

# **CONTROL OF GUNS**

## **The Labour Party's Evidence to The Cullen Inquiry May 1996**

### **George Robertson MP – Shadow Secretary of State for Scotland and Jack Straw MP – Shadow Home Secretary**

#### **Introduction**

1. The British public were appalled to discover that the perpetrator of the Dunblane massacre, Thomas Hamilton, though "known to the police", had been lawfully licenced to hold all the firearms which he used in the killings on 13 March 1996. Though no system of licencing could pretend to be foolproof, and weed out in advance all applicants who are likely to misuse firearms in their possession, we share the widespread disquiet about the relative ease, with which people may obtain firearms certificates for weapons which have been manufactured for the principal purpose of killing other human beings.
2. Hamilton was able to obtain a firearms certificate for his weapons despite the tightening of the law in 1988 following the Hungerford massacre. We believe that action is needed urgently but that it is also important to get legislation that will stand the test of time.

#### **Firearms and Crime**

3. We have not been able to obtain any estimate of the number of weapons, used in crimes, which were never subject to any lawful licencing. Nonetheless, the number of offences of burglary and theft which weapons (generally presumed to be licensed) were stolen, though broadly stable, is unacceptably high. (see Table 1). The additional controls on storage brought in under the 1988 Act has not led to any reduction in such offences. Indeed, in England and Wales the number of pistols stolen has increased from 58 in 1987 to 222 in 1993 and 173 in 1994; and of the rifles stolen from 54 in 1987, to 121 in 1993 and 71 in 1994. As weapons like this have a very long life, such thefts involve a cumulative transfer of firearms into the criminal world.
4. The number of occasions when firearms have been used to commit (or attempt to commit) serious criminal offences has risen alarmingly in recent years (see Tables 2 & 3). In England and Wales there was a quadrupling in the number of offences of attempted murder and other acts endangering life between 1979 and 1994 (up from 255 to 1,044), and a similar increase in the number of robberies where firearms were used (up from 1,038 to 4,104). All offences involving firearms almost doubled in this period (from 6,547 to 12,977). In Scotland in the same period, attempted murder in which firearms were used tripled (from 13 to 42), robberies quadrupled (from 88 to 371), and total firearms crimes and offences more than doubled (from 682 to 1,788).

#### **International Comparisons**

5. International comparisons suggest that there is a direct relationship between the lawful availability of weapons, and their use in criminal offences as well as levels of suicide and accidental firearm deaths. (See Table 4).

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6. At one extreme is the United States, which has 27 times more firearm homicides per million of the population than the UK.
7. At the other extreme is Japan, where firearm murders as a proportion of the population are roughly an eighth of that of the UK – and whilst civilians may apply to own a gun, in almost all cases they are refused. (ibid).
8. The experience of Switzerland is, we believe, instructive. In this otherwise law abiding country, firearm murders are six times as common as in the UK – something which must be related to the fact that every male up to the age of 32 is a member of the Swiss Army Reserve, and holds a gun of some sort. (Ibid).
9. The number of firearms certificates in England and Wales at the end of 1995 – at 140,200 covering almost 400,000 pistols and rifles – on top of the 670,000 shot gun certificates covering almost 1.4 million shotguns, indicates that there is in the United Kingdom an extensive 'gun culture'. (Home Office Statistical Bulletin, 'Firearm Certificates Statistics', 25 May 1995).
10. The easing of border controls within the mainland of Europe and the opening of former Communist bloc borders have led to a booming market of illegal guns of all kinds – which make it all the more important that controls on firearms in the UK should be very tight and very effective. We are however well aware that alongside the need significantly to limit the circumstances in which firearms may lawfully be held by civilians, the police face a daunting challenge in reducing the use and possession of illegally held weapons.
11. However, many recent mass killings – in New Zealand, Australia, France, the US, and the UK – have been committed with guns which were lawfully held. That is clearly intolerable.

### **General Principles**

12. Given the terrible consequences which have arisen for two communities in the United Kingdom in less than a decade through the current licencing system, and the wider hazards which arise through the ready availability of guns, we believe that the time has come for a fundamental reappraisal of firearms law.
13. Almost all pistols and rifles are designed and manufactured to kill human beings. In our judgement the public are increasingly of the view that the risks to the community from the misuse of firearms far outweigh any 'civil liberty' in favour of the holding of firearms, save in the most limited of circumstances. Given this, we believe that in this enquiry the burden of proof must fall on those who wish to use firearms, for them to satisfy the public as to the circumstances in which firearms should be licenced.
14. Apart from those uses associated with people's lawful trade or occupation (see below), firearms possession is usually justified on the grounds of sport. By definition, sport is a recreational pastime. It seems to us that those who follow a particular hobby are under an overwhelming obligation to ensure that their pursuit does not place the safety of the public at unacceptable risk.
15. We believe that the enquiry should take evidence as to whether target practice sports could adequately be enjoyed by the use of modern air weapons, and through laser driven simulators.

