SHOOTERS' JOURNAL

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HOME OFFICE REGULATIONS

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COVER PICTURE

Following the launch of Laura Saunsbury and Nick Doherty's update of the Firearms Law handbook, we review that and look back at the other works – all now out of print – that trod the ground in the 20th century

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EDITORIAL

TIME FOR A RE-THINK

The Home Office consultation about draft statutory guidance to police, focussing mainly on establishing a requirement for a medical for every applicant awaits the new government's approval.

The Firearms Acts have prevented chief constables issuing firearm certificates to anyone of unsound mind since 1920. The term 'unsound mind' is to be found in contemporary 1920s mental health legislation with a clear definition that it refers to people incapable of caring for themselves.

Parliament has never extended the restriction to include less disabling or any temporary medical conditions, nor have the courts of record. The current general thrust of government policy toward mental health is to normalise it – to persuade the public at large to accept mental illnesses as precisely that: illnesses, except in the Home Office where ostracising anyone who is ill and depriving them of their hobby and access to their friends is still their policy and objective.

When shot gun certificates were introduced via the Criminal Justice Act 1967 Parliament was at pains to avoid making the new certificate any harder to acquire than the gun licence it replaced (a Post Office purchase 1870-1966) and chose the phrase 'danger to public safety or the peace' as the benchmark – the same as for registration as a firearms dealer.

This phrase is also defined in case law and means someone to whom an immediate custodial sentence is applicable. Such people are disbarred from having certificates for five years after release or permanently (with an option of applying for relief) if the sentence handed down is three years or more. The meaning of this phrase in the context of shot gun certificates has been qualified – stretched or limited - by various appeal cases: Spencer-Stewart v Kent (1988) indicates that it does not include convictions for non-violent crimes and Shepherd v chief constable of Devon and Cornwall (2002) indicates that it does not include firearms convictions.

Chief Constables are apt to call all sorts of behaviour 'danger to public safety or the peace' with mixed results: in 'Germain' it was held that two drink-drive convictions in a ten year period

could exclude him from having a shot gun certificate for the duration of the driving ban, while in 'Dabek' she could not have her shot gun certificate back until the statutory security conditions applied to it (introduced on new certificates in 1989) due to her co-habitee's antecedents. 'Farrar' lost his appeal for leaving his gun cabinet keys with his Mum so that the police could access the guns to check serial numbers. He was entitled to appoint her as a gun bearer under section 11(1) of the Act but didn't know that and thus didn't argue it in court. None of these three was described as 'a danger to public safety or the peace' in court. They were merely conveniences for advancing the police agenda.

The constitutional position for citizens who wish to use firearms and shot guns – almost all of whom (outside the gun trade) do so for reasons that are social, domestic or leisure-based, is that they should be able to unless the forces of law and order can think of a reason not to let them: most people qualify, yet the police will try to stop some on precedent or whim.

Restrictions over and above the limits set by Parliament are unsupported by primary legislation, so they amount to mission creep. Statutory Instruments are secondary legislation and can't create law, so while requiring medical certificates from firearm certificate holders to prove they aren't of unsound mind would be a legal clarification via an SI introducing a medical form for GPs to fill in, extending it to shot gun certificate holders and registered dealers would not.

The mission-creep problem, so evident in the meeting minutes of Home Office officials with the constabulary clerks who issue certificates is 'polarisation'. This sociological phenomenon occurs when like-minded people come together to consider problems or issues. The lack of any counterbalance causes the group to polarise toward the extreme.

The like-minded people in this instance – administrative personnel from police headquarters - have, for many years now, been seeking out ways of not doing their jobs. That approach culminated in the 1966 judgment 'Joy v chief constable of Dumfries and Galloway', which set the standard for processing firearm certificate applications: that they should be considered from the point of view of the applicant and not from that of a possible objector. But try finding anyone in firearms administration doing that these days – or even knowing that they are supposed to.

The Firearms Acts are quite neutral in tone, stating that the chief constable shall issue certificates to anyone who has a good reason for acquiring a firearm, provided that person is not of unsound mind, intemperate habits or otherwise unfitted to be entrusted with such. That left chief constables with discretion to find ways of not doing as Parliament had told them to.

The first wave of resistance in the 1920s addressed 'good reason'. Target shooting was not a good reason in some areas and that surfaced

periodically as an objection for over six decades before the Home Office finally adopted it in a bizarre way. Vintage handguns can now be kept at an approved facility for target shooting, but *not* for use in competitions.

Chief constables had tried limiting or qualifying 'target shooting' to 'competitive target shooting'; i.e. you didn't have a good reason unless you entered competitions. That was a way of preventing certificate holders acquiring firearms for which there weren't recognised competitions: machine guns in the 1920s, short barrelled shotguns after 1937, flare pistols after 1947, and various configurations of all sorts of firearms. The .22" Vostok MU pistol, for example, didn't fit in the standard pistol box and thus couldn't be used in standard pistol competitions.

The clubs and associations gradually caught up by providing more competitions, but restrictions on the Home Office approval of clubs have left a number of firearms types out. These are firearms for which one must belong to a club to possess for target shooting, but for which the club is not approved. The effect is that club officials can't *use* the firearm to teach its owner how to, nor can other club members try it out.

Home Office 'approval' of clubs has been a pointless bureaucracy for its own sake for a quarter of a century now. Its origin is to be found in the Unlawful Drilling Act 1819, which prohibited training and drilling in military movements without lawful authority. Permission could be obtained from the Lord Lieutenant of the county and that's what the volunteer rifle regiments did when they started forming up in 1859. By 1908, when the territorial army was formed, a lot of erstwhile regiments dropped the military side of things and became rifle clubs – approval was not needed for target shooting: until 1920 when the Firearms Act took over and made a secretary of state the source of authority for drill. Yeah, and that Act extended drill to include target practice, thus bringing the social clubs back into the approval net. 'Drill' was deleted from what approved clubs might do in 1988 and the defence of the realm aspect of club constitutions ceased to be a charitable purpose in the 1990s.

In the countryside, many police forces restricted the use of firearms for fox control to .22" rimfires until the counter-balancing Firearms Consultative Committee argued successfully that the round wasn't powerful enough. It's what you do with it that counts but opening the door to the use of more appropriate ammunition for larger pest species, gave the extremist response the new wheeze of 'if it's powerful enough for deer it must be too powerful for foxes.' That in turn led to some hunting cartridges being declared too powerful for deer and thus no reason was acceptable for their use in the UK.

While these restrictions appear to be for their own sake and part of the police drive to reduce the number of firearms in the hands of the public to an absolute minimum, they actually

have an equally weird origin in bureaucracy. In 1985, a Home Office committee came up with the principal of land inspections as a means of getting chief constables to notify other chief constables of an application by someone resident in their police area to use a rifle in his. This came about because the chief constable of Norfolk didn't know about a London-based deer-stalking club having shooting rights in Thetford Forest.

'Land inspections' turned into untrained policemen looking at fields and woods in order to think up objections to that land being used by riflemen stalking deer or controlling pest species. The Home Office objective was to make it clear by way of conditions on the face of the certificate what the firearm was possessed for: so that policemen encountering FAC holders in possession of their private belongings outside their 'approved' domestic security could determine whether that possession at that time and in that place was for an 'approved' purpose or not. Screwing around with what cartridge suited what land or which species was just a bonus.

Between 1920 and the Home Office taking over section 5 (prohibited weapons) management in 1968, few firearms cases reached the higher courts. Cafferata v Wilson in 1936, Read v Donovan in 1947 and Moore v Gooderham in 1960 come to mind. Cafferata v Wilson concerned a retailer selling dummy revolvers with instructions for enlivening them. We had a case in the 1990s relating to one of his products that hadn't been adapted, but the owner was prosecuted anyway – and acquitted.

Read v Donovan concerned a flare pistol converted to fire shotgun cartridges. Don't try this at home: on tests, we found that four 12 bore shots would be enough to shear a brass flare gun's frame where the trigger pivot pin passes through it. Moore v Gooderham concerned the sale of an air gun to a minor. The issue was 'toy or firearm' as the sale would be legal if a toy and illegal if a firearm.

A few appeals also reached the courts of record: Anderson v Neilans (1940) was a 'good reason' test case, as was Greenly v Lawrence (1949) in which Reading police appealed a recorder's decision to allow the householder to keep his Colt .25 automatic pistol on a firearm certificate for self-defence.

In the preface to 'the law relating to firearms' (published in 1981) authors Clarke and Ellis state that***, "…there have been more reported cases since the Firearms Act 1968 than under all the previous legislation together."*** There are two main reasons for that: one is that 'firearms crime' doubled every three years in the 1960s, as the way in which figures were collected changed and crimes involving the use of firearms were conflated with administrative offences connected with possession. Air guns also became firearms in the 1960s, so criminal damage with them – breaking windows – also racked up the numbers. The other is that the introduction of shot gun certificates in

1968 quadrupled the number of certificates, when some 600,000 people applied for them despite the poor publicity surrounding their introduction.

The combination of bringing so many more people into scope and the Home Office having a different approach to that of the Defence Council over prohibited weapons account for much of the rise. It certainly accounts for the plethora of section 5 cases from 1973 onwards and coincidentally every defendant was a registered firearms dealer.

