

HANDGUNS FOR HUMANE DISPATCH

Introduction

Handguns are not prohibited for the humane dispatch of deer by legislation in England, Wales or Scotland. Legally the 1991 Deer Act (England & Wales) allows the use of handguns and their ammunition for the hunting of deer. The Deer (Scotland) Act 1996 and the Deer (Scotland) (Firearms Etc.) Order 1985 allow handguns to be used for the hunting of deer, but not ammunition due to a stated minimum muzzle energy and velocity.

However police firearms licensing departments will refuse to entertain applications for handguns to hunt deer as they are prohibited items within the meaning of the 1997 Firearms (Amendment) Act. Section 3 of the 1997 Act provides an exemption providing the firearm certificate is conditioned for the handgun to be used for the humane killing of animals alone.

1) Legitimacy of handguns for humane dispatch

THE FIREARMS (AMENDMENT) ACT 1997

Section 3 of the Firearms (Amendment) Act 1997 provides an exemption for handguns specifically for humane dispatch. The language of this section does not restrict the grant of a firearm certificate for a handgun for this purpose to any particular class of person, e.g. professionals such as vets etc.

THE DEER ACT 1991 (ENGLAND & WALES)

Section 4 (2) of the Deer Act 1991 prohibits certain methods for the taking or killing or injuring deer, these are:

- a) *Any firearm and ammunition prescribed in Schedule 2 of the Deer Act 1991 (See below)*
- b) *Any Arrow, Spear or similar missile*
- c) *Any missile, whether discharged from a firearm or otherwise, carrying or containing any poison, stupefying drug or muscle relaxing agent.*

Schedule 2 of the Deer Act 1991 lists prohibited firearms and ammunition, these are:

1. *Any smooth-bore gun.*
2. *Any rifle having a calibre of less than .240 inches or muzzle energy of less than 2,305 joules (1,700 foot pounds).*
3. *Any air gun, air rifle or air pistol.*
4. *Any cartridge for use in a smooth-bore gun.*
5. *Any bullet for use in a rifle other than a soft-nosed or hollow-nosed bullet.*

NB: No. 2 & 5 above says RIFLE &. No. 3 says AIR PISTOL; these do not include centre-fire pistol calibre handguns or their ammunition.

Section 6 (3) & (4) of the Deer Act 1991 (amended by the Regulatory Reform (Deer) (England and Wales) Order 2007) allows for any reasonable method to be used for humane dispatch:

"(4) A person shall not be guilty of an offence under section 4(1) or (2) above by reason of the use of any reasonable means for the purpose of killing any deer if he reasonably believes that the deer has been so seriously injured, otherwise than by his unlawful act, or is in such condition, that to kill it is an act of mercy."

"(4A) In subsection (4) above, "any reasonable means" means any method of killing a deer that can reasonably be expected to result in rapid loss of consciousness and death and which is appropriate in all the circumstances (including in particular what the deer is doing, its size, its distance from the closest position safely attainable by the person attempting to kill the deer and its position in relation to vegetative cover)."

As handguns (short firearms) defined by Section 5(1)(aba) of the 1997 Firearms (Amendment) Act are not prohibited in Schedule 2 of the 1991 Deer Act, exemptions for short firearms do not feature within the main text of the Deer Act (i.e. exemptions are only provided where prohibitions exist.) Such short firearms may be legitimately employed within the meaning of Section 6(3), (4) & (4A) above.

SCOTTISH LEGISLATION

The Deer (Scotland) Act 1996 and the Deer (Firearms etc.) (Scotland) Order 1985 have to be read in conjunction. The Order does not contain any specific prohibitions for handguns similarly to the Deer Act 1991. The 1996 Act provides for '**any**' method to be used for humane dispatch. A relevant extract from the 1996 Act is provided below. Full details of the 1985 Order may be obtained from BASC Scotland on 01350-723226 or from the Deer Commission for Scotland - <http://www.dcs.gov.uk/> or from BASC's firearms department on 01244-573010.

Section 25 of the Deer (Scotland Act) 1996

25. A person shall not be guilty of an offence against this Act or any order made under this Act in respect of any act done for the purpose of preventing suffering by-

- (a) an injured or diseased deer; or*
- (b) by any deer calf, fawn or kid deprived, or about to be deprived, of its mother*

2) Suitability of applicant to possess firearms

The Chief Officer shall grant a certificate for a firearm if he is satisfied that:

- The applicant is not a prohibited person.
- The applicant is not of unsound mind or intemperate habits.
- The applicant is not for any reason unfitted to be entrusted with such a firearm.

