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Directive 2008/51/EC

Key Points

What is the 2008 Directive?

Directive 2008/51/EC amended the 1991 Council Directive 91/447/EEC on the control of the acquisition and possession of weapons. The Directive aims to reconcile the abolition of internal frontier controls with the need to maintain control of and acquisition and possession of firearms within the European Union.

The 2008 Directive made a number of amendments to the 1991 Directive to address issues identified by a report by the European Commission on the implementation of the 1991 Directive and as a result of the accession by the European Union to the UN Protocol on the illicit manufacturing of and trafficking in firearms in January 2002.

The 2008 Directive in particular required the implementation a system of marking individual firearms and ammunition, a computerised system for the registration of firearms and a restriction on the acquisition and possession of firearms by persons under 18 years by means of purchase.

The European Commission is expected to prepare a report on the implementation of the directive by

July 2015 which may include further proposals if necessary.

What is the Impact of the 2008 Directive on Northern Ireland?

The Firearms (Amendment) Regulations 2010 transposed aspects of the 2008 Directive into national legislation. Regulation 5 deals specifically with amendments to firearms legislation in Northern Ireland.

The Explanatory Memorandum to the 2010 Regulations explained that amendments made by the 2008 Directive were already broadly reflected in existing legislation but further legislation was required in relation to the acquisition and possession of firearms by persons under the age of 18.

The 2010 Regulations amended the Firearms (Northern Ireland) Order 2004 to ensure that a certificate may only be issued to a person under the age of 18 for acquisition but not purchase of firearms. The Regulations stipulate that a certificate may only be issued to a person under 18 where the application is accompanied by written permission of the person's parent or guardian.

The 2010 Regulations also amend Article 7 of the 2004 order to require that any firearm certificate issued to a person under 18 in relation to a high-powered air weapon or shotgun to be used for sporting purposes is issued subject to the condition that the weapon is used under the supervision of a certificate holder aged 21 and over and has held a firearm of that type for at least three years, or until the applicant reaches the age of 18.

One area still outstanding is the implementation of a computerised register by 31 December 2014. The Home Office announced that the Firearms Act 1968 will be amended by statutory instrument to mandate that dealers will be required to keep a register on a computer filing system for a minimum period of 20 years.

In Northern Ireland, the Department of Justice is proposing a centralised approach and the police will keep a computer record of transactions from 31 December 2014. The intention is to track all firearms "from manufacture", so the record of transactions will include dealers acquiring stock as well as dealer to dealer transactions requiring notification to the PSNI and not just captured in the dealer register.

The Department will have to introduce regulations to amend the Firearms (Northern Ireland) Order 2004, however prohibited firearms fall within the legislative competence of the UK Parliament. Discussions will therefore need to take place as to whether regulations affecting Northern Ireland will be made by the Home Office in order to bring all changes into effect at the same time.

1 Introduction

This briefing paper has been prepared in response to a research request from the Committee for Justice on Directive 2008/51/EC of the European Parliament and of the Council which amends Council Directive 91/447/EEC on the control of the acquisition and possession of weapons. Section 2 of this paper provides information on Directive 91/477/EEC and its transposition. Section 3 contains information on the 2008 Directive, including the rationale for the amendments to the 1991 Directive and outlines its provisions. Section 4 considers how the 2008 Directive has been implemented to date in the UK, including Northern Ireland, and future implementation of the Directive.

2 Background

Directive 2008/51/EC of the European Parliament and of the Council amended Council Directive 91/477/EEC on control of the acquisition and possession of weapons. This section provides information on the original directive before discussing amendments made by the 2008 Directive.

