

# Know your law.....Air weapons

## Introduction

This guidance document is designed specifically with air weapons in mind. This subject matter is complicated as there are guns that feature in the prohibited category, those which require a certificate and those that do not. The law has developed piecemeal over the years and is fraught with complexity. This guide aims to consolidate laws relevant to air weapons for ease.

This fact sheet is not an interpretation of law; it contains direct extracts from the legislation. Explanations given thereafter by BASC are established from known facts and the meaning of a words plain ordinary everyday meaning i.e. "Where the meaning of the statutory words is plain and unambiguous" (Lord Diplock in the case of *Duport Steel -v- Sirs [1980]*) BASC views the legislative extracts to be unambiguous in their meaning.

## What are air weapons?

Section 1(3) of the Firearms Act 1968 exempts certain items from the Section 1 firearm certificate control. Subsection 1(3)(b) specifically exempts 'air weapons'. Section 57(4) of the Act (Interpretation) adopts the description shown at Section 1(3)(b) as definition for the Act. Therefore when the term "air weapon" is referred to throughout the Firearms Act it means those items described in the definition only. The definition is as follows;

"an 'air weapon' (that is to say, an air rifle, air gun or air pistol) which does not fall within the prohibited category and which is not of a type declared by rules made by the Secretary of State under section 53 of the 1968 Firearms Act to be specially dangerous."

This means; air guns, air rifles and air pistols are exempt from the Section 1 certification requirement but only if they are not prohibited in the first place or of a type declared specially dangerous by the Firearms (Dangerous Air Weapons) Rules 1969 or the Firearms (Dangerous Air Weapons) (Scotland) Rules 1969 (both amended in 1993). These are commonly referred to as 'low powered air weapons'. Additionally Section 48 of the 1997 Firearms (Amendment) Act includes air weapons powered by compressed carbon dioxide (CO<sub>2</sub>). Firearms using other gases are not so exempt and require a firearm certificate in order to possess them, regardless of their power.

The Rules provide that any air weapon is "specially dangerous" if it is capable of discharging a missile so that the missile has, on being discharged from the muzzle of the weapon, kinetic energy in excess, in the case of an air pistol, of 6 foot lbs or, in the case of an air weapon other than an air pistol, 12 foot lbs. Therefore specially dangerous air weapons fall outside the definition of "air weapon" for the purposes of the Firearms Act 1968 (as amended).

**NB:** "Air gun" in law means an air weapon with a smoothbore barrel.

## Are air weapons firearms?

"**Firearm**" means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, and includes any prohibited weapon.

All air weapons capable of lethality are caught by the definition of "firearm" and fall into the following three categories;

- **Air weapons as defined in Section 1(3)(b) of the 1968 Firearms Act** (capable of lethality but not subject to certification); e.g. as per the definition of air weapon (above) certain air weapons not declared to be specially dangerous or prohibited i.e. kinetic energy remains below 6 ft lbs for pistols and for any other weapon 12 ft lbs.
- **Those declared to be specially dangerous by the Secretary of State and require a firearm certificate;** e.g. Section 1 firearms i.e. air rifles or airguns that exceed 12 ft lbs in muzzle energy or those that operate using other gasses than air or CO<sub>2</sub>.

- **Prohibited weapons (Section 5) requiring the Secretary of State's authority to possess them;** e.g. high energy short firearms that exhibit over 6 ft lb kinetic energy, those specifically prohibited such as disguised air weapons (air canes), and those that incorporate the self-contained air cartridge system.

The test for whether or not something is a firearm is firstly whether it is a weapon with a barrel and secondly whether it is lethal. Lethality is a complex issue and although case law exists (*Moore v Gooderham (1960)*), only a court can decide whether any particular weapon is capable of causing a (potentially) lethal injury and therefore is a "firearm" for the purposes of the Acts. It is widely accepted that guns discharging shot, bullets or other missiles in excess of 1 joule (0.74 ft lbs) kinetic energy (often referred to as muzzle energy) are capable of lethality. In a court case, each case would be taken on its merits and tests conducted with the firearm in question.

