



RESPONSE TO PROPOSALS FOR LICENSING AIR WEAPONS IN SCOTLAND

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A BUTTERFLY UPON A WHEEL

Introduction

THE TRADITIONAL consultation process is one in which the powers that be set out what they perceive as the problem, indicate what their favoured solution is and then consult as widely as need be to test the worth of their proposals and to identify side issues, such as 'unintended consequences'.

This consultation starts out, in the Minister's foreword, by indicating that the air weapon 'problem' is insignificant (195 offences in 2011–12), getting smaller and at a 34-year low. With that said, the Minister is clear that the Scottish Government has wanted to 'do something' about air weapons since 2007: in other words, their proposals were adopted as a policy without identifying the problem that licensing (or certification) is intended to solve.

Or not. The Minister identifies the problem as infinitesimal. The solution to that problem, buried in the consultation document at paragraph 63, is to create new air weapons crimes; and since there just aren't enough criminals using air weapons to meet statistical demand, the objective appears to be to create a new set of laws for more people to break and thus to keep the police and other publicly-funded bureaucrats in work for years to come.

There is not one word in the consultation document to explain either the current problem or how this solution is intended to tackle it. The 195 crimes committed with air weapons, reported by the Minister from the most recent figures, as are not discussed, broken down by type of offences, or mentioned at all; never mind in a useful way.

This becomes significant when one notices, at paragraph 16, that the very definition of an air weapon is ambiguous. So the hardware they included in the 195 figure may not actually be air weapons at all. They might come within a different definition. In the 1990s, for example, the Home Office researched the factoid that "2,000 guns" were being stolen annually and found that most of them were not firearms at all but glue guns, nail guns, hot-air guns – stuff that fitted the 'guns' tick box on burglary report forms.

What we *can* determine from this figure is that the crimes are contrary to *existing* laws, so they would not be addressed by a new licensing regime. Those laws might include the Firearms Act, 1968, as amended; section 21, for example, makes possession of a firearm an offence for a person who has previously been in prison. The ban lasts for five years after release if the sentence was three months or more, and for life if the sentence was three years or more.

Robbery with an air weapon is contrary to the Theft Act, 1968. The Road Traffic Act, 1972 makes an offence

of discharging a firearm too close to the centre of a carriageway for the comfort of road users; and so on. Everything from simple possession by some people to extremes of reckless abuse by the same people or others might be in that 195 figure.

Part One The Consultation Paper

1 – Ambiguity (1)

1.1 It would make some sense to resolve the ambiguity of what is being discussed in order to discuss it intelligently. 'Firearms' historically are those in which some fuel is burned to generate the propulsion of the missile, so a trebuchet chucking eight-to-the-ton rocks is not a firearm. The industrial revolution found other means of propulsion besides gunpowder; inert gases, air, water, elastic, gravity etc. Later governments have 'adopted' the term firearm to include some (but not all) propellant systems in addition to those which burn fuel and use the resultant gas for propulsion.

The law lacks a precise definition of what an air pistol or air rifle is. The Pistols Act, 1903, led to a case in the High Court of Bryson v Gamage Ltd (1907, 2K.B.630), in which the question of whether an air pistol was a firearm within the meaning of the Act or a toy, was left to magistrates to decide as a matter of fact and degree.

In the 1920s, an 'air pistol' was held (Saint v Hockley 41 TLR 555) to (also) be an air gun or air rifle, which complicates later vague uses of the words.

The term 'rifle' means that the inside of the barrel is scored with spiraling grooves to cause the missile to spin about its own axis, so the term 'rifle' does not distinguish between types that could be worn in a belt holster and types that would have to go in a saddle boot on the horse. The Home Office definition of a rifle is "a weapon fired from the shoulder held in both hands". If taken literally, this includes shotguns and bazookas, both of which are smooth-bored.

'Pistol' is unmentioned in current firearms legislation except in the Firearms (Dangerous Air Weapons) Rules 1969. Since rifled arms would be rifles, according to Collins dictionary, one assumes that 'pistols' are smooth-bored, so it's an alternative to 'air weapon' – maybe.

The status of pneumatics came up twice in the 1997 legislation, once when CO₂ variant 'firearms' were dropped out of section 1 controls and the other when 'small firearms' were raised from section 1 to section 5, so if a smooth-bored air 'pistol' generates more than 6

foot/pounds at the muzzle it's a prohibited weapon. If it's a small firearm dimensionally, has a rifled barrel and generates more than 6 foot/pounds, only a court can decide. We say it's a rifle, and we have a dictionary to prove it.

1.2 The government gave itself the power to declare certain air guns and air rifles 'especially dangerous' in 1920. The government's definition in 1969 for the dangerous air weapons rules needs looking at, viz:

- The rules set a maximum kinetic energy at the muzzle for an air pistol of 6 foot/pounds and for an air weapon other than an air pistol of 12 foot/pounds.
- The rules exempt those air weapons designed for use underwater.
- The rules include no definitions or interpretations, referring the reader instead to the Interpretation Act 1889 (amended and consolidated in 1978), which offers no specific way of interpreting the difference, if any, between the three 'types'.
- The terms 'pistol' 'rifle' and 'weapon' are not defined in the Firearms Acts either.

The 'dangerous air weapons' rules in 1969 originated as a trade embargo. British-made air rifles typically generated 10.5-11 foot/pounds at the muzzle, while popular German air rifles made more like 14.5 foot/pounds. The legislation thus served to ban certain imports at a time when the balance of payments was so important and in such difficulties. It took foreign manufacturers about eighteen months to re-work their designs for the UK market. Using the 1969 rules, it's clear enough that any air rifle generating less than 12 foot/pounds is exempt from firearm certificate controls.

1.3 The Scottish Government seems to think (at paragraph 21) that all air 'weapons' defined as especially dangerous are prohibited by section 5 of the Act. That view conflicts with Home Office guidance to the police, and is quite wrong. A long gun generating more than 12 foot/pounds at the muzzle is a section 1 weapon. It's another example of them not knowing what this discussion is about.

