EXPLANATORY MEMORANDUM TO

THE ANTIQUE FIREARMS REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations provide a statutory definition of 'antique firearm' for the purposes of section 58(2) of the Firearms Act 1968 ("the 1968 Act"), as amended by section 126 of the Policing and Crime Act 2017 ("the 2017 Act"). They specify types of propulsion system and types of cartridge which would make a firearm eligible to be regarded as antique, and a date of manufacture after which a firearm cannot be regarded as antique. This is intended to address the criminal misuse of antique firearms by providing legal certainty on which firearms can safely be possessed as an antique without the need for a firearm certificate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland, except in relation to air weapons.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and, with the exception of air weapons, Scotland. The control of air weapons is devolved to Scotland.

5. European Convention on Human Rights

5.1 The Minister of State for Crime and Policing has made the following statement regarding Human Rights:

"In my view the provisions of the Antique Firearms Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 58(2) of the 1968 Act exempts from most controls under that Act an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament. This includes being able to possess such firearms without requiring a firearms certificate and to trade in them without being registered with the police as a firearms dealer. However, the 1968 Act does not define an 'antique firearm'.

6.2 Section 58(2) of the 1968 Act was amended by section 126 of the 2017 Act to provide for a definition of 'antique firearm' by inserting new subsections (2A) to (2H) into section 58. New section 58(2A) provides that a firearm is antique if either the conditions set out in subsections (2B) or (2C) are met. The condition in new section 58(2B) is that the chamber or chambers are those that the firearm had when it was manufactured (or is a replacement that is identical in all material respects) and that the firearm is chambered for use with a cartridge specified in regulations. The condition in new section 58(2C) is that the firearm's propulsion system is of a type specified in regulations. An additional condition is provided for by new section 58(2D), which allows the Secretary of State to make regulations to specify that either a number of years must have elapsed since the date of manufacture of the firearm, or a fixed date before which the firearm was manufactured in order for it to be antique. These Regulations specify the detail of those conditions.

6.3 Section 126(4) to (8) of the 2017 Act provide for cases where a person currently owns a firearm which is regarded as antique and therefore exempt from control, but as a result of these Regulations (or their subsequent amendment) that firearm ceases to be regarded as an antique and therefore becomes subject to licensing. Where the firearm becomes a prohibited weapon, section 126(5) disapplies section 5 of the 1968 Act (which makes it an offence to possess a prohibited weapon without the authority of the Secretary of State) except in the case of firearms dealers, although a firearm or shotgun certificate is still required in order to possess the firearm. Section 126(6) and (7) provide that an application for the grant or renewal of a firearm or shotgun certificate in these circumstances cannot be refused on the grounds that the applicant does not have a good reason for possessing the firearm (a requirement that applies to certificate applications normally).

7. Policy background

What is being done and why?

7.1 Law enforcement has raised concerns with the Government about the increased use of antique firearms in crime. The number of antique firearms recovered in criminal circumstances increased from four in 2007 to 96 in 2016. Although the numbers have since decreased to 87 in 2017, 80 in 2018 and 68 in 2019, they remain at a high level. Since 2007 six fatalities have been linked to antique firearms. Although there is Home Office guidance on which firearms can safely be regarded as antique, the absence of a statutory definition of 'antique firearm' is being exploited by criminals to obtain old but still functioning firearms. The Law Commission looked into this issue in 2015[1] and recommended defining 'antique firearm' in legislation to remove any ambiguity. The Government accepted the Law Commission's recommendation and legislated through the 2017 Act to provide for a statutory definition.

7.2 The Home Office conducted a public consultation[2] in 2017 on the detailed aspects of the statutory definition. It sought views on what the cut-off date of manufacture should be, and on the detailed descriptions of propulsion systems and cartridges. It also sought views on the arrangements to monitor and review the regulations, and information on the trade in antique firearms. This instrument gives effect to the outcome of that consultation.

[1] Firearms Law - Reforms to Address Pressing Problems (2015)

[2] Proposals for Implementing Legislation to Define Antique Firearms (2017)

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not amend other secondary legislation.

10. Consultation outcome

10.1 The Home Office conducted a full public consultation between 19 October 2017 and 14 December 2017. A total of 185 responses were received, comprising 103 completed online survey responses, 58 partially completed online survey responses and 24 responses received via email or post.

10.2 Responses came from collectors of antique firearms, museums, the firearms community (dealers, certificate holders and representative bodies) and from the police and other law enforcement agencies. Over half of respondents provided no identifying information.

10.3 A majority of respondents agreed that the descriptions of propulsion systems and cartridges used in the Home Office's non-statutory guidance on antique firearms were a good basis for the new statutory definition, although various amendments were suggested. A majority of respondents also preferred to retain the 1939 cut-off date of manufacture used in the Home Office guidance.

10.4 The Government's summary of responses to the consultation has been published on the gov.uk website[3].

10.5 The Home Office has consulted with the Scottish Government which is content with the approach being taken.

11. Guidance

11.1 A Home Office circular will be published, and other publicity material produced, to alert police forces, dealers, collectors and museums of the new legislation and how it affects existing owners of firearms which cease to be antique as a result of these Regulations. The Home Office Guide on Firearms Licensing Law will be updated online and made available on the gov.uk website.

12. Impact

12.1 In defining 'antique firearm' in statute, this instrument excludes seven types of cartridge that were previously included in non-statutory guidance as qualifying a firearm as antique, making those firearms subject to licensing control. Those firearms have been found to regularly feature in crime. Antique firearm collectors, dealers and museums who possess firearms chambered for those particular cartridges when this instrument comes into force will incur additional costs from having to licence them, meet additional security requirements and from loss of value. The accompanying Impact Assessment identifies an Equivalent Annual Directed Cost to Business of £0.5 million per year. These costs will be off-set by savings from no longer needing to

[3] https://www.gov.uk/government/consultations/policing-and-crime-bill-proposals-to-implement-legislation-to-define-antique-firearms

licence firearms which the instrument brings into the definition of 'antique firearm' as a result of including 23 additional cartridges.

12.2 The statutory definition of 'antique firearm' will provide greater clarity for the police and other criminal justice agencies in enforcing the law and prosecuting offenders.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the gov.uk website.

13. Regulating small business

13.1 The Regulations apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Government will establish a non-statutory group which will meet annually to consider the latest developments in the criminal use of antique firearms. The Government will carry out a review of the Regulations every three years.

15. Contact

15.1 Dennis Wilmer at the Home Office, telephone: 020 7035 1786 or email: dennis.wilmer@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alice Reynolds and Rebecca Egan, joint heads of the Serious Violence Unit at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Crime and Policing, Kit Malthouse MP, can confirm that this Explanatory Memorandum meets the required standard.