

SCHEDULES

SCHEDULE 2

Section 51

WEAPONS ETC.: CORRESPONDING PROVISIONS FOR NORTHERN IRELAND

Using someone to mind a weapon

- 1 (1) A person is guilty of an offence if—
 - (a) he uses another to look after, hide or transport a dangerous weapon for him; and
 - (b) he does so under arrangements or in circumstances that facilitate, or are intended to facilitate, the weapon's being available to him for an unlawful purpose.
- (2) For the purposes of this paragraph the cases in which a dangerous weapon is to be regarded as available to a person for an unlawful purpose include any case where—
 - (a) the weapon is available for him to take possession of it at a time and place; and
 - (b) his possession of the weapon at that time and place would constitute, or be likely to involve or to lead to, the commission by him of an offence.
- (3) In this paragraph “dangerous weapon” means—
 - (a) a firearm other than an exempt air gun or a component part of, or accessory to, an exempt air gun; or
 - (b) a weapon to which section 141 of the Criminal Justice Act 1988 (c. 33) or Article 54 of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (NI 24)) applies (specified offensive weapons, knives and bladed weapons).
- (4) In sub-paragraph (3)(a) “exempt air gun” means an air gun to which paragraph 9(1) of Schedule 1 of the Firearms Order applies (air guns for which firearm certificate not required).

Penalties etc. for offence under paragraph 1

- 2 (1) This paragraph applies where a person (“the offender”) is guilty of an offence under paragraph 1.
- (2) Where the dangerous weapon in respect of which the offence was committed is a weapon to which section 141 of the Criminal Justice Act 1988 (specified offensive weapons) or Article 54 of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (NI 24)) (knives and bladed weapons) applies, the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.
- (3) Where—
 - (a) at the time of the offence, the offender was aged 16 or over, and

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- (b) the dangerous weapon in respect of which the offence was committed was a firearm mentioned in Article 3(1)(a) or 45(1)(a), (aa), (b), (c), (d), (e) or (g) or (2)(a) of the Firearms Order (firearms possession of which attracts a minimum sentence),

the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both.

- (4) On a conviction where—

- (a) sub-paragraph (3) applies, and
- (b) the offender is aged 21 or over at the time of conviction,

the court must impose (with or without a fine) a term of imprisonment of not less than 5 years, unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

- (5) On a conviction where—

- (a) sub-paragraph (3) applies, and
- (b) the offender is aged under 21 at the time of conviction,

the court must impose (with or without a fine) a term of detention in a young offenders centre of not less than 3 years, unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

- (6) In any case not mentioned in sub-paragraph (2) or (3), the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

- (7) Where—

- (a) a court is considering for the purposes of sentencing the seriousness of an offence under paragraph 1, and
- (b) at the time of the offence the offender was aged 18 or over and the person used to look after, hide or transport the weapon was not,

the court must treat the fact that that person was under the age of 18 at that time as an aggravating factor (that is to say, a factor increasing the seriousness of the offence).

- (8) Where a court treats a person's age as an aggravating factor in accordance with sub-paragraph (7), it must state in open court that the offence was aggravated as mentioned in that sub-paragraph.

- (9) Where—

- (a) an offence under paragraph 1 of using another person for a particular purpose is found to have involved that other person's having possession of a weapon, or being able to make it available, over a period of two or more days, or at some time during a period of two or more days, and
- (b) on any day in that period, an age requirement was satisfied,

the question whether sub-paragraph (3) applies or (as the case may be) the question whether the offence was aggravated under this paragraph is to be determined as if the offence had been committed on that day.

- (10) In sub-paragraph (9) the reference to an age requirement is a reference to either of the following—

- (a) the requirement of sub-paragraph (3) that the offender was aged 16 or over at the time of the offence;

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- (b) the requirement of sub-paragraph (7) that the offender was aged 18 or over at that time and that the other person was not.
- (11) The Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (NI 24)) is amended as follows—
- (a) in Article 2(9), after “2004” insert “or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006”;
 - (b) in each of —
 - (i) Article 4(1) (power to discharge defendant except in specified circumstances),
 - (ii) Article 10(1) (power to impose probation order except in specified cases),
 - (iii) Article 13(1) (power to impose community service order except in specified cases),
 - (iv) Article 15(1) (power to impose combination order except in specified circumstances),
 - (v) Article 19(1) (restrictions on custodial sentences except in specified circumstances),
 - (vi) Article 20(1) (length of custodial sentence), and
 - (vii) Article 24(1) (power to impose custody probation order except in specified circumstances),after “Article 70(2) of the Firearms (Northern Ireland) Order 2004” insert “or paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006”.

