

**EXPLANATORY MEMORANDUM TO  
THE FIREARMS REGULATIONS 2015**

**2015 No. 860**

**1.** This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The purpose of the instrument is to complete the implementation of the Weapons Directive 2008/51/EC, Article 4(4) of which requires the establishment and maintenance for twenty years of a computerised data filing system that records details of persons who possess, acquire, supply and transfer firearms and details of such firearms.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 This instrument will complete the implementation of the Weapons Directive 2008/51 of the European Parliament and of the Council of 21 May 2008 ('the Directive') which itself amends Council Directive No. 91/477/EEC on the control of the acquisition and possession of weapons. A Transposition Note is attached at annex A.

4.2 The instrument will amend Section 39 of the Firearms (Amendment) Act 1997 and Articles 30 and 38 of, and Schedules 3 and 5 to, the Firearms (Northern Ireland) Order 2004 to ensure that the existing centralised firearms systems in the United Kingdom fully comply with the requirements of article 4(4) EU Weapons Directive.

**5. Territorial Extent and Application**

5.1 This instrument applies to the United Kingdom.

**6. European Convention on Human Rights**

6.1 The Minister of State, Lynne Featherstone MP, has made the following statement regarding Human Rights:

6.2 In my view the provisions of The Firearms Regulations 2015 are compatible with the Convention rights.

## **7. Policy background**

- What is being done and why

7.1 The instrument completes the implementation of the Directive, which was negotiated over a period of two years in Brussels.

7.2 Article 4(4) of the Directive requires, by 31 December 2014, the establishment and maintenance of a computerised data filing system to record each firearm subject to the Directive. The Directive allows this to be achieved through either a centralised or decentralised system. The Government has opted for the centralised approach and will be relying on our existing centralised systems (the National Firearms Licensing Management System (NFLMS) in England and Wales and SHOGUN in Scotland and Northern Ireland) to implement the Directive.

7.3 In Great Britain we will not in practice be requiring the police or certificate holders to record anything more or less than they are already required to do now. The only difference is the length of time (20 years) that records must be retained.

7.4 In Northern Ireland the majority of the information is already recorded but legislation will be introduced to ensure that in all transactions involving a firearm the type, make, calibre, model, serial number and the details of the person selling and purchasing the firearm are recorded (by the registered dealer and the Police Service of Northern Ireland (PSNI)) and that electronic records held by the PSNI are kept for at least 20 years.

- Consolidation

7.5 There are no immediate plans for consolidation, given that this instrument amends primary legislation.

7.6 The Law Commission will commence a review of firearms legislation in Great Britain in April 2015.

## **8. Consultation outcome**

8.1 The narrow scope of the Directive meant that a public consultation would not be as effective a means of understanding views compared to more focused engagement. The Directive set out two approaches that member states could take, centralised or decentralised and our approach to implementation would not go further than these requirements. We have engaged with the industry trade representatives, Gun Trade Association (GTA), the British Shooting Sports Council and other shooting representative organisations. In Northern Ireland, officials met with representatives from British Association for Shooting and Conservation (BASC), Gun Trade Guild NI and the Northern Ireland Firearms Dealers' Association.

## **9. Guidance**

9.1 A Home Office circular will be published and the Home Office Guide on Firearms Licensing Law will be updated. Both documents will be made available on the GOV.UK website.

## **10. Impact**

10.1 There is not any impact on businesses in Great Britain and the impact on business in Northern Ireland is negligible so an impact assessment has not been prepared for this instrument.

10.2 There is not any impact on the public sector.

## **11. Regulating small business**

11.1 The legislation does not apply to small business in Great Britain. In Northern Ireland registered dealers are required to keep more information than they previously recorded and they must ensure that the PSNI receive this information in a timely manner.

## **12. Monitoring & review**

12.1 There will not be any additional monitoring required in England, Wales and Scotland because the preferred option is to continue with existing systems. In Northern Ireland, the Department of Justice will review the regime with the PSNI. The European Commission has a process of reviewing the implementation of the Directive which included submission of a questionnaire on each country's approach by end of January (completed) and then a dedicated meeting on how the Directive has been implemented by each country in spring/summer 2015.

