

N·A·Re·S

National Association of Re-enactment Societies

Guidance note - Replica Imitation Firearms (RIFs) and the Violent Crime Reduction Act 2006

Introduction

The Violent Crime Reduction Act 2006 (hereinafter referred to as 'the 2006 Act') received royal assent in October 2006.

The principle sections of the 2006 Act that this guidance note is concerned with are 36 to 38; these sections contain provisions dealing with RIFs.

In essence the 2006 Act makes it an offence to manufacture, import or sell RIFs, however historical re-enactment does have a defence.

What do we mean by a 'replica imitation firearm'?

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.

38 Meaning of "realistic imitation firearm"

(1) In sections 36 and 37 "realistic imitation firearm" means an imitation firearm which—

(a) has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm; and

(b) is neither a de-activated firearm nor itself an antique.

(2) For the purposes of this section, an imitation firearm is not (except by virtue of subsection (3)(b)) to be regarded as

distinguishable from a real firearm for any practical purpose if it could be so distinguished only—

- (a) by an expert;*
- (b) on a close examination; or*
- (c) as a result of an attempt to load or to fire it.*

(3) In determining for the purposes of this section whether an imitation firearm is distinguishable from a real firearm—

(a) the matters that must be taken into account include any differences between the size, shape and principal colour of the imitation firearm and the size, shape and colour in which the real firearm is manufactured; and

(b) the imitation is to be regarded as distinguishable if its size, shape or principal colour is unrealistic for a real firearm.

(4) The Secretary of State may by regulations provide that, for the purposes of subsection (3)(b)—

the size of an imitation firearm is to be regarded as unrealistic for a real firearm only if the imitation firearm has dimensions that are less than the dimensions specified in the regulations; and

a colour is to be regarded as unrealistic for a real firearm only if it is a colour specified in the regulations.

(5) The power of the Secretary of State to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(6) That power includes power—

(a) to make different provision for different cases;

(b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and

(c) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.

(7) In this section—

“colour” is to be construed in accordance with subsection (9);

“de-activated firearm” means an imitation firearm that consists in something which—

(a) was a firearm; but

(b) has been so rendered incapable of discharging a shot, bullet or other missile as no longer to be a firearm;

“real firearm” means—

(a) a firearm of an actual make or model of modern firearm (whether existing or discontinued); or

(b) something falling within a description which could be used for identifying, by reference to their appearance, the firearms falling within a category of actual modern firearms which, even though they include firearms of different makes or models (whether existing or discontinued) or both, all have the same or a similar appearance.

(8) In subsection (7) "modern firearm" means any firearm other than one the appearance of which would tend to identify it as having a design and mechanism of a sort first dating from before the year 1870.

(9) References in this section, in relation to an imitation firearm or a real firearm, to its colour include references to its being made of transparent material.

(10) Section 8 of the Firearms (Amendment) Act 1988 (c. 45) (under which firearms are deemed to be deactivated if they are appropriately marked) applies for the purposes of this section as it applies for the purposes of the 1968 Act.

What are the offences?

Section 36 of the 2006 Act gives the offences which can be committed:

36 Manufacture, import and sale of realistic imitation firearms

- (1) A person is guilty of an offence if—*
- (a) he manufactures a realistic imitation firearm;*
 - (b) he modifies an imitation firearm so that it becomes a realistic imitation firearm;*
 - (c) he sells a realistic imitation firearm; or*
 - (d) he brings a realistic imitation firearm into Great Britain or causes one to be brought into Great Britain.*
- (2) Subsection (1) has effect subject to the defences in section 37.*
- (3) The Secretary of State may by regulations—*
- (a) provide for exceptions and exemptions from the offence under subsection (1); and*
 - (b) provide for it to be a defence in proceedings for such an offence to show the matters specified or described in the regulations.*
- (4) Regulations under subsection (3) may—*
- (a) frame any exception, exemption or defence by reference to an approval or consent given in accordance with the regulations;*
 - (b) provide for approvals and consents to be given in relation to particular cases or in relation to such descriptions of case as may be specified or described in the regulations; and*
 - (c) confer the function of giving approvals or consents on such persons specified or described in the regulations as the Secretary of State thinks fit.*
- (5) The power of the Secretary of State to make regulations under subsection (3) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.*
- (6) That power includes power—*
- (a) to make different provision for different cases;*

(b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
(c) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.

(7) A realistic imitation firearm brought into Great Britain shall be liable to forfeiture under the customs and excise Acts.

(8) In subsection (7) "the customs and excise Acts" has the meaning given by section 1 of the Customs and Excise Management Act 1979 (c. 2).

