

VIOLENT CRIME REDUCTION ACT 2006 (COMMENCEMENT No3) ORDER 2007; and

VIOLENT CRIME REDUCTION ACT 2006 (COMMENCEMENT No4) ORDER 2007: FIREARMS MEASURES

Circular 12/2007 advised of the commencement on 6 April 2007 of certain firearms provisions in Part 2 of Violent Crime Reduction Act 2006. This circular, which has been drawn up in consultation with ACPO's Firearms & Explosives Licensing Working Group and with ACPO Scotland, advises of the commencement on 1 October 2007 of the remaining firearms provisions in that Act. The relevant commencement orders can be downloaded from the following links:

www.opsi.gov.uk/si/si2007/uksi_20072180_en.pdf

www.opsi.gov.uk/si/si2007/uksi_20072518_en.pdf

Sections 31 and 32: Sales or transfers of air weapons

2. Section 31(1) makes it an offence for anyone to sell or transfer air weapons by way of trade or business unless they are registered with the police as a firearms dealer. Section 31(2) requires dealers to keep a register of transactions involving air weapons. Dealers will not be required to keep records of ammunition sales. Section 31(3) amends the definition of 'firearms dealer' in section 57(4) of the Firearms Act 1968 and was brought into effect on 6 April to allow businesses time to apply for registration as a dealer. The remainder of the section, including the new offence, comes into effect on 1 October.

3. The new provisions apply to air weapons, their component parts and accessories. As with other firearms, there is no definition of a component part but the Home Office takes the view that this means the pressure bearing parts of air weapons, such as the barrel, cylinder or reservoir and the piston. As for accessories, only moderators (silencers) will need to be registered by dealers. The new provisions do not apply to ammunition for air weapons. Nor do they apply to specially dangerous air weapons, which should continue to be treated as either section 1 or section 5 firearms.

4. In cases where a dealer trades only in air weapons, chief officers will want to condition their registration accordingly. The following wording for the condition is suggested:

"The holder of this certificate is restricted to trade only in those air weapons not declared to be specially dangerous. The holder shall give prior notice in writing to the chief officer of police if at any time he/she wishes to commence trading in other firearms or ammunition."

5. A second condition relating to security should also be imposed. The following wording is suggested:

“Reasonable measures shall be taken to maintain the safekeeping of all firearms dealt with or kept in the course of the registered firearms dealer’s business.”

6. Circular 12/2007 mentioned that amended Firearms Rules were being prepared to specify how dealers must record air weapon transactions. These Rules were made on 6 September and can be downloaded from the following link: <http://www.opsi.gov.uk/si/si2007/20072605.htm>. They amend Schedule 4 to the 1968 Act and require dealers to record the quantities and description of air weapons purchased, acquired, sold or transferred together with the names and addresses of the other parties involved. They also require dealers to record the quantities and description of air weapons possessed for sale or transfer at the date of the last annual stock take. The Rules also amend Part IV of Schedule 5 to the Firearms Rules 1998 to specify how air weapons should be described in the register. These requirements are virtually the same as for other firearms but new paragraph 2(ac) provides that in the case of dealer-to-dealer transactions, only the class of air weapon need be recorded.

7. Circular 12/2007 explained that it will not be necessary to register as a firearms dealer where sales or transfers involve only antique air weapons which are kept as curiosities or ornaments. The Home Office view was given that, for the purposes of section 31, any air weapon manufactured before 1939 should normally be regarded as an antique. Attached at Annex A to this circular is a note prepared by Bill Harriman on behalf of the Historic Firearms Reference Panel, which provides police forces with some guidance on the most common types of air weapon manufactured before 1939.

8. Section 32 of the 2006 Act requires that air weapons sold to an individual by way of trade or business must be handed over in person. This provision is modelled on the arrangements which already exist in section 32 of the Firearms (Amendment) Act 1997 for other firearms.

9. Section 32(2) allows a representative of the seller to be present instead. Section 32(3) defines a representative as an employee of the dealer, another registered firearms dealer or an employee of another registered firearms dealer. This is intended to avoid the need for a purchaser to travel long distances to a dealer in order to receive an air weapon in person. Instead, the air weapon could, for example, be sent to a dealer nearer to the purchaser so the sale can be completed more conveniently.

