

Comments on the proposed Firearms (Northern Ireland) Order 2002

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The purpose of this paper is to provide a commentary on the Order, and to suggest improvements or alterations where they may be necessary.

Competence in the safe handling and use of firearms

I will deal with this topic first as the Government has specifically asked for guidance in this area.

Article 5(2)(c) of the Order provides that the Chief Constable shall not grant a firearm certificate unless he is satisfied that the applicant "is competent in the use of such a firearm or ammunition".

This wording is somewhat inappropriate because an applicant may have applied for authority to possess a firearm for a purpose other than using it. For example, a person may apply for authority to possess a war trophy with no intention of using it, or they may apply for authority to possess a firearm as part of a collection as contemplated in article 47(2) of the Order. I suggest that the word: "use" in this subsection be replaced with the words: "safe handling".

There are other notable problems with the introduction of this requirement.

The explanatory document says that the competence requirement will only be needed when a person seeks to acquire a firearm "of a different type" to those they already hold. What is "a different type"? Is a revolver a different type of firearm from a self-loading pistol, for example? Is a .22 rimfire lever-action rifle different in type from a .30-30 lever-action rifle? Is a side-by-side shotgun different from a side-by-side rifle? And so on. Any regulations promulgated must clearly subdivide types of firearm, so that an applicant knows when and when not they must provide a certificate of competence with their application.

It is not clear how this requirement will operate in relation to private transfers of firearms. If one certificate holder wishes to dispose of a firearm to another, the Order makes no provision for the first certificate holder to provide instruction to the second. A person will only be able to get instruction from a firearm dealer, his employee or "a person authorised by the Chief Constable". In essence, a person wishing to privately transfer a firearm will have to go to the local gun shop, get instruction, get authority and only then can the transfer take place. This is somewhat cumbersome.

Another problem is that it is entirely unclear what impact this requirement will have on firearm dealers and others, because it depends on a number of unknowns, such as the number of transactions in firearms, when the competency test must actually be taken (based on the definition of "type" outlined above), and how many other people the Chief Constable authorises. It must be pointed out here that simply because a person is a firearms dealer does not *ipso facto* make them knowledgeable about every firearm they may sell, many of which will doubtless be special orders, especially in Northern Ireland where the number of firearms an RFD can keep in stock is limited. They therefore may not be qualified to give such a competence test.

Finally, the question arises of how a competence test is to be given if there is no suitable firearm on-hand with the firearm dealer for him to show the applicant how to safely handle it. For example, a certificate holder may want to acquire a firearm from another certificate holder, and dutifully goes to his local dealer in order to obtain a competence certificate. However, the dealer has no such firearm in stock, and cannot get one except as a special order. What does the applicant do then?

I would suggest to ease the introduction of this requirement that the "types" of firearm be defined somewhat broadly; that full members of authorised clubs be exempt from the requirement when the application relates to a type of firearm the club uses; and that it not be applied to certain simpler or less dangerous types of firearm, notably airguns and perhaps shotguns that do not have a magazine. In addition, it would be helpful if the police service itself had someone able to provide the competence test to resolve situations relating to private transfers, as outlined above.

Definition of “component part” of a firearm

The definition of a component part has been much improved, I assume it is based on recommendations of the Firearms Consultative Committee, however, one worrying point is the inclusion of “any magazine”, which presumably includes a detachable magazine, in Article 2(2) of the Order.

This alteration in the law is not mentioned in the explanatory document, even though it potentially has the greatest impact of any change in the firearms law in Northern Ireland.

My understanding is that this provision has been included because of concerns expressed by the forensic service that the uncontrolled sale of magazines makes them easily available to people who may illegally manufacture firearms.

The impact of changing the law in this area is however very considerable.

Many people possess magazines for firearms as curiosities, and they are widely sold for example by Army & Navy shops, and also at militaria fairs. A person in possession of such a device, will, unknowingly, on the effective date of the Order be in possession of an item the unlicensed possession of which carries a serious criminal penalty.