## **13. Contact**

Sam Darby at the Home Office Tel: 0207 035 3273 or email: Samantha.Darby1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

**Annex A**

**DIRECTIVE 2008/51/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 21 MAY 2008 AMENDING COUNCIL DIRECTIVE 91/477/EEC ON CONTROL OF THE ACQUISITION AND POSSESSION OF WEAPONS**

**TRANSPOSITION NOTE**

Directive 2008/51/EC (“the 2008 Directive”) amends Directive 91/477/EEC (“the 1991 Directive”) as set out below. The additional requirements imposed by the 2008 Directive were already largely reflected in UK law, notably the Firearms Act 1968 and the Firearms (Amendment) Act 1988 in relation to England, Wales and Scotland, and the Firearms (Northern Ireland) Order 2004 in relation to Northern Ireland. In order to complete the process of transposition it has only been necessary to legislate in the area of the acquisition and possession of firearms by persons under the age of 18 (article 1.4 of the 2008 Directive). The Firearms (Amendment) Regulations 2010 (“the Regulations”) do what is necessary to implement the Directive in this area, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
1 1.1(a)	Amends article 1 of the 1991 Directive as follows: Inserts a general definition of “firearm” (previously defined by reference to particular categories of object set out in Annex I)	Existing legislation.  In England, Wales and Scotland section 57(1) of the Firearms Act 1968 defines a firearm as “a lethal barrelled weapon from which any shot, bullet or other missile can be discharged”. The same definition applies in Northern Ireland under article 2(2) of the Firearms (Northern Ireland) Order 2004. Existing UK law therefore goes further than the 2008 Directive in including air weapons and weapons that are not portable. Article 3 of the 1991 Directive permits Member States to adopt legislative provisions more stringent than those provided for in the Directive.	Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).
1.1(b)	Inserts definitions of “part”, “essential component”, “ammunition”, “tracing” and “broker” (these terms did not previously appear in the 1991 Directive, with the exception of “ammunition”, which was not defined).	Existing legislation.  In England, Wales and Scotland under section 57(1)(a) of the Firearms Act 1968 “any component part” of a firearm is classed as a firearm, and ammunition is defined as “ammunition for any firearm”. The position is the same in Northern Ireland by virtue of article 2(2) of the Firearms (Northern Ireland) Order 2004, save that blank cartridges of a diameter not more than 25.4mm are excluded from	Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).

		<p>the definition of ammunition.</p> <p>The term “tracing” does not appear in UK legislation, but the existing provisions on marking and record-keeping are sufficient to implement the substantive requirements of the Directive – see below.</p> <p>The term “broker” does not appear in UK legislation – brokers are classed as dealers for the purposes of most of the activities covered by the Directive definition (see the definition of “dealer” below).</p> <p>Existing legislation.</p> <p>In England, Wales and Scotland section 57(4) of the Firearms Act 1968 (as amended by section 31(3) of the Violent Crime Reduction Act 2006) defines a firearms dealer as “a person who, by way of trade or business, (a) manufactures, sells, transfers, repairs, tests or proves firearms or ammunition to which section 1 of this Act applies or shot guns ...”. By virtue of section 1(3), section 1 of the 1968 Act (as amended by Firearms (Amendment) Act 1988 and the Anti-Social Behaviour Act 2003) applies to every firearm except (a) a smooth-bore gun which has a barrel not longer than 24 inches and a bore not greater than 2 inches, has no magazine or a non-detachable magazine incapable of holding more than 2 cartridges, and is not a revolver gun, and (b) an air weapon which is not designed or adapted for use with a self-contained gas cartridge system or has not been specified by the Home Secretary as specially dangerous.</p> <p>In Northern Ireland a firearms dealer is defined in article 2(2) of the Firearms (Northern Ireland) Order 2004 as “a person who by way of trade or business manufactures, sells, transfers, repairs, tests or proves firearms or ammunition”.</p> <p>Existing legislation.</p> <p>These terms do not appear in UK legislation, but the existing provisions on marking and record-keeping are</p>	
1.1(c)	Substitutes a new definition of “dealer” in order to include those who deal in ammunition.		Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).
1.1(d)	Inserts definitions of “illicit manufacturing” and “illicit trafficking” (these terms did not previously appear in the 1991 Directive).		Home Office (England, Wales and Scotland), Department of