Also significant was the hardening of attitudes in policing. In 1972 the Chief Inspector of Constabularies Sir John McKay submitted the report of his self-appointed committee to the Home Secretary. An earlier example of polarisation, McKay only considered firearms from the perspective of the work the public having them caused policing, and the risk he perceived to the police by public gun ownership.

Colin Greenwood's book 'Firearms Control' (also 1972) obliquely considered both topics. He took the view that the increased use of firearms in robberies, expressed as a graph, reflected the progressively reducing risk of the death penalty being a consequence. There are obvious robbery spikes in periods during 1948 and 1957 when capital sentences were automatically commuted while abolitionist clauses were considered in Parliament and an upward trend between whiles.

Sir John McKay was concerned about the increased risk to policemen caused by the abolition of the death penalty in 1965, highlighted when three Metropolitan Police Officers were shot dead in one in incident in 1966. But his main cause for concern – alarm and panic – was the apparently huge number of people who applied for shot gun certificates. His conclusion was that the number of guns in the hands of the public must be reduced to an absolute minimum and that the need to do so was sufficient justification for doing it.

He retired to California before shot gun certificate numbers trended upwards, although some of the steady 'increase' in numbers in the twenty years after their introduction would be people finding out they needed one and applying belatedly.

One such was 'Kavanagh', whose case got to the Court of Appeal in 1974. He applied for a shot gun certificate and an RFD when he found out he needed them. He'd invented a release mechanism for break-action guns and while McKay's committee were sitting, he was hawking his design around engineering companies in search of a production partner.

Since he'd built up several guns on his action – much the same way as Christopher Spencer started his repeating rifle design during the American Civil War using parts acquired from Christian Sharps – someone told him he needed the certificates and he duly applied. The case got to the Court of Appeal because the chief constable had 'intelligence' that he had the guns and wasn't

prepared to legitimise his possession of them by issuing the certificates.

He hadn't read 'Joy', nor, it seems, had Mr Kavanagh's lawyers. If they had, the guidance in it said that needing a certificate for a gun already possessed was not a ground for refusing to issue it. The appeal point in his case was because the Quarter Sessions had been broken up into Crown and County Courts in 1971 with firearms appeals being heard in the Crown Court and tribunal type civil matters in the County.

The problem here was that Crown Courts had a strict rules of evidence format, while the old Quarter Sessions had used tribunal style rules to hear cases. At the Quarter Sessions, the chief constable could have said 'he's a bad'n, he's already got the guns': which he couldn't say in the Crown Court. The 'Kavanagh' judgment decided that the chief constable had to put forwards to the court all the information he had considered when reaching his decision, including any in rumour, hearsay or gossip formats.

That's how rumours of events that may or may not have happened in 1988 cost Sterling Northolt's director his RFD in Dyfed Powys in 1996 and many years of uphill struggle to get it back thereafter. But that suits the Home Office agenda; same as requiring GPs to give certificate holders medicals without a form to fill in. It creates problems they can exploit.

The real question should be is whether or not the Home Office is the proper government department to manage sporting clubs, defence contractors, traders and industrialists? Each of which could, would and should be managed by a more relevant and less narrow-focussed ministry that already has the management of these functions within its brief. **Ω**

NEWS IN BRIEF

Another Fine Mess in NZ

Knee-jerk legislation rushed through in New Zealand to prohibit the possession of AR15 type rifles failed to clarify what the buy-back scheme covered in component parts: the lower receiver in particular.

An AR15 lower houses the trigger group and magazine well. The shoulder stock is fitted to it and there's a pivot pin position to attach the upper receiver. The upper houses the barrel, carry handle and thus any optical sights.

In the USA, it's the lower that bears a serial number and that's the part which is registered. In the UK, the lower didn't count as a component until the 2017 Policing and Crime Act specified it as such. Prior to the list in that Act it was only pressure-bearing parts that counted as components.

The New Zealand authorities have now 'clarified' that the lower is prohibited (without re-wording their knee-jerk legislation) and eligible for the buy-back scheme.

The UK's lack of clarity about component parts has yet to cause any problems. Prior to the 2017 Act, the test of the difference between a component and an accessory was whether your chief constable would give you a variation for a part in

isolation: yes, you'd get a variation for a barrel by itself. The usual problem that caused was when you used the second barrel. Taking a Blazer rifle as an example, you can get that with interchangeable barrels in different calibres, so you could have a .243" Blazer rifle and a .270" barrel on certificate. But beware a police check that finds the .270" barrel on the rifle and the .243" barrel spare, as police training never seems to encompass such possibilities.

Likewise, the flash-hider problem. Now you need a variation for that in isolation, but not when it's part of the rifle. Two problems here: one is that you unscrew the flash hider to put a silencer on. The silencer will be noted separately on your certificate, so do you need a variation for the flash hider while it's doing nothing?

The other problem with flash-hiders is that most of what's screwed on the end of a barrel these days does nothing of the sort. The screw-off bit on an L1A1 rifle is a bayonet lug and most modern AR15 'flash-hiders' are cut as muzzle brakes.

So, if it's a muzzle brake, does it need a flash hider variation while the silencer is fitted? This is the kind of mess stupid legislation causes and the real tragedy of such changes is that the powers that be clarify any such muddle by prosecuting people who were trying to act lawfully in the first place. **Ω**

HOME OFFFICE STATUTORY INSTRUMENTS

The Home Office conducted a consultation over last summer about their proposals for compulsory medicals for all firearm and shot gun certificate holder applicants. The consultation included the draft statutory instrument, but no medical form for GPs to fill in.

We responded to the consultation indicating the problems that having a medical requirement, but no form would cause. We also pointed out that an S.I. is secondary legislation and as such can't be used to make up new laws.

In the Firearms Acts, the only reference to any medical condition is in the context of firearm certificate applicants. It says that the chief officer of police may not issue a certificate to someone of unsound mind.

That is defined in the Representation of the People Act 1918: people of unsound mind can't be registered to vote, so the police don't need a medical report, they merely need to check the electoral register.

However, this is mission creep and while an S.I. might extend the definition of 'unsound mind' to include other, less debilitating, conditions, it can't be used to extend that medical requirement to shot gun certificate applicants, as there's no primary legislation upon which such mission creep could be pinned.

Likewise with RFDs. Apart from the lack of primary legislation, most registered firearms dealers are limited companies. The police have a long-standing policy of not understanding this, 'preferring' to register an individual.

Meanwhile, several police forces pre-empted this 'requirement' by going live with it. Kent in July – see their April Fool letter at the back of this journal and Lancashire among others.

Surrey/Sussex (Surrey took over Sussex after the mess the latter made of the Sterling Northolt case) have announced a 1st January start date but claim this is because Her Majesty's Senior Coroner Mr Travers said so.

The difficulties of the dead Parliament in the autumn of 2019 and the eventual general election meant that the Home Office didn't sort this out in time to present an S.I. to lay before Parliament. So, watch this space.

The draft S.I. that they did lay, and which came into force on 12th December relates to the sale or transfer of deactivated firearms. The Firearms Regulations 2019 amount to the Home Office meeting the requirement imposed by EU directive 2017/853 to register the transfer of deactivated firearms.

The story so far is that the Policing and Crime Act 2017 declared all deactivated firearms 'defectively deactivated' and made it a criminal offence to sell them, except to a person outside the EU or if first upgraded to the new EU spec.

The Firearms Regulations 2019 require the transfer of a deactivated firearm to the Home Office via email or post and they've provided a handy 3¼ page form for the purpose.

Possession of a deactivated firearm that was acquired prior to 14th September 2018 does not have to be notified to the Home Office (and thus not upgraded from 'defectively deactivated' to just 'deactivated') until 14th March 2021

Interestingly, if not quite fascinatingly, the form doesn't ask for the deactivation certificate serial number: just the names and addresses of the two parties to the transaction and (if known) the make, model and serial number of the de-ac, or some other description if these are not known.

Nothing in the regulations refers to defectively deactivated firearms, so the position with them remains that it's an offence to sell them. They can still be let on hire, so presumably can be acquired on a long lease, about which the Home Office does not require notification.

If nothing changes, it appears that possession of a defectively deactivated firearm won't become an offence of itself but failing to register it by March 2021 will be.

According to theregister.co.uk : ***"The UK Home Office insists that a new law forcing it to create a new registration system for potentially millions of deactivated firearms and their owners will need neither a new database nor more public spending."***

That suggests the HO are merely complying with the EU requirement whilst our EU membership remains valid and not thereafter. As to what they do after Brexit will depend on whose watching them. The Home Office has had an uninterrupted run of prejudice against the shooting sports, industry and trade for several years

now while ministers turn a blind eye to their outrages.

They do have a database for real guns – the National Firearms Licensing Management System (NFLMS). This provision dates from the 1997 Firearms (Amendment) Act, took more than 12 years to get going, is riddled with flaws and has probably gone past its 'best before' date by now.

It was created to enable police forces to check on each other in hope of finding a failed applicant from one area applying elsewhere without declaring the earlier failure.

It's perfectly feasible to be refused by one constabulary and accepted by another, as their agendas aren't quite synchronised.

The Home Office have told 'The Register' that they do not expect any significant cost to arise from the public complying with this new regulation. Further assurance that they aren't intending to process the data they receive. If any. **Ω**

The Other New Regulation

Slipped in with the Firearms Regulations 2019 is the **Firearms (Amendment) (No2) Rules 2019.**

The first provision in this relates to the storage of firearms or shotguns held on certificate by persons under 18. Henceforth, they can't access their guns except in the presence of an authorised person over the age of 18. Home Office advice suggests that this needn't be another certificate holder with the guns listed on their certificate also if a twin lock cabinet using two different keys is used such that it can only be opened in the presence of both key holders. This will be sorted out as a condition on certificates as they come up for renewal, but under-18s are advised to sort out compliance in the meantime.

