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# Definitions of Firearms and Air Weapons

A firearm is "a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged" (section 57 (1) [Firearms Act 1968](#)), it includes:

1. any prohibited weapon ([see below](#) in this guidance section 5 Firearms Act 1968), whether it is such a lethal weapon as aforesaid or not; and
2. any component part of such a lethal or prohibited weapon; and
3. any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon.

Lethality is a complex issue and although case law exists (Moore v Gooderham [1960] 3 All E.R. 575), only a court can decide whether any particular weapon is capable of causing "more than trifling and trivial" injury and is therefore is a "firearm" for the purposes of the Acts. The Forensic Science Provider (FSP) will be able to advise in any case where "lethality" is likely to be an issue. See also: R v Thorpe 85 Cr. App. R 107 CA.

"barrelled" is a question of mixed law and fact – R v Singh (1989) Crim. L.R. 724, CA, involved an evidential dispute as to whether a flare launcher was barrelled.

"from which any shot, bullet or other missile can be discharged" has to be capable of discharging a missile either in its present state or with adaptation. To prove that a weapon is a firearm, it is essential to call evidence as to whether a bullet or missile can be discharged from the weapon or which can be adapted to discharge any missile: *Grace v DPP*(1989) Crim L.R.365 where the conviction was quashed as there was no evidence that the air rifle could have been fired.

"component parts". *R v Clarke* (F), 82 Cr App R 308, CA states that the component part of a prohibited weapon is itself a prohibited weapon. Although there is no statutory definition, the Home Office Guidance to the Police at paragraph 13.70 states the following:

The term "component part" may be held to include (i) the barrel, chamber, cylinder, (ii) frame, body or receiver, (iii) breech, block, bolt or other mechanism for containing the charge at the rear of the chamber (iv), any other part of the firearm upon which the pressure caused by firing the weapon impinges directly. Magazines, sights and furniture are not considered component parts.

*R v Ashton*, CA, 1 February 2007 seems to suggest that any part that stops the weapon functioning as it was designed would be a component part:

"Whether in fact this particular gas plug is a component part of a prohibited weapon, is a matter of fact for the court to decide the words have their ordinary natural meaning. as a matter of reasonable interpretation it means a part that is manufactured to the purpose screw or washer, would not be a component part for present purposes. Similarly, a component part must be a part that if it were removed, the Gun could not function without it."

### *Air Weapons*

An air weapon is defined, under section 1(3)(b) and 57(4) of the Firearms Act 1968 as:

"an air rifle, air gun or air pistol which does not fall within section 5 (1) (a) and which is not of a type declared by rules made by the Secretary of State under section 53 of the Firearms Act to be specially dangerous".

Any air rifle, air gun or air pistol which uses or is designed or adapted for use with, a self contained gas cartridge system is a prohibited weapon: section 5(1)(af) Firearms Act 1968 e.g. a Brocock

An air rifle is "specially dangerous" if it is capable of discharging a missile so that the missile has, on being discharged from the muzzle of the weapon, kinetic energy in excess in the case of a pistol of 6 ft lbs or, in the case of an air weapon other than an air pistol, 12 ft lbs: [Firearms \(Dangerous Air Weapons\) Rules 1969](#) rr. 2, 3 (Archbold 24–8a.)

Paintball guns are a type of air weapon. The Home Office regard self-loading or pump action rifled airguns (including paintball guns) as outside the scope of the Firearms Act, unless they are sufficiently powerful to fall within the category of a "specially dangerous" air weapon (Archbold 24.8a). Paintball guns could be considered imitation firearms.

Unless an air weapon falls within one of the above exceptions, it is not subject to section 1 Firearms Act 1968.

## Definitions of "Imitation Firearms", "Realistic Imitation Firearms" and "Readily Convertible Imitations"

### Imitation Firearms

An imitation firearm means "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." section 57(4). This means that an offence requiring "possession" or "having with him/her" a firearm or imitation firearm requires a "thing" which is separate and distinct from a person. Putting a hand inside a jacket and using fingers to force out the material to give the impression of a firearm falls outside the scope of such offences, as a person's bodily parts is not a "thing". (R v Bentham [2005] UKHL18.) R v Morris and King, 79 Cr App R 104, CA: when considering whether a thing has the appearance of being a firearm the jury should consider its appearance at the time of the offence and should also be assisted by the evidence of the witness who saw the thing at the time of the offence.

Unlike with "Realistic Imitation Firearms", it is not always necessary to obtain evidence from the FSP on whether the thing is an imitation firearm. Evidence of the Firearms Officer will usually be sufficient expert evidence.

### Realistic Imitation Firearms

From 1 October 2007, section 36 Violent Crime Reduction Act 2006 created an offence to manufacture, bring into or cause to be brought into Great Britain, or sell realistic imitation firearms. It also made it an offence to modify an imitation firearm to make it realistic.

Section 37 relates to specific defences: this allows persons in the course of trade or business to import realistic imitation firearms for the purpose of modifying them to make them non-realistic. It also provides various defences if the realistic imitation firearm was available for:

1. a museum or gallery;
2. theatrical performances and rehearsals of such performances;
3. the production of films and television programmes;
4. the organisation and holding of historical re-enactments; or
5. crown servants.

Section 38 defines a "realistic imitation firearm" as "an imitation firearm which has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm". As a result of "real firearm" (defined in section 38 (7)) imitations of pre-1870 firearms are not caught by the offence.

Whether an imitation firearm falls within the definition of a realistic imitation firearm should be judged from the perspective of how it looks at the point of manufacture, import or sale and not how it might be appear if it were being misused. Section 38(3) provides that in determining whether an imitation firearm is distinguishable from a real firearm, its size, shape and principal colour must be taken into account.

It is worth keeping in mind that the intention behind this measure is to stop the supply of imitations which look so realistic that they are being used by criminals to threaten and intimidate others. If it is not a realistic imitation firearm it may still be an imitation firearm.

## Readily Convertible Imitations

If an imitation weapon, has the appearance of being a firearm to which section 1 of the 1968 Act applies and the imitation firearm is not capable of discharging a missile **but** can be readily converted into a firearm then section 1(1) Firearms Act 1982 states that the weapon is to be considered a firearm for the purposes of the

Act. The Act defines "readily convertible" when "it can be so converted without any special skill on the part of the person converting it and 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 and maintenance in their own homes." Section 1(6) Firearms Act 1982.

The FSP will be required to test the weapon to ascertain whether it is readily convertible.

However, 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, Section 1 (5) Firearms Act 1982.

