

**EXPLANATORY MEMORANDUM TO**  
**THE VIOLENT CRIME REDUCTION ACT 2006 (REALISTIC IMITATION**  
**FIREARMS) REGULATIONS 2007**

**2007 No. 2606**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 These Regulations are made in connection with the implementation of sections 36 to 38 of the Violent Crime Reduction Act 2006 (the **2006 Act**) and the equivalent Northern Ireland provisions in paragraphs 4 to 6 of Schedule 2 to that Act. Those sections/paragraphs contain provision dealing with realistic imitation firearms which essentially are imitation firearms which have an appearance so realistic as to make them indistinguishable for all practical purposes from a real firearm. The 2006 Act makes it an offence to manufacture, import or sell realistic imitation firearms. These Regulations contain further defences to these offences, supplement an existing defence as set out in the Act and make provision in connection with the definition of realistic imitation firearms.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 Section 36 of the 2006 Act makes it an offence to manufacture, import or sell realistic imitation firearms. The Government accepts that there are some legitimate uses for realistic imitation firearms which present negligible risk to public safety and it has included in section 37 of the 2006 Act defences for the purposes of activities such as film, theatre, television and historical re-enactment.
  - 4.2 These Regulations are being made to provide for further defences to the offences in section 36 and to specify those persons to whom the existing defence for historical re-enactment in section 37 will apply. The Regulations are also being made to specify what colours and size of imitation firearms will be regarded as unrealistic. An undertaking was given by the Government to Parliament to provide the defence at regulation 3(2)(a); please see Lords Hansard for 16 October 2006, column 599 and paragraph 7.7 below for more details.
  - 4.3 These Regulations also make identical provision in relation to the equivalent Northern Ireland provisions in paragraphs 4 to 6 of Schedule 2 to the 2006 Act.
  - 4.4 This is the first use of the powers in sections 36 to 38 of and paragraphs 4 to 6 of Schedule 2 to the 2006 Act.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Imitation firearms feature in a significant number of crimes, ranging from nuisance and intimidation to armed robbery. For example, in 2005/6 there were 3,275 offences involving imitation firearms in England and Wales. One aspect of the problem is the misuse of realistic imitation firearms, which can often be passed off as real guns. The Government decided to tackle this problem at source by banning the manufacture, import and sale of realistic looking imitations. Section 36 of the 2006 Act achieves this, subject to various defences for certain legitimate purposes.

7.2 During the passage of the Act through Parliament, the Government accepted that realistic imitation firearms were an intrinsic part of airsoft skirmishing. Airsoft skirmishing is a recreational activity in which participants act out military or law enforcement scenarios. The Government undertook to provide a suitable defence which would not undermine the overall policy intention. This defence is set out in regulation 3(2)(a). An important aspect of this defence is the requirement that third party public liability insurance must be held, as a means of ensuring that the defence is limited to genuine, organised airsoft skirmishing.

7.3 Many exhibitors at arms fairs use realistic imitation firearms to advertise their products rather than risk bringing real firearms to events. The Government does not wish to discourage this sensible practice and has included in the Regulations a suitable defence in regulation 3(2)(b).

7.4 Section 37(2)(e) of the 2006 Act already provides a defence for the organisation and holding of historical re-enactments and gives the Secretary of State a power to make regulations to describe the persons to whom the defence applies. Regulation 5 describes these persons, requiring that third party public liability insurance must be held, as a means of ensuring that the defence is limited to genuine, organised historical re-enactments.

7.5 Section 38 of the 2006 Act allows the Secretary of State to specify in regulations the size and colours of imitation firearms that will not be regarded as realistic for a real firearm. This is designed to give business some certainty over the type of imitation they can legitimately trade in. Regulations 6 and 7 specify dimensions and colours which are unrealistic for a real firearm.

7.6 These Regulations also make identical provision in relation to the equivalent Northern Ireland provisions in paragraphs 4 to 6 of Schedule 2 to the 2006 Act.

