

~~IN CONFIDENCE~~

Office of the Minister of Police
Chair, Cabinet Legislation Committee

Arms (Extension of Licences and Endorsements) Amendment Regulations 2023

Purpose

- 1 I seek Cabinet approval for submission to the Executive Council of the attached Arms (Extension of Licences and Endorsements) Amendment Regulations 2023. These amendment regulations propose a temporary extension of the following documents that have expired or will expire due to the impacts of weather events in January and February 2023 leading to a national state of emergency declaration under the Civil Defence Emergency Management Act 2002:
 - firearms licences (and endorsements on them)
 - dealer's licences (and endorsements on them)
 - endorsements made on the firearms licences of wild animal or animal pest controllers authorising them to possess prohibited firearms and prohibited magazines for employment purposes.
- 2 The extension is limited to those licence holders whose post code address, as notified to Police's Firearms Safety Authority Te Tari Pūreke, is within one of the Civil Defence Emergency Management (CDEM) Group areas covered by the recently declared state of national emergency and local district declared state of emergency: Northland, Auckland, Waikato (Waitomo, Thames Coromandel), Bay of Plenty, Tairāwhiti, Tararua District and Hauraki District

Issue Identification

- 3 Loss of power, connectivity, road access, and damage to homes and buildings caused by Cyclones Hale and Gabrielle means that some holders of firearms and dealer's licences may be unable to apply for a new licence or endorsement before their current licence expires.
- 4 Firearms Licence holders in this situation are not covered by the general extension provided in the Arms Act 1983 (the Act) as amended in November 2022. For a firearms licence to remain current, the application for a new licence must be made before the current licence expires (section 25A of the Act). If the licence expires an applicant cannot lawfully possess a firearm or purchase ammunition, and any new licence if issued would be for a five year licence not a ten year licence.
- 5 For a dealer's licence to remain current and to continue in force, a dealer is required to apply for renewal before expiry of their licence (section 8A of the Act). If a dealer does not or is not able to apply for renewal before expiry of their licence, they would no longer be able to undertake dealer activities and would be unlawfully in possession of any arms items they possess for the purposes of their business through no fault of their own.

Further, the dealer would not be able to undertake any dealer activities until such a time as a determination has been made on their application.

6 To prevent the expiry of a licence through no fault of the licence holder I seek the Committee's agreement to:

6.1 the attached regulations extending the expiry dates of licences and endorsements in those areas where emergencies have been declared under the Civil Defence Emergency Management Act 2002 (section 74(1)(ea) of the Act); and

6.2 a waiver of the 28-day rule.

Relation to Government priorities

7 The proposed urgent Arms (Extension of Licences and Endorsements) Amendment Regulations 2023 contribute to the Government's priority: 'Support healthier, safer and more connected communities' through recognising the impact on licence holders of cyclones Hale and Gabrielle and ensuring they can continue to legally possess and use firearms even though they have not been able to make application for a new licence before their current licence expires.

Background

8 To legally possess firearms a person must have a current firearms licence issued by New Zealand Police. A firearms licence is valid for ten years, or five years for first-time licence holders. A dealer's licence is valid for one year. Endorsements on those licences which enable holders to lawfully possess prohibited firearms, prohibited magazines, pistols and restricted weapons last for the duration of the licences, except for endorsements for possession of prohibited firearms for wild animal and animal pest control purposes, which last for up to two and a half years.

9 Before expiry of the licence the firearms licence holder must have applied for and obtained a new licence in order to retain legal possession of their firearms. A dealer must have applied for a new dealer's licence before the current licence expires. The Act provides that the current licence continues in force until the application is determined if the application is made before the previous firearms or dealer's licence expires.

10 Possession of a firearm without a firearms licence is an offence with a penalty of not exceeding one year imprisonment or a fine not exceeding \$15,000. There are higher penalties for possession of prohibited firearms, prohibited magazines, pistols, and restricted weapons without an endorsement.

