

COUNTRYSIDE ALLIANCE BACKGROUND NOTE
POLICING AND CRIME BILL – PART 6 FIREARMS
HOUSE OF COMMONS, SECOND READING



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SUMMARY

- Firearms Law is unnecessarily complex and even those who deal with it every day often struggle to understand aspects of it. There is a general recognition that the law is in need of clarification and codification to improve the clarity and understanding of the law.
- Following a public consultation the Law Commission proposed a series of changes to firearms law to address what are seen as “pressing problems” and these are given effect by Part 6 of the Policing and Crime Bill.
- The Bill provides definitions relating to firearms including ‘lethal’, ‘component part’ and ‘antique’, and addresses deactivation and the test for ‘ready convertibility’, all based on the Law Commission’s recommendations.
- The Policing and Crime Bill presents an opportunity to bring further clarity to firearms law and is an opportunity which should not be missed. As far back as 2009 a number of technical changes were agreed between the shooting associations and ACPO Firearms and Explosives Licensing Working Group (ACPO FELWG). It was agreed by both parties that these changes would reduce the burden of administration upon both shooters and the police without any risk to public safety.

There are three additional areas which the Countryside Alliance believes could be addressed in this Bill:

- Clarify the definition of ‘occupier’
- Continuation of a certificate whilst renewal is completed
- Move expanding ammunition back to Section 1 of the Firearms Act 1968

BACKGROUND

Shooting is of enormous value to the UK both economically and in terms of conservation and wildlife management. There are 34 Acts of Parliament and numerous pieces of secondary legislation that regulate the acquisition and possession of firearms, as well as Home Office Guidance. The current legislative landscape has been the subject of a great deal of criticism for:

- The lack of coherence between the 34 different sets of legislative provisions
- The loopholes being exploited by those with criminal intent
- The fact that it is difficult to find out what is legal and what is illegal, given that the law is scattered across numerous statutes
- The fact that key terms within the legislation have been left undefined

The law is unnecessarily complex and even those who deal with it every day often struggle to understand aspects of it. There is a widespread recognition that the law is in need of clarification and codification.

LAW COMMISSION

The Law Commission set out to examine a number of the criticisms levelled at firearms law, in an effort to help improve the clarity and understanding of the law. The Commission focussed on what were seen as 'pressing problems' but also invited views on other changes which should be made to improve firearms law. The Countryside Alliance played a full part in that consultation process and worked closely with the Commission and other stakeholders.

The Law Commission's Final Report was published on 15 December 2015 and was largely welcomed by the Countryside Alliance and other shooting organisations. The Report addresses the issue of definitions relating to firearms including 'lethal', 'component part' and 'antique', and issues relating to deactivation standards and the test for 'ready convertibility'. It is these recommendations that are implemented by Part 6 of the Policing and Crime Bill.

The Report also recommended that the next stage of firearms law reform should be the codification of existing firearms law and noted other areas where reform was called for.

The Countryside Alliance would welcome the codification of firearms law but believes that the Policing and Crime Bill should not just implement the recommendations of the Law Commission but also clarify the law in a number of other areas, which would assist both the police and firearms users without affecting public safety. These are all areas where the shooting community, police and Home Office are in agreement. These further areas are set out below.

POLICING AND CRIME BILL – CHANGES TO FIREARMS LAW

Part 6 of the Policing and Crime Bill implements the majority of recommendations from the Law Commission's Report. The Countryside Alliance welcomes this Bill, and the great deal of progress that has been made in an admirably short period of time. The implementation of these recommendations will go some way towards clarifying and streamlining the legislation, reducing confusion and the administrative burden on the public and the police forces.

The amendments in the Bill make the following changes:

1. Lethality

Section 57(1) of the Firearms Act 1968 defines a firearm as a 'lethal barrelled weapon from which any shot, bullet or other missile can be discharged'. There is however no current agreed definition of 'lethality'. The Bill amends the 1968 Act to include a definition of lethality set at 1 joule. It permits slightly higher levels of up to 2.5 joules in respect of airsoft guns firing small plastic pellets. This provides certainty to the courts, police and public as to what is and is not licensable.

This change would also harmonise the English and Welsh legislation with that in Scotland. While the Countryside Alliance had reservations about setting the level so low we are content with this change, in light of the exemptions for airsoft guns contained in the proposed amendment.

