

Title: Firearms Law IA No: LAWCOM0051 Lead department or agency: Law Commission Other departments or agencies: Home Office	Impact Assessment (IA)
	Date: 7/12/2015
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
N/Q	N/Q	N/Q	Yes/No In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

The law governing the possession and acquisition of firearms is contained in the Firearms Act 1968 and over 33 other pieces of legislation. The law lacks clarity on key terms, lags behind technological developments and has gaps in legal provision. As a result, existing law undermines public safety; overburdens the police and the Crown Prosecution Service (CPS); and makes trials needlessly expensive. Ultimately, comprehensive reform is required to make firearms law as a whole comprehensible and to minimise the threat to public safety. Government intervention is required because primary legislation is needed to bring about the appropriate reforms.

What are the policy objectives and the intended effects?

The policy objectives are to:

- promote public safety by improving the regulation of firearms;
- ensure firearms law is more comprehensible for criminal justice professionals and legitimate users;
- ensure firearms law reflects technological developments; and
- increase public confidence in the criminal justice system by avoiding illegitimate prosecutions and promoting legitimate prosecutions. An illegitimate prosecution is here defined as one that occurs because the offender has committed an offence due to a deficiency with the law.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing.

Option 1: Introduce legislation to 1) define “lethality”, “component part” and “antique”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Launch a project to codify firearms law.

Option 2: Introduce legislation to 1) define “lethality”, “component part” and “antique”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Do not launch a project to codify firearms law.

Option 3: Introduce legislation to 1) define “lethality” and “component part”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Neither define “antique” nor launch a project to codify firearms law.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce legislation to 1) define “lethality”, “component part” and “antique firearm”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) to modernise the test for what amounts to a readily convertible imitation firearm. Launch a project to codify firearms law.

Price Base Year 14/15	PV Base Year 14/15	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised costs by ‘main affected groups’

Transitional cost: training and familiarisation with the new law are expected to be negligible (Judicial Academy, the police and lawyers); setting-up new muzzle kinetic test expected to be negligible (Home Office); launching a project to codify firearms law: £450,000 over 3 years (Law Commission).
 On-going costs: increased costs for the criminal justice system (CJS) due to the extension of existing offences CPS; police; increased court time HMCTS; legal aid; and NOMS). The creation of a new criminal offence: £8,900 per conviction – best estimate (CJS). For reasons explained in the evidence base it is not possible to provide a cost range to the above identified areas.

Other key non-monetised costs by ‘main affected groups’

An initial spike in appeals; and a long-term increase in appeals due to creating a new offence, and extending existing offence (HMCTS).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised benefits by ‘main affected groups’

Transitional benefits: none identified. On-going benefits: increased public safety as measured through potential for less homicides and wounds caused by firearms. The cost of a homicide is £1,909,943 (the public), and the saving from preventing a serious injury is £9,208 (victim) including £1,756 in treatment costs (NHS). There would also be benefits for the CJS because clarifying the law will likely reduce offending and shorten cases (CPS; HMCTS; legal aid; and NOMS). Clearer law would also result in business benefits (traders of airsoft, antique and deactivated firearms). For reasons explained in the evidence base, it is not possible to provide a savings range to the above identified areas.

Other key non-monetised benefits by ‘main affected groups’

Increased public confidence in the criminal justice system [criminal justice professionals, the public and government].

Key assumptions/sensitivities/risks Discount rate (%) 3.5%

Given that the areas of cost and benefit in this Option are overlapping and non-quantified, there is a risk that, despite its clear legal and social benefits, this Option could prove more costly than expected. This risk is heightened by the figures provided by stakeholders often being unsubstantiated. There is also a risk that a codification project would take longer than 3 years and/or that it would not result in a codified body of firearms law.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/Q	Benefits: N/Q	Net: N/Q	Yes/No	IN/OUT/Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce legislation to 1) define “lethality”, “component part” and “antique”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Do not launch a project to codify firearms law.

Price Base Year 14/15	PV Base Year 14/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised costs by ‘main affected groups’

The key monetised costs of Option 2 are likely to affect the same groups as those of Option 1. However, the initial costs are predicted to be less because a project to codify the law of firearms would not need to be undertaken. For reasons explained in the evidence base, it is not possible to provide a cost range to the above identified areas.

Other key non-monetised costs by ‘main affected groups’

None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised benefits by ‘main affected groups’

The key monetised benefits of Option 2 are likely to affect the same groups as those of Option 1. The benefits to public safety, the CJS and business are predicted to be less than Option 1 because this Option would not clarify the law of firearms through codification. For reasons explained in the evidence base, it is not possible to provide a savings range to the above identified areas.

Other key non-monetised benefits by ‘main affected groups’

Increased public confidence in the criminal justice system [criminal justice professionals, the public and government].

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Given that the areas of cost and benefit in this Option are overlapping and non-quantified, there is a risk that, despite its clear legal and social benefits, this Option could prove more costly than expected. This risk is heightened by the figures provided by stakeholders often being unsubstantiated.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/Q	Benefits: N/Q	Net: N/Q	Yes/No	IN/OUT/Zero net cost

Summary: Analysis & Evidence

Policy Option 3

Description: Introduce legislation to 1) define “lethality” and “component part”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Neither define “antique” nor launch a project to codify firearms law.

Price Base Year 14/15	PV Base Year 14/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	N/Q		N/Q		N/Q	
Description and scale of key monetised costs by ‘main affected groups’						
The key monetised costs of Option 3 are likely to affect the same groups as those of Option 1. As with Option 2, the transitional cost of undertaking a project to codify the law of firearms would be avoided. For reasons explained in the evidence base, it is not possible to provide a cost range to the above identified areas.						
Other key non-monetised costs by ‘main affected groups’						
None identified.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	N/Q		N/Q		N/Q	
Description and scale of key monetised benefits by ‘main affected groups’						
The key monetised benefits of Option 3 are likely to affect the same groups as those of Option 1. The benefits to public safety, the CJS and business are, however, predicted to be less because the meaning of an antique firearm would not be clarified and codification would not be undertaken. For reasons explained in the evidence base, it is not possible to provide a savings range to the above identified areas.						
Other key non-monetised benefits by ‘main affected groups’						
Increased public confidence in the criminal justice system [criminal justice professionals, the public and government].						
Key assumptions/sensitivities/risks					Discount rate (%)	3.5%
Given that the areas of cost and benefit in this Option are overlapping and non-quantified, there is a risk that, despite its clear legal and social benefits, this Option could prove more costly than expected. This risk is heightened by the figures provided by stakeholders often being unsubstantiated.						

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/Q	Benefits: N/Q	Net: N/Q	Yes/No	IN/OUT/Zero net cost

Evidence Base

Introduction

The current law regulating firearms is contained in the Firearms Act 1968 and over 33 other pieces of legislation. The piecemeal development of the law regulating firearms has left it riddled with undefined terms, loopholes and unnecessary complexities.

The primary act regulating the possession and acquisition of firearms, the Firearms Act 1968, was itself a consolidating measure: it was meant to bring existing law on firearms together. The 1968 Act incorporates provisions that originated in the Pistols Act 1903. It is questionable whether some of the language used in that Act is fit for purpose over 100 years after it was enacted. Additionally, the 1968 Act was hurried through Parliament. Colin Greenwood, a leading expert on the history of firearms regulation in the United Kingdom, has suggested that the Act was enacted without sufficient consultation and preparation first being undertaken.¹ This perhaps explains some of the Act's deficiencies.

As part of our Twelfth Programme of Law Reform, which began in July 2014, the Law Commission undertook to reform the problematic area of law that regulates firearms. The firearms project is sponsored by the Home Office. At the commencement of the project, the terms of reference agreed between the Home Office and us, the Law Commission, were as follows.

- To review the law relating to firearms with a view to understanding its limitations and the practical problems they cause or exacerbate. To publish a scoping paper setting out those problems and a range of options for further work, intended to inform recommendations for reform.
- The review will have regard to advances in firearms technology and their impact on effective firearms legislation, including but not limited to 3D printing. Any proposals for reform will aim to take account of contemporary firearms and their use, both legitimate and criminal, and provide sufficient flexibility for likely future developments.
- When conducting the review, the Law Commission will keep in mind the principle that all regulation should be fair and effective, and where appropriate the review will consider the simplification or reduction of over-complex or unnecessary regulation.
- This review will not be concerned with either the existing firearms licensing regime, or sentencing tariffs for firearms offences except where some consideration of them is necessary to analyse properly the rest of the relevant law.

During the early stages of the project we attended a significant number of consultation meetings both within London and elsewhere, meeting dozens of stakeholders. Further, to ensure we had a practical understanding of the issues, we visited both Proof Houses and also had numerous meetings with forensic firearms experts.²

On the 21 July 2015 we published a scoping consultation paper which requested views on 15 provisional proposals and answers to 9 consultation questions. A two month consultation period was then launched which ended on the 21 September 2015, however, we continued to accept responses after this date. This period included a successful symposium at Westminster University on the 8 September 2015 which attracted over 100 stakeholders. We received 205 responses to our Scoping Consultation Paper. Respondents included representative organisations, professionals involved in the law of firearms and individuals.

