



## HOME OFFICE FIREARMS SAFETY CONSULTATION

### A RESPONSE BY THE BRITISH ASSOCIATION FOR SHOOTING AND CONSERVATION (BASC)

---

#### Introduction

With some 150,000 members, the British Association for Shooting and Conservation (BASC) is widely regarded as the major UK representative body for sporting shooting. BASC's expertise on firearms matters is widely recognised and we are routinely consulted by a variety of government departments and agencies (including the Home Office and DEFRA) as well as other statutory and non-statutory bodies, e.g., the National Police Chief's Council.

BASC is unique amongst UK shooting associations in having a specialist, seven-man team dedicated to dealing with firearms matters. It is made up from former gun trade practitioners, police firearms licensing personnel, a former firearms licensing manager, former service personnel and others. Its expertise is nationally recognised. The team deals with upwards of 10,000 member enquiries p.a.

BASC's main interest in this consultation is the section on air weapons. These are very important for agricultural pest control as well as providing a safe and readily accessible means of teaching firearms safety, especially to the young.

This response is **NOT CONFIDENTIAL** and BASC welcomes its wider dissemination to interested parties as part of the ongoing debate.

**NB.** In keeping with current legal convention, where the masculine is used, it is assumed to encompass the feminine as well.

BASC has a long history of constructive engagement with government and once again offers its experience and tecno-legal expertise to assist government with the effective resolution of concerns raised in the consultation.

## **Consultation Questions**

### **1) High muzzle energy rifles**

High muzzle energy (HME) rifles have become demonised in some official quarters despite there being no evidence of them being misused or posing a tangible threat to national security or public safety. The consultation itself raises the question of proportionality given the very small number of these rifles in existence and the fact that only one has ever been stolen (it was speedily recovered). On that basis, stringent security precautions predicated on the certificate holder's circumstances are the way to tackle any concerns raised by law enforcement and others.

BASC does not subscribe to the notion that such measures should be the subject of any rigid prescription but would advocate good dialogue between the licensing authority and any applicant for an HME rifle. This would produce an effective solution tailored to an individual's circumstances.

A consensus solution is likely to be the most effective as it will achieve a proper balance between parties. The Chief Officer will be satisfied that no danger exists to public safety or the peace and the applicant will be satisfied as to the security of his valuable property and his continuing ability to pursue his chosen sport.

BASC's answers to the specific questions on Page 10 are as follows.

**Question 1. To what extent do you consider that the present level 3 security requirements if specified in rules made by the Secretary of State, would be sufficient to mitigate the risks posed by high muzzle energy rifles, as described above?**

BASC considers that the principles enshrined in level 3 security are more than adequate to mitigate against the risk of theft of HME rifles. However, such security precautions should not be prescribed in rules but should form a consensus agreement between the Chief Officer and a Firearm Certificate applicant in such cases. Flexibility of application is the key to success.

## **Question 2. Additional measures above level 3?**

a) Fitting shutters and grilles on all doors and windows?

BASC does not support this proposal as such highly visible security measures may actually invite attack by advertising the presence of a desirable object behind them. As a general rule, overt and substantial security measures merely incite curiosity instead of deflecting it elsewhere. In addition, the installation of such devices might prejudice fire safety exit points. Additionally, these measures may be precluded in architectural heritage conservation areas.

b) Installing CCTV?

BASC does not support this proposal as CCTV cameras would invite unwanted curiosity. CCTV's main benefit is for identifying perpetrators after a crime has been committed, rather than deterring attack.

c & d) Panic alarms both for storage and during use?

The utility of any panic alarm is questionable in an era of almost universal mobile phone ownership. The remoteness of the locations where HME rifles are used further militates against the utility of panic alarms. The same issue also applies to police response times and priorities.

e) The bolt or other critical component parts to be kept separately?

This is a sensible security precaution that is already used for other types of firearm.

f) If viable, and with a change in the law or certificate conditions, other members of the holder's shooting club to look after critical components on behalf of each other?

