

Out of scope

## **APPEALS & Out of scope UNDER THE FIREARMS (NORTHERN IRELAND) ORDER 2004**

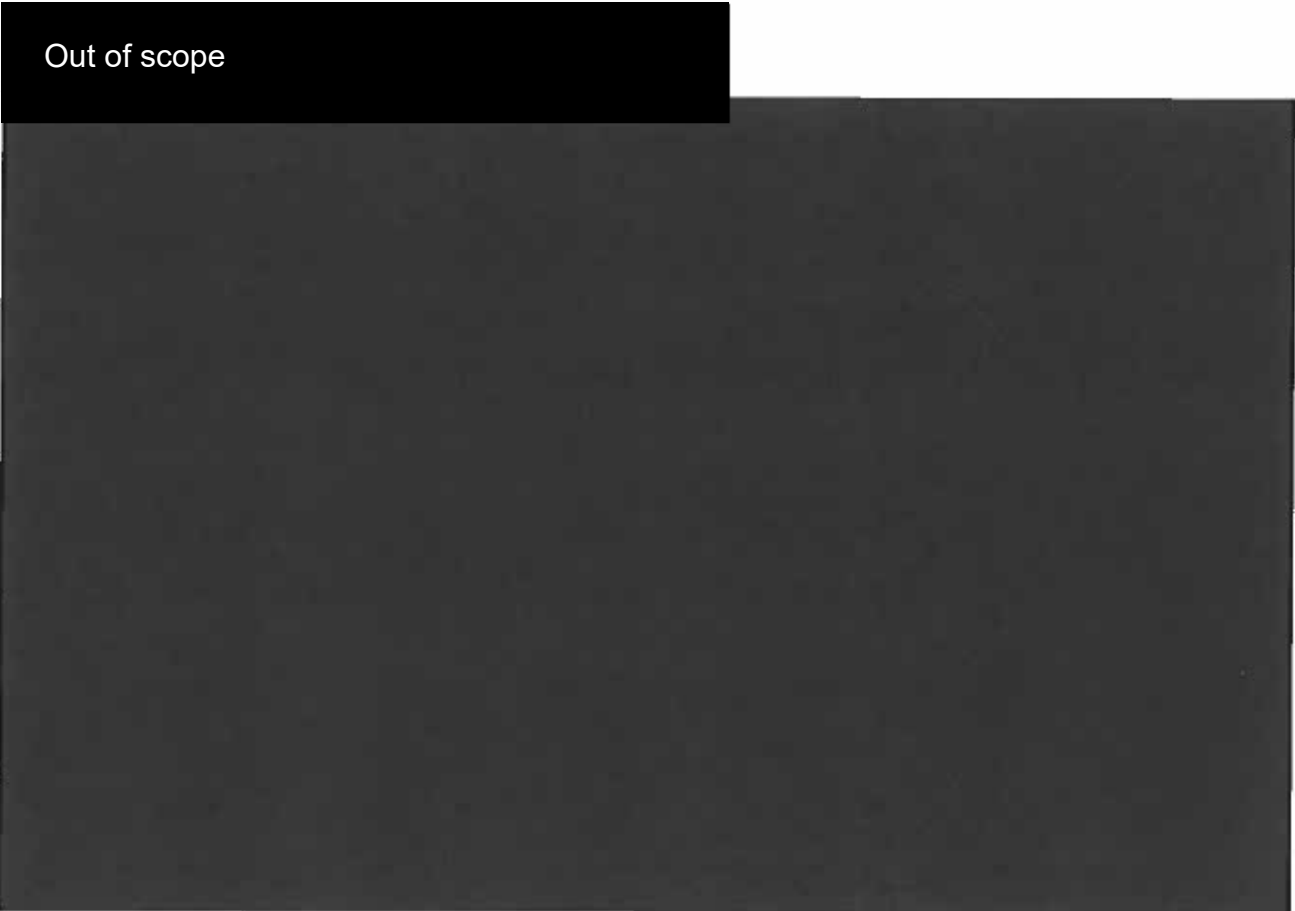
### **GRANT OF FIREARM CERTIFICATE: ARTICLE 5**

The control of firearms in Northern Ireland is exercised by the Chief Constable of the Police Service of Northern Ireland. In accordance with Article 5 of the Firearms (Northern Ireland) Order 2004 ("the 2004 Order") the Chief Constable may grant a Firearm Certificate to an applicant if he is satisfied that the applicant can be permitted to have in his possession, without danger to public safety or to the peace, the firearm or ammunition in respect of which the application is made. The Chief Constable shall not grant a Firearm Certificate unless he is satisfied that the applicant is a fit person to be entrusted with a firearm and the applicant has a good reason for having in his possession, or for purchasing or acquiring, each firearm and any ammunition to which the certificate relates.