Next up is another EU requirement, which extends the details that dealers must include in their registers:

- (a) In the case of firearms (other than air weapons) manufactured before 14 September 2018 and firearms of historical importance:
  - (i) the class of firearms (e.g. shotgun, rifle, revolver or pistol)
  - (ii) the calibre
  - (iii) the name of the manufacturer or brand
  - (iv) the country or place of manufacture, if known
  - (v) the identification number (which may be the serial number) or other distinguishing mark, if present; and,
- (aa) in the case of firearms (other than air weapons and firearms of historical importance) manufactured in the United Kingdom or anywhere in the European Union or imported from outside the European Union on or after 14 September 2018:
  - (i) the class of firearms (e.g. shotgun, rifle, revolver or pistol);
  - (ii) the calibre;
  - (iii) the unique marking affixed to each relevant component part, to include:

- (aa) the name of the manufacturer or brand
- (bb) the country or place of manufacture
- (cc) the serial number and the year of manufacture (if not part of the serial number)
- (dd) the model (where feasible)

- (iv) where a relevant component part, other than the frame and the receiver, is too small to have a unique marking including all of the information set out in paragraph (iii)(aa) to (dd) above, the serial number or alphanumeric or digital code instead of that information should be recorded.

So there: and in the case of ammunition, dealers must now also record the batch number. **All firearms made before September 1939 count as of 'historical importance' for the purposes of these regulations.**

There seems to be a growing acceptance in officious circles of pre-WW2 manufacture as an acceptable cut-off date for antiques. That said, the courts have already accepted guns made in or for WW2 as antiques in appropriate cases. **Ω**

FBI Crime Report on Guns: (Edited from Personal Defense World Magazine)

The violent crime rate (in the USA) fell 3.9% when compared with the rate in 2017. Meanwhile, property crime declined 6.9% in the same comparison.

While crimes fell in most areas and categories, non-negligent manslaughter offenses fell 6.2%: meanwhile, the estimated volume of aggravated assault offenses decreased by 0.4%.

But for gun owners, how guns came to be used by murderers proves even more interesting. In 2018, 14,123 murders occurred, 10,265 of which used a firearm. Of those 10,265 murders, 6,603 reportedly took place with a handgun, while 297 murders utilized a rifle of any type. Shotguns featured 235 times in murders.

In the (U.S.) national discourse on firearms currently taking place, the semi-auto "assault rifle" gets portrayed as the scourge of American society. But the FBI data simply doesn't support that claim. While even one murder is too many, the data shows that gun control advocates aren't proposing to save lives. It's something else entirely. Otherwise, enemy number one would be the handgun. That's what the data says.

Or possibly they should turn their attention to knives. Criminals used knives to murder 1,515 victims in 2018. Meanwhile, blunt objects, listed as "clubs, hammers, etc." took 443 lives. Stunningly, personal weapons, "hands, fists, feet, etc." killed 672 lives in 2018. **Ω**

We live in a data-driven, analytical age. From stocks to sports, to the news you read, analytics drives the decision-making. Except when it comes to gun control. Because even though handguns, knives, clubs, hammers and even feet take more lives than rifles,

it's the "assault rifle" that must be banned.

It's not about saving lives for gun control advocates. And it never has been.

SRA COMMENT

Rifles featured in the high-profile American spree killings that people remember, although bombers have claimed far more victims. Emile Durkheim established in the 19th century (while founding sociology as a discipline and studying suicides) that eliminating a method causes a temporary dip in the numbers until another method takes over.

The simple fact is that, *in extremis,* one uses what is available. People who plan ahead might choose their weapon, but a 1990s Home Office study of armed robbers serving time when interviewed suggested that coming across the weapon motivated some of these convicts to find a way of gaining financial advantage from their discovery.

In the round, no ban has ever worked, while most have caused consequences unintended by the legislator to the inconvenience of the public legislators' purport to serve. **Ω**

Continuing the theme of USA watching, here's the top-5 Best Gun Friendly States:

1. Arizona
2. Idaho
3. Alaska
4. Kansas
5. Oklahoma

while the bottom 5 - Worst Gun Anti-Friendly States are:

47. California
48. Hawaii
49. New Jersey
50. Massachusetts
51. New York

This list according to American sources. Nevada; hosts of the 2021 SHOT Show don't make the top five, nor does historically gun-law-free Vermont. New York being bottom comes as no surprise, as they still have the 1911 Sullivan Act, drafted by Mayor Sullivan so that his bodyguards could carry guns but his political opponents' couldn't arm their close protection officers: while Washington DC – that used to have the highest murder rate in the land – has climbed out of the bottom five. DC lost their citizen gun ban laws to a US Supreme Court ruling in 2008 and have been grudgingly issuing carry permits. Ω

IN THE COURTS
The High Court of Justice

Before:

LORD JUSTICE FLAUX
-and-
SIR KENNETH PARKER
(Sitting as a Judge of the High Court)

_____

Between:

THE QUEEN ON THE APPLICATION OF OFFICER W80 **Claimant**

- and -

DIRECTOR GENERAL OF THE INDEPENDENT OFFICE FOR POLICE CONDUCT **Defendant**

-and-

COMMISSIONER OF POLICE OF THE METROPOLIS	**First Interested Party**
-and-	
EFTEHIA DEMETRIO	**Second Interested Party**

This judicial review arose from the investigation of Specialist Firearms Officer 'W80' following the fatal shooting of Jermaine Baker on 11 December 2015.

The background is that the Independent Office for Police Conduct (IOPC) directed the Metropolitan Police Service to bring misconduct proceedings against officer 'W80' alleging "a breach of the standards of professional behaviour amounting to gross misconduct."

The background to the fatal shooting began with Izzet Eren's arrest on 13 October 2015. He was riding a stolen motorbike and in possession of a loaded Scorpion machine pistol and a loaded handgun at the time. He pleaded guilty to a charge of possession of the weapons with intent to endanger life and was remanded in custody to 11 December 2015 for sentencing.

Police intelligence became aware of a plot to rescue him from the prison van while en route to Wood Green Crown Court for sentencing and SFO W80 and others were deployed to the vicinity of the court and parked close to the suspect vehicle to await developments. The threat assessment was that people in the car had firearms and the intention to release prisoners from the prison van – which by then was on its way from Brixton Prison.

Before the van reached the area, the specialist firearms team received orders to intervene. The suspect vehicle's windows were steamed up; there was no information as to the number of occupants or what they might be doing as police approached.

Police followed their usual procedure (shouting 'armed police' etc.) and W80 opened the front passenger door to reveal Jermaine Baker reaching for his shoulder bag instead of the dashboard as directed. In W80's words, "***I believed at that time that this male was reaching for a firearm and I feared for the safety of my life and the lives of my colleagues."*** He fired one shot.

No firearm was found in the vehicle: an imitation Uzi was located in the rear of the car. The two survivors were convicted of firearms offences and conspiracy to enable Eren's escape from custody in June 2016.

W80 was interviewed as a suspect in a murder case, but the Crown Prosecution Service decided not to bring criminal charges. The Independent Police Complaints Commission (IPCC, preceded the IOPC) thought that W80 had, ***" a case to answer for gross misconduct on the basis of the civil law test that any mistake of fact could only be relied upon if it was a reasonable mistake to have made, which was said to be the test that investigators were advised to apply in police disciplinary proceedings".***

The JR application cited two grounds; the first being that the correct test for self-defence in police misconduct proceedings is the test applicable under the criminal law and the second being that the IPCC/IOPC's assessment of the facts as giving rise to a case to answer was unreasonable and irrational.

Self-defence is a common law right: it is necessarily reactive to the perceived threat and such violence as is used has to be reasonable and proportionate. The 79-paragraph judgment handed down on 14 August 2019 is largely a consideration of the numerous attempts to 'clarify' or 'qualify' that common law right in statute law and numerous guidelines, codes of conduct and codes of practice, highlighting the different approaches taken in civil and criminal law.

The court in this case concluded that the correct test was that of the criminal law, thus agreeing with SFO W80 that he had no case to answer in misconduct proceedings.

That leaves the late Jermaine Baker in the same position as numerous other unarmed suspects shot by police. It's OK because he was a suspect at the time, believed to be armed at the time and believed to be trying to take action to ward of the threat to him at the time.

It's another case, like that of the late Anthony Grainger (reported in issue 64) arising from armed officers being sent into personal jeopardy to pre-empt something that was thought to be about to happen, with half-cocked intelligence and an incomplete briefing. And these cases matter to us because the police treat legitimate firearms owners as target criminals, such as by sending armed officers to execute their unlawful seizure policies.

The risk to us all is the same as for actual criminals when armed police are sent out with 'intelligence' that the 'suspect' has firearms. What there doesn't seem to be is any comeback on the people dishing out the 'intelligence'.

In the Sterling Northolt appeal case in 2017 it became clear that the 'intelligence' relied upon to regard its director as a danger to public safety or the peace and worthy of a place on the terrorist watch list was a conflated misunderstanding of events that had nothing whatever to do with him and if it took place at all it was over thirty years ago.

