<sup>8</sup> and *Bewley*.<sup>9</sup> In the former case, Lord Justice Latham stated:

<sup>7</sup> Provisional Proposal 4.

<sup>8</sup> [2007] EWCA Crim 234.

<sup>9</sup> [2012] EWCA Crim 1457; [2013] 1 WLR 137.



The mischief to which section 57 in particular is directed therefore exists whether or not the origin of the component part is a working or a deactivated weapon.

3.30 The consequence of this judgment is that an item could constitute a “component part” in law even if it might have originated from something that was incapable of discharging a projectile and therefore would not fall within the statutory definition of firearm.

3.31 In the subsequent case of *Bewley*, however, a different conclusion was reached. In that case Lord Justice Moses held:

The definition of firearm cannot include a component part of a lethal-barrelled weapon of any description from which any shot, bullet or other missile *cannot* be discharged. Any other construction would ignore the use of the word “such”. If the starting pistol does not fall within the definition of firearm within section 57(1), no part of it could do so.

3.32 As a result of this case, if a part might have originated from a deactivated firearm, then it cannot in law constitute a “component part”.

3.33 The justification for regulating the possession of component parts is their potential to be used in the reactivation of deactivated firearms and in the conversion of imitation firearms into live firearms. Merely because a component part might have originated from a deactivated firearm (or something else that does not fall within the legal definition of “firearm” because it is otherwise incapable of discharging a projectile) does not necessarily mean it has been rendered incapable of functioning as part of a lethal barrelled weapon. In light of this we took the view that, to the extent there is a conflict between the cases, the approach in *Ashton* is preferable to the one in *Bewley*.

3.34 In our scoping consultation paper we provisionally proposed clarifying in legislation that the focus of the enquiry about whether an item is a component part of a firearm should not be on the firearm the component part might have originated from, but on whether it remains capable of fulfilling its intended function as part of a lethal barrelled weapon.

### **Consultation**

3.35 Broadly speaking, the reaction to this provisional proposal was supportive. As we discuss below, some stakeholders required us to clarify when a part would be subject to control.

3.36 The Gun Trade Association said:

The GTA agrees, with the proviso that there is clarification on the question of “component parts” of a de-activated firearm. A definition of such a part is needed (*how much work would be required on a re-activated component of a de-activated firearm before it became a “component” in law?*).

- 3.37 Similarly, the National Rifle Association agreed but suggested that something that cannot fulfil its function as part of a lethal barrelled weapon should no longer be considered a component part.
- 3.38 A number of other organisations representing the licensed firearms community, for example the Countryside Alliance, agreed with this provisional proposal.
- 3.39 The London Criminal Courts Solicitors' Association made the point that if an individual was in possession of a lawfully deactivated firearm, but because of an anomaly in the deactivation process it still contained a working component part, under our provisional proposal that person would be committing a serious offence.

### **Discussion**

- 3.40 There is an ambiguity in the law that we believe ought to be remedied. Broadly speaking consultees agreed with our provisional proposal that the focus of the enquiry ought to be on the functionality of the component part. This is in line with the reason component parts are subject to control. We do not believe that this would have a detrimental impact upon the licensed firearms community and the response from consultees confirmed our view. Indeed, our approach would clarify that broken parts are no longer subject to control.
- 3.41 Concerns regarding potential criminalisation of persons in possession of working component parts due to an anomaly in the deactivation process prompt two responses. First, as a result of the decision in *Ashton* it could be argued that the law already stipulates that it is immaterial that the component originated from a deactivated firearm. Secondly, as Nicholas Doherty pointed out in his response, section 57(1)(b) provides that the definition of "firearm" includes "any component part of such a lethal or prohibited weapon". The use of the indefinite article could suggest there is already an express intention evident within the legislation for the focus to be on the functionality of the component part.
- 3.42 Regardless of these points, we do believe it would be deeply problematic for someone inadvertently to find themselves in possession of a functional component part because of a flaw in the deactivation process. We believe a suitable way to address this problem is for it to be a defence for an individual to show that he or she did not know and had no reason to suspect that the parts remained functional.
- 3.43 In response to the point made by the National Rifle Association, our view is that if the component is incapable of fulfilling its function as part of a lethal barrelled weapon, then it should not be considered a component part for the purposes of the law. This would be the case, for example, if the part was deactivated or at a very early stage in the manufacturing process.

### **Recommendations 7 and 8**

- 3.44 **We recommend that legislation be enacted to clarify that a component part shall remain classified as such so long as it is capable of fulfilling its function as part of a lethal barrelled weapon.**

- 3.45 **We recommend it be a defence for an individual to show that he or she did not know and had no reason to suspect that the parts remained functional.**

#### **SHOULD SHOTGUN COMPONENTS BE SUBJECT TO CONTROL?<sup>10</sup>**

- 3.46 Finally, we asked consultees whether shotgun components ought to be subject to control. The consultation paper discussed the fact the Firearms Consultative Committee in its Ninth Report had concluded it was “anomalous” that the component parts of shotguns are excluded from the definition and are not subject to any form of control. We therefore asked consultees whether they had a view on whether the component parts of shotguns should be subject to the same control as the component parts of section 1 firearms.<sup>11</sup>

#### **Consultation**

- 3.47 Consultees representing the licensed firearms community expressed reservations about the merits of subjecting shotgun components to certification. For example the British Association for Shooting and Conservation said that:

BASC suggests that no evidence has been adduced to show that the current system where shotgun components are uncontrolled, has hitherto presented any problem. Various agencies from the police service have presented anecdotal evidence but no proper evidence base has been put forward to sustain this proposal. Until such evidence is produced then BASC believes that the current system should remain in place.

- 3.48 This view was echoed by the Countryside Alliance:

We do not believe that the component parts of a Section 2 shotgun should be subject to control, as there is no evidence the current position poses any risk to public safety. Many shotgun owners possess spare barrels, locks and other parts which may be used in the case of malfunction. New shotguns may be supplied with such parts. Controlling these items would amount to retrospective legislation which could inadvertently criminalise existing shotgun owners.

- 3.49 By way of contrast, the National Ballistics Intelligence Service suggested that there exists no scientific reason why shotgun components should be treated differently from firearm components. This view was echoed by the Crown Prosecution Service:

We consider that this practice would ensure harmonisation between shotguns and other firearms.

<sup>10</sup> Consultation Question 4.

<sup>11</sup> By virtue of section 57 of the Firearms Act 1968, the term “component part” does not include the component part of shotguns.

## Discussion

- 3.50 According to statistics compiled by the Home Office, there are currently 582,494 shotgun certificates on issue in the United Kingdom, covering 1,338,399 shotguns.<sup>12</sup> We have no way of estimating how many component parts each shotgun certificate holder might have in his or her possession. For this reason, it is impossible to assess the impact, both to the police and the licensed firearms community, of bringing the component parts of shotguns into the licensing regime.
- 3.51 Due to the level of disagreement amongst consultees on the merits of subjecting shotgun components to the licensing regime and our inability to assess the impact of doing so, **we make no recommendation on this issue.**

<sup>12</sup> <https://www.gov.uk/government/publications/firearm-and-shotgun-certificates-in-england-and-wales-financial-year-ending-march-2015/firearm-and-shotgun-certificates-in-england-and-wales-financial-year-ending-march-2015> (last accessed 7 December 2015).

# CHAPTER 4

## ANTIQUÉ FIREARMS

### INTRODUCTION

- 4.1 Section 58(2) of the Firearms Act 1968 provides that:

Nothing in this Act relating to firearms shall apply to an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament.

- 4.2 The effect of this provision is to exempt antique firearms from the provisions of the 1968 Act so long as they are held as a curiosity or ornament. This means, for example, that an antique firearm can be possessed without the need to obtain a firearm certificate and the authority of the Secretary of State.

### PROBLEMS WITH THE CURRENT LAW

- 4.3 In our scoping consultation paper we examined a number of problems with the current law. We suggested in the scoping consultation paper that the uncertain state of the law causes difficulties for the police, Crown Prosecution Service, experts and legitimate collectors. This conclusion was, for the most part, confirmed by the responses to the consultation.
- 4.4 For example, the National Ballistics Intelligence Service presented evidence at our symposium that suggested old firearms are being encountered by the police in criminal circumstances with increasing frequency. These old firearms are clearly not possessed as curiosities or ornaments. This suggests that a provision that is intended to be relied upon by legitimate collectors is being exploited by those with criminal intent.
- 4.5 The problem is that the legislation fails to define the term “antique firearm”. As we discussed in detail in our scoping consultation paper, in the absence of a statutory definition, the courts have not considered it appropriate for them to define what Parliament did not.<sup>1</sup>
- 4.6 The Home Office *Guide on Firearms Licensing Law* (2015), which is relied upon by many collectors, states that a firearm ought to be considered antique if it is chambered for a type of cartridge that is included on the obsolete cartridge list. A cartridge will be only included on this list if it is no longer readily available. According to the *Guide*, this ensures that only those old firearms that do not pose a realistic danger to the public are capable of coming within section 58(2). The difficulty, however, is that the *Guide* is not the law. Anecdotal evidence from stakeholders suggests that the extent to which judges permit reliance on the *Guide* in court is minimal. It is therefore not a substitute for a legal definition of “antique firearm” contained in statute.

<sup>1</sup> This has been emphasised in a number of cases, as we explained in paras 4.20 to 4.39 of our scoping consultation paper.

