

Submission to the Department of Justice
on the Review of Firearms Licensing

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Summary

The proposals put forward by the Working Group seek to introduce unwarranted restrictions to what are already the most restrictive firearms laws in the EU. The supporting data for these proposals contain mathematical errors and are presented in an inappropriate context and much of the supporting data does not actually have anything to do with licenced firearms ownership and so do not support the proposals. Further, several of these proposals would worsen the problems with the Firearms Act and firearms law in Ireland in general by introducing new anomalies while not correcting existing ones.

Desired outcomes

I feel perhaps that it would be helpful if I were to state at the outset what I, and many other shooters, would wish to see in the Firearms Act. It is quite simple:

A clear and unambiguous set of rules regarding firearms licencing which are readily readable by everyone and which are enforced equally in all Garda districts.

At present we do not have this, and despite decades of experience, the only available answer to many basic questions posed by newcomers to our sports is "*you have to ask your local Superintendent*" (a prospect which most right-thinking members of society tend to find intimidating). This situation has arisen because the Firearms Act, instead of being a clear and universal law, is at present a legal morass that takes expertise to read and whose enforcement varies from Garda district to Garda district. As such, the Firearms Act in practice is not so much a law in Ireland at present as it is a collection of mostly undocumented whims which varies from place to place.

This is an intolerable situation, and one which these proposed changes does not resolve, but exacerbate.

Recommendations

My recommendations to the Department are simple and straightforward and identical to those I made to the Oireachtas Joint Committee on Justice with regard to the Working Group's proposals:

1. I recommend that these proposals be rejected in their present form on the grounds that they require further consideration and that they be submitted to the Firearms Consultation Panel under the aegis of the Minister for that consideration in an open and transparent manner.
2. I recommend that before **any** further changes are made to the Firearms Act, a restatement under the 2002 Statute Law (Restatement) Act is prepared and enacted as called for by Justice Charleton and the Law Reform Commission, thus allowing us to see clearly, in one document, what the actual and complete state of the Firearms Act is and where any errors or deficiencies lie.

Language Shapes Thought

Before addressing the proposals in detail, I wish highlighting a serious problem with the incorrect and inaccurate language the Working Group has been using in the Report and when presenting it to the Oireachtas Joint Committee.

Most illustratively of this, was the continual use of the word **“weapon”**. An Garda Síochána do not issue weapons licences. Such licences do not, in fact, exist anywhere in Irish law. This is logical since a weapon is something that has been used to harm another person. Anyone presenting themselves to a member of the Gardaí seeking such a licence is therefore confessing to at least assault causing actual bodily harm. The term is inaccurate and highly prejudicial against lawabiding members of society. Target shooters and hunters and vets and sports officials and farmers do not have **“weapons licences”**. We have **firearms certificates**. These firearms certificates are issued by the Gardaí in respect of sports equipment, or farming equipment, or veterinary equipment or airport safety equipment. These items are **not** weapons. Referring to them as weapons is to imply a context which is defamatory and offensive to all firearms owners in Ireland, a point noted by Garda Superintendent Aidan Glackan in 2009 when addressing the Firearms Consultation Panel's public meeting on the range standards Statutory Instrument.

Weapons don't get licences. They get evidence tags.

This was not the only example of problematic language in use. Citing all the examples would require a book, but one further example must be highlighted:

“Firearm” in Irish law has a very broad and loose definition and does not merely include what is conventionally thought of by the average member of the public as “a gun”. It does indeed include rifles, pistols and shotguns; but it also includes:

- paintball markers;
- birdscarers;
- crossbows;
- stun guns;
- blank starting pistols;
- flare guns;
- any firearm (including all of the items on this list) which has been broken or decommissioned;
- airguns which are not legally firearms anywhere else in the EU (our limit on muzzle energy is 1 joule – throughout the EU the limit varies from 7.5 joules to 17 joules); and
- all component parts of a firearm (in other words, under the law, the wooden cheekpiece on my air rifle is a firearm in and of itself, as is every nut and bolt contained within the air rifle).

This broad definition has enormous impact on the accuracy of statistical data as what is referred to in Ireland as a firearm may not be a firearm anywhere else in the world; and also any firearm which is decommissioned and kept as a family heirloom may still be counted in statistical reports as a firearm even though it can never again function as one. Minister McDowells answer to Written Question 617 of June 28 2005 (which asked about the statistics for stolen firearms) is illustrative of the critical importance of this overly-broad definition when interpreting Garda statistics correctly:

According to the Garda authorities the category of “pistol-revolver” on the crime recording system is broad and captures different types of pistols and revolvers

including starting pistols, air pistols, antique pistols and flare pistols. Starting pistols, antique pistols and flare pistols do not require a firearm certificate for possession, use or carriage. Where an air pistol falls under the definition of a firearm contained in the Firearms Acts 1925 to 2000 a firearm certificate is required for possession, use or carriage.

With regard to the figures relating to pistols the six pistols-revolvers stolen in 2002 refer to starting pistols, flare pistols and air pistols. There were two antique revolvers stolen in 2002 and both had the barrel bored and the hammer filed down to render them incapable of firing. The 17 pistols-revolvers stolen in 2003 refer to air pistols, starting pistols and starting revolvers. There was one revolver stolen in 2003 which had been rendered incapable of firing. The pistols-revolvers stolen in 2004 were two air pistols.

This extremely important contextual point is neither made nor emphasised anywhere in the Working Group's Report, which could easily be construed as being deliberately misleading.

Data Quality

I would like to discuss the nature of the data being used by the Working Group in its Report. The only source of statistical data so far has been PULSE, and the Garda Inspectorate report's criticism of the data quality in the PULSE system, and the subsequent establishment of a new Data Quality Team and the statements regarding this by the Minister on November 11 2014 would strongly suggest that the data being presented from PULSE in regard to firearms requires at a minimum a degree of auditing that does not appear to be happening.

I wish to discuss in particular two statistical points given – though I will point out that these two points are far from being the sole examples of problems with the report's data. These points are the number of licenced handguns, and the number of licenced firearms (both as an absolute number and as a per capita figure).

The figure of 1,666 licenced handguns (later revised to 1,683 when presented to the Joint Committee) has two distinct issues, one to do with its veracity and one with its context:

- Chief Superintendent Healy stated that the figure of 1,683 comprised 639 restricted handguns and 1,044 non-restricted handguns of .22 calibre. My handgun is a .177 unrestricted air pistol (air pistols are legally in the same class as .22 calibre unrestricted handguns). Its existence alone mean that figure of 1,044 .22 calibre handguns must be incorrect -- at most it could only be 1,043 .22 pistols. However, there are hundreds of similar licenced air pistols in the country; therefore the number of .22 pistols must be much lower than this. As such, I would question the veracity of the data.
- In terms of the data's context, it was presented in the Report repeatedly as being a high number, with no prior precedent, as though handguns had never been licenced in the state in this manner before and were an unknown risk to the public. However, this is simply not the case. Handguns have been licenced in the State since 1925. From 1972 to 2004, under a Ministerial and Garda policy which was later found to be unlawful by the Supreme Court in *McVeigh* and in *Brophy*, applications for certificates for handguns were not considered. In 1972, Minister O'Malley reported to Dr.O'Donovan in Oral Questions in the Dail that 1,565 handguns were licenced.

