



Gun Barrel Proof Act 1978

1978 CHAPTER 9

An Act to make provision to enable the United Kingdom to accede to a Convention for the Reciprocal Recognition of Proof Marks of Small Arms done at Brussels on 1st July 1969; to amend the Gun Barrel Proof Act 1868; to extend that Act and the Gun Barrel Proof Act 1950 to Scotland and Northern Ireland; and for purposes connected with the matters aforesaid. [5th May 1978]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Convention proof marks

- (1) The sections set out in Schedule 1 to this Act shall be substituted for sections 129 to 137 of the Gun Barrel Proof Act 1868 (in this Act referred to as " the Act of 1868 ").
- (2) The transitional provisions set out in Schedule 2 to this Act shall have effect.

2 Offences

- (1) A person who commits an offence under section 30 (acting as Guardian while not qualified), section 122 (dealing with barrels bearing forged or counterfeit marks etc.) or section 143 (fraud by officers of the Two Companies) of the Act of 1868 shall be liable—
 - (a) on summary conviction to a fine not exceeding the statutory maximum; and
 - (b) on conviction on indictment to a fine.
- (2) Section 87 (refusing inspection of books), section 100 (acting contrary to declaration) and section 142 (neglect of duties) of the Act of 1868 shall cease to have effect.

3 Branch proof houses

Branch proof houses may be established under section 89 of the Act of 1868 in any proper and convenient place, wherever situated.

4 Rules and regulations

The Guardians shall have power to make any such rules and regulations as are mentioned in section 106 of the Act of 1868 ; and sections 101 to 105 of that Act (byelaws made by the Guardians) shall cease to have effect.

5 Metric units

In rules, regulations and scales of proof made or altered under section 117 of the Act of 1868 measurements (whether of length, area, volume, mass or weight) may be expressed in imperial units or in metric units.

6 Extent of the Gun Barrel Proof Acts 1868 and 1950

The Gun Barrel Proof Acts 1868 and 1950 shall extend to Scotland and Northern Ireland.

7 Interpretation

- (1) In this Act " the Act of 1868 " means the Gun Barrel Proof Act 1868 ; and expressions to which a meaning is given for the purposes of the Act of 1868 have the same meaning in this Act.
- (2) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

8 Minor and consequential amendments and repeals

- (1) The provisions mentioned in Schedule 3 to this Act shall have effect subject to the amendments there specified, being minor amendments or amendments consequential on the provisions of this Act.
- (2) The enactment mentioned in Schedule 4 to this Act (which contains certain provisions which are obsolete or unnecessary) is hereby repealed to the extent specified in the third column of that Schedule.
- (3) When it appears to the Secretary of State that Schedule 2 to this Act can have no further application, he may by order made by statutory instrument repeal that Schedule; and the order may make such amendments and repeals in any other enactment as appear to the Secretary of State to be appropriate in consequence of that repeal.

9 Citation, commencement and extent

- (1) This Act may be cited as the Gun Barrel Proof Act 1978.
- (2) This Act and the Gun Barrel Proof Acts 1868 and 1950 may be cited together as the Gun Barrel Proof Acts 1868 to 1978.

- (3) This Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different purposes.
- (4) This Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 1(1).

SECTIONS SUBSTITUTED FOR SECTIONS 129 TO 137 OF THE ACT OF 1868

“129 Convention proof marks.

- (1) In this Act " convention proof mark " means any mark, sign or character of which a specimen is for the time being included in the register of proof marks published by the Permanent International Commission for the Proof of Small Arms established under a Convention done at Brussels on 1st July 1969 (in this section and in sections 130 and 131 of this Act referred to as "the register"), not being a mark, sign or character included therein as a United Kingdom proof mark.
- (2) The Proof Master of each of the Two Companies shall keep at the Proof House a copy of the register for the time being in force, together with copies of any documents published by the Permanent International Commission amending that register ; and the copy or copies so kept shall be open for public inspection without charge at all reasonable times.
- (3) The Proof Masters of the Two Companies respectively shall from time to time, by advertisement published—
 - (a) in the London, Edinburgh and Belfast Gazettes ;
 - (b) in a local newspaper circulating in Birmingham ; and
 - (c) in daily newspapers circulating generally in England and Wales, in Scotland and in Northern Ireland respectively ;
 give notice of the inclusion in or omission from the register of any marks, signs or characters other than United Kingdom proof marks.