At the time of writing, all attempts to see and correct the 'intelligence' have failed: probably because the police might want to misdirect another bunch of armed officers in his direction, citing him as a terrorist suspect. You couldn't make it up. **Ω**

And in a quasi-court

Lord Keen QC cleared of professional misconduct after firearms conviction

Richard Keen, Baron Keen of Elie and advocate general for Scotland appeared before the Bar Council on 29 October 2019 to answer a professional misconduct charge.

The charge arose out of his conviction for a firearms offence in 2017, when he pleaded guilty to breaching a condition of his shot gun

certificate, viz: failing to keep a gun in a secure place. Section 2(2) of the Firearms Act 1968 says that *"it is an offence for a person to fail to comply with a condition subject to which a shotgun certificate is held by him"*. Every certificate includes a condition that guns *"must be stored securely so as to prevent, so far as reasonably practicable, access to the shotgun by an unauthorised person."* Police investigating a burglary at his Edinburgh address reported finding one of his shotguns in a cellar cupboard: i.e. not in his 'approved' gun cabinet.

Having been convicted of the summary matter, he was next called before the barristers' regulator – the Bar Standards Board, because in addition to being a Scottish Law Lord he was called to the English bar in 2009. Core Duty 5 of the handbook tells barristers that *"you must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession".*

The Bar Standards Board 'prosecutor' Tom Forster QC claimed at the hearing that a "breach of a condition of a shot gun certificate is not a minor criminal offence" and that Lord Keen's conduct was "appreciably culpable and placed the public at risk". The gun had been used on 27 December 2016 after which Lord Keen put it in the cupboard and forgot to clean it and move it to the gun cabinet before leaving the "residential property in an urban area" all locked up and alarmed for a holiday. He reported himself to the Bar Council in March 2017 and heard nothing until the November.

Tom Richards, representing Lord Keen, said that this was an "isolated lapse" and merely a "regulatory offence" that was "entirely outwith the course of professional practice." He said that the Advocate General took "full responsibility for his offence" but argued that it was "manifestly not such as to constitute professional misconduct…This shotgun was in the cellar of the property in Edinburgh, which was locked and alarmed, so the shotgun was kept secured from members of the public. That is a very important point in considering the risk to the public which was posed by this one-off lapse".

The tribunal found him in breach of this duty, but considered the breach was not serious enough to constitute professional misconduct.

As for the rest of us, SRA Secretary Richard Law commented; "this is an old chestnut started by the Metropolitan Police in London – they came up with the idea that a gun was only 'secure' when it's in the gun cabinet or safe they'd checked and approved as part of their drive to reduce certificate numbers. The Home Office has never recognised concealment as a form of security, while the courts regard regulatory breaches such as this as not evidence of danger to public safety or the peace."

Ω

Graham Hatton's Open Letter to the Martini Henry Society
(cribbed from the internet by the Shooters' Journal – very slightly edited)

"I do not, generally, rant and roar on FB; it is ultimately pointless and achieves little other than to, perhaps, clear the mind and permit a little steam to be let off. However.....
I have held my licences since I was 16 years old and am now 52. I am a former range officer with a spotless record, not as much as a parking ticket, and have fired just about everything short of artillery at one time or another. I assumed applying for a variation to my FAC would be straightforward as I have dealt with the licensing department in Glasgow for decades.

I apply for slots for a Long lee, an SMLE, a Martini Henry and a Snider. I am meticulous in the information provided, exact in the technical details etc. I spend weeks answering damn fool questions from anonymous licensing staff ranging from "What is a Henry's Martin?" to "Do you know where you'll be buying bullets?" I explain until I am blue in the face that I will be re-loading for both black-powder guns and that if they check their own records they'll see my explosives certificate is pending.

I am then told the variation will be conditional on my joining a local gun club; a gun club that is .22" only - hold that thought! I duly do so and have parted with the required cash.
Their delay causes me to lose out on the two Lee's I had my eye on; the vendor citing delay prompting him to sell elsewhere (yes, yes, spare me the wisdom, he was at it, RFD etc.) and then the licence finally arrives.

Said licence permits me these variations only for as long as I am a member of the gun club mentioned above, a substantial financial commitment I would not otherwise undertake. Add to this that the club meets on a Wednesday at 1900, and no one may leave once signed in until 2200: and it is a 2.5-hour round trip for me.

To say I am less than happy is an understatement but, wait, there's more! The variation allows for two bolt action .303's: fine and then a space for 'any .577 hammer operated rifle' and 'a falling block .455 rifle'. Anyone else see the issue here?
Tomorrow morning, I intend schooling the ignorant, jumped up acting Inspector I've had to jump through hoops for in the difference between GUIDELINE and MANDATORY! It's not the first time I've had to deal with such an individual and I will take it straight to his gaffer if he decides to be obdurate. However, there is no bloody need for all this palaver and I am, frankly, a Bee's wing off telling him to stick it rapidly where monkey's hide their nuts!
Thank you for the space and I'll make it a long time before I rant again. Oh, and I could not care less if Police Scotland monitor social media, I've said nothing that's not true and they get to police my licence; not my opinion."

Should try living in Tunbridge Wells! –Ed. Ω

GUN LAW BOOKS – THE BACKGROUND

There's never a good time to publish a book about firearms law. It's such a moving target these days that any book or journal is out of date in some regard before it hits Amazon. They used to hit the bookstands, but much has changed in the fifty years since the first edition of 'Gun Law' was published in 1969.

An act of consolidation in 1968 brought firearms legislation together in one Act. Then in 1969, the Home Office circulated its 'memorandum for the guidance of the police' and Godfrey Sandys-Winsch published his first edition of 'gun law'. That made him the first. And since its readers wrote 'Guns Review', his book wasn't reviewed in that publication until the third edition in 1979, by which time Colin Greenwood has assumed the editor's chair.

Sandys-Winsch's 1973 (second) edition added the Firearms (Dangerous Air Weapons) Rules 1969, the Firearms Rules 1969 and a certificate fees order. He didn't know about the restricted Home Office guidance, so he doesn't comment in its mistakes and doesn't even touch on appeals, so the 1971 changes wrought by the Crown Courts Act pass him by, as they did Clarke and Ellis when they followed with 'the law relating to firearms' in 1981. J B Hill's 'weapons law' came out in 1989 and Ian Bradley's 'firearms' in 1995.

Clarke and Ellis thus published just before the Firearms (Amendment) Act 1982. They've never gone to a second edition. J B Hill's 1989 first edition was up to date with the 1988 Firearms (Amendment) Act changes. Also that year, the Home Office revised its guidance to police and published it in 1989. Bradley's 1995 'firearms' has a Scottish perspective, he being at the time a solicitor with the procurator fiscal service. He was up to date then, since the last piece of legislation he encompasses was the 1994 Firearm Act.

Sandys-Winsch knocked out two more editions (1979 – reviewed in GR's August edition) and his 1985 fourth edition. Reviewed by Colin Greenwood in November's GR, Colin criticises the author's lack of awareness of two 'good reason' appeal cases, which the author dutifully adds to his table of cases in his 1990 fifth edition, which also took in the Firearms (Amendment) Act 1988. The seismic 1997 legislation went into his (last) 1999 sixth edition. And that left him as the most up to date. And since he never looked at appeals (save when explaining 'good reason' as a gesture to Colin Greenwood), one can't do without the other books as well.

Sandys-Winsch offers no explanation in his books for what motivated him to write his first edition, nor his due diligence in keeping up to date with the areas he does cover. Gun law books are not million-sellers. We thought it might have been on a law students' reading list somewhere but have no evidence for thinking that.

Other authors are more obvious: Clarke and Ellis presented the most thoughtful and hair-splittingly argued prosecutors' bible: their target market

was police firearms managers and prosecuting solicitors, which made the 1,000 print-run ambitious.

As an example, consider their position in respect of section 12 of the 1968 Act, which says*: "(1) A person taking part in a theatrical performance or a rehearsal thereof, or in the production of a cinematograph film, may, without holding a certificate, have a firearm in his possession during and for the purpose of the performance, rehearsal or production".*

Straightforward enough, you might think: yet the Metropolitan Police took the view that battle re-enactment wasn't 'theatrical' and thus didn't benefit from the exemption – when they found out that WW2 re-enactors hired machine guns from theatrical armourers Bapty's: in the fifth year that they had done so.

Clarke & Ellis delved into the wording of the exemption, introduced into law by the Firearms (Amendment) Act 1936 and found that the Theatres Act 1968 used the term 'play' but not the term 'theatrical performance'; so they went back to section 13 of the Theatrical Employers Registration Act 1925 and found that, "*the expression 'theatrical performer' includes any actor, singer, dancer, acrobat or performer of any kind employed to act, sing, dance, play or perform in any theatre, music hall, or other place of singing, dancing, playing or performing…..and the term shall include all persons employed or engaged for purposes of a chorus or crowd but shall not include stage hands or members of an orchestra.*"

Clarke and Ellis comment, "*It appears that the producer, stage manager and like persons may be excluded from the definition…"*

Er, no; the props man, stagehands etc. are covered by the word 'production'. This is the kind of bent argument that brings the law into disrepute – quite often along with the people caught up in it.

There's nothing in Clarke & Ellis that promotes the shooting sports: just where the lines are that certificate holders might cross. The complication is that the 1968 Act contains all the regulatory stuff about what one needs to do to act lawfully AND a whole bunch of crimes that can be committed by having a firearm over and above not having a certificate for it.

