

## **PROVISIONS 108-111 ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

1. This circular covers the introduction of provisions 108-111 of the Anti-social Behaviour, Crime and Policing Act 2014.
2. These provisions will come into force on Monday 14 July 2014.

### **Provision 108: Offence of possessing a firearm for supply etc**

#### **Section 108 amends section 5 of the Firearms Act 1968 to make it an offence to possess for sale or transfer prohibited weapons or ammunition with a maximum penalty of life imprisonment.**

3. This provision is aimed at targeting the middle market of suppliers of illegal firearms.
4. Under the Firearms Act 1968, possession of section 5 firearms (such as handguns, submachine guns and assault rifles) can only be authorised by the Home Secretary after enquiries by the police. Section 5 authorities are only issued where there is a clearly established need, such as law enforcement, registered firearms dealers or museums.
5. Section 108(2) amends section 5(1) and 5(1A) of the Firearms Act 1968, which make it an offence to possess, purchase, acquire, manufacture, sell or transfer, without the authority of the Secretary of State, or Scottish Ministers in Scotland, firearms or ammunition of particular types (such as handguns, sub-machine guns and assault rifles).
6. Possession, purchase or acquisition of a prohibited weapon or ammunition, will carry the existing maximum penalty of 10 years. The manufacture, sale or transfer of a prohibited weapon or ammunition, will now carry a maximum penalty of life imprisonment.
7. New section 5(2A)(c) of the Firearms Act 1968 creates a new offence of possession for sale or transfer of a prohibited weapon or ammunition, which will similarly carry a maximum penalty of life imprisonment. The mandatory minimum sentences for this offence are five years imprisonment in the case of an offender aged 18 years or over when he or she committed the offence (21 years or over in Scotland) or three years imprisonment in the case of an offender under 18 years (21 years in Scotland).
8. New section 5(2A)(d) also creates a new offence of purchasing or acquiring for sale or transfer, which will similarly carry a maximum penalty of life imprisonment.
9. Subsection (4) substitutes a new section 5(3) of the Firearms Act 1968 to define "authority" as meaning an authority given in writing by the Secretary of State in or as regards England and Wales or by the Scottish Ministers in or as regards Scotland.

## **Provision 109: Functions of Scottish Ministers under Firearms Acts**

### **Section 109 amends the Firearms Act 1968 to ensure that the Scottish Ministers are empowered to grant authorities under the Firearms Act 1968**

10. Section 5 of the Firearms Act 1968 deals with the prohibition of certain weapons and, on devolution, the Secretary of State's functions under section 5 were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). This section covers a fresh transfer of all the Secretary of State's functions under this section, as amended, to the Scottish Ministers in or as regards Scotland. It also includes the new offence as set out above.

### **Section 110: Possession of firearms<sup>1</sup> by persons previously convicted of crime**

#### **Section 110 extends the definition of a prohibited person.**

11. Subsection (1) amends section 21 of the Firearms Act 1968 Act. Section 21 prohibits persons who have previously been sentenced to imprisonment for a term of between three months and three years from possessing firearms or ammunition for a period of five years. Persons who have previously been sentenced to imprisonment for a term of more than three years are permanently prohibited.

12. Section 110 inserts section 21 (2C) which extends the definition of a prohibited person to include persons with suspended sentences of three months or more. The period of five years will begin on the second day after the date on which sentence has been passed<sup>2</sup>.

13. This timescale has been set so that a person who is in possession of a firearm or ammunition is not in immediate breach of the law when the sentence is passed and has an opportunity to make arrangements to transfer or dispose of their firearm or ammunition. This includes an antique firearm (see para 20).

14. Police firearms licensing departments should be monitoring the behaviour of their firearms certificate holders. In line with best practice it would therefore be advisable to review the outcome of any court appearances to ensure that those receiving suspended sentences on or after 14 July are aware that they would need to transfer or dispose of their firearm and/or ammunition.

15. Subsection (3) makes a transitional provision that enables a person with a suspended sentence to continue to possess firearms and ammunition for the remainder of a firearm certificate that was valid immediately before *subsection (1)* comes into force.

---

<sup>1</sup> All reference to firearms in this section also includes shotguns and air weapons

<sup>2</sup> This does not exclude public holidays.

16. This means that a person who received a suspended sentence before 14 July and already has a firearm certificate would be able to retain their firearm and ammunition for the duration of their certificate.

17. However, this does not apply to renewals. Therefore, when the extant certificate expires, the applicant would have to apply for a renewal, at which point if the applicant was still prohibited under section 21(2C) (see paragraph 12), the renewal would be refused under section 27(1)(a).