**THE FAILURE TO DEFINE “ANTIQUE FIREARM” IS A SIGNIFICANT OMISSION WHICH CAUSES DIFFICULTIES IN PRACTICE AND THEREFORE IT IS NECESSARY TO DEFINE THE TERM<sup>2</sup>**

- 4.7 In its consultation response, the Crown Prosecution Service stated that it is “essential” for there to be a clear definition of “antique firearm”. The Crown Prosecution Service agreed with us that it is necessary to provide a set of statutory criteria to determine which firearms can fall within section 58(2). This was echoed by the Council of Her Majesty’s Circuit Judges who said that in the experience of judges “there is far too much uncertainty and inconsistency in the law at present”.
- 4.8 Whilst expressing uncertainty as to the extent of the problem caused by the failure to define “antique firearm”, the London Criminal Courts Solicitors’ Association stated:
- This is an area of law which does need to be reviewed as there are undoubtedly legal and practical difficulties created by the uncertainty in determining whether any given firearm is exempt from control as an antique.
- 4.9 There was, however, disagreement amongst collectors and dealers as to whether the current state of the law causes them difficulties in practice. A number of dealers in antique firearms stated that the current state of the law is unproblematic on the basis that they place reliance upon the obsolete cartridge list contained within the Home Office *Guide*. For example, in a group response a number of dealers in antique firearms described the reference in our scoping consultation paper to there being a lack of clarity amongst collectors as “mystifying” since “collectors who specialise in collecting antique firearms are aware of their legal position and do know whether it is legal for them to acquire a specific firearm”.
- 4.10 Similarly, the British Association for Shooting and Conservation “strongly disputed” our conclusion that legitimate collectors are unable to know with certainty whether they are complying with the law. Bonhams doubted that the lack of definition was a significant omission, but did state that a legal definition could clarify the issue. This view was echoed by Holt’s Auctioneers.
- 4.11 Other groups representing collectors and dealers agreed with us that the failure to define “antique firearm” does cause difficulties. The Countryside Alliance, for example, agreed that a “definition is required in order that all parties can know where they stand”. The Vintage Arms Association agreed that the failure to define “antique firearm” is a significant omission, while the Heritage Arms Study Group suggested that the term “antique” is a misleading one.

**Discussion**

- 4.12 As we explained in our scoping consultation paper in some detail, the obsolete cartridge list contained within the Home Office *Guide* does not have the force of law. A dealer in antique firearms may choose to place reliance upon the *Guide*, but that is no guarantee he or she is not committing a serious criminal offence.

<sup>2</sup> Provisional proposal 5.

The *Guide* may not even be admissible in evidence. In the absence of a statutory definition of “antique firearm” dealers and collectors simply have no way of knowing for certain whether they are complying with the law. As the courts have decided that the definition of the term “antique firearm” is a question of fact for the jury, strictly speaking the only point at which a collector can know for certain whether he or she has complied with the law is after a jury has delivered its verdict.

### **Recommendation 9**

- 4.13 **We recommend that the term “antique firearm” be defined in legislation.**

#### **DEFINING “ANTIQUE FIREARM” BY REFERENCE TO FUNCTIONALITY<sup>3</sup>**

- 4.14 As we explained in our scoping consultation paper, we agree with the view expressed in the Home Office *Guide* that only those old firearms that do not pose a realistic danger to the public ought to be considered “antique” for the purposes of the law. We therefore provisionally proposed that functionality – rather than date of manufacture - be the criterion that is relied upon when determining what types of old firearm fall within section 58(2).

#### **Consultation**

- 4.15 There were reservations expressed by consultees as to the merits of defining antique firearms by reference to functionality. Some consultees, for example the Historical Breechloading Smallarms Association, expressed concern about what we meant by “functionality”. To clarify, we are not suggesting that a firearm must be deactivated before it can fall within section 58(2). We mean that to benefit from the exemption a firearm must be one that, because of the way it functions, does not pose a realistic danger to the public despite the fact it may remain technically capable of discharging a projectile.

#### **Discussion**

- 4.16 In arriving at this provisional proposal, we rejected an approach that would make the age of the firearm the determining factor, specifically a rolling 100 year approach, and instead proposed that obsolescence be decisive. For the most part, consultees agreed that age is not an appropriate criterion upon which to rely. If age were the criterion, then within a few decades automatic weapons would be capable of constituting antiques. This state of affairs would be undesirable from the perspective of public safety.

### **Recommendation 10**

- 4.17 **We recommend that the term “antique firearm” should be defined in legislation by reference to functionality, understood as a firearm that does not pose a realistic danger to the public either because of the type of ammunition it fires or because of its ignition system.**

<sup>3</sup> Provisional Proposal 6.

## **WHICH APPROACH IS THE MOST SUITABLE FOR DEFINING “ANTIQUÉ FIREARM”<sup>4</sup>**

4.18 In our scoping consultation paper we set out a number of ways obsolescence could be understood in this context:

- (1) Obsolete cartridge list – this approach is based upon the one in the Home Office *Guide*. If a firearm is chambered for a type of cartridge contained on the list and is held as a curiosity or ornament, it would fall within section 58(2). Only those cartridge types that are no longer readily available would be on the list.
- (2) Modern cartridge list – rather than a list of cartridges that are no longer readily available, this approach would be based upon a list of cartridge types that are considered to be modern. If a firearm is chambered for a type of cartridge on this list, it would not be capable of coming within section 58(2).
- (3) Year of manufacture conclusive of functionality – a date would be chosen before the advent of modern forms of ignition system. If the firearm in question was manufactured before that date, it would come within section 58(2).
- (4) Obsolete ignition system – if the firearm relies upon an obsolete ignition system, it would come within section 58(2).

### **Consultation**

4.19 In our scoping consultation paper we asked consultees for their views on the suitability of these various options for reform.

4.20 A significant proportion of consultees suggested that the obsolete cartridge list ought to be placed on a statutory basis for the reason that it is already widely relied upon. This view was expressed by a number of organisations, such as the British Association for Shooting and Conservation and the Historical Breechloading Smallarms Association. The Vintage Arms Association said:

This is the current guide that dealers and collectors use to determine what is an accepted antique and what is still regarded as a firearm, regardless of age.

4.21 The Countryside Alliance stated that the obsolete cartridge list has “withstood the test of time”. Bonhams and Holt’s Auctioneers also agreed that this is a suitable method of defining antique firearm on the basis that it is an approach that the antiques trade already relies upon.

4.22 In our scoping consultation paper, we pointed out that the obsolete cartridge list is problematic for a number of reasons. The Crown Prosecution Service agreed with our suggestion that the list could be overly inclusive. The Metropolitan Police Forensic Firearms Unit expanded upon the nature of these problems in greater detail:

<sup>4</sup> Consultation Question 5.



Obsolete or modern manufacture calibre lists even enshrined in law have inherent difficulties in terms of new developments, the potential to manufacture / modify readily available ammunition to fit in 'obsolete' calibre guns. What is obsolete - how would we define obsolete or modern? Some calibres on current appendix 5 list are in current (albeit limited scale) production. Also can be difficult to accurately determine the calibre of an old gun and whether it would be on the list or not.

- 4.23 It is for this reason that both the Metropolitan Police Forensic Firearms Unit and a number of other stakeholders suggested that "antique firearm" ought to be defined by reference solely to obsolete ignition system on the basis that it is simple and would maximise public safety. The Crown Prosecution Service agreed with this.

### **Discussion**

- 4.24 Whilst we recognise that defining an antique firearm solely by reference to ignition system would be the most simple approach, we agree with the observation made by a number of stakeholders that it is one that would significantly curtail the types of old firearm that can be possessed without a firearm certificate and/or the authority of the Secretary of State. Although it is impossible to quantify precisely, we would suggest that this approach would have a significant impact upon the trade in antique firearms.
- 4.25 It is for this reason that we agree with the consultees who suggested that in practice the obsolete cartridge list is a more suitable way of defining antique firearms. We agree with the observation made by the National Ballistics Intelligence Service that the obsolete cartridge list is "probably the most pragmatic way forward and would meet most interested parties' needs". Put simply, whilst an approach based solely upon obsolete ignition system is best in theory, the obsolete cartridge approach is best in practice.
- 4.26 We consider, however, that the most effective definition would be one based on an obsolete cartridge list combined with a list of obsolete ignition systems.<sup>5</sup> As both the Heritage Arms Study Group and the Gun Trade Association pointed out, the obsolete cartridge list is needed only for those old firearms that are centrefire.<sup>6</sup> Neither the police nor the Crown Prosecution Service suggested to us that firearms using obsolete ignition systems, such as matchlock, are encountered by the police in criminal circumstances.
- 4.27 It is for that reason that we recommend a tiered approach to defining antique firearm. This would consist of an amendable list of obsolete ignition systems for

<sup>5</sup> For an analysis of ignition systems, see B J Heard, *Forensic Ballistics In Court* (2013), Chapter 1.

<sup>6</sup> In the centre-fire system, the primer is at the centre of the cartridge case head. The centre-fire system has been described as "the great milestone" in weapon and ammunition development. Heard states that, "Although invented around 1860, the principles [relied upon in the centre-fire system] are still the same and they are utilised in every type of weapon, from the smallest handgun up to some of the largest artillery pieces." See B J Heard, *Forensic Ballistics In Court* (2013), page 5.

non-centrefire firearms in addition to a list of obsolete cartridge types for centrefire firearms.

- 4.28 As was pointed out by the Metropolitan Police Forensic Firearms Unit, relying upon the obsolete cartridge approach presents a number of issues. The most challenging is the fact that evidence suggests that obsolete cartridge firearms are encountered by the police in criminal circumstances. From this, it can be inferred that there are some cartridge types on the list that perhaps should no longer be considered obsolete.
- 4.29 We believe it is necessary for a mechanism to exist that would enable cartridge types that have become vulnerable to criminal misuse to be taken off the list. We believe it is important that this process be one that is responsive to emerging public safety concerns. The National Ballistics Intelligence Service produces quarterly intelligence bulletins, which could be used as a point of reference when evaluating whether specific cartridge types ought to be removed from the list. We also believe it is important that any changes to the list be widely publicised, to ensure collectors know when they occur.
- 4.30 Taking a cartridge type off the list would mean that a firearm chambered to fire such a cartridge could no longer be considered antique. This would potentially put a collector who bought such a firearm in good faith when it was included on the list in unlawful possession of a prohibited weapon. This offence carries a mandatory minimum five-year custodial sentence.<sup>7</sup> It is important to have a means of amending the list so that changes do not render a collector inadvertently in possession of a prohibited weapon.
- 4.31 To ensure cartridge types can be taken off the list without criminalising legitimate collectors, we have drawn upon the legislative approach that was adopted when air weapons that use self-contained gas cartridge systems were made prohibited weapons.<sup>8</sup> Such air weapons were made prohibited weapons when it was discovered that they were being converted to fire live ammunition.
- 4.32 Section 39(4) of the Anti-Social Behaviour Act 2003 made provision for existing owners<sup>9</sup> to keep their weapons provided they are entered onto a firearm certificate before a specified cut-off date. The Court of Appeal recently confirmed in *Goldsborough* that failure to enter such an air weapon onto a firearm certificate is an offence contrary to section 1 of the Firearms Act 1968, rather than section 5.<sup>10</sup> This means that the mandatory minimum five year sentence that applies to offences contrary to section 5 is not applicable.
- 4.33 Once it has been entered onto a firearm certificate, if the owner wishes subsequently to sell the firearm this will be permitted provided that the new owner includes it as a separate entry on his or her firearm certificate.

