

**PETER JACKSON and
FORGE CONSULTING LTD**

OPINION

1. Mr. Jackson and his company are in business as consulting engineers and firearms importers and dealers in Scotland. I am asked to advise on aspects of the law relating to the proof of firearms and in particular of sound moderators manufactured or imported by Mr. Jackson and intended to be fitted to rifles of various calibres. The importance for dealers and manufacturers is that if there is a requirement to have such moderators proofed it is uneconomic for those who are a considerable distance from a Proof House to have an individual item examined. This issue has become important as a result of a document issued by the Proof Houses in October 2001. I will deal with some of the assertions made in that document later. In summary I am of the opinion that :-

- a) A sound moderator is not a “part” of a “small arm” for the purposes of the *Proof Acts*.
- b) There is no requirement in law for a sound moderator to be subject to proof.
- c) The cutting of a screw thread on a barrel in order to affix a sound moderator is most unlikely to “unduly reduce it in substance or strength”, although each case will depend on its own facts.
- d) The pronouncement made by the Proof Authority in October 2001 is misleading and wrong in law in a number of important respects.

2. I will set out the reasons for these conclusions below in more detail. I should say that a comprehensive answer to all the questions set out in Mr. Jackson’s letter to those who instruct me dated 3rd April 2002 could fill a medium sized book. I will attempt to avoid such lengths and only give the principal reasons for my conclusions.

3. **Part of a small arm, part of a barrel or neither?**

If you will forgive the pun, the Gun Barrel Proof Act 1868 is silent on the subject of sound moderators. I am not sure they had then been invented, although they have been in common use in this country since the 1930s. The Gun Barrel Proof Act 1978, is similarly quiet, although that only modifies the law in relation to weapons which have been proved abroad under reciprocal arrangements. Section 4 of the 1868 Act provides, inter alia (complete with odd use of capitals!):- “ ‘Barrel’ includes every Barrel of every Small Arm, and every Breech of every Small Arm and every Part of every Small Arm which would in the User of the Small Arm contain all or any Part of the Charge of the Small Arm, and every Part of every Small Arm in, from, or through which Part in the User of the Small Arm all or any part of the Charge thereof would be exploded or discharged”. I begin by quoting the definition of a ‘barrel’ because by virtue of section 107 of the 1868 Act it is the duty of the Proof Houses to prove ‘barrels’ in accordance with the rules. There is also in Section 4 of the 1868 Act a definition of ‘small arms’ which is comprehensive and clearly covers what we would all expect to be included. Section 111 deals with the situation where a previously proved ‘barrel’ has been altered to unduly reduce its substance or strength (see further below). Sections 108 & 109 go on to provide that there shall be offences committed where ‘small arms’ with un-proved barrels are sold, lent or pawned, etc. So on one simplistic view, proof applies to barrels, and some offences apply to small arms which have un-proved or out of proof barrels. That is, however, in my view an oversimplification. A better view, and one which I would suggest is borne out by many years of practice in this country, is that proof applies to ‘any small arm’, the barrel of which must be proved. The Rules of Proof 1989 (Schedule B), made under Section 117 of the 1868 Act and currently in force, contain within Rule 1 a definition which is arguably wider. However, this cannot be relied upon as this is subordinate legislation which cannot amend the Principal Act and does not even have the status of a Statutory Instrument, as it only has to be approved by a Junior Minister at the DTI, rather than by Parliament.

4. It is necessary to engage in the above analysis in order to decide whether what the law requires to be proof tested are ‘parts of a barrel’, or ‘parts of a small arm’. Applying the normal rules of statutory interpretation, and looking at the applicable legislation and statutory instruments as a whole, it seems clear to me that the law relates to ‘parts of a small arm’. The

Proof Authority pronouncement of October 2001 suggests that detachable sound moderators “form part of the barrel” and therefore have to be proof tested. In my opinion this is misleading for two reasons, firstly it is not part of a barrel (unless attached to it at the time of test), and secondly the law requires parts of a small arm to be tested, not parts of a barrel. The question that needs to be asked is:-“Is a sound moderator part of a small arm?” The answer is clearly “No”, as a small arm is whole and complete without it. Although, as I have indicated, the issue is whether it is part of a small arm, this argument applies equally well if one was considering whether it is part of a barrel. I would therefore suggest that if a small arm is submitted for proof testing with a sound moderator attached, the Proof Master can choose to include the sound moderator in the test and mark it accordingly if he wishes. The law does not require him to do so.

5. I have taken into account three other matters which support my view:- Under the provisions of the *Firearms Acts* a firearm certificate which grants authority to possess a firearm cannot cover a sound moderator, even if one is possessed for that weapon. If a sound moderator is required, a separate authority under the Act is required. Secondly, Mr. Jackson has the benefit of an Open Individual Export Licence issued by the DTI for firearms and firearm parts. He is told by the DTI that a sound moderator is an ‘accessory’ and not covered by his Export Licence. Thirdly the CIP (the International Proof Authority) has no requirement or procedure relating to sound moderators. If this were not the case, the sound moderators which Mr. Jackson imports from Finland (a signatory to the CIP Convention) would have already been subject to a proof test. These three matters are not determinative by themselves, but I would suggest that they confirm the view generally held in this country that a sound moderator is not a part of a small arm. The Proof Authority pronouncement of October 2001 mentions a number of other attachments that can be affixed to the end of a barrel, such as choke tubes and muzzle brakes. In my view the requirement to be proof tested does not apply to any such items for the same reasons.