3) Licensing process

The applicant must satisfy the Chief Officer that he has good reason to possess or acquire such a firearm.

The Chief Officer must take the case on its individual merits. Settled law constrains him from viewing the application from the standpoint of an objector. (Chapter 13.6 Firearms Law - Guidance to the Police: Home Office 2002. *Anderson -v- Nielands 1940*, *Joy -v- Chief Constable Dumfries and Galloway Constabulary 1966*.)

The Chief Officer may not have a blanket policy on licensing matters (*R -v- Wakefield Crown Court ex-parte Oldfield 1978*).

4) Good reason

Good reason must be genuine and substantial. It must relate to a lawful purpose and include a component which shows that the applicant has the means and opportunity to follow such a purpose.

It is not equated to need. The concept of the need to possess a firearm does not feature in firearms legislation.

5) Can a recreational stalker satisfy the good reason test for a handgun for humane dispatch?

Paragraph 13.36 of Firearms Law - Guidance to the Police: Home Office 2002 recommends that "*The humane killing of sick or injured animals with a firearm is normally confined to those who may deal with such animals on a fairly regular basis. Examples would include veterinary surgeons, RSPCA Inspectors, hunt servants and occupiers of farms and smallholdings.*" Although this section suggests that the majority of cases will apply to those who use a firearm professionally, it is clear from the language within it that it accepts that there will be others who fall outside of this class of people. The inclusion of the word "regular" does not equate to a frequent basis.

Section 13.36 of the Home Office Guidance has largely been overtaken by the cases of *Palmer -v- Chief Constable Humberside Police (2003 and 2004)* and *Hall -v- Chief Constable Northumbria Constabulary (2005)*. In both cases, the Appellants were recreational stalkers and as their appeals were allowed, this establishes that the grant of authorities for the use of a handgun for the purposes of the humane dispatch of animals is not confined to professionals, but to **anyone** who can satisfy the good reason test. Licensing managers should note the comments of HH Judge Curran in *Hughes -v- CC South Wales Police [1998]* in interpreting Section 3 of the 1997 Act as applying to professional user only "is regarded as being an unnecessary gloss on the Act."

6) The "floodgates" argument

This is often put up as a reason for refusing a certificate in difficult cases. The argument runs that if 'A' is allowed a certificate for this type of firearm and for this purpose, then 'B' must be allowed one too. Such an argument has no validity and for reasons advanced earlier in section 3 above, Chief Officers may not use it as a reason for a refusal and nor must applicants think they will get a handgun because their friend has one.

The Firearms Acts do not set any upper limit on the number of people who may be granted certificates. The police are not permitted to impose their own limits on the number of firearm and shotgun certificates that they issue. Each case must be considered on its merits and not from the standpoint of an objector.

7) Refusal based on the experience of others

There are many people who have hunted deer for many years and who have never found it necessary to carry a handgun for humane dispatch. That may be the case, but the experience of another person does not constitute a valid reason for a Chief Officer to refuse an application.

This is supported by paragraph 13.6 of the Home Office Guidance: "*Most firearm certificate holders possess firearms for reason of their profession, sport or recreation, and may properly wish to exercise discretion as to what types of firearms they chose for these purposes.*" If an application was refused on the grounds of the opinion of another person who had not found it necessary to use a firearm for the purpose for which the application had been made, then this would place the Chief Officer in conflict with settled law. He would be viewing the application from the standpoint of an objector.

8) Welfare charities

In some cases, animal welfare societies and estate gamekeepers have made statements against the use of handguns for humane dispatch, usually because they presume that once a handgun is granted that it may be used to legally 'stalk' deer in the UK, of course this is prohibited by law.

Some policy statements have been used by police to help bolster argument against issuing a certificate for handguns even where 'good reason' exists. Policy statements from animal welfare charities with an interest in deer management are simply the opinion of those bodies; accordingly, a Chief Officer may not cite the lack of support of animal welfare charities for the use of a handgun for the humane dispatch of deer as a reason for refusing an application.

9) Potential dangers from using rifles at close range for humane dispatch

It is well established that a rifle which meets the ballistic minima¹ for hunting deer has a potential to cause injury to the user and others if it is discharged at the ground at close range. Injuries could result from a deflected bullet, from bullet fragments caused by projectile break-up and from displaced earth and stones driven away at significant velocities from the impact site. It is not possible to guarantee that a bullet fired into the ground at close range will not strike a hard surface under the top soil which is not visible to the firer.

