



**THE GARDA SIOCHÁNA/DEPARTMENT OF JUSTICE & EQUALITY JOINT
WORKING GROUP ON THE REVIEW OF FIREARMS LICENSING**

***SUBMISSION ON BEHALF OF THE CONSTITUENT ASSOCIATIONS OF THE SPORTS
COALITION TO THE JOINT OIREACTHAS COMMITTEE ON JUSTICE AND EQUALITY***

1. Public Safety/Criminal use of firearms:

This is an old and well used argument for restricting lawful ownership of firearms and which has long been discredited. It has been used in Ireland and elsewhere in the past to give the impression that crime is actively and innovatively being tackled. The reality is that this approach has never reduced crime in which firearms are used and no administration anywhere, including the Irish Department of Justice or An Garda Síochána, is in a position to present any evidence of any nature to support that contention. This is already well known to An Garda Síochána. It simply creates the mistaken impression that something meaningful is being done to tackle gun crime. A cynical person could be forgiven for believing it is intended to create such a false impression among the general public. The removal of firearms from licence holders will not take a single firearm out of the hands of criminals simply because guns held by criminals are not in the licensing system. The recommendations in the report of the *GARDA SIOCHÁNA/DEPARTMENT OF JUSTICE & EQUALITY JOINT WORKING GROUP ON THE REVIEW OF FIREARMS LICENSING (hereafter the Report)* seek to address a problem by effectively tackling something that has nothing to do with the problem. The recommendations will not achieve anything other than penalising law abiding citizens and angering and alienating a large section of Irish society unnecessarily. The figure for firearms stolen is listed in the report. This figure, in the context of what the report argues and then recommends is false. We refer to the detailed response on that issue (*Para No. 2. - P. 4*).

Additionally, given that the measures proposed are predicated in their entirety on an alleged concern for public safety, the potential for criminal use of legally held firearms and a baseless allegation that members of the judiciary have expressed difficulties in interpreting the legislation, it is inexplicable that there is no recommendation or proposal of any nature anywhere in the report to increase penalties for those who are found to be in illegal possession of a firearm, for theft of a firearm or for unlawful use of a firearm – all of which

most certainly would have a positive effect on public safety and criminal use of firearms, especially mandatory sentences. The absence of any such proposal would suggest this was not even considered in whatever deliberations took place, giving weight to the strong suspicion of licence holders of a self-serving agenda by the Gardai and the Department of Justice to circumvent the decisions of the courts against the State for maladministration of the licensing system.

We have on several occasions requested that an independent risk assessment be carried out to establish the precise risk which licensed firearms pose in the Irish statutory regime. One of the most important questions which any risk assessment would address is: *“What has occurred/changed in lawful firearms ownership since the current legislation was enacted in 2009 which gives rise to a change or increase in risk to the safety of the public?”* The answer is of course nothing? This is set against a background where more than 15,000 hand guns are licensed in Northern Ireland, apparently without generating any similar concerns among the police, the government or the public on that part of our island. The request for a risk assessment has been inexcusably resisted by both the Gardai and the Minister. It seems they wish to confiscate the property of Irish citizens on the seriously flawed basis (as this document illustrates) of a public safety risk, while refusing to commission a risk assessment which would establish what exactly the risk is. No one in the sports shooting sector is surprised. It is inexplicable that the Department of Justice and An Garda Síochána would seek to assert an unsubstantiated connection between lawful firearms ownership and criminality resulting in a public safety risk while refusing to conduct a proper and credible risk assessment, especially when the same state agencies propose to confiscate private property without compensation. The real basis for the current proposals is demonstrably not public safety or any connection between legal firearms ownership and criminality but has everything to do with circumventing the court decisions against the Gardai on firearms licensing. This is proposed under cover of creating the false impression that the Minister and the Garda Commissioner are doing something substantive about tackling crime. No jurisdiction has ever enjoyed a reduction in firearms crime as a consequence of banning legal ownership of firearms. This is simply because people who are licensed to hold firearms are not criminals and therefore are not part of the problem. It is significant that neither the Gardai nor the Department of Justice offer any examples of jurisdictions where gun crime was reduced as a direct result of a restriction/ban of lawfully held firearms.

Having regard to the alleged public safety issues highlighted in the Joint Report, we draw the Committee’s attention to two relevant matters which potentially impinge on public safety:

1. The Barr Tribunal into the shooting of John Carthy in Abbeylara by members of An Garda Síochána made a number of recommendations concerning firearms licensing, all of which were accepted by the then Government and many of which were

incorporated into the current legislation. Some recommendations, while not appropriate for legislation, were nonetheless accepted for implementation as best practice. One such recommendation, which is included in the Garda Commissioner's Guidelines is a recommendation that all Garda Superintendents should meet with each gun/game club in their areas at least twice every year. The intention of this recommendation was that the licensing authorities and the firearms licence holders could build a trusting relationship and exchange relevant information and their respective concerns to each other, thereby contributing to the avoidance of problems arising. Since this recommendation was made by the Tribunal, accepted by Government and published in the Garda Commissioner's Guidelines, not a single Garda Superintendent has met with a gun club.

