

FIREARMS LICENSING

A consultation on recommendations for changes made to the Home Office: June – August 2023

A response by the British Association for Shooting and Conservation (BASC)

The British Association for Shooting and Conservation (BASC) is the largest shooting association in the UK with some 150,000 members, making it the largest stakeholder group involved with firearms licensing.

BASC is the only UK shooting association with a specialist firearms team dealing with all matters pertaining to firearms and their use whether legal, technical, or practical. Its composition includes former police firearms licensing personnel, firearms forensic examiners and a registered firearms dealer. The team's expertise is widely recognised by government departments, Police and Crime Commissioners, the police firearms licensing community, and other agencies. For example, a member of BASC's firearms team sits on the current Home Office Fees Working Group and on the National Crime Agency's Criminal Use of Firearms (Prevent) Board. BASC also provides the Secretariat of the All-Party Parliamentary Group for Shooting and Conservation which consists of 150 MPs and Peers.

BASC is pleased to respond to this consultation and holds itself ready to assist with further advice as required.

BASC's responses to specific questions are made in the order in which they appear in the consultation.

NB. This consultation response is not confidential and may be freely disclosed or published.

Background on firearms licensing (Part 2).

Preamble

Introducing this consultation at 1.2, the Minister said, *"Public safety is our priority, but the measures to manage the risk to public safety must be proportionate and balanced with the fact that the vast majority of licensed firearms holders are law abiding and cause no concern"*. BASC welcomes this statement, considering it to be an endorsement of private firearms ownership by responsible people and an acknowledgment that the firearms licensing process must be predicated upon targeted risk management rather than blanket restrictions.

BASC also applauds the Minister's decision not to adopt the recommendations to align the firearm and shotgun licensing regimes, none of which were evidence-led. *"It is for this reason that the Government has decided not to proceed with the recommendations made to align shotgun and firearms legislation and the concern from the coroner that there appears to be a legislative presumption in the Firearms Act 1968 in favour of granting a firearms certificate. Shotguns are already subject to significant controls on their use...."*

Whilst welcoming, the Minister's words, BASC is disappointed to see that nothing within this consultation addresses the core problem that confronts effective firearms licensing practice. As long as the licensing function is devolved to the independent Chief Officers of 43 police forces who can choose to resource and operate as they see fit, then certificate holders will be

at the mercy of a postcode lottery. Home Office guidance – whether statutory or discretionary - is all well and good; but without an agency with statutory powers to compel the adoption of best practice and enforce change in failing forces then this problem will endure.

Remarks on Statistics.

The UK has some of the strictest firearms legislation in the world. It also enjoys the lowest level of firearms homicides and firearms misuse in the western world. Consequently, calls for further firearms legislation such as the reclassification of firearms or major changes to the licensing regime must only be evidence based.

In this context, the statistics produced since 2008 by the National Ballistics Intelligence Service (NABIS) are instructive, as they only deal with serious gun crime. Firearms discharges are only recorded if there is physical evidence of a gun being fired. NABIS data consistently shows that 65-70% of serious crime discharges in the UK are with handguns. This is despite that fact that legislation effectively prohibited this type of firearm twenty-five years ago. The majority of the remainder of discharges recorded, are with sawn-off shotguns. 84% of the sawn-off shotguns submitted to NABIS, were manufactured prior to 1988. This strongly suggests that shotguns used by criminals are sourced from the illegal arms pool, rather than stolen from current certificate holders.

The vast majority of homicides are committed with illegally held guns. The number of homicides, including suicides, with legally held firearms (as listed in the consultation document) averages 4.3 deaths per year over the last eleven years. Statistically, this represents less than 1 in 15,000,000 of the population. Whilst such shootings represent personal tragedies for the families of the deceased, legislation should be based on empirical evidence of harm, and not emotional reactions. (In the Health and Safety Executive's matrix for reducing harm, it only recommends intervention action when the risk rises to over 1 in 1,000,000). Therefore, the figures for homicides with legally held firearms do not support further legislation. BASC confidently asserts that a study of homicides with legally held firearms since the Firearms Act 1968, will show little change in the intervening fifty-five years.

