

IN CONFIDENCE

Office of the Minister of Police
Chair, Cabinet Legislation Committee

Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019, Arms (Prohibited Ammunition) Order 2019, and other Arms Amendment Regulations

Proposal

1. This paper seeks Cabinet approval for submission to the Executive Council of the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019, and the Arms (Prohibited Ammunition) Order 2019. These amendments implement aspects of the recently passed Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 (the Amendment Act).

Executive Summary

2. Following the 15 March 2019 terror attack, the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act was passed. It removed most semi-automatic firearms and other large capacity firearms from circulation and use by the general population.
3. It established a temporary amnesty during which compensation may be paid for prohibited firearms, prohibited parts and prohibited high-capacity magazines. A regulation making power was included for setting out the details of any compensation scheme.
4. Ministers with the Power to Act have met and agreed policy settings for the buy-back which will be implemented in these regulations.¹
5. KPMG has developed a pricing approach and pricing schedules to be used for the buy-back scheme for prohibited items. These pricing schedules can form the basis for a compensation schedule that can be considered by the Commissioner for issuing once the regulations are in force.
6. The regulations and an Order in Council also set out the pricing approach to dealer compensation, further conditions around the use of a prohibited firearm during the amnesty period, declare certain ammunition to be prohibited ammunition, and enable certain people to possess prohibited ammunition for specific purposes (e.g. research).
7. This paper seeks a waiver of the 28-day rule so the regulations can come into force on the day they receive assent. This will benefit the public by enabling the compensation scheme for prohibited items to commence in June and be completed in December 2019. It is also desirable to assist compliance with the Amendment Act.

¹ [BR/19/34], [BR/19/36], [BR/19/47].

8. The regulations have been subject to one policy change by Ministers with Power to Act between consideration by the Cabinet Legislation Committee and consideration by Cabinet on 17 June 2019.
9. s 9(2)(h) [REDACTED] a change has been made to the provision for modification so that owners of firearms capable of being safely and permanently modified may receive payment for the cost of modification, up to \$300, or hand over their firearm and receive compensation for the firearm as outlined in the pricing schedule including any condition based adjustment. Modification is regulated in 28U as a transitional provision rather than in the main compensation scheme.
10. s 9(2)(h) [REDACTED] the updated regulations also include date changes from which compensation will commence s 9(2)(h) [REDACTED] This is in relation to provisions in the regulations that compensated people and dealers for firearms lawfully held prior to 21 March 2019, but unlawfully held from 21 March to 12 April, as a result of the Order in Council that reclassified some semi-automatics to military style semi-automatics.
11. The regulations also reflect minor and technical changes, including:
- moving the provision that requires licensed dealers to mitigate losses before applying for compensation into a transitional provision rather than having it within main compensation regulations;
 - expansion to the conditions of temporary amnesty to provide for other situations where prohibited items may be transported legitimately, and protection from offence provisions for dealers, those undertaking valuations and gunsmiths who are handling or storing prohibited items during the amnesty period in regulation 28W;
 - a number of clarifications including minor wording changes to make the intent of the regulations clear.
12. The regulations and Order in Council will come into force on 21 June 2019.

Background

13. On 18 March 2019, when Cabinet agreed in principle to prohibit certain types of semi-automatic firearms, certain large capacity magazines and certain parts, it agreed in principle to develop a buy-back initiative for these newly prohibited items [CAB-19-MIN-0105], and agreed to run an amnesty for all newly prohibited items [CAB-19-MIN-0124].
14. The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 implemented the new prohibitions, including:
- a general prohibition on specified semi-automatic firearms, specified large capacity firearms and any parts that would result in enabling a firearm to become a prohibited firearm (collectively called “prohibited items”);

- an exemption regime for limited categories of licensed gun owners to be able to own and use prohibited firearms, prohibited magazines and prohibited parts; and
 - a range of new offences to support the prohibitions.
15. Schedule 1 of the Amendment Act sets out transitional provisions providing for:
- an amnesty period from 21 March 2019 until 6 months after any compensation scheme commences for prohibited items; and
 - a regulation-making power to outline the detail of a compensation scheme or schemes for prohibited items delivered to Police after 3 pm on 21 March 2019.
16. The Prime Minister, the Deputy Prime Minister, the Ministers of Finance, Police, Justice and Defence have the Power to Act to make decisions on the development of a buy-back initiative [CAB-19-MIN-0105]. Ministers agreed to a buy-back initiative for newly prohibited firearms on 20 March 2019 [BR/19/31].

