



EU Legislation and Proposals for Deactivated Firearms Update 4 – 14th April 2016

EU Deactivation Regulation

The new EU Deactivation Regulation was implemented as expected on Friday 8th April

Recap - What does the Regulation mean for UK Collectors and Businesses?

- Any firearm newly deactivated from this date will have to be deactivated to the EU standards
- Any current UK deactivated firearms that you currently own can be **retained** without any further work
- If you wish to sell/transfer (including gifting) a current UK deactivated firearm on/after this date, the Regulation states that it must be re-deactivated to the EU standards prior to sale or transfer

Is there an offence/penalty for selling or transferring a non-EU deactivated firearm after the 8th?

A clause has been introduced into the forthcoming Policing and Crime Bill 2015-2016 creating an offence and related penalty for selling 'defectively deactivated weapons'; the definition of which would include firearms deactivated to existing UK standards. This Bill is currently passing through Parliamentary committee stages, but has not been voted upon in either the House of Commons or the House of Lords and as such, is not yet UK law.

So am I OK to sell a UK deactivated firearm after the 8th up until the Policing and Crime Bill is passed?

There isn't a definitive answer to this. Below is a legal opinion from our honorary solicitor which you may wish to read and consider. The DWA makes no recommendation relating to the opinion and it is provided for your information only. Further, the DWA accepts no responsibility or liability for any consequences or actions resulting from your interpretation or use of the opinion.

There is clearly an expectation under the EU Regulation (EU 2015/2403) which comes into force on 8th April 2016 that all deactivated firearms placed on the market for sale from that date anywhere in the EU, including within the UK, will conform to the new standard on deactivation as specified in the Regulation. Aside from the lack of clarity as to the technical specifications and exactly what in practical terms will meet the new deactivation standard, I understand DWA members are concerned about what action could be taken against them by the UK authorities if they sell in the UK or place on the market a deactivated firearm after 8th April 2016 which is deemed not to meet the new deactivation standard.

Strictly, the EU Regulation becomes legally binding without the need for further domestic legislation to introduce it into UK law. However, the question arises what sanction could be imposed for failing to comply. On 24th March 2016 a new clause was introduced into the Policing and Crime Bill currently going through Parliament which, if enacted, will give formal effect to this EU Regulation by making it a criminal offence to make available for sale or to sell or gift a 'defectively deactivated weapon' i.e. one not deactivated to the EU standard. This offence will be punishable by up to 5 years imprisonment. However,



until such time as this Bill is actually passed as an Act of Parliament and entered on the UK Statute Book, there is in my opinion currently no criminal offence in UK law for which a person could properly be arrested or successfully prosecuted by the Police or other UK law enforcement agencies if they sell or place on the market for sale a deactivated firearm which meets the present UK deactivation standard but fails to comply with the new EU deactivation standards.

The fact that this clause was added to the Bill by Parliament as an afterthought indicates that it was realised a new criminal offence and penalty needed to be introduced into UK law to create a sanction for failing to comply with this EU Regulation. It is extremely rare for UK legislation, particularly where it creates a criminal offence, to have retrospective effect. The new offence proposed by the Bill will therefore only apply if and when that legislation actually comes into force.

Some DWA members may be registered firearms dealers (RFD) and also hold a section 5 authority from the Home Office in respect of prohibited weapons. Until it becomes an offence in UK law to sell deactivated firearms which do not conform to the new EU standard, it is difficult to see how any perceived failure by them to comply with this EU Regulation could potentially jeopardise their RFD certificate and section 5 authority. However, members who are concerned about this may wish to consult their local Police Firearms Licensing Department for guidance.

The purchaser will not be at risk of prosecution even if the Bill becomes law as the proposed new offence merely relates to the seller or person otherwise transferring the defectively deactivated weapon to another. It does not create an offence of buying or receiving such a weapon. The requirement for a weapon to be deactivated to the EU standard only arises at the point when it is placed on the market for sale or ownership of it is transferred by giving it to another. It does not apply to deactivated weapons which are not transferred and remain in the ownership of the same individual, and therefore it is clear that there can be no offence of simply being in possession of a defectively deactivated weapon.

Is there any offence or penalty for buying (or receiving) a non-EU deactivated firearm after the 8th?

Not that the DWA is aware of. Please see last paragraph of the legal opinion above.

When will firearms deactivated to the EU spec be available?

The DWA has been involved in an interpretation exercise with the Home Office, Proof Houses, NABIS and NCA. This has clarified elements of the mess that is the EU Regulation, but the process is still ongoing. We would not expect to see anything available until at least the middle of May, possibly longer than this.

What is being done to try and improve the situation?

- The DWA has been lobbying very hard for an immediate review of the EU Deactivation Regulation and for the EU to recognise the current UK standard as an equivalent to avoid the need for retrospective deactivation upon sale/transfer
- The DWA is also strongly promoting the concept that any review of the Regulation should consider the current UK standard as the basis of any revised EU standard
- The DWA has made submissions to attempt to remove the 'defectively deactivated weapons' clause from the Policing and Crime Bill. This fight goes on.



What can you go to help?

Write to your MP with regard to the 'defectively deactivated weapons' clause in the forthcoming Policing and Crime Bill 2015-2016. Ask for their support in opposing it. Take a look at the DWA submission for some ideas on points you might like to make.

<http://www.publications.parliament.uk/pa/cm201516/cmpublic/policingandcrime/memo/pcb36.htm>

Find who your MP is here:

<http://www.parliament.uk/mps-lords-and-offices/mps/>

We doubt that if you are reading this you will be voting for the UK to remain in the EU. However, do your bit to influence friends, family, colleagues and customers to vote LEAVE. Irrespective of their views or interests with regard to (deactivated) firearms, this is a prime example of the EU imposing legislation based on agenda that has nothing to do with security and safety and has no evidential base to support it.

EU Proposals for the Firearms Directive

Further to Vicky Ford's very positive report suggesting a whole raft of sensible and measured amendments, a far less positive report has been produced by the EC Working Party on General Matters including Evaluation (GENVAL) - composed of representatives of the Ministries of Justice and Home Affairs of all member Countries. This seeks to uphold many of the original unworkable, unfair and clearly anti-gun clauses in the original EU Directive and does so based on the fantasy that such measures will be instrumental in preventing further terror attacks in the EU.

The final amendments are likely to be somewhere between those Vicky Ford has suggested and those proposed in original (or slightly revised GENVAL) report. The fight continues – watch this space.

The DWA is working for everyone who has an interest in deactivated firearms. Please support us by joining the association for just £20.00 per year.



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