Section 19 is a case in point: ignoring later Labour Party mental illiteracy for the moment, this clause makes it an offence to have a firearm and ammunition or a loaded shotgun in a public place without lawful authority or a reasonable excuse. 'Lawful authority' refers to what one is doing at the time: a sentry outside Buckingham Palace has lawful authority for what he is doing – i.e. guarding the palace gate. The same man, twelve hours later and ten pints of lager into his evening may not have lawful authority for carrying his rifle.

'Reasonable excuse' is usually straying from what one is doing at the time. An example is crossing a public highway with a loaded shotgun from one field to another; having lawful authority to shoot over both. And if a valid target species happens by while

the shooter is crossing the road it's only an offence to take the shot if doing so causes inconvenience/alarm etc. *to a road user.*

We had a case about this in the 1980s. Our clients had repeating shotguns and what they did was hid in the bushes next to the road and when the coast was clear they stepped onto the tarmac and emptied their guns into the rookery above. Then they collected up the cases and carcasses before retiring to the bushes to reload. Eventually a policeman happened by and they were charged under this section 19.

When we got to court, we asked to see the complainant's statement and she turned out to be a curtain-twitcher watching them through binoculars from some 900 yards away – *so she wasn't a road user* and the case was dropped at the court door.

The intended function of section 19 was to cover that unknown: the suspect has his gun and certificate; what is he going to do with it? We don't know, but there's no obvious reason he'd be there with it so arrest him – whereupon the onus is on him to tell the court why he was there with it.

Re-wind to the last journal for a moment and to the case of Antony Grainger. Police observers were focussed on a stolen car Mr Grainger drove daily by which foolhardiness he had inserted himself into this matter. The police assumption was an armed robbery being planned and it reads as though a senior police officer decided to put a stop to it before it happened by having them arrested.

The assumption seems to have been that there would be guns in the car, and if there had been the arrest could have been followed with a section 19 charge in addition to possession without certificate etc. In the event there were no guns: ordinary British coppering would have nabbed three suspects in a stolen vehicle.

Hill's 'weapons law' (as the title suggests) and aside from the law-abiding certificate side of things, looks at the Prevention of Crime Act and thus offensive weapons, self-defence, poaching and the police use of firearms. Bradley is solely concerned with firearms laws and how certificate holders might break them.

Sandys-Winsch's book started in 1969 as a guide book to what you needed to know about firearms and shot gun certificate procedures, game and game licenses, wildfowling and how to avoid falling foul of the law in the countryside: defining poaching, tenants' rights, which critters are protected, young people and guns and a summary of the offences one can inadvertently commit while having a certificate and trying to act lawfully.

He generally stayed on that path through his six editions. And no great need for an update after 1999 came until the Anti-Social Behaviour Act 2003, followed by the Criminal Justice Act 2003, the Serious Organised Crime and Police Act 2005, the Violent Crime Reduction Act 2006 and its accompanying 2007 regulations landed.

The Anti-Social Behaviour Act 2003 banned air guns using the

Saxby/Palmer-cum-Brocock systems of self-contained air cartridges. The Criminal Justice Act 2003 added section 51A to the 1968 Firearms Act – mandatory prison terms for certain section 5 weapons and the Serious Organised Crime and Policing Act 2005 strengthened police powers to arrest persons suspected of poaching.

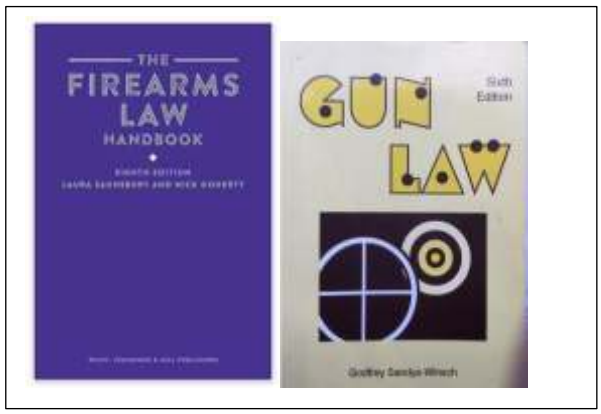
The Violent Crime Reduction Act 2006 introduced the concept of 'realistic imitation firearms' and made it an offence to sell them, with exemptions in the 007 regulations.

In 2011 Laura Saunsbury and Nick Doherty revised and updated Godfrey Sandys-Winsch's sixth edition, and while they considerably expanded it and changed the title, they homaged his contribution by making it the seventh edition.

There was a brief respite after 2011 in which firearms laws didn't change. Derrick Bird's spree shooting in Cumbria just six weeks after the 2010 general election knocked the then London Mayor Boris Johnson's plans to bring back handguns in time for the Olympics on the head; but otherwise it was a slow-burn, as politicians and civil servants combed the Cumbria case for clues as to what to ban next.

Elements of what they came up with appeared in the Anti-Social Behaviour, Crime and Policing Act 2014; other legislation since then includes - the Explosives Regulations 2014, the Air Weapons and Licensing (Scotland) Act 2015, the Firearms (variation of fees) Order 2015, the Policing and Crime Act 2017 and the Firearms (Amendment) Rules 2018.

It was high time someone updated their gun law book: Saunsbury and Doherty stepped up to the plate, fast enough to miss all the changes currently being wrought by Brexit and the polarised Home Office 'Serious Violence Unit: let's see how they did. Ω



The Firearms Law Handbook (Eighth edition)
By Laura Saunsbury and Nick Doherty
Published by Wildy, Simmonds & Hill in 2019
ISBN 9780854902736

Following a telephone call from a bailed suspect about the charge he faced under the Animal Welfare Act 2006 for shooting a dog that had been worrying sheep, we turned to this book (since it was on the desk for review) for advice and found none. We emailed the author, who replied that his book was about firearms, not animals.

And therein the clue to cracking our case: the Animal Welfare Act 2006 is about the care and welfare of domesticated animals. And what local authority inspectors do to owners who don't measure up. Nothing in it 'controls' the destruction of animals in a humane manner, so a charge under this Act couldn't stick to a suspect who

the police'; that has never been published.

What Nick Doherty and Laura Saunsbury have done with the last Sandys-Winch edition as their starting point is to elevate that guidance to the public to a tome of guidance to lawyers; and that's no bad thing, given that most firearms owners need to know at least as much about the law as they do about their guns and in both instances far more than most law enforcement officials they encounter because of their interests.

It's not written in the style of a textbook: none of the editions are. It's still guidance to the public, but now its guidance to the pitfalls of trying to pursue shooting in any version as a hobby and what to do when the powers that be try to stop you. There's a lot in it for other interested parties as well: if you don't read it, you need to hope that your club secretary, gunshop proprietor or lawyer has or will when necessary.

Clarke and Ellis claimed in their 1981 'the law relating to firearms' book that more firearms cases had gone through the courts since 1968 than in the preceding 6.8 decades of the 20th century. We comment on that elsewhere, but essentially the *increase* since 1968 has been logarithmic and your chances of being caught up in a case in which the people who issued your certificate are trying to trash your good character and reputation have never been better.

So be prepared: getting involved in having any certificate under the firearms or explosives acts necessitates knowing more law than one needs for other hobbies, such as restoring vintage vehicles or flying light aircraft.

All the case law pouring forth qualifies statute law: according to Lord Bingham's book 'the rule of law' Court of Appeal decisions *become* the expression of the common law. That means a decision such as Richards v Curwen in 1977, which set out the fact and degree test for defining an antique firearm, can't be overturned by mere Home Office guidance or even a statutory instrument.

This is a long running issue and features in this book because the Court of Appeal in Richard v Curwen rejected the Crown's argument that firearms for which ammunition is 'readily available' should not qualify as antiques. Nevertheless, the Home Office has never let go of this concept, even though there's no longer any truth in it (all ammunition and components can only be acquired by certificate holders) hence the 1992 antique calibres list and numerous prosecutions of middle-aged collectors for possessing antiques that might chamber ammunition that didn't make the Home Office list.

In the Richards v Curwen case, the judge did say (the case concerned revolvers made in the 1890s) that he didn't envisage firearms made in 'this' (the 20th) century as qualifying for antique status. That remark was addressed by Lord Butler-Sloss in a 1994 case concerning a 1906 dated .22" War Office pattern rifle (R. v. Brown). She said that time had moved

shot a dog with 50 grammes (two ounces) of No1 shot at six metres and the police shouldn't have brought a summons under it, 'cos they ain't a local authority.

Glad we cleared that one up: as to when or whether our man will get his guns and certificate back now that the case has been dropped, we'll report the case next issue.

Turning to the book, the homage to the late Geoffrey Sandys-Winch remains clear, with sections on poaching, protected species and such. Much of the book is devoted to information useful to people who want to own and use firearms legitimately, while a lot of that is intruded upon by the more recent changes in the law aimed at, so far as possible, preventing the public from doing so.

We mentioned earlier that 'Gun Law' didn't touch on appeals, except in later editions when the author added the two 'good reason' appeals to his case list in response to a 'Guns Review' review of the book.

This latest edition has a whole section dealing with the intricacies of the section 44 appeal, including the ***Mason*** case at Winchester (2018 EWHC 1182 Admin) in which the High Court set out a template for the conduct of appeals that seems to have fallen on deaf ears in the courts, Home Office and police departments: so far.

