

SUBSIDIARY LEGISLATION 365.13**MILITARY EQUIPMENT (EXPORT CONTROL)
REGULATIONS**

1st January, 2002

LEGAL NOTICE 269 of 2001, as amended by Legal Notices 376 of 2003, 168 of 2006 425 of 2007 and 195 of 2020.

1. The title of these regulations is the Military Equipment (Export Control) Regulations.

Citation.

2. (1) In these regulations, unless the context otherwise requires:

Interpretation.
Amended by:
L.N. 376 of 2003;
L.N. 168 of 2006
Cap. 365.

"Act" means the National Interest (Enabling Powers) Act;

"broker" means any natural or legal person engaged in brokering activities;

"brokering activities" means activities of persons and entities -

- (a) negotiating or arranging transactions that may involve the transfer of items listed in the Manual from any country, including Malta, to any other country; or
- (b) who buy, sell or arrange the transfer of such items that are in their ownership from any country, including Malta, to any other country;

"country" includes territory;

"Director" means the Director responsible for trade and includes any officer designated or authorised by the Director to act for a purpose or class of purposes of these regulations:

Provided that for the purposes of article 30(3) of the Customs Ordinance, the Minister or the Director shall act in consultation with the Minister responsible for Customs, or such other authority, head of department or person appointed for the purpose by such Minister;

Cap. 37.

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

"export", unless the context otherwise requires, means export from Malta, and includes the transmission of software or technology by fax, telephone or other electronic media (except that oral transmission of technology by telephone is included only where the technology is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read);

"export declaration" means the act whereby a person indicates in the prescribed form and manner the wish to place military

equipment under an export procedure;

"exporter" means any natural or legal person on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of Malta. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the power for determining the sending of the item out of the customs territory of Malta shall be decisive;

"firearm" means any portable barrelled weapon that expels, is designed to expel or may be converted to expel a shot, bullet or projectile by the action of a combustible propellant, unless it is excluded from that definition for one (1) of the reasons listed in Part III of Annex I of Council Directive 91/447/EEC of 18 June 1991 on control of the acquisition and possession of weapons. Firearms are classified in Part II of Annex I.

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

- (a) it has the appearance of a firearm; and
- (b) as a result of its construction or the material from which it is made, it can be so converted;

"import" and "export" in relation to a vessel, submersible vehicle or aircraft includes the taking into or out of Malta of the vessel, submersible vehicle or aircraft notwithstanding that the vessel, submersible vehicle or aircraft is conveying goods or passengers, and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"items in transit" means items which only pass through the territory of Malta, that is those which are not assigned a customs-approved treatment or use other than the external transit procedure or which are merely placed in a free zone or a free warehouse and where no record of them has to be kept in an approved stock record;

"military equipment" means any used or unused items, including software and technology, which are listed in the First Schedule;

"Minister" means the Minister responsible for trade;

"normal commercial journey" means a journey providing transport services in the ordinary course of business;

"person" means any natural or legal person;

"scheduled journey" means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

"surface effect vehicle" means any air cushion vehicle (whether side wall or skirted) and any vehicle using the wing-in-ground effect for positive lift;

"vessel" includes any ship, surface effect vehicle, vessel of small waterplane area or hydrofoil, and the hull or part of the hull of a vessel.

(2) Any reference in these regulations to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) In these regulations, except where the context otherwise requires, any reference to -

- (a) a numbered regulation is a reference to the regulation in these regulations which is so numbered;
- (b) a numbered subregulation is a reference to the subregulation which is so numbered in the regulation where the reference occurs.

3. (1) An authorization by the Director shall be required for the export of the items listed in the First Schedule.

Granting and revocation etc., of authorizations.

Amended by:
L.N. 168 of 2006.

(2) Any authorization so granted by the Director in pursuance of these regulations may be:

- (a) limited so as to expire on a specified date unless renewed;
- (b) subject to or without conditions, and any such condition may require or prohibit any act before or after the export of items under that authorization;
- (c) annulled, suspended, modified or revoked by the Director.

(3) When applying for an export authorization, exporters shall supply the Director with all the relevant information required for their applications. Applications shall be submitted on a form as set out in the Second Schedule.

4. (1) Subject to the provisions of these regulations no person shall make any export of items specified in the First Schedule, to any destination except under and in accordance with an authorization as specified in regulation 3.

Exports of military equipment.

Amended by:
L.N. 168 of 2006;
L.N. 195 of 2020.

(2) These regulations apply also to items in transit.

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

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

Brokering Licence.

Added by:
L.N. 376 of 2003.
Substituted by:
L.N. 195 of 2020.

(2) On receipt of an application for the issue of a licence to act as a broker, the Director shall perform background checks and shall submit the relevant information to the Commissioner of Police

so that a criminal record check is carried out with regard to the applicant:

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

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

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

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

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

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

Brokering
Activities.
Added by:
L.N. 195 of 2020.

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

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

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

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

(3) Brokers shall without undue delay and by not later than two (2) weeks from the date of the transfer, report to the Director

through the submission of a delivery receipt, that the transfer authorised in terms of sub-regulation (1) has been effected.

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

Data filing system
in relation to
brokering
activities.
Added by:
L.N. 195 of 2020.

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

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

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

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

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

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

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

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

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

Cap. 586.

Exceptions.

