

The Violent Crime Reduction Act - a united approach.

This document is an explanation of the effect that the above Act will have on the airsoft skirmishing community within the UK from the 1st of October 2007. Its author is not a lawyer and makes no claim to a complete and irrefutable understanding of the law. If you have any concerns regarding legal issues, you should seek advice from a qualified practitioner.

The Government has granted airsoft skirmishers a Specific Defence under Sect 36 of the Act, and the following explains how the UK airsoft industry aims to deal with the new restrictions. Please read this document carefully as the new offences are criminal and not civil and the penalties for contravening the Act are severe.

Any reference to 'clubs' within this document should be taken to mean a properly constituted body that exists to facilitate airsoft skirmishing between its members. It does not include social, shooting or other clubs. The specific defence has been granted for airsoft skirmishing and not for any form of target shooting.

The schemes and procedures outlined in this document are the result of close cooperation between a number of bodies and individuals. Those responsible believe that they represent a workable solution to the Act, however time and experience will inevitably lead to changes and improvements.

We would urge that those concerned, especially airsoft sites within the UK, should take steps to prepare to the coming of the VCRA as a matter of urgency. Although this process has been on going for some two years or more, the Home Office has only just released the draft of the defence. Whilst there are likely to be some further changes to the wording of the defence before October, the intention contained therein is clear enough to allow us to now start preparing for the changes to come. More time would have been nice, but we work with what we have.

The Headlines

From the 1st of October 2007 it will be illegal to sell, manufacture or import realistic imitation firearms within the UK.

Furthermore, selling an imitation firearm to, or the purchase of an imitation firearm by, anyone under the age of 18 years is illegal under Section 40 of the Act. Contravening this is a criminal offence punishable by imprisonment, a fine or both. In blunt terms it will not be legal to sell imitation firearms (of which realistic imitation firearms should be seen as a sub-set) to anyone under 18.

A realistic imitation firearm is defined thus in the Act:

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.

The Statutory instrument entitled “arms and ammunition” which includes the Defence says the following about ‘unrealistic imitation firearms’

Imitation firearms which are to be regarded as unrealistic for a real firearm

— For the purposes of section 38(3)(b) of the 2006 Act, 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 paragraph (2).

The dimensions specified in this paragraph are a height of 38 millimetres and a length of 70 millimetres.

— For the purposes of section 38(3)(b) of the 2006 Act, a colour is to be regarded as unrealistic for a real firearm only if it is a colour specified in paragraph (2).

The colours specified in this paragraph are—

bright red;

bright orange;

bright yellow;

bright green;

bright pink; and

bright purple.

This should be read in conjunction with Section 38 of the Act and is included for reference. It would be legal to sell an airsoft gun conforming to these specifications to a person over the age of 18 regardless of whether or not they were a registered skirmisher.

What is affected by the VCRA and why was it enacted?

The main aim of Sections 36 - 40 of the Act is to reduce the availability of imitation firearms within the UK. The ABA, UKARA & UKASGB have successfully argued for a specific defence for airsoft skirmishing. This defence is for skirmishers only - it is not applicable to target shooters, collectors or to those with a passing attraction to realistic imitation firearms. Therefore the main restriction is on the sale of realistic imitation firearms. You may legally keep any you own prior to the Act coming into

force. The Act has no effect on skirmishing, nor has it any impact upon an individuals' ability to purchase accessories, spares, replacement parts etc. It is the sale of complete guns that is affected. It is likely that a court would view the assembling of component parts to produce a realistic imitation firearm as 'manufacture'. It may well take the same view if a brightly coloured imitation firearm was painted to make it look more realistic.

The Specific Defence

The defence granted by the Home Secretary allows for the continuing purchase of airsoft guns by those participating in, holding or organising airsoft skirmishes.

It is understood that in order to abide by the defence, the airsoft community within the UK will become self-regulating. It is therefore of the ultimate importance that everyone involved takes their responsibilities seriously. Failure to do so could, in the worst case, see the defence being revoked.

There will inevitably be cases where the Act will either be contravened or ignored. Should any of us be aware of such instances, it is in our own interest to ensure that such acts are brought to the attention of the relevant bodies or authorities and that law-abiding airsofters distance themselves from those involved. Remember - any breaches of the Act are not a simple 'trading standards' issue, they are a criminal act.

Sites.

Sites are at the heart of the scheme, as only through membership of a legitimate airsoft site can an individual demonstrate their entitlement to the specific defence granted to airsoft skirmishers.

The Government has determined that a 'legitimate' site is one that holds third-party insurance. This is important, because only members of a site or club with valid third party insurance can claim to be "airsoft skirmishers" for the purposes of the defence.

It is therefore vital that sites ensure that they have up-to-date third-party liability insurance before the 1st of October if they wish to register their members.

