

What is the law regarding the granting of a Firearm Licence and can you appeal should your application be refused?

Introduction:

Following the recent tragic cases of Derek Bird and Raoul Moat the granting of firearm/shotgun licences may be placed under greater scrutiny. Police Forces throughout the UK have introduced a variety of new questions to be asked at the interview stage of an applicant whether for a new or renewal of a licence. This article is intended to set out the current legislation and the process of appeal should an application be refused.

An overview of the law relating to granting firearm certificates:

The relevant Law governing Firearm certification is found principally under the provisions of the 1968 Firearms Act.

Statute: The 1968 Firearms Act [“The Act”]

- *Section 1: Legal Requirement to have a certificate*

Section 1 of the Firearms Act 1968 makes it is an offence for a person—

*(a) to have in his possession, or to purchase or acquire, a firearm to which this section applies **without holding a firearm certificate in force** at the time, or otherwise than as authorised by such a certificate;*

(b) to have in his possession, or to purchase or acquire, any ammunition to which this section applies without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate, or in quantities in excess of those so authorised.

Section 1 of the Act is supplemented by section 48 requiring those who have been granted firearms certificates must have them readily available for inspection, stating more particularly:

- *Section 48: Production of certificates.*

(1) A constable may demand, from any person whom he believes to be in possession of a firearm or ammunition to which section 1 of this Act applies, or of a shot gun, the production of his firearm certificate or, as the case may be, his shot gun certificate.

(2) Failure to produce may result in Firearms being seized and detained

So how do you apply for a firearm certificate?

An application is made in accordance with Section 26 (a) of the 1968 Act as amended by Section 37 of the Firearms (Amendment) Act 1997

- **Section 26 (a):**

(1) An application for the grant of a firearm certificate shall be made in the prescribed form to the chief officer of police for the area in which the applicant resides and shall state such particulars as may be required by the form.

The prescribed form is known as a F101

<http://www.leics.police.uk/files/library/documents/ff101.pdf>

As well as completing the F101 the applicant has to supply four passport photographs and the details of two people willing to act as their referee.

- Subsection (3)(b) of section 26A states that before considering an application for a firearm certificate, the chief officer of police *may* require each referee nominated by the applicant to provide 'a statement in the prescribed form to the effect that he knows of no reason why the applicant should not be permitted to possess a firearm'.

This prescribed form is known as a F125

<http://www.leics.police.uk/files/library/documents/ff125.pdf>

It is worth highlighting that under the existing legislation it is not mandatory that each firearms certificate application be accompanied by an F125 form, this is a matter for the Chief Officers discretion.

The three limb test - Fitness / good reason / public safety

Upon receipt of an application to acquire or renew a firearms certificate the Chief Constable must apply the three limb test as set out in **Section 27** of The Act

Section 27(1) of the Firearms Act 1968 states that

‘A firearm certificate shall be granted where the chief officer of police is satisfied—

*(a) that the applicant is **fit to be entrusted with a firearm** to which section 1 of this Act applies and is not a person prohibited by this Act from possessing such a firearm;*

*(b) that he has a **good reason for having in his possession**, or for purchasing or acquiring, the firearm or ammunition in respect of which the application is made; and*

*(c) that in all the circumstances the applicant can be permitted to have the firearm or ammunition in his possession **without danger to the public safety or to the peace.**’*

Statutory comment:

A presumption in favour of granting

The wording of section 27 suggests there is a rebuttable presumption in favour of granting firearm certificate. In stating a certificate ‘shall’ be granted if the Chief Constable deems the provisions of S.27 (1) (a) (b) & (c) to be satisfied.

The cases of **Anderson v Neilans (1940)** and **Joy v Chief Constable of Dumfries and Galloway (1966)**¹ suggests that the chief officer should consider the application firstly *“from the standpoint of the applicant rather than from that of a possible objector”*.