1.1(e)	<p>Amends the paragraph in relation to the European Firearms Pass to make the maximum period of validity 5 years in all cases, and makes other minor changes to the text.</p>	<p>sufficient to implement the substantive requirements of the Directive – see below. Existing legislation.</p> <p>In England, Wales and Scotland under section 32A(6) of the Firearms Act 1968 (as amended by the Firearms Acts (Amendment) Regulations 1992) the period for which a European Firearms Pass is to be valid cannot exceed the period until a firearm or shotgun certificate relating to a firearm identified in the pass expires. Under section 28A(1) of the 1968 Act (as amended by the Firearms (Amendment) Act 1997) a certificate continues in force for 5 years.</p> <p>The position is the same in Northern Ireland by virtue of articles 20(1) and 8(2) of the Firearms (Northern Ireland) Order 2004.</p>	<p>Justice (Northern Ireland). Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).</p>
1.2	<p>Substitutes a new article 4 requiring the implementation of a system of marking for individual firearms and packages of ammunition, requiring that the activity of dealer be subject to authorisation in all cases, requiring the implementation of a computerised database of firearms supply and possession by 31 December 2014, maintaining the requirement for dealers to keep their own registers of transactions, and requiring that all firearms be capable of being traced to their owners including, by 31 December 2014, Category D firearms placed on the market after 28 July 2010. (Category D firearms are single-shot shotguns.)</p>	<p>Existing legislation and practice.</p> <p>The Gun Barrel Proof Act 1868, as amended by the Gun Barrel Proof Act 1978 provides for the marking of firearms in accordance with the Convention for the Reciprocal Recognition of Proof Marks of Small Arms done at Brussels on 1<sup>st</sup> July 1969.</p> <p>The 1969 Convention also governs the marking of ammunition packages, and UK manufacturers regard themselves as bound by it.</p> <p>In England, Wales and Scotland under section 3(1) of the Firearms Act 1968 it is a criminal offence for a person to sell any firearm or ammunition to which section 1 of the Act applies, or a shotgun, without being registered under the Act as a firearms dealer. Sections 33 to 39 of the 1968 Act govern the registration of firearms dealers by the police, including a power under section 34(2) to refuse to register a person as a dealer if on grounds of danger to public safety.</p> <p>Section 40 of, and Schedule 4 to, the 1968 Act requires</p>	<p>Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).</p>

		<p>registered firearms dealers to maintain registers of transactions, including the quantities and descriptions of firearms and ammunition sold or transferred, and the names and addresses of the purchasers or transferees. The corresponding provisions in Northern Ireland are articles 24(1), 26 to 36 and 38 of, and Schedule 3 to, the Firearms (Northern Ireland) Order 2004.</p> <p>The requirement to establish and maintain, for at least 20 years, a computerised database of firearms possession and supply is implemented by section 39 of the Firearms (Amendment) Act 1997 (as amended). This requirement is also established in Northern Ireland by Articles 30, 38 and 38A of the Firearms (Northern Ireland) Order 2004.</p>	
1.3	<p>Inserts new articles 4a, restricting the acquisition of firearms to licence holders, with the exception of Category C and D firearms acquired or possessed in accordance with specific permission granted under national law, and 4b, requiring consideration to be given to a system of regulation for brokers. (Category C firearms are repeating and semi-automatic shotguns and single-shot, repeating and semi-automatic rifles, other than shotguns with short barrels and semi-automatic shotguns and rifles which have magazines that are removable or contain more than 3 rounds, or which resemble automatic weapons. For Category D firearms, see above.)</p>	<p>Existing legislation.</p> <p>In England, Wales and Scotland section 1 of the Firearms Act 1968 (as amended by Firearms (Amendment) Act 1988 and the Anti-Social Behaviour Act 2003) makes it a criminal offence for a person to acquire or possess a firearm to which the section applies (for which, see above) without holding a firearm certificate. Section 2 of the 1968 Act makes similar provision in relation to shotguns. Sections 1 and 2 of the Act are subject to certain exemptions set out in sections 7 to 13, which permit the acquisition and possession of firearms without a certificate in specific circumstances.</p> <p>The corresponding provisions in Northern Ireland are article 3 of, and Schedule 1 to, the Firearms (Northern Ireland) Order 2004.</p> <p>Brokers are regarded as dealers under UK law for most purposes, and are regulated as such (see above). They are also subject to export control legislation in relation to international transactions.</p>	Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).
1.4	<p>Substitutes a new article 5 restricting the acquisition and possession of all firearms to those who have good cause, are at least 18 and are not likely to be a danger to themselves or</p>	<p>Existing legislation and the Firearms (Amendment) Regulations 2010.</p>	Home Office (England, Wales and Scotland),