2. Secondly, good reason is at the heart of justification for having a firearm for sporting purposes. The Barr Tribunal focused on this having regard to the Burns report into the Dunblane shootings where the perpetrator, Thomas Hamilton, gave his membership of a club as his good reason but notably did not participate in the club's activities nor did he attend club meetings. This was identified as a serious factor which should have flagged a potential problem but did not, despite club officials expressing their concerns to the police. The Barr Tribunal recognised this in its findings and recommended that where membership of a club is cited on a firearms application, that membership must be maintained for the duration of the licence, or an equivalent membership. Firearms licenses in Ireland are for a three year duration. Some licence holders do not maintain their membership for the three years, presumably for financial reasons. Despite club secretaries informing local Garda Superintendents of lapsed members in their areas, no longer satisfying the "good reason" requirement as a consequence, many licensing officers (not all) have failed to take any action. A most peculiar failure given the stated concern for public safety.

*(Please refer to the attached study "**WOULD BANNING FIREARMS REDUCE MURDER AND SUICIDE?**" by Don B. Kates and Prof. Gary Mauser which we submit is well researched, has had regard to an enormous volume of other relevant research and makes a compelling case.)*

(Note: The issue of public safety, criminal use of firearms and theft of firearms were extensively debated at the Select Committee on Justice, Equality, Defence and Women's Rights, on Thursday, 18 June 2009 on the introduction of the Criminal Justice Miscellaneous Bill 2009. Of note are the contributions of Deputy Charles Flanagan who is now Minister for Foreign Affairs and Deputy Pat Rabbite who was Minister for Communications and Natural Resources until the recent cabinet re-shuffle. Please see full text on the link following)

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2009070200006?opendocument>

2. Stolen Firearms:

In the Report of the Joint Working Group, it is stated in support of the Report's recommendations that 1,134 firearms were stolen in the period 2010 to 2013 inclusive. This figure, and the statistics for murders in the state, are used to establish the basis for the Report's recommendations, which would unjustly further restrict possession of their firearms by sports shooting enthusiasts. The figure quoted for stolen firearms in the period mentioned is presented so as to give the impression that ordinary citizens who are licensed for firearms are somehow a source of firearms for criminals and therefore a danger to public safety. It has also been stated by the Gardai that they are unable to determine whether short firearms used in crime have been stolen from licence holders as serial numbers are typically removed from the guns which are recovered, but in most cases the guns are simply not recovered at all. This is most disingenuous. Firstly, it is a criminal offence not to report a stolen firearm and as firearms licence holders are among the most law abiding citizens in the state, this suggestion is wild and fanciful. However, if every short firearm and even rifle licensed in the state was subjected to a ballistic test and the test results recorded, the bullets which are almost always recovered from gun crimes where the gun has been used will provide the Gardai with the ballistic identity of the particular firearm if it is one which has already been tested i.e. one which is licensed and therefore the identity of the gun owner.

The solution to this problem, if indeed it is a real problem at all, is already available and can be found in Section 25(b) of the Firearms Act 1925 as amended by Section 47 of the Criminal Justice Act 2006, which states:

"47 - The following section is inserted in the Principal Act after section 25A:

Surrender of firearm for ballistic testing.

25B.— (1) The Commissioner may by notice in writing require any person lawfully possessing a firearm to produce it at such time and place as may be specified in the notice for the purpose of having ballistic or other tests carried out on it and of establishing and recording its distinctive characteristics.

(2) A person who, without reasonable excuse, does not comply with such a notice is guilty of an offence under this Act."

If there is a problem in this area and if it is the case cost is the reason the Gardai are not prepared/unable to establish this database of ballistically tested guns, why has the issue of

sharing the cost burden not been discussed by either the Gardai or the Department of Justice with the representative associations?

The quoted figure for stolen firearms is disingenuous of the working group as nothing could be further from the truth. We can reasonably conclude that this figure of 1,134 has been downloaded from the Garda PULSE system, a system the integrity of which was seriously criticised in the recent damning report of the Garda Inspectorate. To bolster the argument that licence holders are a danger to public safety, the Report made much of criminal use of firearms, in particular murders and cited 96 murders where firearms were used. Again the clear implication was that licence holders were somehow associated with those murders through being the source of the firearms used. The report of the murder of the Corbally brothers, the only murder identified in the report by reference to the names of the victims, is biased, misleading and self-serving. These murders were indeed carried out with a gun stolen from a lawful firearms holder. However, of note is the fact that it was stolen prior to the introduction of the new mandatory home security provisions introduced in 2009 and taken, not from an ordinary licence holder but from a member of the PSNI in Northern Ireland whose service firearm it was. Please see the report as published in the Evening Herald on 13th July 2010 which is attached to this submission. That this example should be used to bolster the report and recommendations of the Joint Working Group by laying the blame somehow at the door of lawful sporting licence holders, coupled with the distorted figure of 1,134 for stolen firearms, is nothing short of disgraceful and is symptomatic of the manner in which the Gardai and the Department of Justice have dealt with the sporting representative organisations from the outset. The use of Garda statistics to bolster their arguments demands very close scrutiny. This was amply highlighted in the aforementioned Report of the Garda Inspectorate which revealed large numbers of serious crime incidents which were either not recorded, not investigated or re-classified as less serious crimes, all of which gave the impression that the Gardai were more successful in crime detection/investigation than they actually are.

