



Gun Law

by

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Solicitor



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3rd
Edn.

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PREFACE TO THIRD EDITION

In the month following the publication of the last edition the Government published a Green Paper entitled "The Control of Firearms in Great Britain". This proposed a tightening up of firearms law in several respects to counter the increasing number of crimes in which firearms were used. Owners of shotguns were to be subject to the stricter controls now exercised by the police in cases where a firearm certificate is needed. Consultations on the Green Paper's proposals have ensued leading to revised proposals on which the Government has now invited comments from a number of national bodies before presenting new legislation to Parliament. No early changes in the law are expected.

The process of giving protection to individual kinds of animals has continued since the Second Edition through the Badgers Act of 1973 and the Conservation of Wild Creatures and Wild Plants Act of 1975; the otter was added to the creatures named in the 1975 Act at the beginning of this year. Sections covering this legislation have been incorporated in Chapter 6.

No other changes of substance have occurred. Several cases in the High Court have been concerned with points of interpretation in the provisions of the Firearms Act of 1968. In particular, a little light has been shed on the vexed question of antique firearms. These, and other minor changes arising from legislation and court decisions during the last five years, are noted in this Third Edition. I have also taken the opportunity of expanding and clarifying some points in the text.

The law is stated as at 13th October 1978.

GODFREY SANDYS-WINSCH.

LEASINGHAM,
LINCOLNSHIRE.

October 1978.

PREFACE TO SECOND EDITION

I wish, first of all, to thank the reviewers and other readers of the first edition of this book for the kindness with which they received it and for the helpful criticisms which they offered in a number of respects. I hope that I have been able to profit by them so as to make the second edition a better book.

Some four years have passed since the publication of the First Edition. In this time there have been no substantial alterations in the law, but activity in the field of subordinate legislation has produced a classification of specially dangerous air weapons, a new set of Firearms Rules, and increases in the fees for firearm and shot gun certificates.

The principal change made in this edition is the introduction of a new Chapter I to deal fully with the definitions of firearms and ammunition, which are fundamental to so much of firearms' law, and with the general exceptions to that law in the cases of proof houses and antique firearms. New sections on the protection of seals, shooting game on the fore-shore and over water, and offensive weapons in public places have also been added. The Chapter on Young People and Guns has been re-written to give a better presentation of this difficult topic. Other minor changes have been made to keep abreast of statute and case law. I have tried, as before, to retain the simplicity of the text, consigning references and matters of detail to the footnotes.

Since the First Edition appeared I have had the advantage of access to that delightfully informative book "Shots From a Lawyer's Gun" by Nicholas Everitt and Dr. E. I. Watson which is now, and has been I believe for many years, out of print. I readily acknowledge the help (and entertainment) which it has given me. I am also grateful again to the Home Office for their further assistance on certain topics.

The law is stated as at 1st January 1973.

GODFREY SANDYS-WINSCH.

LEASINGHAM,
LINCOLNSHIRE.

February 1973.

PREFACE TO FIRST EDITION

I have ventured to write this small book on a subject which, to the best of my belief, has not before had devoted to it a separate book. It seemed to me that there might be a wide need for such a book, from a father wondering whether he could allow his son to use an air gun to the police and others in authority who might not have the answers at their fingertips.

It was my intention, when I began writing, to produce a book in simple terms and primarily for the ordinary person who handles a gun. Alas, it soon became apparent that the complications of the law would not allow the attainment of the first object. I have, nevertheless, tried to keep the text as straightforward as possible, but am conscious that in so doing I may have fallen between the virtue of simplicity on the one hand and the need for comprehensiveness on the other.

The law governing the use of guns is sometimes a strange mixture of the old and the new: there is the body of legislation passed between 1825 and 1850 and retained in the verbiage of an age when the infringement of gaming rights was so seriously regarded that a poacher might be transported overseas for 14 years; modern society has, on the other hand, been more concerned to curb the indiscriminate and illegal use of guns by its less responsible members and to protect wild life. This is not to say that poaching is no longer a problem; in many rural areas it is still prevalent, though the modern poacher is often, by background and method of operation, a very different fellow from his predecessor of 100 years ago.