Interestingly the wording of the equivalent provisions for issuing Shotgun certificates [under section 28(1) (A) of the Firearms Act 1968] suggests there is a rebuttable presumption against issuing shotgun certificates, beginning *‘No such certificate shall be granted or renewed if the chief officer of police...’*

¹ As highlighted at paragraph 10.28 of the Home Offices’ guidance on Firearms Law

It can be seen there exists the potential for huge variation of standards being applied across the UK as the provisions of section 27 places the decision to issue a firearm certificate entirely in the hands of individual chief constables. The absence of a centralised authority governing application decisions has led to concerns that the existing law is not being consistently applied by the various police forces.

The provisions of section 27 should be read in light of Home Office Guidance

The **2002 Home Office Guidance on Firearms Law** was introduced to encourage a uniform approach to issuing firearm certificates. It should be stressed that ‘guidance’ is simply that, whilst the procedures it advocates are regarded as best practice, the guidance does not impose any statutory duties upon chief constables which they are obligated to follow.

<http://www.clach-sbrc.org.uk/miscpaperwork/firearmsguide.pdf>

An examination of the three limb test

Limb One

Fitness to be entrusted

Determining whether an applicant is fit to bear arms is recognised as being a particularly sensitive and difficult area for designated officers to explore. It may for example require questions being asked about an applicant’s mental health.

The provisions of Chapter 12 of the Home Office Guidance should be considered:

Is the applicant restricted from owning a firearm by law?

Section 21 of 1968 Act states:

(1) A person who has been sentenced [to custody for life or] to preventive detention, or to imprisonment or to corrective training for a term of three years or more [or to youth custody [or detention in a young offenders institution] for such a term]... shall not at any time have a firearm or ammunition in his possession.

Does the applicant have “Intemperate Habits”?

Chapter 12 provides a non-exhaustive list of areas that may be explored/considered in interview [whether or not an officer discusses such will largely depend on the information

provided in the F101 & F125 forms] such as alcohol and drug abuse and evidence of aggressive and antisocial behaviour

Is the applicant of sound mind?

Whilst the judgement as to whether a person is fit to be entrusted with firearms rests in law with the police, officers should not conduct an isolated assessment of an applicant's mental health. Any concerns should be supported by medical evidence provided by the applicants GP. It is a requirement that all applicants provide the contact details of their GP and agree to have their records examined. It is important to note however that Home Office Guidance states that an agreement to have medical records examined does not mean that this should be done in every instance but rather GPs should only be consulted when there are "**genuine doubts or concerns about the applicant's medical history that may have a bearing on the applicant's suitability to possess firearms**"²

Mental illness not an automatic bar to holding a license:

Paragraph 12.10 of the 2002 Home Office Guidance states:

"It should be remembered that simply because a person has received treatment in the past for certain illnesses or conditions, such as depression or stress, it does not automatically follow that they are unfit to possess a firearm. It is simply one of the factors to be considered"

Paragraph 12.16 encourages a holistic approach to assessing an applicant's fitness adding:

*"Decisions on applications and revocations should be made on **an assessment of all the relevant information and must be made on the individual merits of each case**. Evidence of previous convictions or intemperate behaviour, for example, might not result in an automatic refusal if, since the conviction, the applicant has led a law-abiding life and shown a capacity to be entrusted to possess a firearm."*

² Para 10.20

Limb Two

Having a good reason

Each case must be judged on its own merits, there is not a finite list of good reasons available for wanting to possess a firearm. Where an applicant wishes to possess more than one firearm a good reason in relation to each must be provided

Paragraph 13.6 of the Home Office guidance states:

“Good reason should be neither confined to need nor equated with desire... On the other hand, a simple wish to own a particular sort of firearm is not in itself “good reason” without further supporting evidence of intentions”

It goes on to list reasons typically provided [though this is not an exhaustive list] such as for shooting certain types of animals or target shooting.

