

New Air Weapons Leaflet

On 10th October 2017, the Home Office launched a revised leaflet about air guns. They've been called air weapons in Home Office newspeak for sometime and while target shooting purists detest the word and refer to the dictionary-backed fact that something is only a weapon when being used as such; the Home Office has stuck to air 'weapons'. It makes them feel better.

The term umbrellas air rifles and air pistols, which are distinguished in law by their respective muzzle energies. While we're being pedantic, 'air gun' doesn't work for purists either, as 'gun' tends to mean 'smoothbore' to civilians and 'on wheels' to military veterans. In law, air 'weapons' are pneumatic – the discharge being the release of an inert compressed gas, rather than a gas generated by burning a propellant or explosive substance within the chambering. CO2-powered 'air' guns were classed as section 1 firearms from 1987 to 1997 – on the pedantic Forensic Science Service interpretation of CO2 not being 'air' (R v Thorpe, 1987). The 1997 legislation preferred to drop low-powered CO2 'weapons' into the exempted category in preference to putting them in section 5. The Forensic Science Service fell into disrepute and has since been closed down.

Air 'weapons' are defined by power output. An air 'pistol' has to have an energy output in excess of 0.7 ft. lb. (1 joule in French) to qualify as a firearm within the meaning of the Act and then to be exempted from Firearms Act controls, its output must not exceed 6 ft. lbs. or the French equivalent. Any that do are prohibited section 5 weapons **IF** the barrel is less than 300mm and/or the overall length is less than 600mm. 'Pistol' is not defined in legislation. The 1997 Act introduced the term 'small firearms' and provided dimensions. To define terms including 'pistol', 'revolver' and 'handgun', go to a dictionary.

An 'air' rifle likewise has a qualifying threshold of 0.7 ft. lbs. and is exempted through to 12 ft. lbs.; over which it becomes subject to section 1 firearm certificate controls. Rifle is likewise undefined in law. The Home Office, when pressed, offered us *'a firearm that is ordinarily held by both hands and fired from the shoulder'*, so rifling in the barrel doesn't count in their interpretation.

The qualifying maximum power outputs come from the Firearms (Dangerous Air Weapons) Rules 1969. These are widely regarded as an anti-import measure by Harold Wilson's Labour administration (1964-70) aimed at curbing German competition in the ailing British air gun market in the days when the balance of payments surplus/deficit was solemnly announced on the BBC every month. British-made air rifles tended to be around 10.5 foot pounds, while German ones were typically 14 foot pounds. The restriction knocked imports back for eighteen months while the Germans found ways of making their air rifles less powerful.

The qualifying minimum, notwithstanding the imaginary test in Moore v Gooderham (1960), became a job creation scheme for forensic scientists engaged in a race to the bottom. Forensics in Northern Ireland considered 3 foot pounds a minimum, but their consideration included supposedly non-lethal cartridge weapons used in crowd control and the issue there was the state's liability when the wrong people got controlled.

UK forensics were in the one foot pound bracket when the Home Office Firearms Consultative Committee opted to go below them in 2002 and suggested 1 joule (0.73 etc. of a foot pound) before realizing that European toy regulations had opted for 0.08 of a joule as their maximum for toys. Nevertheless, the 1-joule break point stuck and has been adopted in law by the Scottish Parliament for their air weapons legislation. This is mentioned in the leaflet, although the key

anomaly in it has yet to be sorted out: the legislation requires residents to get a 'certificate', none of which have been issued. If you apply, what you get is a 'licence' that the Scottish government didn't legislate for.

Air softs are exempted from the controls, by virtue of the Violent Crime reduction Act 2006. This sets higher muzzle velocity limits for them at 1.3 joules for full chat and 2.5 joules for the rest. Pistol/rifle/smoothbore makes no difference. Higher than the European standard for toys, then, these muzzle energies respect the fact that the very light plastic projectiles don't retain anything like those striking energies much past the muzzle, while giving the projectile enough impetus for tolerable accuracy over shotgun ranges.