When considering the evidence base for any future legislation, BASC considers it essential to have conducted an independent review of the risks of private firearms ownership. This should be conducted by an organisation such as the Statistical Laboratory at the University of Cambridge or similar body. Such organisations have a long record of understanding risk, as well as being entirely independent. Only then can evidence-based policy be formulated, and risk mitigated.

Recommendations for changes to legislation (Part 3).

Q1. Do you consider that the police should be granted a specific power of entry (without warrant) to be able to seize shotguns, firearms, and ammunition where there is a risk to public safety and the peace, and the certificate holder does not cooperate with the police and agree to voluntary surrender. In association with this proposal, the police should be given the power to suspend a certificate temporarily).

BASC emphatically rejects this proposal and asserts that simply because someone has made a choice to be licenced to possess firearms for legitimate purposes, this should not then deprive them of the basic civil liberties that safeguard their privacy and the quiet enjoyment of their property.

If there is an immediate threat to life, the police have power of entry. In cases where there is no immediate threat to life and where the certificate holder declines to co-operate the matter can be easily resolved by the immediate revocation of the certificate(s). This then places the former certificate holder in illegal possession of firearms and ammunition, which is an arrestable offence.

It is worth noting that the few occasions where a certificate holder declines to co-operate are invariably generated by poor police communication, often by a failure to give a proper explanation as to why the surrender of guns has been requested.

Sections 4.10 and 4.11 of the Statutory Guidance are very clear as to the procedures that should be adopted in these situations. It is BASC's experience that they rarely are. This is particularly so in relation to the final sentence; "A properly itemised record and photograph should be provided in all cases detailing the firearms, accessories and ammunition removed".

In situations where a proper and reasoned explanation has been given for the request for voluntary surrender and a receipt and photographs provided, BASC has found that certificate holders invariably co-operate. Situations where such reasoned explanations are not given often result in non-cooperation. In BASC's experience is that when this happens no explanation is given by a Chief Officer as to why this section of Statutory Guidance has not been followed.

The matter is inextricably linked to the timeliness of suitability reviews. BASC has been aware of some taking up to 2 years. This is wholly unacceptable and again, contrary to section 4.11. It is for this reason that BASC rejects the notion of temporary suspension of certificates. No proposal has been made to introduce any safeguards or time limitations into the process.

BASC opposes both the creation of a new police power of entry without warrant and the ability to suspend certificates.

Q2. Do you consider that the prohibition on possessing firearms should be changed from one that is based solely on length of a custodial sentence following conviction, to one based more on the nature of the offence?

The concept of prohibiting serious offenders (i.e., those who had served significant custodial sentences) from possessing firearms and ammunition was introduced by the Firearms Act, 1920. It has served society well since then. The shorter period of prohibition was recently extended (Anti-Social Behaviour, Crime and Policing Act, 2014) to those whose custodial sentences were suspended. BASC supported this extension believing that the underlying gravity of the offence still stood, even though the trial judge may have decided not to activate the custodial sentence based on case-specific facts.

This issue was raised in the Senior Coroner's Regulation 28 letter to the Home Secretary and the Policing Minister.

*"I am concerned that continued application established in 1968 in the context of modern day criminal disposals, and continuance of a system that does not link the prohibition on holding a licence to the **responsibility for particular categories of criminal acts** (rather than the length of prison sentence imposed if convicted) will leave many firearms and shotguns in the hands of dangerous offenders who should (and would previously when criminal justice diversion schemes were not ubiquitous) have been barred from holding a weapon".*

No evidence is adduced by the Coroner to support this statement. The only justification given is that the system was established 55 years ago and that other witnesses at the inquests

endorsed recommendations for legislative change. Merely because legislation was enacted some time ago does not automatically mean that it is flawed. For example, The Offences Against The Person Act, 1861 remains largely unaltered. The agreement of some witnesses at an inquest does not justify calls for any change to the law. This is particularly true when those giving evidence have a vested interest to deflect criticism of the failures in the Devon and Cornwall firearms licensing team to implement current legislation.

At the time of the 2014 extension, Parliament chose not to make further amendment to the Section 21 prohibitions. This strongly suggests that it saw no justification for further change. The current provisions are also easily understood. This would not be the case if prohibition was to be based on a list of offences.