At the bottom end of the scale, we have already mentioned *Bryson v Gamage*, in which magistrates were left to distinguish between a firearm and a toy. The same question arose in *Moore v Gooderham* in 1960, without anyone putting numbers to it. Published research suggests that 2 foot/pounds is the lower limit in the terms suggested in *Moore v Gooderham* (1960, 3All ER 575): see VJM Dimajo *et al.*, "Minimal Velocities Necessary for Perforation of Skin by Air Gun Pellets", *Journal of Forensic Sciences* Vol 27, No 4 (October 1982), pp 894-898. The figure of 0.7 foot/pounds suggested in paragraph 21 is, we presume, an error: apart from not being a recognized number, it is less than the striking energy generated by paintball and nearly all air soft products. To be a 'firearm' under current rules, the suspect air gun (or weapon etc.) has to lob its standard ammunition with sufficient velocity to count for an offence to be proved.

1.4 In summary: under current legislation, some 'firearms' are too low-powered to have been worth including in the bureaucracy of controls. Scottish Government proposals are to include some, but not all of them, in a new category, peculiar to Scotland.

2—Ambiguity (2)

2.1 The consultation paper starts by talking about 'licensing' air weapons and then goes seamlessly to using the word 'certificate'. The two terms, seemingly used interchangeably by politicians, have different meanings, so which do the Scottish politicians mean or, more particularly, which do they *think* they mean? We think we should be told, so that we can respond to what the Scottish Government thinks it means.

The distinction is important. A 'licence' is a permission or authority to do something. Thus the Oxford Dictionary: "A permit from an authority to own or use something, do a particular thing, or carry on a trade." So a TV licence permits you to watch a television receiver set at the address to which the licence has been issued. A licence can be a revenue collection measure, as in the case of the TV licence (which is expensive) or an information collection measure, such as a DTi export licence, which is free. One gets a marriage licence (an authority to marry) by having banns read in church, or equivalent means.

A 'certificate' relates to and recognizes an entitlement. So you become entitled to a marriage certificate by taking the vows. You obtain a certificate of competence to drive by passing a test – then you trade that in for a permission to drive – *alias* a driving licence.

In the UK in 1870, the Home Office slipped a Gun Licence Act through Parliament. Renewable annually and costing 10 shillings, this permitted owners to take their weapons beyond the curtilage of their dwellings. It wasn't popular with farmers, who now had to pay the government a tax to rid their own fields of pests and vermin. Note, though, that this was a *licence* – it granted a specific permission – and not a system of registering guns or limiting who could own what. When registration was introduced with the Firearms Act 1920, the bureaucrats then (perhaps less so since) were mindful of the common-law right – which needs no one's permission in the UK – to bear arms for self-defence; and so they named the owners' document a *certificate* rather than a licence.

A gun licence (1870-1966) was a permission to possess and use a gun in specific circumstances. A firearm certificate is an entitlement for those who require one.

3—Consultation Method

3.1 The whole consultation paper is geared toward the assumption made by everyone with a vested interest in this process that a regime based on that for shot gun certificates will be created for the police to administer. The questions posed in the consultation are drafted with only that outcome in mind, so the results will be skewed and difficult to interpret. That may be the intention – since, if those responding are sufficiently confused by the

questions, the Scottish Government will announce a successful outcome, pat itself on the back and then hand the consequential mess to someone else to sort out, at the expense, probably, of Scottish taxpayers.

4—Ministerial Concerns

4.1 We are concerned, and so should Scottish ministers be, by the comment in paragraph 23 that there is no 'right to bear arms' in 'modern' Scotland. The right to bear arms is a common law right and, while Scotland is a Roman law country rather than a common law one, its citizens were granted equal rights with Englishmen – and English people reciprocal Scottish rights – by the Treaty of Union in 1707.

The Treaty has never been ratified, so it was a mystery to us why there would be any problem as to what the question in any referendum on Scottish independence should be. It can only be: Should the people approve of their government ratifying the Treaty of Union or not?

Meanwhile, Scottish people have had those reciprocal common law rights for three hundred years; so denying their existence off-handedly seems strange. Confusing 'licensing' with 'certification' at the same time is at best incompetent, and may be deliberately misleading.

We should add that the question of ratifying the Treaty of Union should be put, at the same time, to the rest of the United Kingdom, to see if we want to keep subsidizing the Scottish minority or not, but that's a question for another time and place.

4.2 The paper opens with the Minister giving every appearance of being concerned at the rapid decline in crime involving air weapons in Scotland; then we get to paragraph 27 and find concerns about people going about their lawful occasions on their own private property. There is no mention of 'plinking' being a crime or causing offence, nor can there be; where legitimacy ends and criminality begins is defined by what is shot at. Next door's cat trespassing into that private range is not a legitimate target, whereas a rat might be, if it's a safe shot. But there are public safety concerns, nevertheless.

The law currently requires an air weapon user to be old enough, or supervised by someone old enough at the time. They must be on private property, as the owner of that property or with his permission, more than fifty feet from the centre of any carriageway (or less if no road user is inconvenienced), and their ammunition must not leave the ground they are authorized to be on. The same rules, incidentally, apply to firearms and shot guns although in the latter case there is a twenty-eight days a year limit for properties where 'open' or club clay pigeon shoots are held.

So, to plink legally in a back garden, of age and with permission, one presently has only to confine the activity to *legitimate* targets and ensure that the expended ammunition is caught on the property by a suitable backstop. Achieving compliance with the law is a matter of education, which might be achieved simply by printing advice on the ammunition tins.

4.3 Worrying about what someone else might do with a gun is the fundamental pivot of the firearms debate generally. Shooters regard themselves as entitled to do anything (legal), which does not adversely affect anybody else. Ownership of a firearm is a responsibility, for which the owner is accountable to his neighbours and his jurisdiction. Those opposed to the private possession of firearms take the view that the gun owner cannot be trusted to maintain his integrity.

