

# When is a firearm not a firearm?

## Application of the Firearms Act to air weapons and antiques

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When does a normally legal air gun become an illegal firearm? When does a normally illegal firearm become a legal antique? Two contentious areas of firearms law that need clarification are discussed in detail.

Firearms legislation has undergone many changes in recent years, but lack of clarity and apparent contradictions make it an area fraught with danger for the unwary. Low-powered air weapons can generally be owned without any certificate or restriction by persons aged over 17 years, and genuine antique guns can usually be collected by anyone. But even within the Firearms Act 1968, different definitions can be applied. Indeed, both of these normally unrestricted categories may be classed as 'firearms' for the purpose of Section 21(1) of the Act – which prohibits possession for life by persons who have been sentenced to 3 years or more in prison.

This article seeks to examine the application of the Firearms Acts specifically to air weapons and antiques.

### When does a legal air gun become an illegal firearm?

The Firearms (Dangerous Air Weapons) Rules 1969 (SI 1969 No.47) state that an air weapon otherwise exempt from the provisions of the Firearms Act 1968 is not exempt 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 ft.lb, or, in the case of an air weapon other than an air pistol, of 12 ft.lb.'*

Fairly simple on the face of it! If a pellet fired from an air **pistol** exceeds 6 ft.lb kinetic energy, then the pistol loses its exemption from the provisions of the Firearms Act 1968; the same applies to an air **rifle** exceeding 12 ft.lb. (Note the distinction between 'pistol' and 'rifle'.)

Since the Firearms (Amendment) Acts of 1997, firearms with a barrel of less than 30 cm in length, or less than 60 cm in length overall, have been virtually banned. Thus the over-powered air pistol was made a prohibited weapon under Section 5 of the Act – the same section that prohibits rocket launchers, machine guns, exploding bullets and hand grenades. However, an air rifle firing a pellet exceeding 12 ft.lb kinetic energy becomes a firearm as described under Section 1 of the Act, requiring the owner to hold a Firearm Certificate.

In January 2004, the general imposition of a mandatory 5 year prison sentence for possession of a prohibited weapon has meant that the consequences of owning a slightly over-powered air pistol may be very severe.

### Testing the kinetic energy of a pellet

The tests to establish kinetic energy utilise a chronograph, which measures the muzzle velocity of a

pellet. A calculation based on the speed and weight of the pellet is then used to ascertain the kinetic energy.

So how do you know whether the air rifle bought years ago and now gathering dust could fire above the legal limit? The short answer is: 'You don't.' The absolute limits imposed are applied in much the same way as speed limits used to prove a speeding offence. The difference is that there is no equivalent of a speedometer for use on an air gun, and there is, in my experience, very little allowance made if the gun is only slightly over the limit. One of the reasons for such inflexibility may be a lack of understanding.

In a recent case, an air rifle was firing at 12.75 ft.lb, rather than 12 ft.lb. It was only when it was pointed out that this was on a par with someone travelling at 31.9 miles/hour rather than 30 miles/hour that the excess power was put into perspective, and the figures became meaningful.

### Test conditions affect pellet power

The first question a lawyer looking at an over-powered air weapon charge might ask is: 'How was the test conducted?'

It might be thought that with such definite limits set on power, there would be a specific protocol in place to ensure consistent testing. Not so. There is no standard test prescribed, despite repeated requests by manufacturers and importers.

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*'the measurable power of an air gun varies according to a number of factors'*

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The problems of this become evident when one considers that the measurable power of an air gun varies according to a number of factors, e.g. the type and weight of pellet used, the amount of oil in the mechanism, and even the temperature. If a gun is firing slightly under the limit with one type of pellet, it can often be made to fire slightly over with another, and vice versa. This means that by judicious selection of test pellets, the desired result may, in some circumstances, be achieved. Not, presumably, what the legislators intended.



#### About the author

David Dyson is a Bachelor of Laws and non-practising Barrister with a keen interest in firearms legislation and forensic science. David has been involved in the arms and armour industry for over 25 years, specialising originally in antique weapons and then becoming a Registered Firearms Dealer in 1985. He has been an expert witness since 1990, with expertise in the field of firearms, explosives and ballistics, plus related areas including edged weapons. David is based in Huddersfield and can be contacted on 01484 607331 or at [Davidwdyson@hotmail.com](mailto:Davidwdyson@hotmail.com).