



New Zealand House of Representatives
Te Whare Māngai o Aotearoa

Report of the Regulations Review Committee
Komiti Arotake Waeture

Fifty-fourth Parliament
July 2024

**Complaint about the Arms Amendment
Regulations 2022**

Presented to the House of Representatives
by Hon David Parker, Chairperson

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Complaint about the Arms Amendment Regulations 2022

Recommendation

The Regulations Review Committee has considered a complaint about the Arms Amendment Regulations 2022 and recommends that the House take note of its report.

About this complaint

On 15 February 2023, the Regulations Review Committee of the 53rd Parliament received a complaint about the Arms Amendment Regulations 2022 from legal firm Franks Ogilvie on behalf of the Council of Licensed Firearms Owners. COLFO is a voluntary organisation that represents the interests of licensed firearms owners, occasional users, and the firearms industry in New Zealand.

The complaint mainly concerns the requirements in the amendment regulations for information that shooting clubs and ranges must provide for certification, and must collect from their members. It also concerns the adequacy of consultation carried out by the Police when the amendment regulations were proposed.

This committee's jurisdiction

Our jurisdiction in relation to secondary legislation is set out in the Standing Orders of the House of Representatives. Under Standing Order 326(5), the committee may investigate complaints about the operation of secondary legislation and may report on complaints to the House. Where a complaint relates to one of the grounds set out in Standing Order 327(2), the committee may draw the secondary legislation to the special attention of the House.

The legislative scheme

The Arms Legislation Act 2020

The amendment regulations were made under sections 74 and 86 of the Arms Act 1983 (the Act), as amended by the Arms Legislation Act 2020 (the 2020 Act).

The purposes of the Act, as set out in section 1A,¹ are to:

- promote the safe possession and use of firearms and other weapons
- impose controls on the possession and use of firearms and other weapons.

Section 1A also states that the regulatory regime established by the Act to achieve these purposes reflects the principles that:

- the possession and use of arms is a privilege

¹ Section 1A was inserted by section 5 of the 2020 Act.

- persons authorised to import, manufacture, supply, sell, possess, or use arms have a responsibility to act in the interests of personal and public safety.

Section 74(1) of the Act contains a regulation-making power. This includes the ability for regulations to prescribe information that must be supplied to support applications for approvals of shooting clubs and ranges, as well as the particulars required to be included in the annual reports of shooting clubs (section 74(1)(gb), (gc), and (gd)).²

Section 74(4) of the Act sets out the consultation requirements for regulations made under section 74. Regulations may only be made 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 that appear to the Commissioner to be affected or likely to be affected. There is an exception to this requirement if the Minister is satisfied that it was not practicable to consult to that extent or to carry out any consultation.

Section 86 of the Act authorises regulations to be made for cost recovery, including in respect of application fees for shooting clubs and shooting ranges.

The amendment regulations

The Arms Amendment Regulations came into effect on 15 December 2022 and inserted new Parts 5 and 6 into the Arms Regulations 1992.

New Part 5 relates to shooting clubs, and specifies:

- how an application for a certificate of approval may be made in respect of a shooting club, the details required to be stated in an application, and the information and documents required to support an application
- conditions for certificates of approval
- the information required to be included in a shooting club's annual report.

New Part 6 relates to shooting ranges, and specifies:

- how an application for the certification of a shooting range may be made, the details required to be stated in an application, and the information and documents required to support an application
- the circumstances in which an application may be made for the renewal of a certification, how a renewal application may be made, the details required to be stated in a renewal application, and the information and documents required to support a renewal application
- the conditions that a certification is subject to.

Further provisions in the amendment regulations require the collection, storage, and distribution of personal information about club members and users. New regulation 28GT(2) requires the application for certification of a shooting range to include a declaration by the applicant that they have obtained all necessary territorial authority and regional council

² These specific provisions were inserted by the 2020 Act.

consents in respect of the shooting range, and consent from all landowners affected, or likely to be affected, by the operation of the shooting range.