<sup>7</sup> By virtue of section 51(A) of the Firearms Act 1968.

<sup>8</sup> See section 5(1)(af) of the Firearms Act 1968.

<sup>9</sup> Those who possessed such an air weapon before they were made prohibited weapons.

<sup>10</sup> [2015] EWCA Crim 1278; [2015] 1 WLR 4921.

- 4.34 We believe this approach provides a suitable mechanism for removing cartridge types that are no longer obsolete from the list whilst ensuring that collectors already in possession of firearms chambered to fire them do not inadvertently commit an offence carrying a five year mandatory minimum sentence. It also means that such firearms could still be sold.
- 4.35 Some consultees expressed the view that once a cartridge has been added to the list, it should be impossible to remove it. We do not, however, believe this is a tenable approach because it would make it easier for those with criminal intent to use antique firearms. We believe that if defining “antique firearm” by reference to the obsolete cartridge list is to be a viable approach, it is crucial that the list is flexible enough to respond to the needs of public safety.
- 4.36 A further issue inherent in relying upon a list is to identify who has responsibility for compiling and maintaining it. Given that a list already exists in the Home Office *Guide*, we believe updating and maintaining a list is possible in principle. In addition, a list is already contained in the Firearms (Amendment) Act 1997 (Firearms of Historic Interest) Order 1997, so this is an approach that is used elsewhere in the legislation. We do believe, however, that there is a need to provide a more formal mechanism for how the list is compiled and for this process to be a transparent one. This could be a task that is suitable for an advisory body that fulfils a similar role to the Firearms Consultative Committee.
- 4.37 On balance we consider a dual approach is preferable. That would define a non-centrefire firearm as antique by reference to its having an obsolete ignition system and a centrefire firearm by reference to its being chambered for an obsolete cartridge type. We believe this is a pragmatic solution.
- 4.38 Under our recommendation, the approach to determining whether a firearm was an antique would be as follows:
- (1) Does the firearm employ an ignition system included on a statutory list of obsolete ignition systems and is it possessed as a curiosity or ornament?  
  
If yes, the firearm falls within section 58(2). If no, proceed to question 2.
  - (2) Is the firearm chambered for a cartridge type included on a statutory list of cartridge types that are no longer readily available and is it possessed as a curiosity or ornament?  
  
If yes, it falls within section 58(2). If no the firearm must either be held on a firearm certificate, or it is a prohibited weapon and thus it is unlawful to possess it without the authority of the Secretary of State, depending upon the type of firearm.
- 4.39 We recognise that this solution entails a certain degree of complexity, but this is inevitable given the subject matter. We also recognise that this approach will not fully satisfy those consultees, such as the Gun Control Network, who stated that all antique firearms ought to be subject to the licensing regime in the same way as other firearms. We do not believe, however, that this scoping exercise would be the appropriate forum for such a fundamental shift in policy to take place. In addition, given that no figures exist on the number of antique firearms currently in circulation, it would be impossible for us to quantify the added burden this would

place upon the police who have responsibility for licensing. This is particularly important since anecdotal evidence suggests that there are many thousands of such firearms in circulation.

### **Recommendation 11**

4.40 **We recommend that an “antique firearm” be defined as:**

- (1) **a firearm employing an ignition system included on an amendable statutory list of obsolete ignition systems and is possessed as a curiosity or ornament; or**
- (2) **a firearm that is chambered for a cartridge type included on an amendable statutory list of cartridge types that are no longer readily available and is possessed as a curiosity or ornament.**

### **REQUIRING ANTIQUE FIREARMS TO BE PAID FOR BY CHEQUE OR ELECTRONIC FUND TRANSFER<sup>11</sup>**

4.41 During our preliminary fact finding with stakeholders, it was suggested that it is anomalous that antique firearms can be paid for in a manner that leaves the purchaser untraceable. We therefore provisionally proposed that the sale of antique firearms ought to take place by cheque or electronic fund transfer.

### **Consultation**

4.42 This provisional proposal proved to be a controversial one. The National Ballistics Intelligence Service and the Crown Prosecution Service were in favour of imposing such an obligation, whilst dealers and collectors expressed serious misgivings.

4.43 Consultees from the antique firearm trade objected to this provisional proposal for two main reasons. The first is that the trade in antique firearms tends to be informal. For example, sometimes it involves swapping one antique firearm for another with or without additional payment in cash. The second is that sales often take place at fairs where electronic means of taking payment might not be available.

### **Discussion**

4.44 The difficulty with our provisional proposal is one of utility. The traceable payment obligation would only make it possible for the authorities to trace a purchaser when an antique firearm has been misused if they knew who to ask for the information. Without an identifiable group of sellers, the authorities will not know. It is for this reason **we make no recommendation on this issue.**

### **REQUIRING SALES OF ANTIQUE FIREARMS TO BE RECORDED<sup>12</sup>**

4.45 Like the previous provisional proposal, this one was based upon the desirability of being able to trace antique firearms once they are sold.

<sup>11</sup> Provisional Proposal 7.

<sup>12</sup> Provisional Proposal 8.

## Consultation

- 4.46 The responses to this provisional proposal were largely negative. The National Ballistics Intelligence Service expressed doubt that this provisional proposal would be viable without requiring antiques to be sold by Registered Firearms Dealers. Organisations representing collectors and dealers said that this provisional proposal seemed too much like “registration by the back door”.
- 4.47 In addition, dealers and collectors suggested that antique firearms often have no registration number or other distinguishing feature, so the details that could be included in any register would be vague at best. Given that antique firearms do not have to be sold by Registered Firearms Dealers, it was also suggested that it would be difficult for the authorities to keep track of who deals in antique firearms.

## Discussion

- 4.48 As with the previous provisional proposal, the problem with this one is utility given that we have been told antique firearms tend not to have identifiable serial numbers. For this reason **we make no recommendation on this issue.**

## AMENDING THE OFFENCES IN SECTIONS 16 – 25 OF THE FIREARMS ACT 1968<sup>13</sup>

- 4.49 Section 58(2) provides that none of the provisions of the Firearms Act 1968 apply to antique firearms. In our scoping consultation paper we provisionally proposed amending these offences to put beyond doubt that they apply if committed by someone in possession of an antique firearm. The relevant offences are:
- (1) section 16A of the Firearms Act 1968 – possession of a firearm with intent to cause any person to believe that unlawful violence will be used against him or her;
  - (2) section 17 of the Firearms Act 1968 – use of a firearm with intent to resist or prevent the lawful arrest or lawful detention;
  - (3) section 18 of the Firearms Act 1968 – carrying a firearm with intent to commit an indictable offence;
  - (4) section 19 of the Firearms Act 1968 – carrying a firearm in a public place;
  - (5) section 20 of the Firearms Act 1968 – trespassing with a firearm;
  - (6) section 22 of the Firearms Act 1968 – purchasing or selling of firearms by or to minors;
  - (7) section 24 of the Firearms Act 1968 – supplying a firearm to a minor; and
  - (8) section 25 of the Firearms Act 1968 – supplying a firearm to a person drunk or insane.

<sup>13</sup> Provisional Proposal 9.

### **Consultation**

- 4.50 Some consultees, for example Key Forensic Science Ltd, pointed out that an individual who used an antique firearm in circumstances potentially giving rise to liability for one of these offences would not possess the antique as a curiosity or ornament and could therefore already be guilty of an offence.
- 4.51 The British Association for Shooting and Conservation made the separate point that the offences cannot be taken as a whole, but need to be considered individually. Section 24, supplying a firearm to a minor, was given as an example. Consultees told us that donating antique firearms to children is a common way of engaging their interest at an early age and placing any form of restriction upon this would be detrimental to future interest in antique firearms.

### **Discussion**

- 4.52 We agree that the offences need to be considered on an individual basis. We also agree with the observation made by a number of stakeholders that the requirement in section 58(2) for the firearm to be possessed as a “curiosity or ornament” means that the antique firearm defence would not apply.
- 4.53 There are, however, a number of offences that are more ambiguous. Section 19 criminalises the carrying of a firearm in a public place without reasonable excuse or lawful authority. Section 20 creates the offence of trespassing with a firearm. We believe there is merit in clarifying that these offences can be committed by someone in possession of an antique firearm.