Minimum sentence for certain firearms offences

- 3 (1) The Firearms Order is amended as follows.
- (2) In Article 70 (which imposes minimum sentence requirements for certain offences involving the possession of various firearms), in paragraph (1)—
- (a) in sub-paragraph (a)(iii) for “and” substitute “or”;
 - (b) after sub-paragraph (a)(iii) insert—
 - “(iv) an offence under any of the provisions of this Order listed in paragraph (1A) in respect of a firearm or ammunition specified in Article 3(1)(a) or Article 45(1)(a), (aa), (b), (c), (d), (e) or (g) or (2)(a), and”.
- (3) After paragraph (1) of that Article insert—
- “(1A) The provisions are—
- (a) Article 58 (possession of a firearm with intent);
 - (b) Article 59 (use of firearm to resist arrest);
 - (c) Article 60 (carrying a firearm with criminal intent);
 - (d) Article 61(1) (carrying a firearm in a public place);
 - (e) Article 62(1) (trespassing in a building with a firearm).”
- (4) In Schedule 5 (prosecution and punishment of offences), in column 3, in paragraph (a) of the entries relating to Articles 61(1) and 62(1), after “Summary”, in each place, insert “except if the firearm is a firearm specified in Article 3(1)(a) or Article 45(1)(a), (aa), (b), (c), (d) or (e) or (2)(a)”.

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- (5) This paragraph applies only to offences committed after the commencement of this paragraph.

Manufacture, import and sale of realistic imitation firearms

- 4 (1) A person is guilty of an offence if—
- (a) he manufactures a realistic imitation firearm;
 - (b) he modifies an imitation firearm so that it becomes a realistic imitation firearm;
 - (c) he sells a realistic imitation firearm; or
 - (d) he brings a realistic imitation firearm into Northern Ireland or causes one to be brought into Northern Ireland.
- (2) Sub-paragraph (1) has effect subject to the defences in paragraph 5.
- (3) The Secretary of State may by regulations—
- (a) provide for exceptions and exemptions from the offence under sub-paragraph (1); and
 - (b) provide for it to be a defence in proceedings for such an offence to show the matters specified or described in the regulations.
- (4) Regulations under sub-paragraph (3) may—
- (a) frame any exception, exemption or defence by reference to an approval or consent given in accordance with the regulations;
 - (b) provide for approvals and consents to be given in relation to particular cases or in relation to such descriptions of case as may be specified or described in the regulations; and
 - (c) confer the function of giving approvals or consents on such persons specified or described in the regulations as the Secretary of State thinks fit.
- (5) The power of the Secretary of State to make regulations under sub-paragraph (3) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) That power includes power—
- (a) to make different provision for different cases;
 - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.
- (7) A realistic imitation firearm brought into Northern Ireland shall be liable to forfeiture under the customs and excise Acts.
- (8) In sub-paragraph (7) “the customs and excise Acts” has the meaning given by section 1 of the Customs and Excise Management Act 1979 (c. 2).
- (9) An offence under this paragraph shall be punishable, on summary conviction, with imprisonment for a term not exceeding 6 months or with a fine not exceeding level 5 on the standard scale, or with both.
- (10) In this paragraph “realistic imitation firearm” has the meaning given by paragraph 6.

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- 5 (1) It shall be a defence for a person charged with an offence under paragraph 4 in respect of any conduct to show that the conduct was for the purpose only of making the imitation firearm in question available for one or more of the purposes specified in sub-paragraph (2).
- (2) Those purposes are—
- (a) the purposes of a museum or gallery;
 - (b) the purposes of theatrical performances and of rehearsals for such performances;
 - (c) the production of films (within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 (c. 48) see section 5B of that Act);
 - (d) the production of television programmes (within the meaning of the Communications Act 2003 (c. 21) see section 405(1) of that Act);
 - (e) the organisation and holding of historical re-enactments organised and held by persons specified or described for the purposes of this paragraph by regulations made by the Secretary of State;
 - (f) the purposes of functions that a person has in his capacity as a person in the service of the Crown.
- (3) It shall also be a defence for a person charged with an offence under paragraph 4 in respect of conduct falling within sub-paragraph (1)(d) of that paragraph to show that the conduct—
- (a) was in the course of carrying on any trade or business; and
 - (b) was for the purpose of making the imitation firearm in question available to be modified in a way which would result in its ceasing to be a realistic imitation firearm.
- (4) For the purposes of this paragraph a person shall be taken to have shown a matter specified in sub-paragraph (1) or (3) if—
- (a) sufficient evidence of that matter is adduced to raise an issue with respect to it; and
 - (b) the contrary is not proved beyond a reasonable doubt.
- (5) The power of the Secretary of State to make regulations under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) That power includes power—
- (a) to make different provision for different cases;
 - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.
- (7) In this paragraph—
- “historical re-enactment” means any presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time or period in the past;
 - “museum or gallery” includes any institution which—
- (a) has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest; and
 - (b) gives the public access to it.