2. Antique Firearm

Antique firearms are exempt from the Firearms Act 1968 so long as they are held as a curiosity or ornament. This means an antique firearm can be possessed without the need to obtain a firearm certificate and the authority of the Secretary of State. The uncertain state of the law causes difficulties for the police, Crown Prosecution Service, experts and legitimate collectors. The National Ballistics Intelligence Service presented evidence to the Law Commission that old firearms are being encountered by the police in criminal circumstances with increasing frequency. The Law Commission concluded that the current failure to define properly 'antique firearm' is a significant omission which causes difficulties in practice. Therefore, the following definition has been agreed, which the Countryside Alliance supports:

1. *its chamber is capable of being used only with a cartridge of a description specified in regulations made by statutory instrument by the Secretary of State, or*
2. *its ignition system is of a description specified in regulations made by statutory instrument by the Secretary of State*

3. Component Parts

Section 57(1) of the Firearms Act 1968 provides that the definition of 'firearm' includes 'any component part of such a lethal or prohibited weapon'. However, there is no definition of component part. The current law creates unnecessary confusion for the police, courts and border agencies in addition to the licensed firearms community. The Law Commission's proposal, with which the Countryside Alliance agrees, will now be incorporated into law and a component part will be defined as:

1. *The barrel, chamber, cylinder.*
2. *Frame, body or receiver;*
3. *Breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber,*

but only where the item is capable of being used as a part of a lethal barrelled weapon or a prohibited weapon.

4. Readily Convertible Firearms

The Countryside Alliance agrees with the creation of an offence of being in possession of an article with the intention of using it unlawfully to convert an imitation firearm into a live firearm. This will fill a current gap in legislation and is modelled upon numerous offences that already exist.

FURTHER IMPROVEMENTS

The Countryside Alliance believes that the Policing and Crime Bill presents an opportunity to bring further clarity to firearms law and is an opportunity which should not be missed. As far back as 2009 a number of technical changes were agreed between the shooting associations and ACPO Firearms and Explosives Licensing Working Group (ACPO FELWG). It was agreed by both parties that these changes would reduce the burden of administration upon both shooters and the police without any risk to public safety.

The Countryside Alliance has three particular areas of interest:

1. Clarify the Definition of ‘Occupier’

Current Home Office Guidance states:

‘Section 11(5) of the 1968 Act allows an individual, without holding a shotgun certificate, to borrow a shotgun from the occupier of private premises and use it on those premises in the occupier’s presence. Section 11(5) was amended by SI 2010/1759, to add that where the borrower is under eighteen, the exemption only applies if the occupier is eighteen or over. The presence of the occupier is normally taken to mean within sight or earshot of the individual borrowing the shotgun. The term “occupier” is not defined in the Firearms Acts, nor has a court clarified its meaning. However, the Firearms Consultative Committee in their 5th Annual report recommended that the provisions of section 27 of the Wildlife and Countryside Act 1981 be adopted. This states that “occupier” in relation to any land, other than the foreshore, includes any person having any right of hunting, shooting, fishing or taking game or fish’.

As the Guidance notes, the term ‘occupier’ has never been tested in the courts and while the Firearms Consultative Committee has recommended that the definition in the Wildlife and Countryside Act be adopted, the Firearms Act, which pre-dates the 1981 Act, remains undefined. The lack of certainty and clarity here poses a significant problem for shooters, given that no court has ever opined on how occupier is to be interpreted. Furthermore, the complicated nature of the ‘right’ to hunt or shoot was underlined in the Law Commission’s initial Scoping Consultation paper 224.

As such many legitimate shooters are prevented from lending a gun to a friend or family member on private land because, while they may be a member of a shooting syndicate or club, or otherwise have lawful authority to shoot over land, they cannot with any certainty be considered the ‘occupier’. This uncertainty in the law causes all sorts of issues with lending guns in reasonable circumstances, with one of the unintended consequences being the need to apply for shotgun certificates for children and young people so they can shoot under supervision when borrowing a gun from someone who is not the ‘occupier’.

Our proposal is to replace the word ‘occupier’ with the phrase ‘the owner, occupier or other properly authorised person’.

The effect of such an amendment would be to:

- Eliminate the present misunderstanding around who is, or is not, the occupier of land.

- Democratise the Act by breaking the link with land ownership and occupancy. In the 1960s shooting was largely associated with those who own and occupy land, but that is not the case today.
- Eliminate the need for the police to grant a substantial number of certificates to children and young people who are learning to shoot.