### *Classification of the Olympic BBM*

There has been concern about the use of the Olympic BBM firearm in criminal circumstances. The police has received advice that the Olympic BBM blank firing weapon can be readily converted into a firearm capable of discharging ammunition and it therefore falls within the terms of the Firearms Act 1968. If such a case is referred, the prosecutor should satisfy themselves on the following questions:

1. Does the Olympic BBM firearm have the appearance of being a firearm to which section 1 of the Firearms Act 1968 applies (i.e. a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, other than certain shotguns and air weapons)?
2. If yes is it so constructed or adapted as to be readily convertible into a firearm to which section 1 of the 1968 Act applies (i.e. it can be converted without any special skill and without equipment or tools other than such as are in common use by persons carrying out works of construction or maintenance in their own homes: section 1(1) (b) and (6) of the Firearms Act 1982).
3. If yes, any reference to a firearm in the 1968 Act shall be read as including the imitation firearm, and the 1968 Act shall apply in relation to the imitation firearm as it applies in relation to a firearm to which section 1 of the 1968 Act applies, with the exception of subsections 4(3) and (4), 16 to 20 and 47 (see subsections. 1(2), 2(1) and (2) of the 1982 Act). This means that the imitation firearm is to be treated as a "section 1 firearm" (i.e. a firearm to which section 1 of the 1968 Act applies) for the purposes of (in particular) the offences under subsection 1(1) (possession, purchase or acquisition without a certificate) and subsection 3 (sale,

etc without being registered as a firearms dealer and/or without purchaser producing firearms certificate).

4. Does the imitation firearm fall have a barrel less than 30cm or overall length less than 60cm, and is not an air weapon, muzzle-loading gun or signalling apparatus: section 5(1)(aba) of the 1968 Act?

5. If yes, the imitation firearm is to be treated as a "section 5 firearm" i.e. a prohibited weapon to which section 5 of the Firearms Act 1968 applies, and it is an offence to possess, purchase or acquire, or manufacture, sell or transfer the imitation firearm without the authority of the Secretary of State, subject to the defence of lack of knowledge that the imitation firearm was readily convertible in section 1(5) of the 1982 Act.

Steps 1, 2 and 4 above are factual matters requiring expert evidence whilst steps 3 and 5 are the legal consequences which flow inevitably if those factual matters are proved.

## De-activated Weapons and Antiques

### De-activated Weapons

If a weapon bears an approved house mark and has been certified in writing as de-activated, the item is presumed to be incapable of discharging bullets or shot. De-activated firearms are expressly excluded from the definition of realistic imitation firearm and are therefore not affected by the new realistic imitation offence: Section 8 [Firearms \(Amendment\) Act 1988](#).

### Antiques

Section 58(2) of the 1968 Act exempts from the provisions of the Act – including certificate controls under sections 1 and 2 and prohibition under section 5 – all antique firearms which are sold, transferred, purchased, acquired or possessed as curiosities or ornaments. The word "antique" is not defined in the Act but Home Office guidance on the subject can be summarised briefly as follows:

1. If modern ready made ammunition can be bought and fired using the weapon it cannot be classed as an antique;
2. A muzzle loading firearm is antique;
3. A breech loading firearm using a rim-fire cartridge exceeding .23 (but not 9mm) is antique;

4. A breech loading firearm using an ignition system other than rim-fire or centre is antique;
5. A breech loading centre fire firearm originally chambered for cartridges which are now obsolete **and** retains that original chambering is antique.

However, each case should be dealt with on its merits and advice on individual weapons should be sought from the FSP. The case of R v Burke 67 Cr App R 220 dictates that it is for the Prosecution to prove that the firearm does not come within the ambit of section 58(2) and it is a matter for the jury to decide upon.

## Transfer of Weapons

Section 3 of the 1968 Act creates an offence if, by way of trade or business without being registered as a firearms dealer he/she manufactures, sells, transfers, repairs, tests or proves any firearms or ammunition to which sections 1 and 2 applies; or a shotgun (Archbold 24.12).

Section 31 [Violent Crime Reduction Act \(VCRA\) 2006](#): this offence is committed where on or after 6 April 2007, a person who is not a registered firearms dealer sells or transfers an air weapon or exposes an air weapon for sale or has in his possession for sale of transfer.

Section 32 of the VCRA 2006 requires that air weapons sold or transferred to an individual by way of trade or business must now be done in person. This provision is modelled on the arrangements which already exist in section 32 of the Firearms (Amendment) Act 1997 for other firearms. This is subject to exceptions.

Section 35 of the VCRA 2006 creates a summary offence on or after 6 April 2007 where a person sells, buys or attempts to sell or buy a primer or empty cartridge case incorporating a primer. There are a number of exceptions as expanded upon in section 35(3) VCRA 2006.

Section 40 of the VCRA 2006 creates an offence for anyone aged under 18 to purchase an imitation firearm and for anyone to sell an imitation firearm to someone aged under 18.

It is ultimately for the courts to decide whether any item falls within this definition but clearly it applies to the purchase and sale of realistic imitation firearms. However, it also applies to non-realistic imitations which nevertheless have "the appearance of being a firearm". This could include some children's toys. Where a

toy is considered to be an imitation firearm, the purchase will have to be made by a parent or other person aged over 18.

It is a defence if the seller can show that he had reasonable grounds for believing the purchaser to be 18 or over.

## Conversions

Section 4 of the [Firearms Act 1968](#) creates an offence of shortening or converting a firearm (Archbold, 24.16). This is committed when:

1. the barrel of a shotgun is shortened to a length less than 60.96 cm (24 inches) section 4 (1);
2. for a non-firearms dealer to convert into a firearm anything which had appearance of being a firearm, but originally was incapable of discharging any missile through its barrel section 4 (3).

## Possession of Firearms by Adults

The Firearms Act 1968 creates offences of:

1. Section 1 – Possession of a firearm/specially dangerous air weapon and certain ammunition without a certificate, (Archbold, 24.3);
2. Section 2 – Possession of a "shotgun" without a certificate (Archbold, 24.9);  
**NB:** Shotguns can fall within various sections, see [Evidence to Charge](#) below.
3. Section 5 – Possession of a prohibited weapon (Archbold, 24.19).

The above offences are subject to certain exceptions (Archbold, 24.28 – 24.34)

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## Possession

1. Section 1(1) of the Firearms Act 1968 creates an absolute offence.

2. The prosecution only has to show that the defendant knew he had something in his possession. It is irrelevant what he knew or thought it was (R v Hussain (1981) 72 Cr. App. R. 143; R v Waller Crim. L.R. 1991, 381; Sullivan v Earl of Caithness [1976] 62 Cr. App. R 105). (Archbold 24–6).
3. Possession is both proprietary and custodial (Distinction from "have with him" in criminal use offences) (Hall v Cotton and Treadwell [1987] 83 Cr. App. R 257 DC).

## Prohibited Weapons Defined by section 5 Firearms Act 1968 as Amended

The weapons below are subject to the mandatory minimum sentence see [Mandatory Minimum Sentences](#) section below.