Therefore in 43 years we have seen an increase of 118 handguns. A breakdown of how many of those are air pistols, smallbore pistols, fullbore pistols, starter pistols and how many are decommissioned pistols is unavailable to me, but I do feel that an increase of less than 3 pistols per year does not justify the level of concern expressed by the Report.

We must also consider that a large number of the 1,683 pistols currently licenced, and the 1,565 pistols handed in under the 1972 Temporary Custody Order, are in fact the same firearm.

And it must also be remembered that since the Central Statistics Office figures show that the population has risen by 1.6 million people since 1971, the number of licenced handguns per capita has actually *fallen* by approximately 28%, from 0.5 per thousand people to 0.36 per thousand people, and thus terms like “**decline**” are the appropriate ones to use when describing this data, rather than terms like “proliferation”, which have been used instead. This vital contextual point is utterly absent from the Report, which has the effect of misleading any lay person reading the Report, and the use of inappropriate terms to the Joint Committee when introducing the Report raises serious concerns.

Secondly, I wish to discuss the overall number of licenced firearms held in Ireland at present, given as 179,833 firearms in the Report and 200,436 firearms to the Joint Committee. I will consider the higher number on the grounds that it is more recent and presumably therefore more accurate. This figure again represents a *decline* in the total number of licenced firearms in Ireland since 2008, which Garda statistics reported by Minister Ahern on October 24, 2008 in the Dail puts at 233,120.

While the 2008 figures do represent an increase over the status quo for firearms licencing in Ireland, it should be noted that this increase was triggered by the economic boom and the resultant development of new firearms ranges along with new facilities in all other sports in the country and it is a matter of public record that it had no impact on public safety.

Prior to this, as Minister Noonan reported to the Dail on February 4 1986, the number of firearms certificates in 1985 was 176,173 – though at the time the definition of “firearm” was different and less inclusive, and several thousand firearms were still in storage following the 1972 Temporary Custody Order, so direct comparisons are difficult to say the least.

None of this contextual data was presented in the Report, nor was it made clear to the Joint Committee, which again, has the effect of misleading any lay reader of the Report to believe that the number of firearms in Ireland is excessively high or in the process of becoming an issue, beliefs utterly unsupported by the actual evidence.

Further to this point, I wish to address the figure cited by Ms. Walsh of the Department's Firearms Unit of **8.6 firearms per 100 people** and her statement to the Joint Committee that this places us in the middle range of firearms ownership rates in the EU. Chief Superintendent Healy stated to the Joint Committee in the same hearing that the latest information is that there are 200,436 firearms in Ireland; and the Central Statistics Office's most recent population estimate from April 2014 is 4,609,600. This puts our firearms ownership rate at **4.34 firearms per 100 people**, just over half the figure cited by Ms. Walsh. In order to reach 8.6, we would require a total number of licenced firearms of 396,425 – almost double the number currently licenced.

I can only account for this figure of 8.6 if it has been taken from [Annexe 4 of the Small Arms Survey 2007](#) (which does indeed incorrectly list Ireland as having 358,644 privately owned firearms in 2005 – a figure it arrives at by including an estimate of 150,000 illegally held firearms in that total, see page 44 of that report -- and calculates the ownership level for 2005 accordingly).

It is plainly invalid to calculate the number of licenced firearms per capita using such an approach, and indeed Minister Burke commented on such estimates of the number of illicit firearms in the Dail on October 22 1991 stating that *“The very fact that [illegally held] firearms are held illegally precludes statistics being available of the number of such firearms”*.

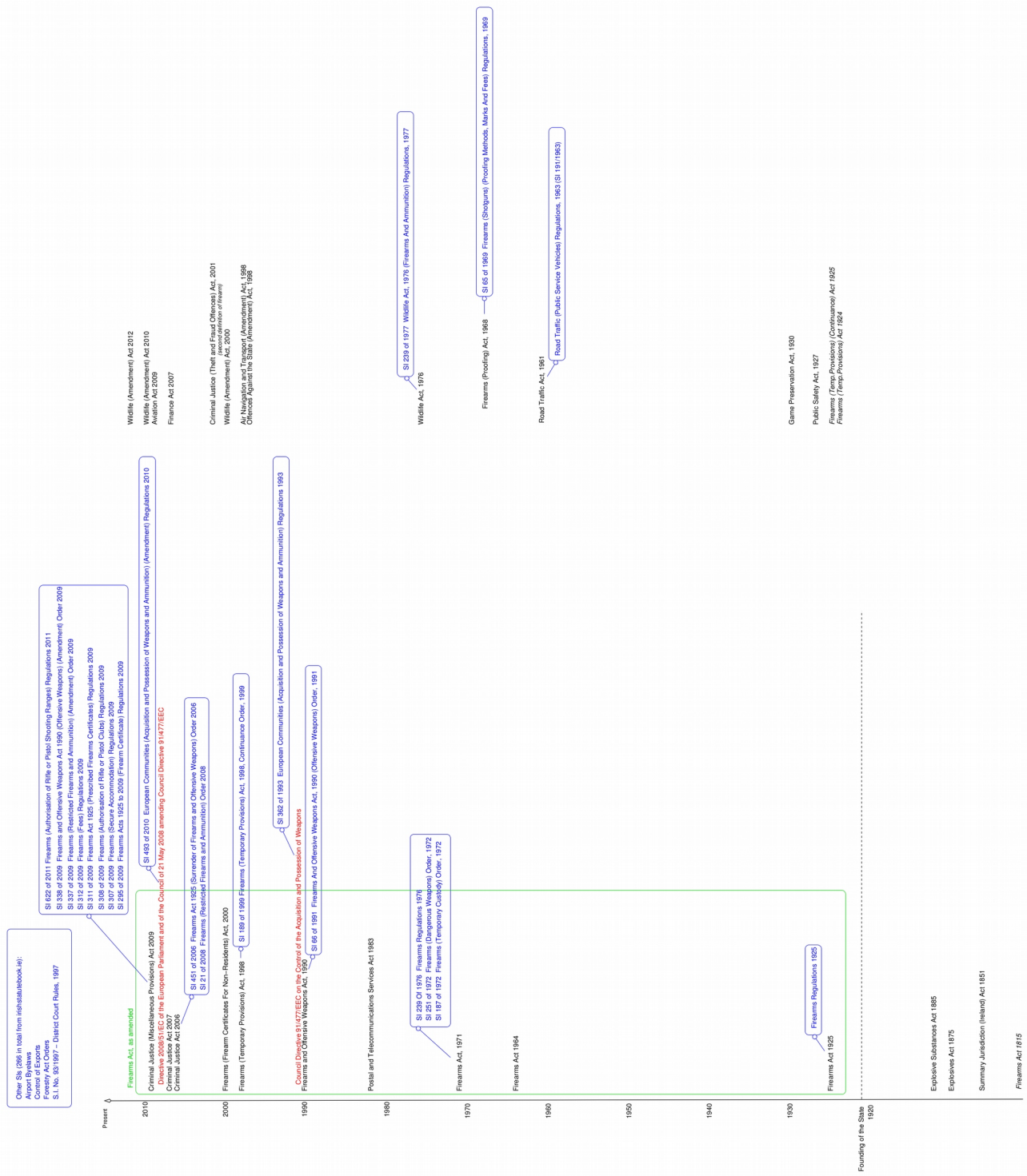
Furthermore, figures from the [EU15 member states in 2003](#) show an average firearms ownership rate of **17.4 firearms per 100 population**. So even if we doubled our current number of licenced firearms we would still have only *half* the average ownership level in the EU, and even then that would owe much of that rate to our counting as firearms a range of objects (such as sub-seven-joule airguns, crossbows, paintball markers, deactivated or broken firearms and component parts of firearms) which are not counted as firearms in the rest of the EU.