## *Consultation*

- 7.6 Key stakeholders in Great Britain such as the police, shooting organisations, representatives of airsoft skirmishing, representatives of re-enactment societies, representatives of the toy industry and the gun control lobby were consulted on a draft version of these Regulations. Consultees were broadly content with the proposals and amendments have been made to take account of their detailed comments where necessary. The Gun Control Network was opposed to providing a defence for the purposes of airsoft skirmishing on the basis that this would undermine the ban on the supply of realistic imitation firearms. In response, the Home Office is writing to the Gun Control Network, highlighting the safeguards that will exist under this defence, which the Government considers will not undermine the ban.
- 7.7 A similar consultation was carried out of stakeholders in Northern Ireland. No comments were received on the Regulations.

## *Guidance*

- 7.7 The Home Office will be issuing guidance in the form of a circular letter to the police, which will be made available on the Home Office website. It is also working with stakeholders to ensure their members are aware of the Regulations. The Northern Ireland Office will be issuing guidance which will be made available on its website. The Northern Ireland Office will also issue a press release.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies additional to that imposed by the 2006 Act. A Regulatory Impact Assessment was prepared for the 2006 Act and a copy is attached for information.

## **9. Contact**

- 9.1 In relation to Great Britain, Dennis Wilmer at the Home Office Tel: 020 7035 1786 or e-mail: [dennis.wilmer@homeoffice.gsi.gov.uk](mailto:dennis.wilmer@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument. In relation to Northern Ireland, Eric Kingsmill at the Northern Ireland Office Tel 028 905 22738 or email: [eric.kingsmill@nio.x.gsi.gov.uk](mailto:eric.kingsmill@nio.x.gsi.gov.uk) can answer any queries regarding the instrument.

## REGULATORY IMPACT ASSESSMENT

### 1. Title of proposal

**VIOLENT CRIME REDUCTION BILL - Amendment to firearms legislation to ban the sale, import and manufacture of realistic imitations and to prohibit the sale of imitation firearms to persons under the age of 18. Also to introduce tougher sentences for the possession of an imitation firearm in a public place without reasonable excuse.**

### 2. Purpose and intended effect

#### *Objective*

2.1 The objective is to save police time dealing with crimes involving imitation firearms, in particular by persons under the age of 18, and to prevent the manufacture of particularly realistic imitations.

#### *Background*

2.2 In recent years, the use of imitation firearms has been a cause of concern in circumstances ranging from nuisance to armed robbery.

2.3 At present, there are three main controls in law on the misuse of imitation firearms. The first is the Firearms Act 1982, which provides for an imitation firearm to be treated as a real firearm in law if:

(a) it has the appearance of being a firearm to which section 1 of the Firearms Act 1968 (firearms requiring a certificate) applies; and

(b) it is so constructed or adapted as to be readily convertible into a firearm to which that section applies.

2.4 This law was introduced principally to prevent the sale of blank-firing imitation firearms of a kind that could be converted to fire live ammunition by fairly simple changes (eg, cutting off a blanked-off barrel).

2.5 The second main control is through the Firearms (Amendment) Act 1994. This creates a criminal offence of possessing a firearm or imitation firearm with intent to cause fear of unlawful violence. For these purposes, an 'imitation firearm' is defined as 'any thing, which has the appearance of being a firearm ..... whether or not it is capable of discharging any shot, bullet or other missile.' This measure was intended to allow the police to deal with the misuse of imitations as a threat by criminals.

2.6 Several other sections of the 1968 Act aimed at the prevention of crime and the preservation of public safety also deal with the misuse of imitations. For example, under section 17 it is an offence to make use of a firearm or an imitation firearm with intent to resist or prevent arrest. Furthermore, a person found in possession of an imitation when arrested for certain specified offences is guilty of an offence unless he can show that he had it for a lawful object. Under section 18 it is an offence for a person to have with him an imitation firearm with intent to commit an indictable offence, or to resist arrest, or to prevent the arrest of another. Section 20, on trespassing with a firearm, also applies to an imitation firearm by virtue of section 2(1) of the 1994 Act.

