Response to Draft Regulations

relating to

sections 36, 37 and 38 of the VCRA 2006

Imitation or Realistic Imitation?

Citation, commencement and extent

1. — These Regulations may be cited as the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 and shall come into force on 2007.

Defences to an offence under section 36 of the 2006 Act

2. — It shall be a defence in proceedings for an offence under section 36 of the 2006 Act for the person charged with the offence to show that his conduct was for the purpose only of making the imitation firearm in question available for one or more of the purposes specified in paragraph (2).

It is Counsels opinion that Rule 3 as currently opens the door to the Prosecution to argue that the defence applies only to imitation firearms and not realistic imitation firearms. As such it could be considered not to grant those involved in the sale, manufacture or importation of airsoft replicas any defence whatsoever.

It is presumed that it is the intention of the Home Office to have this defence apply to “realistic” imitation firearms. If that is the case the word “realistic” needs inserting before imitation firearm in the first sentence of Rule 3.

This is not simply semantics, given the fact that the Act refers to both “realistic imitation firearms” and ‘imitation firearms” and considers them to be different entities it is imperative that this needs redrafting. As currently drafted it could easily be imagined that the Prosecution would make the point in court that Rule 3 does not operate to give airsoft a defence.

Burden of Proof ?

It is apparent from the regulations that there is a clear difference between how the defence to s 36 and the defence to s 37 operate.

Under section 37, once a defendant raises the defence in a sustainable manner, it is for the prosecution to disprove, beyond reasonable doubt, that the defence in fact exists in the circumstances. Whereas the defence under Rule 3 requires a defendant to prove that the defence applies (presumably on the usual basis, that he proves it on a balance of probabilities).

Is there a reason why two defences have been written that use different burdens and standards of proof?

What is the justification for the two different standards?

Has anyone given any regard to the fact that legislation is more easily implemented by the police and the courts when matters are kept consistent?

And if it is intended that the defence under the regulations be harder for a defendant to rely upon, could the parliamentary draftsmen please spell out that the burden on the defendant is "on the balance of probabilites"?

Does the Draft Regulation actually provide a defence for sale etc to individual airsoft skirmishers?

1. Those purposes are—
    1. the organisation and holding of permitted activities for which public liability insurance is held in relation to liabilities to third parties arising from or in connection with the organisation and holding of those activities;
    2. the purposes of display at a permitted event.

It has been apparent from first reading of the draft regulation that we are all concerned about the language used in Rule 3. Whilst the regulation clearly (albeit given the reservations set out above) sets out a defence for sale to those organizing or holding a permitted activity it fails on the face of the regulation to grant any such defence to individual skirmishers/attendees.

As all a court would have is the language contained within the regulation we would suggest there needs to be a rewording, clarification or addition in order that this defence applies where the sale, etc, is made to an individual skirmisher. We I would suggest the addition of the words "or participation in" to sub-paragraph a)

immediately after "organisation and holding".