



**Law
Commission**
Reforming the law

Firearms Law
A Scoping Consultation Paper

**50
YEARS**

Law Commission

Consultation Paper No 224

FIREARMS LAW

A Scoping Consultation Paper



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THE LAW COMMISSION – HOW WE CONSULT

About the Law Commission: The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are: The Rt Hon Lord Justice Lloyd Jones, *Chairman*, Stephen Lewis, Professor David Ormerod QC and Nicholas Paines QC. The Chief Executive is Elaine Lorimer.

Topic of this consultation: Firearms law. This scoping consultation paper does the following:

- proposes solutions to the most pressing problems with the law regulating the possession and acquisition of firearms;
- examines whether more fundamental reform of the law is necessary; and
- provides some examples of issues that could be addressed in such an exercise.

Geographical scope: This consultation paper applies to the law of England and Wales.

Availability of materials: The consultation paper is available on our website at <http://www.lawcom.gov.uk/project/firearms>.

Duration of the consultation: We invite responses from 21 July to 21 September 2015.

Comments may be sent:

By email to firearms@lawcommission.gsi.gov.uk

OR

By post to Karl Laird, Criminal Law Team, Law Commission of England & Wales,
1st Floor Tower, 52 Queen Anne's Gate, London, SW1H 9AG.

Tel: 020 3334 3162 / Fax: 020 3334 0201

If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically (for example, on CD or by email to the above address, in any commonly used format).

After the consultation: In the light of the responses we receive, we will decide on our final recommendations and present them to Government.

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.

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THE LAW COMMISSION

FIREARMS LAW: A SCOPING CONSULTATION PAPER

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CHAPTER 1

INTRODUCTION

THE PROJECT

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 (NaBIS) 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.¹

- 1.6 Work commenced on the project in January 2015.
- 1.7 Since we started this project, concerns regarding the practical problems caused by the law have been endorsed by numerous additional stakeholders. We have had meetings with the Metropolitan Police's "Trident" Gang Crime Command and CPS policy officials, for example, who have provided us with evidence of the practical problems the current law is causing.

BACKGROUND

- 1.8 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.
- 1.9 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.
- 1.10 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 undertaken² – 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 in that Act is fit for purpose over 100 years after it was enacted.
- 1.11 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.
- 1.12 As this paper will explain, these issues are not academic: they have tangible consequences both in terms of public safety and cost.

¹ Firearms licensing is currently under review by Her Majesty's Inspectorate of Constabulary.

² C Greenwood, *Firearms Control* (1972), p 79.

- 1.13 To remedy these most pressing problems with the law and thereby minimise these consequences, the Law Commission is asking consultees for their views on the suitability of a range of proposed solutions for reform.

THE PURPOSE OF THIS PAPER

- 1.14 This Scoping Consultation Paper has two aims: to consult on particular reforms that appear to be urgently needed and to examine the case for more fundamental reform. Chapters 2 to 6 examine those problems which a range of stakeholders agreed cause particular difficulty and undermine public safety. Chapters 7 and 8 examine whether the law ought to be more fundamentally reformed.
- 1.15 We provisionally propose interim solutions to those problems analysed in chapters 2 to 6, followed by a more fundamental codification of the law.
- 1.16 After initial meetings with stakeholders, there was consensus that the following failings in the law cause particular difficulties in practice:
- (1) the failure to define “lethal”;
 - (2) the failure to define “component part”;
 - (3) the failure to define “antique”;
 - (4) the failure to impose a legal obligation that deactivated firearms be certified as being deactivated to an approved standard; and
 - (5) the failure of the law to keep pace with technological developments in relation to whether an imitation firearm is ‘readily convertible’ into a live firearm.
- 1.17 Chapters 2 to 6 set out the current law on each of these issues, explain the practical problems the law causes, and propose solutions to remedy these problems. The reason these issues merit separate consideration is that there is consensus that they cause difficulty and they also undermine public safety to varying degrees.
- 1.18 Chapter 7 will examine the case for more fundamental reform of the law regulating the possession and acquisition of firearms. Before beginning this scoping consultation exercise, the Law Commission was aware from early fact finding with stakeholders that the entire legislative framework regulating firearm use and possession is seriously flawed in a variety of different ways. What became clearer as the scoping exercise progressed, however, is that these problems are not academic, but cause significant difficulties in practice.
- 1.19 As Chapter 7 will explain in more detail, the Law Commission provisionally proposes that the law on firearms be codified.
- 1.20 Chapter 8 provides some examples of problems that stakeholders brought to our attention, but which were not suitable for analysis in an individual chapter. There were two reasons for this. First, there is less consensus that these issues cause practical difficulty and secondly there are not the same public safety imperatives.

THE SCHEME OF THIS PAPER

1.21 This scoping paper is structured thematically as follows:

- (1) Chapter 1 is this introduction.
- (2) Chapter 2 sets out the law on lethality, examines the problems with the law and makes some provisional proposals to remedy them.
- (3) Chapter 3 sets out the law on 'component parts', examines the problems with the law and makes some provisional proposals to remedy them.
- (4) Chapter 4 sets out the law on 'antiques', examines the problems with the law and invites consultees' views on the suitability of a range of options to remedy them.
- (5) Chapter 5 sets out the law on deactivated firearms, examines the problems with the law and makes some provisional proposals to remedy them.
- (6) Chapter 6 sets out the law on 'readily convertible imitation firearms', examines the problems with the law and makes some provisional proposals to remedy them.
- (7) Chapter 7 examines the case for codification.
- (8) Chapter 8 sets out some additional issues that stakeholders have brought to our attention.
- (9) Chapter 9 lists our Provisional Proposals and Consultation Questions and invites views from consultees.
- (10) Chapter 10 contains a glossary.

ACKNOWLEDGMENTS

1.22 We 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 Detective Inspector 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 and the rest of the team at the Metropolitan Police Forensic Firearms Unit; Chris Lynn of the National Crime Agency; HMI Stephen Otter and Mark Stainforth of Her Majesty's Inspectorate of Constabulary; Ian Elkins and Kirsten Foster 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;

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CHAPTER 2

LETHALITY

INTRODUCTION

- 2.1 Section 57(1) of the Firearms Act 1968 defines a firearm as a 'lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged'. None of these terms are defined, however. Unless a weapon is lethal it will not fall within the statutory definition of firearm. Stakeholders suggest that the failure to specify what lethal means in this context and how it ought to be measured can cause considerable difficulty. Chapter 8 will examine the issues that have arisen due to the failure to define other terms within the definition of firearm. These do not, however, cause the same difficulties in practice as the failure to define lethal.
- 2.2 This absence of a definition of lethal goes back further than the Firearms Act 1968 - the first legislative provision to use it in the definition of "firearm" was the Firearms Act 1920.¹ The definition of firearm has remained largely unchanged since then, passing through the Firearms Act 1937² into the consolidating 1968 Act. None of these provisions specified what lethal means in this context or how lethality is to be determined.
- 2.3 In the absence of legislative guidance on the matter, it has been left to the courts to fill this lacuna. As this chapter will establish, the courts have demonstrated a marked reluctance to define lethal with any specificity.
- 2.4 Determining whether the article is lethal is a crucial prerequisite when determining whether an individual has committed one of the offences contained within the legislation. Although normally this omission does not cause difficulty, since most alleged firearms in real-life cases are clearly potentially lethal, issues can arise at the margins and specifically in relation to low-powered air weapons and poorly converted imitation firearms.
- 2.5 Initial discussions with stakeholders suggested that the failure to specify what lethal means or how lethality is to be determined causes three main problems:
- (1) Greater reliance upon expert evidence leads to longer and more expensive trials. What should be a relatively simple matter is rendered more complex by the legislation's silence.
 - (2) A lack of clarity on whether certain air weapons and poorly converted imitation firearms are 'firearms' for the purposes of the legislation, which causes difficulty both for the prosecuting authorities and, in the case of air weapons, legitimate users.
 - (3) The ability to determine with absolute certainty whether something is a firearm is crucial to the operation of section 21 of the Act, which prohibits those who have been convicted of an offence from possessing a firearm

¹ s 12(1).

² s 23(6)(a).

for specified periods of time. The legislation's failure to specify what lethal means could make it difficult to determine whether an individual is in possession of something which he or she is not permitted to possess.

- 2.6 By examining the failure to define what lethal means, and considering potential solutions, we aim to address these problems.

THE JUDICIAL APPROACH TO INTERPRETATION

The pre-1968 cases

- 2.7 In *Read v Donovan* the issue for the court to determine was whether a signal pistol was lethal and therefore a firearm.³ Lord Goddard CJ held that it was "beyond doubt" that the signal pistol in question was a firearm. In relation to whether it was lethal, the judge observed that it undoubtedly was, given that it was capable of causing injury. The judge further held that the intention of the manufacturer was irrelevant. The question in every instance was whether the weapon in question was "capable of inflicting harm."⁴ The Lord Chief Justice did not, however, specify what "harm" means in this context. Harm could be interpreted as meaning relatively trivial injury or it could be taken to mean something more serious, such as grievous bodily harm. Therefore significant uncertainty remained despite *Read v Donovan*.
- 2.8 Subsequently, in *Moore v Gooderham* D was charged with selling an airgun to a boy he knew to be under the age of 17.⁵ The airgun was the least powerful type available and the magistrates found that the airgun was not a firearm. The magistrates held that the weapon must be one likely to cause injury of the sort which might result in death. They rejected the contention that a lethal weapon was one which was merely capable of causing injury, but which was unlikely to cause death. In evaluating whether the magistrates had been misdirected, Lord Parker CJ stated:
- I think that they were fully entitled to give to the word lethal the sense that the injury must be of a kind which may cause death. That is the ordinary meaning of the word, but it is to be observed that in this connection one is not considering whether a firearm is designed or intended to cause injury from which death results, but rather whether it is a weapon which, however misused, may cause injury from which death may result.⁶
- 2.9 Lord Parker arrived at this conclusion on the basis that the offence in section 19 of the Firearms Act 1937 (then the relevant legislation) was intended to prevent a weapon coming into the possession of a child who might misuse it by discharging it at point blank range towards an eye or ear.
- 2.10 The magistrates had found that, although generally speaking this particular airgun was incapable of causing more than merely trivial injury, it was sufficiently

³ [1947] KB 326, [1947] 1 All ER 37.

⁴ [1947] KB 326, 328.

⁵ [1960] 1 WLR 1308, [1960] 3 All ER 575.

⁶ [1960] 1 WLR 1308, 1310.

powerful to penetrate the eye. Based on this finding, the court overturned the magistrates' ruling and allowed the prosecution's appeal. The case was therefore sent back to the magistrates for reconsideration.

- 2.11 In *Moore*, Lord Parker CJ, with reference to *Read v Donovan*, stated that the weapon in that case was clearly lethal if misused and that he did not feel too much attention could be given to the definition in that judgment. The Lord Chief Justice then stated:

But I am far from saying that it is wrong, if one once considers that all that it is necessary to find is a weapon capable of doing something more than trivial harm, because, in those circumstances, death may well result if it is fired at a particularly vulnerable point.⁷

- 2.12 In neither of these cases was lethal defined with reference to muzzle kinetic energy. (A separate section, below, explains what this means.) The court in *Moore* appears to have defined lethal with reference to whether the weapon in question was capable of causing harm from which death could occur if discharged at a particularly vulnerable part of the body, such as the eye. This is very imprecise.
- 2.13 As a result of these cases there were two conflicting approaches as to how lethal ought to be defined. The first approach suggested that lethal was to be determined with reference to whether something could cause harm. The second approach, in contrast, defined lethal with reference to whether something was capable of causing death. The lethality threshold set by these respective approaches differs significantly and would therefore dictate different answers to the question of whether something is lethal and therefore a firearm.

Cases decided with reference to the Firearms Act 1968

- 2.14 More recently, in *Thorpe* D was charged with possessing a firearm without a firearm certificate.⁸ The weapon in question was a 6-chamber revolver that fired using compressed carbon dioxide. Evidence suggested that if fired at close range, the revolver was capable of penetrating the eye. Its muzzle kinetic energy⁹ was determined to be 2 ft lbs (2.7 joules). The recorder directed the jury that when assessing whether the weapon was lethal they must be sure that it is a "weapon which is capable of causing injury from which death might result if the weapon is misused." After having retired to consider their verdict, the jury returned and asked: "In a definition of 'lethal' how remote can the chance of lethality be on the basis that anything can be lethal?" The judge refused to answer this question, responding "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." D was convicted.
- 2.15 On appeal counsel for D submitted that the court was not bound by either *Moore v Gooderham* or *Read v Donovan*. The Court of Appeal rejected this argument. The court asserted that Parliament could be presumed to have had

⁷ [1960] 1 WLR 1308, 1311.

⁸ [1987] 1 WLR 383, [1987] 2 All ER 108.

⁹ See below, para 2.20.

these two decisions in mind when drafting the 1968 Act. Counsel for D then suggested that a weapon could only be lethal if it is “one capable of causing injuries of a more than trivial nature and of a kind which, it might reasonably be expected, could lead to death.” Mr Justice Kenneth Jones, giving the judgment of the whole court, rejected this argument on the basis that it would be undesirable to import reasonableness into the statute. It was also observed that the test of capacity to inflict harm laid down by Lord Parker CJ in *Moore v Gooderham* had “carried the day” for 25 years and that it would be inappropriate to depart from it.¹⁰

- 2.16 A similar issue arose in *Castle v DPP*, in which D was convicted of an offence under section 21(2) of the 1968 Act (of possessing firearms when barred by virtue of having prior criminal convictions).¹¹ The articles found in D’s possession were air weapons that he alleged were incapable of being firearms, on the basis that they were not lethal. The weapons in question were capable of killing small vermin and the magistrates had inferred from this that they could cause injury from which death might result if fired at point blank range at a vulnerable part of the human body. The Crown’s expert’s evidence was that he would recommend the weapons as being suitable for killing vermin. This was not challenged by D. There was no expert evidence that specifically addressed the issue of whether the weapons were lethal to humans. D submitted that this was a prerequisite in every instance and that his conviction was therefore unsafe.
- 2.17 The court rejected D’s argument and held that the justices were entitled to conclude that the weapons were lethal from the fact that they were capable of killing small vermin. The court declined to lay down a rule mandating the type of evidence that had to be adduced before it could safely be said that a weapon is lethal.
- 2.18 In *Street v DPP* the Divisional Court accepted that an air weapon with a muzzle energy of 0.5 ft lbs (0.68 joules) was not lethal and was therefore not a firearm.¹²
- 2.19 This collection of cases spanning over 50 years demonstrates two things in relation to how the courts understand the term lethal. First, on one interpretation a weapon is lethal (and therefore a firearm) if it is capable of causing an injury from which death could result if the weapon were misused. The fact that a weapon could only cause death if fired point blank at an especially vulnerable part of the body is sufficient. On another interpretation, it suffices that the weapon is capable of causing injury. Such uncertainty is deeply problematic. Secondly, the courts do not define “lethal” with reference to a specific kinetic energy. Adding to the difficulty in these cases is the fact that the projectile in each one differed in its shape and material and therefore its penetrative capacity.¹³ The next section will explain what is meant by kinetic energy.

¹⁰ [1987] 1 WLR 383, 388.

¹¹ (1998) CO/3791/97.

¹² [2003] EWHC 86 (Admin).

¹³ How well a missile can penetrate the body is obviously a key indicator of the potential lethality of the weapon. Due to the variety of possible projectiles, however, kinetic energy is a sensible and practicable alternative.

THE SCIENCE¹⁴

- 2.20 One of the criteria forensic scientists use to assess the lethality of a weapon is the muzzle kinetic energy of the discharged projectile. Muzzle kinetic energy has been described as “probably the most important property when dealing with ballistics”.¹⁵ This metric provides an indication of the overall power of a missile as it leaves the barrel of the weapon and, as a result, an indication of the weapon’s potential to wound. Muzzle kinetic energy is the energy possessed by the projectile, by virtue of its motion. There is a somewhat complicated-looking mathematical formula which we set out here for information. What really matters from a legal perspective is that there is an agreed basis for measuring kinetic energy:¹⁶

$$KE = \frac{1}{2} MV^2$$

Where: KE = kinetic energy; M = mass of the projectile; V = velocity of the projectile. When using imperial measurements, kinetic energy is usually quoted in **foot pounds of force (ft lbs)**, with the weight of the projectile being measured in grains (7,000 grains = 1 pound) and the velocity in feet per second. Due to the different relationship between units in the imperial system compared to the metric system, the appropriate figure for gravitational acceleration (32.174 fts^{-2}) must be added into the formula. Once consideration has also been given to converting pounds into grains, it therefore becomes:

$$KE \text{ (ft lbs)} = \frac{MV^2}{2 \times 32.174 \times 7000}$$

When working with the SI system, the kinetic energy is quoted in **joules (J)**, with the mass of the bullet in kilograms and the velocity in metres per second. The equation then becomes:

$$KE \text{ (joules)} = \frac{MV^2}{2}$$

The conversion factor from ft lbs to joules is to multiply by 1.3558.

- 2.21 This information is especially pertinent as one of the possible ways suggested to us of remedying the current uncertainty is to define lethal with reference to a specific muzzle energy, measured in joules. In short, rather than try to identify a threshold where a weapon is capable of killing (which is impossible because it turns on so many variables – distance from target, point of entry of target’s body, mass of bullet to name a few) we should identify an agreed threshold of muzzle kinetic energy and deem weapons in excess of that to be “lethal”.

PROBLEMS CAUSED BY THE FAILURE TO SPECIFY A THRESHOLD OF LETHALITY

- 2.22 The failure to specify a precise lethality threshold causes difficulties in practice. A weapon cannot be subject to the legislative scheme established by the Firearms

¹⁴ With thanks to Mark Mastaglio of Forensic Firearms Consultancy.

¹⁵ B J Heard, *Forensic Ballistics in Court* (2013), 134.

¹⁶ Adapted from B J Heard, *Forensic Ballistics in Court* (2013), 134 to 135.

Acts unless it is lethal. Whilst in most instances it will be clear that the weapon is lethal, particular difficulty arises in two instances: first in relation to low-powered air weapons and secondly in the case of poorly converted imitation firearms where whether or not the item is a firearm could determine whether or not it is a 5(1)(aba) prohibited weapon, which carries the mandatory minimum 5 year sentence of imprisonment. The ability to determine with certainty whether something is 'lethal' can therefore be crucial.

- 2.23 For example, if an individual possesses a low-powered air pistol (say one that has a muzzle kinetic energy of 1.5 joules) with intent to cause injury, has he or she committed the offence contained within section 16 of the Firearms Act 1968?¹⁷ That provision makes it an offence to possess a firearm with intent to injure. Unlike some of the other offences, section 16 does not specify whether it encompasses air weapons. The air pistol in the example is a weapon, it is barrelled and it is capable of discharging a projectile, so D's guilt turns upon whether it is lethal. The legislation does not assist with this inquiry. Instead of this being a simple question of fact as to whether the air pistol crosses some statutory threshold of lethality, for example, the absence of legislative guidance necessitates satellite litigation on the minimum muzzle kinetic energy that might be capable of causing injury resulting in death. This makes what ought to be a relatively simple issue unnecessarily complex and prolongs the trial.

Imitation firearms and realistic imitation firearms

- 2.24 A further problem arises because of the relationship between the legislation dealing with firearms and imitation firearms.
- 2.25 Section 57 of the Firearms Act 1968 provides that an imitation firearm is one which has the appearance of being a firearm whether or not it is capable of discharging any shot, bullet or other missile. It is an offence to do certain prohibited acts with a firearm or an imitation firearm. For example section 18 makes it an offence for a person to 'have with him a firearm or imitation firearm with intent to commit an indictable offence'.
- 2.26 The Firearms Act 1982 creates offences involving imitation firearms that are 'readily convertible' into firearms to which section 1 of the 1968 Act applies. This is the subject matter of Chapter 6.
- 2.27 Finally, the Violent Crime Reduction Act 2006 creates certain offences involving 'realistic imitation firearms'. Section 38 defines these as imitation firearms that have an appearance that is so realistic as to make it indistinguishable, for practical purposes, from a 'real firearm'.
- 2.28 It is clear that the statutory regime envisages a distinction between an imitation firearm and a 'real' firearm. Given that section 57 states that something can still be an imitation even though it is capable of discharging a shot, bullet or other missile, the only feature that seems to distinguish the two is that an imitation is not *lethal* barrelled. For example, something that looks like a 'real firearm' but is only capable of discharging a projectile with very low kinetic energy would presumably not fall within the definition of firearm contained in section 57. This is

¹⁷ A similar issue arose in *Street v DPP* [2003] EWHC 86 (Admin).

because it is not 'lethal'. It could, however, still be an imitation, and/or a realistic imitation, depending on its appearance. The test of lethality is therefore crucial to the successful operation of this facet of the statutory framework. The failure to specify what 'lethal' means therefore has the potential to complicate this aspect of the legislative regime.

- 2.29 A low powered air weapon may or may not be lethal and therefore a firearm for the purposes of the law. Without obtaining expensive expert evidence and going to court it is impossible to know whether offences may be being committed by someone in possession of one. This causes difficulties for the police and the CPS, as well as for legitimate air weapon enthusiasts.
- 2.30 It is for these reasons we believe that the failure to specify what lethal means and how lethality ought to be determined needs to be remedied.

POSSIBLE SOLUTIONS

- 2.31 This section of the chapter will consider some methods of remedying the failure to define lethal, with the aim of enhancing clarity and certainty.

(1) Remove 'lethal' from the definition of firearm

- 2.32 One solution is to remove lethal from the definition of firearm altogether. As our comparative legal research demonstrates, this approach has been adopted in a number of the Australian jurisdictions. For example the New South Wales Firearms Act 1996 defines a firearm as "a gun, or other weapon, that is (or at any time was) capable of propelling a projectile by means of an explosive, and includes a blank fire firearm, or an air gun, but does not include anything declared by the regulations not to be a firearm."¹⁸ Under this approach a firearm could be defined without reference to lethality at all.
- 2.33 The New South Wales legislation does not define a firearm by reference to muzzle kinetic energy either. This might be problematic, however: if 'firearm' is not defined by reference to lethality *or* muzzle kinetic energy, a child's toy could fall within the definition.¹⁹ This would obviously be undesirable. The NSW authorities avoid this problem by explicitly exempting toys and similar items.
- 2.34 An alternative solution that avoids this problem is to define a firearm not by reference to lethality, but solely by reference to muzzle kinetic energy. The Air Weapons and Licensing (Scotland) Act 2015 provides an example of such an approach. For the purposes of the Act, an "air weapon" does not include one that is incapable of discharging a missile with kinetic energy of more than one joule as measured at the muzzle of the weapon.²⁰
- 2.35 Using this as a template, a firearm could, for example, be defined as a 'barrelled weapon capable of discharging a shot, bullet or other projectile with kinetic

¹⁸ New South Wales Firearms Act 1996, s 4.

¹⁹ Children's toys are not at present excluded by the regulations – although many objects, such as certain industrial tools and things designed for use in film, TV or on stage are declared not to be firearms: New South Wales Firearms Regulations 2006, reg 4.

²⁰ Available at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx> (last visited 7 July 2015).

energy of 'X' joules as measured at the muzzle of the weapon'. Another, admittedly less elegant, way of achieving the same thing would be to leave the term 'lethal' in the Act but deem 'lethal' to be fixed at a certain level of muzzle kinetic energy – this option is considered below.

- 2.36 It would be necessary to consider whether a lower muzzle kinetic energy ought to apply to those firearms that are capable of fully automatic fire²¹ from those that are capable of semi-automatic fire²² and/or single shot fire only. This is because rapidly repeated impacts with projectiles can cause significant injury even at such low energy levels that a single shot could cause no harm.
- 2.37 The benefit of omitting reference to "lethal" is that it would remove the controversy that might arise in deciding how lethality is to be measured. It would, however, alter the definition of 'firearm' quite significantly. This is a definition that has remained unchanged for decades and with which many are familiar. It is for this reason that removing lethal from the definition of firearm might cause more problems than it solves. This problem would not arise if a firearm was still defined with reference to lethality, but the threshold of lethality was deemed with reference to a fixed muzzle kinetic energy.

(2) Specify a threshold expressed in terms of muzzle energy

- 2.38 A second possibility would be to specify a threshold above which a firearm would be deemed to be lethal (or below which it would not be lethal).

The approach taken by the Firearms Consultative Committee

- 2.39 The point at which a weapon becomes lethal and is therefore a firearm is an issue that has been considered by both the Firearms Consultative Committee and the Home Office. Unlike the courts, these bodies have relied upon muzzle kinetic energy to define a firearm. Neither, however, suggested that the definition of firearm ought to be amended so as to remove the reference to lethality – therefore their recommendations are distinct from option (1) above.
- 2.40 In its Eleventh Annual Report, the FCC reported that it had established a sub-committee to investigate whether it would be possible to establish a 'practical and safe' threshold for determining lethality and, if so, how best to express this minimum level as unambiguously as possible for the purposes of the Firearms Act.²³
- 2.41 The sub-committee's first step was to establish a realistic minimum level of injury from which death might result as a consequence of a shot being fired at a

²¹ The ability to fire multiple shots without the need to release pressure on the trigger.

²² The firer must release and reapply force on the trigger for each shot, but the weapon rechambers another round by itself, resulting in a faster rate of fire.

²³ Available at <https://www.gov.uk/government/publications/firearms-consultative-committee-eleventh-annual-report> (last visited 7 July 2015). See paras 10.1-10.2 and annexes D and F.

vulnerable part of the body.²⁴ To be of practical use, the sub-committee concluded that any threshold must be expressed as unequivocally as possible and also be capable of being determined by anyone with a suitable chronograph and weighing apparatus.²⁵ The sub-committee also stated that any threshold must maximise public safety. We agree with these observations.

- 2.42 In approaching this task, the sub-committee drew an analogy with the drink driving limit; it is expressed in objective terms, but whether it has been crossed requires an evaluation of the individual driver. The sub-committee believed that a similar approach ought to be adopted in determining whether a firearm is lethal. A fixed kinetic energy was considered more appropriate than a “rule of thumb.”
- 2.43 The sub-committee recommended that the lethality threshold should be set at 1 joule.²⁶ This limit was endorsed as being both practical, in terms of ease of measurement, and also one at which or below which a lethal injury would be extremely unlikely to be inflicted. It also stated that a limit of 1 joule takes account of projectiles that have intrinsically high penetrative qualities, such as darts. This approach was characterised as being one that was “unambiguous and accessible”.²⁷ The FCC endorsed the conclusion of its sub-committee, and this recommendation was made to the Home Secretary. It was, however, never implemented.
- 2.44 There are two reasons why this approach could prove problematic. First, there could be controversy as to the criterion that ought to be utilised to determine muzzle energy. For example, should it be whether the weapon in question is capable of causing injury from which death could result if fired at a *vulnerable part of the body*? Secondly, there could be disagreement about the value that ought to be attributed to this criterion.²⁸
- 2.45 We do not believe either of these fatally undermines the merits of this approach, however. A way of avoiding these problems would be to *deem* a firearm to be “lethal” if it crosses certain muzzle kinetic energy threshold. This would therefore not be a true test of whether the firearm in question is lethal, in the strict sense of that term. This would represent a pragmatic approach.
- 2.46 Retaining the lethality requirement and defining it with reference to a specific muzzle kinetic energy is an approach that commends itself, as it would not require major alteration to the definition of ‘firearm’, Although this approach is not without its problems, this suggests that retaining the reference to lethality in the definition of firearm is a temporary solution, rather than a reason why this

²⁴ Annex F of the Eleventh Report. Significant reliance was placed on VJM DiMaio, AR Copeland, PE Besant-Matthews, LA Fletcher, A Jones, “Minimal Velocities Necessary for Perforation of Skin by Air Pellets and Bullets” (1982) 27(4) *Journal of Forensic Sciences* 894-898.