Most firearms legislation, and in particular its implementation, reflects this distrust. The proposal to make plinking illegal is only another expression of this attitude – or perhaps the gratuitous and discredited expansion of law to 'send a message' – quite apart from being an unwarranted restriction of liberty.

And so we get: "The sight of guns in residential areas is no longer acceptable" (paragraph 28). Hmm. It is currently legal to carry an air weapon in (through) a public place only while it is securely covered so that it cannot be fired. This does not apply to other firearms, so police officers can be seen in public overtly (and unacceptably) carrying prohibited weapons. The consultation document offers no evidence beyond assertion that plinking causes alarm and despondency or represents a significant threat to public safety. The sentiment in paragraph 28 places the document on a collision course with the Human Rights Act (Article One, Protocol One).

We don't discern a problem, but if there *is* one, and the Scottish Government is losing sleep at the thought of tax payers designing and building their own private ranges on their own private property, then government can provide public range facilities that airgunners can go to; and they will, if the public range offers better facilities at lower cost than their private arrangements. Local authorities already provide some leisure facilities, such as swimming pools, although their doing so does not seem to have stopped a lot of people building their own pools on their own property – certainly in the south of England.

Existing ranges either belong to the Ministry of Defence or to private clubs. Most, but not all, private clubs are 'Home Office approved', which precludes them taking in day members or temporary members or guests for air weapons training, unless those people go through the Masonic rituals made necessary by the Home Office for full membership; whereupon they'd buy real rifles. We do not know and have not enquired about access and training at MoD facilities for air weapon licence holders.

4.4 There is another flaw in the proposal. If the Scottish Government wants to make 'plinking' in back gardens illegal, it cannot do so by refusing the licence/certificate. What the Scottish Government seems to be trying to do is extend the current public order offences that one can commit by alarming other people in the street by having a gun there, to private property overlooked by others. That is none of their legislative business. Such a change would have to be instituted at Westminster, making a law for everyone in the UK. That way, we'll all get suitable to generous compensation for those air weapons we will no longer need.

4.5 The two 'unintended' consequences of providing public range facilities are that there will be more 'firearms movements' on the streets, as people get to and from the facilities and more people will join in; not everyone in Scotland currently has a back garden to use as a range. The chief benefit of providing public facilities is that training can be provided at the facility, so the knowledge of how to make a private space into a safe 'no danger area' range will disseminate quicker.

5—Administration

5.1 Paragraph 31 simply assumes that the police will administer the new licences, certificates or whatever. Historically, gun *licences* were (as a revenue collection measure) issued at the Post Office counter. The police got firearm certificates to deal with in 1920 because they had a network of local offices (as did the Post Office) to which an applicant could go, and the records against which the application had to be checked before issue at their headquarters.

The problem, then as now, is that the police have dozens of headquarters and hundreds of police stations. Scotland might have some advantage in this department, but now we also have computers. There is no logic to the police issuing firearm and shot gun certificates from dozens of headquarters and keeping incompatible (with each other) records all over the place.

As Richard Law and Peter Brookesmith explained in *Does the Trigger Pull the Finger?* (Spitfire Press, 2011), the duplicated effort across dozens of different offices is inefficient and pointless. That raises the question as to whether it is worth having the current system at all. It's not fit for purpose. It's not even clear what its purpose is. But what it's actually being used as, is as a barrier – a bar to obstruct people *who want to be legal*.

5.2 *Does the Trigger Pull the Finger?* was written in response to the Home Affairs Select Committee hearings and report that arose from a spree-shooting incident in Whitehaven, Cumbria, in 2010. The authors thought it odd that the entire focus of the committee was on firearm and shot gun certificate holders. They are the ones who *want* to be legal, so obstructing them seems counter-intuitive. And they hold, between them, only about ten percent (10%) of the firearms and shotguns in the United Kingdom. The authors argue trenchantly that if the controls are worth maintaining at all for such a tiny minority of the hardware, they should be administered efficiently and without punitive costs to the public.

The Coroner's report into the Michael Atherton murder and suicide at the beginning of 2011 was clear that the police did not use their current powers effectively, so there is no point giving them more money to fund continuing inefficiency. In calling for a review of what the BBC called 'guns licensing laws', whatever that means, he might well have been referring to Law and Brookesmith's book, which advocated a national computer-based system.

The Firearms Act of 1920 set the cost of a certificate at

five shillings (25p), a figure which can still be seen in an original copy of the 1968 Act, so issuing certificates never was a revenue collection measure. If the 1968 Act had adjusted for inflation since 1920, it would have set the cost at twelve shillings and sixpence (65p). If later increases in charges had done the same thing, a firearm certificate would today cost £9.48 (based on the 1920 figure) or £3.42 (based on the 1968 figure), according to the Bank of England's online inflation calculator.

It should not cost more than £3 to issue a certificate (ten minutes at the computer, the certificate form, the envelope and stamp). Yet the current fee is £56, so the police are well ahead – and demanding more. They want more like £96 for the work, which reinforces our point that the present system is deployed as a barrier to people owning firearms. Our view is that the work should be put out to tender. Now that we have computers, we don't need police stations or their dozens of headquarters to sort this kind of paperwork.

5.3 Law and Brookesmith proposed a far simpler and cheaper system. First, the applicant fills in his details on line. The issuing authority creates a file for the applicant and sends him a plastic card with those details on; retrievable via a card reader in gunshops (police cars etc.). Firearms and shotguns currently in the trade are entered into an 'eBay'-style database, as are the guns held by a renewing certificate holder. Then future transactions are merely a matter of transferring the firearm file from one holder to another. The police would be able to 'see' at any moment, who's got what; whether an individual firearm is in the trade or with a certificate holder.