Before turning to the problems we considered, it is important to note a significant limitation on the data available on the (mis)use of firearms in the United Kingdom. Most bodies who record criminal incidents involving firearms do not do so in a way which is conducive to use in this Impact Assessment. This is because the firearms that are of particular concern to this report do not sit well, and often cut across, the subcategories of firearms they use. For example, reform of the law surrounding antique firearms is integral to this impact assessment. However, this is not a category of firearm recorded by Hospital

¹ C Greenwood, *Firearms Control* (1972), p 79.

² By virtue of the Gun Barrel Proof Act 1868, the role of the London and Birmingham Proof Houses is to ensure firearms are safe before they are sold. This is achieved by test firing them.

Episode Statistics.³ Instead, they use handguns, rifles and unspecified firearms amongst other subcategories. These subcategories could all include, but are not limited to, antique firearms. Similarly, the Office of National Statistics more generalist categories of crime type, such as “Violence with injury” are of limited utility.⁴ The result of this is that, although recorded information on firearms does exist, often only indicative examples can be given below.

Problems under consideration

There are two types of problem considered by the Law Commission. Firstly, there are a collection of problems within firearms law that are in need of urgent reform and, secondly, firearms law as a whole has become too complex and diffuse.

The problems within firearms law that are in need of urgent reform have their foundations in key terms being undefined, a gap in the law and the law having become out of step with technological developments.

Missing definitions of key terms

- The failure of the law to define “lethal”. Section 57(1) of the Firearms Act 1968 defines a firearm as a “lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged”. This makes lethality integral to knowing whether something is a firearm. Leaving “lethal” undefined raises a number of problems including a greater reliance on expert witnesses; a lack of clarity over whether some air weapons and poorly converted imitations are firearms; and the knock on effect of not knowing when offenders, who are banned from firearm ownership, possess a firearm when they are prohibited from doing so.
- The failure of the law to define “component part”. Section 57(1)(b) of the Firearms Act 1968 states that the term “firearm” includes “any component part of such a lethal or prohibited weapon”. The effect of this provision is that whenever the legislation refers to a firearm it is also referring to a component part. The main problems caused by the failure to define “component part” are an increased risk to public safety because defendants may walk free solely based on the term’s ambiguity; difficulties for the police in investigation; difficulties for the Crown Prosecution Service (CPS) in deciding whether to prosecute; longer and more complex trials; and that members of the licensed firearms community may inadvertently commit a serious offence.
- The failure of section 58(2) of the Firearms Act 1968 to define “antique”. Section 58(2) exempts antique firearms, which in many cases would otherwise be prohibited weapons, from the scope of firearms legislation. However, no definition of “antique” is offered in section 58(2). This poses five problems: (1) public safety is put at risk when working firearms that can be acquired without any form of restriction fall into the possession of criminals; (2) the police cannot be certain whether a suspect is unlawfully in possession of a prohibited weapon; (3) the CPS has difficulty deciding whether to charge an individual with an offence; (4) experts rely upon different criteria when giving evidence on whether a firearm is an antique which can confuse juries and leads to inconsistent trial outcomes; and (5) legitimate collectors are unable to know with certainty whether they are complying with the law.

A gap in the law

- The failure of the law to impose a legal obligation to the effect that deactivated firearms must be certified as being deactivated to an approved standard. A deactivated firearm is not a firearm for the purposes of the law. It is, however, an imitation firearm. The problem is that whilst the United Kingdom has some of the most rigorous deactivation standards in the world, there is no legal requirement that they be followed. This undermines public safety because allegedly deactivated firearms, which can be reactivated, cannot be monitored appropriately.

³ Hospital Episode Statistics, *Admitted Patient Care, England, External Causes*, (various years).

⁴ Office for National Statistics, *Crime in England and Wales, Year Ending June 2015* (2015) p 24-25.

Out of step with technological developments

- The failure of the law to keep pace with technological developments in relation to whether an imitation firearm is “readily convertible” into a live firearm. Section 1 of the Firearms Act 1982 mandates that “readily convertible imitation firearms” are subject to the same control as live firearms. Section 1(6) of the 1982 Act provides that an imitation will be “readily convertible” if it requires neither “special skill” on the part of the convertor nor the use of tools or equipment “other than such as are in common use by persons carrying out works of construction or maintenance in their own homes.” Section 1(5) provides that it is a defence “for the accused to show that he did not know and had no reason to suspect that the imitation firearm was so constructed or adapted as to be readily convertible into a firearm”. In its current state, the law does not account for the increased availability of tools that are not commonly used for home maintenance, due to the advent of the internet, which could be used to convert imitation firearms into live firearms. This is problematic because weapons which should now be considered “readily convertible” are not appropriately categorised. Having such a loophole available unnecessarily increases the risk to public safety posed by firearms.

We also considered whether firearms law needed to be more fundamentally reformed. This consideration was based on the problem of firearms law being dispersed in over 34 pieces of interrelated legislation and case law. There will always be a level of complexity within firearms law because of the subject matter itself. Nonetheless, beyond this substantive complexity, having such a large and diffuse body of law unnecessarily further complicates matters by making the law hard to find, cumbersome to interpret and often incoherent. The scale of this unnecessary complexity has become apparent to us through our initial research and our consultation process.

Rationale for intervention

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

In the case of firearms law, failures are created through incomplete information due to gaps in legal provision, lack of clarity on key terms and the law having become outdated. Further, the body of law as a whole is excessively large and diffuse. As a result, there are adverse safety implications rooted in the difficulties in regulating firearms and unnecessary complexities for professionals in the criminal justice system and legitimate firearms users.

Policy objectives

- **To promote public safety.** By improving the regulation of firearms our reforms would reduce the risk posed to members of the public.
- **To ensure the law in this area is readily comprehensible.** The proposed reforms would make the law easier, for both professionals in the criminal justice system and legitimate firearms users, to understand.
- **To ensure the law in this area is up to date.** The proposed reforms would make a body of law fit for purpose in the 21st century.
- **To increase public confidence in the criminal justice system.** Public confidence in the criminal justice system is severely undermined when defendants walk free because the criminal law is incomprehensible or outdated. It is further undermined when those who make every effort to comply with the law inadvertently commit an offence because the law is unduly complex. The reforms we recommend aim to reduce the occurrences of both of these outcomes and, thus, to increase public confidence in the criminal justice system.

Scale and scope

Firstly, a typology of the firearms that fall within the options presented in this Impact Assessment will be given. Where available, estimates of the number of each type of firearm will also be included. Secondly, attention will then turn to setting out the size and range of legitimate use of firearms. Thirdly the effect the relevant firearms have on public safety, will then be assessed. Fourthly, attention will next turn to the economic and social costs of firearm crime. Fifthly, and finally, the scale of the complexity of the law of firearms as a whole will be indicated.

Typology

Air weapon – a weapon which uses compressed air to fire a projectile. Only a firearm if it is considered to be lethal, and even if it is lethal, it is exempt from regulation if under certain power limits due to section 1(3)(b) of the Firearms Act 1968. We have been unable to find an estimate of the total number of air weapons in the United Kingdom.

Airsoft – this can refer to both 1. an activity employing low-powered air weapons in acting out military or law enforcement scenarios, where the participants shoot at each other with 6 millimetre plastic pellets 2. the air weapons used during this activity. The air weapons used for airsoft are not rifled and are made from low density metal. The United Kingdom Airsoft Retailers Association estimate that it is “likely that there are upwards of 500,000 airsoft imitation firearms presently lawfully owned [in the United Kingdom].”

Antique firearms – section 58(2) of the Firearms Act 1968 does not define “antique” beyond the “curiosity or ornament” requirement. The issue of whether a firearm is an antique is a question of fact for the jury.⁵ Factors which are presently indicative, but not determinative, of a firearm being an antique are the firearm’s age⁶ and the risk it presents to public safety.⁷ We have been unable to find an estimate of the total number of antique firearms in the United Kingdom.

Deactivated Firearms – “deactivated firearm” is a misnomer in legal terms. If a firearm has been deactivated then it is not a firearm under section 57(1) of the Firearms Act 1968. Section 38(7) of the Violent Crime Reduction Act 2006 defines a deactivated firearm as “an imitation firearm that consists in something which was a firearm, but has been rendered incapable of discharging a shot, bullet, or other missile as no longer to be a firearm.” As noted above there is a gap in the law due to the fact there is no mandatory standard of deactivation.

The Deactivated Gun Collector’s Association estimate that there are around 70,000 firearms deactivated to a 1989 standard and that there is likely a larger amount of weapons deactivated to later standards. Comparatively, the Home Office, in a 2009 consultation paper, estimated that there are 180,000 deactivated firearms that have been certified by the Proof Houses and that there are likely to be a “significantly higher” number that have not been.⁸ Given this disagreement, a precise figure of the total number of deactivated firearms cannot be given. It is evident, however, that there are a substantial number of deactivated firearms in the United Kingdom; likely measurable in the hundreds of thousands.