²⁵ As explained above, since kinetic energy is a function of mass and velocity it can be calculated having ascertained the weight of a projectile and the speed at which it left the muzzle of the weapon.

²⁶ Paragraph 10.2.

²⁷ Annex F, para 23.

²⁸ This value would depend upon a number of variables, for example the velocity of the projectile, its shape and weight to name but three.

approach should be rejected altogether. There is an argument that the definition of firearm requires much more fundamental reconsideration, but this would need to be undertaken in the context of more wide-ranging reform of the legislative landscape. For further discussion, see Ch 8.

- 2.47 Defining lethality with reference to muzzle energy is an approach that has been deemed to be the appropriate one by a number of bodies, in addition to the FCC. The Forensic Science of Northern Ireland has recommended that the threshold of lethality be set at between 2.2 and 3 ft lbs (3.0 and 4.1 joules respectively).²⁹ In its *Guide*, the Home Office suggests that the threshold of lethality ought to be between 1.3 joules and 2.5 joules³⁰.
- 2.48 The comprehensive work undertaken by the FCC makes a persuasive case as to why 1 joule is an appropriate kinetic energy at which to set the lethality threshold. 1 joule has the benefit of maximising public safety given that it is low enough to take account of projectiles that have higher penetrative capacity, such as darts. If the threshold were higher, it would fail to accommodate projectiles of this nature. 1 joule also has the benefit of providing certainty, as it can be more easily measured than other potential thresholds.
- 2.49 Given the extensive research that has been conducted and the authoritative nature of the organisations that have considered it appropriate to define lethality with reference to an absolute limit, we propose the adoption of this approach. We recognise that it may be necessary to set out in guidance a standardised method for how this limit ought to be tested.

Provisional proposal 1

- 2.50 **The meaning of lethal should be set by reference to a fixed muzzle kinetic energy.**

Do consultees agree?

Other potential thresholds

- 2.51 It is possible that 1 joule could be considered to be too low a threshold. The Association of Chief Police Officers commissioned research in 2011 with a view to ascertaining what the threshold of lethality ought to be. As a result of this research, the levels endorsed by ACPO were 1.3 joules or less for fully automatic firearms and 2.5 joules for single shot.³¹

Consultation question 1

- 2.52 **What should the lethality threshold be?**

a) 2.5 joules for single shot and 1.3 joules for fully automatic weapons; or

²⁹ Control of Firearms – Proposals for Reform: a Review of the Firearms (Northern Ireland) Order 1981, NI Office, April 1998, p 7.

³⁰ Home Office, *Guide on Firearms Licensing Law* (March 2015), para 2.6.

³¹ See letter sent by DCC Andy Marsh to firearms licensing managers. Available at http://www.airsoft-forums.co.uk/uploads/lethality_UKARA.pdf (last accessed 7 July 2015)

b) 1 joule.

Implications for air weapons

- 2.53 As has already been pointed out, the current state of the law means there is a lack of clarity surrounding the extent to which low powered air weapons³² fall within the definition of firearm. Specifying a threshold above which a firearm would be deemed to be lethal would have the benefit of confirming that certain air weapons are firearms for the purposes of, for example, section 16 of the Firearms Act 1968.³³
- 2.54 This would not, however, have the effect of requiring air weapons to be held on a firearm certificate, as the exemption in section 1(3)(b) would continue to apply. Section 1(3)(b) mandates that a firearm certificate is not required for an air weapon that is not “specially dangerous”. An air rifle is deemed to be “specially dangerous” if it has a muzzle energy greater than 12 ft lbs (16.3 joules) and an air pistol is deemed to be “specially dangerous” if it has a muzzle energy greater than 6 ft lbs (8.1 joules).³⁴ Therefore our provisional proposal would not increase the pool of air weapons that are subject to the licensing regime.
- 2.55 An air weapon below the lethality threshold would not be lethal and therefore would not fall within the definition of “firearm”. Depending on its appearance it could constitute an imitation firearm or a realistic imitation firearm, however. An individual who possessed a low-powered air weapon with intent to commit robbery, for example, would be guilty of the offence contained in section 18 of the Firearms Act 1968. This makes it an offence to possess a firearm or an imitation firearm with intent to commit an indictable offence.
- 2.56 Specifying a lethality threshold that would clarify whether low powered air weapons fall within the general definition of firearm would not, we believe, have a detrimental impact upon the legitimate trade in and acquisition of air weapons. Firstly, it would not bring such air weapons within the licensing regime and, secondly, air weapons must already be sold by Registered Firearms Dealers.³⁵
- 2.57 In addition, section 32 of the Violent Crime Reduction Act 2006 requires that sales or transfers of air weapons in the course of a business must take place on a face-to-face basis. This means that it is already unlawful to sell air weapons via post. Many retailers have their own delivery service, meaning the transfer of possession takes place on a face-to-face basis. This ensures compliance with section 32.
- 2.58 The impact of any change would be on those who intend to misuse air weapons and these changes would ensure that such individuals are appropriately

³² Those which may be held without a certificate by virtue of s 1(3)(b) of the 1968 Act.

³³ This makes it an offence to possess any firearm or ammunition with intent to endanger life.

³⁴ The relevant regulations setting out which air weapons are “specially dangerous” for the purposes of the s 1(3)(b) exemption are currently the Firearms (Dangerous Weapons) Rules 1969, SI 1969 No 47. If an air weapon falls into one of these categories, it must be held on a firearm certificate.

³⁵ This requirement was introduced by section 31 of the Violent Crime Reduction Act 2006.

criminalised. This benefits everyone, including those with a legitimate interest in air weapons.

- 2.59 There could, however, be an impact upon the airsoft trade.³⁶ Evidence from stakeholders suggests that airsoft guns tend to have a muzzle kinetic energy of above 1 joule. If this threshold were to be adopted, therefore, airsoft guns above this threshold would have to be sold by RFDs and sales would have to take place on a face-to-face basis. This could have a detrimental impact for the airsoft trade to the extent that it is carried out by remote sales.
- 2.60 Airsoft guns are classified as realistic imitation firearms under 36 of the Violent Crime Reduction Act 2006. A realistic imitation firearm is defined in section 38 as an imitation firearm that has an appearance that is so realistic as to make it indistinguishable, for all practical purpose, from a real firearm, and is neither a deactivated firearm nor an antique. A person is guilty of an offence if he or she:
- (1) manufactures a realistic imitation firearm;
 - (2) modifies an imitation firearm so that it becomes a realistic imitation firearm;
 - (3) sells a realistic imitation firearm; or
 - (4) brings a realistic imitation firearm into Great Britain or causes one to be brought into Great Britain.
- 2.61 By virtue of section 36(3), the Secretary of State by way of regulation can provide exemptions from the offences in section 36(1). To ensure airsoft enthusiasts can continue their hobby, the Secretary of State exercised this power by making the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007. It is a defence if an individual charged with an offence under section 36 has only made the realistic imitation firearm available for a specified purpose. These purposes are the organisation and holding of a permitted activity³⁷ for which there is public liability insurance or the purposes of display at the permitted event. If consultees believe that our provisional proposal would have a disproportionate impact upon the airsoft trade, one way of mitigating this would be to include an exemption similar to that which already exists.

Consultation questions 2 and 3

- 2.62 **If the threshold of lethality was set at 1 joule would it have a disproportionate impact upon the legitimate trade in air weapons?**
- 2.63 **If the threshold of lethality was set at 1 joule should there be a specific exemption for the airsoft trade, similar to that already contained within the Violent Crime Reduction Act 2006?**

³⁶ See the glossary for explanation.

³⁷ This is defined as the acting out of military or law enforcement scenarios for the purposes of recreation. This is the technical definition of airsoft.

CONCLUSION

- 2.64 This chapter has examined the implications of failing to define lethal and suggested a pragmatic solution that would not fundamentally alter the definition of 'firearm'. A separate chapter will examine the implications of the failure to specify some of the other elements in the definition of 'firearm'.

CHAPTER 3

COMPONENT PARTS

INTRODUCTION

- 3.1 As discussed in Chapter 2, section 57(1) of the Firearms Act 1968 defines the term “firearm”. Section 57(1)(b) of the Act states that the term firearm includes “any component part of such a lethal or prohibited weapon”. Whenever the legislation refers to a firearm, the effect of this provision is that it is also referring to a component part. For example, it is unlawful to possess a single component part of a rifle without a firearm certificate. This would be an offence under section 1 of the Firearms Act 1968. Additionally, component parts of weapons prohibited under section 5(1)(a),¹ 5(1)(aba)² and 5(1A)(a)³ are also prohibited and therefore unlawful to possess without the authority of the Secretary of State.
- 3.2 In addition, by virtue of section 31 of the Violent Crime Reduction Act 2006, it is an offence for someone who is not a Registered Firearms Dealer to sell or transfer a component part of an air weapon. The ability to determine whether something is a “component part” is therefore crucial.
- 3.3 Nowhere does the legislation define “component part”, however. The failure to define “component part” means that the same item could be classified in different ways by different juries sitting in different courts. Evidence from stakeholders in our informal fact finding suggests that this causes significant difficulties in practice.
- 3.4 Law enforcement authorities may not be able to know whether an item found in a suspect’s possession is a component part of a firearm for the purposes of the legislation. This is also an issue for the licensed firearms community. For example, is the firing pin of a rifle a component part? If so and it is found in the possession of someone who does not have it included as a separate entry on his or her firearm certificate, that individual would be unlawfully in possession of a firearm. We expand on these problems below.
- 3.5 The lack of a statutory definition also poses difficulties for firearms dealers. As the Firearms Consultative Committee stated in its Third Report, “in theory, at least, no firearms dealer can sell any part of a firearm safe in the knowledge that he or she is acting within the law unless the prospective purchaser has an entry on his or her firearm certificate authorising acquisition of the particular part.”⁴ This opens up the possibility that a registered firearms dealer could inadvertently commit a serious offence and lose his or her livelihood.
- 3.6 The main problems caused by the failure to define “component part” are:

¹ This refers to any weapon which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger.

² This refers to any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signalling apparatus.

³ This refers to any firearm which is disguised as another object.

⁴ Firearms Consultative Committee, Third Report (July 1992), para 8.3.

- (1) difficulties for the police in investigation;
- (2) difficulties for the CPS in deciding whether to prosecute;
- (3) longer, more complex trials; and
- (4) that members of the licensed firearms community may inadvertently commit a serious offence.

JUDICIAL APPROACHES

Question of fact or law?

- 3.7 In the absence of a statutory definition, it has been left to the courts to determine how 'component part' should be interpreted. This issue has been considered on a number of occasions. As this section will demonstrate, despite the opportunities the Court of Appeal has had to consider how "component part" ought to be defined, uncertainty still abounds.
- 3.8 In *R v Secretary of State for the Home Department, ex parte Impower Ltd* Mr Justice Jowitt stated that the words in section 57(1)(b) are 'ordinary English words'. He observed:
- For myself, I would suggest as a rough working aid (stressing what I say is not a substitute for the words of the statute) that a component part of a firearm is likely to be a part used to make the firearm operate as it is designed or modified to operate. Further, a component part may be an assembly of individual parts which make up a composite assembly used to make the firearm operate, as it is designed or modified to operate. I add though, that the part which is separated from other parts and in that separate form would have other uses, would not in that separate state be likely to be a component part.⁵
- 3.9 The judge went on to emphasise that nothing in his judgment should be interpreted as suggesting that washers and screws ought to be classified as component parts. Such a distinction was also drawn in *Ashton*, in which the Judge Advocate⁶ distinguished between a general screw or washer and a part such "that if it were removed, a [firearm] could not function without it".⁷ He suggested that only the latter should constitute a component part. The Courts Martial Appeal Court held that the Judge Advocate had directed himself "impeccably".
- 3.10 The implication of the judgment in *Impower Ltd* is that the definition of 'component part' constitutes a question of fact for the jury. On this approach it is entirely possible that an individual could be convicted of a serious criminal

⁵ CO/539/98.

⁶ The presiding judge in a Court Martial, the approximate equivalent of a Crown Court in the military justice system. Judge Advocates are the sole determinants of law, sitting with between 3 and 7 warrant officers and officers who are the sole determinants of matters of fact, deciding amongst themselves by simple majority. Judge Advocates and military members decide on any sentence together. See generally the Armed Forces Act 2006. For further discussion, see J Blackett, *Rant on the Court Martial and Service Law* (2009).

⁷ [2007] EWCA Crim 234, Latham LJ, at [5].

offence for being in possession of something as innocuous as a screw, if the jury decides screws constitute component parts.

- 3.11 A different approach from the one in *Impower Ltd*, however, was adopted by the trial judge in *Rogers*.⁸ In that case D was charged with being in possession of the barrel, frame and trigger of a 9mm revolver. The judge directed the jury that these constituted 'component parts' and D was convicted. On appeal, counsel for D submitted that whether the objects in question constituted component parts was a question of fact for the jury. The Court of Appeal agreed, and held that the judge was not entitled to rule as he did. D's conviction was therefore quashed.⁹ This judgment endorses the approach that was earlier adopted in *Impower Ltd*.
- 3.12 Although the courts have emphasised that whether an item constitutes a "component part" is a question of fact for the jury, there are a number of cases in which the Court of Appeal has provided guidance on what is capable of falling within that definition. In *W* the defendant was found in possession of a stun gun that resembled a torch. The question for the Court of Appeal was whether this was a firearm for the purposes of the legislation. The court held that it was a firearm. The Court of Appeal, referring to section 57(1)(b) also observed that an item can only constitute a component if it is part of a lethal barrelled weapon, as defined in section 57(1), or a prohibited weapon, as that term is utilised in section 5 of the Firearms Act 1968.¹⁰ The court noted that a component part does not necessarily have a barrel and is not necessarily capable of discharging a projectile. Nevertheless, it is a firearm, so long as it was part of a lethal barrelled weapon.

Recent issues

- 3.13 One controversy that has arisen relatively recently is whether an item that may be from a deactivated firearm (or one that is not readily convertible¹¹) can constitute a component part. For example, if a gas plug¹² is found in D's possession, but it could be from a deactivated firearm, should the judge leave the issue of whether the gas plug is a component part to the jury?
- 3.14 In *Ashton*, D was found in possession of a gas plug from a sub-machine gun.¹³ The prosecution's expert could not say definitively whether the gas plug originated from a working sub-machine gun or a deactivated sub-machine gun. The Judge Advocate ruled that it was sufficient that the gas plug was proven to be for use in a sub-machine gun, and D was convicted. The Courts Martial Appeal Court upheld D's conviction and held that it was immaterial whether the gas plug was from a deactivated firearm, so long as it remained capable of fulfilling its intended function as part of a working firearm. Lord Justice Latham observed:

⁸ [2011] EWCA Crim 1459.

⁹ Although he was not ordered to stand trial again, he still went to prison for 5 years in total for other offences.

¹⁰ [2007] EWCA Crim 3485.

¹¹ For discussion, see Chapter 6.

¹² This is a part that makes a firearm capable of automatic fire.

¹³ [2007] EWCA Crim 234.

So long as a de-activated weapon remains in its complete state, there is therefore a justification in permitting it to be possessed or indeed traded on the open market. But it is clear from the exception that it is not intended to apply to any component part of such a weapon and that must be for the good public policy reason that once a weapon, de-activated or not, is disassembled then the parts which are then made available are capable of being re-assembled into a working weapon. 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 de-activated weapon.¹⁴

3.15 Whilst there are policy reasons that could be said to justify the approach that was taken in *Ashton*, it could be said that it is difficult to reconcile with the statutory language, given that it refers to a component part of 'such a lethal barrelled weapon'. If a gun has been deactivated and is therefore no longer lethal, it could be argued that a part cannot therefore be a 'component part' within the meaning of section 57. Such ambiguity is problematic.

3.16 Further evidence that clarification is needed is provided by the subsequent case of *Bewley*¹⁵ which casts doubt upon the validity of what was said earlier in *Ashton*. In *Bewley* it was held that a starting pistol was not a "firearm" within the meaning of section 57 of the Firearms Act 1968, as it was not readily convertible. The Court of Appeal also considered whether the starting pistol could be a component part. In holding that it could not, Lord Justice Moses stated

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 can *not* 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.¹⁶

3.17 This appears to contradict *Ashton*, as the focus of the enquiry in that case was on the functionality of the component part. By way of contrast, in *Bewley* the focus was placed upon the functionality of the firearm of which the component is a part.

3.18 This analysis of the case law demonstrates two points. First, whether an item is a 'component part' is a question for the jury. This makes the application of the law and the outcome of trials more inconsistent and unpredictable. It also makes it more difficult for the police, CPS and licensed firearms community to know whether something requires certification to possess. Secondly, there is disagreement between *Ashton* and *Bewley* over whether an item from something

¹⁴ [2007] EWCA Crim 234, [7].

¹⁵ [2012] EWCA Crim 1457, [2013] 1 WLR 137.

¹⁶ [2012] EWCA Crim 1457, [34].

that falls outside the statutory definition of “firearm” can constitute a “component part”. This is a crucial issue.¹⁷

- 3.19 The inconsistency in the case law suggests that the failure to define ‘component part’ has the potential to cause problem in practice. The next section will outline these in more detail.

PROBLEMS

- 3.20 Evidence from forensic firearms experts, the CPS and the licensed firearms community suggests that the failure to define “component part” causes considerable practical difficulties. The current state of the law causes difficulties for the investigative authorities, since it means they cannot know with any certainty whether an item in a suspect’s possession is a component part and therefore is unlawful to possess without the appropriate certification. It also poses difficulties for the licensed firearms community, given that they may unwittingly find themselves in possession of something that they do not have the authority to possess. This might arise where a legitimate firearm holder wishes to hold spare parts for his weapons. If the spare part is deemed to be a component, then the legitimate holder must have that part included on his or her firearm certificate as a separate entry. Failure to do so constitutes an offence and may result in the legitimate holder losing his or her firearm certificate and perhaps even imprisonment. This is also an issue for registered firearms dealers, whose livelihoods are placed in jeopardy.
- 3.21 Due to the legislation’s failure to define “component part”, a considerable amount of court time can be spent attempting to ascertain whether the item in the suspect’s possession is a component part. What ought to be a relatively simple matter becomes protracted.
- 3.22 There are additional problems in relation to importation. As the legislation specifies that a ‘component part’ is deemed to be a firearm, it is necessary to have an import licence and a firearm certificate to bring component parts into the country. There could be confusion about whether a licence is necessary to import certain items, however. This causes confusion both for members of the licensed firearms community and for border officers. Neither will be able to know conclusively whether it is unlawful to import certain items without first obtaining the necessary authorisation. Although the Department for Business, Innovation and Skills document entitled *Do I need a BIS import licence?* cites the list given in the Home Office *Guide*, this does not have the force of law, as the next section will explain in more detail.
- 3.23 In its Ninth and Tenth Reports, the FCC considered the difficulties caused by the failure to define ‘component part’. In its Tenth Report the FCC observed:

Both gun owners and the authorities wanted a clear definition of component parts that was readily understood. Without this there was a risk both of over-zealous enforcement on the one hand, and an

¹⁷ In the recent case of *Yong* [2015] EWCA Crim 852 further emphasis was placed on the role of the jury. In that case there was disagreement about whether a flash eliminator found in the defendant’s possession was from a prohibited weapon or from a rifle. The Court of Appeal held that resolution of this matter is for the jury.

inability of the prosecution and the courts to proceed with any certainty against criminal re-activators on the other.¹⁸

- 3.24 As the above analysis demonstrates, evidence from stakeholders suggests that the passage of time has not diminished the significance of these difficulties since the FCC's published its report in 1999.

SOLUTIONS

- 3.25 This section of the chapter will consider some methods of remedying the failure to define 'component part'. The aim of these remedies is to enhance clarity and certainty, whilst maximising public safety by ensuring that parts with potential criminal use remain tightly controlled.

- 3.26 In examining this issue in its Ninth Report, the FCC listed the following general principles:¹⁹

- (1) any definition of component part must fall within the lawful and reasonable interpretation of section 57 of the Firearms Act 1968 and be legally and logically defensible;
- (2) the definition must protect public safety by ensuring that component parts which would significantly assist criminals in constructing firearms or in restoring deactivated firearms to working order are subject to control; and
- (3) subject to the above, the definition should be clear, straightforward, and reduce the need for unnecessary recordkeeping and bureaucracy. The classification of component parts as 'prohibited', and therefore subject to strict security and control, should not be adopted lightly.

- 3.27 Reflecting the view taken by the Home Office, the sub-group considered that any part of a firearm for which a common item such as a nail or piece of scrap metal could easily be substituted should not be subject to certificate controls. The sub-group did consider, however, that those items that would be subject to destruction as part of the officially recognised deactivation process, and treated as such because of their risk of re-use, should be subject to control.

- 3.28 The general principles laid down by the FCC are the product of careful consideration and debate by a range of experts and for that reason the Law Commission has relied upon them to inform our own approach to this issue.

(1) Create a list of items that would be deemed to be component parts

- 3.29 In its *Guide* the Home Office lists the following as being component parts:²⁰

- (1) The barrel, chamber, cylinder;
- (2) The frame, body or receiver;

¹⁸ Firearms Consultative Committee: *Tenth Annual Report* (1999), para 13.5.

¹⁹ Firearms Consultative Committee, *Ninth Annual Report* (1998), Annex C para 1.

²⁰ Home Office, *Guide on Firearms Licensing Law* (March 2015), para 13.74. For definitions of these terms, see the glossary.

- (3) The breech, block, bolt or other mechanism for containing the charge at the rear of the chamber; and
 - (4) Any other part of the firearm upon which the pressure caused by firing the weapon impinges directly.
- 3.30 The *Guide* states that magazines, sights and other “furniture” should not be considered component parts. By listing the items that ought to be considered component parts but making the list non-exhaustive, the *Guide* provides both clarity and flexibility. The *Guide*, however, is not law and the extent to which courts permit reliance upon it is variable.
- 3.31 In its Ninth Report, the FCC established a sub-group with the aim of drawing up a general definition of ‘component part’.²¹ Like the Home Office *Guide*, the sub-group also provided a non-exhaustive list of items they believed ought to constitute component parts.
- 3.32 The sub-group recommended that ‘component part’ should be defined as follows:

The term ‘component part’ shall apply to: (i) any barrel, chamber of cylinder; (ii) any frame, action, body, or receiver; (iii) any breech, block, bolt or other mechanism for containing the pressure of discharge at the rear of the chamber; (iv) any other part of the firearm upon which the pressure caused by firing the weapon impinges directly. In addition, it would also apply to those items which are more or less unique to firearms, which are not readily replaced by items found in general use (such as coil springs, screws, washers and the like), and without which a person of reasonable skill could not create a firearm or repair a scrap or deactivated firearm.²²
- 3.33 They recommended the Secretary of State be given the power to amend the list by way of order, to deal with new or unusual designs that might be developed in the future. This would ensure certainty whilst avoiding the problems caused by inflexibility.
- 3.34 The sub-group also noted how the police had generally drawn a line between components that should appear on a certificate and those smaller items that could reasonably be held as spare parts without posing a risk to public safety. As a matter of good practice, the sub-group suggested that RFDs should only sell the latter on production of a firearms certificate for the type of weapon concerned. The merits of this approach were said to be that it would avoid the need for RFDs to keep records of minor parts, whilst also preventing what they described as ‘dubious characters’ from obtaining minor parts freely but allowing the police to prosecute those who did so.²³ These parts would not have to be held on certificate, however.
- 3.35 The FCC recommended that the proposals of the sub-group be enshrined in statute at the first legislative opportunity.

²¹ Firearms Consultative Committee, *Ninth Annual Report* (1998), Annex C.

²² Firearms Consultative Committee, *Ninth Annual Report* (1998), para 6.

²³ Firearms Consultative Committee, *Ninth Annual Report* (1998), para 8.

- 3.36 The first potential solution, therefore, is to list those items that are ‘component parts’ for the purposes of the legislation. Such an approach would maximise clarity and provide certainty for both the investigative and prosecuting authorities and members of the licensed firearms community. This is the method adopted in Article 2 of the Firearms (Northern Ireland) Order 2004, for example.²⁴
- 3.37 The success of this model would be dependent upon reaching a consensus around which items ought to go onto the list of component parts. In addressing this question, it would be necessary to maximise public safety whilst not overburdening the police and the licensed firearms community by requiring every washer and screw to be entered onto a firearm certificate if held by a certificate holder in connection with a firearm. To criminalise possession of such commonplace components, which coincidentally have uses in firearms, would also be wrong in principle because there would be no benefit to public safety from doing so. This would therefore be a disproportionate solution to the problem identified earlier. The FCC achieved this balance by defining a component part with reference to those items that are ‘more or less unique to firearms’ and which could not be replaced by items in general use.
- 3.38 A similar approach is taken in EU Council Decision 2014/164/EU. Article 3(b) provides:
- ‘Parts and components’ shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;
- This definition also seeks to exclude items found in everyday use that might be made to work as parts of a firearm.
- 3.39 Those items not on the list, so-called “sub-components”, would not be deemed to be firearms for the purposes of the legislation. Their acquisition could, however, be made contingent upon the production of a firearm certificate, if this were deemed to be appropriate.
- 3.40 The benefit of the approach advocated by the FCC in its Ninth Report is that it ensures items such as screws and washers are not made subject to control, thus minimising the potential for unnecessary bureaucracy and the additional burden that would entail for both the police and the licensed firearms community. This would therefore be an example of a proportionate approach.
- 3.41 The problem with relying upon a list is that it might not reflect future technological developments. To mitigate this problem the Secretary of State could be given the power to amend the list by way of order. This guarantees clarity whilst also providing flexibility and would “future proof” the legislation. The FCC also suggested such a mechanism in its Ninth Report.

²⁴ The 2004 Order replicates the approach taken in the Home Office *Guide*. The definition in the Order contains some items explicitly excluded by the *Guide*, such as the magazine.