BASC does not support this proposal as it is fraught with practical difficulties. Shared responsibility for security rarely works, particularly when members of clubs who shoot HME rifles are likely to live far apart from one another, and only meet at the small number of remote locations where these rifles can be fired. This type of shooting does not have the same club infrastructure as say as .22 rifle club which has a permanent clubhouse, regular meetings and a membership which lives close by.

g) Separate storage of ammunition and only a small quantity authorised?

It is always a sensible precaution to store ammunition separately from the firearm in which it is used. Indeed, Section 1 ammunition is routinely stored either in a separate lockable container or within a similar lockable compartment within gun cabinets. The number of

cartridges authorised is properly an agreement reached between the Chief Officer and the Certificate holder. It will depend on a variety of factors that relate to the Certificate holder's personal circumstances and should not be the subject of any fixed prescriptive limit. In any case, as the cost of HME rifle ammunition is very much greater than smaller rifle cartridges, this is likely to be a limiting factor in itself.

### **Question 3. Storage of HME rifles at a club?**

BASC does not support this proposal for the reasons given at 2(f) above. It is neither viable nor practicable. It is not good practice to store a large number of firearms at a single location as this simply concentrates the risk of theft. (In the past, a number of shooting clubs have been subject to targeted attacks because the thieves knew they were "target rich" environments containing lots of guns). Conversely, the anonymous dispersal of firearms dilutes the risk of theft. BASC is surprised that government should pose such a question as it is self-evident that storage at shooting clubs increases the risk of theft of firearms.

### **Question 4. Storage of HME rifles by an RFD?**

BASC does not support this proposal for the reasons given at 2(f) and elsewhere above. It is neither viable nor practicable.

### **Question 5. Other comments.**

BASC asserts that the proposal for further prescribed security measures for HME rifles is neither evidence-led nor proportionate. Any measures must be based on an individual's circumstances and by consensus with the licensing authority.

Whilst the use of HME rifles is not core business for BASC, the Association unreservedly supports those who wish to use them for legitimate sporting activities.

## **2) Air Weapons**

BASC welcomes the government's decision not to introduce a licensing regime for air weapons in England and Wales along the lines of the licensing regime for firearms and shotguns. It is sensible, evidence-led, and proportionate.

### **Unsupervised use by 14 – 17-year-olds**

The government proposes (inter alia) to “*remove the exception that allows young persons who are at least 14 years of age to have unsupervised possession of air weapons on private premises.*”

BASC opposes this proposal on the grounds that there is no body of evidence to justify removing this exemption which has been enshrined in law since 1968. It disagrees with the statement on Page 14 that “the measures set out below represent “targeted action”.

BASC also asserts that it will disadvantage many youngsters who rely on it to learn to use firearms in a responsible manner e.g., trainee gamekeepers, agricultural pest controllers and young sport shooters both formal and informal.

The proposal is predicated on the case of Benjamin Wragge (aged 13) who was killed when he was accidentally shot in the neck by a friend. Benjamin was part of a group of teenagers who had gone to a friend’s house to look at the progress of a den. One boy fetched an air rifle (owned by his father) from an airing cupboard and allowed his friends to play with it. As one of them used the telescopic sight to scan the treeline, the air rifle went off and its pellet hit Benjamin in the neck. The boy who shot Benjamin was unaware that he had done so as the rifle was both fitted with a sound moderator and would discharge without the trigger being pressed.

The following, aggravating factors all contributed to Benjamin’s death.

- The air rifle was home-made.
- Its mechanism was dangerously faulty resulting in an unintended discharge.
- It did not have a safety catch.
- It held 9 pellets and there was no way of telling if it was loaded.
- Its Kinetic Energy (KE) output took it into the restricted category of “Specially Dangerous Air Weapons”.
- It was owned illegally without the authority of a Firearm Certificate.
- It was stored negligently being charged with air and loaded with at least one pellet.
- The excess KE value increased its potential to cause a lethal injury.
- The boy who shot Benjamin Wragge was in unlawful possession of the air rifle when the accident happened.