Readily convertible imitation firearms – the test for what constitutes a readily convertible imitation firearm is set out in Section 1 of the Firearms Act 1982. See Problems under consideration, Out of step with technological developments above for discussion. We have been unable to find an estimate of the total number of readily convertible imitation firearms in the United Kingdom.

Legitimate firearms users

It is important also to recognise the interests of the licensed firearms community. When considering the problems and options presented in this Impact Assessment it is important to bear in mind that there is a large and diverse legitimate interest in firearms. Larger organisations who represent firearms users

⁵ *R v Howells* [1977] QB 614 (CA); *Richards v Curwen* [1977] 1 WLR 747; *R v Thompson* CO/1572/94.

⁶ *Richards v Curwen* [1977] 1 WLR 747, 752 Eveleigh J; *Bennett v Brown* (1980) 71 Cr App R 109, 112 Eveleigh LJ and 112 Watkins J. However, there are more recent cases where firearms of less than 100 years old have been held to be antiques: *R v Garfield Stacey* Bournemouth Crown Court, 5 October 2006 and *R v Kevin Schofield* Leeds Crown Court, 18 March 2008.

⁷ Home Office, *Guide on Firearms Licensing Law* (March 2015); *R v Thompson* CO/1572/94.

⁸ Home Office, *Controls on Deactivated Firearms – a Consultation Paper* (February 2009) p. 30.

include the Scottish Association for Country Sports (membership not provided); the National Gamekeepers' Organisation (15,000 members); the National Rifle Association (30,000 Members); the Countryland and Business Association (34,000 members); the Countryside Alliance (100,000 members) and the British Association for Shooting and Conservation (140,000 members).

Moreover, there is a diverse range of legitimate firearms organisations. These organisations specialise in airsoft (United Kingdom Airsoft Players' Union and the United Kingdom Airsoft Retailers' Association); deactivated firearms (Deactivated Gun Collectors' Association and Deactivated Weapons Association); entertainment (Bapty Ltd and Stage Management Association); historical aspects of firearm (Vintage Arms Association and Heritage Arms Study Group); professional (Association of Professional Shooting Instructors, Gun Trade Association, and Joint Antique Arms Fairs); and specific types of firearm (Fifty Calibre Shooters Association).

The danger presented to the public

This section focuses on the scale of the danger presented to the public by the firearms that would be affected if our urgent reforms were accepted. Namely, these firearms are air weapons, airsoft, antique firearms, deactivated firearms and readily convertible imitation firearms.

Air weapon – The consultation response of Professor Peter Squires, an academic with expertise in firearms law, drew on Kaiza's analysis of air weapons.⁹ Squires commented, "9 people have been killed by air weapon discharges between 1998 – 2008, and although 78% of air weapon offences involve criminal damage only, this is still 22% of air weapon offences causing injury."

Airsoft – no homicides caused by an airsoft weapon have been reported to us by the National Ballistics Intelligence Service,¹⁰ the CPS or The Council of HM Circuit Judges. Similarly, no such incidents were brought to our attention by either the United Kingdom Airsoft Retailers Association or the United Kingdom Airsoft Players Union.

Antique firearms – the National Ballistics Intelligence Service have recently published information on the use of antique firearms in crime.¹¹ This information is summarised in the bullet points below.

- 14% (n=27/190) of newly identified firearms used by criminals in the last year (1 September 2014 – 31 August 2015) are potentially antique.¹² Further, since 2009 125 inferred firearms have been identified as possibly antique.
- 59 antique firearms have been recovered in the last year in criminal circumstances.
- Suitable ammunition has been recovered with 52% of antique firearms recovered by police intervention.
- Antique firearms have been discharged in fatal shootings.
- Antique firearms can use modified or unmodified commercially available ammunition.

This information, of course, does not constitute complete data. It has been criticised to this effect by respondents to our scoping consultation paper including the Joint Antique Arms Fairs, Roy Jones and James Hallam.

The Metropolitan Police Service Forensic Firearms Unit also hold records of the use of firearms that could be considered antique based on their presence in the Home Office's *Guide on Firearms Licensing Law* or their age.¹³ Their records show that from 1 January 2011 to 31 December 2014, at least 94 firearms were examined at the Unit that were of a calibre considered obsolete according to the Home Office. All of these firearm recoveries were made in criminal circumstances (that is to say, none were surrendered firearms). 2 of these obsolete firearms were found to have been used in shooting incidents;

⁹ P Kaiza, "Recorded Crimes Involving Firearms" in D Povey (ed) and others, *Homicides, Firearm Offences and Intimate Violence 2007/08* (Supplementary Volume 2 to Crime in England and Wales 2007/08, 3rd edn, 2009).

¹⁰ The National Ballistics Intelligence Service also responded to our consultation on behalf of the National Crime Agency and all police forces.

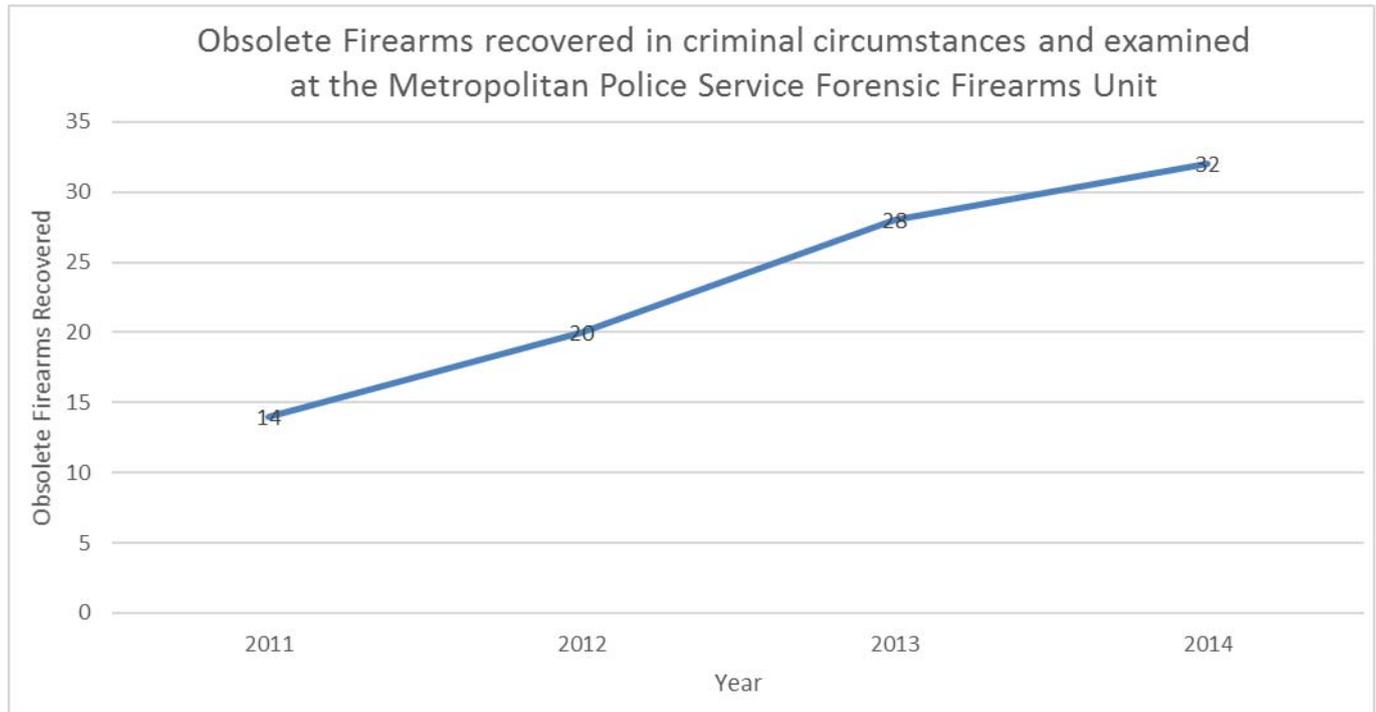
¹¹ National Ballistics Intelligence Service, "NABIS Takes Part in Law Commission Firearms Event" (NaBIS, 8th September 2015) <<http://www.nabis.police.uk/news/NABIS-Takes-Part-In-Law-Commission-Firearms-Event>> last visited **x**.

¹² These figures are based on inferred firearms. Inferred firearms are those firearms known by the National Ballistics Intelligence Service to have been used in a crime, but which are yet to be recovered.

¹³ Home Office, *Guide on Firearms Licensing Law* (March 2015).

1 in a shooting incident that resulted in gunshot injuries to 2 people and 1 in the shooting of a police officer.

A breakdown of this data is provided in the line graph below.



In addition to the obsolete calibre firearms described above, a number of other firearms were submitted to the laboratory for analysis within this time frame that were of a sufficient age that their status as antiques would be arguable in court. These firearms primarily date from the late 19th and early 20th century such as a Webley British service-issue revolver.