(2) “Pressure bearing” part

- 3.42 A second option is based upon the FCC’s Tenth Report, in which it again considered the definition of component part. The FCC reiterated that the main objective in defining component part was to maximise public safety and prevent what they described as “unsuitable characters” from possessing parts that could be used in the assembly of a firearm. The FCC noted, however, the danger that any attempt to define component part could lead to needless bureaucracy. To minimise this possibility, when an item is being manufactured, it was suggested that it should only be deemed to be a component when it is “capable of being fitted into a firearm and fired”, rather than at an earlier stage of manufacture.²⁵
- 3.43 Referring to its earlier analysis in the Ninth Report, the FCC clarified that it intended “component part” to be synonymous with “pressure bearing part”. It took the view that it should only be pressure bearing parts that are deemed to be firearms and which must therefore be entered on a firearm certificate.²⁶ The FCC reiterated that it was not suggesting there be an obligation for “sub-components” to be entered onto a firearm certificate. It was recommended, however, that sub-components should only be sold upon production of a valid firearm certificate.
- 3.44 The second approach is therefore to define a “component part” as “any part upon which the pressure caused by firing the weapon impinges directly.”²⁷ This approach would have the benefit of providing a relative degree of certainty, although there would exist the potential for disagreement over whether the part in question is in fact pressure bearing. Expert evidence would in many cases be necessary to assist with this inquiry.
- 3.45 On this model only pressure bearing parts would be deemed to be firearms for the purposes of the legislation. Any items that were not pressure-bearing, defined as “sub components”, would not need to be entered onto a firearm certificate. Their acquisition could, however, be made dependent upon the production of a firearm certificate.
- 3.46 Defining a component part solely with reference to whether it is pressure-bearing might be thought to pose two difficulties. First, it could be under-inclusive. There might be parts of a firearm that, while not impacted directly by the pressure of firing, ought nevertheless to be the subject of control due to their potential for criminal misuse. Secondly, there could be difficulty at the margins in determining whether the pressure of firing does in fact impact directly upon the item in question, and if there is any minimum extent to which a part must bear pressure during the firing process to be considered pressure-bearing.

²⁵ Firearms Consultative Committee, *Tenth Annual Report* (1999), para 13.9.

²⁶ Firearms Consultative Committee, *Tenth Annual Report* (1999), para 13.11. A part is pressure bearing if it is impacted by pressure released as a consequence of firing the weapon.

²⁷ Firearms Consultative Committee, *Tenth Annual Report* (1999), para 13.11.

(3) A part without which the thing could not operate as a lethal barrelled weapon

- 3.47 A third suggestion has been made: that a component part should be any item without which the thing in question will not operate as a lethal barrelled weapon.²⁸ For example, a firearm is unable to discharge a projectile without a firing pin. A firing pin, therefore, would constitute a component part based upon this approach.
- 3.48 There might also be problems in defining a component by reference to whether a firearm could operate as a lethal barrelled weapon without it. First, there might be disagreement as to whether removal of the item in question would render the firearm incapable of operating as a lethal barrelled weapon. Secondly, this approach could be over inclusive, in that it might bring screws and similar items within the definition of 'component part'. This would obviously be undesirable.

EVALUATING THE RESPECTIVE MERITS OF THESE OPTIONS

- 3.49 On balance, the Law Commission believes the approach adopted by the FCC in its Ninth Report to be the most appropriate one and provisionally proposes its adoption. It maximises certainty, which is beneficial for both the licensed firearms community and the investigative and prosecuting authorities.
- 3.50 'Component part' would therefore be defined as:
- (1) The barrel, chamber, cylinder.
 - (2) Frame, body or receivers upper and lower where present in the complete firearm.
 - (3) Breech, block, bolt or other mechanism for containing the charge at the rear of the chamber.
- 3.51 The Law Commission provisionally considers that including a catch all provision based upon whether the part is 'pressure bearing' would undermine certainty and clarity. For this reason (4) has been omitted from the FCC's list.
- 3.52 To deal with the potential inconsistency between *Bewley* and *Ashton*, legislation should clarify that as a matter of law something can only be a component part for the purposes of the law if it remains capable of fulfilling its function as part of a working firearm. This would have the effect of reversing *Bewley*, because in that case the court held that something could only be a component part if it was part of a working firearm. The focus of the enquiry under our provisional approach would be on the functionality of the part, rather than the firearm from which it originates. This would ensure that component parts that are still capable of fulfilling their intended function are subject to control. Even if taken from a deactivated firearm, these items could still be used with criminal intent, for example in the conversion of imitation firearms into live firearms.

²⁸ L Saunbury and N Doherty, *The British Firearms Law Handbook* (2011), para 1.19.

- 3.53 To ensure the law can take account of technological developments, the Law Commission also provisionally proposes that the Secretary of State be given the power to amend the list by order.

Provisional proposal 2

- 3.54 **To maximise clarity and certainty, the FCC's modified list of component parts should be enshrined in law, namely:**

- (1) the barrel, chamber, cylinder;**
- (2) the frame, body or receivers upper and lower where present in the complete firearm;**
- (3) the breech, block, bolt or other mechanism for containing the charge at the rear of the chamber; and**

Provisional proposal 3

- 3.55 **We provisionally propose that as a matter of law a component part will remain such so long as it is capable of fulfilling its intended function as part of a firearm.**

Do consultees agree?

Provisional proposal 4

- 3.56 **We provisionally propose that the Secretary of State is given the power to amend the list by way of order.**

Do consultees agree?

COMPONENT PARTS OF SHOTGUNS

- 3.57 By virtue of section 57 of the Firearms Act 1968, the definition of "component part" excludes the component parts of shotguns. In the Ninth Report, the sub-group considered this lack of control to be "anomalous" and should be resolved. It was suggested that the major parts of a shotgun, such as the barrel, should have to be entered on a shotgun certificate and that the purchase of minor parts be contingent upon the production of a shotgun certificate.²⁹ This would ensure harmonisation between shotguns and other firearms.

Consultation question 4

- 3.58 **Do consultees have a view on whether the component parts of a shotgun should be subject to control? If so what form of control would be appropriate?**

Conclusion

- 3.59 This chapter has examined the problems caused by the failure to define "component part". It has also suggested a simple way of remedying this failure that would maximise certainty and clarity. This would ultimately benefit both the licensed firearms community and the investigative and prosecuting authorities.

²⁹ Firearms Consultative Committee, *Ninth Annual Report* (1998), Annex C, para 10.

CHAPTER 4

ANTIQUES

INTRODUCTION

- 4.1 This chapter will outline the current law relating to antique firearms, specify the problems the current law is causing and suggest some possible solutions to them. This issue is one of the most difficult to resolve and yet it is one of most pressing problems. At present, fully functioning firearms are freely held without any control simply on the basis of their age and because the person in possession treats the article as a curiosity or ornament. The problem is that although the legislation exempts 'antique firearms' that in many cases would otherwise be prohibited weapons from its scope, there is no definition of that term. At the outset it is important to point out that the exemption for antiques is primarily relied upon by legitimate collectors. There is evidence to suggest, however, that criminal exploitation of the exemption is on the rise. This makes it crucial to be able to tell which firearms fall within the exemption.
- 4.2 As this chapter will explain, the current law poses the following problems:
- (1) public safety is put at risk when working firearms that can be acquired without any form of restriction fall into the possession of criminals;
 - (2) the police cannot be certain whether a suspect is unlawfully in possession of a prohibited weapon;
 - (3) the CPS have difficulty deciding whether to charge an individual with an offence;
 - (4) experts rely upon different criteria when giving evidence on whether a firearm is an antique which confuses juries and leads to inconsistent trial outcomes; and
 - (5) legitimate collectors are unable to know with certainty whether they are complying with the law.
- 4.3 At the end of this chapter, there is a flowchart which may be of assistance in understanding the present law in relation to antique firearms.

BACKGROUND

- 4.4 The Pistols Act 1903 was the first attempt at firearms control in the United Kingdom. The Act required anyone who wished to purchase a pistol to first obtain a licence. The licence was obtainable on demand from a Post Office. It is for this reason that the 1903 Act has been characterised as an ineffective control on the circulation of firearms.¹ An antique pistol sold as a curiosity or ornament was exempt from the provisions of the Act.

¹ C Greenwood, *Firearms Control* (1972), 28. It is unclear whether the true purpose of the Act was curtailing the circulation of dangerous firearms or whether it was to raise revenue.

- 4.5 Section 2 specified what was not to be considered an antique pistol for the purposes of the act:

The term “antique pistol” shall not include any pistol with which ammunition is sold, or which there is reasonable ground for believing is capable of being effectually used.

- 4.6 It seems that the Pistols Act 1903 sought to define an antique not solely by reference to the age of the article, but also by reference to whether it posed a danger to the public. It is important to emphasise that the Act only regulated sales of pistols, not possession or ownership.

- 4.7 The Pistols Act 1903 was repealed by the Firearms Act 1920. Section 13(1) of that Act provided that:

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

- 4.8 What immediately distinguishes this provision from section 2 of the Pistols Act 1903 is that it does not provide any criteria for determining whether a firearm is an antique, other than it being held as a curiosity or ornament. The method that had been adopted by section 2 of the 1903 Act was abandoned, although not completely. To fall within section 13(1) the firearm still had to be held as a curiosity or ornament.
- 4.9 The 1920 Act also made an attempt to regulate the possession of firearms, rather than just their acquisition. The exemption for antiques therefore also applied not just to those that were bought and sold, but also to those that were carried or otherwise possessed.
- 4.10 The lack of certainty in section 13(1) did not go unnoticed. During debate in Parliament, the Earl Winterton stated that, “I hope that before the Committee stage the Government will put down an Amendment making those words a little clearer, because I think they will be very difficult to interpret, and may lead to litigation.”²
- 4.11 The Firearms Act 1937 replaced the 1920 Act. Section 33(5) used similar language in excluding antique firearms from its provisions, the only difference being that ‘carried’ was omitted. This amendment had the effect of exempting antique firearms from the certification requirements specified by the legislation.

THE CURRENT LAW

- 4.12 As Chapter 1 explained, the principal Act setting out the law relating to firearms is Firearms Act 1968. This was a consolidating measure and therefore incorporates many of the provisions contained in previous legislation.
- 4.13 Section 58(2) incorporates the saving that had previously been found in section 33(5) of the Firearms Act 1937. Section 58(2) provides:

² HC Deb 10 June 1920 vol 130 cc 666-667.

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.

- 4.14 The effect of this provision is to exempt antique firearms from the provisions of the 1968 Act. This means, for example, that an antique firearm can be possessed without first having to obtain a firearm certificate.
- 4.15 There are three crucial terms in section 58(2), none of which is defined: antique, curiosity and ornament. The lack of clarity in this definition was criticised by Francis Bennion who stated that the drafter used “a flurry of broad terms”.³
- 4.16 The section specified that the firearm in question must be an antique that is possessed as a curiosity or ornament. If the firearm is not an antique, section 58(2) will not apply, even if it is possessed as a curiosity or ornament. Similarly, if the firearm is an antique but is not possessed as a curiosity or ornament then section 58(2) does not apply. This could be the case if the firearm were possessed with the purpose of being fired, for example – indeed, this is the Home Office’s view. It must be emphasised that this is not necessarily the law, just one interpretation of the phrase “curiosity or ornament”. It is arguable that something can still be a curiosity even if it is possessed with the purpose of being occasionally fired. There is significant ambiguity here.
- 4.17 It is questionable whether some of the terms in the section are of relevance today. For example, given the high value of some antique firearms, it is unlikely that they would be out on permanent display. If not, it might be unclear whether they could be characterised as being ornaments. This issue arose in the case of *Burke*.⁴ The Court of Appeal held that the trial judge should have left the issue of whether the firearm was an ornament to the jury.
- 4.18 In the absence of statutory definitions, it has been left to the courts to determine how these key terms ought to be understood.
- 4.19 It is fair to say that an assessment of the case law reveals a significant lack of certainty on what characteristics a firearm must have before it can be considered an antique for the purposes of section 58(2).

The approach of the courts

- 4.20 The first reported case to touch upon this issue was *Howells*.⁵ In this case the Court of Appeal confirmed that once the defendant (D) has adduced sufficient evidence to raise the issue, it is for the prosecution to prove that a firearm is not an antique. The trial judge, in directing the jury on how to assess whether the firearm in question was an antique, had stated that:

As to what an antique means, if one looks in the Oxford dictionary, one gets perhaps a little help on that because there are phrases there

³ F Bennion, “Jaguars and donkeys: distinguishing judgment and discretion” (2000) 31 *The University of West Los Angeles Law Review* 7.

⁴ (1978) 67 Cr App R 220.

⁵ [1977] QB 614.

which claim that it means something in olden times, something old-fashioned, something of longstanding, something ancient, something of bygone days, but essentially it is going to be a matter for you; it is in your hands whether or not you decide whether one gun or other here is properly to be described as an antique firearm.⁶

- 4.21 The Court of Appeal did not comment on the appropriateness or otherwise of this direction. It was held that D could be guilty of possessing a firearm without a certificate even though he had an honest belief that the firearm in question was an antique. It was held that this was purely a question of fact and that D's belief was irrelevant.
- 4.22 What this case confirms is that it is no defence for an individual to have a genuine belief that the firearm was an antique. It is therefore possible for an individual to commit an offence which now carries a mandatory minimum five-year custodial⁷ sentence *even if* the firearm was purchased from an antiques dealer who sold it as an antique and both the seller and buyer believed that it was one.
- 4.23 Stakeholders have reported to us that this lack of clarity is a concern for legitimate collectors.⁸ They have said the trade in antique firearms is significant and, as this chapter will demonstrate, in addition to posing a risk to public safety, the current state of the law has the potential to undermine this trade.
- 4.24 In *Richards v Curwen*⁹ D possessed two revolvers made in the late nineteenth century. These hung on his wall and were capable of being fired, although it was accepted that D had no intention of doing so. On behalf of the prosecution it was submitted that these firearms could not be antiques, as they remained capable of firing and were no more than 85 years old. The magistrates found that the firearms were antiques and D was acquitted of three counts of possessing a firearm without a certificate.
- 4.25 On appeal to the High Court, counsel for the Crown suggested that there existed three ways of approaching the issue as to how antique ought to be defined.¹⁰
- (1) The first was to hold that the question was a matter of 'fact and degree' for the jury.
 - (2) The second was to select an age which a firearm had to exceed before it could be considered an antique. Mr Justice Wien, however, expressed unease with this approach on the basis that it would have the effect of defining something that Parliament had not seen fit to define.
 - (3) The third possibility, and the one counsel suggested ought to be adopted, was to import into section 58(2) the definition of antique pistol that had previously been contained in section 2 of the Pistols Act 1903. Mr Justice

⁶ [1977] QB 614, 619, quoting HHJ Phelan.

⁷ If the purported antique is otherwise eg a s 5(1)(aba) FA 1968 prohibited handgun.

⁸ See also <http://www.antiquestradegazette.com/news/2012/jun/26/firearms-law-causes-confusion/> (last visited 7 July 2015).

⁹ [1977] 1 WLR 747.

¹⁰ [1977] 1 WLR 747, 751-752.

Wien rejected this approach for two reasons. First, that it would be an absurdity to say that a firearm that was 300 years old but which was nevertheless capable of being used was not an antique. Second, his lordship held that it was impermissible to look at an earlier Act for guidance where the words had not been repeated in subsequent legislation.

4.26 Mr Justice Wien favoured the first of the three approaches enumerated by counsel, and dismissed the Crown's appeal.

4.27 In agreeing that the appeal ought to be dismissed, Mr Justice Eveleigh stated that

Primarily one would think that an antique is something that has peculiar value because of its age, in addition to its other attributes. But to lay down what that age should be I think is quite impossible.¹¹

4.28 Finally, in that case Lord Widgery CJ expressed some sympathy with the argument that the term antique ought to be defined with greater certainty but observed that, "It would be entirely wrong for us to specify a particular age and say that everything over that age was antique, and everything below that age was not."¹² The Lord Chief Justice agreed that the issue of whether a particular firearm is an antique ought to be left to the jury.

4.29 By 1977 it seems that the term antique had been deemed to be an ordinary English word. It had therefore become a question of fact, not law. Such an approach would permit the jury to attribute to antique any meaning they deem to be appropriate. This is because the Divisional Court was reluctant to define the term in the absence of any legislative attempt to do so.

4.30 This approach has been confirmed in subsequent cases, for example in *Burke*.¹³ In this case, the court reiterated what was decided in *Howells*, namely that once the defendant has raised the matter, the burden is on the prosecution to prove beyond reasonable doubt that the firearm is not an antique.

4.31 No further light is shed by the case of *Bennett v Brown*.¹⁴ Police found three firearms in D's home, two from the early twentieth century and one from the late nineteenth. The magistrates acquitted D of possessing a firearm without a certificate and the Crown appealed. The sole question for the Divisional Court was whether the magistrates had been entitled to conclude that the weapons in D's possession were antiques. Counsel for the Crown contended that no reasonable bench of magistrates could have arrived at the conclusion that the firearms in question were antiques.

4.32 Lord Justice Eveleigh observed that it would be reasonable to assume that two of the weapons had been used in the First World War. The judge then stated that:

¹¹ [1977] 1 WLR 747, 752.

¹² [1977] 1 WLR 747, 752.

¹³ [1978] Criminal Law Review 431.

¹⁴ (1980) 71 Cr App R 109.

It seems that it would be quite impossible to say that any weapon that could reasonably be envisaged as available for use in a war in this century could properly be regarded as an antique.¹⁵

4.33 In agreeing with this outcome, Mr Justice Watkins said:

Thus I am prepared to say that no reasonable bench of justices could conclude, regardless of whether or not a firearm could be used in a war at any time, that a firearm which has been manufactured during this century is an antique.¹⁶

4.34 These authorities were considered more recently by the Divisional Court in *Thompson*.¹⁷ Lady Justice Butler-Sloss confirmed that the issue of whether a firearm is an antique is a question of fact for the jury. The firearm in question was a rifle that was manufactured in 1906, some 88 years before the defendant was convicted of possessing a firearm without a certificate. The judge held that it was not for the Divisional Court to question the judgment of the magistrates that the firearm was an antique.

4.35 In relation to whether the firearm was held as a curiosity or ornament, Lady Justice Butler-Sloss agreed with counsel for the Crown that the firearm was not treated as an ornament, given that it was tucked away in a wardrobe. Her ladyship also observed that the firearm was not being kept as a firearm that was intended to be used. This was inferred from the fact the firearm had sentimental value, as it had belonged to the defendant's uncle.

4.36 Given that the firearm was inherited, was old, was useless for the purpose for which it was made and the surrounding circumstances the magistrates concluded that the firearm was held as a curiosity. Lady Justice Butler-Sloss saw no reason to depart from this finding.

4.37 There are more recent examples of first instance decisions in which a jury has found that firearms less than 100 years old were antiques.¹⁸

(1) In *Garfield Stacey*¹⁹ the jury decided that a .455" calibre Webley Revolver made in 1918 was an antique.

(2) In *Kevin Schofield*²⁰ the jury decided that a 9mm Parabellum calibre Lanchester sub-machine gun made in 1940 was an antique firearm.

4.38 The latter case was highlighted by NaBIS as being of particular concern, given that ammunition for the firearm in question remains readily available.²¹ This could

¹⁵ (1980) 71 Cr App R 109, 112.

¹⁶ (1980) 71 Cr App R 109, 112.

¹⁷ CO/1572/94.

¹⁸ L Saunbury and N Doherty, *The British Firearms Law Handbook* (2011), 1-26 to 1-30.

¹⁹ Bournemouth Crown Court, 5 October 2006.

²⁰ Leeds Crown Court, 18 March 2008.

²¹ NaBIS Submission for the 12th Programme of Law Reform.

be detrimental from a public safety perspective. That firearms of this nature can be freely held could undermine the public's sense of security.²²

- 4.39 The cases analysed in this section are important in several ways. First, they confirm the fact that a firearm is less than 100 years old has been decisive in some instances, but not necessarily in others. Secondly, tribunals of fact continue to be left to decide for themselves whether the firearm in question is an antique. As the next section will discuss, this has the potential to be deeply problematic both for investigating authorities and for legitimate collectors of antique firearms. The former may not know whether a firearm that is in the possession of a potential suspect is unlawful and the latter will be unable to know – without a full criminal trial taking place – whether they are complying with the law or potentially committing a serious offence carrying a mandatory minimum five-year prison sentence.

The Home Office Guide

- 4.40 The Home Office's *Guide on Firearms Licensing Law*²³ takes a different approach from the one adopted in both *Richards v Curwen*²⁴ and *Bennett v Brown*.²⁵ According to the *Guide*, the fact that a firearm was manufactured in the twentieth century does not necessarily mean that it cannot be classified as an antique.²⁶ In the *Guide*, the Home Office states that, "antique" should cover those firearms of a vintage and design such that their free possession does not pose a realistic danger to public safety." The *Guide* produces a list of firearms the Home Office believes ought to benefit from the exemption and those that ought not to.²⁷ In each instance what is decisive is not the age of the firearm, but whether its possession is deemed to pose a risk to public safety. There are parallels between this approach and the one adopted in the Pistols Act 1903.
- 4.41 The *Guide* contains what is known as the 'obsolete calibre list'. This is a list of types of firearm that are chambered for specified types of ammunition and which retain that original chambering. The *Guide* states that these ought to be considered antique for the purposes of the law.
- 4.42 The *Guide* has recently been updated to include a list of those air weapons the Home Office believes ought to benefit from the exemption for antique firearms.
- 4.43 Given that the *Guide* does not have the force of law, when determining whether a firearm is an antique, the jury remains free to conclude that something is an antique even though the Home Office believes it should not be classified as such. The converse is also true. This could be potentially unfair to those who possess what they believe to be an antique, having relied on the Home Office's *Guide*.

²² As suggested by various newspaper reports examining the use of antique firearms in crime.

²³ Home Office, *Guide on Firearms Licensing Law* (March 2015). Available at <https://www.gov.uk/government/publications/firearms-law-guidance-to-the-police-2012> (last visited 8 July 2015).

²⁴ [1977] 1 WLR 747.

²⁵ (1980) 71 Cr App R 109.

²⁶ Home Office, *Guide on Firearms Licensing Law* (March 2015), para 8.3.

²⁷ Home Office, *Guide on Firearms Licensing Law* (March 2015), para 8.12 and appendix 5.

The fact that the offence is one of strict liability means that, as a matter of law, it makes no difference that the legitimate collector relied on the *Guide* in good faith. He or she is guilty by virtue of the fact that the jury has deemed the firearm not to be an antique. The potential for unfairness is self evident. If the *Guide* is treated as being an authoritative statement of the law, then there is the argument that it ought to have the force of law and should be placed on a statutory footing.

- 4.44 There is the potential for even greater unfairness to the legitimate collector. The Department for Business, Innovation and Skills and the UK Border Force adopt a different definition of antique from the one contained in the Home Office's *Guide*. Until recently their guidance stated that a firearm is an antique if it is 100 years old.²⁸ Therefore, if a firearm is at least 100 years old, it is deemed to be an antique and outside the import controls that apply to other firearms. There is no mention in the guidance of the necessity for the firearm to be one that does not pose a danger to public safety. There is no mention of the requirement that the firearm be held as a curiosity or ornament.
- 4.45 The guidance was amended in March 2015. The amended guidance states that a firearm manufactured on or before 31 December 1899 does not require an import licence. Even if the firearm is chambered for an obsolete calibre, the guidance states that an import license is still required if the firearm was manufactured after 31 December 1899.²⁹
- 4.46 This change ensures the guidance is in accordance with the United Nations' Vienna Firearms Protocol, which is concerned with the manufacture and trafficking of firearms.³⁰ This was ratified by the EU in 2013 and the UK opted in to its provisions, meaning it is bound by them. Article 3(1) provides:

Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899.

Firearms of historic interest

- 4.47 The relationship between antique firearms and firearms of historic interest is also relevant when analysing this area of law. Section 1 of the Firearms (Amendment) Act 1997 amended section 5 of the 1968 Act to extend the list of prohibited weapons to include most handguns. Prohibited weapons can only be possessed under the authority of the Secretary of State. An exception is made in section 7 of the 1997 Act for certain types of historic firearm, provided specific conditions are met.³¹

²⁸ Border Force Manual, "Customs Guidance – Firearms Import Policy" (December 2011), para 6.7.

²⁹ Department for Business, Innovation and Skills, "Do I need a BIS Import licence?" (March 2015), p 34, paras 88 to 89.

³⁰ <http://www.poa-iss.org/FirearmsProtocol/FirearmsProtocol.aspx> (last visited 4 June 2015).

³¹ Although section 7 refers to firearms, in fact only handguns fall within these provisions. This means that section 7 only applies to a relatively narrow class of firearm and does not include, for example, rifles.

- 4.48 Section 7(1) of the 1997 Act provides that the authority of the Secretary of State is not needed³² in order to possess³³ a firearm: (a) manufactured before 1919 and (b) of a type for which ammunition is not readily available. Criterion (b) will be satisfied if the firearm is chambered for ammunition of a kind set out in the Firearms (Amendment) Act 1997 (Firearms of Historic Interest) Order 1997.³⁴ This is provided for by section 7(2). In its *Guide*, the Home Office provides examples of firearms that stopped being made before 1919 as well as those that continued to be manufactured.³⁵
- 4.49 The terms of section 7(1) provide that the person must be authorised by a firearm certificate to possess the firearm, subject to the condition that they only possess it for the purpose of it being kept or exhibited as part of a collection. 'Collection' is not defined, but the *Guide* lists the factors that police ought to take into consideration when assessing whether the firearm is genuinely to be kept as part of a collection, such as coherence of the collection (that is to say, whether all the firearms in the collection have something in common) and number of guns held.³⁶
- 4.50 In addition to this exception, section 7(3) provides that it is not necessary to obtain the authority of the Secretary of State to possess a firearm that (a) is of 'particular rarity, aesthetic quality or technical interest' or (b) is of 'historical importance.' These terms are undefined, but the *Guide* lists some criteria that might be relevant in evaluating whether the firearm in question falls within either of these categories.³⁷
- 4.51 The relationship between these two categories of firearm and how they both relate to antique firearms is difficult to understand. For a firearm to come within section 7(1), it cannot be one for which ammunition is readily available. On the other hand, firearms that are permitted under section 7(3) can be fired, although only at Home Office approved sites, where they must also be kept. There are only eleven of these in England and Wales at present.³⁸
- 4.52 Section 7(4) provides that the provisions of section 7 have effect without prejudice to section 58(2). The main difference between the regimes that apply to antiques and to section 7 firearms is that the former can lawfully be possessed without a firearm certificate, whereas the latter cannot lawfully be possessed without one. A large number of firearms that could possibly be deemed to be antique by a jury could also fall within the section 7(1) exception.³⁹ This would be so provided that they are held as a curiosity or ornament. A flowchart at the end of this chapter sets this out in diagrammatical form.

³² As it otherwise would be for section 5 prohibited weapons.

³³ Although they must be held on certificate.

³⁴ SI 1997 No 1537.

³⁵ Home Office, *Guide on Firearms Licensing Law* (March 2015), Chapter 9.

³⁶ Home Office, *Guide on Firearms Licensing Law* (March 2015), 9.19 to 9.23.

³⁷ Home Office, *Guide on Firearms Licensing Law* (March 2015), 9.26 to 9.40

³⁸ Home Office, *Guide on Firearms Licensing Law* (March 2015), 9.37.

³⁹ A point also made in L Saunbury and N Doherty, *The British Firearms Law Handbook* (2011), pp 21.

