

EXPLANATORY STATEMENT

Issued by Assistant Minister for Customs, Community Safety and Multicultural Affairs,
Parliamentary Secretary to the Minister for Home Affairs

Customs Act 1901

Customs (Prohibited Imports) Amendment (Firearms) Regulations 2020

The *Customs Act 1901* (the Customs Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation and exportation of goods to and from Australia.

Subsection 270(1) of the Customs Act provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters, which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act.

Section 50 of the Customs Act provides, in part, that the Governor-General may, by regulation, prohibit the importation of goods into Australia and that the power may be exercised by prohibiting the importation of goods absolutely or by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

The purpose of the *Customs (Prohibited Imports) Amendment (Firearms) Regulations 2020* (the Regulations) is to amend the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) to:

- introduce a new import prohibition on bump stocks, auto gloves and similar devices that give a firearm the capability of being operated in a way that mimics burst fire and/or fully automatic operation. The amendments are necessary to ensure that the community remains protected from these new and emerging technologies, for which there is no legitimate civilian use;
- remove redundant conditions on the importation of handguns by firearms dealers, reducing the regulatory burden associated with these importations; and
- extend the current requirement for a firearm to bear a unique serial number to frames and receivers, whether imported as part of a firearm or not. In addition, requirements for the location, format and appearance of unique serial numbers are prescribed. The amendments enhance the ability to record, track and trace the movement of firearms, frames and receivers and may contribute to identifying and preventing firearms trafficking.

Details of the Regulations are set out in [Attachment A](#). A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at [Attachment B](#).

The amendments have been discussed with Commonwealth, State and Territory law enforcement agencies, including through the national Firearms and Weapons Policy Working Group. Targeted members of the firearms community and gun safety advocates were also consulted through stakeholder meetings with the Assistant Minister for Customs, Community Safety and Multicultural Affairs.

Stakeholders expressed strong support for restricting the importation of bump stocks and similar devices and acknowledged there is no legitimate need for civilians to increase the rate of fire of their firearms. Stakeholders also supported removing the duplication in reporting on the importation of handguns. Members of the firearms community will continue to be consulted on the operation and practical effect of the new serial number requirements throughout the 12 month implementation period.

The Customs Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Sections 1 to 4 and Schedule 1 of the Regulations commence on the day after the instrument is registered. Schedule 2 of the Regulations commences on the day after the end of the period of 12 months beginning on the day this instrument is registered. This 12 months implementation period will allow time for further discussion with firearms importers and allow them to make any necessary changes to ensure compliance with the new requirements before they commence.

OPC64403 - A

Details of the Customs (Prohibited Imports) Amendment (Firearms) Regulations 2020

Section 1 – Name of Regulation

This section provides that the title of the Regulations is the *Customs (Prohibited Imports) Amendment (Firearms) Regulations 2020* (the Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Regulations commence.

Table items 1 and 2 provides for sections 1 to 4 and Schedule 1 to the instrument to commence the day after the instrument is registered.

Table item 3 provides for Schedule 2 to the instrument to commence on the day after the end of the period of 12 months beginning on the day after the instrument is signed. This 12 months implementation period will allow time for further discussions with firearms importers and allow them to make any necessary changes to ensure compliance with the new requirements before they commence.

Section 3 – Authority

This section sets out the authority under which the Regulations are to be made, which is the *Customs Act 1901* (the Customs Act).

Section 4 – Schedules

This section is the formal enabling provision for the Schedules to the Regulations, and provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to this instrument has effect according to its terms.

The instrument to be amended is the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations).

Schedule 1 – Amendments commencing day after registration

Customs (Prohibited Imports) Regulations 1956

Item 1 – Subregulation 4F(4) (paragraph (a) of the definition of *firearm accessory*)

This item makes a minor amendment to paragraph (a) of the definition of ‘firearm accessory’ for consistency with the grammatical structure of new paragraph (c) of the definition of ‘firearm accessory’, described below.

Item 2 – Subregulation 4F(4) (after paragraph (b) of the definition of *firearm accessory*)

The purpose of the amendment in this item is to restrict the importation of bump stocks, auto gloves and similar devices that are designed to, or capable of, giving the firearm the capability of being operated in a way that mimics burst fire and/or fully automatic operation, for which there is no legitimate civilian use.

This item inserts a new paragraph (c) into the definition of ‘firearm accessory’. The importation of a firearm accessory is prohibited under subregulation 4F(1) unless the firearm accessory is an article to which an item in Part 2 of Schedule 6 applies, and the importation is in accordance with the requirements listed in item 14 of Part 2 of Schedule 6 to the PI Regulations.

