



Air guns in Scotland

Standard Note: SN/HA/5796
Last updated: 9 December 2010
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Section: Home Affairs

Firearms law is currently a reserved matter. However, arguing that Scotland has a significantly bigger problem with airgun-inflicted injury and death than the rest of Great Britain, the Scottish Parliament has called for the right to make its own laws on air weapons.

The previous Westminster Government was long resistant to these calls. In 2009 the Calman Commission on Scottish Devolution recommended that power be devolved in this area. In its response to Calman, the last Government agreed in principle to devolution but further progress was interrupted by the General Election of 2010. In November 2010 the Coalition Government fulfilled the pledge made by its predecessor and introduced a power in the *Scotland Bill 2010-11* to transfer legislative competence to the Scottish Parliament in relation to the regulation of air weapons.

For the current law on the possession and use of air guns in Great Britain see the Library Standard Note [Air guns](#) (SN/HA/3641).

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1 Background

Firearms law is currently a reserved matter. However, arguing that Scotland has a significantly bigger problem with airgun-inflicted injury and death than the rest of Great Britain, the Scottish Parliament has called for the right to make its own laws on airguns.

In 2005 two-year-old Andrew Morton was killed when he was hit in the head by an airgun pellet in Easterhouse, Glasgow. His parents subsequently launched a campaign to ban airguns in Scotland which received all-party support. A press report expanded on the background to this story:

Scottish government figures show that the number of airgun offences have halved in the past 12 years. In the year 1995-96, there were more than 1,150 offences involving airguns, while by 2007-08, that figure had dropped to 567. Injuries to people from airguns also decreased, from 355 in 1995 to 92 in 2007-08. Since 2001-02, however, six people have been killed by airguns, where previously there were none. (...) Pest control and conservation experts argue that airguns are essential for dispatching vermin within contained areas such as gardens and farms, as well as trapped mink.¹

In June 2008 Scottish Justice Secretary Kenny MacAskill wrote to the then Home Secretary Jacqui Smith seeking permission to run an airgun licensing pilot scheme in Scotland which would make it illegal to possess an airgun without a permit. According to a press report, the Home Office “gave the letter and proposal only a cautious response and hinted that recent changes in the law should be allowed to bed in before any more amendments”.² (This is a reference to provisions in the *Violent Crime Reduction Act 2006*: provisions which, according to the Home Office, were developed in consultation with Scottish ministers.) In November 2008, MSPs were reported to be “bitterly disappointed” that the Home Office had rejected the call to devolve legislative competence in this area. Brian Adam MSP called it “another example of the UK Government sticking its head in the sand”. The Home Office responded that “the present unified regime represents the best way of tackling problems which currently exist in relation to armed crime and the irresponsible use of firearms”.³

However, in February 2009, the subject was still very much on the agenda in Scotland:

A group of experts studying the Scottish Parliament has placed gun control at the top of its list of powers that could be transferred from London to Edinburgh, Scotland on Sunday understands.

¹ “Whitehall agrees to hand Holyrood power over airguns,” *Times*, 23 November 2009

² “SNP seeks gun pilot scheme north of border”, *Scotland on Sunday*, 8 June 2008, p4

³ “MSPs angry as control of air weapons to stay at Westminster”, *Aberdeen Press and Journal*, 12 November 2008, p13

If the Calman Commission goes ahead and recommends the change it would almost certainly result in SNP ministers delivering on their pledge to ban air weapons north of the border.

SNP ministers have demanded that firearms laws be devolved following a spate of crimes committed with airguns, including the death of two-year-old Andrew Morton, from Easterhouse, Glasgow.

His death in 2005 prompted 11,000 people to sign a petition calling for an outright ban on the sale of airguns in Scotland. In total, more than 1,000 people have been injured over the past eight years from airgun pellets.

But UK Home Secretary Jacqui Smith has set her face against the move. UK Government officials fear that a Scotland -only ban on airguns would create confusion and a thriving black market for the weapons.

The commission, headed by Sir Kenneth Calman, has yet to reach a decision on which powers should be transferred, but Calman told MPs last week that firearms legislation was a key area being looked at.

Other sources have confirmed that firearms legislation is "one of the principal areas under active consideration".

Despite ongoing opposition from the Home Office, the commission is said to be increasingly swayed by evidence from Scottish police forces which have declared they are happy for the laws to come under Holyrood's jurisdiction. Scottish Justice Secretary Kenny MacAskill has called for firearms laws to be devolved, arguing that there are specific problems north of the border which require tougher action.

Campaigners have pointed out that Northern Ireland has separate firearms laws and there is therefore no impediment to Scotland following suit.