### **Handguns**

16. Handguns are particularly dangerous. They are easily concealed and carried. They are capable of rapidly firing a large number of rounds without reloading – 6 or 8 with a revolver, up to 18 with a pistol. Some 57,000 people hold firearms certificates for handguns.
17. All target shooting disciplines in the Olympic Games are restricted to handguns of .22 inch. We can think of no good reason why a larger calibre handgun should ever lawfully be held for sporting purposes. Accordingly we recommend that handguns above .22 inch calibre should certainly be prohibited. We also believe that the strong case for restricting handguns of .22 calibre and below to those which need to be reloaded after each shot should carefully be examined by the Inquiry.

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18. In general, given the lethal nature of handguns, we see a strong case for banning them altogether. The shooting fraternity must make a case for possession and if they can, they must suggest and accept restrictions and costs necessary to prevent such guns from being used for anything other than target practice.
19. Some handguns are used by casualty slaughterers, veterinary surgeons, and in certain circumstances by farmers having to deal with vermin. So far as we are aware a restriction on .22 inch calibre or below for these purposes would pose no practical difficulty to those involved. Special certification can be designed for these exceptional cases.

### **Rifles**

20. The .22 inch rimfire rifle is used for pest-control on agricultural land, (and higher calibre rifles are used for the control of a number of species such as deer stalking and control). Apart from these uses we think there should also be a general prohibition on rifles above .22 inch calibre.

### **Shotguns**

21. There is a case for distinguishing, as the law presently does, between shotguns, and other firearms. They are in widespread use in rural areas by farmers in keeping down vermin, and by those involved in shooting game.
22. A shotgun as defined has to have a smooth bore barrel of at least two feet, and be capable of holding more than three cartridges. The size, and time taken to reload a shotgun, mean that they are far less likely to be used to effect a massacre than are rifles and pistols.
23. However, the proposals which we make on tightening the certification process would apply here. With almost two million shotguns licenced in the UK there are clearly too many such weapons in circulation.
24. There should be some control over the number of shotguns owned by requiring that each gun be entered separately on the certificate and for the applicants to show good reason, to the satisfaction of the police, for needing an additional weapon or weapons.

### **Replica and De-activated Firearms**

25. We are also concerned about the number and variety of replica and deactivated firearms which can be sold legally. The police say that many deactivated weapons can be re-activated for use, and that replica guns are often used for criminal purposes. Consideration should be given to proscribing such weapons.

### **Age Limits**

26. Young people may not marry, even with parents' consent, until they are 16, hold a driving licence for a car until they are 17, drink in a public house or watch a violent film in the cinema until they are 18. But they may possess a firearm from the age of 14.
27. We believe that the public will find this quite extraordinary. If the aim is – as it must be – to reduce the attraction of firearms, to limit the 'gun culture' in the UK, then in our view no person under 18 should be allowed to possess a handgun or rifle, or make use of a gun club. There might even be a case for making the minimum age limit 21.
28. The Inquiry should, we believe, also examine the case for raising the age limits for the holding of shotguns.

### **Certification Procedure**

29. Up to now, the regulation of firearms in Great Britain has effectively been permissive. Although firearms offences are drafted on the premise that no one may possess a firearm unless they are authorised to do so, in practice citizens whose criminal record does not fail foul of section 21 (as amended) of the 1968 Firearms Act and/or are not of 'unsound mind' can easily obtain authorisation to possess the most lethal of pistols or rifles – including .357 Magnum revolvers or semi-automatic pistols. The dice are heavily loaded in favour of the applicant. In 1994, of 11,700 people who made an application, only 120 were refused. (Home Office Statistical Bulletin, 'Firearm Certificate Statistics', 25 May 1995).
30. Crown Courts, to whom unsuccessful applicants may appeal, have shown themselves to place the onus on the police to establish a 'good reason' for refusal, and are reluctant to accept police 'instinct' or hearsay evidence.
31. The current scheme for the issue of firearms certificates follows the usual arrangements where a legal right is available for exercise subject to the satisfaction of certain conditions. Any refusal has to be for stated reasons, and is subject to appeal. This kind of scheme is plainly correct in most circumstances. Applicants should be treated similarly, and there should be protection against abuse by those effectively granting rights.
32. However, where questions of public safety are so acute – as they are with the possession of firearms – than in our judgement the onus should always be on the applicants to prove that they satisfy all necessary conditions, that they have a good reason to hold each firearm for which they seek authorisation, and that they are a fit and proper person to do so. Moreover, in the exceptional circumstances of firearms control, we are persuaded that in future subject to certain safeguards (see below) the Chief Constable for any area should have an absolute discretion to refuse any application, and should not be required to give reasons for doing so.
33. The use of such discretion would be subject to judicial review, but because the reasons for refusal could not be examined in normal circumstances such review would in practice be limited to 'Wednesbury' unreasonableness. This is the situation which currently applies to a refusal by the Secretary of State to grant British citizenship, where by status he/she is not required to give reasons.
34. Each weapon should require a separate certificate.
35. Consideration should be given to the publication or circulation of details of applicants for firearms certificates so that people can make known their objections. Legal notices are already used for liquor licences and for applications for planning permission.