A stock is a part of a firearm to which the barrel, action and firing mechanism are attached. Bump stocks are firearm stocks that use the recoil of a semi-automatic firearm to increase the firing rate of the firearm to fire multiple shots in rapid succession. An auto glove is a glove designed to allow simulation of fully automatic operation with semi-automatic firearms. The auto glove incorporates a ‘trigger assist device’, an automated device that pulls the trigger in a variety of pre-programmed configurations.

Under subregulation 4F(1) and the current definition of firearm accessory in subregulation 4F(4), the importation of a firearm accessory designed to modify, or capable of converting, a firearm to give it burst fire, semi-automatic operation or fully automatic operation is prohibited. However, the current definition of firearm accessory may not prohibit all bump stocks. Due to their technical operation, although bump stocks enable a firearm to mimic an increased rate of firing they do not change the actual operation of the firearm.

New paragraph (c) prescribes devices that are designed to increase the rate of fire of a firearm and give the firearm the capability of being operated in a way that mimics burst fire or fully automatic operation.

This amendment ensures the importation of all devices designed to or capable of increasing the rate of fire of a firearm, including bump stocks and auto gloves, are subject to the controls on importation under regulation 4F and Schedule 6 to the PI Regulations that apply to firearm accessories.

As a result of the amendment, the importation of devices designed to or capable of increasing the rate of fire of a firearm must comply with at least one of the following tests: the official purposes test, the specified purposes test, or the returned goods test. These tests are set out in Part 1 of Schedule 6 to the PI Regulations. In accordance with subregulation 4F(1A), the requirement to meet one of these tests may be met by compliance with either the public interest test or the national interest test, which are set out in Part 1 of Schedule 6 to the PI Regulations.

Item 3 Subitem 5.1 of Part 3 of Schedule 6 (definition of *category H (dealer stock) article*)

Please see explanation under Item 7.

Item 4 Subitem 5.2 of Part 3 of Schedule 6

Please see explanation under Item 7.

Item 5 Subitem 5.3 of Part 3 of Schedule 6

Please see explanation under Item 7.

Item 6 Subitems 5.6 to 5.14 of Part 3 of Schedule 6

Please see explanation under Item 7.

Item 7 Subitem 5.15 of Part 3 of Schedule 6

Item 5 of Part 3 in Schedule 6 to the PI Regulations provides the conditions to which importation of category H articles under the dealer test is subject. Category H articles are defined in item 3A of Part 4 of Schedule 6 as firearms mentioned in item 9 of Part 2 (other than a firearm manufactured before 1 January 1900), or frames or receivers mentioned in item 9B of Part 2 (other than a frame or receiver that was manufactured before 1 January 1900) of Schedule 6 to the PI Regulations. These are handguns, and frames or receivers of, or for, handguns.

Prior to amendments made to the PI Regulations in July 2013 by the *Customs (Prohibited Imports) Amendment (Firearms) Regulations 2013* (the July 2013 Amendments), under item 5 of Part 3 in Schedule 6 to the PI Regulations, licensed firearm dealers (dealers) for category H articles could only hold a specified number of category H articles at their dealership for stock purposes. The remainder of their stock was held by the Australian Border Force (the ABF). A certificate, issued by the ABF, stated the quantity the dealer could hold. The dealer was required to present this certificate to the ABF for the ABF to release the goods for ‘stock purposes’.

Item 5 requires dealers to provide a report of disposals of category H articles to the ABF within 30 days of any disposal. This reporting is duplicated under State and Territory legislation, where dealers must report disposals to the relevant State or Territory firearms registry.

Following the July 2013 Amendments, the ABF no longer stores category H articles for dealers, precluding the need for presentation of a certificate issued by the ABF for release of goods for ‘stock purposes’ to them, and negating the relevance of disposal reporting. However, the conditions in item 5 that require the issue and presentation of certificates and reporting by dealers were not repealed by the July 2013 amendments and are redundant and unnecessarily burdensome.

The amendments at items 3 to 7 amends item 5 in Part 3 of Schedule 6 to the PI Regulations to repeal these now redundant reporting conditions. Firearms dealers will still require appropriate import permission to import category H articles. These amendments will reduce the regulatory burden on both firearms dealers who import category H articles and ABF officers inspecting goods at the border.