18. If a person received a suspended sentence of 3 months or more before 14 July, that is still running on or after 14 July, they would not be able to purchase or possess a firearm or ammunition for the duration of the prohibition in section 21(2C) (see paragraph 12).

19. If a person receives a suspended sentence on 14 July or subsequently then they would not be able to purchase or possess a firearm or ammunition for a period of five years from the second day after sentence.

20. Subsection (2) amends section 58(2) of the Firearms Act 1968. Section 58(2) allows antique firearms to be possessed without a certificate as a “curiosity or ornament”. Subsection (2) ensures that persons prohibited from possessing firearms under section 21 (including those with suspended sentences) will now be unable to possess antique firearms.

21. This means that if a person is a prohibited person on 14 July 2014 then they cannot possess an antique firearm.

22. A permanently prohibited person is someone who has been sentenced to a term of imprisonment of more than three years. A prohibited person is someone who has been sentenced to a term of imprisonment, or received a suspended sentence, of between three months and three years and has been prohibited from possessing firearms for a period of five years.

23. The word “antique” is not defined in the Act and it is for the chief officer of police and for the courts to consider each case on its merits. Further guidance can be found in the Home Office Guide to Firearms Licensing Law paragraph 8.3.

24. A prohibited person who lawfully possesses an antique firearm before the commencement of these powers will need to dispose of their firearm by 14 July 2014. Disposal could include:

- sell the firearm;
- surrender the firearm at a police station;
- take firearm to a registered firearms dealer;
- pass possession of the firearm to someone else who is lawfully entitled to possess it.

25. Possession of a firearm and ammunition during a period of prohibition is an offence under section 21(4) of the Firearms Act 1968 and attracts a maximum sentence of five years. This includes an antique firearm.

26. A person prohibited from possessing a firearm and ammunition may apply to the Crown Court or, in Scotland in accordance with Act of Sederunt to the sheriff, for the removal of the prohibition under section 21(6) of the Firearms Act 1968.

### **Section 111: Increased penalty for improper importation of firearms etc**

#### **Section 111 increases the maximum sentence for importation or exportation of a prohibited weapon or prohibited ammunition from 10 years to life imprisonment.**

27. The importation of firearms is restricted under the Import of Goods (Control) Order 1954 (SI 1954/23), made under section 1 of the Import, Export and Customs Powers (Defence) Act 1939. This prohibits importation other than in accordance with a licence issued by the Department for Business, Innovation and Skills. The maximum penalty for an offence under section 50 of the Customs and Excise Management Act 1979 is normally seven years, but where it relates to prohibited firearms and certain other specified goods (including counterfeit currency notes and coins) it is ten years.

28. Section 111 amends section 50 of the Customs and Excise Management Act 1979 to increase the maximum penalty for the unlawful importation of firearms prohibited under section 5 of the Firearms Act 1968 from ten years to life imprisonment.

29. Subsection (3) makes consequential amendments to section 50 of the Customs and Excise Management Act 1979 in order to preserve the existing maximum penalty of ten years for the improper importation of counterfeit currency notes and coins.

30. Section 170 of Customs and Excise Management Act 1979 makes it an offence knowingly to acquire possession of goods or knowingly to be concerned in carrying, removing, depositing, harbouring, keeping or concealing goods where the importation of the goods is restricted or prohibited under any enactment, and there is an intention to evade the restriction or prohibition.

31. It is also an offence to be knowingly concerned in the fraudulent evasion of the restriction or prohibition on the importation of such goods. It is usual practice to deal with smuggling of prohibited goods by charging an offence under section 170, even when the conduct falls within the specific importation offence in section 50.

32. Subsection (4) and (5) amend section 170 of the Customs and Excise Management Act 1979 so that the maximum penalty for the illegal importation of firearms prohibited under section 5 of the Firearms Act 1968 will be increased from 10 years to life imprisonment.

33. Subsections (6) and (7) amend section 68 of the Customs and Excise Management Act 1979 which makes it an offence for a person to be knowingly

concerned in the exportation of any goods with the intent to evade the prohibition or restriction on their exportation. The effect is that the maximum penalty for illegal exportation of firearms prohibited under section 5 of the Firearms Act 1968 Act will be increased from 10 years to life imprisonment.

**Please see following links:**

Legislation:

<http://www.legislation.gov.uk/ukpga/2014/12/part/8/enacted>

Home Office Guide to Firearms Licensing Law:

<https://www.gov.uk/government/publications/firearms-law-guidance-to-the-police-2012>