Some licences and endorsements holders directly affected by Cyclones Hale and Gabrielle may be unable to complete an application for licences and endorsements before they expire

11 Applicants may not be able to make a new application due to an inability to provide their current licence card, or necessary photographs, or other identifying information, or do not have a fixed address for storage of any firearms, or are unable to pay the required fees either online or at a NZ Post shop. This prevents applicants from meeting the requirements for application.

- 12 If their licence expires they risk holding firearms unlawfully, unable to purchase ammunition and if issued with a new firearm's licence that licence would be treated as a first-time licence which is for five years, rather than the ten years if they had applied for a new 'subsequent' licence in time. Dealers and those holding pest-control endorsement would be required to cease their activities.

About 2,118 licence holders may be affected

- 13 As at 10 January 2023, there are 2,045 firearms licences and 63 dealer's licences due to expire after 10 January 2023 and before 1 September 2023 in the declared CDEM Group areas and declared Districts. There are a further ten wild animal pest control endorsements also due to expire in the above timeframe in the declared areas.

There is provision in the Arms Act to make regulations to extend the duration of licences

- 14 In 2020, due to the COVID-19 related lockdowns, provision was made in the Arms Act for extending the duration of licences and endorsements.
- 15 In anticipation of a further emergency situations arising, the Arms Legislation Act passed in June 2020 included an amendment to section 74(1) which enabled regulations to be made:

(ea) extending the expiry date of licences and endorsements in the event of a pandemic, an epidemic, or an emergency being declared under the Civil Defence Emergency Management Act 2002.

Regulations to extend duration of firearms licences and endorsements

- 16 The attached regulations are along similar lines to changes made in response to the impact of COVID-lockdowns on firearms licence applications in 2020 and 2021. These proposed Regulations temporarily extend the duration of licences and endorsements of licence holders who are unable to apply for a new licence or endorsement before expiry and whose address, as held by Police prior to 10 January 2023, is within the declared Civil Defence Emergency Management (CDEM) Group areas and declared Districts. I propose that the licences and endorsements continue in force until 31 August or until Police has made a decision on the application if this happens earlier.
- 17 The temporary licence extension would apply to any licence and associated endorsement or pest control endorsement held by a licence holder whose postcode address¹, lies within the declared CDEM Group areas or declared Districts, and the licence or endorsement was current prior to 10 January but application had not been made by midnight on 9 January 2023, and the licence or endorsement expired on or after 10 January and prior to 1 September 2023.
- 18 The extension will remain current provided an application for a new (subsequent) licence, associated endorsement, or pest control endorsement is made no later than 5pm on Thursday 31 August 2023.

¹ Licence holders postcodes are those provided to and recorded by Police's Firearms Safety Authority-Te Tari Pūreke.

- 19 The proposed length of the extension is considered sufficient to accommodate expired licences during the event recovery period.

Timing and 28-day rule

- 20 This paper seeks a waiver of the 28-day rule so the regulations can come into force on the day after they are notified in the Gazette. This is to minimise the time licence holders are without current licences and endorsements when they have applied for new licences and to place them in compliance with the Act as soon as possible.

Compliance

- 21 The attached regulations comply with:

- the principles of the Treaty of Waitangi;
- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- the principles and guidelines set out in the Privacy Act 2020;
- relevant international standards and obligations; and
- the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee

Regulations Review Committee

- 22 I do not consider there are grounds for the Regulations Review Committee to draw the Regulations to the attention of the House.

Certification by Parliamentary Counsel

- 23 The regulations have been certified by the Parliamentary Counsel Office.

Impact Analysis

- 24 Treasury's Regulatory Impact Analysis team has determined that the proposal in this Cabinet paper to extend the duration of firearms and dealer's licences and endorsements due to the impacts of weather events in January and February 2023 is exempt from the requirement to provide a Regulatory Impact Statement. The proposal is exempt on the grounds that it is intended to temporarily defer or extend legislative deadlines in situations where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome.