Schedule 2 – Amendments commencing 12 months after registration

Customs (Prohibited Imports) Regulations 1956

Items 1, 2, 4, 6, 8, 10 and 12 – Part 2 of Schedule 6 (table items 1, 2, 3, 6, 9, 12, and 14A, column 3)

These items amend the wording of the current requirement that firearms listed in table items 1, 2, 3, 6, 9, 12 and 14A must bear a unique serial number if the firearm was manufactured on or after 1 January 1900.

These amendments are consequential to the amendments that are made to item 1A of Part 3 of Schedule 6 to the PI Regulations, described below. The operation of these table items in Part 2 is not be changed.

Items 3, 5, 7, 9 and 11 – Part 2 of Schedule 6 (at the end of the cells at table items 2B, 4, 7, 9B, 13, and 14A, column 3)

These items amend the requirements listed in column 3 of table items 2B, 4, 7, 9B, 13 and 14A to add a new requirement that a frame or receiver to which item 1A of Part 3 of Schedule 6 to the PI Regulations applies must comply with the identification requirements that are set out in that item. The requirements in item 1A of Part 3 of Schedule 6 are described below.

The purpose of these amendments is to require firearm frames and receivers to bear a unique serial number.

The importation of frames and receivers is currently controlled, as firearm parts, under regulation 4F of, and Schedule 6 to, the PI Regulations. A frame and receiver are the accountable components of a firearm. There is currently no requirement for a frame or receiver to bear a unique serial number, when either imported as part of a complete firearm or imported as individual parts.

A prescribed approach to the location, format and appearance of unique serial numbers improves the recording of data in firearms systems. This assists police and other law enforcement agencies to manage the registration, licensing and movement of firearms, frames and receivers being imported into Australia and being moved between States and Territories.

The amendments enhance the ability to record, track and trace the movement of firearms, frames and receiver, and may contribute to identifying and preventing firearms trafficking.

Item 14 – Item 1A of Part 3 of Schedule 6 (heading)

Please see explanation under Item 15.

Item 15 – Subitem 1A(1) of Part 3 of Schedule 6

These items, together with items 16, 17, 18, 19 and 20 described below, amend item 1A of Part 3 of Schedule 6 to the PI Regulations. Part 3 of Schedule 6 to the PI Regulations sets out the conditions on the importation of firearms and firearm parts. Amended item 1A sets out firearms, frames or receivers that must comply with the identification requirements as well as setting out the identification requirements

New subitem 1A(1) sets out the scope of item 1A, and provides that it applies to a firearm, frame or receiver that was manufactured on or after 1 January 1900.

Item 16 – Subitem 1A(2) of Part 3 of Schedule 6

Please see explanation under Item 19.

Item 17 – Paragraph 1A(2)(a) of Part 3 of Schedule 6

Please see explanation under Item 19.

Item 18 - Paragraph 1A(2)(b)(i) of Part 3 of Schedule 6

Please see explanation under Item 19.

Item 19 - Subparagraph 1A(2)(b)(iii) of Part 3 of Schedule 6

Together, these four items amend current subitem 1A(2) of Part 3 of Schedule 6 to the PI Regulations. The amendments extend the identification requirements under current subitem 1A(2) so that the requirements have to be met by a firearm, and also a frame or a receiver. Under amended subitem 1A(2), a firearm, frame or receiver would comply with the identification requirements if the firearm, frame or receiver, or a sample of a consignment of firearms, frames or receivers, has been visually inspected and found to comply with new subitem 1A(3), described below.

Item 20 – At the end of item 1A of Part 3 of Schedule 6

This item adds new subitem 1A(3) at the end of item 1A of Part 3 of Schedule 6 to the PI Regulations, which prescribes the requirements for the location, format and appearance of unique serial numbers. Under new subitem 1A(3), a firearm, frame or receiver has to:

- a) have a unique serial number that consists only of Arabic numerals, English letters , or punctuation marks. The serial number could be made up of any combination of these three; and
- b) display the serial number in accordance with new subitem 1A(4):
 - i) in the case of a firearm-on the frame or receiver of the firearm; or
 - ii) in the case of a frame or receiver-anywhere on the frame or receiver.

Under new subitem 1A(4), the serial number has to be:

- a) easily recognisable as the serial number of the firearm, frame or receiver; and
- b) legible; and
- c) able to be read without the use of any device or tool.

