

VIOLENT CRIME REDUCTION ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Weapons etc.

Section 28: Using someone to mind a weapon

217. *Subsection (1)* provides that it is an offence for a person to use someone else to hide or carry a dangerous weapon so as to make the weapon available to the first person for an unlawful purpose. *Subsection (2)* sets out non-exhaustive circumstances in which a weapon is to be regarded as being available for an unlawful purpose. The offence could catch a situation where the first person would be committing an offence if he took possession of the weapon from the person minding it, and would also cover a case where the first person was intending to commit an offence with the weapon in the future. *Subsection (3)* defines “dangerous weapon” for the purposes of this offence as meaning, broadly speaking, a firearm, knife or other specified offensive weapon. *Subsection (4)* provides that in Scotland the section will not apply in relation to knives or offensive weapons, as this issue is devolved.

Section 29: Penalties etc. for offence under s.28

218. This section sets out the penalties for this offence, determined according to the type of dangerous weapon involved and in line with penalties for possession of the particular weapon. In some circumstances the offence will attract a minimum sentence. The section sets out where the penalties applicable vary between England and Wales and Scotland. *Subsection (11)* requires the courts to take the ages of the offender and the person used to hide or carry the weapon into account when considering sentencing. If the offender is 18 or over and the person used is under 18, this must be regarded as an aggravating factor increasing the seriousness of the offence. *Subsection (12)* requires the court to state that the person’s age is an aggravating factor. *Subsections (13)* and *(14)* ensure that in a situation where the offender turns 16 during the period when the weapon is being held by someone else, he is liable to be given the stiffer penalties which are faced by a person of that age who is convicted of the offence. These provisions also provide that if either person turns 18 during the period that the weapon is being held, the offence is still liable to be treated as aggravated if at some point in that period the offender was 18 or over and the other person was under 18.

Section 30: Minimum sentences for certain firearms offences

219. This section amends the minimum sentence provisions in section 51A of the Firearms Act 1968, which currently apply only to the simple offence of possession of a prohibited weapon. The minimum sentence, other than in exceptional circumstances, is five years’ imprisonment for persons aged 18 or over (or 21 or over in Scotland) and three years’ imprisonment for a person aged between 16 and 18 (or 21 in Scotland). This section extends these provisions to other serious offences involving the possession of prohibited weapons, to ensure that offenders do not escape the minimum sentence where they are

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not also charged with the simple possession offence. The additional offences all appear in the 1968 Act and are the offences under:

- Section 16 (possession of firearm with intent to injure)
- Section 16A (possession of firearm with intent to cause fear of violence)
- Section 17 (use of firearm to resist arrest)
- Section 18 (carrying firearm with criminal intent)
- Section 19 (carrying a firearm in a public place), and
- Section 20(1) (trespassing in a building with firearm).

220. The minimum sentence will apply in the case of the above offences only where a prohibited weapon is involved.

Section 31: Prohibition on sale or transfer of air weapons except by registered dealers

221. This section makes it an offence to sell air weapons by way of trade or business without being registered as a firearms dealer. *Subsection (1)* adds the sale and transfer of air weapons to section 3(1) of the Firearms Act 1968, which sets out the activities for which registration as a dealer is required. *Subsection (2)* amends section 40(2) of the 1968 Act to require dealers to keep a register of transactions involving air weapons. *Subsection (3)* makes a consequential amendment to the definition of “firearms dealer” in the 1968 Act.

Section 32: Sales of air weapons by way of trade or business to be face to face

222. This section makes it an offence to sell air weapons by way of trade or business other than face to face. *Subsection (1)* applies the offence to sales by way of trade or business to an individual in Great Britain who is not a registered firearms dealer. *Subsection (2)* makes it an offence to transfer possession of an air weapon to the buyer otherwise than when both the buyer and either the seller or his representative are present in person. *Subsection (3)* defines a “representative” as someone employed by the seller, or another registered firearms dealer (or his employee) authorised to act on the seller’s behalf. This allows an air weapon to be sent from one registered firearms dealer to another to make the final transfer in person to the buyer. This enables someone to buy an air weapon from a dealer in a distant part of the country without one or other party to the transaction having to make a long journey, while still preserving the safeguards of a face-to-face handover.

223. *Subsection (4)* makes the offence a summary offence with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (5)* sets the maximum term of imprisonment to 6 months but this will increase to 51 weeks in England and Wales after the commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.