### **Recommendation 12**

- 4.54 **We recommend that sections 19 and 20 of the Firearms Act 1968 be extended so that it is clear that they apply to antique firearms.**

# CHAPTER 5

## DEACTIVATED FIREARMS

### INTRODUCTION

- 5.1 Section 38(7) of the Violent Crime Reduction Act 2006 defines a deactivated firearm as “an imitation firearm that consists in something which was a firearm, but has been rendered incapable of discharging a shot, bullet, or other missile as no longer to be a firearm”.
- 5.2 As discussed in our scoping consultation paper, section 8 of the Firearms (Amendment) Act 1988 provides that a firearm is presumed to have been deactivated to a standard approved by the Secretary of State if it bears an approved mark denoting that fact and one of the two Proof Houses have certified in writing that it has been deactivated to an approved standard.
- 5.3 If a weapon bears an approved mark and comes with the relevant certification, as a result of section 8 there is a rebuttable presumption that it is no longer a firearm and can therefore be possessed without any form of certification. This is because deactivated firearms fall outside the definition of “firearm” contained in section 57(1) of the Firearms Act 1968.
- 5.4 In 1989 the Home Office produced a series of deactivation standards. These specify the physical changes that must be made to a firearm in order for it to be considered deactivated within the terms of section 8. These standards were revised in 1995 and in 2010. The more recent standards are more rigorous than those adopted in 1989. The new standards do not apply retrospectively, however. This means that if a firearm was deactivated to the-then approved standard, it remains lawful to possess it without the need to “upgrade” it to the most recent deactivation standard.
- 5.5 More recently, the European Commission has approved changes to European Union law on deactivated firearms.<sup>1</sup>

### PROBLEMS WITH THE CURRENT LAW

- 5.6 As we explained in our scoping consultation paper, there is evidence to suggest that poorly deactivated firearms are being “reactivated” and used in crime. It is crucial that only those firearms that have been rendered irreversibly incapable of discharging a projectile can be considered deactivated and possessed without any form of certification.
- 5.7 The potential risk posed by ineffectively deactivated firearms has also been recognised by the European Commission. In a consultation document published in 2013, the European Commission stated:

Law enforcement authorities in the EU are concerned that firearms which have been deactivated are being illegally reactivated and sold for criminal purposes, [and that] items such as alarm guns, air

<sup>1</sup> Available at [http://europa.eu/rapid/press-release\\_MEMO-15-6111\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-6111_en.htm) (last accessed 7 December 2015).

weapons and blank-firers are being converted into illegal lethal firearms.<sup>2</sup>

- 5.8 The United Kingdom has some of the most stringent deactivation standards in Europe. The problem examined in detail in chapter 5 of our scoping consultation paper is attributable to the fact there is no legal requirement for firearms to be deactivated to a Home Office approved standard. The current state of the law does not preclude other, less stringent methods of deactivation. This is because section 8 of the Firearms (Amendment) Act 1988 is merely an evidential provision and does not impose a legal obligation to deactivate firearms to an approved standard.
- 5.9 In our scoping consultation paper we also examined in detail two other problems with the law. First, the person in possession of a deactivated firearm can still take advantage of the evidential presumption in section 8 even if there is clear evidence that efforts have been made to reactivate it. For as long as a deactivated firearm bears the relevant mark and comes with the relevant certification, it will fall within the terms of section 8.
- 5.10 Although the most recent deactivation standards provide that any efforts to reactivate a deactivated firearm will render the deactivation invalid, this is not specified in law.
- 5.11 Secondly, we considered an ambiguity in section 4(3) of the Firearms Act 1968. This provision makes it an offence for someone other than a registered firearms dealer to “convert into a firearm anything which, though having the appearance of being a firearm, is so constructed as to be incapable of discharging any missile through its barrel”.
- 5.12 In our scoping consultation paper we suggested that this provision is unclear. On one interpretation it only applies if the item in question was *never* capable of discharging a projectile. This is because it only applies if something was *constructed* so as to be incapable of discharging a projectile. Given that deactivated firearms were originally constructed so as to be capable of discharging a projectile, the offence might be too narrowly drawn to encompass reactivating deactivated firearms.

### **A LEGAL OBLIGATION TO DEACTIVATE A FIREARM IN ACCORDANCE WITH A HOME OFFICE APPROVED STANDARD<sup>3</sup>**

- 5.13 To ensure the United Kingdom’s stringent deactivation standards cannot be ignored, we provisionally proposed the law be amended to impose a legal obligation that to constitute a “deactivated firearm” a firearm must be certified as having undergone a Home Office approved deactivation process.

<sup>2</sup> European Commission, Communication from the Commission to the Council and the European Parliament: Firearms and Internal Security of the EU: Protecting Citizens and Disrupting Illegal Trafficking (2013), page 5.

<sup>3</sup> Provisional Proposal 10.



## **Consultation**

- 5.14 Consultees were broadly in favour of this provisional proposal. The Deactivated Weapon Association stated that they were “fully supportive” on the basis that:

DWA members are committed to only selling UK specification, Proof House inspected deactivated firearms. Since it was formed the DWA as an organization has lobbied the Home Office for clarity in UK law about the status of non-UK/non-Proof House inspected firearms.

- 5.15 The British Proof Authority also agreed.
- 5.16 The Gun Trade Association agreed with this provisional proposal subject to the caveat that the more recent standards should not apply retrospectively.
- 5.17 The National Ballistics Intelligence Service and the Council of Her Majesty’s Circuit Judges also agreed, while the Crown Prosecution Service stated:

The CPS agrees with this provisional proposal, which would provide certainty as to what is required to ensure a firearm can be properly categorised as ‘deactivated’ and thereby dispense with the ‘less rigorous’ methods of deactivation.

- 5.18 The Deactivated Gun Collectors’ Association disagreed, however, on the basis that imposing a legal requirement for firearms to be deactivated to a Home Office approved standard would leave open the question about what to do with those firearms that have not been deactivated to such a standard. It was suggested that a better option would be to define the term “deactivated firearm” in law to put beyond doubt that firearms that have been deactivated to certain international standards and standards analogous to those promulgated by the Home Office are also sufficient.

## **Discussion**

- 5.19 The response of the Gun Trade Association raises an issue which we think needs clarification. We did not state in our scoping consultation paper that a firearm must be deactivated to the most recent standard in order for it to be considered deactivated for the purposes of the law. Our provisional proposal required a firearm to be deactivated to a Home Office approved standard, without specifying which one. We took this view on the basis that retrospective application of the standards would be problematic. This was confirmed by a number of stakeholders.
- 5.20 The Deactivated Weapon Association, for example, told us that firearms deactivated to a pre-1995 standard have increased dramatically in value over the years. One of the examples given was a World War 2 MP40. In the early 1990s this would have cost around £450, whereas in 2015 the price for the same pre-1995 deactivated MP40 was said to be around £3750.
- 5.21 The Deactivated Weapons Association suggested that there are roughly 85,000 pre-1995 deactivated firearms currently in private possession and estimated that on average each firearm would be devalued by £400 were it to be subjected to a more recent process of deactivation. There would also be the additional cost of the work associated with having to have the deactivated firearm “upgraded” to a

more modern standard as well as the cost of submitting it to one of the Proof Houses for certification.

- 5.22 Although the validity of these figures cannot be verified, they do suggest that any retrospective application of the stricter deactivation standards could have substantial cost implications to the owners of and trade in deactivated firearms.
- 5.23 The Deactivated Weapon Association made the point that the value of firearms deactivated to a pre-1995 standard has increased to such an extent that there are cheaper and easier ways for those with criminal intent to obtain a working firearm, such as by purchasing an antique firearm.
- 5.24 Based upon the analysis in the preceding paragraphs, we still believe that retrospective application of the deactivation standards would have significant cost implications and would also be difficult to enforce. This conclusion has, however, been superseded by developments emanating from the European Commission.

#### **EUROPEAN UNION LAW**

- 5.25 At this stage, it is necessary to discuss recent changes to European Union law on deactivated firearms.
- 5.26 As we discussed in our scoping consultation paper, the European Commission has in the past remarked that the divergence in deactivation standards throughout the member states poses a risk to public safety.
- 5.27 To address this problem the European Commission has approved a Regulation laying down common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable.<sup>4</sup> The aim of these standards is to ensure consistency across the member states as to how firearms are deactivated. The technical standards are annexed to the Regulation.
- 5.28 Article 1(2) of the Regulation states that
- This Regulation shall not apply to firearms deactivated prior to the date of its application, unless those firearms are transferred to another Member State or placed on the market.
- 5.29 This means that it is lawful to possess a deactivated firearm that does not conform to the standards mandated by the Regulation. If, however, an individual wishes to transfer that same deactivated firearm to another person or it is to leave the United Kingdom, he or she must ensure that it has been deactivated in a way that is compliant with the standards annexed to the Regulation.
- 5.30 The law of the European Union therefore requires retrospective application of the deactivation standards set out in the Regulation.
- 5.31 Although we still believe retrospective application of the recent deactivation standards would be problematic, we must nevertheless ensure that our recommendations conform to European Union law.

<sup>4</sup> Available at [http://europa.eu/rapid/press-release\\_IP-15-6110\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6110_en.htm) (last accessed 7 December 2015).

## **Recommendations 13 and 14**

- 5.32 **We recommend that for a firearm to be considered deactivated as matter of law, it must either be certified as having undergone a Home Office approved deactivation process or the deactivation process annexed to the Deactivated Firearms Regulation.**
- 5.33 **We recommend that if a deactivated firearm is to be placed on the market, including transmission for free, exchange or barter, or transferred to another member state it must be deactivated in a way that complies with the deactivation standards annexed to the Deactivated Firearms Regulation.**

## **HOW SHOULD LEGAL EFFECT BE GIVEN TO THE DEACTIVATION STANDARDS?<sup>5</sup>**

- 5.34 We asked for consultees' views on three different ways legal effect could be given to the deactivation standards:
- (1) Amending the definition of "deactivated firearm" in section 38(7) of the Violent Crime Reduction Act 2006;
  - (2) Using the Secretary of State's regulation making power in section 39 of the Violent Crime Reduction Act 2006; or
  - (3) Amending section 8 of the Firearms (Amendment) Act 1988.
- 5.35 As we explained in our scoping consultation paper, each of these respective options has its own merits. The most straightforward route would be to amend section 8 of the 1988 and specify that the process set out in that section *must* be followed in order for a firearm to be considered deactivated. Amending section 38(7) would be similarly straightforward. By contrast, the benefit of using the Secretary of State's regulation making power is that it would achieve the same end, but would not require primary legislation. Given that it is primarily concerned with imitation firearms we noted how it could be considered artificial to rely upon that power in this context.

## **Consultation**

- 5.36 Consultees were overwhelmingly in favour of amending section 8 of the Firearms (Amendment) Act 1988 on the basis that it is a provision with which many are already familiar. Some consultees expressed support for using the provisions in the Violent Crime Reduction Act 2006 on the basis that it would avoid the need for primary legislation.

## **Discussion**

- 5.37 Given the response from consultees to this consultation question, we believe that the 1988 Act ought to be amended so that it becomes a legal, rather than merely an evidential, provision. Given the developments in European Union law, the amended provision would also need to make reference to the Regulation that was discussed previously.