The complainant's concerns

The complainant specified the following grounds under Standing Order 327(2) for the complaint about the amendment regulations, namely that the secondary legislation:

- SO 327(2)(a)—is not in accordance with the general objects and intentions of the enactment under which it is made
- SO 327(2)(b)—trespasses unduly on personal rights and liberties
- SO 327(2)(c)—appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made
- SO 327(2)(h)—was not made in compliance with particular notice and consultation procedures prescribed by applicable enactments.

Most of the complaint relates to the collection of information required by the amendment regulations. To apply for certification under the amendment regulations, a shooting club or a shooting range must provide personal information such as the name, address, and contact details of the club officers or the range operator. Shooting clubs must also maintain a list of current members and their firearms licence numbers.

The complainant argued that the amendment regulations contradict the purposes of the Act in that they do not promote safe possession and use of firearms. The complainant was concerned that the increased focus on paperwork requirements would divert club staff away from their safety and training responsibilities. In addition, the complainant argued that the requirement for clubs to keep a list of members and their personal information could allow people with malicious intent to get access more easily to firearms.

The complainant stated that the amendment regulations trespassed on the right to privacy of licensed firearms owners, as established by the Information Privacy Principles contained in the Privacy Act 2020.

The complainant also alleged that the amendment regulations were not made in compliance with the consultation requirements set out in section 74(4) of the principal Act. It argued that the document supplied by the New Zealand Police to support consultation was superficial and lacked detail. The complainant alleged that, despite the regulations' impact on shooting clubs and ranges, the Police failed to adequately publicise the discussion document, and notify people about it.

Consideration by the 53rd Parliament's committee

The Regulations Review Committee of the 53rd Parliament decided to investigate the complaint under the Standing Order grounds raised by the complainant.

The Police provided the committee with a response to the complaint in a letter dated 14 April 2023. After hearing evidence from the complainant, the New Zealand Deerstalkers Association, and the Police in May 2023, the previous committee recommended that the complainant and the Police work together to resolve the issues raised in the complaint.

In a letter dated 30 June 2023, the Police informed the committee that, during a June 2023 meeting between the Police and the complainant, the Police had told COLFO the following:

- The application form to have a range certified would now use the same wording as the Police Shooting Range Manual that: “landowners affected by the operation of the shooting range and its associated danger area have consented to the use of their land as a shooting range”. The Police said that this wording would make it clear that landowners’ consent relates to the mitigation of safety risks that arise when a range is used.
- The Police committed to inform COLFO of the number of applications received by 26 June 2023 for clubs and ranges. This relates to the clubs and ranges that would be covered by transitional provisions of the Act, which could therefore continue to lawfully operate until their applications were decided.³
- The Police confirmed that clubs and ranges that did not make applications in time could not continue to operate. However, the Police would consider their applications before the applications of clubs and ranges covered by the transitional provisions.

The committee noted the Police’s commitment in June 2023 to amend the wording in the application form for certifying a range. However, the committee considered that the new wording of the declaration was not consistent with the requirements of regulation 28GT(2).

The complainant’s request for more information about consultation

As noted above, the complainant raised concerns about the quality of supporting information provided for consultation on the amendment regulations. The previous committee questioned the level of detail included in the discussion document.

The committee noted that it was unclear whether the requirement for clubs to maintain lists of club members, including their firearms licence numbers, and the need for pistol shooting clubs to provide this information to the Police, had been raised during consultation. The committee also asked whether the Police had encouraged people to use draft application forms that were yet to be fully consulted on or adopted.

The Police’s response to questions about consultation

The committee wrote to the Police seeking further response to the complainant’s allegations. The Police responded to the committee’s letter of 6 September 2023 on 9 November 2023.

The Police indicated that the draft forms used as the basis for consultation contained a statement which made clear that the content of the exposure draft was subject to further consultation. It also supplied consultation data⁴ showing that submitters specifically engaged with questions regarding the level of documentation and information required from applicants. The committee noted that submissions were overwhelmingly opposed to the collection of information authorised by the amendment regulations. The Police argued that the iterative process of consultation led to multiple changes to the initial exposure drafts.

³ Transitional provisions are contained in the Arms Act 1983, Schedule 1, clauses 12 and 13.

⁴ Proposals for regulation of shooting clubs and ranges, Allen + Clarke, May 2022.