### **What about guns not capable of lethality?**

Plastic BB firing (airsoft) guns and projectile firing toys that exhibit a kinetic energy of less than 1 joule are widely accepted as not being lethal and thus fall outside the definition of a firearm. However imitation and realistic imitation firearms are controlled with respect to purchase ages and permitted activities. This subject is not covered by this document, for more details see BASC's guide the Violent Crime Reduction Act.

### **What about paintball guns?**

It should be noted that the majority but by no means all guns powered by carbon dioxide which discharge paint pellets and which are used in adventure games are *unlikely* to cause serious injury, nor were they designed as "weapons". As such, they should not be considered to be "firearms".<sup>♦</sup>

### **So what types of air weapon are prohibited?**

Section 5 of the Firearms Act 1968 (as amended) contains various descriptions. Any firearms (regardless of kinetic energy) that fall within any of the following definitions are prohibited weapons.

1. Any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeat pressure on the trigger. [Section 5(1)(a)] e.g. this means fully automatic and burst fire weapons of any type are banned.
2. Any self-loading or pump-action rifled gun other than one which is chambered for .22 rim-fire cartridges. [Section 5(1)(ab)] (See definitions below)

NB: Although it was not Parliament's intention that any low powered air weapons should be banned by the 1997 Acts, there is now considerable uncertainty as to whether a rifled airgun of the description covered by 5(1)(ab) has become prohibited even though it may be a very low powered weapon not hitherto held on certificate.

The Home Office have consulted ACPO and the Crown Prosecution Service about the legal status of these weapons and have agreed, in the absence of a court ruling, that the issue should be resolved formally at the next legislative opportunity. In the meantime chief officers are advised that self-loading or pump-action rifled airguns should continue to be regarded as falling outside the certification process **provided that they are low powered and do not fall within the Firearms (Dangerous Air Weapons) Rules 1969.**<sup>\*</sup>

3. Any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signaling apparatus. [Section 5(1)(aba)] e.g. a low powered air weapon (i.e. one which is not declared by Rules made by the Secretary of State under section 53 of the 1968 Act to be specially dangerous) such as an air pistol with a muzzle energy of over 6 ft lbs.

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<sup>♦</sup> Extract from 'Firearms Law' – Guidance to the Police [Home Office 2002]

<sup>\*</sup> Extracts taken from Home Office Circular 068 of 1997

4. Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or is less than 40 inches in length overall. [Section 5(1)(ac)] This (See definitions below)
5. Any smooth-bore revolver gun other than one which is chambered for 9mm. rim-fire cartridges or a muzzle-loading gun [Section 5(1)(ad)] (See definitions below)
6. Any air rifle, air gun or air pistol which uses, or is designed or adapted for use with, a self-contained gas cartridge system [Section 5(1)(af)] (i.e. Brocock and Saxby-Palmer type)
7. Any firearm which is disguised as another object [Section 5(1A)(a)] (e.g. air canes)

Note: where the law excepts "air weapon" in the categories above this only excludes those air weapons defined in Section 57(4) of the 1968 Firearms Act. That is to say those not declared specially dangerous i.e. below 6 ft lbs for pistols and for any other weapon 12 ft lbs kinetic energy; or those that have already been prohibited. e.g. an air pistol that exhibits a kinetic energy greater than 6 ft lbs no longer falls within the definition of an air weapon and is then subject to Section 5(1)(aba).

Further definitions relating to the categories above are provided in Section 57 of the 1968 Firearms Act:

**"self-loading" and "pump-action"** in relation to any weapon means respectively that it is designed or adapted (otherwise than as mentioned in section 5(1)(a)) so that it is automatically re-loaded or that it is so designed or adapted that it is re-loaded by the manual operation of the fore-end or forestock of the weapon.

