

# **FIREARMS SCOPING CONSULTATION PAPER – EXECUTIVE SUMMARY**

## **INTRODUCTION**

- 1.1 This is a summary of our scoping consultation paper on firearms law. This introduction provides an overview of the scoping consultation paper and sets out the parameters of the project. This summary is for readers with no specialist legal knowledge.

### **The project**

- 1.2 When consulting on the contents of the Law Commission's 12<sup>th</sup> Programme of Law Reform, a number of respondents suggested that the law governing the use and acquisition of firearms was deeply problematic and in need to reform. This suggestion came from both the police and law enforcement agencies in addition to organisations representing the licensed firearms community.

### **Background**

- 1.3 The law regulating the use and acquisition of firearms is contained primarily within the Firearms Act 1968. Further provisions, however, are to be found in an additional 33 Acts of Parliament. In total therefore, to understand fully the law on firearms it is necessary to have regard to 34 Acts of Parliament. In addition to these, the law is to be found in numerous pieces of secondary legislation. These are not Acts of Parliament, but provisions enacted by the Secretary of State in accordance with powers conferred by statute.
- 1.4 The current law has been subject to a great deal of criticism, in particular because:
- (1) there is a lack of coherence between the 34 different 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) the law is so complex that even those who deal with it every day struggle to understand aspects of it.
- 1.5 We believe that public confidence in the criminal justice system may be undermined when defendants walk free because the statutes intended to criminalise their behaviour are not fit for purpose 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 laws that are difficult even for experts to understand fully.

- 1.6 To remedy these shortcomings with the law and thereby minimise these adverse consequences, the Law Commission is asking consultees for their views on a range of options for reforming the most pressing problems stakeholders have brought to our attention.

### **The Purpose of the Paper**

- 1.7 The Scoping Consultation Paper has two aims. Chapters 2 to 6 of the paper examine those problems which a range of stakeholders agreed cause particular difficulty and undermine public safety to varying degrees. In these chapters we propose some immediate solutions to these pressing problems. Chapters 7 and 8 examine whether more fundamental reform of the law is necessary. The immediate solutions we propose in chapters 2-6 ought to be implemented at the first opportunity, but this should be followed by a more fundamental review of the law.
- 1.8 After initial meetings with stakeholders, there was wide agreement that the following issues with 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 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.

### **LETHALITY**

- 1.9 Section 57(1) of the Firearms Act 1968 defines a firearm as a 'lethal barreled weapon'. Lethality is therefore crucial in ascertaining whether something is a firearm or not.<sup>1</sup> The legislation does not, however, specify what lethal means and how lethality ought to be determined in this context. The interpretation of this word has been left to the courts and they have demonstrated a marked reluctance to specify with any degree of certainty how lethality ought to be determined.

### **Judicial approach**

- 1.10 In *Read v Donovan*<sup>2</sup> the Lord Chief Justice stated that when determining whether something was lethal, the question was whether the weapon in question 'was capable of inflicting harm'. This is a very low threshold.

<sup>1</sup> By virtue of section 1 of the Firearms Act 1968, firearms must be held on a firearm certificate. If the firearm is a prohibited weapon as listed in section 5 of the Firearms Act 1968, the authority of the Secretary of State must be obtained before it can lawfully be possessed.

<sup>2</sup> [1947] KB 326, [1947] 1 All ER 37.

- 1.11 In the subsequent case of *Moore v Gooderham*,<sup>3</sup> Lord Parker CJ stated that what matters is whether the weapon could cause injury from which death may result. In that case, the weapon in question was capable of firing a pellet that could penetrate the eye. This was sufficient for the weapon to be lethal and therefore a firearm for the purposes of the law.
- 1.12 There is an important difference between these two cases. In *Moore v Gooderham* to determine whether a weapon was lethal, the issue was whether it could cause injury *from which death could occur*. In *Read v Donovan*, the question was simply whether the weapon in question was capable of inflicting harm.
- 1.13 The two cases in the last paragraph were decided prior to the enactment of the Firearms Act 1968. More recently, in *Thorpe* the court accepted that in order to determine whether a weapon is lethal it is necessary to ask whether it is capable of causing injury from which death might result.<sup>4</sup> In *Castle* the Divisional Court accepted that an air weapon with a muzzle kinetic energy of 0.5 ft lbs (0.68 joules) was not lethal and was therefore not a firearm.<sup>5</sup>
- 1.14 These cases demonstrate that despite the fact the courts have examined what lethal means in the context of the Firearms Act 1968, there is still a great deal of uncertainty.

### **The science**

- 1.15 One of the criteria forensic scientists use to determine whether a weapon is lethal is muzzle kinetic energy. This metric provides an indication of the overall power of a missile as it leaves the barrel of a firearm and, as a result, an indication of the weapon's potential to wound. Muzzle kinetic energy is expressed in a unit of measurement known as a joule.

### **Problems caused by the failure to specify a threshold of lethality**

- 1.16 Stakeholders suggest that the failure to specify a precise lethality threshold causes difficulties in practice. In most cases it will be clear whether a weapon is lethal and therefore a firearm. Difficulties arise in two scenarios, however. First, in relation to low-powered air weapons<sup>6</sup> and secondly in relation to poorly converted imitation firearms.

<sup>3</sup> [1960] 1 WLR 1308, [1960] 3 All ER 575.

<sup>4</sup> [1987] 1 WLR 1308.

<sup>5</sup> (1998) CO/3791/97.

<sup>6</sup> The term air weapon is undefined. An air weapon discharges a projectile using compressed gas or by use of a gas spring. These are lawful to possess without a firearm certificate, provided they are below a certain muzzle kinetic energy.