Not only was the figure of 8.6 incorrect – and easily detected as being incorrect -- it was also presented without the contextual data of the average firearms ownership rate in the EU. Instead of being in the mid-range of ownership levels as Ms. Walsh stated, we are in fact fifth from the bottom of the ownership table, and most of those nations below us have long histories of extremely strict State control of firearms while they were satellite states of the Soviet Union, which does rather render comparisons meaningless.

Unreadable Legislation

The exceptionally awkward nature of the Firearms Act was touched upon in the Report, but I believe that even the description given does not accurately relate to the lay reader the depth of the problem. The Firearms Act today is effectively unreadable to the average member of the public. The body of firearms law in Ireland – in other words those laws which a licenced firearms owner is required to obey -- is comprised now of the 1925 Firearms Act and over twenty other Acts layered upon it or contributing to it in a palimpsest fashion, complicated by the introduction of a quasi-seperate Act by the 1990 Firearms and Offensive Weapons Act which was then itself amended by several subsequent acts; all of which layering is governed by dozens of statutory instruments laying out the commencement dates of various portions of the Act, and the additional attendant statutory instruments which contain secondary regulations, some of which have themselves been amended by subsequent statutory instruments. Two EU directives also feed into this legal morass along with the Commissioner's guidelines and case law from several hundred Supreme, High and District Court cases, and all of these sources must be read together to gain a picture of the existing Firearms Act, as amended – and rarely in Irish law do the words “*as amended*” contain so much hidden work for the reader.

A [diagram](#) may assist here in understanding the sheer magnitude of the difficulty in understanding this body of law:



In 1963, when it was proposed to have a single Act amend the 1925 Act, Fine Gael TD Michael O'Higgins said during the second stage of the Dail debate on what became the 1964 Firearms Act:

"At the close of his remarks, the Minister referred to a point I had intended urging on him—the question of the consolidation of his Bill and the earlier Firearms Act. I agree with the Minister that in view of the size of the 1925 Act, which was very considerable and the additions proposed by this Bill, the resultant Act would be a bulky volume. However, I should like the Minister to consider in future legislation of this type that it is well worth while consolidating from a number of different points of view. Certainly, from the point of view of anyone in the legal profession who has occasion to examine these Acts and advise on them, it is obviously more convenient that the law should be contained in one Act, if possible, rather than that it should be necessary to thumb through a number of different Acts. From the point of view also of the occupants of the benches, particularly the District Court bench, it would be a matter of convenience to consolidate as far as possible. The ordinary district justice has not got so readily available to him the services of a legal library as the people sitting on the Circuit Court and High Court benches."

In 2004, before some of the most significant and intricate of amendments to the Firearms Act were drafted, the Law Reform Commission called for a legal restatement of the Firearms Act under the Statute Law (Restatement) Act 2002 to address the complexity of the law.

In 2008, before the 2009 Act added even more complexity to the Firearms Act, Justice Peter Charleton further called for such an action in the High Court, saying in [McCarron](#) that *"the piecemeal spreading over multiple pieces of legislation of the statutory rules for the control of firearms is undesirable. Codification in that area is almost as pressing a need as it is in the area of sexual violence."*

And as Minister Fitzgerald commented in the Dail on 27 January 2015:

"Judge Durcan, in a written judgment in Ennis District Court on 5 November, 2014, addressed an issue relating to the interpretation of the legislation when he stated: "By way of casual initial observation, it must be said that the manner of amendment adopted by the legislature with respect to the Firearms Code is to be regretted. The 2006 Act amends substantially fourteen of the thirty sections of the Principal Act, six important sections of the Principal Act being completely amended by substitution. The 2009 Act contains an additional 20 sections which effect considerable amendments to the code. It is highly unsatisfactory that the code must now be read by reference to a number of different statutes, when the opportunity could have been taken to provide a consolidating statute. Despite developments in information technology and the empowerment of computer consolidation, Statue Law should be easily accessible not merely to Lawyers and Legislators, but also to ordinary citizens in a comprehensible manner".

To date, none of these calls for a more readable Act have been followed through on and some 21 Acts now amend or contribute to the body of Irish firearms law. The end result of this awful legislative situation is that despite a basic structure which was sufficiently sound to last through seventy years without significant alteration - thirty of them during the Troubles - we now have a law in which we simply have no true experts in the entire country and only a few dozen people with a sound working knowledge of the Act, and that is including the law's drafters in the Department, the Attorney General's office and the other members of the Firearms Consultation Panel as well as those members of the Bar and Judiciary who have been involved in taking cases in the various Courts of late. Indeed, Heads 11 & 12 in the Report directly stem from this problem. It is little wonder that so much contention has arisen in recent years over the fine detail of the Act and its enforcement.

And we know there are deficiencies in the legislation caused by accidental oversight in the current Act. To give one example, crossbows and paintball markers are now designated as restricted firearms, not because they were seen as warranting such classification, but because the Statutory Instruments setting forth what is a restricted firearm and what is not was drafted in the form of a whitelist of unrestricted firearms and all firearms not on that whitelist were designated as being restricted – and nobody in the drafting process remembered crossbows and paintball markers until after the second Statutory Instrument had been signed. I know this because I personally brought the situation to the Department's attention. In the case of paintball the situation is doubly ridiculous as most paintball markers are classified legally as restricted short firearms and therefore are governed by the same regulations that apply to centerfire handguns – and this in effect means that any stag party taking part in a game of paintball before the wedding celebrations is strictly speaking committing an offence under the Firearms Act that carries a penalty of up to seven years imprisonment and twenty thousand euros in fines for each participant, along with the employees of the company that operates the facility. This is plainly ridiculous.

Further silliness comes from there being no minimum draw weight for a crossbow to be designated as a firearm (in an analogous way to the manner in which an airgun must have a muzzle energy in excess of one Joule to be legally considered as a firearm). This means that any toy crossbow, sold openly in toy shops across Ireland today, is legally a restricted firearm and any parent buying one for their child is guilty of an offence under the Firearms Act with a maximum penalty of seven years in jail and twenty thousand euro in fines, as are the company selling the toy and all their employees, and the entire retail chain from the child to the importer. This is completely silly.

We have, in short, a law where everyone can see the lines, but nobody is completely certain about where exactly they are, and everyone has spent the last six years arguing about where they should go. This Report proposes to add to this problem, not resolve it.