The Calman Commission will not confirm any changes until this summer when its final report will be published. Calman insisted last week that no decisions had yet been taken, but asked to name any areas which were being looked at for a transfer of powers, he highlighted firearms laws.⁴

2 The Calman recommendations

The Commission on Scottish Devolution, under the chairmanship of Sir Kenneth Calman, published its final report in June 2009.⁵ The Commission showed itself mindful of the practical difficulties that could arise from having different firearms laws in different parts of Great Britain:

5.154 The Commission has also taken account of the concerns expressed by a number of sporting associations (and the UK Government) that a different regime for firearms control in Scotland could inhibit the free movement of legally held weapons used for sporting purposes (both in terms of hunting and target shooting). At present, authorities under the Firearms Acts are valid across Great Britain (as are certificates issued in Northern Ireland, although not vice versa) and whilst there are understandable concerns that different regimes could introduce an additional layer of complexity and greater bureaucracy, it is not inconceivable that some sort of mutual-recognition arrangement could be reached that would allow firearms certificates issued

⁴ "Calman sets sights on gun control power", *Scotland on Sunday*, 15 February 2009, p9

⁵ Commission on Scottish Devolution, *Serving Scotland better: Scotland in the United Kingdom in the 21st century: final report*, June 2009. See pp187-8 for firearms.

in one jurisdiction to be accepted in another (providing safeguards were felt to be adequate), especially given the economic importance of shooting in Scotland.

5.155 The UK Government has argued that any ban on a firearm which it is currently legal to possess would need to be underpinned by a compensation scheme. It argues that where such firearms are currently unregulated (e.g. air guns), it would be difficult to prevent them being legally and cheaply acquired in one jurisdiction and passed off for compensation in another which had introduced a ban. This is not an argument against devolution itself as much as it is a caution to a devolved administration making difficult policy decisions it believes to be in the best interests of its citizens. Whilst there would undoubtedly be practical considerations and potential difficulties in any divergence of approach to firearms control they do not preclude the development of robust mechanisms for managing cross-border problems, information sharing and good communications.

Despite these caveats - and accepting that “devolving competence for firearms would be in line with the Scottish Parliament’s wider responsibilities for the criminal justice system” - the Commission recommended that “the regulation of airguns should be devolved to the Scottish Parliament”. They concluded as follows:

5.157 The Commission is persuaded (...) that there may be merit in devolving legislative competence for air weapons about which the Scottish Government has made particular representations to the UK Home Office. It appears to the Commission that if there is appetite to deal with air weapons differently in Scotland than south of the border then the advantages of enabling the Scottish Parliament to do so outweigh the disadvantages. The Commission notes that air weapons have been clearly defined in legislation and recommends that powers over weapons of this kind are devolved to the Scottish Parliament. This could be achieved through an Order under the Scotland Act.

The concerns raised by the Home Office will be found in the Department’s written submission to the Commission, which is available on the Commission’s website.⁶

A body representing airgun users gave this reaction to Calman’s proposal:

The British Association for Shooting and Conservation (BASC) will oppose any move – as suggested by the Calman Commission – to devolve power over airgun law to Scotland.

The current government in Westminster has resisted all calls to devolve firearms legislation. BASC has been involved in the discussions and is currently meeting Conservative Shadow Ministers to confirm the Party’s policy in the event of a change of government. BASC has consistently opposed devolution of firearms law and maintains that different legal regimes across the UK would create confusion, compromise law enforcement, do nothing for public safety and disadvantage the law abiding shooting community.

BASC director of firearms, Bill Harriman, said: “The call for devolution of firearms control powers is an overtly political initiative that is not evidentially based. Scottish statistics show a low level of firearms incidents, which are in decline. Education and enforcement of existing legislation is undoubtedly the best way to address any problems.”

⁶ HMG Scottish Office, [Government evidence to the Commission on Scottish Devolution](#), November 2008, pp52-3

The vast majority of people who use airguns do so lawfully and there are already sufficient powers available to deal with the small minority who break the law. BASC believes that a new airgun law that only applies in Scotland will be almost impossible to enforce, and BASC will strongly argue against it.⁷

3 Devolution

Following what the press described as “intensive discussions” between the then Home Secretary, Alan Johnson, and Scottish Secretary, Jim Murphy, the Westminster Government seemingly had a change of mind.⁸ In a statement to the House on the Government’s response to the Calman Report, Jim Murphy announced the devolution of powers to regulate airguns:

On the power to regulate air weapons, the Government have kept controls under close scrutiny and there are encouraging signs that recent changes are having an effect. However, the Government agree in principle to devolve the regulation of air weapons to the Scottish Parliament.⁹

Following the change of Government in 2010, the pledge made by the previous Government was honoured. The *Scotland Bill*, which received first reading on 30 November 2010, includes a power to transfer legislative competence to the Scottish Parliament in relation to the regulation of air weapons.¹⁰

The Scottish Government has announced how it intends to proceed once it has its new power:

When powers on air weapons are passed to Scotland, we will establish a Scottish Firearms Consultative Panel involving all key stakeholders. One of its first tasks will be to develop and consider the merits of a pilot licensing scheme for air weapons. This would enable us to test the practicalities of air weapon licensing. It would also test whether or not air weapon licensing can operate effectively without wider reform of the firearms legislation. Any pilot would take place in one or more parts of Scotland.¹¹

⁷ BASC press notice, *BASC opposes devolution of airgun law*, 18 June 2009

⁸ “Whitehall agrees to hand Holyrood power over airguns,” *Times*, 23 November 2009

⁹ HC Deb 25 November 2009 c548

¹⁰ *Scotland Bill 2010-11*, clause 11

¹¹ *Weapons – firearms – what the Scottish Government is doing*