

IN THE MATTER OF SABRE DEFENCE INDUSTRIES LIMITED

AND S.5 OF THE FIREARMS ACT 1968

OPINION

1. I am asked to advise this Company in relation to the sale by them of the Taurus Judge shot pistol ('the Taurus'). This is a traditional revolver which has a smooth bore barrel and is chambered for .410 calibre shotgun cartridges. I am of the opinion that such sales are lawful, are within the spirit and purpose of the Act, as passed by Parliament, and should be permitted to continue.

The Background

2. Sabre Defence Industries Limited ('SDI') is a Registered Firearms Dealership (RFD) based in Northholt, Middlesex. In addition to being an RFD they also hold The Secretary of State's Authority to possess and trade in weapons 'prohibited' by virtue of Section 5 of the Firearms Act 1968 ('The principle Act'). A part of their trade is the supply, both through the gun trade and directly to the public, of items which firearm certificate holders ('FAC's') are entitled to possess by virtue of the certificates, which have been granted to them pursuant to the various exemptions from prohibition set out in the Firearms Acts. There are a number of such exemptions. Examples of such exemptions for the private individual include pistols for the humane dispatch of animals; persons who hold collections of firearms and ammunition; items for use in theatrical productions and so on. The exemption we are concerned with here is that which permits FAC's to hold a shot pistol for the shooting of vermin in confined spaces.

3. In recent times SDI has imported and sold to members of the public a number of Taurus to FAC's who hold a suitably conditioned certificate. It is important to bear in mind

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that such sales can only be to persons who have been granted a variation on their firearm certificate for a shot pistol for vermin destruction within buildings, and where the certificate is endorsed with the appropriate condition for the pistols use. A difficulty has arisen because several police forces have suggested that the Taurus should not be categorised under Section S.5 (1) (aba) of the Principle Act, and therefore benefit from the exemption thereto contained in Section 4 of the 1997 Act, but instead should be categorised under Section 5 (1) (ad) of the Principle Act, which does not benefit from such an exemption. I set out the law in detail below, but I can see no argument at all to suggest that the Taurus does not fall squarely into the definition in 5(1) (aba), nor that it cannot benefit from the exemption in S4 of the 1997 Act.

The law

4. In general terms Section 5 of the Principle Act places 16 different types of firearm and ammunition into the prohibited category. ‘Prohibited’ in this context simply indicates that (subject to some exceptions) the authority of the Secretary of State is required in order to possess or deal in such items. We are concerned here with two categories of prohibited item –

- i) the prohibition relating to ‘small firearms’ [S.5(1)(aba)], and
- ii) that relating to ‘smooth bore revolver guns’ [S.5(1)(ad)].

As I have indicated S.5(1)(aba) of the Principle Act [As amended by S.1. of the 1997 Act] relates to ‘small firearms’ and begins with the heading “*General Prohibition of small firearms etc.*”. This encompasses:

“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 signalling apparatus”.

It will be noted that whether a firearm is rifled or smooth bored, or it’s method of operation, is immaterial for the purposes of S.5 (1)(aba). The prohibition is on all ‘small’ firearms of all types. The barrel on the Taurus is 16.7 centimetres long and the overall length is 32.2 centimetres. The Taurus therefore unarguably falls within the third category of prohibited items in Section 5, as amended. I suggest this is confirmed by one of the exceptions to S.5 (1)

(aba) set out in Section 4 of the 1997 Act.

Section 4 (1) provides as follows:-

“The Authority of the Secretary of State is not required by virtue of subsection (1)(aba) of section 5 of the 1968 Act for a person to have in his possession, or to purchase or acquire, or to sell or transfer, a shot pistol if he is authorised by a firearm certificate to have the shot pistol in his possession, or to purchase or acquire it, subject to a condition that it is only for use in connection with the shooting of vermin”. Section 4(2) further provides:- *“For the purposes of this section “shot pistol” means a smooth bored gun which is chambered for .410 cartridges, or 9mm rimfire cartridges”.*

The Taurus is a small firearm, a smooth bored shot pistol, chambered for .410 cartridges and in common language would be referred to as a ‘pistol’. It therefore falls squarely into this exemption from Section 5 of the Principle Act. It is not suggested that any sales have been made to persons other than those who have the relevant authority and conditions on their firearm certificates. In my view, in law, the sales of the Taurus by SDI to those with appropriate certificates are lawful and within what Parliament intended.

I suggest this view is supported by the current Home Office *Guidance to Police*, (‘the Guidance’) published in 2002 to assist the police in the administration of the Firearms Acts.