It would be well worth remembering that the technical nature of firearms and the detailed knowledge required to draft useful and enforceable firearms legislation is such an onerous set of requirements that previous Ministers created and maintained the Firearms Consultation Panel, a body which gathered stakeholders and experts including not only the Gardaí and Department of Justice, but also the Irish Sports Council, several shooting sports bodies, insurance providers, range operators, the Irish Farmers Association, firearms dealers and other concerned parties.

This panel, and the unprecedented cooperation between stakeholders and the Minister with regard to legislation that it represented, contributed enormously to the legislation, detecting and correcting some truly appalling mistakes in draft legislation caused by a lack of technical knowledge in one form or another by various drafters. Having more than proven itself as an effective technique for addressing legislative shortcomings, it would seem unusual to many including myself to abandon it at a time when it could do so much badly needed work repairing the morass of legislation that the Firearms Act has become over the decades.

The problem with Whitelisting

I would like to make a specific comment about the whitelisting of pistols mentioned throughout the Report. There are significant technical problems with whitelisting as envisaged, and the experiences in California where such a whitelist is used have demonstrated these problems.

The first problem is that someone has to maintain such a list. This is not a simple task. Pistols are like any other manufactured good in that new designs come out and old designs retire. Maintaining a whitelist will therefore not be a one-off job, and keeping track of every smallbore pistol design and judging which meet the criteria and which do not would be almost a fulltime job. I'm a fully qualified ISSF judge who's been target shooting for twenty years, I've run equipment control for a few international pistol matches, and I certainly couldn't perform such an evaluation merely by looking at a brochure from the manufacturer, I cannot in good faith see how an untrained civil servant whose expertise does not lie in firearms will be able to perform such evaluations adequately unless the Department of Justice purchased test firearms for that purpose, which would be enormously expensive and time-consuming and which would require facilities they do not currently possess.

The assertion that such a whitelist could be maintained and updated using statutory instruments is facile at best; the rate at which the whitelist would change would necessitate several of these per year, unless the intention is to simply abandon the project after its initial work and thereby deliberately and directly handicap Irish Olympic target shooters in direct opposition to the stated policy of the Minister for Justice and the Minister for Sport.

Further, the whitelist is envisaged as being pistols **"designed for use"** in the Olympics. This phrasing is not fit for purpose. Pistols, like any other piece of comparable sports equipment, are designed for use in a lot of other sports as well because of the nature of manufacturing economics. Like any popular car, you can get a pistol like the Hammerli Xesse in several different variants, mostly with cosmetic changes between them. For a beginner in the sport, this is perfect – the pistol costs six or seven hundred euro instead of the three to five thousand euro the pistols used by Olympic medalists cost, and they can try several Olympic and non-Olympic shooting sports to find out which they're best at. Ban those beginner pistols and you're banning not only a dozen non-Olympic sports, but you're strangling the Olympic sports as well. This is at variance with the stated Garda and Departmental policy to facilitate Olympic sports. Such a bias against recreational entry-level target shooting of this kind is also at odds with the stated intent of the Firearms Act, which was not envisaged as allowing certificates only in the case of international level shooters. Beginners in the sport were explicitly mentioned in the Dail by the Minister during the 2004 Bill's debates. This is why the Act requires proof of competency in section four of the Firearms Act, rather than proof of proficiency. The correct phrase to have used was **"suitable for use in"**, not "designed for use in".

Also such a whitelist is – as was pointed out in objections during the drafting of the original Restricted List – not an appropriate mechanism to use in legislation, and if restrictions are required, they should – **as they currently are in the legislation** – be based on physical characteristics of the firearm which may be objectively and independently measured to determine the legal classification of the firearm. Such an approach is infinitely more flexible, open and transparent.

Section 4(2)(b) Implications

I wish to touch upon a disturbing point pertaining to the current law and the review.

It has been repeatedly stated in the Report that the driving motivation behind the proposed changes to the Firearms Act in this review is public safety. This is deeply troubling. Section 4(2)(b) of the Firearms Act clearly says – and has clearly said since 1925 – that if the issuing person thinks the issuing of a firearms certificate to an applicant would pose a danger to the public safety or the peace, then they **may not** issue a firearms certificate.

*4.— (1) An issuing person **shall not** grant a firearm certificate unless he or she is satisfied that the applicant complies with the conditions referred to in subsection (2) and will continue to comply with them during the currency of the certificate.*

(2) The conditions subject to which a firearm certificate may be granted are that, in the opinion of the issuing person, the applicant—

...

(b) can be permitted to possess, use and carry the firearm and ammunition without danger to the public safety or security or the peace,

Legally, the licencing official has no choice in the matter. If a danger exists or will come to exist, they cannot legally choose to ignore it. The only legally permitted question is whether or not that danger is real. It should be noted that several cases, including those cited in section 8 of the Report, saw the Judges disagree with the AGS on the answer to that question; but the Report completely omits this central point.

Further, under Section 5(1)(b), the firearms certificate may be revoked at any time if the issuing person feels the condition of 4(2)(b) has changed:

5.—(1) An issuing person may at any time revoke a firearm certificate granted by the person if satisfied that the holder of the certificate—

...

(b) is a person who cannot, without danger to the public safety or security or the peace, be permitted to possess a firearm,

In short, it is not legally possible for a valid threat to public safety to arise and remain extant unless the issuing person ignores the law or is incompetent at judging threats to public safety.

Therefore, if the Gardaí feel that the current licencing laws have resulted in a danger to the public safety, some very hard questions arise, first amongst which are why sections four and five have not been adhered to. Stating that this is due to District Court judgements merely poses that same question to the District Court Justices, who are as bound by the Act as the Gardaí and who can no more legally issue a firearms certificate if they believe a real danger exists than the Gardaí can. It is hard for a member of the public who has read sections four and five to read the Report or hear a Garda Chief Superintendent make these statements and not ponder the ramifications of those statements and to query who is asking hard questions of whom by making them.

Consultation

In section seven in the Report, I note the following statement from the first paragraph:

The particular issues pertinent to this Review were not raised by DOJE or An Garda Síochána at these meetings; neither have the recommendations of this draft Report been the subject of consultation with these groups

The fact that -- despite meeting with several stakeholder groups on several occasions during the course of this Working Group's review and despite many requests for clarification about the nature and subject of the review -- none of these groups were informed as to the issues being examined nor shown the proposed recommendations, despite being acknowledged as possessing significant expertise in the area of firearms legislation and having been involved in the legislative process for the 2006 and 2009 Acts, speaks volumes as to the manner in which this review was conducted.

It should inform the lay reader as to the nature of, and justification for, the concerns and objections of these stakeholder groups who have found themselves the subject of offensive implications regarding their sports and the character of their members as a result of this review and while the Minister's assurances that no final decision will be taken without consultation have been given, the manner in which this review has been carried out does not prejudice a reasonable person to accept these assurances without qualms.

In contrast to how legislation was prepared under the Firearms Consultative Panel, the complete lack -- in fact, the refusal to participate in -- wider consultation during the preparation of this Report, is a disturbing development.

