

## Feature

# Conditions on firearm certificates

by NGO firearms adviser, George Wallace.

THIS SUBJECT CAUSES MORE PROBLEMS FOR NGO members than any other aspect of firearms licensing. Although restricted to a few Constabularies, the volume of enquiries indicates that it causes untold frustration.

Let's have a look at the problem first and then move on to the solution.

It is a criminal offence to fail to comply with the conditions on a firearm or shotgun certificate. Although the police have no power to add conditions to shotgun certificates, some add unnecessary, unreasonable, probably unlawful and always unenforceable conditions on firearm certificates.

The police would not know if you shot a wild boar or a rabbit with a .308 that was only conditioned for deer; and provided it is a safe shot it's not their business. But because we are law-abiding, we try to abide by the rules and ask for the conditions to be altered to allow us to shoot other lawful quarry.

The usual response from the licensing department is that you have not shown good reason for them to allow you to shoot, for example, muntjac or Chinese water deer with your .222 or wild boar with your .308. That is a distortion of the legislation and available guidance.

**As certificate holders, we have to show good reason for the possession of each firearm but, when it comes to conditions imposed by the police, it is *they* who must be able to show good reason for imposing restrictions. That is the Law and that is the Guidance.**

Whatever the reason for refusal to put helpful conditions on certificates, the frustration engendered brings the good name and professionalism of the Constabulary into disrepute. Let's look at the facts...

### THE FIREARMS ACT 1968 AS AMENDED

Section 27(2) of the Act says that a firearm certificate *shall be in the prescribed form and shall specify the conditions (if any) subject to which it is held*. There are four statutory conditions

that appear on all certificates and require the holder to sign the certificate, notify the police of a change of address, store rifles and ammunition safely, etc. But when it comes to police imposition of extra conditions, Parliament, in putting '*if any*' in brackets, seems to have taken the view that extra conditions would be the exception rather than the rule. That is my opinion and it is largely supported by Home Office Guidance.

### HOME OFFICE GUIDANCE TO THE POLICE

This is a hefty volume in whose original preparation I played a small part. It is issued by the Home Office to guide the police in their administration of firearms legislation, in particular licensing.

Section 1.4 of the Guidance says that its purpose is to ensure consistent application of the legislation across the Country and Sect 1.6 tells the police that the Secretary of State attaches great importance to that. It then says that all forces should seek to comply where possible and that decisions to do otherwise will need to be justified.

Section 10.28 tells us of case law which makes it a legal requirement for the police to consider an application from the standpoint of the applicant rather than from that of a possible objector. That advice appears again in Section 13.6.

Section 10.35 says that the chief officer may impose extra conditions *if he feels that they are necessary to ensure effective operation of the firearms controls and minimise risk to public safety* [my italics].

Section 13.14 says that once *good reason* has been established, any conditions on the certificate should allow the holder to deal with reasonable eventualities which might include, for example, other lawful quarry, humane despatch of livestock, target practice, etc.

This is not to suggest that all possible uses should be listed – a list is, by definition, restrictive – but only that conditions (if any) should not prevent the certificate



holder from carrying out what would otherwise be a lawful act.

It was this that caused the NGO to propose and ACC Adrian Whiting to accept, as per his circular to all forces in 2009, that once 'good reason' is established for possession of a firearm, any conditions should allow the certificate holder to deal with other lawful quarry. That wording puts the onus on the shoulders of the certificate holder, where it must inevitably rest, to behave safely and within the Law.

It is therefore almost certainly *ultra vires* for police to impose conditions preventing a certificate holder from carrying out an operation that would otherwise be lawful. They are there to enforce the Law, not to invent or embellish it. To do so may be an infringement of our human rights.

There is no right of appeal to the Crown Court against the imposition of unreasonable conditions, which leaves us with only negotiation and, failing that, formal complaint.

It is unnecessary and sours relations between ourselves and the police. In the end, we need each other because, as Alan Eastwood (the then Chairman of the Police Federation) said in the *Observer* some years ago: "In a democracy, policing is impossible without the consent of the public." I very much hope that the Association of Chief Police Officers will be able to put its house in order so that that consent, as far as shooters are concerned, is not put in jeopardy.