- 1.17 In relation to a low-powered air weapon, it may be unclear whether it is lethal and therefore subject to the provisions of the Firearms Act 1968. For example, section 16 makes it an offence to possess a firearm with intent to cause injury. Difficulty arises in determining whether it is possible to commit this offence if an individual is in possession of a low-powered air weapon. This is because it may not be clear whether it is 'lethal' and therefore a firearm for the purposes of the legislation given that it may be so low powered that there could be disagreement over its potential to inflict any injury.
- 1.18 In relation to poorly converted imitation firearms, an individual may have attempted to convert an imitation firearm into a live firearm. This may not have been entirely successful and whilst the weapon is now capable of discharging a projectile, it may be able to do so with little force. Once again, the issue is whether the weapon is lethal and therefore a firearm. If so, an individual who is unlawfully<sup>7</sup> in possession of it would be guilty of a very serious offence, potentially carrying a mandatory minimum sentence of five years' imprisonment.<sup>8</sup>
- 1.19 Without obtaining expensive expert evidence and going to court, it is impossible to know whether items such as these are considered by the law as firearms. This has a negative impact upon the licensed firearms given that community in addition to making charging decisions more complex for the CPS and investigations more difficult for the police. This is because both groups may not be able to tell whether something falls within the legislation.

#### **Possible solutions**

- 1.20 There are a number of methods of remedying the legislation's failure to specify how lethality ought to be determined.

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

- 1.21 A radical approach would be to remove the reference to lethality altogether. This is the approach adopted in New South Wales, to take one example. The issue, however, is that if a firearm was not defined with reference to lethality then toys may inadvertently be considered as firearms under the law. This would be undesirable for obvious reasons.
- 1.22 A similar approach would be to remove the reference to lethality and replace it with reference to a muzzle kinetic energy. By way of example, the Air Weapons and Licensing (Scotland) Act 2015 provides that 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.
- 1.23 Given that the definition of 'firearm' has remained unchanged for decades, we have taken the view that replacing the concept of "lethality" in the Act would be too radical in the context of this scoping exercise. It is something that could be considered in a redrafting exercise were the law to be codified in the future, as we suggest below.

<sup>7</sup> This would be the case if he or she did not have a firearm certificate.

<sup>8</sup> Certain offences within the Firearms Act 1968 carry mandatory minimum 5 year sentences of imprisonment.

- 1.24 A short term solution that would be just as effective, although admittedly less elegant, would be to specify a threshold above which a firearm would be deemed to be lethal.

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

- 1.25 In its Eleventh Annual Report, the Firearms Consultative Committee set out to establish a minimum realistic injury from which death might result as a consequence of a shot being fired at a vulnerable part of the body. The FCC concluded that the lethality threshold should be set at 1 joule. 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.<sup>9</sup>
- 1.26 Defining “lethal” with reference to muzzle energy has also been considered appropriate by both the Forensic Science Service of Northern Ireland and the Home Office in its *Guide*.
- 1.27 Given the extensive research that has been carried out on this issue by these authoritative organisations, we provisionally propose the adoption of this approach.
- 1.28 In relation to what the muzzle energy ought to be, the FCC endorsed 1 joule. Other organisations have endorsed different thresholds, however. In 2011 ACPO, for example, commissioned research that concluded the threshold of lethality ought to be 1.3 joules for fully automatic firearms and 2.5 joules for single shot.
- 1.29 Given that there is disagreement on what the threshold of lethality ought to be, we are asking consultees for their views on what that threshold should be.
- 1.30 We do not believe this proposal would curtail the legitimate trade in air weapons. It would simply clarify which air weapons are subject to the provisions of the Firearms Act 1968. As a result of this proposal many low-powered air weapons would be considered ‘firearms’. This would mean they would have to be sold by Registered Firearms Dealers<sup>10</sup> on a face-to-face basis.<sup>11</sup> Such an obligation has already been imposed by virtue of sections 31 and 32 of the Violent Crime Reduction Act 2006, however.
- 1.31 Since certain obligations are already attached to the sale of these weapons by the Violent Crime Reduction Act 2006, there would be no additional restrictions arising from their being classified as firearms under the Firearms Act.” For this reason, we do not believe our proposal would place any additional burden upon legitimate users of air weapons.

<sup>9</sup> Available at <https://www.gov.uk/government/publications/firearms-consultative-committee-eleventh-annual-report> (last visited 17 July 2015). See paras 10.9-10.10 and annexes D and F.

<sup>10</sup> By virtue of section 3(1)(c) of the Firearms Act 1968 it is an offence for someone to sell or transfer an air weapon without being registered under the Act as a firearms dealer.

<sup>11</sup> i.e. the seller would have to hand over physical possession and ownership to the buyer in person.

- 1.32 In relation to airsoft guns, however, there is the potential for greater impact.<sup>12</sup> Evidence from stakeholders suggests that sales of airsoft guns tend to take place by post. If these were brought within the legislative regime, they would have to be sold on a face-to-face basis. It is for this reason we are consulting on whether there ought to be an exemption that would mean the sale of airsoft guns could continue to take place remotely.

## COMPONENT PARTS

### Introduction

- 1.33 Section 57(1)(b) of the Firearms Act 1968 states that the term firearm includes 'any component part of such a lethal or prohibited weapon'. The effect of this provision is to subject the 'component parts' of a firearm to whatever level of control the firearm they are part of is subject to. Therefore if you need a certificate to possess a particular weapon you also need a certificate to possess a component part of it and an import licence to import it, depending upon the nature of the component in question.
- 1.34 The issue, however, is that the legislation fails to define the term 'component part'. This omission causes considerable difficulties in practice.

### The interpretation given by the courts

- 1.35 In the absence of a legislative definition, it has been left to the courts to search for a definition of component part. In *R v Secretary of State for the Home Department, ex parte Impower Ltd* Mr Justice Jowitt held that the words are 'ordinary English words'.<sup>13</sup> The implication of this is that the term is a question of fact for the jury. Rather than being something for the judge to decide, this is for the jury to decide. This was made clear in the subsequent case of *Rogers*.
- 1.36 One issue that has arisen recently is whether an item that may be from a deactivated firearm can be a component part for the purposes of the legislation. In *Ashton* Lord Justice Latham held that it was immaterial that the item may have been from a deactivated firearm.<sup>14</sup> The crucial question is whether the item in question remains capable of fulfilling its intended function as part of a working firearm. The approach in the subsequent case of *Bewley* contradicts this. In that case it was held that unless the weapon is a firearm for the purposes of the legislation, then no part of it could be either.<sup>15</sup> In this case, therefore, the emphasis was placed not on the part itself, but on the firearm from which it was taken.