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## APPEAL FROM DECISION OF CHIEF CONSTABLE: ARTICLE 74

Under Article 74 of the 2004 Order, a person aggrieved by a decision of the Chief Constable may appeal to the Department of Justice ("DoJ"). The following decisions of the Chief Constable may be appealed—

- (a) a refusal to grant or vary any certificate;
- (b) a revocation of a certificate;
- (c) a condition attached to any certificate or the variation of such a condition;
- (d) a requirement to surrender a certificate of approval under Article 17(3) or 18(2);
- (e) an order under Article 72(4).

Appeals against decisions made by the Chief Constable on the basis of national security are considered by the Secretary of State for Northern Ireland. Any and all documents or other information received in connection with these appeals are passed to the NIO and **no record** of them is retained by the Department of Justice. It is the Chief Constable who notifies the appellant whether to submit their appeal to the DoJ or NIO.

The Firearms (Appeals and Applications) Regulations (Northern Ireland) 2005 provide that—

- (a) an appeal shall be made by the person aggrieved serving written notice of appeal upon the Department of Justice;
- (b) the notice shall be served not later than the expiration of a period of one month from the date on which the decision of the Chief Constable against which appeal is made is notified to the appellant, or of such longer period as the Department of Justice may in special circumstances allow;
- (c) the notice shall state the name and address of the appellant. If the appellant's address is different from the address to which notification was sent of the decision against which he is appealing, the notice shall also state the latter address;
- (d) the notice shall state the decision of the Chief Constable against which the appeal is made;
- (e) the notice shall state the grounds of the appeal.

The Minister of Justice has delegated responsibility for determining appeals (a function of the Department of Justice) to senior officers (*Grade 5 and above*). Appeals are not a review of the Chief Constable's decision. The senior officer may make such order as they think fit having regard to the circumstances. The senior officer may consider any evidence or other matter, whether or not it was available or known when the Chief Constable made his decision. This means that the senior officer will consider the case afresh, including any matters that may have come to light since the Chief Constable's decision was made. The Chief Constable should therefore consider, prior to the determination of the appeal, any such matters that have arisen which might have a bearing on his decision. Before reaching a decision, the DoJ will disclose as much relevant information as possible to the appellant and give them the opportunity to make further written representations.

The appeal should be made on a Notice of Appeal form but a solicitor's or public representative's letter is normally accepted as an initial appeal pending receipt of the Notice of Appeal form.

The Guidance on Northern Ireland Firearms Controls which was published by the Northern Ireland Office should also be noted:

**[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136380/guidance\\_on\\_northern\\_ireland\\_firearms\\_controls\\_revised\\_01\\_june\\_2006-1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136380/guidance_on_northern_ireland_firearms_controls_revised_01_june_2006-1.pdf)**

This discusses the application of the 2004 Order and most of the factors that affect the processing of an appeal and **Out of scope**.

## PROCESS FOR AN APPEAL UNDER ARTICLE 74

1. On receipt of a Notice of Appeal, the DoJ will check—
  - (a) whether the case contains adverse information, other than national security. Any appeal that references national security will be redirected to the NIO and the appellant will be notified of the transfer;
  - (b) that the Notice of Appeal has been received no later than one month from the date on which the appellant received notification of the Chief Constable's decision from the PSNI's Firearms and Explosives Branch (FEB). If the Notice of Appeal was received—
    - (i) within one month, go to Point 4;
    - (ii) after one month, the DoJ will consider whether the appeal can be accepted or if a late explanation is required, see Point 2;
2. On receipt of a response from an appellant to the late explanation request, the DoJ will consider whether or not there are "special circumstances" under which to accept the late appeal.
3. If the late appeal is accepted go to Point 4. If not, the DoJ will issue a letter advising the applicant that the late appeal has not been accepted.
4. An acknowledgement of accepted appeal is issued to the appellant. A request is made to FEB for a background report on the appellant and a copy of the Notice of Appeal (including any attachments) is provided to FEB.
5. On receipt of FEB's report, the DoJ will check that the report contains the information the Chief Constable took into account in reaching his decision.
6. If medical evidence formed part of the Chief Constable's determination of the case, or if it is considered that the appellant may have a medical issue relevant to their fitness to possess firearms or ammunition, the DoJ, with the appellant's permission, will seek a medical report from their GP. If permission from the appellant—

- (a) is received, the DoJ will seek an up-to-date assessment of the appellant's health and advise the GP that the information will be disclosed to the appellant;
- (b) is not received, the DoJ will advise the appellant that the senior officer will consider any medical information presently in the department's possession, and the senior officer will be advised that permission was not given to seek an updated medical report.