1. Section 5(1)(a) any firearm which is so designed or adapted so that two or more missiles can be successively discharged without repeated pressure on the trigger, e.g. machine guns, burst fire weapons;
2. Section 5(1)(ab) any self-loading or pump-action rifled gun other than one which is chambered for .22 rim-fire, e.g. short barrelled rifles;
3. Section 5(1)(aba) any firearm which either has a barrel less than 30cm in length or is less than 60cm in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signalling apparatus, e.g. handguns, revolvers;
4. Section 5(1)(ac) any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24" in length or is less than 40" in length overall, e.g. self loading shotguns;
5. Section 5(1)(ad) any smooth-bore revolver gun other than one which is chambered for 9mm rim-fire cartridges or a muzzle-loading gun, e.g. Dragon;
6. Section 5(1)(ae) any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus;

7. Section 5(1)(af) any air rifle, air gun or air pistol which uses, or is designed or adapted for use with, a self-contained gas cartridge system, e.g. Brococks;
8. Section 5(1)(c) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any such noxious thing as mentioned in section 5(1)(b), and, if capable of being used with a firearm of any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode as aforesaid, e.g. ammunition containing explosive in the bullets or missiles;
9. Section 5(1)(A)(a) any firearm which is disguised as another object, e.g. pen guns, key fob guns and phone guns.

In addition the following are also prohibited but **are not** subject to mandatory minimum sentences:

1. Section 5(1)(b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid gas or other thing. Generally stun guns or electric shock devices, CS gas not usually cattle prods but depends on type. Note: Parliament has provided that disguised weapons fall within the provisions for a minimum sentence and so, an offence contrary to section 5(1A) should be charged rather than an offence contrary to section 5(1)(b) where a stun gun is disguised as another object and also meets the requirements of section 5(A1), (R v Brereton[2012]EWCA Crim 85) ;
2. Section 5(1A)(b) any rocket or ammunition not falling within paragraph (c) of subsection (1) of this section which consists in or incorporates a missile designed to explode on or immediately before impact and is for military use;
3. Section 5(1A)(c) any launcher or other projecting apparatus not falling within paragraph (ae) of that subsection which is designed to be used with any rocket or ammunition falling within paragraph (b) above or with ammunition which would fall within that paragraph but for its being ammunition falling within paragraph (c) of that subsection;
4. Section 5(1A)(d) any ammunition for military use which consists in or incorporates a missile designed so that a substance contained in the missile will ignite on or immediately before impact, e.g. incendiary ammunition;

5. Section 5(1A)(e) any ammunition for military use which consists of, or incorporates, a missile designed, on account of its having a jacket and hard core, to penetrate armour plating, armour screening or body armour, e.g. armour piercing ammunition;
6. Section 5(1A)(f) any ammunition which incorporates a missile designed or adapted to expand on impact. For example expanding ammo, e.g. soft-point or hollow-point ammo;
7. Section 5(1A)(g) anything which is designed to be projected as a missile from any weapon and is designed to be, or has been, incorporated in –
  - (i) any ammunition falling within any of the preceding paragraphs; or
  - (ii) any ammunition which would fall within any of those paragraphs but for its being specified in subsection (1) of this section.

## Criminal Use of Firearms

The [Firearms Act 1968](#) creates offences of:

1. Section 16 Possession of a firearm or ammunition with intent to endanger life (Archbold, 24.36);
2. Section 16 A Possession of a firearm or imitation with intent to cause fear of violence (Archbold, 24.39);
3. Section 17(1) Using a firearm or imitation to resist or prevent lawful arrest of himself or another (Archbold, 24.42);
4. Section 17(2) Possessing a firearm or imitation whilst committing certain offences (Archbold, 24.42) which are set out in Schedule 1 (Archbold, 24.43);
5. Section 18 Carrying a firearm or imitation with intent to commit an indictable offence or to resist arrest or prevent the arrest of another (Archbold, 24.51);
6. Section 19 Carrying a loaded shot gun, air weapon, (whether loaded or not), any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm or an imitation firearm in a public place without lawful authority or reasonable excuse (Archbold 24.56). Possession of an air weapon or an imitation firearm in a public place (section 19 Firearms Act 1968) is triable summarily only (see Schedule 6) and carries a

maximum sentence of 6 months' imprisonment prior to 1 October 2007. After that date section 41(1) Violent Crime Reduction Act 2006 increases the penalty for possession of an imitation firearm but not an air weapon to 12 months and makes the offence triable either way.

7. Section 20 Entering a building or part of a building as a trespasser without reasonable excuse whilst having with him a firearm or imitation (Archbold, 24.62); Distinguish possession from "having with him" (R v Kelt 1977 3 All ER 1099) (R v Pawlicki 1992 3 All ER 92) (R v Bradish & Hall 2004 6, Archbold News 3);
8. Section 21 Possession of a firearm by persons previously convicted of crime (Archbold, 24.65).

Prosecutors should check to see if a defendant commits an offence under section 21 Firearms Act 1968 whenever a firearm or ammunition is involved. A person commits such an offence if:

1. He has possession, of any class of Firearm (except imitations and deactivated weapons), or any ammunition, including shot gun and air weapon ammunition; and
2. At the time of possession has been previously convicted of any offence and was sentenced to a term of imprisonment (including detention in a Youth Offender Institute (YOI) and Detention and Training Order (DTO)).
  1. If the sentence was 3 years or more the prohibition is for life.
  2. If between 3 months and 3 years and is in possession within 5 years of release.
  3. This section does not apply to those sentenced to a Hospital Order.
3. The release papers include an acknowledgement of this requirement. This offence should attract a consecutive sentence, although in practice it is usually concurrent and treated as an aggravating feature of the other offence. A memorandum of conviction or certificate of conviction and a signed copy of the release form should be obtained.

Section 28 of the [Violent Crime Reduction Act 2006](#) creates an offence of using another person to mind a dangerous weapon on or after 6 April 2007. The offence is committed where a person uses another to look after, hide or transport a dangerous weapon for him and he does so under arrangements or in

circumstances that facilitate or are intended to facilitate the weapon's being made available to that person for an unlawful purpose (section 28(1)).

A dangerous weapon is defined by section 28(3) as "a firearm other than an air weapon or a component part of or accessory to an air weapon or a weapon to which section 141 or 141A of the Criminal Justice Act 1998 applies (specified offensive weapons, knives and bladed weapons)".

Section 28(2) states that a weapon is to be regarded as being available for an unlawful purpose where the weapon is available for him to take possession of it at a time and place and his possession of the weapon at that time and place would constitute or be likely to involve or lead to the commission by him of an offence. This provision is intended to cover cases in which:

1. Mere possession would be an offence e.g. because the weapon is a prohibited weapon or is a firearm and the person taking possession is legally prohibited from possessing a firearm because he does not have a license as required by section 1 of the Firearms Act 1968 or because he is disqualified from possession under section 21 Firearms Act 1968 and;
2. The person was intending to commit an offence with the weapon in future;
3. This does not preclude other "arrangements or circumstances" from facilitating or intending to facilitate the availability of the weapon for an unlawful purpose.

Prosecutors should note that the evidential requirements of section 28 Violent Crime Reduction Act 2006 may be harder to satisfy than those of simple possession under sections 1, 2 or 5 Firearms Act 1968.

Sections 23(1) and (4) of the Firearms Act 1968 made it an offence to fire an air weapon beyond the boundary of premises. However, prior to 1 October 2007 the offences were limited to young persons and to the adults supervising them. Section 34 of the VCRA 2006 replaces the existing offences for young people with a new offence for anyone of any age to fire an air weapon beyond the boundary of premises. The offence relating to adults supervising young persons is preserved.