All these factors contributed to the “perfect storm” which led to Benjamin’s death. The learned Coroner (Dr Peter Dean) recognised this when he described the incident as “*a very rare tragic accident*”.

The legal maxim of “Hard Cases Make for Bad Law” is particularly applicable here. Hundreds of thousands of youngsters aged 14 – 17 use air weapons without supervision perfectly safely

on private premises with their parents' consent. (That is a proportionate check and balance in its own right). BASC is unaware of this provision ever causing any significant trend in air weapon abuse. A parent or guardian is best placed to determine whether or not his child is sufficiently responsible to be allowed unfettered access to an air weapon, rather than being subject to a "catch all" prohibition imposed by the state.

Throughout UK firearms law, there is the sensible principle of allowing more self-determination as the age and maturity of a young person increases. In turn, this creates a "rite of passage" for young people who recognise that with privilege comes responsibility. They understand that any misbehaviour will result in the withdrawal of such privileges and comport themselves accordingly. That actually enhances public safety by instilling a commitment to safe and responsible gun handling from an early age.

This approach has been public policy by the Home Office since at least 1988. The document "Guide on Firearms Licensing Law: 2016" contains the phrase at 7.21 *"It is in the interests of safety that a young person who is to handle firearms should be properly taught at a relatively early age"*.

BASC reminds the government of the two principles of enforcement and education that were identified by the then Home Office Minister, Paul Boateng MP during the 1999 air weapon adjournment debate (23<sup>rd</sup> June 1999; Col 1266). In BASC's experience, enforcement of existing law is patchy in the extreme; education (other than that conducted by the shooting community) is non-existent.

The current consultation document contains the phrase "we **think** [BASC's bold underlining] there have been at least 25 deaths caused by air weapon shootings in Great Britain since 2005". This statistic appears to have been lifted from the Infer Trust website and included in the consultation without any independent verification. The authors admit that this total includes suicides and homicides which have no bearing on this proposal.

Proposals for legislative change should not be predicated upon supposition but based on fact. The use of unchecked, open sources to justify any change is sloppy in the extreme.

### **Statistics used in the consultation.**

Throughout the consultation document, very few sources are cited for the statistics quoted within it. In the interests of openness and transparency, any statistics which are used to justify legislative change must have full citations so that they can be verified.

In the section entitled “Animal Welfare”, the first sentence starts with the words “Although there are no official statistics ...” This immediately proves that the consultation is not evidence-led.

As the RSPCA’s data collection protocols are unknown, no credibility can be ascertained for the statistics used. It is entirely possible that multiple complaints have been recorded for a single incident.

As all fatalities will have been reported to the police, it follows that statistics for them do exist, contrary to the opening statement. However, given the extreme rarity of air gun fatalities, these statistics will not be readily ascertainable from the wider raft of firearms offences statistics. Nonetheless they can and should be obtained by the simple expedient of asking each police force area for them.

Any data obtained from online sources cannot be verified or be subject to any quality assurance.

BASC avers that throughout this section, unreliable statistics are being used for effect in order to justify legislative change. This is unacceptable; any proposals for legislative change must be evidence-led.

Consequently, BASC asserts that this proposal for legislative change is: -

- Neither **Evidence-led**, nor
- **Proportionate** as it is predicated on one tragic case precipitated by a raft of aggravating factors.

### **Storage of air weapons when not in use**

BASC endorses the principle that air weapons should be stored securely when they are not in use and welcomes the statement that the government does not propose a requirement that air weapons are stored in a gun cabinet. Given that they are not licenced, that would be disproportionate.

The current test of “reasonable precautions” comes from the statutory conditions applied to Firearm and Shotgun Certificates (Condition 4(b)). As “reasonable” is defined in law, this gives great flexibility in application as it can be directly related to an individual’s circumstances. This

approach has been public policy since 1988 and works well. The proposal to specify the measures that “reasonable precautions” must include is at variance with that flexibility, in that it does not admit of individual circumstances. The test should either be left as “reasonable precautions”, or it should become prescriptive with proper detail.