Section 33: Age limits for purchase etc. of air weapons

224. This section increases from 17 to 18 the minimum age for acquiring or possessing an air weapon. This will have the effect that the age limit for the purchase of air weapons will be higher than for other firearms; however, purchasers of the latter will have to satisfy the police as to their suitability under the certification process in section 1 of the Firearms Act 1968. *Subsection (2)* increases the age limit for purchasing or hiring an air weapon. *Subsection (3)* increases the age limit for possessing ammunition for an air weapon. *Subsection (4)* increases the age limit for selling an air weapon and letting one on hire. *Subsection (5)* increases the age limit for making a gift of an air weapon or parting with the possession of one.

Section 34: Firing an air weapon beyond premises

225. One type of air weapon misuse involves the firing of an air weapon across the boundary of premises. Existing offences covering this type of misuse are linked to the use of air weapons by young people and consequently apply only to people under 17, not to adults. This section closes this loophole by making it an offence for a person of any age to fire an air weapon beyond the boundary of premises. 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.
226. *Subsection (2)* introduces the new offence by inserting a new section 21A into the Firearms Act 1968. *Subsection (3)* removes the existing offences relating to young people in section 23(1) and 23(4) of the 1968 Act while preserving the additional offence committed by a person supervising someone under the age of 18 who commits the offence of firing an air weapon beyond premises. *Subsection (3)* also introduces the defence described above to the supervision offence.

Section 35: Restriction on sale and purchase of primers

227. This section restricts the purchase and sale of primers to persons who hold a relevant firearms certificate or who otherwise have lawful authority for having them. Primers are components of ammunition which contain a chemical compound that detonates on impact.
228. *Subsection (1)* applies the section to cap-type primers designed for use in metallic ammunition for a firearm. This will exclude primers for cartridge-type ammunition such as that used for shot guns. *Subsections (2)* and *(3)* make it an offence to sell a primer, or an empty cartridge case incorporating a primer, unless the purchaser:
- is a registered firearms dealer;
 - sells primers by way of trade or business;
 - produces a certificate authorising him to possess a firearm of a kind with which the primers being bought can be used;
 - produces a certificate authorising him to possess ammunition of a kind that can be used with such a firearm;
 - shows he is in the service of Her Majesty and is entitled to acquire a primer;
 - produces a certificate authorising another person to possess ammunition or such a firearm, together with that person's authority to purchase primers on his behalf;
 - shows he is entitled by an enactment (including one passed after this Act) or otherwise to possess such a firearm or ammunition without a certificate; or
 - falls within a category of person set out in regulations.
229. *Subsections (4)* and *(5)* make it an offence for a person to buy, or attempt to buy, primers or empty cartridge cases incorporating primers, unless he meets similar criteria.
230. *Subsection (6)* provides that a person in the service of Her Majesty is entitled to acquire primers if they are for the public service and he is duly authorised in writing, or if he holds a firearm certificate issued in accordance with section 54(2)(b) of the Firearms Act 1968 (i.e. a certificate issued free of charge to a person in the armed forces who is required to purchase a firearm for official duties).
231. *Subsection (7)* makes the offence a summary offence with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (8)* sets the maximum term of imprisonment to 6 months but this will increase to 51 weeks in England and Wales after the commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.

Section 36: Manufacture, import and sale of realistic imitation firearms

232. This section makes it an offence to manufacture, import or sell a realistic imitation firearm. It includes a power to make regulations to provide for exceptions, exemptions and defences to the new offence. Realistic imitation firearms are defined by section 38.
233. *Subsection (1)* applies the offence to a person who:
- manufactures or sells a realistic imitation firearm;
 - modifies an imitation firearm to become a realistic imitation firearm; or
 - imports, or causes to be imported, an imitation firearm.
234. *Subsection (2)* applies defences in Section 37 to the offence. These defences allow for the continuing availability of realistic imitation firearms for certain specific legitimate purposes.
235. *Subsection (3)* allows the Secretary of State to make regulations to provide for exceptions and exemptions to the offence, and to provide for further defences in respect of the offence. *Subsection (4)* allows for exceptions, exemptions and defences to be based on the giving of approvals or consents, either for particular cases or for types of cases. *Subsection (5)* requires the regulations to be set out in a statutory instrument and to be subject to the negative resolution process in Parliament.
236. *Subsections (7) and (8)* provide HM Revenue & Customs with a power to seize items imported into Great Britain in contravention of this section.
237. *Subsection (9)* makes the offence a summary offence with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (10)* sets the maximum term of imprisonment to 6 months but this will increase to 51 weeks in England and Wales after the commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.