<sup>12</sup> Airsoft is an activity employing low-powered air weapons for 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.

<sup>13</sup> CO/539/98.

<sup>14</sup> [2007] EWCA Crim 3485.

<sup>15</sup> [2012] EWCA Crim 1457, [2013] 1 WLR 137.

- 1.37 There is therefore inconsistency in the case law on whether an item from a deactivated firearm can be a component part. This is crucial, as a defendant's guilt or innocence could turn on this. This is in addition to the fact there is a lack of guidance on what that term actually means.

### **Problems**

- 1.38 Evidence from stakeholders suggests the failure to define component part causes difficulties in practice. These will be elaborated upon below.
- 1.39 The police and investigative authorities may be unable to tell whether an item in a suspect's possession is a component part and therefore unlawful to possess without the requisite certification. This also causes the CPS difficulties. Additionally, the border authorities may be unable to tell whether something that is intercepted at the border is lawful to import without first obtaining an import license. Members of the licensed firearms community may be unable to know whether they need the item in question entered onto their firearm certificate. Finally, RFDs may be unable to sell certain items safe in the knowledge they are can lawfully be sold without first checking whether the buyer has the item entered onto his or her firearm certificate.

### **Solutions**

- 1.40 In seeking a definition of component part, the goals are to enhance clarity and certainty whilst also maximising public safety by ensuring that those parts with the potential for criminal misuse are tightly controlled.

#### **(1) Listing component parts**

- 1.41 One solution would be to list in statute those parts of a firearm that would be considered 'component parts' for the purposes of section 57(1)(b). The Home Office *Guide on Firearms Licensing Law*<sup>16</sup> lists the following as being component parts:
- (1) The barrel, chamber, cylinder.
  - (2) Frame, body or receiver.
  - (3) Breech, block, bolt or other mechanism for containing the charge at the rear of the chamber.
  - (4) Any other part of the firearm upon which the pressure caused by firing the weapon impinges directly.<sup>17</sup>
- 1.42 In its Ninth Report, the FCC adopted a similar approach. To ensure any list remained flexible enough to deal with new or unusual designs, the FCC recommended the Secretary of State be given the power to amend it by way of order. This means the Secretary of State could amend the list without the need for an Act of Parliament.

<sup>16</sup> This does not have the force of law, however.

<sup>17</sup> *Home Office Guide*, paras 13.73 – 13.76.

- 1.43 The success of this approach would depend on what items are included in the list. In addressing this question it would be necessary not to overburden the police and licensed firearms community by requiring every washer and screw to be held on certificate whilst also maximising public safety by ensuring that those items which can be criminally misused are subject to control. The FCC achieved this balance by defining 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.

**(2) 'Pressure-bearing' part**

- 1.44 A second option is the one adopted in the FCC's Tenth Report. In this report, the FCC defined component part with reference to whether it is a 'pressure bearing part'.<sup>18</sup> To clarify, this approach asks whether the part in question is impacted directly by the pressure produced when the weapon is fired.
- 1.45 This approach could, however, pose a number of difficulties. First, there is the issue of how much pressure must impact upon the part in question before it could be considered 'pressure-bearing'. Secondly, there may be parts that are not pressure bearing but which nevertheless ought to be subject to control due to their potential for criminal misuse.

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

- 1.46 A third option would be to define component part with reference to whether it is an item without which the thing in question could not operate as a lethal barreled weapon.<sup>19</sup> This would bring, for example, firing pins within the definition of component part.
- 1.47 This approach could, however, be considered over inclusive in that it has the potential to make screws and washers subject to control. There might also be disagreement over whether the firearm would be incapable of functioning as a lethal barreled weapon in the absence of the part in question.

**The merits of these approaches**

- 1.48 On balance, we have taken the view that the approach advocated by the FCC in its Ninth Report, namely listing parts that would be considered component parts, is the most desirable as it maximises both certainty and clarity. It is also relatively easy to comprehend. The term '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.

<sup>18</sup> *Tenth Report of the Firearms Consultative Committee*, para 13.9.

<sup>19</sup> See L Saunbury and N Doherty, *The British Firearms Law Handbook* (2011).



- 1.49 We believe that including a catch all provision based upon whether the part is pressure bearing would undermine certainty and have therefore omitted (4) from the FCC's list.
- 1.50 To deal with any inconsistency between *Ashton* and *Bewley* we provisionally propose the law should also specify that the focus of the enquiry should be on whether the part is capable of fulfilling its function as part of a working firearm, rather than on whether the weapon from which it may have been taken is a firearm within the terms of section 57 of the Firearms Act 1968. This would put beyond doubt that what is decisive is whether the part remains capable of fulfilling its function rather than on the weapon from which the part may have been taken.
- 1.51 To ensure the list is flexible and can take account of technological developments, we also propose that the Secretary of State be given the power to amend it by order.

### **Component Parts Of Shotguns**

- 1.52 Section 57 of the Firearms Act 1968 states that the component parts of shotguns are not deemed to be firearms for the purposes of the legislation. The component parts of shotguns are therefore not subject to the same level of control as the component parts of firearms. In its Ninth Report the FCC considered this 'anomalous'.<sup>20</sup> The Law Commission is therefore asking consultees for their views on whether the law ought to classify the component parts of shotguns in the same way it classifies the component parts of firearms and if so in what terms.

### **ANTIQUES**

- 1.53 Section 58(2) states that 'Nothing in this Act relating to firearms shall apply to an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament'. The practical effect of this provision is to exempt antique firearms from the legislation. This means, for example, that it is lawful to possess, sell or import an antique firearm without any form of certification, so long as it is sold, transferred etc. as a curiosity or ornament.
- 1.54 The problem, however, is that the legislation fails to define 'antique firearm' and "curiosity or ornament". This section sets out the problems caused by the legislation's failure to specify what these terms mean and asks for consultees' views on a range of options for reform.