**"revolver"**, in relation to a smooth-bore gun [Section 5(1)(ad)], means a gun containing a series of chambers which revolve when the gun is fired." NB: this means mechanical action rotates the cylinder on firing; this does not include guns which work on the revolver principle that are manually operated such as by a bolt)

**"rifle"** includes carbine;"

### **So what sets the energy limitations for a firearm to fall within the definition of air weapon?**

The Firearms (Dangerous Air Weapons) Rules 1969 and the Firearms (Dangerous Air Weapons) (Scotland) Rules 1969 (both amended in 1993) prescribes the kinetic energy limits which dictate how air weapons are categorised in law. Items exhibiting a kinetic energy (often referred to as muzzle energy) in excess of the stated limits are declared 'specially dangerous' and cause air weapons to fall outside the definition of air weapon. In essence they are no longer low powered air weapons that you can possess without a certificate.

The rules say: air pistols capable of discharging a missile with a kinetic energy in excess of 6 ft. lb. or, in the case of an air weapon other than an air pistol, of 12 ft. lb or which is disguised as another object (regardless of energy) are declared to be specially dangerous.

These Rules does not apply to a weapon designed for use only when submerged in water i.e. spear guns.

In practical terms air rifles or air guns that exhibit kinetic energy of greater than 12 ft lbs are subject to Section 1 of the Act and require a firearm certificate in order to possess them.

Any short firearm (which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall) that is declared especially dangerous becomes prohibited weapon. Only the Secretary of State may permit these weapons to be possessed, but will only do so if there is a trade or professional need to do so, such as forensic practitioners and museums. Illegal possession of such a prohibited weapon attracts the 5 year mandatory sentence.

## **Conversion not to affect classification – changing an air weapon’s power**

The wording of Section 7(2) of the Firearms (Amendment) Act 1988 is complex, but in essence once air weapons are prescribed as ‘specially dangerous’ they **cannot** be back converted and remain in their relevant categories (Section 1 & 5) regardless of what is done to them other than de-activation or destruction.

However the only exception is for airguns (smoothbore air weapons) or for air rifles which have barrels in excess of 24 inches in length. These are the only types of air gun that may be converted back below 12 ft lbs legally.

A dealer who tests an air weapon and finds it to be specially dangerous may not hand the gun back to the owner. The owner maintains ownership but may not legally possess the air weapon unless he has a firearm certificate allowing him to do so. It would be an offence for a dealer to return such a gun to someone without such a certificate. In the case of prohibited pistols; deactivation or destruction is the only way forward but the owner must permit this to take place.

## **Transactions involving low power air weapons**

Since 2007 the Violent Crime Reduction Act made it an offence to sell low power air weapons, their ammunition, components and accessories such as sound moderators “by way of trade or business” without being a registered firearms dealer (RFD). The law also required such sales to be conducted face to face between RFD’s and the purchaser or their representative. Private sales were unaffected. For specific details of these laws, see BASC’s guide to the Violent Crime Reduction Act.

## **Possession and use of low power air weapons**

Any offence you commit can carry a very heavy penalty – and there are at least 38 different offences. Following this guide will help you to keep on the right side of the law, but, if you have any doubt, seek advice from BASC ([www.basc.org.uk](http://www.basc.org.uk)) or your local police firearms licensing department.

## **Airgun security**

From February 2011, the Crime and Security Act 2010 makes it an offence for a person in possession of an air weapon to fail to take “reasonable precautions” to prevent someone under the age of 18 from gaining unauthorised access to it. The legal advice contained within this publication remains unchanged e.g. 14-17 year olds may still use air weapons unsupervised on private premises where they have permission etc.

For further advice about reasonable precautions for storing for air weapons not in use please contact BASC or see [www.basc.org.uk](http://www.basc.org.uk) for a copy of our fact sheet ‘Young People and Airguns’.