Regulations to implement of the Arms Amendment Act 2019

17. In April and May 2019, Ministers with the Power to Act agreed to a number of key policy settings for the buy-back, including:
- the purpose of the buy-back is to get as many prohibited firearms out of the community as possible;
 - the buy-back will cover lawfully (as at 21 March 2019) held prohibited firearms, prohibited high-capacity magazines, and prohibited parts;
 - the buy-back will not cover unlawfully acquired property, items which are not prohibited or licence holders who apply for and receive an endorsement to possess a prohibited item;
 - the buy-back would run for 6 months from the date of compensation details being announced aligning with the amnesty period;
 - the pricing approach will apply condition-based adjustments to a base price list for prohibited firearms (three adjustments), parts and magazines (two adjustments);
 - compensation will not include economic or consequential loss, loss for business interruption or any intrinsic or sentimental value;
 - owners of firearms with non-detachable magazines that are capable of being permanently modified (to lower their capacity) so they are no longer prohibited receive the cost of modification for that firearm up to \$300;
 - owners of exceptional or unique prohibited items may apply to the Commissioner of Police for compensation if the prohibited item meets certain criteria;
 - dealers may apply for compensation for lawfully acquired prohibited items held as stock by producing records of the price paid and any direct costs attributable and traceable to that prohibited item such as freight; and

- Police may contract licensed dealers as collection agents to receive prohibited items as part of the buy-back.

18. s 9(2)(h)



19. The updated regulations also include a change s 9(2)(h)

This is in relation to provisions in the regulations that compensated people for firearms lawfully held prior to 21 March 2019. On this date the Government announced that the law would change to prohibit most semi-automatic firearms.

20. Also on this date an Order in Council came into effect which, as a transitional provision, reclassified some semi-automatic firearms that could be held on a standard A category licence, as military style semi-automatic firearms, that could only be held on an E endorsed licence. The practical effect of this change meant that after 21 March and before 12 April, some people, including a small number of dealers, were likely to be in possession of firearms they were not lawfully able to possess, but which were not yet prohibited.
21. The regulations for individual firearms owners now provide for both of these scenarios in clause 28L: a firearm owner is eligible for compensation if they lawfully possessed the firearm that before 21 March, or between 21 March and 12 April possessed the firearm unlawfully as a result of the Order in Council. The regulations will be updated prior to Cabinet to include the same provision for dealers.

The compensation scheme for individuals handing in prohibited items

22. The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 reflect decisions made by Ministers with the Power to Act.
1. The amount of compensation payable for these items will be set out in a schedule to be issued by the Commissioner once the regulations are in effect. KPMG has developed a base price list. The base price list for prohibited items takes into consideration advice received on fair market value and what an owner might spend to replace that type of firearm at March 2019.²
 2. A person who before 12 April 2019 (or 21 March 2019) in relation to some prohibited firearms) lawfully possessed a prohibited item may apply to receive compensation if they deliver the item to Police or an approved licensed dealer during the amnesty period.
 3. The regulations provide for a condition-based adjustment for prohibited firearms as follows:

² Prior to the legislative amendments and events of 15 March 2019 which initiated these changes.

- new or near-new condition: 95% of base price;
 - used condition: 70% of base price;
 - poor condition: 25% of base price.
4. The regulations provide for a condition-based adjustment to prohibited parts and magazines, as follows:
 - 70% of base price; or
 - poor condition: 25% of base price
 5. The criteria for the condition-based adjustment categories will be published on Police's website along with the price list.
 6. The regulations enable price lists to be updated to add prohibited items that may have been inadvertently left off.
 7. The regulations provide for prohibited firearms that are capable of being permanently modified (through modifications of their non-detachable magazine) to become non-prohibited, and firearms with non-detachable prohibited magazines that are capable of being permanently modified to become non-prohibited magazines. If owners of these firearms choose to have their firearm modified, payment will cover the cost of modification up to \$300. If owners of these firearms choose to surrender their firearm, they will receive compensation based on the price list and any condition based adjustment.