6. **Does Screw-Cutting a barrel require re-Proof?**

In order to fit a sound moderator to the end of the barrel of a small arm, a screw thread is cut into the first few millimetres of the barrel. Typically this reduces the thickness of the barrel by 1 mm,

or 40 thousandths of an inch. Section 111 of the 1868 Act provides that “If any Barrel which shall be marked as proved under this Act shall by any Process of Manufacture, or by any other Means whatsoever other than the Use and Wear and Tear thereof, be unduly reduced in Substance or Strength so as that the Mark thereon does not duly represent the Proof which if then duly proved it would bear, every such Barrel shall for the Purposes of this Act be deemed an unproved Barrel.” To put it shortly, if a small arm which has previously ‘passed’ a proof test and had the appropriate marks applied is subsequently altered in such a way as to *unduly* reduce its substance or strength, then it is deemed to be unproved. In accordance with Sections 108 & 109 it would then be a criminal offence to ‘sell, exchange etc.’ that small arm. It is obvious that the key word is ‘unduly’. This word is missed out of the October 2001 pronouncement and so again I would suggest that it is misleading, although the Proof Authority do speak of “alterations in excess of permitted tolerances” when referring to alterations affecting the bore size or internal chamber dimensions of barrels. Clearly, it is not *any* reduction that will require a re-test before sale, etc., only those alterations which seriously affect the strength and therefore the safety of the weapon. This must be a question of fact in each case and could be subject to proper engineering examination at a later date. Consulting engineers can easily give accurate answers regarding the effects on the strength of a barrel from having a screw thread cut in the end. I understand that the manufacture of most modern weapons is such that in practice any reduction in strength, although measurable, is negligible. It seems to be widely accepted that when an attachment is actually screwed on to the end of the barrel the result is a stronger structure. So given modern standards of materials and engineering and the fact that the prosecution would have to prove the ‘reduction’ beyond all reasonable doubt, I would rate the chances of a successful prosecution as slim. It is important to emphasise that simple possession of a small arm that has been altered is not an offence. The owner cannot begin to commit an offence (even if the reduction was ‘undue’) until he comes to sell the item, and, as I set out below, giving it to a dealer to carry out the work does not constitute an offence either.

7. **Circumstances requiring Proof and Evidence**

As I mentioned in paragraphs 3 & 6, Sections 108 & 109 of the 1868 Act provide that a criminal offence is committed where a small arm with an unproved barrel is ‘sold or exchanged’ or ‘exposed for sale or exchange’ or ‘exported’ or ‘pawned’ or there is an attempt to do one of those

actions. To put it in modern parlance, simple possession is not an offence. So a lawful owner who intends to keep a small arm, who does work on it himself, or has a gunsmith do so, cannot commit an offence in *any* circumstances, no matter *what* he does to it. I should add that the transfer to the gunsmith to do such work is clearly not a ‘sale or exchange’, etc., and so could not found liability on the part of the customer or the dealer. It would only be if an owner later decided to sell the weapon that any liability could *begin* to arise, and then could only do so if the item had been so reduced in substance or strength since the original proof marks were applied, in accordance with Section III.

8. Good law is clear and easily enforced. The proof marks applied to the barrel and action of a small arm are the same whether (for example) the barrel has been screw cut to accept a sound moderator or not. On examination of a small arm 20 years after the proof marks were applied, how will the prosecution say ‘This barrel wasn’t screw cut at the time of the proof test’? The weapon may have passed through several hands by then. If the proof house view of the law were correct members of the public could unwittingly commit such an offence by selling on a small arm. That I would suggest is an undesirable state of affairs in the criminal law. More importantly, this example demonstrates that even if the Proof Authority were correct in their view of the law, it would often be impossible for the prosecution to prove their case to the required standard.

9. **The Proof Authority Pronouncement, October 2001**

As I have indicated, in my view this Pronouncement is misleading in a number of respects. I set out below the passages I take issue with:-

- i) “the barrels of small arms fitted with sound moderators etc. require to be proof tested”. All barrels will already have been proof tested, including those with a screw-cut in the barrel.
- ii) “....any barrel of any small arm already previously proved but subsequently converted by a manufacturing process, resulting in a reduction in substance or strength, to accept the fitting of sound moderators.....etc., will require the arm to be re-proved.”

As indicated, unless the alteration has caused an *undue* reduction in strength, *and* the weapon is to be sold etc., they will not need to be re-tested.

- iii) “Muzzle attachments through which any part of the charge would be exploded or discharged

from part of the barrel and also require to be proof tested and marked accordingly.”

It might form part of the barrel if fitted to it at the time of test, but these attachments are not ‘part of a small arm’ and the requirement to be proof tested does not therefore apply.

There is one passage with which I agree:-

“This advice also applies to any alteration to the internal dimensions of the barrel affecting bore size or chamber lengths in excess of permitted tolerances”.

This correct - if for example the calibre or chamber length of a weapon is changed, it will have to be re-proved.

A handwritten signature in black ink that reads "Nick Doherty". The signature is written in a cursive style and is underlined with a single horizontal line.

NICHOLAS DOHERTY,

10, King's Bench Walk,
Temple,
LONDON, EC4Y 7EB.

18th June 2002.

© Nicholas Doherty 2002

**PETER JACKSON and
FORGE CONSULTING LTD**

OPINION

**Saunbury & Co.,
157, High Street,
LONDON, E17**

LS/Jackson