It is also entirely unclear what: “any magazine” means; there is no further definition given. Does it for example include belts for a machinegun, and if so, does that mean the unlicensed possession of a single disintegrating link would become unlawful (while at the same time, possession of a cartridge case would not be)? What of the drums such belts are kept in for feeding into a machinegun?

The inclusion of this provision also runs contrary to the removal of deactivated firearms from certification. Nearly all deactivated pistols and many other deactivated firearms (such as bolt-action rifles) have operable magazines, as they are not altered during the deactivation process. The legal status of a magazine supplied with a deactivated firearm is thus unclear. Is it subject to certification or not, and if not, what is the purpose of including magazines in the definition of a firearm component, when anyone will be able to obtain one simply by buying a deactivated firearm? And if they are, it renders the removal of deactivated firearms from certification redundant.

There is also the issue of the effectiveness of such a requirement – magazines will still not require a certificate in Great Britain or many other European countries, so it will be an easy requirement to evade. A magazine is simply a metal box with a spring in it, and not a difficult item to smuggle.

Another concern is the amount of paperwork such a re-definition will create; at least 10,000 firearm certificates on issue in Northern Ireland relate to firearms that have removable magazines. These will all have to be called in and varied to include each magazine a certificate holder possesses. In addition, applications for variations will increase substantially as magazines are a commonly acquired accessory and are frequently replaced.

I understand the concerns of the forensic service, but this is an attempt to bolt the door a very long time indeed after the horse has bolted, and the negative impacts of such a change in the law in this area far outweigh any concerns the forensic service has. I strongly suggest that this provision be removed from the Order.

Deactivated firearms

The Order includes an evidential provision relating to deactivated firearms; in essence any firearm that has been deactivated and inspected according to the provisions of the section is no longer a firearm. It is worth noting here that under the 1981 Order, a deactivated firearm may not be controlled under the Order if it is no longer a “lethal barrelled weapon”, so for example, a firearm crushed by a steam roller certainly would not be a firearm within the meaning of the 1981 Order, but there is a substantial grey area as to how deactivated a firearm needs to be to not qualify as a firearm under the Order. However, the Firearms (Northern Ireland) Order 1983 gives a description of when an imitation firearm would be a firearm under the 1981 Order; it is reasonable to assume that courts would usually

hold that a deactivated firearm that could not be made to work in the same way as an imitation firearm not subject to control (under the 1983 Order) is not a firearm.

The new provision in the draft Order is worded after that in the Firearms (Amendment) Act 1988, with a big difference being that it is worded so that it only applies to firearms deactivated after 1st October 1995.

The deactivation standard in Great Britain was altered on this date due to two cases in which deactivated submachineguns had been restored to working order and used in armed crimes. The deactivation standards for all firearms were reviewed at this time, but the deactivation process required only changed substantially for submachineguns and automatic rifles, which in essence under the current guidelines have to be welded solid after various components have been removed or altered.

However, it is important to note that the bulk of deactivated firearms, i.e. pistols, bolt-action rifles, shotguns, light to heavy machineguns, etc. were not affected in a major way by the change in the deactivation standard which remains substantially the same as it did prior to October 1st, 1995.

Thus the wording in the draft Order creates a situation whereby a person in possession of a bolt-action rifle for example that was deactivated in 1994 could be convicted of illegal possession of a firearm, whereas a person in possession of the same type of firearm deactivated in 1996 would not be, even though both firearms have been deactivated in essentially the same way.

Therefore I would strongly recommend that Article 2(7) of the draft Order be amended so that the 1995 limitation be applied only to automatic rifles and submachineguns, or be removed altogether. I should note that in discussions with the forensic service and the Home Office, there appears to be no evidence that an automatic rifle deactivated to the pre-1995 standard has ever been recovered after being restored fully to working order, and certainly no such reworked firearm has ever featured in an armed crime in Great Britain.