<sup>20</sup> *Ninth Report of the Firearms Consultative Committee, Annex C, para 10.*

## **The current law**

### ***The interpretation of the courts***

- 1.55 Section 58(2) exempts antique firearms from the provisions of the Act so long as they are sold, transferred etc. as a curiosity or ornament. As has already been pointed out, the legislation does not define any of these terms. In the absence of a statutory definition, it has been left to the courts to define these terms. There is a lack of certainty as to what features a firearm must have before it can be considered to be an antique for the purposes of section 58(2).
- 1.56 In *Howells* the court did not provide a definition.<sup>21</sup> It did decide, however, that it is no defence for an individual genuinely to believe the firearm to be an antique. This has the potential to be very unfair.
- 1.57 In the subsequent case of *Richards v Curwen*, the defendant was in possession of two pistols that were no more than 85 years old.<sup>22</sup> The magistrates found that these were not antique and he was convicted of three counts of being in possession of a firearm without a certificate. The court rejected the argument that the court ought to provide a definition of antique. It was held that providing a definition would be inappropriate given that Parliament had failed to do so.
- 1.58 A similar approach was taken in *Bennett v Brown*<sup>23</sup> and *Thompson*.<sup>24</sup> In neither of these cases did the court set out criteria that ought to be invoked to determine whether a firearm was an antique. The law has progressed on a case by case basis and depends upon how the jury understands the term 'antique'. For example, in *Kevin Schofield* the jury accepted that a Lanchester sub-machine gun made in 1940 was an antique and was possessed as a curiosity or ornament.<sup>25</sup>
- 1.59 What is clear is that it is uncertain which characteristics a firearm must have before it can be considered antique. Is age determinative or should the focus be on whether the firearm in question is capable of being used?

### **The Home Office Guide**

- 1.60 In its *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 that ought to be considered antiques and those that ought not to. What is determinative is not age, but whether ammunition for the firearm in question is readily available. Those firearms for which ammunition is no longer readily available are known as 'obsolete calibre' firearms.

<sup>21</sup> [1977] QB 614.

<sup>22</sup> [1977] 1 WLR 747.

<sup>23</sup> (1980) 71 Cr App R 109.

<sup>24</sup> CO/1572/94.

<sup>25</sup> Bournemouth Crown Court, 5 October 2006.

- 1.61 This is guidance not law, however. It is possible that a firearm on the obsolete calibre list could nevertheless be found by a jury not to be an antique. The opposite is also true. This leads to potential unfairness and is detrimental to both legitimate collectors in addition to the investigative authorities and the CPS. Despite good faith efforts to comply with the law, a collector could nevertheless fall foul of it. The CPS will be unable to know for certain whether a suspect is in possession of something it is unlawful for them to possess.
- 1.62 To add further confusion, the United Nations Vienna Firearms Protocol provides that in no case shall antique firearms include firearms manufactured after 1899.

#### **Firearms of historic interest**

- 1.63 Section 58(2) of the Firearms Act 1968 is not the only provision dealing with old firearms. 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 with the authority of the Secretary of State. Section 7 contains an exception for certain types of historic firearms, provided specific conditions are met. Although firearms falling into this category can be possessed lawfully without the authority of the Secretary of State, they must be entered onto a firearm certificate.
- 1.64 Section 7(1) exempts those firearms that were manufactured prior to 1919 and for which ammunition is not readily available. Section 7(3) exempts those firearms that are (a) of particular rarity, aesthetic value or technical interests or (b) are of 'historic importance'. Section 7(4) clarifies that these exemptions have effect without prejudice to section 58(2). Section 7 therefore coexists alongside section 58(2).
- 1.65 It could be argued that the coexistence of these provisions is illogical. For example, a firearm manufactured after 1919 could not fall within section 7(1). Even if it could, it would only be lawful to possess if held on a firearm certificate. Despite the fact the firearm in question cannot take advantage of this narrow exemption, it could still fall within the scope of section 58(2). If so, it would be lawful to possess without any form of certification or control at all.

#### **Problems with the current law**

- 1.66 Section 58(2) is overwhelmingly relied upon by those with a legitimate interest in antique firearms. Nevertheless, there is evidence to suggest the exemption is being exploited by those with criminal intent. Recent legislative amendments have recognised this. As a result of section 110 of the Anti-social Behaviour, Crime and Policing Act 2014 antique firearms were brought within the scope of the prohibited person provisions for the first time.
- 1.67 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.

1.68 The current state of the law poses the following difficulties:

- (1) **The breadth of the exception means the law is failing to prevent easy acquisition and possession by those with criminal intent** – From January 2011 to December 2014 at least 94 firearms were examined at the Metropolitan Police Forensic Firearms Unit that were of a calibre considered obsolete by the Home Office. All these recoveries were made in criminal circumstances i.e. none were surrendered. Two had been found to have been used in shooting incidents, one involving a police officer who was shot through the hand. From examination of fired bullets recovered from the scene of shooting incidents in the Metropolitan Police District, the use of an obsolete calibre firearm was indicated in 31 shooting incidents that occurred between 1 January 2011 and 31 December 2014, including 3 fatal shootings. It is important to point out that because these firearms were never recovered, it is impossible to rule out firearms of more modern manufacture.
- (2) **Investigative difficulties** – the police cannot know whether an individual is committing an offence at the point of sale. Everything turns on whether an individual intends the thing to be a curiosity or ornament. This means the police have to rely upon sensitive evidence gathering methods, which are resource intensive and can be intrusive.
- (3) **Problems for legitimate collectors** – strictly speaking, as a matter of law, someone who acquires a firearm he or she honestly believes to be an antique cannot conclusively know whether the firearm in his or her possession is in fact an antique until he or she has been prosecuted and a jury has delivered its verdict. Additionally, the National Target Shotgun Association has said 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 considered to be an antique in one area but defined as a firearm in another area’.
- (4) **Increased need for expert evidence** – as it is a question of fact for the jury, expert evidence is needed to assist jurors in deciding whether the firearm in question is an antique. The issue is that different experts may have different meanings of the term. For example, the prosecution expert may be addressing the issue of whether the firearm is obsolete, whilst the defence expert could be addressing the question of whether it is at least 100 years old. This makes trials very confusing for juries and leads to inconsistent outcomes.

