



Chapter 12: Assessing Suitability

- 12.1 This chapter offers guidance on the issue of a person's suitability to be entrusted with a firearm or permitted to possess a shotgun without danger to the public safety or to the peace.
- 12.2 The "fitness" test applies to firearms by virtue of section 27(1)(a) of the 1968 Act. Whilst the statutory test for shotguns in section 28 does not use the term "fit" or "fitness", many of those considerations will be relevant when granting a shotgun certificate. For example, the assessment of whether the applicant can be permitted to possess a shotgun without danger to the public safety or to the peace as under section 28(1). This chapter contains a list of factors, which should be taken into consideration and is **not** exhaustive.
- 12.3 Police forces must ensure that all relevant information and intelligence is readily available for continuous assessment of the suitability of an individual to possess firearms or shotguns. This is particularly important where there is evidence of domestic violence (see paragraph 12.40).
- 12.4 For the purposes of this chapter, the term 'firearms' includes shotguns, unless otherwise stated, this approach is in accordance with the definition of firearm in section 57(1) of the 1968 Act.

The test for firearms

- 12.5 Section 27(1) of the 1968 Act (as amended) states that:

"A firearm certificate shall be granted where the chief officer of police is satisfied that:

- (a) the applicant is fit to be entrusted with a firearm to which section 1 of this Act applies and is not a person prohibited by this Act from possessing such as firearm;
- (b) that he has a good reason for having in his possession, or for purchasing or acquiring, the firearm or ammunition in respect of which the application is made; and
- (c) that in all the circumstances the applicant can be permitted to have the firearm or ammunition in his possession without danger to the public safety or to the peace".

- 12.6 Section 30A(2) of the 1968 Act (as amended) states that:

"The [firearm] certificate may be revoked if the chief officer of police has reason to believe:

- (a) that the holder is of intemperate habits or unsound mind or is otherwise unfitted to be entrusted with a firearm; or

- (b) that the holder can no longer be permitted to have a firearm or ammunition to which the certificate relates in his possession without danger to the public safety or to the peace”.

The test for shotguns

- 12.7 Section 28(1) of the 1968 Act states that “subject to subsection (1A) below, a shotgun certificate shall be granted or, as the case may be, renewed by the chief officer of police if he is satisfied that the applicant can be permitted to possess a shotgun without danger to the public safety or to the peace”.
- 12.8 Section 30C(1) of the 1968 Act (as amended) states that the shotgun certificate may be revoked on the grounds that the chief officer of police is satisfied that the holder is prohibited from possessing a shotgun, or that they can’t be permitted to possess one without danger to the public safety or to the peace.

Factors to be taken into account

- 12.9 The chief officer of police must, when assessing an application for the grant, renewal, or revocation of, a firearm or shotgun certificate, consider the following factors:

i) Prohibited persons and others known/suspected of criminal involvement

- 12.10 Section 21 of the 1968 Act sets out restrictions on the possession of firearms by certain categories of persons convicted of crimes in England, Wales and Scotland. In short, persons who are sentenced to a term of imprisonment of three years or more are never allowed to possess firearms or ammunition, and persons who are sentenced to a term of imprisonment for three months or more but less than three years must not possess them until five years have passed since the date of release (see Chapter 5). In both these circumstances, the prohibited person may appeal to the Crown Court, or in Scotland, in accordance with Act of Sederunt to the sheriff for the prohibition to be lifted, and such an appeal is likely to succeed if the conviction was for an unrelated crime.
- 12.11 Different provisions apply to Northern Ireland, by virtue of the Firearms (Northern Ireland) Order 2004. Those sentenced to imprisonment or detention in a young offender’s centre are not permitted to purchase, acquire or possess a firearm or ammunition unless the term to which they were sentenced is less than three years. A person sentenced to imprisonment for a term of three months or more but less than three years, or detention in a young offender’s centre or juvenile justice centre for such a term cannot purchase, acquire or possess a firearm or ammunition until eight years from the date of their conviction.
- 12.12 Consideration must also be given to any previous convictions or cautions, where the applicant does not fall within the provisions of section 21. This would include cautions held by persons for offences such as a failure to comply with conditions on a firearm certificate (taking account of the seriousness of the breach of conditions) or where an individual has been given a suspended sentence.
- 12.13 Although convictions overseas do not count towards prohibition, they will need to be considered in relation to questions of fitness/suitability. Chief officers of police will also want to be aware of the following judgements - although these cases were decided on their particular facts, they offer broad guidance that may be applicable elsewhere:

