

# **The Deactivated Gun Collector's Association**

## Purpose of this paper

The purpose of this paper is to present the DGCA's views on firearm control to the current Home Office review.

## What is the DGCA?

The DGCA is an Association based in the UK whose purpose is to represent owners of deactivated firearms, to promote the hobby of collecting deactivated firearms, and to respond to legislative threats to the interests of those who own deactivated firearms.

Our remit is solely that of deactivated firearms, not replicas, toys or other such items.

## What are deactivated firearms?

A deactivated firearm is a firearm that has been rendered inoperable in such a way that it cannot be readily converted into a working firearm. The definition used by our Association also includes factory made deactivated firearms, which may never have actually been a working firearm but which have been made by the same maker as the working version of the firearm. In the UK, these would be legally defined as an imitation firearm.

## What do people want with deactivated firearms?

There are a plethora of legitimate reasons as to why someone might have a use, need or interest in deactivated firearms:

- 1) Many target shooters possess deactivated firearms for "dry firing" practice. Essentially this involves pointing and repeatedly pulling the trigger to master the trigger pull, sighting and balance of the gun. Use of a deactivated firearm prevents wear and tear on a working gun, and also provides additional security because the live firearm can be kept locked up all the time when not in actual use.
- 2) Gun collectors obviously have an interest in deactivated firearms. Two of the primary advantages to collectors with deactivated firearms are that they can possess firearms with less red tape than accompanies owning a working firearm, and also it enables them to own guns that cannot be legally owned in working order, such as machineguns. In addition, there are collectors of militaria who may have a uniform in their collection that is completed by a holster and pistol who have no real interest in guns per se.
- 3) Re-enactment societies often use deactivated firearms. Re-enactments of World War One and World War Two battles often use deactivated firearms, providing an interesting historical perspective.
- 4) Deactivated firearms are also used theatrically, whether it is a live performance or TV. Considerable bureaucracy accompanies use of live firearms, and thus deactivated firearms are often the best option for these uses.
- 5) Museums often prefer deactivated firearms; this is especially the case if the main theme of the museum is not firearms, but something that is indirectly related. For example, a museum of technology might have a display which uses deactivated firearms. The advantage to the museum is enhanced security and the elimination of the need for a museum firearms license.

## Why is there concern about deactivated guns?

In the last few years both the press and the police have expressed concerns about deactivated firearms. These can be boiled down into two main areas:

- 1) The use of deactivated guns to intimidate crime victims - the problem is perceived that criminals may use deactivated firearms in the commission of robberies to intimidate victims.

- 2) The second concern is that criminals are restoring deactivated firearms to working order for the commission of crimes.

Taking the first point, there is in fact no indication in Great Britain that deactivated firearms are used merely to intimidate crime victims, except in a few isolated examples. The theory is that there are far simpler methods to intimidate victims, such as through the use of toy or replica guns that are far cheaper than deactivated firearms. There have also been cases of criminals using bananas or cucumbers in a pocket to intimidate.

On the second point, in most cases where deactivated firearms have been used in crime in Great Britain, some attempt, at least, has been made to reactivate the firearm.

#### The problem of criminal reactivation and deactivation standards

The sale of deactivated firearms became common in Britain after the passage of the Firearms Act 1982, and the R v Hucklebridge decision in 1981. This court decision and the 1982 law established that any gun sold would be considered a firearm (i.e., a "lethal barrelled weapon") if it could be readily converted into one with the use of ordinary tools in common use in works of construction around the home. This gave the gun trade a guideline to work to in deactivating firearms. It is not clear whether there were any particular problems with this state of affairs, however, in 1988, Parliament legislated again on the subject with Section 8 of the Firearms (Amendment) Act 1988.

This section gave the Secretary of State the power to lay down specifications for the deactivation of firearms. Firearms deactivated to this standard have to be submitted to a Proof House for inspection and marking to indicate that the work has been done properly. The section also created a presumption that the possession of such a deactivated firearm was not illegal unless the contrary could be shown. Therefore, although it is not an absolute requirement that firearms be deactivated to the standard laid down by the Secretary of State, it is an advantage for dealers to do so, as they are less likely to be prosecuted.

The theory behind this law was that if a deactivation standard were laid down, criminals would find it more difficult to reactivate firearms and use them in crime.

Over time however, criminals became more skilled in the reactivation of firearms, and the specification was revised in 1995 to require in essence that automatic rifles and submachineguns be welded solid to qualify as deactivated under Section 8. The deactivation standard for other firearms is strict but differs according to firearm type. In all cases, the major components of the gun have to be modified and essentially rendered inoperable. The standard for portable firearms is more restrictive as the Government feels these are more likely to be used in crime.