- 4.53 This overlap seems illogical and could lead to practical difficulties. It could be difficult to determine whether a given firearm is an antique and therefore exempt from the provisions of the Firearms Act altogether, or whether it is one that is of historic importance and which therefore must be held under certificate by virtue of section 7(1). This has the potential to cause difficulty in both enforcing the law and complying with it.
- 4.54 For example, if a handgun was manufactured after 1919 it cannot benefit from the section 7(1) exception. It is possible, however, that it could nevertheless be regarded as an antique and therefore exempt from the provisions of the Firearms Act 1968 altogether.
- 4.55 Section 7(1) contains a very narrow exception to the general prohibition on handgun ownership. As already pointed out, section 7 (1) requires the handgun in question to be held on a firearm certificate. It is counterintuitive for a firearm that cannot take advantage of this narrow exception potentially to fall within the broad exemption in section 58(2). This is especially the case given that in the latter instance the firearm would not need to be held on certificate. The Lanchester sub-machine gun discussed earlier is an example of a firearm that would be unable to take advantage of section 7,⁴⁰ but was nevertheless deemed to be an antique. Therefore not only did its owner avoid the absolute prohibition on the possession of automatic weapons but he could possess such a firearm without it even being entered on a firearm certificate.⁴¹

PROBLEMS WITH THE CURRENT LAW

- 4.56 It is crucial to emphasise at the outset that the exception the legislation provides for antique firearms is primarily relied upon by legitimate collectors.
- 4.57 There is, however, evidence to suggest that the exception is being exploited by those who seek to use firearms for criminal purposes. For example, an individual was recently sentenced to 16 years' imprisonment for shooting a police officer through the hand with what was subsequently discovered to be an old Belgian .32 calibre pocket revolver.⁴²
- 4.58 Recent legislative amendments have recognised the danger antique firearms can pose. On 14 July 2014, new firearms provisions in section 110 of the Anti-social Behaviour, Crime and Policing Act 2014 came into effect: these first lower the severity of sentence D must receive before becoming a person prohibited from possessing firearms,⁴³ and secondly bring possession of antique firearms into the scope of that prohibition for the first time.⁴⁴

⁴⁰ Due to its age and the fact it is not a handgun.

⁴¹ Section 7 only applies to handguns, but this does not detract from the point that is being made.

⁴² <http://www.standard.co.uk/news/crime/police-officer-shot-through-the-hand-wrestling-gun-from-man-who-threatened-to-blow-his-colleagues-head-off-10142686.html> (last visited 7 July 2015).

⁴³ Firearms Act 1968, s 21(2C).

⁴⁴ Firearms Act 1968, s 58(2) as replaced.

- 4.59 The reason given in the explanatory notes for this provision was the perception that there exists a growing interest in antique firearms on the part of criminal groups.⁴⁵
- 4.60 Taken together, the successive changes made to the Firearms Act 1968 mean that a person who has served a term of imprisonment of at least three months and less than three years, cannot possess a firearm, including an antique firearm, for five years following his or her release from prison. A person who is sentenced to a suspended term of imprisonment of three months or more cannot possess a firearm for five years beginning from the second day after the date on which sentence was passed. A person who has served a term of imprisonment of over three years can never possess a firearm or antique firearm.
- 4.61 Since the Firearms (Amendment) Act 1997 effectively prohibited the acquisition of handguns, the only lawful way to possess such a weapon without first applying for authority from the Secretary of State is for it to be an antique or a handgun meeting the criteria in section 7(1) or 7(3). If it is an antique, not only can the handgun be possessed but it can be acquired without any kind of certification. Given that section 58(2) exempts antique firearms from the entirety of the scheme in the Firearms Act 1968,⁴⁶ there is no requirement to acquire them from a registered firearms dealer.
- 4.62 The fact the legislation lacks clarity on what is meant by ‘antique’ poses practical difficulties. The current state of the law causes difficulty not only for those who enforce it, but also for those who make a concerted effort to comply with it. For example, in order for an firearm to come within section 58(2) is it sufficient for it to be over 100 years old, or must it also be one for which ammunition is not readily available? The lack of clarity creates difficulty for expert witnesses, as it is unclear what they are being asked to give evidence on. The inconsistent reliance placed upon the Home Office *Guide* adds an extra layer of uncertainty.
- 4.63 The cumulative impact of these factors is that trials are made longer, more complex and ultimately more costly than they might otherwise be. The police also face difficulty in ascertaining whether a suspect is committing an offence. As will be explained, this leads to increased costs for the police and is detrimental for legitimate collectors also.

The increasing criminal use of antique firearms and the consequent threat to public safety

- 4.64 Records held at the Metropolitan Police Service Forensic Firearms Unit (MPSFFU), indicate that from 1 January 2011 to 31 Dec 2014, at least ninety-four (94) firearms were examined at the MPSFFU that were of a calibre considered obsolete according to the Home Office *Guide*. Most dated from the late 19th century into the early 20th century. All these firearm recoveries were made in criminal circumstances (that is to say, none were surrendered firearms). Two had been found to have been used in shooting incidents; one in a shooting incident

⁴⁵ <http://www.legislation.gov.uk/ukpga/2014/12/notes/division/3/3> (last visited 7 July 2015), at para 26.

⁴⁶ Save for the section 21 regime for persons not permitted to possess firearms.

that resulted in gunshot injuries to two people and one in the shooting of a police officer.

- 4.65 Fourteen of these guns were recovered in 2011, twenty in 2012, twenty-eight in 2013, and thirty-two in 2014; this suggests that the criminal possession and, in some cases use, of such firearms is increasing.
- 4.66 In addition to the obsolete calibre firearms described above, a number of other firearms were submitted to the laboratory for analysis within this time frame that, based on previous experience, were of a sufficient age that their status as antiques would be arguable in court. Again, these guns primarily date from the late 19th and early 20th century; examples would include the Webley British service-issue revolver.
- 4.67 From examination of fired bullets recovered from the scene of shooting incidents in the Metropolitan Police District, the use of an obsolete calibre gun was indicated in thirty-one shooting incidents that occurred between 1st January 2011 and 31st December 2014. This included three fatal shooting incidents. An additional eight incidents were likely to have involved the discharge of an 'old' firearm such as a Webley Service revolver or a M1895 Russian Nagant revolver, including one fatal shooting incident.
- 4.68 This situation has led the police to comment that:

The lack of an explicit statutory definition results in the situation whereby criminals are able to exploit the loophole that allows the sale and ownership of these original lethal purpose obsolete calibre firearms to be held as 'curiosities or ornaments'. There are many reported cases which demonstrate that ammunition suitable for use in these firearms is being used in criminal use of firearms in the UK.

- 4.69 This is exacerbated by the fact that according to the police:

Fifty-two per cent of antique firearm recoveries from police intervention or criminal circumstances are made in combination with suitable ammunition.

- 4.70 Whilst these data are far from conclusive, they do suggest that old firearms are being encountered by the police with increasing frequency.

Investigative difficulties

- 4.71 As a result of the current state of the law, the police cannot know whether an individual who purchases an old firearm commits an offence at the point of purchase. This leads to investigative difficulties. The police have commented that:

While proactive investigations, using sensitive evidence gathering methods, can be undertaken, they are a resource intensive form of policing and can be intrusive. The current legal situation also presents challenges to police in relation to the management of physical risk in armed operations, because the current law does not provide clarity as to when transfer of a firearm ostensibly as an antique is illegal. This

creates situations where an armed policing operation with the potential for recourse to lethal force may be authorised, and yet the transfer of a firearm (antique) may not itself be a criminal act.

- 4.72 The failure to define “antique firearm” has the potential to be detrimental to public safety in addition to having tangible resource implications for the police.

Problems for legitimate collectors

- 4.73 The current regime also poses difficulties for legitimate collectors. Someone who acquires a firearm he or she genuinely believes to be an antique cannot conclusively know whether the firearm in his or her possession is in fact an antique until they have been prosecuted and a jury has delivered its verdict.

- 4.74 The National Target Shotgun Association has said to us that:

[The current law] is not a desirable state of affairs, as different Police Forces might have differing views, resulting in a ‘postcode lottery’ of an item being deemed to be an antique (benefiting from s.58(2) status under the 1968 Act) in one Area but being defined as a firearm in another Area and resulting in the prosecution of an individual.

- 4.75 Anecdotal evidence suggests that there have been prosecutions in instances such as this. This is a corollary of the fact the legislation does not define antique and the courts have decided that the matter is a question of fact and not law.

- 4.76 As has already been highlighted, the fact that the border and custom agencies use different criteria from the Home Office to determine whether a firearm is an antique exacerbates the problem faced by the legitimate collector, who may be able legitimately to possess a certain firearm but may require an import licence to import it. This is compounded by the inconsistent reliance on the Home Office *Guide*. Practitioners have confirmed that this lack of certainty also makes it difficult for them to advise their clients on what their potential liability might be.

Increased need for expert evidence

- 4.77 The combination of the legislation’s silence on what features make a firearm an antique and the fact the courts have decided that the question is one of fact necessitates greater expert involvement than would otherwise be the case. This makes trials longer and also more expensive, both for the prosecution and the defence.⁴⁷ Figures obtained from MPSFFU indicate that 10% of the defence examinations⁴⁸ at their laboratory between 2011-2014 concerned antique firearms.

- 4.78 Given the nature of the subject matter, it is unsurprising that expert evidence is crucial. Problems arise due to the fact the legislation does not provide a point of reference for the experts. Anecdotal evidence suggests that it is possible for the experts to be addressing separate issues in their reports. For example, the focus of the expert instructed by the prosecution could be on the issue of whether

⁴⁷ See for example *R v Aristidou* (Inner London Crown Court, March 2015).

⁴⁸ Where expert witnesses employed by the defence go to examine the weapon(s) that are the subject of the charge against the defendant.

ammunition for the firearm is readily available. Meanwhile, the expert instructed by the defence could be focusing on whether the firearm is over 100 years old. Whilst both experts are addressing the same question – is this firearm an antique? – they might invoke different criteria when arriving at the answer to that question. This can cause confusion for jurors.

- 4.79 Further, the approaches taken by both experts might be equally valid. This is because the courts have decided that the definition of antique is solely for the jury, and they choose the criteria they will rely upon in evaluating whether the firearm is an antique. So, for example, one expert may discuss age and another expert whether the Home Office considers the calibre of the weapon to be obsolete, and the jury must decide whether to use one, other or both approaches in reaching their conclusion. As has already been indicated, this leads to inconsistent outcomes, dependent upon which expert the jury finds more credible. It is important to bear in mind that if a defendant is found not guilty, the firearm is ordinarily returned to him or her.

Provisional proposal 5

- 4.80 **The failure to define antique firearm is a significant omission which causes problems in practice and therefore it is necessary to provide a set of statutory criteria for determining which firearms can benefit from the exemption in section 58(2).**

Do consultees agree?

POSSIBLE SOLUTIONS

- 4.81 Given that the Firearms Act 1968 contains an exemption for antiques and in this part of the scoping exercise the Law Commission is working within the constraints imposed by the current legislative landscape, this section will suggest some possible methods for determining whether a firearm ought to fall within the statutory exception. The guiding principle underlying each of these suggestions is to maximise the protection of the public. By remedying the uncertainty that currently prevails, it is hoped that legitimate collectors of antique firearms will also be able to feel confident that they are complying with the law and to ensure that they do not inadvertently fall foul of it. The aim is not to criminalise collectors, but to make prosecution of those with criminal intent more efficient and effective.
- 4.82 Broadly speaking, these solutions can be placed into two categories. First, there are those that focus upon the age of the firearm. Alternatively, there are solutions that focus upon the functionality of the firearm. For the reasons that will be explained below, we take the view that any solution ought to focus upon the firearm's functionality.

A rolling 100 year definition

- 4.83 Using the Criminal Justice Act 1988 (Offensive Weapons) Order 1988⁴⁹ as a model, the law could specify that an antique firearm is simply one that is over 100 years old. Whilst such an approach would provide certainty, it has the potential to

⁴⁹ SI 2019 No 1988. The Order specifies descriptions of weapons to which section 141 of the Criminal Justice Act 1988 applies.

undermine public safety given that there are many firearms that are over 100 years old but for which ammunition remains readily available, and which can be fired to lethal effect. To compensate for this, greater emphasis could be placed on the additional requirement that the firearm be held as a curiosity or ornament. If, for example, suitable ammunition were stored with the firearm, then this could lead to the inference that, whilst it is an antique, it is not held as a curiosity or ornament.⁵⁰ Such an approach would focus more on why the firearm is held than on its characteristics.

- 4.84 We do not believe this solution is an appropriate one. The basic design of firearms has remained unchanged for decades. Depending upon the type of firearm, one that was manufactured in 1915 could be almost indistinguishable from one manufactured in 2015.⁵¹ The latter would be a prohibited weapon and therefore unlawful to possess except in the most exceptional circumstances and with the authority of the Secretary of State, whilst the former could be possessed without any certification requirements at all. This would remain the case despite the fact they are identical in terms of functionality. Such a state of affairs would be wholly irrational and would fail adequately to protect the public.
- 4.85 Following this approach, within a couple of decades automatic weapons would also be able to benefit from the exemption. This would not be a desirable state of affairs for obvious reasons.
- 4.86 We believe that the determining factor for what ought to benefit from the exemption is *functionality*. The term ‘antique’ is misleading: an old firearm can be just as deadly as one that was manufactured today.

Provisional proposal 6

- 4.87 **The deciding factor for determining which firearms can benefit from the exemption in section 58(2) ought to be functionality.**

Do consultees agree?

- 4.88 In the event that consultees agree, we turn to examine how functionality ought to be determined for these purposes. In short, we provisionally propose that only *obsolete* firearms ought to benefit from the exemption. Rather than the “antique firearm” exemption, it would be an exemption for “obsolete firearms”. Obsolescence in this context can refer to one of two things: ammunition or firing mechanism. The following sections will explain these in more detail.

Obsolete cartridge

- 4.89 One approach that focuses upon obsolescence is to place the obsolete calibre list contained within the Home Office *Guide* on a statutory footing. If the firearm in question is chambered for a type of cartridge contained on the obsolete list, then

⁵⁰ This could pose difficulties for those who (entirely legitimately) both have extensive collections of antique weapons and a large number of guns on certificate. It would be quite likely that there would be coincidental matchings of lawfully held ammunition which would be capable of fitting into an antique weapon.

⁵¹ An example would be the Colt M1911 pistol, which has been manufactured virtually unchanged since 1911 and is presently in service with various US police departments and special forces units.

as a matter of law it would be an antique, provided it is held as a curiosity or ornament.

- 4.90 For this approach to be a viable one, the method for updating the obsolete calibre list would need to be formalised.
- 4.91 Basing the criteria for whether a firearm is an antique upon whether it is chambered for an obsolete calibre poses four difficulties, however:
- (1) it is complex and requires significant time and expertise to determine whether any particular firearm submitted for investigation is chambered for an obsolete cartridge and what is not;
 - (2) a cartridge that is 'obsolete' may not remain obsolete: the internet provides access to manufacturers who can make 'old' ammunition to order;
 - (3) there is evidence from the police to suggest that 'obsolete cartridge' firearms are being modified to chamber modern ammunition; and
 - (4) there is evidence from the police to suggest that criminals are purchasing obsolete cartridge firearms and manufacturing ammunition suitable for use in them.
- 4.92 For these reasons, this approach would not provide a perfect solution. There are, however, some ways of mitigating the effect of these problems. For example, there is evidence to suggest that certain types of old firearm are particularly vulnerable to criminal misuse. These could be taken off the list, for example.

The 'Canadian approach'

- 4.93 A second option is what we might call the 'Canadian approach'. This is the inverse of the obsolete cartridge approach, in that Canadian law specifies those cartridges that *cannot* be considered antique firearms. These are contained in the Regulations Prescribing Antique Firearms 1998.⁵² This approach would give rise to the same difficulties as the obsolete cartridge approach, however, although perhaps not to the same extent.

Year of manufacture conclusive of functionality

- 4.94 Thirdly, an antique firearm could be any firearm manufactured before a fixed date. While such an approach would provide a relative degree of certainty, it can be difficult to determine the precise date when a firearm was manufactured. It could also be considered somewhat arbitrary for one firearm not to be an antique while a firearm of the same model produced a year earlier would benefit from the exemption.
- 4.95 It would also be necessary to determine the cut-off date and justify why that date was considered to be an appropriate one. Section 38(8) of the Violent Crime Reduction Act 2006, for example, defines a "modern firearm" as "any firearm other than one the appearance of which would tend to identify it as having a

⁵² SOR/98-464.

design and mechanism of a sort first dating from before the year 1870.” By way of another example, the United Nations Firearms Protocol provides that, “in no case, shall antique firearms include firearms manufactured after 1899.”

- 4.96 Justifications for a specific date could include the year chosen being one before which only obsolete ignition systems for the cartridge or powder charge were produced. These are complicated to load and fire, and ultimately less lethal in criminal hands.
- 4.97 If the date were early enough, this approach could be a viable one from a public safety perspective. This, however, would represent a significant restriction of the type of firearm that can benefit from the exemption.

Mechanism

- 4.98 Finally, functionality could be determined by reference to mechanism. This approach has been adopted in Western Australia, where no licence is required for the acquisition of a firearm with an ‘antique firearm mechanism’.⁵³ This is defined as a ‘muzzle loading firearm (including a percussion lock handgun that is muzzle loading) manufactured before 1900 that uses black powder to propel a shot, bullet, or other missile except that it does not include a breech loading firearm, a firearm with revolving chambers or barrels, or a cannon.’
- 4.99 Similarly, in a Green Paper published in 1973, it was recommended that firearms capable of firing self-contained centre-fire cartridges should not be classified as ‘antique’.⁵⁴
- 4.100 This approach does not focus upon the exact type of ammunition the firearm is chambered for, but on its ignition system. Drafting a list of specific types of firearm that ought to benefit from the exemption has the benefit of providing certainty for both legitimate collectors and law enforcement whilst also maximising public safety. The latter would be satisfied by the fact that firearms contained on the list could be those that are difficult to load and/or have a very slow rate of fire. This approach would, however, restrict the types of firearms that at present can benefit from the exemption. Arguably this is the purest form of functionality test. It differs from the age-based test, as it is more prescriptive in that it identifies those firing mechanisms that can benefit from the exemption rather than simply stating a date.

Consultation question 5

- 4.101 **We would welcome consultees’ views on the following options for a criterion to determine which firearms benefit from a new obsolescence exemption:**

- (1) obsolete cartridge list;**
- (2) modern cartridge list (Canadian);**

⁵³ Section 8(1)(mc) of the Firearms Act 1973. The Western Australian Law Commission is currently conducting a review of the state’s firearms legislation.

⁵⁴ *Green Paper: Control of Firearms in Great Britain* (Cmnd 5297, 1973).

- (3) **year of manufacture conclusive of functionality; or**
- (4) **antique firearm mechanism.**

NON-DEFINITIONAL ISSUES IN RELATION TO ANTIQUE FIREARMS

- 4.102 Aside from the uncertainty surrounding which firearms can benefit from the antique firearms exemption, stakeholders have suggested that there are two further problems with the current law.

The ability to buy antique firearms for cash

- 4.103 The police have suggested that it is irrational to impose greater obligations upon scrap metal dealers than upon those who sell firearms, albeit antique ones. At present an antique firearm can be bought for cash with no verification of the identity of the purchaser. This means there is no way of tracing who has purchased an antique firearm.
- 4.104 This state of affairs seems unsatisfactory when one considers that by virtue of section 12 of the Scrap Metal Dealers Act 2013, a scrap dealer must not pay for scrap metal except by cheque, or by electronic funds transfer (including by credit or debit card). Additionally, by virtue of the Scrap Metal Dealers Act 2013 sections 11 to 15, scrap metal dealers must record each transaction, the method of payment, and to whom the payment was made (having verified their identity).
- 4.105 The benefit of imposing a similar obligation upon those who sell antique firearms is that it would aid the investigation of crimes that occur using such items. We do not believe it would place a significant burden upon legitimate dealers in antique firearms, since stakeholders suggest most comply with these practices anyway.

Provisional proposals 7 and 8

- 4.106 **Any purchase of an antique firearm must be paid for by cheque or electronic funds transfer.**

Do consultees agree?

- 4.107 **Any sale of an antique firearm must be recorded.**

Do consultees agree?

Exempting antique firearms from *all* the provisions of the Firearms Act 1968

- 4.108 Section 58(2) states

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.

- 4.109 As has already been discussed, this provision exempts antique firearms from the licensing regime. On one interpretation, it also exempts them from every other provision in the Firearms Act 1968, including the offences contained in sections 16 – 25. This part of the Act is entitled *Prevention of crime and preservation of public safety*. 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 - purchasing or selling firearms to minors.
 - (7) Section 24 – supplying a firearm to a minor.
 - (8) Section 25 – supplying a firearm to a person drunk or insane.
- 4.110 To take one example, the effect of section 58(2) might be that it would not be an offence contrary to section 17 to use an antique firearm to resist arrest.
- 4.111 This strikes us as a loophole that ought to be closed. If it is an offence to use an imitation firearm to resist arrest, then it should also be an offence to use an antique firearm. Remedying this problem would be relatively straightforward. The offences in section 16 – 25 could be amended to put beyond doubt that they can also be committed by someone with an antique firearm.
- 4.112 This would have the benefit of closing a loophole, but we believe it would have no detrimental impact upon legitimate antique firearms collectors.

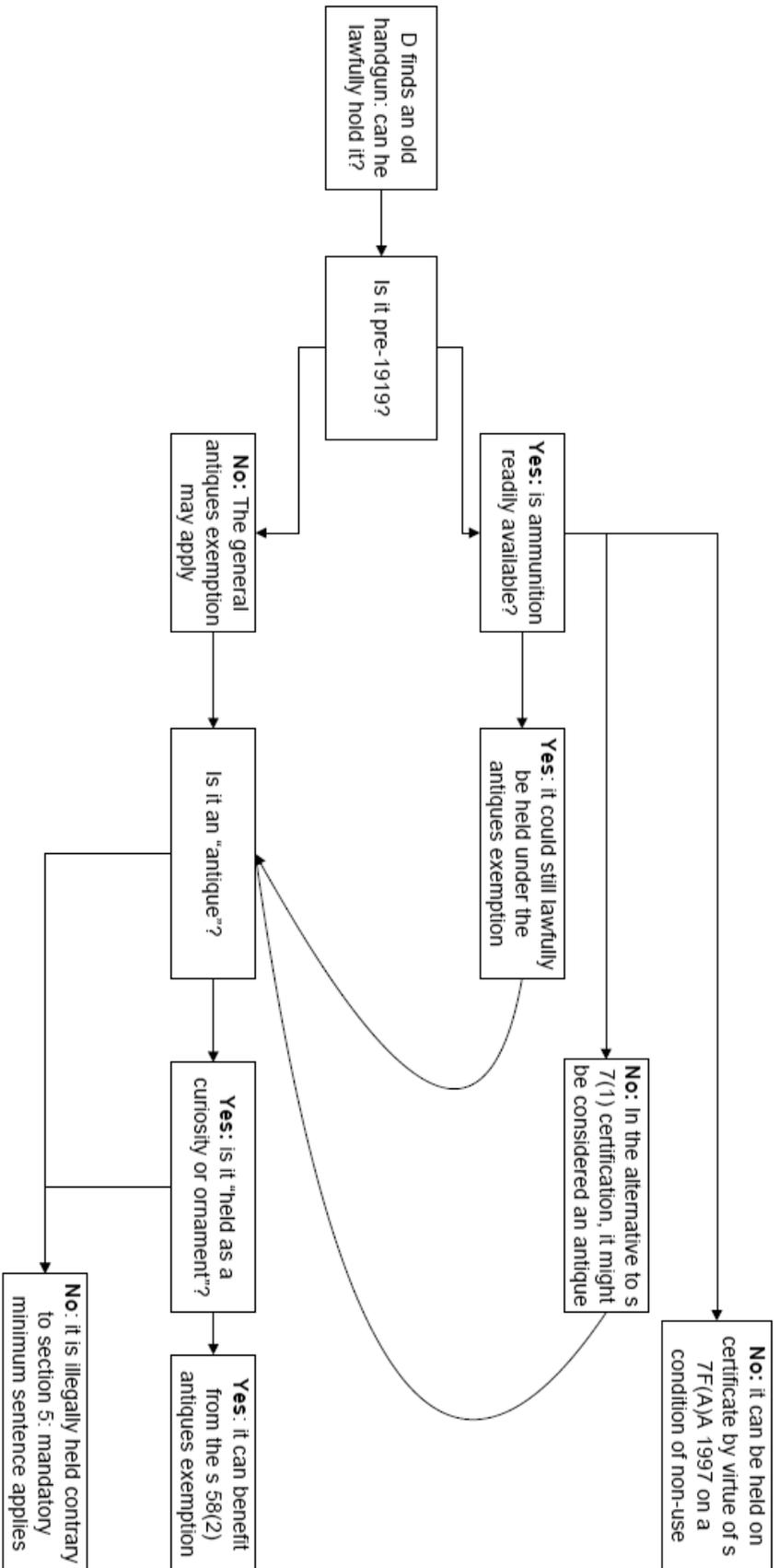
Provisional proposal 9

- 4.113 **The offences in sections 16 – 25 ought to be amended to put beyond doubt that they can be committed by someone in possession of an antique firearm.**

Do consultees agree?

CONCLUSION

- 4.114 This chapter has explained the problems caused by the fact the legislation fails to define ‘antique firearm’. These problems are tangible and can have implications both for public safety and for legitimate collectors. Remedying this problem is not straightforward, which is why the Law Commission has proposed a range of options for reform.
- 4.115 On the next page is a flowchart of the present law in relation to antique firearms, to assist with understanding the legislative scheme examined in this chapter.



CHAPTER 5

DEACTIVATED FIREARMS

INTRODUCTION

- 5.1 This chapter deals with deactivated firearms. This is a complex topic, not least of all because the term “deactivated firearm” is a misnomer in legal terms. If a firearm has truly been deactivated then it is not a firearm as that term is defined in section 57(1) of the Firearms Act 1968. Stakeholders suggest that deactivated firearms can pose a risk to public safety. The reasons why will be explained below.
- 5.2 Section 38(7) of the Violent Crime Reduction Act 2006 defines a deactivated firearm as “an imitation firearm¹ 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.” Due to the fact that it can no longer discharge a projectile, a deactivated firearm no longer comes within the definition of firearm, which was discussed in chapter 2.
- 5.3 Put simply, a deactivated firearm is not a firearm for the purposes of the law. It is, however, an imitation firearm.² It is an offence to do any of the following with an imitation firearm:
- (1) Section 16A of the Firearms Act 1968 – possess an imitation firearm with intent to cause any person to believe that unlawful violence will be used against them.
 - (2) Section 17 of the Firearms Act 1968 – use an imitation firearm with intent to resist or prevent the lawful arrest or lawful detention.
 - (3) Section 18 of the Firearms Act 1968 – carry an imitation firearm with intent to commit an indictable offence.
 - (4) Section 19 of the Firearms Act 1968 – carry an imitation firearm in a public place. and
 - (5) Section 20 of the Firearms Act 1968 – trespass with an imitation firearm.
- 5.4 Since deactivated firearms are classified as imitation firearms, these offences also apply to deactivated firearms.

¹ “Imitation firearm” is defined in section 57 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.” By virtue of section 38(1)(b) of the Violent Crime Reduction Act 2006, a deactivated firearm is exempted from being a ‘realistic imitation firearm’. For further explanation of what these are, refer to para 2.60.

² Imitation firearms must also conform to the specifications set out in section 39 of the Violent Crime Reduction Act 2006. As stated above, a deactivated firearm is not a realistic imitation firearm.

- 5.5 Put simply, the problem this chapter will consider is that whilst the United Kingdom has some of the most rigorous deactivation standards in the world, there is no legal requirement that they be followed.