How Crown Courts deal with appeal cases is a muddle, at best. The first problem Appellants encounter is court officials who presume all appeals are against conviction and judges likewise who will give the police side latitude when cases aren't ready, but not Appellants. This comes of being used to dealing with people *trying* to delay justice – such as to keep a driving licence for a bit longer – while Appellants are usually the opposite: *trying* to restore normality to their lives by getting their hobby and friends back.

Section 12 of the Firearms (Amendment) Act 1988 provided police with the power *in extremis* to seize guns and certificates at the service of a revocation letter. No revocation has taken place (in our cases files) without this clause being invoked since 1989 and more recently a 'seizure policy' has been implemented via which the police seize guns without any statutory authority whatever; including dealers' stock and the tools of their trade.

Appeals are as old as firearms legislation. Under the 1920 Act magistrates heard them; that was so unsatisfactory (magistrates courts used to be called police courts) that legislation in the 1930s elevated appeal hearings to the Quarter Sessions and prior to 1968 few cases got from there to a higher court. We count just two English and two Scottish ones in half a century.

Geoffrey Sandys-Winch's first edition of this book in 1969 followed hot on the heels of the 1968 Firearms Act – so hot that he published before the 1969 Rules came out – as guidance to the public. The same year, the Home Office circulated its own guidance to the police as a restricted document – the 'memorandum for the guidance of

on and so must the definition, which paved the way to acquittals of a couple of defendants charged with possessing WW2 vintage souvenirs.

We found it interesting that the 1994 case of R v Brown isn't listed in the table of cases in this book. That sparked our interest in looking at the tables of cases in all our firearms law books to see what differences we could spot. And there were quite a few. This book contains numerous judgments that post-date all the other authors, while not referring to some earlier judgments that feature elsewhere and including many older judgments that the other authors didn't use: 41 of them on our count, including the 1592 'case of swans'.

That could be to do with each author's intended audience: Clarke and Ellis addressed prosecutors, showing them ways of cracking down on the law-abiding, as did Iain Bradley. Hill is closer to Sandys-Winch in that he sought to guide the public and their lawyers on a wider range of 'weapons' than just firearms.

One of the SRA's first cases (in the early 1980s) involved the Metropolitan Police refusing to process a shot gun certificate application because the applicant also had a country house. This meant he didn't live in London full time, so the refusal to process was based on his being of 'no fixed abode': same as the Duke of Edinburgh.

We sorted that quickly enough, but the issue came up again this century in a case where Hertfordshire Constabulary refused to process a shot gun certificate application for a lorry driver who moved into digs in that county.

Clarke and Ellis deal with 'abode' by reference to two obscure cases: R. v. St. Leonard, Shoreditch (1865-LR1 QB21) and Levene v. IRC (1928 AC 217, HL) which say respectively that a man lives where he says he does and that a man may have more than one address. Saunsbury & Doherty are silent on the subject, so it could be that police forces aren't trying that one on anymore and to be fair we haven't had to cite the 'abode' cases in court since 2009.

The book does give a huge amount of guidance, citing decided cases where useful and many of these come from the authors' own practise experience. Nick Doherty has been the 'go to' lawyer for firearms cases involving certificate holders for over thirty years and it shows in the detailed knowledge of case law he brings to print.

We find ourselves differing with the authors on some points of detail and at times they make assertions without supporting the position with a source. As an example, in the context of the list of component parts to be found in the Policing and Crime Act 2017, they say in para 1.22 "*…the mere fact that an item is capable of being used as one of the specified component parts of a firearm or prohibited weapon will be sufficient for it to be classified as such, notwithstanding the fact that the part may at the relevant time have been fitted to something which could not be considered a lethal barrelled weapon or a prohibited weapon.*"

They don't cite any authority for this position. In R. v. Hucklebridge (AG's Ref 3/1980), Lord Lane had to consider a bored-out Lee Enfield and answer two questions, viz: did removing the rifling alter the classification of the weapon, or just of the barrel? He answered that with a smooth bored barrel of more than 24 inches, the gun met the definition of a shot gun in the Act and all the parts were part of the whole. On reading his judgment, the Lee Enfield bolt becomes a component part of the shotgun it is fitted to and it seems to us that Lord Lane's decision covers the possibility of a component part of a firearm being found as part of something else: it will be part of that whole, such as the crossbow we saw at 'Military Odyssey' that used an AR15 type lower and trigger group.

These were made in the USA for the German market: the crossbow manufacturer couldn't fit the AR15 lowers to his product without registering the crossbows as firearms in his country, so he sent them to England to have the lowers fitted.

That sets a few more hares running. Can a lower be considered a component part of a firearm *before* it has been fitted to anything?

We did have a problem case indirectly following 'Hucklebridge' in which the defendant had acquired a bored-out Lee Enfield with a bent barrel. He removed the barrel with a view to seeking a replacement and the police landed on him in the meantime, at which point he had all the parts of a Lee Enfield *except the barrel*, and the missing part is what would have settled whether the rest of it was a section 1 rifle or a section 2 shotgun.

Saunsbury & Doherty do cite R. v. Hucklebridge on page 216, but as '3 All ER 273', as authority for : "*prior to the coming in to force of section 7 of the Firearms (Amendment) Act 1988 it was possible to bore the rifling out of an old section 1 rifle and hold it on a shot gun certificate.*" To which we would add "and it still is." The 'conversion not to affect classification' clause 7 prevented downgrading section 5 prohibited weapons to section 1. It only prevented section 1 rifles being converted to shotguns in cases where the rifled barrel was less than 24 inches long: the K98K being a prime example.

We did have a 20-inch barrelled Winchester 1897 shotgun once upon a time: marked to the Royal Irish Constabulary (which ceased to be in the 1920s) the barrel had at some later stage been extended to 24 inches.

Classifying guns like that is the poker game policing plays with the character and liberty of owners. Did it become section 5 in 1988? Or just section 1 on magazine capacity? Or is it, since it's an 1897 design made before the Great War, an antique? A question of fact and degree for a jury.

What thrust the Hucklebridge Lee Enfield back into section 1 in 1988 was the rewording of the definition of a shot gun. After that any shotgun with a magazine capacity of more than two cartridges or a detachable magazine of any capacity went back into section 1. That caught the bored-out rifles re-enactors were using, as well as a few

actual shotguns, such as the Marlin Goose Gun. Neither change affected rifles that had no magazine, such as Martini Enfields, which can still be held smoothbored on a shot gun certificate.

Its these picky details introduced by knee-jerk legislation and intended to be used to whittle down certificate numbers at the expense of erstwhile certificate holders' good characters that keeps lawyers in business. And that's tricky financially, as years of austerity have depleted the Crown Prosecution Service budget and all but eliminated legal aid.

Despite the cost, nobody should risk their good name and possibly their liberty by not consulting experts if or when placed in jeopardy by way of a prosecution. Nyira Lawrence got into such a predicament a few years ago (R. v. Nyira Lawrence – [2013] EWCA Crim 1054, [2014] 1 WLR 106) when she pleaded guilty under an 'early guilty plea scheme' to a charge of possessing a section 5 shotgun after her lawyer received a report to that effect from a prosecution 'expert'.

The gun was a section 1 shotgun (one aspect of our knee-jerk legislation is this kind of muddle) and that went unchallenged by her lawyer for 89 days by which time she'd been sentenced to five years in prison. The Court of Appeal refused to order a re-trial – presumably conspiring with the Home Office to keep the statistic in place – and said in judgment "This case serves to highlight that in relation to "streamlined" procedures directed at encouraging early guilty pleas it is important that all involved are alert to check that the necessary elements of what will sometimes be relatively specific offences are in fact provable."

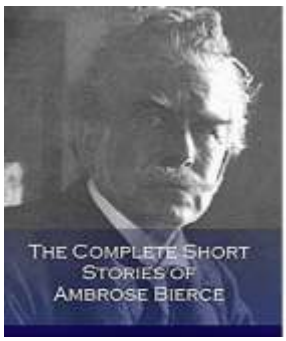
Doubly so where prosecution 'experts' are involved. We mentioned R. v. Hucklebridge above: the discredited and now defunct Forensic Science Service habitually ignored decisions that went against their grain. They weren't proper 'experts'; most of them were chartered chemists, which is the qualification for dealing in drugs, and were hired by the Home Office to get convictions. So, in a 1989 case relating to a gun which had been bored out and reproofed as a shotgun, the FSS 'expert' described the removal of the rifling as 'damage'.

The Home Office shut them down a few years ago to save money. When originally conceived, chief constables were docked 6% of their budgets to pay for 'forensics', so policemen sent every gun they got hold of to the labs for the full treatment: nearly 600 guns when they raided Peregrine Arms in 1985. Then a budgetary shift in 1991 gave chief constables their gross budgets and they were billed on a 'cost of works' basis.

That meant most guns were classified in-constabulary and only classifications that were disputed by defence experts went to the labs for a second opinion. Following the FSS going the way of the Dodo, a variety of 'experts' are used by police forces to come up with the evidence necessary to prosecute, as in the 'Lawrence' case, and without proper checks by the defence, dodgy prosecution evidence will get through. And, as the Lawrence

case shows, the higher courts are unwilling to correct mistakes made by defence lawyers, so beware. And have a copy of this book handy. **Ω**

The Complete Short Stories of Ambrose Bierce



I heard mention of this book on a TV programme; the author received a head wound in the US war between the States (1861-5) and wrote these short stories thereafter. My junior school teacher read us a story (during the civil war centenary) about a little boy who got lost, went to sleep, woke up and found men crawling past him: thought it was a game but the one he tried to ride shook him off and couldn't speak because his jaw was shot away.