- (a) 'Dabek v Chief Constable of Devon and Cornwall (1991)', where the court ruled that a woman of good character should not possess a gun where her husband had two ancient drug convictions but still associated with drug users;
- (b) 'Chief Constable of Essex v Germain (1991)', where the court ruled that a chief officer was entitled, in revoking a shotgun licence, to take into account the certificate holder's drink driving convictions. It was felt that this demonstrated irresponsibility and lack of self-control and justified the chief officer believing there was a future risk to the peace involving the shotgun; and
- (c) 'Spencer-Stewart v Chief Constable of Kent (1989)', where the court ruled that the certificate holder's handling stolen goods conviction was considered not to pose any future risk in relation to possession of a shotgun, and thus the revocation of the licence was not justified.

12.14 A series of convictions is likely to be sufficient evidence of unfitness, even if one on its own would not be sufficient to justify refusal or revocation, unless the convictions are well in the past. Whether the applicant is found to have knowingly or recklessly made a false statement in order to obtain a certificate is of particular relevance; failure to declare relevant convictions, medical conditions or medical history would tend to suggest unfitness to hold a certificate, regardless of whether the licence would have been refused if the appropriate declaration had been made.

12.15 In addition, consideration must also be given to arrests, police call-outs or bindings over in relation to:

- any activity which involves the use of a firearm
- offences involving violence (including domestic violence)
- offences involving dishonesty or a disregard for public safety

12.16 Information contained in criminal intelligence must be assessed, paying particular regard to alleged or known involvement in criminal offences, particularly those involving the use or threat of violence or firearms, or evidence of associations with known criminals. Allegations or intelligence which has not resulted in conviction may nonetheless be evidence of unfitness or unsuitability, especially if a number of allegations have been received from different sources.

12.17 Chief officers of police should bear in mind that information contained in police intelligence has not necessarily been tested in a criminal court and proven beyond reasonable doubt, as is required for a criminal conviction. In the event of an appeal against the refusal/revocation of the certificate, a court would place less weight on hearsay evidence than on direct evidence, and this should be borne in mind by chief officers when making those decisions. In the interests of fairness, the applicant should be given the opportunity to comment on any allegations made against them which have not been tested by the courts.

12.18 Chief officers should think critically about the reliability of the source where an allegation is made against an applicant, including whether the source has any motivation to discredit the applicant.

12.19 The test to be applied in considering whether an applicant is unfit in the light of such allegations or intelligence is twofold: firstly, whether any such allegations would, if substantiated, be enough to render an applicant unfit/unsuitable. Second, whether, on a

balance of probabilities, there is a significant likelihood that the allegations or intelligence are true. Chief officers of police should, however, consider that any such information might have to be placed before a court if the applicant appeals.

- 12.20 When an applicant is a foreign national or has lived several years overseas the enquiries should be made through Interpol with the authorities of the country concerned to ensure that the applicant has no criminal record overseas that would have a bearing on their “fitness”. This includes applicants from overseas who have been granted British citizenship.

ii) Intemperate habits

- 12.21 The term ‘intemperate habits’ appears in section 30A of the Firearms Act 1968 as part of the test for revoking firearms certificates. The term means having a lack of self-control. It should be noted that the term ‘intemperate habits’ does not appear in the test for revoking a shotgun certificate. However, it may be relevant to the assessment of whether the applicant can be permitted to possess a shotgun without danger to the public safety or the peace as under section 28(1).

- 12.22 Factors for consideration include:

- (a) Evidence of alcohol or drug abuse that may indicate that a person is unfit/unsuitable to possess a firearm due to the possible impairment of judgement and loss of self-control. The relevant case law here is “Luke v Little” (1980) supported by “Chief Constable of Essex v Germain” (1991). An assessment will need to be made into the circumstances of each case. Usually, it will be a pattern of behaviour that causes concern but there may also be cases where one-off incidents will bring into question the fitness/unsuitability of somebody to possess firearms. In the case of “Lubbock v Chief Constable of Lothian and Borders” (2001) the Sheriff ruled that the revocation of a firearms and shotgun certificate following one isolated drink driving incident was justified given the individual’s general attitude towards the offence;
- (b) Evidence of aggressive or anti-social behaviour, which may include domestic disputes or evidence of hostility likely to lead to violent acts against particular groups categorised by, for example, race, gender, disability, sexual orientation, age, religion or class. As at (a) above, an assessment will need to be made of each case, particularly as regards the seriousness of individual incidents; or
- (c) Evidence of disturbing and unusual behaviour of a kind which gives rise to well-founded fears about the future misuse of firearms. A pattern of abuse should generally be regarded more seriously than a single incident, although isolated incidents should not be disregarded in the assessment of the person concerned and their fitness to possess a firearm.

iii) Unsound mind

- 12.23 The term ‘unsound mind’ appears in section 30A of the Firearms Act 1968 as part of the test for revoking firearms certificates. It should be noted that the term ‘unsound mind’ does not appear in the test for revoking a shotgun certificate. However, it may be relevant to the assessment of whether the applicant can be permitted to possess a shotgun without danger to the public safety or to the peace as under section 28(1).

