

BRIEFING FOR THE MINISTER OF POLICE

Priority	<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> Time-Sensitive <input type="checkbox"/> Routine		
	PCO need drafting instructions by close of business 17 April to meet their deadline for completion of the Bill.		
Subject	Temporary extension of expired firearms and dealers' licences during Covid-19 Alert period in Omnibus Bill		
Date	16 April 2020	Ref	BR/20/33

Executive summary

- On 26 March 2020 New Zealand entered the highest COVID-19 alert level – Alert Level 4 (AL4). Under AL4, people are instructed to stay at home and maintain physical distancing apart from what is necessary for 'essential services' (e.g. supermarkets, pharmacies, clinics and lifeline utilities).
- During this period Police has been unable to process applications for firearm and dealer licences because they cannot interview applicants and their referees. These elements of the process are considered to be essential for the integrity of the licensing system which requires applicants to be assessed as being fit and proper to possess firearms.
- A firearms licence is valid for 10 years and a dealer's licence for 1 year. In order to be able to legally possess firearms, people must have a current licence. There is no provision in the Act for the duration of licences to be extended.
- Several thousand persons will be affected by Police being unable to process their applications for new licences and will find themselves in possession of firearms without a current licence.
- Your agreement is sought to amend the Arms Act to temporarily extend the duration of licences that have and are expiring in the circumstance where Police is unable to progress applications for new licences owing to the restrictions and resource demands of the COVID-19 Alert. The temporary licence extension would be conditional on an application being made for a new licence. It is proposed that these licences would be extended until 25 September 2020 if they expired between 1 January and 24 March 2020 and until 6 months after the current expiry date if they expire between 25 March and 25 September 2020. This would provide time for an orderly return to compliance and time to deal with the backlog of applications.
- A COVID-19 Omnibus Bill is scheduled to be introduced to Parliament in the week it resumes sitting and is intended to be passed by mid-May. This proposed amendment fits into the criteria for inclusion in that Bill and can be approved by the relevant portfolio Minister.

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- 7 Your urgent consideration is required to enable officials to provide PCO drafting instructions by close of business this Friday 17 April to enable them time to draft the changes in time for inclusion in the Omnibus Amendment Bill.

Recommendations

Police recommends that the Minister of Police:

- a) **Note** that owing to Police being unable to process firearms and dealer licence applications because of COVID-19 Alert restrictions and resourcing requirements there are a significant number of persons who have not been able to obtain new licences before their current licence expired. These persons may be in illegal possession of firearms, which they previously legally held under their previous licences
- b) **Agree** to an amendment to the Arms Act, for inclusion in the forthcoming COVID-19 Omnibus Bill, to extend the duration of firearms licences and dealers' licences (and the endorsements on them) that have expired. Licences would be extended until 25 September 2020 if they expired between 1 January and 24 March 2020 and until 6 months after the current expiry date if they expire between 25 March and 25 September 2020, provided that the holders of those licences have applied for a new licence Yes/No
- c) **Authorise** Police to issue instructions to PCO by 17 April to draft this amendment Yes/No

Minister's comments and signature

..... / / 2020

Hon Stuart Nash
Minister of Police

Temporary extension of expired firearms and dealers' licences during Covid-19 Alert period in COVID-19 Omnibus Bill

Purpose

- 1 This paper seeks your agreement to an amendment to the Arms Act to provide a temporary extension of the following documents that have expired, or will expire, during or shortly prior to, the COVID-19 Alert period:

- firearms licences (and endorsements on them)
- dealers' licences (and endorsements on them)

where a licence holder has applied for a new licence and Police has been unable to process that application. It is proposed that this amendment is included in the forthcoming COVID-19 Omnibus Bill.

Firearms licences and endorsements are expiring during the COVID-19 Alert period

- 2 To legally possess firearms a person must have a current firearms licence issued by New Zealand Police.
- 3 A firearms licence is valid for 10 years. A dealer's licence is valid for one year. Endorsements on those licences which enable holders to possess prohibited firearms, pistols and restricted weapons, last for the duration of the licences. By the end of the licence period, the licence holder must have applied for and obtained a new "replacement" licence in order to retain possession of firearms.
- 4 Possession of a firearm without a licence is an offence (enforced by Police) with a penalty of up to 3 months imprisonment or a fine not exceeding \$1,000, or both. There are higher penalties for possession of prohibited firearms, pistols and restricted weapons without an endorsement.

Police is not able to process licence applications during this time

- 5 Before issuing a licence, Police must be satisfied that the person is fit and proper to possess firearms. This involves face-to-face interviews with applicants and their referees. Under current home based and physical distancing restrictions Police is unable to make the necessary visits for these interviews, which are considered critical by Police and the firearms community (as represented by COLFO) to the integrity of the licensing process.
- 6 Police is also an essential service and has a key part in leading the country's response to the COVID-19 epidemic. This competing demand for Police resource is impacting on the processing of applications.
- 7 Police proactively provided information on its website confirming that Police was having to defer the processing of applications during the COVID-19 Alert and that licence holders could continue to keep possession of their firearms in secure storage although not use them unless it was for an essential service.