Furthermore, from the examination of fired bullets recovered from the scene of shooting incidents in the Metropolitan Police District, the use of an obsolete calibre firearm was indicated in 31 incidents that occurred between 1 January 2011 and 31 December 2014. This included 3 fatal incidents. An additional 8 incidents were likely to have involved the discharge of an “old” firearm such as a Webley Service revolver or a M1895 Russian Nagant revolver, including 1 fatal shooting incident.

This evidence from the Metropolitan Police Service Forensic Firearms Unit converges with the information supplied by the National Ballistics Intelligence Service above. Both suggest that there is a real and present problem with antique firearms being available to criminals and that this results in homicides.

Deactivated firearms – according to data supplied by the National Ballistics Intelligence Service, the proportion of criminal shootings that involve reactivated firearms has risen over the last three years. 30% (n=40) of these shootings resulted in injuries, including 5 homicides.

Deactivated firearms have been the subject of an analysis by Warlow, who gave some examples of instances when he encountered reactivated firearms in the course of his work as a forensic scientist with the Forensic Science Service. These instances included multiple homicides and two police officers being shot and wounded on separate occasions.¹⁴ Additionally, Migeot and De Kinder have observed:

Another effect of the tight firearms laws is that it becomes much more difficult to put one’s hands on weapons. Reactivating these collectors [sic] items back to functioning firearms seems to some handy people a feasible way of (illegally) obtaining firearms.¹⁵

In its Tenth Report, the Firearms Consultative Committee established a sub-committee to ascertain and report on whether the reactivation of firearms by criminals was a problem.¹⁶ The subcommittee

¹⁴ T A Warlow, “The Criminal Use of Improvised and Re-activated Firearms in Great Britain and Northern Ireland” (2007) 47 *Science and Justice* 111, 114-115.

¹⁵ G Migeot and J De Kinder, “Reactivating deactivated firearms” (1999) 103 *Forensic Science International* 173.

¹⁶ The Firearms Consultative Committee was established by the Firearms (Amendment) Act 1988 s 22. It was a group composed of the full range of interested parties in firearms law, brought together to make recommendations for its reform. It ceased to exist in 2004 under section 22(8), when the Home Secretary did not make an order providing for it to continue in operation.

recognised the fact that there were a significant number of deactivated firearms in circulation. It also recognised that there is evidence to suggest that the proportion of deactivated firearms in criminal hands is significant and did pose a threat to public safety due to the possibility that some of them could be made to discharge a missile.

Therefore, the evidence presented by the police and relevant experts points toward deactivated weapons posing a serious risk to public safety due to the number in circulation and their continued use by criminals in incidents which can result in homicides.

Readily convertible imitation firearms – deactivated firearms will often constitute readily convertible imitation firearms because they will retain the look of a firearm and, if deactivated to a low standard, will be readily convertible. It is, therefore, informative to see the paragraphs on deactivated firearms above to conceptualise the risk presented by readily convertible imitation firearms.

The economic and social costs of firearm crime

The economic and social costs of crime is here proxied on the costs of homicides and wounds caused by the firearms considered in this Impact Assessment. The data on the amount of homicides and wounds relied on is the best available. However, the data is not beyond reproach. This is a limitation which means the figures generated can only be indicative of the current costs of homicides and wounds caused by relevant firearms.

Homicides

The economic and social cost of a homicide is estimated by the Home Office to be £1,909,943.¹⁷

The number of homicides per annum (P/A) that are caused by firearms that would be directly impacted by our recommendations will firstly be set out.

Air weapons - the number of deaths caused by air weapons are taken from Kaiza.¹⁸ He notes that between 1999 and 2008 there were 9 deaths caused by air weapons. This provides for a homicide rate of 0.89 P/A.

Airsoft weapons - No homicides have been found to have been caused by airsoft weapons. Therefore, the homicide rate is 0.00P/A.

Antique firearms - the number of deaths caused by antique firearms are taken from the Metropolitan Police Service Forensic Firearms Unit records that were presented above. These figures will inevitably be an underestimation because they only cover those in greater London, 7,200,000 people,¹⁹ and not the population of the United Kingdom, 64,600,000 people.²⁰ Scaling up the deaths based on this information to project a national rate is not undertaken here because London is very likely not a representative sample. There were estimated to be 4 deaths caused by antique firearms in London between January 2011 and December 2014. This gives a, conservative, national homicide rate of 1P/A.

Deactivated firearms - the number of homicides caused by deactivated firearms are those provided to us by the National Ballistics Intelligence Service. Their figures cover a three year period; over which deactivated firearms were responsible for 5 fatal incidents. This gives a homicide rate of 1.67P/A.

Readily convertible imitation firearms - given the lack of data on readily convertible imitation firearms and their aforementioned overlap with deactivated firearms, a separate homicide rate is not given for them.

The total homicide rate for relevant firearms is, therefore, 3.56P/A, rounding up to 4 to account for a full life. Multiplied by the Home Office's cost of a homicide (£1,909,943), this means the total cost of homicides caused by relevant firearms is £7,639,772 P/A.

¹⁷ The Home Office estimate of the average cost of a homicide £1,458,975 in 2003 prices updated to 2014/15 prices. The estimate covers three cost aspects – costs in anticipation of crime, cost as a consequence of crime and costs in response of crime. See Home Office, *The Economic and Social Costs of Crime against Individuals and Households 2003/04* (30/05, 2005) 7.

¹⁸ P Kaiza, "Recorded Crimes Involving Firearms" 38.

¹⁹ Metropolitan Police, "About the Met" (2015) <<http://content.met.police.uk/Site/About>> last visited **x**.

²⁰ Office of National Statistics, "Release: Population Estimates for UK, England and Wales, Scotland and Northern Ireland, Mid-2014" (2015).

Wounds

The estimated average cost of firearm injuries is proxied through the Home Office measure of serious wounding and other wounding from violent crime. The average cost of health treatment is £1,756. By comparison the total health-related cost of an injury which also includes the emotional and physical impacts of injuries is £9,208.²¹

The number of wounds per annum (P/A) that are caused by firearms that would be directly impacted by this option must be set out.

Air weapons – Kaiza has set out the number of serious wounds caused by air weapons each year between 1999-2000 and 2007-2008.²² The average is 139.89P/A. Only serious wounds are considered here because Kaiza defines serious as being wounds that are of a level to require hospital treatment.²³ Thus, these fit the methodology used here because it makes health treatment a central cost factor. To include the thousands of slight wounds caused by air weapons would skew any calculation of yearly cost because, by Kaiza's definition, they are not actually treated in hospitals. Therefore, a limitation of this methodology is that the cumulative effect of thousands of slight injuries is not calculated. The cost of air weapons is, therefore, likely a significant underestimate.

Airsoft - the number of wounds caused by airsoft weapons is predicted to be negligible. This gives a working wounding rate of 0.00P/A.

Antique firearms - the number of wounds caused by antique firearms is taken from the Metropolitan Police Service Forensic Firearms Unit records. As with homicides above, these have not been scaled to account for the whole of the United Kingdom. They only explicitly reference 3 wounds over a 4 year period. This provides a wounding rate of 0.75P/A

Deactivated firearms - the number of wounds caused by deactivated firearms relied on is that provided to us by the National Ballistics Intelligence Service. Over a three year period, they found there were 35 incidents where people were wounded non-fatally. This provides a wounding rate 11.67P/A.

Readily convertible imitation firearms - for the reasons given above, the number of wounds caused by readily convertible imitation firearms are not given.

Cumulatively, this provides for a wounding rate of 151.31P/A for relevant firearms. Cumulatively, these wounds are estimated to cost the healthcare system £265,700.36P/A²⁴ and to have a total health-related cost of £1,366,026.68P/A.²⁵

Another limitation must be added to this figure: a significant number of injuries caused by firearms are predicted to go unreported.²⁶ Although these unreported cases will not have a cost to the healthcare system, they will still have a wider health-related costs because they will have a physical and emotional impact. Therefore, the total health related cost above is likely an underestimation.

The cost to the criminal justice system

The proportion of relevant firearms that reach each stage of the criminal justice system is unknown. This is due to the aforementioned problems with firearms data collection. The total costs generated by relevant firearms at each stage and overall is, therefore, also unknown. It is, however, still useful to highlight general costs to the criminal justice system to give some indication of the affect relevant firearms may be having.

The cost to the police - The police face an estimated cost of £19,485 for a homicide and £7,732 for a serious wound.²⁷

²¹ Health treatment costs £1,348 and total health related costs of violent crime £7,068 both in 2003/04 prices. See Home Office, *The Economic and Social Costs of Crime against Individuals and Households 2003/04* (30/05, 2005) 43-44.

²² P Kaiza, "Recorded Crimes Involving Firearms" 38.

²³ P Kaiza, "Recorded Crimes Involving Firearms" 38.

²⁴ £1,756 X 151.31P/A.