### **Possible solutions**

1.69 The Law Commission is asking consultees for their views on the suitability of a number of ways ‘antique’ could be interpreted. The fundamental principle in seeking to define antique is maximising the protection of the public. By remedying the uncertainty that is currently a feature of the law, legitimate collectors of antique firearms will also be able to feel confident they are complying with the law and do not inadvertently fall foul of it. The aim is not to criminalise collectors, but to ensure the exemption for antique firearms is not exploited by those with criminal intent.

- 1.70 Broadly speaking, these solutions can be divided into two categories. There are those that define antique with reference to age and those that do so with reference to functionality.

#### **A rolling 100 year definition**

- 1.71 One solution is to ask whether the firearm in question is 100 years old. If so, it would be an antique. Whilst this approach is superficially attractive due to its simplicity, we do not believe it is viable. First, it could be considered arbitrary to adopt a fixed year. Secondly, it can be difficult to ascertain how old a firearm is. Finally, there could be negative public safety ramifications. The basic design of firearms has remained unchanged for decades. Depending upon the type of firearm, one manufactured in 1915 could be identical in terms of functionality to one manufactured in 2015. The latter would be unlawful to possess without first obtaining the authority of the Secretary of State whilst the former could be freely held without any form of certification at all. Such a state of affairs would not be desirable. It is for this reason we have taken the view that the deciding factor for determining which firearms can benefit from the exemption in section 58(2) should be functionality. There are a number of ways functionality can be understood.

#### **Obsolete cartridge**

- 1.72 One option, based upon the obsolete calibre list in the Home Office *Guide*, is to ask whether the firearm is chambered for a cartridge contained on the obsolete calibre list. For this approach to be a viable one, the method for updating the list would need to be formalised. There are problems with this approach that would need to be addressed for it to be a viable one, however.

- (1) it is complex and requires significant time and expertise to determine whether any particular weapon 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.

#### **The 'Canadian approach'**

- 1.73 A second option is what we might call the 'Canadian approach'. This approach specifies those calibres that *cannot* be considered antique because they are modern.

### **Year of manufacture conclusive of functionality**

- 1.74 A third option is to specify that an antique firearm is any firearm manufactured before a certain year. The year would be determined with reference to it being before the introduction of modern ignition systems. Section 38(8) of the Violent Crime Reduction Act 2006 defines a 'modern firearm' as one that was manufactured after 1870. By implications is an antique firearm one that was manufactured before this year? The problem with this approach is that it can be difficult to ascertain when a firearm was manufactured.

### **Mechanism**

- 1.75 Finally, functionality could be determined with reference to whether the firearm uses an obsolete ignition system. This approach has been adopted in some other jurisdictions. For example, in Western Australia no certificate is required to possess a firearm with an 'antique firing mechanism'. This means, "a muzzle loading firearm (including a percussion lock handgun that is muzzle loading) manufactured before 1900 that uses black power to propel a shot, bullet, or other missile except that it does not include a breech loading firearm, a firearm with revolving chambers, or a cannon"
- 1.76 Whilst this approach would maximise certainty and clarity, it could significantly restrict those firearms that can benefit from the exemption in section 58(2). For that reason, it could be considered undesirable.
- 1.77 Due to the various considerations that must be taken into account in seeking to define antique firearm, we are inviting consultees for their views on the suitability of all of these options.

### **NON-DEFINITIONAL ISSUES**

- 1.78 Stakeholders have brought other issues to our attention that are not related to the definition of 'antique'.
- 1.79 The police have suggested it is irrational to impose greater obligations upon scrap metal dealers that those who sell firearms, albeit antique ones. 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 fund transfer. Additionally, by virtue of section 11 – 15 scrap metal dealers must record each transaction, the method of payment, and who the payment was made to.
- 1.80 No such obligation exists in the context of selling antique firearms. The police suggested that this makes it almost impossible to trace owners of antique firearms used in crime. This lack of traceability also makes antique firearms more attractive to those with criminal intent that might otherwise be the case. We provisionally propose imposing an obligation that any purchase of an antique firearm must be paid for by cheque or electronic fund transfer and any sale must be recorded.
- 1.81 Finally, on one interpretation of section 58(2) antique firearms are exempt from all the provisions of the Firearms Act 1968, not just those that relate to licensing. This means, for example, that it would not be an offence contrary to section 17 to use an antique firearm to resist arrest.

1.82 We believe that this is a discrepancy that ought to be closed and provisionally propose specifying that it is possible to commit the offences in sections 16 – 25 of the Firearms Act 1968 with an antique firearm. This proposal would only impact upon those with criminal intent. 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 them;
- (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

#### **DEACTIVATED FIREARMS**

1.83 Section 38(7) of the Violent Crime Reduction Act 2006 defines a deactivated firearm as ‘an imitation firearm that consists in something which was a firearm but has been rendered incapable of discharging a shot, bullet or other missile as no longer to be a firearm’. Given that it is not longer capable of discharging a missile, a deactivated firearm is strictly speaking not a firearm and therefore lawful to possess without any form of certification.

1.84 The UK has some of the most stringent deactivation standards in the world, but there is no legal requirement to comply with them.

#### **The current law**

1.85 The Firearms (Amendment) Act 1988 provides that a firearm is presumed to have been deactivated to a standard approved by the Secretary of State if it bears an approved mark for denoting that fact and one of the two Proof Houses has certified in writing that it has been deactivated to that standard. This means that, unless the contrary is proven, it is presumed to have been rendered incapable of firing a projectile and can lawfully be possessed without any form of certification.

1.86 The law does not state that a firearm must be deactivated in this way, however. It simply provides that a firearm that has undergone the process outlined in section 8 is presumed to have been deactivated. It is possible, therefore, that a court could accept that a firearm that had not undergone this process is nevertheless deactivated.

