

Legal

The musket in the thatch

by Matthew Knight and Joshua Quinn of Knights Solicitors

IN RECENT YEARS WE HAVE HAD NUMEROUS cases of private individuals coming across an old gun or guns they have either inherited or found stored on their farms or estates. Older guns can be very curious items and the temptation to hold onto them can be great, but it is always important to keep the law in mind.

The principal act which sets out the law related to firearms is the Firearms Act 1968 (the Act); it incorporates the older legislation, the Pistols Act 1903 and the Firearms Act 1920. Section 58(2) provides that nothing in the Act relating to firearms shall apply to an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament. Therefore to be exempt from the provisions of the Act, the firearm must be an antique and must

either be possessed as a curiosity or as an ornament, which means they can be possessed without having to obtain a Firearms Certificate.

Unfortunately the terms ‘antique’, ‘curiosity’ and ‘ornament’ are not defined by the Act and it has therefore fallen to the courts to determine how these are to be understood.

In *Howells [1977] QB 614* the dictionary definition of antique was used “something in olden times, something old fashioned, something of longstanding, something ancient, something of bygone days”. The Court of Appeal did not comment on the use of the dictionary definition and found the Defendant guilty of possessing a firearm despite his honestly held belief that it was an antique. The Court

therefore has established that it is a question of fact for the jury as to whether a firearm is an antique and this is the approach taken to this day.

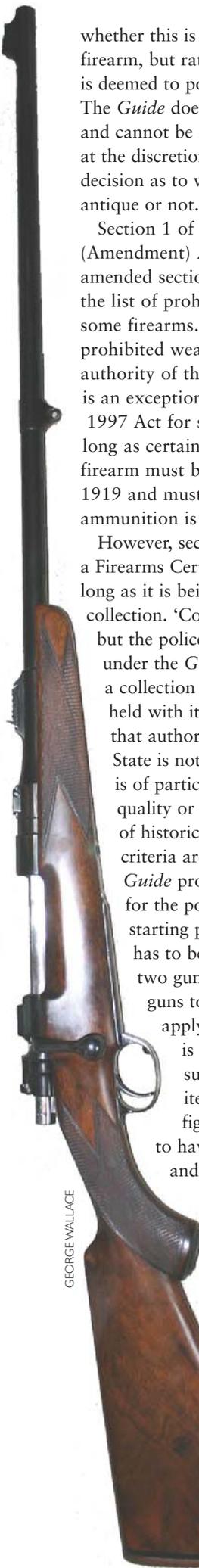
The jury in *R v Garfield Stacey* in Bournemouth Crown Court on 5 October 2006 and the jury in *R v Kevin Schofield* in Leeds Crown Court on 18 March 2008, found the firearms in question to be antiques despite them being made in 1918 and 1940 respectively. This was despite ammunition for the latter gun being readily available in 2008.

To complicate matters further, there is *The Home Office’s Guide on Firearms Licensing Law* (the *Guide*) which takes a different approach to that of the courts. The *Guide* contains a list of firearms which the Home Office believes should be deemed antiques and in deciding

An Army and Navy Jungle Gun, built by Webley and Scott in 1898 and used in India and South Africa. Antique guns are only exempt from certificate control as long as they are kept as a curiosity or ornament. If you want to shoot it, it’s a gun!

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whether this is so, it is not the age of the firearm, but rather whether its possession is deemed to pose a risk to public safety. The *Guide* does not have the force of law and cannot be relied on; it is therefore at the discretion of the jury to make the decision as to whether a firearm is an antique or not.

Section 1 of the Firearms (Amendment) Act 1997 (the 1997 Act) amended section 5 of the Act to extend the list of prohibited weapons including some firearms. In order to possess prohibited weapons they must have the authority of the Secretary of State. There is an exception to this in section 7 of the 1997 Act for some types of firearms, so long as certain conditions are met. The firearm must be manufactured before 1919 and must be of a type for which ammunition is not readily available.

However, section 7(1) provides that a Firearms Certificate is required as long as it is being kept as part of a collection. 'Collection' is not defined but the police will take into account, under the *Guide*, whether it is part of a collection and the number of guns held with it. Section 7(3) provides that authority from the Secretary of State is not necessary if the firearm is of particular rarity, aesthetic quality or technical interest, or is of historical importance. These criteria are not defined, but the *Guide* provides guidance on these for the police to consider. The starting point is that a collection has to be more than just one or two guns and they must all be guns to which section 7 could apply, the exception being if it is part of another collection such as a collection of items of a famous historical figure. The collection has to have historic significance and so owners would need to produce evidence such as a letter from

Edward North Buxton's Rigby .400/.350 Flanged Nitro Express, built around 1905, was very highly regarded in Africa.

Although an antique of historical significance, it remains a fully-functioning rifle.

NOTE IT!

KNIGHTS SOLICITORS
 Matthew Knight is the Senior Partner of Knights Solicitors and Joshua Quinn is the Partner responsible for criminal and regulatory work at 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.

NGO FREE LEGAL HELPLINE
 NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

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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a national museum to demonstrate that this is the case. Further evidence such as a longstanding genuine interest in guns of historic significance is considered. The police will consider each gun on its individual merits and whether it would form part of an existing collection. If these considerations are satisfied then the gun may be eligible to be kept at home without ammunition.

Section 7(4) provides that section 7 has effect without prejudice to section 58(2). The difference between the two regimes: antiques (section 58(2) of the Act); and historical (section 7 of the 1997 Act), is that the former categories can be possessed lawfully without a Firearms Certificate, but the latter cannot.

With all the above in mind, it is usually best to follow the standard procedure immediately after finding a gun even if you believe it is an antique or of historic significance or is otherwise exempt from the Act's scope. If in doubt, ask a registered

firearms dealer to store the gun and then, if he does not know if it is antique, take photos and a careful description of all engraving, stamping and proof marks and consult someone who really does know the subject. Following this, if the gun is deemed to be an antique or of historical significance, it will likely be returned to you either for exhibition or retention as an antique or following the necessary application procedures, and the issuing of a Firearms Certificate in the event that the firearm is found not to be an antique, but is accepted as being rare or aesthetic or of technical interest or of historic importance, but subject to the Act's provisions.

In the UK there are enough firearm offences that involve activated replica weapons and reactivated antique ones to cause the police concern.



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