

Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

Ireland's national report 2009

Legislation, regulations and administrative procedures

The Department of Enterprise, Trade and Employment is the national agency responsible for the issuing of military export authorisations for all military items listed in the Control of Exports (Goods and Technology) Order 2009. Exporters are obliged to complete a military export licence application form to be accompanied by either an International Import Certificate or an End Use Certificate. This documentation, together with all other internal assessments and relevant information, is forwarded to the Department of Foreign Affairs for foreign policy observations. The Licensing Unit of the Department of Enterprise, Trade and Employment issues licenses for the export of military goods, which may cover several consignments of a specific good to the consignee/end-user specified on the licence. This type of export licence is normally valid for a period of 12 months. Global licences are not granted for the export of military goods.

There are a number of legislative and administrative means by which Ireland may take action against an activity that violates a UN Security Council arms embargo. The role of Customs as the main national enforcement body is integral to this. Legislative measures include the following:

Secondary legislation is made, under the European Communities Act 1972 as amended, to provide for criminal penalties for breach of trade sanctions and arms embargoes which have been imposed by the UN, EU or Organisation for Security and Cooperation in Europe (OSCE). The maximum penalty, on conviction for an indictable offence, is €500,000 or up to 3 years imprisonment.

The export of military goods, including small arms and light weapons (SALW), is governed by the Control of Exports (Goods and Technology) Order 2009, which is made under the Control of Exports Act 2008. The list of controlled goods, which incorporates the Common Military List of the European Union, is contained in the schedule to the Control of Exports (Goods and Technology) Order 2009. The penalties for the infringement of the 2009 Order are set out in the Control of Exports Act 2008 which provides for maximum penalties of up to 5 years imprisonment and/or a fine of up to €10 million or three times the values of the goods exported illegally. (Under the Customs Act of 1956, if military goods are exported without a licence, a fine not exceeding €120 or 3 times the value of the goods may be imposed.)

With respect to the importation of SALW, an import licence granted by the Department of Justice, Equality and Law Reform is required for an applicant not in possession of a valid firearm certificate for the firearm in question. Where a valid firearm certificate exists for the firearm proposed to be imported, a prior consent (Article 11) document is required to bring the firearm into the State, in accordance with European Communities (Acquisition and Possession of Weapons and Ammunition) Regulations 1993.

The Firearms Acts 1925 to 2009 govern the illegal manufacture, possession and trade of small arms and light weapons and sets out the criminal offences for such activities. While

there is no offence for stockpiling, the possession, use or carriage of such a firearm without a firearm certificate is an offence. All applications for firearms certificates are assessed on a case by case basis.

With respect to production, The Firearms Acts, 1925 to 2009 are applicable. In order to produce firearms the company or individual concerned must be registered with the Minister for Justice, Equality and Law Reform. However, no small arms or light weapons are currently manufactured in Ireland. It is an offence to manufacture firearms without being registered to manufacture by the Minister for Justice, Equality and Law Reform.

Ireland expects to transpose the EU Directive 2008/51/EC, which updates Directive 91/477/EEC on the control and acquisition of weapons, by the 2010 deadline.

Law enforcement/criminalisation

Following the enactment of the Criminal Justice Act 2006, the Minister for Justice, Equality and Law Reform introduced a national amnesty for firearms and offensive weapons. Individuals had a period of two months during which they could surrender guns, ammunition and offensive weapons without incurring any penalty for illegal possession. Notwithstanding this, all weapons surrendered were forensically examined and individuals could still be charged if the weapons concerned were found to have been used in the commission of a criminal offence. 1,002 weapons were surrendered at and in November 2006 the Minister introduced mandatory minimum sentences for certain firearms offences.

These offences and new related penalties include:

1. Possession of firearms with intent to endanger life – maximum sentence of life imprisonment and mandatory minimum sentence of 10 years imprisonment;
2. Use of firearms to resist arrest or aid escape – maximum sentence of life imprisonment and a mandatory minimum sentence of 10 years imprisonment;
3. Possession of firearms while hijacking a vehicle – maximum sentence of 14 years imprisonment and a mandatory minimum sentence of 5 years imprisonment;
4. Possession of firearms or ammunition in suspicious circumstances – maximum sentence of 14 years imprisonment and a mandatory minimum sentence of 5 years imprisonment,
5. Carrying a firearm with criminal intent – maximum sentence of 14 years imprisonment and a mandatory minimum sentence of 5 years imprisonment; and
6. Altering a firearm – maximum sentence of 10 years imprisonment and a mandatory minimum sentence of 5 years imprisonment.