Therefore, the Sports Coalition urges members of the Committee and other Oireachtas members to question the figure of 1,134 stolen firearms very closely indeed. We are satisfied from our own knowledge that a breakdown of the statistic will reveal that while the total of 1,134 firearms listed as stolen represents only 0.554% of all firearms licensed during the period 2010 to 2013 and only 0.138% when taken on an annual basis, many are stolen from lawful sources other than ordinary licence holders. And if one takes the alleged stolen firearms as a % of all licenses issued during the same period, the figure drops dramatically further to 0.277% over the period, or 0.069% when annualised! Any examination of these figures exposes the truth that the very basis for the Joint Working Group's Report and recommendations – public safety and criminal access to legally held guns - has no credibility and will make no contribution to either reducing criminal possession of firearms or improving public safety. This fact is inescapable. We suggest that if fraudulent Social

Welfare Claims were of these levels of percentages, the Government would be claiming fraudulent claims to be effectively “no problem”. The recommendations will not take a single firearm out of the hands of criminals, but they will unjustifiably penalise law abiding citizens.

Public representatives need to ask the following questions to establish the relevance to ordinary licence holders of the 1,134 firearms which are stated in the Report of the Joint Working Group to be stolen in the period 2010 – 2013 inclusive:

1. The number of handguns stolen from firearms licence holders in each of the years 2010 and 2013.
2. The number of handguns stolen in each of the years 2010 and 2013, which were issued to members of An Garda Síochána and to members of the Defence Forces.
3. The number of shotguns stolen from firearms licence holders in each of the years 2010 and 2013.
4. The number of rifles stolen from firearms licence holders in each of the years 2010 and 2013.
5. The number of crossbows stolen from firearms licence holders in each of the years 2010 and 2013.
6. The number of blank firing guns stolen from firearms licence holders in each of the years 2010 and 2013.
7. The number of antique guns stolen from firearms licence holders in each of the years 2010 and 2013.
8. The number of deactivated guns stolen from firearms licence holders in each of the years 2010 and 2013.
9. The number of handguns stolen from firearms dealers in each of the years 2010 and 2013.
10. The number of shotguns stolen from firearms dealers in each of the years 2010 and 2013.
11. The number of rifles stolen from firearms dealers in each of the years 2010 and 2013.
12. The number of crossbows stolen from firearms dealers in each of the years 2010 and 2013.
13. The number of blank firing guns stolen from firearms dealers in each of the years 2010 and 2013.
14. The number of antique guns stolen from firearms dealers in each of the years 2010 and 2013.
15. The number of de-activated guns stolen from firearms dealers in each of the years 2010 and 2013.

These questions have been asked on the floor of the Dail on several occasions, always with the response from the Minister that the Garda Commissioner has been requested to provide the information sought and that it would be given when the Commissioner provided it to the Minister. The breakdown, which is extremely relevant, has never been disclosed.

The figure of 1,134 firearms stolen includes all of the above categories and when the firearms stolen which were not in the possession of ordinary licence holders are removed from the total figure, the aforementioned percentages alter significantly downward. When blank firing, antique and de-activated guns are also removed, the downward movement continues. As the figure of 1,134 comprises all of the above categories, the breakdown is readily available. Therefore, the bundling together of all categories, and using the resulting total to imply that ordinary licence holders are responsible for all losses in order to justify the Joint Report's recommendations, is most disingenuous.

3. Proposal to ban semi-automatic shotguns and rifles:

This proposal gives the impression that only a small number of firearms will be affected and indeed the Joint Working Group stated to this Committee on the 17th of December last that only 45 such guns would be affected (P11 of the Group's Report). This statistic is demonstrably false. While this may be the number licensed as restricted, some other 8,700 shotguns will be affected nonetheless as none are "manufactured" to permanently render them incapable of taking more than three rounds.