2.7 The third main control is through section 19 of the 1968 Act, which was amended by section 37 of the Anti-social Behaviour Act 2003 to create a new arrestable offence of possessing an imitation weapon in a public place without lawful authority or reasonable excuse. The aim was

not to interfere unduly with the legitimate use of imitations, but to allow the police to deal with those who were either misusing them or carrying them around in suspicious circumstances.

2.8 An imitation firearm is defined in section 57 of the 1968 Act as anything having the appearance of a firearm whether or not it is capable of discharging any shot, bullet or other missile. This is a wide-ranging definition, which could include exact metal replicas designed as collector's items, soft air-guns designed to fire plastic pellets with very low muzzle energy, some children's toy guns and probably antiques. It works in practice by virtue of the fact that it is subject to a qualifier, relating either to its design (whether or not it is readily convertible), or to its misuse (whether or not it is possessed to cause fear of unlawful violence).

#### *Rationale for government intervention*

2.9 There is an extensive range of offences in place to deal with incidents involving the misuse of imitation firearms. These measures are starting to have some impact and a total of 2,766 offenders were charged, cautioned or convicted in 2004 for offences under sections 16(a), 19(b) and (d) of the Firearms Act 1968. Nevertheless there is still real public concern about the growing trend for some young men to carry imitation firearms and their use in crime has continued to rise. In 2001/02 there were 1,245 offences involving imitation firearms. By 2003/4 this had risen to 2,146, an increase of 72%. Many imitation firearms are extremely difficult to tell apart from the real thing and, because they are not subject to certificate control, are easily obtained by all ages. Evidence would suggest that a large part of the overall problem is caused by young people misusing imitations and the Government believes that measures are needed to tighten up on purchase and sale of these guns, which can be as frightening to confront as real firearms and cause particular problems for the police when armed response units are called out in response to reports of people seen with guns. A ban on the manufacture of realistic imitations is also proposed.

### **3. Consultation**

3.1 The Home Office issued in May 2004 a consultation paper to a wide range of interested parties and other Government Departments entitled *Controls on Firearms* which drew attention to the fact that imitations are freely available without licence and have proved attractive to criminals who may not have the resources, or may not want to possess real guns. Respondents were asked to say whether they thought imitations should be licensed or their sales restricted. Although the majority of those who commented were not in favour of a licensing regime and were against restricting sales, a third of those who expressed a view supported some controls, particularly of sales to young people.

### **4. Options**

4.1 The following options have been considered

#### *Option 1 – Do nothing*

4.2 Although the existing range of offences, if vigorously enforced, go some way towards dealing with problems of misuse, they do not help the police by addressing the problem at source. The police can only act once an offence has been committed or when the imitations are already being carried in public without reasonable excuse. Often this will result in the police being called out to deal with somebody brandishing what turns out to be an imitation firearm in the street and on a small number of occasions people have been shot dead as a result. At the moment the police are powerless to stop young and often impressionable youngsters going into a shop and buying very realistic imitations which they then misuse, either deliberately, recklessly or with little appreciation of the consequences.

#### *Option 2 – Make imitations subject to a certification scheme*

4.3 Imitations are freely available without a licence which means that any person wishing to purchase a realistic copy of a modern handgun for criminal purposes may do so without any checks on their criminal background or fitness. However, although a system of licensing or certification would mean these checks could be made, a significant number of imitations are owned for wholly legitimate purposes and any benefits of a licensing system would be heavily outweighed by the administrative burden and the impracticalities of enforcement.

*Option 3 – Restrict sales to persons under 18.*

4.4 The misuse of imitations is, in the main, thought to be committed by young people or those who see it as an entry-level firearm for committing armed robbery. Armed police are frequently being called out to deal with incidents of young people reported for brandishing a gun where it might not be immediately clear whether the gun is real or not. Given these problems, a restriction on the age at which imitation firearms can be purchased would help to reduce the incidence of misuse. It would still be open to parents to buy imitations for use by their children where they wished to do so. The offences of possession in a public place without reasonable excuse would continue to apply to all age groups.