He was attracted to a fire, which he tried to keep going by throwing stuff on including his wooden sword before he realised it was his house and then he found his mum lying dead. I thought it must be from this collection - and so it is: called Chickamauga. I never forgot it from hearing it as an eight-year-old and now I'm reading the complete book, which is challenging and fascinating, written by an eyewitness, albeit with some poetic licence. Like his account of a sleepy Union sentry shooting his own Confederate father; the latter riding his horse straight down a sheer cliff.

Paperback: 234 pages
Publisher: CreateSpace Independent Publishing Platform (31 Aug. 2017)
Language: English
ISBN-10: 1975940164
ISBN-13: 978-1975940164

Bierce liked to shock readers out of their comfort zone. His works have been pillaged by the 20th century visual arts, such as his story 'an Occurrence at Owl Creek Bridge'; one of many to have been used in the cult TV series 'The Twilight Zone'. And he kept his ability to surprise right to the end, disappearing (aged 71) in December 1913 having followed Pancho Villa's irregular forces to the Battle of Tierra Blanca. Gregory Peck portrayed him in the 1989 movie 'Old Gringo' in which they managed to tie together several of the rumours of Bierce's death into one scene.

All in all, a rattling good read. **Ω**

Three years of hell
By Harry James Greenwall
Privately published during the war and after he got out of Occupied France and reached England.

The author was a journalist – and briefly editor of the Daily Express during the First World War – who lived in France for most of his working life. This little wartime economy book came out in 1944 and the three years of hell he wrote about in it are his experiences in France from the start of the Second World War in 1939 until his eventual escape back to Britain.

His journal style – he wanted it as a record of events – makes an interesting read because he was there as things happened and hasn't overlaid or edited his journal with hindsight. In September 1939 he was living in Paris in sight of where the first Big Bertha

shell landed on the city in 1917. His observations that month include that France had run out of gas masks to issue, but there were Swiss made ones for sale.

Paris was always a left-wing city: very much in the grip of the unions and the unions very much communist.

When war was declared, the government made communist party membership illegal, so a lot of key workers had to disappear. It was them and their covert organisational skills that became the backbone of resistance, but at the war's start, Greenwall mentions that Petain has told Goering that the French army is fascist, hence anti Bolshevik, while his own observation is that the French army is class riddled: officers tend to be fascists and the men socialist or communist.

After a week of war there's no coffee, no oil and no soap. Telephone calls are restricted and may not be made in English. Paris was still heaving with Germans, but the author does not say if these are tourists or refugees. The French, he says, have an anti-English attitude, which makes German propaganda more believable. Less believable are the government of the 3rd republic. He refers to them as petticoat led: all the top men are managed by unscrupulous women.

Edouard Daladier was Prime Minister of France in 1939 (known as the bull - but there's a word missing) until March 1940 when Paul Reynaud replaced him. The Duke of Windsor visited the front line at Strasbourg in November 1939, followed by the author who notes that in February 1940 there were still lots of Germans in Nice, who seem to him to be mostly to be German and Austrian Jews.

On 9 April Paris hears Denmark and Norway invaded. On the 15th Paris hears that British troops have landed in Norway, as have a few French mountain and foreign legion units. On 10 May Paris hears that Holland and Belgium have been invaded, France is next.

In his words, *"11.5.40 no news of the fighting in Belgium but a steady stream of posh Belgian cars are driving into France. German aircraft overhead every day as has been happening for months, but no bombs have been dropped."*

The pervading French attitude is one of not wanting war: it's defensive thinking, the "do you want to die for Danzig?" Attitude is because Danzig was German until given to Poland after the Great War.

- *12.5.40 Chantilly bombed, missed the airfield and railway but hit the village.* (A Don-R tells the author that the BEF in retreat.)
- *14.5.40 second rate Belgian cars coming through and now the first pedestrian refugees.*
- *18.5.40 His secretary working a Dictaphone and typewriter is assumed to be using a short-wave radio; panic about spies ensues.*
- *21.5.40 Civilians evacuated by the mayor on the strength of a bogus call. German fifth column use the telephones to spread fear and rumours.*

- *French army can't get into position for refugees on the roads and deserters retreat on foot because their officers have already fled in cars. 29.5.40 First news of BEF at Dunkirk leaving equipment behind.*
- *2.6.40 a couple of supposedly Czech refugees found in Dunkirk with a short-wave transmitter. They have been there since 1938.*
- *5.6.40 Luftwaffe bomb villages and strafe fields to get people fleeing. The first ground troops arrive on motorcycles and say its ok to stay. Then a field kitchen arrives dishing out soup and bread. Col de Gaulle is promoted general and appointed under-secretary for war.*
- *10.6.40 the Germans are 25 miles from Paris and friend of his evacuated from Dunkirk with the British Expeditionary Force has returned. He says not all the BEF left; some retreated toward Normandy* (the 51st Highland Division were sent to support the French army at Abbeville and the whole division was cut off from the sea and captured – Ed) *and many French evacuees have returned. The BEF might invade further down Brittany to strengthen French army, but Paris will fall anyway. The political problem is defeatists like Petain who want to surrender, as he wanted to in March 1918. He's also terrified of the communists and would rather have fascist Germany as an ally than left wing Frenchmen. PM Reynaud is controlled by a woman with business and banking interests and those interests don't like communism either. De Gaulle went to London but failed to obtain strong RAF support. It's not yet common knowledge that BEF left all their guns and transport at Dunkirk. Italy declares war and the French government is evacuating to Tours. Tough day."*
- *11.6.40 Paris covered in shroud-like mist so no bombing.*
- *12.6.40 Radio tells teachers to return to their schools, but teachers feel that if the government is running so can they.*
- *13-14th June: lead elements of German spearhead enter Paris. Churchill has told French that if they make a separate peace Britain will fight on and if Britain wins will unconditionally lift France from the ruin. After he goes, French cabinet still divided about fighting on or making peace. Either way Churchill's main concern was what the French fleet would do.*
- *14.6.40 it will take either America declaring itself for France or a BEF landing to keep the French army in the fight.*
- *15.6.40 Valence, Rhone is the demarcation between two departments and is peach tree country. The hoped-for miracle is*

a British landing, but now Italy has invaded.

- *17.6.40 government resigns after USA response is negative and British ambassador back pedals on Churchill's promises. Petain forms the new government*
- *18.6.40 Petain announces that France must stop fighting. Actually, they pretty much had days ago, except for General Olry and his army of the Alps who is beating the Italians with six divisions and a reserve of Senegalese troops. This action prevented the German-Italian link up at Chambery.*
- *19.6.40 Petain says he prefers Hitlerism in France to socialism in France but doesn't want the Belgian government fleeing to England. He asks the Spanish ambassador to France for Germany's terms and is told to send a delegation, but also to ask Italy for their terms.*
- *21.6.40 surrender of Paris by candlelight, an unnecessary farce as German tanks are already in place de la Concorde. Detectives say, it was an inside job.*
- *25.6.40 government moves to Vichy. Some Ministers flee, ineffectively to North Africa. 29.6.40 News of the British attack on the French fleet is in the papers.*

To this point, as a journalist, he has been close to government sources, hence knowing more and recording more in his journal than was common knowledge. We didn't know why de Gaulle was in Britain until we read Greenwall's comments about trying to get RAF support. His broadcast call to all Frenchmen to rally on 18th June ties in with his appointment to the collapsing government and now makes more sense. We thought the date significant, being the anniversary of Waterloo in 1815.

France making peace with Germany left Greenwall as a persona-non-grata enemy alien. The Germans told him he could go home (he'd moved to Chantilly before Paris fell) but the French have looted English properties. The French gave him a petrol coupon but the American embassy in Lyons says it's a trap: ask for more fuel coupons and then flee south, which he does.

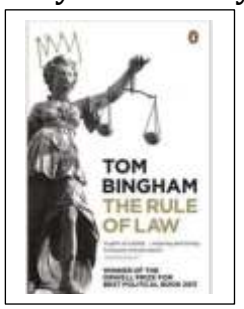
His journal is now more personal, as he has to make do with the situation; a few more of his observations:

- *Bifstek Longchamps is horsemeat.*
- *Food is scarce, rationing meaningless and much time goes on getting up early and queuing.*
- *Refugee Estonian military attaché reminds him that everyone expects Germany to go to war against Russia.*
- *French police say that a failed invasion of England cost Germans fifty thousand casualties. There was an earlier report of hundreds of burned bodies washing up.*

- *Petain saw himself as the Hindenburg of France while Pierre Laval sees himself at the Hitler of France.*
- *Queer cast at the bar. Temporary red head. Rarely have I enough money to patronise the place and listen, and when I do, I wish I had a gun and was allowed to use it.*
- *People climbing over each other to get jobs from the Germans. Others trying to escape.*
- *Food shortage blamed on British blockade but the facts are that three fifths of France is occupied and the two fifths that isn't is mostly agricultural. The food surplus is going to Germany, reckoned at 80% of production.*
- *Shipping is operating normally, food livestock etc. from North Africa. Sailings gazetted to north and South America. The Germans have taken control of port traffic. They don't requisition, they pay for everything, and they take everything.*
- *10.2.41 Visitor from Rennes says every farm, coal mine, and cellar has British Tommies hiding in it.*
- *German invasion barges were badly made and in tests lots turned turtle, hundreds drowned.*
- *German troops mutinied in Lille over not being allowed to go to Paris for leave. Casualties. Only two Paris gates open, others barricaded.*

All useful observations for the social historian from a talented writer whose neutral observer position became harder to achieve as the war wore on. He wasn't eligible for ration cards, not being French, so he lived among the refugees until the Germans took over the south.

