

LEGAL STATUS OF AIR PISTOL DECLARED SPECIALLY DANGEROUS

1. The firearms (Dangerous Air Weapons) Rules 1969.
The Rules declare that air weapons 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 pounds.
2. Certain air weapons are declared specially dangerous, they are not re-defined in words as “specially dangerous air weapons”, therefore they are air weapons albeit specially dangerous and subject to section 1 control?
3. We have two types of air weapons, those that are firearms that produce energy of more than 1 Joule and those that are declared specially dangerous.
4. Section 5(1)(aba) prohibits firearms which either has a barrel less than 30 cm in length or is less than 60 cm in length overall, however it exempts an “air weapon”.
5. An air pistol is an air weapon (The Firearms Dangerous Air Weapons) Rules 1969. An “air weapon” that is specially dangerous is an air weapon and is therefore exempt (opinion).
6. The explanatory note on the Statutory Instrument “The Firearms (Dangerous Air Weapons) Rules 1969 says: *“under Section 1 of the Firearms Act 1968, a firearm certificate is required for any air weapon declared by rules to be specially dangerous.”*
7. There is conflicting advice on the status of an air pistol that is declared specially dangerous, for instance:
 - a) “Home office Air Weapons a Brief Guide to Safety” leaflet says: *“air pistols with muzzle energies greater than 6 foot - pounds (and certain other air weapons) are prohibited and may not be possessed without the authority of the Secretary of State”*
 - b) Guide to Firearms law April 2016 2.46 Page 13 says: *“Any air pistols which either has a barrel less than 30 cm in length or is less than 60 cm in length overall, with a muzzle energy in excess of 6 foot lbs is a prohibited firearm”*
 - c) The explanatory notes that relate to the Policing and Crime Act 2017 (C.3) which received Royal Assent on 31 January 2017 page 140 927 says:

“An air pistol with a muzzle kinetic energy in excess of 6ft lb, or any other air weapon with a muzzle kinetic energy in excess of 12 ft lb, needs to be held on a firearm certificate”.
8. The firearms (Amendment) Act 1997 Section 50 (1) defines: *“(b) an air pistol to which section 1 of the 1968 Act applies and which is designed to fire .22 or smaller diameter ammunition”* as a *“small - calibre pistol”*

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9. A small- calibre pistol was exempted from the Section 5(1)(aba) in the firearms (Amendment) Act 1997.
 10. The firearms (Amendment Act) (No 2) Act 1997 in the schedule repeals: “In section 5(1)(aba) the words “a small-calibre Pistol”.
 11. That would suggest the legislators felt that section 1 category air pistols that fall below the qualifying size for barrel and overall length would have fallen into section 5 category 5(1) (aba) if they were not exempted by the category “small – calibre pistols”. (Opinion).
 12. Note: The above refers to .22 or smaller ammunition, so .25 calibre air pistols would not be caught.
 13. Section from 188 R, V Law (Nathan), Court of Appeal (Criminal Division) 22 January 2015:

H2 The defendant possessed a carbon dioxide powered pistol that was less than 60 cm in length overall. He was arraigned on a count under s.5(1)(aba) of the Firearms Act 1968 , ¹ as amended, by which it was prohibited to be in possession of any firearm of less than 60cm in length overall “other than an air weapon”. The judge, holding that the legislation should be given the interpretation most favourable to the defendant, found that any air rifle, air gun or air pistol was excluded from the ambit of s.5(1)(aba) . That being so, no reasonable jury could properly conclude that the defendant was in possession of a prohibited firearm for the purposes of s.5(1)(aba) . The Crown appealed on the ground that the judge had failed to apply the definition of “air weapon” in s.1(3)(b) of the 1968 Act. ²

*H3 Held, allowing the appeal, that the definition in s.1(3)(b) of the Firearms Act 1968 excluded two different types of air weapon, namely those specifically prohibited under s.5(1) and those specially dangerous. An air rifle/gun/pistol was only an “air weapon”, therefore, if one of those two exclusions did not apply. Accordingly, the case would be remitted for the jury to determine whether the pistol in question, which met the other requirements in s.5(1)(aba) for a prohibited firearm, was specially dangerous and therefore not an air weapon (post, [14], [17], [19], [23]). H4 (For s.1(3)(b) of the Firearms Act 1968 , see Archbold 2015, para.24-4; for s.5(1)(aba) see *ibid* . para.24-24.)*

Note:

- 1] The above applies to a “carbon dioxide powered pistol” it is not clear if this pistol exceeded the power limit of 6 foot lbs or was just not an “air weapon”
- 2] See section 48 for firearms powered by compressed carbon dioxide.

14. Summary:

Is the high power air pistol where lengths fall into the section 5 (1)(aba) category subject to section 1 certificate procedure because it is exempted as an air weapon?

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15. Home office guidance says they are prohibited weapons, Policing and Crime Act 2017 notes says clearly they need to be held on a firearm certificate.
 16. The issue is not clear and in that case where there is possible doubt “*legislation should be given the interpretation most favourable to the defendant*”. (R.V Law (Nathan)).