

A BILL

entitled

FIREARMS AMENDMENT ACT 2010

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SCHEDULE

WHEREAS in recent years Bermuda has seen an increase in violent crime involving the use of firearms which is causing a threat to public safety and order;

AND WHEREAS it is necessary for the protection of members of the public and in the interest of justice to amend the Firearms Act 1973 to provide for a new offence of handling a firearm or ammunition; to take restrictive measures against individuals who are arrested on suspicion of having committed an offence involving a firearm or ammunition pending charges; and to make related amendments;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

FIREARMS AMENDMENT ACT 2010

Short title

1 This Act, which amends the Firearms Act 1973 (the “principal Act”), may be cited as the Firearms Amendment Act 2010.

Amends section 1

2 Section 1(1) of the principal Act is amended by inserting in its proper alphabetical order the following definition—

“ handles” has the meaning given in section 19A(2) and related expressions shall be construed accordingly;”.

Amends section 11

3 Section 11 of the principal Act is amended by inserting the following after subsection (1)—

“(1A) No licence shall be granted to a person who is under the age of eighteen years.”.

Amends section 14

4 Section 14(2) of the principal Act is amended—

- (a) by inserting the word “, handling” after “possession”; and
- (b) by inserting the word “, handled” after “possessed”.

Inserts section 19A

5 The principal Act is amended by inserting the following after section 19—

“Handling firearm or ammunition

19A (1) It is an offence for a person to knowingly handle a firearm or ammunition without lawful authority.

(2) A person “handles” a firearm or ammunition if—

- (a) he is in any way concerned with removing, harbouring, keeping or concealing a firearm or ammunition, or anything containing a firearm or ammunition; or
- (b) he deals in any manner with a firearm or ammunition.”.

Amends section 20

6 Section 20 of the principal Act is amended—

- (a) in the heading by inserting the words “or handling” after “Possession”;
- (b) in subsection (1) by deleting the words “have a firearm or ammunition in his possession.” and substituting “possess or handle a firearm or ammunition.”; and

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- (c) in subsection (2) by deleting the words “having a firearm or ammunition in his possession.” and substituting “possessing or handling a firearm or ammunition.”.

Amends section 22

7 Section 22(2) of the principal Act is repealed and replaced with the following—

“(2) It is an offence for a person who is ordinarily in possession of a firearm or ammunition, if—

- (a) upon discovering that the firearm or any of the ammunition cannot be found; or
- (b) on having reasonable grounds for believing or suspecting that the firearm or any of the ammunition is improperly in the possession of, or is being handled by, or is under the control of some other person,

he does not inform the Commissioner (by reporting to any police station) as soon as possible, and no later than 24 hours, after the circumstances mentioned in paragraphs (a) or (b) arose.”.

Repeals and replaces section 23

8 Section 23 of the principal Act is repealed and replaced with the following—

“Acquisition, possession and handling of firearms or ammunition by minors
23 It is an offence for a person under the age of eighteen years to purchase, hire, possess or handle any firearm or ammunition.”.

Repeals and replaces section 24

9 Section 24 of the principal Act is repealed and replaced with the following—

“Supplying firearms to minors

24 (1) It is an offence to sell, let on hire, make a gift of, or lend any firearm or ammunition to a person under the age of eighteen years, or to part with possession of any firearm or ammunition to such person, or to cause or allow such person to handle any firearm or ammunition.

(2) In proceedings for an offence under subsection (1) it is a defence to prove that the person charged with the offence believed the other person to be of or over the age of eighteen years and had reasonable ground for the belief.”.

Inserts section 26A

10 The principal Act is amended by inserting the following after section 26—

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“Using a firearm while committing an indictable offence

26A Any person who uses a firearm or an imitation firearm, whether by discharging, brandishing or otherwise—

- (a) while committing or attempting to commit an indictable offence; or
- (b) during flight after committing or attempting to commit an indictable offence,

whether or not he causes or means to cause bodily harm to any person as a result, commits an offence.”.

Amends section 27

11 Section 27(2) of the principal Act is amended by inserting the words “or handling” after “possession of”.

Inserts sections 29A, 29B and 29C

12 The principal Act is amended by inserting the following after section 29—

“Warrant for detention without charge

29A (1) This section, and sections 29B and 29C, apply where a person has been arrested and detained by the police on suspicion of committing—

- (a) an offence under this Act; or
- (b) a serious arrestable offence, within the meaning of section 3 of the Police and Criminal Evidence Act 2006, involving the use of a firearm or ammunition.

(2) Where, on an application on oath made by a police officer of the rank of Chief Inspector or above and supported by an information, the court is satisfied that there are reasonable grounds for believing that the continued detention of the person to whom the application relates is justified, the court may issue a warrant of detention authorising the keeping of that person in police detention without charge for a period not exceeding 14 days.