## **Who can use an air weapon?**

### **18 years**

If you are 18 years or older there are no restrictions on buying an air weapon and ammunition, and you can use them wherever you have permission to shoot.

### **14-17 years**

#### **You can**

- borrow an air weapon and ammunition
- use an air weapon, without supervision, on private premises where you have permission

#### **You cannot**

- buy or hire an air weapon, or ammunition, or receive one as a gift. Your air weapon and ammunition must be bought and looked after by someone over 18 – normally your parent, guardian or some other responsible adult.

- have an air weapon in a public place unless you are supervised by somebody aged 21 or over, and you have a reasonable excuse to do so (for example, while on the way to a shooting ground).

### Under 14 years

#### **You can**

- use an air weapon under supervision on private premises with permission from the occupier - normally the owner or tenant. The person who supervises you must be at least 21 years old.

#### **You cannot**

- buy, hire or receive an air weapon or its ammunition as a gift, or shoot, without adult supervision.

Parents or guardians who buy an air weapon for use by someone under 14 must exercise control over it at all times, even in the home or garden.

***It is illegal to sell an air weapon or ammunition to a person under 18 years of age.***

### Possession of firearms by persons previously convicted of crime - prohibited persons.

Under Section 21 of the Firearms Act 1968 any person who has been sentenced (anywhere in the UK) to a term of imprisonment, youth custody or detention in a young offenders institution for a period of more than three months but less than three years is subject to a five year prohibition from having any firearm or ammunition in his possession. A person who has been sentenced to a term of imprisonment or youth custody for a period in excess of three years is prohibited for life. Suspended sentences do not attract any prohibition.

### Where can you shoot?

Where you intend to shoot, always ensure that you are authorised by the landowner or person with the sporting rights and that you know precisely where the boundaries are. Get permission in writing, if possible, to remove any doubt.

**Whenever you are in a public place you should carry the weapon in a gun cover and always ensure that it is unloaded and not cocked.**

### Trespassing

Going on to private land, or water, where you do not have permission or a reasonable excuse is trespassing, and if you are carrying an air weapon it becomes armed trespass. Whether it is loaded or not, or whether you are carrying pellets, is irrelevant – armed trespass is a serious criminal offence carrying heavy penalties.

**Only shoot where you have the permission of the landowner or tenant.**

### Having an air weapon in a public place

Whilst this is touched upon above within the age advice; a person commits an offence if, without lawful authority or reasonable excuse (the proof whereof lies on him) he has with him in a public place;

(i) an air weapon (whether loaded or not),

(ii) any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm.

**Note:** Part (i) above relates to air weapons as per the definition at the beginning of this fact sheet and part (ii) relates to all Section 1 firearms including especially dangerous air rifles and air guns. "public place" includes any highway road within the meaning of the Roads (Scotland) Act 1984 and any other premises to which at the material time the public have or are permitted access, whether on payment or otherwise.

### **Firing pellets beyond your boundary**

It is an offence to fire an air weapon pellet beyond the land where you have permission to shoot, unless the occupier of the neighbouring land has also given you permission. Where someone under 14 is shooting, both the young person and the supervising adult can be prosecuted.

### **Highways & other matters**

It is also against the law, in England and Wales, to fire an air weapon within 50 feet of the centre of a highway if this results in someone being injured, interrupted or endangered. These offences could be committed, for example, when someone is shooting in their garden close to a road and the pellets ricochet onto the highway. For specific details about footpaths and bridleways see BASC's fact sheet: 'Rights of Way and Shooting'

It is an offence in Scotland to discharge any gun in a culpable or reckless manner. This means shooting without caring about the safety of others.

For further details about the possession and use of Section 1 air weapons and firearm certificates contact BASC's firearms department.

ENQUIRIES TO: FIREARMS DEPT – 01244 573010  
E-mail: [airguns@basc.org.uk](mailto:airguns@basc.org.uk)

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