

IN CONFIDENCE

Office of the Minister of Police

Chair, Cabinet Legislation Committee

Arms (Extension of Licences and Endorsements) Amendment Regulations 2021

Proposal

1. This paper seeks Cabinet approval for submission to the Executive Council of the attached Arms (Extension of Licences and Endorsements) Amendment Regulations 2021. These amendments extend the duration of firearms and dealer licences and endorsements that have expired before their renewal can be completed by Police, due to processing difficulties arising from COVID-19 Alert Level restrictions.

Executive Summary

2. Following the entry by New Zealand into COVID-19 Alert Level restrictions from 17 August 2021, a significant number of people have not been, or will not be, able to renew their firearms licence or endorsement before the expiry of their current licence or endorsement. This is because Police has been unable to process the application or the licence holder is unable to complete their application.
3. Without an extension to their licence or endorsement, these people will be in illegal possession of firearms, which they legally held under their previous licence or endorsement.
4. To address this situation I recommend making the Arms (Extension of Licences and Endorsements) Amendment Regulations, pursuant to section 74(1)(ea) of the Arms Act 1983. These regulations will extend the duration of firearms licences and dealers' licences (and the endorsements on them) that have expired or will be expiring during delays in processing applications.
5. Under these regulations, firearms and dealers' licences and endorsements expiring up until 30 November 2021 will be extended for up to 12 months from the original expiry date. The extension would only apply to applications made before the expiry date for licences and endorsements expiring before 16 August 2021, and within 4 months of the original expiry date for licences and endorsements expiring between 16 August 2021 and 30 November 2021.
6. I propose that the regulations come into force on the day after they are gazetted. This is to minimise the time licence holders are without current licences and endorsements when they have applied for new licences.

Background

7. On 17 August 2021 New Zealand entered the highest COVID-19 alert level, Alert Level 4 (AL 4), although areas outside of Auckland have since moved to AL3 and then AL 2. Under AL 4, people are instructed to stay at home except for 'essential services' (e.g. supermarkets, pharmacies, clinics) and maintain physical distancing. AL 3 has similar restrictions on movements and also involves maintaining a home bubble.
8. As was the case after 26 March 2020, when New Zealand first entered AL 4, the resulting restrictions mean that Police is unable to process applications for new firearms and dealer licences (and for endorsements on those licences that need renewing at the same time). Before issuing a licence, Police must be satisfied that the person is fit and proper to possess firearms. This requires face-to-face interviews with applicants and their referees. Police must also be satisfied that applicants have secure storage facilities for their firearms and ammunition. Under current home-based and physical distancing restrictions Police is unable to make the necessary visits for these interviews. Face-to-face interviews are considered critical by Police and the firearms community (as represented by the Firearms Community Advisory Forum (FCAF)) to the integrity of the licensing process. Under AL 3, it is still not possible to progress those steps in the licence application process that require face-to-face meetings.
9. A similar difficulty arises with certain endorsements on firearms licences that need to be renewed independently of the firearms licence. These are endorsements issued to wild animal and animal pest controllers, enabling them to possess prohibited firearms for use for employment purposes. The endorsements are valid for up to 2 years and 6 months, or shorter if the holder's firearms licence expires before then. This means that some will need to be renewed before the expiry of the person's firearms licence.
10. Also, those needing to apply for new licences and endorsements may not be able to lodge applications due to an inability to pay the required fees at a NZ Post shop. Many NZ Post shops will be closed at AL 4 and 3, and at present Police has no alternative provisions for payments to be made. This means there is a greater chance that licences will expire before licence holders can be issued with a new licence. It also prevents dealers from meeting the requirements for retaining their current licence (which remains in force if they apply for its renewal before it expires).
11. These difficulties have added to an existing backlog of licence applications that will not be completed before the expiry date of the applicant's current licence¹.

About 4,000 licence holders will be affected by delays in processing licence renewal applications

12. Around 240,000 New Zealanders hold firearms licences. As at 1 September 2021, renewal applications for 1,801 firearm licences and 84 dealers' licences were being processed. These licences have all now expired. Many of these applications still

¹ The current backlog is due to a number of factors including changes to the licence application process as recommended by the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 (RCOI), changes to the employment of vetters, and COVID-19 AL4 restrictions in 2020.

cannot be progressed under current restrictions. A further 138 firearms licences and 6 dealer licences had expired between 16 August and 1 September without being subject to an application for renewal.