<sup>5</sup> Consultation Question 6.

## Recommendation 15

- 5.38 **We recommend that section 8 of the Firearms (Amendment) Act 1988 be amended to give effect to our previous recommendation.**

### **WEAPONS NOT DEACTIVATED TO A HOME OFFICE OR EUROPEAN UNION APPROVED STANDARD**

- 5.39 As the Deactivated Gun Collectors' Association pointed out this leaves open the question of how to classify a weapon that has not been certified as having undergone a Home Office approved deactivation process (and now the one approved by the European Union). One option is to say that the weapon is simply a firearm. This would be the case if the weapon is currently capable of discharging a projectile. In this section we consider how to classify a weapon that is incapable of discharging a projectile.
- 5.40 It could be argued that despite the fact the weapon has not been certified as having undergone a Home Office or European Union approved deactivation process, its physical inability in its present state to discharge a projectile means that as a matter of law it is not a firearm and it is therefore lawful to possess. This could be a way of circumventing the deactivation process which would fatally undermine the effectiveness of our earlier recommendation, as such weapons could be reactivated.
- 5.41 Equally, however, as a matter of principle we also believe it is necessary to ensure that an individual is not deemed to be unlawfully in possession of a firearm when the weapon in question has been rendered *permanently* incapable of discharging a projectile, despite the fact it does not bear a deactivation mark. Although it is not entirely clear, European Union law may mandate that a weapon without a deactivation mark should remain a firearm.
- 5.42 Given the ambiguity over what European Union law mandates, we are anxious to prevent both these possibilities.
- 5.43 To meet this concern, in our scoping consultation paper, we suggested that one solution was to provide that something that has not been deactivated to a Home Office approved standard could be a readily convertible imitation firearm. The process of reasoning this would entail is as follows:
- (1) Is D in possession of a weapon that once was a lethal barrelled weapon capable of discharging a projectile?  
  
If yes, proceed to step 2. If no, the person is not in possession of a firearm, but may be in possession of an imitation firearm.
  - (2) Is D in possession of a weapon certified as having been deactivated to a Home Office or European Union approved standard?  
  
If yes, D is not in possession of a firearm. If no, proceed to step 3.
  - (3) If the weapon is capable of discharging a projectile above the lethality threshold, it will be a firearm for the purposes of the legislation. If it is incapable of discharging a projectile, proceed to step 4.

- (4) Is D in possession of a readily convertible imitation? If yes, D is guilty of being unlawfully in possession of a firearm contrary to section 1 of the Firearms Act 1968.

5.44 In light of further discussions with stakeholders and consideration of consultation responses, we now consider that, although that provisional proposal would operate successfully, an alternative might be more effective. The alternative is that within the existing scheme legislation should provide that something that was once classified as a lethal barrelled weapon capable of discharging a projectile ought to be presumed to be a firearm until it is certified as having undergone a Home Office or European Union approved deactivation process. The process of reasoning this would entail is as follows:

- (1) Is D in possession of a weapon that once was a lethal barrelled weapon capable of discharging a projectile?

If yes, go to step 2. If no, the person is not in possession of a firearm, but may be in possession of an imitation firearm.

- (2) Is D in possession of a weapon that is certified as having undergone a Home Office or European Union approved deactivation process?

If yes, the weapon is a deactivated firearm and is therefore lawful to possess. If no, go to step 3.

- (3) If the weapon is not certified as having undergone a Home Office or European Union approved deactivation process, it is presumed to still be a firearm unless the person in possession of it can show it has been rendered *irreversibly incapable* of discharging a projectile.

5.45 Our recommendation is that this alternative should be adopted.

### **Recommendation 16**

5.46 **We recommend there should be a rebuttable presumption that a weapon not deactivated to a Home Office or European Union approved standard remains a firearm unless the person in possession of it can show it has been rendered irreversibly incapable of discharging a projectile.**

5.47 Under this reformulated recommendation, we still believe the Proof Houses should have the authority to certify that a weapon has been rendered incapable of discharging a projectile despite the fact it has not been deactivated to a Home Office approved standard.

### **EFFORTS TO REACTIVATE DEACTIVATED FIREARMS<sup>6</sup>**

5.48 Within our scoping consultation paper we also provisionally proposed that legislation provide explicitly that any attempt to modify a firearm deactivated to a Home Office approved standard with the intention of rendering it capable of discharging a projectile ought to mean that the weapon can no longer be considered deactivated. This does not necessarily mean an individual would be

<sup>6</sup> Provisional Proposal 11.

guilty of an offence, however. The question would be whether the weapon in the person's possession was a firearm within the meaning of section 57 of the Firearms Act 1968.

- 5.49 The response to this provisional proposal was overwhelmingly positive. The Gun Trade Association said:

This amendment would remove "the evidential presumption" and clarify the situation through a simple change to the Act.

- 5.50 The Countryside Alliance stated:

We believe that the matter should hinge upon the intention of the person working on the firearm. Thus a person may clean, repair or carry out restoration work on a deactivated firearm without any intention of reactivating it. Attempted reactivation should in our view include both physical evidence of the attempt, along with evidence of an intention to reactivate.

- 5.51 The Deactivated Weapon Association made a similar point:

The DWA agrees with this proposal, but would highlight the need to have a clear definition of 'reactivation' in this context. It should concentrate on the parts of the weapon already subject to the deactivation process with a clear goal to modify to be able to discharge a shot.

- 5.52 We agree that simply cleaning and repairing a deactivated firearm would be insufficient to demonstrate an intent to reactivate it. There would have to be some modification made to the deactivated firearm that demonstrates a clear intent to render it capable of discharging a projectile.

- 5.53 The Deactivated Gun Collectors' Association expressed concern on the basis that the concept of an attempt is uncertain:

There is a difference between someone who fiddles with a deactivated firearm out of idle curiosity and someone who has attempted to reactivate it for a criminal purpose. Creating a criminal offence of "attempt" would further remove the distinction between the two (which is already very limited).

- 5.54 A similar point was made by the London Criminal Courts Solicitors' Association.

### **Discussion**

- 5.55 Our provisional proposal does not amount to the creation of a criminal offence of "attempt". Whilst we accept that there may be difficulty in ascertaining whether modifications made to a deactivated firearm were for the purpose of reactivating it or for some other purpose, such as for cosmetic reasons, this would be a matter for the prosecution to prove. Even if the prosecution discharges this burden, an individual would only commit the offence of being unlawfully in possession of a firearm if the weapon is also capable of discharging a projectile.

- 5.56 The British Association for Shooting and Conservation supported this provisional proposal, as did the Crown Prosecution Service, the National Ballistics Intelligence Service and the Council of Her Majesty's Circuit Judges, amongst others.

### **Recommendation 17**

- 5.57 **We recommend that any modification made to a deactivated firearm with the intention of making it capable of discharging a projectile will mean that as a matter of law that weapon cannot be classified as a deactivated firearm.**

### **REMEDYING THE AMBIGUITY IN SECTION 4(3)<sup>7</sup>**

- 5.58 Section 4(3) of the Firearms Act 1968 makes it an offence for someone other than a registered firearms dealer to "convert into a firearm anything which, though having the appearance of being a firearm, is so constructed as to be incapable of discharging any missile through its barrel." The Court of Appeal in *Greenwood*<sup>8</sup> confirmed that this is a serious offence and will ordinarily carry a significant sentence. The maximum sentence for this discrete offence is 7 years' imprisonment.
- 5.59 The problem we identified with this offence is that it is ambiguous. On one interpretation it only applies if the item in question was *never* capable of discharging a projectile. This is because it only applies if something was *constructed* so as to be incapable of discharging a missile. Deactivated firearms, however, were originally constructed to discharge a missile but have subsequently been rendered incapable of doing so. The offence might, therefore, be too narrowly drawn to criminalise attempts to reactivate something that once was a firearm.
- 5.60 To avoid a gap in the law, we provisionally proposed section 4(3) be modified to clarify that the offence applies irrespective of whether the item in question began life as a lethal barrelled weapon capable of discharging a missile.

### **Consultation**

- 5.61 The responses to this provisional proposal largely mirrored the responses to the previous one. The Crown Prosecution Service, the National Ballistics Intelligence Service and the Council of Her Majesty's Circuit Judges agreed with us that the section is ambiguous.
- 5.62 The London Criminal Courts Solicitors' Association suggested that this provisional proposal was preferable to the previous one, as it places a clear emphasis on intention. The Deactivated Weapon Association expressed a similar view.
- 5.63 The Deactivated Gun Collectors Association disagreed, however, on the basis that the drafting of section 4(3) demonstrates a clear intention for it only to apply

<sup>7</sup> Provisional Proposal 12.

<sup>8</sup> [2005] EWCA Crim 2686.

to imitation firearms. It was said that, “The construction of section 4(3) highlights the fact that de-activated firearms were largely unknown when it was drafted.”

### **Discussion**

- 5.64 We agree with the statement made by the Deactivated Gun Collectors' Association, which is why we provisionally proposed the section be amended. Section 4 is entitled “Conversion of weapons” and we believe the mischief the provision is intended to deal with applies equally to deactivated firearms.

### **Recommendation 18**

- 5.65 **We recommend that section 4(3) be amended to clarify that the offence can be committed even if the weapon was originally capable of discharging a projectile through its barrel.**



# CHAPTER 6

## READILY CONVERTIBLE IMITATION FIREARMS

### INTRODUCTION

6.1 The Firearms Act 1982 deals with readily convertible imitation firearms. These are defined as imitation firearms that can be “readily converted” into live firearms to which section 1 of the Firearms Act 1968 applies. By virtue of section 1(6) an imitation firearm will be considered “readily convertible” if:

- (1) it can be converted without any special skill on the part of the person converting it in the construction or adaptation of firearms of any description; and
- (2) the work involved in converting it does not require equipment or tools other than such as are in common use by persons carrying out works of construction or maintenance in their own homes.

6.2 This provision is in some respects anachronistic. This is because, by focusing on whether the necessary tools are in common use when carrying out maintenance in the home, the provision does not take sufficient account of the range of tools and equipment that can now be readily purchased on the Internet and used to convert imitation firearms into live firearms.