The Criminal Justice Act 2006 also introduced the distinction between a Firearm Certificate and a Restricted Firearm Certificate. Applications for Restricted Firearm Certificates, whether they be for handguns, rifles or shotguns, must now be considered by a member of the Garda Síochána (National Police) holding the rank of Chief Superintendent. Such applications must satisfy the issuing authority that the firearm is the only weapon suitable for the purpose for

which it is required. This requirement is in addition to satisfying the Chief Superintendent that the applicant has good reason to possess, use and carry the firearm; is not disentitled to hold a firearm certificate under the Firearms Acts; and is not a danger to public safety or to the peace.

In addition, firearms dealers who wish to import or store restricted firearms must obtain a special authorisation from the Minister.

Furthermore, the Criminal Justice (Miscellaneous Provisions) Act 2009 introduced new restrictions on the licensing of handguns. It provides that no new licences may be issued for handguns, apart from some exceptions in relation to Olympic sports. The Act also contains powers that can be used to ban outright any type of firearm.

Between 2008 and 2009 the Customs Division of the Revenue Commissioners has seen an increase, not only in the level of firearms and components detections, but also in the level of non-lethal weapons such as stungun and gas devices as well as an increasing link between firearms and explosives. In December 2009 a controlled delivery of stunguns led to the detection of a viable explosive device during a follow-up search. In July 2009 a search of premises following the attempted importation of a rifle from Germany led to the detection of a large quantity of chemicals which could be used in the production of chemical explosives such as triacetone triperoxide (TATP). In August 2009 Customs also seized a highly modified rifle being imported from Germany by a licensed firearms dealer. The import licence application had described a standard semiautomatic rifle but the imported gun was in fact a restricted firearm.

The majority of detections made originated in either the EU or USA, however there have been an increasing number of detections of military specification optical sighting mechanisms, particularly nightsights, from Eastern Europe and Ukraine.

The Customs Drugs Law Enforcement Unit (CDLE) is the national/international customs contact point for Revenue's Customs Division in relation to firearms and ammunition. Information and intelligence exchanges in relation to suspect importations takes place on a regular basis between customs enforcement officers, nominated officers of the CDLE and nominated officers of the Crime and Security Branch of the Garda Síochána. This is a useful facility in determining whether importations relate to simple licensing breaches or have an organised crime dimension.

Specific liaison arrangements have been put in place between officials of the CDLE and of the Garda Síochána on a case by case basis to facilitate joint enforcement action such as joint surveillance exercises, joint operations and joint controlled deliveries when there is intelligence and evidence to suggest organised crime involvement.

In late 2008 CDLE took part in a Europol-supported 24-hour High Impact Firearms Operation in conjunction with the Garda Síochána and other European Agencies. This directly resulted in the seizure of one firearm and associated ammunition by Customs. The operation was viewed as highly successful as the seizure, within the short operational timeframe, satisfied the overall objectives of the operation.

The CDLE Unit has been involved in researching the training needs of Customs officers in the area of recognition and safe handling of firearms, parts, and chemical, biological,

radiological and nuclear weapons and is developing a training course in conjunction with the Garda Síochána and the Defence Forces. Initial training in commodity recognition has already taken place involving officers from key entry/exit points within the State.

Stockpile management and security

Stockpile management and security falls under the remit of the Department of Justice, Equality and Law Reform and the Department of Defence.

The Defence Forces complies with the OSCE Document adopted by the OSCE Forum for Security Cooperation on Stockpiles of Conventional Ammunition on 19 November 2003. This document lays out basic principles, the categories of conventional ammunition, indicators of surplus, standards of stockpile management and the level of transparency to which each Participating State is required to adhere.

The Defence Forces, in accordance with its own Defence Forces Regulations (DFRs) and associated Administrative Instructions, conducts a mandatory serial number check of all in-use SALW on a weekly basis. All reserve SALW held in Depot level storage is checked monthly. All SALW that are considered surplus to requirement are held in secure single location storage at the Defence Forces Logistics Base.

Collection and Disposal

Collection and disposal of small arms and light weapons falls under the remit of the Garda Síochána and the Defence Forces.