THE CURRENT LAW

- 5.6 In 1989 the Home Office established 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 of the Firearms (Amendment) Act 1988 and take advantage of the presumption set out in section 8.
- 5.7 The standards were revised in 1995 and more recently in 2010. These more recent standards are not retrospective. Therefore a firearm that was deactivated to the 1989 standard is still presumed to be a deactivated firearm for the purposes of the law. The 1995 and 2010 standards are more rigorous than those that were adopted in 1989. The revised specifications are contained within “Firearms Law – Specifications for the Adaptation of Shotgun Magazines and the De-Activation of Firearms”.³
- 5.8 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, unless the contrary is proven, if it bears an approved mark for denoting that fact and one of the two Proof Houses⁴ have certified in writing that it has been deactivated to the approved standard. If a firearm bears the mark and there is the requisite documentation, it is therefore presumed to be incapable of discharging a missile and is therefore not a firearm. It does remain, however, an imitation firearm.
- 5.9 This is a rebuttable presumption. It is still open for the prosecution to prove beyond reasonable doubt that the item in question is capable of discharging a missile despite the fact it bears a proof mark.
- 5.10 The legislation does not state that a firearm *must*, as a matter of law, have been rendered incapable of discharging a projectile by undergoing some Home Office approved deactivation process. It simply provides that if a firearm is deactivated in this way and it is certified as such, then it is presumed not to be a firearm. This does not preclude other, less rigorous, methods of deactivation.

Terminological difficulties

- 5.11 The complexity of this issue is exacerbated by the accumulation of different terms to describe items that are subtly, yet significantly, different from one another. To aid clarity the following four types of item are under consideration in this chapter:
- (1) *A firearm* – this is defined as a “lethal barrelled weapon from which any shot, bullet, or other missile can be discharged” in section 57(1) of the Firearms Act 1968. Possession without a firearm certificate is an offence.

³ <https://www.gov.uk/government/publications/the-adaptation-of-shotgun-magazines-and-the-deactivation-of-firearms-revised-2010> (last visited 8 July 2015).

⁴ Or some other person approved by the Secretary of State to mark the firearm. No other person has yet been approved to do this.

If the firearm is also a prohibited weapon, unlawful possession carries a mandatory minimum five year prison sentence.

- (2) *A firearm that has been certified as being deactivated by one of the two British Proof Houses* – this is something that once was capable of discharging a missile but has been rendered incapable of doing so and therefore falls outside the statutory definition of ‘firearm’. Deactivation is therefore the process of rendering a firearm incapable of discharging a missile. Items in this category have been certified as ‘deactivated’ by one of the Proof Houses. As they are not firearms, items in this category are lawful to possess. Crucially, deactivation is intended to be an irreversible process. The problem at the heart of this chapter is the fact the law does not currently impose an obligation as to the way a firearm must be rendered incapable of discharging a missile. This means that something could be offered for sale as a ‘deactivated firearm’ despite the fact it could be made to discharge a missile again.

Proof House certified ‘deactivated’ firearms can be further divided into the following categories:

- (a) *Deactivated to the 2010 standard* – it is almost impossible that something deactivated to this standard could be reactivated. Possession is not an offence as it is not a firearm. The item remains, however, an imitation firearm. It would be possible to commit one of the offences mentioned above with something in this category.
- (b) *Deactivated to the 1995 standard* - it is almost impossible that something deactivated to this standard could be reactivated. Possession is not an offence as it is not a firearm. The item remains, however, an imitation firearm. It would be possible to commit one of the offences mentioned above with something in this category.
- (c) *Deactivated to 1989 standard* – firearms deactivated to this standard are more vulnerable to being reactivated. Nevertheless, they still benefit from the evidential presumption in the Firearms Act 1988. It remains open to the prosecution to prove, however, that the item in question remains capable of discharging a missile and is therefore a firearm. It would also be possible to commit one of the offences mentioned above with something in this category.
- (3) *A firearm that has purportedly been “deactivated”* – this is something that once was capable of discharging a missile and has been rendered incapable of doing so. Unlike a truly deactivated firearm (above), items in this category have not been certified as being deactivated by one of the Proof Houses. This means it may be possible to reactivate them.⁵ These are the items that are encountered in criminal circumstances. Items in

⁵ The process of modifying something that was incapable of discharging a projectile so that it becomes capable of doing so is called ‘reactivation’.

this category do not benefit from the evidential presumption in section 8 of the Firearms Act 1988. They are incapable of discharging a missile, which means they fall outside the statutory definition of firearm. Given that they have not been certified as having undergone a Home Office approved process, it is possible that items in this category could be made to discharge a projectile with potentially lethal consequences.

- (4) *A firearm that has become so corroded that it is permanently incapable of discharging a missile* - it is possible for a firearm to be incapable of discharging a projectile for some other reason. For example it may have been retrieved from a shipwreck. If so, it may also have ceased to come within the definition of firearm found within section 57(1) of the Firearms Act 1968 because it is so corroded that it is incapable of discharging a missile. This inability to discharge a missile means that such an item falls outside the statutory definition of 'firearm'.⁶ There is a mechanism to enable the Proof Houses to deal with items such as these in the 2010 deactivation standards.⁷

- 5.12 As this chapter will explain, items in category three cause particular difficulties. This is because an individual may offer to sell something that is purported to be a 'deactivated firearm' despite the fact it has not been subjected to a certified deactivation process.

PROBLEMS WITH THE CURRENT LAW

- 5.13 As has already been explained there is no obligation to comply with the Home Office approved standards for deactivation. An individual could claim that a firearm is 'deactivated' and therefore lawful to possess without any form of certification, despite the fact it might not have been through a sufficiently rigorous deactivation process.
- 5.14 There is the possibility that something that has not been certified as being deactivated to a Home Office approved standard could be 'reactivated' and rendered capable of discharging a projectile with potentially fatal consequences.⁸ There is evidence to suggest that firearms that have not been through a sufficiently rigorous deactivation process pose a danger to public safety, as the next section will explain.

The danger deactivated firearms can pose

- 5.15 There is increasingly a consensus that deactivated firearms can pose a significant danger to public safety. This is primarily due to the fact that formerly deactivated firearms have been used in a number of high profile incidents that have led to fatalities.

⁶ Home Office *Guide on Firearms Licensing Law* (March 2015), para 2.20.

⁷ See page 16. This provides that 'In special circumstances where normal specifications for the type of arm cannot be fully implemented, the British Proof Authority has discretionary powers to use an individual specification and mark to certify that an arm has been deactivated to standard sufficiently stringent to comply with requirement by the Secretary of State'.

⁸ Stakeholders suggest that firearms deactivated to the 1989 standard are also susceptible to reactivation. The more modern standards do not apply retrospectively, however.

- 5.16 As this chapter explains, firearms that have been certified by one of the Proof Houses as deactivated are not necessarily the problem, although some are. More significant problems are posed by firearms that are alleged to have been deactivated but which, with varying levels of modification, can be made to discharge a missile with potentially lethal consequences.
- 5.17 According to the Home Office, in 2009, approximately 180,000 firearms certified as deactivated by the Proof Houses were in circulation. The Home Office found that the number of pre-1989 deactivations – that is to say, those that have not been certified as being deactivated to a Home Office approved standard – was more difficult to estimate, but thought that it was likely to be significantly higher.⁹
- 5.18 According to data supplied by NaBIS, the proportion of criminal shootings that involve reactivated firearms has risen over the last three years. Thirty per cent (40) of these incidents resulted in injuries being sustained, including five fatalities.
- 5.19 The European Commission has also recognised the significant danger deactivated firearms can pose. According to a document published by the Commission in 2013:

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 guns¹⁰, air weapons and blank-firers are being converted into illegal lethal firearms.¹¹

- 5.20 Deactivated firearms have been the subject of an analysis by Warlow, who gave some examples of instances when he encountered reactivated firearms in the course of his work as a forensic scientist with the Forensic Science Service.¹²
- 5.21 Additionally, Migeot and De Kinder have observed:

Another effect of the tight firearms laws is that it becomes much more difficult to put one's hands on weapons. Reactivating these collectors [sic] items back to functioning firearms seems to some handy people a feasible way of (illegally) obtaining firearms.¹³

⁹ Home Office, *Controls on deactivated firearms – a Consultation Paper* (February 2009), p 9.

¹⁰ These are another term for flare pistols, line throwers etc.

¹¹ European Commission, *Communication from the Commission to the Council and the European Parliament: Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking* (2013), p 5.

¹² T A Warlow, "The criminal use of improvised and re-activated firearms in Great Britain and Northern Ireland" (2007) 47 *Science and Justice* 111.

¹³ G Migeot and J De Kinder, "Reactivating deactivated firearms"(1999) 103 *Forensic Science International* 173.

- 5.22 In its Tenth Report, the FCC established a sub-committee to ascertain and report on whether the reactivation of firearms by criminals was a problem. The sub-committee recognised the fact that there were a significant number of deactivated firearms in circulation. It also recognised that there is evidence to suggest that the proportion of deactivated firearms in criminal hands is significant and did pose a threat to public safety due to the possibility that some of them could made to discharge a missile.
- 5.23 The data supplied by NaBIS suggests that the dangers deactivated firearms can pose have not diminished since the FCC published its Tenth Report in 2001.

SOLUTIONS

- 5.24 This section will consider some ways of remedying the problems that were identified in the last section.

A legal not an evidential provision

- 5.25 To ensure that the UK's strict deactivation standards can no longer be ignored, one option is to impose a legal obligation that to qualify as a deactivated firearm, a firearm *must* be certified as having been deactivated to a standard required by the Home Office.
- 5.26 There are three possible ways of achieving this. First, the definition of 'deactivated firearm' in section 38(7) could be amended so that only those firearms deactivated to a Home Office approved standard fall within the definition. Once a weapon comes within the definition, it may be bought, sold or possessed without any kind of control. Alternatively, the regulation making power in section 39 of the Violent Crime Reduction Act could be used.¹⁴ This would make it an offence to manufacture, modify, or import a weapon that was not certified by one of the Proof Houses as being deactivated to a Home Office approved standard. Finally, section 8 of the Firearms (Amendment) Act 1988 could be amended to state that it is no longer merely an evidential provision.
- 5.27 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, however, it could be considered artificial to rely upon that power in this context.

¹⁴ This gives the Secretary of State the power to make regulations requiring imitation firearms to conform to specifications set out in regulations.

Provisional proposal 10

- 5.28 **The statute or regulation should state expressly that only firearms that have been certified by one of the Proof Houses as being deactivated to a Home Office approved standard ought to be categorised as ‘deactivated firearms’ and therefore capable of being possessed without any form of control. A mechanism would need to be inserted to enable the Proof Houses to certify that a firearm that has not been deactivated to a Home Office approved standard is nevertheless irreversibly incapable of discharging a projectile, because of corrosion, for example.**

Do consultees agree?

Consultation question 6

- 5.29 **Based upon the assumption that the preceding question is answered in the affirmative, do consultees have a view on which of these three methods would be more appropriate?**

- (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.**

- 5.30 Where a firearm does not meet a Home Office approved standard and is incapable of discharging a missile, it may, under our provisional proposals constitute an offence to possess it *if* it is readily convertible because the effect of the Firearms Act 1982 is to bring “readily convertible imitation firearms” into the definition of firearm in section 57(1) of the Firearms Act 1968.¹⁵ Convertibility is discussed in Chapter 6. If the firearm is capable of discharging a projectile, it will be a firearm provided it can discharge a projectile with lethal force. Lethality is discussed in Chapter 3.

- 5.31 This approach would ensure that the focus of the analysis in a prosecution for being in unlawful possession of a weapon that is not deactivated to a Home Office approved standard will be on whether that article could be made to discharge a missile with potentially lethal consequences.

- 5.32 Using this approach to determine what possible criminal offence has been committed by someone in possession of something that is allegedly a deactivated firearm, then we suggest the process would be as follows:

- (1) Is D in possession of a firearm certified by one of the Proof Houses as being deactivated to a Home Office approved standard?

If yes, D is not guilty as D is not in possession of a firearm. D is in possession of an imitation, however. The offences discussed earlier would be applicable.

¹⁵ As confirmed in relation to the present law in *Bewley* [2012] EWCA Crim 1457, [27].

If not certified as being deactivated to an approved standard, go to step (2).

- (2) If the item in question is capable of discharging a missile with lethal force, it will be a firearm for the purposes of the legislation. It would be unlawful to possess without the requisite certification.

If it is not capable of discharging a missile, go to step (3)

- (3) Is D in possession of a readily convertible imitation firearm?

If yes, D is guilty of being in unlawful possession of a firearm contrary to section 1 of the Firearms Act 1968. The maximum sentence would depend upon the type of firearm in D's possession.

5.33 The benefit of this approach is that if a firearm has been rendered permanently incapable of discharging a missile, whoever is in possession of it will not commit the offence of being in unlawful possession of a firearm. They will, however, still be in possession of an imitation and it would be possible to commit one of the offences listed above para 5.3.

5.34 A further benefit of this approach is that it would leave no doubt that something that is not irreversibly deactivated falls within the scope of the legislation. It would also ensure that something which cannot discharge a projectile, although not deactivated to a Home Office approved standard is not considered a firearm for the purposes of the legislation, so long as it is not "readily convertible",

5.35 This would mean an individual would not commit an offence by being in possession of something that was a firearm but which for example, has been lying at the bottom of the sea for decades, and is therefore so corroded that it is incapable of discharging a missile.

Attempts to alter a firearm deactivated to a Home Office approved standard – does the presumption still apply?

5.36 A further issue arises when attempts are made to reactivate a firearm that was previously deactivated to a Home Office approved standard. Reactivation refers to the process of making alterations to a deactivated firearm with the aim of enabling it to discharge a missile. Although deactivation is intended to be an irreversible process, an individual may still attempt to modify a deactivated firearm with the intention of making it capable of discharging a missile. An individual could attempt this even with something deactivated to the 2010 standard, although we are told that they would be very unlikely to succeed.

- 5.37 In the event that reactivation is successful, the item in question will be a firearm for the purposes of the Act and would therefore be unlawful to possess without the requisite certification. If the process is unsuccessful, the Home Office specifications state that substantial alteration will render the deactivation invalid such that the firearm can no longer benefit from the presumption in section 8 of the Firearms (Amendment) Act 1988.¹⁶ This is not, however, specified in law.
- 5.38 The current state of the law is problematic as it leaves open the possibility that someone who has attempted to render a deactivated firearm capable of discharging a projectile could still rely on the presumption that the firearm is deactivated because the item in question still bears the relevant proof mark. Such a possibility is problematic. The ultimate arbiter of whether something is no longer capable of taking advantage of the presumption is a jury. This could lead to investigative difficulties for the police, as they will be unable to tell whether a suspect is unlawfully in possession of a firearm. This is also a difficulty for the CPS when deciding whether to prosecute.
- 5.39 To remedy this problem, we provisionally propose inserting a provision into the statute specifying that as a matter of law any subsequent attempt to reactivate a deactivated firearm would render the deactivation invalid.
- 5.40 The benefit of this approach is that it gives legal effect to what is already contained within the 2010 deactivation standards.

Provisional proposal 11

- 5.41 **Where a person attempts to reactivate a firearm that was deactivated to a Home Office approved standard, we provisionally propose that as a matter of law that weapon should no longer be presumed to be deactivated and take advantage of the presumption.**

Do consultees agree?

Attempts to alter a deactivated firearm with the intention of rendering it capable of discharging a missile – is it already unlawful?

- 5.42 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*¹⁷ 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.

¹⁶ Firearms Law – Specifications for the Adaptation of Shotgun Magazines and the De-Activation of Firearms (2010), p 16.

¹⁷ [2005] EWCA Crim 2686.

- 5.43 This problem with this offence, however, 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.
- 5.44 To avoid a gap in the law, we provisionally propose 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.

Provisional proposal 12

- 5.45 **We provisionally propose the amendment of section 4(3) to put beyond doubt that the offence can also be committed by someone who makes amendments to a deactivated firearm with the intention of rendering it capable of discharging a missile.**

Do consultees agree?

INTERNATIONAL TRADE

- 5.46 Stakeholders suggest that the trade in deactivated firearms is international. It is possible that a firearm deactivated in another part of the world could be imported into the UK and sold as a “deactivated firearm”. This scenario raises two issues:
- (1) Can a firearm that has been deactivated in another jurisdiction take advantage of the evidential provision in section 8 of the Firearms (Amendment) Act 1988?
 - (2) What are the implications if a firearm is deactivated in compliance with the law in the jurisdiction it originates from?

Firearms deactivated in other jurisdictions

- 5.47 If a firearm has been deactivated in another jurisdiction, it cannot benefit from the evidential presumption in section 8 of the 1988 Act. Nevertheless, if the deactivation process has rendered the firearm permanently incapable of discharging a projectile, then it will not fall within the definition of “firearm”. It would, however, be an imitation. The implications of this were explained above.¹⁸
- 5.48 If the deactivation process has not rendered the firearm permanently incapable of discharging a projectile, then to ascertain whether it is lawful to possess without the requisite certification consideration would need to be given to whether it is a readily convertible imitation.
- 5.49 The most important thing to note is that a firearm deactivated in another jurisdiction can *never* take advantage of the presumption.

¹⁸ If the law were amended using the 2006 Order, import restrictions would apply.

EU

5.50 Deactivation standards vary across the EU Member States. Some jurisdictions, such as the UK, have very stringent standards. The standards in other jurisdictions are less stringent, however. After an extensive study, the European Commission has recognised that the disparity in deactivation standards at national level “risks creating several vulnerabilities to criminal activity”.¹⁹ This is despite the fact the Firearms Directive imposes an obligation upon Member States to ensure that firearms have been rendered *permanently* unfit for use by deactivation and that all the essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or modification that would permit the firearm to be reactivated in any way. It also imposes upon Member States an obligation to make arrangements for the deactivation measures to be approved by a competent authority. The national authority must ensure that the national procedures for the deactivation of firearms render them *irreversibly* deactivated. It is important to point out that Article 3 of the Directive states that

Member States may adopt in their legislation provisions which are more stringent than those provided for in this Directive, subject to the rights conferred on residents of Member States s by Article 12(2)

5.51 The Commission has found that the shortcomings in the effective implementation of the Firearms Directive and the differences among national regulations imply a range of security concerns related to deactivated firearms. The reason for this is the fact that different standards and procedures are applied across the Member States. The Commission has found that two potentially dangerous consequences follow from this: first that this may generate the circulation of deactivated firearms with different levels of security and secondly trade in components that have not been permanently deactivated and may be used to build or reactivate a firearm.

5.52 The EU is currently engaged in a consultation process that aims to reduce the lack of consistency in the rules and procedures for deactivating firearms and increase the security of EU citizens.

5.53 The Commission has tasked the Permanent International Commission on the Proof of Small Arms (the CIP) to conduct a review of the feasibility of an EU marking standard for all weapons.

5.54 Imposing a legal obligation for firearms to be certified as being deactivated to a British standard might entail two EU law related issues. The first issue is whether such an obligation would be in conformity with the Firearms Directive. Given that the Commission itself has recognised that not all Member States take sufficiently stringent steps to ensure firearms are rendered *irreversibly* deactivated, we do not believe that this is an impediment to what we have provisionally proposed. The Directive itself gives Member States the scope to adopt more stringent standards than those that are provided for in the Directive.

¹⁹ European Commission, Study to support an impact assessment on a possible initiative related to improving rules on deactivation, destruction and marking procedures for firearms in the EU, as well as alarm weapons and replicas (2014). Available at http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/general/docs/dg_home_ia_firearms_deactivation_final_en.pdf (last visited 8 July 2015).

- 5.55 The Commission aims to publish its report on deactivated firearms in September 2015 and we will be in a position to reflect its conclusions in our final Scoping Report.
- 5.56 The second issue is related to the free movement of goods. This is a fundamental principle of the EU that is enshrined in Article 34 of the Treaty on the Functioning of the European Union ('TFEU'). This prohibits measures that have the equivalent effect of being a quantitative restriction on imports.²⁰
- 5.57 It is not clear whether Article 34 applies to firearms, given the existence of the Firearms Directive. Assuming it does, Article 36 TFEU permits derogations from Article 34. One of the grounds for derogating is public security and the protection of health and life of humans. Given the fact that the Commission itself has recognised that ineffectively deactivated firearms pose a threat to the security of EU citizens, we believe there is a clear justification for taking steps to restrict the import of those deactivated firearms that have not been rendered irreversibly incapable of discharging a projectile.

Impact on trade of the Law Commission's proposals

- 5.58 According to guidance promulgated by BiS in March 2015 and referred to in the Border Force Manual, if a purportedly deactivated firearm is purchased abroad but does not bear a proof mark to denote it has been deactivated to a Home Office approved standard, it cannot be imported without first obtaining a BiS import licence and/or a firearm certificate, depending upon the type of firearm and where it originates from. According to BiS, a British proof mark is the only acceptable proof of deactivation.²¹ Given the stance already taken by BiS, we do not believe the proposals in this chapter would have any additional impact upon the import of deactivated firearms.

CONCLUSION

- 5.59 This chapter has explained the problems associated with the ineffectual deactivation of firearms. It is problematic that the United Kingdom has some of the most rigorous deactivation standards in the world, but there is no legal requirement that they be followed. This chapter has made some suggestions as to how these issues can be remedied.

²⁰ See P Oliver, *Free Movement of Goods in EU Law* (2010).

²¹ *Department for Business, Innovation and Skills – Do I need a BIS import license?* (2015), para 98.

CHAPTER 6

READILY CONVERTIBLE IMITATION FIREARMS

INTRODUCTION

6.1 This chapter is concerned with what the Firearms Act 1982 terms “readily convertible imitation firearms”. These are imitation firearms that can be converted into live firearms capable of discharging a missile with potentially lethal consequences. Problems have arisen in distinguishing those imitations that ought to be considered convertible from those that ought not.

6.2 This issue has been around for some time. In 1934, for example, the Bodkin Committee recognised:

...a practical difficulty in the way of prohibiting or restricting convertible safety pistols¹ is the difficulty in distinguishing for the purpose of the legislation between the convertible and the non-convertible type. The Committee was not able to provide a suitable definition or test.²

6.3 There is a degree of overlap between the subject matter of this chapter and the chapter examining deactivated firearms.³ This is because something that was not deactivated to a sufficiently rigorous standard may be ‘readily convertible’ into a live firearm. The law in this chapter therefore applies to the following types of firearm:

- (1) A blank firing pistol. This is not capable of discharging a missile with potentially lethal consequences, but could be “readily convertible” so that it becomes capable of doing so.
- (2) Something that was a lethal barrelled weapon capable of discharging a projectile, but work has been done to it that renders it incapable of doing so. This deactivation may not be permanent and therefore the item may be “readily convertible” so that it could discharge a projectile with potentially lethal consequences.

6.4 The questions that arise are whether the law’s current definition of whether something is “readily convertible” is fit for purpose and offers adequate protection.

6.5 We will examine:

- (1) which types of weapon these provisions apply to;
- (2) whether the definitions of these types of weapon are clear;

¹ Another term for flare guns and line throwers.

² Statutory Definition and Classification of Firearms and Ammunition Committee, Cmd 4758 (1934).

³ Chapter 5, above.

- (3) the test for 'ready convertibility' and whether it has kept pace with technology;
- (4) the problems posed by the present law; and
- (5) possible solutions that would ensure greater protection against the risk that readily convertible imitation firearms can pose.

Legal definitions

- 6.6 An imitation firearm is defined in section 57 of the Firearms Act 1968 as “anything which has the appearance of being a firearm (other than such a weapon as is mentioned in section 5(1)(b) of this Act⁴) whether or not it is capable of discharging any shot, bullet or other missile.”
- 6.7 Section 39 of the Violent Crime Reduction Act 2006 gives the Secretary of State the power to make provision requiring *blank firing* imitation firearms to conform to specifications set out in regulations.⁵ Such specifications are set out in the Violent Crime Reduction Act 2006 (Specifications for Imitation Firearms) Regulations 2011.
- 6.8 In relation to blank firing firearms, section 39(2)(a)-(d) of the 2006 Act makes it an offence to do any of the following:
- (a) manufacture an imitation firearm which does not conform to the specifications required of it by regulations made under the section;
 - (b) to modify an imitation firearm so that it ceases to conform to the specifications so required of it;
 - (c) to modify a firearm to create an imitation firearm that does not conform to the specifications so required of it; or
 - (d) to bring an imitation firearm into Great Britain which does not conform to the specifications so required of it or cause such an imitation to be brought into Great Britain.
- 6.9 The intention behind the enactment of these provisions is to ensure that blank firing imitations that could be converted into firearms that discharge a missile are not imported. These provisions do not apply retrospectively, however. So the problem is that there are already in circulation an unknown number of imitation firearms that do not conform to the prescribed specifications and which therefore could be “readily convertible”. It is therefore crucial that the test for ascertaining

⁴ Which classes as prohibited “any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing”. Thus the possession of a readily convertible imitation stun gun, for example, is *not* criminalised under the present law. Stun guns are deemed by the legislation to be firearms.

⁵ These are a subset of imitation firearms that fire blank rounds, such as starting pistols. Given that they do not just look like firearms, but are also capable of firing blank rounds, it was deemed necessary to formulate these standards to minimise the risk that they can be converted so as to be capable of firing live rounds.

whether an imitation is “readily convertible” enables the police to intervene and remove these items from circulation with the aim of maximising public protection.

6.10 The current state of the law is as follows:

- (1) If a blank firing imitation conforms to the prescribed specifications it is unlikely that it is readily convertible.
- (2) If a blank firing imitation does not conform to the prescribed specifications it could be readily convertible.
- (3) There are no specifications for non-blank firing imitations, so these could *also* be readily convertible.

Brief historical background

6.11 Section 9(2) of the Firearms (Amendment) Act 1936 made it an offence for someone other than a registered firearms dealer to convert into a firearm something which, though having the appearance of a firearm was unable to discharge a projectile (namely an imitation firearm). This offence is replicated in section 4(3) of the Firearms Act 1968.

6.12 Whilst the offence in section 4(3) criminalises the individual who converts the imitation, it does not criminalise the individual who is in possession of an imitation that can be converted. Legislation was enacted in 1982 to make specific provision for the possession of imitation firearms that can be converted.

CURRENT LAW

6.13 Section 1 of the Firearms Act 1982 provides that an item with the following characteristics is deemed to be a firearm to which section 1 of the Firearms Act 1968 would apply. This means that a firearm certificate (and the authority of the Secretary of State if it is a prohibited weapon) is required to possess the imitation firearm in those circumstances when it would be required for the real thing. Those characteristics are:

- (1) the item in question has the appearance of being a firearm to which section 1 of the 1968 Act (firearms requiring a firearm certificate) applies; and
- (2) it is so constructed or adapted as to be readily convertible into a firearm to which that section applies.⁶

6.14 The test is based upon appearance and “ready convertibility”. By way of example, a starting pistol that is only capable of firing blank cartridges and therefore would not otherwise be a firearm requiring certification will be deemed to be a firearm provided it looks like a firearm to which section 1 of the Act would apply and is “readily convertible” into such a firearm.

6.15 Section 1(6) of the 1982 Act provides that an imitation will be “readily convertible” if:

⁶ Which, according to s 1(3), is every firearm *except* certain shotguns and not “specially dangerous” air weapons.

