

Appendix 2: Table summarising the additional legislative and regulatory changes required to meet the obligations under the Firearms Protocol

Proposal	What needs to happen	What happens now	Analysis	Impact on firearm owners, manufacturers and importers
<i>Substantive changes</i>				
New offence: the illegal trafficking of firearms, parts and ammunition	<p>Article 5 of the Firearms Protocol requires parties to adopt measures as necessary to establish a criminal offence for the illegal trafficking of firearms, parts and ammunition.</p> <p>Illegal trafficking is defined as the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and ammunition from or across the territory of one State Party to that of another State Party if one of the parties does not authorise or the firearms are not marked.</p> <p>Extraterritorial application.</p>	<p>Section 16 of the Arms Act 1983 makes it an offence to import firearms and parts without a permit. However, s 16(2) provides the section does not apply to "harbours and other territorial waters of New Zealand" thus limiting its scope only to those firearms that are brought into New Zealand. This limitation is appropriate given that some vessels entering New Zealand waters in transit will have firearms on board. As there is no intention for these firearms to be brought ashore, no permits are required.</p> <p>Section 16A makes it an offence to import prohibited ammunition. As part of proposals to strengthen the firearms regulatory framework, Police has proposed import permits for ammunition (and an associated offence of importing ammunition without a permit).</p> <p>Neither of these offences prevent activity normally classified as arms trafficking – that is, the illegal trade and movement in firearms, parts, and ammunition. Such behaviour goes beyond brokering (currently regulated in the Brokering (Weapons and Related Items) Controls Act 2018).</p>	<ul style="list-style-type: none"> New Zealand has an import control regime that regulates the movement of arms into New Zealand, and an export control regime that regulates the movement of arms and military equipment from New Zealand (including prohibiting movement of these items into conflict zones or countries subject to UN embargos). The cross-border nature of illegal trafficking of firearms, parts and ammunition means that often, no element would have enough connection to New Zealand to provide a basis for criminal jurisdiction. This means that if a New Zealand citizen or resident is involved, they may not be subject to any controls/penalties by New Zealand because the items being trafficked are not brought into New Zealand. To meet the requirements of the Firearms Protocol, the offence would need to apply extraterritorially to allow for the cross-border nature of illegal trafficking to be addressed while leaving the existing offence structures in place in relation to importing firearms and ammunition. The penalties will need to align with offences under the Brokering (Weapons and related items) Controls Act 2018 (5 years), but reflect the higher penalties associated with offending related to participation in organised criminal groups under the Convention (10 years), and the people trafficking / migrant smuggling offences under the Conventions' first two protocols (14-20 years). Based on this, the appropriate penalty may lay in the 7-10 year range, and the level of intention may be similar (i.e. knowing or being reckless). 	No impact on law-abiding firearm owners, manufacturers and importers.
New offence(s): the illegal manufacture of firearms and parts	<p>Article 5 of the Firearms Protocol requires parties to adopt measures as necessary to establish a criminal offence for the illegal manufacture of firearms and parts.</p> <p>Illegal manufacturing is defined as the manufacturing or assembly of firearms, their parts or ammunition, from (a) parts illegally trafficked; (b) without a licence or authorisation; and (c) without marking the firearms at time of manufacture.</p> <p>Extraterritorial application.</p>	<p>There is no specific offence relating to the illegally manufacture of firearms. The only offence is the illegal assembly of prohibited firearms.</p> <p>Police identify locally, illegally manufactured firearms for use by organised crime groups or other criminals in the course of its duties.</p> <p>Someone who manufacture a firearm for their own use must hold a firearms licence and any necessary endorsement. If they wish to manufacture for sale, they must have a dealer's licence.</p> <p>Illegal manufacture can only be linked to a licencing offence (for instance, manufacturing for sale without a dealer's licence is subject to a maximum fine of \$1,000).</p>	<ul style="list-style-type: none"> New Zealand has a very small legitimate firearm manufacturing sector. Changes in the nature of organised crime and improvements in technology (including the ability and availability of 3D printing) mean it is easier for someone to assemble or manufacture their own firearms and parts without the appropriate licence or authorisation. To meet the requirements of the Firearms Protocol, this offence would also need to apply extraterritorially, and would require similar levels of intention and maximum penalty as illegal trafficking of firearms, parts and ammunition. This change also includes an offence for failing to mark firearms at the time of manufacture: <ul style="list-style-type: none"> in practice, most dealer's /commercial manufacturers mark firearms at the time of manufacture this would also apply to someone, who with an ordinary or Cat A licence, manufactured a firearm for their own use. 	<p>No impact on manufacturers and importers (see below).</p> <p>May impact on firearms owners who have manufactured their own gun as currently no requirements on them to 'mark it' (see below).</p>
