

GOVERNMENT OF ANGUILLA

GUIDENCE ON THE ISSUING OF FIREARM LICENSES



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Introduction

Legal gun ownership in Anguilla is relatively low with only 41 firearms licensed and 7 shotgun licenses in place in January 2016. It is only in an extremely small minority of cases that legally held firearms are misused. When they are, however, the results can be devastating both for the immediate families and communities around.

The Anguilla Constitution does not give anyone the right to bear arms. As such, ownership of any firearm is a privilege and not a right. Public safety must always be paramount. The conditions for determining gun ownership are set out in law in the Anguilla Firearms Act and are based on two tests: the first is 'good reason' and the second is 'suitability'.

The legislation requires the Appropriate Licensing Authority to be satisfied that these two tests are met. The law that governs firearms licensing does not set out what would constitute good reason or go far enough in providing the criteria for the assessment of suitability.

What constitutes the criteria for 'satisfaction' is not defined in legislation. This creates a complex licensing environment and one that risks a lack of consistency and transparency in decision-making.

The 2016 licensing process for the issuing of a Firearm User's Licence or Firearm User's (Employee's) Certificate was different to that in years gone by. At the discretion of the Commissioner of Police (the Licensing Authority) a process was introduced by which 'good reason' and 'suitability' could be properly examined. This caused a degree of consternation with existing holders, and highlighted the challenges faced by the Licensing Authority in discharging its responsibilities under the Firearms Act and keeping the public safe.

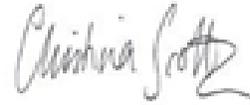
In the opinion of the Government of Anguilla, firearms licensing therefore requires clear supporting guidance for both those applying and those making the determinations in respect of applications, thereby ensuring a more transparent and consistent process.

In writing this guidance the Royal Anguilla Police Force have worked to ensure that guidance on firearms licensing is made as clear and concise as possible for the police, the legal firearm user community and the general public of Anguilla. Executive Council endorses this guidance and commends the Police for taking this initiative forward.



Hon Victor Banks
Chief Minister

October 2016



HE Christina Scott
HM Governor

Guidance:

1. What is meant by the term 'firearm'? (Section 1 (1) Firearms Act F30 Anguilla)

“Firearm” means any lethal barrelled weapon from which any shot, bullet or other missile can be discharged, or any restricted weapon or, unless the context otherwise requires, any prohibited weapon, and includes any component part of any such weapon and any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon but does not include any air rifle, air gun, or air pistol of a type prescribed by the Governor and of a calibre so prescribed;

2. Who is the Licensing Authority for firearms?

The Appropriate Licensing Authority is defined within the Firearms Act at section 38 as:

(1) The appropriate authority for the grant, amendment or revocation of any Firearm manufacturer’s Licence shall be the Governor.

(2) The appropriate authority for the grant, amendment or revocation of any Firearm Dealer’s Licence, or any Gunsmith’s Licence shall be the Commissioner of Police.

(3) The appropriate authority for the grant, amendment or revocation of any Firearm Import Permit, or Firearm Export Permit, or Firearm User’s (Special) Permit shall be the Commissioner of Police.

(4) The appropriate authority for the grant, amendment or revocation of any Firearm Transshipment Permit shall be the Comptroller of Customs.

(5) The appropriate authority for the grant, amendment or revocation of any Firearm User’s Licence or Firearm Disposal Permit or Firearm User’s (Employee’s) Certificate shall be the Commissioner of Police.

(6) The appropriate authority for the grant, amendment or revocation of any certificate under section 20(2)(j) shall be the Governor or a police officer authorised by him.

3. What are the basic principles of firearms law in Anguilla?

The Government of Anguilla’s policy is based on the fact that firearms are dangerous weapons and the State has a duty to protect the public from their misuse. Gun ownership is a privilege, not a right.

Applicants must satisfy the appropriate Licensing Authority that they have both good reason and are suitable persons.

4. What kind of firearm may be licensed?

Most firearms, shotguns and rifles must be licensed and are held on a firearm or shotgun user license. Any air rifle, air gun, or air pistol of a type prescribed by the Governor and of a calibre so prescribed does not require a user license.

5. Can anyone apply for a firearm certificate?

Permission to possess or to purchase or acquire a firearm will be granted to an individual who is assessed by the licensing authority as not posing a threat to public safety and having good reason to own the firearm. Organisations such as target shooting clubs, museums and firearms dealers must also apply for licenses if they wish to possess or use firearms.

The Act defines at Section 1 “Restricted Persons’ who will not be authorised to hold a firearm.

“Restricted person” means any person who—

(a) is a habitual criminal; or

(b) has at any time within 5 years next before the event in relation to which the term is used—

(i) been declared by a court pursuant to section 3 to be a restricted person, or

(ii) been convicted of an offence involving violence and sentenced to a term of imprisonment exceeding 3 months;

6. How does the Appropriate Licensing Authority decide if a person is fit to own a firearm?

To decide whether a person is fit (suitability test) to own a firearm, the appropriate licensing authority will conduct a number of checks that will usually include interviews, visits to the person’s property, criminal records checks and references from friends. In addition, the applicant’s GP may be contacted.