In relation to semi-automatic shotguns, these guns have been licensed in Ireland since the first Firearms Act came into being in 1925 without being the subject of any controversy or concern. The proposals call for all such guns which are not manufactured to limit the number of rounds of ammunition they hold to three, to be prohibited. The problem is that all semi-automatic shotguns are designed with a five shot magazine capacity but with a restriction fitted or applied to reduce the capacity to three rounds for those countries, such as Ireland, where it is already illegal to hunt with a gun capable of firing more than three shots. They are not designed in a way that they can be made permanently incapable of having a magazine shot capacity of more than three rounds. It also bears consideration as stated already, this type of firearm has not featured in any particular way as being a problem coming to any special attention of An Garda Siochana.

The use of the word "manufactured" in the recommendation is important and is in the recommendation for a specific purpose – to be used to ban all semi-automatic shotguns. This is a copy/paste of what has already occurred in relation to small calibre unrestricted hand guns for competitive target shooting. The regulations in relation to small calibre handguns incorporated the words "designed for" use in Olympic competition instead of "suitable for". Despite the list of such small calibre firearms having been agreed and published at the insistence of the Department of Justice as an Annex to the Garda Commissioner's Guidelines, when over 1,000 such firearms were licensed, the Gardai did a

complete and disgraceful u-turn and having issued licenses for them, then declared the firearms to be restricted and therefore not available for licensing. This was because the guns, even though their magazines were restricted to five rounds as the regulations required, were still capable of accommodating a larger capacity magazine and also because they were not “designed for” Olympic competition under Olympic Rules. This was a purposeful and conscious decision by An Garda Síochána to circumvent the legislation and what was intended by the legislature as is evident from the Dail debates when the legislation was introduced in 2009. The International Olympic Council does not in fact have any rules at all governing firearm types in its competitions. It instead defers to the rules of the International Shooting Sports Federation (ISSF) which is a member of the Olympic Council and which considers the qualification of firearms for competition, not on the basis of design, but on the basis of suitability. Therefore, there is every reason to believe that the Gardai will apply the same logic, and therefore the same decisions, to all semi-automatic shotguns as they have applied to the small calibre handguns which has resulted in the removal of ANNEX F of the Garda Commissioner’s Guidelines. As there are approximately 8,700 such guns licensed in the state, it represents 4.25% of all firearms licensed which would be affected – considerably more than the 45 indicated by the Joint Working Group when it appeared before this Committee in December.

As for semi-automatic centre fire rifles, there are only a very small number of these licensed in the state for target shooting on authorised ranges attached to authorised clubs. It is noted that very significantly, these are referred to as “assault rifles”. This is a wilful falsehood. Both the Gardai and the Department of Justice are well aware that they are not assault rifles, such firearms already long ago being banned in this state. There are no assault rifles licensed to private citizens. This term is used for nothing more than emotive purposes to further a self-serving agenda which, as already submitted, has nothing to do with public safety. The Committee can see the Encyclopaedia Britannica definition of “assault rifle” which is more accurate on the link below.

<http://www.britannica.com/EBchecked/topic/39165/assault-rifle>

4. Judiciary Difficulties in Interpreting the Firearms Provisions

The Minister has made a number of misleading statements based on information she has received from An Garda Síochána without checking the accuracy (or truthfulness) of those statements. A perfect example are the various statements she has made concerning members of the judiciary having difficulty in interpreting the firearms legislation. As Members of the Committee know, the Report is based on three pillars: a) an alleged connection between legal firearms ownership as a firearm supply source for criminals; b) a public safety issue arising therefrom, and lastly, c) an alleged difficulty having been expressed by members of the judiciary in interpreting the provisions of the firearms legislation. The Minister stated to the Dail on 11th March, 2014:

“My Department is currently examining key issues relating to firearms licensing in conjunction with An Garda Síochána in light of public safety concerns highlighted by An Garda Síochána and difficulties in the interpretation of the legislation expressed by members of the judiciary.”

The Minister made these statements on the following occasions:

- 1 In response to a Dail question by Billy Timmins TD on 11th March, 2014.
- 2 In a letter from the Minister’s Private Secretary to Mr Keith Foran of Cavan Regional Game Council on 25th April, 2014.
- 3 In a letter from Olivia Mitchell TD on 27th May, 2014 to Mr Colm O’Reilly, quoting the Minister for Justice.
- 4 In a letter from the Minister for Justice to Mr Tom Mansfield dated 24th June, 2014.

(Copies of these documents are attached.)

Also attached is a copy written summary in response to the judiciary issue which was drafted by the legal representative who was involved in the prosecution of the majority of the 650+ court cases and who was present in court throughout the conduct of those cases. That summary makes clear that no judge has had any difficulty in interpreting the provisions of the firearms acts as evidenced by the absence of any matter in relation to the provisions of the acts being referred up to a higher court for clarification/direction. The only matter which was referred to a higher court in a firearms case was for clarification/ruling in relation to a rule of the District Court concerning that court’s jurisdiction to award costs to a successful applicant in a firearms appeal. This of course had absolutely nothing to do with any provision of the firearms acts. Simply put, if judges are having difficulties in interpreting provisions of the firearms acts, why have none of them referred any matter to a higher court for a ruling? The only people having “difficulty” are members of An Garda Síochána.

