

Implementation Date: 1 October 2007

**VIOLENT CRIME REDUCTION ACT 2006 (COMMENCEMENT No3)
ORDER 2007 AND (COMMENCEMENT NO 4) ORDER 2007**

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

FIREARMS MEASURES

This Guidance, 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 imitation 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 and
www.opsi.gov.uk/si/si2007/uksi_20072518_en.pdf.

The Regulations can be downloaded from the following link:

www.opsi.gov.uk/si/si2007/uksi_20072606_en.pdf

Schedule 2, paragraphs 4 to 6: Realistic imitation firearms

2. These paragraphs introduce a ban on the supply of realistic imitation firearms.
3. Paragraph 4 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. Sub-paragraph 7 provides that imported realistic imitation firearms will be liable to forfeiture under customs and excise controls.

Paragraph 5 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.

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

5. Sub-paragraph 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.

6. Paragraph 4(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".

7. 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.

8. 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 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.

9. 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.

10. Paragraph 6 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 Article 2(2) of the Firearms (Northern Ireland) Order 2004 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 paragraph 6(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 sub-paragraph 8 as a firearm other than one the appearance of which 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.

11. 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 be appear if it were being misused - for example, in the dark and from a distance. Paragraph 6(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. Paragraph 6(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 distinguishable if these features are unrealistic for a real firearm.

12. Paragraph 6(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 about those imitations in which they can trade. 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 yellow;
- bright green;
- bright pink;

- bright purple; and
- bright blue.

13. An imitation firearm the principal colour of which is not one of those listed in the Regulations does not automatically fall to be regarded as realistic, although it is more likely that 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.

14. 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 Article 3(2) of the Firearms (Northern Ireland) Order 2004 or how that definition is applied elsewhere in the 2004 Order – for example, in firearms offences such as those in Articles 58, 59, 60, 61 and 62. 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.

Schedule 2, paragraph 7: Specification for imitation firearms

15. This paragraph 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.

Schedule 2, paragraph 8: Supplying imitation firearms to minors

16. This paragraph 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.

17. “Imitation firearm” is defined in Article 2(2) of the 2004 Order 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 Schedule 2, paragraphs 4 to 6 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 that they might not be

regarded as imitations 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.

18. 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.

Schedule 2, paragraph 9: Increase of maximum sentence for possessing an imitation firearm

19. This paragraph increases to 12 months the maximum custodial sentence for an offence under Article 61(1) of the 2004 Order of carrying an imitation firearm in public without reasonable excuse. The offence becomes triable either way.