13. A further 2,117 firearms licences (794 of which are subject to renewal applications) and 137 dealers' licences (50 of which are subject to renewal applications) are expected to expire between 1 September and 30 November 2021 and will need to be renewed. Applications for renewal will be difficult to process before the expiry of the current licences, even if Alert Levels are downgraded to AL 1 or 2 in October/early November 2021, because of the backlog of earlier applications still being processed.

The Arms Act enables regulations to be made extending firearms licences in the event of a pandemic

14. In 2020 the Act was amended to temporarily deal with the licensing situation that arose in March 2020 with COVID-19 (section 65I). Section 74(1)(ea) of the Arms Act now enables regulations to be made 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.
15. The current pandemic situation with Alert Level restrictions (which could be extended) has created a similar situation to last year, with licences expiring due to hold-ups in the processing of applications. This time it can be addressed through the above regulation-making power.

Regulations to extend duration of firearms licences and endorsements

16. The attached regulations are along similar lines to section 65I. They temporarily extend the duration of licences and endorsements that Police has been unable to renew, or licence holders have been unable to seek renewals of, due to the recent COVID-19 AL 3 and 4 restrictions. These licences and endorsements will continue in force for a further 12 months or until Police has made a decision on the application, if this happens earlier.
17. The temporary licence extension will apply to:
 - a. any licence or endorsement that expired on or before 16 August 2021 provided the licence holder applied for a new licence or a new endorsement before their licence or endorsement expired (which will include those in the current renewal backlog) and
 - b. any licence or endorsement expiring during the period commencing on 17 August 2021 and ending on 30 November 2021 provided the licence holder has applied for a new licence or a new endorsement within 4 months of the expiry date.
18. For the avoidance of doubt, the regulations specifically include endorsements made on firearm licences held by employees of dealers licensed to handle prohibited firearms, pistols and restricted weapons in their capacity as an employee; and endorsements to possess prohibited firearms held by specified exempt persons for the purposes of controlling wild animals or pests.

19. The proposed length of the extension is considered sufficient to accommodate expired licences during the period in which Police is unable to process the licences, or the applicant cannot pay the application fee. It provides for ongoing compliance with licensing requirements and time for Police to deal with the backlog of applications. Should AL 3 or 4 restrictions remain in place beyond November, a further extension would be needed.

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 receive assent. 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 1993;
 - relevant international standards and obligations; and
 - the Legislation Guidelines (2018 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 to extend the duration of firearms and dealers' licences and endorsements in this Cabinet paper is exempt from the requirement to provide a Regulatory Impact Statement. This exemption is on the basis that this is a temporary measure exercised under the declared emergency of the COVID-19 pandemic. 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 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 forwarded the draft regulations to members of my Ministerial 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. These regulations are considered to 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 because of the urgency of minimising the time licence holders are without current licences and endorsements when they have applied for new licences.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that following the entry by New Zealand into COVID-19 Alert Level restrictions from 17 August 2021, there are a significant number of people who have not been, or will not be, able to renew their firearms licence or endorsement before the expiry of their current licence or endorsement;
2. **note** that section 74(1)(ea) of the Arms Act enables regulations to be made extending the expiry date of licences and endorsements in the event of a pandemic or epidemic;

3. **note** that the attached Arms (Extension of Licences and Endorsements) Amendment Regulations 2021 provide for extending by a further 12 months:
 - 3.1. any firearms or dealer's licence or endorsement that expired on or before 16 August 2021 provided the licence holder applied for a new licence or a new endorsement before their licence or endorsement expired (which will cover those in the current renewal backlog)
 - 3.2. any licence or endorsement expiring during the period commencing on 17 August 2021 and ending on 30 November 2021 provided the licence holder has applied for a new licence or a new endorsement within 4 months of the original expiry date.
4. **authorise** the submission to the Executive Council of the attached Arms (Extension of Licences and Endorsements) Amendment Regulations 2021;
5. **note** that a waiver of the 28-day rule is sought:
 - 5.1. so the regulations can come into force as soon as possible;
 - 5.2. on the grounds that it is important to minimise the time licence holders are without current licences and endorsements when they have applied for new licences and to make them compliant with the Act as soon as possible
6. **agree** to waive the 28-day rule so that the attached Arms (Extension of Licences and Endorsements) Amendment Regulations 2021 can come into force on the day after they are gazetted.

Authorised for lodgement

Hon Poto Williams
Minister of Police