The matter of any member of the judiciary, much less several members as asserted in the Minister’s various statements, not being able to interpret the provisions of legislation coming before him/her for decision in the course of his/her Constitutional function in dispensing justice, would be a significant and serious matter of public interest and one where it would be expected that the matters of difficulty would be referred up to a higher court.

Therefore, in light of the Minister’s response to Dail question number 432 from Deputy Billy Timmins (copy attached) and the Minister’s reply on the 11th of March 2014 which included a statement by her that members of the judiciary had expressed difficulties in interpreting provisions of the firearms legislation, we submit that it is a matter of significant public interest for any member of the judiciary to be found unable to interpret legislation governing matters before his or her court. In the circumstances of the Minister’s statement

and various other written correspondences issued by her and on her behalf repeating this statement, it would be expected that the Minister would identify which members of the judiciary expressed such difficulties and with which provisions of the legislation by reference to the section/s and subsections of the acts they were having difficulties with and that she would seek to know if these difficulties of interpretation had been referred to a higher court. If on the one hand judges are unable to carry out their functions because of difficulties in interpretation of legislation before them in their courts, and on the other hand are not doing their job by failing to refer the matters with which they are having difficulty to a higher court for rulings, this should be a matter of the gravest concern for the conduct of justice and for action by the Government and yet nothing has been referred to another court by any judge and there has been no action by Government.

It is not acceptable for the Minister to make such statements as justification for this review and not substantiate them. This is information published by the Minister and is of relevance in the context of the public interest and the recommendations contained in this review. It is significant that the Minister in all cases has referred in the plural to members of the Judiciary who have expressed difficulty in interpreting the legislation. If what the Minister has said on this matter is true, how is it that every judge who has dealt with a firearms licensing matter has been able to deliver a judgement in every case without exception, almost all in favour of the appellants, without referring a single alleged difficulty of interpretation to a higher court? This is a very serious matter which has been used as justification for a review of firearms licensing which recommends the banning of certain firearms without payment of compensation for the loss of property or the considerable expenditure incurred on mandatory home security. It is simply not good enough for the Minister to make such statements in this context unless they are substantiated by disclosure of the identities of the members of the judiciary concerned who would have made such concerns known in public. Alternatively, has the Minister received any written communications from any member of the judiciary in that regard? In relation to this specific matter we draw the Committee's attention to Dail Question number 387 submitted by Deputy Niall Collins in which he asked:

“To ask the Minister for Justice and Equality the cases or correspondence that the judiciary have expressed difficulties in interpreting provisions of current firearms legislation; and if she will make a statement on the matter.”

The Minister's answer on the 16th of December revealed that while several judges had made various comments about the firearms cases before them, including criticisms and concerns, not one expressed any difficulty in interpreting the legislation and all delivered judgements in favour of the licence holders. A copy of the question and the full answer is attached. The Minister should not attempt to support the basis for this review with incorrect information of this nature.

Another example of the Minister making important statements, but which are regrettably false and therefore misleading, is a statement she made to the Dail as recently December 2nd in response to questions from Deputy Michael Healy-Rae in which she said that firearms licensing is a Garda Operational matter. Garda operational matters are important as they are not open to challenge or interference from any third party, including Government Ministers. In other words, if it is a Garda operational matter, it means the Minister has no function or say over such matter. Firearms licensing is no such thing and I draw the Committee's attention to a decision of the High Court in 2000, and confirmed on appeal by the Supreme Court in 2001, on this very issue in which both courts **expressly** ruled that firearms licensing is **not** a Garda Operational matter and is no more than an administrative function of an Garda Siochana. I refer the Committee to the relevant court record references to assist the Members:

THE HIGH COURT JUDICIAL REVIEW JR 378/2000
MARTIN DUNNE, DESMOND CROFTON AND BERNARD MC LOUGHLIN
APPLICANTS
AND
GARDA SUPERINTENDENT K G DONOHOE, PATRICK O'TOOLE (AS ASSISTANT COMMISSIONER
OF AN GARDA SIOCHANA) IRELAND AND THE ATTORNEY GENERAL
RESPONDENTS

And unsuccessful Supreme Court Appeal against the above decision of the High Court:

SUPREME COURT RECORD NO: 274/01
MARTIN DUNNE AND THE NATIONAL ASSOCIATION OF REGIONAL
GAME COUNCILS SUING BY ITS ADMINISTRATOR/DIRECTOR
DESMOND CROFTON ON BEHALF OF ALL ITS MEMBERS AND
BRENDAN MCLOUGHLIN
APPLICANTS/RESPONDENTS
AND
GARDA SUPERINTENDANT KG DONOHOE, PATRICK O'TOOLE,
IRELAND THE ATTORNEY GENERAL
RESPONDENT/APPELANTS.