It is expected that in order to differentiate the casually interested from the committed airsoft skirmisher, that sites will maintain a minimum standard with regards to new players. UKARA will require that any site applying to register under the scheme should ensure that a new entrant into airsoft should play a minimum of three times in a period of not less than two months before being offered membership of a site. This is important, as the main objective of the VCRA is to reduce the supply of imitation firearms within the UK, and the defence granted is aimed at assisting only legitimate skirmishers. We must therefore be, and be seen to be, serious about our pastime and not willing to grant membership on a whim.

We would suggest that sites when granting membership in relation to the VCRA follow a standard form. They should record and obtain the following information.

Name

Address

Date of Birth

A Passport photo

A copy of the players Passport/ Driving Licence

A copy of a utility bill.

Site membership cards should ideally contain a Passport sized photo.

General information or advice regarding sites can be sought from UKASGB (United Kingdom Airsoft Sites Governing Body).

Membership Cards

A universal form of membership card was discussed with the Home Office and there is much to recommend it. Given the timescales we now find ourselves working to, it

has proved impractical to implement such a system in time for the Act coming fully into force. This does not prevent continuing work being done to achieve this, and the Government will no doubt be sympathetic to the difficulties involved in introducing large-scale ID card schemes... Some sites are considering or implementing commercially available card schemes and these may well become more widespread over time. Ultimately it is a decision for individual sites to decide whether or not they wish to pursue this at present.

Retailers

Any retailer who wishes to sell airsoft guns will be legally obliged to demonstrate that they have taken reasonably practicable steps to ensure that the purchaser is entitled to one of the exemptions or defences under the Act. UKARA (United Kingdom Airsoft Retailers Association) members have agreed to abide by a code of conduct, and have set up a national scheme that will ensure that they meet this test. Any retailer wishing to apply for membership should contact UKARA via their website. As an organisation, UKARA is dedicated to providing specialist airsoft equipment to skirmishers and not all retailers will be deemed suitable applicants for membership. Please see "Non UKARA Members" below should you fall into this category. Regardless of membership, anyone being granted access to the database for the purposes of trading in realistic imitation firearms will be contractually obliged to abide by the Code of Conduct.

UKARA Database

UKARA have developed and funded a database to facilitate the continuing distance selling of airsoft guns. While not the only way to meet the restrictions of the Act, we believe this is the most efficient way to tackle it. No player can register directly with UKARA, as the players 'legitimacy' comes from site membership and nowhere else.

The UKARA scheme is to an extent paper-based. We are aware of the potential criticism this may occasion, but we were keenly aware that not all sites would have the means or the desire to implement a fully digital membership system by the 1st of October 2007. By designing the system as it is, a degree of flexibility is retained to allow maximum participation by the airsoft community.

How will it work?

Sites wishing have their players registered on the database must first register themselves with UKARA. They can download the necessary form from the UKARA website, or obtain it from a UKARA retailer. This should be completed & returned to any UKARA retailer with a copy of their insurance certificate. In order to establish a sites' bona fides UKARA reserves the right to request additional information. The site will then be added to the sites register and this will allow members of that site to then be added to the database.

UKARA will issue a stamp to each registered site that they will use to stamp the players' form (see below). This, along with an agreed signatory, will ensure that only valid players are entered onto the database.

For airsoft clubs, which exist to allow only their members to play, further information may be required, for instance a copy of their Constitution and proof that they have permission to hold skirmishes on the land they use.

Sites or clubs who have registered to participate in this scheme will have their site name & contact details displayed on the UKARA website. Players will therefore be able to establish which sites are participating in the scheme.

Participation in this scheme is not mandatory, and not registering does not prevent a site from hosting perfectly legal airsoft skirmishes, however sites may deem registration advantageous as it will enable their members to more easily prove their entitlement to the specific defence when purchasing airsoft guns.

How sites run a membership scheme is up to them, but if they wish to participate in the UKARA database scheme, they will need to use membership numbers which are in the format XXX12345 - three alpha characters followed by five numeric characters. The exact site-specific format should be agreed at time of registration.

Players who hold site membership.

Players wishing to have their details entered on the database should obtain a form from either the UKARA website or from their local UKARA retailer. This should be

taken to the site at which they are a member where it will be filled in, signed & stamped. It should then be returned to any UKARA retailer who will enter their details onto the database. Thereafter, any UKARA retailer who receives an order for an airsoft gun from that player will be able to cross-check the database to establish that the individual is entitled to purchase RIFs.

Player's detail will remain on the UKARA database for a period of 365 days after first entry. If no query is registered against a player on the database by the end of that period, they will be automatically removed from the database. This is to ensure that we are not accused of allowing "lifetime" access to RIFs - the defence is for skirmishing - if you no longer skirmish you are no longer permitted to buy.