Paragraph 13.20 provides as follows:

“ Section 4 of the 1997 Act allows the possession and use of shot pistols in calibres .410 and 9mm rimfire, provided that such a pistol is “subject to a condition that it is only for use in connection with the shooting of vermin” (see Appendix 3 for the exact wording of the condition which covers these circumstances). This exemption was intended mainly for pest controllers who may need to use a firearm of this kind in farm buildings, farmyards and similar areas where use of a conventional shot gun would be inappropriate, for example fruit cages or near release pens.”

The relevant condition set out in Appendix 3 is as follows:-

“4. Quarry shooting – Shot pistols

*The * calibre SHOT PISTOL shall be used only in connection with SHOOTING*

VERMIN WITHIN OR AROUND BUILDINGS over land which holder has lawful authority to shoot.”

The Guidance at 13.20 and the condition itself make it clear that this authority is to be granted to an FAC holder for vermin destruction where a full size shotgun would not be appropriate. This is clearly because what is needed is something smaller, ie. a small firearm. As we shall see in Paragraph 7 the items intended to be prohibited by 5(1)(ad) cannot be described as small, and would be wholly unsuitable for this purpose.

5. Despite what appears to be clear and straightforward case, a difficulty arises here because of the provisions of Section 5(1) (ad) which add to the prohibited category as follows:-

“(ad) any smooth bore revolver gun other than one which is chambered for 9mm rimfire cartridges, or loaded at the muzzle end of the chamber;”.

Section 5(1) (ad) was added by Section 1 of the Firearms (Amendment) Act 1988. This may be of some significance as it is an older provision than those dealt with in Section 5(1)(aba), which were added in 1997. The Taurus could be described as a ‘revolver gun’, although for reasons set out in Paragraph 7 below, it does not in fact appear to conform with the definition of a revolver gun set out in Section 25 of the 1988 Act which amended Section 57 (2B) of the Principle Act. As already stated it is smooth bored. Being of .410 calibre and not 9mm rimfire it does not fall within the exception to 5(1)(ad). So which category of prohibition does it come within, is it (aba) or (ad)? Given that it fits the specific exemption in S.4(1) of the 1997 Act (ie. it is a .410 shot pistol), it can be suggested that it must be within (aba) and therefore benefit from that exemption. Further, Parliament can be expected to have been aware of the other provisions of Section 5 of the Principle Act when they amended it again in 1997, and to any extent that the later legislation is in conflict with the earlier, it can be presumed that it was intended that the latter would take precedence. This would accord with the usual rules of statutory interpretation.

I take the view that this is effectively the answer to this question and the Taurus clearly comes within 5(1)(aba). Indeed much as I have tried, I can see no sensible counter argument.

I have however been asked to give a comprehensive Opinion on this subject and so it is necessary to look further at the history and purpose of this legislation.

6. It seems to me that there are at least 3 ways of analysing this problem. There are mechanical arguments to do with the original reasons that ‘smooth bored revolver guns’ were specifically mentioned in the Acts. There is an objective test to be considered and there is the question as to the ‘order of precedence’ which is contained within the scheme of Section 5 of the Act.

7. The Mechanical Argument

It is apparent when one considers the detail of the legislation that it was one particular type of ‘smooth bore revolver gun’ which Parliament intended to prohibit with the provisions in the 1988 Act. A careful analysis demonstrates that this prohibition was not intended to cover conventional smooth bore revolvers such as the Taurus. I set out in paragraph 4 above the provisions of Section 4 of the 1997 Act. In relation to Section 4 the current Police Guidance states:

“2.7 The 1988 Act also raised to the prohibited category any smooth-bore revolver gun other than one that is chambered for 9mm rimfire cartridges or is a muzzle-loading revolver gun. The first exemption is understood to cover “rattling” or “garden” guns. Since the 1988 Act does not permit any revolver gun to be regarded as a “shot gun”, smooth-bore revolver guns which are chambered for 9mm rimfire or muzzleloading guns are “firearms” and subject to control under section 1 of the 1968 Act.”

“3.7 Category (v) covers most smooth-bore revolver guns though an exception is made for the so-called rattling guns” chambered for 9mm rimfire and for muzzle-loading revolver guns, both of which are subject to control under section 1 of the Act. Section 57(2B) of the 1968 Act (as amended by the 1988 Act) defines a smooth-bore revolver gun as one containing a series of chambers which revolve when the gun is fired. Examples of such guns are the “Dragon” and the “Striker”.