130 Exemption of barrels with convention proof marks.

- (1) Subject to subsections (5) and (6) below, a barrel (wherever manufactured) bearing a convention proof mark shall, if the mark was lawfully impressed upon the barrel in accordance with the law applicable in the State to whose official Proof House the mark is attributed by the register, be exempt from liability to proof under this Act.
- (2) Subject to subsections (4), (5) and (6) below, a barrel which would at any time have been liable to proof under this Act but for subsection (1) above shall not cease to be exempt from liability to proof under this Act, so long as it continues to bear the mark, sign or character by virtue of which it was so exempt under subsection (1), by reason only of the fact that the mark, sign or character in question has since ceased to be a convention proof mark.
- (3) No offence shall be committed under this Act—
 - (a) in respect of any barrel; or
 - (b) by reference to any barrel made up into a small arm,

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by virtue of the fact that the barrel in question has not been proved under this Act or the Gun Barrel Proof Act 1855, if the barrel is for the time being exempt under subsection (1) or (2) above from liability to proof under this Act.

- (4) The Proof Masters of the Two Companies, acting jointly, may by notice published as mentioned in section 129(3) of this Act withdraw any exemption continuing by virtue of subsection (2) above by reference to any mark, sign or character described in the notice, either generally or in relation to any class or description of barrels bearing the mark, sign or character in question.
- (5) If a barrel of one sort which is exempt under subsection (1) or (2) above from liability to proof under this Act by virtue of any mark, sign or character impressed upon it is in the United Kingdom converted into a barrel of another sort, the barrel shall cease to be so exempt by virtue of that mark, sign or character from the time when the conversion is begun.
- (6) If a barrel which is exempt under subsection (1) or (2) above from liability to proof under this Act by virtue of any mark, sign or character impressed upon it is in the United Kingdom, by any process of manufacture or by any other means except user and wear and tear, so reduced in substance or strength that the mark, sign or character does not represent the proof which the barrel would bear if it were then duly proved in the official Proof House of the State in question, the barrel shall thereupon cease to be so exempt by virtue of that mark, sign or character.

131 Convention of proof marks: proceedings for offences.

- (1) Subject to subsection (2) below, in any proceedings for an offence under this Act it shall be for the defendant or, in Scotland, the accused to show that any exemption under section 130 of this Act is applicable to the case.
- (2) Subject to subsection (3) below, a person shall not be convicted of an offence under this Act by virtue of any withdrawal of exemption under section 130(4) of this Act unless it is shown that he knew at the time when the offence is alleged to have been committed that the exemption had been withdrawn.
- (3) Subsection (2) above does not apply in any case where the defendant or, in Scotland, the accused was at the time when the offence is alleged to have been committed a gun maker or gun barrel maker, or a maker of or dealer in small arms or barrels, or in any parts for small arms or barrels.
- (4) For the purposes of any proceedings for an offence under this Act a document purporting to be a copy of the register or of any document published by the Permanent International Commission amending the register shall be evidence (and, in Scotland, sufficient evidence) of the contents of the register at any time on or after the date on which the document in question purports to be published.”

SCHEDULE 2

Section 1(2).

TRANSITIONAL PROVISIONS

Barrels to which this Schedule applies

- 1 (1) Subject to sub-paragraph (2) below, this Schedule applies to a barrel if—

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- (a) it would immediately before the passing of this Act have been subject to the provisions of the Act of 1868 but for section 132 of that Act; and
 - (b) the mark, sign or character by virtue of which it was then exempt under that section from the provisions of that Act was not at the passing of this Act a convention proof mark.
- (2) This Schedule shall cease to apply to any barrel if at any time after the passing of this Act the mark, sign or character by virtue of which it was immediately before the passing of this Act exempt under section 132 of the Act of 1868 from the provisions of that Act becomes a convention proof mark.