New offence: the falsifying or removal/altering of firearms markings	<p>Article 5 of the Firearms Protocol requires parties to adopt measures as necessary to establish a criminal offence for falsifying or illegally obliterating, removing or altering firearms markings.</p> <p>Extraterritorial application.</p>	<p>There is no offence for altering or removal of firearms markings, such as their serial numbers or other unique identifier.</p>	<ul style="list-style-type: none"> The falsifying or removal of firearms markings indicates either an attempt to fake the provenance or legitimacy of a firearm or a heightened risk it will be used for criminal offending. It also impacts on the ability to track firearms as they move between (or enter and exit) nations. This would also need to apply extraterritorially, and may have a range of penalties depending on intention. It would be a defence if the removal or alteration was authorised (for instance, by a recognised gun smith repairing a firearm). 	No impact on law-abiding firearm owners, manufacturers and importers.

Proposal	What needs to happen	What happens now	Analysis	Impact on firearm owners, manufacturers and importers
<i>Substantive changes</i>				
Amending the Arms Act 1983 and Arms Regulations 1992 to require all firearms manufactured in or imported into New Zealand to have an identifying markings	<p>Article 8 of the Firearms Protocol requires a system of identifying and tracing firearms at time of manufacture or import.</p> <p>For manufacture, this requires firearms to be marked with name of manufacturer, country or place of manufacture and serial number or unique marking.</p> <p>For importing, the Protocol requires firearms to be marked with the country of import and where possible, the year of import.</p>	<p>The Arms Act and Regulations require:</p> <ul style="list-style-type: none"> manufacturers to record serial numbers of manufactured firearms for their records importers to add serial numbers to any restricted or prohibited firearm or prohibited magazine that does not have one (penalty for not doing in 30 days is maximum fine of \$400) those handing possession of a restricted or prohibited firearm or prohibited magazine to another person are required to add serial number if the item does not have one (penalty for not doing in 7 days is maximum fine of \$400). <p>Guidance provided to importers and manufacturers include that if a firearm does not have unique markings, then the marking / numbers must include the Country of origin (usual abbreviation) / Manufacturer or New Zealand Agent (abbreviated) / Model ID / serial number and possibly the year of manufacture (abbreviated) or follow a recognised numbering system, such as Smith & Wesson: (eg NZ (New Zealand) GS (Gun city) 2019 001).</p>	<ul style="list-style-type: none"> New Zealand has a small legitimate firearm manufacturing sector, and most firearms entering the market (70,000 during 2016-2018) are imported. Import forms currently require serial numbers for firearms, and importers are required to notify serial numbers for restricted and prohibited firearms, within 30 days. Most importers provide the information on time. Police provide guidance over the unique marker /numbers requirements for manufactured and imported firearms that do not have markings – but these are currently only required for restricted or prohibited firearms. To meet the obligations of the Protocol, New Zealand would need to require all firearms imported or manufactured (including those manufactured by individuals licence holders for their private use) in New Zealand to have markings / unique identifiers. As only a few firearms are imported without existing unique numbers or identifiers, this is unlikely to place much additional burden on importers. Under the Protocol, antique firearms are not deemed to be firearms and therefore antique firearms would (continue to be) exempt from the marking requirements. Note: while the Protocol requires firearms to be marked with the country of import and where possible, the year of import, MFAT's view is New Zealand would comply with the obligations if New Zealand recorded existing markings – and required markings to be placed on any unmarked firearm. Our assessment of impact is based on this position. 	<p>Little impact on manufacturers; minimal impact on importers and owners – and these changes would also be needed under the registry to register the firearm (i.e. no change from what has already been proposed):</p> <ul style="list-style-type: none"> manufacturers already mark firearms (no change) importers required to mark imported firearms that does not have the required markings (current requirement is for restricted and prohibited firearms but in practice, most imported have identifying markings) owners would need to mark a firearm if they have personally manufactured one.