UKARA will levy no charges for any of the foregoing, however sites may charge for membership as they are going to incur additional overheads and responsibilities. That is a matter for them.

Distance Selling

In some respects, this is the very reason for a national database. Without this, establishing that a potential customer is entitled to purchase could prove to be a long and tortuous process.

When a registered player attempts to purchase an airsoft gun, he or she will be asked for their site membership number. Using this, along with the other information routinely provided (Name, address etc) the retailer will be able to quickly and efficiently check the database to confirm that the individual is indeed entitled to purchase under the terms of the defence. In order to reduce fraudulent orders, it may be necessary to only send airsoft guns to the address specified in the player's membership details. For this reason, players should ensure that any changes in address details are notified to their site and through them to UKARA as quickly as possible.

Under 18s

While we are sympathetic to the plight of younger players, there is no easy way around the restrictions contained in Section 40 of the Act. It was originally hoped that under-18s could nominate a parent or adult who could buy on their behalf, however unless that person is themselves a registered skirmisher, such a scheme would be unworkable and illegal. Furthermore grave concerns must be entertained about the

legality of transferring an imitation firearm to a minor. The Act would not appear to prevent hiring or lending imitation firearms, but we would urge the greatest caution in this area.

Data Protection.

All data will be held in accordance with the Data Protection Act. The player data requested will be the absolute minimum necessary to allow a retailer to ensure they are dealing with a member of a legitimate skirmish site.

Your data will never be used for any purpose other than to confirm your right to avail yourself of the specific defence for airsoft skirmishers. Only the designers of the database have complete access to it, and their actions are contractually defined. UKARA members can only enter sites & players & request individual searches against that data. Each search is logged & given a unique reference number.

Non-UKARA members.

We cannot and will not create a closed shop within the UK; therefore non-UKARA members with a legitimate reason for accessing the database will be able to do so. They will have to approach UKARA and demonstrate good reason. They will be permitted access which will allow only player searches, they will be contractually bound to adhere to the same code of conduct as UKARA members and a reasonable fee will be levied for this access, probably on an annual basis.

Second Hand sales.

We appreciate the importance of these to the community. Any seller will be obliged to ensure that the purchaser is entitled to the Defence before selling. Remember the offence created in the Act is the sale, manufacture or importing of a realistic imitation firearm. The precise mechanisms whereby second hand sales are to be facilitated are still under discussion. For instance, UKARA might make available to all major UK forums a log on which will allow them to perform the necessary check for their members. It may be possible to allow players registered on the UKARA database a limited number of queries to enable person to person sales. Regardless of the 'how' all participants will be required to exercise a responsible attitude and abide by any rules set in place. Individual UKARA retailers are free to offer such a check as a service to their customers and it is up to them whether or not they charge for this.

Sales By Sites

Sales of airsoft guns by airsoft sites will be legal providing that the seller can demonstrate that the purchaser is entitled to avail themselves of the specific defence. Clearly if the sale is to a player registered at that site, that is a straightforward process, sales to visiting players may require more care. We would not necessarily suggest however that all sites that sell airsoft guns should apply to join UKARA as this may not be an appropriate or cost-effective option.

Personal imports

This is an area that any scheme will struggle to address due to the complex nature of the relationships involved.

UKARA will carefully consider any approach from any courier company that wishes to offer a "clearing" service to its customer to facilitate personal importation of RIFs. This will be offered on a commercial basis. We may make available the ability to check players' details via the database to Her Majesty's Revenue & Customs (HMRC). It is unlikely however that HMRC will check individual imports and no purchaser should count on this. HMRC are extremely busy and have higher priorities. You should therefore be aware that any airsoft gun imported after 1st October might be subject to seizure & destruction.

Importation of Realistic Imitations by way of business

HMRC have expressed no particular concerns regarding the importation of realistic imitation firearms by businesses who can demonstrate that they are doing so specifically to supply those entitled to avail themselves of the specific defence – or to put it in slightly more lay terms, airsoft equipment retailers selling to skirmishers. The HMRC firearms team appear to be well versed in the details of the VCRA and a senior member of the team involved in formulating policy has been directly involved in the discussions regarding the defence.

Overseas retailers.

Retailers based outside the United Kingdom will not be allowed access to the database. This scheme is for the benefit of the UK airsoft community. Overseas retailers have not helped UK airsofters throughout the long period of consultation & representation and furthermore we are concerned about possible security implications and abuse of the system from areas of the world where we might struggle to achieve adequate legal redress. Since such abuse could compromise and possibly threaten the defence itself, we deem the risk to outweigh any perceived benefits.

Useful Contacts:

UKARA www.ukara.org.uk

UKASGB www.ukasbg.org.uk

ABA www.associationofbritishairsoft.org