Compensation for unique items

8. The regulations allow an owner of a unique or exceptional prohibited item to apply to the Commissioner of Police for compensation, if it is a lawfully acquired prohibited item that:
 - is not in the price list because it is an antique or otherwise unique, or
 - is substantively different from the model in the price list because it has been modified and this has increased the value of the firearm at least 30% above the base price.
9. An application must be accompanied by a fee of \$120 plus GST. The applicant must also produce evidence of the value of the item, Police plans to publish guidance about what constitutes suitable evidence. Police's consultation with some firearms experts indicates an hour would be the minimum time required to conduct a valuation and this fee reflects the average cost of one hour for an expert valuation.
10. The Commissioner of Police can require the applicant to obtain a valuation of the item from an approved valuer on a list produced by Police and to pay the cost of that valuation. The list may include different valuers for different types of weapons such as for antique items or highly modified Military Style Semi-Automatics. The Commissioner

may then compensate at the level established by valuation for that firearm rather than at the level established in the price list.

Compensation for dealer licence-holders

11. The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 also provide that:
- dealer licence-holders may claim compensation for lawfully acquired prohibited items held as stock (or currently under the control of Customs) that were purchased or ordered prior to 21 March or 12 April 2019 (as discussed above);
 - dealers will be compensated for stock at import or wholesale cost (being whatever price they paid), including freight and any other direct costs associated with the stock, but excluding overhead costs;
 - dealers must make a single claim for compensation within the 6 month period of the compensation scheme, unless there are extenuating circumstances;
 - dealers must produce records to prove the price paid for prohibited stock and any directly associated costs such as freight, and must provide evidence of steps taken to mitigate any loss (e.g. attempts to return stock to suppliers);
 - where the price paid is not available, such as with second-hand items or trade-ins, the price in the base list may be paid; and
 - where imported stock is returned to a supplier at a discounted rate, compensation will be paid for the difference between the price paid and the discounted price refunded by the supplier, as well as actual and reasonable freight costs incurred re-exporting to the supplier.

Dealers acting as collection agents for the buy-back

12. Police is developing a network of dealers to use as a firearms collection channel for the buy-back. Dealers who are contracted by Police as a collection agent may receive an administration fee of \$50 per successful buy-back application (one application per licence-holder).
13. The regulations set out the information that dealers must collect when an individual hands in a prohibited item for the purposes of the buy-back.

Other Policy for regulations

Appeals

14. The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 specify that individuals may apply to the District Court under section 63 of the Arms Act 1983 in respect of compensation, and to the High Court on points of law under section 64 of the Arms Act 1983.

Minor amendments to implement the Amendment Act

15. The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 also clarify provisions introduced by the Amendment Act, including:
- security requirements for collectors, for the secure storage of vital parts of prohibited firearms; and
 - amnesty conditions that prohibit the use of prohibited items during the amnesty period, and protections from offence provisions for dealers, gunsmiths and valuers who may handle or store prohibited items during the amnesty period.

Technical amendment

16. The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 set out variations to the permit to possess process for the transfer or addition of an already-held firearm to an endorsement. This will ensure that a firearm is lawfully held in compliance with section 30(2)(b) (in the case of pistols and restricted weapons) or section 30B(5)(b) (in the case of prohibited firearms).

Order in Council to implement of the Arms Amendment Act 2019

The Arms (Prohibited Ammunition) Order 2019 to prohibit certain types of ammunition

17. The Amendment Act introduced a prohibition on the possession of military-style ammunition that has no legitimate civilian use (to be called prohibited ammunition). The Amendment Act does not define prohibited ammunition but section 2D provides that the definition of prohibited ammunition may be established through an Order in Council made under section 74A(e) of the Act.
18. Police is aware that military-style ammunition is still being sold in New Zealand. We have identified ten internet sites that are currently offering for sale the proposed prohibited ammunition. An unknown quantity of this type of military-style ammunition is possessed in the civilian market.
19. Given the Amendment Act indicated an intention to prohibit certain ammunition, and to reduce the possibility that prohibited ammunition is stockpiled in the interim, we propose that the prohibition on military-style ammunition is given effect to by Order in Council. To avoid any rush to purchase this type of ammunition we recommend that no further consultation is undertaken and the 28 day rule is waived.
20. The regulations do not provide for any compensation for prohibited ammunition, exemptions for legitimate use have been provided for in the regulations and there is considered to be no other legitimate civilian purpose for these types of ammunition. Police understands that most of this ammunition has been obtained cheaply from international army surplus disposal, with importers generally meeting freight costs only, anyone importing this type of ammunition would also be aware of the limited legitimate demand for this ammunition.
21. The Order in Council prohibits the following types of ammunition: tracer, enhanced penetration, armour piercing, incendiary, explosive, multi-purpose ammunition that is armour piercing incendiary, discarding sabot ammunition (excluding shotgun), multi

projectile ammunition (excluding shotgun cartridges), chemical or biological carrier ammunition, and flechettes (fin stabilized dart like projectiles).