Referees

The Order introduces the requirement for referees in relation to an application for the grant or renewal of a firearm certificate. This requirement is copied from the Firearms (Amendment) Act 1997. One curious provision in the draft Order however is the limitation on the suitability of a referee to someone who is resident in Northern Ireland. The 1997 Act also limits referees to people resident in Great Britain. There appears little logical reason for this restriction, as the police in Northern Ireland can easily check with the referee's local police force to determine whether they have any information regarding the referee's background, in addition, it is just as easy to do a PNC check on such a person.

This requirement will create problems for people who have recently moved to Northern Ireland from Great Britain, and indeed, I have been contacted by one Northern Irish man who upon applying for the renewal of his firearm certificate after recently moving to London found that he could not find anyone to serve as a referee!

I therefore recommend that in Article 4(4)(d) that the wording be changed to: "resident outside the United Kingdom."

Young persons

The Order retains the age limit of 16 for the grant of a firearm certificate and in some respects makes it more restrictive. It is not clear why such a harsh regime towards young people using firearms is present in the Order.

The age limit of 16 comes from the Firearms Act 1920, which applied an age limit of 14 to Great Britain and the higher age limit to Ireland. However the 1920 Act did not apply to shotguns in Great Britain, and in addition there were many other exemptions for cadet corps and so forth, so in practice the age limit of 14 did not apply to many types of commonly owned firearm.

Over the years, certification has been introduced for shotguns in Great Britain although the age limits are lower than in Northern Ireland, and there still exist many exemptions in section 11 and other sections of the Firearms Act 1968 that allow young people to possess and use firearms.

There is little conceivable threat that could be imagined for example, if people under the age of 16 could possess and use firearms (especially air rifles and .22 rimfire rifles) on the premises of a firearm club of which they are members, especially if they are properly supervised. Similar exemptions could safely be provided for supervised young people while engaged in clay pigeon shooting or pest control – the key to safety is proper supervision. As the Order stands, it is unlawful for anyone under the age of 16 to even touch a firearm, other than an air gun with a muzzle energy of one joule or less.

I therefore suggest that an age limit of 14 be applied to the possession of a firearm and the grant of a firearm certificate; and that any use or possession under that age require supervision by a person aged 21 or older. An age limit of 17 should apply to the acquisition of a firearm from a firearm dealer or person other than the guardian of the certificate holder.

Such changes would move Northern Ireland legislation more in line with the law that exists in Great Britain, and prevent Northern Ireland legislation from being needlessly punitive.

Exemption for low-power airguns

The Order provides, in Schedule 1(9), an exemption for air guns that have a muzzle energy of one joule or less; this would affect “airsoft” guns. Although current practice in Northern Ireland is to license such guns, in reality it is open to question whether such an interpretation of the 1981 Order would hold up in court, as the Forensic Science Service has published guidance that indicates that any air gun with a muzzle energy of one joule or less is not a “lethal barrelled weapon” and thus not subject to control under the Firearms Act 1968, and by inference, the 1981 Order.

In essence therefore, the exemption in the schedule represents the application of control to these guns, rather than the removal of it. It should be noted however that as such a low power airgun is not a “lethal barrelled weapon” that the exemption could become redundant, as it not clear what penalty a court could apply to unlicensed possession of such a gun if it is held to not be a firearm. For the exemption to work as intended, guns which are not “lethal barrelled weapons” would have to be expressly included within the definition of a “firearm”.

Visitor’s firearm permits

The draft Order contains provisions that are essentially identical to those in the Firearms (Amendment) Act 1988. However, it is not clear that those provisions, while they make sense in Great Britain, make as much sense when applied in Northern Ireland.

Currently, the overwhelming majority of people who hold non-resident Northern Ireland firearm certificates are residents of the Republic of Ireland; they frequently visit Northern Ireland to use their firearms there. The situation is different because there is a land border in Ireland, whereas a person visiting Great Britain has to come from overseas and such visits are more likely to be less frequent than those of a resident of the Republic of Ireland visiting Northern Ireland.

