



Good Evening Sir is that a Gun in your Pocket or ... is it an Antique Firearm?



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What is an antique? This is a thorny old question that has vexed collectors and legislators alike. With the passing of time objects that only relatively recently seemed modern become period pieces and collectable. Browse an auction house catalogue and you will probably come across relatively modern pieces that are now touted as antiques. As a rule of thumb some people think that to qualify as an antique the object must be 100 years old, but this does not really stand up to scrutiny - what is the difference between a piece of Lalique glass made in 1914 and 1915 – is one an antique and the other not? Why does this matter you may ask, well, if you have an old firearm that you say is antique but the police disagree with you, and you are convicted of possession of a prohibited weapon, then you might be spending 5 years or more at Her Majesty's Pleasure.

Of course genuine firearms crime is a serious issue for society and convictions rightly carry heavy sentences. However there are many examples of individuals who

believed they possessed a genuine antique firearm who have been prosecuted for illegal possession of a firearm. The unlawful possession of a prohibited weapon, as defined by section 5(1)(aba) of the amended Firearms Act 1968, such as a handgun, is an offence of strict liability and carries a mandatory, minimum sentence of 5 years imprisonment.

However an in-depth knowledge of both the primary legislation, case law and the forensic science issues can lead to a successful Defence concerning antique, historical or technical interest status as defined by section 58 of the 1968 Act and section 7 of the Firearms (Amendment) Act 1997, respectively.

How does firearms legislation accommodate the concept of antique firearms? Unhelpfully the Firearms Act 1968 does not define what an antique firearm is, but section 58 does provide for an exemption from control for antique firearms, it states:

Nothing in this Act relating to firearms shall apply to an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament.

Without a statutory definition of antique the Police, Crown experts and the CPS tend to rely upon guidance provided by the Home Office. The latest advice is encapsulated in chapter 8 of the Home Office publication, Guidance on Firearms Licensing Law published in November 2013. In a nutshell the Home Office advice makes the obsolescence of the design of the gun and the commercial availability of ammunition the crucial factors in the decision process as to the applicability of the section 58 exemption. The Home Office, has listened to the Association of Police Officers (ACPO) and the ruminations of the old Firearms Consultative Committee, and base their approach on what they consider the overriding need to keep viable firearms out of criminal hands. Their reasoning is that it is best to restrict the possession of guns, irrelevant of their age, for which ammunition is still produced in significant quantities. To this end the Home Office guidance gives a list of what they regard as obsolete calibres, that is sizes of ammunition which are either not manufactured anymore

or are available in tiny numbers, any gun chambered in one of these calibres would be regarded as antique. This official approach is different from a lot of our continental neighbours who, not unreasonably, regard age as the deciding factor in assessing antiquity.

Dictionary definitions of antique use phrases such as “old fashioned”, “bygone days” and “belonging to, made in, or typical of an earlier period” in general they do not refer to functional obsolescence. Essentially they refer to an object that represents a previous era or time period in society and its development.

The Home Office approach is not law. When someone is arrested with an old gun and the Defence is that it was possessed as an antique being held as a curiosity or ornament then the burden is on the Crown to prove it is not an antique. This follows from *R v Burke* [1978] 67 Cr. App. R. 220. The Defence needs to adduce expert evidence identifying the firearm in question as a possible antique. The meanings of the words curiosity and ornament are also not defined in law but it can be taken that they have their normal literal meanings.



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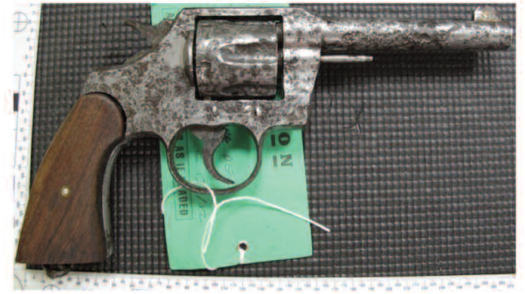
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If you need immediate advice, please contact either **Mark Mastaglio** on +44 7919 217 848 or **Angela Shaw** on +44 7919 392 397. Otherwise please email us at: enquiries@forensicfirearmsconsultancy.com. Our website is at: www.forensicfirearmsconsultancy.com





Examples of guns examined by FFC Ltd that were possessed as antiques.

Ammunition is not covered by any antique exemption within the legislation and the possession of live cartridges requires a firearms certificate. The Police and CPS tend to regard possession of ammunition with an antique firearm as having the effect of removing the gun from the section 58 exemption. This seems to be applied irrespective of circumstances with Crown experts relying on the presence of compatible ammunition to show that the gun was not being held as a curiosity or ornament. This is a leap of faith that exposes possible prosecution or contextual bias. The presence of ammunition is not *prima facie* evidence of intent to discharge the ammunition in the antique firearm; it may be that the individual wishes to possess it to give completeness to their collection. However there have been examples where criminals have tried to exploit the section 58 exemption and have used commercially made or modified ammunition with otherwise antique firearms. The law needs to be applied so that those in possession of antique firearms with criminal intent are convicted whilst those with no such intent are protected.

Determining whether or not antique status applies to a firearm requires the input of a truly impartial firearms expert who is capable of interpreting the technical nuances, age and provenance of the gun in question within the context of the historical development of firearms, primary legislation and case law.

At the Forensic Firearms Consultancy (FFC) Ltd Mark Mastaglio has many years experience in assessing the status of possible antique firearms and a proven track record in assisting in cases using the section 58 exemption. His evidence on antique status has resulted in charges being dropped and acquittals at trial in a range of cases involving guns dating from the 1870's to the Second World War. ■

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