Section 37: Specific defences applying to the offence under s.36

238. This section sets out defences to the offence under section 36. *Subsections (1) and (2)* makes it a defence to show that the sale etc of realistic imitation firearm was for the purposes of a museum or gallery; for theatre, film or television productions; for specified historical re-enactments; or for Crown service. *Subsection (3)* provides a defence for business to import realistic imitation firearms for the purposes of modifying them so that they cease to be realistic imitations. *Subsection (4)* provides that for a defence to be shown, a person must adduce sufficient evidence of it and the contrary must not be proved beyond reasonable doubt.
239. Under *subsection (2)* the Secretary of State will have the power to make regulations to specify which historical re-enactments will benefit from the defence in *subsection (1)*. This enables the exception for historical re-enactments to be confined to bona fide organisations. The regulations will be subject to the negative resolution procedure.
240. *Subsection (7)* defines “historical re-enactment” 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. It also defines “museum or gallery” as including any institution, accessible by the public, which has as one of its purposes the preservation, display and interpretation of material of historical, artistic or scientific interest.

Section 38: Meaning of “realistic imitation firearm”

241. This section explains what is meant by the term “realistic imitation firearm”. The definition of “imitation firearm” for the purposes of this section is that used in the Firearms Act 1968, namely any thing which has the appearance of being a firearm whether or not it is capable of discharging any shot, bullet or other missile. *Subsection*

(1) defines “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. It does not include a de-activated firearm or an antique imitation firearm. The effect of this exception for de-activated firearms is that it will still be possible to de-activate a firearm without committing the offence in section 36(1)(a) of manufacturing a realistic imitation firearm.

242. *Subsection (2)* provides that an imitation firearm is not to be regarded as distinguishable from a real one if it could only be distinguished by an expert, on close examination or as a result of an attempt to load or fire it. *Subsection (3)* provides that in determining whether an imitation is distinguishable from a real one, its size, shape and principal colour must be taken into account. An imitation is to be regarded as distinguishable if its size, shape or principal colour is unrealistic for a real firearm. In this connection, *subsections (4), (5) and (6)* provide a power for the Secretary of State to make regulations (subject to the negative resolution procedure) specifying dimensions and colours which would be regarded as unrealistic.
243. *Subsection (7)* defines “deactivated firearm” as being an imitation firearm that was a firearm but has been rendered incapable of firing. A “real firearm” is defined as a firearm of an actual make or model of modern firearm, or a firearm of a description that makes it look like it belongs to a category of firearms.
244. *Subsection (8)* defines “modern firearm” as any firearm other than one the appearance of which would tend to identify it as having a design and mechanism dating before 1870. *Subsection (9)* provides that the colour of an imitation or real firearm includes whether it is made of transparent material.
245. *Subsection (10)* has the effect that a firearm which has been marked and certified as deactivated in accordance with the Firearms (Amendment) Act 1988 will be presumed to be a deactivated firearm for the purposes of this section.

Section 39: Specification for imitation firearms

246. This section applies where imitation firearms are still permitted to be manufactured, imported or sold and requires them to be constructed in accordance with specifications laid down in regulations by the Secretary of State. The definition of ‘imitation firearm’ for the purpose of this section is the same as that for section 38.
247. *Subsection (1)* provides a power for the Secretary of State to make regulations specifying how imitation firearms must be constructed. For example this will enable the imposition of a requirement that all blank-firing imitations be constructed in such a way that it is impossible to attempt to convert them into firearms firing live ammunition.
248. *Subsection (2)* makes it an offence to manufacture or import an imitation firearm which does not conform to those specifications. It also makes it an offence to modify an imitation firearm so that it ceases to conform to the specifications, or to modify a real firearm to create an imitation that does not conform to the specifications.
249. *Subsection (3)* makes the offences summary offences with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (4)* sets the maximum term of imprisonment to 6 months but this will increase to 51 weeks in England and Wales after commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.
250. *Subsection (5)* allows the regulations to provide that an imitation firearm is to be presumed to conform with the specifications if it has been certified to this effect in accordance with arrangements set out in the regulations.
251. *Subsection (8)* requires the regulations to be set out in a statutory instrument and to be subject to the negative resolution process in Parliament.

Section 40: Supplying imitation firearms to minors

252. This section makes it an offence to sell an imitation firearm to a person under the age of 18, or for a person under 18 to purchase one. The definition of “imitation firearm” for the purposes of this section is that used in the Firearms Act 1968, namely any thing which has the appearance of being a firearm whether or not it is capable of discharging any shot, bullet or other missile.
253. *Subsection (1)* inserts new section 24A into the Firearms Act 1968 which contains the new offences. In relation to the offence of selling an imitation firearm to someone under 18, it is a defence to show that the vendor believed that the purchaser was 18 or over and had reasonable grounds for that belief.
254. *Subsection (2)* makes the offences summary offences with a maximum penalty of 51 weeks imprisonment or a £5,000 fine, or both. *Subsection (3)* sets the maximum term of imprisonment to 6 months for offences committed before the commencement of the sentencing provisions in section 281(5) of the Criminal Justice Act 2003.