- (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.
- 6.16 The 1982 Act does not, on its face, expand the definition of “firearm” to encompass readily convertible imitations. It deems an imitation that has the features specified in section 1 of the 1982 Act to be a firearm for the purposes of the legislative regime.
- 6.17 Uniquely in the legislative regime, by virtue of section 1(5) of the 1982 Act, it is a defence for the accused to show that he or she did not know and had no reason to suspect that the imitation was so constructed or adapted as to be readily convertible.⁷

The judicial interpretation

6.18 The most authoritative decision on the interpretation of the Firearms Act 1982 is *Bewley*⁸. The Court of Appeal observed that strictly speaking the 1982 Act did not amend the definition of “firearm” in section 57 of the Firearms Act 1968. As a matter of statutory interpretation, however, the court held that when a later Act covers the same material as an earlier one, then both Acts may be regarded as a single code. It was held that this principle ought to govern the interpretation of the 1968 and 1982 Acts.

6.19 The court explained the implications of this conclusion in the following terms:

It is plain that Parliament intended to widen the scope of the meaning of firearm to include an imitation firearm falling within section 1(1) of the 1982 Act. But it is equally plain that Parliament intended only to widen that description in cases where the conversion could be achieved without any special skill and without the use of equipment or tools other than those in common use... Parliament clearly expressed the intention to exclude from the application of the 1968 Act imitation firearms which could not be readily convertible into a firearm by equipment or tools which were not in common use.⁹

6.20 The court also examined what is meant by “conversion”. It was held that the provisions of the 1982 Act are broad enough to encompass both a process that permanently alters the construction of the item in question and one that is only temporary in nature. Lord Justice Moses stated:

It matters not whether that process involves the permanent alteration of the construction of the firearm such as by drilling or by some other

⁷ The Court of Appeal held in *Williams* [2012] EWCA Crim 2162 that this section imposes a persuasive burden on the accused, not just an evidential one.

⁸ [2012] EWCA Crim 1457, [2013] 1 WLR 137.

⁹ [2012] EWCA Crim 1457, [27].

more temporary means. An item may be converted not merely by changing its capacity or by altering its construction, but also by adapting the way it can be used.¹⁰

- 6.21 It was observed, however, that the definition of “firearm” in section 57(1) of the Firearms Act 1968 does not encompass something that is only capable of discharging a missile *in combination with* equipment extraneous to the item. So, if the item in question is only capable of discharging a missile by holding it in a vice and striking the firing pin with a hammer, for example, it cannot be a firearm. For that reason, the Court of Appeal concluded that the starting pistol that was the subject of the appeal did not come within the definition of “firearm”. This was because it could only be made to discharge a projectile through the aid of tools. No facts were advanced to assist the court in ascertaining whether the firearm was “readily convertible” within the terms of the 1982 Act. The defendant’s conviction was therefore quashed.
- 6.22 The Court of Appeal’s judgment in *Bewley* is significant as it also deviated from an earlier line of case law that accepted that something could be a firearm for the purposes of the legislation provided it could be made to discharge a projectile.¹¹ *Bewley* holds that an item is only capable of being a firearm if it can be made to discharge a projectile without the use of special skill and tools other than those in common use.

PROBLEMS WITH THE CURRENT LAW

- 6.23 It is clear from the preceding discussion that it is crucial to determine whether an imitation is “readily convertible”. This is not just an issue for the police, but also for the licensed firearms community.
- 6.24 Whether an imitation is readily convertible will turn on whether it could be converted into a working firearm without the use of special skill and without the use of tools that would not commonly be used by people doing maintenance on their homes.
- 6.25 The 1982 Act was drafted before the advent of the internet. The internet provides the means of acquiring tools that in 1982 would be considered specialist but which today are relatively easy to obtain. Additionally, the cost of what would have been considered specialist tools in 1982 has decreased drastically.
- 6.26 The combination of these factors has led stakeholders to suggest that the 1982 Act is anachronistic in the modern era. For example, the CPS has said that:

The law has not kept up-to-date with society in that instructions for converting imitations into weapons that can discharge missiles with lethal consequences are now easily available from the Internet; furthermore, diamond-tipped drills and milling machinery is available from DIY stores raising the question as to whether there is really a requirement for specialist knowledge and equipment to convert

¹⁰ [2012] EWCA Crim 1457, [30].

¹¹ These cases were *Cafferata v Wilson* [1936] 3 All ER 149 and *Freeman* [1970] 1 WLR 788, [1970] 2 All ER 413.

weapons any more, or whether any imitation that has the potential to be adapted in any manner whatsoever ought to be treated as a firearm.¹²

- 6.27 Similarly, in evidence given to the Home Affairs Select Committee in 2010, the Association of Chief Police Officers (ACPO) and the National Ballistics Intelligence Service (NaBIS) submitted that:

These terms create confusion and a lack of common understanding; neither do they reflect the range of tools available within the domestic marketplace. It is suggested the sub section be revised to reflect tools and equipment commonly available on the high street or via Internet retailers.¹³

- 6.28 More recently, NaBIS has said to us that, “Readily convertible is subjective and requires clarity of statutory definition.”
- 6.29 NaBIS data has highlighted that the proportion of criminal shootings committing using reactivated firearms has risen over the last three years. Thirty per cent (40) of these incidents resulted in injuries being sustained, including five fatalities.
- 6.30 The problem is that the law does not reflect the increased availability of tools that could be used to convert imitation firearms into live firearms.

SOLUTIONS

- 6.31 This section will consider how to address the anachronistic state of the law.

The increased availability of specialist tools

- 6.32 The Home Affairs Select Committee concluded that the legislation ought to be amended to ensure the definition of “readily convertible” accurately reflects the abilities of contemporary criminals to carry out the conversion of imitation firearms into working firearms.¹⁴ Given that almost 35 years have passed since the 1982 Act was enacted, we believe this suggestion is a sensible one.
- 6.33 One option to bring the legislation up to date, suggested by the CPS, the Police and the Home Affairs Select Committee, is to amend the law so that the focus of the test for convertibility is based upon the *ready availability* of the requisite equipment or tools rather than on whether they are in common use. For example, if an imitation could only be converted by using a lathe, this might not be considered “readily convertible” under the current law because presumably a lathe is not a tool *commonly* used by someone carrying out maintenance on their home. A search of online tools suppliers demonstrates, however, that lathes are both inexpensive and easy to obtain. It is therefore a tool that is *readily available*.

¹² Crown Prosecution Service’s (CPS) submission for the Law Commission’s 12th Programme of Law Reform, of which this project forms part.

¹³ House of Commons Home Affairs Select Committee, “Firearms Control: Third Report of Session 2010 – 2011 Volume 1” HC 447-1 at Ev103.

¹⁴ House of Commons Home Affairs Select Committee, “Firearms Control: Third Report of Session 2010 – 2011 Volume 1” HC 447-1 at para 124.

- 6.34 By way of contrast, if the imitation could only be converted using military grade equipment that is not readily available on the open market, then under this proposal it would not be readily convertible for the purposes of the amended 1982 Act.
- 6.35 The benefit of amending the law to focus upon the *ready availability* of the requisite tools lies in ensuring that it reflects practical reality and remedying an anachronism that stakeholders suggest causes difficulties. This would not criminalise those in possession of an imitation with the requisite tools. There would only be liability if the imitation could be converted without the use of special skill. This, combined with the defence in section 1(5), would ensure liability is kept within sensible limits.¹⁵

Provisional proposal 13

- 6.36 **We provisionally propose the law be amended to focus on the *ready availability* of the tools necessary to convert an imitation firearm into a live firearm.**

Do consultees agree?

Possessing equipment with the intention of unlawfully using it to convert imitation firearms

- 6.37 The second issue that stakeholders have suggested needs to be addressed is that of the individual who possesses articles such as tools and equipment with the intention of using them unlawfully to convert imitation firearms into live firearms. Currently such an individual does not commit an offence until he or she is in possession of an imitation firearm that is in fact readily convertible. This stands in stark contrast to other areas of the law. For example, section 6 of the Fraud Act 2006 makes it an offence to be in possession of an article for use in fraud. There are similar offences applicable to someone who possesses articles with the intention of manufacturing false immigration documents and forged documents.¹⁶
- 6.38 The fact the law does not criminalise possession of equipment with the intention of using it to convert imitation firearms into live firearms could be considered a significant lacuna. This is especially the case when the law applicable to the conversion of firearms is contrasted with the law applicable to the manufacture of false immigration documents. The public safety concerns are considerably more acute in the former scenario than in the latter, and yet there is no offence at present. This is a discrepancy that ought to be remedied.

¹⁵ Section 1(5) of the Firearms Act 1982 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 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."

¹⁶ For discussion see D Ormerod and K Laird, *Smith and Hogan's Criminal Law* (14th ed, 2015), p 1036.

Provisional proposal 14

- 6.39 **We provisionally propose the creation of an offence of being in possession of articles with the intention of using them unlawfully to convert imitation firearms into live firearms.**

Do consultees agree?

- 6.40 It might be thought that such an offence would criminalise everyone who is in possession of any drill, vice or other common tools. This is not the case, however. An individual would only commit our proposed offence if the prosecution proves he or she was in possession of an article capable of being used in the unlawful conversion of an imitation firearm *and* he or she had the intention to use it for that purpose.
- 6.41 For example, section 6 of the Fraud Act 2006 potentially criminalises anyone in possession of a pen and paper. The reason it does not do so is that it requires an intention to use those articles for an unlawful purpose. The Court of Appeal has confirmed that requiring the prosecution to prove intention ensures that those who are in innocent possession are not criminalised.¹⁷ This same interpretation would apply to our proposed offence.
- 6.42 The requisite intention would be capable of being proved if, for example, an individual was in possession of articles and instructions on how to convert imitation firearms into live firearms.
- 6.43 Such an offence, therefore, would ensure that only those who possess tools and equipment *with the intention* of using them unlawfully to convert imitation firearms into live firearms commit an offence. This proposal would also ensure that an individual who only possesses such tools for carrying out maintenance on his or her home would not commit an offence.
- 6.44 RFDs often possess tools for repairing firearms. RFDs would not, however, commit our proposed offence, because it only applies if an individual has an intention *unlawfully* to convert imitation firearms into live firearms. Provided an RFD keeps within the boundaries of what he or she is permitted to do, no offence would be committed.

CONCLUSION

- 6.45 This chapter has examined how the law has failed to keep pace with modern developments and explained some ways of remedying this deficiency. It has also proposed a method of closing a loophole that is open to exploitation. These proposals would ensure that the law is up to date whilst not criminalising those in innocent possession of imitation firearms and equipment.

¹⁷ See *Sakalauskas* [2013] EWCA Crim 2278.

CHAPTER 7

THE CASE FOR FUNDAMENTAL REFORM

INTRODUCTION

- 7.1 Before beginning this scoping consultation exercise, the Law Commission was aware from early fact finding with stakeholders that the entire legislative framework regulating firearms is seriously flawed in a variety of different ways. What became clearer as the scoping exercise progressed, however, is that these problems are not academic, but cause significant problems in practice. It is for that reason we have taken the view that it is appropriate to consider the merits of more fundamental reform of the legislative regime. This chapter has four aims:
- (1) to set out briefly the problems caused by the current law;
 - (2) to sketch out the options for fundamental reform of the legislative landscape;
 - (3) to evaluate the respective merits of these options; and
 - (4) to offer a brief overview of the law in some other jurisdictions and evaluate the extent to which they provide models that would be suitable for use in England and Wales.
- 7.2 We have concluded that a sensible approach would be to remedy the problems analysed in chapters 2 to 6 at the first opportunity, before then engaging in a codification exercise.

THE CURRENT LAW – THE PROBLEMS

- 7.3 Colin Greenwood, a leading expert on the history of firearms regulation in the United Kingdom, has complained that the law regulating firearms is now governed by a ‘mass’ of primary and secondary legislation and has therefore become increasingly incomprehensible.¹ These criticisms have been echoed by those who must comply with the law for their livelihoods and in their recreational activities.
- 7.4 In its most recent examination of the law, the Home Affairs Select Committee in 2010 expressed the scale of the problems in the following terms:

An onerous burden is placed on the police and on the public because of the difficulty of understanding and applying the 34 relevant laws which govern the control of firearms. It is unreasonable to expect members of the public to know their responsibilities when the law is so complex and confused. It is also unreasonable to expect the police to apply the law accurately in all cases when it is so complex. This is unhelpful to good relations between the police and the public. We recommend that, rather than adding new rules and greater confusion,

¹ Home Affairs Select Committee Report on Firearms Control (2010), Memorandum by Mr Colin Greenwood, *Firearm Controls in Britain Part I – The History of Firearms Controls in Great Britain*.

the Government provides proposals for early consultation on how to codify and simplify the law. Along with the proposals themselves, we urge the Government to give careful consideration to how it will publicise the legislation in order to give greater clarity to the lay person.²

7.5 Anecdotal evidence from stakeholders suggests that these conclusions remain as apposite today as they were when the Home Affairs Select Committee conducted its review in 2010.

7.6 The deep dissatisfaction with the current law is attributable to four main problems:

- (1) The lack of coherence between different provisions.
- (2) Different policy aims.
- (3) Problems attributable to consolidation without reform.
- (4) Complexity

The lack of coherence between different provisions

7.7 First, the use and regulation of firearms is governed by a vast number of provisions, contained within both primary and secondary legislation. There are 34 Acts of Parliament governing the use of firearms. These date from 1842 to 2014. In addition, there are numerous pieces of secondary legislation to grapple with. The problem is exacerbated as each piece of legislation does not deal with a discrete issue: the Acts are interrelated and often overlap. In addition to this, there are numerous pieces of secondary legislation. Further complexity arises because it is sometimes difficult to reconcile the case law with the legislation. This makes it exceptionally difficult even for a skilled lawyer to state with certainty what the law is.

7.8 Because of the volume of primary and secondary legislation, it is not always clear how the different legislative provisions relate to each other. This problem came to the fore in *Bewley* in which the Court of Appeal held that the Firearms Act 1968 must be read subject to the amendments introduced by the Firearms Act 1982.³ Clarification on the relationship between the two Acts was only provided some 30 years after the enactment of the 1982 Act. To reach this conclusion the Court of Appeal had to overturn two earlier, longstanding authorities.⁴

² Home Affairs Select Committee Report on Firearms Control (2010), chapter 2, para 36.

³ *Bewley* [2012] EWCA Crim 1457; [2013] 1 WLR 137.

⁴ The authorities were *Cafferata v Wilson* [1936] 3 All ER 149 and *Freeman* [1970] 54 Cr App Rep 251.

- 7.9 This lack of clarity imposes an onerous burden not only upon the police but also upon the licensed firearms community. It is unreasonable to expect the police to apply the law accurately in all cases when it is so complex that experts and trained lawyers disagree. It is equally unreasonable to expect members of the public to know their responsibilities when the law is so complex and confused. The conclusion of the Home Affairs Select Committee was that the current state of the law is detrimental to good relations between the police and the licensed firearms community.

Different policy aims

- 7.10 Secondly, associated with the first problem is the fact there are inconsistent policies underpinning each provision. This means that the various legislative provisions do not necessarily relate well to each other and may even be inconsistent. For example, the Deer Act 1991 provides that expanding ammunition must be used when hunting deer. The Firearms (Amendment) Act 1997 prohibits expanding ammunition, however. To ensure the legislation did not conflict, it had to be amended to provide exemptions to ensure compliance with the Deer Act 1991. This, however, potentially demonstrates the problem. There are so many exemptions that it could be argued prohibiting expanding ammunition merely adds an unnecessary administrative burden.

Problems attributable to consolidation without reform

- 7.11 Thirdly, the principal act – the Firearms Act 1968 - was a consolidating measure and therefore incorporates many of the deficiencies contained within earlier legislation. For example, the definition of ‘firearm’ has remained unchanged since 1920 and it is questionable whether that definition remains appropriate almost 100 years after it was first adopted in legislation due to recent technological developments. Additionally, the exception for antique firearms dates as far back as 1903 and now undermines public safety, which is why we are making proposals for its amendment. Adding to the difficulty, many key terms in the legislation have never been defined, such as ‘servant’, ‘shooting gallery’, ‘noxious thing’ and even ‘rifle’. The next chapter expands on some of these problems.

Complexity

- 7.12 Fourthly and finally, the law has become unnecessarily complex. Whilst a certain degree of complexity is to be expected, it is hard to see why – for example – section 5 of the 1968 Act, which sets out those weapons that are prohibited, has needed to expand from 305 to 2,545 words. This section now refers to a huge number of items - ‘firearms’, ‘prohibited weapons’, rocket launchers’, ‘firearms designed as another object’, ‘firearms designed as a signalling apparatus’ to name just a few. In enforcing this section the police, NCA and border agencies must now grapple with all these complex and overlapping terms, none of which are defined. What they encompass is often left for the jury to decide. It is self-evident that this steady accumulation of different terms that are undefined makes the law difficult to enforce and difficult to comply with.

- 7.13 A single firearm can be classified within the legislative regime in a number of different ways. For example, the same item could be an imitation firearm, a realistic imitation firearm, a readily convertible imitation firearm, a section 5(1)(aba) prohibited weapon and/or a prohibited weapon capable of discharging a noxious substance in section 5(1)(b). These problems are vividly illustrated by the prosecution in *Williams*, in which there was considerable difficulty deciding which category the firearm in that case fell into.⁵ This issue is a crucial one, as the penalty and nature of the offences, as well as the defences available may differ depending upon the category it fits into.
- 7.14 The extent to which there is overlap between these classifications causes significant confusion. This makes charging decisions exceptionally complex and also makes it difficult for the licensed firearms community to know whether they are complying with the law.
- 7.15 Earlier in this paper we identified some issues which stakeholders from diverse interest groups agreed cause difficulties due to the frequency with which they arise and the potential danger they pose to public safety and have made provisional proposals in Chapters 2 to 6. We take the view that these ought to be remedied at the first legislative opportunity.
- 7.16 This, however, would increase the number of legislative provisions. In one sense this would exacerbate rather than reduce the complexity of the law. Additionally, the solutions we have provisionally proposed to these problems must all operate within the constraints imposed by the current legislative regime. This constraint means these solutions may not necessarily be as effective as they might otherwise be.
- 7.17 For the reasons given in this section, we have determined that it is appropriate to consider whether more fundamental reform is necessary. There are three options, which we shall consider in turn:
- (1) Consolidation.
 - (2) Codification (not incorporating licensing).
 - (3) Codification (incorporating licensing).

CONSOLIDATION

- 7.18 One option to remedy some of the deficiencies that were outlined above is to consolidate the law regulating firearms. This would bring together the 34 pieces of legislation referred to earlier into a single statute.
- 7.19 This would perhaps remedy one of the problems discussed above, namely the sheer number of sources of law.

⁵ *Williams* [2012] EWCA Crim 2162, [2013] 1 WLR 1200.

- 7.20 Although consolidation would provide the opportunity to remedy some problems, given the constraints within which consolidation takes place, it would not provide a mechanism for resolving the underlying policy issues that currently undermine the effectiveness of the law. For example, it would not be possible to define antique within a consolidation exercise. Additionally, consolidation would be time consuming, given the multitude of problems with the law.
- 7.21 In fact consolidation may make matters worse by exposing their incoherence when the provisions are more proximate and not littered throughout the statute book.
- 7.22 Our aim, therefore, is not simply to consolidate the existing provisions into a single Act. The Firearms Act 1968 was a consolidation measure and, as was discussed earlier, it incorporated many of the deficiencies contained within earlier legislation. A striking example of this being the failure to define ‘antique’.
- 7.23 It is for this reason we believe that it is necessary to consider more fundamental reform that would not only simplify the law, but also provide an opportunity to remedy its deficiencies and ensure it is fit for purpose in the modern era.

CODIFICATION

- 7.24 One way of remedying the deficiencies with the law is codification. 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.⁶

- 7.25 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.
- 7.26 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.

⁶ ATH Smith, “Codification of the Criminal Law – Part 1: The Case for a Code” [1986] *Criminal Law Review* 285, 287.

- (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.
- 7.27 At this stage it is important to point out that for many years one of the aims of the Law Commission was the codification of the entire criminal law. In 2010 simplification was prioritised over codification. This chapter does not question that prioritisation. The Law Commission’s aims of ensuring that the law is fair, modern, simple and as cost-effective as possible do, however, correspond with the aims of codification.⁷
- 7.28 Codification in this context would be a much more limited exercise than an attempt to codify the whole criminal law: the aim would be to codify a discrete and very specific area of the law. This exercise has been undertaken successfully in the past. Recent examples include the Fraud Act 2006. In the past, similar exercises have also been undertaken in relation to theft and forgery and counterfeiting.
- 7.29 To take one example, prior to the enactment of the Fraud Act 2006, the law on fraud suffered from defects similar to those currently associated with the law regulating firearms. At the time we concluded that the law was untidy and over-particularised. It was for this reason that the Law Commission concluded that it was time for a “fresh approach”. Similarly, we believe that a fresh approach is needed in the context of firearms.

The benefits of codification

- 7.30 As section 1 discussed, the law regulating firearms suffers from the following defects:
- (1) the sheer volume of law and volume of sources;
 - (2) unnecessary complexity;
 - (3) inconsistency and incoherence;
 - (4) a failure to define key terms; and
 - (5) a failure to keep pace with modern developments.
- 7.31 The key aims of codification are to reduce complexity, ensure comprehensiveness, increase accessibility and provide certainty. Stakeholders suggest these attributes are what the law regulating firearms currently lacks and is in desperate need of. This is especially the case given that unlawful possession of a firearm carries substantial mandatory minimum custodial sentences. This means that an otherwise law-abiding citizen may be subject to a mandatory minimum five-year prison sentence as a result of a deficiency in the law, rather than through any fault of his or her own. This could occur, for example, in the context of an antique firearm, as Chapter 4 explained.

⁷ See <http://www.lawcom.gov.uk/about/> (last accessed 8 July 2015).

- 7.32 The aim, therefore, would be not only to ensure that the form of the law adheres to the principles identified above, but also to ensure that the substance of the law is rational and fit for purpose in the 21st century.
- 7.33 In some instances there is a clear need for re-evaluation of the substance of the law. An example is how the legislation deals with firearms for use in film and television, an issue discussed in Chapter 8. When the Firearms Act 1968 was enacted its drafters could not have envisaged the different forms of media that exist today. Reforming the substance of the law would ensure that it is capable of addressing recent developments.
- 7.34 In relation to the regulation of firearms in particular, we believe that codification would have the following benefits:
- (1) **Improving public safety** – remove those ambiguities and loopholes that are being exploited and therefore pose a risk to the public. By looking at the whole picture we can ensure that the levels of protection are optimised across the entire law.
 - (2) **Modernisation** – ensure the law is fit for purpose in the 21st century and takes account of technological advances. There is evidence to suggest that dangerous firearms are now being manufactured with the purpose of ensuring they do not fall within the definition of ‘prohibited weapon’. This is because the Acts do not take into account recent developments and opportunities for firearms manufacture. Codification would ensure the law is adaptable and can be easily amended to take account of these recent developments.
 - (3) **Clarity** – make the law clear to facilitate enforcement and compliance, improving relations between the police and the public.
 - (4) **Cost** – simplify the law by removing technicalities, making the law cheaper to enforce. Codification would reduce the need for the police and CPS to rely upon expensive expert evidence.
- 7.35 Codification provides the opportunity not only to reduce the volume of sources but also to remove those deficiencies that undermine the effectiveness of the law and lead to tension between the police and the licensed firearms community. As was explained above, consolidating the law would be a time consuming and complex exercise. In comparison therefore, codification does not necessarily impose an additional time burden.
- 7.36 Codified law would save time and effort for investigators and police and practitioners and judges as one source for law makes life easier. It would mean citizens have a higher chance of finding the law. The lack of ambiguity would save time and money and avoid errors – which in this context could be a risk to the public.
- 7.37 This chapter has sought to explain why codification of the law regulating firearms would be beneficial and particularly apposite, given the deficiencies with the current legislative regime. It remains necessary to outline what form such a code might take. The aim of the next section is to evaluate which of these codes provide a suitable model for any future reform in England and Wales.

WHAT MIGHT A FIREARMS CODE LOOK LIKE?

- 7.38 Codifying the law governing firearms could encompass licensing, or licensing could remain separate. This section will briefly examine how codification has been achieved in two jurisdictions. It is important to note at the outset that we are not suggesting these models be adopted wholesale. The law regulating firearms differs between jurisdictions. This is mainly attributable to the different restrictions placed upon firearm ownership. These are often attributable to the culture and political landscape.
- 7.39 With that in mind, lessons can be learned from how other jurisdictions *structure* their legislation.

Canada

- 7.40 At the outset it is important to point out that the restrictions posed upon firearm ownership in Canada are not as strict as they are in England and Wales. That does not mean, however, that lessons cannot be learnt from how Canadian law *structures* its law regulating the use and acquisition of firearms.
- 7.41 The Canadian Criminal Code was enacted in 1892 and was based to a large extent on the work of Sir James Fitzjames Stephen, whose efforts at codification in England and Wales proved unsuccessful. The substance of the code has changed since it was enacted. The current Criminal Code is attributable to significant changes that were made in 1985 in addition to more recent amendments.⁸
- 7.42 Part III of the Code sets out the law regulating the use and acquisition of firearms and other weapons. At the outset of Part III, in section 84, the Code defines the key terms that recur in subsequent sections. In keeping with one of the aims of codification, an effort has been made to ensure that there is as much explanation as possible of key terms, with the aim of limiting the need for judicial interpretation. This has the benefit of meaning that it is possible to know the law without having to resort to the time and expense of a trial.
- 7.43 Rather than having different offences dispersed throughout the law, the Canadian Code lists all the offences that apply to the unlawful use and acquisition of firearms in sequence. These range from offences dealing with unlawful possession, to assembling and import offences. The benefits of this are clarity and ease of use.
- 7.44 The law of England and Wales law has a complex and overlapping system for classifying firearms. For example, the Firearms Act 1968 refers to air weapons, air pistols, air rifles, specially dangerous air weapons, gallery rifles, prohibited weapons, firearms, imitation firearms, realistic imitation firearms, ready convertible imitation firearms to name just a few. The Canadian Code takes a very different approach.

⁸ See J Hermida, *Criminal Law in Canada* (2012).

- 7.45 The Canadian Code provides a list of articles that are deemed not to be firearms, for example because they fall below a specified muzzle energy. If an article is deemed to be a firearm, then it fits into one of three categories: non-restricted firearm; restricted firearm; prohibited firearm. An effort has been made to ensure that definitions of these categories are accessible and that there is no overlap between them. This is important, as the requirements that must be fulfilled in order lawfully to acquire a firearm depend upon the category it falls into.
- 7.46 The Canadian Code does not deal with firearms licensing. This is governed by the Firearms Act 1995.⁹ Canadian law also requires firearms to be registered. The Firearms Act gives the Governor in Council the power to make regulations governing defined aspects of firearms law. For example, there are regulations prescribing what types of firearm will constitute antiques and regulations concerning the Firearms Register.
- 7.47 To have a comprehensive understanding of firearms law in Canada therefore, it is necessary to have regard not only to the relevant sections of the Criminal Code, but also to the Firearms Act and the various regulations passed by the Governor in Council.
- 7.48 Even taking account of the various regulations, the law governing the use and acquisition of firearms in Canada is markedly simpler than the law in England and Wales. Although the legislative landscape has been rendered more complex by the enactment of various regulations, codification means Canadian law is more coherent and rational than the law in England and Wales.