Directive 91/477/EEC

Scope of the Directive

Directive 91/477/EEC was adopted by the Council of Ministers in 1991 and member states were required to implement it by 1 January 1993. The Directive aims to reconcile the abolition of internal frontier controls with the need to maintain control of the acquisition and possession of firearms within the European Union.¹

The Directive applies to weapons and firearms as defined in Annex I of the Directive. Firearms are classified into four categories:

- Category A- Prohibited Firearms which includes explosive military missiles, automatic firearms, firearms disguised as other objects, ammunition with penetrating, explosive or expanding projectiles, except in the case of weapons for hunting or target shooting;
- Category B-Firearms subject to authorisation including semi-automatic or repeating short or long firearms;
- Category C-Firearms subject to declaration including repeating long firearms other than those listed in Category B;
- Category D-Other firearms such as single shot smooth bore barrels.

¹ Commission of the European Communities "Report from the Commission to the European Parliament and Council: The Implementation of Council Directive 91/477/EEC of 18 June 1991 on the control and acquisition and possession of weapons" COM (2000) 837 final, pg 5

The Directive also covers essential parts of firearms including the breach closing mechanism, the chamber and the barrel of a firearm. Objects will not fall into the definition of firearm if they are designed for alarm, signalling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes. Objects rendered permanently unfit for use as well as antique weapons or reproductions are excluded from the scope of the directive. The Directive does not affect national rules on the carrying of weapons, hunting or target shooting.

Harmonisation of firearms legislation

The Directive does not apply to the acquisition of weapons and ammunition in accordance with national law by the armed forces, the police and public authorities or by collectors and bodies concerned with the cultural and historical aspects of weapons. The Directive does not apply to commercial transfers of weapons and ammunition of war (Article 2). The Member States may also adopt legislation provisions which are more stringent than those provided for in the Directive (Article 3).

Article 4 of the Directive laid down a minimum level of harmonisation of the conditions for the activity for arms dealers. The activity is subject to authorisation in respect of categories A and B and subject to declaration in respect of categories C and D. Each dealer is required to keep a register in which information on categories A, B and C weapons received or disposed of by him or her, shall be recorded, including the type, make, model calibre and serial number and the names and addresses of the supplier and person acquiring the weapon. Member States are required to regularly check dealers' compliance with this obligation. The dealer must also keep a register for a period of five years, even after he has ceased his activity.

Article 5 of the Directive laid down minimum age requirements for persons acquiring a firearm:

- The person is 18 years old or more, except for hunting or target shooting;
- Are not likely to be a danger to themselves, to public order or to public safety.

The Directive requires Member States to take all appropriate steps to prohibit the acquisition and the possession of firearms and ammunition classified in Category A. Competent authorities may grant authorisations in special cases provided it is not contrary to public order or public safety (Article 6). Member States must make the acquisition of firearms in Category B subject to authorisation (Article 7). The possession of firearms that are outlined in Category C are subject to declaration to the authorities. Every seller, dealer or private person must inform the authorities of the Member State of every transfer or handling over of a firearm classified in Category C. Furthermore if a Member State prohibits or makes subject to authorisation the acquisition or possession of a firearm in Category B, C or D, it must inform other Member States which shall include a statement to that effect on any European

Firearms Pass they issue for such a firearm (Article 8). The Directive contains rules for the handing over of a firearm classified in Category A, B or C to a person who is not a resident in the Member State (Article 9).

Formalities for the movement of weapons within the European Union

Articles 11 to 14 provide for the formalities for the movement of weapons within the Community (now the European Union).

Firearms may be transferred from one Member State to another only in accordance with the procedure laid out in Article 11 of the Directive. When a firearm is to be transferred, the person concerned has to supply information on:

- The names and addresses of the person selling or disposing of the firearm and of the person purchasing or acquiring it, or where appropriate the owner;
- The address to which the firearm is to be consigned or transported and the numbers of firearms;
- The particulars enabling the firearm to be identified;
- The means of transfer;
- The date of departure and estimated date of arrival.

When a Member State authorises a transfer, Article 11 provides that it shall issue a licence that includes the relevant information and the licence accompanies the firearm until it reaches its destination. In relation to transfers between arms dealers, Member States may replace this system of prior authorisation by an authorisation valid for a maximum of three years.

