

THE FIREARMS (AMENDMENT) BILL
(No. IV of 2016)

Explanatory Memorandum

The main object of this Bill is to amend the Firearms Act so as to implement the provisions of the Arms Trade Treaty to which Mauritius is a signatory.

2. The opportunity is being taken to clarify some provisions of the Act.

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To amend the Firearms Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Firearms (Amendment) Act 2016.

2. Interpretation

In this Act –

“principal Act” means the Firearms Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definition of “guidelines” and replacing it by the following definition –

“guidelines” means guidelines issued by the Commissioner –

- (a) setting out the requirements, the applicable law and the procedure for an application for a permit under section 20 or 21 or for an authorisation for a transit of firearms and ammunition in Mauritius under section 21A;
- (b) available for consultation at the Police Force; and
- (c) posted on the website of the Police Force;
- (b) by inserting, in the appropriate alphabetical order, the following new definitions –

“effective date” means the date on which all the information, particulars and documents specified in the guidelines are submitted;

“export permit” means a permit issued under section 21;

“import permit” means a permit issued under section 20;

“TradeNet” has the same meaning as in the Customs Act;

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended by inserting, after the word “person”, the words “, other than a member of a disciplined force authorised by the Commissioner,”.

5. Section 8 of principal Act amended

Section 8 of the principal Act is amended –

(a) in subsection (1), by inserting, after the words “Subject to”, the words “subsection (1A) and”;

(b) by inserting, after subsection (1), the following new subsection –

(1A) The Commissioner shall, in considering an application made under section 7, designate a police officer, not below the rank of Assistant Superintendent of Police, to inspect the place where any firearm and ammunition, in respect of which the application is made, will be stored.

(c) by adding the following new subsection –

(3) A firearm licensee shall store his firearm and ammunition in such manner as may be prescribed.

6. Section 12 of principal Act amended

Section 12 of the principal Act is amended, by inserting, after subsection (2), the following new subsection –

(2A) The Commissioner may, in considering an application for the renewal of a firearm licence, designate a police officer, not below the rank of Assistant Superintendent of Police, to inspect the place where the firearm and ammunition of the firearm licensee are stored.

7. Section 20 of principal Act amended

Section 20 of the principal Act is amended –

- (a) in subsection (1), by adding the words “issued by the Commissioner”;
- (b) by repealing subsections (2) and (3) and replacing them by the following subsections –

- (2) Every application for an import permit shall be made –

- (a) in such form as the Commissioner may approve;
 - (b) at least 15 days before the import; and
 - (c) in accordance with relevant guidelines.

- (3) An import permit shall be issued –

- (a) in such form as the Commissioner may approve, within 5 working days of the effective date;
 - (b) subject to such conditions as the Commissioner may determine; and
 - (c) on payment to the Commissioner of the fee specified in the Second Schedule.

- (c) by adding the following new subsections –

- (4) The making of an application, the issue of an import permit and payment of the prescribed fee shall be effected either electronically through the TradeNet or, in exceptional or unforeseen circumstances, in such other manner as the Commissioner may determine.

- (5) The holder of an import permit shall keep a record of every firearm and ammunition imported under that permit.

- (6) The Commissioner shall not issue an import permit where –

- (a) the import violates the obligations of Mauritius under measures adopted by the United Nations

Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;

- (b) the import contravenes the other international obligations of Mauritius under an international agreement to which Mauritius is a party; or
- (c) he has reasonable ground to believe that the firearm and ammunition intended for import may be used in the commission of genocide, crimes against humanity or war crimes.

8. Section 21 of principal Act amended

Section 21 of the principal Act is amended –

- (a) in subsection (1), by adding the words “issued by the Commissioner”;
- (b) by repealing subsections (2) and (3) and replacing them by the following subsections –

(2) Every application for an export permit shall be made –

- (a) in such form as the Commissioner may approve;
- (b) at least 5 working before the import; and
- (c) in accordance with relevant guidelines.

(3) The Commissioner shall not issue an export permit –

- (a) unless the firearm licensee intends to hunt in a foreign country where he has been invited;
- (b) unless the firearm licensee is sending the firearm to the manufacturer of the country of origin for repairs;
- (c) where the export violates the obligations of Mauritius under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;

- (d) where the export contravenes the other international obligations of Mauritius under an international agreement to which Mauritius is a party;
- (e) where he has reasonable ground to believe that the firearm and ammunition intended for export may be used in the commission of genocide, crimes against humanity or war crimes; or
- (f) where he determines that there is a substantial risk that the firearm or ammunition intended for export –
 - (i) undermines peace and security;
 - (ii) may be used to commit or facilitate –
 - (A) a serious violation of international humanitarian law;
 - (B) a serious violation of international human rights law;
 - (C) an act constituting an offence under an international convention or protocol relating to terrorism or transnational organised crime to which Mauritius is a party; or
 - (D) an act of, gender-based violence or, violence against children; or
 - (iii) may be diverted before or after delivery to the intended recipient,

and the risk cannot be mitigated.

- (c) in subsection (5) –
 - (i) by inserting, after the word “issued”, the words “as soon as practicable but before the export”;

(ii) in paragraph (a), by deleting the words “impose or as may be prescribed” and replacing them by the word “determine”;

(d) by adding the following new subsections –

(6) The making of an application, the issue of an import permit and payment of the prescribed fee shall be effected either electronically through the TradeNet or, in exceptional or unforeseen circumstances, in such other manner as the Commissioner may determine.