This system doesn't do anything other than keep track of what's where and with whom. It will never solve a crime, just as the existing system never has and never will. It might create a few, as the existing system does in practice. But we can see from the Scottish Government figures that they need the crime to justify having so many police.

5.4 Why are present charges so high? Much of the 'cost' of certificates generally is caused by two factors; one is unnecessary duplication and the other is inappropriate behavior. The largest single cost in current firearm and shot gun certificate processing is undoubtedly the home visit. For which Parliament has never given the police authority. Home visits started as a branch of 'crime prevention'; any citizen can ask the police to inspect the security of their home and to suggest improvements.

The police are very good at that, since they've all seen the aftermath of burglaries. They know what keeps burglars out, or deters them altogether. They can see which homes will successfully displace someone casing the joint to an easier target. They can advise on hardening that 'easier target' to displace the crime to elsewhere, or so that the wannabe burglar bounces off.

Firearms security is an extension of this to the inner security that protects firearms from people who have penetrated the outer shell. For that, the police 'cost' the visit to firearms administration instead of crime preven-

tion. In some police areas, no certificate will be issued without that security inspection, despite Parliament repeatedly not sanctioning it. Yet, the Scottish Government makes the assumption (tucked away in paragraph 52) that it is already compulsory and thus believe they can naturally extend the practice in dealing with low-powered air weapons.

5.5 Paragraph 32 onwards shows really lazy thinking. With all the baggage above, the current firearm and shot gun certification systems are already discredited; they don't comply with European law and are incompatible with the Human Rights Act, so that's the last place anyone should think of starting a new system from. (See 5.6 below.)

But if *licensing* (and not certification) is what is at stake, we would observe that there is a choice of two models. You can have a per person licence and as many guns as you like per licence, or you can have a per gun licence, which is transferable with the gun. In that case you could have the gun's photo on the licence, to get around licences getting mixed up and guns not all having serial numbers, or certificates. Either way, it's a revenue collection measure, a tax.

A certificate that contains no information is as pointless as the proposal to have one. Neither a certificate nor a licence can be used as a barrier to either continued or future ownership. The introduction of shot gun certificates in 1968, with the police so relaxed about issuing them that a convicted murderer got one, still persuaded only one in four shotgun owners to bother. Much of the 'increase' in shot gun certificate numbers from 1968 to 1988 was due to existing owners complying with the requirement when they found they needed to do so.

5.6 You can't give the police an administrative 'sanction' of revocation, because that violates the Human Rights Act. It's currently a problem with firearm and shot gun certificates: the police cannot legally be both issuer and revoker. You'd need a national body issuing the certificates, or licences, depending on what this consultation is about; cancellation is for the courts – no loss of property without due process. The Human Rights Act is clear that there cannot be an arbitrary power for anybody other than the courts to cancel such licences, and then only for a limited period.

5.7 Contrary to what the Scottish Government seems to believe, there is no 'good reason' requirement for shot gun certificates. They are open to everybody. Nobody is 'unsuitable' before the fact, apart from those who have served gaol time and are 'prohibited'. They are currently prohibited from possessing air guns anyway and so could not apply for the proposed Scottish licence or certificate. The current police power to revoke shot gun certificates is unlawful and the UK government has to make current legislation comply with both European law and the Human Rights Act. Only a court can decide such matters as cancellation of an individual's rights, after due process.

Think of it as applied to dogs; it takes a court to ban

someone from owning a dog. The police can't do it arbitrarily. The courts won't unless there is a violation so serious that a ban on keeping dogs becomes a relevant part of the penalty.

The start-point of this thinking is unconstitutional. In 1966, a court pointed out that applications should be considered *from the point of view of the applicant* and not from that of a possible objector (*Joy v Chief Constable of Dumfries & Galloway*, 1966 SLT (Sh Ct 93)). That makes every resident of Scotland eligible for a licence. Or certificate. Unless prohibited from possessing firearms already.

5.8 Any attempt to use the law as a barrier, as a gate to restrict who can have them, will reduce take-up from the ten per cent that might bother trying to a lower figure.

Two examples: in 1988, the UK Government resisted police lobbying to 'uplift' repeating shot guns to section 5, but did put them into section 1, so from a shot gun certificate to a firearm certificate. Many police forces made it clear that they wouldn't be granting firearm certificates for such shotguns, and when the Home Office stepped in, they only suggested two 'good reasons' for repeating guns. These were 'pest control' and 'practical shotgun', which had been in use as good reasons for some years for sub-24-inch barrelled shotguns.

The vast majority of repeating shotguns, held legally until 1989, remain unaccounted for. The 1988 Act added more guns to the unregistered pool than all the amnesties from 1920 on had drained from it. And the 1988 Act supposedly had something to do with public safety.

In 2003, the Anti-Social Behaviour Act 2003 added to section 5 air weapons that used self contained air reservoir cartridges. An exemption for 'collecting' meant that the air weapons could be kept on firearm certificates, which may have got the government out of compensation liability, but from the number of such guns known to have been sold in the previous decades, anyone can see that less than 1% have reached firearm certificates.

5.9 Paragraph 33 is weird. Why would the Scottish Government want to force its residents to buy a licence, or certificate, and then not have to produce it at the point of a relevant transaction? One has to produce the driving licence to hire a car (but not to buy one). There is no requirement to produce a TV licence when buying one so maybe there is some constitutional right here that the Scottish Government doesn't want to trample on.

6— Age Limits

6.1 There is no lower age limit for a shot gun certificate, which is a consequence of the legislation. The Firearms Act, 1968, contains an exemption at section 11(5) from the need to hold a certificate when borrowing a shotgun from the occupier of private premises and using it in the occupier's presence.

The key word is 'occupier'. The occupier of a piece of land, for the purposes of this Act, is the one who has the shooting rights to it. Scottish and UK law differ on this

point. In England and Wales, the buyer of a field has the shooting rights to it unless the conveyance says otherwise; in Scotland, the buyer only gets the shooting rights if the conveyance includes them.