(3) The court shall not hear an application for a warrant of detention unless the person to whom the application relates—

- (a) has been furnished with a copy of the information; and
- (b) has been brought before the court for the hearing.

(4) The person to whom the application relates is entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented, the court shall adjourn the hearing to enable him to obtain representation, and he may be kept in police detention during the adjournment.

(5) A person’s detention is only justified for the purposes of this section or section 29B if—

- (a) his detention without charge is necessary to—

- (i) secure or preserve evidence relating to an offence for which he is under arrest;
 - (ii) obtain such evidence by questioning him; or
 - (iii) allow investigating officers sufficient time to obtain the results of forensic testing in order to determine whether to charge the person with an offence; and
 - (b) the investigation of the offence is being conducted diligently and expeditiously.
- (6) An application for a warrant of detention may be made at any time before the expiry of 72 hours after the time when the person has been arrested.
- (7) A warrant of detention shall—
- (a) state the time at which it is issued;
 - (b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.
- (8) The period stated in a warrant of detention shall be such period, not exceeding 14 days, as the court thinks fit, having regard to the evidence before it.
- (9) An information submitted in support of an application under this section shall state—
- (a) the nature of the offence for which the person to whom the application relates has been arrested;
 - (b) the general nature of the evidence on which that person was arrested;
 - (c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;
 - (d) the reasons for believing the detention of that person is necessary for the purpose of such further inquiries.
- (10) Where an application under this section is refused, the person to whom the application relates shall immediately be charged or released, either on bail or without bail.
- (11) Where an application under this section is refused, no further application shall be made under this section in respect of the person to whom the refusal relates, unless it is supported by evidence which has come to light after the refusal.
- (12) Upon expiry of a warrant of detention, the person to whom the warrant relates shall be released from police detention, either on bail or without bail, unless he is charged.

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(13) A person released under subsection (12) shall not be re-arrested for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light.

(14) Subsection (13) does not prevent the arrest without a warrant of a person who, having been released on bail subject to conditions, breaches any of those conditions.

Extension of warrant for detention

29B (1) On an application on oath made by a police officer of the rank of Chief Inspector or above and supported by an information, the court may extend a warrant of detention issued under section 29A, if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3), the period for which a warrant of detention may be extended shall be such period as the court thinks fit, having regard to the evidence before it.

(3) But the period for extension of a warrant of detention together with the original period of detention granted under section 29A, shall not exceed a total of 28 days.

(4) A warrant of detention, if extended under this section, shall be endorsed with a note of the period of the extension.

(5) Subsections (3), (4), and (9) of section 29A shall apply to an application made under this section as they apply to an application made under that section.

(6) Where an application under this section is refused, the person to whom the application relates shall immediately be charged or, subject to subsection (7), released, either on bail or without bail.

(7) A person need not be released under subsection (6) before the expiry of a warrant of detention issued in relation to him under section 29A.

Meaning of "court"

29C For the purposes of section 29A and 29B, "court" means a court presided over by a judge of the Supreme Court."

Amends section 30

13 Section 30 of the principal Act is amended—

- (a) in the heading by deleting the words "and punishment";
- (b) by repealing subsections (1) and (1A); and
- (c) in subsection (5) by deleting the words "18 or 19" and substituting "18, 19 or 19A".

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Repeals and replaces section 30A

14 Section 30A of the principal Act is repealed and replaced with the following—

“Punishment for offences

30A The punishment for a person found guilty of an offence under this Act is as set out in the tables in Schedule 1.”.

Amends section 31

15 Section 31(1)(b) of the principal Act is amended by inserting the words “or handled” after “possession of”.

Amends section 35

16 Section 35 of the principal Act is amended—

- (a) in subsection (1) by inserting the word “handling,” after “possession,”; and
- (b) in subsection (2) by inserting the words “or handling” after the word “possession”, where it first occurs.

Application and duration of sections 29A, 29B and 29C

17 (1) For the avoidance of doubt, sections 29A, 29B and 29C of the principal Act (as inserted by section 12 of this Act) apply only in relation to an offence committed on or after the coming into operation of this Act.

(2) Sections 29A, 29B and 29C of the principal Act shall continue in force until 31 December 2013 and then expire, unless the Minister responsible for justice after consultation with the Governor, extends the duration of those sections beyond 31 December 2013 by Notice published in the Gazette.

(3) Where the Minister issues a Notice under subsection (2) to extend the duration of sections 29A, 29B and 29C beyond 31 December 2013, the Minister may after consultation with the Governor, from time to time, but before the expiration of a Notice already issued, issue another Notice to extend the duration of those sections, as and when needed.

