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The Law Relating to Firearms

Butterworths

The Law Relating to Firearms

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Preface

The law relating to firearms has hitherto remained an unexplored corner of the law of England and Scotland, at least so far as an attempt at systematic exposition of the criminal law is concerned. Parliament has, chiefly during the last one hundred years, concerned itself with firearms and their regulation to an ever-increasing extent; the Firearms Act 1968 is itself a consolidating act (as slightly amended) and provides the current law. Judicial analysis of the legislation (both current and past) has been limited and, because of the courts normally involved, very often briefly reasoned. In England the decisions have commonly been in the Divisional Court of the Queen's Bench Division (from which, until 1960, there was no right of appeal); in Scotland most reported decisions are those of Sheriffs or Sheriffs-Substitute. Periodical literature is limited. There are no textbooks which profess to analyse the current law in detail, though useful works exist on the history and practice of the law, and for the sportsman rather than for the lawyer.

The aim of this work is to provide a comprehensive exposition of the criminal law in England and Scotland relating to firearms, and of the system of licensing and registration of such firearms, and firearms dealers. Firearms offences occur more frequently than is commonly realised, and there have been more reported cases since the Firearms Act 1968 than under all the previous legislation together. It seemed to us, therefore, that there was a justification for a work such as this. The work is directed primarily towards the practitioner, but we hope it will also be of assistance to the police, and to others concerned with the administration and enforcement of the relevant laws. Although the law relating to firearms is not normally covered in university courses, we hope that both teachers and students may find some matters of interest. The law provides a fascinating blend of issues in criminal law, administrative law and constitutional law, set against a background of the policy of the law towards the preservation of peace and order, and the prevention of crime. It appears to the authors that there have been occasions when the concern of the judiciary for these matters has overshadowed what would appear to be the proper construction of the legislation.

It may well be argued that the law relating to firearms is insufficiently strict, but, if this is so, it is for Parliament rather than the courts to intervene.

The work follows the order of the Firearms Act 1968 closely, but not slavishly; the Act is intended to be a code though it is one which, in some respects, is perhaps ill-drafted. We have included precedents of charges to assist the drafting of informations and indictments; these have been omitted from the current edition of *Archbold*. We have also included two brief chapters listing other offences involving or potentially involving firearms; the list is not intended to be complete, but contains material on what we believe to be most relevant in practice.

The law has not remained static since the manuscript was delivered to the publisher and two developments may be noted. In *Ogston v Miller* (1980) Times, 30th October, the Queens Bench Divisional Court has criticised the requirement that the applicant for a shotgun certificate should have to declare any convictions save for 'minor traffic offences'; this last phrase was held to be uncertain, and the court indicated that the Home Secretary should consider the matter urgently. The position of aerosols, carried by women to protect themselves from attack, and designed to emit a spray or jet of some substance has been queried. It seems clear to the authors that such devices can come within the provisions of section 5(1)(b) of the Firearms Act 1968, but one police authority has indicated that it is unlikely to bring a prosecution for possession of such a device.

The authors, one a practitioner, the other an academic, have found their collaboration mutually informative and beneficial; although we have approached some of the problems from different angles, we have invariably agreed on the solutions or interpretations to be adopted; we hope that the meld of ideas and of different approaches proves informative.

The law is stated as on 22 August 1980; though it has proved possible to note certain developments until 12 January 1981.

P. J. Clarke
J. W. Ellis

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