Article 12 provides that if the procedure provided for in Article 11 is not followed, the possession of a firearm during a journey of two or more Member States shall not be permitted, unless that person has obtained the authorisation of each of those Member States. Member States may grant authorisation for one or more journeys for a maximum period of one year, subject to renewal. However there is derogation in the procedure for hunters in categories C and D and marksmen in categories B, C and D, who may without prior authorisation be in possession of a firearm during a journey through two or more Member States provided:

- The purpose of the journey is to engage in hunting or shooting activities;
- They are in possession of a European Firearms Pass listing such firearms ; and
- They are able to substantiate the reasons for their journey in particular by producing an invitation.

This derogation does not apply to journeys to Member States which prohibit the acquisition and possession of the firearm in question. In this case, an express

statement to that effect is entered on the European Firearms Pass. Two or more Member States may provide for more flexible arrangements than those prescribed for movement of firearms within their territories under agreements for the mutual recognition of national documents.

Transposition and implementation of Directive 91/477/EEC

Member States were required to bring into force laws, regulations and administrative provisions necessary to comply with the Directive by 1 January 1993 and inform the Commission and the other Member States of the measures taken (Article 18). The Firearms (Northern Ireland) Order 1981 (Amendment) Regulations 1992 amended the Firearms (Northern Ireland) Order 1981 for the purposes of implementing the Directive. However the 1981 Order was repealed by the Firearms (Northern Ireland) Order 2004. The 2004 Order included provisions as required by the Directive on the European Firearms Pass.²

3 Directive 2008/51/EC

3.1 European Commission Report 2000

Article 17 of Directive 91/477/EEC required the European Commission to submit a report to the European Parliament and to the Council on the implementation of the Directive.³ The Commission published its report in 2000 after all the Member States had transposed the Directive. The Commission concluded that the 1991 Directive had been properly transposed and its provisions were operating in practice. There were, however some omissions and incorrect transpositions.⁴ The report suggested that modification of the Directive could improve the operation of the European Firearms Pass and the exchange of information between Member States. The Commission proposed modification of Article 12 of the Directive, which deals with possession of firearms during a journey. The Commission indicated it would create a Contact Group to improve the exchange of information. The group would discuss concrete proposals for improving the exchange of information.⁵

The Commission highlighted that difficulties arose from the fact that certain Member States classified as war weapons or prohibited weapons that were considered to be hunting firearms in other Member States. The Commission indicated that in order to strengthen the status of the European Firearms Pass, it would study the feasibility of

² See in particular Articles 19-20 of the Firearms (NI) Order 2004

³ Commission of the European Communities "Report from the Commission to the European Parliament and the Council: The Implementation of Council Directive 91/477/EEC of 18 June 1991 on the control and acquisition of weapons" COM (2000) 837 final.

⁴ Commission of the European Communities "Report from the Commission to the European Parliament and the Council: The Implementation of Council Directive 91/477/EEC of 18 June 1991 on the control and acquisition of weapons.", pg 17

⁵ Commission of the European Communities "Report from the Commission to the European Parliament and the Council: The Implementation of Council Directive 91/477/EEC of 18 June 1991 on the control and acquisition of weapons.", pg 19

introducing special treatment in national legislation for hunting firearms and firearms used by marksmen.⁶

At the time of the report, the UN Protocol against illicit manufacturing and trafficking in firearms was being negotiated. The Commission had a mandate to negotiate certain provisions of the Protocol: these included Articles on Record Keeping (Article 8), on Marking of firearms (Article 9), on Deactivated Weapons (Article 10), on Export and Import licences (Article 11), on Security and preventative measures (Article 12) and on Brokering (Article 18a). The Commission concluded it was advisable to wait for the protocol to be adopted before proposing modifications to the Directive.⁷ The Commission signed the Protocol on behalf of the European Union in January 2002.⁸

3.2 Directive 2008/51/EC

Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amends Council Directive 91/477/EEC on control of the acquisition and possession of weapons.

