

# Red Lion Chambers Webinars





# Disguised Firearms and Mandatory Minimum Sentences

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# Disguised Firearms and Mandatory Minimum Sentences

a) Elements of the offence under s5(1A)(a)  
Firearms Act 1968

b) The law on mandatory minimum  
sentences where s.5(1A)(a) is charged

c) Disguised stun guns and s.5(1)(b)



Sports & Outdoors › Hunting & Fishing › Tactical & Personal Defense › Personal Defense Equipment › Stun Guns



VIDEO



Roll over image to zoom in



## REAX Power Volt Micro USB Keychain Stun Gun,Rechargeable with LED Flashlight

Brand: REAX

★★★★★ 825 ratings

| 16 answered questions

**Currently unavailable.**

We don't know when or if this item will be back in stock.

Color: **BLUE**



**Brand** REAX

**Color** BLUE

**Material** Aluminum



RED LION CHAMBERS

## S.5(1A)(1) Firearms Act 1968

*“A person commits an offence if without authority, he has in his possession, or purchases or acquires any firearm which is disguised as another object”*

## S.57(1)(b) Firearms Act 1968

*“In this Act, the expression firearm means...*

*(a) Lethal barreled weapon*

*(b) A prohibited weapon*

*...”*

## a) Elements of the Offence

### i) Prohibited Weapons

- Prohibited weapon has the meaning as assigned by s.5(2) of the 1968 Act
- Any prohibited weapon is a firearm whether it is a lethal barreled weapon or not
- In *Weaver* [2007] EWCA Crim 3485, the Court of Appeal held that an electronic stun gun resembling a torch is a prohibited weapon, and therefore must necessarily be a firearm within the meaning of s.57(1) of the 1968 Act
- A weapon may be a prohibited weapon even if one essential component is missing such as the trigger (*Brown* (1992) *The Times* 27 March 1992)

## a) Elements of the Offence

### ii) Possession

- Physically in the custody of, or under the control of the defendant (*DPP v Brooks* [1974] AC 862)
- Prosecution must prove the defendant knew they had something in their possession; it is irrelevant what they knew or thought it was (*R v Hussain* (1981) 72 Cr. App. R. 143)
- Question of fact
- Person does not have to be present in the place where the firearm is kept in order to be in possession (*Hall v Cotton* [1987] QB 504)
- To be distinguished from 'had with him'

## a) Elements of the Offence

### iii) Mens Rea

- Strict liability offence
- No mens rea is required except insofar as it is necessary to prove the accused was in possession of the firearm



## b) Mandatory Minimum Sentences and s.5(1A)(a)

S.51A(2), Firearms Act 1968

*R v Rehman and Wood* [2005] EWCA Crim 2056

[16] Circumstances were exceptional if the imposition of a sentence of five years would amount to an *arbitrary* and *disproportionate* sentence

[11] Important to take a holistic approach and look at circumstances together

*R v Dawson* [2017] EWCA Crim 244 [12]-[16]

The circumstances had to be *truly* exceptional

## b) Mandatory Minimum Sentences and s.5(1A)(a)

*R v Avis* [1998] 1 Cr. App. R. 420

1. What sort of weapon is involved?
2. What (if any) use has been made of the firearm?
3. With what intention (if any) did the defendant possess or use the firearm?
4. What is the defendant's record?

*R v Withers* [2015] EWCA Crim 132

*R v Stoker* [2013] EWCA Crim 1431

*R v Boyle* [2018] EWCA Crim2035 at [20]

c) Disguised stun guns and s.5(1)(b)

S.5(1)(b) Firearms Act 1968

*“A person commits an offence if without authority, he has in his possession, or purchases or acquires **any weapon of whatever description designed or adapted for the discharge of noxious liquid, gas or other thing**”*

- c) Disguised stun guns and s.5(1)(b)
  - ii) s.5(1)(b) or s.5(1A)(a)?

*Flack v Baldry* (1988) 87 Cr. App. R. 130, HL

A stun gun (hand-held device designed to stun a victim by way of electric shock) is a prohibited weapon within s.5(1)(b)

*R v Weaver* [2007] EWCA CRIM 3485

A stun gun disguised as a torch, in addition to coming within the meaning of s.5(1)(b), comes within s.5(1A)(a)

- c) Disguised stun guns and s.5(1)(b)  
ii) s.5(1)(b) or s.5(1A)(a)?

### *Key questions to ask*

- Does the object have a dual purpose and is therefore not a disguised firearm?
- Unless it is immediately apparent that the object contains a firearm then it is a disguised weapon



- c) Disguised stun guns and s.5(1)(b)
  - ii) s.5(1)(b) or s.5(1A)(a)?

## *CPS Guidance*

*“Where a stun gun is disguised as another object, section 5(1)(b) should be charged unless there is evidence of any use or intended use of the stun gun, or the commission or alleged commission at the same time or recently of other relevant offences”*