This review appears to many in the shooting community to be an attempt by the Gardai to "win" an argument that was lost several hundred times in various Courts at a cost to the state estimated to be in the region of five million euros.

There is a disturbing division that has arisen between the AGS and the shooting community unnecessarily in recent years, which is in nobody's best interests. It would be infinitely preferable to all of us if Garda manhours were not being consumed by disputes over sports equipment but instead spent on the prosecution of those who commit crimes with illegally held firearms.

The lack of wider consultation on this Report and the choice of wording in many sections of it has done nothing but widen this division and elevate it from being an extreme position to being a moderate, even a conservative one. I cannot stress strongly enough how unwise and unhelpful to the best interests of the AGS, the Department and the shooting community this has been.

Legal Philosophy

The last point I wish to raise regarding the Report before dealing with its points specifically is one of a slightly more fundamental nature. Irish law is by nature *ex post* law. It sets forth what citizens may not do and lists punishments which will be applied if the law is broken and then applies them if someone breaks that law.

What is being recommended by these proposals is a departure from this philosophy for an *ex ante* philosophy; namely that firearms currently held legally for legitimate purposes by people strictly vetted by the Gardaí should be banned on the grounds that in the future some or one of those people – or even some person not included in their number today -- may choose to break the law. It is, in other words, imposing a punishment on a group of people who have not broken the law using the justification that it would be mathematically possible for some unnamed person to break the law at some unknown indeterminate future date.

This is unethical and dangerous territory for legislators to enter lightly. What applies today to a small, technical piece of law which primarily applies only to an easily derided minority of the population nonetheless sets a precedent whose unintended consequences are enormously far-reaching.

To give a practical analogy, I own an ordinary everyday car. I've never had a penalty point, never a fine for speeding, not so much as a parking ticket in fifteen years of driving. But:

- My car doesn't have a speed limiter. I could, in theory, drive at 120kph down the M50, breaking the law in the process.
- It doesn't have any system or device to stop me driving at 60 kph down a crowded pedestrian street at lethal speeds with horrific results.
- It doesn't have a 24-hour guard watching it to stop someone else stealing it from me and doing either of those things or worse.
- And every year, cars like mine kill several hundred people on the roads of this country, and maim and cripple hundreds more, even when driven by upstanding members of society like former members of the Oireachtas.

When can I expect the Gardaí to come round to my house and take the car away from me for the good of society?

Many will say in response to this that cars are not designed to kill people; I have never understood or accepted this argument, which says that hundreds of deaths and thousands of injuries are acceptable because they were accidental. Apart from the depraved indifference to human life that this implies, it also assumes that the point of the analogy is that we should be banning cars; when instead the point is that we do not punish innocent people on the off-chance that they might in the future break a law. We leave that sort of thing to Hollywood summer films which enjoy fancy special effects and a suspension of disbelief.

I respectfully submit that those who draft legislation in our country ought to be adhering to a higher standard than Steven Spielberg.

The Working Group Report

The Report does not begin well. In the Executive Summary, the number of criminal incidents involving a firearm between 2009 and 2014 is cited in a manner that misleads the reader into associating that statistic with certified firearms owners despite a complete lack of proof that any such link exists. Indeed the one incident where it was stated that a handgun stolen from a licenced owner was used in a murder, has since been publicly disputed by the NARGC who assert that the handgun was in fact a stolen PSNI service revolver, issued and stolen in a separate jurisdiction.

Section four makes mention of statements by then Minister Ahern, including:

"I am determined to ensure that a gun culture is not allowed to form in this State"

This statement did not account for the presence of target shooting as a sport in Ireland since at least 1850 (including pistol shooting); nor did it allow for the possibility that an Irish gun culture already existed and was one in which positive traits are reinforced and negative ones discouraged; and yet that accurately describes the club-based gun culture which has existed in this State for many decades now and which continues to exist to this day. It is a culture that stands in stark contrast to the American approach to firearms ownership and has much in common with the European model. This context should have been provided in section four but is markedly absent.

In section five of the Report, the following assertion is made:

Under the Temporary Custody Order of 1972, holders of specified firearms (pistols, revolvers, and rifles exceeding .22 inches) were directed to surrender their firearms to the Gardaí. Following a series of judicial decisions, firstly the Judicial Review case of Frank Brophy V Kehoe in 2004, approximately 1,800 handguns were licensed between 2004 and 2008. This situation did not come to pass as a result of a decision of the Oireachtas and therefore in 2008 the then Minister for Justice announced his plans regarding the licensing of handguns

The assertion that this situation did not come to pass as a result of a decision of the Oireachtas is incorrect. The relevant decisions of the Oireachtas took place in 1925, 1964, 1971 and 1990 when the Oireachtas passed Firearms Acts which did not ban the ownership of pistols. The policy of not issuing firearms certificates for pistols, which extended from 1972 to 2004, was found to be unlawful by Justice Fennelly *et al* in the Supreme Court in [McVeigh](#):

70. *The present case does not present any such difficult problems of judgment. There are two obvious problems about the Minister's decision, as communicated to the appellant. The first is that he refers to "the policy," clearly referring to some single policy concerning the criteria for the grant of firearms certificates. However, the Minister had no function in the grant of firearms certificates and, a fortiori, in formulating such policies. Moreover, there could not, at that time, be a single policy. The function was allotted to Garda Superintendents in their own individual districts. I do not say that it was impermissible for the Minister to have regard to the need for any person possessing or using a firearm to have a firearms certificate, granted by his local superintendent. If the Minister had formulated the matter differently by referring, for example, to the unlikelihood of a particular firearm being granted a certificate, his decision might have been defensible. Since that situation did not arise, it is unnecessary to decide a hypothetical case.*

71. *The second problem with the Minister's decision is that it clearly does communicate a rigid inflexible policy. The Minister offered the applicant no opportunity to address the possibility of any exception to the policy or the merits of the particular firearm.*

....

73. *In any event, it is quite clear that the Minister's decision as communicated was infected by the vice of inflexibility. I do not think the matter can be rescued from the Minister's point of view by Mr. Kelly's belated attempt to portray it as otherwise than inflexible. The decision has then been made. According to the case-law, especially *Dunne v. Donohoe*, it was not a lawful decision. In my view, it was such as should have been quashed on judicial review. However, it is difficult to discern, at this stage, any advantage to be gained by quashing the decision of the Minister made more than seven years ago. **I would simply make a declaration that the Minister had made an unlawful decision** by basing it on an inflexible policy.*

Therefore the reissuing of licences in 2004 for pistols which had been in Garda custody since 1972 is **not** a situation that came about without a decision of the Oireachtas; but is instead a situation that came about because of the ending of the unlawful defiance of the Oireachtas – and as I have already pointed out, the number of pistols so licenced represented a fall of 28% per capita from the level of handgun licencing prior to the institution of that unlawful policy. The sense conveyed by the Report's assertion in section five is one of the arrival of a new, unpredicted and possibly threatening state of affairs in firearms licencing, but in fact the situation is that of a return from an unlawful state of affairs to the law the Oireachtas passed on four separate occasions, and the level of risk implied is not supported by the statistical data and many of the firearms in question were in fact the same firearms that had been in the State prior to 1972.

A large proportion of the remainder of section five of the Report is devoted to explaining that An Garda Síochána, as a result of statistics which *exclusively* pertain to illegal crimes, wishes to prevent the legal licencing of certain classes of firearms by people who, by law, are required not to be a threat to the public safety or the peace should a firearms certificate be issued to them. There is a complete lack of a logical connection here between the axioms and the results of the Gardaí's argument. If criminals were licencing the firearms they use in crimes, perhaps there would be merit in considering the abuses of illegal guns by drug gangs, but insofar as I am aware, there is a Garda policy against granting firearms certificates for smuggled handguns to be used by drug dealers in the murder of competing drug dealers.

If this belief is in error, I would strongly urge the Committee to advise the Gardaí to immediately institute such a policy.

Also in section five, it is related that the Commissioner believes that center-fire handguns are “*primarily designed to kill human beings*”. When issuing firearms certificates for restricted firearms, Section 4(2)(h)(ii) of the Firearms Act states:

- (2) *The conditions subject to which a firearm certificate may be granted are that, in the opinion of the issuing person, the applicant—*
 - (h) *in case the application is for a restricted firearm certificate—*
 - (ii) *has demonstrated that the firearm is the only type of weapon that is appropriate for the purpose for which it is required.*

If a restricted firearm is sought for the purposes of target shooting, but is designed primarily to kill human beings, then it cannot pass the test in 4(2)(h)(ii). Therefore a restricted firearm primarily designed to kill human beings cannot be licenced unless 4(2)(h)(ii) is ignored. A certificate refusal on these grounds could only be successfully appealed if the applicant could prove the firearm was not primarily designed to kill human beings. The several hundred such successful appeals – in particular cases like *Herlihy* – would seem to indicate that there is a difference of opinion between the Gardaí and the Courts and the target shooting community as to the design purpose of several kinds of firearm are, but this is not a legislative issue and it has already been settled in the Courts. The existence of firearms such as the Morini 32M, a firearms explicitly designed to compete in ISSF center-fire pistol shooting – an Olympic discipline until 1972 when the cost of ranges and pressure for spaces in the Olympic Village saw its removal from the Olympic programme – would also speak to the inaccuracy of the Commissioner's statement.

As an aside, continual reference has been made to “*the Minister*” and “*the Commissioner*” in the Report, but at no point are the specific Minister and Commissioner named; given the events that transpired in those offices during the timeframe that this Report was compiled in, it would be helpful for the lay reader if the Report stated *which* Minister and *which* Commissioner made these statements.

Very nearly the entirety of section eleven of the Report is personally offensive. Comparing certified Irish firearms owners with mass shootings carried out by mentally unstable individuals in jurisdictions where firearms ownership by the mentally unstable was prohibited anyway is not only unjustifiable, but also seeks to absolve the police forces of these jurisdictions and this one of the duty of enforcing firearms legislation.

As the Cullen Inquiry into the Dunblane shooting demonstrated, often the failing which leads to such atrocities is a failing of the police force, who in the case of the Dunblane atrocity not only ignored a serious breach of the firearms laws by Hamilton as early as the 1970s when he illegally purchased a pistol he had no licence for and was caught doing so by the police; but who also ignored several other investigations from 1976 to 1995 and who overruled the formal written report of Detective Sergeant Paul Hughes in which he stated:

During the course of my investigation I discovered that Hamilton was no stranger to controversy and similar investigations had been undertaken by this and Strathclyde Police Forces in the past. Hamilton also features in local criminal Intelligence files. Throughout my investigation I met and spoke with Hamilton on a number of occasions. It is as a result of the impressions left with me by this man that I feel compelled to make this report. I have recently discovered that Hamilton possesses a firearms certificate ... This concerns me. I am firmly of the opinion that Hamilton is an unsavoury character and an unstable personality. ... I would contend that Mr. Hamilton will be a risk to children whenever he has access to them and that he appears to me to be an unsuitable person to possess a firearms certificate in view of the number of occasions he has come to the adverse attention of the police and his apparent instability. The Procurator-Fiscal at Stirling has not yet decided on whether or not he will proceed with the case against Hamilton but at the moment it appears in all likelihood that he will not. I respectfully request that serious consideration is given to withdrawing this man's firearms certificate as a precautionary measure as it is my opinion that he is a scheming, devious and deceitful individual who is not to be trusted.

Despite this damning report, which was supported by the local Child Protection Officer, the Scottish police renewed Hamilton's firearms licences and following the subsequent horrific events, sought to have all police files on this topic sealed for a century under the Official Secrets Act, something not overturned until 2005.

The obvious conclusion that should have been drawn from Dunblane, and one which was obstructed by these actions of the Scottish police, was that **the existing firearms legislation was more than adequate to prevent the atrocity, had it been enforced by the police**. Instead this lesson was not learned, the legislation was changed, and the underlying problem remained unaddressed. How much this error contributed to the subsequent shooting in Cumbria cannot be readily quantified but must be considered as a contributing factor.

That none of this context is provided in section eleven severely questions the objectivity of the Report.

It should also be noted that instituting bans on classes of firearms to prevent this sort of atrocity is a much studied topic and the practice has been shown to be ineffectual. In Australia after the 1996 Port Arthur shooting mentioned in section eleven, several scientific studies have shown that the ban instituted there in 1997 had no effect on the rate of gun crime, and it did not prevent the mass shooting in Monash University in 2002. The head of the Australian Bureau of Crime Statistics and Research, Doctor Don Weatherburn, said in 2005:

"There has been a drop in firearm-related crime, particularly in homicide, but it began long before the new laws and has continued on afterwards. I don't think anyone really understands why. A lot of people assume that the tougher laws did it, but I would need more specific, convincing evidence."

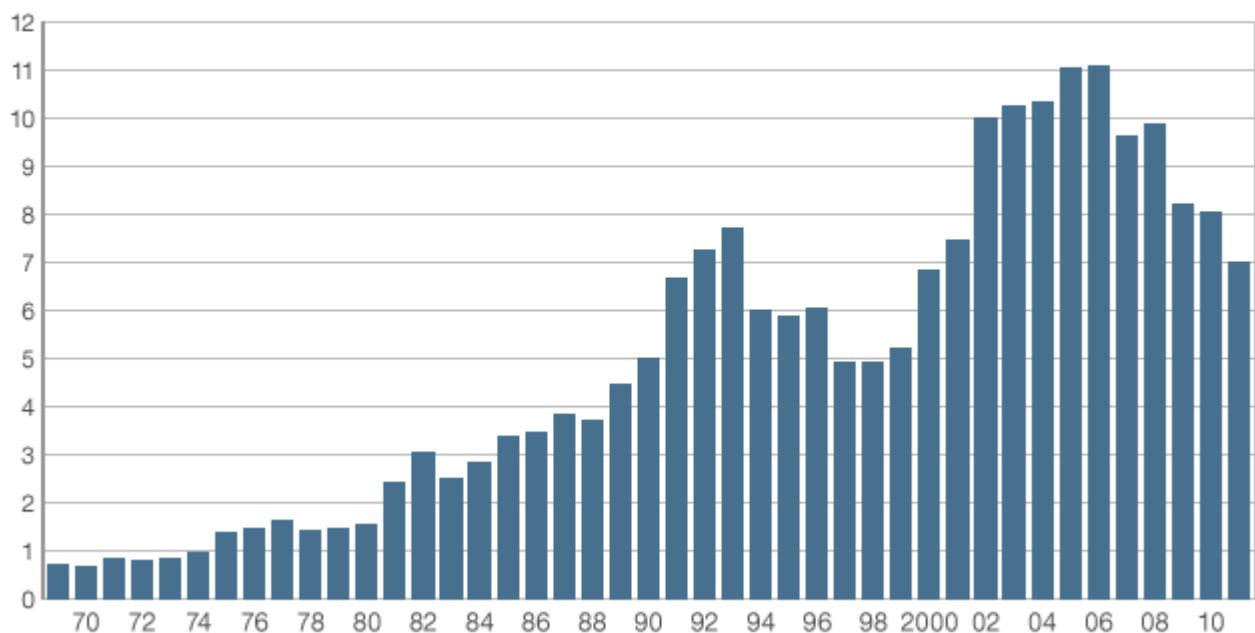
"There has been a more specific problem with handguns, which rose up quite rapidly and then declined. The decline appears to have more to do with the arrest of those responsible than the new laws. As soon as the heroin shortage hit, the armed robbery rate came down. I don't think it was anything to do with the tougher firearm laws."

This view aligns with the scientific studies into the ban in the [British Journal of Criminology](#) in 2006 and the [Justice Policy Journal](#) in 2011. Even the rate of suicide by firearm in Australia was shown not to have been effected by the 1997 ban in [a 2009 study in Social psychiatry and psychiatric epidemiology](#). In short, this approach has been found to be one which *sounds* effective, intuitive and simple; but in practice has had no effect, and only well-funded, properly-directed police prosecution of criminals has shown proven results.

It also speaks ill of the Report's quality that when the statistical data from the UK shows that after a firearms ban the level of firearms crime rose until more police resources were tasked to prevent that crime, the Report has taken the position that the extra police resources were insignificant and the ban was the reason for the subsequent fall in firearms crime.

Firearms offences in England and Wales 1969-2011

Total (thousands)



Source: Home Office

This position is at odds with the [long-term data on gun crime in the UK](#) as reported by the Home Office, which shows that the overall trend of a rise in gun crime from 1980 to 2006 was not affected by the 1997 handgun ban (the noticable drop in handgun crime having

begun three years earlier in 1994) and until a focused, funded police effort was put in place, the crime rate had climbed to a rate double that at the time of the ban.

I wish to make it very clear and to stress in the strongest possible terms that this data does not suggest that gun crime is kept in check by licenced firearms ownership. Correlation is not causation.

Rather, it demonstrates that gun crime and licenced firearms ownership are not linked. Gun crime rates are unaffected by bans that by definition only apply to law-abiding people.

There is nothing to suggest that the Irish experience would differ in any way from that of other jurisdictions which have enacted gun bans and our experiences with gun crime from 1972 to 2004, and our more recent experience since the partial handgun ban in 2009, both demonstrate this as gun crime rates were unaffected by the bans in place during these periods.

It must be asked, if the data from this jurisdiction and others, and the scientific study of that data, show that the approach of banning licenced firearms ownership has no effect on gun crime, why is the Working Group proposing a ban on licenced firearms ownership based on gun crime statistics instead of proposing increased numbers of Gardaí and funding to fight drug crime? And why has none of this data, research and other evidence been cited in the Report?

At the end of section 12 of the Report, mention is made of issuing officers consulting with either the Firearms Policy Unit or the Ballistics Section. It would seem far more sensible that the Firearms Policy Unit should be consulted on matters regarding licenced firearms ownership. Having two contact points whose advice may differ can only exacerbate situations where confusion arises.

Mention is also made in this part of the Report of the *persona designata* status of the deciding officer as being a bar to an internal review process for licencing decisions, which would presumably serve as a welcome first step before availing of the District Court, whose time is already hard pressed. The Report's conclusion that this status is a bar does not acknowledge two points which utterly contradict this finding:

- Firstly, if the deciding officer errs in his decisionmaking process and this is indicated by an internal review, this does not constitute an order to make a decision one way or another; but is instead a finding that the decisionmaking process was flawed and the decision should be reexamined. It ought to be recognised that this is precisely the same kind of finding that resulted from High Court Judicial Reviews of licencing decisions prior to the 2006 Firearms Act's introduction of the District Court appeals process. If the *persona designata* status was not a bar to High Court Judicial Reviews, then it is not clear how it could be a bar to internal reviews so long as those reviews do not issue orders to grant or refuse a certificate application, but restrict themselves to examining the decisionmaking process for possible errors of law.
- Secondly, the introduction of the District Court appeals process in the 2006 Act empowered the District Court to direct a Garda Superintendent or Chief Superintendent to grant or refuse a certificate as well as to direct them to reexamine their decision. **Therefore the previous *persona designata* status enjoyed by the deciding officer no longer exists** as their ultimate discretion in making a decision on firearms licencing may be fettered - in fact it may be overridden directly by the District Court should that Court deem it warranted.

Section 13 contemplates the confiscation of a large amount of expensive privately owned sports equipment from law-abiding people without compensation and concludes no legal case would be successful in pursuing compensation. I find myself unsure as to whether or not the Working Group was serious in this conclusion, or whether they were just kidding around. I'm hoping as a taxpayer whose taxes would be used to pay for the inevitable Supreme Court cases that they're just joking and no further comment on this section is warranted.

Section 15 considers the issue of applications not processed in the three month timeframe set forth by section 15A of the Firearms Act. The tone of this consideration is one suited to considering the satisfaction of customers in a retail outlet. It is not suited to the nature of the three month timeframe set forth in 15A, because at the end of that three month period, the applicant is legally deemed to have been refused by the deciding officer and notified of said refusal. However, many licences have been granted after this deadline. This raises a question of the validity of a firearms certificate issued for an application that has legally already been deemed to be refused. This is a confusing situation and requires addressing; the approach of stating that it only applies in a small number of cases is basically stating that it is considered acceptable to the Gardaí to ignore a section of the Firearms Act so long as it only happens in a small number of cases (even when "*small number*" refers to almost ten thousand incidents). This is (thankfully) highly inconsistent with the approach of the Gardaí to noncompliances with the Firearms Acts by non-Gardaí.

Specific points relating to individual Heads

Head 1

This proposes the introduction of the term “handgun” in section 2 of the Firearms Act. It does not allow for the fact that “handgun” is not a legal term in the Firearms Act. The correct term is “short firearm”; and if this substitution is made, this head still exacerbates the problems encountered by those engaged in paintball in Ireland today (namely that the Department has made the entire paintball industry highly illegal in Ireland through a minor oversight in the drafting process and has not addressed this for several years and has again failed to address it in these proposals).