10. Section 32 does not apply to dealer-to-dealer transactions.

Section 33: Age limits for purchase etc of air weapons and ammunition

11. This section raises from 17 to 18 the age at which a young person may have an air weapon and ammunition for air weapons. From 1 October 2007, an age limit of 18 will apply to:

- purchasing or hiring an air weapon (section 22(1) of the Firearms Act 1968);

- having an air weapon without adult supervision etc (section 22(4) of the 1968 Act);
- selling or hiring an air weapon to a young person (section 24(1) of the 1968 Act); and
- making a gift of an air weapon or parting with possession of an air weapon (section 24(4) of the 1968 Act).

Section 34: Firing an air weapon beyond premises

12. Sections 23(1) and (4) of the Firearms Act 1968 already make it an offence to fire an air weapon beyond the boundary of premises. However, the offences are limited to young persons and to the adults supervising them. Section 34 of the 2006 Act replaces the existing offences for young people with a new offence for anyone of any age to fire an air weapon beyond the boundary of premises. The offence relating to adults supervising young persons is preserved.

13. A defence is provided to cover the situation where the person shooting has the consent of the occupier of the land over or into which he shoots. Consent can be specific or by way of a general consent. The same defence applies to adults supervising young persons.

Sections 36 to 38: Realistic imitation firearms

14. These sections introduce a ban on the supply of realistic imitation firearms.

15. Section 36 makes it an offence to manufacture, import or sell realistic imitation firearms. It also makes it an offence to modify an imitation firearm to make it realistic. Subsection 7 provides that imported realistic imitation firearms will be liable to forfeiture under customs and excise controls.

16. Section 37 provides various defences to the new offence. It makes it a defence to show that the manufacture, importation, sale or modification was only for the purpose of making the realistic imitation firearm available for:

- a museum or gallery;
- theatrical performances and rehearsals of such performances;
- the production of films and television programmes;
- the organisation and holding of historical re-enactments; and
- crown servants.

17. Subsection 3 provides a further defence for businesses to import realistic imitation firearms for the purpose of modifying them to make them non-realistic.

18. Subsection 7 provides that "museum or gallery" includes institutions which are open to the public and whose purpose includes the preservation, display and interpretation of material of historical, artistic or scientific interest. Historical re-enactment is defined as "any presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time

or period in the past". This is intended to include a range of re-enactment activities, including the display of military vehicles at shows and presentations to school children by war veterans.

19. Section 36(3) gives the Secretary of State a power to provide for further exceptions, exemptions or defences. This power has been exercised to make the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007, which can be downloaded through the following link: <http://www.opsi.gov.uk/si/si2007/20072606.htm>. The regulations provide for two new defences. The first is for the organisation and holding of airsoft skirmishing. This is defined by reference to "permitted activities" and the defence applies only where third party liability insurance is held in respect of the activities. The second new defence is for the purpose of display at arms fairs, defined in the regulations by reference to "permitted events".

20. The regulations also specify the persons who can claim the defence for historical re-enactment. This is restricted to those organising or taking part in re-enactment activities for which third party liability insurance is held.

21. For manufacturers, importers and vendors to claim one of the defences, they must be able to show that their conduct was for purpose of making realistic imitation firearms available for one of the reasons specified in the defences above. How they should satisfy themselves of this will vary from case to case and it might be advisable for them to keep a record of this for each transaction. In some cases they could ask to see, for example, a letter from the commissioning film or television company. In others, for example an importer, they might want to rely on orders from a supplier to the film industry. For re-enactments, it would be advisable to ask to see any membership card and to check that either the individual or the re-enactment society holds the required insurance. For airsoft skirmishing, the Association of British Airsoft is putting in place arrangements to allow retailers to check that individual purchasers are members of a genuine skirmishing club or site. The key elements of these arrangements are:

- new players must play at least 3 times in a period of not less than 2 months the 2 months before being offered membership;
- membership cards with a photograph and recognised format will be issued for production to retailers;
- a central database will be set up for retailers to cross-check a purchaser's details; and
- a member's entry on the database will be deleted if unused for 12 months.