Such statements do not serve to contribute anything positive to the issue to be resolved. They serve only to mislead those to whom they are addressed – in this case Deputy Healy-Rae and Dail Eireann. Furthermore, when statements are made by a Government Minister, they carry significant weight among the electorate and for that reason it is incumbent on Ministers to deliver accuracy in their statements, especially where a Minister runs the risk of contradicting, and therefore undermining the superior courts as in this case in the eyes of the Dail. It is not a small or minor matter when a Government Minister, especially a Minister with responsibility for Justice and therefore the courts, contradicts decisions of both the High Court and the Supreme Court.”

5. Future licensing policy:

The proposals being promoted would have the effect of giving licensing officers in the future the authority to refuse to renew or grant firearms certificates based on their (the licensing officers') view of the calibre of the firearm, the appearance of the firearm or the proliferation of firearms in the officer's district/division. In other words, if the officer considered there were too many guns in his/her area, or that he/she simply didn't like the look of the firearm or the calibre, he/she would be able to refuse licenses on that basis. If granted these authorities, they would be a charter for abuse of power on a large scale by senior Garda officers and lest there be any doubt on this point, one needs only to consider the fact that it was necessary for licence holders to take more than 650 court challenges against licensing officers for mal-administration of the licensing system over the past five years with more than 95% of judgements going against the licensing officers. It is important to emphasise to the Committee that none of the legal challenges sought to either strike down or change the legislation. The entire focus of all the court challenges was to force the Gardai to comply with the law.

6. Extending disentitlement and other provisions:

Unlike the aforementioned recommendations, these proposals do not represent a breaking point for the shooting associations. However, we urge caution in such areas as to who should decide what is a disentitled category. This must not be left to the discretion of licensing officers for the very good reasons already advanced in this submission.

7. Consultation:

The Minister has previously stated there will be no final decisions without consultation with the representative associations. This is not believed for the following reasons.

- a. Licensing officers are now, and have been for some time, making licensing decisions which are on the basis of the recommendations in the report. There is evidence of a communication, presumably from Garda HQ, that there is a new policy and that all short firearms will be refused in future "by Dublin". We have passed the details to the Department of Justice. We are now receiving other documented supporting evidence as decisions are being communicated to applicants.
- b. We are aware of a DOJ internal statement on the record that while there will be consultation with stakeholders, meaningful consultation is not envisaged. Details of this were provided to the Minister on 26th August last.
- c. When the Report of the Joint Working Group was finally published, consultation was downgraded to written submissions only i.e. no face-to-face dialogue. It was only following the uproar created by a very vigorous lobbying campaign that this was reversed. We have been contacted by the Department of Justice and the Minister to assure us there will be no final decisions prior to full consultation. As the consultation process is seriously poisoned already with the removal of the Annex F list of unrestricted small calibre hand guns from the Garda Commissioner's

Guidelines without any consultation just three days before the release of the Report, none of the representative associations believe that the consultation will be sincere. This is not only because of the removal of Annex F from the Guidelines, but also because of the revelation by the Department of Justice of an intention to deal with the representative associations in what can only be described as a less than honest manner. As a test of their good faith, we formally requested the restoration of the Annex F list. The response is as expected, the list will not be restored. A copy of the response is attached. The clear conclusions to be drawn from this are:

- i. The proposals are, irrespective of the public statements issued, regarded as final.
- ii. There is a firm decision as already revealed not to engage in meaningful consultation with the stakeholders.
- iii. Despite the assurances given, licensing decisions are already being delivered as though there has been a change in the legislation.

The removal of Annex F to the Garda Commissioner's Guidelines has now left further chaos in its wake as there is no approved list of unrestricted short firearms. The removal of the Annex was carried out without consultation at the same time as the Minister was telling the shooting associations there would be no final decisions taken without consultation. The Minister has refused to re-instate the Annex. This was the final straw and leaves the representative bodies in no doubt that any hope of honest consultation with either the Gardai or the Department of Justice is pointless.

Trust has been irreparably damaged to the extent that none of the shooting representative bodies are prepared to meet with either Department of Justice officials or Garda representatives. There have been far too many instances of what are regarded as dishonest communications and positions adopted by these two institutions.