7. If a GP does not respond to the request for medical information, the appellant or their representatives will be given the opportunity to obtain a medical report directly which should be forwarded to the DoJ.

**If the FEB report contains adverse information proceed to Point 12.**

**For appeals that do not contain adverse information follow Points 8-11 and 17.**

8. Once the DoJ is content that all the necessary information has been received, a letter is issued to the appellant detailing the information that will be made available to the senior officer. The appellant is then given 14 days to make further representations. This deadline can be extended on receipt of a written request. If no reply is received, the appellant is given a further seven days to respond. If they do not respond, the DoJ will assume the appellant has nothing further to add.
9. If a reply is received, the DoJ will review it and, if applicable, seek further information or comment (e.g. from FEB) in response to the appellant's representations.
10. Before the submission is sent to the senior officer, the DoJ may seek an update from FEB as to whether the appellant has come to police attention since the Chief Constable's decision or receipt of FEB's initial report. If further information is received the DoJ will issue another letter, sharing that information with the appellant, and invite further representations.
11. A submission to the senior officer will usually contain the following—
- (a) the background report provided by FEB and the views of the Chief Constable;

- (b) representations from the appellant and/or representatives and any medical information (if applicable);
- (c) analysis and recommendation;
- (d) if applicable, information annexes.

**For appeals that do not contain adverse information proceed to Point 17.**

**For appeals that contain adverse information follow Points 12-17.**

12. The DoJ will review FEB's report and seek further information, if needed, including a gist of the information that can be disclosed to the senior officer/appellant. The DoJ will also check whether the appellant has come to police attention for any relevant matter(s), since the Chief Constable's decision. The DoJ will then proceed to prepare the first submission for the senior officer (submission A).
13. Submission A for the senior officer will usually contain the following—
  - (a) the background information provided by FEB and the views of the Chief Constable;
  - (b) representations from the appellant and/or representatives and any medical information (if applicable);
  - (c) branch recommendation and the next steps;
  - (d) if applicable, information annexes.
14. The senior officer will receive a briefing from the PSNI (procedure for briefings at Annex A) to review and scrutinise the adverse information and to determine whether any further information (other than what has already been disclosed by the PSNI) can be shared with the appellant. After the briefing, the senior officer will make a determination on whether they wish to allow the appeal, are minded to refuse the appeal or if further information is required.
15. The senior officer will advise the branch of his/her decision. If—
  - (a) the appeal is allowed, the DoJ will issue the outcome letter;
  - (b) the senior officer is minded to refuse the appeal, he/she will advise the DoJ if any further information can be disclosed to the appellant. The DoJ will then issue a letter, see points 8-9. If a change in gist has been provided by the information owners, FEB are to be notified that the letter has been issued to the appellant including an updated gist;



(c) further information is needed, the branch will take the necessary action(s).

16. Once the information has been shared with the appellant and they have had an opportunity to **reply\***, the DoJ will prepare a second submission to the senior officer (submission B), which will usually contain the following—

- (a) a copy of submission A and a reminder of the senior officer's preliminary decision;
- (b) representations from the appellant and/or representatives (if a response was received);
- (c) branch recommendation;
- (d) if applicable, information annexes.

**\* If the representations seek further information regarding the undisclosed information, the questions should be redirected to the information owners for their comment/input into the reply/or alternatively an official line for the reason for non-disclosure. A further letter be sent to the appellant/representatives even if there is nothing further than can be disclosed.**

17. On receipt of a final decision from the senior officer, the DoJ will notify the appellant and FEB. If the senior officer seeks further information, the DoJ will request this information and, if appropriate, repeat the letter cycle so that the appellant is informed of any new information and an opportunity is given to make further representations.



Out of scope



### Procedure for PSNI briefings

1. The PSNI will provide an oral briefing to the Department of Justice in respect of the adverse information held on the Appellant/ Out of scope .
2. In advance of the briefing, DoJ will ask the information owners whether the gist, as provided by PSNI, can be expanded.
3. The briefing will take place in person. Attendees will include a representative from the PSNI, a senior officer from the Department of Justice "the decision maker" ( Out of scope ) and a DoJ note taker.
4. The meeting will allow the decision maker to have access to the information with a view to testing its reliability to include confirming identity and whether there is any innocent explanation, especially in the context of any representations made as part of the appeal. The meeting will also allow the decision maker to subject that information and those responsible for the information to such robust scrutiny as the decision maker considers necessary to make the required decision, and to explore whether anything further can be disclosed to the appellant.
5. A note of the meeting will be recorded by the DoJ.