ACPO guidance to police firearms units ("The Humane Destruction of Animals by the Police – PSDB 1998") states that "officers must always be aware of":-

- 1) **The potential for over penetration and ricochets**
- 2) Utilising appropriate backstops
- 3) Adopting appropriate shot placement

Handguns have much lower energy levels than rifles and it is likely that their projectiles will remain in the deer.

¹ Ballistic minima are placed into legislation to ensure sufficient kinetic energy is carried by a projectile to the quarry resulting in a humane kill when shooting over a long distance.

10) Ability of the applicant to use a handgun effectively

Much is made of the difficulty of using a handgun in an effective manner. The majority of free-bullet handguns for humane dispatch have sights. This means that they can be aimed. Over the relatively short distances involved, such as 5 metres or less, their users will achieve an acceptable degree of accuracy with them.

11) Types of handgun for humane dispatch

The Home Office Guidance recommends that handguns for humane dispatch start at a baseline of .32 and are restricted to one or two shots. This means that once the applicant has satisfied the good reason for the grant of a handgun, he then has the opportunity to make the case for a handgun other than a .32. The cases of *Goodman, Newton, Palmer and Hall*, and that of *Jeans -v- Chief Constable Northern Constabulary (2005)* establish that in those particular instances deerstalkers have been able to make the case for other handguns than the .32.

12) Humane Slaughter Association Guidance Notes on the Humane Killing of Livestock

Humane Slaughter Association (HSA) guidance notes on the humane killing of livestock are useful where domestic livestock are concerned and can aid a farmer or stockman when considering dispatch of domestic livestock; however it has little bearing on the application of handguns or rifles in the field for dealing with wounded deer.

The HSA guidance notes are also unhelpful as they contain a paragraph that appears to be anti handgun (favouring adapted slaughtering instruments which in BASC's opinion are more appropriate for domestic livestock). Parliament provided an exemption for the use of handguns at Section 3 of the Firearms (Amendment) Act 1997. This exemption is not subject to qualification e.g. to a professional operator. As the exemption exists, it is not for the HSA or any other organisation to dissuade anyone from taking advantage of it. Police have been known to refer to these notes in an attempt to find out how much an applicant knows about humane killing. The guidance note recommends dispatching animals by firing the gun no more than 5-25cm away from the animal's skull, a distance recommended for domestic penned animals that are easily reached. BASC has no objection to this recommendation in these circumstances but it must be remembered that this is not a mandatory distance and that those dispatching injured animals such as deer will find themselves in other scenarios where this distance cannot be safely achieved.

Some deer have large antlers, and some will kick out when lying injured and under stress. They may also be in a location where they have to be shot from a slightly greater distance due to the position they are in and the lack of accessibility by the operator. Handguns of .32 or greater calibre are capable of carrying sufficient energy *well* over 25cm, and most dispatches will take place within 1.5 meters of the animal. A bullet from a .38/.357 handgun is powerful enough to give a clean kill at 1.5m. Accurate bullet placement is paramount and wounded animals should be shot at as close a range as possible. However when the operator is in potential danger or injury or the animal is inaccessible, then an aimed shot from the handgun at a range just outside of the danger area is the best option. It is up to the operator to know his equipment and take account of what the animal is doing, its size, position and any cover. Operators must get into the best safely attainable position before dispatch is carried out. These latter criteria are a legal requirement as required by Section 6(4A) and the 1991 Deer Act.

13) Vented or Ported barrels

Whether you have an existing handgun, or are applying for one; if you are asked to have your barrels ported by the police, you do not have to do so. The Association of Chief Police Officers has circulated guidance to all firearms licensing managers about ported barrels being considered in cases where there might be a pressure hazard present if a barrel were to be placed hard against the animal's skull. The circular does not say that all barrels have to be ported but there is a possibility that this may become a recommendation by some licensing staff without regard to the full circumstances, the applicant's knowledge or the proposed use of the gun. BASC strongly asserts that there is no evidence of any hazard; and all that such adaptations achieve is additional expenditure for the certificate holder in having to have their gun machined and possibly re-proofed. In any case even the HSA does not recommend a contact dispatch; BASC concurs with this advice.

14) Appeals

Information about BASC's appeals procedure can be found on the BASC website in the Firearms Department pages.

15) Expert evidence

If you are involved in an appeal where expert witnesses are employed the expert/s must be impartial, non-aligned individuals with personal experience of the matter or matters under consideration. Their first duty is to the court and not to any party which instructs them. They must give a broad breadth of options on a particular subject and then give their reasons for preferring one option.