- 1.87 In 1989 the Home Office produced standards that a firearm must be deactivated to. These set out the physical changes that must be made to a firearm in order for it to take advantage of the presumption in section 8. These were revised in 1985 and 2010. The more recent standards are not retrospective. This means that a firearm deactivated to the 1989 standard is still considered a deactivated firearm.

#### **Problems with the current law**

- 1.88 As has already been explained, there is no legal obligation to follow the process set out in section 8 of the Firearms (Amendment) Act 1988. Deactivation is intended to be a permanent process. There is evidence to suggest, however, that some deactivated firearms can be reactivated and made to discharge a missile with lethal force. These are falling into criminal hands and are being used to commit offences. In its Tenth Report, the FCC stated that evidence suggests deactivated firearms can pose a risk to public safety. More recently, according to NaBIS, the proportion of criminal shootings involving reactivated firearms has risen in the past three years. Thirty per cent of these incidents resulted in injuries being sustained, including five fatalities. Finally, the European Commission has also recognised there exists a problem and will soon publish a paper outlining potential solutions that would be binding on all Member States.

#### **Solutions**

- 1.89 We believe there ought to be a legal obligation to follow the deactivation process set out in section 8 of the Firearms (Amendment) Act 1988. There are three possible ways of achieving this.
- (1) The definition of 'deactivated firearm in section 38(7) could be amended so that only those firearms that have been deactivated to a Home Office approved standard fall within the definition.
  - (2) Section 8 of the Firearm (Amendment) Act 1988 could be amended to state that it is no longer an evidential provision.
  - (3) The regulation making power in section 39 of the Violent Crime Reduction Act 2006 could be invoked.<sup>26</sup> This would make it an offence to manufacture, modify, or import a firearm not certified as being deactivated to a Home Office approved standard.
- 1.90 Each of these respective options has its own merits. For that reason we are asking consultees for their views on most appropriate approach.
- 1.91 If a weapon is incapable of discharging a missile, to classify it we suggest the focus of the enquiry ought to be whether it is a readily convertible imitation firearm. The benefit of this approach is that it ensures that a firearm that has been deactivated but could discharge a missile falls continues to be a firearm and is unlawful to possess. If a weapon can discharge a missile, the question would be whether it can do so with lethal force.

<sup>26</sup> This gives the Secretary of State the power to make regulations requiring imitation firearms to conform to specifications set out in regulations.



### **Attempts to reactivate a deactivated firearm – does the presumption still apply?**

- 1.92 It is possible that an individual could attempt to reactivate a firearm that has been certified as being deactivated to a Home Office approved standard. The question that arises is whether this renders the deactivation invalid or whether the firearm can still benefit from the presumption in section 8. The most recent deactivation standards issued by the Home Office in 2010 specify that this is the case. This assertion does not, however, have the force of law. To address this situation we provisionally propose that as a matter of law any attempt to modify a firearm that has been deactivated to a Home Office approved standard will render the deactivation invalid. The presumption that the item is not a firearm would therefore no longer apply.

### **Attempts to alter a firearm deactivated to a Home Office approved standard**

- 1.93 There is a specific offence in section 4(3) of the Firearms Act 1968 making it an offence 'for someone other than a registered firearms dealer to convert into a firearm anything which, although having the appearance of being a firearm, is constructed so as to be incapable of discharging a missile'. This wording is ambiguous, however. On one interpretation, it only applies if the weapon in question was *never* capable of discharging a missile. This is because it states that the item must have been *constructed* so as to be incapable of discharging a missile. Deactivated firearms, however, were once working firearms. The offence might therefore be too narrow to criminalise an attempt to reactivate something that once was a firearm. To avoid a gap in the law, we provisionally propose that section 4(3) be modified to put beyond doubt that it applies irrespective of whether the weapon in question began life as a working firearm.

### **Firearms deactivated in other jurisdictions**

- 1.94 Given that section 8 of the Firearms (Amendment) Act 1988 only applies to firearms that have a British proof mark, firearms deactivated in other countries cannot take advantage of the presumption. If a firearm is deactivated in another jurisdiction, guidance issued by the Department for Business, Innovations and Skills states that it will be considered to be a working firearm. Therefore it would be necessary to obtain an import licence and the requisite certification to import such a firearm.<sup>27</sup> The documentation required depends upon the type of firearm and where it originates from.

### **READILY CONVERTIBLE IMITATION FIREARMS**

- 1.95 Section 1 of the Firearms Act 1982 sets out the law relating to readily convertible imitation firearms. These are imitation firearms that may be adapted to enable them to discharge a missile.
- 1.96 Section 1 of the 1982 Act provides that an item with the following characteristics is deemed to be a firearm to which section 1 of the Firearms Act 1968 applies. That means that a firearm certificate (or the authority of the Secretary of State if a prohibited weapon) is necessary to possess the imitation when that would be required for the real thing. Those characteristics are:

<sup>27</sup> *Department for Business, Innovation and Skills – Do I need a BIS import license? (2015), para 98.*

- (1) The item in question has the appearance of being a firearm to which section 1 of the Firearms Act 1968 applies; and
  - (2) It is so constructed or adapted as to be readily convertible into a firearm to which that section applies.
- 1.97 Subsection (8) of the 1982 Act provides that an imitation will be 'readily convertible' if:
- (1) It can be converted without any special skill on the part of the person converting it in the construction or adaptation of firearms of any description; and;
  - (2) The work involved in converting it does not require equipment or tools other than such as are in common use by persons carrying out works of construction or maintenance in their own homes.
- 1.98 In *Bewley* the Court of Appeal explained that the Firearms Act 1968 and the Firearm (Amendment) Act 1982 must be read as a single code. It is therefore only those imitation firearms that are "readily convertible" within the meaning of subsection (8) that must be held on certificate or with the authority of the Secretary of State. The court held that if something is only capable of discharging a missile through the use of tools, by for example using a punch and hammer to strike the firing pin, then it is not a firearm.

#### **Problems with the current law**

- 1.99 The ability to ascertain whether an imitation is readily convertible is crucial. The 1982 Act was enacted before the advent of the internet. The internet provides the means of acquiring tools that would have been considered specialist in 1982. It is for this reason that stakeholders have suggested this aspect of the 1982 Act is out of date and requires modernisation. In evidence given to the Home Affairs Select Committee in 2010, for example, ACPO and 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.' We agree with this observation.