22. The defence for airsoft skirmishing can apply to individual players because their purchase of realistic imitation firearms for this purpose is considered part of the "holding" of a skirmishing event.

23. Section 38 defines a “realistic imitation firearm” as an imitation firearm which has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm. “Imitation firearm” is defined in section 57(4) of the Firearms 1968 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”. The term “real firearm” is defined in section 38(7) as either a firearm of an actual make or model of a modern firearm, or a generic modern firearm. The term “modern firearm” is defined in subsection 8 as a firearm other than one whose appearance would tend to identify it as having a design and mechanism of a sort first dating before 1870. The effect of this definition is that realistic imitations of pre-1870 firearms are not caught by the new offence. Deactivated firearms and antique imitations (such as old dummy rifles used for drill practice) are expressly excluded from the definition of realistic imitation firearm and are therefore not affected by the new offence either.

24. Whether an imitation firearm falls within the definition of a realistic imitation firearm should be judged from the perspective of how it looks at the point of manufacture, import or sale and not how it might appear if it were being misused - for example, in the dark and from a distance. Subsection 2 provides that an imitation firearm should not be regarded as distinguishable from a real firearm if only an expert can tell the difference or the difference is only apparent on close examination or as a result of attempting to load or fire it. Subsection 3 provides that in determining whether an imitation firearm is realistic, its size, shape and principal colour must be taken into account, and it is to be regarded as realistic if these features are unrealistic for a real firearm.

25. Subsection 4 gives the Secretary of State a power to make regulations specifying dimensions and colours that will be regarded as unrealistic. This is designed to provide business with a degree of certainty over what they can trade in. The aforementioned Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 specify the following dimensions and colours:

- a height of 38mm and a length of 70mm. An imitation firearm with dimensions less than this is to be regarded as unrealistic;
- transparent;
- bright red;
- bright orange;
- bright blue
- bright yellow;
- bright green;
- bright pink; and
- bright purple;

26. An imitation firearm whose principal colour is not one of those listed in the regulations does not automatically fall to be regarded as realistic, although it is more likely that will be the case. In these circumstances, the general test of whether it is distinguishable from a real firearm, taking into account its size, colour etc, should be applied. It is worth keeping in mind that the intention behind

this measure is to stop the supply of imitations which look so realistic that they are being used by criminals to threaten and intimidate their victims.

27. The definition of realistic imitation firearm given in the VCR Act and the colours and dimensions specified in the regulations relate only to the new offence of manufacturing, importing, modifying or selling such items. They are not intended to affect in any way the definition of an imitation firearm in section 57(4) of the Firearms Act 1968 or how that definition is applied elsewhere in firearms law – for example, in firearms offences such as sections 16A, 17, 18, 19 and 20 of the 1968 Act. The fact that a bright pink imitation firearm is not regarded as being realistic under the VCR Act provisions would not in itself stop it being regarded as an imitation in the commission of one of these offences.

Section 39: Specification for imitation firearms

28. This section makes it an offence to manufacture or import an imitation firearm which does not conform to specifications to be laid down by the Secretary of State. It also makes it an offence to modify an imitation firearm so that it does not conform to the specifications or to modify a firearm to create an imitation firearm which does not so conform. The intention is to put in place manufacturing standards which will prevent imitation firearms being converted to fire live ammunition and further guidance will be provided when the regulations have been made.

Section 40: Supplying imitation firearms to minors

29. This section introduces two new offences. It makes it an offence for anyone aged under 18 to purchase an imitation firearm and for anyone to sell an imitation firearm to someone aged under 18.

30. “Imitation firearm” is defined in section 57(4) of the Firearms 1968 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”. It will ultimately be for the courts to decide whether any item falls within this definition but clearly it will apply to the purchase and sale of realistic imitation firearms where this is allowed under one of the statutory defences (see sections 36 to 38 above). It will also apply to non-realistic imitations which nevertheless have “the appearance of being a firearm”. This could include some children’s toys although many toys will look so different from a firearm they might not be regarded as an imitation at all (for example, some of the more futuristic looking space guns). Where a toy is considered to be an imitation firearm, the purchase will have to be made by a parent or other person aged over 18.