On that basis, BASC does not support this proposal as it is not evidence-led.

Q3. Do you consider that the renewal period (currently every five years) for a certificate should be kept under review? If so, is renewal every five years the right period of time or should it be changed to a shorter or longer period of time?

BASC has long advocated that the period of validity for a certificate should be increased to 10 years. This increase is predicated upon the placing of a marker (an encoded reminder) by a GP on a certificate holder's medical records. This, combined with existing police databases and intelligence gathering systems, would give 24/7/365 monitoring of certificate holders. This in turn would give the public confidence in the licensing system. Additionally, a 10-year certificate would be beneficial to the police as it would release scarce resources and reduce pressure on overstretched licensing departments.

BASC notes that at 2.17 in this consultation it is confirmed that the digital marker is available in all English GP surgeries and looks forward to its universal availability across GB.

None of the recommendations for the reduction in certificate life made by the Coroner, the IOPC or the Scottish Affairs Committee were evidence-led. Indeed, the evidence given to the latter by the Gun Control Network supporting a shorter certificate life referenced countries with much higher levels of gun crime than the UK. One cited, Brazil, has one of the highest levels of firearms homicides in the world.

This issue has already been widely discussed in Westminster and Whitehall circles. The previous Policing Minister, Kit Malthouse MP gave an undertaking to MPs that the 10-year certificate would follow the adoption of the marker. The previous National Police Chief's Council lead on Firearms Licensing (DCC Dave Orford of Durham Constabulary) was also supportive of this stance.

BASC recommends that ten-year certificates are introduced for those who have the medical marker. This would prompt consumer pressure on GPs to use the marker and facilitate its wider adoption. This would represent an important improvement to public safety, which is the purpose of firearms licensing.

Referees (Part 4).

BASC Overview

BASC questions the overall utility of the referee system, believing it makes little or no contribution to the assessment of an applicant's suitability. That view is sustained by the comments made in the House of Commons Scottish Affairs Committee's 3rd Report for 2022/23 "Firearms Licensing Regulations in Scotland", published on 19th December 2022.

"Moreover, Fraser Lamb, Firearms Licensing Adviser for the Scottish Association for Country Sports (who was formerly the Head of Firearms Licensing for Police Scotland) told us that he sees "no benefit to having a referee", saying "[y]ou are going to ask your pals who are going to give it to you. You are not going to ask someone who is not going to give you a reference. In the four years that I was a firearms licensor, there was only one occasion when the referee raised a concern"."

BASC can only recall one instance of a certificate application in the last 32 years having been refused on the grounds of referee unsuitability; it was subsequently granted when the applicant put up a suitable referee.

Consequently, BASC questions the Home Office's assertion at 4.5 that referees *"are now an important part of the suitability checks carried out by the police"*. Again, it is BASC's experience that few Firearms Licensing Managers set great store by referees, preferring instead to rely on information provided from police databases, Firearms Enquiry Officer's reports and local intelligence.

BASC's answers to specific questions.

Q4. Do you consider that people applying for shotgun certificates should provide two referees?

No evidence has been adduced to suggest that any requirement to provide a second referee would have changed the outcome at Keyham. In any case, as the government has already said that it does not intend to align the licensing regimes for shotguns and other firearms, then such a question becomes redundant.

BASC does not support the suggestion that applicants for shotgun certificates should provide a second referee as it is not evidence-led.

Q5. Do you consider that at least one of the referees should be a person of certain standing in the community (e.g., of a professional background)?

BASC is surprised that the Home Office should ask such a question which is inappropriate for an egalitarian democracy. Nobody is "better" than another person simply because they hold a professional qualification. If the referee system is to have any currency, it must be predicated on a person's character and integrity combined with a close personal knowledge of the certificate applicant rather than the referee's social status. Professional qualifications confer neither integrity nor good character. BASC notes that an MP or Cabinet Minister would undoubtedly be said to have standing in the community. Recent political events show that their status does not automatically guarantee personal integrity.

BASC is reminded of the cautionary note in the previous Home Office Guidance to the Police that some applicants might have difficulty in accessing "people of standing in the community" as they do not move in the same social circles.

BASC is emphatically opposed to the suggestion that a referee should be a person of standing in the community.