- 12.24 This is a particularly difficult and sensitive area and it is not possible to provide a definition that covers every eventuality. It is impractical for a psychiatric assessment to be conducted on an applicant's suitability to possess firearms. However, chief officers of police should be alert to cases in which a General Practitioner's (GP) report reveals that an applicant has exhibited, or is exhibiting, signs of serious depression, suicidal tendencies, or long-standing or intermittent periods of either emotional instability or unpredictable behaviour. Chief officers should also be alert to any of these signs exhibited by existing certificate holders. This includes persons who have been detained under the civil powers of the Mental Health Act 1983 on the basis of their behaviour posing a risk to the public (the Mental Health (Care and Treatment) (Scotland) Act 2003 contains provisions covering similar situations).
- 12.25 Particular attention should be paid to anyone who has previously been subject to a hospital order, guardianship order or restriction order under the provisions of the Mental Health Act 1983 following the commission of offences. Although there is no correlation between periods of imprisonment and periods of detention under the Mental Health Act, it is important for officers to examine the nature of the offences and the length of the order in these situations.
- 12.26 The fact that a person has received treatment in the past for certain illnesses or conditions, such as depression or stress does not make them automatically unfit/unsuitable to possess a firearm. It is one of the factors to be considered with all other evidence relating to the applicant's character and history. In such cases, account should be taken of the latest medical opinion, and particular attention should be paid to whether this suggests the condition is liable to recur.

iv) Safe-keeping and handling of firearms

- 12.27 Consideration should include any evidence that unauthorised persons, such as family members or associates, who may themselves present a danger to public safety, might have access to the firearms, notwithstanding any arrangements for the security of the firearms which may have already been made. Any history of serious incidents involving firearms, or a careless approach to the handling of other potentially dangerous items, should also receive close consideration. Where the latter exists, the police should consider the likelihood of repetition.

v) Domestic violence and abuse

- 12.28 When considering applications for the grant or renewal of firearm/shotgun certificates particular attention should be paid to domestic incidents, specifically violence and patterns of behaviour by the applicant which give cause for concern. (See below for the definition of domestic violence and abuse.) An incident of domestic violence taking place should trigger a need for police to review whether the certificate holder can be permitted to possess the firearm or shotgun without causing a danger to public safety or to the peace.
- 12.29 In general evidence (including a history) of domestic violence and abuse will indicate that an individual should not be permitted to possess a firearm or shotgun. Each case must be assessed by the police on its merits, on the basis of the strength of the evidence available and all the circumstances of the case.

Applications

- 12.30 Background checks will always be carried out on applicants to assess their fitness to possess a firearm. These checks should encompass local information as well as checks on national databases. Where there is information indicating domestic violence and abuse, **wider interviews or enquiries** should be considered with a range of family, friends or associates of the applicant prior to issue or renewal of a firearm/shotgun certificate. Those interviewed need not be confined to those persons put forward by the applicant. The police response should be proportionate to the risk involved and care must be taken to consider every case on its merits.
- 12.31 Interviews with partners who may be victims of domestic violence may be judged essential to making a complete assessment of an application. Such interviews need to be conducted with sensitivity, and officers must take into account that a victim of domestic violence may be unwilling to speak openly with the police for fear of further violence or reprisals. Information provided during interview must be treated as confidential. Officers must have received adequate training so that they are aware of the indicators of domestic abuse, and how to support victims and keep them safe. They should be aware that there may be a need to take active steps to protect an applicant's partner from reprisals. This is particularly important in the event that the partner is interviewed in connection with the application and provides information which leads to a refusal or revocation since the applicant might blame their partner and resort to violence.
- 12.32 An applicant's partner is not required to give approval for the issue of the firearm or shotgun certificate and this should be made clear to them. The responsibility lies with the police to make the decision based on all the evidence available. Similarly, the police will assess evidence provided by other family members, friends or associates of the applicant where this is considered to be necessary.
- 12.33 Police domestic violence/public protection units should be consulted and multi-agency liaison may be necessary to properly assess whether the applicant can hold a firearm or shotgun without danger to public safety or the peace.
- 12.34 Chief officers need not rely only on convictions when considering the suitability of applicants to possess firearms without danger to the safety of the public or the peace. In particular chief officers should be aware that they can take hearsay evidence into account and not have to rely directly on spouses/partners when considering domestic related incidents. Hearsay evidence could include the evidence of police officers attending scenes of domestic incidents.
- 12.35 Conduct which has not resulted in a conviction can be considered. For example, a bind over may be relevant, particularly if in relation to a partner or a former partner. Evidence falling short of a conviction (e.g. police intelligence, which has not been tested in the criminal court and proved beyond reasonable doubt) should be treated with caution and an assessment made by chief officers of police as to what weight should be attached to it. In each case the police must ensure a fair process by analysing how recent the incident was and whether it should be viewed as an isolated incident or part of an ongoing pattern. They should conduct an assessment of future risk based on all of the evidence.
- 12.36 Information from GPs, especially an indication of alcohol or drug abuse, or mental health issues may indicate that an applicant is not fit to possess a firearm. Consideration may be given to requesting the medical records of spouses, partners or family members (with their consent) if there is concern over previous domestic violence or abuse.