Why did the 1991 Directive need to be amended?

The introduction to the 2008 Directive sets out the rationale for amendment of the 1991 Directive including:

- To address the issues identified in the European Commission's report on the implementation of the 1991 Directive;
- Police intelligence showed an increase in the use of converted weapons within the European Union and it was essential to ensure that convertible weapons were brought within the definition of firearm for the purposes of Directive 91/477/EEC;
- Firearms, their parts and ammunition, when imported from third countries are subject to European Union legislation and to the requirements of the Directive;
- Illicit manufacturing and trafficking their parts and ammunition as well as tracing should be defined for the purposes for the 1991 Directive;
- While the Protocol provided that the period during which registers containing information on weapons are to be kept must be increased to at least 10 years, it is necessary, in view of the dangerous nature and durability of weapons to extend this period up to a minimum of 20 years;

⁶ Commission of the European Communities "Report from the Commission to the European Parliament and the Council: The Implementation of Council Directive 91/477/EEC of 18 June 1991 on the control and acquisition of weapons., pg 20

⁷ Commission of the European Communities "Report from the Commission to the European Parliament and the Council: The Implementation of Council Directive 91/477/EEC of 18 June 1991 on the control and acquisition of weapons., pg 22

⁸ See Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008

- It is necessary that Member States keep a computerised data filing system which ensures that access to the authorised authorities to the data filing systems to which the information regarding each firearm is recorded;
- Brokering activities referred to Article 15 of the Protocol should be defined for the purposes of the 1991 Directive;
- In serious cases, compliance with Articles 5 and 6 of the Protocol require the application of criminal sanctions and confiscation of the weapons;
- The Protocol sets out more explicit general principles for the deactivation of weapons. Annex 1 of the 1991 Directive needed to be amended;
- It is necessary that Member States exercise a strict control over the activity of dealers, including verifying professional integrity and abilities of dealers;
- The acquisition of firearms by distance communications for example via the internet should, where authorised, be subject to the rules laid down in the 1991 Directive and as a general rule acquisition of firearms by persons convicted of certain serious offences should be prohibited;
- The European Firearms Pass should be regarded as the main document needed by hunters and marksmen for the possession of a firearm during a journey to another Member State;
- In order to facilitate the tracing of firearms and combat illicit trafficking and manufacturing, it is necessary to improve the exchange of information between Member States;
- Several Member States have simplified the way they classify firearms by switching from four categories to two: prohibited firearms and firearms subject to authorisation. Member States should fall into line with this simplified classification, although Member States which divide firearms into a further set of categories, may in accordance with the principle of subsidiarity, maintain their existing classification;
- Authorisations for the acquisition and possession of firearms should involve a single administrative procedure;
- In accordance with point 34 of the Inter-institutional Agreement on better law-making, Member States should draw up tables illustrating the correlation between the 2008 Directive and the transposition measures and make them public.

What does the 2008 Directive involve?

The 2008 Directive contains four provisions. The main provision of the 2008 Directive is Article 1, which includes the amendments to the 1991 Directive. Article 2 of the Directive requires Member States to transpose the Directive, laws, regulations or administrative

provisions by 28 July 2010. Article 3 stipulates when the Directive will come into force. Article 4 provides that the Directive is addressed to Member States.

The provisions in the 2008 Directive are summarised in the following table.