(4) On the expiration of sections 29A, 29B and 29C, section 16 of the Interpretation Act 1951 shall apply as if those sections had been repealed by another Act.

Inserts Schedule 1

18 The principal Act is amended by inserting Schedule 1 as set out in the Schedule to this Act.

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SCHEDULE

(section 18)

“SCHEDULE 1

(section 30A)

PUNISHMENT FOR A PERSON FOUND GUILTY OF AN OFFENCE UNDER THIS ACT

TABLE 1	
Punishment for a person found guilty of an offence under section 9, 10, 11, 12, 13, 27, 28 or 36	
On Conviction on Indictment	
Offence	Punishment
(a) First offence, except as provided in paragraph (c):	Imprisonment for not less than 5 years and not more than 15 years.
(b) Second or subsequent offence:	Imprisonment for not less than 10 years and not more than 20 years.
(c) First offence committed by a person who, prior to the commencement of the Firearms Amendment Act 1995 on 6 October 1995, was convicted of an indictable offence, or an attempt to commit an indictable offence, in the course of which or during his flight he used a firearm:	Imprisonment for not less than 10 years and not more than 20 years.
On Summary Conviction	
Offence	Punishment
(d) First offence, except as provided in paragraph (f):	Imprisonment for a term not exceeding 2 years or a fine not exceeding \$5,000 or both.
(e) Second or subsequent offence:	Imprisonment for not more than 10 years.
(f) First offence committed by a person who, prior to the commencement of the Firearms Amendment Act 1995 on 6 October 1995, was convicted of an	Imprisonment for not more than 10 years.

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	indictable offence, or an attempt to commit an indictable offence, in the course of which or during his flight he used a firearm:
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TABLE 2	
Punishment for a person found guilty of any offence under section 2, 3, 4, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22, 23, 24, 25 or 32	
On Conviction on Indictment	
Offence	Punishment
(a)	First offence, except as provided in paragraph (c): Imprisonment for not less than 12 years and not more than 17 years.
(b)	Second or subsequent offence: Imprisonment for not less than 17 years and not more than 20 years.
(c)	First offence committed by a person who, prior to the commencement of the Firearms Amendment Act 1995 on 6 October 1995, was convicted of an indictable offence, or an attempt to commit an indictable offence, in the course of which or during his flight he used a firearm: Imprisonment for not less than 17 years and not more than 20 years.
On Summary Conviction	
(d)	First offence, except as provided in paragraph (f): Imprisonment for a term not exceeding 7 years or a fine not exceeding \$15,000, or both.
(e)	Second or subsequent offence: Imprisonment for not less than 3 years and not more than 10 years.
(f)	First offence committed by a person who, prior to the commencement of the Firearms Amendment Act 1995 on 6 October 1995, was convicted of an indictable offence, or an attempt to commit an indictable offence, in the Imprisonment for not less than 3 years and not more than 10 years.

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	course of which or during his flight he used a firearm:	
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TABLE 3		
Punishment for a person found guilty of an offence under section 26A		
On Conviction on Indictment		
	Offence	Punishment
(a)	First offence, except as provided in paragraph (c):	Imprisonment for not less than 10 years and not more than 20 years.
(b)	Second or subsequent offence:	Imprisonment either for life or for such lesser term (not however being less than 20 years) as the court thinks fit.
(c)	First offence committed by a person who, prior to 18 October 1985, was convicted of an indictable offence, or an attempt to commit an indictable offence, in the course of which or during his flight he used a firearm:	Imprisonment either for life or for such lesser term (not however being less than 20 years) as the court thinks fit.
A sentence of imprisonment imposed on a person convicted of an offence under section 26A shall be served consecutively to any other punishment imposed on him for an offence arising out of the same event or series of events and to any other sentence to which he is subject at the time the sentence is imposed on him for an offence under section 26A."		

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Firearms Act 1973 (the “principal Act”) for the purpose of creating a new offence of “handling” a firearm or ammunition and to make related amendments. The Bill also seeks to allow the police to apply to the Supreme Court for a warrant of detention and an extension of such warrant, which would allow the police to detain a person arrested in connection with an offence involving firearms or ammunition, or a serious arrestable offence involving firearms or ammunition, without charge for a maximum of 28 days for the purpose of, among other things, obtaining the results of forensic testing.

Clause 1 provides a short title for the Bill.

Clause 2 amends section 1 of the principal Act to insert the word “handles” in the list of definitions. A reference is made to a new section 19A of the principal Act (inserted by clause 5) which provides a meaning for the word “handles”.

Clause 3 amends section 11 of the principal Act so that a licence for a firearm or ammunition shall not be granted to a person under the age of 18 years.