The owner of the shooting rights can give other people permission to shoot on the land, but that is insufficient to make them the occupiers. What it takes, either side of the border, is an agreement which makes the person wanting to shoot there the occupier for that purpose for the specified duration.

Consider it thus. A man wants to let his son or girlfriend try out his gun. The boy or girl has no certificate. If he gets permission to use the land as the occupier for that purpose, he can let his guest shoot, but if he can only get permission to be there for that purpose, then the girlfriend or child needs their own certificate to be legal. That or the owner of the land has to supervise them using his gun.

6.2 The press make a fuss periodically about the age of some shot gun certificate applicants, in complete ignorance of the fact that it's a legal requirement: the people who apply are those who want to be legal, and the press take issue with the person, when they should be taking issue with the law. If the Scottish Government exempts everybody under 18 from the need to hold a certificate when accompanied by a certificate holder, the problem won't arise.

That said, any attempt to abuse legislative powers in a bid to prevent youngsters learning shooting skills at the right age would be really odd, given that national legislation still enables them to learn with real shotguns and rifles at any age.

7—Fees

7.1 See our comments at 5.2–5.4 inclusive, above. The police are the wrong branch of public service to undertake any licensing or certificate procedure. Their current role in regard to firearm and shot gun certificates breaches both European law and the Human Rights Act and is in any event so discredited that it is surely only a matter of time before they are relieved of it altogether.

The police do have a proper duty (paragraph 38) to prosecute those who breach the law, if they are made responsible for doing so. The Post Office are responsible for detecting and prosecuting TV licence evaders and the Proof Masters are responsible for prosecuting violations of the Proof Acts. Violations of the Betting, Gaming and Lotteries Act are the responsibility of local authorities.

7.2 Paragraph 39 – a licence is a permission to do something (see 2.1 above), so the fee is payable only when the licence (the permission) is granted. A certificate recognizes an entitlement to something, for which again the fee applies only when granted. The reason that firearm and shot gun certificate fees are refunded if the certificate is not granted is that it's illegal not to. We can't imagine any Scottish Government licensing scheme, however, ridiculous, being exempt from the law.

As we noted above: should the Scottish Government

insist on this 'licensing' scheme, the exact level of fees should not exceed £3 on a full costs recovery basis. Authorities that are issued for public safety reasons, such as section 5 (prohibited weapons) permits or DTI export licences are free. Since the whole argument for having an air weapon licence in Scotland is that the Scottish Government wants one, it should be that Government that pays for them.

Another way of looking at this would be via the cost of the air weapon. Since the Scottish Government cannot make the licensing requirement retrospective (see 11.1 below), it will only apply to new sales, so the cost of the licence could be tacked onto the sale cost and the licence issued by the vendor. That would deal with it.

8—Visitor Permits

8.1 This is complete and utter nonsense. It's one thing for a glorified local authority to pass laws relating to the people who can't move out of their area quickly enough, but quite another to apply them to visitors. OK, it works in the case of parking permits – resident-only street parking and such, but most visiting firearms users don't use their guns under the immediate gaze of a traffic warden, or even a passing police helicopter.

The simplest workable solution is that the local rules don't apply to visitors. Proof of a permanent address elsewhere in the free world exempts the visitor from whatever local regime is decided upon. There aren't the border controls or the infrastructure to do anything else.

9—Security

9.1 Paragraph 52 implies that there is lawful authority for chief constables to spend public funds on checking firearm security, which is not true. It has been the case since February 2011 (paragraph 53) that air weapon owners are responsible for keeping their property secure and out of the hands of unsupervised minors. The legal obligation to keep one's private property private is more than sufficient. The evidence of any failure of that security will be empirical and judged accordingly.

9.2 The 'security' system for firearm and shot gun certificates is a discredited model, poorly defined, patchily administered and not fit for purpose. The police have no power to inspect anyway, so they have 'created' one by abusing existing laws and the patience of the law-abiding they purport to serve.

The limited evidence available from Home Office research suggests that their own insistence on security cabinets is counter-productive in that the coffin-shaped cabinet tells the burglar what is within. The Home Office has never liked concealment as a security device, for while it is 100% effective (you can't steal what you can't find) it conflicts with their actual agenda for security, which is to identify where firearms and shotguns are, so that the police can seize them if the 'need' arises.

9.3 In 1940, police on Guernsey used firearm certifi-

cate records to gather up all the firearms held on certificates in advance of the German occupation forces arriving. In 1982, the Falklands Islands police used their records to collect up all the registered firearms on the islands, after the fact, accompanied by Argentine occupation forces.

We the people just don't need either a Home Office or a police force that is planning on how to give our country away to the next invader. The 'logic' of current government security thinking is fifth columnist.

10—Hand-in Period

10.1 We can't imagine how any legitimate government can conceive of a requirement for its citizens to hand in to the police anything that they already lawfully own, never having had to justify owning it to anyone but themselves. And what next? Mobile phones? Brown shoes?

The concept of 'good reason' doesn't exist in the case of shotguns, which is the certification model that the Scottish Government purports to be following when considering 'licensing' air weapons, yet the idea that one needs a 'good reason' to keep one's already lawfully owned property pops up in one paragraph after another, undiscussed, unexplained; it's just there, as though we should all fall for it being part of this debate.

The only good reason necessary for owning something is that we already have it. Our property is precisely that: our property. No government can take it away from us without due process – see the Human Rights Act – so paragraph 57 is simply nonsense. Licences cannot be retrospective, so that which is already owned comes with 'grandfather' rights.

10.2 Paragraph 58 – the police have routinely been the worst possible suggestion for handing unwanted anything to. The gun trade has relieved the unregistered pool of more firearms since 1920 than the police have, by a considerable margin. People who wind up owning a firearm by default generally expect it to be worth something, so one of the main non-sentimental reasons for not disposing of it is not knowing how to realize its value.