The net effect will be that instead of renewing their non-resident firearm certificates every three years, residents of the Republic will instead renew their visitor’s permits every year, effectively tripling the amount of paperwork for the police service, with no benefit in terms of public safety.

Article 13(4)(c) also assumes that a visitor is bringing their firearm with them; once again, this is frequently not the case as many types of firearm are banned in the Republic, and residents of the Republic visit Northern Ireland to borrow a pistol or 7.62mm calibre rifle, using the authority granted to them via their non-resident firearm certificates.

Another large problem is that Article 13 assumes that all visitors to Northern Ireland will be using their firearms for sporting purposes, or as a display of a collection of firearms. While this makes sense in Great Britain, such is not the case in Northern Ireland, where currently two non-resident firearm

certificates are on issue to people for the purposes of personal protection. It is unrealistic to expect such a person to have a sponsor apply for a visitor's permit in their name, an impractical and cumbersome procedure, especially as the visitor could not name some specific event that they are importing the firearm for.

I therefore recommend that the Chief Constable should have the power to waive the requirement that a permit application must be made by a sponsor (for example in the case of applications by residents of the Republic or those importing firearms for personal protection reasons); that the maximum length of time a permit can be issued for should be five years; and that a permit can be issued to allow the borrowing of a firearm already in Northern Ireland by a permit holder.

Notifications of dealings involving firearms

Article 41(2)(b) applies a 72-hour limit to the notifications of firearm transfers; it is not clear why the longer time period of 7 days present in Great Britain has not been applied in Northern Ireland. This is bound to create confusion, especially as regards private transactions of firearms between certificate holders, where one holder lives in Great Britain and the other in Northern Ireland.

Measurements

The Order contains many metric measurements that are translations of Imperial measurements; many of these are quite awkward to measure, such as the 60.96cm barrel length of a smoothbore firearm. I suggest that these measurements be rounded down to the nearest centimetre, so in the case of a shotgun barrel, the minimum length would be 60cm. This would also fit in with the European Firearms Directive that defines a shotgun barrel of a Category C shotgun as 60cm. Many European shotgun makers make their guns with a 60.1 cm barrel length because of this definition; rounding off the length to 60cm would remove any anomaly in the Order, for example in Articles 46(1)(c) and 65(2). The overall length in Article 46(1)(c) could also be safely reduced to 100cm for ease of understanding.

This difficulty also extends to measurements in ft/lbs that have been converted to joules; for example in Schedule 1(8) – such measurements could safely be rounded up to the nearest joule.

Appeals to county court

Article 68 introduces the concept of an appeal to a county court, this is needed for the Order to be in compliance with Article 6 of the European Convention on Human Rights. However, the grounds for appeal are somewhat narrow, and I refer the Northern Ireland Office paragraph 12.4 of the 11th Annual report of the Firearms Consultative Committee, which suggests that in order to be in compliance with the ECHR, all administrative decisions that are made must be subject to appeal. So for example, a refusal to grant prohibited weapons authority under Article 46(1) should be subject to appeal.

Production of firearms for ballistic and other tests

Article 52 broadens the provisions in the 1981 Order to encompass airguns and shotguns. It is not entirely clear why this is necessary, and indeed why the article is necessary in relation to other types of firearms. No explanation has so far been provided as to why it is necessary, either in the 1998 consultation paper or in the explanatory document accompanying the draft Order. Why is this article necessary, and more importantly, has this requirement served any useful purpose? Presumably it was conceived as an anti-terrorist measure, else it would also appear in the laws of Great Britain.

How many terrorists have applied for firearm certificates for firearms used in terrorist offences, and are thus in possession of firearms to which article 52 would apply? Moreover, is it realistic to believe that a criminal of any ilk would go to the trouble of obtaining a firearm certificate for a .22 rimfire rifle, or an air gun, or similar firearms, which are not of any real use to a criminal?

For these reasons I question the value of article 52 of the draft Order, and recommend that it be removed.