Australia

- 7.49 The regulation of firearms is primarily a matter for the states and territories in Australia rather than the Federal government. It is for this reason that prior to 1996 there was a great deal of inconsistency in Australia on how firearms were regulated. This changed in the aftermath of the Port Arthur massacre,¹⁰ which led to renewed political pressure to harmonise the laws throughout the various states and territories of Australia.¹¹ For example, it was agreed that all jurisdictions would restrict the availability of automatic and semi-automatic firearms. It is for this reason that much of the legislation in Australia dates from 1996 or shortly after.¹²

⁹ See Canadian Firearms Centre, *Understanding Canada's firearms law: a guide to key information in the Firearms Act, regulations and support material* (2001).

¹⁰ The Port Arthur massacre of 28–29 April 1996 in which 35 people were killed and 23 wounded in Tasmania.
<http://www.abc.net.au/archives/80days/stories/2012/01/19/3412072.htm> (last visited 8 July 2015).

¹¹ For discussion, see A Imbergamo, 'The Achievement of the 1996 National Firearms Agreement in Australia: Lessons for Federal Gun Control Reform in the United States' (2013) (Trinity College Digital Repository).

¹² Australasian Police Ministers' Council, "Special Firearms Meeting Resolutions" (May 1996).

7.50 Although the law regulating the use of firearms in many Australian states is not, strictly speaking, embodied in a code, it nevertheless has many of the features associated with codification. The Firearms Act (New South Wales) 1996 is a mere 93 sections and contains all the provisions relating to both criminal misuse and licensing. By way of comparison, the law in England and Wales is contained within hundreds of sections of legislation. Section 3 sets out the 'principles and objects' of the New South Wales Act in the following terms:

(1) The underlying principles of this Act are:

(a) to confirm firearm possession and use as being a privilege that is conditional on the overriding need to ensure public safety, and

(b) to improve public safety:

(i) by imposing strict controls on the possession and use of firearms, and

(ii) by promoting the safe and responsible storage and use of firearms, and

(c) to facilitate a national approach to the control of firearms.

(2) The objects of this Act are as follows:

(a) to prohibit the possession and use of all automatic and self-loading rifles and shotguns except in special circumstances,

(b) to establish an integrated licensing and registration scheme for all firearms,

(c) to require each person who possesses or uses a firearm under the authority of a licence to prove a genuine reason for possessing or using the firearm,

(d) to provide strict requirements that must be satisfied in relation to licensing of firearms and the acquisition and supply of firearms,

(e) to ensure that firearms are stored and conveyed in a safe and secure manner,

(f) to provide for compensation in respect of, and an amnesty period to enable the surrender of, certain prohibited firearms.

7.51 The provisions are then drafted in such a way as to apply these principles and to achieve these objects. This gives the legislation a coherence and provides a method for interpreting ambiguous provisions.

7.52 The New South Wales Act has the following benefits. The first is that it is comprehensive, in that it brings together what would otherwise be a series of separate legislative provisions, for example in relation to licensing. The second is that the Act defines its key terms with precision within the necessary constraints that these are technical matters of ballistics that are being described. For example an air gun is defined as:

“**air gun**” means a gun that:

(a) can propel, or is designed to propel, a projectile:

(i) by means of any gas or mixture of gases, including air but not including a gas or mixture of gases generated by an explosive, or

(ii) by means of a spring, and

(b) is operated or designed for operation by means of a trigger or similar device.

7.53 By way of contrast, the Firearms Act 1968 uses the terms “air weapon”, “air pistol” and “air rifle” without defining any of them. The scope of these terms is important as there are different levels of control depending upon the category something falls into.

7.54 Another feature of Australian legislation regulating firearms (not confined to New South Wales) that distinguishes it from England and Wales is the fact that firearms in Australia are licensed by category. Firearms defined as falling within categories A – H depend upon their functionality. In addition, there are separate categories for firearms dealers and firearm collectors.

7.55 The benefits of this approach are that it not only ensures all the law is in one place, but ensures it is logical and coherent. This makes the law accessible, aids comprehension and ensures it can be understood by the citizen.

7.56 The purpose of setting out the position in Australia is not to suggest that that approach ought to be adopted wholesale in England and Wales. Rather, the purpose is to demonstrate how another jurisdiction incorporates licensing into its code. Codification would present the opportunity to rationalise the entire legislative landscape in England and Wales that governs the acquisition and possession of firearms. It would also ensure there was harmony and consistency between those provisions that relate to licensing and those that relate to other matters.

CONCLUSION

7.57 Weighing up the respective merits of the options discussed above, we provisionally propose that codification of the law would be preferable to mere consolidation. As has been discussed, this would provide the opportunity to improve the law’s accessibility and consistency. As the chapters in this paper have outlined, the deficiencies with the current law have tangible cost implications. Codification would provide the opportunity to make the law more efficient with the aim of reducing the costs associated with regulation of firearms.

Provisional proposal 15

- 7.58 **We provisionally propose that the current law governing firearms in England and Wales is of such complexity that it is necessary to undertake a wider reform project to codify the law.**

Do consultees agree?

Consultation question 7

- 7.59 **Do consultees have any examples of the additional and unnecessary costs or any dangers to the public that are attributable to the defects with the current law governing the acquisition and possession of firearms?**

CHAPTER 8

FURTHER ISSUES FOR REFORM

INTRODUCTION

- 8.1 During informal discussions with stakeholders, they have raised many issues with us that they consider to be problems with the present law. Not all of these, however, have been as pressing as those which featured earlier in this paper. There was greater consensus that the issues examined earlier cause significant problems in practice, and also evidence to suggest they undermine public safety.
- 8.2 Some of the other issues are examined in this chapter. They are ones which we consider would be most easily solved by further reform, ideally in the context of a codification project: to do otherwise would be to add enormously to the already complex body of law on this topic, even if it were possible to devise solutions to insert into the existing legislative landscape.
- 8.3 Broadly, the issues in this chapter reveal three categories of failure within the legislation:
- (1) failures of definition in the law;
 - (2) difficulties of adapting the legislation to meet new criminal threats; and
 - (3) failures of the legislation to keep pace with changes in society.

FAILURES OF DEFINITION

“Weapon”

- 8.4 Section 57(1) defines a firearm as a lethal barrelled *weapon*. The legislation does not, however, define *weapon*. There are many things that are lethal, barrelled and capable of discharging a projectile about which there could be disagreement over whether they can accurately be described as a *weapon*. The Home Office *Guide* provides a number of examples, such as line throwing devices used for saving the lives of those onboard vessels in distress.¹ Further examples are nail guns commonly used in DIY.²
- 8.5 *Weapon* is defined in the OED as “a thing designed or used for inflicting bodily harm or physical damage”. Based on this definition, anything could be a *weapon*, no matter how innocuous it might otherwise be, if it is used for inflicting bodily harm or physical damage. The issue is the extent to which the legal definition ought to accord with this, or whether a more restrictive definition is appropriate.
- 8.6 There are a number of cases that have examined the meaning of “*weapon*” in the context of firearms. In *Bryson v Gamage Ltd*, a case under the Pistols Act 1903, Mr Justice Darling stated that the tribunal of fact “should carefully inform his mind as to what a *weapon* is, what a *weapon* is meant for in the way of offence or

¹ Home Office, *Guide on Firearms Licensing Law* (March 2015), 2.55.

² Note *Singh* [1989] *Criminal Law Review* 724, in which it was held that an army signalling kit consisting of flares and a hand-held device was capable of amounting to a firearm.

defence'.³ In this case the judge held that the Pistols Act did not apply to toys, but did apply to an air gun if it is a weapon. This reasoning is somewhat circular, however.

- 8.7 In *Formosa* D was found in possession of a washing up liquid bottle that he had filled with hydrochloric acid.⁴ He was charged with an offence contrary to section 5(1) of the Firearms Act 1968 of being in possession of a weapon that had been designed or adapted for the discharge of any noxious liquid. On appeal, D argued that the bottle had not been so designed or adapted. The Court of Appeal interpreted these terms narrowly and held that D had not adapted the bottle by simply filling it with hydrochloric acid. It was observed that if this were not the proper construction of the legislation, then a homeowner who filled an empty washing up bottle with acid to destroy a wasps' nest would be in possession of a prohibited weapon.
- 8.8 In his commentary on the case, Professor Sir John Smith QC agreed with the outcome, but suggested that the court paid insufficient attention to the requirement that the thing be a "weapon".⁵ The reason why the homeowner in the example should not be guilty of an offence, he suggested, is that the washing up liquid bottle cannot be considered a weapon. He observed that, while the bottle could be considered a weapon in the fight against garden pests, whether it is a weapon in the sense meant by the Firearms Act is more questionable. Professor Smith stated that, "it would be hazardous to attempt an off-the-cuff definition of 'weapon' but perhaps it requires something designed or adapted for use against the person of another."⁶
- 8.9 This is an issue that has arisen in relation to airsoft guns.⁷ In *Airsoft Armoury v The Commissioners for Her Majesty's Revenue and Customs* the claimant sought to challenge the defendant's decision to classify airsoft guns as weapons.⁸ The claimant argued that airsoft guns were toys. It was held, however, that airsoft guns are not toys because 'airsoft guns are used in a form of combat, even though it is recreational rather than intended to cause serious harm to the opponent'.⁹ Whilst this decision was not considering the firearms legislation, it is instructive that in a different context, airsoft guns have been deemed to be weapons.
- 8.10 The impact of this failure in definition is that, as the cases above show, it is sometimes not clear whether an object is or is not a weapon, and thus whether or not it is a firearm. This uncertainty in the law means that some articles might be possessed without the level of control or regulation that would be desirable and that when prosecutions do occur they can take longer and cost more money than ought to be necessary.

³ [1907] 2 KB 630, 636.

⁴ [1991] 2 QB 1.

⁵ [1990] Crim LR 868.

⁶ [1990] Crim LR 868, 869.

⁷ See glossary, also para 2.60.

⁸ [2012] UKFTT 145.

⁹ [2012] UKFTT 145, [65].

8.11 On balance we consider that this is a less urgent definitional problem than lethality since it is raised in court less frequently. Nevertheless, it still has potential to cause problems in practice, albeit to a lesser extent. As mentioned above in relation to lethality, we also consider that it would be wrong entirely to alter the long standing definition of “firearm” given that the scope of the present project is not to consider fundamental changes to the legislative landscape.

“Gas pistol”

8.12 A further example of a definitional problem is the controversy that has recently arisen over the proper way to classify “gas pistols”. These are weapons that discharge irritant agents (such as tear gas) rather than projectiles. The issue is whether weapons such as these fall within section 5(1)(b) of the Firearms Act 1968. This subsection encompasses, “any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing”. This section contains a number of key terms, none of which is defined. For example, is it sufficient that the weapon is merely capable of discharging a noxious thing, rather than specifically being advertised as such? No definition of “noxious” is provided, either.

8.13 The Court of Appeal considered this issue recently in *Rhodes*.¹⁰ There was a conflict between the defence and prosecution experts on whether the pistol found in D’s possession was “designed” for the discharge of any noxious thing. The judge ruled that this was a question of law. He indicated that he would direct the jury that if they were satisfied the guns in question had the features that had been described as part of their design then they fell within the scope of section 5(1)(b). D then changed his plea to guilty.

8.14 D appealed and submitted that the judge had misinterpreted the legislation. D’s contention was that the judge ought to have concluded the mere fact that a weapon which had not been designed for the purpose of discharging a noxious gas was in fact capable of doing so was insufficient to bring it within the scope of section 5(1)(b).

8.15 In the earlier case of *Turek v Regional Court In Giliwice Poland*, considering a similar issue, Mr Justice Silber observed, “the very fact that these weapons can be used for the discharge of gas and emergency bullets shows that they must have been designed for that purpose, otherwise it is difficult to see why they are capable of fulfilling this function, which seems to be an integral part of it.”¹¹

8.16 Relying upon this authority, in *Rhodes* Sir Brian Leveson P dismissed D’s appeal and held that a pistol which has the deliberate design capability of discharging gas fell within the scope of section 5(1)(b). The appearance of this issue in reported cases suggests that the failure to define what may appear, at first glance, to be straightforward terms can cause significant difficulties in practice.

8.17 Recurring litigation on this unsolved problem burdens the criminal justice system in financial and other ways: the problem remains unresolved and the law is left in an unsatisfactory state of uncertainty.

¹⁰ [2015] EWCA Crim 155.

¹¹ [2011] EWHC 1556 (Admin), [26].

- 8.18 Our informal fact finding revealed that this issue does not, however, arise as frequently as the others considered earlier in this paper, so it was not included as a pressing problem for resolution in this Scoping Consultation Paper.
- 8.19 Additionally, to resolve this issue in this phase of the project would cause more problems than it solves, since any changes would have to operate within the current legislative framework. This would increase rather than diminish the complexity of the law. Given that these are not immediate problems, it would be difficult to justify adding to the complexity of the law.
- 8.20 This problem is an example of what can occur when there is a steady accumulation of law in successive Acts that overlap and lack coherence. Depending upon their precise configuration, a gas pistol could be classified in different ways by virtue of different amendments to the legislative regime. As stated above, it could be a prohibited weapon. By virtue of section 11, however, it is also possible that it could be considered a signalling apparatus. This latter term is undefined. In a codification exercise such problems can be addressed, as part of the overall aim would be to clarify the law and ensure these difficult overlaps no longer arise.

Further definitional issues

- 8.21 There are additional terms within the current legislative regime that remain undefined. A range of stakeholders, from the police to representatives of the licensed firearms community, has suggested that the following pose problems in practice. This is due to the fact these are terms which legitimate users and law enforcement agencies alike must apply on a day-to-day basis.
- (1) “Rifle” – section 11(4), for example, refers to “miniature rifles”, but does not define that term. What is the distinction, for instance, between a miniature rifle and a long barrelled pistol?
 - (2) “Shooting gallery” – section 11(4) does not define this term, yet this is crucial as the legislation gives operators of shooting galleries an exemption from any form of certification whatsoever.
 - (3) “Servant” – section 8(1) refers to the “servant” of a registered firearms dealer, without specifying what that term means. Such a person can acquire a firearm without a certificate, if that acquisition is in the course of that business. This is a broad term and potentially not confined to employees. The use of such a broad term could be considered problematic in this context.
 - (4) Firearms capable of firing successive shots – section 5(1)(a) prohibits automatic firearms, but the language used to express this concept has proved problematic.¹²
 - (5) ‘Disguised’ – section 5(1)(A)(a) applies to a firearm that is disguised as another object, but does not specify how to determine whether a firearm is disguised.

¹² Considered in *Law* [1999] Criminal Law Review 837.

- 8.22 This is but a small sample of the range of key terms the legislation does not define. The scope of the solutions presented earlier in this paper is limited to those issues stakeholders and our own research has demonstrated are particularly pressing. The definitions which are lacking here, whilst problematic, do not pose a threat to public safety and do not yet arise with any great frequency.
- 8.23 Defining these terms is, however, a task that would be ideally suited to a codification exercise: the law in this area is not working as well as it could and Parliament's intention in relation to, for example, higher sentences for those found in possession with disguised firearms as opposed to undisguised ones can be frustrated. These complex issues suggest that a careful reconsideration of the entire legal framework is necessary.

FAILURE OF THE LAW TO KEEP PACE WITH NEW THREATS

Armed guards on UK-flagged shipping

Present law & practice

- 8.24 In recent years piracy has become a significant problem for ships navigating around the Horn of Africa. Vessels, including UK registered ones are under threat. Since 30 October 2011, the UK Government has recognised the engagement of armed personnel onboard UK-registered ships as a legitimate means of protecting life, albeit only in exceptional circumstances and in one strictly circumscribed area. The international community has in recent years made huge strides in reducing pirate attacks of the coast of Somalia: down to just one, unsuccessful attack in 2014 from 114-125 in 2009-11 (of which 23-35 were successful hijackings).¹³ Since this reduction is comparatively recent, however, the government intends to remain "vigilant" and will continue to support this policy.¹⁴
- 8.25 Since 2011, the private maritime security company (PMSC) industry has flourished in the UK, developing an internationally-recognised standard¹⁵ for such operations. It has ensured that no UK-flagged ship carrying armed guards has so far been successfully hijacked.
- 8.26 The problem with the Firearms Acts is that they were not readily adaptable to meet this new criminal threat. The regulatory regime governing armed guards on vessels is, as a result, complex and far from ideal. Although a certain degree of complexity is inevitable, given the nature of the problem, that is not to say that the law cannot be improved to provide a solution tailored to meet this new exigency.

¹³ NATO Shipping Centre statistics: <http://www.shipping.nato.int/Pages/Piracystatistics.aspx> (last visited 8 July 2015). Figures are only for "commercial shipping" in the NATO-designated High Risk Area in the Gulf of Aden.

¹⁴ *Department for Transport Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances*, version 1.2, May 2013 (hereafter *DfT Guidance*), p 6 (Ministerial Foreword).

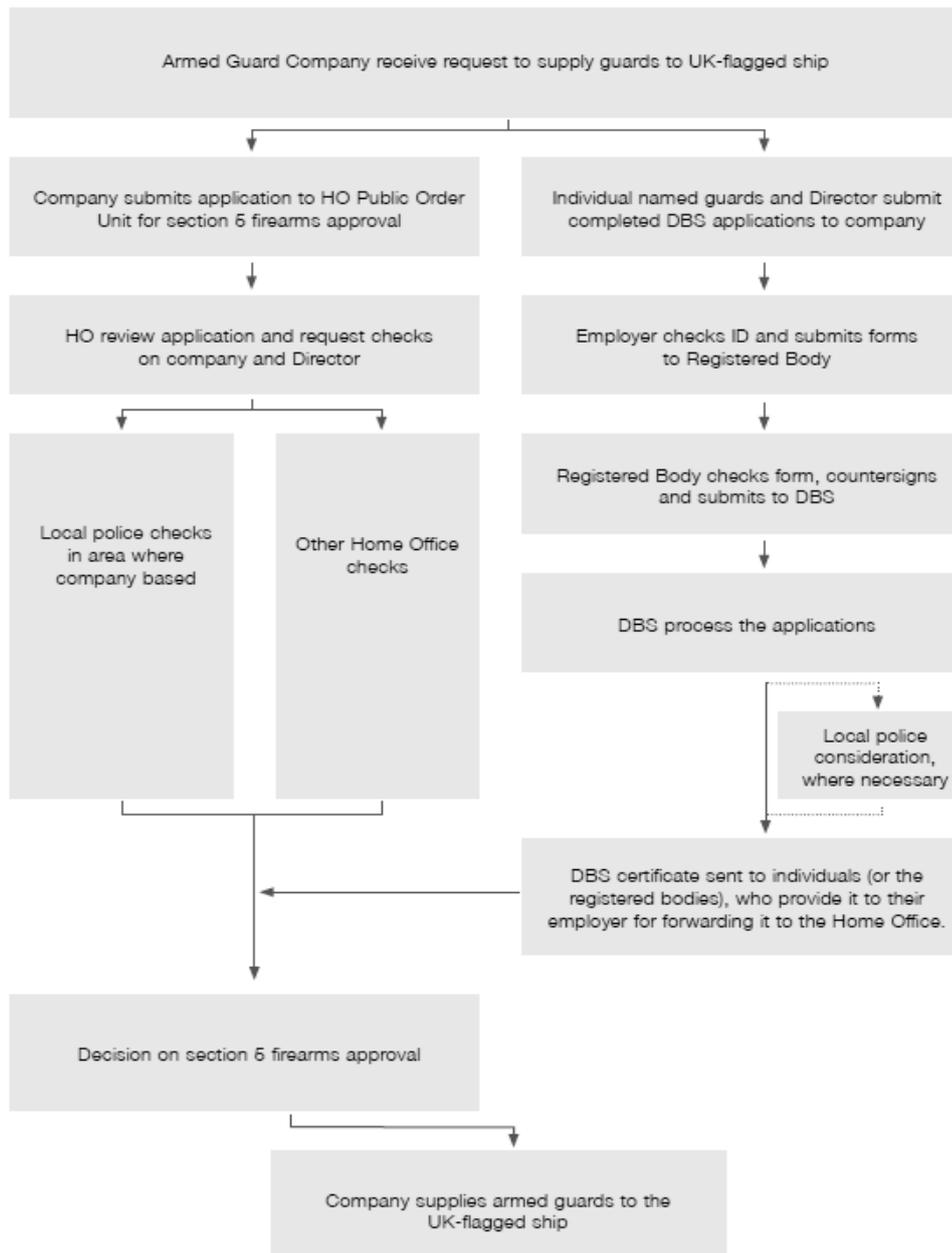
¹⁵ ISO PAS 28007-1:2015. Available at http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=42146 (last visited 8 July 2015).

- 8.27 In brief, the present solution operates by adopting various parts of the existing legislative framework for purposes they were not intended for, and for which they do not fit very well. Such an approach was necessary given the limitations of the statute and the urgency of the circumstances.
- 8.28 The next page replicates the regulatory flowchart from page 225 of the Home Office *Guide*, but in brief, the way the firearms aspect works is as follows:
- (1) Regardless of the type of firearms which the PMSC wishes to deploy on a UK registered vessel in the relevant area, section 5 authorisation¹⁶ must be sought from the Home Office.
 - (2) Enhanced DBS¹⁷ checks are then obtained for each guard.
 - (3) The PMSC then registers as a firearms dealer (becoming an “RFD”) so that its guards can be treated as its servants and thus exempt under section 8 of the 1968 Act, *or* each individual guard obtains a firearm certificate from their local police force, to which the PMSC’s section 5 authority attaches. The first route makes use of the provisions which ordinarily permit the employees of RFDs to handle firearms in the course of the business. This simplifies the administrative burden for PMSCs. The second route is considered to be so cumbersome that no PMSC currently employs it, according to the Home Office.¹⁸

¹⁶ This means the authority of the Secretary of State must be obtained.

¹⁷ Disclosure and Barring Service – formerly known as Criminal Records Bureau (CRB) checks.

¹⁸ Of the 15 recognised PMSCs – which together employ 273 armed guards – all have chosen to go down the RFD route, according to Home Office figures.



Problems with the present law

8.29 The reason the present system is thought to be unsatisfactory is that the legal processes suggested by the guidance do not reflect the factual reality. For example, the PMSC is not in fact in the business of trading in firearms, which is the stated purpose of becoming a RFD. Further, the guards PMSCs employ are not really their “servants”¹⁹ in a firearms trading business, which is the statutory exemption relied upon here. And, whilst the DfT’s guidance requires that all PMSCs have section 5 authority to ensure central Home Office oversight, this is not a statutory requirement.

¹⁹ The wording from Firearms Act 1968, s 8. This old-fashioned word was formerly used in, amongst other things, tort law to denote the kind of employee (in a sense broader than modern employment law would understand it) for whose actions the employer is liable for when they were acting as such.

- 8.30 Of course, such problems are inevitable when the present regulatory framework was hurriedly devised in response to an imminent threat to lives on British ships. Since it is clear that employment of PMSCs will remain a feature of the firearms law landscape for some time to come, we believe it is appropriate to have a legislative solution that is designed to deal with this specific issue.
- 8.31 Without substantial legislative changes, the current mechanism appears to be the only way of permitting and controlling PMSCs within the legislation as it stands. The only viable solutions, therefore, are ones that involve legislative change.
- 8.32 We believe that this issue, again, is one that would be suitable for inclusion in a codification exercise. It would add to the complexity of the law to insert a specific provision into the existing legislative regime.

FAILURE OF THE LAW TO KEEP PACE WITH DEVELOPMENTS IN SOCIETY

Film, TV & theatrical exemptions

Present law & practice

- 8.33 Firearms are commonly used on television and in film, both of which are major industries in this country, as well as in theatrical productions. To do so obviously requires a special exemption from the normal rules, since it is clearly disproportionate to require actors being filmed in a fight sequence in a *James Bond* film to be required to have their own firearm certificates.
- 8.34 An exemption does at present exist, but it dates from 1936, and is manifestly unsuited to modern day media productions. The exemption has been extended to television, but this is something read into the Act by the Home Office *Guide*.
- 8.35 This is a topic on which there have been calls for revision of the law since at least the Firearm's Consultative Committee's 6th Annual Report in 1995. At present, the exemptions are contained in section 12 of the Firearms Act 1968, but the core of the exemption appears to have originated in the Firearms (Amendment) Act 1936, as section 1(6)(c), which was in exactly the same terms.²⁰
- 8.36 The essence of the rule is in section 12(1): a person taking part in a theatrical performance (or a rehearsal for one), or in the production of a film, may possess a firearm during and for the purpose of that performance, rehearsal or production.
- 8.37 This exemption only legitimises *possession*: no purchase or acquisition is possible without the normal certificates. For this reason, film companies must engage specialist RFDs who hold stocks of firearms specifically for productions, which they can transport to the theatre/set and keep under their control and supervision at all times.²¹
- 8.38 There is also a more complex exemption in section 12(2), which only concerns section 5 prohibited weapons. This permits the Home Secretary to authorise someone in charge²² (and any others) to possess prohibited weapons for the

²⁰ It was replicated exactly the following year in the Firearms Act 1937 as s 4(10).

²¹ Home Office, *Guide to Firearms Licensing Law* (2015), para 6.45.

²² This term is undefined and it is not clear who it is intended to encompass.

purposes of a theatrical performance, rehearsal or film production, where they are necessary for the purpose of that performance, rehearsal or production.

Problems with the present law

- 8.39 The FCC's Sixth report states that the law on this is generally applied fairly pragmatically by the police and others, and that it does not regularly pose problems in practice. Informal discussions with stakeholders confirm this. There remains substantial concern amongst stakeholders, however, that this crucial exemption from firearms offences is poorly defined and may well not technically cover many of the situations in which people rely upon it.
- 8.40 The section only explicitly exempts "theatrical productions", "rehearsal[s] thereof" and "cinematograph films" from the normal rules.²³ The Home Office *Guide* states that "[the section 12(1) exemption] applies equally to television production,"²⁴ but this is not clearly spelt out in the legislation.
- 8.41 Beyond television, the Home Office *Guide* is silent on all media not included in the original exemption. We agree with the FCC that this is an anomaly related to the time when the exemption was drafted, and that there can be no justification for retaining the current medium-specific regime. The FCC concluded that the legislation ignored home camcorders and CD-ROMs: nowadays the problem is obviously considerably wider, since so many different media can be used for the capture, storage and display of moving images in an ever-evolving range of ways. Put simply, the legislation has not kept pace with technological developments.
- 8.42 Since reform in this area involves many inter-related areas of law and since stakeholders tell us that the practical problems are limited, we consider it is a topic more suited to codification than to immediate legislative amendment.

Surrender

Introduction

- 8.43 It is important to be clear about what this section is *not* about: this is about the *surrender* of firearms, not an 'amnesty'.
- 8.44 The concept, as understood by law enforcement agencies in this country, is that an unlawful possessor of a firearm can hand it in without being prosecuted for that unlawful possession. The police will, however, attempt to ascertain whether the firearm has been used in crime. If it is thought that it has, then criminal investigations will take place as normal.
- 8.45 The desirability of surrender is self-evident: in a jurisdiction with low rates of firearm crime, a key way of ensuring that criminals find it difficult to get hold of them is to limit the supply of firearms held outside the regulatory regime. There is a public safety imperative in taking steps to take such firearms off the streets.