The Act also creates a number of offences in relation to the making and revocation of certificates, the controlling of transactions in firearms and in respect of police powers – sections 26, 29, 30, 38–42 and 47–49.

# Acquisition and Possession of Firearms and Air Weapons by Minors

Sections 22 – 25 – Possession by and supply to minors and drunk/insane persons. (Stones, 8.10401).

Sections 22 and 24 were amended by section 33 of VCRA 2006 so as to increase age limits in a number of offences:

Section 22(1) – Purchase or hire of any firearm or ammunition by a person under 17. From 1 October 2007, the age limit is raised to 18.

Section 22(1A) – Use of a firearm by a person under 18 for a purpose not authorised by the European weapons directive.

Section 22(2) – Possession of any firearm or ammunition to which section 1 applies by a person under 14.

Section 22(3) – Person under 15 having an assembled shotgun except while under the supervision of a person aged 21 or over, or while the shotgun is so covered with a securely fastened gun cover that it cannot be fired.

Section 22(4) – Person under 17 having an air weapon or ammunition for an air weapon unless supervised by a person aged 21 or over. From 1 October 2007, the age limit is raised to 18.

Section 24(1) – Selling or hiring an air weapon to a young person. From 1 October 2007, the age limit is raised to 18.

Section 24(4) – Making a gift of an air weapon or parting with possession of an air weapon. From 1 October 2007, the age limit is raised to 18.

Section 24ZA – A person in possession of an air weapon failing to take reasonable precautions to prevent any person under the age of 18 having the weapon with him (from 10 February 2011).

## Importation of Firearms

Section 170(1) of the Customs and Excise Management Act 1979 (CEMA) makes it an offence for any person to knowingly acquire possession of any of the following goods:

- (i) goods which have been unlawfully removed from a warehouse or Queen's warehouse;
  - (ii) goods which are chargeable with a duty which has not been paid;
  - (iii) goods with respect to the importation or exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment; or
- (b) is in any way knowingly concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any such goods, and does so with intent to defraud Her Majesty of any duty payable on the goods or to evade any such prohibition or restriction with respect to the goods he shall be guilty of an offence under this section and may be detained.

Section 170(2) of CEMA 1979 covers the import "smuggling" offence in so far as a person knowingly concerned in the fraudulent evasion or attempted evasion relating to goods (namely firearms) that are subject to any "prohibition or restriction." The prohibition upon the importation of firearms is contained in Article 1 of the Import of Goods (Control) Order 1954 (SI 1954/23) which was made under section 1 of the Import, Export and Customs Powers (Defence) Act 1939.

## Charging Practice

### Code for Crown Prosecutors - Considerations

A prosecution will generally be required in the public interest because of the risk to public safety. However, where a youth has committed an offence involving an air weapon, prosecutors should consider diversion, according to the gravity of the offence and the principles of the reprimand and final warning scheme.

A prosecution may not be required where the contravention is technical and there has been no risk to public safety and the offence resulted from an oversight or misunderstanding. Guidance issued to the police in connection with certain aspects of firearms legislation can be found on the Home Office website.

There may be occasions when a defendant has committed a firearms offence in conjunction with a public order offence. As to the level of charging, refer to Public Order Offences incorporating the Charging Standard.

# Diversion

The public interest will almost always require a prosecution whenever there is sufficient evidence to show that an adult has committed a firearms offence.

However, there may be occasions when the public interest will be satisfied by action short of prosecution. These will usually relate to the physical or mental health of the defendant or victim.

Administrative and genuine errors resulting in inadvertent breach may be suitable for cautioning or informal action, e.g. using lead shot on water fowl or shooting without a game licence where a genuine error as to species has been made.

Whenever there is sufficient evidence to charge a youth with a firearms offence, prosecutors should consider whether the youth is eligible for the statutory diversion scheme of reprimands and final warnings (sections 65 and sections 66 Crime and Disorder Act 1998). A youth specialist should be consulted and the youth referred to the police for diversion where the public interest does not require a prosecution.

# Evidence to Charge

A firearm or suspected firearm should always be recovered by a trained firearms officer, who should exhibit each and every weapon, component part and item of ammunition stating where each item was found.

The Firearms Officer should provide a full description of each item found, including measurements, where relevant. The length of the barrel of a firearm shall be measured from the muzzle to the point at which the charge is exploded on firing (section 57(6) Firearms Act 1968). Measurements will be particularly relevant where:

The weapon is a shotgun as the dimensions of the barrel and bore will determine whether it is a firearm for the purposes of section 1, 2 or 5;

1. The firearm is a prohibited weapon as defined by section 5(1)(aba) see above;
2. The firearm is a prohibited weapon as defined by section 5(1)(ac) see above; and

3. The firearm is a shortened shotgun for the purposes of section 4(4) see above.

Each weapon and component part should be photographed alongside a scale to indicate dimensions, and copies provided to the CPS. Courts would expect to have at least a photograph of the weapon for sentencing purposes, so the timely provision of photographs may also avoid the need for the weapon and the accompanying officer to come to court.

Where the Firearms Officer is able to identify the weapon, component part or ammunition he should do so and indicate which offence(s) appear to have been committed.

The Firearms Officer should state whether the weapon was loaded or not.

Where the Firearms Officer is able to confirm that the weapon is an imitation firearm, he should do so. He should also indicate how closely it resembles a real firearm, based on his own knowledge of firearms. Again photographs may be of assistance. It is also important to determine the circumstances surrounding the possession and use of an imitation weapon.

A full statement from a Firearms Officer will usually be sufficient for air weapons and straightforward shotgun offences. However, where the Firearms Officer suspects that the air weapon is "specially dangerous" and is therefore a firearm for the purposes of the Act, the air weapon should be submitted to Forensic Science Provider (FSP) for the question to be answered.

Where offences contrary to section 1 or section 5 Firearms Act 1968 (other than straightforward shotgun and air weapon offences, referred to above) appear to have been committed, a forensic report from a FSP will always be needed for classification purposes.

Prosecutors should not accept guilty pleas unless there is formal evidence as to the nature of the firearm.

However, in many cases a remand in custody will be sought, and the lawyer giving advice will apply the threshold test and may have to rely on the opinion of a Firearms Officer, Force Armourer or a preliminary report from a FSP as to the nature of the firearm. Where such preliminary advice is given, the prosecutor must ensure the proper completion of a Form MGFSP identifying the forensic issues that need to be addressed, the classification of the weapon and any relevant timescales, in accordance with any local tripartite protocol.

Whenever a person has been charged with an indictable only offence, all firearms, weapons, component parts and ammunition should be submitted to the FSP with a request for a report. It will always be essential to determine the category of such items. The prosecutor and the police should identify other relevant forensic lines of enquiry, which may include:

1. Quasar testing;
2. Fingerprint analysis;
3. DNA testing;
4. Forensic Discharge Residue (FDR) on clothing and swabs;
5. Ballistics;
6. Compatibility of firearm with any ammunition recovered;
7. Nature of any "noxious liquid, gas or other thing"; and
8. NABIS submission and analysis (from April 2008).