#### International law and regional law relating to deactivated firearms

In the EU, the European Firearms Directive contains provisions regulating deactivated firearms. This directive requires all member states to have a deactivation standard and an inspection procedure for deactivated firearms. Article 9 of the Firearms Protocol to the UN Transnational Crime Treaty also has a bearing, however, this Protocol has not yet been ratified and is not yet law.

#### The view of our Association on changes to the law regarding deactivated firearms

##### Possession by criminals and criminal reactivation

The Association has lobbied for some time now that section 21 of the Firearms Act 1968 (prohibition of possession of firearms by persons convicted of certain offences) should be expanded to cover deactivated firearms. It is highly anomalous in our view that while a convicted bank robber cannot possess a working firearm, they can (depending on the conditions attached to their release) legally walk out of prison into the nearest gun shop and buy a deactivated firearm. Worse yet, people convicted of

offences involving the reactivation of deactivated firearms can quite legally amass deactivated firearms and the necessary tools to reactivate them, and only commit an offence when they start converting the guns.

There has been resistance to our view on the basis that first of all, it would mean that a criminal who buys a toy gun for their child to innocently play with might break the law, and secondly that a person who buys a deactivated firearm and happens to live with a convicted criminal (perhaps unknowingly) could place that person in jeopardy of breaking the law as they would place them constructively in possession.

The first point only has weight if the prohibition was drawn broadly enough to include toy guns; on the second point, this problem already exists with low-power air guns and case law has been established that deals with it.

Therefore, **we recommend that people convicted of serious criminal offences be prohibited from acquiring and possessing deactivated firearms on the same basis as working firearms, and to facilitate this, that a clear definition of “deactivated firearm” be adopted into the law.**

The definition of a “deactivated firearm” must be broader than that used in section 8 of the Firearms (Amendment) Act 1988 because it must include firearms that were deactivated before the Act came into force, and also deactivated firearms that have been imported. For this prohibition to work properly, we suggest that the definition of a deactivated firearm be: “any firearm that has been rendered incapable of discharging any shot, bullet or other missile and cannot be readily restored to do so but that still retains the appearance of a firearm”.

While this change would help considerably, there is also the problem of people who would not be covered by such a prohibition (such as people with no prior criminal record) who engage in the reactivation of firearms for criminal purposes. Illegal manufacture of a firearm is already an offence, however, the stockpiling of deactivated firearms and the acquisition of tools to reactivate them is not, and although current law may stretch to cover this, we believe it would be better for there to be a separate offence that dealt with this situation.

**We therefore recommend that an offence of acquiring and possessing deactivated firearms with the intention of illegally reactivating them be created.** It is important that the offence be created in such a way that it is not an absolute offence, i.e. the principal of *mens rea* be maintained, otherwise there will be situations in which a person might legitimately have a collection of deactivated firearms, and may innocently possess tools that could be used to rework them into working firearms, being convicted of such an offence. This is obviously not in the interests of justice and public safety.

However it is important that the changes proposed above be adopted into law, as together they enable the police to take action to prevent the reactivation of deactivated firearms for use in crimes before such reactivation takes place, as they generally have to do at present.

#### Firearms deactivated to the earlier pre-October 1995 standard

The status of firearms deactivated to the pre-October 1995 standard has developed into a contentious issue, and the Association believes that it is now shrouded in misconceptions. We have been alarmed by the adoption in Article 2(7) of the Firearms (Northern Ireland) Order 2004 of what amounts to a prohibition (or at least licensing) of deactivated firearms that pre-date October 1995.

The reality is that there is in fact little difference between the deactivation standards adopted in 1989 and the later standards adopted in 1995 as they affect the majority of firearms. The later standard only really changed the situation in relation to submachineguns and automatic rifles. The vast bulk of firearm types, such as shotguns, pistols, light to heavy machineguns, manually-operated rifles, etc. are currently deactivated to a standard little different to that originally adopted in 1989, and therefore there is little point in viewing most deactivated firearms that pre-date the 1995 standards with some sort of bias. The situation in Northern Ireland now is that a person who for example possesses a bolt-action rifle

deactivated in 1994 may face criminal sanctions, even though it was deactivated in almost exactly the same way as a bolt-action rifle deactivated in 1996. This is obviously bad law, and **we recommend that provisions similar to Article 2(7) of the Firearms (Northern Ireland) Order 2004 not be adopted into the laws of Great Britain.**

In reality the problem of pre-October 1995 deactivated firearms was and is largely confined to the submachineguns that operate from an open bolt (these were the impetus for the change in 1995 after two serious crimes involving them). There is little evidence that deactivated automatic rifles were being reactivated for use by criminals no matter what standard they were deactivated to, simply because automatic rifles are large and difficult to conceal. In addition, a rifle barrel once deactivated by slotting it or drilling holes into it, is very difficult to rework into a working barrel (due to the high pressures at which rifle cartridges work and the complex mechanisms needed to deal with them), and the 1989 standards were thus sufficient to deal with any problem of criminal reactivation of automatic rifles. As regards submachineguns, the number of pre-October 1995 guns is obviously finite, and we note that in evidence to the All-Party Parliamentary Group on Armed Crime organised by the Gun Control Network and Saferworld, that DCS Jon Coles of Operation Trident noted that only 2% of armed crime in London involved the use of deactivated firearms, and presumably pre-October 1995 submachineguns would only be a fraction of those used.