6.3 It is important to note that section 1(5) of the Act states:

In any proceedings brought by virtue of this section for an offence under the 1968 Act involving an imitation firearm to which this Act applies, it shall be a defence for the accused to show that he did not know and had no reason to suspect that the imitation firearm was so constructed or adapted as to be readily convertible into a firearm to which section 1 of that Act applies.

6.4 We also examined the fact there is no specific offence of being in possession of articles with the intention of using them unlawfully to convert imitation firearms into live firearms. This stands in stark contrast to the offences that exist in other areas, such as forgery and fraud.

### **AMENDING THE LAW TO FOCUS UPON THE *READY AVAILABILITY* OF THE TOOLS NECESSARY TO CONVERT AN IMITATION FIREARM INTO A LIVE FIREARM<sup>1</sup>**

6.5 The responses to this provisional proposal were mixed.

6.6 Both the National Ballistics Intelligence Service and the Crown Prosecution Service agreed with the provisional proposal. The latter said:

<sup>1</sup> Provisional Proposal 13.

The CPS agrees with the provisional proposal that the law be amended to focus on the ready availability of tools necessary to convert an imitation firearm into a live firearm. We anticipate that the operation of the proposal will improve public confidence.

6.7 The Gun Trade Association also agreed and stated:

The wording of the 1982 Act is clearly no longer fit for purpose in the 21<sup>st</sup> century. With the advent of the internet and greater financial freedom, it is virtually impossible to define what is available and the question of tools will, of necessity, rely on the intention of the purchaser of the tools. Furthermore, the 1982 Act talks about “special skills on the part of the person”. This again is almost impossible to define with readily available instructions both on the internet and in printed form.

6.8 The Gun Trade Association agreed with us that there is a risk posed by certain blank firing firearms that do not conform to the specifications enacted by virtue of section 39 of the Violent Crime Reduction Act 2006:<sup>2</sup>

Although Section 39 of the VCR Act now protects against the convertibility of “blank firers”, there are many thousands of blank firing imitation firearms in circulation which do not meet this specification and possession of these is not affected by Section 39. Updating of the 1982 Act is essential.

6.9 Although broadly supportive the Crown Prosecution Service did, however, query what “ready availability” means in this context and expressed the concern that relying upon this phrase could cause difficulties in practice. The Scottish Government expressed a similar concern as to how “ready availability” would be assessed.

6.10 The London Criminal Courts Solicitors’ Association agreed with this provisional proposal but disagreed with our suggestion that the defence in section 1(5) of the Firearms Act 1982 would ensure liability is kept within sensible limits. It was said:

if an individual is found in possession of an item which is considered to be a readily convertible imitation firearm, the prosecuting authorities will in our experience virtually always charge with the relevant offence under the 1968 Act, thereby denying the accused the defence of lack of knowledge of its ready convertibility which Parliament clearly intended to be available to him.

6.11 The reaction to this provisional proposal from the licensed firearms community was overwhelmingly negative. This was mainly attributable to a concern that reformulating the law in the way we provisionally proposed would make the test for convertibility too wide.

<sup>2</sup> This provision gives the Secretary of State the power to make provision requiring imitation firearms to conform to specifications set out in regulations. To date this power has been exercised once in the Violent Crime Reduction Act 2006 (Specifications for Imitation Firearms) Regulations 2011.

- 6.12 The Deactivated Weapon Association, for example, suggested that the existence of the Internet means that practically any tool is “readily available”. This view was expressed by a number of other stakeholders from the licensed firearms community.
- 6.13 Both the British Association for Shooting and Conservation and the Countryside Alliance suggested that the focus of the law ought to be on the intention to convert an imitation firearm into a live firearm. Her Majesty’s Council of Circuit Judges, whilst agreeing with our provisional proposal, also stated that focus should be placed upon the intention to convert.

### **Discussion**

- 6.14 The response from consultees confirmed the view we took in our scoping consultation paper that the test in the 1982 Act is out of date.
- 6.15 In response to those consultees who expressed concern about the breadth of our provisional proposal, we emphasise that it would not mean that possession of every imitation firearm would constitute an offence. The requisite tools would have to be readily available. In addition, the prosecution would still have to prove that the imitation firearm could be converted without the use of special skill. Finally, the defence in subsection (5) would remain available.
- 6.16 In response to the point made by the London Criminal Courts Solicitors’ Association, our understanding of the law is that the 1982 Act does not create any offences. It brings within the scope of the 1968 Act imitation firearms that are readily convertible, as that term is defined in subsection (6). Our understanding of the law is supported by subsection (5), which provides:

In any proceedings brought by virtue of this section *for an offence under the 1968 Act* involving an imitation firearm to which this Act applies, it shall be a defence...

- 6.17 If the imitation firearm only falls within the 1968 Act by virtue of the operation of the 1982 Act, then the defendant ought to be able to plead the defence in subsection (5). Our provisional proposal would not impact upon the availability of the defence. In fact, widening the test could increase the opportunity for the defence to be pleaded.
- 6.18 Some consultees expressed the view that our provisional proposal, rather than simplifying the law, would make it more complex. We disagree with this proposition, however. Ascertaining the tools readily available in contemporary British society is no more difficult than ascertaining what is commonly used when carrying out maintenance in the home. We expand on the meaning of “readily available” below.
- 6.19 We tend to agree with the Council of Her Majesty’s Circuit Judges that evidence of an intent to convert should of itself be sufficient for an individual to commit an offence based upon the operation of this provision, but this is not what the 1982 Act requires. The current focus of the law is on the potential convertibility of an imitation firearm. Focusing solely upon intention would therefore entail making significant changes to the 1982 Act and would considerably narrow its scope. The

aim of our provisional proposal, however, was limited to ensuring the test used in the Act reflects advances in society.

- 6.20 We believe that our provisional proposal has two key advantages. First, it would ensure that the test for convertibility reflects the ability in contemporary society to convert imitation firearms into live firearms. Secondly, it does so while avoiding every imitation firearm potentially being considered as one that is readily convertible and therefore being unlawful to possess.
- 6.21 From consultees' responses, however, it is evident that we need to clarify what we mean by "readily available". This is a test that will need to be invoked in two contexts. The first is when the Home Office is deciding whether a type of imitation firearm is readily convertible and therefore ought to be classified as a prohibited weapon.<sup>3</sup> The second is in an individual case when a jury is considering whether a specific imitation firearm in a defendant's possession is readily convertible.
- 6.22 We believe "readily available" can be applied in both these contexts. The test sets a floor and not a ceiling. In the abstract sense, we believe that the tools readily available to an individual in contemporary British society can be ascertained with relative ease. For that reason, the Home Office will be able to predict whether a type of imitation is readily convertible and therefore ought to be classed as a prohibited weapon. In the context of an individual case, it may be that the defendant has access to tools that would not be readily available to other people. This could be the case because of the defendant's job, for example. We believe this is something the jury could take into consideration.

### **Recommendation 19**

- 6.23 **We recommend that the test for convertibility in section 1(6) of the Firearms Act 1982 be amended to focus upon the ready availability of the requisite tools rather than on whether they are commonly used when carrying out maintenance on the home.**

### **CREATING AN OFFENCE OF BEING IN POSSESSION OF AN ARTICLE WITH THE INTENTION OF USING IT UNLAWFULLY TO CONVERT AN IMITATION FIREARM INTO A LIVE FIREARM<sup>4</sup>**

- 6.24 The aim of this provisional proposal was to fill a gap we identified in the law and was modelled upon numerous offences that already exist, albeit in different contexts.
- 6.25 The response to this provisional proposal was mixed. Consultees representing the police and prosecuting authorities were broadly supportive.
- 6.26 The Crown Prosecution Service stated:

<sup>3</sup> By virtue of section 1(4) of the Firearms (Amendment) Act 1988, the Secretary of State may add firearms to the list of prohibited weapons set out in section 5 of the Firearms Act 1968.

<sup>4</sup> Provisional Proposal 14.

The CPS agrees with the provisional proposal to create an offence of being in possession of articles with the intention of using them unlawfully to convert imitation firearms into live firearms.

CPS prosecutors initially identified a number of concerns with regard to how to prove the new offence. On further reflection and consideration of the consultation paper, it appears that those concerns have been unduly pessimistic.

6.27 The National Ballistics Intelligence Service also supported the creation of an offence such as the one we proposed. The Gun Trade Association also agreed with the creation of such an offence. The Council of Her Majesty's Circuit Judges agreed that the new offence "should apply to any articles of any kind if there is an intention to use them for this purpose."

6.28 Consultees from the licensed firearms community expressed concerns about the breadth of our proposed offence. For example the National Rifle Association stated:

A great many legitimate shooters are competent with machine tools and own well-equipped home workshops. Many such people are also interested in the technicalities of firearms as well as their personal skill in using them. Possession of an imitation firearm, a few machine tools and a text on the corresponding real firearm could be enough to create "reasonable suspicion" and legitimise appalling intrusion into an honest person's life.

### **Discussion**

6.29 This response from the National Rifle Association encapsulates a concern expressed by a significant number of consultees from the licensed firearms community. Namely, that our proposed offence would criminalise everyone who possesses tools and a book on gun manufacture.

6.30 This is not, however, the way the provision is designed to work. An offence would only be committed if the Crown could prove to the usual criminal standard of proof that the requisite tools were possessed *and* that there was a demonstrable intention to use them unlawfully to convert an imitation firearm into a live firearm.

6.31 As we pointed out in our scoping consultation paper, similar offences exist in other contexts. For example, section 6 of the Fraud Act 2006 creates an offence of being in possession of articles for use in the course of or in connection with any fraud.<sup>5</sup> This is an extremely broad offence that on its face has the potential to criminalise anyone in possession of a pen and paper. The Court of Appeal in *Sakalauskas* held that the offence requires an *intention* for the article to be used in the course of or in connection with any fraud.<sup>6</sup> This ensures that the offence is kept within sensible limits.

<sup>5</sup> For discussion, see D Ormerod and K Laird, *Smith and Hogan's Criminal Law* (14th edition, 2015) page 1036.