| Article 1 of 2008/51/EC Directive | Amendments to Council Directive 91/477/EEC |
|--|---|
| Article 1(1) | Article 1 (1)(a) inserts definition of firearm |
| | Article 1 (1)(b) Inserts definition of 'part', 'essential', 'component', 'ammunition', 'tracing' and 'broker'. |
| | Article 1(1)(c) inserts a new definition of dealer to include those who deal in ammunition |
| | Article 1 (1)(d) inserts definitions of illicit manufacturing and illicit trafficking |
| | Article 1(1)(e) amends the paragraph on the European Firearms Pass to make the maximum period of validity 5 years in all cases. |
| Article 1(2) | Replaces Article 4 by requiring the implementation of a system of marking individual firearms and ammunition. Member States are required to provide that the activity of a dealer is subject to authorisation. Member States are required to ensure the establishment and maintenance of a computerised database (either centralised or decentralised system) of firearms supply and possession by 31 December 2014. Dealers shall also be required by Member States to keep registers of their transactions and ensure that firearms may be linked to their owner at any moment by 31 December 2014, including Category D firearms (single shot guns) placed on the market after 28 July 2010. |
| Article 1 (3) | Inserts new Article 4a, restricting the acquisition and possession of firearms to persons granted a licence, with the exception of categories C and D firearms who are specifically permitted to acquire and possess firearms in accordance with national law. Category C firearms are repeating and semi-automatic shotguns and single-shot short firearms. Category D includes single-shot long firearms. |
| | Inserts new Article 4b, requiring Member States to consider |

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| | establishing a system for the regulation of the activities of brokers. |
| Article 1 (4) | Replaces Article 5, restricting acquisition and possession of firearms to only those who have good cause, are at least 18 years of age and are not likely to be a danger to themselves, to public order or to public safety. In relation to the prohibition of firearms to those under 18, there is an exception for hunting and target shooting, provided that acquisition is by means other than purchase and provided that the person has parental permission, is under parental guidance, or the guidance of an adult with a valid firearms or hunting licence, or is in a licenced or otherwise approved training centre. |
| Article 1 (5) | Inserts a new paragraph in Article 6 requiring the acquisition of firearms, their parts and ammunition by means of distance communication is strictly controlled. |
| Article 1 (6) | Inserts new paragraphs into Article 7 allowing Member States to consider granting of multi-annual licences and exempts persons authorised to possess Category B firearms (firearms subject to authorisation) as at 28 July 2008 from a requirement to apply for a licence for Category C or D firearms they hold due to the entry into force of the 2008 Directive. |
| Article 1 (7) | Replaces the second sub-paragraph in Article 11(3) requiring that notification of transfer between Member States is given to the authorities by the dealer prior to the date of transfer. Authorities are required to carry out inspection, where appropriate on the spot and to verify the correspondence between the information communicated by the dealer and the actual characteristics of the transfer. |
| Article 1 (8) | Replaces the first sub-paragraph in Article 12(2), allowing hunters and marksmen, travelling through two or more Member States without prior authorisation, provided they are in possession of a European Firearms Pass listing such firearm or firearms and provided they are able to substantiate the reasons for their journey, by producing an invitation or other proof of their hunting or target shooting activities. This sub-paragraph also prohibits the charging of a fee for acceptance of a European Firearms Pass by Member States. |
| Article 1 (9) | Replaces Article 13(3) providing for the Commission to establish a Contact Group by 28 July 2009, for the purposes of exchange of information between Member States. |

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| Article 1 (10) | Inserts a new Article 13a providing for the Commission to be assisted by a Committee for the purposes of Article 13 |
| Article 1 (11) | Replaces Article 16, requiring Member States to implement rules on effective, proportionate and dissuasive penalties for infringements of national provisions. |
| Article 1(12) | Replaces Article 17, requiring the Commission to submit a report to the European Parliament and the Council on the implementation of the 2008 Directive by July 2015. The Commission are also required to carry out research and report to the European Parliament and the Council by 28 July 2012 on the move to two categories of firearms (prohibited and authorised). The Commission must also report by 28 July 2010 on the inclusion of replica firearms within the scope of the Directive. |
| Article 1(13) | Amends Annex 1 to include detail on methods of the deactivation of firearms and a requirement for Member States to issue a certificate attesting to the deactivation of a firearm. |
| Article 2 | Transposition- required Member States to transpose the Directive, laws, regulations or administrative provisions by 28 July 2010 |
| Article 3 | Entry into force on the 20 th Day following publication of the Official Journal of the European Union |
| Article 4 | The Directive is addressed to Member States |