Where an expert witness is directly employed by a party, the other party is entitled to ask the court to direct that the expert demonstrates his impartiality.

16) Can the police condition my certificate to restrict the firearm's capacity and use?

The police have the power to add additional conditions at grant or renewal and to call your certificate in at any time during its validity to vary conditions. There is no right of appeal at this time to challenge conditions imposed upon a certificate holder.

Section 2 & 3 of the 1997 Firearms Amendment Act require that a statutory condition be placed on the certificates to restrict the use of the firearm to the specific activity i.e. slaughtering or humane dispatch of animals. Sample conditions are given within the Home office guidance and forces should not be deviating from these. Often police condition for "sick or injured deer", this is an unlawful condition as the law requires the wording "humane killing of animals". Humane killing is the activity for which a firearm is used; the reason a humane killing has to take place may be for one of many reasons e.g.

- Wounded animal – through RTA, shooting or caught in fence or snare etc
- Unviable animal – deformed at birth, cattle stuck in marsh
- Diseased animal
- Slaughtering for food (Regulations apply in certain circumstances)
- Trapped pest species i.e. difficult to handle (fox, mink etc)
- Digging out fox earths (increase in this activity due to Hunting Act 2004)

However the condition can be extended to include other matters that the Chief Officer feels relevant, typically by restricting the capacity of the firearm to two shots. This is unhelpful but has been proliferated across the UK. The legislation does not specifically require the police to restrict the firearm's capacity, nor does it require the applicant to make a case for having a firearm of any particular capacity. Such restrictions have been added by police under the guise of public safety and fear of criticism for granting one should it be lost or stolen and subsequently used in crime.

Such adaption costs money and if welding is applied it may require re-proof at a cost. Carriage charges to proof are also expensive as Section 5 prohibited firearms require special carrier provisions. This is an unsatisfactory situation but one that cannot be resolved for now. This culture is odd in that no physical restriction is ever permanent nor is it likely to deter or prevent crime.

17) Do the police have a right to seize my handgun for any reason?

The police have no power of seizure. The legislation does not allow police to discriminate against individual types of firearm, calibre or features of a firearm; equally there is no requirement for police to consider the possibility of the firearms convertibility or ability to be concealed. Parliament has previously decided upon these facts in passing the exemption as it is worded.

BASC receives many enquiries about police wishing to seize handguns from their owner when good reason remains, usually at renewal. If the police make such an attempt you are under no obligation to co-operate until reasons are clearly given. You should ask for reasons in writing and ignore any persuasion tactics such as *"it's a prohibited weapon, hand it over or risk 5 years in jail, the armed response team will be called etc."*. The police may only revoke the certificate if they are satisfied that the certificate holder no longer has "good reason" to possess it. When a revocation notice is served you must comply with it.

Good reason relates to the possession and use of the firearm in question and good reason exists to own a handgun under the Section 3 exemption within the 1997 Firearms (Amendment) Act for "humane dispatch of animals". It is only when the certificate holders animal welfare responsibility is lost that good reason is no longer present.

18) How do I defend myself in such situations?

Sometimes police employees fixate on the level of compliance a person gives in order to achieve their aims, especially where the police have no legal powers or are reluctant to use what powers they have. So long as you are compliant with legal requirements (elementary cooperation) no one can fault you, even if you are warned about being uncooperative. There is a difference in being uncooperative to protect your position and being uncooperative in a bloody minded or illegal fashion.

If you are non-compliant with what are believed to be unjust actions, then you are perfectly within your rights to complain and resist until you are presented with a clear and reasoned explanation as to why the request is being made e.g. when the law actually requires you to co-operate in the specific circumstances. Always remain polite and co-operate once the police explain their legal powers and official procedures. If you are in doubt as to what you are being told, politely ask them to wait whilst you seek

advice. No officer should intimidate to achieve his aims least of all threaten prosecution for possessing a firearm authorised by them in the first place.

Often police will coerce people into handing over their guns by saying that it's the easier option than revocation i.e. that the revocation will have to be declared on future application forms and that could go against you. This is poppycock. The revocation/partial revocation procedures can be used for a variety of reasons. Whether or not a formal revocation is made, the detail will always be recorded and that is what future decisions must be based upon if relevant. Often the motive behind not revoking relates to saving on paperwork and closing off an avenue for appeal, for which the police would be easily exposed to if they revoke handguns on grounds not relating to good reason.

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