Some of these enquiries can be carried out independently of the tests needed to classify the item, e.g. ballistics analysis need not delay submission of a report to the police/CPS about classification. The prosecution should have regard to timescales likely to be set by the court for service of evidence and the arrangements for staged reporting, including any local tripartite protocol.

## Choosing the Charge

Overlaps can occur between the various more serious offences of possessing/using firearms for crime outlined above. It is important that the indictment is not unnecessarily overloaded and reflects the overall gravity and nature of the offence. Prosecutors should select charges that reflect the seriousness and extent of the offending behaviour and give the court adequate sentencing powers. Prosecutors should be familiar with the sentencing guidelines given by the Court of Appeal (CA) in *R v Avis* [1998] 1 Cr. App. R. 420 (see sentencing below).

Where a firearm offence is disclosed in addition to another substantive offence, a suitable count should always be included on the indictment so that:

1. The issue of whether or not a firearm was used can be determined by the jury if necessary. A defendant is entitled to a jury decision on this issue: (*Eubank* (2001) EWCA Crim 891);

2. The court has the power to impose the appropriate sentence;
3. Although it is not mandatory for a court to pass a consecutive sentence (AG Ref Nos 21 and 22 R v Hahn and Webster (2004) 2 Cr. App. R. (S) 13, CA), courts may do so to mark the seriousness of such behaviour and as a deterrent: (R v Greaves and Jaffer (2004) 2 Cr. App. R. (S) 10 CA);
4. Robbery where at some time during the commission of the offence the offender had in his possession a firearm or an imitation firearm is a serious offence for the purposes of section 109 (5) (h) Powers of Criminal Courts (Sentencing) Act 2000. Section 109 requires a life sentence to be imposed on conviction of a second serious offence committed as an adult. Section 109 (5) (h) will only be held to apply if the defendant has admitted before the court that he had a firearm in his possession during the robbery, or if the jury return a specific verdict establishing that fact (R v Hylands (2004) WWCA (Crim) 2999 CA);
5. Where the weapon in question is not recovered, and thus its status remains unknown, it is not duplicitous to include the phrase "firearm or imitation firearm" in a count under sections 17 or 18 of the 1968 Act.

There may be an overlap between an offence contrary to section 1 or section 2 and section 19 Firearms Act where a person with a firearm or loaded shotgun for which no certificate is held is in a public place. The following factors should be taken into account when determining the appropriate charge:

1. Section 1, section 2 and section 5 are offences of strict liability;
2. Section 19 provides a defence of "lawful authority or reasonable excuse" for possession;
3. Section 1 and section 2 are triable either way with a maximum penalty of 5 years;
4. Section 19 is triable either way but carries a maximum penalty of 7 years;
5. Section 1 and section 2 do not require the weapon to be loaded. No certificate is required for possession of shotgun cartridges; and
6. Section 19 requires the shotgun to be loaded or for there to be possession of a firearm and suitable ammunition.

There will be occasions, less common with the passage of time, when the appropriate sentence and need for mode of trial will vary depending on whether the offence was committed before or after 22 January 2004 and the implementation of the minimum sentence provisions. This will occur when the only evidence of possession is of fingerprints or DNA without any other circumstance to determine when the possession took place. To reflect the different penalties that apply charge possession in the alternative as being before 22 January 2004 and after 21 January 2004. This is sufficient to provide an indictable only offence and if the matter goes to trial to allow a jury to determine that issue.

Consideration should always be given to the merits of charging an offence contrary to sections 16, 16A, 17 or 18 Firearms Act 1968. All the circumstances surrounding the incident should be considered, with particular regard to the following factors:

1. Admissions or explanation given by the defendant in interview;
2. Whether the weapon was real;
3. Whether the weapon was loaded;
4. The imminence of any probable use;
5. Whether the victim or any other person present believed that the weapon was real; and
6. Whether the weapon was associated with other criminal activity.

The prosecution do not need to prove an immediate or unconditional intention to endanger life, but the intention required for section 16 may not necessarily be met by the recovery of a loaded weapon. Any explanation given in interview and the surrounding circumstances should be carefully considered to determine whether an inference could be drawn. Prosecutors should note that Section 16 offences can only be committed with a real firearm. Consideration should be given to an attempt where the defendant expresses a belief that the weapon was a real firearm.

Section 16A may be more appropriate where the necessary intent for section 16 cannot be proved, as the intent to cause another to believe that unlawful violence will be used, is more readily inferred. Section 16A can be used where the firearm is an imitation.

There is some overlap between charges under section 17 and 18.

Section 17(1) requires "use" or "attempt to use" a firearm or imitation firearm with intent to resist arrest.

Section 17(2) requires "possession" of a firearm or imitation firearm at the time of commission or arrest for a Schedule 1 offence.

It is subject to a defence of "lawful possession".

Section 18(1) covers the same intention, but at an earlier stage and refers to "any indictable" offence. It requires "having with him" a firearm or imitation firearm.

The addition of one of these charges, where appropriate, could resolve the question of venue prior to receipt of any forensic evidence. These offences are "serious specific offences" for the purposes of sections 224 to 229 Criminal Justice Act 2003. A person convicted of such an offence committed after 4 April 2005 must be sentenced to a life sentence or indeterminate imprisonment for public protection if the court is satisfied that there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences. An extended sentence is also available where a youth is so convicted.

Whenever a prohibited weapon is used in the commission of any offence, committed prior to 6 April 2007, an additional charge contrary to section 5 should also be preferred. This will require the court to impose the minimum sentence (AG Reference No 114 of 2004 R v Stephen McDowell (2004) See Sentencing below for offences post 6 April 2007.

Note: Parliament has provided that disguised weapons fall within the provisions for a minimum sentence and so, an offence contrary to section 5(1A) should be charged rather than an offence contrary to section 5(1)(b) where a stun gun is disguised as another object and also meets the requirements of section 5(A1), (R v Brereton [2012

## Consent

Summary proceedings for certain offences under the Firearms Act 1968 may be instituted within 4 years of the offence. However, if commenced more than 6 months after the offence DPP consent is required (Archbold, 24.82) refer to the section on Consents to Prosecute for further guidance.

Usually, offences contrary to sections 1 and 2 Firearms Act will be suitable for summary trial, where there has been a technical, inadvertent or minor breach of licence conditions or where the firearm has remained on private property.

Possession etc. of weapons "designed or adapted for the discharge of any noxious liquid, gas or other thing" contrary to section 5(1)(b) remains an either way offence and will usually be preferred where the weapon is a stun gun or CS spray. Case law suggests offences of straightforward possession of these items will normally remain in the Magistrates' Courts, refer to Sentencing below.

Trial on indictment will be more appropriate where:

1. the weapon was real as opposed to an imitation;
2. the weapon was used;
3. the weapon was visible in a public place;
4. the firearm was loaded;
5. the weapon was used or produced whilst committing another offence;
6. the defendant was in possession of more than one weapon;
7. damage, injury or fear of injury was intended or caused;
8. the weapon was carried for self-defence;
9. the weapon was intended for unregistered sale or transfer;
10. the weapon was recovered in connection with drug dealing, gang association or any other organised criminal activity; and
11. the weapon was a sawn off shotgun (falling short of a prohibited weapon).