The European Commission is required to prepare a report by 28 July 2015 on the implementation of the 2008 Directive. This report may include further proposals if necessary. In November, EU Commissioner Malmström called on the European Commission to address a number of issues in the 2015 report on the implementation of the Directive. These issues were:⁹

- a) Making the e-rules in the 1991 and 2008 Directives more stringent. The Commission should :
 - Examine whether certain very dangerous types of firearms should be forbidden for civilian use;

⁹ <http://www.loc.gov/law/help/firearms-control/eu.php>

- Adopt EU rules on the deactivation of firearms, those firearms which have been declared incapable of being fired;
 - Adopt EU rules on technical security features to the effect that only the rightful owner of a firearm can actually use it.
- b) Adopting EU legislation on common minimum rules on criminal sanctions for illicit firearms and trafficking;
- c) Improving cross border co-operation among law enforcement authorities and examining whether EU agencies such as Europol and Eurojust should be more engaged to facilitate co-ordination and judicial co-operation;
- d) Reviewing the status of seized and confiscated firearms following investigation and prosecution of crimes by law enforcement authorities.

4 Transposition of Directive 2008/51/EC

4.1 Firearms (Amendment) Regulations 2010

In the United Kingdom, the Firearms (Amendment) Regulations 2010 transposed provisions in the 2008 Directive. In England, Wales and Scotland, the Regulations increased the age limit from 17 to 18, at which a person could lawfully purchase or hire all firearms. The Regulations also allowed a person under 18 to carry firearms and ammunition for another person at sporting events, but only if the other person is aged 18 years or over. The Regulations restrict the use of firearms for starting races to those aged 18 or over, although this does not apply to blank firing weapons. Persons under 18 may use a borrowed shotgun or rifle on private land only in the presence of a person aged 18 years or over.

In Northern Ireland, the Regulations have a similar effect on persons under 18 carrying firearms for others at sporting events and using starter pistols at athletic events. The Regulations also allow persons aged at least 16 but under 18 to acquire and possess firearms but not to purchase them and make their acquisition and possession subject to certain conditions. Article 7 of the Firearms (Northern Ireland) Order 2004 governs the issuing of certificates to persons under the age of 18. The 2010 Regulations amended Article 7 and Schedule 1 of the 2004 Order. Regulation 5 amended Article 7 of the 2004 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. The Regulations also amend Article 7 to require that any firearm certificate issued to a person under 18 in relation to a high-powered air weapon or shotgun to be used for sporting purposes is issued subject to the condition that the weapon is used under the supervision of a certificate holder aged 21 and over who has held a firearm of that type for at least three years, or until the applicant reaches the age of 18. Regulation 5 made some amendments to Schedule 1 of the 2004 Order on exemptions to the requirement to hold a certificate.

The Explanatory Memorandum to the 2010 Regulations suggested that the amendments made by the 2008 Directive to the 1991 Directive were broadly reflected in law and the only area where it was felt that further legislation was required was in relation to the acquisition and possession of firearms by persons aged under the age of 18.¹⁰ The transposition note highlighted that the requirement to create a computerised database had not been implemented as at 28 July 2010, but would be implemented by 31 December 2014.¹¹ The Home Office announced in March 2014 that it would amend Section 40 of the Firearms Act 1968 by way of statutory instrument to comply with Article 4 of the 1991 Directive, as amended by the 2008 Directive.

The statutory instrument would mandate that dealers will be required to keep a register on a computer filing system for a minimum period of 20 years and not five years as is currently required. Firearms dealers will not be required to record anything more or less than they are already required to do. The only difference is the way they keep their records and the length of time they must be kept. From the 31 December 2014, paper based records will not be acceptable.¹² Section 40 of the 1968 Act only applies to England, Wales and Scotland.