Q6. Do you consider that the referees should be able to demonstrate a good knowledge of the applicant's circumstances relevant to their suitability to possess a firearm or shotgun?

Subject to the reservations about referees in general expressed earlier in this section, BASC considers this to be a sensible suggestion which ought to underpin any referee system.

Q7. Do you consider that the application form should include a checklist for referees on the information they should provide to the police, and require referees to provide a written declaration that they have disclosed all relevant facts to the police?

As this question has two parts, BASC gives two answers to it.

Referee checklist. BASC considers this to be a sensible suggestion. It should also make plain to the referee that he/she is not expected to guarantee the applicant's future behaviour.

Referee Declaration. BASC is opposed to this suggestion, believing that it will put off potential referees. There is also the perception that such a declaration partially indemnifies the police in the event that an unsuitable person is granted a certificate.

Q8. Do you consider that the Statutory Guidance should include more detailed guidance for the police on the information they should be looking to elicit from referees?

Sections 2.21 – 2.24 already gives detailed advice about the criteria for referees and the degree of contact required. BASC sees no need to add to this with further guidance. Any additional information that should be elicited is best left to the good sense and professional curiosity of Firearms Licensing Managers who are better placed to decide this.

BASC does not support this suggestion.

Q9. Do you consider that the police should look at the circumstances when individuals change referees between application and renewal and between subsequent renewals?

This question presupposes that there is some nefarious motive for the change of referee when the reality may be entirely innocent. In terms of social contact, five years is a relatively long period and certificate holders may lose contact with referees for a variety of reasons including moving house, changing employment, or leaving the district. Social circles change and people become estranged from one another, not necessarily through reasons of dislike but because of changing interests, different friends etc. Referees also die and emigrate.

Investigation into any change of referee should not be routine but evidence-led and intelligence guided. The crux of the referee system must be personal knowledge from recent contact. If any change gives Firearms and Explosives Licensing Unit staff cause for suspicion, they have the facility to investigate it on a case-by-case basis and determine the reason for change.

BASC does not support this suggestion.

Q10. Do you consider that the sharing of the unique application reference number by applicants with their referees, would make it easier for referees to report concerns about applicants, decline to give references or report concerns about certificate holders to the police?

BASC is unsure as to the operation and benefits of this suggestion and as such does not support it. In any case, it is BASC's contention that anyone who has concerns about a certificate holder or applicant will not be put off from voicing those concerns simply because they do not have a unique reference number for the application.

Section 5: Other areas of recommendation.

Statutory Guidance.

Q11. Do you consider that the content in the Statutory Guidance should be expanded and made more prescriptive in relation to the suitability checks carried out by the police for firearm and shotgun applicants and certificate holders?

Chapter 2 of the Statutory Guidance deals with suitability checks. It runs to 11 pages and the 10 sub-sections of its content are both detailed and comprehensive.

BASC urges caution in interviewing former partners as this may act as a vehicle for disgruntled or otherwise ill-intentioned people to make unfounded and damaging allegations against a certificate holder/applicant by way of revenge. Such allegations might contribute to an injustice or cause wasteful employment of the police. It should be noted that most suitability reviews that come to the attention of BASC follow divorce or breakdowns in relationships. This strongly supports the belief that former partners may use such a vehicle to seek retribution.

Regarding the IOPC recommendations, BASC observes that No 6 (open source media checks) is already incorporated at 2.53(v) of the Statutory Guidance, requirements for referees is under consideration and No 5 (check on cohabitants) at 2.53(vi). On that basis it is hard to see what else may be done.

Consequently, BASC does not consider that the case has been made out for the further expansion of the Statutory Guidance which it considers to be comprehensive and fit for purpose.

Q12. Do you consider that the balance of probabilities test is the correct test to apply in the Statutory Guidance to information about a person's suitability to hold a certificate?

BASC asserts that the balance of probabilities test is the correct one to use in suitability decision making. Firearms licensing is administrative rather than criminal law and as such it would be inappropriate to apply the criminal test of "beyond reasonable doubt". The Home Office has actually supplied the correct answer to this question when it states that the balance of probabilities test has been used by the police for many years.