Clause 4 amends section 14 of the principal Act to provide a defence for a person who handles a firearm or ammunition under the authority of a removal permit.

Clause 5 amends the principal Act to insert a new section 19A making it an offence for a person to knowingly handle a firearm or ammunition without lawful authority. Section 19A(2) gives the meaning for “handling” a firearm or ammunition.

Clause 6 amends section 20 of the principal Act. Subsections (1) and (2) are amended so that it is an offence for a person with a previous conviction relating to firearms or violence to handle a firearm or ammunition; and for someone to sell, transfer, repair, test or prove a firearm or ammunition being handled by such person.

Clause 7 amends section 22 of the principal Act so that it is an offence for a person ordinarily in possession of a firearm or ammunition to fail to inform the Commissioner of Police as soon as possible, and no later than 24 hours, after discovering that the firearm or ammunition is lost, or suspecting that it is improperly in the possession of, or is being handled by, or is under the control of some other person.

Clause 8 repeals and replaces section 23 of the principal Act. The offences under the current subsections (1) and (2) are combined to make it an offence for all persons under the age of 18 years to purchase, hire, possess or handle a firearm or ammunition.

Clause 9 repeals and replaces section 24 of the principal Act. The offences found in the current subsections (1) and (2) are combined and set out in the new subsection (1) to make it an offence for a person to sell, let on hire, make a gift of, or lend a firearm or ammunition to any person under the age of 18 years, or to part with possession of, or cause or allow such person to handle a firearm or ammunition. The provisions of the current subsection (3), which provide a defence, appear in the new subsection (2).

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Clause 10 inserts a new section 26A which contains the provisions currently found in section 30(1) regarding the use of a firearm during the commission of an indictable offence. This house-keeping amendment separates this serious offence from the general provisions contained in section 30 relating to the prosecution of offences.

Clause 11 amends section 27 of the principal Act to allow a police officer to arrest a person, without warrant, where the police officer has reasonable grounds for suspecting that such person is handling a firearm or ammunition.

Clause 12 inserts new sections 29A, 29B and 29C. These sections allow the police to apply to the Supreme Court for a warrant to detain a person without charge for a period of up to 14 days for the purpose of, among other things, obtaining the results of forensic testing. The Police may apply for the warrant to be extended for a further period up to a maximum of 28 days after which the person arrested must be immediately charged or released, either with or without bail. The rights of the individual, such as the right to legal representation, are safeguarded in these provisions.

Clause 13 amends section 30 so that the section relates only to prosecution of offences (and not to punishment of offences as well). Subsection (1) is repealed and the provisions placed in the new section 26A; and the provisions of subsection (1A), which relate to the punishment of an offence under subsection (1), are placed in a new Schedule 1 (inserted by clause 18). These are house-keeping amendments and no substantive changes have been made. Subsection (5) is amended so that a person convicted of handling a firearm or ammunition may also be convicted of possessing a firearm or ammunition, if the evidence indicates this.

Clause 14 repeals and replaces section 30A (which relates to the punishment of offences). The provisions of section 30A are now set out in tabular form, for clarity, in a new Schedule 1.

The principal Act currently provides a four-level scheme of punishment. Punishment for offences under sections 24 and 25 were set at the second highest level (ie level 3 of the scheme) at 12 to 17 years imprisonment for a first offence on indictment.

The new Schedule 1 raises the punishment for all offences set at level 2 (currently 10 to 15 years imprisonment for a first offence on indictment) so that they are at the higher level of sections 24 and 25. This reduces the scheme from a four-level scheme of punishment to a three-level scheme of punishment.

The sections to which the increased punishment relate are set out in Table 2 of Schedule 1.

Clause 15 amends section 31(1)(b) to provide a rebuttable presumption that a person who has in his possession anything containing a firearm or ammunition also handled the firearm or ammunition.

Clause 16 amends section 35 so that the offence of handling a firearm or ammunition does not apply to a member of the disciplined forces who handles a firearm or ammunition in the execution of his duty.

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Clause 17 provides for the new sections 29A, 29B and 29C to expire on 31 December 2013, unless extended by the Minister responsible for justice after consultation with the Governor, by Notice in the Gazette.

Clause 18 inserts a new Schedule 1, introduced by section 30A in clause 14.

Also included in Schedule 1 is the punishment for a person found guilty of handling a firearm or ammunition under section 19A: first offence on indictment would be 12 to 17 years imprisonment; subsequent offences on indictment would be 17 to 20 years imprisonment; first offence on summary conviction would be up to 7 years imprisonment or up to a \$15,000 fine, or both; subsequent offences on summary conviction would be 3 to 10 years imprisonment.