The Defence Forces plans for the disposal of surplus stocks of SALW only when such stocks are considered obsolete and beyond operational use. Destruction is the principal means of disposal employed by the Defence Forces. Defence Force Regulations specify the measures that are to be taken in order to safeguard stocks of SALW prior to disposal. The Defence Forces separate all SALW for destruction into material types (i.e. metal, wood, plastic etc) and recycle as appropriate.

Export Controls

The Control of Exports Act 2008 and the Customs Act, 1956 provide for a licensing requirement for the export of all items listed in the Control of Exports (Goods and Technology) Order 2009. The Control of Exports Act, 2008 creates offences for the export of controlled goods without authorisation and provides for maximum penalties of €10 million and/or 5 years imprisonment on conviction. The Customs Act of 1956 provides for criminal and monetary sanctions (fines) for the export of military goods without an export licence.

In order to export a firearm the applicant must obtain an Export Order from the Garda Síochána and also obtain an export licence from the Department of Enterprise, Trade and Employment or a transfer licence from the Department of Justice, Equality and Law Reform.

Under current Irish legislation, the import, transit, re-transfer and export of small arms and light weapons to and from EU countries must be licensed in accordance with the Firearms

Acts, 1925 to 2009 and the EC (Acquisition and Possession of) Weapons and Ammunition Regulations, 1993. Exports of firearms to all countries are also subject to the Control of Exports Act, 2008 and Orders made there under. At present, the relevant Order is the Control of Exports (Goods and Technology) Order 2009, which includes pistols and “component parts thereof” in relation to general military equipment. The Control of Exports Act provides for controls on goods in transit by defining “exportation” to include goods brought into the State for re-export.

Brokering

The EU adopted a common Position on Arms Brokering in 2003. The OSCE has also adopted Principles on the control of Brokering. The Control of Exports Act 2008 provides for controls on brokering activities in accordance with the EU Common Position. Customs officers are nominated as Enforcement Officers under the Control of Exports Act, 2008. Brokering investigations involving Ireland and other jurisdictions are currently ongoing.

Marking, record keeping and tracing

Ireland welcomed the adoption in 2005 by UN Member States of an instrument on the marking and tracing of small arms and light weapons.

Firearms present in Ireland would normally have been marked by their manufacturer before entering the State. However, some older firearms may not have been marked in this fashion; the Garda Síochána is responsible for marking in these cases. Firearms dealers are required to keep records of each transfer of a firearm for a minimum of 5 years.

All SALW held by the Defence Forces are marked in accordance with the OSCE Handbook of Best Practice. All SALW procured by the Defence Forces must have a serial number engraved into the critical components. This marking is unique to the weapons type in question. All SALW procured by the Defence Forces are proof marked with a unique manufacture’s stamp. Within the Defence Forces’ SALW inventory, no serial number is repeated for any weapon type. Serial number nomenclature is assigned by the Defence Forces and applied by the manufacturer. Serial numbers in and of themselves do not normally identify the country of manufacture.

As long as the SALW remain in service, records of their existence are retained. Details of weapons destroyed are required to be retained for at least seven years. However, in practice records are retained indefinitely either at the Defence Forces Logistics Base or in the Archives.

Regional Cooperation

Ireland is bound by the EU Common Position defining common rules governing control of exports of military technology and equipment, which contains eight criteria against which each export licence for military equipment is assessed, on a case by case basis. All applications for export licences for military equipment must be accompanied by an end-use certificate. EU Member States, including Ireland, circulate details of licence applications refused to EU partners in accordance with the Code of Conduct. Member States have adopted a User’s Guide which contains procedures on the operation of the denial notification and consultation system.

Ireland is also an active participant in the Wassenaar Arrangement and the relevant EU Working Groups (COARM and CODUN).

As a Participating State in the OSCE, the Irish Defence Forces fulfils all commitments and maintains the highest standards with regard to information on SALW. Ireland, like other OSCE Participating States, is required to provide a number of annual returns with regard to arms control and SALW, including annual information on SALW identified as surplus and/or seized and destroyed, as well as SALW exports and imports.

Ireland also participates in the OSCE's Annual Implementation Assessment Meeting (AIAM). This meeting takes place annually in Vienna. The meeting normally runs for a full two days and sees discussions on items such as evaluations/inspections, military contacts (visits to airbases and military facilities), Confidence and Security Building Mechanisms (CSBMs) and Returns in accordance with the Vienna Document 1999 (VD 99), the Code of Conduct, Defence Planning, as well as SALW.