In his Regulation 28 report, HM Senior Coroner queried whether the balance of probabilities test was the correct test to apply. However, he gave no reasons why he thought it was not and made no suggestion for the correct test. On that basis, BASC believes this was not evidenced and strongly supports the status quo.

The remarks of Hoffmann LJ in *Re H (Minors; Sexual Abuse Standard of Proof)* [1996] reinforce this viewpoint. "*There is only one civil standard and that is proof that the fact in issue more probably occurred than not*".

The balance of probabilities test is the correct one to use when assessing a certificate applicant's suitability.

Q13. Do you consider that neurodevelopmental disorders should be added to the list of relevant medical conditions in the Statutory Guidance (and application forms)?

As the list of neurodevelopmental disorders (NNDs) is extensive and as each NND varies in extent and severity, BASC believes that this is not a proper question for a lay response from a public consultation. Informed advice needs to be taken from medical professionals.

In all cases, any assertion that an NND should be added to the list must be tested against the standard that it would make someone a danger to the public safety etc if they were allowed access to firearms whilst suffering from it.

Medical arrangements:

Q14. Do you consider that GP's engagement with the firearms licensing process should be made mandatory?

BASC's answer to this question is nuanced and twin-limbed.

BASC strongly asserts that the requirement for GPs to add markers (encoded reminders) to the medical records of certificate holders should be mandatory throughout GB. The marker is a major contributor to public safety. BASC believes that simply requiring GPs to use "best endeavours" to place markers on certificate holders' medical records is not good enough and is prejudicial to public safety. The requirement to place a marker needs to be mandatory for GPs.

In terms of mandating GPs to take part in the medical verification process, BASC rejects this. Currently, there are adequate arrangements for applicants whose GPs decline to take part, such as commercial providers or the BASC Medical Panel. BASC would not wish to see participation made mandatory without a fee for this enshrined in law – i.e., added to a Fees Order. If no fee was set, BASC believes that this compulsion would be exploited by some GPs. BASC has evidence that a fee of £365.00 has been charged for a medical verification; that is 4 ½ times the cost of the grant of a shotgun certificate. The shooting community should not be made hostages to fortune where no fee level has been enshrined in law.

A further objection is the potential for those GPs who oppose shooting to reject all verifications submitted to them or delay their completion by so long as to make the system unworkable. The view that this is possible, should GPs be mandated to take part in the verification process, has been expressed by some members of the BASC medical panel.

Q15. Do you consider that interim medical checks should be made on licensed firearms holders in between the grant of the certificate and any application to renew?

BASC asserts that interim medical checks would be redundant in an environment where 24/7/365 medical monitoring was conducted through a mandatory marker applied to certificate holders' medical records.

In any case any contact to assess suitability of certificate holders by the licensing authority should be intelligence-led and not routine or formulaic if it is to have any value and not waste scarce resources.

Consequently, BASC does not support interim medical checks, believing that mandatory medical markers provide a much greater degree of protection through their ability to give early warning when a certificate holder presents with a condition that gives concern about their suitability to possess firearms.

Q16. Do you consider that the digital marker for use by GPs on the medical records of licenced firearms holders should be visible to other health professionals?

BASC believes that the marker should be visible to any medical professional who needs access to a patient's medical records. That said, care needs to be exercised to ensure that certificate holders' security is not compromised by excessive and unwarranted access. Such access must be auditable in the same way that access to police computer systems is. This enables identification of persons who might misuse information. This would reassure certificate holders that their security would be less likely to be compromised.

Mental health.

Q17. Do you consider there should be more mental health advice and support for licenced firearms holders through, for example, advice leaflets and other such support?

BASC lends its unqualified support to this proposal. BASC (Scotland) was part of the group which developed the excellent mental health support leaflet now promulgated by Police Scotland and would wish to see its further dissemination throughout England and Wales.

BASC also supports 'buddy' initiatives in clubs and shooting syndicates.

Phonelines.

Q18. Do you consider a specific phonenumber should be introduced in addition to the services already available to report concerns about a licenced firearms holder?

BASC's answer to this is an unequivocal "No".