The term 'lethal' has thus come a long way since US Government arsenal tests defined it as a projectile capable of penetrating a half-inch pine board. That takes, on their tests, 59 foot pounds of striking energy, so .22" short and .25"ACP just make it – 60 and 61 foot pounds respectively – at their muzzles, while .320" is non-lethal.

The two cases in UK law that addressed the issue both turned around the question of the transition point at which an air gun crosses the line from toy to weapon and both predate European legal wisdom on the subject. The first was *Bryson v Gamage Ltd* in 1907. Gamage's was a department store on High Holborn in London and Bryson would have been a policeman seeking to make a name for himself. This policeman noticed that Gamage's were selling air pistols with a barrel length of less than nine inches, which in his view restricted their sale to people who held a gun licence under the 1870 Act, a game licence or a pistols licence under the 1903 Act. He prosecuted: Gamage's maintained that the licensing requirements of the Gun, Game and Pistols Acts did not apply to toys and the question of law was referred to the High Court.

The high court took the view that the break point between 'toy' and 'firearm' or 'toy' and 'weapon' was a matter of fact and degree for the magistrates to decide. An object becomes a weapon when used as such: the candlestick in 'Cluedo' or the safe in 'who framed Roger Rabbit?' are weapons, while Gavin Williamson's sharpened carrot isn't until used as such. We assume the magistrates decided 'toys' since the period 1907-20 (when the Pistols Act was repealed) is not littered with long barrelled air pistols. The same cannot be said for real firearms and those of you who had the benefit of training with real handguns before the 1997 ban will recall the .22" calibre 10-inch barrelled Webley single shot break action pistol that was the introduction most of us had to pistol shooting. Ten inches to save the complication of the club and each member who wished to use the firearm buying a pistol licence.

Aside from *Cafferata v Wilson* in 1936 (to do with readily convertible blank firers) the courts went untroubled about the sale of air guns until 1960, when another policeman encountered a youth who had bought an air pistol. The issue in this case was again toy versus weapon, because the juvenile could buy a toy but was underage for buying an air weapon. We should mention that, in 1960 and pursuant to the *Gamage's* case, air guns were regarded as toys and thus outwith the requirement to buy a Gun Licence from the Post Office: so this was another policeman pushing the envelope, trying to make a difference.

The issue in this case was about the potential consequences of abuse (which hadn't happened) of the product, rather than the manufacturer's intentions and the outcome in *Moore v Gooderham* (1960) was the judge's conclusion that 'lethal' meant causing more than a trifling injury: so for the next six years – until February 1966 when the Home Office repealed the Gun Licensing Act 1870,

persons seeking to acquire air guns had to be (a) over 17 and (b) in possession of said gun licence.

Anyway, to the leaflet, which is in large part a list of the offences one might commit while owning an air rifle or air pistol. The word 'offence' features fifteen times. Our eye caught the phrase 'it is an offence to have an air weapon in a public place without a reasonable excuse' – so what happened to 'lawful authority'?

It's still in the Act, but is missing here. 'Lawful authority' is the common law test and refers to what you are doing at the time. Going to a place where you have authority to use the air gun counts as lawful authority, for example, while 'going equipped' toward a gang fight doesn't, but fleeing such a gang fight with an air gun so that nobody else can use it might be a reasonable excuse.

The controls on air guns in a public place are to be found in various bits of legislation. Section 19 of the Firearms Act 1968 makes it an offence to have any firearm together with suitable ammunition in a public place without *lawful authority or* a reasonable excuse. Air guns have to additionally be securely covered so that they cannot be fired. Transporting any 'weapon' through a public place – gun, knife, sword etc. – can violate public order legislation if someone notices what it is and is alarmed by your conduct.

Overall, the leaflet is very negative toward beginners. It suggests training at a club in the first instance and refers readers to the shooting organisations to find access to same: so the drive is toward target shooting in the first instance and the possible transition to pest control later. As in Scotland, 'plinking' in private on one's own property has been quietly painted out of the reckoning: and that means an opportunity for pushing the envelope for a policeman or several, somewhere.