As part of the Dayton Peace Accord Article IV Inspections, each Participating State is required to have available a number of qualified inspectors to assist in the Article IV inspections. The Defence Forces Liaison Officer is then required to organise inspectors from the submitted list to carry out the inspection. Although much of the ordnance inspected under the Dayton Accord is larger than SALW, it remains an important control measure for SALW.

Ireland participates in the Global Exchange of Military Information (GEMI), which is held every April in Vienna and which allows the 55 Participating States to conduct an exchange of information on military issues and equipment, including SALW. Ireland also attends the Annual Exchange of Military Information (AEMI), which takes place every December in Vienna. Ireland also contributes to the information exchange on the Code of Conduct on politico-military aspects of security. This return, initiated in 1995, is submitted to the OSCE by 15 April each year. The returns outline the State's initiatives on politico-military aspects of security, including agreements entered into to prevent and combat terrorism; an outline of the national planning and decision-making process for the determination of the military posture; the roles and mission of the military; recruitment and public access to the military; the instructions given on international law; and the protection and rights of military personnel.

International Implementation Efforts

Ireland participated in the work of the Third Biennial Meeting of States to Consider the Implementation of the UN Programme of Action, held from 14-18 July 2008 in New York. Ireland participated in the work of the Open-Ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace Illicit Small Arms and Light Weapons. Ireland continues to maintain a positive voting record in favour of resolutions at the UN General Assembly's First Committee concerning the issue of SALW. Ireland is also committed to working for an ambitious outcome to the negotiations for the establishment of a Treaty to regulate the trade in conventional arms, including SALW.

Ireland submits annual reports to the United Nations Register of Conventional Arms Transfers. Ireland also participated in the negotiations on the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime (the

“Firearms Protocol”). EU Directive 2008/51/EC, amending Directive 91/477/EEC on the control and acquisition of weapons, takes account of the provisions of the Firearms Protocol and will help facilitate Ireland’s ratification of the Protocol in the near future.

Since the Programme of Action was established, Ireland has contributed over €2 million directly to projects in the area of SALW. Ireland contributed \$30,000 in 2008 to the UNIDIR project “International Assistance for Implementing the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons,” which is now in its third phase. Ireland also continues to provide funding to the Geneva Forum, a Geneva-based organisation that works to build partnerships among and between governments, international organisations and NGOs on disarmament and arms control issues of common concern. The Geneva Forum continues to work to support existing processes to combat the proliferation and misuse of small arms and light weapons.

In 2009, Ireland provided €180,000 in funding support to the United Nations Coordinating Action on Small Arms (CASA) project which aims to create a set of internationally accepted standards on small arms and light weapons (ISACS).

Ireland, as a member of the Human Security Network, supports a people-oriented approach to the issue of arms and has a long history of providing funding for Disarmament, Demobilisation, Reintegration and Rehabilitation (DDRR) Programmes. Ireland provided emergency and recovery funding of €1,000,000 in 2004 and 2005 for DDRR activities in Liberia under the UNDP DDRR Trust Fund. This UNDP programme works to ensure that community-based programmes are tailored to address the needs of women and child ex-combatants in particular. The Defence Forces were directly involved in the DDRR programme in Liberia. While much of the involvement was security-related, they gained an in-depth knowledge of the operation of such programmes, which may be of use on future UN missions in Africa. The experience gained by the Defence Forces on the UNMIL mission with regard to DDRR may be an area also for future cooperation with our European partners.

Ireland believes that civil society participation is vital in the small arms process and that the expertise held by NGOs is particularly invaluable in highlighting key issues. It is for these reasons that Ireland has had NGO representation on its national delegations in the past and why Ireland continues to support the work of organisations such as the International Action Network on Small Arms (IANSA). Grants to IANSA in 2008 and 2009 assisted in the distribution of material on small arms to members of the network.

National Point of Contact

Ireland has established, in accordance with the UN Programme of Action, a national point of contact on Small Arms and Light Weapons. Its contact details are as follows:

Disarmament and Non-Proliferation Section,
Department of Foreign Affairs, St. Stephen's Green,
Dublin 2, Ireland.

Tel: +353-1-408 2392

Fax: +353-1-4082383

Email: brian.mcnally@dfa.ie
