

Office of the Minister of Police
Chair, Cabinet Legislation Committee

Arms Amendment Regulations (No 2) 2023 – Firearms Registry

Proposal

- 1 This paper seeks agreement to amend the Arms Regulations 1992 to exclude specified firearms for which a firearms licence is not required from the definition of “arms item” in regulation 36; and from identification marking requirements in regulation 12(5A); and authorise the submission to the Executive Council of the Arms Amendment Regulations (No 2) 2023.

Executive summary

- 2 This paper seeks policy approval to amend the Arms Regulations 1992 to exclude specified low-risk firearms for which a firearms licence is not required from the definition of “arms item” for the purpose of the firearms registry (the Registry) in regulation 36; and from identification marking requirements in regulation 12(5A). These items that are technically firearms (because they discharge a projectile using explosive force) include, for example, stud guns, flare pistols, underwater spear guns, and tranquilliser guns.
- 3 It was not intended to require registration of items for which a licence is not required in amendment regulations made on 11 May 2023 for the Registry. Airguns and antique firearms, which also do not require a licence, were not included. The proposed amendments fix an oversight which would otherwise unfairly burden licence holders, given non-licenced people may also possess the items without registering them or needing a licence. Consequently, it was also not intended and would not make sense to require licence holders to place identification markings on items for which a licence is not required and which will not be registered.
- 4 This paper also seeks policy approval for transitional provisions to address impacts on any licence holder caught by requirements in Part 9 and regulation 12(5A) of the Arms Regulations, which the proposed regulations otherwise amend, between 24 June 2023 and when the proposed amendment comes into force.
- 5 This paper seeks approval to submit the Arms Amendment Regulations (No 2) 2023 to Executive Council. It also seeks agreement to waive the 28-day rule so that the amendment regulations will come into force on 28 July 2023, the day after they are gazetted.

Policy

- 6 On 24 June 2023, amendments to the Arms Act 1983 which require the Commissioner of Police to keep and operate the Registry came into force.

- 7 The Arms Amendment Regulations 2023, which set out the information requirements and timing for the operation of the Registry, were gazetted on 11 May 2023 to also come into force on 24 June 2023. Part 9 (Arms Registry) of the Arms Regulations requires licence holders to register arms items in their possession when certain activating circumstances¹ occur and, to record certain events related to those items, for example, if they purchase or sell an arms item.
- 8 Regulation 36 defines “arms item” for the purpose of the Registry as:
- (a) means any firearm (including a prohibited firearm), prohibited magazine, major firearm part, restricted weapon, or pistol carbine conversion kit; but
 - (b) does not include an antique firearm.
- 9 Under section 2 of the Arms Act a “firearm” includes “anything from which any shot, bullet, missile, or other projectile can be discharged by force of explosive”.
- 10 Section 20 of the Arms Act makes it an offence for a person to possess a non-prohibited firearm unless they are 16 years old and hold a firearms licence. However, there are exemptions to this requirement under sections 22(1)(a), (b) or (c) of the Arms Act.
- 11 Section 22(1)(a) exempts people in possession of specified types of firearms from the offence in section 20 (which would otherwise require them to have a firearms licence to be in possession of that type of firearm). The specified firearms are any ‘firearm’ of the kind known as:
- 11.1 a bolt gun or a stud gun
 - 11.2 a humane killer
 - 11.3 a tranquilliser gun
 - 11.4 a stock marking pistol
 - 11.5 an underwater spear gun
 - 11.6 a flare pistol
 - 11.7 a deer net gun
 - 11.8 a pistol that is part of rocket or line throwing equipment
 - 11.9 a miniature cannon
- 12 Section 22(1)(b) exempts any antique firearm from section 20. Regulation 36 of the Arms Regulations excludes antique firearms from the definition of arms item for the purpose of the Registry.

¹ Activating circumstances include if the licence holder: applies for a licence or an endorsement under the Act; has a change to their licence holder information; sells/supplies, purchases/receives, modifies, manufactures, imports, exports, destroys, or notifies loss or theft of an arms item; is subject to compliance or enforcement action; or purchases ammunition after 24 June 2025.