8. Existing Annex F Licensed Firearms

It is important for the Committee to understand, in the context of the Joint Working Group's recommendation to ban sporting handguns, how Annex F arose. This list of sporting handguns was agreed with the input of everyone involved, including An Garda Síochána and was driven by the Department of Justice. Lest there be any doubt on that matter please refer to the copy correspondence attached from the Department of Justice and An Garda Síochána at the time the Annex was agreed. Following on from that, applications for Annex F firearms were encouraged by senior Gardai in an effort to dissuade applicants from applying for more powerful sporting handguns. Again, lest there be any doubt on this matter, please refer to a sampling of letters attached from senior Gardai to applicants which make the position clear. The copy letters are provided with the permission of the applicants but with their identities redacted for security reasons as this submission will be published. Applicants were obliged to provide additional security at their homes at significant cost for these firearms and shooting range operators were obliged to invest significant amounts in

their facilities for the various shooting disciplines associated with them. This Annex is now withdrawn without consultation and new applicants are being refused applications for firearms on the Annex list on the basis that the listed firearms are now “restricted”. Therefore applications for firearms from the Annex are not being considered from new applicants as they were not licensed by the applicants prior to 19th November 2008, as per the provisions of Section 30 of the Criminal Justice (Miscellaneous Provisions) Act 2009. As the vast majority of current licence holders of such firearms obtained their firearms certificates after the 19th of November 2008, it follows that the Gardai and the Department must hold, by virtue of the reasons being given for current refusals, that existing licence holders are invalidly licensed. If these firearms are restricted as claimed, the Gardai must revoke every such licence affected. Any other approach is illogical and contrary to the current view of the legislative provisions by Joint Working Group. This is by any measure farcical and symptomatic of the chaotic approach to firearms licensing by the Gardai. It indicates that when current firearms licenses for these firearms come for renewal in 2015, they will be refused. That applications for the Annex F unrestricted firearms (now being regarded as restricted) are being refused on the basis that their status is changed, and has been implemented without consultation, is further proof of the heavy handed and poisoned intent of the authorities towards licence holders. It should be particularly noted by the Committee that this state of affairs has been brought about by the actions of one individual within An Garda Síochána upon whose opinion the entire suite of licensing officers has relied. The Committee should also take note that the evidence offered to the courts on this particular matter (the reclassification of the Annex from unrestricted to restricted) by that individual has been referred to GSOC by the Garda Commissioner. Please refer to a copy letter attached from the Garda Commissioner on this matter which is self-explanatory.

In addition to the investment which will be lost to range operators and licence holders for the costs of security proofing their homes, firearms dealers will also suffer significant losses as stocks of firearms which will be affected by the recommendations will have no market and therefore no value as they will not be saleable in this jurisdiction.

The Committee should be acutely aware that the first such refusal to renew an existing Annex F firearm will inevitably ignite a mass re-action from an already very aggrieved shooting community.

9. Previous Submissions

In May 2014 the Sports Coalition published a Critique of the Administration of the Firearms Licensing System in the Republic of Ireland. A copy of this publication was circulated to every member of both Houses of the Oireachtas. The Critique chronicled the collective experiences of the Sports Coalition’s member bodies of the maladministration of the firearms licensing system over a period of five years by An Garda Síochána. That the Joint Working Group did not consider a single issue identified by the Critique, having regard to

the fact that the maladministration had resulted in over 650 court challenges of which more than 95% were successful, merited consideration enough to be the basis for any recommendations at all is not credible and speaks volumes for the attitude of the Report's authors. The issues identified by the Critique are real, are serious and warrant a considered response.

10. Penalties

As evidenced in the Report of the Joint Working Group, and stated at the beginning of this submission, the recommendations in the Report are predicated on the notion that public safety is compromised by a concern of legally held firearms falling into the hands of criminals and an expression of difficulties by members of the judiciary in interpreting the provisions of the firearms legislation. Apart at all from the absence of a scintilla of evidence to substantiate any of these assertions, the agenda of the Joint Working Group is exposed by the absence of any recommendations of any nature in the area of increased penalties as a disincentive for those who would be in unlawful possession of firearms. It may be stating the obvious, but one would expect that where a statutory authority expresses a serious concern of a public safety risk arising from criminality and makes recommendations to mitigate such risk, such recommendations would reasonably be expected to include new and/or revised penalties for engaging in the criminal acts which are of concern. Of significance, no such recommendations can be found in the report of the Joint Working Group.

11. The Way Forward

The shooting community has been experiencing difficulties with the Garda interpretation and maladministration of the firearms legislation for at least the past ten years, but to a much greater degree over the past five years. We have been unfairly targeted, had our concerns ignored, suffered discrimination and incremental unreasonable restrictions on our sport without lawful and/or reasonable cause. This has occurred simply because we dared to exercise our Constitutional right to hold the statutory body charged by Government with administering the firearms licensing system to account for unlawful application of the system and for being proven right. Because of what has now transpired, including the distorted and biased evidence given even at this stage to this Committee by the members of the Joint Working Group on December 17th, there is no prospect of direct engagement with either the Department of Justice or An Garda Síochána by the main associations representing sports shooting enthusiasts. All trust has been lost.

Any resolution to the current problems will only occur with the involvement of a party who can command trust. Regrettably, neither the Department of Justice and Equality nor An Garda Síochána are in a position to command the trust of the sports shooting groups. The sports shooters have complied with every requirement made of them without exception, at

considerable cost and inconvenience in the face of serial obstruction, unfair and unlawful application of the licensing system by An Garda Síochána.