(9) An offence under this section shall be punishable, on summary conviction—

(a) in England and Wales, with imprisonment for a term not exceeding 51 weeks or with a fine not exceeding level 5 on the standard scale, or with both; and

(b) in Scotland, with imprisonment for a term not exceeding 6 months or with a fine not exceeding level 5 on the standard scale, or with both.

(10) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (9)(a) of this section to 51 weeks is to be read as a reference to 6 months.

(11) In this section "realistic imitation firearm" has the meaning given by section 38.

The primary offences which will affect historical re-enactment are highlighted in red - this covers the sale of an RIF or the import of an RIF (note that with the latter, both the actions of physically bringing it in yourself and of causing it to be imported, such as mail order, are covered).

What are the defences for 'historical re-enactment'?

Section 36(3) of the 2006 Act empowers the Secretary of State the power to grant defences to the offences cited above. It is important to note that these are only defences and not wholesale exemptions from the law.

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.

The regulations 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

37 Specific defences applying to the offence under s. 36

(1) It shall be a defence for a person charged with an offence under section 36 in respect of any conduct to show that the conduct was for the purpose only of making the imitation firearm in question available for one or more of the purposes specified in subsection (2).

(2) Those purposes are—

- (a) the purposes of a museum or gallery;
 - (b) the purposes of theatrical performances and of rehearsals for such performances;
 - (c) the production of films (within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 (c. 48)_see section 5B of that Act);
 - (d) the production of television programmes (within the meaning of the Communications Act 2003 (c. 21)_see section 405(1) of that Act);
 - (e) the organisation and holding of historical re-enactments organised and held by persons specified or described for the purposes of this section by regulations made by the Secretary of State;**
 - (f) the purposes of functions that a person has in his capacity as a person in the service of Her Majesty.
- (3) It shall also be a defence for a person charged with an offence under section 36 in respect of conduct falling within subsection (1)(d) of that section to show that the conduct—
- (a) was in the course of carrying on any trade or business; and
 - (b) was for the purpose of making the imitation firearm in question available to be modified in a way which would result in its ceasing to be a realistic imitation firearm.
- (4) For the purposes of this section a person shall be taken to have shown a matter specified in subsection (1) or (3) if—
- (a) sufficient evidence of that matter is adduced to raise an issue with respect to it; and
 - (b) the contrary is not proved beyond a reasonable doubt.
- (5) The power of the Secretary of State to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) That power includes power—
- (a) to make different provision for different cases;
 - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.
- (7) In this section—
- “historical re-enactment” means 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;**
- “museum or gallery” includes any institution which—**
- (a) has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest; and
 - (b) gives the public access to it.

As can be seen from the red highlighted sections above, the defences are very straight forwards for historical re-enactment. Further definitions are given in regulation 5 of the The Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007:

5. — (1) *The persons described for the purposes of section 37(2)(e) of the 2006 Act and paragraph 5(2)(e) of Schedule 2 to that Act are those mentioned in paragraph (2).*
- (2) *The persons mentioned in this paragraph are—*
- (a) a person or persons holding public liability insurance in relation to liabilities to third parties arising from or in connection with the organisation and holding of historical re-enactments;*
 - (b) two or more persons, at least one of whom holds such public liability insurance.*

Are there any other considerations?

Section 40 of the 2006 Act amends the Firearms Act 1968 to make it an offence to sell an RIF to a person under the age of 18 years, and also for a person under 18 years to purchase an RIF. There are no exemptions or defences specific to historical re-enactment.

It should also be borne in mind that under the Firearms Act 1968, there are other specific offences relating to imitation firearms.

Summary

If you are wanting to purchase an RIF, then you must:

- Be over the age of 18
- Belong to a historical re-enactment group of 2 or more people
- Have valid PLI in place

The onus of satisfaction for the above criteria is, however, placed on the seller of the RIF. As the purchaser, however, you should be prepared to submit documentary evidence of the above on request.

If you are wanting to sell an RIF, then you must:

- Ensure the purchaser is over the age of 18 years
- Ensure the purchaser belongs to a historical re-enactment group of 2 or more people
- That the group has valid PLI in place.

Best practice would be to request confirmation of membership in writing from an officer of the purchasers' group and take copies of their PLI and membership card. If the age of the seller is in any way questionable, a copy of their birth certificate should also be taken.

It should be noted that the onus is on the seller to prove to his satisfaction that the purchaser meets the legal requirements.

When traveling to and from an event, it is best practice to store all RIFs out of sight and in the boot of a vehicle. Under no circumstances should they be readily accessible to anyone in the vehicle.

NAReS guidance notes are based on what is believed to be current good practice. They are not intended to be exhaustive in their content and are open to revision.

These notes are intended for guidance only and should not be construed as being mandatory, or applying to all circumstances which may arise. They are designed to work in conjunction with any member groups' own rules, regulations or recommendations.

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