Exemption of such barrels

- 2 (1) Subject to the following provisions of this paragraph, a barrel to which this Schedule applies shall be exempt from liability to proof under the Act of 1868 so long as it continues to bear the mark, sign or character by virtue of which it was immediately before the passing of this Act exempt under section 132 of that Act from the provisions of that Act; and accordingly no offence shall be committed under that Act in respect of or by reference to any such barrel by virtue of the fact that it has not been proved under that Act or the Gun Barrel Proof Act 1855.
- (2) The Proof Masters of the Two Companies, acting jointly, may by notice published—
- (a) in the London, Edinburgh and Belfast Gazettes;
 - (b) in a local newspaper circulating in Birmingham ; and
 - (c) in daily newspapers circulating generally in England and Wales, in Scotland and in Northern Ireland respectively,
- withdraw any exemption continuing under this Schedule by reference to any mark, sign or character described in the notice, either generally or in relation to any class or description of barrels bearing the mark, sign or character in question.
- (3) If a barrel of one sort which is exempt under this Schedule from liability to proof under the Act of 1868 by virtue of any work, sign or character impressed upon it is in the United Kingdom converted into a barrel of another sort, the barrel shall cease to be so exempt by virtue of that mark, sign or character from the time when the conversion is begun.
- (4) If a barrel which is exempt under this Schedule from liability to proof under the Act of 1868 by virtue of any mark, sign or character impressed upon it is in the United Kingdom, by any process of manufacture or by any other means except user and wear and tear, so reduced in substance or strength that the mark, sign or character does not represent the proof which the barrel would bear if it were then duly proved in the official Proof House of the State in question, the barrel shall thereupon cease to be so exempt by virtue of that mark, sign or character.

Continuation of former register

- 3 (1) The Proof Master of each of the Two Companies shall continue to keep the register of foreign proof marks kept before the passing of this Act under section 129 of the Act of 1868 (in this Schedule referred to as "the former register"), as it had effect immediately before the passing of this Act; and the former register shall continue to be open for public inspection without charge at all reasonable times at the Proof House of each of the Two Companies.

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- (2) The reference in paragraph (14) of section 121 of the Act of 1868 to any stamp or mark, or any part of any stamp or mark of a foreign country, registered by either of the Two Companies under the Gun Barrel Proof Act 1855 or under the Act of 1868, shall continue to be construed as referring to registration in the former register, and the reference in paragraph (6) of section 138 of the Act of 1868 to the register of foreign proof marks shall continue to be construed as a reference to the former register; but a person shall not by virtue of this sub-paragraph and paragraph 6(2) of Schedule 3 to this Act be liable to be punished twice under section 121 of the Act of 1868 for the same offence.

Proceedings for offences

- 4 (1) Subject to sub-paragraph (2) below, in any proceedings for an offence under the Act of 1868 it shall be for the defendant or, in Scotland, the accused to show that any exemption under this Schedule is applicable to the case.
- (2) Subject to sub-paragraph (3) below, a person shall not be convicted of an offence under the Act of 1868 by virtue of any withdrawal of exemption under paragraph 2(2) above unless it is shown that he knew at the time when the offence is alleged to have been committed that the exemption had been withdrawn.
- (3) Sub-paragraph (2) above does not apply in any case where the defendant or, in Scotland, the accused was at the time when the offence is alleged to have been committed a gun maker or gun barrel maker, or a maker of or dealer in small arms or barrels, or in any parts for small arms or barrels.
- (4) For the purposes of any proceedings for an offence under the Act of 1868 the former register kept by the Proof Master of either of the Two Companies shall be conclusive evidence of the contents of that register as it had effect immediately before the passing of this Act, without production of any original document received from any consular authority or agent, and without proof of any other fact in verification of that register.

SCHEDULE 3

Section 8(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 In section 4 of the Act of 1868—
- (a) after the definition of " The Two Companies " there shall be inserted the following definition—
- “ the Permanent International Commission ' means the Permanent International Commission for the Proof of Small Arms mentioned in section 129(1) of this Act;”;
- (b) after the definition of " Mark " there shall be inserted the following definitions—
- “ convention proof mark ' has the meaning given in section 129(1) of this Act;
- ' statutory maximum ', in relation to a fine on summary conviction, means—

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- (a) in England and Wales, the prescribed sum within the meaning of section 28 of the Criminal Law Act 1977 (£1,000 at the passing of the Gun Barrel Proof Act 1978) ;
 - (b) in Scotland, the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975 (also £1,000 at the passing of the said Act of 1978) ; and
 - (c) in Northern Ireland, £1,000 ;” ; and
- (c) after the words "The Several Weights by this Act or any Schedule thereto prescribed" there shall be inserted the words " which are expressed in imperial units ".

2 After section 6 of the Act of 1868 there shall be inserted the following section—

“6A Acquisition of land in Scotland.

For the purpose of acquiring land by agreement in Scotland the Lands Clauses Consolidation (Scotland) Act 1845 and section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 so far as those enactments are applicable for the purposes of this Act shall be incorporated with it; and accordingly in the next following section the reference to the Lands Clauses Consolidation Act 1845 shall include a reference to those enactments.”