*Option 4 – Ban the sale, import and manufacture of realistic imitation firearms*

4.5 It is difficult to say with any certainty how many imitation firearms there are at present. Conservative estimates, disregarding children's toys and low-level imitations, but including soft air-guns, give a total of not less than 10 million. These include re-creations of muzzle-loading firearms made to standards close to the original antique firearm. They also include sturdy and substantial copies of modern firearms, including pistols and revolvers and automatic weapons, some of which may be capable of firing blank cartridges. And they include soft air-guns made of plastic, which closely resemble real firearms but have a short survival life. If children's toys and the like were included, that number must be at least doubled.

4.6 Imitation firearms are owned and used for a variety of purposes. Many children's toy guns fit the definition of an imitation firearm, and although no precise figures are available they are known to have been used in some of the 2,146 offences involving imitation firearms in 2003/04. Imitation firearms are used in the theatrical and film industries to avoid the complications of using real firearms. They are also extensively used by re-enactment societies, and for war games. Moreover, a large number form part of collections of firearms or fill gaps in existing collections. There are also deactivated weapons, which are real guns with their working parts modified, which ceased to be a 'firearm' for legal purposes.

4.7 The repercussions of a total ban on sale, import and manufacture would therefore be quite extensive and would impact on businesses selling imitation guns. Most problems arise from the misuse of imitations that look like real firearms and this might be addressed by a ban on the sale, import and manufacture of realistic imitations, albeit that a system which allowed for legitimate use would have to be devised.

*Option 5 – A total ban on the possession imitation firearms.*

4.8 A total ban on the possession of imitations would require a mechanism for collecting the 10 million or more items currently in circulation; also the payment of a substantial sum by way of compensation which of itself would require a significant administrative effort.

## **5. Costs and benefits**

### *Sectors and groups affected*

5.1 The misuse of imitation firearms affects the following sectors and groups:

- communities – which suffer from the 2,146 crimes committed with imitations in 2003/ 04as well as nuisance, fear and intimidation;
- police – who have to deal with offences and to deploy armed response teams. Also the Crown Prosecution Service, courts, prisons and probation service who have to deal with offenders;
- people who use imitation firearms responsibly;
- businesses which sell imitations;
- potential victims of crime involving imitation firearms, this includes the general public and staff and owners of businesses.

### *Benefits*

5.2 There would be no benefit to communities and the police from option 1. Although existing legislation provides some remedy, it is not sufficient to deter people from buying cheap imitations and then misusing them. This is supported by the rising trend in imitation gun crime in the face of the existing legislation.

5.3 Option 2 would reduce the number of irresponsible people able to obtain imitations legally and thereby reduce crime and fear of crime in communities.

5.4 Option 3 would restrict the availability of such guns to young people who are most likely to misuse them and would reduce crime and fear of crime in communities and reduce the amount of police time spent in dealing with incidents. This would probably not be as effective as option 2 as it would not provide additional checks such as criminal background checks. However, it is generally accepted that young people are associated with a large amount of imitation gun crime.

5.5 Option 4 would significantly reduce the availability of imitation firearms and would be more effective than either of the above measures. However, it would not reduce the existing stock of imitation firearms.

5.6 Option 5 would make new imitation firearms unavailable and would significantly reduce the existing stock. However, it is likely that given the large number of imitations already sold, without any records being kept, many would remain in circulation.