- 13 Section 22(1)(c) provides for any other make, type, or manufacture of firearm specified by regulations made under the Arms Act to also be exempted from section 20. Regulation 20 of the Arms Regulations exempts people from needing to have a firearms licence to possess any 'firearm' of the kind known as:
- 13.1 a dog training dummy launcher
 - 13.2 an improvised explosive device disrupter.
- 14 The firearms specified in section 22(1)(a) and regulation 20 ("exempted firearms") were not excluded from the definition of arms item in regulation 36 of the Arms Regulations. This means that from 24 June 2023 under Part 9 of the Arms Regulations when certain activating circumstances occur, licence holders are required to register any exempted firearms they possess, and record any related events, for example, if they sell or purchase them. Part 9 of the Arms Regulations only applies to licence holders. Non-licenced people can possess exempted firearms without registration or regulatory controls associated with licence (such as being assessed to be a fit and proper person to possess a firearm and secure storage).
- 15 The exempted firearms were also not excluded from regulation 12(5A) of the Arms regulations which requires that all arms items possessed by firearms licence holders must have identification markings. This means that licence holders will need to place serial numbers on exempted firearms for which a licence is not required, and which will not be registered. Non-licenced people will not be subject to the same requirements.

Policy approvals

- 16 I seek to amend the Arms Regulations to exclude the exempted firearms from the definition of "arms item" in regulation 36 for the purpose of the Registry, and regulation 12(5A) in relation to identification marking requirements.
- 17 Registration and identification marking of exempted firearms would add an unnecessary and unfair burden to licence holders for negligible public benefit. The exempted firearms are already considered to be low-risk by virtue of being able to be purchased and owned without a licence and the consequent regulatory controls associated with a licence. Any benefit for public safety of having only those items possessed by licence holders registered and marked is negligible because people can buy, own and transfer them to others without holding and showing a licence.
- 18 These amendments are consistent with the policy intent of the Arms Amendment Regulations that were considered by Cabinet Business Committee on 31 January 2023 [refer CBC-23-MIN-0004] and confirmed by Cabinet [refer CAB-23-MIN-0013].

- ~~IN CONFIDENCE~~
- 19 Airguns (which are included in the definition of arms item for general application of the Arms Act but do not require a licence) were not included in the definition of arms item for the purpose of the Registry in proposals to Cabinet on the Arms Amendment Regulations. Feedback from consultation on a proposal to include restricted airguns² was that it would not make sense to include them because non-licenced people (over the age of 18) could also possess them. Antique firearms, which also do not require a licence for possession, were excluded from the definition of arms item for the purpose of the Registry. This demonstrates the intent to exclude firearms for which a licence is not required from the Registry.
- 20 Consequently, it was also not intended and would not make sense to require licence holders to put identification markings on items for which a licence is not required and which will not be registered (and therefore which anyone can possess with no further oversight).
- 21 I therefore propose to:
- 21.1 amend regulation 36 of the Arms Regulations to exclude any exempted firearm described by or under section 22(1) of the Arms Act that a person may possess without holding a firearms licence from the definition of “arms item” for the purpose of the Registry; and consequently, amend the reference to ‘firearm’ in Part 3 of Schedule 1B of the Arms Regulations to be consistent with the amended definition, and
- 21.2 amend regulation 12(5A) to exclude exempted firearms in relation to requirements on firearms licence holders to place identification markings on arms items.
- 22 I also propose to amend the Arms Regulations to provide for transitional provisions so that:
- 22.1 New Zealand Police cannot prosecute any licence holder who is required to provide information for the Registry in Part 9 of the Arms Regulations in relation to any exempted firearm, and place identification markings on any exempted firearm, in the time period between 24 June 2023 and the amendment coming into force, if those licence holders did not do so in that time, and
- 22.2 after the amendment comes into force a licence holder is no longer required to provide information to Police for the Registry in Part 9 or place identification markings under regulation 12(5A), related to the exempted firearms.

² ‘Restricted’ airguns are airguns that have the appearance of being a pistol, prohibited firearm, or restricted weapon.

- 23 In the short period between 24 June and when the amendment comes into force (approximately five weeks) Police expect only a small number of licence holders will be affected. This will not affect the 400 or so dealers whose arms items will be brought into the Registry at a later date determined by the Commissioner. From 24 June, only those firearms licence holders who possess the exempted items will be affected, and of those, only those who have an activating circumstance (for example, purchasing or selling a firearm), which for many may not occur for several months or even years.

Timing and 28-day rule

- 24 I seek a waiver of the 28-day rule so that the regulations can come into force on the day after they are gazetted. This is on the grounds that the amendment will have little or no effect or confer only benefits on the public, and early commencement is necessary to avoid the defeat of the purpose of the regulations. The amendment regulations would therefore come into force on 28 July 2023.