Amending the Arms Regulations 1992 to require records of firearms manufacture for at least 10 years	Article 7 of the Firearms Protocol requires the maintenance of information relating to firearms necessary to trace and identify those firearms to prevent and detect illegal manufacturing and trafficking activity for 10 years.	<p>Import records are kept for firearms and parts. Export records for firearms, parts and ammunition. The second Arms Amendment Bill will introduce requirement for import permits for ammunition (which will be kept as records).</p> <p>Dealer manufacturing records are currently only kept for 5 years under regulation 7.</p>	<ul style="list-style-type: none"> Records for firearms imported and exported are currently kept for 10 years, however dealers (which includes manufacturers) are only required to keep records for 5 years. The Protocol would require this timeframe to be changed from 5 years to 10 years. 	This will impact on dealers and manufacturers, who will be required to keep records for 10 years rather than the current 5.
<i>Technical changes</i>				
Adding the word 'silencers' to the definition of 'parts' for all firearms	Article 3 of the Firearms Protocol (use of terms) provides that parts and components include "any device designed or adapted to diminish the sound caused by firing a firearm".	The definition of parts "in relation to any firearm" includes "any thing, such as bolt carrier group parts, trigger group parts, lower parts kits, barrel, gas block, gas tube, folding or telescoping stock, magazine loader, sub-calibre conversion kits, and carbine stock".	<ul style="list-style-type: none"> While Police considers that all parts, including silencers, are captured through this definition, including the term 'silencer' in the list would avoid any doubt. 	No impact on law-abiding firearm owners, manufacturers and importers.
Clarifying the definition of antique firearms does not include firearms manufactured after 1899	Article 3 of the Firearms Protocol (use of terms) provides that "in no case, however, shall antique firearms include firearms manufactured after 1899.	The definition of an antique firearm in the Arms Act 1983 does not place any time limit on the manufacture of the firearm although it has to be "not designed for firing, and not capable of firing, rimfire or centrefire cartridge ammunition".	<ul style="list-style-type: none"> The current definition does not state any manufacturing cut-off date for an antique firearm. To meet the requirements of the Protocol, the definition needs to be amended to include a clause that an antique firearm does not include any firearms manufactured after 1899. 	Around 1900 is often used for cut-off for antique firearms, but may impact on some owners whose firearms will no longer be considered antique (note: we do not know the number impacted).
<i>Consequential amendments</i>				
Mutual Assistance in Criminal Matters Act 1992	The Convention requires parties to afford each other the widest measures of mutual legal assistance in relation to offences under the Convention and its Protocols.	As we have not acceded to the Firearms Protocol, it is not mentioned in the Mutual Assistance in Criminal Matters Act 1992.	<ul style="list-style-type: none"> The Firearms Protocol and relevant new offences would need to be added to the schedule of the Mutual Assistance in Criminal Matters Act 1992 to reflect accession. 	No impact on law-abiding firearm owners, manufacturers and importers.
Extradition Act 1999	The Convention also covered extradition for offences under the Convention and its Protocols.	As we have not acceded to the Firearms Protocol, it is not mentioned in the Extradition Act 1999.	<ul style="list-style-type: none"> To reflect accession, the Firearms Protocol and new offences would need to be added to the list of offences with transnational aspects deemed to be included in extradition treaties in the Extradition Act 1999, and added to the list of provisions reflecting treaties deemed to incorporate crimes. 	No impact on law-abiding firearm owners, manufacturers and importers.