However the 1989 Home Office Guidance to Police (relating to the same provision and published shortly after the passing of the 1988 Act) tells a slightly different and very much more detailed story (pages 110 and 111 thereof):-

“Category (iv) covers most revolver smooth-bore guns though an exception is made for so called "rattling guns" chambered for 9mm rim-fire and for black powder weapons loaded at the muzzle end of each chamber, both of which are subject to control under section 1 of the Act. Section 57(4) of the Act, as amended, defines a "revolver" smooth-bore gun as one containing a series of chambers which revolve when the gun is fired. Examples of such guns are the "Dragon" and the "Striker". Their operation is such that on applying pressure to the trigger, the next chamber is brought into line with the barrel; further pressure to the trigger causes the firing pin to strike the head of the cartridge and the gun discharges. When the finger pressure is released from the trigger the cylinder moves again until the next chamber is almost in line with the barrel and it stops.

It can be seen that both versions of the Guidance refer to the same type of weapon, and indeed the law has not changed since 1988. The type of weapon referred to as the ‘Dragon’ or the ‘Striker’ is a large 12 gauge shotgun with a clockwork cylinder. To enable a simple comparison to be made I attach some photographs which show a Dragon and picture that alongside the Taurus. As already stated, there is no similarity in the size of the items.

8. The Taurus Judge does not operate in the manner described (and proscribed) in this legislation. It is a conventional revolver which can be fired in either single or double action mode. Pulling the trigger in double action mode unlocks the cylinder and rotates it fully to the next chamber where it is relocked. Continued pressure on the trigger will then bring the hammer back to its point of no return or alternatively the trigger can be released returning the trigger to its safe position. In double action the gun is not necessarily fired although the cylinder can be rotated. In single action mode the hammer is manually cocked which in turn unlocks, rotates and relocks the action. The gun is not fired until the shooter applies pressure to the trigger which releases the locking sear and allows the hammer to fall forward

impacting the cartridge primer. Upon release of the trigger the hammer merely resets, the cylinder does not move. This is the basic design of a double action revolver that has been in existence for over 120 years. Mechanically, to meet the test outlined in section 57(2B) the chambers must move while the gun is being fired. The cylinder of the Taurus does not move during the firing stages of the hammer movement or on the release and resetting of the trigger. Therefore the rotation of the cylinder is not a function of the firing process.

9. There is only one type of gun that exists that follows this pattern of operation and they are specifically named in the guidance. Following *Pepper v. Hart*, it is necessary to look at the intention of Parliament to get a clear understanding of the intention of the law as passed. It appears from the Hansard reports from Standing Committee F, which dealt with the 1988 Act, that the then Junior Minister to the Home Department, the Rt. Hon. Douglas Hogg MP, specifically named both guns as being the reason for the proposed prohibition.

The reasons given for banning the Striker and Dragon were that they were 12 bore, short barrel, multishot weapons that had folding stocks and could indeed have been devastating concealable weapons. Having prohibited concealable pump action and semi-automatic shotguns in Section 5(1)ac it was a logical progression for the Home Office to close the loophole on other shotguns in this genre of weapons that were perceived to be ‘especially dangerous’. The Taurus is neither especially dangerous nor does it have any resemblance to the Striker type of shotgun which is also fairly unique in that its cylinder is so heavy to rotate by trigger pressure alone it is powered by a pre-tensioned clockwork mechanism when it is initially loaded. The Striker is still manufactured in small numbers in the USA and it has no resemblance in operation, design or purpose to the Taurus Judge. The direct reference to this specific type of weapon in the Committee Debates and in subsequent detailed Guidance to Police makes the intention of the prohibition explicitly clear.

In summary, the Taurus does not come within the definition of a ‘revolver gun’ in Section 57(4) of the Principle Act and Section 5(1)(ad) was not intended to prohibit such items. So 5(1)(ad) does not, and was not intended to, apply to the Taurus.

Subjective Test

10. It is sometimes appropriate to take a subjective approach to firearms legislation, or to put it another way, what was the practical intention of Parliament? As already stated the purpose of 5(1)(ad) was to prohibit a particular type of weapon.

Elsewhere in the 2002 Guidance it is noted:

3.3 Category (i) above includes weapons such as machine guns, sub-machine guns, chain guns and the so-called “burst-fire” weapons in which several missiles (typically 3-5) are discharged in succession on a single application of the trigger. Case law also suggests that the courts should consider the actual operation of the firearm rather than the intent of the designers.

My underlining. This notion is reinforced by the subjective test standard imposed by the Court of Appeal in R. v. Law [TLR 04/02/1999].