Then he took the escape/evasion route to get back to England, returning to France as soon as he could. His last book 'They were murdered in France' detailed fifteen murders of British subjects since 1920 was published in 1957, after which he disappears from the publishing record, probably into obscure poverty, as seems to be the way of so many prolific writers. **Ω**



The Rule of Law
By Tom Bingham
213 pages
Publisher: Penguin;
Language: English
ISBN-10: 014103453X
ISBN-13: 978-0141034539
Kindle edition £2.49

Tom Bingham was, according to the Guardian, 'the most eminent of our judges': he was, successively 'Master of the Rolls' 'Lord Chief Justice of England and Wales' and 'Senior Law Lord of the United Kingdom'.

His book's title 'The rule of law' was used, he says, in an Act of Parliament as "an existing constitutional principle" in 2006. The phrase was coined by Whig Jurist A V Dicey in his 1885 book 'Introduction to the Study of the Law of the Constitution' and he in turn

cribbed it from Aristotle who said, *"the better for the law to rule than one of the citizens"* – except he said it in Greek.

There's a lot more name dropping to come, as Tom Bingham feels his way around the various obstructions to the rule of law that Tony Blair's government introduced, while acknowledging that terrorism impacted on the rules of the game. The balance is that of human rights and civil liberties versus security against terrorist attack.

The principle of restricting the public at large on the grounds that it might make terrorism more complicated is drawn from 'the Protocols of the Elders of Zion' – an early 20th century anti-Semitic diatribe and that Labour adopted so much of is why they seem to be anti-Semitic.

To continue in Tom Bingham's words; *"When 'The UK's Strategy for Countering International Terrorism', was published in March 2009, the Prime Minister, Mr Gordon Brown, paraphrased Cicero when he said: 'The first priority of any Government is to ensure the security and safety of the nation and all members of the public.' This is a view which many support, in Britain and the United States. But John Selden (1584–1654), who did not lack experience of civil strife, observed 'There is not anything in the world more abused than this sentence.' A preferable view to Cicero's, perhaps, is that attributed to Benjamin Franklin, that* ***'he who would put security before liberty deserves neither'.***

The problem, of course, is that the Home Office don't trust the people. Consider what would have happened to Alfred the Great's kingdom if he'd banned his people from having swords and restricted their use of spears and bows to hunting as a way of preventing Vikings terrorism. That's the logic currently in vogue at the Home Office.

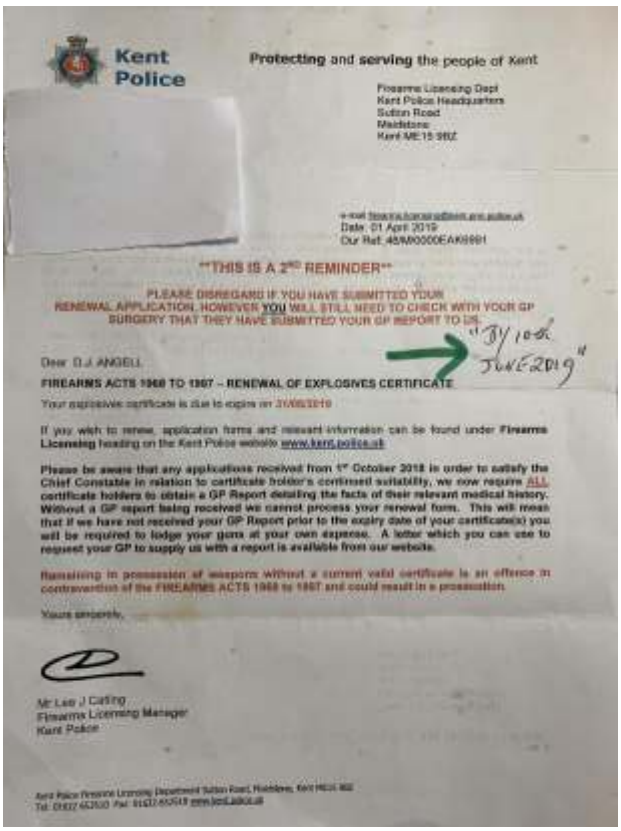
And again; "*…great Catholic thinker, Christopher Dawson, who wrote in 1943, when Britain and the United States were pitted against the great evil of Nazism, 'As soon as men decide that all means are permitted to fight an evil then their good becomes indistinguishable from the evil that they set out to destroy.' Thus, our constitutional settlement has become unbalanced, and the power to restrain legislation favoured by a clear majority of the Commons has become much weakened, even if, exceptionally, such legislation were to infringe the rule of law as I have defined it."*

This is another retired judge following in the footsteps of Lord Hewart, Lord Chief Justice of England 1922-40. His book 'The New Despotism' was published in 1929; in which he asserts that the rule of law was being undermined by the executive at the expense of the legislature and the courts. This was his view of civil servants introducing regulations (Statutory Instruments); "*quasi-judicial decision-making by the civil service and the subordination of Parliament which resulted from the growth of delegated legislation"* which he said, *"to subordinate Parliament, to evade the Courts, and to render the will, or the caprice, of the Executive unfettered and supreme".*

Powerful stuff at the time; strong enough for civil service to try boycotting his book and for the government to appoint a committee to review the powers of ministers. Its Report (1932; Cmd. 4060) did not share Lord Hewart's alarm, so Parliament collectively didn't take the hint from Lord Hewart then and has likewise ignored Tom Bingham – Baron Bingham of Cornhill in the County of Powys – now; if the latest crop of S.I.s put out by the Home Office is anything to go by.

Unlike Lord Hewart, this retired judge is a much better read. It's worth knowing his position and how he arrived at it; it's just a pity that the people who could do something about this crisis are too busy making it worse to read it. **Ω**

APRIL FOOL?



Kent Police

Protecting and serving the people of Kent

Firearms Licensing Dept
Kent Police Headquarters
Sutton Road
Maidstone
Kent ME15 9BZ

Date: 01 April 2019
Our Ref: 48/M/0000EAK/0001

"THIS IS A 2ND REMINDER"

PLEASE DISREGARD IF YOU HAVE SUBMITTED YOUR RENEWAL APPLICATION, HOWEVER YOU WILL STILL NEED TO CHECK WITH YOUR GP SURGERY THAT THEY HAVE SUBMITTED YOUR GP REPORT TO US.

"31/10th JUNE 2019"

Dear D.J ANGELL

FIREARMS ACTS 1968 TO 1997 – RENEWAL OF EXPLOSIVES CERTIFICATE

Your explosives certificate is due to expire on 31/05/2019

If you wish to renew, application forms and relevant information can be found under **Firearms Licensing** heading on the Kent Police website www.kent.police.uk

Please be aware that any applications received from 1st October 2018 in order to satisfy the Chief Constable in relation to certificate holder's continued suitability, we now require ALL certificate holders to obtain a GP Report detailing the facts of their relevant medical history. Without a GP report being received we cannot process your renewal form. This will mean that if we have not received your GP Report prior to the expiry date of your certificate(s) you will be required to lodge your guns at your own expense. A letter which you can use to request your GP to supply us with a report is available from our website.

Remaining in possession of weapons without a current valid certificate is an offence in contravention of the FIREARMS ACTS 1968 to 1997 and could result in a prosecution.

Yours sincerely,

Mr Lee J Catling
Firearms Licensing Manager
Kent Police

Kent Police Firearms Licensing Department Sutton Road, Maidstone, Kent ME15 9BZ
Tel: 01622 652520 Fax: 01622 650519 www.kent.police.uk

This letter was sent to one of our founder members: purportedly from Kent Police, the letter is headed ***"Firearms Acts 1968-97 – Renewal of Explosives Certificate"***. Yet explosives certificates are issued under the Explosives Regulations 2014, not under the Firearms Acts.

The second paragraph refers to "***Firearms Licensing"***: which doesn't exist. The Firearms Acts refer to firearm and shot gun *certificates:* Gun Licenses were issued under the Gun Licensing Act 1870 until that Act was repealed in 1966.

The third paragraph refers to ***"certificate holders"*** and the 'requirement' (currently ultra vires) to obtain a GP's report ***"prior to the expiry date of your certificate(s) you will be required to lodge your guns at your own expense"***. Er, for a belated explosives certificate renewal?

The last paragraph says ***"..remaining in possession of (sic) weapons without a current valid certificate is an offence…"*** so it was drafted by someone ignorant of section 131 of the Policing and Crime Act 2017, section 7 of the Firearms Act 1968 (as amended) and the Explosives Regulations 2014: or an illiterate hoaxer. Take a closer look at the date on it. **Ω**

NB The Explosives Regulations 2014 are a consolidation of parts of one Act and 31 legislative instruments regulating explosives and 11 legislative instruments regulating acetylene. What used to be black powder licenses are now explosives certificates.