	<p>to public order or safety. In relation to the prohibition on the acquisition and possession of firearms by under-18s, the exception for hunting and target shooting is retained, provided that any acquisition is by means other than purchase, and provided that the person either has parental permission, is under parental guidance or the guidance of an adult holding a firearms or hunting licence, or is in a licensed or approved training centre.</p>	<p>In England, Wales and Scotland it is a criminal offence under section 22(1) of the Firearms Act 1968 for a person under the age of 17 to purchase or hire a firearm or ammunition. There is a corresponding offence under section 24(1) of the 1968 Act of selling or letting on hire a firearm to a person under the age of 17. The Firearms (Amendment) Regulations 2010 amend sections 22(1) and 24(1) in order to raise the age threshold to 18. Consequential amendments are made to Part 1 of Schedule 6 to the 1968 Act, which deals with sentencing. The 2010 Regulations also amend sections 27(1)(b) and 28(1C) by removing incidental references in those subsections to the purchase of firearms by under-18s. By prohibiting the hiring as well as the purchase of firearms by under-18s, the 2010 Regulations do more than is necessary to implement the 2008 Directive, but they do so in order to ensure the coherence of UK law by maintaining the existing equal treatment of purchase and hire.</p> <p>The 2010 Regulations amend section 11 of the 1968 Act, which allows persons who do not hold a firearm or shotgun certificate to possess firearms for the purposes of sporting activities. Section 11(1) and (5) are amended to ensure that, where a person under the age of 18 possesses a firearm under the particular circumstances set out in those subsections, they are under the guidance of an adult. Section 11(2) is amended to allow only persons aged 18 or over to possess firearms for the purpose of starting races.</p> <p>The 2010 Regulations amend the forms prescribed for the purposes of applying for firearm and shotgun certificates in Part I of Schedule 1 and Part I of Schedule 2 to the Firearms Rules 1998, respectively, in order to require the forms to be counter-signed by the parent or guardian of an applicant who is under the age of 18. This ensures that all certificate holders under the age of 18 have the permission of a parent or guardian to acquire or possess the firearms to which the certificate relates.</p>	<p>Department of Justice (Northern Ireland).</p>
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		<p>In Northern Ireland article 7 of the Firearms (Northern Ireland) Order 2004 governs the issuing of firearms certificates to persons under the age of 18. The 2010 Regulations amend article 7 to prevent a firearms certificate being issued to a person under the age of 18 for the purchase of a firearm, and to require that proof of parental permission is provided before a certificate for acquisition and possession can be issued.</p> <p>Existing legislation.</p> <p>In England, Wales and Scotland section 32 of the Firearms (Amendment) Act 1997 requires that the sale of a firearm to which section 1 of the Act applies, or a shotgun, must be conducted in person. This prevents firearms being acquired by distance communication.</p> <p>The equivalent legislation in Northern Ireland is article 39 of the Firearms (Northern Ireland) Order 2004.</p> <p>Existing legislation.</p> <p>In England, Wales and Scotland under section 28A(1) of the Firearms Act 1968 (as inserted by the Firearms (Amendment) Act 1997) a firearm or shotgun certificate continues in force for five years unless revoked or cancelled.</p> <p>The corresponding provision in Northern Ireland is article 8(2) of the Firearms (Northern Ireland) Order 2004.</p> <p>Category C and D firearms were already subject to the requirement for a firearm or shotgun certificate under existing UK law, so the 2008 Directive does not give rise to any additional requirement to apply for a licence, and the question of an exemption does not arise.</p> <p>Existing legislation and administrative policy.</p> <p>The export of firearms is governed by the Export Control Order 2008, made under the Export Control Act 2002. Registered firearms dealers in the UK may apply to the Department for Business, Innovation and Skills for an</p>	<p>Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).</p>
1.5	<p>Inserts a new paragraph in article 6 requiring that the acquisition of firearms, parts and ammunition by means of distance communication is strictly controlled.</p>		
1.6	<p>Inserts new paragraphs in article 7 allowing consideration to be given to the issuing of multi-annual firearms licences, and exempting persons authorised to possess Category B firearms as at 28 July 2008 from any requirement to apply for a licence in respect of Category C or D firearms resulting from the coming into force of the 2008 Directive.</p>		<p>Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).</p>
1.7	<p>Substitutes a new second sub-paragraph in article 11(3) requiring that notification of a transfer of firearms between member states be given to the authorities by the dealer prior to the date of transfer, and that the authorities carry out inspections to verify the details given.</p>		<p>Department for Business, Innovation and Skills, Home Office.</p>