#### **Solutions**

- 1.100 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. Given that it has been almost 35 years since the 1982 Act was passed, we believe this is a sensible approach.
- 1.101 To bring the legislation up to date, we provisionally propose that focus should be on the *ready availability* of the requisite tools or equipment, rather than on whether they are in common use by people carrying out maintenance on their homes. This would encompass a lathe for example, which is a tool that can be used in the conversion of firearms.

- 1.102 By way of contrast if an imitation firearm could only be converted using military grade equipment that is not readily available on the open market, then it would not be readily convertible.

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

- 1.103 Stakeholders have brought a second issue to our attention. Namely the fact the law does not criminalise the possession of articles with intention to use them unlawfully to convert imitation firearms into working firearms. This is in stark contrast to other areas of the law. For example, section 6 of the Fraud Act 2006 criminalises being in possession of articles for use in fraud.<sup>28</sup> It is for this reason we provisionally propose the creation of such an offence. Given that it requires the prosecution to prove an *intention* unlawfully to convert firearms, this hypothetical offence would not everyone in possession of a drill. Such an intention would be proven if, for example, an individual had in their possession the requisite tools combined with guidance on how unlawfully to convert firearms.

### **THE CASE FOR FUNDAMENTAL REFORM**

- 1.104 Before beginning this scoping consultation exercise, the Law Commission was aware from early fact finding with stakeholders that the entire legislative framework governing firearms is flawed in a variety of ways. What became clearer as the exercise progressed, however, is that these problems cause serious difficulties in practice.
- 1.105 The deep dissatisfaction with the current law expressed amongst stakeholders is attributable to four main problems:
- (1) The acquisition and use of firearms is governed by a vast number of provisions – 34 Acts of Parliament and numerous orders and other legislative provisions. These date from 1842 to 2014. This makes the law inaccessible and difficult to understand. In addition, each provision does not deal with a distinct issue. There is overlap between which makes the law lack coherence. This lack of clarity imposes an onerous burden not only upon the police, CPS and investigative authorities, but also upon the licensed firearms community. It is unreasonable to expect the police to apply the law accurately in every case when it is so complex. It is equally unreasonable to expect members of the public to know their responsibilities. This problem led the Home Affairs Select Committee to conclude that the current state of the law is detrimental to good relations between the police and the licensed firearms community.<sup>29</sup>

<sup>28</sup> For discussion see D Ormerod and K Laird, *Smith and Hogan's Criminal Law* (2015), p 1036.

<sup>29</sup> Home Affairs Select Committee Report on Firearms Control (2010), chapter 2, para 36.

- (2) There are inconsistent policies underpinning some of the provisions. 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 states that expanding ammunition must be used when hunting deer. By virtue of the Firearms (Amendment) Act 1997, however, expanding ammunition is prohibited. To solve this, the 1997 Act had to be amended to provide exemptions to ensure hunters could comply with the Deer Act 1991. There are so many exemptions it could be argued that prohibiting expanding ammunition whilst specifying that it must be used lawfully to shoot deer adds an unnecessary administrative burden.
- (3) 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 failure to define antique dates back to 1903. Many key terms have never been defined, such as ‘servant’, ‘shooting gallery’ and even ‘rifle’.
- (4) The law has become unnecessarily complex. Whilst a certain degree of complexity is to be expected, given the subject matter, it is hard to understand why – for example- section 5 of the Firearms Act 1968 has needed to expand from 305 to 2,545 words. That section now refers to a huge variety of items – ‘firearms’, ‘prohibited weapons’, ‘rocket launchers’, firearms disguised as a signaling apparatus’ etc. Both the police and CPS on the one hand and the licensed firearms community on the other must grapple with these terms. To add further complexity, none of these terms are defined. The current state of the law means that a single item can be classified in a number of different ways. This is especially detrimental given that penalty and the defences that can be pleaded depend upon the category the firearm falls into.

1.106 There are three ways the law could be more fundamentally reformed to remedy these problems:

- (1) Consolidation.
- (2) Codification (not incorporating licensing)
- (3) Codification (incorporating licensing)

### **Consolidation**

1.107 The aim of consolidation would be to ensure the law is in one place. This would have the benefit of improving accessibility. It would not, however, provide the opportunity to remedy the deficiencies with the law. The Firearms Act 1968 was a consolidating measure and evidence from stakeholders suggests that its provisions have not withstood the test of time. For example the exemption for antique firearms originates from 1903. Consolidating the law would not be a simple process, however. It would be time consuming and complex. For that reason, we believe that it would be preferable to conduct more fundamental reform of the law.

## **Codification**

- 1.108 One way of remedying the deficiencies with the law is codification. Broadly speaking, codification has the following aims:
- (1) **Accessibility** – ensuring the law is not scattered across multiple pieces of legislation and is drafted with a minimum of ambiguity. This would provide less scope for judicial interpretation of the law.
  - (2) **Comprehensibility** – ensuring the law is as intelligible as possible and can be understood by ordinary citizens.
  - (3) **Consistency** – the haphazard development of the law in a multitude of statutes leads to inconsistency of terminology and substance. Codification seeks to remove these inconsistencies.
  - (4) **Certainty** – ensuring that the law's prohibitions are clear so that the citizen has fair warning of when they are in danger of committing an offence. Consolidation cannot achieve this as it would only replicate the deficiencies with the existing law.
- 1.109 Stakeholders have suggested that the law governing the possession and acquisition of firearms lacks these characteristics. We believe codification provides the opportunity ensure the law embodies these important principles. This would enable both and police and the CPS to apply the law with confidence and the licensed firearms community will have a clear understanding of their position and obligations under the law.
- 1.110 We believe that codifying firearms law 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 optimized across the entire law.
  - (2) **Modernisation** – ensure the law is fit for purpose in the 21<sup>st</sup> century and takes account of technological advances. 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. This will ensure the law can be applied consistently and means the licensed firearms community will be able to know how to comply with it, improving relations between the police and the licensed firearms community.
  - (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.
- 1.111 Codification provides the opportunity not only to reduce the volume of sources but also remedy those deficiencies that undermine the effectiveness of the law and lead to tension between the police and members of the licensed firearms community.