22. In addition to the Order in Council, the regulations also:

- exempt directors or curators of museums, bona fide collectors of ammunition and researchers from possessing prohibited ammunition, where the researcher is employed or contracted by the New Zealand Defence Force or the Institute of Environmental Science and Research Limited and is researching the chemical makeup of certain types of prohibited ammunition;
- provide a temporary amnesty for persons possessing prohibited ammunition before 21 June 2019 where they notify Police they are in possession of the prohibited ammunition and they comply with any Police direction relating to the delivery of the ammunition to the Police; and
- provides for the delivery of prohibited ammunition held by the New Zealand Customs Service on 21 June 2019 to be delivered to the Police.

Timing and 28-day rule

23. This paper seeks a waiver of the 28-day rule so the regulations and Order in Council can come into force on the day they receive assent. This will benefit the public by enabling compensation for prohibited items to be paid as soon as possible and enabling the buy-back of prohibited firearms to be completed by the end of 2019. It is also desirable to assist compliance with the Amendment Act and prevent the stockpiling of prohibited ammunition.

Compliance

24. The regulations and Order in Council 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 1993 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
- relevant international standards and obligations; and
- the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

25. I do not consider there are grounds for the Regulations Review Committee to draw the Regulations or Order in Council to the attention of the House.

Certification by Parliamentary Counsel

26. The regulations were near final draft and were subject to a policy change by Ministers with Power to Act and minor and technical changes between consideration by the Cabinet Legislation Committee and Cabinet on 17 June 2019. A final version of the regulations will be delivered to Cabinet Office prior to Cabinet following a final quality assurance review. At that time a Certification will be provided by Parliamentary Counsel.

Impact Analysis

27. A cross-agency Quality Assurance Panel with representatives from the Ministry of Justice, the Ministry for Primary Industries and the Treasury has reviewed the Regulatory Impact Assessment (RIA) Implementation of Arms Amnesty: Compensation for individuals and dealers and prohibition of certain types of ammunition produced by the New Zealand Police and dated June 2019. The panel considers that it meets the Quality Assurance criteria.
28. The RIA is clear and concise. The problem and objectives have been clearly outlined, supported by convincing evidence. The analysis and costings are comprehensive, and implementation considerations and risks have been discussed. Police have engaged with the gun community, and continue to engage. It will be important for Police to keep working closely with the gun community throughout the amnesty and buy-back process to ensure successful implementation and compliance.

Publicity

29. Police has developed a public communications campaign for the buy-back scheme. Police will engage with the Minister of Police and Prime Minister's offices in relation to public communications. I intend to announce the commencement of the buy-back scheme following approval by Cabinet in the week starting 17 June 2019. Police will announce details of the buy-back process via a media conference and media channels shortly after. The price lists will be published in the Gazette and on the Police website once they have been approved by the Commissioner, following the regulations coming into force on 21 June.

Proactive release

30. I intend to proactively release this paper with necessary redactions within 30 business days or following the promulgation of regulations, whichever comes first.

Consultation

31. Police consulted Treasury on the development of the pricing methodologies set out in the regulations and on the costings.
32. Police consulted with the New Zealand Defence Force to develop the definition of prohibited ammunition.
33. KPMG was commissioned to develop options for the pricing methodologies and pricing schedules for the buy-back component. In order to create a set of options and price lists, KPMG consulted with New Zealand-based industry specialists including retailers,