Let us be clear, the only party to break the law on firearms licensing has been An Garda Síochána who have pursued their agenda without regard to either previous court decisions, the tax payer who has had to foot the bill or the law abiding citizens who were directly and adversely affected.

We accept that the police force of the state must always be the chosen body to carry out appropriate character checks of those citizens who seek to possess a firearm for sporting purposes. And on a point of clarification, sport is the only purpose for which a firearm may be used by civilians in this state. The character of the applicant is the single most important aspect of consideration of an application for a firearms certificate. However, thereafter the matter is simply one of administration within a framework of parameters which are already determined by law and public policy. There is no imperative for the police force to be involved in the administration of the system beyond the character checks.

We believe there is a compelling case to be made for the administration of the system to be allocated to a central government licensing body which is not An Garda Síochána. We submit that the Gardai have themselves made the most compelling argument for this in the manner of their stewardship of the system over the past five years in particular having regard to their inability and unwillingness to apply the legislation in an even handed and consistent manner. Already there is a very significant number of man hours spent by members of An Garda Síochána in dealing with firearms licensing generally - hours which would be far better employed in the prevention and detection of crime at a time when the general public are concerned about Garda availability, public order and organised crime. The large number of court challenges which have been necessary and the huge costs associated with those challenges bear ample testament to the waste of time and money and the need for another approach.

Moving forward does require an examination of what has occurred over the past five years in particular. Otherwise we will have learned nothing and we will be ill equipped to put a permanent solution in place.

What we believe and submit is required at this juncture is as follows:

- a. The establishment of an all-party Oireachtas Committee on Firearms Licensing, which could appropriately be a sub-committee of the Joint Oireachtas Committee on Justice and Equality.

- b. We suggest the functions of this Committee would include a look back at what has occurred over the past five years or in the alternative, the Minister would request the Garda Inspectorate to carry out this task.
- c. The Committee would actively engage with all the stakeholders to develop a licensing system administration which will endure without the rancour which has characterised the current administration and to make recommendations to the Minister in that regard.
- d. The Committee would actively seek a solution which would be based on a centralised system of administration.
- e. The Committee would in particular examine the entire area of appeals against refusals with a view to avoiding recourse to the courts.
- f. The Committee would examine any aspect of firearms licensing it sees fit.
- g. The term of the Committee should be no longer than six/nine months.
- h. So that the Committee is truly independent, no stakeholder should be allowed serve as a member of the Committee in any capacity.
- i. The Committee should engage on a regular basis with the stakeholders as necessary.
- j. The Minister and the stakeholders would accept the recommendations of the Committee unless there is a demonstrable and compelling reason for not so doing.
- k. The Committee would be empowered to call on the Minister to take appropriate action where any party fails to cooperate with, engage with, or causes undue delay in engaging with the Committee.
- l. There will be no change to firearms licensing policy pending the outcome of the Committee's work.
- m. Annex F would be restored to the Commissioner's Guidelines as unrestricted as was originally intended pending the outcome of the Committee's work.
- n. The Committee would make recommendations for ongoing monitoring of the application of the licensing system into the future and such monitoring process and/or body could/should include stakeholder representation/input.

7/1/2015

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The Sports Coalition



NATIONAL ASSOCIATION
OF REGIONAL GAME COUNCILS

*Federation of Irish Salmon
& Sea Trout Anglers*

Comaidhm na Slat Iascaí Buidín agus Brúic Géal



National Association of Sporting Rifle
and Pistol Clubs



RANGE OPERATORS
ASSOCIATION
OF IRELAND



I.F.D.A
Irish Firearms
Dealers
Association



Supported by:



The Rise Campaign



FACE Ireland



Irish Coursing Club



Ward Union Hunt

Supported by (Contd.):



Irish Masters of Foxhounds Association



The Long Range Rifle Association of Ireland



Country Sports Ireland



Archery Ireland.



Irish Masters of Beagles Association



Irish Hawking Club

ANNEX 1

List of Attachments:

1. Email 2/12/2014 from Marion G Walsh Dept. of Justice
2. Statements of Minister concerning members of the judiciary having difficulty interpreting the legislation.
3. Commentary of solicitor on members of the judiciary's understanding of the legislation.
4. Copy Garda letters to applicants encouraging applications for handguns on Annex F of the Commissioner's Guidelines.
5. Booklet of correspondence regarding the establishment of Annex F.
6. Copy Garda Commissioner's letter confirming referral of Garda witness evidence to GSOC.
7. Study by Don B kates and Prof. Gary Mauser.
8. Copy article from Evening Herald 13/7/2010 regarding Corbally murder.
9. Dail Question from Deputy Niall Collins to the Minister for Justice.