- 12.37 It should be noted, however, that in the event of challenge a court is likely to attribute less weight to hearsay or other evidence short of a conviction than to direct evidence which can be tested under cross-examination. The chief officer must therefore make a judgement about the reliability and credibility of hearsay evidence before relying upon it to refuse or revoke a certificate.

Removal of firearms or shotguns

- 12.38 When considering renewal applications or reviewing fitness following any incident that has come to light, chief officers must consider the necessity for action to remove firearms, ammunition and certificates in the interests of preventing avoidable or foreseeable harm. Where it is considered necessary to remove such items, enquiries may be necessary with the applicant, their partner/spouse, GPs, and any other relevant party (family, friends, or statutory agencies) to gather best evidence enabling a chief officer to make an informed decision on revocation.
- 12.39 When considering removal and revocation of firearms, ammunition and certificates, it is vital that partners/spouses are safeguarded against potential retribution, even if there is a lack of cooperation from them.

Continuous review

- 12.40 Forces must have appropriate measures in place to monitor any activity of a certificate holder or associates that has come to the notice of police. This is to ensure that all relevant information and intelligence is readily available for continuous assessment of the suitability of an individual to possess firearms or shotguns. It is crucial that chief officers act robustly, specifically around domestic incidents and violence, to avoid preventable harm by the potential misuse of firearms or shotguns. A review on the continued suitability of a firearm or shotgun certificate holder should take place following an incident of domestic violence or abuse.
- 12.41 Chief officers should also consider danger to public safety or the peace, including arrangements for storage of the firearm/shotgun/ammunition where the certificate holder is a victim of, or a witness to, domestic violence or abuse in the family home. Any household which is in domestic turmoil is unlikely to be a suitable place for firearms to be stored.

Definition of Domestic violence and abuse

The new definition was introduced on 31 March 2013. This is a non-statutory definition, the purpose of which is to apply across Government to ensure there is a common approach to tackling domestic violence across different agencies.

The definition of domestic violence and abuse now states:

Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse:

- psychological
- physical
- sexual
- financial
- emotional

Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

* This definition, which is not a legal definition, includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage, and victims are not confined to one gender or ethnic group.

Seeking further information

- 12.42 Where the applicant has previous convictions, or where information has cast doubts on the suitability of the person to be entrusted with a firearm, the chief officer of police should consider whether to approach agencies likely to have had involvement with them, such as the probation service or social services. The chief officer should ensure that the reason for the enquiry is to ascertain whether or not there is any further evidence that the person would be unfit/unsuitable to possess a firearm.
- 12.43 Where an applicant's reason for possessing the firearm is shooting on a farm or at a club, for example, the chief officer should also consider whether to seek additional information from persons such as the relevant holder of shooting rights or secretary of the club who may have close knowledge of the applicant's character. Where this is considered necessary, care should be taken by the police not to divulge information about the applicant which is of a sensitive or confidential nature.
- 12.44 Where applicants have declared on the prescribed form that they have suffered from a mental or nervous disorder, including depression, and have given their consent to an approach being made to their GP or medical adviser, the GP should be asked in writing to provide factual details about the condition. The failure of a GP to provide such information should not in itself result in the refusal of an application (see also Chapter 10).

Making the final assessment

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