In Northern Ireland, the Department of Justice is proposing to adopt a centralised approach, rather than the decentralised approach in the rest of GB. In considering options, the Department of Justice secured a small grant for an IT system (computer/laptop/tablet) and training for dealers to enable a decentralised approach, but this was turned down by the trade representatives. From 31 December 2014, the police will keep a computer record of transactions which will capture the additional information which dealers in Northern Ireland will have to provide. Information required by the Directive includes the type, make, model, calibre and serial number of the firearm as well as the names and address of the supplier and the person acquiring the firearm. The intention is to be able to track all firearms “from manufacture”, so the record of transactions will include dealers acquiring stock as well as dealer to dealer transactions to PSNI and not just captured in the dealer register.¹³

The Department will have to introduce regulations to amend the Firearms (Northern Ireland) Order 2004. Prohibited firearms, however, fall within the competence of the UK Parliament. The Home Office is responsible for legislating in this area. Discussions will therefore need to take place as to whether regulations affecting Northern Ireland will be made by the Home Office in order to bring all changes into effect at the same time.¹⁴

Currently Article 38 and Schedule 3 of the Firearms (Northern Ireland) Order 2004 requires firearms dealers to keep a record of each transaction and retain all relevant documents for a

¹⁰ Explanatory Memorandum to The Firearms (Amendment) Regulations 2010, para 4.1, <http://www.legislation.gov.uk/ukxi/2010/1759/memorandum/contents>

¹¹ See Annex A of the Transposition note attached to The Firearms (Amendment) Regulations 2010

¹² <https://www.gov.uk/government/publications/changes-to-registered-firearms-dealers-and-computerised-records>

¹³ Information obtained from the Department of Justice via email 06/11/2014

¹⁴ Information obtained from the Department of Justice via email 06/11/2014

period of at least two years. The record has to include information set out in Schedule 3 of the 2004 Order:

- The quantities and description of firearms and ammunition manufactured and the dates of manufacture;
- The quantities and descriptions of firearms purchased or acquired with the names and addresses of the sellers and transferors;
- The quantities and descriptions of firearms and ammunition accepted for sale, repair, test, proof, cleaning, safekeeping, destruction or other purpose, with the names and addresses with the names and dates of the transferors and the dates of transactions;
- The quantities and descriptions of firearms and ammunition, sold or transferred, with the names and addresses of the purchasers or transferees and dates of transactions;
- The quantities and descriptions of firearms and ammunition in possession for sale or transfer at the date of the last stocktaking or such other date in each year as specified in the record.

According to Article 38 of the 2004 Order, the record shall also be made within 24 hours of the transaction and be kept for a period not less than 5 years from the date of the transaction.

Annex 1 of the paper provides information on how the Directive was reflected in existing law and where amendments as a result of the Directive were required. This information has been taken from the UK's transposition note on Directive 2008/51/EC which is attached the Explanatory Memorandum to the Firearms (Amendment) Regulations 2010.

4.2 The Firearms (Northern Ireland) Order 2004 (Amendment) Regulations 2012

The Firearms (Northern Ireland) Order 2004 (Amendment) Regulations 2012 came into operation on 29 November 2012. The purpose of the Regulations was to make small changes to controls over the import and export of firearms from the European Union, helping shooters from the EU to take part in the World Police and Fire Games. The amendment was to improve implementation of the 1991 Directive as amended by the 2008 Directive. However the change was not in response to a direct trigger from the European Union.¹⁵

Article 12(2) of the 1991 Directive as amended, allows Member States to grant authorisations to those in possession of firearms for journeys between Member States. It provides that such authorisations must be entered onto the European Firearms Pass, which the traveller must produce whenever required by the authorities of the Member States. Regulation 2 of the 2012 Regulations amends Article 15(6) of the 2004 Order so that a person resident in Northern Ireland applying for a visitor's firearm permit on behalf of a person, can produce a copy of the European Firearms Pass as an alternative to the original document. Article 15(6) is also amended so that where a copy of the original document is produced, the Chief Constable who grants a visitor's permit shall endorse a statement on the copy rather than on

