

## **EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENT**

### **Commission Recommendation of 17 April 2018 on immediate steps to improve security of export, import and transit measures for firearms, their parts and essential components and ammunition**

Submitted by Department for International Trade on 31 May 2018

#### **SUBJECT MATTER**

1. This document is a Commission Recommendation that was referenced in the Communication from the Commission on the “Fourteenth progress report towards an effective and genuine Security Union” under the heading “Improving controls on firearms import and export to prevent illegal firearms trafficking” (EU document 8160/18).
2. The Commission having reviewed the operation and implementation of Regulation (EU) No 258/2012 (“the Regulation”) during 2017 (report 15932/17) has produced this Recommendation (not legally binding) containing ten provisions to improve the security of export, import and transit measures for firearms, their parts and essential components and ammunition. The provisions are designed to achieve a more efficient implementation of the Regulation which lays down rules governing export authorisation, and on import and transit measures for firearms for civilian use only and to improve the traceability and cooperation in the fight against firearms trafficking.
3. The focus of the provisions in the Recommendation are in the following areas: provision of statistics on licensing information (e.g. number, refusals); measures relating to the checking of criminal records and the relationship to licence decisions; notification and checking of denial notifications; arrangements on deactivated firearms; import marking arrangements; electronic licensing and denial systems; and the potential to exchange information on the reasons for denials and in relation to risk information on the movement of firearms.
4. The UK fully supports a robust implementation of the Regulation. While some of these provisions are already existing UK practice in relation to our export control arrangements, some have wider implications and will need closer examination. This examination will need to consider whether it is practical to implement these provisions (e.g. on information sharing on denial notifications and on the assessment of criminal records) against current procedures that might be more effective. Furthermore, the Regulation is largely silent on procedures for import licensing arrangements and it is difficult to envisage these new provisions applying to this area.

#### **SCRUTINY HISTORY**

5. The Department for International Trade (DIT) submitted an Explanatory Memorandum (EM) on 10 January 2018 concerning EU document number 15932/17 (Report from the Commission to the Council and the European Parliament in accordance with Article 21(3) 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), establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition).
6. The EM was cleared by the House of Lords European Union Committee at the Chairman's Sift 1678 on 17 January 2018 (Session 2017-19). The House of Commons European Scrutiny Committee (ESC) cleared the EM in their 25<sup>th</sup> Report (Session 2017-19) on 25 April 2018 as a document not raising questions of sufficient political or legal importance to warrant a report to the House.

### **MINISTERIAL RESPONSIBILITY**

7. The Secretary of State for International Trade has primary responsibility for export and import controls on firearms. The Home Secretary has overall responsibility for policy on firearms in Great Britain. The Foreign Secretary and the Secretaries of State for Defence and for Business, Energy and Industrial Strategy also have an interest. The Chancellor of the Exchequer has an interest in view of the fact that HMRC is responsible for the enforcement of export controls.

### **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

8. The UK's trade with third countries is a reserved matter under the UK's devolution settlements. Firearms (apart from Air Weapons) are also a reserved matter except in Northern Ireland where it is devolved and in Scotland it is devolved for air weapons only. On this basis, the devolved administrations have been consulted in the preparation of this Explanatory Memorandum.

### **LEGAL AND PROCEDURAL ISSUES**

9. There are no legal or procedural issues. This is not a proposal for legislation.

### **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

10. This Recommendation is a document with EEA relevance.

### **SUBSIDIARITY**

11. This Recommendation provides guidance to Member States on the implementation of the Regulation that is within exclusive EU competence and subsidiarity issues therefore do not apply.

## **POLICY IMPLICATIONS (including exit implications where appropriate)**

12. On 23 June 2016, the EU referendum was held and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29<sup>th</sup> March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
13. This Recommendation from the Commission is not legally binding. However, the provisions that it contains are considered to be politically binding on Member States and should be implemented wherever possible.
14. These provisions have been put forward following the evaluation by the Commission of the Regulation during 2017. Many of these provisions are existing practice in the UK in relation to export and transit procedures and will not cause any operational difficulties (provision of statistical information, the checking and notification of denied licences, an electronic licensing system and denials database and deactivation practices).
15. On import procedures, the Regulation is largely silent and it is difficult to see how the provisions of this Recommendation can be applied. There will also need to be consultation across relevant parts of Government about the sharing of risk information related to the movement of firearms through specific channels and on the information that can be shared concerning refusals of licence applications (too sensitive to share).
16. Most significantly, there will need to be consideration of the implications surrounding the verification of criminal records on the European Criminal Records Information Exchange System (ECRIS) and the requirement to refuse licences where matches are found. Similarly, the associated requirement to establish inspection systems and processes to check on whether the conditions for granting an export licence are still met will need to be looked at. These new provisions go beyond existing UK export control practice and we will need to consider closely the wider implications relating to our arrangements in these areas before deciding whether or not to proceed. If, a decision was taken not to align UK practice with this Recommendation, then the Commission would need to be informed with a justification of our approach provided.
17. In the policy area as a whole, the Government intends to use the EU (Withdrawal) Bill to preserve EU export control regulations and make consequential amendments to relevant domestic legislation. The Government will negotiate with the EU to maintain as much continuity as possible for exporters following EU exit, and to maintain close cooperation with the EU in this area. However, the non-legally binding measures contained in this Commission Recommendation are of a different nature and would fall outside these arrangements.

## **CONSULTATION**

18. The Commission did not consult with Member States on the content of this Recommendation. Due to the short timescale surrounding the publication of the Commission's recommendations, no consultation has therefore been possible at this time with UK stakeholders on these matters. Since the provisions mainly cover processes internal to Government procedures and interaction with other Governments to combat illegal firearm trafficking, immediate consultation with external stakeholders is not essential at this stage.

## **IMPACT ASSESSMENT**

19. An impact assessment has not been produced. This Recommendation will impose minimal or no costs on business.

## **FINANCIAL IMPLICATIONS**

20. Some of the provisions included in the Recommendation may have some resource implications across Government as they are not existing practice. These implications will require further assessment.

## **TIMETABLE**

21. Not applicable. There are no legislative proposals contained within this Recommendation requiring negotiation or implementation. This is a final Recommendation and is now politically binding on Member States.

22. There is no specific timescale for implementation of the measures outlined in the document.

A handwritten signature in blue ink, appearing to be 'R. Fairhead', written in a cursive style.

**Baroness Fairhead**  
**Minister for State for Trade and Export Promotion**  
**Department for International Trade**