These new requirements make it easier to check serial numbers at the border. For the purpose of paragraph 1A(4)(b), an example of an ‘easily recognisable’ serial number is one that is placed on the firearm, frame or receiver separate from any other markings such as model number, patent date or year code. The serial number placed on the firearm frame or receiver has to be in a format and style that does not require an instrument or tool (such as a magnifying glass, barcode scanner or QR code reader), to decipher or decode a serial number. This alleviates the need for both industry and law enforcement to have these specialist tools available every time a firearm serial number is to be validated.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Customs (Prohibited Imports) Amendment (Firearms) Regulations 2020

The *Customs (Prohibited Imports) Amendment (Firearms) Regulations 2020* (the Amendment Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Amendment Regulations

The purpose of the Amendment Regulations is to amend the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) to:

- restrict the importation of bump stocks, auto gloves and similar devices that give a firearm the capability of being operated in a way that mimics burst fire and/or fully automatic operation. The proposed amendments are necessary to ensure that the community remains protected from these new and emerging technologies, for which there is no legitimate civilian use;
- extend the current requirement for a firearm to bear a unique serial number to frames and receivers, whether imported as part of a firearm or not. In addition, requirements for the location, format and appearance of unique serial numbers would be prescribed. The proposed amendments would enhance the ability to record, track and trace the movement of firearms, frames and receivers and may contribute to identifying and preventing firearms trafficking; and
- remove redundant conditions on the importation of handguns by firearms dealers, reducing the regulatory burden associated with these importations.

There is no legitimate civilian use for bump stocks, auto gloves or similar devices.

To control the importation of bump stocks, auto gloves and similar devices which give a firearm the capability of being operated in a way that mimics burst fire or fully automatic operation, the definition of ‘firearm accessory’ in subregulation 4F(4) of the PI Regulations is amended to include such devices. As a result of the amendment, and as with other firearms accessories, the importation of bump stocks, auto gloves and similar devices will only be permitted if they satisfy the requirements of the official purposes test, the specified purposes test, the returned goods test, the public interest test, or the national interest test set out in Schedule 6 to the PI Regulations. Any person who intentionally imports a bump stock, auto glove or similar device without the appropriate permission may be liable for a penalty under subsection 233BAB(5) of the Customs Act of imprisonment for 10 years or 2,500 penalty units (currently \$525,000), or both.

The PI Regulations specify that a firearm must bear a unique serial number as an identification marker if the firearm was manufactured on or after 1 January 1900. However, there were no requirements in the PI Regulations as to the format, location or appearance of the serial number.

The importation of firearm frames and receivers is currently controlled under regulation 4F and Schedule 6 to the PI Regulations, as firearm parts. The frame and receiver are the accountable components of the firearm. There is currently no requirement for a frame and receiver to bear a unique serial number, when either imported as part of a complete firearm is imported or imported as individual parts.

A prescribed approach to the location, format and appearance of unique serial numbers would improve the recording of data in firearms systems. This would assist police and other law enforcement agencies to manage the registration, licensing and movement of firearms imported into Australia and being moved between States and Territories.

The amendments to Schedule 6 to the PI Regulations will require the unique serial number to be on a frame or receiver of a complete firearm, and on a frame and a receiver if these parts are imported separately. This will more closely align the import requirements with State and Territory government requirements. In all Australian States and Territories there is a legal requirement that the frame or receiver is subject to registration. The amendments will commence on the day after the end of the period of 12 months beginning on the day the Amendment Regulations were registered on the Federal Register of Legislation. This 12 months implementation period will allow time for further discussions with firearms importers and allow them to make any necessary changes to ensure compliance with the new requirements before they commence.

The Amendment Regulations will also reduce regulatory burden on firearms dealers and the Australian Border Force (the ABF) by removing the requirement to issue and present the Category H (handguns) certificate to the ABF for stock purposes, and removing the requirement for handgun dealers to present monthly reports of sales to the ABF.

Human rights implications

The Amendment Regulations may engage the right to life in Article 6(1) of the *International Covenant on Civil and Political Rights*; specifically, the responsibility that a country has to take appropriate steps to protect the right to life.

The inherent right to life entails the right not to be deprived of life arbitrarily or unlawfully by the country or its agents. The right to life also includes a duty on governments to take appropriate steps to protect the right to life of those within its jurisdiction, and to investigate arbitrary or unlawful killings and punish offenders.

The Amendment Regulations restrict the importation of bump stocks, auto gloves and similar devices that are designed to, or capable of, operating in a similar way, to strictly limited purposes only. This promotes the right to life as it would significantly lower the risk and potential harm to life posed by such devices by limiting their availability in the Australian community. By strengthening serial number requirements for firearms and extending these requirements to frames and receivers imported as firearms parts, Australia enhances its ability to record, track and trace their movement, and identify and prevent firearms trafficking.

Conclusion

The Amendment Regulations are compatible with human rights because they promote the protection of human rights.