### **Appeals**

36. It follows from what we have proposed above that a right of appeal to a court should not be available. It would not be inconsistent with the scheme which we propose that there could be available a review of the Chief Constable's decision conducted by a legally qualified and judicially qualified individual. But such a review would have to be held in private, and the information on which the Chief Constable depended could not be disclosed to the applicant. There are parallels for such procedures, but they usually apply where the liberty of the subject is involved.
37. The matter of firearms certificates is a privilege, not a right. We are not persuaded that the extra cost and complication would be justified, save perhaps where the pursuit of the applicant's livelihood depended upon the issue of a certificate.

### **Information**

38. Such additional discretion which we propose for the Chief Constable could only be exercised effectively if the officers considering each application have sufficient information concerning the suitability of the applicant.

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39. This is a matter on which we do not believe there is any merit in second guessing the police view. We assume that the enquiry will take evidence from ACPO and other bodies as to whether existing information and intelligence should be supplemented, for example by psychological tests, though we share some of the scepticism about the reliability of such tests in these circumstances.

### **Medical Evidence**

40. More information plainly needs to be available to the police about the mental health of applicants. We question whether this could be provided by the simple device of an open certificate by a General Practitioner. GP's are often put under intolerable pressure by applicants for certificates of all kinds instead we believe that consideration should be given to a system by which the applicants would state the name of his/her GP and consent to the GP responding direct and in confidence to the police in answer to enquiries from them. Such an arrangements would only be sustainable if, as we recommend, the Chief Constable did not have to give reasons for any refusal.
41. We think there is merit in the proposal of the Association of Police' Surgeons that they should, on behalf of Chief Constables, screen applications with access to reports from GP's.

### **Counter-signatures/references**

42. We believe that the current procedures for counter-signing applications are insufficiently rigorous.
43. In our view the provision for counter-signatories endorsing the form itself should be replaced by a requirement to name two referees who would then have to provide confidential references to the police in answer to a standard questionnaire. It should be a criminal offence for false information to be given in a reference deliberately or negligently.
44. Referees should be restricted to those professions/occupations specified under the Firearms Rules 1989. The wider category of 'person of similar standing' should be removed.
45. Consideration should be given to extending the length of time that referees have to have known the applicant.

### **Fees**

46. In our view all fees should at least continue to cover the full costs of administering the licencing scheme.

### **Mail Order, Advertising and Display**

47. The availability of weapons of all descriptions by mail order encourages a gun culture, especially through the magazines supported by such advertising. We take the view that all sales should be in person and that there should be a prohibition on the sale of all kinds of guns and ammunition by mail order.
48. We can also see no justification for allowing the advertising of guns and other weapons in a way which appear to encourage or condone violence. Responsible periodicals and responsible suppliers will avoid such advertisements, but fringe periodicals find their way into the wrong hands in a way which any voluntary regulation is powerless to control. We urge that evidence be taken on the best form of legislation to regulate unacceptable advertisements.

### **Gun Clubs**

49. At present individuals who do not hold a firearms certificate themselves may use a weapon in an authorised gun club. We believe this to be wrong. No civilian should be permitted to use a firearm unless he/she has personal authority to do so.

### **Storage**

50. Given the number of thefts of licenced weapons, and their availability to unstable users if weapons are stored at home, we question whether firearms (as opposed to shotguns) should ever be permitted to be stored in homes, save those which are held for occupational reasons. The enquiry will no doubt wish to obtain expert evidence on this point from the police. We accept that general storage in clubs would require an increase in their security, but we believe that those who wish to participate in such an intrinsically dangerous activity should have to pay appropriately.