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- 6 (1) In paragraphs 4 and 5 “realistic imitation firearm” means an imitation firearm which—
- (a) has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm; and
 - (b) is neither a de-activated firearm nor itself an antique.
- (2) For the purposes of this paragraph, an imitation firearm is not (except by virtue of sub-paragraph (3)(b)) to be regarded as distinguishable from a real firearm for any practical purpose if it could be so distinguished only—
- (a) by an expert;
 - (b) on a close examination; or
 - (c) as a result of an attempt to load or to fire it.
- (3) In determining for the purposes of this paragraph whether an imitation firearm is distinguishable from a real firearm—
- (a) the matters that must be taken into account include any differences between the size, shape and principal colour of the imitation firearm and the size, shape and colour in which the real firearm is manufactured; and
 - (b) the imitation is to be regarded as distinguishable if its size, shape or principal colour is unrealistic for a real firearm.
- (4) The Secretary of State may by regulations provide that, for the purposes of sub-paragraph (3)(b)—
- (a) the size of an imitation firearm is to be regarded as unrealistic for a real firearm only if the imitation firearm has dimensions that are less than the dimensions specified in the regulations; and
 - (b) a colour is to be regarded as unrealistic for a real firearm only if it is a colour specified in the regulations.
- (5) The power of the Secretary of State to make regulations under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) That power includes power—
- (a) to make different provision for different cases;
 - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.
- (7) In this paragraph—
- “colour” is to be construed in accordance with sub-paragraph (9);
 - “de-activated firearm” means an imitation firearm that consists in something which—
 - (a) was a firearm; but
 - (b) has been so rendered incapable of discharging a shot, bullet or other missile as no longer to be a firearm;
 - “real firearm” means—
 - (a) a firearm of an actual make or model of modern firearm (whether existing or discontinued); or
 - (b) something falling within a description which could be used for identifying, by reference to their appearance, the firearms falling

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within a category of actual modern firearms which, even though they include firearms of different makes or models (whether existing or discontinued) or both, all have the same or a similar appearance.

- (8) In sub-paragraph (7) “modern firearm” means any firearm other than one the appearance of which would tend to identify it as having a design and mechanism of a sort first dating from before the year 1870.
- (9) References in this paragraph, in relation to an imitation firearm or a real firearm, to its colour include references to its being made of transparent material.
- (10) Article 2(7) of the Firearms Order (under which firearms are deemed to be deactivated if they are appropriately marked) applies for the purposes of this paragraph as it applies for the purposes of that Order.

Specification for imitation firearms

- 7 (1) The Secretary of State may by regulations make provision requiring imitation firearms to conform to specifications which are—
 - (a) set out in the regulations; or
 - (b) approved by such persons and in such manner as may be so set out.
- (2) A person is guilty of an offence if—
 - (a) he manufactures an imitation firearm which does not conform to the specifications required of it by regulations under this paragraph;
 - (b) he modifies an imitation firearm so that it ceases to conform to the specifications so required of it;
 - (c) he modifies a firearm to create an imitation firearm that does not conform to the specifications so required of it; or
 - (d) he brings an imitation firearm which does not conform to the specifications so required of it into Northern Ireland or causes such an imitation firearm to be brought into Northern Ireland.
- (3) An offence under this paragraph shall be punishable, on summary conviction, with imprisonment for a term not exceeding 6 months or with a fine not exceeding level 5 on the standard scale, or with both.
- (4) Regulations under this paragraph may provide that, in proceedings for an offence under this paragraph, it is to be presumed, unless the contrary is proved, that an imitation firearm conforms to the required specification if it, or the description of imitation firearms to which it belongs, has been certified as so conforming by a person who is—
 - (a) specified in the regulations; or
 - (b) determined for the purpose in accordance with provisions contained in the regulations.
- (5) An imitation firearm brought into Northern Ireland which does not conform to the specifications required of it by regulations under this paragraph shall be liable to forfeiture under the customs and excise Acts.
- (6) In sub-paragraph (5) “the customs and excise Acts” has the meaning given by section 1 of the Customs and Excise Management Act 1979 (c. 2).

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- (7) The power of the Secretary of State to make regulations under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) That power includes power—
- (a) to make different provision for different cases;
 - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.