²⁵ £9,028 X 151.31P/A.

²⁶ P Squires, *Gun Crime in Global Contexts* (2014) 55.

²⁷ Home Office, *The Economic and Social Costs of Crime against Individuals and Households 2003/04* (30/05, 2005) 8.

The Cost to the CPS - The weighted CPS cost per case at a magistrate's court for summary matter is about £200 and for an either way matter is £200. At the Crown Court, the CPS's average cost per case is about £900 and a precharge decision cost on average £100 per case.²⁸

The cost of expert witnesses - The average hourly cost of a firearm expert is £94 and the average hourly cost of a forensic scientist is £118.²⁹

The cost to the courts - Court costs vary depending on which court is sitting. Assuming a 5 hour sitting day the average cost of a magistrate's court is £1,200 and the Crown Court is £1,500.³⁰

The cost of imprisonment - The average cost of holding one prisoner for the year is about £25,300 in 2014/15 prices.³¹

The Complexity of Firearms Law

Perhaps the easiest way to indicate how unnecessarily complex firearms law has become is to set out 34 of the pieces of legislation that make it up. Otherwise, the danger is that the number "34" is read and repeated, but the complexities having this much legislation raises for firearms users and professionals is not fully appreciated. If this list is considered burdensome to read, then perhaps at least it provides some indication of the plight of those, legitimate users and professionals, who actually have to go through the legislation itself. The list includes both primary and secondary legislation and legislation ranging from 1868 to 2015. By way of comparison, the law relating to theft is predominately contained in the Theft Act 1968.

²⁸ Figures provided by the Ministry of Justice and rounded to the nearest £100.

²⁹ The average cost for a forensic scientist in London is lower: £94. These figures come from the Legal Aid Agency, *Guidance on the Remuneration of Expert Witnesses* (2015) 22

³⁰ Figures provided by the Ministry of Justice and rounded to the nearest £100.

³¹ Ministry of Justice, "Costs per Place and Costs per Prisoner: National Offender Management Service Annual Report and Accounts 2013-2014 Management Information Addendum" (2014) Table 2a. Rounded to the nearest £100 to parallel other Ministry of Justice figures.

- Gun Barrel Proof Act 1868.
- Firearms Act 1968.
- Firearms (Dangerous Weapons) Rules 1969.
- Conservation of Seals Act 1970.
- Gun Barrel Proof Act 1978.
- Customs and Excise Management Act 1979.
- Wildlife and Countryside Act 1981.
- Firearms Act 1982.
- Firearms (Amendment) Act 1988.
- Aviation and Maritime Security Act 1990.
- Deer Act 1991.
- Firearms (Amendment) Act 1992.
- Protection of Badgers Act 1992.
- Firearms (Amendment) Act 1994.
- Police and Magistrates' Courts Act 1994.
- Armed Forces Act 1996.
- Firearms (Amendment) Act 1997.
- Firearms (Amendment) (No. 2) Act 1997.
- Firearms (Museums) Order 1997/1692.
- Firearms Rules 1998.
- Youth Justice and Criminal Evidence Act 1999.
- Anti-social Behaviour Act 2003.
- Criminal Justice Act 2003.
- Violent Crime Reduction Act 2006.
- Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007/2606.
- Policing and Crime Act 2009.
- Crime and Security Act 2010.
- Violent Crime Reduction Act 2006 (Specification for Imitation Firearms) Regulations 2011/1754.
- Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- Firearms (Amendment) Rules 2013/1945.
- Firearms (Amendment) Rules 2014/1239.
- Anti-social Behaviour, Crime and Policing Act 2014.
- Firearms (Variation of Fees) Order 2015/611.
- Firearms Regulations 2015/860.

Further, it is instructive to turn from the law itself to the views of relevant professionals to develop an appropriate conception of its complexity. The Council of HM Circuit Judges described firearms law as being in an “uncertain state”. The CPS “concur[ed] entirely” with our suggestion that even trained lawyers may struggle with firearms law. This suggestion was also “welcome[d]” by the London Criminal Courts Solicitors’ Association. The National Ballistics Intelligence Service, responding on behalf of police forces, the National Crime Agency and themselves, commented, “It is...unreasonable to expect the police to apply the law accurately in all cases when it is so complex.” This agreement shows the problems within firearms law have practical ramifications: these are not just academic concerns.

Description of options considered

Our options are:

Option 0: Do nothing.

Option 1: Introduce legislation to 1) define “lethality”, “component part” and “antique”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Undertake a project to codify firearms law. This is our preferred option because it is the only one which could tackle both the urgent problems and the more overarching complexities within the law of firearms.

Option 2: Introduce legislation to 1) define “lethality”, “component part” and “antique”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Do not undertake a project to codify firearms law.

Option 3: Introduce legislation to 1) define “lethality” and “component part”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Neither define “antique” nor launch a project to codify firearms law.

Option 0: Do nothing

Retain the existing law relating to firearms. The key features and associated problems of the current law are summarised in the table below.

Table 1: Option 0, Key features and associated problems

Key feature	Associated problem(s)
A firearm is defined in section 57(1) as a “lethal barrelled weapon”. No definition of lethal is provided, however.	<ul style="list-style-type: none"> • A lack of clarity over what constitutes a firearm. • A greater reliance on expert witnesses in court. • Ambiguity over whether certain offenders, who are banned from firearm ownership, are in breach of their bans.
Section 57(1)(b) provides that the definition of firearm includes the component part of any firearm. Section 57(1)(b) of the Firearms Act 1968 does not define “component part”.	<ul style="list-style-type: none"> • Difficulties for the police in investigation. • Difficulties for the CPS in deciding whether to prosecute. • Longer and more complex trials. • Members of the licensed firearms community may inadvertently commit a serious criminal offence.
Section 58(2) of the Firearms Act 1968 provides that the provisions of the Firearms Act 1968 do not apply to antique firearms. “Antique” is, however,	<ul style="list-style-type: none"> • Public safety is put at risk when working firearms can be acquired without any form of restriction.

left undefined.	<ul style="list-style-type: none"> • The police cannot be certain whether a suspect is unlawfully in possession of a prohibited weapon. • The CPS has difficulty deciding whether to charge an individual with an offence. • Expert witnesses rely on different criteria when giving evidence on whether a firearm is an antique which confuses juries and leads to inconsistent trial outcomes. • Trials are longer and more expensive than necessary. • Legitimate collectors are unable to know with certainty whether they are complying with the law.
The failure of the law to impose a legal obligation that deactivated firearms be certified as being deactivated to an approved standard.	<ul style="list-style-type: none"> • This poses a danger to public safety because allegedly deactivated firearms, which can be reactivated, cannot be monitored appropriately. • Legitimate deactivated firearms owners are at risk of prosecution.
The failure of section 1 of the Firearms Act 1982 to keep pace with technological developments in relation to whether an imitation firearm is “readily convertible” into a live firearm.	<ul style="list-style-type: none"> • Weapons which should now be considered “readily convertible” due to the advent of the internet are not. This unnecessarily increases the risk to public safety posed by firearms.
Firearms law is spread across over 34 pieces of legislation.	<ul style="list-style-type: none"> • This makes the law more complex than it needs to be for both professionals involved in firearms law and legitimate users of firearms.

Option 1: Introduce legislation to 1) define “lethality”, “component part” and “antique”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Undertake a project to codify firearms law.

This option would address both the problems within firearms law in need of urgent reform and the problem of firearms law as a whole being unnecessarily complex.

The problems within firearms law in need of urgent reform

This option would entail acceptance of all of our proposed reforms with respect to lethality, component parts, antiques, deactivated firearms and readily convertible imitation firearms. These reforms aim to address the aforementioned problems of missing definitions: the gap in the law and the fact the law is out of step with technological developments.

Lethality – Lethality would be defined by a fixed muzzle kinetic energy of 1.0 joules. Muzzle kinetic energy provides an indication of the overall power of a missile as it leaves the barrel of the weapon and, as a result, an indication of the weapon’s potential to wound. The airsoft trade would receive a specific exemption from this 1.0 joule limit. They would instead be bound by a 2.5 joule limit for single shot airsoft weapons and a 1.3 joule limit for automatic airsoft imitation firearms.

Component parts – A component part would be one that was: 1. on a new statutory list and 2. capable of functioning as part of a lethal barrelled weapon. The new statutory list would enshrine the list contained in the Ninth Report of the Firearms Consultative Committee into law.

³² Those parts listed in the Home Office *Guide* are the barrel; chamber; cylinder; the frame; body or

receivers; the breech block, bolt, or other mechanism for containing the charge at the rear of the chamber. To align with EU law, sound moderators would be added to this list. The second part of our proposed definition of component parts focuses on functionality. Thus, if the part concerned was broken or was at an early stage in the manufacturing process, it would not be subject to control. This focus on functionality aligns to our objective of promoting public safety because it values how the part could be (mis)used over where it originated from.