Note: Parliament has provided that disguised weapons fall within the provisions for a minimum sentence and so, an offence contrary to section 5(1A) should be charged rather than an offence contrary to section 5(1)(b) where a stun gun is disguised as another object and also meets the requirements of section 5(A1), (R v Brereton [2012]EWCA Crim 85)

# Sentencing

## Sentencing Guidance

**Important:** Refer to the Sentencing Manual for current sentencing information.

The leading firearms sentencing case is *R v Avis* (1998) 1 Cr. App. R 420, the CA said that some of the sentences imposed in the past for firearms offences had been too lenient. Lord Bingham CJ said that the courts should treat offences under the Firearms Act as serious as there was a clear need to discourage the unlawful possession and use of real and imitation firearms and to give effect to Parliament's intention expressed by the continuing increase in maximum penalties for firearms offences.

Offences contrary to sections 1(1), 2(1), 3, 4, 5 (1A), 16, 16A, 17 (1) and (2), 18 (1), 19 and 21 (4) would generally warrant custodial sentences, even where the offender pleaded guilty and had no previous convictions unless the offence was a minor infringement that was tried summarily.

Offences contrary to sections 4, 5, 16, 16A, 17(1) and (2), 18 (1), 19 or 21 would attract a considerable custodial sentence and, where the answers to the following questions are adverse to the defendant, a sentence at or approaching the maximum in a contested case.

The sentencing court should usually ask itself four questions:

1. What sort of weapon was involved? Genuine weapons are more dangerous than imitations, loaded firearms than unloaded, unloaded for which ammunition is available than those for which none is available. Possession of a firearm which has no lawful use, such as a sawn off shotgun, is more serious than possessing a firearm capable of lawful use;
2. What use, if any, was made of the firearm? The more prolonged, premeditated and violent the use, the more serious the offence is likely to be;
3. With what intention, if any, did the defendant possess the firearm? The more prolonged, premeditated and violent the use, the more serious the offence is likely to be;

4. What is the defendant's record? The seriousness of any firearms offence is increased if there is an established record of committing such offences or crimes of violence.

R v Wilkinson and others (2009) EWCA Crim 1925 (16 October 2009) reaffirmed the principles as applied in Avis and others:

It is further emphasised that the specified minimum terms are 5 years' imprisonment where the offender was 18 years or over at the date of conviction and, in accordance with section 289 of the Criminal Justice Act 2003, 3 years' detention under section 91(A) of the Powers of Criminal Courts (Sentencing) Act 2000 for an offender aged at least 16 but under 18 years. Whilst conceding that these provisions do not arise to be directly considered in this judgement R v Wilkinson does stress that where there is an intention to impose a shorter sentence than the prescribed minimum use of this must be "exceptional". "It is nevertheless necessary to focus attention on the importance of these provisions and their intended impact for sentencing in cases involving gun crime even at a lower level of seriousness than those which arise in the present case. They confirm, if confirmation were needed, that possession of a firearm, without more, and without any aggravating features beyond the fact of such possession, is of itself a grave crime, and should be dealt with accordingly."

The case goes on to emphasise, "Criminals who are prepared to deal in such lethal weapons invariably represent a serious public danger, and it cannot be assumed that the danger they represent will have dissipated when the determinate element of their sentences has been completed. We therefore supplement the guidance in Avis and others by emphasising that for criminals involved in this level of gun crime along with very lengthy determinate sentences, indeterminate sentences, whether discretionary imprisonment for life or IPP, inevitably arise for consideration."

## Mandatory Minimum Sentences (Prohibited Weapons)

Mandatory minimum sentences apply to most section 5 offences and were introduced by section 287 of the Criminal Justice Act 2003, which inserted a new Section 51A into Firearms Act 1968. (Sections 5(1)(a), 5 (1) (ab), 5 (1) (aba), 5 (1) (ac), 5 (1) (ad), 5 (1) (ae), 5 (1) (af), 5 (1) (c) and 5 (1) (A) (a) see prohibited weapons above)

The court will consider the effect of mitigation and only in "exceptional circumstances" will the judge depart from the minimum sentence (R v Jordan, Alleyne and Redfern [2004] EWCA Crim. 3291).

Exceptional circumstances may relate to the offence and/or the offender, and the court should take a holistic approach and consider all the circumstances involved (R v Rehman [2006] 1 Cr. App. R. (S) 77).

The mandatory sentence applies where:

1. The offence listed above was committed on or after 22 January 2004 and the offender was aged 16, 17 or over 21 years of age when the offence was committed;  
or
2. The offence was committed on or after 28 May 2007 when the offender was aged 16 or over **and** is aged 18, 19 or 20 at the date of conviction.

The intention of the legislature was for the mandatory sentence to apply to all offenders who had attained the age of 16 when the offence was committed.

However, the mandatory minimum sentence does not apply to offenders who committed the offence before 28 May 2007 and were aged 18, 19 and 20 on the date of conviction. This is because offenders of this age are sentenced to detention in a young offender institute and this falls outside the definition of imprisonment in section 51 A Firearms Act 1968 (R v Campbell [2006] EWCA Crim 726).

The Firearms (Sentencing) (Transitory Provisions) Order 2007 inserts a new paragraph 51 A(4)(a) Firearms Act 1968 and makes changes to the meaning of "appropriate custodial sentence" with the effect that 18 – 20 year olds are subject to the mandatory minimum sentence. The Order is in force from 28 May 2007, and applies only to offences committed on or after that date.

The mandatory minimum sentence is 5 years' imprisonment for an offender aged 21 or over and 5 years' detention in a young offender institute for those aged 18,

19 and 20 at the date of conviction. Offences that attract the minimum sentence are triable only on indictment (Section 288 Criminal Justice Act 2003, which also amends Schedule 6 to the Firearms Act 1968).

Sixteen and 17 year olds are subject to a mandatory minimum sentence of 3 years and so the case must be committed to Crown Court for trial. The youth court has no jurisdiction to try such cases (section 24(1B) Magistrates Courts Act 1980).

**The MMS sentence is not to be reduced for a guilty plea, see Archbold 5-261.**

Sections 29 and 30 of the Violent Crime Reduction Act 2006 extends the mandatory minimum sentence to the following offences committed on or after 6 April 2007, where the firearm used is a prohibited weapon that itself attracts a Mandatory Minimum Sentence:

1. Section 16 Firearms Act 1968 (possession of firearm with intent to injure);
2. Section 16A Firearms Act 1968 (possession of firearm with intent to cause fear of violence);
3. Section 17 Firearms Act 1968 (use of firearm to resist arrest);
4. Section 18 Firearms Act 1968 (carrying firearm with criminal intent);
5. Section 19 Firearms Act 1968 (carrying a firearm in a public place);
6. Section 20(1) Firearms Act 1968 (trespassing in a building with a firearm);  
and
7. Section 28 Violent Crime Reduction Act 2006 (using another person to mind a dangerous weapon).