### *Costs*

5.7 Option 1 imposes no additional costs.

5.8 Option 2 imposes administrative costs on the police as the licensing authority, and on retailers who would need to check for a valid certificate before making a sale. Businesses would also be expected to lose sales as some potential purchasers would be deterred by the cost and inconvenience of having to obtain a certificate. A cost would fall on customers themselves in terms of the fee and time taken to apply for the certificate. Rough estimates of these costs are presented in the table below:

Estimate	Value	Assumptions
Estimated total number of sales – This estimate is conservative as it is based on a subset of relevant sales.	350,000- 700,000 sales. 175,000- 350,000 sales	Based on sales of blank firers and airsoft guns. Assume 1/2 of sales are from new owners.

	to new owners	
Cost to police	£8.75-£17.5m	Assumes £50 fee for a new certificate.
Administrative cost to businesses	£0.3m-£0.6m	Assume 5 min of staff time @ £10ph per sale.
Loss of business	£1.5m-2m (£15m – £20m sales)	Assumes a profit rate of 10% on sales of £30-40m total. Assume that 50% of sales are lost.
Cost to individuals	£0.3m-£0.6m	Assumes it takes ½ an hour @£5 per hour for each application
Total cost	£11m-21m	One flaw with this estimate is that the more people that are deterred from applying the lower the admin costs. Also fewer sales imply less admin cost.

5.9 These estimates do not include police enforcement costs or the costs of renewing certificates.

5.10 Option 3 would have some cost to business through loss of sales to under 18s. It is difficult to know how extensive these costs might be without knowing what proportion of sales are to the under 18s although it is likely that many airsoft guns are sold to this age group. Furthermore, the cost may be counteracted by purchases by adults on behalf of under 18s. It is reasonable to assume that the cost of lost sales and profits will be similar to that of option 2, since one might reasonably expect many of the under 18s to be refused licences. This option avoids the administrative burden to the police, firms and individuals of option 2. It is assumed that retailers could verify age at little inconvenience. This implies total costs of between £1.5 and £2m to society, estimated by assuming 10% profit on sales. Businesses could lose £15m-£20m sales in total.

5.11 Option 4 would have a significant effect on businesses since all sales of “realistic” imitations would be lost. The estimated cost of lost profits would be £3m-4m again assuming a 10% profit rate on lost sales of £30-40m. This is based on the current size of the market for blank firers and soft air guns. There would be additional costs to the police and criminal justice system of pursuing offenders, however these have not been estimated as it is difficult to estimate how many will continue to offend.

5.12 Option 5 would create the biggest burden for business. Excluding toys, sales are estimated at £30-40m. There would be additional costs to the police and prosecution authorities in pursuing offenders. These are likely to exceed those of option 4 as possession would also be illegal. There would be an additional one off cost involving collecting the existing estimated 20 million imitation firearms in circulation. Assuming these cost a conservative estimate of £15 each (we accept that some imitations can cost considerably more than this) this would imply compensation to the value of £300m and significant administration cost to the public sector, and compliance costs for individuals who would need to travel to a police station to surrender their imitations.

## 6. Small Firms Impact Test

Many responsible retailers are already cautious about selling certain imitations to young people and the imposition of a statutory age limit would only have a limited effect on sales, given that parents could buy them for their children. The estimated sale of blank firers and soft air guns is 350,000 per annum. If realistic toys are included that number could probably be at least doubled. Any total ban on the sale of imitation weapons would affect a number of companies in the supply chain from importers through to distribution and sale.

## **7. Competition Assessment**

7.1 There are no competition issues.

## **8. Enforcement, sanctions and monitoring**

8.1 Enforcement would be a matter for the police and the maximum penalty would be in line with the existing offence of selling an air weapon to a young person, ie 6 months or a level 5 fine or both.

## **9. Implementation and delivery plan**

9.1 The necessary legislative provisions are included in the Violent Crime Reduction Bill. The affected groups and sectors will be notified of the new provisions before they come into force.

## **10. Post implementation review**

10.1 The Home Office will review the effectiveness of the new provisions by monitoring statistics for the misuse of imitation firearms and through feedback from the sectors and groups affected.

## **11. Summary and recommendation**

11.1 The preferred option is for a ban on the sale, import and manufacture of all realistic imitations, as in option 4, combined with restrictions on the sale of imitations to persons under 18, as in option 3. As an additional deterrent the existing sentence for possessing imitations in a public place without reasonable excuse will be doubled.