To ensure that this list is responsive to future developments, the Secretary of State would be able to amend it by affirmative procedure. Undertaking an affirmative procedure would require both houses of Parliament to approve any amendment.

Antiques – A firearm would be defined as an antique if it met either of two criteria. Firstly, if it used an obsolete firing mechanism. Those firing mechanisms which qualified as obsolete would be on a statutory list that could be amended by the Secretary of State. If the firearm did not use an obsolete firing mechanism, then it would be antique if it was chambered for a cartridge contained on a statutory list of obsolete cartridge types. Such a list is already contained in the Home Office *Guide on Firearms Licensing Law*.³³ This list would also be amendable by the Secretary of State. To qualify as an antique, through either requirement, the firearm would still need to be held as a “curiosity or ornament” as per section 58(2) of the firearms Act 1968.

It would, additionally, be clarified that the exemption for firearms in section 58(2) did not mean that antique firearms could not be used to commit the offences laid out in sections 19 and 20 of the 1968 Act. Section 19 makes it an offence to carry a firearm in a public place and section 20 to trespass with a firearm.

Deactivated firearms – The UK’s deactivation standards would be enshrined in law. This could be achieved by reforming section 8 of the Firearms (Amendment) Act 1988. Section 8 presently sets out that a firearm is presumed to have been deactivated to a standard approved by the Secretary of State, unless the contrary is proven, if it bears an approved mark denoting that fact and one of the two Proof Houses have certified in writing that it has been deactivated to the approved standard.³⁴ Our amendment would not only mean that this standard was required for future deactivated firearms, but also that a proof house’s mark would lead to a firearm being classified as deactivated and not just being presumed as such.

There are two further points on how our suggested reforms would affect deactivation. First, if a firearm had not been deactivated to a Home Office or EU approved standard there would be a rebuttable presumption that it remained a firearm. This means that it would be for the defendant to prove that their firearm was appropriately deactivated. Second, a firearm would lose its status as deactivated if attempts had been made to reactivate it.

Readily convertible imitation firearms – The test for ready convertibility would be amended to focus on the “ready availability” of the requisite tools rather than on whether they are in “common use” when carrying out home maintenance. This would bring the law up to date with the vastly increased availability of tools post the advent of the internet. For example, lathes, which can be used to make a live firearm, are not “in common use” for home maintenance, but they are readily available to many people: lathes are available for less than £1,000. Whether an item was readily available to a particular defendant would be a question of fact, but likely relevant factors include cost, rarity and whether the equipment was bespoke. This reform would not remove the requirement relating to “special skill” and it would not affect the defence under section 1(5) of the Firearms Act 1982.

Further, a new offence of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm would be introduced. This would allow unregistered armourers to be prosecuted even if they stored the imitation firearms they were converting separately from their armoury.

The problem of firearms law as a whole being unnecessarily complex.

³² Home Office, *Guide on Firearms Licensing Law* (2015), para 13.74.

³³ Home Office, *Guide on Firearms Licensing Law* (2015).

³⁴ Strictly, section 1 did not introduce a new criminal offence, but if a firearm was found to be an RCIF it would be an offence to possess it due to **x**.

This Option would also launch a project to codify firearms law. A codified firearms law would make the present law, which is dispersed across over 34 pieces of legislation as well as case law, more accessible and clear. This would address much of firearms law's unnecessary complexity.

Option 2: Introduce legislation to 1) define “lethality”, “component part” and “antique”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Do not undertake a project to codify firearms law.

Those reforms necessary to address the pressing problems we identified could be introduced without to undertaking a codification exercise. This would still address the problems of lethality, component parts, deactivated firearms, readily convertible firearms and antique firearms. See Option 1(1) for detailed consideration of each.

This Option would not, however, move firearms law toward codification. Accepting Option 2 would, therefore, constitute a missed opportunity to undertake the more wholesale reform that the law of firearms requires.

Option 3: Introduce legislation to 1) define “lethality” and “component part”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Neither define “antique” nor undertake a project to codify firearms law.

See Option 1(1) above for who Option 3 would affect the parts of firearms law relating to lethality, component parts, deactivated firearms and readily convertible imitation firearms.

An even narrower option would be to only undertake the urgent reforms relating to lethality, component parts, readily convertible firearms and deactivated firearms. As with Option 2 above, this would be a missed opportunity to undertake the codification of firearms law. It would also fail to define “antique”.

Main stakeholders

The main stakeholders are as follows.

- The CPS.
- HM Courts and Tribunals Service.
- The Home Office.
- Law enforcement agencies.
- Legitimate firearms users.³⁵
- Members of the public.
- The National Health Service.
- The National Offender Management Service.

Public consultation exercise

The public consultation process, outlined in the background section above, received 205 responses. In addition to numerous individuals, respondents included the British Association for Shooting and Conservation; Border Force; the Council of Her Majesty's Circuit Judges; the Countryside Alliance; the CPS; the Marine Management Organisation; the Metropolitan Police; the National Ballistics Intelligence Service; the National Gamekeepers' Organisation; the National Rifle Association; both Proof Houses; the

³⁵ For a breakdown of these users see the Sale and scope section above.

Scottish Association for Country Sports; the Scottish Government; and the United Kingdom Airsoft Retailers' Association.

Many of the provisional proposals in our Scoping Consultation Paper met with widespread support. We were able to make recommendations based on most of those with some refinement as necessary. The options offered in this Impact Assessment are based upon these refined recommendations.

On just a few issues the consultation raised some controversy. On antiques, for example, while there was agreement that the term "antique firearm" ought to be defined, there was disagreement as to which of the methods set out in our paper is the most appropriate method of doing so. We were, nevertheless, able to make a recommendations based upon the constructive responses we received during consultation and from our subsequent engagement with stakeholders. The controversy surrounding our suggested reforms that would affect antique firearms led to us including Option 3. Option 3 would see all those issues related to the law of firearms tackled, except those relating to the antique exemption.

Our consultees were overwhelmingly in support of codification. In fact, consultees were almost unanimously in favour of codifying the law to remove the complexities and ambiguities that undermine its effectiveness. Those in favour of codification included the Scottish Government; the CPS; the Gun Trade Association; the British Association for Shooting and Conservation; and the National Ballistics Intelligence Services. Given, however, that undertaking codification is a significantly different type of recommendation it was paired with the urgent reforms needed in Option 1, but left out of Option 2 which is otherwise identical to Option 1.

Costs and benefits analysis

This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the United Kingdom, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

When calculating the net present value ("NPV") for the impact assessment we have used a time frame of ten years, with the present being year 0. We have assumed that the transitional costs and benefits occur in year 0, the current year, unless otherwise indicated. Ongoing costs and benefits accrue in years 1 to 10. We have used a discount rate of 3.5%, in accordance with HM Treasury guidance. Unless stated all figures are in 2014/15 prices, and have been uprated using the GDP deflator to adjust for inflation.

Option 0: Do nothing [base case]

The problems with the law of firearms identified above are likely to cause wasted court time and public funds spent in legal argument, and in the resulting appeals. For a fuller breakdown of the problems associated with Option 0 see Table 1: Option 0, Key features and associated problems. Because the "do-nothing" option is compared against itself its costs and benefits are necessarily zero, as is its NPV.³⁶

Option 1: Introduce legislation to 1) define "lethality", "component part" and "antique"; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Launch a project to codify firearms law.

Costs

³⁶ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in a NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

Transitional costs

1. Training and familiarisation

There will be minimal, if any, additional costs as a result of judicial training. Both initial and ongoing judicial training in this area would not be unduly onerous and could, therefore, be incorporated within existing programmes. The Judicial Academy thought that the immediate reforms suggested here, and possibly a later codification, would likely only require the updates being put in their criminal e-letter. We think that the training of relevant police officers would also be able to be achieved through existing programmes.

With regard to training legal professionals, we anticipate minimal additional cost because training on reforms to firearms law would form part of their continuing professional development.

2. Setting up an acceptable test of muzzle kinetic energy

We recommend a new test of lethality based on the proxy of muzzle kinetic energy. The likely cost of setting up an appropriate test of muzzle kinetic energy is predicted to be a negligible cost for the Home Office. This view is based on the response of Helston's Forensics to our consultation: they commented a muzzle kinetic energy test can be "easily conducted by a wide range of persons." Some minor engagement may be necessary to set an acceptable methodology of assessing muzzle kinetic energy.

3. Initial spike in appeals

There may be an initial spike in appeals where we either recommend the introduction of new offences or the expansion of existing offences to new contexts. An example of the former is the proposed new offence of being in possession of articles with intention of using them unlawfully to convert an imitation firearm into a live firearm. Two examples of the latter are, firstly, extending sections 19 and 20 of the Firearms Act 1968 so that they can be committed with an antique firearm and, secondly, extending section 4(3) of the Act so that it can be committed by reactivating a previously deactivated firearm.³⁷ An initial increase in appeals may be caused here by both the increased base number of cases heard and the potential for an increased percentage of these cases being appealed as practitioners and judges acclimatise to the new law. There could also conceivably be an initial spike in appeals on the accuracy of the equipment used to measure muzzle kinetic energy as discussed above.