Section 29 Violent Crime Reduction Act 2006 sets out the penalties for offences under section 28, which differ according to the nature of the "dangerous weapon". Where the weapon is a prohibited weapon mentioned in section 5(1) (a) to (af), (c) and 5(1A)(a) of the Firearms Act 1968, the maximum sentence is 10 years' imprisonment for a person aged 16 or over at the time of the offence (section 28 (3)). In such cases, there is also a mandatory minimum sentence of:

1. 3 years' detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 where the offender is aged 16 or 17 at the time of the offence and under 18 at the date of conviction (section 29(3) b) and section 29(6));

2. 5 years' imprisonment for offenders aged 18 or over at the time of conviction. Section 29 (5) makes express provision for offenders aged 18 to 20 inclusive to receive the mandatory sentence, by requiring a reference to a sentence of imprisonment to include a sentence of detention in a young offender institute.

Where the weapon is a firearm, the maximum sentence on conviction is 5 years' imprisonment or a fine or both (section 29 (10)).

It shall be an aggravating feature where a person aged 18 or over uses a person under 18 to mind the weapon, and such a finding must be stated in open court as an aggravating feature, section 29(11) and section 29(12).

## Table of Punishments for Firearms Offences

### Section of the Firearms Act 1968 creating the offence:

#### *Section 1(1)*

General nature of offence: Possessing etc. firearm or ammunition without certificate.

Mode of Trial: Triable Either Way.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment (i) Where the offence is committed in an aggravated form within the meaning of section 4(4) of this Act, 7 years, or a fine; or both. [Applies to Scotland only.] (ii) In any other case, 5 years or a fine; or both.

#### *Section 1(2)*

General nature of offence: Non-compliance with condition of firearm certificate.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

#### *Section 2(1)*

General nature of offence: Possessing, etc. shot gun without shot gun certificate.

Mode of Trial: Triable Either Way.

Punishment: (a) Summary 6 months or the statutory maximum; or both [Applies to Scotland only.] (b) On indictment 5 years or a fine; or both.

### *Section 2(2)*

General nature of offence: Non-compliance with condition of shot gun certificate.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both [Applies to Scotland only.]

### *Section 3(1)*

General nature of offence: Trading in firearms without being registered as firearms dealer.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment 5 years or a fine; or both.

### *Section 3(2)*

General nature of offence: Selling firearm to person without a certificate.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment. 5 years or a fine; or both.

### *Section 3(3)*

General nature of offence: Repairing, testing etc. firearm for person without a certificate.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment 5 years or a fine; or both.

### *Section 3(5)*

General nature of offence: Falsifying certificate, etc. with view to acquisition of firearm.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment 5 years or a fine; or both.

### *Section 3(6)*

General nature of offence: Pawnbroker taking firearm in pawn.

Mode of Trial: Summary Only.

Punishment: Summary 3 months or a fine of level 3 on the standard scale; or both.

### *Section 4(1)(3)*

General nature of offence: Shortening a shot gun; conversion of firearms.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment 7 years or a fine; or both.

### *Section 5(1) and 5(1A)(a) but not Section 5(1)(b) see below*

General nature of offence: Possessing or distributing prohibited weapons or ammunition.

Mode of Trial: Indictable Only.

Punishment: On indictment 10 years or a fine; or both.

Additional provisions: Mandatory Minimum Sentence applies.

### *Section 5(1A) but not 5(1A)(a) see above*

General nature of offence: Possessing or distributing other prohibited weapons or ammunition.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the statutory maximum; or both. (b) On indictment 10 years or a fine; or both.

Additional provisions: Not subject to Mandatory Minimum Sentence.

### *Section 5(1)(b)*

General nature of offence: Possession or distributing a weapon capable of discharging a noxious thing.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the statutory maximum; or both. (b) On indictment 10 years or a fine; or both.

Additional provisions: Not subject to Mandatory Minimum Sentence.

### *Section 5(5)*

General nature of offence: Non-compliance with condition of Defence Council authority.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 5(6)*

General nature of offence: Non-compliance with requirement to surrender authority to possess, etc. prohibited weapon or ammunition.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

### *Section 6(3)*

General nature of offence: Contravention of order under section 6 (or corresponding Northern Irish order) restricting removal of arms.

Mode of Trial: Summary Only.

Punishment: Summary 3 months or, for each firearm or parcel of ammunition in respect of which the offence is committed, a fine of level 3 on the standard scale; or both.

Additional provisions: Para. 2 of part II of this schedule applies.

### *Section 7(2)*

General nature of offence: Making false statement in order to obtain police permit.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 9(3)*

General nature of offence: Making false statement in order to obtain permit for auction of firearms etc.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine not exceeding level 5 on the standard scale; or both.

### *Section 13(2)*

General nature of offence: Making false statement in order to obtain permit for removal of signalling apparatus.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale or both.

### *Section 16*

General nature of offence: Possession of firearm with intent to endanger life or injure property.

Mode of Trial: Indictable Only.

Punishment: On indictment Life imprisonment or a fine; or both.

Additional provisions: May be subject to Mandatory Minimum Sentence see section 30 VCRA 2006.

### *Section 16A*

General nature of offence: Possession of firearm or imitation firearm with intent to cause fear of violence.

Mode of Trial: Indictable Only.

Punishment: On indictment 10 years or a fine, or both.

Additional provisions: May be subject to Mandatory Minimum Sentence see section 30 VCRA 2006.

### *Section 17(1)*

General nature of offence: Use of firearm or imitation firearm to resist arrest.

Mode of Trial: Indictable Only.

Punishment: On indictment Life imprisonment or a fine; or both. Paras 3 to 5 of part II of this schedule apply.

Additional provisions: May be subject to Mandatory Minimum Sentence see section 30 VCRA 2006.

### *Section 17(2)*

General nature of offence: Possessing firearm or imitation firearm while committing an offence in schedule 1 or, in Scotland, an offence specified in schedule 2.

Mode of Trial: Indictable Only.

Punishment: On indictment Life imprisonment or a fine; or both.

Additional provisions: Paras 3 and 6 of part II of this schedule apply. May be subject to Mandatory Minimum Sentence see section 30 VCRA 2006.

### *Section 18(1)*

General nature of offence: Carrying firearm or imitation firearm with intent to commit indictable offence (or, in Scotland, an offence specified in schedule 2) or to resist arrest.

Mode of Trial: Indictable Only.

Punishment: On indictment Life imprisonment or a fine; or both.

Additional provisions: May be subject to Mandatory Minimum Sentence see section 30 VCRA 2006.

### *Section 19*

General nature of offence: Carrying firearm in public place.

Mode of Trial: Tribale Either Way or Summary Only.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment (but not if the firearm is an air weapon or imitation). 7 years or a fine; or both.

If the firearm is an air weapon or imitation. For shotgun or other firearm. NB on or after 1 October 2007 imitation firearms are TEW with 12 months on indictment.

Additional provisions: May be subject to Mandatory Minimum Sentence see section 30 VCRA 2006.

### *Section 20(1)*

General nature of offence: Trespassing with firearm or imitation firearm in a building.