### **Firearms Consultative Committee**

51. Police, the magazine of the Police Federation, recently complained that "the police service is under-represented on the Firearms Consultative Committee. After Dunblane, the issue is accountability, not cost and expediency" (April 96, p6). We share his concern, and believe that the composition of this Committee should be reviewed.

### **Firearms Control Board**

52. Consideration should be given to the establishment of a national Firearms Control Board and a national database of firearms.

### **Status of this Report**

53. Following discussions with the Home Secretary and the Secretary of State for Scotland this report has been prepared to set out our initial views to the Cullen Inquiry. We shall of course, carefully consider all the evidence given to the Inquiry and the recommendations which Lord Cullen makes before coming to final conclusions.

**Table 1**

**Notifiable offences of burglary and theft recorded by the police in which Firearms were reported to have been stolen from residential buildings**

<b>England &amp; Wales</b>	<b>1987</b>	<b>1993</b>	<b>1994</b>
Air Weapons	525	960	925
Shotgun	503	421	391
Pistol	58	222	173
Rifle	54	121	71
Starting Gun	29	25	28
Other	145	242	213
<b>Total</b>	<b>1,314</b>	<b>1,991</b>	<b>1,801</b>

Source: Criminal Statistics England and Wales 1994 and earlier

**Table 2**  
**Notifiable offences recorded by the police in which firearms were reported to have been used (England and Wales)**

Year, England & Wales	All Offences involving firearms (a)	Violence Against the Person			Robbery	Burglary	Other offences	Criminal damage
		homicide	Attempted murder & other acts (b)	Other				
1979	6547	55	255	2909	1038	80	52	2158
1980	6587	24	252	2493	1149	67	33	2569
1981	8067	34	276	2692	1893	98	28	3046
1982	8400	46	308	2404	2560	79	46	2957
1983	7961	42	269	2429	1957	93	49	3417
1985	9742	45	353	2652	2531	125	59	3977
1986	9363	51	363	2015	2629	96	69	4140
1987	9002	77	508	1944	2831	109	80	3453
1988	8524	36	531	1816	2688	107	111	3235
1989	9502	45	581	1914	3390	133	118	3321
1990	10373	60	663	1855	3939	154	158	3544
1991	12129	55	861	1795	5296	176	169	3777
1992	13305	56	866	1893	5827	182	163	4318
1993	13951	74	1047	1738	5918	235	257	4862
1994	12977	66	1044	1777	4104	255	286	5445

Note:

(a) Includes only offences of criminal damage where the damage was estimated at over £20

(b) Other acts that endanger life (including wounding)

Source: Criminal Statistics England and Wales 1992 (Cm 241 0)



**Table 3**  
**Notifiable offences recorded by the police in which firearms were reported to have been used (Scotland)**

Year	Homicide	Attempted Murders	Assault	Robbery	Vandalism	Reckless conduct with a firearm	Firearms Act 1968 Offences	Other Crimes & Offences	Total
1979	1	13	49	84	139	379	10	3	678
1980	0	10	272	73	436	235	33	34	1093
1981	7	17	304	94	541	305	26	20	1314
1982	3	9	269	142	566	250	28	16	1283
1983	6	10	335	146	477	294	51	17	1336
1984	3	14	293	126	550	289	51	27	1353
1985	9	18	408	157	658	302	84	39	1675
1986	5	16	360	157	547	291	106	43	1525
1987	3	20	342	159	493	285	89	38	1429
1988	2	27	251	135	402	194	105	43	1159
1989	7	16	289	264	481	231	148	43	1479
1990	3	31	295	246	560	218	103	39	1495
1991	7	40	389	440	575	246	148	76	1921
1992	6	45	350	508	604	243	153	50	1959
1993	8	44	297	396	552	196	188	95	1776
1994	9	42	359	371	498	206	233	70	1788

Note:

(a) Before 1990 it is likely that records were not submitted for some incidents of assault or property damages of a less serious nature.

Source:

Scottish Office Recorded Crimes and Offences involving Firearms, Scotland 1994 and earlier.

**Table 4**  
**Homicides involving firearms (a)**

Country	Homicides involving firearms	Population (million)	Firearm homicides per million pop.
UK	137	58.4	2.3
Switzerland (b)	96	6.94	13.8
Japan	38	125.0	0.3
United States	16315	260.7	62.6

Notes:

(a) May involve deaths where a firearm has been used as a blunt instrument.

(b) Figures for Switzerland are for 1993.

Sources:

Japanese Embassy

Swiss Embassy

Population trends 1996

United Nations Monthly Bulletin of Statistics, Feb. 1996.

US Department of Justice <http://www.fbi.gov/ucr/ucr95prs.htm>