<sup>6</sup> [2013] EWCA Crim 2278.

- 6.32 Similarly, our proposal for a new offence, by requiring the prosecution to prove an *intention* that the article in a suspect's possession be used in the unlawful conversion of firearms, avoids the undesirable outcomes that caused concern to members of the licensed firearms community. Possession of tools and a book on gun manufacture would be insufficient to cross the evidential threshold necessary to initiate a prosecution. This point was made by a number of practitioners at our symposium.
- 6.33 We believe this clarification addresses the concerns expressed by those consultees from the licensed firearms community about the potential breadth of our proposed offence. In addition, the fact the Crown Prosecution Service has expressed its support for the offence demonstrates that it is a provision that would have practical value.

#### **Recommendation 20**

- 6.34 **We recommend the creation of an offence of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm.**

# CHAPTER 7

## CODIFICATION

### INTRODUCTION

- 7.1 In our scoping consultation paper we examined various other problems that undermine the effectiveness and coherence of the law governing the acquisition and possession of firearms.
- 7.2 To remedy these problems, we provisionally proposed the law be codified.<sup>1</sup> We also gave some examples of problems that could be rectified in a codification exercise.<sup>2</sup>
- 7.3 The process of codifying the law has been described in the following terms:
- It is peculiarly the aim of a code that it should seek to digest a field of the law consisting of decisions and legislation (together with the gaps between these sources) and wield them into a coherent whole.<sup>3</sup>
- 7.4 Codification is a term that has a multitude of meanings. In the context of this particular project, when we use the term codification what we mean is the opportunity to digest the law governing the use and acquisition of firearms, make it coherent and remedy the deficiencies that undermine the law's effectiveness.
- 7.5 It is generally accepted that codification has the following aims:
- (1) **Accessibility** – ensuring the law is not scattered across the statute book and is drafted with a minimum of ambiguity. This would provide less scope for judicial interpretation of the law.
  - (2) **Comprehensibility** – ensuring the law is as intelligible as possible and can be understood by ordinary citizens.
  - (3) **Consistency** – the haphazard development of the law in a multitude of statutes leads to inconsistency of terminology and substance. Codification seeks to remove these inconsistencies.
  - (4) **Certainty** – ensuring that the law's prohibitions are clear so that the citizen has fair warning of when they are in danger of committing an offence. Consolidation cannot achieve this as it would only replicate the deficiencies with the existing law.
- 7.6 We asked consultees whether they agreed with us that the law governing the acquisition and possession of firearms be codified. We also asked consultees whether they had any examples of issues that could be remedied in a codification exercise.

<sup>1</sup> Provisional Proposal 15.

<sup>2</sup> Scoping Consultation Paper, Chapter 8.

<sup>3</sup> ATH Smith, "Codification of the Criminal Law – Part 1: The Case for a Code" [1986] *Criminal Law Review* 285, 287.

## RESPONSES

- 7.7 There was overwhelming support for this proposal from consultees. In fact, consultees were almost unanimously in favour of codifying the law to remove the complexities and ambiguities that undermine its effectiveness. The Countryside Alliance stated:

Given the clear need to alter the legislation for the purposes outlined [above] and the inability of simple consolidation to deliver such alterations, we support a wider reform project to codify the law.

- 7.8 The Crown Prosecution Service argued that:

It is our experience that firearms law is an area of law that consistently, possibly more than any other area of law, causes difficulties for charging lawyers. We concur entirely with the observation in paragraph 7.7 that the state of the current legislative provisions 'makes it exceptionally difficult even for a skilled lawyer to state with certainty what the law is'.

We consider that codification of the firearms law would ensure efficiency, reduce costs, increase public confidence in how the courts deal with firearms offenders, and make the legislation easier to access. Codification would also ensure that the new legislation is up to date and had 'moved with the times' providing, as far as possible, clear and unequivocal definitions on matters that have caused the courts problems over many years.

- 7.9 The Gun Trade Association concurred:

The breadth and depth of the Law Commission's Scoping document and the recent Symposium made it very clear that there is an absolute necessity to re-visit UK Firearms Legislation and bring it into the 21<sup>st</sup> century. The GTA firmly supports a comprehensive approach and Codification of the Acts.

- 7.10 The National Ballistics Intelligence Service agreed, saying that "measures [should] be put in place to simplify and codify the law".

- 7.11 The British Association for Shooting and Conservation stated that:

BASC wholeheartedly supports the Law Commission in this wider project. It must be common sense that an area of legislation that draws upon 34 separate pieces of law ought to be codified. The law has long passed the stage of consolidation which although helpful in the short term would do nothing to address this problem.

- 7.12 Finally, the Scottish Government said that:

The Scottish Government and Scottish Ministers have long championed a comprehensive reform of the law, which governs firearms in Scotland as well.



While codification would be a welcome step, there remain deeper problems inherent in the existing law that need to be resolved.

It is essential that any codification or review of the legislation also includes licensing. There are as many anomalies and loopholes in that area as there are in the definition of weapons.

## **DISCUSSION**

- 7.13 There was almost unanimous support amongst consultees for codification of the law. Consultees supplied us with numerous problems that undermine the effectiveness of the law and cause difficulties in practice. A significant number of these were related to the current licensing system. Many of these points, especially relating to the regional variation in the operation of the licensing system, were remarked upon recently by Her Majesty's Inspectorate of Constabulary.
- 7.14 This lends weight to the suggestion we made in our scoping consultation paper that any codification exercise ought to encompass the licensing system.
- 7.15 Further support for codification can be seen in the report published by Her Majesty's Inspectorate of Constabulary shortly after our consultation. That report contained the following summary:<sup>4</sup>

8.15. We summarise the current position as follows:

- 1) the relevant firearms licensing arrangements are set out across a substantial number of statutes;
- 2) the Home Office guidance is too discretionary in approach;
- 3) in any event, it seems as though the courts may not be prepared to place weight on it when deciding cases; and
- 4) previous recommendations designed to strengthen the current position have not been implemented.

8.16. This is not a satisfactory situation and it cannot be allowed to continue.

- 7.16 We agree with these observations and believe that codification would provide the opportunity to address the problems identified by Her Majesty's Inspectorate of Constabulary.
- 7.17 Consultees also suggested a substantial number of other examples of problems that we believe could be examined in a codification exercise. By way of example, the Marine Management Organisation drew our attention to section 13 of the Firearms Act 1968. This provision provides an exemption to the requirement for a firearm certificate for the carriage of firearms on vessels. Whether this exemption

<sup>4</sup> Her Majesty's Inspectorate of Constabulary, *Targeting the Risk* (2015), para 8.15-8.16. Available at: <http://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/firearms-licensing-targeting-the-risk.pdf> (last accessed 7 December 2015).

remains necessary is something that we believe could be examined in a codification exercise.

- 7.18 By way of another example, there was overwhelming support expressed for the reconstitution of the Firearms Consultative Committee. Given how much we have drawn upon the Committee's work, we agree that it performed a valuable role and agree with those consultees who expressed a desire for a similar advisory body to be established.

#### **Recommendations 21 and 22**

- 7.19 **We recommend that the law on firearms be codified. We believe a suitable opportunity to carry out codification would be immediately following the passing of any legislation which includes our specific proposals.**
- 7.20 **We recommend that consideration be given to the formation of a consultative committee of experts to advise the Home Office on firearms law.**

# CHAPTER 8

## LIST OF RECOMMENDATIONS

### Recommendation 1

- 8.1 We recommend that section 57(1) of the Firearms Act 1968 be amended to define “lethal” by reference to a specified muzzle kinetic energy.

[paragraph 2.16]

### Recommendation 2

- 8.2 We recommend that for the purposes of section 57(1) a weapon should be considered lethal if it is capable of discharging a projectile with a kinetic energy of more than 1 joule as measured at the muzzle of the weapon for the purposes of section 57(1) of the Firearms Act 1968.

[paragraph 2.29]

### Recommendation 3

- 8.3 We recommend the creation of an exempting provision in the Act exempting airsoft guns from the scope of the 1 joule kinetic energy threshold which deems a barrelled weapon to be lethal.

[paragraph 2.43]

### Recommendation 4

- 8.4 We recommend that if a deemed lethality threshold of 1 joule kinetic muzzle energy be created, a statutory exemption for airsoft guns should also be created. The exemption should be defined:

- (1) by reference to safe kinetic energy thresholds for airsoft guns to operate within;
- (2) so as to exempt those guns that are only capable of firing small plastic pellets; and
- (3) having regard to the “permitted activities” listed in The Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007.

[paragraph 2.49]

### Recommendation 5

- 8.5 We recommend that the term “component part” in the Firearms Act 1968 be defined as:

- (1) The barrel, chamber, cylinder.
- (2) Frame, body or receivers;

- (3) Breech block, bolt or other mechanism for containing the charge at the rear of the chamber.

**[paragraph 3.20]**

**Recommendation 6**

- 8.6 We recommend that the Secretary of State be given the power to amend the statutory list of component parts by way of statutory instrument, subject to the affirmative resolution procedure.

**[paragraph 3.28]**

**Recommendation 7**

- 8.7 We recommend that legislation be enacted to clarify that a component part shall remain classified as such so long as it is capable of fulfilling its function as part of a lethal barrelled weapon.

**[paragraph 3.44]**

**Recommendation 8**

- 8.8 We recommend that it be a defence for an individual to show that he or she did not know and had no reason to suspect that the parts remained functional.

**[paragraph 3.45]**

**Recommendation 9**

- 8.9 We recommend that the term “antique firearm” be defined in legislation.

**[paragraph 4.13]**

**Recommendation 10**

- 8.10 We recommend that the term “antique firearm” should be defined in legislation by reference to functionality, understood as a firearm that does not pose a realistic danger to the public either because of the type of ammunition it fires or because of its ignition system.

**[paragraph 4.17]**

**Recommendation 11**

- 8.11 We recommend that an “antique firearm” be defined as:
- (1) a firearm that employs an ignition system included on a statutory list of obsolete ignition systems and is possessed as a curiosity or ornament or;
  - (2) a firearm that is chambered for a cartridge type included in a statutory list of cartridge types that are no longer readily available and is possessed as a curiosity or ornament.