¹⁵ <http://www.legislation.gov.uk/nisr/2012/395/memorandum/contents>

the original document.¹⁶ The Department of Justice believed that the initial implementation in 1992 which was adopted by the Firearms (Northern Ireland) Order 2004 was not satisfactory and was overly burdensome on visitors from the EU who wished to obtain a Visitor's Firearms Pass.¹⁷

¹⁶ <http://www.legislation.gov.uk/nisr/2012/395/made>

¹⁷ <http://www.legislation.gov.uk/nisr/2012/395/memorandum/contents>

Annex1: 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.

| Article | Objective | Implementation | Responsibility |
|----------------|---|---|--|
| 1 | Amends article 1 of the 1991 Directive as follows: | | |
| 1.1(a) | 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 | Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland). |

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| | | stringent than those provided for in the Directive. | |
| 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). | <p>Existing legislation.</p> <p>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 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> | Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland). |
| 1.1(c) | Substitutes a new definition of “dealer” in order to include those who deal in ammunition. | <p>Existing legislation.</p> <p>In England, Wales and Scotland section 57(4) of the Firearms Act 1968 (as amended by section</p> | Home Office (England, Wales and Scotland), Department of |

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| | | <p>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>Justice (Northern Ireland).</p> |
| <p>1.1(d)</p> | <p>Inserts definitions of “illicit manufacturing” and “illicit trafficking” (these terms did not previously appear in the 1991 Directive).</p> | <p>Existing legislation.</p> <p>These terms do not appear in UK legislation, but the existing provisions on marking and record-keeping are sufficient to implement the</p> | <p>Home Office (England, Wales and Scotland), Department of Justice</p> |

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| | | substantive requirements of the Directive – see below. | (Northern Ireland). |
| 1.1(e) | 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>Existing legislation.</p> <p>In England, Wales and Scotland under section 32A(6) of the Firearms Act 1968 (as inserted 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 inserted 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> | Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland). |
| 1.2 | 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 | <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 1st July 1969.</p> <p>The 1969 Convention also governs the marking of ammunition packages, and UK manufacturers</p> | Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland). |

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| | <p>the market after 28 July 2010. (Category D firearms are single-shot shotguns.)</p> | <p>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 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 create a computerised database has not been implemented as at 28 July 2010, but will be implemented by 31 December 2014.</p> | |
| 1.3 | Inserts new articles 4a, restricting the acquisition of | Existing legislation. | Home Office |

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| | <p>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>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> | <p>(England, Wales and Scotland), Department of Justice (Northern Ireland).</p> |
| <p>1.4</p> | <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 to public order or safety. In relation to the prohibition on the acquisition and possession of firearms by under-18s, the exception</p> | <p>Existing legislation and the Firearms (Amendment) Regulations 2010.</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</p> | <p>Home Office (England, Wales and Scotland), Department of Justice (Northern</p> |

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| | <p>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>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</p> | <p>Ireland).</p> |
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| | | <p>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 the 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>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>1.5</p> | <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> | <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</p> | <p>Home Office (England, Wales and Scotland), Department of Justice</p> |

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| | | <p>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> | (Northern Ireland). |
| 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>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>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,</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</p> | <p>Department for Business, Innovation and Skills, Home</p> |

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| | and that the authorities carry out inspections to verify the details given. | Control Act 2002. Registered firearms dealers in the UK may apply to the Department for Business, Innovation and Skills for an 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. | Office. |
| 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. | Existing legislation. 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 1988 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) | Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland). |

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| | | Order 2004. | |
| 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. | <p>Existing legislation and case law.</p> <p>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, 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).</p> <p>In Northern Ireland the corresponding provisions are article 70 of and Schedule 5 to the Firearms</p> | Home Office (England, Wales and Scotland), Department of Justice (Northern Ireland). |

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| | | (Northern Ireland) Order 2004. | |
| 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. | 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. |