Police checks including intelligence and incident reports are to be considered by the appropriate authority. It is not necessary for the appropriate authority to rely solely on previous convictions in their determination. This reflects that some incidents such as domestic violence may be recorded as an incident/intelligence log but the case never proceeds to court. The guiding principle will always be public safety.

The ‘suitability’ test to possess a firearm is a continuing test. If circumstances arise in which suitability is brought into question, such as domestic violence, misuse of

controlled drugs/alcohol, arrest for offences in which violence has been used, concern regarding the mental health of the holder as examples then the Appropriate Licensing Authority should Act to remove the firearm until a determination on continued suitability can be conducted. This is not an exhaustive list; the question is the impact of such factors on continued public safety.

However, Section 29 (1) Firearms Act does direct that:

‘Subject to this section and to sections 28 and 37, the grant of any license, certificate or permit shall be in the discretion of the appropriate authority. ‘

7. What is a good reason to own a firearm?

The guiding principle behind the requirement to have a “good reason” to possess, purchase or acquire firearms or ammunition, is that firearms are dangerous weapons and the state has a duty to protect the public from their misuse.

Under section 29 (4) of the Firearms Act:

‘A Firearm Import Permit, a Firearm User’s Licence, a Firearm User’s (Special) Permit, a Firearm User’s (Employee’s) Certificate or a certificate issued under section 20(2)(j) shall be granted by the appropriate authority only if he is satisfied that the applicant has a good reason for importing, purchasing, acquiring or having in his possession the firearm or ammunition in respect of which the application is made, and can be permitted to have in his possession that firearm or ammunition without danger to the public safety or to the peace, but such a permit, certificate or licence shall not be granted to a person whom the appropriate authority has reason to believe to be of intemperate habits or unsound mind, or to be for any reason unfitted to be entrusted with such a firearm or ammunition.’

Therefore, firearm certificates shall be granted by the appropriate authority if they are satisfied that applicants have a “good reason” for having in their possession, or for purchasing or acquiring, the firearm or ammunition in respect of which applications are made and that in all the circumstances the applicants can be permitted to have the firearm or ammunition in their possession without danger to the public safety or to the peace.

Apart from assessing fitness to possess firearms, “good reason” is one of the most substantial and complex areas of discretion that the appropriate authority may exercise in licensing firearms. It is therefore imperative that any decision to refuse on grounds of “good reason” must be reasonable.

This guidance is not exhaustive. The appropriate authority will encounter cases not covered here where they may properly judge that “good reason” is proven. Each case

must be judged on its own merits, being mindful of the consistent administration of the Acts and the need to provide fair and equitable treatment to all applicants, while maintaining the duty to protect the public from firearm misuse.

Apart from having a “good reason” in principle, an applicant’s reasons for owning firearms should be genuine. Equally, any reason to refuse an application must be clearly justified and explained. The appropriate authority should exercise caution in dealing with cases where the applicant presents a nominal reason for possessing firearms but may have ulterior motives. The police will be expected to make reasonable inquiries to verify the applicant’s “good reason” for the possession of firearms.

An intention to acquire a firearm certificate, with the attendant privileges and responsibilities, should generally involve a genuine intent or genuine need to use/possess the firearms concerned. Failure to use a firearm or failure to acquire one by the end of the certificate’s life may be cause for further inquiry as to the applicant’s intentions.

“Good reason” should be neither confined to need nor equated with desire. A simple wish to own a particular sort of firearm is not in itself “good reason” without further supporting evidence of intentions. The appropriate authority should consider the application firstly “from the standpoint of the applicant rather than from that of a possible objector”. “Good reason” will need to be demonstrated for each firearm to be held under the act.

In summary applicants should be able to demonstrate to the appropriate authority that they require their firearm on a regular, legitimate basis for work, sport or leisure (including collections or research) or other good reason. The appropriate authority is able to exercise discretion over what constitutes a good reason, judging each case on its own merits.

“Good reason” needs to be demonstrated at each re-licensing period as given by section 29 of the Firearms Act. A grant is not for ‘life’ it must be reassessed at each licensing period.

The Government recognizes that although the Constitution and Firearms Act do not refer to self-defence as good reason, there may be occasion where the type of work/role the applicant conducts may allow them to possess a firearm for protection. This must be frequently examined and justified at each re-licensing application. The use of a firearm for self-protection does require the user to understand the legal implication on the use of potential lethal force.

CRIMINAL CODE

- **Excessive use of force**

S 217. Any person who is authorized by law or by the consent of a person injured by him, to use force shall be criminally responsible for the consequences of the

force he may use, if it exceeds what is reasonable, having regard to all the circumstances of the case.