It should be noted that a similar provision occurs at Section 16 of the Firearms (Amendment) Act 1988 in respect of rifles borrowed from the occupier of private premises and used 'in the presence of either the occupier or a servant of the occupier'.

2. Continuation of a Certificate Whilst Renewal is Completed

Section 7 Temporary Permits were originally granted to deal with cases in which the executor of an estate needed to dispose of firearms that belonged to a deceased person. They were not meant for coping with a backlog in renewals of either shotgun or firearms certificates, but this is how they are now being used in many police forces.

Since the Countryside Alliance responded to the Law Commission's consultation the Air Weapons and Licensing (Scotland) Act 2015 has become law. Whilst we opposed the introduction of licensing for air weapons which this Act introduced, one sensible element was the renewals mechanism. We therefore suggest adapting for shotgun and firearm certificate renewals the protocol outlined in Section 8 (2) of the Air Weapons and Licensing (Scotland) Act 2015:

'Where an individual has applied for the renewal of an air weapon certificate before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the certificate is to continue to have effect until the application is determined'.

This would reduce the burden on police licensing departments with no detrimental impact on public safety. Last year's HMIC report, 'Targeting the Risk' stated that:

'7 of the 11 forces which we inspected told us that they were experiencing backlogs in dealing with renewal applications. As a result, some certificate holders had experienced occasions when their certificates had expired, prior to the renewal being approved. They told us that it could be a source of great concern, stress and worry when their licence renewal is delayed and that it left them feeling vulnerable, particularly when the delay may mean that they held their firearm unlawfully'.

It should be noted many people depend on their firearms for their livelihood, and the inability to use their firearms lawfully would undermine their ability to carry out the functions of their job. Despite this, it is not uncommon for a renewal to take around six months in some police force areas. Furthermore, the start date of the new license will align with the end date of the expired license resulting in the loss of six months paid-for license whilst holding a Section 7 Temporary Permit.

It should also be noted that some of the forces inspected had failed to issue a Section 7 Temporary Permit to individuals whose certificates had expired, putting these individuals into an illegal situation through no fault of their own. Of the 11 forces inspected by HMIC between 1 and 168 holders were currently in that category in each force. Adopting our proposal would prevent this situation from occurring in future.

3. Move Expanding Ammunition Back to Section 1 of the Firearms Act 1968

Ammunition designed to expand upon impact was 'prohibited' in 1997 (Section 5 (1A)(F)). However, such ammunition, with the necessary authorisation, is in universal use for pest control and is a legal requirement for deer stalking under the Deer and Deer (Scotland) Acts. Special authority currently has to be given on a firearm certificate for the possession of expanding ammunition, requiring additional administration by the police. Furthermore, because the reason for which authority may be granted ('the management of any estate') refers only to estates in Britain, owners of rifles for use overseas are currently prohibited from possessing expanding ammunition for their rifles in this country and they may not therefore zero their rifles with them using the ammunition which they will be using overseas.

Moving expanding ammunition back to Section 1 would reduce administrative burden and make our laws more comprehensible and coherent. It is illogical to have a type of ammunition banned in one Act and yet it is required to be used in another.

SHOOTING FACTS

- The contribution of sporting shooting to the UK economy is valued at £2 billion (GVA) according to a 2014 report¹ carried out by the Public and Corporate Economic Consultants² (PACEC) on behalf of a number of shooting organisations. The study also found:
 - Shooters spend £2.5 billion each year on goods and services.
 - Shooting supports the equivalent of 74,000 full time jobs.
 - Shooting is worth £2 billion to the UK economy (GVA).
 - Shooting is involved in the management of two-thirds of the rural land area.
 - Over 600,000 people in the UK shoot live quarry, clay pigeons or targets.
 - Shoot providers spend nearly £250 million a year on conservation.
 - Shooters spend 3.9 million work days on conservation, or 16,000 full-time jobs.
- There were 151,413 section 1 firearm certificates on issue at 31 March 2014.
- There were 582,923 shotgun certificates on issue at 31 March 2014.
- There were 1,837,243 firearms and shotguns licensed at 31 March 2014.

¹ PACEC, 2014, The Value of Shooting - The Economic, Environmental and Social Contribution of Shooting Sports to the UK.

² Carried out on behalf of the Countryside Alliance, the Country Land and Business Association and the British Association for Shooting and Conservation, in consultation with the Game Conservancy Trust.

Countryside Alliance

Background Note – Policing and Crime Bill – Part 6 Firearms (2R)

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