3 In section 21 of the Act of 1868—

- (a) for the words " Justices for the Borough of Birmingham " there shall be substituted the words " justices for the petty sessional division of Birmingham. " ;
- (b) for the words " the Council of the said Borough " (twice) there shall be substituted the words " Birmingham City Council " ; and
- (c) for the words " Mayor for the Borough " there shall be substituted the words " Lord Mayor " .

4 In section 28 of the Act of 1868 for the words "deemed guilty of a misdemeanour" there shall be substituted the words " guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years " .

5 In section 30 of the Act of 1868 for the words from "for every such offence" to " as a Guardian", in the second place where those words occur, there shall be substituted the words " be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine " and for the words " Recovery of such Penalty" there shall be substituted the word " conviction " .

6 In sections 90 and 92 of the Act of 1868 for the words from " as to the Gunmakers Company" to " Birmingham" and in section 117 of that Act for the words from " in the London Gazette " to " Birmingham Newspapers respectively " there shall be substituted the words " published—

- (a) in the London, Edinburgh and Belfast Gazettes ;
- (b) in a local newspaper circulating in Birmingham ;
- (c) in daily newspapers circulating generally in England and Wales, in Scotland and in Northern Ireland respectively " .

7 In section 95 of the Act of 1868 for the word "Byelaws" there shall be substituted the word " rules " .

8 In section 106 of the Act of 1868—

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- (a) for the words "The Gunmakers Company" there shall be substituted the words " The Two Companies respectively ";
 - (b) after the word "their" there shall be inserted the word " respective "; and
 - (c) after the words " by them " there shall be inserted the word " respectively ".
- 9 In section 119 of the Act of 1868 for the words from "deemed guilty" to the end there shall be substituted the words " guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years. ".
- 10 (1) In section 121 of the Act of 1868 for the words from " for every such offence " to " not more than " there shall be substituted the words " be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding " and for the words " a misdemeanour ", in the second place where they occur, there shall be substituted the words " an offence ".
- (2) The said section 121 shall be renumbered as subsection (1) of that section and after that subsection there shall be inserted the following subsection—
 - “(2) Any person who, with respect to—
 - (a) any stamp or part of a stamp provided or used at any time by an official Proof House of any foreign State for impressing upon any barrel a mark which is or at any time was a convention proof mark;
 - (b) any mark of any such stamp or part of a stamp;
 - (c) any forgery, counterfeit or imitation of any such stamp or part of a stamp or of any such mark ; or
 - (d) any barrel marked with any such forged or counterfeit stamp or part of a stamp,knowingly does anything which would be an offence under subsection (1) above if done with respect to any stamp or any part of a stamp provided or used at any time by either of the Two Companies for marking any barrel, or with respect to any mark of any such stamp or part of a stamp, shall be guilty of an offence under that subsection.”
- 11 In section 122 of the Act of 1868—
 - (a) for the words " for every such offence be subject to a Penalty as follows " there shall be substituted the words " be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine ";
 - (b) for the word " England ", wherever occurring, there shall be substituted the words " the United Kingdom ";
 - (c) in paragraphs (1) to (3) and (5) to (7) the words from " shall for every " to the end shall be omitted ; and
 - (d) in paragraph (4) the words from " shall for every neglect" to "Twenty Pounds", in the second place where those words occur, shall be omitted.
- 12 In section 123 of the Act of 1868 for the words from "deemed guilty " to the end there shall be substituted the words " guilty of an offence and liable on conviction on indictment to imprisonment for life ".
- 13 In section 124 of the Act of 1868 for the words from " and any Penalty" to the end there shall be substituted the words " and proceedings for any offence under this Act which is punishable on summary conviction may be taken at any time not later than six months after the time when either of the Two Companies had, or with reasonable diligence might have had, notice that the offence had been committed ".

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14 In section 127 of the Act of 1868 for the word "England", wherever occurring, there shall be substituted the words " the United Kingdom ".

15 (1) In section 138 of the Act of 1868—

- (a) for the words from the beginning to " Possession of " there shall be substituted the words " If either of the Two Companies have reasonable cause to suspect that there is in any premises or place "; and
- (b) for the words from " The Company may apply " to the end there shall be substituted the words " the Company may apply to a justice for a search warrant under subsection (2) below or, in Scotland, make report of their suspicion and the grounds therefor to the Crown Agent in the Crown Office in Edinburgh for such investigation and for such proceedings as he may consider necessary having regard to Part II of the Criminal Procedure (Scotland) Act 1975 ".