BASC predicts that such a phonenumber would be an invitation to ill-intentioned people to make mischief for certificate holders by making false allegations about them. In addition to promoting such mischief making, this proposal is likely to squander scarce public resources by causing the wasteful employment of the police with no concurrent gain for public safety. BASC has evidence that individuals make malicious accusations against certificate holders knowing they will be forced to surrender their firearms in the light of them. Implementing this proposal would greatly exacerbate the situation.

Q19. How in principle should any specific phonenumber be funded: public funding or other sources funding?

BASC considers that the phrasing of this question is biased because it assumes a positive answer to Q18. This should not happen in an open consultation where the government has said explicitly that "it has taken no decisions on the recommendations on which we are seeking views (5.25).

Q20. Do you consider that it would be better to raise awareness of existing avenues open to raise concerns about a licenced firearms holder (999 etc)?

In BASC's experience, the public is already aware of how to raise concerns about a licenced firearms holder. Indeed, any such a campaign might incite and encourage the ill-intentioned to make false allegations as per the answer to Q18 above.

Consequently, BASC does not support this proposal.

Fees.

BASC is already part of the Fees Working Group and has already made its detailed responses known to its Chair.

Fees should only be set on data gathered from the most efficient FELUs. The data should not be skewed by the inclusion of those who fail to perform as this simply rewards inefficiency.

As a general principle, BASC avers that as firearms licensing is principally undertaken for the preservation of public safety, it follows that the public purse should bear a significant part of its cost. This is not the public subsidising firearms certificate holders but the public investing in a regime that contributes to its own safety.

Additionally, full cost recovery to finance FELUs is meaningless as Chief Officers cannot be compelled to ringfence those monies received as fees from certificate holders.

National police training package.

BASC welcomes the announcement that £500,000 has been allocated to the College of Policing (CoP) to take forward accredited training for FELU staff, particularly Firearms Enquiry officers and decision-makers. However, BASC questions whether this level of funding is enough. In its 2022 report into police firearms licensing departments in England and Wales, BASC found that the twenty-seven forces who responded accounted for 417.56 full time equivalent staff. By extrapolation, BASC estimates that there are 665 full-time staff involved in firearms licensing. It is difficult to see what level of training £752.00 per staff member will achieve.

BASC also looks forward to the publication of the CoP Accredited Professional Practice, having participated in the consultation about it.

BASC is very pleased to learn that the CoP and the National Police Chiefs' Council will be consulting with the Home Office on how the accredited training scheme will become mandatory for FELU staff. BASC asserts that this will not only go a long way to eliminating the administrative inconsistency that has dogged police firearms licensing since 1920 but which will also make a great contribution to public safety by making avoidable tragedies like the Keyham shootings far less likely.

Other Matters

Page 34 invites respondents to make any further comments on the subject matter of the consultation.

- BASC reminds the Minister that he has undertaken to remove sound moderators from the licensing system and suggests that any change in legislation arising from this consultation would be an ideal opportunity to undertake that.
- BASC recommends that those Chief Officers who do not run efficient FELUs should be subject to financial penalties. This should be tied into mandatory service level agreements. BASC defines an efficient force as one that completes all renewal applications received eight weeks prior to expiry before the certificate expires. Also, more than 95% of grant applications would be processed within sixteen weeks.

- BASC endorses the remarks made by HM Chief Inspector of Constabulary, Andy Cooke QPM DL, that the Chief Inspector should have the ability to give directions, rather than recommendations, to police forces where an inspection identifies a failing that poses a significant risk to public safety (Page 32 of “State of Policing in England and Wales 2022, published June 2023). This is particularly apposite where firearms licensing is concerned.
- BASC believes that there should be a Firearms Licensing Regulator, akin to the Forensic Science Regulator, with statutory powers to compel Chief Officers to adopt best practice and correct any failings in their FELUs.
- BASC reminds the Minister of the Law Commission’s recommendation (December 2015) that firearms legislation should be codified in order to bring clarity and to facilitate understanding. BASC endorses this.
- Currently, there is no legal avenue to challenge the conditions placed on a Firearm Certificate by a Chief Officer. This leads to some forces imposing their own arbitrarily derived conditions to limit or effectively prohibit the use of a certificated firearm. There should be an explicit legal right to appeal these discretionary conditions by a person aggrieved by them.

For further information, please contact Bill Harriman (Director of Firearms) or Martin Parker (Head of Firearms).

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