Mode of Trial – Tribale Either Way or Summary Only.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both.

Imitations and air weapons (b) On indictment (but not in the case of an imitation firearm or if the firearm is an air weapon). 7 years or a fine; or both.

Additional provisions: May be subject to Mandatory Minimum Sentence see section 30 VCRA 2006.

### *Section 20(2)*

General nature of offence: Trespassing with firearm or imitation firearm on land.

Mode of Trial: Summary Only.

Punishment: Summary 3 months or a fine of level 4 on the standard scale; or both.

### *Section 21(4)*

General nature of offence: Contravention of provisions denying firearms to ex-prisoners and the like.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment 5 years or a fine; or both.

### *Section 21(5)*

General nature of offence: Supplying firearms to person denied them under section 21.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the prescribed sum; or both. (b) On indictment 5 years or a fine; or both.

### *Section 22(1)*

General nature of offence: Person under 17 acquiring firearm (18 from 1 October 2007).

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 22(1A)*

General nature of offence: Person under 18 using certificated firearm for unauthorised purpose.

Mode of Trial: Summary Only.

Punishment: Summary 3 months or a fine of level 5 on the standard scale; or both.

### *Section 22(2)*

General nature of offence: Person under 14 having firearm in his possession without lawful authority.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 22(3)*

General nature of offence: Person under 15 having with him a shot gun without adult supervision.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

Additional provisions: Para. 8 of part II of this schedule applies.

### *Section 22(4)*

General nature of offence: Person under 14 having with him an air weapon or ammunition.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

Paras 7 and 8 of part II of this schedule apply.

### *Section 22(5)*

General nature of offence: Person under 17 having with him an air weapon in a public place (18 from 1 October 2007).

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

Additional provisions: Paras 7 and 8 of part II of this schedule apply.

### *Section 23(1)*

General nature of offence: Person under 14 making improper use of air weapon when under supervision person supervising him permitting such use.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

Additional provisions: Paras 7 and 8 of part II of this schedule apply.

### *Section 24(1)*

General nature of offence: Selling or letting on hire a firearm to person under 17 (18 from 1 October 2007).

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 24(2)*

General nature of offence: Supplying firearm or ammunition (being of a kind to which section 1 of this Act applies) to person under 14.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 24(3)*

General nature of offence: Making gift of shot gun to person under 15.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

Additional provisions: Para. 9 of part II of this schedule applies.

### *Section 24(4)*

General nature of offence: Supplying air weapon to person under 14.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

Additional provisions: Paras 7 and 8 of part II of this schedule apply.

### *Section 25*

General nature of offence: Supplying firearm to person drunk or insane.

Mode of Trial: Summary Only.

Punishment: Summary 3 months or a fine of level 3 on the standard scale; or both.

### *Section 26(5)*

General nature of offence: Making false statement in order to procure grant or renewal of a firearm or shot gun certificate.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 29(3)*

General nature of offence: Making false statement in order to procure variation of a firearm certificate.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 30D(3)*

General nature of offence: Failing to surrender certificate on revocation.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

### *Section 32B(5)*

General nature of offence: Failure to surrender expired European firearms pass.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

### *Section 32C(6)*

General nature of offence: Failure to produce European Firearms Pass or Article 7 authority for variation or cancellation etc.; failure to notify loss or theft of firearm identified in Pass or to produce Pass for endorsement.

Mode of Trial: Summary Only.

Punishment: Summary 3 months or a fine of level 5 on the standard scale; or both.

### *Section 38(8)*

General nature of offence: Failure to surrender certificate of registration [or register of transactions] on removal of firearms dealer's name from register.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

### *Section 39(1)*

General nature of offence: Making false statement in order to secure registration or entry in register of a place of business.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 39(2)*

General nature of offence: Registered firearms dealer having place of business not entered in the register.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 39(3)*

General nature of offence: Non-compliance with condition of registration.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 40(5)*

General nature of offence: Non-compliance by firearms dealer with provisions as to register of transactions; making false entry in register.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 42A*

General nature of offence: Failure to report transaction authorised by visitor's shot gun permit.

Mode of Trial: Summary Only.

Punishment: Summary 3 months or a fine of level 5 on the standard scale; or both.

### *Section 46*

General nature of offence: Obstructing constable or civilian officer in exercise of search powers.

Mode of Trial: Summary Only.

Punishment: Summary 6 months or a fine of level 5 on the standard scale; or both.

### *Section 47(2)*

General nature of offence: Failure to hand over firearm or ammunition on demand by constable.

Mode of Trial: Summary Only.

Punishment: Summary 3 months, or a fine of level 4 on the standard scale; or both.

### *Section 48(3)*

General nature of offence: Failure to comply with requirement of a constable that a person shall declare his name and address.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

### *Section 48A(4)*

General nature of offence: Failure to produce firearms pass issued in another Member State.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

### *Section 49(3)*

General nature of offence: Failure to give constable facilities for examination of firearms in transit, or to produce papers.

Mode of Trial: Summary Only.

Punishment: Summary 3 months or, for each firearm or parcel of ammunition in respect of which the offence is committed, a fine of level 3 on the standard scale; or both.

Additional provisions: Para. 2 of part II of this schedule applies.

### *Section 52(2)(c)*

General nature of offence: Failure to surrender firearm or shot gun certificate cancelled by court on conviction.

Mode of Trial: Summary Only.

Punishment: Summary A fine of level 3 on the standard scale.

## **Section 28 Violent Crime Reduction Act 2006 Minding Weapons:**

General nature of offence: Minding weapons.

Mode of Trial: Tribale Either Way.

Punishment: (a) Summary 6 months or a fine of the statutory maximum; or both.  
(b) On indictment 10 years or a fine; or both.

Additional provisions: May be subject to Mandatory Minimum Sentence see section 29 VCRA 2006.

## **Use of Weapons and Assaults**

Generally, for sentences in which firearms are used, the aggravated feature should be marked by a consecutive sentence, subject to regard being had to the totality

of the sentence then passed, R v McGrath (Sean David) (1986) 8 Cr. App. R. (S.) 372.

However, where the use of a firearm led onto the primary offence, which could not be separated from the firearms offence (for instance where the weapon actually seriously harms or kills another person, then separate and consecutive sentences become artificial. R v Johnson [2005] EWCA Crim 2281.

## Forfeiture on Conviction

Power to order forfeiture in certain circumstances is contained in section 52 (Archbold 24.83). Refer to the Ancillary Orders toolkit for further guidance.

**The weapon may be of use to Force Armourers and Forensic Service Providers. Therefore unless the Police specify otherwise destruction of the weapon should not be routinely requested.**

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## Violent Crime Reduction Act 2006 (Commencement No3) Order 2007: Firearms Measures

Home Office Circular 12/2007 advised of the commencement on 6 April 2007 of certain firearms provisions in Part 2 of Violent Crime Reduction Act 2006. This circular, which has been drawn up in consultation with ACPO's Firearms & Explosives Licensing Working Group and with ACPO Scotland, advises of the commencement on 1 October 2007 of the remaining firearms provisions in that Act. The relevant commencement orders can be downloaded from the following links: