

# **Prohibiting Handguns: the Firearms (Amendment) Bill [Bill 3 of 1997-98]**

**Research Paper 97/77**

**9 June 1997**



*The Firearms (Amendment) Bill*, which is due to be considered on Second Reading on June 11 1997, seeks to extend the class of prohibited weapons under the *Firearms Act 1968* to include small-calibre pistols, that is, pistols chambered for .22 or smaller rim-fire cartridges and certain types of air pistol designed to fire .22 or smaller diameter ammunition. This paper discusses the background to the Bill, some of the arguments for and against restricting the availability of firearms and the provisions of the Bill itself. The current arrangements for licensing firearms, the provisions of the *Firearms (Amendment) Bill 1996-97* as originally drafted and assertions that the *Bill of Rights 1689* may affect statutory attempts at gun control are considered in Library Research Paper 96/102 [*Controls on Firearms: The Firearms (Amendment) Bill*] and are not repeated here. Neither the current Bill nor the 1997 Act extends to Northern Ireland.

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## Summary

This paper sets out a brief history of statutory controls on the possession, use and sale of firearms by civilians from the enactment of the *Firearms Act 1920*, before which there was virtually no control over the sale or possession of guns, to the enactment of the *Firearms (Amendment) Act 1994*.

It then goes on to summarise the events following the shootings at Dunblane Primary School on 13 March 1996, including the establishment of a Tribunal of Inquiry under the chairmanship of Lord Cullen, the separate inquiry by the Home Affairs Committee into the possession of handguns, the views of various political parties, Lord Cullen's conclusions on the subject of restricting the availability of certain weapons and the then Conservative Government's response to those conclusions.

The paper then summarises the provisions of the *Firearms (Amendment) Act 1997*, which was designed to implement the previous Government's proposals following the Cullen Inquiry. The Act, most of which is not yet in force, seeks to impose a general prohibition, subject to certain specific exceptions, on small firearms other than air weapons, muzzle-loading guns, firearms designed as signalling apparatus, or small-calibre pistols. The Act also seeks to require that small-calibre pistols, which are defined as pistols chambered for .22 or smaller rim-fire cartridges or certain kinds of air pistols designed to fire .22 or smaller diameter ammunition, be kept and used in secure gun clubs.

The next part of this paper contains further discussion, from the report of the Home Affairs Committee, the report of Lord Cullen's Inquiry and the debate in the House of Commons following the publication of the Cullen report, of proposals to restrict the availability of firearms. It is followed by summaries and extracts from the debate, in the press and in the House of Commons during the 1996-97 session, on proposals to prohibit small firearms, or handguns as they are generally known.

The provisions of the *Firearms (Amendment) Bill 1997-98*, which is designed to fulfil the new Labour Government's manifesto commitment to allow a free vote on banning all handguns, is discussed in the next part of this paper. The Bill, which seeks to extend the class of weapons prohibited by the firearms legislation so as to include small-calibre pistols (as defined in the 1997 Act) and is designed to repeal the provisions of the 1997 Act concerning the licensing of pistol clubs, is due to be considered on second reading on June 11 1997. Like the 1997 Act, the Bill extends to England and Wales and Scotland only. The final part of this paper summarises the current position concerning the reform of firearms controls in Northern Ireland.

This paper does not discuss the current arrangements and procedures for licensing firearms, the detail of the provisions of the Bill which became the 1997 Act or assertions that the *Bill of Rights 1689* may affect statutory attempts to control firearms. These matters are discussed in Library Research Paper 96/102, which also contains information on the European Convention on Human Rights and on firearms amnesties.

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## A. The control of firearms in Great Britain 1920-1996

Before the *Firearms Act 1920*, there was virtually no control over the sale and possession of guns. In his evidence to the Home Affairs Committee in 1996, the specialist adviser, Mr Colin Greenwood, commented that:<sup>1</sup>

During the early part of this century anyone, respectable citizen, criminal or lunatic, could walk into a gunshop and buy any firearm he wanted. The law prohibited sales to persons who were drunk at the time, and those wishing to buy a pistol would have been required to call first at a post office to obtain a 10 shilling licence. Despite that, statistics provided by the Commissioner of Police for the Metropolis showed that the use of it in crime was very rare indeed.

The 1920 Act, passed at a time of concern about the quantities of weapons available after the first World War, made it an offence to buy, possess, use or carry rifles and pistols or their ammunition without a certificate from a chief officer of police, who had to be sure that an applicant had a good reason for acquiring the firearm and could be permitted to have it without danger to public safety. The *Firearms Amendment Act 1936* strengthened arrangements for the issue of certificates by enabling conditions to be attached to them; brought weapons such as short-barrelled shot guns within the control and prescribed stringent controls on continuous fire weapons such as machine guns. Shotguns remained outside the system of controls.

In 1962 the *Air Guns and Shot Guns Etc. Act* restricted the use of such weapons by young persons. The *Firearms Act 1965*, described by Mr Greenwood as "...clearly a panic reaction to the abolition of the death penalty"<sup>2</sup>, substantially increased the penalties for offences involving firearms and created new offences of carrying firearms in public places or while trespassing.

Part V of the *Criminal Justice Act 1967* made it an offence to buy or possess a shot gun without a certificate issued by a chief officer of police, but there was no requirement to have a good reason for wanting one. This, and all previous legislation on the control of firearms in England, Scotland and Wales was consolidated in the *Firearms Act 1968*.

In 1973, a consultative document was issued by the Home Office which made wide-ranging proposals based on the report of Sir John McKay's working party set up in 1970. Mr Greenwood, in his memorandum to the Home Affairs Committee, commented that the first

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<sup>1</sup> 1995-96 HC 393-II p.109

<sup>2</sup> *ibid*, p.110

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conclusion of the unpublished report that a reduction in the number of firearms in private hands was a desirable end in itself, was not included in the green paper.<sup>3</sup>

This proposed that self-loading rifles and pump-action and repeater shot guns should be moved into the prohibited category and that additions should be able to be made by order; that another order-making power should be introduced to achieve greater consistency in deciding what was a good reason for possessing "Section 1" firearms, but the most far-reaching of suggested changes were those relating to shot guns which, it proposed, should be subject to the same controls as rifles and pistols under s.1 of the 1968 Act. The proposal met with considerable opposition from the shooting community and time was not found for the necessary legislation.

In 1987, the tragic events at Hungerford which resulted in the deaths of 16 people killed by a single gunman precipitated further consideration of changes to the 1968 Act. The gunman, Michael Ryan, was lawfully entitled to possess the following self-loading weapons:<sup>4</sup>

Beretta 9 mm pistol  
Bernadelli .22 pistol  
CZ OR50 .32 pistol  
Kalashnikov 7.62 mm rifle  
Underwood Carbine .30 rifle

The *Firearms (Amendment) Act 1988* provided, *inter alia*

- a prohibition on high powered self-loading rifles
- a prohibition on burst fire weapons and repeating short barrelled smooth bore guns
- that pump action and self-loading short guns with a magazine capacity in excess of 2 shots be brought under the same control as rifles and pistols
- that prohibited weapons converted from a higher classification to a lower one, should retain the original higher classification.
- that the onus was on the applicant for a certificate to show that he could be permitted to possess a shotgun without danger to the public safety or the peace and
- the power for the chief officer to refuse to grant or renew a certificate if satisfied that the applicant did not have good reason for possessing a shotgun.

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<sup>3</sup> 1995-96; HC 393-II, p.110

<sup>4</sup> 11.2.88 HC Deb 127 c.306W

The *Firearms Rules 1989*<sup>5</sup> set out *inter alia* new requirements for the safekeeping of shotguns, as did the *Firearms (Scotland) Rules* in Scotland.<sup>6</sup> S.22 of the Act established a firearms consultative committee to keep under review the working of the Firearms Acts.

The *Firearms (Amendment) Act 1994* created new criminal offences of using a firearm or imitation firearm with intent to cause fear of violence and made it clear that the offence of trespassing with a firearm can be committed when using an imitation firearm.

## **B. The Shootings at Dunblane Primary School and the Cullen Inquiry**

On March 13 1996 Thomas Hamilton entered Dunblane Primary School with 4 handguns and 743 rounds of ammunition. He fired 105 rounds with a 9 mm Browning self-loading pistol over a space of about 3-4 minutes, shooting dead Mrs Gwen Mayor and 16 members of her Primary 1/13 class and inflicting gunshot wounds on 10 other pupils and 3 other members of the teaching staff, before committing suicide with one shot from a .357 Smith & Wesson revolver.<sup>7</sup> On 21 March 1996 a Tribunal of Inquiry was set up under the chairmanship of Lord Cullen to inquire into the circumstances leading up to and surrounding the events at Dunblane, to consider the issues arising from them and to make recommendations. On March 28 1996 the Home Affairs Select Committee also announced that it would be conducting an inquiry into the possession of handguns.

In the months following the shootings at Dunblane a number of MPs, including the Conservative former Home Office minister, David Mellor, a large number of Labour Members and Members of other parties, such as Plaid Cymru, called for a complete ban on the private possession of handguns.<sup>8</sup> Editorials in some national newspapers appeared to support either this proposal<sup>9</sup> or the proposal that there should be a ban on keeping guns at home.<sup>10</sup> The "Snowdrop petition", calling for all firearms held for recreational purposes for use in authorised sporting clubs to be held securely at such clubs with firing mechanisms removed, for the private ownership of handguns to be made illegal, and for certification of all firearms to be subject to stricter control, was presented to Parliament by the Labour Member Martin

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<sup>5</sup> SI 1989/854

<sup>6</sup> SI 1989/889

<sup>7</sup> *The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996* Cm 3386 October 1996 para.1.3

<sup>8</sup> See eg. EDMs 639 & 1238 Session 1995-96; "Mellor heads campaign for handgun ban" - *Times* 18.3.1996

<sup>9</sup> "After Dunblane" - *Times* 15.3.1996

<sup>10</sup> "Guns kill, not just people" - *Guardian* 15.3.1996; "Time to curb gun ownership" - *Scotsman* 20.3.1996; "Jumping the gun" - *Guardian* 1.8.1996

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O'Neill, on July 3 1996.<sup>11</sup> Mr O'Neill noted that the petition had been signed by over 700,000 people at that stage. Relatives of the victims of the shootings at Dunblane and Hungerford set up a pressure group, the Gun Control Network, with the aim of outlawing the civilian ownership of handguns. A number of newspapers also launched campaigns calling for tighter controls on handguns.<sup>12</sup>

Evidence submitted to the Cullen Inquiry and to the Home Affairs Committee on behalf of the then Secretary of State for Scotland, Michael Forsyth and the then Home Secretary, Michael Howard, set out a number of suggestions for change which had been made since the shootings at Dunblane and while making no recommendations about them, provided comment about the advantages and disadvantages which each might have in practice.<sup>13</sup> The Labour Party, the Liberal Democrats and the Scottish National Party were also among the many organisations and individuals who submitted evidence.

The Labour Party submitted evidence in the form of a report from the then Shadow Secretary of State for Scotland, George Robertson and the then Shadow Home Secretary, Jack Straw. They noted that they were setting out their initial views and would carefully consider all the evidence given to the Inquiry and the recommendations which Lord Cullen made before coming to final conclusions. They stated that:<sup>14</sup>

Given the terrible consequences which have arisen for two communities in the United Kingdom in less than a decade through the current licensing system, and the wider hazards which arise through the ready availability of guns, we believe that the time has come for a fundamental reappraisal of firearms law.

Almost all pistols and rifles are designed and manufactured to kill human beings. In our judgement the public are increasingly of the view that the risks to the community from the misuse of firearms far outweigh any 'civil liberty' in favour of the holding of firearms, save in the most limited of circumstances. Given this, we believe that in this enquiry the burden of proof must fall on those who wish to use firearms, for them to satisfy the public as to the circumstances in which firearms should be licensed.

They also made the following comments about handguns:<sup>15</sup>

All target shooting disciplines in the Olympic Games are restricted to handguns of .22 inch. We can think of no good reason why a larger calibre handgun should ever be lawfully held for sporting purposes. Accordingly we recommend that handguns above .22 inch calibre should certainly be

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<sup>11</sup> HC Deb Vol 280 c.1023 3.7.1996

<sup>12</sup> eg. the Sunday Times Dunblane Campaign

<sup>13</sup> DEP/3 3283. Extracts are set out later in this paper - see p. 19-20

<sup>14</sup> *Control of Guns: The Labour Party's Evidence to the Cullen Inquiry* May 1996 paras. 12-13

<sup>15</sup> *ibid* paras. 17-18



prohibited. We also believe that the strong case for restricting handguns of .22 calibre and below to those which need to be reloaded after each shot should carefully be examined by the Inquiry.

In general, given the lethal nature of handguns, we see a strong case for banning them altogether. The shooting fraternity must make a case for possession and if they can, they must suggest and accept restrictions and costs necessary to prevent such guns from being used for anything other than target practice.

They went on to make the following comments about the storage of weapons:

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

In its evidence to the Cullen Inquiry the Liberal Democrat Parliamentary Party stated that:

It is vital that any new measures are based on the evidence available. It is right that there has not been a knee-jerk reaction to the Dunblane tragedy. However, Liberal Democrats in Parliament have been lobbied by many members of the public who find it hard to comprehend why anyone should have personal access to lethal weapons. Therefore, if access is granted we should be able to justify that access in the context of the public interest. If we cannot adequately explain rules giving access to lethal weapons, then the rules are inadequate.

The aim of gun control is to prohibit the use of guns by those who cannot use them safely. We believe this aim has cross party support and also the support of the shooting community.

The Liberal Democrats went on to say that in their view, no one should be licensed for a handgun not commonly used in specific sporting events or for use in a profession, that there should be an investigation into the feasibility of issuing separate licences for firearms and ammunition to prevent ammunition for sporting purposes being kept in the possession of individual firearm licence holders, that individuals should not be allowed to keep multiple firearms in their homes for purposes other than those connected with their occupations and that there should be an investigation into the feasibility of requiring that all firearms kept for sporting purposes be kept inside a suitable armoury, except when they were in legitimate transit.

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The Scottish National Party made the following points in its submission:

The SNP believes that a parliamentary consensus exists to prohibit the home storage of handguns and that this is a matter of grave and substantial public concern. In these circumstances, legislation to amend the Firearms Acts should be negotiated urgently with the opposition parties whose effect would be to:

a) Revoke all existing certificates for handguns and allow after an appropriate transitional period for these to be returned under the following conditions:

- \* An absolute ban on home storage
- \* The prevention of holding more than one such gun
- \* Prior and continuing membership of a gun club by each and every applicant

b) License existing gun clubs to store weapons under strictly controlled conditions, which would require to be inspected and approved by the police. Conditions would include the disabling of every weapon when not in use by the removal of the firing mechanism or other actions and the storage of the firing mechanism would not be permitted within the club.

The Home Affairs Select Committee's report on the *Possession of Handguns* was published on July 24 1996.<sup>16</sup> Conservative Members of the Home Affairs Committee voted against an amendment put forward by Labour Members which included recommendations that the possession of handguns be banned and made a number of further recommendations concerning shotguns and airguns.<sup>17</sup> The Conservative Members instead approved a majority report which came to the following conclusions about the banning of various categories of firearm:<sup>18</sup>

### *Banning the possession of all guns*

5. **We conclude that a ban on the possession of all guns would be too far-reaching.** (para 50)
6. **We believe that a ban upon all guns would not prevent unstable individuals from gaining access to guns illegally, and we therefore reject this option.** (para 51)
7. **We believe that the opportunity should also be taken to review the restrictions upon possession of guns by young people, with regard to public safety.** (para 52)

### *Banning the possession of handguns*

8. **We see no point in a total ban on the possession of handguns alone, and we do not recommend it.** (para 59)

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<sup>16</sup> *Possession of Handguns* Fifth Report from the Home Affairs Committee Session 1995-96 HC 393-I

<sup>17</sup> *ibid* p.xxxviii-xlii

<sup>18</sup> HC 393-I Session 1995-96 pxxxiv

*Partial bans on the possession of handguns*

9. **We doubt that a ban upon either the possession of handguns of above a certain calibre, or on the possession of multi-shot handguns, would make a mass killing any less likely. We therefore reject these options.** (para 63)
  
10. **Although we see some value in the proposal that handguns should be centrally stored, we do not believe that a determined criminal would be prevented from using a weapon for criminal purposes; we therefore reject this suggestion.** (para 69)
  
11. **We do not favour the proposal for possession of assembled handguns to be banned other than at licensed premises.** (para 70)
  
12. **Although we see [a ban on possession of a handgun with ammunition] as a potentially attractive solution, we have concluded that there are significant practical difficulties which cannot be easily overcome, and we therefore reject it.** (para 72)
  
13. **We reject the proposal for restrictions to be placed upon the number of handguns that an individual might hold.** (para 73)

The decision by the Conservative majority on the Home Affairs Committee not to recommend a total or partial ban on the possession of handguns caused considerable controversy and was much criticised in the press, with complaints being made that the Conservative members of the committee were out of touch with public opinion.<sup>19</sup> An article in the *Observer* on August 4 1996 suggested that the Select Committee's report had been used to test public opinion and "give credibility" to any subsequent Government decision which fell short of a total ban on handguns. The article suggested that it was likely that the Labour Party would go on to undertake to ban private ownership of handguns irrespective of the recommendations of Lord Cullen's inquiry.<sup>20</sup> An opinion poll in the *Sunday Times* on 18 August 1996 suggested that a majority of Conservative Members were likely to support a ban on all handguns except single-shot .22 calibre weapons, with many likely to support such a ban even if Lord Cullen did not recommend one.

On of the organisers of the Snowdrop petition, Ann Pearston, addressed the Labour Party conference at Blackpool in October 1996 and pressed for a ban on all handguns. In his speech on October 1st 1996 the leader of the Labour Party, Tony Blair, said he believed that the private ownership and possession of handguns should be banned. The then shadow Home Secretary, Jack Straw, reiterated this in his speech to the conference on October 3rd 1996, saying that it was time for fundamental changes in the gun laws, including a ban on the

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<sup>19</sup> See eg. "Ministers disown MPs who oppose handgun ban" - *Guardian* 1.8.1996; "Weapon ban rebels feel full force of public fury" - *Times* 1. 8. 1996; "Off Target" - *Times* 14.8.1996; "A contemptible report" - *Guardian* 14.8.1996

<sup>20</sup> "Labour pledges gun ban after Tory ruse misfires" - *Observer* 4.8.1996

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private ownership and possession of all handguns. The Scottish National Party had also declared its support for a total ban on the private possession of handguns.

Lord Cullen submitted his report on September 30 1996 and it was published, along with the Conservative Government's response, on October 16 1996. In his report Lord Cullen recommended that:<sup>21</sup>

24. Consideration should be given to restricting the availability of self-loading pistols and revolvers of any calibre which are held by individuals for use in target shooting

preferably, by their disablement, while they are not in use, by either (i) the removal of the slide assembly/cylinder, which is to be kept securely on the premises of an approved club of which the owner is a member or by a club official; or (ii) the fitting of a locked barrel block by a club official (para 9.112);

or, if such a system is not adopted, by the banning of the possession of such handguns by individual owners (para 9.113).

In its response to Lord Cullen's Report the Conservative Government said it intended to go further than Lord Cullen had suggested and prohibit all higher calibre handguns. It also proposed to prohibit people from keeping even single shot handguns at home.<sup>22</sup> In his statement to the House on October 16 1996 the former Home Secretary, Michael Howard, said:<sup>23</sup>

I come to the question that I know will be of greatest concern to the House and the nation: the controls on the ownership of handguns. Lord Cullen confines his suggestions to self-loading pistols and revolvers of all calibres. He does not consider that further restrictions are required for single-shot handguns, which he would allow to be kept in the home, as at present. He suggests that owners of multi-shot guns should be required to disable them when keeping them at home, and goes on to say that, if after consideration those arrangements are found not to be practicable, there should instead be a ban on the possession of multi-shot handguns by individual owners. He envisages that it would still be possible for guns to be kept by a club secretary so that target shooting could continue, using guns owned by the club.

The Government have taken advice from the Forensic Science Service on the practicability of Lord Cullen's suggestions for disabling handguns. Lord Cullen himself recognised that there were considerable practical difficulties in removing key components from handguns. The Forensic Science Service has confirmed that view. It is also not convinced that a barrel block-Lord Cullen's other suggestion-could be made that someone with sufficient determination and access to metal-working tools could not remove. As a result, I have come to the conclusion that we cannot recommend that approach to the House.

I therefore come to Lord Cullen's alternative suggestion of banning multi-shot handguns from individual ownership. I propose to go considerably further than Lord Cullen has suggested in two respects. First, we shall ban all handguns from

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<sup>21</sup> The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996 Cm 3386. p150

<sup>22</sup> The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996 - The Government Response. Cm 3392 p5

<sup>23</sup> HC Deb Vol 282 c832-833 16.10.1996

people's homes. I do not agree with Lord Cullen that it would be safe to allow single-shot handguns to remain in the home. I believe that they should be subject to the same controls as those imposed on multi-shot handguns.

Secondly, we shall outlaw high-calibre handguns of the kind used by Thomas Hamilton. Low-calibre handguns-.22 rimfire handguns-will have to be used and kept in licensed clubs. We believe that a distinction needs to be made between high-calibre handguns, which are principally made for police and military use, and .22 rimfire handguns, which are largely intended for target shooting. Although Lord Cullen decided against making such a distinction, he sets out in paragraph 9.49 of his report a table that demonstrates that a .22 handgun is some four to six times less powerful than higher-calibre handguns.

In paragraph 9.44, Lord Cullen points out that the expansion in the use of high-calibre handguns has even made many shooters concerned about the use of such guns as symbols of personal power. In addition, target shooting with .22 handguns has been an Olympic sport since 1896. There will be exceptions for the very few professionals, such as vets, who need handguns outside gun clubs for the humane destruction of animals.

The proposals will mean that at least 160,000 handguns - 80 per cent. of those legally held at present - will be destroyed. Appropriate compensation will be paid.

A report in the *Guardian* on 23 October 1996 noted that the Liberal Democrats had decided to join the Labour Party and the Scottish National Party in supporting a total ban on handguns, rather than the Conservative Government's proposal to ban only guns above .22 calibre.

### **C. The Firearms (Amendment) Act 1997**

The *Firearms (Amendment) Bill 1996-97*, which subsequently became the *Firearms (Amendment) Act 1997*, was intended to implement the changes proposed by Michael Howard in his statement to the House of Commons on 16 October 1996.<sup>24</sup> During the Bill's second reading in the House of Commons the then shadow Home Secretary, Jack Straw, reiterated the Labour Party's belief that there should be a complete ban on the general civilian

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<sup>24</sup> *ibid*

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possession and ownership of all handguns of any calibre. He added that the Labour Party nonetheless supported the Bill which, in his view, represented a considerable advance on the current arrangements for gun control.<sup>25</sup> During the Bill's committee stage in the House of Commons the Clauses dealing with the prohibition on handguns above .22 calibre were dealt with on the floor of the House. An amendment introduced by the Conservative former Member for Harrow, West, Robert G. Hughes, which sought to extend the Bill's prohibition on handguns above .22 calibre to all handguns, was defeated by 306 votes to 281.<sup>26</sup>

Section 1 of the *Firearms (Amendment) Act 1997* amends section 5 of the *Firearms Act 1968* (the principal Act concerned with controls on firearms) by setting out a general prohibition on handguns and small firearms above .22 calibre. The Act is also designed to require the owners of handguns and small firearms below .22 calibre to keep and use their weapons in secure gun clubs. It will not generally permit the removal of such weapons from such clubs without prior permission from the police.

Section 1 prohibits "any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a small-calibre pistol, a muzzle-loading gun or a firearm designed as signalling apparatus". Sections 2-7 of the 1997 Act provide exemptions from the general prohibition in section 1 for slaughtering instruments, firearms used for humane killing of animals, shot pistols used for shooting vermin, firearms used in races at athletic meetings, trophies of war and firearms of historical interest. The exemptions for muzzle-loading guns and firearms of historic interest were added during the Bill's passage through Parliament.<sup>27</sup> The exemption for firearms acquired as trophies of war before 1946 was also extended by amendment so as to permit the possession of such a weapon, with the appropriate certificate<sup>28</sup>, by someone other than the person who originally acquired it, such as a family member who might inherit it as a family souvenir. Section 7(4) of the 1997 Act provides that the exemption for firearms of historic interest has effect without prejudice to section 58(2) of the *Firearms Act 1968*, which provides a general exemption from the controls set out in the 1968 Act for antique firearms which are sold, transferred, purchased, acquired or possessed as curiosities or ornaments.

Part II of the 1997 Act was intended to provide for the establishment of licensed pistol clubs, which would be required to satisfy the police that their premises meet certain specifications on security and other matters, such as the maintenance of registers of members' attendance. Consultation papers on arrangements for approved rifle and muzzle-loading pistol clubs<sup>29</sup> and

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<sup>25</sup> HC Deb Vol 285 c.186 12.11.1996

<sup>26</sup> HC Deb Vol 285 c.746-793 18.11.1996. See p.28-34 for extracts from the debate on total prohibition

<sup>27</sup> HC Deb vol 285 c.793-797 18.11.1996; HL Deb vol 577 c.325, 16.1.1997

<sup>28</sup> HL Deb vol 577 c.324, 16.1.1997

<sup>29</sup> DEP/3 4883

licensed small-calibre pistol clubs<sup>30</sup> were published by the Home Office and Scottish Office in March 1997.

Part III of the 1997 Act was intended to tighten the firearms licensing procedures used by the police and enhance the powers of the police to suspend or revoke certificates. The Act requires every person who uses a small-calibre pistol in a licensed pistol club to hold a certificate, unless they are newcomers to shooting, in which case they will be allowed a period of 28 days in which to try shooting at a club which has Home Office or Scottish Office approval for this activity. Part II of the Act is also designed to prohibit transfers of firearms from one person to another except where the transfer is carried out in person, unless the person receiving the gun is a registered firearms dealer.

The maximum penalty for illegal possession of a weapon prohibited under section 5 of the *Firearms Act 1968* is ten years' imprisonment following conviction on indictment.<sup>31</sup> Under section 11 of the 1997 Act this will also be the maximum penalty for the offence of having a small-calibre pistol outside the premises of a licensed pistol club.

So far only those provisions of the 1997 Act concerned with the payment of compensation for prohibited small firearms and ammunition and ancillary equipment have been brought into force. Compensation is payable to people who, on or immediately before 16th October 1997, had (or were contracted to acquire after that date) and were entitled to have, those types of firearm and ammunition which are to be prohibited, and ancillary equipment which has no other practicable use, in their possession by virtue of firearm certificates or by virtue of their being registered as firearms dealers. During the Bill's passage through the House of Lords of the Bill which became the 1997 Act an amendment designed to extend the arrangements for compensation to people who were operating shooting clubs which would be unable to continue to operate, was agreed to in spite of opposition from the then Conservative Government.<sup>32</sup> It was subsequently disagreed to by the House of Commons.<sup>33</sup> A Lords amendment to provide compensation for the business losses of firearms dealers<sup>34</sup> was also subsequently disagreed to when the Bill returned to the House of Commons.<sup>35</sup> A consultation paper on the firearms compensation scheme was issued by the Home Office in February 1997.<sup>36</sup> A draft *Firearms (Amendment) Act 1997 Compensation Scheme* was laid before Parliament on 22 May 1997 and was debated and approved in the House of Commons and the House of Lords on June 9 1997.<sup>37</sup> The financial memorandum for the version of the

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<sup>30</sup> DEP/3 4882

<sup>31</sup> *Firearms Act 1968* s.51 & Schedule 6

<sup>32</sup> HL Deb. Vol 577 c.587-588 21.1.1997

<sup>33</sup> HC Deb. Vol 290 c.812-816 18.2.1997

<sup>34</sup> HL Deb. Vol 577 c.1581-1597 4.2.1997; HL Deb Vol 578 c.154-155 11.2.1997

<sup>35</sup> HC Deb. Vol 290 c.792-812 18.2.1997

<sup>36</sup> DEP/3 4643

<sup>37</sup> HC Deb vol 295 c.897-918 9.6.1997; HL Deb vol 580 c.765-779 9.6.1997

1996-97 Bill which was passed to the House of Lords estimates that the total amount of compensation to be paid under what is now the 1997 Act could be about £150 million, with additional administrative costs of between £3 million and £5 million.

## **D. The debate on proposals to restrict the availability of firearms**

In evidence presented to the Home Affairs Committee for its inquiry on the *Possession of Handguns* the Association of Chief Police Officers (ACPO) said:<sup>38</sup>

Prohibition of handguns has been considered. Although some Chief Officers would support total prohibition of handguns this is not felt to be practical. Target shooting using handguns has been legitimised through sport, up to, and including, Olympic level. Therefore a blanket prohibition on handguns would unfairly impact upon members of society taking part in lawful sporting activities.

In its evidence the Police Superintendents' Association of England and Wales said:<sup>39</sup>

The Association accepts that the total banning of the private possession of handguns would be too draconian and an unacceptable restriction on the liberty of the citizen.

The Association added that because of the dangers involved in the misuse of handguns and the fact that they could so easily be concealed it believed the number of weapons in private hands should be reduced.

In its evidence to the Committee the Police Federation of England and Wales recommended a complete ban on the private ownership and possession of handguns, stating that:<sup>40</sup>

The Police Federation of England and Wales has decided to recommend a complete ban on the private ownership and possession of handguns. We recognise that such a measure would prevent thousands of gun enthusiasts from taking part in a long established sport and from collecting handguns. We have had to weigh their interests against public outrage following the massacres at Hungerford and Dunblane, and the Government's responsibility to ensure, as far as possible, that such incidents cannot recur. The balance is overwhelmingly on the side of the prohibition of handguns. Both the perpetrators of Hungerford and Dunblane held their weapons legally. They had satisfied all legal requirements. Nothing in their

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<sup>38</sup> HC 393-II Session 1995-96 p.77

<sup>39</sup> *ibid.* p.79

<sup>40</sup> *ibid.* p.80-81



shooting activities gave rise to cause for concern that they might be temperamentally unfitted to possess lethal weapons. It might be argued, with the benefit of hindsight, that psychological profiling of Ryan and Hamilton might have raised doubts about their temperament because both led solitary lives and in Hamilton's case there was concern about his connections with boys clubs. Without wishing to trespass on this area of the Cullen Inquiry's remit we believe that it is impossible to devise a foolproof standard of personality assessment that would guarantee the screening out of all psychopathic personalities who apply for firearms certificates. We do not know how many more Ryans and Hamiltons are current owners of legal handguns.

We are fortunate, in the context of this debate, that the United Kingdom does not have a written constitution and so we are not burdened with anything akin to the "right to bear arms" which is the cornerstone of the opposition of the gun interests in the United States to calls for bans on handguns. We accept that what we are demanding amounts to a deprivation of the rights of law abiding citizens to participate in what have until now been lawful activities, but we believe that this is essential in the wider interest of the preservation of human life. Frankly, we do not know what answer government would be able to give to the relatives of the victims of another such massacre if it involved legally held handguns.

We argue that handguns are especially dangerous to human life, because of their potent killing capacity which enables a person who is skilled in their use to murder a large number of victims in an incredibly short time. It takes only a couple of seconds to change the magazine on an automatic pistol. This killing capacity, which is common to handguns other than the single shot variety, is what distinguishes them from shotguns. We also accept that if handguns are to be banned in order to prevent so-called "spree" killings, attention will have to be paid to some types of rifle which are equally capable of being used for such a purpose.

Handguns can also be distinguished from shotguns because in this country it is very rare to permit a private citizen to possess a handgun for any purpose other than sport or collecting. Shotguns, on the other hand, are essential to the farming community besides their sporting use.

We considered the proposal that all handguns should be stored at gun clubs. We accept the view of the shooting lobby that this would not be possible in the case of many clubs. Also, it would still leave the problem of guns being taken out of clubs by owners wishing to take part in shooting activities elsewhere. On balance we believe that storage at gun clubs does not eliminate the risk of another mass shooting.

We are aware that other groups who are equally anxious to tighten the law as a means of avoiding another massacre, propose that the possession of handguns above .22 calibre should be prohibited. The gun interests oppose this on the grounds that some international (but not Olympic) shooting events require the use of handguns of greater calibre. We believe that the .22 calibre handgun is just as capable of killing as a larger calibre weapon.

One argument raised against a ban is the cost of compensation to current gun holders and we accept that this would be considerable. At least the cost to the public purse of such compensation can be measured. The cost of incidents such as Hungerford and Dunblane cannot be expressed in monetary terms but it is far greater.

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The report of the Home Affairs Committee included the following comments on proposals for a ban on handguns:<sup>41</sup>

57. We have asked ourselves whether a ban on handguns might lead to an increase in the numbers of firearms (handguns or otherwise) which were illegally held. Any answer must be largely conjecture. We note however that there is some uncertainty about the effectiveness of those restrictions on possession of smooth-bore self-loading shotguns which were introduced by the Firearms (Amendment) Act 1988. Those which had a barrel-length of less than 24 inches were henceforth prohibited; controls on those types which had a barrel-length of 24 inches were toughened by introducing a requirement for possession of a *firearm certificate* rather than a shotgun certificate. Trade sources indicated that some 300,000 of these weapons had been sold prior to the Act; in order to comply with the Act, all of these weapons would have had to be surrendered, or converted so as to be covered by a shotgun certificate, or held on firearms certificates. The Firearms Consultative Committee noted in its Sixth Annual Report that only 640 such guns had been handed in during the 1988 amnesty, and that only 50,000 had been converted to shotguns. There is some anecdotal evidence to suggest the police have been highly restrictive in their issue of firearms certificates for these weapons; it therefore seems possible that a large proportion are currently illegally held, although Mr Maclean believed it "highly likely" that large numbers would have been sold to dealers and exported overseas.

58. The Shooters' Rights Association suggested that the policy of reducing the number of firearms in private hands, as advocated by the McKay report in 1972 and - according to the Shooters' Rights Association - still regarded by certain police forces as "the doctrine to follow", had led to the levels of illegally held firearms in circulation today.

59. It is natural enough to ask, after a major disaster involving a particular class of gun, why possession of all such weapons should not be banned. Unfortunately, it is not that simple. It is obvious that panic legislation, which might be seen at its outset to bear the seeds of failure, should be avoided. What would be the point of a total ban on the lawful holding of handguns if there remained easy access to unlawful handguns, and easy access - both lawful and unlawful - to powerful rifles, or to shotguns which, given time to reload (and we have already noted that rate of fire at both Hungerford and Port Arthur was not a particular factor in the scale of killing), would have the same result? As we concluded when we discussed the possibility of banning the possession of all guns, the improvement in public safety would be minimal. **We see no point in a total ban on the possession of handguns alone, and we do not recommend it.**

As has already been noted<sup>42</sup> the rejection by the Conservative majority on the Home Affairs Committee of proposals for total or partial bans on the possession of handguns and a number of other measures provoked some controversy. The Labour members of the committee tried unsuccessfully to move an amendment to the report which, amongst other things, stated that:<sup>43</sup>

We heard in evidence that partial bans would be impracticable; we therefore believe that the private possession of handguns should be banned. Undeniably, a large proportion of crime involving the use of firearms is

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<sup>41</sup> Possession of Handguns Fifth Report of the Home Affairs Committee Session 1995-96 HC 393-I p.xix-xx

<sup>42</sup> see above p.11

<sup>43</sup> *ibid.* p.xxxviii-xxxix

committed with illegally held guns; but there is strength in the argument that to reduce the number of firearms in circulation would be one step on the way to making it more difficult for criminals to obtain guns.

In their amendment the Labour members said they recognised that a balance was needed between the interests of sportsmen and the need for public safety, but they believed that public safety should take priority. They added that particular gun clubs at particular locations might be able to demonstrate that guns for use at the club could be securely kept, at a central point, in such a way as to preserve the safety of the public. Where this was so, they considered that exceptions to the general ban might be made. They doubted, however, that many such exceptions could in practice be justified unless the shooting community were willing to incur the costs of major new investment in new secure premises and went on to say that no handguns should be available or obtainable for private use outside very secure locations:<sup>44</sup>

The memorandum submitted to the Home Affairs Committee by the then Home Secretary, Michael Howard and the then Secretary of State for Scotland, Michael Forsyth (which they also submitted to the Cullen Inquiry) made the following observations about proposals to prohibit the possession and use of all handguns:<sup>45</sup>

#### A. A PROHIBITION ON THE POSSESSION AND USE OF ALL HANDGUNS

10. The aim would be to minimise the number of handguns in circulation. Semi-automatic rifles have been prohibited weapons since 1988. But handguns, most of which are semi-automatic, remain available under a firearm certificate.

11. The Government recognised at the time of the 1988 Act that handguns also pose particular dangers, both because they are easily concealed and carried and because they are capable of rapidly firing a large number of rounds without reloading - usually 6 or 8 with a revolver, but up to as many as 18 in the case of a pistol, depending on the size of its magazine. Several of the murders by Michael Ryan in Hungerford in August 1987 were committed with a pistol.

12. A prohibition on their possession would reflect their particularly dangerous nature. But there are a number of occupational reasons why people in civilian life may need to have a handgun. For instance a veterinary surgeon, or RSPCA inspector, may need a pistol for the humane destruction of a seriously wounded animal, and pistols are sometimes used for shooting vermin in confined spaces. But in all these cases a single shot pistol might be all that was necessary, and there might be special exemptions or licensing arrangements for such cases.

13. A prohibition would deny many law abiding handgun shooters the means to pursue their sport. Some 57,000 people hold firearm certificates for handguns (see *Appendix A*). Target shooting is a sport with a long history in this country, enjoyed by substantial numbers

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<sup>44</sup> *ibid.* p.xxxix

<sup>45</sup> HC 393-II Session 1995-96 p.44-45

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of people, and some forms of small-bore pistol shooting are Olympic events. Exact statistics are not available, but it seems likely that more target shooters use handguns than rifles.

14. A complete prohibition on handguns, or on any other particular category of gun, would require primary legislation. It could also pose problems of defining exactly what a handgun, as opposed to other types of firearm, is. The glossary definition at *Annex B* is in terms of size and design function, but this approach might not lend itself to a precise and workable definition in law.

15. The Firearms Acts already pose problems of definition. For example section 5(1) (ab) of the 1968 Act, introduced by the 1988 Act, prohibits most types of self-loading and pump-action "rifle", which term includes, under section 57(4) of the 1968 Act, "carbines". Since this legislation came into force a number of types of self-loading and pump-action gun have appeared on the market which have many of the characteristics of rifles or carbines but which are described by their vendors as "pistols". There have as a result been court cases in which the correct classification of these firearms as rifles, carbines or pistols has been an important issue.

In the report of his inquiry into the shootings at Dunblane Lord Cullen considered the proposal from Mr C.M. Campbell QC (who represented the families of the children killed at Dunblane) that all guns, including both handguns and shotguns, be banned. Lord Cullen did not recommend that such a wholesale prohibition be considered.<sup>46</sup> He did not give specific consideration to proposals that the civilian use of handguns, rather than all guns, be prohibited, but did consider measures for restricting the availability of handguns in target shooting such as limiting the number of handguns, or the number of a particular calibre, which may be held, separating handguns from their ammunition, restricting the capacity of multi-shot handguns, temporarily disabling multi-shot handguns and banning the possession by individuals of multi-shot handguns.<sup>47</sup> In the context of proposals to prohibit the possession by individuals of multi-shot handguns, while permitting the possession of single-shot weapons, Lord Cullen made the following remarks about suggestions that European Community law would prevent the implementation of such a measure:<sup>48</sup>

9.96 The practicability of such a measure was not questioned save in one respect. It was suggested that the EC Weapons Directive (91/447/EEC) would prevent the implementation of such a ban. This Directive provided for the partial harmonisation of Member States' domestic firearms controls in order to reach consistency in regard to minimum standards. However, it allows Member States to maintain or introduce domestic controls which are more stringent than those standards, provided that the European Commission and other Member States are advised accordingly. Thus, as I understand the position, the Directive does not prevent this country from introducing such a ban. The Directive is due to be reviewed by the European Commission by the end of 1997. This will provide an opportunity for the Government

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<sup>46</sup> Cm 3386 p.81-83

<sup>47</sup> *ibid.* p.120-129

<sup>48</sup> Cm 3386 p.126-127

to put its case for altering any of the prohibitions which apply to all Member States if it sees a case for so doing.

Lord Cullen also made the following comments about the argument that any restriction on handguns would be ineffective because lawfully held handguns might simply be transferred into the pool of illegally held weapons:

9.97 As I have already indicated in the first part of the chapter it was questioned whether any restriction on the legal availability of firearms would be effective. It was suggested that the owners of handguns which were currently in lawful possession might avoid confiscation by causing them to "disappear". Examples of this phenomenon were drawn by some commentators from the past history of firearms control in this country and in Germany. Even if the withdrawal of lawfully held handguns was achieved, professional criminals and others who were bent on mischief could obtain illegal handguns. Further there was a risk that by process of "displacement" they might resort to the use of other types of firearm, such as shot guns, which were capable of delivering shots which were more devastating, or to other methods of destruction such as bombs. There was nothing to suggest that the banning of self-loading rifles under the 1988 Act (which had led to the confiscation of Thomas Hamilton's rifle) had prevented the happening of anything that was worse than occurred. The same points also apply to the proposal that the handguns in respect of which firearm certificates may be granted for target shooting should be restricted to .22 calibre.

9.98 None of these points can be dismissed from consideration. However given that lawfully held handguns are identified in firearm certificates, the opportunity for them to "disappear" is much less than if they were not identified at all. I have already rejected the contention that legally held firearms are of no significance in regard to the commission of crime, and expressed the view that the arguments in support of weapon substitution are overstated. I am not convinced that a restriction on the availability of handguns would actually lead to an increase in injury. I am satisfied that a ban on the possession of multi-shot handguns would have some effect on the incidence of serious crime.

In setting out what he thought should be done, Lord Cullen noted that:<sup>49</sup>

9.108 It is not enough to consider what would be practicable and effective. No assessment of what should be done would be complete without considering what would be proportionate and just, having regard on the one hand to the scale of risk and on the other the implications of one course of action or another.

9.109 It has seemed to me that if there was a case for restricting the availability of multi-shot handguns, as I have held there to be, it would be a proportionate and just result if a practicable and sufficiently effective way could be found to minimise the opportunity for such handguns to be used except on the ranges without in effect destroying the sport in the process. If such means could not be found, there would then be a case for banning them. That remains my view.

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<sup>49</sup> *ibid.* p.130

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9.110 At this point I should observe that throughout the Inquiry, the BSSC who acted as the umbrella body representing the interests of the shooting community at large were opposed in principle to any restriction on the availability of handguns: and objected not merely to the suggestion of one kind of ban or another but also, as I have explained above, to various measures which stopped short of a ban. This entrenched attitude meant that as each measure was supposedly discredited what was at stake became the greater. That has not, of course, prevented me from making my own assessment as to the merits of any particular measure but it did mean that so long as the principle of there being any restriction was in dispute there was no incentive for them to see how a measure less drastic than a ban could be made to work.

9.111 At the same time I am very conscious that proposals such as a ban on the possession of a certain type of firearm raise questions which are peculiarly within the province of the Government and Parliament to decide. Thus after the shooting at Hungerford in August 1987 the Government decided how far there should be, in the words of the White Paper, a shift in the balance of controls "between safeguarding the public at large and protecting the interests of the legitimate shooting community" (*Firearms Act 1968: Proposals for Reform, para 4.*). Michael Ryan had killed half of his victims with shots from a self-loading pistol and the fact that handguns posed particular dangers was recognised (*Green Book Part para 11*). However, the Government did not propose that handguns should be banned. The proposal of such a ban after the shootings at Dunblane once more raises a question of policy. It is necessary to decide what risk is acceptable, bearing in mind that some risk is an inevitable feature of daily life. Against the risk to society has to be balanced the loss of freedom of the individual and the other implications which I mentioned earlier (paras 9.100-9.105). There may also be competing claims on the use of resources. In the light of these points it is clear to me that in stating my own conclusions I should confine myself to what I recommend should be *considered*.

Lord Cullen said he was satisfied that of all the measures which stopped short of a ban the one which was open to the least objection on the ground of practicability was the temporary dismantling of self-loading pistols and revolvers by the removal of major components. He added that:<sup>50</sup>

9.113 If for any reason that course is not to be followed I see no alternative to considering the more draconian alternative of a ban on multi-shot handguns. However, in such circumstances I would suggest that the ban should be directed to the possession of such handguns by individual owners rather than the possession of handguns by shooting clubs, since it is through possession by individuals that the risk, in so far as there is a risk, of homicide or serious injury arises. Thus I do not consider that the banning of handguns for target shooting or the banning of shooting clubs would be justified. I have no particular recommendation as to the legislative means by which effect would be given to such a ban.

As has already been noted,<sup>51</sup> the Conservative Government did not accept this approach and moved instead to legislate, in the *Firearms (Amendment) Act 1997*, for a ban on handguns above .22 calibre and for handguns of .22 calibre and below to be required to be kept in licensed pistol clubs.

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<sup>50</sup> *ibid.* p.131

<sup>51</sup> see above p.12

In setting out the Labour Party's view of the previous Government's proposals in response to the Cullen report the then shadow home affairs spokesman, Jack Straw, said :<sup>52</sup>

As we heard from the Secretary of State for Scotland, Thomas Hamilton - one man - killed 16 children and one teacher, and injured 17 others, by discharging 105 rounds of ammunition from a single semi-automatic handgun in the space of three minutes. Handguns are small, portable, easy to hide and lethal. In the light of Lord Cullen's report - and especially his analysis - it is our considered judgment that handguns should be banned altogether from general civilian use.

May I make it clear to the Secretary of State that we shall of course co-operate fully to ensure that legislation is passed speedily through Parliament, to implement the will of this House and the other place for a root-and-branch reform of gun law? We welcome almost everything in the Secretary of State's statement, and especially the complete ban on all handguns from people's homes. But, with respect, we do not believe that his proposals go far enough. Let me briefly give our reasons.

In the evidence submitted to the Cullen inquiry on behalf of the Labour party by my hon. Friend the Member for Hamilton and me, we said that there was a strong case for banning all handguns, apart from some very limited occupational exceptions such as vets and casualty slaughterers. We then said that it was for the shooting fraternity to make a case for exceptions to that - for example, in respect of single-shot .22 pistols. But, in our judgment, the shooting fraternity has failed to do so.

Lord Cullen says that an exemption for single-shot .22 handguns would be both impractical and ineffective because they could easily be reconverted to multi-shot guns, and we accept that view. Partial bans, moreover, would create extra work for the police. As the Police Federation said in its evidence to Lord Cullen, .22 weapons may be just as lethal as higher-calibre weapons.

In reply to this the then Home Secretary, Michael Howard, commenting on proposals for a complete prohibition on the ownership and possession of handguns, referred to "the unhappy history of the complete prohibition of activities hitherto regarded as lawful":<sup>53</sup>

**Mr. Howard:** I am grateful to the hon. Gentleman for the remarks with which he began his observations. He identified with some precision the difference that lies between us. We believe that it is possible to give the public the protection that they rightly require and deserve without going so far as to put in place a complete prohibition on the ownership and possession of handguns for which the hon. Gentleman called. We believe that if it is possible to provide that protection without a complete ban, it is the Government's duty to take that course.

I ask the hon. Gentleman and those sitting behind him to reflect on the unhappy history of the complete prohibition of activities hitherto regarded as lawful. It would not be in anyone's interests,

least of all the protection of the public, to drive underground an activity that could then be conducted without any safeguards for security, whereas if it remains possible to carry out that activity legitimately, under extremely secure safeguards, the public's protection might be greater. I ask him to reflect on that.

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<sup>52</sup> HC Deb. Vol 282 c834-835 16.10.1996

<sup>53</sup> HC Deb. Vol 282 c835-836 16.10.1996

Some commentators criticised the previous Government for not proposing a complete prohibition on handguns, citing views such as those of the Police Federation, in its evidence to Lord Cullen, that .22 calibre firearms may be as lethal as higher-calibre weapons. Press reports claimed that weapons of this calibre had been used in the assassinations of Robert Kennedy and Yitzhak Rabin, and in the attempted assassination of Ronald Reagan by John Hinckley Jr. Some commentators also called for a general prohibition on shotguns, noting, as Lord Cullen did,<sup>54</sup> that an individual shot from a handgun, depending on the distance and calibre, may be less lethal than a shot from a shotgun or rifle. In its report on *The Possession of Handguns* the Home Affairs Committee noted that:<sup>55</sup>

6. The Home Office, in evidence to Lord Cullen's inquiry which was prepared jointly with the Scottish Office, and which was also submitted to this inquiry, maintained that handguns, being small, easily concealed and carried, and capable of rapidly firing a large number of rounds without reloading, were weapons of a "particularly dangerous nature". This view is not universally held; it may be argued that a shot from a standard rifle will generate more energy than will a shot from a typical self-loading handgun; a shotgun is likely to have a greater destructive capacity even at close range, due to the spread of the shot.

Lord Cullen also referred in his report to the dangers posed by the use of air weapons at large and whether they should be subject to certification and unavailable until a later age than at present. During the debate which followed his statement on the Cullen report the former Home Secretary, Michael Howard, made the following remarks in reply to questions from Chris Mullin about the dangers posed by shotguns and air weapons:<sup>56</sup>

**Mr. Chris Mullin** (Sunderland, South): I thank the Home Secretary for endorsing the main plank of the minority report from the Home Affairs Committee on the issue. It is not every day that a minority report is endorsed so swiftly by the Home Office. I have one or two others that he might like to reconsider.

Did the Home Secretary hear the comments this morning by Mr. Michael Yardley, a firearms expert, that it was pointless to ban handguns if something was not also done about shotguns? Is it not about time that we made a start on collecting some of the 2 million shotguns in circulation, starting in urban areas? Everyone acknowledges that farmers need shotguns, for reasons that we all know about, but it is hard to understand why licences should be granted to shotgun owners in urban areas.

Does the Home Secretary have any plans to do anything about the misuse of air weapons, which, as many of our colleagues will know, are responsible for a great deal of mayhem in urban areas?

**Mr. Howard:** I note the hon. Gentleman's opening remarks. I am sure that he does not expect me to give any undertaking on my reaction to minority reports from the Home Affairs Committee in future. I do not follow the hon. Gentleman in his observations about shotguns. Shotguns have many wider applications than do handguns, which are restricted to target shooting. I do not think that the hon. Gentleman has made a case for the restriction on shotguns to which he has referred. Similar observations apply to air rifles.

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<sup>54</sup> Cm 3386 para 9.59

<sup>55</sup> HC 393-I Session 1995-96

<sup>56</sup> HC Deb. Vol 282 c837-838 16.10.1996



The Home Affairs Committee said in its report that it believed the problems posed by illegally held firearms were on a far larger scale than those posed by legally held firearms.<sup>57</sup> It also noted that policy on firearms control appeared to be formed without the benefit of statistical material on the proportion of crime committed with stolen or borrowed legally-held weapons and recommended that records be kept of the sources of firearms recovered after crime.<sup>58</sup>

In Chapter 9 of his report, Lord Cullen discussed in some detail the question of a possible relationship between the legal availability of firearms and the incidence of crimes and suicide, using evidence from the UK as well as international comparisons. The evidence submitted to the Cullen Inquiry on behalf of the then Home Secretary and the then Secretary of State for Scotland contains a note by the Crime and Criminal Justice Unit of the Home Office Research and Statistics Directorate (RSD) on the relationship between gun availability and violent crime.<sup>59</sup> Some of the research referred to in this evidence was strongly criticised by a number of commentators at the Cullen Inquiry and the RSD then produced a further note in reply to these criticisms. Both of these notes are available in the Library. The reply contains additional information and comment on firearms and crime in the USA, Canada and Switzerland, including the following table on rates of various crimes in the USA and England and Wales:<sup>60</sup>

**Table 1 Rates of various crimes in the USA and England and Wales (1990-1994 averages)**

	E & W	USA	E&W/USA ratio
	<i>Rates per 1m (1990-94)</i>		
Burglary	24,340	11,590	1: 0.48
Theft of vehicles	10,960	6,290	1: 0.57
Non-gun assaults	3,860	3,290	1: 0.9
Non-gun robberies	890	1,540	1: 1.7
Non-gun homicides	12.4	30.4	1: 2.4
Gun assaults	53	1,045	1: 20
Gun robberies	98	1,033	1: 11
Gun homicides	1.2	63.6	1: 52

Notes:

1. For England and Wales, rates of gun and non-gun crimes are calculated from figures of the number of incidents in which firearms were used compared to the overall number of incidents (*Criminal Statistics for England and Wales*, appropriate years). This was done separately for each year 1990 to 1994, with the figures then averaged. For instance, the number of homicides in 1994 was 724 (a rate of 13.6 per 1m). The number of gun-related homicides was 66 (9.1% of the total), a rate of 1.2. Firearms include air weapons. For the USA, gun and non-gun crimes are derived from figures in *Crime in the US* (appropriate years). For instance, in 1994, the number of homicides was 23,305 (a rate of 89.5 per 1m). Of these, 70% were gun-related (a rate of 62.7) and 30% were not (a rate of 26.8).

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<sup>57</sup> *ibid* para 36

<sup>58</sup> *ibid.* para 35

<sup>59</sup> DEP/3 3283 Annex G

<sup>60</sup> A Reply to Comments on the Research Note in the Government Evidence to: Lord Cullen's Inquiry into the circumstances leading up to and surrounding the events at Dunblane Primary School on Wednesday 13 March - Crime and Criminal Justice Unit, Research and Statistics Directorate, Home Office July 1996 p.10

reply observes, this shows that, contrary to what might be imagined, rates of property crime (burglary and thefts of vehicles) are about 50 % higher in England and Wales than in the US. Shooting organisations in the USA have often sought to attribute the lower rates of burglary in the USA to the possible deterrent effect of the presence of guns in many homes and the wide ambit of the defence of self-defence in some states.<sup>61</sup> Advocates of gun control point to the very much higher rates of gun homicide in the USA which some see as a consequence of higher levels of gun ownership and what is seen as the right to bear arms under the US constitution.

As far as England, Wales and Scotland is concerned, Lord Cullen commented that while the statistical evidence available to him and to which he had referred was of limited value it did show that while *illegal* firearms were used in the great majority of firearm-related crimes in the UK, and especially in robberies, the existence of *legally* held firearms led to their use in crime in a significant, though relatively small number of cases. Other commentators also noted that in the particular context of the shootings at Dunblane, and also, to some extent, those at Hungerford in August 1987, discussion of the dangers posed by illegally held weapons was only partly relevant, as legally held weapons had been involved in both cases. In his statement on the changes proposed by the Government in response to Lord Cullen's report the Home Secretary observed that:<sup>62</sup>

Among all the words that have been written since that dreadful event at Dunblane, there is one irrefutable fact, The crimes that were committed on 13 March were committed with a gun that was legally bought and legally possessed. Those facts place an extremely onerous duty on the Government to consider what controls there should be on the ownership and possession of guns.

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<sup>61</sup> See also "'Gun law' cuts crime rate, US study finds" - *Guardian* 3.8.1996

<sup>62</sup> HC Deb. Vol 282 c831 16.10.1996

## E. The debate on the prohibition of handguns

### i. Some press comment

The proposal that all handguns should be banned from private possession and use received considerable support in the tabloid and broadsheet press, although there were dissenting views. The *Guardian* took the view that both a total ban and a number of other measures were needed "to combat and reverse the growing gun culture in the UK"<sup>63</sup> An editorial in *Scotland on Sunday* expressed support for a total ban and took the view that there was no alternative means of ensuring that the government, police and civilised society avoided complicity in any future incident through having permitted the continued licensing of such weapons. The editorial also put forward the view that:<sup>64</sup>

There is no basic right to own a gun, but there is (or should be) to live without fear. Quite simply, handguns are not necessary. They are an entertainment, a sport. Set against a civilised society's desire to protect itself from encroaching violence of all kinds - not just murder and culpable homicide - they are entirely dispensable.

In an editorial on October 17 1996, the day after the publication of the report of the Cullen inquiry and the announcement of the then Government's response, the *Times* said that the case for banning all handguns was extremely persuasive, but added that the then Home Secretary, Michael Howard, had been right to draw attention to the unhappy history of prohibition. It added that:<sup>65</sup>

Mr Straw's support for a total ban on handguns has the merit of simplicity and overwhelming popular support. But before any absolute ban is introduced MPs should reflect on whether there is a last case for caution. The victims of Dunblane deserve hard thinking as well as deep feeling.

In a subsequent editorial the *Times* said that Mr Howard was right to resist a blanket ban on handguns, saying that his approach demonstrated:<sup>66</sup>

a willingness to balance liberty and coercion, public pressure and policy detail.

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<sup>63</sup> "A victory for people" - *Guardian* 17.10.1996. See also "Tough, but not tough enough" - *Guardian* 20.11.1996 and "No guns in the House" - *Guardian* 14.10.1996 (an article by the Conservative former Member and Home Office minister David Mellor)

<sup>64</sup> "A handgun ban must be total" - *Scotland on Sunday* 13.10.1996

<sup>65</sup> "Cullen's craft" - *Times* 17.10.1997

<sup>66</sup> "Freedom and order" - *Times* 2.11.1996

The *Daily Telegraph* criticised the then Conservative Government's proposals on libertarian grounds, accusing it of making law in a panic and saying in an editorial that:<sup>67</sup>

The proponents of a wholesale ban ask "Why does anyone need a handgun?" This is surely the wrong question to ask in a free society: the bulk of firearms licence holders are law-abiding individuals who are engaged in a peaceful pursuit. They do not have to prove their need of anything - any more than the rest of us have to demonstrate our need of cars or knives, which can also be lethal when in the wrong hands. To deprive thousands of a legitimate hobby and others of their livelihood, for minimal and uncertain gain in terms of public safety, is gesture politics.

Depriving the law-abiding of handguns leaves us less free as a people and brings closer the day when the state has a monopoly of firepower. There might, nevertheless, be overriding reasons why it is justified. But these have not been established in the case of Dunblane.

### ii) The debate in the House of Commons

In a speech during the Debate on the Address at the start of the 1996-97 session, the former Conservative MP Nicholas Budgen made the following remarks about the then Conservative Government's proposals concerning firearms and gun clubs:<sup>68</sup>

Whenever there is a hue and cry, contrary to what my right hon. and learned Friend the Member for Putney (Mr. Mellor) says, it is the role of the High Court of Parliament to take into account public opinion; but we do not have the high honour of being Members of Parliament to be a lynch mob. We are assembled here to weigh carefully the rights and liberties of every section of the community, and gun club members have as much right as anybody else to have their views carefully considered when they are unpopular.

Unfortunately, it has been put about that some sort of deal has been done between the Home Secretary and the Secretary of State for Scotland on what sort of shooting should be continued in clubs and the use of what I agree should be described as pistols. I am all for deals on public expenditure, and deals must take place between constituencies and ministries. There is nothing immoral about

that. But when it is a question of taking away the rights and liberties of a substantial section of the community, there must be some principle about it. That cannot simply be done by a deal dependent on whether somebody has a marginal seat and whether he is running in front of the wind of public opinion. The public must have the sense that their liberty has been taken from them only out of great necessity and principle.

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<sup>67</sup> "Making law in a panic" - *Daily Telegraph* 17.10.1996. See also "Tragedy and travesty" - *Daily Telegraph* 20.11.1996; "The gun lobby is repulsive but right" - *Sunday Telegraph* 13.10.1996; "Parliament's devilish bad act" - *Times* 19.10.1996 and "How not to save lives" - *Sunday Telegraph* 17.11.1996

<sup>68</sup> HC Deb. Vol 284 c.385 28.10.1996

The then shadow Home Secretary, Jack Straw, referred to some of these remarks in his speech during the debate on the Second Reading of the Bill which became the *Firearms (Amendment) Act 1997*, in which he said:<sup>69</sup>

It is the essence of a democratic society that people should have the right to undertake activities of which a majority might disapprove. Indeed, the test of a democracy is not the freedom that we allow those with whom we agree, but the freedom that we allow those with whom we profoundly disagree. As the trustees of people's democratic rights, Members of Parliament must always be careful about removing or restricting the freedoms of others.

I have never used a firearm in my life, but many decent, responsible citizens do. Some people, such as veterinary surgeons, casualty slaughterers and farmers who have to keep down vermin, need guns for their jobs. Hundreds of thousands of people take part in field and country sports and certain individuals, who between them hold around 200,000 handguns, are involved in various target sports. Although I do not share his conclusions, the hon. Member for Wolverhampton, South-West (Mr. Budgen) was right to say, in the debate on the Loyal Address on 28 October:

"We are assembled here to weigh carefully the rights and liberties of every section of the community, and gun club members have as much right as anybody else to have their views carefully considered when they are unpopular."- [Official Report, 28 October 1996; Vol. 284, c. 385.]

Everyone's freedom to do anything must, however, be balanced against the consequences that exercising that freedom poses to others. On any scale, the right to life - especially the right of a child to life - must come higher than the right to practise a sport. Where two sets of rights appear to collide, it is for Parliament to establish a new balance; that is what the Bill and this debate are about.

Following the establishment of the inquiry chaired by Lord Cullen, my hon. Friend the Member for Hamilton and I drafted evidence on behalf of the Labour party, which was submitted after considerable discussion in both the home affairs and the Scottish groups of the parliamentary Labour party. In that evidence, we sought to

distinguish - as the law presently does - between shotguns and other firearms. We recognise that shotguns can kill human beings, but they are not designed for that purpose. Their size and the time it takes to reload them mean that they are far less likely to be used to effect a massacre than a pistol or other handgun. However, we said that there should be a tightening of the licensing procedures, to which point I shall return later in my speech.

Handguns are different from, and inherently more dangerous than, shotguns. I know that that view is not recognised by the British Shooting Sports Council. In its "Public Relations Guide for Shooters", it made the astonishing statement that "guns are not dangerous". That assertion received short shrift from Lord Cullen, who said:

"No doubt a gun cannot kill if someone does not pull the trigger, but it is right to regard a gun as dangerous and to treat some guns as more dangerous than others."

Handguns can be fired with greater speed and accuracy than shotguns, and can be far more easily concealed. Unlike shotguns, handguns have been developed for the purpose of killing other human beings. That puts them in a category by themselves.

Much of the sport of handgun shooting developed from that principal purpose.

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<sup>69</sup> HC Deb. Vol 285 c.188 12.11.1997

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Mr Straw went on to set out the basis for the Labour Party's view that there should be a complete ban on handguns in general civilian use.<sup>70</sup> He referred to what he saw as previous failures to impose adequate controls on the possession and use of firearms and concluded by saying that:<sup>71</sup>

No system of controls, however tough, can guarantee that there will never again be a Dunblane or a Hungerford. However, we know now that more effective controls would almost certainly have saved the lives of 34 innocent children and adults who were massacred in those two peaceful towns—and perhaps the lives of many others also. We owe it to those who were killed at the hands of those lawfully licensed gunmen to put effective controls in place. We must stop the creeping gun culture that is scarring our society.

This Bill is a welcome beginning, but I fervently hope that it will be greatly strengthened before it emerges from Committee and, above all, that the House will decide that handguns for general civilian use have no place in our society.

During the Bill's Committee stage on the floor of the House of Commons the Conservative former MP Robert G. Hughes sought unsuccessfully to put down an amendment designed to prohibit all handguns. In his speech during the debate on this amendment the then Home Secretary, Michael Howard, said:<sup>72</sup>

**Mr. Howard:** We have had a distinguished debate, marked by high-quality speeches on both sides of the Chamber. I agree with my right hon. and learned Friend the Member for Putney (Mr. Mellor) that none of us should be embarrassed by emotion in approaching this topic. The emotions it has aroused have been deep and intense, and they have touched us all. None of us needs to make any apology for having opened up our minds and our hearts to those emotions, but at the end of the day, as was pointed out by my hon. Friend the Member for Morecambe and Lunesdale (Sir M. Lennox-Boyd) and by many other hon. Members, each of us has to come to a rational decision. We have to exercise our judgment; I entirely accept that, in the end, the attitude that one takes and where one draws the line are matters of judgment.

We have to exercise our judgment in a way that we can defend rationally. That is the consideration that has influenced the Government as they have sought to discharge this weighty responsibility. We have tried to put the protection of the public uppermost; that has been our first priority. However, it has always been my belief that, if it is possible to provide the public with the protection they need and deserve while allowing some limited legitimate shooting activity to continue, it is the Government's duty to take that course and to come to a conclusion that permits that result.

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<sup>70</sup> *ibid.* c.188-199

<sup>71</sup> *ibid.* c.199

<sup>72</sup> HC Deb. Vol 285 c.783-784 18.11.1996

Mr Howard went on to say:<sup>73</sup>

As I said at the outset, the Government's first priority is public safety. We are committed to doing whatever is needed to give the public the greater protection that they need and deserve in the aftermath of the dreadful events at Dunblane. The question for Parliament is whether that protection can be provided while allowing some legitimate use of handguns to continue. If the answer is yes, as I believe it is, the Government have a duty to act accordingly. There are several reasons why we take that view. First, if there were to be a complete ban, there is a real danger that target shooting would take place outside the law, completely unregulated and not subject to any supervision or security. That would lead to a lessening of the protection of the public and is not a state of affairs that we should lightly contemplate. That is a serious argument that cannot be dismissed.

To all those hon. Members who take a different view on the complete ban and who have said to those of us who do not share that view, "How could you look yourselves in the face if, on some future occasion, some other awful event were to take place?" - with the implicit assumption that such an event would be a consequence of our failure to impose a total ban in this legislation - I say, "How could they look themselves in the face if that dreadful event were the outcome of driving this activity beyond the bounds of the law?" That could happen, as was acknowledged by the hon. Member for Blackburn (Mr. Straw).

**Mr. O'Neill** *rose-*

**Mr. Howard:** I do not have time to give way. One cannot avoid or shrink from that serious point.

Secondly, we should recognise that the shooting of .22 pistols has had an honourable place in Olympic competition since the early days of the modern Olympic games. It is a legitimate activity that is enjoyed by tens of thousands of law-abiding citizens. If we can allow it to continue and still give the public the extra protection that they deserve, we should do so.

We intend that .22 rimfire pistols should be used only under the most stringent conditions in licensed gun clubs. No one would be able to shoot with a .22 pistol until he had been judged fit to do so and had obtained a firearms certificate. The clubs in which the pistols would be kept would have to meet rigorous security criteria and satisfy the police that they were run by people of good character. No gun would be allowed to be removed from a club, except on a police permit. When outside the club, the guns would normally have to be transported by a third party who was authorised by the police as suitable for the task.

9.15 pm

Some people have questioned whether pistol clubs can be made properly secure. The answer is that they can, but I accept that it will cost money and it will take time. I acknowledge that the Government's proposals will bear heavily on many decent law-abiding citizens who own handguns and use them for the purpose of sport, and I very much regret that. But our proposals will allow continued British participation in four of the five international target shooting disciplines run under the rules of the International Shooting Union, which include the Commonwealth games. British target shooters will be able to participate also in all the disciplines in the Olympic games that involve only .22 pistols.

Before we finally vote on this issue, let us all remember the clear and unambiguous judgment of Lord Cullen on this central question, which can be found in paragraph 9.113 of his report. The paragraph states:

"I do not consider that the banning of handguns for target shooting or the banning of shooting clubs would be justified."

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<sup>73</sup> *ibid* c.787-788

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As I said at the outset of my remarks, amendments Nos. 15 and 16 would increase the extent to which those who at present own and use handguns would be allowed to continue to do so. Amendments Nos. 1 and 2 would impose a complete ban. I believe that the right course is that set out in the Bill, which would provide this country with some of the toughest gun controls in the world. They would be likely to reduce the handguns held in this country by 80 per cent, but would allow some legitimate target shooting to continue. I urge the Committee to reject the amendment.

In his speech during the second reading debate on the Bill the Liberal Democrat MP, James Wallace, suggested that a failure to extend a ban to all handguns might leave open the possibility of smaller handguns being developed. He added that the Bill's provisions might lead those with handguns which were to become illegal to buy smaller ones, thereby increasing the number of legally held handguns in circulation. He also expressed concern that the obligation to keep smaller handguns in licensed clubs would lead to those clubs acquiring even larger arsenals.<sup>74</sup>

During the same debate the Conservative former Member Robert G. Hughes made the following comments about the restriction of the ban under the Bill's provisions to handguns of over .22 calibre:<sup>75</sup>

The question that we must ask is: what will be the effect of legislation on .22 shooting and gun ownership? Is it safe to allow .22s to be kept in the manner proposed in the Bill? I have heard two versions - both from Ministers, so at least one version must be right - of what will happen. The first possibility is that compensation will be used by target shooters to buy a .22, and therefore the number of people with .22s will increase greatly.

The second possibility is that .22 target shooting will not prove popular with target shooters - as my local target shooters have told me - and the restrictions will be so rigorous that the sport will disappear. Both outcomes cannot happen.

It would be unacceptable if the first possibility were to happen, and we ended up with more .22s and a return to the gun culture that many of us would like to be abolished in the United Kingdom. If the second possibility is more likely, perhaps we should - as the hon. Member for Blackburn (Mr. Straw) said - be a bit more honest and say at the outset that we will ban .22s.

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<sup>74</sup> HC Deb. Vol 285 c.208 12.11.1986

<sup>75</sup> *ibid.* c.214



In her contribution to the second reading debate the former Conservative MP Dame Jill Knight criticised the Bill's provisions, saying:<sup>76</sup>

Why did the Government set up the Cullen Inquiry and then fail to accept its recommendations? Why did they ignore the deliberations of the Home Affairs Committee? However much shock and horror we feel, it is wrong to make judgments on the basis of emotion, even though those emotions are fully justified and understandable.

In his speech the Scottish National Party MP and national convenor, Alex Salmond, said that the only effective handgun control was a handgun ban and, referring to the possibility that handgun owners might use their compensation payments to buy smaller handguns said that public opinion would not tolerate public money being used to bring new .22 handguns into people's possession. He added that:<sup>77</sup>

No system of checking, however rigorous, can prevent every unsuitable person from gaining access to guns. It has been said in the debate that the police made mistakes, as if that were an argument against a complete ban on the civilian use of handguns. The fact that the police make mistakes is one of the arguments for such a ban. No system of checking is foolproof and any system that depends on people is essentially flawed in that human beings, including the police, make mistakes.

Hon. Members have spoken about sports and I hope that alternatives can be devised so that people can continue to practise their sport. Some of my constituents have said that they could not understand why some pistol shooters have to use extremely powerful weapons - they ask why the same skill and precision cannot be expressed through new technology, perhaps laser technology. I hope that such possibilities will be investigated. At the end of the day, however, people's pursuit of a sport must be a lesser point than the issue of public safety.

Our job, as representatives of the people, is to square our actions with our conscience. That is why it would be wrong were the House to allow the substantial loophole in respect of handguns as proposed by the Government. We should start from the principle that no one should own a handgun and only then should we discuss the exceptions. The position adopted by the Japanese in this respect is enlightening. In that whole country, there are 58 handgun licences. Hon. Members will be aware of the Home Office statistics, which point to some correlation between the number of legal firearms in circulation and the incidence of firearm homicide.

The Conservative MP Michael Colvin criticised the Bill, saying that the way its provisions would be implemented was unjust. He suggested that ministers had only listened to one side of the debate and added that:<sup>78</sup>

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<sup>76</sup> *ibid.* c.220

<sup>77</sup> *ibid.* c.229-232

<sup>78</sup> *ibid.* c.237

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Perhaps the House will decide that 57,000 law-abiding citizens are a small enough minority to be used as a scapegoat and sacrificed to the god of populist opinion. I was not elected to Parliament to sacrifice my judgment to the opinion of the majority. We are here to defend the rights and privileges of individuals and minorities, which is why we should support the reasoned amendment.

The former shadow Secretary of State for Scotland, George Robertson, made the following comments during the second reading debate in answer to claims that proposals to control handguns were being made as part of a knee-jerk reaction or that they were motivated by vengeance, blame or emotion:<sup>79</sup>

I live in Dunblane, but I do not approach this debate with any irrational knee-jerk reaction to one particularly awful atrocity. Like so many others, alongside the Secretary of State for Scotland and the Minister for Education, Housing and Fisheries, I have been deeply and permanently moved and changed by what I saw and heard in Dunblane on 13 March, but I still look on this key issue as being one of ensuring public safety and not some punitive raid on a legal hobby carried out by thousands of ordinary and largely law-abiding people. I react with passion and quite natural emotion to what happened that day at the hand of a crazed, legally armed and suicidal killer, but I address the issues of firearms control coolly, rationally and dispassionately. I find offensive the idea that those who argue alongside the Police Federation of England and Wales for a complete outlawing of handguns are to be defined as merely hysterical, emotional or somehow lacking in reason or justice.

I once shot a rifle as a recreation - it is perhaps one of the few sports that I did passably well - but I will never do it again. I do not, therefore, speak with ignorance on the subject or with insensitivity about a sport that will be affected by the law that we shall pass, but I believe that the right to life is greater and more important than the right of any person to conduct themselves in any sport.

The policy is not one of vengeance. Nor is it an instant reaction to be worried about such a vast and previously unseen arsenal of handguns. Having waited nine long months for this debate, this policy is not one of indecent haste. It is not a policy of blame or emotion to say that one category of firearms more than any other poses a very different and distinct threat to public safety and that we should do something radical to prevent what has now happened twice in a single decade in our country, when legally held, legally obtained firearms were turned against ordinary citizens.

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<sup>79</sup> *ibid* c.249-250

## F. The Firearms (Amendment) Bill 1997-98

The Labour Party's Manifesto for the 1997 General Election stated that:

In the wake of Dunblane and Hungerford, it is clear that only the strictest firearms laws can provide maximum safety. The Conservatives failed to offer the protection required. Labour led the call for an outright ban on all handguns in general civilian use. There will be legislation to allow individual MPs a free vote for a complete ban on handguns.

The Scottish National Party manifesto also called for a total ban on handguns.

The *Firearms (Amendment) Bill*, which was presented by the Home Secretary, Jack Straw, on May 22 1997, extends to England and Wales and Scotland, but not to Northern Ireland. It aims to prohibit the general ownership, possession or use of all handguns by civilians and seeks to achieve this by including small-calibre pistols in the list of weapons which are prohibited under Section 5 of the *Firearms Act 1968* unless authorised by the Home Secretary. "Small calibre pistols" are defined in section 1 (a) of the *Firearms (Amendment) Act 1997* as pistols chambered for .22 or smaller rim-fire cartridges, or certain air pistols designed to fire .22 or smaller diameter ammunition. They had been exempted from the general prohibition on certain small firearms which was added to s.5 of the *Firearms Act 1968* by s.1 of the *Firearms (Amendment) Act 1997*.<sup>80</sup>

The Schedule to the Bill contains provisions designed to repeal the provisions in the 1997 Act concerning the licensing of pistol clubs and the transitional arrangements for small-calibre pistols. As the Bill's compliance cost assessment notes, gun clubs which cater solely or mainly for target pistol shooting will probably have to close as a result of the Bill's provisions.

Clause 2 amends the *Firearms (Amendment) Act 1997* by, in Clause 2(2), extending to small calibre-pistols, which are to be prohibited under Clause 1, the arrangements, set out in section 15 of the 1997 Act, for the surrender of prohibited firearms and ammunition to designated police stations.<sup>81</sup> Paragraphs (3) and (4) of Clause 2 also amend the 1997 Act by seeking to apply sections 16 and 17 of the Act, which provide for the payment of compensation for prohibited firearms, ammunition and ancillary equipment which has no practicable use in connection with non-prohibited firearms, to small-calibre pistols and to equipment designed or adapted for use in connection with small-calibre pistols. Unlike the provisions in section

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<sup>80</sup> p.14

<sup>81</sup> Clause 2(2)

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16 of the 1997 Act, however, the provisions in Clause 2(3) do not expressly provide for the payment of compensation for the ammunition used with small-calibre pistols, and the section of the Bill's explanatory memorandum dealing with the financial effects of the Bill refers only to compensation for small-calibre pistols.

Compensation is intended to be payable under the Bill's provisions to firearms owners and registered dealers in respect of firearms and ancillary equipment which claimants had and were lawfully entitled to have in their possession, or had entered into contracts to acquire, before May 14 1997. As with the provisions in sections 16 and 17 of the 1997 Act, there is no provision for the payment of compensation to licensed pistol clubs.

Section 18 of the *Firearms (Amendment) Act 1997* requires that a draft of a scheme providing for the payment of compensation for prohibited small firearms, ammunition or ancillary equipment, and drafts of any subsequent alterations to such a scheme, be laid in draft before Parliament and approved by resolution of each House. The statutory instrument ( SI) setting out such a scheme will therefore be subject to the form of Parliamentary control known as the "affirmative procedure". This is quite a stringent form of control as it means that the instrument must receive Parliament's approval before it can come into force. As has already been noted<sup>82</sup>, motions on the draft *Firearms (Amendment) Act 1997 Compensation Scheme* were debated and approved in the House of Commons and the House of Lords on June 9 1997.

The use of the affirmative procedure is relatively rare. It is more common for statutory instruments to be subject to the negative procedure, set out in section 5(1) of the *Statutory Instruments Act 1946*, which applies where the primary legislation states, for example, that any statutory instrument made under it is to be "subject to annulment by resolution of either House of Parliament". This form of words invokes the forty day rule, which requires that any negative resolution in relation to a statutory instrument (usually a motion "praying against" the instrument) be moved within forty days of the instrument being laid before Parliament. (If there is a debate on such a resolution it may take place at a later stage).

Clause 2(5) of the *Firearms (Amendment) Bill* seeks to amend section 18 of the 1997 Act and inserts new provisions into that which will apply to the scheme setting out arrangements for paying compensation for those small-calibre pistols which are to be prohibited by the Bill and ancillary equipment. It provides that such a scheme, and any subsequent alterations to it, should be "laid before Parliament after being made". The scheme will not therefore be subject to any specific statutory procedure.

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<sup>82</sup> p.15

The financial memorandum for the *Firearms (Amendment) Bill* estimates that the amount of compensation to be paid in respect of small-calibre pistols will total about £12 million, with additional payments for ancillary equipment of about £19 million. It adds that compensation payments are likely to start from September 1997 and will fall partly in this financial year but mostly in 1998-99. The Bill's business compliance cost assessment states that the Bill will adversely affect dealers who have a trade in small-calibre pistols and businesses which provide ammunition and equipment for such pistols. As has already been noted<sup>83</sup>, it states that gun clubs which cater solely or mainly for target pistol shooting will probably have to close.

Clause 2(6) is designed to apply the provisions of section 51 of the *Firearms (Amendment) Act 1997* to the Bill. This section enables the Home Secretary (by means of regulations subject to the negative procedure) to make any transitional and consequential provisions and any savings he considers necessary or expedient in preparation for, in connection with, or in consequence of the coming into force of any provision of the 1997 legislation, or the operation of any enactment repealed or amended by that legislation, during any period when the repeal or amendment is not wholly in force. Section 51(2) also provides that:

Regulations under this section may make modifications of any enactment contained in this or in any other Act

Section 51 was introduced as a Government amendment during the Third Reading debate in the House of Lords on the Bill which became the 1997 Act.<sup>84</sup> It was the subject of some criticism in both the House of Lords and the House of Commons, with Members expressing concern about the wide powers which it appeared to give the Secretary of State. It was suggested in some quarters that the regulations might be used to impose tighter restrictions under secondary legislation than those which were provided for in the primary legislation and that the provision therefore amounted to a "Henry VIII Clause". During the debate on Lords amendments to the 1996-97 Bill in the House of Commons the then Home Office minister, Ann Widdecombe, made the following remarks about these criticisms:

I give the House an absolute assurance that this is not, and was never intended to be, any sort of Henry VIII clause. The new clause makes it clear that its powers are purely in respect of transitional and consequential provisions, of provisions that are already written into the Bill. It does not give any wider powers to the Secretary of State

We introduced the powers late, because the fast passage of the Bill and the necessity to introduce tighter controls on firearms in the near future made us decide that over the next few months some minor anomaly might become evident. We wanted to have the necessary powers to deal with that. There is no question whatever, and I say this categorically and give an absolute assurance, of this being a Henry VIII clause.

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<sup>83</sup> p.35

<sup>84</sup> HL Deb. Vol 578 c.170-176, 11.2.1997; HC Deb Vol 290 c. 826-828, 18.2.1997

Like the provisions of the 1997 Act, the Bill's provisions will be brought into force by commencement orders, which will be made under Clause 3. Clause 3(4) provides that the orders

may contain such transitional provision and savings (whether or not involving the modification of any statutory provision) as appear to the Secretary of State to be necessary or expedient in connection with any provisions brought into force.

### G. Northern Ireland

Neither the *Firearms (Amendment) Act 1997* nor the current Bill extend to Northern Ireland. The law concerning the possession of firearms in Northern Ireland is governed by the *Firearms (Northern Ireland) Order 1981*, as amended.<sup>85</sup> Controls in Northern Ireland are broadly similar to those in the rest of the United Kingdom. The former Northern Ireland minister, Sir John Wheeler, described the arrangements in Northern Ireland, including some of the policy differences between Northern Ireland and the rest of the UK, in the following Written Answer on 1 November 1996:<sup>86</sup>

**Mr. Worthington:** To ask the Secretary of State for Northern Ireland if he will list the difference in respect of guidelines relating to the legal possession of handguns in (a) Northern Ireland and (b) Great Britain.

**Sir John Wheeler:** Under the Firearms (Northern Ireland) Order, 1981, the Chief Constable is responsible for the administration of firearms licensing. His policy in relation to sporting handguns which was agreed with the Secretary of State is that a person cannot acquire a handgun unless he is able to show good reason for acquiring such a firearm and he has been a member of a registered firearms club for a minimum of 12 months; the application is supported by the secretary of the firearms club; and the police are content that he is a suitable person to hold such a weapon. In addition, the Chief Constable may approve the issue of a handgun where a person's life is believed to be under a serious and specific terrorist threat. In these circumstances the Chief Constable must satisfy himself that the individual is in all regards suitable to hold such a firearm and that his possession of the firearm does not pose a threat to the wider public safety.

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<sup>85</sup> SI 1981/155

<sup>86</sup> HC Deb. 284, c.281W

The main difference is perhaps that the stricter controls in Great Britain over rifles, pistols and short-barrelled shotguns etc. are applied in Northern Ireland to shotguns and air weapons. In particular the onus is on the applicant to show that s/he has good reason to possess a firearm, rather than on the police to show that s/he does not. The distinction has developed out of a difference in the application of the rules, rather than the legislation itself.

At the time of the introduction of the Bill which became the *Firearms (Amendment) Act 1997* a review of the firearms legislation in Northern Ireland, which had been announced on 23.11.95 was still in progress. The review was designed to take account of developments in firearms technology and design and the growth in recreational and sporting use of firearms in the consideration of legislation "largely unchanged since the 1960's".

During the last session of Parliament the *Northern Ireland Arms Decommissioning Act 1997* was enacted, to make provision for the decommissioning of firearms, ammunition and explosives in Northern Ireland, having regard to the guidelines and modalities of decommissioning contained in the report of the international body, chaired by Senator George Mitchell, which was published on 22 January 1996. The Act is intended to enable the Secretary of State for Northern Ireland to give effect to the report's recommendations as to how decommissioning should take place, at whatever time or stages may be decided. A Press Notice issued by the Northern Ireland Office on November 29 1996, noted that the main provisions of the Bill which became the *Northern Ireland Arms Decommissioning Act 1997* were:

- to make provision in respect of decommissioning schemes to apply to arms in Northern Ireland, England and Wales and Scotland;
- a time limit within which things can be handed in under a decommissioning scheme and thus take advantage of the amnesty under the Bill;
- an amnesty from prosecution in respect of certain (mainly possession related) offences listed in the Schedule. The amnesty would be available only to those acting in accordance with a decommissioning scheme. It is intended to protect those who commit offences through their participation in decommissioning and is not a general amnesty for terrorist-related offences;
- a limitation on the use in evidence of things decommissioned or information obtained as a result of the decommissioning process;
- a prohibition, except in certain circumstances, on the forensic testing of decommissioned articles;

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- the definition of an independent Commission to facilitate the decommissioning of firearms, ammunition and explosives and a power to confer upon the Commission appropriate legal status, immunities and privileges.

In a Written Answer of February 17 1997 to a Question from Mr Robert McCartney about firearms reform in Northern Ireland following the Cullen report the former Northern Ireland minister, Sir John Wheeler, said that the former Secretary of State, Sir Patrick Mayhew, had yet to decide what reforms he would like to see introduced but that, on current plans, it remained his intention to have the amending legislation in place during the latter part of the 1997-98 parliamentary session.<sup>87</sup>

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<sup>87</sup> HC Deb vol 290 c.409w 17.2.1997



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