That value may be limited; most 'off-ticket' firearms, in our experience, are offered to us for less than they'd be worth at auction. Either way, they have an asset value to the family, or the deceased's estate, that should be realized. If the opportunity to make that money is not available, most families would hold on to it in the hope of a better future regime than part with it for nothing.

10.3 Longer term (paragraph 59) it doesn't matter when the 'illegal' air weapon comes to light, because it hasn't ever needed a certificate, or licence, until the transaction that brings it into the open. At that point, the best chance of it becoming registered is that the executor gets a free licence, along the lines of section 7 permits for firearms and shotguns, so that he can realize its value for the estate. Without such a provision, they simply sleep on through the next generation, as do at least four million real guns in private homes around the United Kingdom.

11—Compensation

11.1 Paragraph 61. It's odd that the Scottish Government hasn't understood the Human Rights Act. There can be no confiscation without compensation except by due process of law, so any attempt to make air weapon licensing retrospective without some mechanism for compensation will not be legal. In other words, it would have to be accompanied by a buy-in scheme for the unwanted junk that the Scottish Government has convinced itself is a threat to public safety.

The potential cost of this bears scrutiny. There are allegedly 500,000 air weapons at large somewhere in Scotland, and the consultation paper maintains that their average value is £119.00 (paragraph 69). A buy-in scheme should therefore budget for spending £59.5 million in compensation alone. That figure can probably be doubled to estimate an overall cost including overheads. This is a tidy sum to spend to no effect on public safety.

We suspect that a buy-in scheme in Scotland will empty English and Welsh junk shops, attics and drawers of worthless rubbish, if the price is right.

12—Enforcement

12.1 Storage/security is already legislated for nationally, with responsibility resting on the owner, so is not the business of the Scottish Government to interfere with it. Whether it's a certificate or a licence, it will have to come without conditions, so there won't be any 'conditions' to fall foul of. The legal question will be a straight choice: either you have a licence or not for each air weapon, and only for those purchased since the legislation. Therefore only a fixed penalty, the equivalent of the most minor motoring offence, would be appropriate for infringements.

12.2 The idea that a power of arrest should even be thought of (paragraph 64) is evidence of the police-state thinking behind the wet paint on this barn door.

12.3 Shotgun offences are already too high on the scale of penalties, given that the certificates were introduced as a diversionary tactic by a wobbly Home secretary desperate to avoid having to restore the death penalty he'd contrived to deprive our legislature of, and after the Home Office itself concluded there was no point to them. That we still have them at all is pointless bureaucracy for its own sake. We expect that they will be discarded altogether in a future legislative shake-up. Particularly if the wisdom in the SRA-sponsored book on the subject has been read, marked and inwardly digested.

13—Pilot Scheme

13.1 The whole idea is nonsense; any pilot scheme would be unworkable unless confined to a limited area, such as Rockall.

14—Trade Impacts

14.1 Paragraph 67. It would have been more useful to guesstimate the number of owners rather than the number of guns. At 500,000, less than one in 2,500 was involved in crime, assuming each of the 195 crimes involved a separate gun. At that rate and assuming no further reduction in crimes, the entire Scottish stock of air weapons will have been caught up in crime and arrested by the middle of 4513. Problem, whatever it was, solved.

Threats to ban something generally result in increased sales, so the figures are probably unreliable and in any event don't include air weapon sales to Scottish addresses by dealers elsewhere in the UK.

15—Communications Strategy

15.1 We agree with the summary in paragraph 72 of the disposition of ownership. When a crossbows bill was proposed many years ago, research showed the vast majority of crossbows known to be in private possession were not in use. The majority of air weapons are in a similar position; sitting in a cupboard or drawer, eating nothing, gradually gaining value and presenting no problem whatever to a worried government.

15.2 So far as the rest of the world is concerned, the best bet is to keep quiet. This is also vastly less expensive than the proposed strategy. All visitors should be exempted from the need to hold a certificate or licence for air weapons they bring into Scotland, provided they take them away again. They should register them at the gunshop if selling them. Scots will be denied the revenue of them buying in Scotland, but hey, that must be worth it for the public safety considerations and benefits.

Part Two Omissions from the Consultation Paper

16—Antiques

16.1 We note the complete absence of any mention of an exemption for antiques. The Firearms Act, 1968, as amended, provides at section 58(2) that nothing in the Act shall apply to any antique firearm, sold, etc or possessed. That means neither the documentation of section 1, 2 and 5, nor other matters including prohibited person status and search warrants. It's inequitable of the Scottish Government not to explain how their air weapon licences, or certificates, would or would not have any impact on antique air weapons.

16.2 The interpretation of antique status regarding firearms and shotguns is in a muddle. In 1977 in *Richards v Curwen* (3 All ER 426) the Crown argued *inter alia*

that the exhibit revolvers, made in the 1890s, could not be regarded as antiques because the ammunition for them (.455in) was still available. The court decided that the availability of ammunition was not a consideration. The issues were (a) age and (b) possession solely as a curiosity or ornament, and accepted that the two revolvers were antiques.

That judgment effectively set 1899 as the cut-off date for antiques. Any method of setting a break point is going to be arbitrary. In 1994, the Court of Appeal heard *R. v Thompson*, about a 1906 War Office pattern rifle that was chambered for .22in rimfire. The court said it was an antique, and in regard to the *Richards v Curwen* judgment said that time had moved on and so must the definition. Taking the two judgments together, any firearm (including air weapons) over about 78 years old is arguably an antique, which places everything made for the Great War 1914-18 on the collectors' table.

The main inhibition to that is the appallingly inaccurate and misleading Home office guidance to the police, published in 2002, which ignores the *Richards v Curwen* judgement.

16.3 The Scottish Government should make clear the status of antique air weapons in any proposed legislation. We would suggest that any air weapon that can be established as being an antique be exempt from any certification process (pointless as that may be).