The law relating to guns has been subjected to recent change as much as any other branch of the law, and this has necessarily added to the difficulties of writing. Gun licences

were abolished on 13th December 1966, and shot gun certificates were introduced on 1st May 1968.

The law is stated in the book as at 1st January 1969.

Because, as I have said, this book was intended primarily for the ordinary person who handles a gun, I have not dealt with the following matters: military weapons; what may be called "vicious offences", by which I mean the use of guns by the criminal classes; the regulations affecting game dealers; the killing of birds and animals otherwise than by shooting, except occasionally for purposes of completing a passage in the text; and the law outside England and Wales.

I readily acknowledge the help which I have received, particularly on some of the more difficult points concerning game, from Oke's Game Laws, the last edition of which was published in 1912 and which I believe to be the only book extant (but not readily available) on the subject.

In conclusion, I would like to express my gratitude to the Home Office for the ready and comprehensive advice given on certain topics, and to Superintendent E. Beverley and Mr. A. M. Duffin for their most valuable help in perusing parts of the manuscript.

GODFREY SANDYS-WINSCH.

LEASINGHAM,
LINCOLNSHIRE.

January 1969.

ABBREVIATIONS USED IN FOOTNOTES

For those readers who wish to refer to sources, I have mentioned in the footnotes the Acts of Parliament and some decisions of the Courts which are relevant. References to the Acts in the footnotes mention only the year in which they were passed followed by the number of the appropriate Section or Sections (s. or ss.). Where two Acts bear the same date, the initial letters of the title have been added so that they may be distinguished. The full titles of the Acts are given below.

1828	Night Poaching Act
1831	Game Act
1839	Metropolitan Police Act
1844	Night Poaching Act
C.C.A. 1847	Cemeteries Clauses Act
T.P.C.A. 1847	Town Police Clauses Act
1848	Hares Act
1851	Prevention of Offences Act
1860	Game Licences Act
1862	Poaching Prevention Act
1875	Public Health Act
1880	Ground Game Act
1883	Customs and Inland Revenue Act
1889	Interpretation Act
1892	Hares Preservation Act
1906	Ground Game (Amendment) Act
1947	Agriculture Act
1948	Agricultural Holdings Act
1953	Prevention of Crime Act
1954	Protection of Birds Act
1959	Highways Act
1960	Game Laws (Amendment) Act
D.A. 1963	Deer Act
L.G.A. 1963	London Government Act
1966	Local Government Act
P.B.A. 1967	Protection of Birds Act
C.J.A. 1967	Criminal Justice Act
F.A. 1968	Firearms Act
T.A. 1968	Theft Act
1969	Family Law Reform Act
1970	Conservation of Seals Act
1971	Criminal Damage Act

1972	Local Government Act
1973	Badgers Act
1974	Slaughterhouses Act
1975	Conservation of Wild Creatures and Wild Plants Act
R.D.A. 1977	Roe Deer (Close Seasons) Act
C.L.A. 1977	Criminal Law Act

**GUN LAW
IN ENGLAND AND WALES**

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CHAPTER 1

FIREARMS AND AMMUNITION: DEFINITIONS AND GENERAL EXCEPTIONS

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Introduction

The main body of the criminal law regulating the use of firearms and ammunition is contained in the Firearms Act 1968. Such parts of that law as are covered in this book are dealt with in Chapters 2, 3, 8, 9 (part) and 10, where the words "firearm" and "ammunition" frequently appear. Whilst, as will be seen, the meanings of these words are very wide and will cover all ordinary cases, it is appropriate, by way of this introductory Chapter, to examine their precise meanings. For certain purposes particular kinds of weapons are given their own definitions; this is so in the case of air weapons, shot guns and slaughtering instruments.¹ These definitions are dealt with in later Chapters as and when they occur.

The operation of this code of criminal law in the 1968 Act is totally excluded in two cases which are, briefly, the proving of firearms and the handling of antique weapons. It seems appropriate also to deal with these two matters in this opening Chapter.