8. How should firearms be stored?

The conditions of a firearm or shotgun certificate stipulate that guns must be stored securely so as to prevent access by an unlicensed person. The manner in which they are stored depends on the individual property and circumstances.

9. What should I do if I have concerns about a firearm owner?

Any concern about the suitability of a firearm/shotgun owner should be reported to the Police. Such reports can be taken into consideration by the appropriate authority in determination of suitability to continue to hold a firearm/shotgun. The appropriate authority should be mindful of vexatious or malicious complaints and should where ever possible seek corroboration or validate the reports before such determination is made.

10. What if the Appropriate Authority is not satisfied with my application?

If you are applying for the first time for a firearm license/permit then if the appropriate authority is not satisfied as to the 'good' reason or 'suitability' that application will be refused.

If you are a current holder of a User License or User (employee) permit and on re-application at the specified period the appropriate authority is not satisfied as to the continued 'good' reason or there are issues raised with suitability then the license/permit will be revoked or a new license/permit not granted.

The appropriate authority at each re-application point will need to be satisfied otherwise it may exercise its discretion and revoke or refuse to grant.

The appropriate authority will always act fairly and without prejudice or bias when reaching any decision on revocation or refusal to grant. The relationship between the holder and the appropriate authority is important and both must act with due diligence and mutual respect for the safety of the public.

Current holders will be expected to produce their licensed weapon on renewal for inspection by the appropriate authority. If the firearm has been issued for self-protection as 'good reason' then it may not have been used. The appropriate authority can ask the holder to show safe handling of the firearm. The principle is public safety. Firearms are inherently dangerous and mishandling potentially puts the public and holder at risk of serious injury. Firearms issued for sporting or in connection with vermin/livestock control will be expected to show some legitimate use of their weapon.

Where the appropriate authority makes a determination not to grant/renew or revokes a persons' application or current licence that will be provided in writing by the Appropriate Authority to the applicant or license holder.

11. What happens if my license/permit is revoked or one is not granted?

The mere fact that a user has been granted an existing license does not entitle them to automatic renewal. The Firearm Act section 29 (4) and public safety require the continued assessment of persons who own firearms or shotguns by the appropriate authority as prescribed by the Firearms Act at each re-licensing anniversary.

Section 29(4):

A Firearm Import Permit, a Firearm User's Licence, a Firearm User's (Special) Permit, a Firearm User's (Employee's) Certificate or a certificate issued under section 20(2)(j) shall be granted by the appropriate authority only if he is satisfied that the applicant has a good reason for importing, purchasing, acquiring or having in his possession the firearm or ammunition in respect of which the application is made, and can be permitted to have in his possession that firearm or ammunition without danger to the public safety or to the peace, but such a permit, certificate or licence shall not be granted to a person whom the appropriate authority has reason to believe to be of intemperate habits or unsound mind, or to be for any reason unfitted to be entrusted with such a firearm or ammunition.

On revocation or refusal to grant then the holder will surrender the firearm/shotgun and any ammunition to the Police.

The holder may appeal the decision as given by the Firearms Act in Section 37:

37. (1) Subject to this section, any aggrieved party may within the prescribed time and in the prescribed manner appeal to the Governor against any decision of an appropriate authority—

(a) refusing to grant any application for a licence, certificate or permit;

(b) amending or refusing to amend any licence, certificate or permit; or

(c) revoking or refusing to revoke any licence, certificate or permit.

(2) Upon the determination of any appeal under this section, the Governor shall give to the appropriate authority against whose decision such appeal is taken such directions as the Governor may think fit.

(3) In this section the expression "aggrieved party" means the applicant for or the holder of any licence, certificate or permit in respect of the refusal to grant

or the amendment or the revocation of which any appeal is taken and the owner of the firearm or ammunition to which such application, licence, certificate or permit relates.

(4) The provisions of this section shall not apply to any application for a licence, certificate or permit approval for the grant of which has been refused by the Governor or to any licence, certificate or permit the appropriate authority for the grant of which is the Governor.

Following any appeal to the refusal to grant/renew or revocation of a persons' application or current licence that will be provided in writing.

12. What type of firearm may I possess?

If the appropriate authority is satisfied as to 'good' reason and a person's 'suitability', then the type of weapon will be determined by its intended purpose and suitability for that purpose.

For self-protection this would normally be a handgun that does not exceed the ballistic capabilities of Police Issued firearms for a similar purpose. The appropriate authority has discretion in its determination (section 29 (1), Firearms Act)

For destruction of vermin and dogs then the weapon will normally be a shotgun.

For the humane dispatch of livestock, this may be a rifle of such specification as considered suitable for the size and type of animal. Again the appropriate authority has discretion in its determination (section 29 (1) Firearms Act).

Handguns will not be authorised for the destruction of vermin or humane killing of livestock unless it can be shown these are the most suitable for that purpose by the applicant. The discretion of the appropriate authority will be exercised in order to restrict the number of self-loading handguns and high calibre weapons that are legally held on Anguilla.