Supplying imitation firearms to minors

- 8 (1) After Article 66 of the Firearms Order insert—

Supplying imitation firearms to minors

“66A(1) It is an offence for a person under the age of 18 to purchase an imitation firearm.

(2) It is an offence to sell an imitation firearm to a person under the age of 18.

(3) In proceedings for an offence under paragraph (2) it is a defence to show that the person charged with the offence—

- (a) believed the other person to be aged 18 or over; and
- (b) had reasonable ground for that belief.”

(2) In Article 68 of that Order (defences), for “or 64” substitute “, 64 or 66A”.

(3) In Schedule 5 of that Order (punishments), after the entry for Article 66 insert—

“Article 66A(1) or (2)	Acquisition by a minor of an imitation firearm and supplying him.	Summary	6 months or level 5 or both.”
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Increase of maximum sentence for possessing an imitation firearm

- 9 (1) In the entry in Schedule 5 to the Firearms Order relating to Article 61(1) of that Order (mode of trial and punishment of possession of firearm or imitation firearm in a public place)—
- (a) in paragraph (b) of column 3 (offence to be triable on indictment except in the case of an imitation firearm or air gun), omit the words “in the case of an imitation firearm or”; and
 - (b) in column 4, for “10 years or a fine or both” substitute “If the offence is committed in respect of an imitation firearm, 12 months or a fine, or both; in any other case, 10 years or a fine, or both.”
- (2) This paragraph applies only to offences committed after the commencement of this paragraph.

Sale etc. of knives and other weapons

- 10 In Article 54(1) of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (NI 24)) (prohibition on sale of knives etc. to persons under 16) for “16” substitute “18”.
- 11 (1) Section 141 of the Criminal Justice Act 1988 (c. 33) (offensive weapons) is amended as follows.
- (2) In subsections (5), (8) and (9) of section 141 (defences relating to museums and galleries to offence of manufacture, sale etc. of prescribed weapons), for “prove” substitute “show”.
- (3) After subsection (11) of that section insert—
- “(11A) It shall be a defence for a person charged in respect of conduct of his relating to a weapon to which this section applies—
- (a) with an offence under subsection (1) above, or
- (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,
- to show that his conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11B).
- (11B) Those purposes are—
- (a) the purposes of theatrical performances and of rehearsals for such performances;
- (b) the production of films (within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 – see section 5B of that Act);
- (c) the production of television programmes (within the meaning of the Communications Act 2003 – see section 405(1) of that Act).
- (11C) For the purposes of this section a person shall be taken to have shown a matter specified in subsection (5), (8), (9) or (11A) above if—
- (a) sufficient evidence of that matter is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond a reasonable doubt.
- (11D) The Secretary of State may by order made by statutory instrument—
- (a) provide for exceptions and exemptions from the offence under subsection (1) above or from the prohibition in subsection (4) above; and
- (b) provide for it to be a defence in proceedings for such an offence, or for an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979, to show the matters specified or described in the order.
- (11E) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.”
- (4) The defence in section 141(11A) is not available in relation to so much of any charge as relates to conduct taking place before the commencement of this paragraph.

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Sale etc. of crossbows

- 12 (1) In the Crossbows (Northern Ireland) Order 1988 (SI 1988/794 (NI 5)), in the provisions mentioned in sub-paragraph (2), for “seventeen”, in each place it occurs, substitute “eighteen”.
- (2) The provisions are—
- (a) Article 3 (sale and letting on hire);
 - (b) Article 4 (purchase and hiring);
 - (c) Article 5 (possession).

Amendment of police power to search schools etc. for weapons

- 13 In section 139B of the Criminal Justice Act 1988 (c. 33) (power of entry to search for knives etc. and offensive weapons), in subsection (1) for “believing” substitute “suspecting”.

Supplemental

- 14 (1) In this Schedule “the Firearms Order” means the Firearms (Northern Ireland) Order 2004 (SI 2004/702 (NI 3)).
- (2) Expressions used in this Schedule and in the Firearms Order have the same meanings in this Schedule as in that Order.
- (3) The following provisions of the Firearms Order apply as if paragraphs 1, 2 and 4 to 7 of this Schedule were contained in that Order—
- (a) Article 52 (power of search with warrant);
 - (b) Article 69(4) (limitation period for prosecutions);
 - (c) Article 72 (forfeiture and disposal of firearms and ammunition);
 - (d) Article 81 (savings).
- (4) Article 77(3) of the Firearms Order (certain persons deemed to be in armed forces) applies for the purposes of—
- (a) paragraph 5(2)(f),
 - (b) any rule of law under which any of the provisions of paragraph 1, 2, 4 or 7 do not bind the Crown,
- as it applies for the purposes of Article 77.