

L.N. 195 of 2020

**NATIONAL INTEREST (ENABLING POWERS) ACT
(CAP. 365)**

**Military Equipment (Export Control) (Amendment)
Regulations, 2020**

IN EXERCISE of the powers conferred by article 3(3) of the National Interest (Enabling Powers) Act, the Prime Minister, has made the following regulations:-

1. (1) The title of these regulations is the Military Equipment (Export Control) (Amendment) Regulations, 2020 and they shall be read and construed as one with the Military Equipment (Export Control) Regulations, hereinafter referred to as "the principal regulations".

Citation and scope.

S.L. 365.13.

(2) The scope of these regulations is to transpose the relevant provisions of the Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons.

2. Regulation 2 of the principal regulations, shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) in sub-regulation (1) thereof, immediately after the definition "Director" there shall be added the following new definition:

" "essential component" means the barrel, the frame, the receiver, including both upper and lower receivers, where applicable the slide, the cylinder, the bolt or the breech block, which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted;"; and

(b) in sub-regulation (1) thereof, immediately after the definition "exporter" there shall be added the following new definition:

" "firearm" means any portable barrelled weapon that expels, is designed to expel or may be converted to expel a shot, bullet or projectile by the action of a combustible propellant, unless it is excluded from that definition for one (1) of the reasons listed in Part III of Annex I of Council

B 1340

Directive 91/447/EEC of 18 June 1991 on control of the acquisition and possession of weapons. Firearms are classified in Part II of Annex I.

An object shall be considered to be capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if:

(a) it has the appearance of a firearm; and

(b) as a result of its construction or the material from which it is made, it can be so converted;".

Amends
regulation 4 of
the principal
regulations.

3. In regulation 4 of the principal regulations, there shall be added the following new sub-regulation (3):

"(3) Exporters shall without undue delay and by not later than two (2) weeks from the date of the export, report to the Director through the submission of a delivery receipt, depicting that the export authorised in terms of regulation 3, has been effected.".

Substitutes
regulation 4A of
the principal
regulations.

4. Regulation 4A of the principal regulations, shall be substituted by the following:

"Brokering
Licence.

4A. (1) Prior to engaging in any brokering activities relating to the transfer of any item listed in the Manual, brokers shall submit a written application to the Director for the issue of a licence to act as a broker, therein providing all the relevant information requested by the Director.

(2) On receipt of an application for the issue of a licence to act as a broker, the Director shall perform background checks and shall submit the relevant information to the Commissioner of Police so that a criminal record check is carried out with regard to the applicant:

Provided that in the case of a legal person, the check shall be both on the legal person and on the natural person or persons directing the undertaking:

Provided further that apart from carrying out background checks through the Commissioner of Police, the Director may also request information from other entities in order to establish the private and professional integrity and the relevant abilities of the applicant concerned.

(3) The Director shall not issue a licence to act as a broker if it results that the applicant has been convicted of a criminal offence which in the opinion the Director may impinge on the applicant's private and professional integrity and, or the applicant's relevant abilities:

Provided that in the case of a legal person, this shall also apply if it results that the natural person or persons directing the undertaking have been convicted of such a criminal offence.

(4) The Director shall also not issue a licence to act as a broker if from the information given to the Director it results that the applicant has pending criminal proceedings relating to a criminal offence which in the opinion the Director may impinge on the applicant's private and professional integrity and, or the applicant's relevant abilities:

Provided that in the case of a legal person, this shall also apply if it results that the natural person or persons directing the undertaking has pending criminal proceedings relating to such a criminal offence."

5. Immediately after regulation 4A of the principal regulations, there shall be added the following new regulations:

Adds new regulations to the principal regulations.

"Brokering Activities.

4B. (1) No person shall engage himself in any brokering activities relating to the transfer from any country, including Malta, to any other country of any item listed in the First Schedule to these regulations unless:

(a) he is in possession of a licence issued by the Director to act as a broker; and

(b) an authorisation is granted by the Director for the transfer of such item.

(2) Brokers may refuse to complete any transaction for the acquisition of complete rounds of ammunition, or components of ammunition, which they reasonably consider to be suspicious owing to its nature or scale, and shall report any such attempted transaction to the Director.

(3) Brokers shall without undue delay and by not later than two (2) weeks from the date of the transfer, report to the Director through the submission of a delivery receipt, that the transfer authorised in terms of sub-regulation (1) has been effected.

B 1342

Data filing system
in relation to
brokering
activities.

4C. (1) In relation to brokering activities, the Director shall keep a data filing system which shall record all information relating to firearms which is needed in order to trace and identify those firearms, including:

(a) the type, make, model, calibre and serial number of each firearm and the mark applied to its frame or receiver as a unique marking in accordance with sub-regulation (1), which shall serve as the unique identifier of each firearm;

(b) the serial number or unique marker applied to the essential components, where that differs from the marking on the frame or receiver of each firearm;

(c) the names and addresses of the suppliers and of the persons acquiring or possessing the firearm, together with the relevant date or dates; and

(d) any conversions or modifications to a firearm leading to a change in its category or subcategory, including its certified deactivation or destruction and the relevant date or dates.

(2) The Director shall ensure that the record of firearms and the essential components, including the related personal data, is retained in the data filing systems for a period of thirty (30) years after the destruction of the firearms or essential components in question.

The records of firearms and essential components referred to in sub-regulation (1) and the related personal data shall be made available and be capable of being accessed:

(a) by the Director or by the national authorities competent for customs proceedings for a period of ten (10) years after the destruction of the firearm or the essential components in question; and

(b) by the national authorities competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, for a period of thirty (30) years after the destruction of the firearm or the essential components in question.

(3) The Director shall ensure that the personal data is deleted from the data-filing systems upon expiry of the periods specified in sub-regulation (2). This is without prejudice to cases in which specific personal data have been transferred to a national authority competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and are used in that specific context, or to other national authorities competent for a compatible purpose. In those cases, the processing of such data shall be regulated by the Data Protection Act."

Cap. 586.

6. The marginal note of regulation 9 of the principal regulations, shall be substituted by the following:

Amends regulation 9 of the principal regulations.

"Record keeping and inspection in relation to exporters."

7. Immediately after regulation 9 of the principal regulations, there shall be added the following new regulation 9A:

Adds new regulation 9A to the principal regulations.

"Record keeping obligations in relation to brokers.

9A. (1) Throughout their period of activity, brokers shall maintain a register in which each firearm and each essential component that is received or disposed of by them shall be recorded, together with particulars enabling the firearm or essential component concerned to be identified and traced, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the suppliers and of the persons acquiring it.

(2) Upon cessation of their activities, brokers shall deliver that register to the Director."

8. The First Schedule to the principal regulations, shall be substituted by the following:

Substitutes the First Schedule to the principal regulations.

"FIRST SCHEDULE
(Regulations 2, 3, 4 and 4B)

[The Common Military List of the European Union](#), adopted by the Council on 18 February 2019 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) (updating and replacing the Common Military Lists of the European Union adopted by the Council on 26 February 2018) shall be applicable in its entirety as the First Schedule to these regulations."