About four thousand licence holders are affected

8 If Police processing of licence renewal applications is not possible until after the end of May, over 3,800 standard licences and 86 dealers' licences will have expired:

- Between 1 January and 8 April 2020, 1,904 standard licences and 31 dealers' licences expired (the large majority of which have been subject to renewal applications which have not been processed).
- Between 9 April and 31 May 2020, 1,969 standard licences and 55 dealers' licences will expire.


Given the degree of ongoing public concern, further clarity is needed on this issue

9 While the guidance on Police's website is clear, licence holders still find themselves outside existing legislative provisions and many are not comfortable with this. The situation still relies on the discretion of individual enforcement officers to decide whether to enforce the strict letter of the law. Members of FCAF have requested further assurance that expired licence holders are not acting illegally in retaining possession of firearms when they have complied with the requirement to apply for new licences.


10 It is arguable that if prosecutorial discretion is available to resolve the issue, legislating for the temporary extension of expired licences would be an inefficient use of the legislative process. However, there are several factors in favour of legislating:

- The undesirability of allowing licence-holders to fall into unlawfulness through no fault of their own.
- The lack of clarity as to when New Zealand will be moving to a lower Alert Level, whether it will be possible for Police to progress renewal applications at lower Alert Levels, and how long any Alert Levels will last.
- The large number of expired licences at issue.
- The inevitable delay in issuing licences once the assessment of licence applications is resumed, as Police deal with the backlog.
- The fact that some (albeit presumably a minority of) standard licence-holders may need to use their firearms during the period in which their licences have expired, and some dealers may commence trading once the alert level is reduced.

• s9(2)(h)



s9(2)(h)



- 11 In light of the above, Police considers it preferable to provide for a temporary extension to expired licences in the Omnibus Bill rather than rely on prosecutorial discretion. The length of any extension will need to be sufficient to normalise the situation of holders of expired licences during the period in which Police is unable to process the licences, but no longer than necessary.

Ministers are able to approve certain amendments for inclusion in the Omnibus Bill

- 12 On 15 April 2020, Cabinet Business Committee (CBC) agreed that individual portfolio ministers had delegated authority to approve for inclusion in the Omnibus Bill minor amendments to principal Acts including those deferring critical deadlines or providing exemptions where compliance is not possible or is burdensome.
- 13 CBC authorised responsible Ministers to approve such amendments (on terms and conditions) if:
- those matters are not significant in policy terms;
 - it is desirable to facilitate the response to COVID-19 or mitigate its impact on entities or others; and
 - the exemption is no more than reasonably necessary to meet the need.
- 14 It is submitted that the temporary extension of the duration of licences that have expired but application for a new licence made prior to expiry meet each of these criteria.

Amending the legislation so that those firearm owners whose licence has expired have their licence extended so they are not in breach of legislation

- 15 It is proposed that the temporary extension will apply:
- For people whose licence (and any endorsements) expired between 1 January 2020 and 24 March 2020, who had applied to renew that licence/endorsements, and that application had been received by Police on or before the licence expiry date but Police has not yet made and notified a decision on their application. In this situation, their licence and any endorsements on it would be extended from the expiry date to 25 September 2020 unless their replacement licence is sooner issued, or their extended licence is sooner revoked or suspended; and

- For people whose licence (and any endorsements) expires between 25 March 2020 and 25 September 2020, their licences and any endorsements on them to be extended to 6 months after the licence expiry date provided that their application for a replacement licence/endorsement is received by Police no later than 8 weeks before that extended expiry date. The temporarily extended licence will end sooner if the replacement licence is issued or the extended licence is sooner revoked or suspended.

18 Provision for these temporary extensions provide for an orderly return to compliance and for Police to deal with the backlog of applications.

Financial Implications

19 There are no additional financial implications to this proposal.

Compliance

20 The Amendment complies with the:

- principles of the Treaty of Waitangi
- rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
- principles and guidelines set out in the Privacy Act 1993
- relevant international standards and obligations
- Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Population Implications

21 There are no specific population implications from the proposal in this paper.

Consultation

22 The development of the paper and its recommendations have been discussed with Crown Law, PCO and the Department of Prime Minister and Cabinet.

Communications

23 The amendment, once passed, will be communicated directly to the public on the Police website and guidance provided on its application.

Next steps

- 24 The next steps are for the issuance of instructions on the amendments to PCO by the close of business Friday 17 April so that they can complete drafting by Wednesday 22 April. The Omnibus Bill is to be considered by the COVID-19 Group of Ministers on 24 April and approved for introduction. It is then to be introduced and receive a First Reading as soon as possible after Parliament resumes sitting (probably 28 April). The Bill is to be referred to the Epidemic Response Committee for a shortened select process, to enable enactment in mid-May.

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 Jeremy Wood
 Executive Director, Policy and Partnerships

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