The cost of any initial spike in appeals should not be overestimated, however. There is unlikely to be an initial spike where our recommendations make existing practice and guidance legally binding because firearms users and practitioners will have an existing knowledge of the new law. This would likely be the case for the statutory lists recommended of component parts and of antique firearms; and an obligatory method for deactivating firearms. Similarly, there would be no initial spike in appeals due to codification because this option only recommends launching a project to codify firearms law; not to introduce a codified body of law immediately.

Further, an initial proportionate rise in appeals, if it occurred, may be discounted by an overall decreased number of contentious firearms prosecutions being brought due to the relevant law being clearer. In other words, despite their being a higher *proportion* of cases being appealed, a lower *number* of cases would be appealed. For more on their being a lower number of cases if this option was chosen, please see the ongoing benefits section below.

There are no figures available for the cost of appeal. However, given the caveats provided above, we predict the transitional costs due to an initial spike in appeals would be negligible.

4. Launching a codification project

We predict that this exercise would take the Law Commission 3 years to complete. Our estimated cost of a project is £150,000 P/A. This would give a total cost of £450,000. The figure of £150,000 P/A does not include the cost of drafting by parliamentary counsel.

There are a number of risks with this figure. Firstly, the project could take longer than 3 years. It is hard to provide a definitive amount of time that a project would take when much of the initial work of the

³⁷ The Firearms Act 1968 s 4(3) makes it an offence for someone other than a registered firearms dealer to "convert into a firearm anything which, though having the appearance of being a firearm, is so constructed as to be incapable of discharging any missile through its barrel." This offence is ambiguous. On one interpretation, it only applies if the item in question was *never* capable of discharging a projectile. This is because it only applies if something was *constructed* so as to be incapable of discharging a missile. Deactivated firearms, however, were originally constructed to discharge a missile, but have subsequently been rendered incapable of doing so. The offence might, therefore, be too narrowly drawn to criminalise attempts to reactivate something that once was a firearm.

project would be consulting with relevant stakeholders to see what needed to be done. Secondly, the project may not result in the law of firearms law being codified. This could happen if the reform was not implemented by the Home Office or was rejected at a later stage before being enacted.

On-going costs

5. Creation of a new criminal offence

We recommend a new offence of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm. We are unable to provide an estimate of the total cost without a reasonable estimate of numbers involved, but can provide an estimate of the additional cost to the criminal justice system per prosecution which is proxied using the current offence in Section 6 of the Fraud Act 2006. It is assumed that 50% of cases are heard in Magistrates' Courts and 50% are heard in the Crown Court. The average custodial sentence length for a section 6 offence is 9.33 months, but this modelling assumes that the offender serves half of their given custodial sentence.

The estimated cost to the criminal justice system per additional defendant proceeded against is £8,900.³⁸ This cost is broken down as follows.

- Crown Prosecution Service: £600 per case.
- HM Courts and Tribunals Service: £1,600 per case.
- Legal Aid Agency: £900 per defendant.
- Prion costs: £3,600 per defendant.
- Probation costs: £2,100 per defendant.

All costs are weighted to account for the proportion of defendants tried in either a Magistrates' Court or the Crown Court. The cost is an estimated average cost of a proceeding from the beginning of the proceeding to the end of the case (whether the offender is found guilty or not and accounting for the range of disposals possible). These costs have been addressed separately from the other costs to the criminal justice system below, despite their substantive overlap, because they have relied on a different methodology.

6. Increase in costs to the criminal justice system

An increase in costs to the criminal justice system is likely to arise because of an uplift in legitimate prosecutions. A legitimate prosecution is here defined as one that is triggered by the offender committing a blameworthy or harmful criminal offence. A divide between legitimate and illegitimate prosecutions is introduced so that the legal and social benefits of prosecuting the blameworthy are not confused with the economic cost of doing this.

The likely increase in the number of legitimate prosecutions is based upon the following.

- Clarifying that the conversion offence in section 4(3) of the Firearms Act 1968 can be committed with a deactivated firearm.
- Modernising, and necessarily extending, the definition of a readily convertible imitation firearm to account for the ease of accessing a wider range of tools post the advent of the internet.
- Extending section 19, carrying a firearm in a public place, and Section 20, trespassing with a firearm, of the Firearms Act 1968 so that it is clear they can be committed with antique firearms.

As well as an increase in legitimate prosecutions, these reforms are predicted to have wider corresponding costs throughout the criminal justice system. These wider costs arise from increased

- police time;
- court time;
- use of expert evidence;
- number of appeals; and
- number of people imprisoned.

³⁸ Total sum reflects rounding to the nearest £100.

We are unable to provide a robust estimate of the total cost generated by the new offence because of the aforementioned problems with data on firearms

Benefits

Transitional benefits

None identified.

On-going benefits

1. Increased public safety

Having clearer law would likely reduce the risk to the public safety presented by firearms. Peter Squires, in his substantial review of gun crime, comments generally that, legal and policy reform can have the effect of, “significantly reducing year-on year rates of recorded gun crime.”³⁹ Turning specifically to the reforms that make up this Option, both the CPS and the police have been positive about our suggested reforms. We, therefore, think that it is a reasonable assumption that these reforms could significantly increase public safety by deterring homicides and wounds caused by the firearms this Option would affect.

I. Reduced homicides

By way of illustrative example, currently around 4 homicides P/A occur due to the firearms within scope of this project. This is, however, likely to be an underestimation because the figures for homicides caused by antique firearms do not include homicides outside of Greater London. If 1 homicide P/A was avoided, then over 10 years this would enable an improved outcome equivalent to $10 \times £1,909,943 = £19,099,430$.

II. Reduced wounding

By way of illustrative example, currently around 151.31 serious wounds P/A occur due to the firearms within scope of this project. A deterrence rate of 5% is assumed here. This would result in 7.57 serious wound being avoided P/A. The average cost of health treatment is £1,756 and the total health-related cost of an injury which also includes the emotional and physical impacts of injuries is £9,208. Avoiding 7.57 serious wounds P/A would, therefore, equate to a healthcare saving equivalent to £13,293 and a total healthcare related saving equivalent to £69,705.

Over 10 years this would enable an improved outcome equivalent to $10 \times £69,705 = £697,050$. As explained above, this is likely an underestimation due to the amount of unreported firearms injuries and the cumulative effect of slight injuries caused by relevant firearms, especially air weapons.

2. Reduced costs for the criminal justice system

A reduction in criminal justice costs is predicated upon there being less illegitimate prosecutions. An illegitimate prosecution is here defined as one that is triggered by the offender having committed an offence due only to the unduly complex law of firearms.

This option would likely lead to a decrease in illegitimate prosecutions because clear definitions mean firearms users could have more confidence in what they needed to get licensed and what they did not. This would substantially reduce offences of possessing a firearm without an appropriate license being inadvertently committed by well-meaning firearms users.⁴⁰ Such a reduction would likely be the result of having definitions of “lethality”, “antique” and “component part”; a clear exemption for airsoft weapons; and obligatory deactivation standards.

Also, codification would significantly reduce many of the undue complexities within the law on firearms which presently mean that well intentioned and unsuspecting users face strict liability criminal offences. Examples of the complexities to be tackled are listed below.

- Further definitional issues; for example, of “weapon” in section 57(1) of the Firearms Act 1968.

³⁹ P Squires, *Gun Crime in Global Contexts* (2014) 40.

⁴⁰ These offences can be found in the Firearms Act 1968 ss 1 and 5.

- Further examples of the law failing to keep pace with modern developments, for example in the excessively limited nature of the firearms exemption for film, television and theatrical purposes in section 12 of the Firearms Act 1968.
- The disincentivising of surrendering unregistered firearms.⁴¹

However, as highlighted in the Introduction above, the present number of prosecutions for firearms are not broken down in available statistics in a manner that sheds any light on the firearms considered in this Option. A well-informed estimate of the prosecution savings caused by less illegitimate offences cannot, therefore, be formed.

Given that there are predicted to be less illegitimate prosecutions, there will likely to be corresponding savings across the criminal justice system. These would include reduced police time and reduced court time. There would also likely be a reduction in appeals because there would be 1). fewer cases being brought and 2). fewer of the cases brought would be likely to be contentious enough to appeal. Reduced prison sentences would likely follow less illegitimate prosecutions too. It is worthy of note that there are mandatory minimum sentences in firearms law.

A more contentious extension of our less illegitimate prosecutions prediction is that less expert evidence would be required. The contention in this extension is rooted in the ramifications of our proposal to test lethality by muzzle kinetic energy. If more expert evidence was required due to this definition in each case, then a reduction in cases prosecuted would not necessarily mean that there would be less expert evidence needed.

In their response to our consultation, the CPS stated,

We anticipate that, from a charging perspective, the setting of the threshold at 1 joule would necessitate more requests for expert evidence in cases involving air weapons, in order to ascertain the muzzle kinetic energy of the air weapon to determine whether we should be alleging criminal use of a firearm or imitation firearm. This would add new costs and delays to the charging process.