The Taurus Judge is clearly a handgun in every sense of its meaning. Dimensionally it falls well within the scope of Section 5(1)(aba). In its rifled version it would also be (and I suggest would only be) s.5(1)(aba), although it would not benefit from the exemption in Section 4 of the 1997 Act. It operates as a conventional revolver.

If the ‘subjective test’ approach as to the capabilities of a weapon which the Courts have adopted is to be used by the authorities to accommodate a particular position, it must also be used and applied fairly across the spectrum of the Acts. In doing so the Taurus cannot possibly be classified as being a weapon subject to Section 5(1)(ad) as it does not operate in the manner described in Section 57(2B) or either detailed version of the Guidance to Police. Subjectively the Taurus falls squarely into 5(1)(aba) and therefore benefits from the exemption in Section 4 of the 1997 Act.

Legal Precedence within section 5

11. The prohibitions in Section 5 are laid out in a particular order. I suggest that this is itself of some importance. It was clearly Parliament’s intention over the years to prohibit certain types of firearms and thereby restrict their possession to persons who held the authority of the Defence Council, now the Secretary of State for the Home Department. This

began with the Firearms Act of 1937. As recently as 1968 there were only 2 categories of prohibited weapons. The current Guidance to Police sets out the order of all items in the current Section 5:-

“ 3.2

- i) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger (section 5(1)(a));*
- ii) any self-loading or pump-action rifled gun other than one which is chambered for .22 rimfire cartridges (section 5(1)(ab));*
- iii) 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 muzzleloading gun or a firearm designed as signalling apparatus (section 5(1)(aba));*
- iv) any self-loading or pump-action smoothbore gun which is not an air weapon or chambered for .22 rimfire cartridges and either has a barrel less than 24 inches in length or (excluding any detachable, folding, retractable or other moveable butt-stock) is less than 40 inches in length overall (section 5(1)(ac));*
- v) any smooth-bore revolver gun other than one which is chambered for 9mm rimfire cartridges or a muzzle-loading revolve gun (section 5(1)(ad));*
- vi) any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for linethrowing or pyrotechnic purposes or as signalling apparatus (section 5(1)(ae));*
- vii) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing (section 5(1)(b));*
- viii) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in (vii) above and, if capable of being used with a firearm of any description, any grenade, bomb or other like missile, or rocket or shell designed to explode as aforesaid (section 5(1)(c));*
- ix) any firearm which is disguised as another object (section 5(1A)(a));*

x) any rocket or ammunition not falling within (viii) above which consists of, or incorporates, a missile designed to explode on or immediately before impact and is for military use (section 5(1A)(b));

xi) any launcher or other projecting apparatus not falling within (vi) above and which is designed to be, or has been, incorporated in any launcher or other projecting apparatus not falling within (vi) above which is designed to be used with any rocket or ammunition falling within (x) above or with ammunition which would fall within that paragraph but for its being ammunition falling within (viii) above (section 5(1A)(c));

xii) any ammunition for military use which consists of, or incorporates, a missile signed so that a substance contained in the missile will ignite on or immediately before impact (section 5(1A)(d));

xiii) any ammunition for military use which consists of or incorporates a missile designed, on account of its having a jacket and hard-core, to penetrate armour plating, armour screening or body armour (section 5(1A)(e));

xiv) any ammunition which incorporates a missile designed or adapted to expand on impact (section 5(1A)(f));

xv) anything which is designed to be projected as a missile from any weapon and is designed to be, or has been incorporated in, any ammunition falling within any of the preceding paragraphs (see xii, xiii and xiv above); or any ammunition which would fall within any of those paragraphs but for it being specified at (viii) above (section 5(1A)(g))”

I should say for completeness that the Anti Social Behaviour Act 2003 added Section 5 (1) (af) [self contained gas cartridge weapons] to the list but this is not dealt with in predating Guidance.

12. As can be seen there are now 16 broad categories of prohibited weapons. Section 5 is not a perfect piece of Parliamentary drafting. It will be noted that S5(1)(aba) is below Section 5(1)(ab). This was observed and pointed out to the Home Office by interested parties after the

legislation had been given Royal Assent, but prior to the coming into force of the Act by Statutory Instrument. Because of this 'order of precedence' and a rewording of Section 5(1)(ab) from 'rifle' to 'rifled gun' most of the exemptions agreed to in the new law would have been rendered worthless. For example, any semi-automatic small firearm subject to exemption as an Historical firearm, Trophy of War, Humane dispatch pistol or the like would have been banned under Section 5(1)(ab) to which there are no exemptions.