17—Appeals

17.1 The document is also silent about appeals. Having included an arbitrary and unlawful revocation power in their proposals, the Scottish Government are noticeably silent about what any aggrieved party should do about that.

17.2 The position in England Wales is that where there is no appeal mechanism in place, an aggrieved party can take it straight to the High Court as a judicial review. There are currently three circumstances in the Firearms Act in which the High Court is the court of first appeal. One is when the police impose conditions on a certificate and the others are any refusal to grant a section 5 prohibited weapons authority, or to 'approve' a target shooting club. All other decisions made by the police under the Act are appealed under section 44; in England and Wales to the Crown Court sitting in its capacity as successor to the Quarter Sessions, and in Scotland to the Sheriff Court.

17.3 The appeals mechanism is far from satisfactory. When the Quarter Sessions were devolved, the essentially civil process of a section 44 appeal was put in the (criminal) Crown Court, where appellants are denied legal aid, despite the European Court decision *Steele and Morris v UK* (2005).

Section 44 appeals remain incompatible with human rights legislation and are the subject of litigation by

various appellants at the time of writing, so the Firearms Act as a model for an appeals structure contains nothing but trouble and probably won't last much longer in its present form.

Section 44 appeals simply don't work. Chief Constables make decisions and then either refuse to explain their decisions to appellants, such as in *Kevin Hunter v Chief Constable of Warwickshire*, where the appellant has been trying and failing to get the police evidence for five years now; or simply ignore requests for the evidence on which they intend to rely, such as in *Paul Bradley v Chief Constable of Lancashire*.

The only constitutionally sound system, and one compatible with European standards, is for a court to decide after due process. Defendants must have 'equality of arms' – access to legal advice and representation, the costs of which are met by the state on the basis of a means test. It is already clear from several decades of section 44 appeals relating to shot gun certificates that there has to be a relevant conviction for a certificate to be revoked and that it is best left to the court under powers it already has to determine whether a conviction is serious enough to deny the defendant a certificate for a future period.

18—Exemptions

18.1 Every control, regulation or list usually has to admit for exceptions; except the Scottish proposals which don't mention anybody being exempted from the need to have the certificate or licence. It would be unwise to make presumptions, since our past experience is that tracking exemptions through the documentation is not always possible.

For example, Europe prohibited expanding pistol ammunition in 1993, but provided exemptions that included 'target shooting', which the United Kingdom government overruled by way of primary legislation in 1997. The European law did not exempt 'defence' or 'self defence' (expanding bullets were prohibited from military use over a century ago) so carry permit holders in Northern Ireland found their ammunition purchases restricted to ball only. The police continue to use expanding ammunition against members of the public – the Home Office says they are exempt, although 'policing' wasn't exempted by the European legislation.

19—Glossary

19.1 We have already noted ambiguities in the words used in the consultation paper. Such imprecision will, if the Scottish Government insists on the measures proposed therein, lead to poor drafting and bad law. Here is our attempt to address these problems of definition.

19.2 Where an Act of Parliament does not provide a definition of terms used in it, the ordinary dictionary definition is to be followed (*Sussex Peerage Case* 1844; 1 Cl&Fin 85). That creates all sorts of unintended consequences, so in a bid to be clear, this is our glossary of the context of some of the words we have used.

AIR GUN. The term 'gun' is usually applied to (a) a smooth-bored gun, or (b) an artillery piece on wheels, which may be rifled. We use the term 'air gun' to refer to smooth-bored pneumatics.

AIR PISTOL. The term is incapable of definition. Ordinarily, one might plump for a definition that involves the use of one hand to fire it, which is ambiguous; one could try for 'without a shoulder-stock', which doesn't work either, as the current service rifle has no shoulder stock. Some air pistols are 'rifled' which makes them rifles, so whether a rifled 'pistol' is caught by section 5 prohibition at 6 or 12 foot/pounds is currently undecided and will eventually matter to a defendant somewhere.

AIR RIFLE. It's a precondition of dictionary definitions that a 'rifle' has an internally screwed bore designed to spin the missile on its own axis, so we use the term to refer to rifled pneumatics. That can and does include some air pistols.

AIR WEAPON. We have used 'air weapon' throughout this text as a generic term for the items under discussion.

CERTIFICATE is issued where the applicant is entitled to it

LICENCE grants permission to do something

SHOT GUN. The Firearms Act uses this split, so we have tried to follow it when referring to shot gun certificates. 'Shotgun' seems to be normal usage outside the legislation.

Conclusions

- The Scottish Government proposals are based on an assumption rather than on any evidence. Such evidence as there is shows that air weapon crime in Scotland is minute and getting smaller, without any new 'licensing' scheme.
- The proposals would create a bureaucracy for its own sake, a job creation scheme for policemen and public officials at best. No equivalent scheme for any kind of firearm anywhere in the world does anything to prevent crime. Most systems create some crime by being laws that people trying to act legally are likely to trip over. That seems to be the purpose of the Scottish proposals – to create new crime; a self-justification process.
- The shot gun certificate model held up as the one to follow is flawed and overdue for relegation to the historical dustbin. The shot gun certificate system amounts to a fit person certificate and registration of property. There is no 'good reason' requirement in it. Possession or wanting to possess is sufficient.
- All firearms are property, with an asset value, and as such are protected by the Human Rights Act from arbitrary confiscation. Any new 'licensing' regime cannot be retrospective, must not intrude on common law rights

and has to safeguard the individual freedom to enjoy one's possessions.

- The Scottish Government proposals fall at every point where they conflict with existing legislation. That said, it would be possible for Scotland to have a basic revenue-collecting licensing regime with a fixed penalty for non-compliance. It would do nothing to enhance public safety or to reduce the tiny crime level that worries politicians.
- While the Scottish Government is disparaging about 'plinking', their proposals are silent as to what they mean. We have assumed they mean 'outdoor', whereas most private practice and private ranges are 'indoor'; national and international air weapon disciplines are usually shot indoors, at ranges of six yards and up, to ten metres, so would-be competitors simulate these conditions at home. The Scottish Government has not mentioned whether membership of a field target club would qualify members to shoot in their back gardens.