		Open Individual Export Licence under article 26 of the 2008 Order authorising the export of firearms to dealers in other Member States. As a matter of administrative policy such licences are issued subject to the condition that notification of each shipment is given to the Home Office 2 days in advance. Under article 38 of the 2008 Order, it is a criminal offence to breach a condition in a licence. Existing legislation.	Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).
1.8	Substitutes a new first sub-paragraph in article 12(2) allowing hunters and target shooters travelling through other Member States to produce proof of their hunting or target shooting activities, rather than an invitation, in order to substantiate the reason for their journey, and prohibiting the charging of a fee for acceptance of a European Firearms Pass in these circumstances.	Section 17 of the Firearms (Amendment) Act 1988 (as amended by the Firearms Acts (Amendment) Regulations 1992 and the Firearms (Amendment) Act 1997) provides for the grant of a visitors' firearm or shotgun permit where the chief officer of police is satisfied (on whatever grounds) that the visitor has good reason to have the firearm or shotgun with him in Britain. Under section 17(3A) of the 1968 Act a permit may not be granted in the absence of a European Firearms Pass, but no fee is charged for the acceptance of a European Firearms Pass for these purposes. In Northern Ireland the corresponding provision is article 15 of the Firearms (Northern Ireland) Order 2004.	Home Office.
1.9	Substitutes a new article 13(3) providing for the Commission to set up a contact group by 28 July 2009 for the purposes of the regular exchange of information between Member States on intra-Community transfer of firearms.	The Home Office has been identified to the Commission as the UK responsible national authority for these purposes.	Home Office.
1.10	Inserts a new article 13a providing for a committee to assist the Commission in the implementation of article 13.	Does not impose any requirement on Member States.	N/A.
1.11	Substitutes a new article 16 requiring the implementation of effective, proportionate and dissuasive sanctions for infringements of national law.	Existing legislation and case law.  In England, Wales and Scotland maximum sentences for offences under the Firearms Act 1968 are set out in Part 1 of Schedule 6 to the Act (as amended by the Firearms (Amendment) Act 1997, the Criminal Justice Act 2003, the Anti-social Behaviour Act 2003 and the Violent Crime Reduction Act 2006). Section 51A of the 1968 Act provides for minimum custodial sentences for certain serious firearms offences, in the absence of exceptional circumstances. The Court of Appeal has issued sentencing guidelines, which judges have to follow,	Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).

		emphasising the need for deterrent sentences for firearms offences (see the judgment of the Court in <i>R v Avis</i> [1998] 1 Cr App R 420 CA).	
1.12	Substitutes a new article 17, requiring the Commission to report to the European Parliament and the Council by 28 July 2012 on a move to two categories of firearm (prohibited and authorised) and by 28 July 2010 on the inclusion of replica firearms in the Directive.	In Northern Ireland the corresponding provisions are article 70 of and Schedule 5 to the Firearms (Northern Ireland) Order 2004. Does not impose any requirement on Member States.	N/A.
1.13	Amends Annex I by creating more detailed requirements as to methods of deactivation, and requiring verification of deactivation by the issuing of certificates.	Existing legislation. In England, Wales and Scotland under section 8 of the Firearms (Amendment) Act 1988 it is to be presumed that a firearm has been deactivated if it has been marked and certified as such by one of the proof houses for which provision is made in the Gun Barrel Proof Act 1868.	Home Office
2	Requires the implementation of the 2008 Directive by 28 July 2010. Requires Member States to communicate to the Commission the text of implementing measures, which must contain a reference to the Directive or be accompanied by such a reference on official publication, and also to communicate the text of the main provisions of national law adopted in the area.	See the remainder of this Note, and the Firearms (Amendment) Regulations 2010, a copy of which is to be supplied to the Commission.	Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland).
3	Entry into force.	Does not impose any requirement on Member States.	N/A.
4	Addressees.	Does not impose any requirement on Member States.	N/A.