31. There is a defence for anyone charged with the offence of selling an imitation firearm to someone under 18, where he can show that he had reasonable grounds for believing the purchaser to be 18 or over – for example, by seeing credible proof of age.

Section 41: Increase of maximum sentence for possessing an imitation firearm

32. This section increases to 12 months the maximum custodial sentence for an offence under section 19(d) of the Firearms Act 1968 of carrying an imitation firearm in public without reasonable excuse. The offence becomes triable either way.

Annex A

SCHEDULE OF MASS-PRODUCED ANTIQUE AIR WEAPONS WHOSE PRODUCTION PERIOD PRE-DATES 1939

Air weapons from the 17th – 19th century are readily identifiable and tend to be of the pre-charged pneumatic type with detachable reservoirs. They fall into two main types: those which resemble conventional firearms and those which are modelled on walking sticks. Bellows and compressed spring mechanisms are also encountered.

The beginning of the 20th century saw the introduction of mass-produced air weapons. Below are lists of air weapons which were mass-produced before 1939.

Air rifles & air guns

Bonehill Britannia
Britannia "Anglo Sureshot Mk 1"
Improved Britannia
BSA L Model
BSA H Model
BSA Lincoln Model
BSA Improved Model B
BSA Improved Model D
BSA Military Pattern
BSA "A" Series
BSA Standard Model (T Prefix and Club Specials)
BSA "Break Action"
Crank operated gallery rifles/guns (all types).
Daisy M 1901
Daisy B-1000
Daisy Model C
Daisy Model H
Daisy Number 12
Daisy Model 29
Daisy Model 40
Diana Model 16
Diana Model 20
Diana Model 25
Diana "Break Action"
Diana Model 48
"Gem" all types
Giffard compressed CO2 all types.
Greener "Break Action"
Haenel Model I D R P
Haenel Model II
Haenel Model III
Haenel Model IV
Haenel Model VIII

Haenel Model X, XV and XX
Haenel Model 45
Hot Shot
Lane's Musketeer
Langenhahn "Favorit 1"
Langenhahn "Millita" Models
Markham (all models)
Marco
Midland Gun Co Demon "Break Action"
Midland Gun Co "Perfecta"
Pfeil (all models)
Precision air rifle (Oscar Will)
Quackenbush (all models)
Remington Model 26
Roland Model 1927 (marketed under various names)
Speedy air rifle
Tell air rifles (Oscar Will)
Webley Mark 1
Webley Mark 2 Service air rifle

Air pistols

Accles & Shelvoke "Warrior"
Anson "Firefly"
Bedford and Walker "Eureka"
Britannia
Daisy "Targeteer" (fixed rear sight = pre 1940)
Diana Model 1
EmGe "Zenit"
Haenel 26
Haenel 28
Haenel 28 Repeater
Hubertus (as sold by Midland Gun Co)
Iver Johnson "Champion"
Lincoln Jefferies "The Lincoln"
Pope Bros "Rifle"
Quackenbush
Siptonon
Snow & Cowe "Kalamazoo"
Tell II
Tell III
Titan (Frank Clarke, Birmingham?)
Westley Richards "Highest Possible"
Webley Mark 1 (straight butt with wooden grips)
Webley Mark 1 (raked butt with plastic grips, No knurled section on barrel)
Webley "Junior" (wooden or pressed steel grips; post war have rounded butt)
Webley Mark II Target
Webley "Senior" (Straight butt wooden grips)
Webley "Senior" (Slant butt plastic grips. Highest known serial no17578)

1) This list is not definitive and further work is being done to isolate defining features for pre 1939 Webley air pistols.

2) There is a significant class of air pistols with push-in spring loaded barrels which are generically referred to as "Gat" or "Gat type". Those which predate 1939 are as follows.

Briton, Briton De-Luxe and Super Briton
Dolla
Dolla (William Tell)
Diana Model 2
Limit

Those post-dating 1939 are:-

The Gat made by T J Harrington of Walton Surrey
Original Model 2