- It would make more sense to identify the problem and address that. The closest this proposal gets is to suggest that undefined plinking and possession in urban areas are somehow unacceptable. The proposers are confusing legitimate possession of lawfully held property with enjoying its possession and use. Whereas the only definition of illegitimacy is defined by what is shot.
- It seems unlikely that there is any way of separating where air weapons are kept from where people live, nor could there be without violating the Human Rights Act.
- In the absence of clear research into what the problem is, we can only speculate that making public ranges easily accessible in urban areas would encourage owners to use better public facilities than their own limited ones, and that drawing air weapon owners to public facilities provides opportunities to train them in their safe handling and use. This would be a welcome development, but not perhaps the one the Scottish Government intended.

Part Three

Annex D: The Response Form

The Scottish Government's consultation paper *Proposals For Licensing Air Weapons In Scotland* contains an 'Annex D: Response Form: Summary of Questions', presumably for those who feel there is little in the proposal to respond to much beyond 'Yes' or 'No' – and perhaps to help bureaucrats and politicians decide which longer responses to ignore. For the record, here are the SRA's remarks on its form.

Question 1: *Do you agree with the proposed types of weapons to be covered by the new regime?*

The Scottish Government itself is unclear as to what should be covered by their proposals, much less why. There is no point proposing this 'solution' without first identifying the problem.

Question 2: *Should any other weapons be covered?*

A weapon is, by definition, something being used as such, so sand on the beach can be a weapon at times, and not at other times. The utility of legislation is to define crime; legislation does not prevent crime.

Question 3: *Is there any type of air weapon ammunition which should be covered?*

The sentiment in paragraph 22 applies equally to the air guns. In the case of pellets, the air weapon type makes

more difference to pellet performance than does the pellet type, so there's little to choose between them beyond matching pellet to rifle for optimum performance. Darts are intended as reusable ammunition in smooth bores, so tend to be matched to the lowest powered air guns.

Question 4: *Are there other forms of air weapon use which should be considered as "legitimate"?*

This is a bizarre question. The Firearms Acts make no distinction between possession and use, so as a starting point, all possession is legitimate. Foul or criminal use, or abuse, is defined in other legislation as evidenced by the 195 crimes that were detected in Scotland in the last year for which records are available. The freedom to enjoy our possessions is provided for in the Human Rights Act. In principle, one may do anything in a free country that does not interfere with other people.

Question 5: *Do you agree that greater restrictions should be placed on where air weapon owners can shoot?*

No. It's illogical to have greater restrictions on low-powered air weapons usage than currently apply to firearm and shot gun users. Training is the key to safety. Irrational alarm in others is a mental health issue.

Question 6: *Do you agree with these proposals for the application process?*

No. The shot gun certificate model is a very poor choice, which currently violates European law. The only model that would actually work is a revenue collection system, like a TV licence. Revocation can only be by a court, non residents should be exempted altogether.

Question 7: *Do you think there are other issues we should consider around the application process?*

You should consider acting lawfully. No other course of action is open to you.

Question 8: *Do you agree that there should be a lower age limit of 18 for those seeking an air weapon certificate, and that use by those younger than 18 should be appropriately supervised by a licensed adult?*

All you need do is exempt everybody under 18 from needing a certificate or licence when using an adult's low powered air gun.

Question 9: *Do you agree that a fee should be charged for each air weapons application, whether successful or not?*

No, that would be illegal. A fee can only be charged for successful applications. No fee is applicable, nor is the licence, to air guns already held, so the fee for a new air gun licence could be added to the sales cost when bought and the licence issued by the vendor.

Question 10: *Do you have a view on an appropriate fee to be charged for new or renewed applications?*

Licences issued for public safety reasons are free, so that is the supposed point of air gun licences in Scotland, they should be paid for by the government. The current cost of a shot gun certificate, once extra-curricular costs are disbarred is £3.

Question 11: *Do you agree with the proposed levels of checks on applicants for a visitor's permit?*

No. Visitors should be exempted altogether by evidence of a permanent address outside Scotland.

Question 12: *Do you agree with the proposal to adopt a system of time-limited visitor permits and do you agree with the proposed duration of such permits?*

No. There is no point to visitors permits, much less a time limit on them. You might consider a free licence to accompany a visitor's gun being sold in Scotland.

Question 13: *Do you agree that a separate, longer term permit should be available to competition shooters and other regular visitors?*

All temporary visitors should be exempted from all local bureaucracy.

Question 14: *Do you agree that there should be an appropriate hand in period for currently held weapons, in advance of the new legislation taking effect?*

No; the new licenses can't be retrospective, so possession prior to the material date is authority to possess.

Question 15: *Do you agree that it should be a matter for the police and prosecution services to take a view on air weapons handed in at a later date?*

None of their business. An executor has a duty to realize the value of assets and should not be obstructed from doing so. The Firearms Acts provide a permit at section 7 in such circumstances and the Scottish Government should, at the least, follow primary legislation.

Question 16: *Do you agree that it should be open to the police to issue a permit to allow the person to deal with "forgotten" air weapons or, in appropriate cases, to apply for an air weapons certificate?*

They have to for firearms and shotguns, so they might as well for air guns.

Question 17: *Do you agree that penalties should be set at the same level as for shotgun offences?*

No. This is a licensing (permission) scheme like TV licences. At most there should be a fixed penalty.

Question 18: *How else might the message be spread?*

The Scottish Government lost the PR battle years ago by proposing a licensing system without any supporting evidence. Since it's not retrospective, the simplest is to give the licenses away with new guns and to keep all this secret from visitors.

NOTE

*The consultation paper can be downloaded from
www.scotland.gov.uk/Resource/0041/00410460.pdf*