The remaining issue to be considered

On 3 July 2023, COLFO informed the previous committee that it was satisfied that all but one of the concerns raised in its complaint had been appropriately addressed by the Police. The remaining issue relates to new regulation 28GT(2), which was inserted by the amendment regulations. New regulation 28GT(2) provides that an application for certification must include a declaration by the applicant that:

- (a) all necessary territorial authority and regional council consents in respect of the shooting range have been obtained
- (b) all landowners affected, or likely to be affected, by the operation of the shooting range have consented to its operation
- (c) all the information provided in the application is true and correct.

The complainant considered that this regulation went beyond the intent of the Arms Act by focusing on the effect of a range beyond the safe possession and control of a firearm. This aspect of the complaint rested on Standing Order 327(2)(c)—that the regulation appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made.

The previous committee decided to uphold the portion of the complaint referring to new regulation 28GT(2). It considered that the phrase “all landowners affected, or likely to be affected, by the operation of the shooting range” could indeed be interpreted as including operational factors that go beyond ballistic safety. The committee considered that the wording of the amendment regulations did not convey the limitation to landowners within the “danger area” of a range, despite this being the clear policy intention. It viewed this as an unexpected use of the powers conferred by the Arms Act. The committee also considered that this constituted an elucidation concern under Standing Order 327(2)(i).

Comments from the New Zealand Police

The Police stated that the amendment regulations were primarily concerned with matters of safety. It told the previous committee that regulation 28GT(2) aims to secure the public’s safety from the risks posed by guns. It said that range operators are required to tick a box confirming that those exposed to potential risks to safety are aware of the risks, and that arrangements have been made to prevent access to the affected area when the range is in use. The Police clarified that the landowners of interest are those within the “danger area”, rather than those who may be affected by noise or other concerns.

Our consideration of the complaint

We readopted this complaint on 13 December 2023. On 1 February 2024, the complainant confirmed that it wished to pursue the entirety of the initial complaint, despite an earlier letter dated July 2023 indicating that the matters at hand had been resolved between the two parties. We therefore considered all grounds of the initial complaint. In accordance with the conclusions of the previous committee, we decided not to uphold the complaint on the grounds of Standing Order 327(2)(a), (b), and (c) in respect of the record-keeping and disclosure requirements for certification set out in the amendment regulations. We also

further considered the consultation allegations on Standing Order ground 327(2)(h) and decided not to uphold those aspects of the complaint.

Unclear wording of regulation 28GT(2)

In keeping with the previous committee's findings, we decided to uphold one aspect of this complaint, relating to paragraph (b) of new regulation 28GT(2). However, we did not uphold it on the "unusual or unexpected use" ground (Standing Order 327(2)(c)) which was raised by the complainant. On balance, we considered that the requirement to obtain the consent of persons affected, or likely to be affected, did not appear to be inconsistent with the regulation-making power, or the purposes of the Act, which are about controls and public safety.

Instead, we decided to uphold this aspect of the complaint on the ground that it required elucidation regarding its purport (Standing Order 327(2)(i)). We considered that the language used in the amendment regulations was too vague and lacked specificity. We also found that the wording of the regulations and the declaration to be provided as part of the application for certification of a shooting range did not clearly align with the supporting policy documentation supplied by the Police, such as the Shooting Range Manual.

Consultation with the Privacy Commissioner

Under section 74(3) of the Arms Act, regulations made under subsection (1)(pa) may be made only on the recommendation of the Minister of Police after being satisfied that the Commissioner of Police has consulted the Privacy Commissioner about the proposed regulations. Subsection (1)(pa) authorises regulations to be made for any matters necessary or desirable for the efficient operation of the firearms registry.⁵ These include provisions that "require licence holders or other persons to provide specified information to the Police for inclusion in the registry and specify the circumstances in which the requirement applies" and "specify the manner or form in which information is required to be provided to the Police for inclusion in the registry".

This provision resulted from the Finance and Expenditure Committee report on the Arms Legislation Bill, which stated:

In addition, we recommend inserting clause 82(12), new section 74(3), to create a requirement to consult the Privacy Commissioner on the drafting of new registry-related regulations.