(2) The said section 138 shall be renumbered as subsection (1) of that section and after that subsection there shall be inserted the following subsections—

“(2) If on an application under subsection (1) above a justice is satisfied by information on oath that there is reasonable ground for any such suspicion as is mentioned in that subsection, he may grant a search warrant authorising any officer of either of the Two Companies together with a constable—

- (a) to enter at any time any premises or place specified in the warrant, if necessary by force, and to search the premises or place and every person found there; and
- (b) to seize and detain—
 - (i) any stamp or part of a stamp which he suspects to be a forgery or counterfeit of a stamp or part of a stamp provided or used at any time by either of the Two Companies ; and
 - (ii) any barrel which he suspects to be a barrel to which subsection (1) above applies and any small arm or part of a small arm of which any such barrel forms part.

(3) Subsection (1) above shall apply in relation to—

- (a) any barrel bearing any forged or counterfeit mark or part of a mark, or imitation of a mark or part of a mark, which is or at any time was a convention proof mark; and
- (b) any small arm or part of a small arm of which any such barrel forms part,

as it applies in relation to any such barrel as is mentioned in any of paragraphs (2) to (9) of that subsection and any small arm or part of a small arm of which any such barrel forms part.”

16 For section 139 of the Act of 1868 there shall be substituted the following section—

“139 Detention of barrels with forged etc. marks brought to proof house.

Where a barrel bearing—

- (a) a mark of a forgery or counterfeit of a stamp or part of a stamp which is or at any time was provided or used by either of the Two Companies or which is or at any time was a convention proof mark ;
or

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- (b) a forged or counterfeit mark or imitation of a mark of any such stamp or part of a stamp,
is brought to the proof house or any branch proof house of either of the Two Companies, the Company shall detain the barrel and any small arm or part of a small arm of which the barrel forms part.”

17 For section 140 of the Act of 1868 there shall be substituted the following section—

“140 Disposal of detained stamps, barrels and small arms.

- (1) Where a person is charged with an offence under this Act in relation to—
(a) any stamp, part of a stamp, barrel, small arm or part of a small arm which has been seized and detained under, or in pursuance of a report made under, section 138 of this Act; or
(b) any barrel, small arm or part of a small arm which has been detained under section 139 of this Act,

the court before which he is charged may order that the stamp, part of a stamp, barrel, small arm or part of a small arm shall become the property of the Company whose officer detained it or, as the case may be, the Company which made the report under section 138 of this Act.

- (2) As soon as practicable after the making of any such order, the Company shall—
(a) destroy any stamp or part of a stamp to which the order relates ; and
(b) prove any barrel to which the order relates and—
(i) if it is found of proof, mark it as proved ; or
(ii) if it is not found of proof, break and destroy it.”

18 In section 141 of the Act of 1868 for the words from " for every such offence" to " not more than " there shall be substituted the words " be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ".

19 In section 143 of the Act of 1868 for the words "for every such offence forfeit not exceeding Fifty Pounds" there shall be substituted the words " be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine ".

20 In section 4 of the Gun Barrel Proof Act 1950 for the words " London Gazette " there shall be substituted the words " London, Edinburgh and Belfast Gazettes ".

SCHEDULE 4

Section 8(2).

REPEALS

Chapter	Short Title	Extent of Repeal
31 & 32 Vict. c. cxiii.	The Gun Barrel Proof Act 1868.	In section 21, the words " the Borough of", in the second place where those words occur.

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Chapter	Short Title	Extent of Repeal
		<p>In sections 23, 38, 40 and 56, the words " the Borough of " .</p> <p>Section 87.</p> <p>In section 89 the words from " as regards the Gunmakers Company" to "Birmingham".</p> <p>Sections 100 to 105.</p> <p>In section 122, in paragraphs (1) to (3) and (5) to (7) the words from " shall for every " to the end and in paragraph (4) the words from " shall for every neglect " to " Twenty Pounds ", in the second place where those words occur.</p> <p>In section 124 the words " and Penalties " .</p> <p>Sections 125 and 126.</p> <p>In section 127 the words " and Penalty " .</p> <p>In section 128 the words " any Penalty or " .</p> <p>Sections 142 and 144.</p>