5. (1) These regulations do not apply to the exportation of any goods by the Armed Forces of Malta:

- (a) for use by an International United Nations Force in the course of its duties as such;
- (b) for use in connection with EU-led Peace-Keeping Operations sanctioned by UN/OSCE;
- (c) for use in connection with distress situations and other cases of an emergency nature;
- (d) for the purpose of their being repaired, overhauled, refitted, modified, tested or maintained and returned to Malta;
- (e) for the purpose of their being used at international military competitions, or
- (f) for the purposes of testing of munitions.

(2) Nothing in these regulations prohibits the export of:

- (a) any aircraft on a scheduled journey;
- (b) any aircraft the immediately preceding import of which was on a scheduled journey and which is intended for further scheduled journeys;
- (c) any vessel which is departing temporarily from Malta on trials;
- (d) any vessel proceeding on a normal commercial journey.

Customs procedures.

6. When completing the formalities for the export of military equipment at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorization has been obtained.

Misleading applications for authorisations etc.

7. (1) For the purposes of obtaining any authorization no person shall:

- (a) make any statement or furnish any document or information which to that person's knowledge is false in a material particular; or
- (b) recklessly make any statement or furnish any document or information which is false in a material particular.

(2) Any authorization which may have been granted by the Director in connection with an application for which a false statement was made or a false document or information was

furnished shall be void as from the time it was granted.

8. (1) Not later than thirty days after any person makes an export for a first time by virtue of an authorization granted by the Director, that person shall give to the Director written notice of the following particulars:

Registration and provision of information.

- (a) the name of the person; and
- (b) the address at which copies of the records referred to in regulation 9 may be inspected by any person authorized by the Minister under regulation 9.

(2) A person who has given to the Director written notice of particulars under subregulation (1) shall, not later than thirty days after any change in those particulars, give to the Director written notice of the changed particulars.

9. (1) Exporters shall keep detailed registers or records of their exports. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents, containing sufficient information to allow the following to be identified:

Record keeping and inspection in relation to exporters.
Amended by:
L.N. 195 of 2020.

- (a) the description of the military equipment;
- (b) the quantity of the military equipment;
- (c) the name and address of the exporter and of the consignee;
- (d) in so far as it is known to that person, the end use of the military equipment and the name and address of the end-user.

(2) The records referred to in subregulation (1) shall be kept for at least three years from the end of the calendar year in which the export took place, and the person concerned shall permit any such records to be inspected and copied by any person authorized by the Minister.

(3) Any person authorized by the Minister may, on producing if required to do so a duly authenticated document showing his authority, at any reasonable hour enter, for the purpose of subregulation (2), the premises of which the address has most recently been notified to the Director under regulation 8.

(4) Where any documents or records referred to in subregulation (2) are kept in a form which is not legible the exporter shall at the request of the person authorized by the Minister, reproduce such documents or records in a legible form.

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

Record keeping obligations in relation to brokers.
Added by:
L.N. 195 of 2020.

(2) Upon cessation of their activities, brokers shall deliver that

register to the Director.

Penalties for failure to comply with these regulations.
Amended by:
L.N. 425 of 2007.

10. (1) Any person in Malta, or any citizen or permanent resident of Malta, whether in Malta or elsewhere, who -

- (a) exports items from Malta by virtue of an authorization granted by the Director and fails to comply with any condition attaching to that authorization, or
- (b) contravenes any of these regulations,

shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding five years or to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67).

(2) No person is guilty of an offence under subregulation (1)(a) where:

- (a) the condition in question had been previously modified without that person's consent by the Director;
 - (b) the alleged failure to comply would not have been a failure had the authorization not been so modified; and
 - (c) that person proves that the items in relation to which he has failed to comply with the condition had, at the time the condition was modified, already been exported.
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Added by:
L.N. 168 of 2006.

FIRST SCHEDULE
Regulations 3 and 4
List of Military Equipment

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

SECOND SCHEDULE
Export of Military Equipment

Amended by:
L.N. 168 of 2006.

Authorization Application Form

	1. EXPORTER Vat No:		2. CONSIGNEE	
	Name of company: Address:		Name: Address:	
	Name of contact person: Tel. No: Fax No:		Name of contact person: Tel. No: Fax No: e-Mail Address:	
	3. AGENT/REPRESENTATIVE		4. END-USER	
	Name of company: Address: Name of contact person: Tel. No: Fax No:		Name: Address: Name of contact person: Tel. No: Fax No: e-Mail Address:	
	5. Country of origin	6. Country of consignment	7. Country of final destination	
	8. Description of the item*:		9. Commodity Code	10. Control list no.
			11. Currency and Value	12. Quantity of the items
	13. End use	14. Contract date	15. Customs export procedure	

16. Additional information deemed relevant by the exporter		
17. I hereby apply for an export authorization in respect of the item described above and I declare that all the particulars furnished by me are correct.		
Signature	Name in blocks	Date
FOR OFFICE USE ONLY		Reference No:
Export authorized:		This authorization is valid until:
 Signature	Stamp	
Name in blocks		
Date		

* Technical specifications of the item should be attached to this application form

Note: Boxes 1 to 17 should all be filled. A separate form should be submitted for each item.

Note: In part 1 of box 18, enter the quantity still available, and in part 2 of box 18 enter the quantity deducted on that occasion.			
17. Net quantity/value (Net mass/other unit with indication of unit)		20. Customs document (Type and number or extract number) and date of deduction	21. Name in blocks and signature of Customs Officer and stamp
18. In numbers	19. In words for quantity/value deducted		
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