Financial Implications

- 25 There are no additional financial implications with this proposal.

Publicity

- 26 Once the regulations are gazetted, Police will communicate the new legal position on firearms licence and endorsement expiry dates directly to the public on the Police and Firearms Safety Authority – Te Tari Pūreke website and provide guidance on its application.

Proactive release

- 27 I intend to proactively release this paper with any necessary redactions following the promulgation of the regulations.

Consultation

- 28 Police consulted on this paper with the following Government agencies: the Ministry of Justice, Ara Poutama Aotearoa Department of Corrections, New Zealand Customs Service, the Treasury, the Department of the Prime Minister and Cabinet, Ministry of Foreign Affairs and Trade, Department of Conservation, Ministry of Primary Industries, the New Zealand Defence Force, Ministry for Culture and Heritage, and Te Arawhiti.
- 29 Police also discussed the proposal with members of my Arms Advisory Group, the Firearms Community Advisory Forum, and the Arms Engagement Group (representatives of non-firearm-owning organisations with an interest in firearm issues) for feedback. No issues were raised and the proposed regulations were generally viewed as a straightforward and practical measure.
- 30 Police has not undertaken the full consultation process that section 74 of the Act normally requires. I am satisfied that the attached regulations meet the exception provided for in section 74(4) where circumstances are such that it is not practicable to fully consult all those affected or likely to be affected by the regulations. This is because of the urgency of minimising the time licence holders are without current licences and endorsements when they have been unable to apply for a new licence through no fault of their own.

Recommendations

I recommend that the Cabinet Business Committee:

1. **note** the impacts of Cyclones Hale and Gabrielle mean that some holders of a firearms licence or a dealer's licence are unable to apply for a new licence and wild animal pest control endorsement before their current licence and endorsement expires;
2. **note** that section 74(1)(ea) of the Arms Act 1983 enables regulations to be made extending the expiry date of licences and endorsements in the event of an emergency being declared under the Civil Defence Emergency Management Act 2002;
3. **note** the Minister of Police is satisfied that, in the circumstances that led to the development of these regulations as per section 74(4) of the Arms Act 1983, the Commissioner has done everything reasonable to consult persons or organisations that appear to be affected or likely to be affected by the regulations;

4. **note** that Police's Firearms Safety Authority – Te Tari Pūreke has identified there are 2,081 licence holders whose licence address is in the declared national emergency areas and whose licence or wild animal pest control endorsement will expire between 11 January and 5pm 31 August 2023 and may require an extension to their licence;
5. **note** that the attached Arms (Extension of Licences and Endorsements) Amendment Regulations 2023 provide sufficient time up to 5pm 31 August 2023 for those identified in recommendation 3 above to:
 - 5.1 apply for a new firearms licence (and the endorsements on them), and new endorsements issued to wild animal pest controllers,
 - 5.2 apply for a new dealer's licences (and the endorsements on them) that have expired or will be expiring,
 - 5.3 endorsements made on firearms licences of wild animal and pest control;
6. **authorise** the submission to the Executive Council of the attached Arms (Extension of Licences and Endorsements) Amendment Regulations 2023;
7. **note** that a waiver of the 28-day rule is sought:
 - 7.1. so the regulations can come into force as soon as possible;
 - 7.2. on the grounds that it is important to minimise the time affected licence holders are without a current licence and endorsement, and remove the risk of their being penalised with a 5-year licence if application for a new licence and endorsement had not been made before the expiry date of their previous licence or endorsement due to the impact of cyclones Hale and Gabrielle on licence holders, business, housing and travel;
8. **agree** to waive the 28 day rule so that the attached Arms (Extension of Licences and Endorsements) Amendment Regulations 2023 can come into force on the day after they are gazetted;

Authorised for Lodgement

Hon Ginny Andersen
Minister of Police