Limb Three

Public Safety

Paragraph 5.7 of the Home Office guidance states; a Court in England and Wales that imposes a suspended sentence may order the forfeiture of a firearm or cancel a firearm or shotgun certificate. Even if a court does not make such an order, chief officers of police have the power to revoke a firearm or shotgun certificate in certain circumstances. In particular when they are satisfied that the holder is of intemperate habits or of unsound mind, is otherwise unfit to be entrusted with a firearm or can no longer be permitted to have a firearm or ammunition without danger to the public safety or to the peace.

Applying the Law:

The steps taken to acquire a license

The F101 / F125 (for referees)

The process begins by filling in and submitting the requisite forms.

Originally adapted from a passport form, these forms have been subject to criticism, notably because of the way in which certain questions have been worded. For example, question 18 of the F125 without any further specification asks referees:

‘What do you know of the applicant’s attitude towards firearms?’

All sections on the prescribed form must be completed. A failure to do so is likely to result in an application failing.

Rule 3(1) of the Firearm Rules 1998 requires that details about all previous convictions must be given even if spent – *[by virtue of Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975]*

Any information provided must be truthful. As a legal document signed by the applicant it is a criminal offence to make false statements. Where there are concerns about the veracity of the form the onus is on the Police to make necessary enquiries.

According to The British Association of Shooting and Conservation [BASC] guidance³ *‘if the police do not believe you it is up to them to check, not for you to offer proof’*.

THE INTERVIEW – no prescribed form

Once the requisite forms have been completed, the next steps taken by the police will normally involve an interview with the applicant, a home visit and an inspection of their security.

With the exception of the Metropolitan Police; Merseyside and North Wales each force employs dedicated officers employed specifically to deal with firearms.

There is no prescribed form in which these interviews should take place nor is there a list available of prescribed questions that each officer should be asking accordingly there will be significant variations in approach – from officer to officer and from force to force.

The focus of the questioning will largely depend on the contents of the forms submitted⁴ and the local demographic – for example one may expect a greater degree of questioning on security arrangements in an area that has a high rate of burglary.

The **Firearm Security Handbook [2005]** - *produced by the Home Office and the Association of Chief Police Officers [ACPO]* at paragraph 1.7 states that when addressing the issue of

³ *ibid*

⁴ In some cases the more detailed the answers the less likely that further questioning will be required: “If question 19 is completed as fully as possible, there should be no reason for the police to seek extra information about you” – see BASC guidance on providing ‘Good Reasons’ – November 2009

security particular regard should be given to: *The property crime in the area; the remoteness of the applicant's premises; the extent to which the property is occupied etc.*

- *Intrusive questions - applicant co-operation*

The determination of an applicant's fitness to possess firearms should be sensitively handled by an interviewing officer – in line with Home Office guidance. However, with no ceiling placed on what can be asked, the questioning process may be potentially intrusive. There is no legal requirement that applicants provide answers to all of the questions asked, but clearly the extent of an applicant's co-operation with the police will have a direct bearing on the success of their application.

Certain forces have introduced supplementary questions following the recent Derek Bird disaster in Cumbria. The questions are so vague and given such a broad brush that they are open to a huge disparity in interpretation, depending upon the subjective opinion of the officer asking the questions. It may well be that a strange anomaly could exist whereby one person could be refused a licence; another granted it and both giving the same answer to the same question.

An example of a supplementary question in one of the forces is ***“Do you have any financial concerns?”*** If one answers ***“yes, who doesn't !”*** but doesn't elaborate, it is feasible that one officer may take this on face value and not pursue it where as another may want to ask further intrusive questions as to personal finances.

What if the applicant does not want to reveal this further information? Is this a justifiable reason to refuse an application?

Surely the supplementary questions should be considered properly and phrased more accurately to give an insight into the area that is behind the rationale for asking the questions in the first place. .