BASC takes the following views on the 3 proposed measures.

**Out of sight:** it is sensible not to allow children to see something which might be attractive to them.

**Store ammunition separately:** again, this is sensible. Ammunition supply is crucial to any form of firearms control as a gun without ammunition is like a car without fuel. Given that someone needs to prove they are 18 to buy pellets, this is a major deterrent to abuse by young people. BASC has long recommended that any firearm should always be stored separately from its ammunition.

**Locking away:** of all three proposals, this is the most problematic as there are definitional difficulties within it. Is an air gun fitted with a trigger lock and stored in a cupboard “locked out of sight”? Does the container itself have to be locked or is any means of restricting access or temporarily disabling the air weapon adequate?

For greater clarity, it would be preferable to use the words “When under 18-year-olds are present, air weapons must be stored securely, out of sight and separately from their ammunition”. That would address the problem of preventing unfettered access whilst still allowing for individual circumstances.

BASC already issues a great deal of safety information about air weapons such as the Air Rifle Code of Practice. It holds itself ready to provide further expertise to the government to improve the safe keeping and handling of air weapons, as per the commitment made by government on Page 18 to work with industry towards this aim.

### **3) Miniature rifle ranges**

BASC asserts that the exemption at Section 11(4) of the Firearms Act 1968 whereby a person does not need to possess a Firearm Certificate in order to shoot at a miniature rifle range is very valuable and widely used, e.g., by the National Smallbore Rifle Association and the Scouting Movement. It allows people to shoot miniature rifles in a variety of recreational scenarios without the need for a Firearm Certificate. It has been included in UK law since the Firearms Act, 1920 and has only ever resulted in a tiny number of problematic incidents since then.

The exemption is drafted in two parts. The first needs updating to reflect the gradual development of UK firearms law whereby everyone given access to a firearm (other than antiques or low-powered air guns) needs the authority of the relevant certificate granted by the police. The second part needs no alteration as it simply enables temporary possession of a miniature rifle under controlled circumstances.

The most obvious solution to this is to licence the miniature rifle range operator by means of a Firearm Certificate, subject to the usual personal suitability and “good reason” tests being satisfied. Public safety is satisfied as the operator has been certificated and must look after his rifles when not in use. Similarly, the police service is not burdened by having to issue Firearm Certificates to occasional shooters.

BASC answers to the specific questions on Page 18.

**Question 10. To what extent do you agree that a person should be required to obtain a firearm certificate in order to operate a miniature rifle range?**

BASC agrees with this proposal but stresses that any such certificate should only be subject to standard conditions, agreed with the shooting community and included in a future edition of the Home Office Guidance. Operation of a miniature rifle range should be taken as constituting *prima facie* “good reason” and guidance amended to reflect this.

**Question 11. To what extent do you agree that only rifles not exceeding .22 rimfire should be considered as miniature rifles for the purposes of the provision?**

When this exemption was first made, the term miniature rifle was well understood to refer to rifles chambered for .22 rimfire and a small number of now obsolete cartridges such as the .297/230. Ammunition has developed dramatically in the intervening century and has eclipsed this original meaning. Consequently, this exemption needs to specify that it only applies to rifles chambered for .22 rimfire cartridges.

**Question 12. To what extent do you agree that self-loading .22 rimfire rifles shall not be considered miniature rifles for the purposes of the provision?**

BASC does not agree with this proposal as government has not adduced any evidence to show that self-loading .22 rifles are in any way abused or contribute to any CT or armed crime threats. Indeed, they are important tools for pest control and many clubs have competitions

based on their use. The Chief Scientist for the National Ballistic Intelligence Service (NaBIS), Mr Martin Parker routinely stresses that rifles are not used in crime. It flows from this therefore, that as rifles in general are not attractive to criminals, then self-loading .22RF ones are not either.