The Council of HM Circuit Judges share this view. Its response raised the concern that defining lethality by muzzle kinetic energy would lead to “an arms race of experts” because instead of having to just show that the alleged firearm can discharge a projectile the expert will also need to calculate the joule count of this discharge.

We do not share this view. It is important to initially clarify that our argument is not that our reforms would remove the need for expert witnesses in the areas of firearms law to be reformed under this Option. Instead, it is that where experts are needed what they would need to do would be significantly reduced. With a set definition of lethality experts would not need to give evidence on both what lethality means and on whether the alleged firearm met their definition, but, instead, only on the former. This would also cut down on disagreements between experts based on what it means to be lethal. Given the reduction in role and scope for disagreement that experts would have under this option, we are confident that their time spent in court would be reduced.

Our view is based on the assumption that a test of muzzle kinetic energy would be relatively easy to set up and commonly accepted. Given our aforementioned discussions with Forensics experts, we think this is a reasonable assumption.

Additionally, it did not prove as contentious that any of the other relevant reforms would see a reduction in the need for expert evidence. These relevant reforms being, defining “antique” and “component part”; introducing a clear exemption for airsoft weapons from a lethality threshold; obligatory deactivation standards; and codification of firearms law. This would be a benefit for the CPS and legal aid.

3. Increased public confidence in the criminal justice system

Public confidence in the criminal justice system is severely undermined when defendants walk free because the criminal law is incomprehensible or outdated. It is further undermined when those who make every effort to comply with the law inadvertently commit an offence because the law is unduly complex. The urgent reforms and the launch of a codification project that we propose in this option would reduce the occurrences of both of these outcomes and, therefore, further increase public confidence in the criminal justice system.

⁴¹ These examples and others are developed more in our Scoping Consultation Paper: The Law Commission, Firearms Law (2015) Consultation Paper No 224, ch 8.

4. Business benefits

If our proposed exemption for airsoft weapons, from a lethality threshold of 1.0 joules, was accepted it would benefit the airsoft trade. Most weapons used in airsoft have a muzzle kinetic energy of over 1.0 joules. This would mean that, absent an exemption, trade in airsoft weapons would have to be on a face to face basis because they would move from being classified as realistic imitation firearms to being firearms. The United Kingdom Airsoft Retailers Association, which represents 60 businesses retailing Airsoft weapons and 170 playing sites, estimates that 85% of the trade in airsoft weapons takes place online. Given this, the Association opines that without an exemption airsoft retailers would, “cease being viable businesses”. Similarly, the United Kingdom Airsoft Players Union comment that without an exemption airsoft would be left, “hamstrung”. Such commentary is not mere hyperbole, airsoft has a large following: there are between 40,000 and 50,000 players in the United Kingdom and around 500,000 airsoft firearms. The exemption is necessary. If chosen, Option 1 would allow trade in airsoft to continue unimpeded, whilst also enhancing public safety and clarifying the law.

Our reforms will also likely promote trade in antique firearms because they clarify what is and, thus, what can be traded as an antique firearm. The relevant reform is the introduction of a statutory test as to whether or not a firearm is an antique described above. This clarity was desired by a significant number of businesses concerned with antique firearms who responded to our consultation. They included: the British Antique Dealers' Association, the Gun Trade Association, Bonhams, Thomas Del Mar Ltd, Holt's Auctioneers, and a joint response from organisers of antique arms fairs. The British Antique Dealers' Association epitomised this desire by commenting,

We do agree that steps need to be taken to ensure that there is clarity and simplicity for those who need to distinguish between firearms which should and those which should not benefit from the antiques exemption.

The support of business for added legal clarity is unsurprising given that it would greatly diminish a risk presently faced by their customers: a collector may face imprisonment if they buy a weapon which a jury later considers not to fall within the antique exemption. Furthermore, It is worthy of reiteration that our proposed reforms build on widely followed Home Office *Guidance* and would retain the existing test of whether the firearm was held as a “curiosity or ornament”. This continuity would avoid the creation of a new cost to businesses because they would gain the legal clarity they need without having to acclimatise to new regulations.

If Option 1 was chosen, there would also be added certainty as to what constituted a deactivated firearm. This certainty would, as described above, be gained by enshrining existing practice into law. Buyers would, again, receive the benefit of certainty, but would avoid any need to significantly alter their existing practices. As with antique firearms, our suggested reforms to deactivated firearms were widely supported by relevant bodies including the British Proof Authority, the Gun Trade Association and the Deactivated Weapons Association.

Concerns were raised by the Deactivated Gun Collector's Association about the impracticalities of making a standard of deactivation retroactive. The Deactivated Weapons Association were also concerned with retroactivity because, in their view, it would lead to the devaluation of many deactivated firearms. Retroactivity is mandated, however, by a recently promulgated EU Regulation and we must ensure our recommendation conforms with EU law.

Option 2: Introduce legislation to 1) define “lethality”, “component part” and “antique”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Do not launch a project to codify firearms law.

This option would have the same immediate impact as Option 1 because it too would bring into effect our suggested reforms to deal with the problems in the law of firearms described above: undefined key terms, a gap in the law and the law having become outdated. The central difference of this Option is that it would not launch a project of codification. The £450,000 cost of codification would, therefore, be avoided under Option 2.

Not undertaking codification would also impact upon the ongoing costs and benefits flagged in Option 1: public safety; public confidence in the criminal justice system; costs and benefits to businesses; and costs and benefits to the criminal justice system. This predicted impact relies on the assumption that if

we undertook a codification project that the resulting recommended codified law would be implemented. The comparison here is, therefore, to having a codified law of firearms rather than just to undertaking a project to codify firearms law.

It is nigh impossible to predict the actual costs and benefits of codifying the law of firearms accurately because it is not known what exactly a codified law of firearms would look like. Even if it was known, the aforementioned problems with data collection, which pervade analysis of firearms, would likely also likely act as a blockade to analysis. However, the support for codification from stakeholders described above must be taken as a strong indication that it would be economically beneficial. The natural corollary of this is that not undertaking codification, as per this Option, would bear a relative cost. We, therefore, see this Option as second to Option 1 not only by name, but also by predicted cumulative benefit.

Option 3: Introduce legislation to 1) define “lethality” and “component part”; 2) create a legal obligation for deactivated firearms to be deactivated to an approved standard; and 3) modernise the test of what amounts to a readily convertible imitation firearm. Neither define “antique” nor launch a project to codify firearms law.

This Option would have a similar impact to Option 1 above. The two differences are that “antique”, as per section 58(2) of the Firearms Act 1968, would be left undefined and that a project to codify firearms law would not be launched. The problems with the latter difference are laid out in the analysis of Option II above. The focus here is, thus, on the likely impact of not defining “antique”. It is assumed that even if “antique” was left undefined, that the scope of the offences in sections 19 and 20, of the Firearms Act 1968 would still be extended to cover antique firearms.

Not defining “antique” would have ramifications for public safety, the criminal justice system and business.

- Firstly, a significant portion of the public safety benefit of Option 1 would be missed out on. Antique firearms were predicted to be responsible for an average of 1.67 homicides P/A and 0.75 serious wounds P/A. A percentage of these homicides and wounds would likely not be deterred, or at least not deterred as significantly, if Option 3 was chosen. Substantial savings to the health service and to public safety could, therefore, be missed out on. A narrative style is used, instead of estimating a value for the saving lost, so as not to mislead through precision. Option 3 would still see the section 19 and 20 offences extended. It is, therefore, hard to even estimate any lost deterrence solely through not defining “antique”.
- Secondly, the predicted benefits to the criminal justice system triggered by defining “antique” would not apply here. This would likely mean savings for bodies including the CPS, the police and the National Offender Management Service would be missed if Option 3 was chosen instead of Option 1 or Option 2.
- Thirdly, not defining an antique would also run contrary to the desire of most of the relevant businesses that responded to our consultation. It would retain a huge cost presently faced by their customers: the risk of imprisonment if a firearm they bought was later found to not fall within the antique exemption. For more details on the views of relevant business see Option 1 above.

Specific Impact Tests

Statutory equality duty

We do not anticipate that our reforms will have any particular effect, whether positive or negative, on equality.

Competition

We do not anticipate that our reforms will have any particular effect, whether positive or negative, on competition.

Small Business

The effect our suggested reforms would have on relevant businesses are considered above and would generally be positive.

Environmental impact and wider environmental issues

We do not anticipate that our reforms will have any particular effect, whether positive or negative, on environmental impact and wider environmental issues.

Health and well-being

We have already considered the impact that the proposed reforms could have on health and well-being (in terms of public safety). Therefore, it is unnecessary to conduct a further, specific impact assessment on this issue.

Human rights

We do not anticipate that our reforms will have any particular effect, whether positive or negative, on human rights.

Justice system

We have already considered the impact that the proposed reforms could have on the criminal justice system throughout the impact assessment.