Definition of "Firearm"

The word "firearm" is lengthily defined in the 1968 Act,

¹ F.A. 1968 s. 57 (4).

and several ingredients of this definition must be examined with a number of interpretative decisions of the Courts. The definition readily falls into two parts: the core of the definition, and the particular additions to it.

I THE CORE OF THE DEFINITION

This reads: the expression "firearm" means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged.² The following words in this part of the definition require individual examination:

(a) *Lethal*

By dictionary definition this means: causing, sufficient or designed to cause, death. In fact a weapon does not have to be as deadly as this definition might at first sight suggest, as is shown by the following two cases:

- (A) This was a double-barrelled signal pistol with a small propelling charge firing a cartridge with explosive ballistite and containing a phosphorus and magnesium flare. It was capable of killing at short range and might be fatal up to 20 feet. Therefore it was lethal, and the intentions of the designer or manufacturer of the weapon were immaterial.³
- (B) The least powerful type of air gun, which normally would cause only trivial injury, can nevertheless be classed as lethal because its pellet, fired at a particularly vulnerable point such as an eye, could cause death.⁴

(b) *Barrelled*

The relevant dictionary definition of "barrel" is: cylindrical body or trunk of an object; metal tube of

² F.A. 1968 s. 57 (1).

³ *Read v. Donovan* [1947] 1 All E.R. 37.

⁴ *Moore v. Gooderham* [1960] 3 All E.R. 575.

gun. Thus, a barrel must at least be cylindrical; it would not be sufficient for the missile to be discharged along a groove or channel which was unenclosed for any part of its circumference. Despite the second part of the definition, it is suggested that the barrel may be made of any substance.

The length of the barrel is immaterial in this context.⁵

(c) *Weapon*

The dictionary defines a "weapon" as a material thing designed or used or usable as an instrument for inflicting bodily harm.

(d) *Any shot, bullet or other missile*

Following the general rule for construing Acts of Parliament, the meaning of the words "or other missile" must be confined to things of the same kind as shot and bullet. This leads to the probable conclusion that the missile must be a solid object; thus a dart from an air gun would be included, but not liquid or gas.⁶

(e) *Can be discharged*

Here, also, the normal meaning of these words has been expanded by decisions of the Courts. The fact that a gun at the time of an offence is not capable of discharging a missile will not necessarily prevent it from fulfilling this part of the definition, as is shown by the following three cases:

- (A) This was a dummy revolver, with the shape and appearance of an ordinary revolver, with a barrel which was solid except for a hole which was drilled in 3/8ths of an inch from the muz-

⁵ It is, however, material in the definition of a shot gun, as to which see p. 94.

⁶ In the absence of any Court decision on the point, this interpretation can be tentative only. For guns and ammunition discharging a noxious liquid, gas or other thing, see pp. 6 and 9.

zle. The revolving “cartridge chamber” was also solid except for shallow recesses at the ends of what would ordinarily be the cartridge chambers, and there was a venthole for the escape of gas. In that state it was not capable of firing a bullet or other missile, but by five minutes electric drilling the necessary parts could be made to do so sufficiently to kill a man at five feet.

The definition of “firearm” in that case described it as “any lethal firearm or other weapon of any description from which any shot, bullet, or other missile can be discharged, or any part thereof”.

HELD: the dummy revolver was a firearm within that definition because: it contained everything else necessary for making a revolver except the barrel and therefore all the other parts of it, except those which required to be bored, were “parts thereof” within the quoted definition; or, alternatively, the dummy as a whole was part of a firearm within the definition and, by adding something to it or adapting it, the dummy would be a complete revolver.⁷

- (B) This was a Scottish case concerning a double-barrelled pistol the barrels of which had been pierced but if the holes had been blocked up the pistol would have been capable of firing live ammunition. The Court decided that the pistol was a firearm.⁸
- (c) This was a .38 starting pistol with a revolving chamber and of solid construction. The firing chambers had constrictions at the front ends. The barrel was solid except that at the muzzle

⁷ *Cafferata v. Wilson* [1936] 3 All E.R. 149.

⁸ *Muir v. Cassidy* [1953] S.L.T. (Sh. Ct.) 4.