

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

Council ref: 14244/22

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Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on import, export and transit measures for firearms, their essential components and ammunition, implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol) (recast)

Submitted by the Department for International Trade 17 November 2022

SUBJECT MATTER

1. This proposed Regulation was tabled by the European Commission on 27 October 2022 and concerns the recasting of EU rules on import, export and transit of firearms in Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition ("the EU Firearms Regulation").
2. The EU Firearms Regulation addresses challenges related to the tracing and illicit trafficking of civilian firearms by setting common definitions, rules and principles for export, import and transit procedures. The strategic objective is to reduce the risk of illicit trafficking in firearms for civilian use by ensuring coherence across Member States in rules on external trade in line with Article 10 of the UN Firearms Protocol. The EU has signed and approved the UN Firearms Protocol. The UK has signed, but not ratified the Protocol.
3. The Regulation is being recast considering increased trafficking of firearms in the EU from post-conflict countries and significant circumvention of current ambiguous rules against firearms trafficking.

4. The recast regulation's principal aims are to (i) reduce circumvention of embargos, which frequently occurs through the movement of semi-finished firearms; (ii) reduce diversion of civilian firearms; (iii) further coordinate controls between Member States to improve traceability of firearms and (iv) provide a clearer, more harmonised legal and administrative framework for the import, export and transit of firearms.

SCRUTINY HISTORY

5. The EU Firearms Regulation was subject to scrutiny as EU document 10963/10, COM(10)273: Proposal for a regulation (EU) No ... / ... of the European Parliament and of the Council implementing Article 10 of the United Nations' Firearms Protocol and establishing export authorisation, import and transit measures for firearms, their parts and components and ammunition. The then Department for Business, Innovation & Skills (BIS) submitted an EM dated 6 July 2010. The House of Commons European Scrutiny Committee reported on two occasions that the proposal raised issues of political importance (Reports 25 & 45, Session 2010-12) and completed scrutiny on 2 November 2011. The House of Lords European Union Committee examined the proposal in the then sub-committee A (Sift 1396) and scrutiny was completed on 1 November 2011.
6. There was also scrutiny of a European Commission report on the Regulation in 2017 under document reference 15932/17, COM(17)737 on which DIT submitted an EM dated 10 January 2018. Neither scrutiny committee had any follow up questions on the report with the House of Commons European Scrutiny Committee recording completion of scrutiny in Report 25 (Session 2017-18) on 25 April 2018. The House of Lords European Union Committee completed scrutiny at Chair's Sift 1678 on 17 January 2018.

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for International Trade (Rt. Hon Kemi Badenoch MP) has primary responsibility for import licensing and strategic export controls. The Foreign Secretary and the Home Secretary also have an interest. The Chancellor of the Exchequer has an interest since His Majesty's Revenue and Customs (HMRC) is responsible for the enforcement of import and export controls.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. Strategic export controls are reserved under the United Kingdom's devolution settlements, and there is no formal requirement to consult with the devolved governments. The Northern Ireland Executive have nonetheless been made aware of this proposal and consulted about this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

9. **Legal basis:** The legal basis of this proposal is Articles 33 and 207 of the Treaty on the Functioning of the European Union (TFEU).
10. **Voting procedure:** The applicable voting procedure is qualified majority voting.
11. **Timetable for adoption and implementation:** There is no timetable for adoption and implementation. It is now for the European Parliament and the Council to examine the proposal. It is difficult to estimate how long this will take. A similar proposal relating to the recast Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (“the EU Dual-Use Regulation”), which came into force in September 2021, was proposed by the European Commission on 28 September 2016 (COM(2016) 616 final). Once it comes into force, the recast Regulation will be directly applicable throughout the EU.

POLICY IMPLICATIONS

12. The proposed Regulation will revoke and replace the EU Firearms Regulation which continues to apply to and in the UK in respect of Northern Ireland in accordance with Articles 5(4) and Annex 2 of the Protocol on Ireland / Northern Ireland (“the NI Protocol”). Once the proposed Regulation comes into force, the reference to the EU Firearms Regulation in Annex 2 will be read as referring to the recast Regulation, in accordance with Article 13(3) of the NI Protocol.
13. The introduction of the proposed Regulation in Northern Ireland will lead to regulatory divergence between Great Britain and Northern Ireland/the EU. In Great Britain a retained version of Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (“the retained Firearms Regulation”) applies.
14. Goods subject to these new Regulations in Northern Ireland will continue to require export licences for movements to Great Britain.
15. These new Regulations will introduce new categories of goods subject to import licensing in Northern Ireland.