Head 2

This proposes the introduction of a new section 4(1A) to the Firearms Act, and the unreadable nature of the Act that I have stressed repeatedly above is illustrated here because the entirety of section 4(1A) duplicates section 4(2)(b). This is claimed to be justified by the many court judgements which stated that 4(2)(b) should apply to the applicant rather than purely the specifics of the firearm being applied in respect of; but unless the Gardai are stating that the Justices who issued those judgements made an error of law in doing so (in which case, the correct avenue was a Judicial Review, not drafting a new Bill), then this claim simply does not stand up.

The specific addition in 4(1A) claimed as justification – namely that the Gardai may consider certain aspects of the firearm – is in direct opposition to High Court judgements on this point of law. If the Courts considered this specific ground when examining 4(2)(b) and found it to be an error of law to focus on the firearm instead of the applicant, perhaps the Court's point should be heeded instead of the legislative process being abused in this manner to bypass the judgement of the courts – who have at any rate in later judgements upheld that the Gardai *could* take account of the nature of the firearm *as well as* the character of the applicant. The fact is, the Courts have not issued any statement that 4(1A) is necessary, or that 4(2)(b) is deficient in its current form. To add a redundant section duplicating an earlier section to an already unreadable body of law can do nothing but bring about unintended consequences.

Furthermore, the mere existence of the proposed section 4(1A)(e) which explicitly refers to the potential lethality of the firearm, directly implies that 4(1A)(a) through (d) have nothing to do with public safety. 4(1A)(d) in particular, with its reference to the appearance of the firearm, raises the question of what the Working Group were considering. A firearm does not become more or less dangerous because one paints it pink; so how can the appearance of the firearm be justifiable grounds for refusing a firearms application?

On a separate point, as was gone into in excessive detail during the Joint Committee meetings of December 17 2014 and January 21 2015, the legal definition of “assault rifle” in Irish law has major issues because it uses the term “resemble” and thereby makes a subjective decision a mandatory requirement in the licencing process. Section 4(1A)(a) here likewise proposes to introduce another mandatory subjective decision into the Firearms Act when the obvious goal of any group considering the improvement of the Act should be to eliminate such troublesome and errorprone requirements in order that the Firearms Act be the law in Ireland instead of the law being a collection of the conflicting whims of licencing officers across the country which has given rise to what is being commonly referred to in the target shooting community as the postcode lottery, where an applicants address has more impact on the outcome of a licencing decision than any other aspect of their application or character.

Head 3

While I have no overriding objection to the intent of Head 3, I wish to point out that in practice, Section 4(2)(b) of the Firearms Act already completely empowers the Gardai to refuse an application on the grounds that the proposal here is seeking to introduce to section 8. The refusal merely happens as a result of the Garda decision instead of disallowing the application.

If the Gardai do not feel they can stand up in court and state that due to an applicant's criminal record they do not think that applicant should be granted a firearms certificate, then they should say so and make that the point of discussion; not seek to have the law changed so they can avoid having to make that statement in open court. If the Gardai wish to pass the responsibility of this decision from a licencing officer in the Gardai to a piece of legislation, then why do the Gardai oppose proposals to introduce a centralised licencing authority run as a non-Garda function? One cannot have it both ways – to have all the decision-making authority and none of the work involved in defending one's decision.

It should also be noted that the only way in which the current section 8(1)(e) could not do precisely what the proposed rewording of that section requires is if the issuing officer were to ignore section 4(2)(b) and issue a certificate where he or she felt it would cause a threat to public safety or the peace. As such, this proposal seems utterly redundant and a potential cause of unintended side effects.

Head 4

I have already commented on the lack of wisdom in adopting a whitelist approach in Irish firearms law.

I wish to also point out specifically here that the proposed section 9A(1)(d) implies that the practice, accepted without difficulty in Ireland for the last ninety years, of plugging or crimping a shotgun magazine to render it incapable of holding more than three cartridges, would no longer be acceptable. Statements by Chief Superintendent Healy to the Joint Committee, as well as recent refusals for certificate applications for pistols on the same grounds, confirm this implication to be an intention and that it is intended to be applied to all classes of firearms with detachable magazines.

It may have escaped the Working Group's view that no pump or semiautomatic shotgun has yet been manufactured that can hold no more than three cartridges. Modifications have always been required to their magazines to meet the requirements of the law. And because undoing these modifications would be an illegal act with serious penalties, this system has always worked. Assuming perfidy on the part of licenced firearms owners in the manner this intention requires is offensive in the extreme.

Further, it is not physically possible to produce a shotgun which could never, under any circumstances, be so alterable as to hold more than three rounds. As such, this head is proposing that the law be purposely written so as to be unfollowable. What possible purpose this can serve beyond alienating those who follow the law is unknown.

Head 5

Earlier notes highlight my objection to this proposal, and I wish merely to reiterate that the criticism applied to Head 4 applies equally here – this proposal, specifically 3F(1)(c) would render nearly nine thousand currently licenced shotguns which have formed no threat to public safety, being legally banned by a law which is written so as to be unfollowable.

Heads 6 and 7

I have no specific comment on these heads and recommend that the Working Group pay special attention to the comments of the NRAI on Head 7 as they are the sole expert group in Ireland – and I include the Gardai and Department in this assessment – on reloading in this country.

I note that despite this status, the NRAI were not afforded the opportunity to comment on Head 7 during its drafting. This failing of the Working Group may have critically damaged this Head's ability to do what it was intended to.

Head 8

While I have no specific objection to Head 8, I wish to point out that even the Report acknowledges that 3F(1) is redundant under the Firearms (Proofing) Act 1968, and the person altering the marking of a firearm would immediately be in possession of an unlicensed firearm thereafter as the marking is a de facto condition of the firearms licence. The penalty for this offence is identical to the penalty for the proposed 3F(1) section, therefore I would ask why it is felt that the current law does not meet the standards required under Article 5(1)(c) of the UN Firearms Protocol and why it is felt that a duplication of existing law with an identical penalty would be more suited. It is merely asserted in the Report that this is true; no reasoning is given.

Head 9

Again, I have no specific objections to Head 9, but I would point out that proposed section 3G(4) does not give heed to the point that some things classified as firearms under Irish law – and which therefore must adhere to this proposed section – cannot physically be engraved as the materials they employ would be critically weakened by the engraving process and thus complying with the law would cause a safety hazard for the applicant.

Surely this cannot be the intention of the proposed section?

Heads 11 and 12

Heads 11 and 12 again illustrate the point I have repeatedly stressed above about the unreadable nature of the Firearms Act and the subsequent unintended consequences making amendment after amendment to it have caused. These two Heads exist solely because this point was not heeded in previous legislative attempts. I would strongly urge the Working Group to accept my recommendation regarding a restatement of the Firearms Act to avoid the need for this sort of proposal in future; and that they perform this restatement before attempting to enact Heads 11 and 12 in order to be certain they are not introducing further issues.

Head 13

Head 13 directly implies that a certificate issued in contravention of the Firearms Act would not be null and void but would have to be explicitly revoked; this would imply that any private individual could issue such a certificate and it would require a Garda Superintendent to revoke this obviously invalid certificate. Therefore Head 13 is obviously a ridiculous suggestion. Invalidly issued certificates are simply invalid and do not need to be explicitly revoked. Enacting Head 13 would only muddy waters further in the future.