Consequently, BASC does not agree with this proposal as it is not evidence-led.

### **Question 13. Further comments?**

Whilst BASC accepts that a 100-year-old exemption needs to be updated to reflect modern law, this needs to be done with care to ensure that the ability of occasional shooters of miniature rifles to shoot without a certificate is not compromised.

## **4) Ammunition**

The consultation seeks views on the creation of a new offence of possessing component parts of ammunition with intent to assemble unauthorised complete cartridges. BASC would expect to see the government's evidence of those instances where the existence of any such offence would have resulted in successful prosecutions. Further and better particulars are required before BASC gives its *carte-blanche* support to this proposal.

That notwithstanding, BASC is content to offer its **in principle** support to the creation of an offence of possessing **all** of the components of ammunition (case, bullet, propellant & primer) with intent to assemble unauthorised complete cartridges. This is subject to its being satisfied that the creation of any such offence will not disadvantage certificate holders in any way. It is important to stress that all four components must be possessed, and intent proven before any prosecution is mounted. Many people possess some component parts of ammunition for perfectly lawful purposes, (see below).

As intent is based on a highly subjective, individual state of mind, it follows that each case has to be taken on its merits. The CPS tests before mounting any prosecution will have to be met. In law, intent is strictly interpreted and regulated by Section 8 of the Criminal Justice Act, 1967 (Quoted below, for ease of reference).

***"Section 8: Proof of criminal intent.***

*A court or jury, in determining whether a person has committed an offence, —*

*(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but*

*(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”.*

The following people are likely to have some components of ammunition. NB This list is not exhaustive.

- Militaria collectors with drill rounds or deactivated ammunition. (BASC understands this is a very important area for the deactivated firearms and militaria trades).
- Re-enactors and living history groups.
- Metal detectorists and archaeologists.
- Providers of firearms safety training who have a selection of dummy cartridges.
- People with nick-knacks made from ammunition components – key rings, pens, bottle openers etc.
- People with dummy rounds as fashion accessories, e.g., a waistbelt made from the ammunition belt of a machine gun.
- Antique gun collectors with inert rounds to show functionality of actions.
- Western quick-draw competition participants and Line Dancers.
- Owners of ammunition advertising material such as bullet boards and salesman’s cartridge displays.
- People with fireworks and model rocketeers – the powder in them is *de-facto* a component of ammunition.
- Film & theatre use.
- People who use blank cartridges for a wide variety of purposes, e.g., dog training, film & theatre etc.
- Cartridge reloaders.

BASC’s “in principle” support for this measure is also conditional on this list being incorporated into the Home Office document “Guide on Firearms Licensing Law”.

At a meeting of the Practitioners Group (Home Office, Law Enforcement/Firearms Licensing and Shooting Interests) on 27<sup>th</sup> November 2020, a senior civil servant from the Home Office

Firearms Section (Mr Graham Widdecombe) stated unequivocally “This is not a control mechanism”. BASC is prepared to accept that remark at face value, providing proper safeguards are built into any new offence. To that end, BASC suggests that the modified wording of Section 5 (2A) of the Firearms Act 1968 might be imported into any new offence with some advantage.

BASC extends its conditional, in-principle support for the proposal to create the new offence of possessing all of the components of ammunition with intent to assemble unauthorised complete cartridges. It reiterates that two tests would have to be met before any prosecution could be mounted.

- Possession of all four ammunition components: and then,
- Intent to assemble unauthorised complete cartridges from such components proven.

Great care needs to be exercised with the drafting of any such offence so that it does not trench on those people (especially home loaders of ammunition) who might reasonably be expected to have ammunition components for legitimate purposes. Any such new offence should be used to strike at criminal manufacturers and suppliers and not to harass certificate holders.

BASC holds itself ready to assist with the drafting of the new offence and its supporting Guidance.

BASC Firearms Team

20<sup>th</sup> January 2021