wholesalers, specialist dealers, auctioneers and gun clubs. While KPMG engaged with a range of stakeholders in developing these options, preferred options were not specifically discussed.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 came into force on 12 April 2019;
2. **note** that this Act introduced a regulation-making power for establishing one or more schemes for the payment of compensation by the Crown for prohibited items delivered to Police during an amnesty period;
3. **note** that the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 provide for:
 - 3.1 a person who before 12 April 2019 (or 21 March 2019 in relation to some prohibited firearms) lawfully possessed a prohibited item may apply to receive compensation if they deliver the item to Police or an approved licensed dealer during the amnesty period;
 - 3.2 the Commissioner of Police to issue price lists setting out the amount of compensation payable for prohibited items;
 - 3.3 a condition-based adjustment compensation system with a licence-holder paid 95%, 70% or 25% of the base price, depending on the condition of a firearm;
 - 3.4 a condition-based adjustment compensation system for prohibited parts and magazines with payment at either 70% or 25% of the base price, depending on the condition of the prohibited part or magazine;
 - 3.5 dealers who are contracted by Police as collection agents may receive a fee of \$50 per each successful licence-holder application and must record information directed by Police when they receive prohibited items;
 - 3.6 licensed dealers to be paid compensation for prohibited items held in stock (or currently under control of Customs), at import or wholesale cost (being whatever price they paid) including freight and any other direct costs associated with importing the stock, but excluding overhead costs, provided the stock was purchased or ordered prior to 21 March 2019;
 - 3.7 licensed dealers may make a single claim for compensation within the 6 month period of the compensation scheme;
 - 3.8 licensed dealers must attempt to mitigate their losses and compensation may be payable for cost incurred;
 - 3.9 claims by licensed dealers must include records of price paid, but where this is not transparent, eg. trade-in items, the price list may apply

- 3.10 owners of prohibited firearms capable of being permanently modified to make them non-prohibited who choose to have their firearm modified may receive payment for the cost of the modification up to \$300;
- 3.11 owners of unique items may pay a \$120 fee and apply to the Commissioner of Police provided the item is unique and not on the price list or is sufficiently different to the model on the price list which has increased the value by at least 30%;
- 3.12 compensation will not include economic or consequential loss, loss for business interruption or any loss attributable to intrinsic or sentimental value
4. **note** the Arms (Prohibited Ammunition) Order 2019 made under section 74A(e) of the Arms Act will declare certain ammunition as prohibited ammunition including: tracer, enhanced penetration, armour piercing, incendiary, explosive, multi-purpose ammunition that is armour piercing incendiary, discarding sabot ammunition (excluding shotgun), multi projectile ammunition (excluding shotgun cartridges), chemical or biological carrier ammunition, and flechettes (fin stabilized dart like projectiles);
5. **note** that prohibited ammunition is not eligible for compensation in the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019
6. **note** that the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019 provide for:
- 6.1. exempting directors or curators of museums and bona fide collectors of ammunition and researchers from possessing prohibited ammunition, where the researcher is employed or contracted by the New Zealand Defence Force or the Institute of Environmental Science and Research Limited and is researching the chemical makeup of certain types of prohibited ammunition;
- 6.2. a temporary amnesty for persons possessing prohibited ammunition before 21 June 2019 where they notify Police they are in possession of the prohibited ammunition and they comply with any Police direction relating to the delivery of the ammunition to the Police;
- 6.3. prohibited ammunition held by the New Zealand Customs Service on 21 June 2019 to be delivered to the Police;
- 6.4. the security requirements for collectors, for the secure storage of vital parts of prohibited firearms;
- 6.5. technical corrections or clarifications including amending the Arms Regulations to allow the permit to possess process to align with the new legislation regarding prohibited firearms;
- 6.6. amnesty conditions that prohibit the use of prohibited items during the amnesty period and provide protections from offence provisions for those who may be handling or storing prohibited items during the amnesty period such as dealers;

7. **note** that the regulations have been subject to one policy change in relation to the modification of firearms by Ministers with Power to Act (as outlined in this paper) and minor and technical changes, between consideration by the Cabinet Legislation Committee on 11 June 2019 and consideration by Cabinet on 17 June 2019;
8. **note** that the regulations also include date changes from which compensation will commence in order to compensate people and dealers for firearms lawfully held prior to 21 March 2019, but unlawfully held from 21 March to 12 April, as a result of the Order in Council that reclassified some semi-automatics to military style semi-automatics;
9. **authorise** the submission to the Executive Council of the above Amendment Regulations and Order in Council;
10. **note** that a waiver of the 28-day rule is sought:
 - 10.1. so the regulations and Order in Council can come into force as soon as possible;
 - 10.2. on the grounds that it is important that the buy-back of prohibited items can commence as soon as possible and be completed by the end of 2019 and prevent the stockpiling of prohibited ammunition
11. **agree** to waive the 28-day rule so that the Regulations can come into force on 21 June 2019;
12. **note** that the buy-back period of six-months would also commence on 21 June 2019 and end on 20 December 2019.

Authorised for lodgement

Hon Stuart Nash
Minister of Police