16. The proposed Regulation would interact with the introduction of a dual regulatory regime in Northern Ireland as proposed in the NI Protocol Bill. The Government has been engaging with a wide range of stakeholders, as we continue to develop the details of the regime. We want to design its implementation, so it meets the overall objectives of providing greater choice for businesses, removing the future risks around regulatory divergence and preserving NI-GB economic ties. The Government will set out further details on the dual regulatory regime in due course.
17. The purpose of the proposal is to combat and prevent firearms trafficking in the EU.
18. The proposal identifies two main import risks linked to the circumvention of existing rules that enable the import of *semi-finished* firearms and components. These can be used to manufacture firearms, which are not correctly marked or registered (*ghost guns*). The proposal intends to introduce an import control and limit the import of semi-finished firearms and essential components to dealers and brokers. The proposal also intends to place new controls on alarm and signal weapons, including those which are convertible into lethal firearms and used throughout the EU in criminal contexts.
19. The proposal identifies the main export risk as diversion of civilian firearms shipped to non-EU countries and being diverted to countries subject to arms embargoes or sold to criminals and armed forces due to lack of controls and supervision before and after the export process. Those firearms may contribute to a destabilisation near EU borders or be eventually trafficked back into the EU.
20. The proposal aims to enable coordinated controls between Member States and to ensure the traceability of illicit firearms. The proposal provides for the recording of firearms-related information and responds to the need to improve the work of customs authorities in detection of illicit firearms. The proposal aims to clarify the role of the licencing authorities and improve cooperation between law enforcement authorities, customs and licensing authorities to improve the traceability of licit firearms, their components and ammunition.
21. The proposal aims to improve data collection on international movements of firearms and data on seized firearms. The proposal focuses on receiving annual data by Member States on the number of licences and licence refusals and the quantities and values of imports and exports of civilian firearms.
22. The proposal seeks to balance the need for increased security and the facilitation of the legal trade of firearms. The proposal aims to ensure a level playing field and to reduce the administrative burden on business and firearms owners, because businesses face different national rules, procedures and

practices when trying to obtain an import or export licence. EU entities are subject to different requirements and administrative procedures, and therefore different costs, depending on the Member State in which they operate. Some are faced with burdensome paper-based procedures. The proposal aims to address these challenges by creating a clear legal framework, focusing on digitalisation of procedures, and increasing the cooperation between customs and licensing authorities to facilitate the import, export and transit procedures. Firearms owners are not intended to be subject to bureaucratic licensing procedures for the temporary movements of firearms and will be provided with exemptions from import and export licensing for hunters, sport shooters and collectors.

23. It also proposes the introduction of additional exemptions to the requirement for import authorisations and they cover evaluation or exhibition without sale, or inward processing for repair; or for import following temporary export for the purpose of evaluation and repair and exhibition without sale, under the outward processing or temporary exportation customs procedures. These additional exemptions do not currently exist as far as UK firearms import licensing is concerned and their introduction would create a divergence from the requirements for imports from the rest of the world to Northern Ireland and Great Britain.
24. This proposal tries to address the overlap between the scope of the EU Firearms Regulation and the scope of the Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (“the Common Position”). The European Commission believes this overlap leaves room for divergent interpretations and inconsistencies in the application of the correct (military or civilian) export regime. For example, a weapon used by armed forces as a sniper rifle owing to its accuracy, could also be used for sporting purposes. The lack of clear objective criteria in both the EU Firearms Regulation and the Common Position to establish whether firearms or ammunition are military, or civilian is seen as problematic. The proposal is aligned with the scope of Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons (codification).
25. The European Commission’s proposal to address the overlap is that Government-to-Government transactions and direct sales to armed forces, police or public authorities are considered military and therefore excluded from the scope of the proposal but continue to be subject to the EU Common Position. All other transactions are considered of civilian nature and therefore subject only to the rules and procedures provided for in the proposal.

26. There have been no specific discussions on this proposal in the Joint Committee or Northern Ireland Specialised Committee.

CONSULTATION

27. No UK consultations have been undertaken on this measure; UK businesses were able to comment on the EU consultation that was published.

28. A UK impact assessment has not been produced given that this is a proposed new EU Regulation. The UK has not prepared a similar measure.

29. The Department for International Trade has consulted the Northern Ireland Executive and made the Home Office aware of this proposal.

FINANCIAL IMPLICATIONS

30. The European Commission has published an Impact Assessment (which records DIT and UK business being interviewed in January 2019) and an Impact Assessment Summary. It is not anticipated that there will be any significant financial or resource implications for the UK Government or NI business because of these changes.

MINISTERIAL NAME AND SIGNATURE



Nigel Huddleston MP

Parliamentary Under Secretary of State

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