(7) (a) The Commissioner shall, before the export of any firearm and ammunition under an export permit, revoke the permit where –

(i) an arms embargo is imposed on the intended recipient of the firearm and ammunition;

(ii) he has reasonable ground to believe that the firearm and ammunition may be used in the commission of genocide, crimes against humanity or war crimes; or

(iii) he determines that there is a substantial risk of any of the consequences referred to in subsection (3)(f) which cannot be mitigated.

(b) The Commissioner may, at any time, revoke or amend an export permit where –

(i) false or misleading information is supplied in order to obtain the permit; or

(ii) any condition subject to which the permit is issued is not complied with.

(c) The Commissioner shall immediately inform the holder of an export permit of the revocation of, or any amendment to, the permit.

(8) The holder of an export permit shall keep a record of every firearm and ammunition exported under that permit.

9. Section 21A of principal Act amended

Section 21A of the principal Act is amended –

(a) by inserting, after subsection (1), the following new subsections –

(1A) Subsection (1) shall also apply to prohibited firearms other than prohibited firearms to be used for hunting purposes.

(1B) Where the Commissioner authorises the transit of firearms and ammunition under subsection (1), he may, for safekeeping purposes, authorise the transport of the firearms and ammunition to and from the Police Armoury.

(b) in subsection (2), by deleting the words “of firearms and ammunition referred to in subsection (1)” and replacing them by the words “and transport of firearms and ammunition under this section”;

(c) by adding the following new subsections –

(3) Where the Commissioner has reasonable ground to believe that a ship, within the territorial sea of Mauritius, or an aircraft in Mauritius is carrying any firearm and ammunition –

(a) in violation of the obligations of Mauritius under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;

(b) in contravention of the other international obligations of Mauritius under an international agreement to which Mauritius is a party; or

(c) that may be used in the commission of genocide, crimes against humanity, or war crimes,

he may request any relevant information or document from any person on board the ship or aircraft, including the person in charge of the ship or aircraft, a crew member or a passenger.

(4) Every person who receives a request from the Commissioner pursuant to subsection (3) shall –

- (a) answer any question asked by the Commissioner relating to the carriage of any firearm and ammunition on the ship or aircraft; and
- (b) produce, on demand, to the Commissioner any document within that person's possession or control pertaining to the request.

(5) In this section –

“territorial sea” has the same meaning as in the Maritime Zones Act.

10. Section 22 of principal Act amended

Section 22 of the principal Act is amended –

- (a) in subsection (1), by deleting the word “parties” and replacing them by the words “parties or which are in transit in Mauritius”;
- (b) in subsection (1A) –
 - (i) in paragraph (b), by deleting the words “90 days” and replacing them by the words “2 years”;
 - (ii) by repealing paragraph (c) and replacing it by the following paragraph –
 - (c) Where any firearm and ammunition kept for safekeeping at the Police Armoury under this section has remained unclaimed for a period of one year after the expiry of the period referred to in paragraph (a) or (b), as the case may be, the firearm and ammunition shall become the property of the State and be disposed of in such manner as the Commissioner may determine.

11. Section 23 of principal Act amended

Section 23 of the principal Act is amended –

- (a) in subsection (5), by adding the following new paragraph, the full stop at the end of paragraph (g) being deleted and replaced by the words “; and” –

- (h) the Vessels in Transit Transporting Firearms and Ammunitions Database.
- (b) in subsection (6), by adding the following new paragraph, the full stop at the end of paragraph (f) being deleted and replaced by the words “; and” –
 - (g) any information received pursuant to section 21A(4).

12. New section 23A inserted in principal Act

The principal Act is amended by inserting, after section 23, the following new section –

23A. Records

- (1) Every person who keeps a record pursuant to this Act shall –
 - (a) retain the record for a period of not less than 10 years; and
 - (b) on demand, submit a copy of the record to the Commissioner.
- (2) Where the holder of an export or import permit ceases to carry on business, he shall, within 14 days after cessation of the business, submit every record kept pursuant to this Act to the Commissioner.

13. Section 32 of principal Act amended

Section 32 of the principal Act is amended –

- (a) in subsection (1), by inserting, after the word “Act”, the words “and subject to subsection (3)”;
- (b) by adding the following new subsection –
 - (3) (a) Where firearms and ammunition are transited in Mauritius pursuant to section 21A, subsection (1) shall not apply to a person –

- (i) who is authorised by the Commissioner to transport the firearms and ammunition to and from the Police Armoury; or
- (ii) who engages in the freight-forwarding of the firearms and ammunition.

(b) For the purpose of paragraph (a) –

“firearm” includes a prohibited firearm.

14. Section 46 of principal Act amended

Section 46 of the principal Act is amended, in subsection (1)(a), by deleting the words “20(1), 21(1)” and replacing them by the words “20(1) and (5), 21(1) and (8), 21A(4), 23A”.

15. Second Schedule to principal Act amended

The Second Schedule to the principal Act is amended –

(a) in items 3 and 4, by deleting the word “licence” and replacing it by the word “permit”;

(b) by deleting items 9 and 10 and replacing them by the following items and their corresponding entries –

- 9. Safekeeping at the Police Armoury of firearms belonging to private parties –
 - (a) for each such firearm, per month 100
 - (b) during the period of one year after the expiry of the period referred to in section 22(1A)(a), for each such firearm, per month 200
- 10. Safekeeping at the Police Armoury of firearms in transit –
 - (a) for each such firearm, per day 100
 - (b) during the period of one year after the expiry of the period of 2 years, for each 200

such firearm, per day

16. Consequential amendment

The Economic and Financial Measures (Miscellaneous Provisions) Act 2013 is amended, in section 20, by repealing paragraphs (a)(i), (b), (c) and (f)(i).

17. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
