

Legal

Never a borrower or a lender be

by Matthew Knight of Knights Solicitors

THE RULE SINCE THE VERY FIRST FIREARMS Act in 1920 has been that all firearms are illegal unless held and used by someone with a Shotgun Licence or a Firearms Certificate and used strictly in accordance with the provisions of that licence or certificate.

The default position is that only someone with a particular shotgun or rifle listed on his or her licence or certificate can hold and use that shotgun

or rifle. Except, and there are always exceptions in English law, in a handful of circumstances in which this general rule is varied. The most significant of these are:

- The 72-Hour Exemption in relation to shotguns only.
- The Shooting Ground Exemption in relation to shotguns only.
- The Estate Rifle Exemption in relation to rifles only.
- Exemptions for auctioneers,

carriers and registered firearms dealers and those involved in the manufacture or repair of shotguns and rifles but who are not themselves in possession of or named on a licence or certificate. (This last exemption is really a separate issue and needs to be dealt with as such.)

There is also the anomalous position of people who are too young to have Shotgun Licences or Firearms Certificates or who are no longer entitled to have a Shotgun Licence or Firearms Certificate of their own, but who use a shotgun or a rifle under close supervision on particular premises.

LENDING SHOTGUNS AND RIFLES TO THOSE WITH LICENCES AND CERTIFICATES

A Shotgun Certificate holder may borrow a shotgun for a period of up to 72 hours without the need of notifying the Police (the 72-hour rule). If someone wants to borrow the shotgun for more than 72 hours, both the borrower and lender must notify the police. Such a notice must state the nature of the transaction, identify the names of the parties and the shotgun in question. This notice should be sent by post (preferably recorded delivery) or by email to the police.

This 72-hour rule does not apply to firearms under s1 of the Firearms Act 1968 ('the Act'). If a s1 firearm or its ammunition are transferred, it must be to a registered firearms dealer or directly to a person authorised by a Firearms Certificate to take possession, and both the borrower and lender must notify the police within seven days.

LENDING SHOTGUNS AND RIFLES TO THOSE WITHOUT LICENCES AND CERTIFICATES

A person without a licence or certificate may borrow a .22 rim fire rifle at a rifle range and may use a shotgun at a clay pigeon shoot or shooting ground that has been approved by the police.

It is also possible for a person who does not hold a licence to borrow a shotgun from the occupier of private



Be certain of the rules before you lend or borrow a shotgun or rifle.



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premises and use it on those private premises, provided he is in the occupier's presence, and the occupier has a valid licence. This exemption is found at s11(5) of the Act. The term "in the presence of" is not defined, but is generally interpreted as being within sight or hearing.

The 'Estate Rifle Exemption' allows a person who is over the age of 17 without a certificate to borrow a rifle from the occupier of a private premises and use it on those premises in the presence of either the occupier or the occupier's servant as per s16(1) of the Act. Use of the rifle under the Estate Rifle Exemption must comply with the conditions outlined on the lender's certificate. There has been some discussion as to the difference between the s11(5) Shotgun Exemption and the Estates Rifle Exemption. It appears on the face of it that the latter is less onerous than the Section 11(5) Shotgun Exemption as it permits the use of a rifle not only in the presence of the occupier (the limit of the Shotgun Exemption), but also his "servant".

The *Home Office Guidance 2016 to the Police on Firearms* explains that the term "occupier" in both exemptions is likely to be defined by the adoption of the term in s27 of the Wildlife & Countryside Act 1981. This states that an occupier in relation to any land, other than the foreshore, includes any person having any right of hunting, shooting, fishing or taking game or fish on that land.

The term "servant" is not defined under any of the Firearms Acts, but I doubt that this will come under any real test provided the servant has the permission of the occupier.

Of late there has been some discussion as to whether the Shotgun Exemption extends to the occupiers' servants. From my experience in this area, it has

NOTE IT!

KNIGHTS SOLICITORS
 Matthew Knight is the Senior Partner of Knights Solicitors, Tunbridge Wells. Knights Solicitors have dealt with numerous investigations and prosecutions under the Animal Welfare Act 2006 and Wildlife & Countryside Act 1981. Knights Solicitors specialise in countryside and country sports litigation and have acted on behalf of gamekeepers throughout England and Wales. Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Joshua Quinn.

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For those in the South: Matthew Knight, Richard Atkins and Joshua Quinn, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:
 Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.



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been accepted practice that it does. However, this practice does not seem to be supported by any settled law or case law. Take for instance those who quite typically lend shotguns on shoots; are they occupiers satisfying the exemption under Section 11(5)? I note that typically those lenders do not own the sporting rights and therefore do not satisfy the Section 27 Wildlife & Countryside Act definition of "occupier" and therefore they may not use the exemption provided for by Section 11(5).

Unfortunately the law as drafted does not appear to allow any agent of an occupier to loan shotguns. I imagine this practice, based upon perhaps an unsubstantiated belief, will continue until one enthusiastic police force decides to test the water on this subject.

In a situation in which those who are lending shotguns to participants in the shoot are not occupiers, then offences are being committed by those involved. As with many points of law like this, it will only ever be determined with any certainty if someone is prosecuted.

Everyone who is interested in using shotguns or rifles needs to bear in mind that any informality runs a risk of prosecution and, in today's world, a successful prosecution for a firearms related offence carries with it probability of a lengthy prison sentence and so the sensible rule is "never a borrower or a lender be... unless you are absolutely certain that you fit squarely and provably into one or more of the exemptions".



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