- *“Elementary co-operation”*

The British Association of Shooting and Conservation [BASC] guidance in this area notes the recommendations of the Cullen Report, which was compiled following the Dunblane massacre. This report stressed the need for *“elementary co-operation with the licensing authority”*, however BASC states this requirement should not be construed as needing to

answer all questions put to an applicant, particularly where they are deemed not to be part of the normal process⁵

Home Office Guidance adds that legitimate complaints made by an applicant to the Police about the licensing process should not be viewed as being un-cooperative:

“Care should be taken to ensure that reasonable complaints about delays or inappropriate handling of a case are not categorised as a failure to co-operate⁶”

Failed applications

- *Providing reasons – good practice but not a legal requirement*

Whilst it is good practice to furnish an applicant with reasons for why their application was unsuccessful, in order for them to assess whether the decision was justified and possibly appealable, there is no statutory requirement that reasons be given.

The 2002 guidance states at paragraph 10.27:

*“Chief Officers **should** give the reasons for their decision to refuse an application for a firearm certificate, and the applicant should be informed that they may appeal against this decision.”*

Appealing a decision

The relevant law – section 44 & Schedule 5 of the Act

Under Schedule 5 of the 1968 Act an appellant **must** give notice of their appeal to the administrator of the Crown Court and to the chief officer of police concerned within 21 days after the date on which they received notice of the decision of the chief officer against which they wish to appeal.

Section 44 of the 1968 Firearms act states:

(1) An appeal against a decision of a chief officer of police under section 28A, 29, 30A, 30B, 30C, 34, 36, 37 or 38 of this Act lies—

⁵ See BASC guidance on ‘Applications for the Grant and Renewal of Shotgun Certificates’ – February 2009. Whilst this guidance relates to Shotgun applications much of the commentary is equally applicable to the procedures involved in Firearms applications.

⁶ Para 12.13

(a) in England and Wales, to the Crown Court; ...

(2) An appeal shall be determined on the merits (and not by way of review).

(3) The court or sheriff hearing an appeal may consider any evidence or other matter, whether or not it was available when the decision of the chief officer was taken.

Additional conditions

Section 27(2) of the 1968 Firearms Act states:

*'A firearm certificate shall be in the prescribed form and **shall specify the conditions (if any) subject to which it is held***

The existence of the bracketed words '(if any)' within this provision suggest that it is assumed additional conditions should not be added *per se*. Richard Worth in Home Office Guidance provided in 1999 stated; *"In general we would advise the police to exercise caution in imposing conditions that are unduly restrictive."*

Theoretically a Chief Constable can prescribe whatever conditions he deems fit however Appendix 3 of the Home Offices guidance provides a list of standardised conditions that are usually applied if deemed appropriate. Additionally guidance is provided on when conditions are to be added.

Para10.33 of the 2002 Home Office Guidance states:

*"Possible conditions which may be applied are listed at Appendix 3 as a guide to firearms licensing officers. They should be used, where the individual circumstances require it, to ensure **consistency of practice between police forces**. Exceptionally, chief officers of police may impose other conditions appropriate to individual circumstances."*

No right of appeal

Significantly, there is no right of appeal against the conditions attached to a firearm certificate, confirmed in the case of **R v Cambridge Crown Court ex parte Buckland [1998]**.

Where conditions are opposed by an applicant on the grounds that they are too onerous for example, the usual recourse is to have them judicially reviewed, where the issue of whether or not they are ['Wednesbury'] unreasonable will be considered.

Relevant commentary on the imposition of firearms conditions is provided by BASC in an article entitled ‘*Additional Conditions on FACs*’ published in September 2009. This provides advice to Firearm Licensing Staff. At page three of this advice lists the following attributes that additional conditions must have, in line with Home Office Guidance:

“They must be lawful; unambiguous; Reasonable; Proportionate; Non-contradictory; demonstrably beneficial to the public safety; properly notified and evidenced”

The reasons for the conditions should be provided though again this is not mandatory.

One can only hope that the Government gives further guidance to officers across the length and breadth of the country in order that the sensible approach as outlined above, regarding the imposition of conditions, is applied in an even and consistent manner.

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