13. To get round this drafting malaise the Home Office included a section in the enactment order of S5(1)(aba) to enable it to take effect without being prejudiced by S5(1)(ab). This confirms the commonly held view that all weapons are to be categorised within Section 5 according to the first, or highest, category into which they fall. To follow standard practice the Home Office does not issue multiple authorities for weapons that could arguably be covered by several prohibitions of the Act. They chose to apply them in order, the highest classification first. To take one example:- A Police issue Heckler & Koch MP5 is arguably caught by three categories. Firstly all of the MP5s sold to every police force across the country is capable of accepting a fully automatic trigger mechanism although virtually all of them are fitted with the semi-automatic version. As it was 'so designed or adapted' that two or more missiles can be successively discharged without repeated pressure on the trigger they are caught by section 5(1)(a). However in their issued form they are also a 'self-loading rifled gun' other than one which is chambered for .22 rimfire cartridges and caught by section 5(1)(ab). Finally the same weapon is also dimensionally a 'small firearm' which 'either has a barrel less than 30 centimetres in length and is less than 60 centimetres in length overall' and therefore caught by section 5(1)(aba). It is unknown for the Home Office to have required the holder of their authority to hold multiple classifications of permission for a single weapon. To do so would be an administrative nightmare as well as serving no purpose. The first bracket into which a weapon falls is that by which it is controlled.

The Taurus Judge is clearly not a machinegun, nor is it a self loading or pump action rifled gun. It is therefore controlled as the first type of weapon that it can adequately be classified as in the prohibited category, a small firearm as described section 5(1)(aba).

Application of European Convention on Human Rights

14. There is a further legal consideration. The *Human Rights Act 1998, Section 3* provides that any legislation must be read and given effect in a way which is “*compatible with convention rights*”, whenever it is possible to do so - see R.v.A. No 2 (2002) 1 AC 45. Article 8 of the Convention provides for the “*Right to Respect for Private and Family Life*” This can include the right to carry on a business – Neimietz v. Germany 16 EHRR. 97. All ‘human rights’ are subject to the public interest and there is always a balancing exercise to be made by the Courts. There is therefore a strong argument that even if Section 5 were to be interpreted on it’s face as proscribing sales of the Taurus by SDI, it would have to be ‘read down’ so as to allow the continuation of a lawful trade. As the obvious purpose of Section 5 of the 1997 Act is to protect the public, it could be argued that it is necessary to not uphold the right to carry on this particular business in this way, as public safety is paramount, however for the reasons I have set out I am firmly of the view that this trade is entirely lawful in any event. There must be a public interest in efficient vermin destruction? The ‘public interest’ does not therefore outweigh the right to continue the business. A further interesting point is that if a prosecution involves an interference with a defendant’s Convention Rights, it may lead to a discount in sentence if convicted – see Laskey v. United Kingdom 24 EHRR.39.

15. To summarise:-

- i) The Taurus plainly falls within Section 5(1)(aba) of the Principle Act. It can therefore benefit from the exemption contained within Section 4 of the 1997 Act.
- ii) Section 5(1)(ad) was passed to prohibit a particular type of ‘revolver smooth bore gun’ and was not intended to cover a conventional smooth bore revolver.
- iii) The Taurus does not operate in the manner described as the type of ‘smooth bore revolver gun’ prohibited in Section 5(1)(ad).
- iv) Whatever interpretations can be applied to the language of Section 5, Parliament permitted .410 shot pistols to be exempt from Section 5(1)(aba) in 1997, in circumstances where a different type of ‘revolver smooth bore gun’ was already prohibited in Section

5(1)(ad).

v) The 'order of precedence' in Section 5 is always applied to an item in accordance with the first category by which it is caught. The Taurus is therefore a Section 5(1)(aba) weapon, not 5(1)(ad).

vi) The *Human Rights Act 1998* protects the rights of individuals and businesses to carry on lawful trade unless this is outweighed by a public interest to the contrary. In this particular case there is no good argument relating to the Taurus (particularly as opposed to any other shot pistol) which would prevent this lawful trade from continuing.

In conclusion, for all of the reasons stated herein there is no good reason in law, or practice, why Sabre Defence Industries cannot continue to sell the Taurus to those who hold an appropriate firearms certificate.

16. Please contact me if I can be of further assistance, or clarification is needed of any aspect of this Opinion.

A handwritten signature in black ink that reads "Nick Doherty". The signature is written in a cursive style and is underlined with a single horizontal line.

NICHOLAS DOHERTY,

***4, King's Bench Walk,
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11th November 2009.

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LIMITED**

**AND S.5 OF THE FIREARMS
ACT 1997**

OPINION

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LRS

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