Compliance

- 25 The proposed regulations comply with:
- 25.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 25.2 the principles of the Treaty of Waitangi
 - 25.3 the principles and guidelines set out in the Privacy Act 2020
 - 25.4 relevant international standards and obligations, and
 - 25.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 26 I am satisfied that the Commissioner of Police has met the requirements under sections 74 (3) of the Arms Regulations to consult on the proposed regulations with the Privacy Commissioner.
- 27 Regulation 74(4) of the Arms Regulations requires that regulations providing for the Registry must be made only on the recommendation of the Minister of Police after being satisfied that the Commissioner has done everything reasonable to consult persons or organisations (or representatives of those organisations) that appear to the Commissioner to be affected or likely to be affected by the regulations; except where the Minister is satisfied that in the circumstances it was not practicable to consult to that extent or to carry out any consultation.
- 28 I am satisfied that in the circumstances of the need to address this unintended outcome expeditiously it was not practicable for the Commissioner of Police to carry out any consultation. My Arms Advisory Group, the Firearms Community Advisory Forum and Arms Engagement Group (which represent the firearms owning community, those who seek gun control, and health professionals) were informed of the issue and my intention to seek an amendment to the regulations to address it.

Regulations Review Committee

- 29 I do not consider there are grounds for the Regulations Review Committee to draw the amendment regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 30 The amendment regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

- 31 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.
- 32 The Climate Implications of Policy Assessment (CIPA) team was consulted and confirmed that the CIPA requirements did not apply to this proposal as the threshold for significance was not met.

Publicity

- 33 I do not intend to make a public announcement on the amendment regulations.

Proactive release

- 34 I intend to proactively release this paper (with any necessary redactions that are consistent with the Official Information Act 1982) within 30 days of Cabinet decisions.

Consultation

- 35 Police consulted on the proposals with the following agencies: the Treasury; Ministry of Justice; Department of Conservation; Ministry for Primary Industries; Department of the Prime Minister and Cabinet; the New Zealand Defence Force; Ministry of Foreign Affairs and Trade; New Zealand Customs Service; Te Puni Kōkiri; Te Arawhiti Māori/Crown Relations; the Office of the Privacy Commissioner; and Parliamentary Counsel Office.

Recommendations

I recommend that Cabinet Legislation Committee:

- 1 **note** that it was not intended to require registration or identification marking of firearms for which a licence is not required in the Arms Amendment Regulations 2023 which set out requirements for the arms registry

- 2 **agree** to amend regulation 36 of the Arms Regulations 1992 to exclude any firearm described by or under section 22(1) of the Arms Act 1983 that a person may possess without holding a firearms licence from the definition of “arms item” for the purpose of the arms registry; and consequently amend the reference to ‘firearm’ in Part 3 of Schedule 1B of the Arms Regulations 1992 to be consistent with the amended definition
- 3 **agree** to amend regulation 12(5A) of the Arms Regulations 1992 (which requires firearms licence holders to place identification markings on arms items) to exclude any firearm described by or under section 22(1) of the Arms Act 1983 that a person may possess without holding a firearms licence
- 4 **agree** to amend the Arms Regulations 1992 to provide for transitional provisions so that:
 - 4.1 New Zealand Police cannot prosecute any licence holder who is required to provide information for the arms registry in Part 9 or place an identification marking under regulation 12(5A) in relation to any firearm described by or under section 22(1) of the Arms Act 1983, in the time period between 24 June 2023 and when the amendment comes into force, if those licence holders did not do so in that time, and
 - 4.2 after the amendment comes into force a licence holder is no longer required to provide information to Police for the arms registry in Part 9 or place identification markings under regulation 12(5A), related to the exempted firearms
- 5 **note** that the Arms Amendment Regulations (No 2) 2023 give effect to the policy decisions referred to in recommendations 2, 3 and 4 above
- 6 **authorise** the submission to the Executive Council of the Arms Amendment Regulations (No 2) 2023
- 7 **note** that a waiver of the 28-day rule is sought:
 - 7.1 so that the regulations can come into force as soon as possible
 - 7.2 on the grounds that the amendment will have little or no effect or confer only benefits on the public, and early commencement is necessary to avoid the defeat of the purpose of the regulations
- 8 **agree** to waive the 28-day rule so that the regulations can come into force on 28 July 2023
- 9 **note** that I am satisfied the Commissioner of Police has met the requirement under section 74(3) of the Arms Act 1983 to consult the Privacy Commissioner about the proposed regulations

- 10 **note** that regulation 74(4) of the Arms Act 1983 requires that regulations providing for the Registry must be made only on the recommendation of the Minister of Police after being satisfied that the Commissioner of Police has done everything reasonable to consult persons or organisations (or representatives of those organisations) that appear to the Commissioner to be affected or likely to be affected by the regulations, except where the Minister is satisfied that in the circumstances it was not practicable to consult to that extent or to carry out any consultation
- 11 **note** that I am satisfied that in the circumstances it was not practicable for the Commissioner of Police to carry out any consultation on the proposed regulations with persons or organisations (or representatives of those organisations) that appear to the Commissioner to be affected or likely to be affected by the regulations.

Authorised for lodgement

Hon Ginny Andersen
Minister of Police