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

255. This section amends the Firearms Act 1968 to increase from 6 months to 12 months the maximum custodial sentence for the offence of carrying an imitation firearm in public without reasonable excuse.
256. *Subsection (1)* makes the offence triable either way and sets the maximum custodial sentence on indictment as 12 months. *Subsection (2)* clarifies that when section 282(3) of the Criminal Justice Act 2003 comes into force in England and Wales the maximum custodial sentence on summary conviction will increase from 6 months to 12 months.

Section 42: Increase of maximum sentence for offences of having knives etc.

257. **Section 42** amends sections 139(6)(b) and 139A(5)(a)(ii) of the Criminal Justice Act 1988 so that the maximum term of imprisonment for the offences of having an article with a blade or point, in a public place, or of having such an article or another offensive weapon on school premises, is increased from 2 to 4 years.

Section 43: Sale etc. of knives and other weapons

258. *Subsection (2)* amends section 141A(1) of the Criminal Justice Act 1988 (prohibition of sale of knives etc. to persons under sixteen) to extend the offence of selling a knife or an article with a blade or point to a person under sixteen to persons under eighteen.
259. It is an offence to manufacture, sell, hire or offer for sale or hire, lend or give to another person an offensive weapon under section 141 of the 1988 Act. *Subsection (4)* amends that provision to introduce a defence for those who manufacture, sell, hire or offer for sale or hire, lend or give offensive weapons if they are doing so for the purpose of theatrical performances and rehearsals, the production of films or the production of television programmes.

Section 44: Sale etc. of crossbows

260. This section amends the Crossbows Act 1987 to raise from seventeen to eighteen the age at which a person may be sold or hired a crossbow, and at which a person may buy, hire or possess (in the latter case without supervision by a person aged 21 or over) a crossbow.

Section 45: Power of members of staff to search school pupils for weapons

261. **Section 45** inserts new section 550AA into the Education Act 1996 and enables a head teacher or other member of staff in a school, with the authority of the head

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teacher, to search a pupil who they have reason to suspect is carrying a knife or other offensive weapon and to search his possessions.

- 262. Subsection (2) of that new section provides that the power is exercisable whenever the member of staff is in lawful control of the pupil, so as to include time when the pupil is not on school premises, for example on a school trip.
- 263. Subsection (3) of the new section sets out who may conduct a search.
- 264. Subsection (4) explains that a head teacher cannot require a person other than a member of the security staff to carry out a search under this section.
- 265. Subsection (5) provides that a person who carries out a search may not require the pupil to remove any clothing other than outer clothing, must be of the same sex as the pupil, and cannot search without the presence of another member of staff who is of the same sex as the pupil. Subsection (6) provides similarly that the pupils' possessions may not be searched except in the presence of the pupil and another member of staff.
- 266. Subsection (7) provides that the member of staff can seize and retain any articles found, but, under subsection (9), must deliver them to a police constable as soon as is reasonably practicable. Subsection (8) provides that the member of staff may use reasonable force if necessary in exercising a power under this section. Subsection (10) provides that the Police (Property) Act 1897 applies to property that comes into a police constable's possession under this section.

Section 46: Power to search further education students for weapons

- 267. **Section 46** inserts new section 85B into the Further and Higher Education Act 1992 to make provision for searching students of institutions in the further education sector equivalent to that in section 45 for school pupils. A search can only be carried out by the principal of the institution or by a member of staff authorised by the principal.

Section 47: Power to search persons in attendance centres for weapons.

- 268. **Section 47** makes provision for searching persons in attendance centres equivalent to that in section 45 for school pupils. A search can only be carried out by the officer in charge of the attendance centre or a person authorised by that officer and can only be carried out on the premises of the centre.

Section 48: Amendment of police power to search schools etc for weapons

- 269. **Section 48** amends section 139B of the Criminal Justice Act 1988 to reduce the threshold for a constable to exercise his or her powers of entry and search of a school and persons on school premises for weapons under that section from 'reasonable grounds for believing' to 'reasonable grounds for suspecting' to ensure both consistency with the powers in sections 45 to 47 and that the police have the necessary powers to tackle weapons in schools.

Section 49: Consequential amendments to minimum sentences

- 270. **Section 49** introduces and gives effect to Schedule 1 which contains the consequential amendments on the provisions of this Part relating to minimum sentences.

Section 50: Supplemental provisions for Part 2

- 271. **Section 50** makes supplemental provisions for Part 2 of the Act, including providing Crown exemption from a number of the offences in Part 2.

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Section 51: Corresponding provision for Northern Ireland

272. **Section 51** introduces Schedule 2 to the Act which makes provision for Northern Ireland corresponding to the provisions of Part 2 of the Act, with the exception of sections 31 to 35 and 42 and 45 to 47.