### **What might a firearms code look like?**

- 1.112 Codification could incorporate licensing or the licensing regime could remain separate. It is useful to examine how other jurisdictions have gone about codifying their firearms law. To be clear, we are not suggesting the wholesale adoption of the law in these other jurisdictions. Instead we are using them as examples of how the law could be structured.
- 1.113 In Canada the law on firearms is contained in Part III of the Criminal Code. The Code set out what key terms mean and also lists the various offences applicable to firearms in sequence. Additionally, the Canadian Code has a simpler way of categorising firearms than the one adopted in England and Wales. The Criminal Code does not deal with the licensing of firearms. The relevant regulations are contained in the Firearms Act 1995. Codification makes Canadian law much more accessible and rational than our law.
- 1.114 In Australia the regulation of firearms is primarily a matter for the states and territories rather than the Federal government. Strictly speaking, the law in Australia has not been codified. It does, however, bear some of the features of a code. For example, the Firearms (New South Wales) Act 1996 is a mere 93 sections. This stands in stark contrast to our law. At the beginning of the legislation, its 'principles and objects' are set out. The following provisions are then drafted so as to achieve these principles and objects. This gives the legislation a coherence and provides a method for interpreting ambiguous provisions. The New South Wales act is comprehensive, in the sense that it incorporates licensing. Key terms have been defined, such as 'air gun'. By way of contrast, the Firearms Act 1968 uses the terms 'air weapon', 'air pistol' and 'air rifle' without providing any definition.
- 1.115 In conclusion, we provisionally propose that the law governing the possession and acquisition of firearms be codified. This would provide an opportunity to remedy those deficiencies that undermine the effectiveness of the law, whilst also improving clarity and accessibility. We are asking consultees whether they have any examples of unnecessary costs attributable to the deficiencies with the current law.

### **ISSUES FOR CODIFICATION**

- 1.116 During informal preliminary discussions with stakeholders, they 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 the problems analysed in the previous sections. That was greater consensus that those problems cause significant difficulties in practice and also evidence to suggest they undermine public safety.
- 1.117 Broadly speaking, the additional problems stakeholders raised with us can be placed into three categories. This section will give some examples of each of these:
- (1) Failures of definition in the law.
  - (2) Difficulties in adapting the legislation to meet new criminal threats.
  - (3) Failures of the legislation to keep pace with changes in society.

### **Failures of definition**

1.118 There are numerous terms within the legislation that are undefined. Below is a small selection:

- (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.
- (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.
- (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.

1.119 Although the failure to define these terms is not as problematic as the ones examined earlier, defining them 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.

### **Difficulties in adapting the legislation to meet new criminal threats**

1.120 The issue of armed guards on UK-flagged ships provides an example of where the legislation has failed to keep pace with new threats. Due to the increasing threat posed by pirates to ships circumnavigating the Horn of Africa, the UK Government recognised the legitimacy of engaging armed personnel onboard UK-registered ships as a legitimate means of protecting life. As a result of this, the private maritime security industry has flourished.

1.121 The problem is that the current law was not readily adaptable to meet this new criminal threat. As a result, 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 threat.

### **Failures of the legislation to keep pace with changes in society**

- 1.122 Firearms are commonly used in television and in film. To enable this to take place, it is necessary to have a special exemption from the normal rules. Such an exemption is currently contained in section 12 of the Firearms Act 1968. This originated in the Firearms (Amendment) Act 1936.
- 1.123 The issue is that the law may not be broad enough to encompass all the scenarios in which it might need to be invoked. For example section 12(1) states that the special exemption applies to 'theatrical productions,' 'rehearsals thereof', and 'cinematograph films'. The legislation does not, for example, state that it applies to television productions. The narrow range of the exemption is attributable to the fact the provision was drafted in 1936. It would be desirable, therefore, for it to be brought up to date and to remove the outdated reference to 'cinematograph films'.

### **Surrender**

- 1.124 Surrender is the process whereby individuals hand in a firearm to the police. If the individual is unlawfully in possession of that firearm, he or she will not be prosecuted. If it transpires that the firearm has been used in the commission of an offence, the normal investigative process will take place, however. The desirability of surrender is self-evident, given that it reduces the number of firearms in circulation outside the regulatory regime.
- 1.125 Stakeholders suggest that there may be reluctance to surrender a firearm to the police and therefore an individual might prefer to handover a firearm to a Registered Firearms Dealer. Section 40 of the Firearms Act 1968 imposes an obligation on RFDs to maintain a register of all their transactions in firearms. This includes verifying the identity of whoever the RFD transacts with. The problem, however, is that the current law might act as a disincentive for individuals to surrender a firearm. Whether there ought to be a specific provision relating to surrender is something we believe ought to take place in the context of a broader review of the law.

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

- 1.126 People who wish to take up shooting must be able to prove their competence at safe gun-handling to the police before being able to receive their own certificate (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, one of which (section 11(5)) allows supervised borrowing of shotguns on private land. The exemption assists people in taking up the legitimate pursuit of shooting, however there are several ambiguities in the law.
- 1.127 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.



1.128 It has been reported to us by a number of stakeholders that section 11(5) 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 novices wishing to shoot are sometimes forced to take out shotgun certificates in their own names. This also poses difficulty for individuals coming from abroad to shoot.

1.129 It could be argued that the distinctions drawn by section 11(5) are illogical in the circumstances where they permit the controlled loan of a shotgun, and 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 grants the entirely inexperienced and unqualified, and it is certainly unduly administratively and financially burdensome for the police and individuals alike.

### **CONCLUSION**

1.130 The issues raised in this chapter are very diverse, but what unites them is that they are attributable to outdated legislation that is ambiguous and incoherent. For this reason, we are asking consultees whether they agree that these issues would be suitable for resolution in a codification of the law. We are also asking consultees whether they have any further issues that could be resolved by codification.