²³ Needless obsolete language dating from 1936 being another problem with the present law.

²⁴ Home Office, *Guide to Firearms Licensing Law* (2015), para 6.45.

Present law and the problems with it

SURRENDER TO THE POLICE

- 8.46 The present position is that nationwide surrenders are occasionally organised by the police, most recently in November 2014. This was highly successful, with the Metropolitan Police alone reporting that they had received over 350 guns and over 12,000 rounds of ammunition in the 2 week surrender.²⁵
- 8.47 This is not the full picture, however: first, the Home Office's *Guide* is very clear that "no obstacle should be placed in the way of a person who wants to surrender firearms or ammunition to the police".²⁶ Chapter 25 discusses the benefits of "creating an environment in which people are encouraged to hand in illegally held firearms", and it is for this reason that the *Guide* contains much useful advice to police on making sure people understand their rights.²⁷
- 8.48 Stakeholders tell us that in practice there is quite a wide variation between how different police forces, and indeed individual desk officers and firearms enquiry officers deal with members of the public who wish to surrender firearms. Certainly, there is sufficient trepidation surrounding surrender to the police with a non-criminal²⁸ but unlicensed weapon that many prefer to surrender to an RFD.

SURRENDER TO RFDS

- 8.49 The *Guide* does not mention anything about the position of RFDs who accept firearms under the same conditions as the police presently do.²⁹ We are informed by the Gun Trade Association (GTA) that it is something many of their members do out of a sense of civic responsibility and public duty, and it is something that the police in most areas of the country support and indeed encourage. The GTA advise their members (who are a substantial proportion of the RFDs in the country) to take possession of firearms where it is safe to do so, anonymously if required, and to notify the police as soon as possible.
- 8.50 The problem, however, is that currently RFDs are relying on the goodwill of the police by doing so: this is because the RFD is required by section 40 of the Firearms Act 1968 to maintain a register of all of their transactions in firearms, and verify the identity of anyone they transact with. Indeed, it is an offence under section 40(5) not to do so.³⁰ Since the police have a power to inspect the RFD's transaction register,³¹ if the RFD does take in the firearm and comply with the law by demanding the identification of the member of the public, he or she ("the surrenderer") theoretically has no more protection from the perceived threat of

²⁵ <http://www.met.police.uk/giveupyourgun/> (last visited 8 July 2015).

²⁶ At 25.2.

²⁷ Eg in relation to items which may benefit from the section 58(2) antiques exemption – see further Chapter 4.

²⁸ Meaning that the firearm has not been used in the commission of an offence.

²⁹ Save for obliquely implying at 25.9 that the police *might* be obliged to take firearms which they did not acquire through a legitimate route.

³⁰ Attracting a maximum penalty of 6 months' imprisonment or a level 5 – which now means unlimited – fine. Even worse, for some dealers, would be the loss of their RFD registration and thus their livelihood.

³¹ FA 1968, s 40(4).

prosecution than if they had gone to the police directly. This can, and does, have the effect of discouraging surrender. (It is our understanding that RFDs vary in whether they will accept surrendered arms irrespective of whether the surrenderer is happy to provide their details.)

- 8.51 RFDs face further legal uncertainty if they agree to take in section 5 firearms: most RFDs are not authorised by the Secretary of State to deal in prohibited weapons, but – as discussed below – the vast majority of unlawfully held weapons fall into this category. It appears as though a non-authorised RFD would be technically breaching section 5 of the Firearms Act 1968 by being in possession of a prohibited weapon without authority, an offence which carries a mandatory minimum 5 year custodial sentence. This is because the exemption from other certification for RFDs in section 8(1) of the 1968 Act applies only to “possess[ing]...purchas[ing] or acquir[ing] a firearm or ammunition in the ordinary course [of the RFD’s] business”.
- 8.52 It is at least arguable that if one is not normally authorised even to possess something, acquiring it gratuitously and handing it over to the police rapidly is *not* done in the ordinary course of business. This is problematic for two reasons: first, because as argued above, surrender has benefits for public safety and ought to be encouraged where possible, and secondly, because non-expert members of the public will probably not be able to distinguish between the “right” and “wrong” RFDs for their particular type of weapon. Having turned up with a potentially lethal weapon, fully prepared to hand it in, they should not be turned away.

The success of surrender

- 8.53 Previous general surrenders run by the police have been immensely well-subscribed, taking a huge number of guns off the streets and even more ammunition from the streets.

8.54 The following table shows the results of surrenders for selected police forces:

Force	Firearms surrendered in 2-week 2014 surrender	Ammunition surrendered in 2-week 2014 surrender
Metropolitan ³²	350	12500
Greater Manchester ³³	225	3500
West Midlands ³⁴	131	1000

Summary

- 8.55 To summarise, the key problem with the present state of affairs is that, whilst there is consensus that surrender benefits public safety, “surrenderors” may not be inclined to go to the police with their unlawfully possessed items. The only safe alternative to the police, RFDs, are put in a difficult position if they agree to accept surrendered firearms: they are strongly encouraged to do so, and think it is the right thing to do, but it may involve committing a serious offence which places not only their livelihood, but also their liberty, in jeopardy.
- 8.56 It has been suggested that a third of RFDs³⁵ have been called upon to handle section 5 prohibited weapons in a surrender context. We think it is safe to assume that a broader surrender would uncover many more of the types of firearm listed above. There is a compelling argument that the ability of RFDs to accept surrendered firearms ought to be regularised. This is an issue, however, we believe ought to form part of a more fundamental review of the entire legislative framework. Although it has been suggested in case law that there would be a defence of necessity to a charge of unlawfully possessing a firearm in circumstances such those examined in this section,³⁶ we nevertheless believe that a legislative solution would be preferable.

Loan of shotguns under section 11(5) of the 1968 Act

Present law & practice

- 8.57 People who wish to take up shooting must be able to prove their competence in safe gun-handling to the police before being able to receive their own certificate

³² See fn 25 above.

³³ <http://www.manchestereveningnews.co.uk/news/greater-manchester-news/greater-manchester-police-gun-amnesty-7575392> (last visited 8 July 2015).

³⁴ <http://www.bbc.co.uk/news/uk-england-birmingham-28670955> (last visited 8 July 2015). Note that the previous surrender in the West Midlands area, back in 2003, was even more successful with 1,265 weapons and 53,190 rounds of ammunition received.

³⁵ There are approximately 3,500 RFDs in the UK.

³⁶ See *Gregory* [2011] EWCA Crim 1712. See D Ormerod and K Laird, *Smith and Hogan’s Criminal Law* (2015), p 411.

(or at least, before receiving a certificate without supervision conditions attached). There are various exemptions in the legislative regime allowing people to gain experience with firearms before applying for a certificate,³⁷ one of which (section 11(5)) allows supervised borrowing of shotguns³⁸ on private land. The exemption assists people in taking up the legitimate pursuit of shooting, however there are several ambiguities in the law.

8.58 In brief, these include a lack of certainty over how much supervision is required, an illogical distinction between owners of different classes of rights in land, and potentially unjustifiable inconsistency with the rules relating to borrowing rifles.

8.59 This exemption has a number of cumulative elements:

- (1) B (borrower) may borrow a shotgun from L (lender);
- (2) where L is an occupier;
- (3) of private premises;
- (4) and B only possesses it on those premises; and
- (5) in L's presence; but
- (6) where B is under 18, the exemption only applies where L is over 18.³⁹

8.60 We will first examine each of these elements of the present law in turn, before going on to consider in more detail the problems that the present law poses.

(1) B MUST BE "BORROWING" A SHOTGUN FROM L

8.61 Whether this can include hire for payment is unclear. Certainly, it must be a time-limited transfer of possession, and because of the practicalities of requirement (5), it would never conceivably be for longer than a day's shooting.

(2) L MUST BE AN OCCUPIER

8.62 This requirement appears to be simple, but that is deceptive: shooting days often happen over land which L may not technically occupy. There are no reported cases on this point⁴⁰, and there are a number of possible scenarios:

³⁷ Shotgun certificate holders need not rely on this, since shotguns may also be possessed by holders of shotgun certificates who do not have them entered on their certificate for up to 72 hours – Firearms (Amendment) Act 1997, s 32(1)(b). To understand the operation of this exemption from the words of the statute, it is necessary to know that SGCs do not contain a requirement for the transfer to be entered onto them if it is temporary, ie for no longer than 72 hours

³⁸ There is similar provision in the case of rifles under the Firearms (Amendment) Act 1988, s 16. This is sometimes known as the "estate rifle rule".

³⁹ This proviso was inserted by the Firearms (Amendment) Regulations 2010, SI 2010 No 1759, reg 2(2)(c).

⁴⁰ Or under the previous version of this exemption: Criminal Justice Act 1967, s 85(10).

L owns the land, but has granted a lease over it to X, whilst retaining the “right to shoot”

- 8.63 Anecdotally, this appears to be a common scenario, with landowners wanting to shoot over land they own but which is let out to tenant farmers, for example. In these cases, the lease probably creates a *profit à prendre* (a right to take, where the taking is referring to the wild animals being shot).⁴¹
- 8.64 In brief, profits are property rights in themselves, and are rights to take something from someone else’s land.⁴² They are either attached to that other’s neighbouring land (“appurtenant”) or exist as a freestanding right to be bought and sold by itself (“in gross”⁴³). Sporting rights (apart from fishing) are presumed to be held “in common” – that is to say that both the landowner and the rights owner can exercise them.⁴⁴
- 8.65 The crucial question is whether holding a profit can amount to *occupation* of the land that the profit burdens. By analogy with *Chaudhary v Yavuz*⁴⁵, a case on easements (a very similar property right⁴⁶), the answer is almost certainly not. Profits of this type often come with easements (such as a right to cross the land) but again, following *Chaudhary*, exercise of those rights by themselves does not mean that one is “in occupation” of the land that they are over.

L has a freestanding right to shoot over X’s land

- 8.66 This is a slightly different case, since L does not have any interest in X’s land apart from the shooting rights – as opposed to owning the freehold that is subject to the lease, as in the above example. The outcome remains the same, however: by analogy with *Chaudhary*, the profit cannot be occupied, and using it does not mean that L is in occupation of the land; therefore L cannot at present lend a shotgun using section 11(5) *at all*.

L occupies land as owner or tenant

- 8.67 This is currently the only situation in which L can lawfully loan his shotguns. Merely being owner or a tenant is however not enough; L must actually be in occupation. So, for example, if L owns the freehold of the land but has let it out to X, he will not be in occupation.

⁴¹ Our example is a profit created by *reservation* in the grant of the lease to the tenant. See in general C Harpum, S Bridge and M Dixon, *Megarry and Wade: The Law of Real Property* (hereinafter *Megarry and Wade*) at 30-024 onwards.

⁴² This definition is adapted from Making Land Work: Easements, Covenants and Profits à Prendre, (2011) (Law Com No 327). Note that profits can be over leasehold or freehold estates in land.

⁴³ Sporting rights in general are typically profits held in gross – Sara, *Boundaries and Easements* (5th ed, 2011), 23.02.

⁴⁴ See *Megarry and Wade*, 30-033; *Duke of Sutherland v Heathcote* [1892] 1 Ch 475 at p 485 (on the general rule that non-exclusive rights are conferred); *Lady Dunsany v Bedworth* (1979) 38 P & CR 546 (on the exception for fishing rights, which are held “severally”).

⁴⁵ [2011] EWCA Civ 1314, [2013] Ch 249.

⁴⁶ See in general Easements, Covenants and Profits à Prendre (2008) Law Commission Consultation Paper 186 (referenced above) and Law Com No 327 (above).

8.68 The outcome in this scenario applies equally to squatters: the definition of squatting on land is to be an *adverse possessor*, or to possess the land to the exclusion of the true owner. Therefore any squatter is necessarily an occupier, and indeed if squatters are adversely possessing, the true owner (or tenant) cannot be an occupier.

8.69 Someone organising a shoot in this situation has no more control over B as they would in the two alternative circumstances set out above (where they have shooting rights and all relevant access to the land). This makes the distinction between this situation and the others seem illogical given the purpose of the section, which is to provide for the loan of shotguns for legitimate sporting purposes where it is safe to do so.

8.70 Some may take a different view. The Home Office *Guide*,⁴⁷ for example, interprets the law in a way analogous to section 27 of the Wildlife and Countryside Act 1981: that an “occupier” includes those who own sporting rights. This only serves to highlight the ambiguities present in the existing law. This demonstrates why wholesale overhaul of the law in this area would be desirable.

(3) & (4) L MUST BE AN OCCUPIER OF PRIVATE PREMISES ON WHICH THE SHOTGUN IS USED

8.71 (3) & (4) are uncontroversial if L owns the land, or is a tenant on it: L would occupy private premises provided L is in occupation (see preceding discussion). If L only has the shooting rights, however, the situation is much less clear.

8.72 “Premises” is partially defined in section 57(4) of the 1968 Act – it is said there that the term “includes any land”. Profits à prendre are “proprietary interests” (otherwise known as interests in land). It is unclear, however, whether they are included within “any land”, which might refer only to physical land rather than rights over it,⁴⁸ or indeed whether profits are “premises” but *not* “any land”.⁴⁹ It is unlikely that there is a distinction between profits which are appurtenant and those which exist in gross in this context, even though the former type of profit does attach to a specific piece of land.

8.73 It should be noted that for the purposes of the Law of Property Act 1925, profits *are* normally included in the definition of “land”. It might, therefore, be possible to stretch the definition in section 57(4) of the 1968 Act to include them. However, we think the better view is that no profit can ever amount to “private premises”. The most natural meaning of “premises” in this context seems to be the physical land over which the shooting rights are exercised and L is *not* in occupation of that, following *Chaudhary*.

8.74 Whether the land is *private* premises is not normally difficult to establish, and there are clearly sensible public safety reasons why loans of shotguns are not permitted on public land.

⁴⁷ Home Office, *Guide on Firearms Licensing Law* (2015), para 6.18.

⁴⁸ These are also known as incorporeal hereditaments, or intangible real property: in other words, a right in land which is a property right but which is not a physical piece of land.

⁴⁹ A possibility given the odd drafting of the definition – this too was imported word-for-word into the 1968 Act from the Criminal Justice Act 1967, s 87(8).

(5) B MUST USE THE SHOTGUN IN L'S PRESENCE

- 8.75 The crucial questions here are: how close does L need to be to B, and what level of control must L be able to exercise over B's use of the shotgun? There are no reported cases on this point either.
- 8.76 Laura Saunbury & Nick Doherty, in *Firearms Law*, say that the law is unclear at present. They suggest that "if the occupier is at your side or perhaps in the same shoot as yourself the condition is fulfilled".⁵⁰ We think that the "same shoot" test is definitely the furthest this exemption could possibly be stretched, and there is certainly doubt as to whether it goes that far. One could be quite some distance away but still in the same shoot, and it would then be doubtful as to whether one would then be in the "presence" of the person holding the shotgun, as a matter of plain English.
- 8.77 They also suggest that "'occupier' ought to include the occupier's agents, such as a gamekeeper", although it is unclear whether this is intended to assert what the present law is, or to propose a reform.
- 8.78 There is a similar exemption to section 11(5), known as the "estate rifle exemption", under section 16 of the Firearms (Amendment) Act 1988. This sets out the regime for the controlled loan of *rifles* on private property. In it, the term "occupier" is contrasted with "a servant of the occupier", both being people permitted to lend rifles. This indicates that, at the very least, the draftsman of the 1988 Act felt that "occupier" would not include, for example, a gamekeeper. This inconsistency is of additional importance because this Act and the Firearms Acts 1982 and 1968 were intended to form together a coherent statutory code of firearms control. This is evidenced by section 27(2) of the 1988 Act, which states that all three Acts may be cited together as "the Firearms Acts 1968 to 1988".
- 8.79 Our view is that the words of the statute at present simply do not allow for the occupier's agent to be permitted to loan shotguns, on a natural reading of them. Further, a broader interpretation is not required to give effect to the intention of the provision, which is – after all – that lending of shotguns should be heavily restricted to ensure public safety. The exemption remains in the same terms it was originally drafted in, as subsection 85(10) of the Criminal Justice Act 1967, where it was a very limited exception to the comprehensive scheme of strict liability shotgun regulation then being introduced.

The problems posed by the current law

- 8.80 It has been reported to us by a number of stakeholders that this provision poses real problems in practice for shooting enthusiasts. This is because it *inconsistently* limits this very temporary, restricted loan of shotguns, with the result that some novices wishing to shoot are arbitrarily forced to take out shotgun certificates in their own names. Problematically, even if a loan is legally available, under the current law it may well not be from the person most readily available to supervise the novice shooter closely.
- 8.81 The same rules also pose difficulty for experienced individuals coming from abroad to shoot, since even if they are currently at a shoot with the right property

⁵⁰ L Saunbury and N Doherty, *The British Firearms Law Handbook* (2011), para 4.03 – 4.04.

law foundations to enable them to borrow a shotgun, the pool of people able to provide them with supervision is limited.

- 8.82 Perhaps even more problematic is the fact that under the current law the degree of supervision required is unclear. The Home Office *Guide* states that the requirement is “normally taken to mean within sight or earshot”,⁵¹ allowing considerable latitude in interpretation. There is ambiguity here. This has the potential to permit people to have shotgun loans under considerably less supervised conditions than the draftsman and police might intend, and than the public at large might wish.
- 8.83 As explained above, loan may not be possible at all in the context of a shoot where the mere right to shoot is owned by an organiser or syndicate (as opposed to the organiser being the owner or tenant of some land).
- 8.84 This distinction drawn by section 11(5) is illogical in the circumstances where it permits the controlled loan of a shotgun. The result is not to stop people shooting: instead, it requires new shooters to acquire their own shotgun certificate. It might be thought this is inappropriate given the nominal responsibilities it bestows on the entirely inexperienced and unqualified, and it is certainly unduly burdensome both administratively and financially for the police and members of the licensed firearms community alike.
- 8.85 More broadly, it could be argued that this should be harmonised with the position in relation to rifles in sporting situations under section 16 of the Firearms (Amendment) Act 1988. It is the lack of an urgent public safety hazard, as well as the need to consider these (and other) exemptions⁵² together in any reform effort in order to make a coherent legislative framework, that makes this issue most suited to codification.

CONCLUSION

- 8.86 The issues raised in this chapter are diverse, but what unites them is that they are attributable to outdated legislation that is ambiguous and incoherent.
- 8.87 The problems with the law have been compounded by the frequent addition of new provisions, which has led to inconsistencies in the legislation. At present, the law is incomprehensible to the lay reader and incoherent even if he or she does come to understand it. The problems examined here are merely symptoms of this underlying problem, and as such to solve them individually would not deal with the fundamental issues. We believe a full codification project is the only way to properly resolve these (and many other) issues. In addition it would be possible to create a legislative framework which would remain fit for purpose for many years to come.

Consultation questions 8 and 9

- 8.88 **We consider that the issues raised in this chapter are further examples of failings in the present law that generate practical problems and which**

⁵¹ Home Office, *Guide on Firearms Licensing Law* (March 2015), para 6.18.

⁵² Such as the wide-ranging exemption in section 11(4) of the Firearms Act 1968 for those who operate ‘miniature rifle ranges’ and ‘shooting galleries’.

would be suitable for resolution in a codification exercise. Do consultees agree?

8.89 Do consultees have suggestions of other areas of the law suitable for reform

CHAPTER 9

LIST OF PROVISIONAL PROPOSALS AND CONSULTATION QUESTIONS

Provisional proposal 1

- 9.1 The meaning of lethal should be set by reference to a fixed muzzle kinetic energy.

Do consultees agree?

Consultation question 1

- 9.2 What should the lethality threshold be?

- c) 2.5 joules for single shot and 1.3 joules for fully automatic weapons; or
- d) 1 joule.

Consultation question 2

- 9.3 If the threshold of lethality was set at 1 joule would it have a disproportionate impact upon the legitimate trade in air weapons?

Consultation question 3

- 9.4 If the threshold of lethality was set at 1 joule should there be a specific exemption for the airsoft trade, similar to that already contained within the Violent Crime Reduction Act 2006?

Provisional proposal 2

- 9.5 To maximise clarity and certainty, the FCC's modified list of component parts should be enshrined in law, namely:

- (1) the barrel, chamber, cylinder;
- (2) the frame, body or receivers upper and lower where present in the complete firearm;
- (3) the breech, block, bolt or other mechanism for containing the charge at the rear of the chamber; and

Provisional proposal 3.

- 9.6 We provisionally propose the Secretary of State is given the power to amend the list by way of order.

Do consultees agree?

Provisional proposal 4

- 9.7 We provisionally propose that as a matter of law a component part will remain such so long as it is capable of fulfilling its intended function as part of a firearm.

Do consultees agree?

Consultation question 4

- 9.8 Do consultees have a view on whether the component parts of a shotgun should be subject to control? If so in what terms?

Provisional proposal 5

- 9.9 The failure to define antique firearm is a significant omission which causes problems in practice and therefore it is necessary to provide a set of statutory criteria for determining which firearms can benefit from the exemption in section 58(2).

Do consultees agree?

Provisional proposal 6

- 9.10 The deciding factor for determining which firearms can benefit from the exemption in section 58(2) ought to be functionality.

Do consultees agree?

Consultation question 5

- 9.11 We would welcome consultees' views on the following options for a criterion to determine which firearms benefit from a new obsolescence exemption:

- (1) obsolete cartridge list;
- (2) modern cartridge list (Canadian);
- (3) year of manufacture conclusive of functionality; or
- (4) antique firearm mechanism.

Provisional proposal 7

- 9.12 Any purchase of an antique firearm must be paid for by cheque or electronic funds transfer.

Do consultees agree?

Provisional proposal 8

- 9.13 Any sale of an antique firearm must be recorded.

Do consultees agree?

Provisional proposal 9

- 9.14 The offences in sections 16 – 25 ought to be amended to put beyond doubt that they can be committed by someone in possession of an antique firearm.

Do consultees agree?

Provisional proposal 10

- 9.15 The statute or regulation should state expressly that only firearms that have been certified by one of the Proof Houses as being deactivated to a Home Office approved standard ought to be categorised as 'deactivated firearms' and therefore capable of being possessed without any form of control. A mechanism would need to be inserted to enable the Proof Houses to certify that a firearm that has not been deactivated to a Home Office approved standard is nevertheless irreversibly incapable of discharging a projectile, because of corrosion, for example.

Do consultees agree?

Consultation question 6

- 9.16 Based upon the assumption that the preceding question is answered in the affirmative, do consultees have a view on which of these three methods would be more appropriate?

- (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.

Provisional proposal 11

- 9.17 Where a person attempts to reactivate a firearm that was deactivated to a Home Office approved standard, we provisionally propose that as a matter of law that weapon should no longer be presumed to be deactivated and take advantage of the presumption.

Do consultees agree?

Provisional proposal 12

- 9.18 We provisionally propose the amendment of section 4(3) to put beyond doubt that the offence can also be committed by someone who makes amendments to a deactivated firearm with the intention of rendering it capable of discharging a missile.

Do consultees agree?

Provisional proposal 13

- 9.19 We provisionally propose the law be amended to focus on the *availability* of the tools necessary to convert an imitation firearm into a live firearm.

Do consultees agree?

Provisional proposal 14

- 9.20 We provisionally propose the creation of an offence of being in possession of articles with the intention of using them unlawfully to convert imitation firearms into live firearms.

Do consultees agree?

Provisional proposal 15

- 9.21 We provisionally propose that the current law governing firearms in England and Wales is of such complexity that it is necessary for the Law Commission to undertake a wider reform project to codify the law.

Do consultees agree?

Consultation question 7

- 9.22 Do consultees have any examples of the additional and unnecessary costs or any dangers to the public that are attributable to the defects with the current law governing the acquisition and possession of firearms?

Consultation question 8

- 9.23 We consider that the issues raised in this chapter are further examples of failings in the present law that generate practical problems and which would be suitable for resolution in a codification exercise. Do consultees agree?

Consultation question 9

- 9.24 Do consultees have suggestions of other areas of the law suitable for reform?

CHAPTER 10

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) FA 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 an 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.

Automatic – a weapon which fires multiple rounds with a single pull of the trigger.

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).

Bullet – a single metal projectile, typically made of lead. In a cartridge-type weapon, it is contained at the front of the cartridge; in a muzzle-loading weapon it is inserted after the charge and then packed in with wadding.

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.

Expanding ammunition – these are bullets designed to expand on impact to create maximum injury by having a soft or hollow point. They are both listed in section 5(1A)(f) FA 1968 as available for possession only with the Home Secretary’s authority *and* are mandatory for shooting deer under section 4 and paragraph 5 of schedule 2 of the Deer Act 1991.

Firearm – defined in section 57(1) of the FA 1968 as ‘lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged’.

Firearm certificate (FAC) – a certificate granted under section 1 of the FA 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.

Firearms enquiry officer (FEO) – designated officers in a police force in charge of matters related to licensing firearms.

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.

Flare pistol – a firearm for launching flares. Typically used for signalling, for example when in distress.

Foot-pound (ft lb) – the imperial unit for kinetic energy. Technically, it is the energy transferred in applying 1 pound-force through 1 foot.

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) 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.

Line thrower- a device for throwing lines to remote positions.

Magazine – an ammunition storage and feeding device within or attached to a firearm capable of firing multiple shots. They can be integrated or removable.

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.

Pistol – a handgun. The ban on handguns (section 5(1)(aba) FA 1968, brought in by F(A) & F(A)(No 2)A 1997) defines them as having a barrel of no more than 30cm in length and an overall length of no more than 60cm. The latter measurement is taken to be the longest straight line achievable by measuring between two points on the weapon, typically diagonally.

Private Maritime Security Company (PMSC) – security personnel, sometimes armed, employed to protect shipping in high-risk areas for piracy.

Prohibited weapon (“section 5”) – a weapon in the section 5 list of the FA 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 VCRA 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 (RFD) – 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 FA 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.

Round (of ammunition) – a single cartridge.

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 FAC since the ban in 1997. They were banned 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 (SGC) – a certificate granted under section 2 of the FA 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’.

ABBREVIATIONS OF ORGANISATIONS

ACPO – Association of Chief Police Officers: a policing policy organisation, which is now known as the National Police Chiefs' Council.

BASC – British Association of Shooting & Conservation: a sporting and campaigning group with over 140,000 members.

Birmingham Gun Barrel Proof House – one of the UK's 2 proof houses.

BSSC – British Shooting Sports Council: a body formed by a number of shooting organisations to provide a single point of representation for shooters across the country.

CIP – Permanent International Commission for small arms testing (“Commission Internationale Permanente pour l’Epreuve des Armes à Feu Portatives”): the international association of proof houses

FCC – Firearms Consultative Committee: established by section 22 F(A)A 1988, this was a group composed of the full range of interested parties in firearms law, brought together to make recommendations for its reform. It ceased to exist in 2004 under section 22(8), when the Home Secretary did not make an order providing for it to continue in operation.

MPSFFU – Metropolitan Police Service Forensic Firearms Unit: a NaBIS forensic hub, with a great deal of firearms expertise which comes from working in England & Wales' largest police force by population served.

NaBIS – National Ballistics Intelligence Service: a police agency which provides world-leading forensics and intelligence capabilities to assist with the investigation and prevention of gun crime.

Worshipful Company of Gunmakers – one of the UK's 2 proof houses, based in London.

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