Also since 1995, a new specification, known as "spec. B" was developed by the trade for submachineguns and automatic rifles but not adopted, this is a more complex specification that allows for moving parts in the guns but is still rigorous. The Firearms Consultative Committee called for the adoption of this specification but so far this recommendation has not been followed.

Given the foregoing, **we recommend that the 1995 standard not be made retrospective and that consideration be given to the adoption of "spec. B" for the deactivation of submachineguns and automatic rifles.**

#### Firearms deactivated in other countries

We note in passing that the legal situation as regards firearms deactivated in other countries, especially EU States, is unclear. Presumably a firearm deactivated to a standard laid down in accordance with the European Firearms Directive is legal in the UK, but at the moment it is very much a "let the courts decide" situation, which does make the idea of a European directive on the matter somewhat of a farce and the situation facing owners very unclear if the courts take a contrary view. Once again, this is an argument for having a clear definition of what a deactivated firearm is in the law, rather than the current situation of a standard of evidence as exists currently in section 8 of the Firearms (Amendment) Act 1988.

#### Definition of "component part"

The consultation paper mentions a need for a better definition of "component part", and the Firearms (Northern Ireland) Order 2004 uses a new definition. The problem with the new definition is that it includes magazines, and moreover, "magazine" is not defined. Does it for example include machinegun belts? If it does, someone in possession of so much as a single disintegrating link of a machinegun belt could face charges for possession of a component part of a prohibited firearm, which currently has a mandatory sentence of five years in prison.

This has a bearing on deactivated firearms as they are usually equipped with working magazines as the deactivation standard for most types of firearm does not require their alteration. Presumably such a definition would not include a magazine that forms part of a deactivated firearm, such as a fixed magazine, but the legal status of detachable magazines, belts, drums, etc. is very unclear, especially as deactivated guns sometimes come with more than one detachable magazine, or a collector might wish to acquire different magazines for the gun as part of a collection of accessories for it. A situation could develop where a person does not need authority for the deactivated firearm, but does for the magazine, which is obviously silly.

Therefore, **we recommend that in any new definition of “component part” that magazines not be included.**

#### Licensing and prohibition

The consultation paper poses the question as to whether deactivated firearms should be licensed in some way, and some anti-gun groups have called for the prohibition of them.

The consultation paper also makes note of an old ACPO estimate that there are 100,000 deactivated firearms in circulation. This estimate dates from 1998 and was based on an estimate from the Proof Houses that they had certified 120,000 firearms as deactivated since 1989.

Obviously time has moved on since then, and the number of deactivated firearms has increased. In addition, the ACPO estimate did not take account of firearms deactivated prior to 1989 (in which there was a considerable trade, by companies such as World Wide Arms), nor of deactivated firearms which may have been imported. Taking those into account, a more realistic estimate is that there are in excess of 200,000 deactivated firearms in circulation in Great Britain.

Given that there are few records of where they may be, the introduction of licensing would be hard to accomplish in any sort of effective manner. The recent prohibition of self-contained air cartridge guns points this out, as it is estimated that 70,000 or so were sold, but the police have only received a few hundred applications for authority to keep them under the “grandfather” clause.

Prohibition poses similar problems of compliance, coupled with inevitable demands for compensation, as a deactivated firearm costs as much as a working firearm, plus the work involved in deactivating it. Assuming full compliance, the compensation bill would be well into the tens of millions of pounds. No reasonable cost/benefit analysis can justify this expenditure.

**We therefore recommend that there be no licensing or prohibition of deactivated firearms.**

#### Summary of recommendations

- We recommend that people convicted of serious criminal offences be prohibited from acquiring and possessing deactivated firearms on the same basis as working firearms, and to facilitate this, that a clear definition of "deactivated firearm" be adopted into the law.
- We recommend that an offence of acquiring and possessing deactivated firearms with the intention of illegally reactivating them be created.
- We recommend that provisions similar to Article 2(7) of the Firearms (Northern Ireland) Order 2004 not be adopted into the laws of Great Britain.
- We recommend that the 1995 standard not be made retrospective and that consideration be given to the adoption of "spec. B" for the deactivation of submachineguns and automatic rifles.
- We recommend that in any new definition of "component part" that magazines not be included.
- We recommend that there be no licensing or prohibition of deactivated firearms.