**[paragraph 4.40]**

### **Recommendation 12**

- 8.12 We recommend that sections 19 and 20 of the Firearms Act 1968 be extended so that it is clear that they apply to antique firearms.

**[paragraph 4.54]**

### **Recommendation 13**

- 8.13 We recommend that for a firearm to be considered deactivated as matter of law, it must either be certified as having undergone a Home Office approved deactivation process or the deactivation process annexed to the Deactivated Firearms Regulation.

**[paragraph 5.32]**

### **Recommendation 14**

- 8.14 We recommend that if a deactivated firearm is to be placed on the market, including transmission for free, exchange or barter, or transferred to another Member State it must be deactivated in a way that complies with the deactivation standards annexed to the Deactivated Firearms Regulation.

**[paragraph 5.33]**

### **Recommendation 15**

- 8.15 We recommend that section 8 of the Firearms (Amendment) Act 1988 be amended to give effect to our previous recommendation.

**[paragraph 5.38]**

### **Recommendation 16**

- 8.16 We recommend there should be a rebuttable presumption that a weapon not deactivated to a Home Office or European Commission approved standard remains a firearm unless the person in possession of it can show it has been rendered permanently incapable of discharging a projectile.

**[paragraph 5.46]**

### **Recommendation 17**

- 8.17 We recommend that any modification made to a deactivated firearm with the intention of making it capable of discharging a projectile will mean that as a matter of law that weapon cannot be classified as a deactivated firearm.

**[paragraph 5.57]**

### **Recommendation 18**

- 8.18 We recommend section 4(3) be amended to clarify that the offence can be committed even if the weapon was originally capable of discharging a projectile through its barrel.

**[paragraph 5.56]**

**Recommendation 19**

- 8.19 We recommend that the test for convertibility in section 1(6) of the Firearms Act 1982 be amended to focus upon the ready availability of the requisite tools rather than on whether they are commonly used when carrying out maintenance on the home.

**[paragraph 6.23]**

**Recommendation 20**

- 8.20 We recommend the creation of an offence of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm.

**[paragraph 6.34]**

**Recommendation 21**

- 8.21 We recommend that the law on firearms be codified. We believe a suitable opportunity to carry out codification would be immediately following the passing of any legislation which includes our specific proposals.

**[paragraph 7.19]**

**Recommendation 22**

- 8.22 We recommend that consideration be given to the formation of a consultative committee of experts to advise the Home Office on firearms law.

**[paragraph 7.20]**

# CHAPTER 9

## GLOSSARY

**Air gun** – a weapon which uses compressed air to fire a projectile. Only a firearm if it is considered to be lethal, and even if it is lethal, it is exempt from regulation if under certain power limits by section 1(3)(b) of the Firearms Act 1968.

**Air pistol** – a sub-species of air gun. Can be held without any certification if it has have a muzzle kinetic energy not more than 6 ft lbs.

**Air rifle** – a sub-species of air gun. Can be held without a firearm certificate if they have a muzzle kinetic energy not more than 12 ft lbs.

**Airsoft** – an activity employing low-powered air weapons in acting out military or law enforcement scenarios, where the participants shoot at each other with 6mm plastic pellets. The weapons in question are not rifled and made from low density metal.

**Barrel** – the tube down which the projectile travels when the weapon is fired.

**Body** – another word for “receiver” or “frame”.

**Bolt** – on a rifle, this is a component which slides into an extension to the barrel at the breech end and rotates to lock. This closes off the breech end of the barrel and brings the firing pin into the cocked position, ready to strike the primer on the base of the bullet to fire it when the trigger is pulled.

**Bore** – as in “a 12-bore shotgun”. The bore number is a measure of barrel width, defined by the number of lead balls of the diameter of the barrel it would take to make up 1 lb of lead. Therefore the lower the number, the wider the shotgun barrel.

**Breechblock** – this is the component which holds the cartridge in the chamber when the weapon is ready to be fired.

**Breechface** – this is the front part of the breechblock, through a hole in which the firing pin strikes the primer in a typical centrefire weapon.

**Breech-loading** – any firearm which is loaded at the breech end of the barrel (the opposite end to where the bullet comes out).

**Calibre** – this is a confusing term, which in general refers to the bullet type (eg “9mm parabellum”) that a weapon is designed for, and more specifically it denotes the approximate diameter of that bullet type (eg .22” means that the bullet is .22 inches wide). This is not an exact measurement, however. Sometimes, the calibre will also include a description of the bullet’s length, so 9mm parabellum is also known as 9x19mm ammunition.

**Cartridge** – a single round of ammunition, containing primer, charge and bullet (or shotgun pellets) all in one self-contained case.

**Centrefire** – the most modern and commonly-used ignition system for cartridge weapons. A strong brass cartridge case has a soft metal cup filled with primer inserted into the base, which is crushed by the firing pin when the trigger is pulled to ignite the main charge. Since the case itself need not be crushed, unlike in rimfire cartridges, higher pressures and therefore muzzle energies can be achieved.

**Chamber** – the portion of the barrel (or cylinder, in the case of a revolver) into which the round is placed prior to being fired.

**To convert** – the act of making physical changes to an imitation firearm with the intention of rendering it capable of discharging a missile.

**Cylinder** – the rotating part of a revolver, containing the rounds in chambers.

**Firearm** – defined in section 57(1) of the Firearms Act 1968 as “lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged”.

**Firearm certificate** – a certificate granted under section 1 of the Firearms Act 1968 allowing the holder to possess, purchase or acquire a firearm apart from a shotgun. A “good reason” is required to obtain one – see Home Office Guide.

**Firing pin** – in cartridge weapons, the point that is forced into the base of the cartridge when the trigger is pulled. This has the effect of igniting the primer, which in turn ignites the charge which sends the bullet down the barrel. In essence a pin shaped piece of metal.

**Frame** – the “skeleton” of a revolver, to which everything else is attached.

**Home Office Guide** – the Home Office produces a non-statutory *Guide on Firearms Licensing Law*, last updated March 2015, which is discussed extensively in this paper.

**Imitation firearm** – defined in section 57(4) of the Firearms Act 1968 as “any thing which has the appearance of being a firearm (other than such a weapon as is mentioned in section 5(1)(b) of this Act) whether or not it is capable of discharging any shot, bullet or other missile.”

**Joule (j)** – the SI, or metric, unit for kinetic energy. Technically, it is the energy transferred in applying 1 Newton of force through 1 metre.

**Muzzle energy** – the kinetic energy of a projectile at the point it leaves the muzzle.

**Muzzle-loading** - any firearm which is loaded at the “muzzle” end of the barrel (ie the end where the bullet comes out). This can include muzzle-loading revolvers, which are loaded (with powder, bullet and wadding separately) from the front end of the cylinder, which is still behind the barrel proper.

**Prohibited weapon (“section 5”)** – a weapon in the section 5 list of the Firearms Act 1968. These can only be lawfully possessed with the permission of the Secretary of State, and mere possession of many of them attracts a 5 year



mandatory minimum sentence. Very few people have the authority of the Secretary of State to acquire / possess weapons of this nature.

**Proof House** – an organisation which tests, or “proofs”, gun barrels and ammunition. It proofs barrels by firing carefully calibrated loads of 1.25 or 1.5 times the standard load of explosive in the weapon in a safe area, and checking to see if any damage has occurred. There are two proof houses in the UK, the Birmingham Gun Barrel Proof House and the Worshipful Company of Gunmakers in London. Each has its own set of stamps to apply to weapons which have been proofed. They also have a role to play in approving deactivation of firearms, assisting with law enforcement, and testing samples of ammunition. These bodies derive their authority from the Gun Barrel Proof Act 1868, as amended by the Gun Barrel Proof Act 1978.

**Proof mark** – a mark stamped on a gun by a proof house to indicate the date of passing of proof, and the standard to which the weapon has been proofed. May also refer to the marks stamped on a deactivated weapon by a proof house to signify deactivation to an approved standard.

**Realistic imitation firearm** – defined in section 38 of the Violent Crime Reduction Act 2006 as an imitation firearm that has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm and is neither a deactivated firearm or an antique.

**Receiver** – the component of the firearm housing parts of the operating mechanism. Also known as the “frame” in handguns, especially revolvers.

**Registered Firearms Dealer** – someone who sells, transfers, repairs, tests or proves (see “proof house”) firearms or ammunition by way of business who is registered under section 33 of the Firearms Act 1968 to do so.

**Revolver** – a gun action where each round has its own chamber, which rotates to line up with the barrel when either the hammer is cocked (“single action”) or when the trigger is pulled a first time (“double action”).

**Rifle** – a long arm with a rifled barrel.

**Rifled** – the word used to describe the spiral grooves on the inside surface of a barrel. They are present on rifles and most pistols. These are designed to impart rotational spin to a bullet, which stabilises it in flight, enabling it to travel more accurately.

**Self-contained gas cartridge (“Brocock”)** – a type of relatively low-powered air weapon, now a section 5 prohibited weapon in the UK *except* for those which have been owned and held on the owner’s firearm certificate since made prohibited. They were prohibited because of the ease of converting some models into live-firing guns. To operate, a small cartridge is filled with compressed air, which is chambered into a firearm which (typically) looks like a normal revolver. A valve in the cartridge is opened by the trigger being pulled, and the air is released to expel an air rifle pellet.

**Shotgun (“section 2 firearm”)** – a typically smooth-bored gun designed to fire a round containing many small lead pellets, collectively known as “shot”. They can also be used to fire slugs.

**Shotgun certificate** – a certificate granted under section 2 of the Firearms Act 1968 allowing the holder to possess, purchase or acquire a shotgun. Available as of right if the applicant meets all the conditions laid down by statute and the police. This stands in contrast to a firearm certificate, as the individual must show ‘good reason’.

(Signed) DAVID BEAN, *Chairman*  
NICK HOPKINS  
STEPHEN LEWIS  
DAVID ORMEROD  
NICHOLAS PAINES

ELAINE LORIMER, *Chief Executive*  
10 December 2015