In our view, these changes would ensure that gun owners and dealers could be confident that the information they provide to the registry is treated in a way that respects their expectations of privacy.⁶

The Police indicated that the Privacy Commissioner was not consulted on the draft regulations since they were not made under subsection (1)(pa). However, we noted that some of the amendment regulations (28GL(4), 28GM(2), 28GN(4), and 28GZF(4)) specified information which might be included in the registry. Thus, we queried whether these

⁵ The registry is operated by the Commissioner of Police under section 93 of the Arms Act, and includes details about all licence holders and their arms.

⁶ Report of the Finance and Expenditure Committee on the Arms Legislation Bill, February 2020 (p 6).

regulations might fall within the meaning of subsection (1)(pa). In addition, we were concerned that, in practice, information provided by the public pursuant to the rest of the amendment regulations may be kept on the registry. It seems to us that the registry would be the obvious place to store some of the information obtained through certification applications and annual reports. Therefore, in our view, there was an argument that the amendment regulations did indeed “relate to the registry” (as worded by the Finance and Expenditure Committee), in two respects:

- Some of the amendment regulations specify information which may be included in the registry.
- The regulations require the submission of information to the Police which may, in practice, be held on the registry.

We wrote to the Police requesting further information on the level of engagement with the Privacy Commissioner about the Act.

In response, the Police reiterated that consultation with the Privacy Commissioner was not required because the regulations in question did not require or enable information to be included in the registry. Rather, the Police expected the registry to be another option for the provision of information if, in the future, other regulations were made for that purpose. The Police confirmed that, if such other regulations were to be made, they would need to be consulted on with the Privacy Commissioner.

In response to the committee’s concern that information submitted in accordance with the regulations might, in practice, be kept on the registry, the Police stated that the Commissioner may only keep information on the registry as prescribed by or under the Act. Other information lawfully collected is stored in other data repositories.

The Police also indicated that the Privacy Commissioner was involved in the policy development of the Arms Legislation Act 2020. The Commissioner also made a submission during the select committee stage of the bill’s consideration. Amendments were made as a result of the Commissioner’s feedback.

Further matters on which we sought clarification

We raised two further issues with the Police that were not raised by the complainant.

First, we noted that there was no definition of a “pistol shooting club” in the legislation, even though this is a significant term in the Act and regulations. There are significant differences in the regulations between the requirements for pistol shooting clubs and for shooting clubs. We wrote to the Police to ask why there was no definition of “pistol shooting club” in the Act and regulations.

Second, we identified an issue with section 38B of the Arms Act, as inserted by the 2020 Act, which imposes the requirement for shooting clubs to be registered and sets out the sanction for non-compliance. We considered that this section was confusing as to the applicability of the requirement for a certificate of approval.

We wrote to the Police asking for their view on these matters. The Police responded that they saw no lack of clarity on either issue.

Conclusion

We thank the complainant for bringing the issues discussed in this report to our attention. We also thank the Police for their diligence and responses as we and the previous committee considered this complaint.

Regarding the issue with regulation 28GT(2)(b), we contemplated initiating a disallowance motion on the grounds of Standing Orders 327(2)(c) and (i).⁷ Our consideration was based on the premise that, as this regulation was narrow in scope, disallowance would not cause significant collateral effect on the regulatory scheme or wider policy objectives. Another factor contemplated was that the regulation constituted a clear breach of the elucidation ground as it did not reflect the underlying policy.

We ultimately determined that initiating a disallowance motion was not warranted in this situation. Instead, we decided to write to the Ministers in charge of the Arms Act to raise our concerns with the regulation. We recommended that regulation 28GT(2)(b) be redrafted to be narrower in scope and to focus on ballistic safety.

In our correspondence with the Ministers, we also mentioned the further matters that we had raised with the Police. It is a fundamental constitutional principle that primary legislation must provide the coherent symbolic framework from which secondary legislation derives. Definitions and logical consistency are a core aspect of this structure. Guidance material is not, in and of itself, the law and should only be used as a supplementary interpretive aid. We expressed this view to the Ministers.

Finally, we also raised with the Ministers an issue that we identified in the later stages of our consideration. It concerns a broad administrative power in section 94(2)(b) of the Arms Act enabling the Commissioner of Police to include any information in the registry. We consider that this power is at odds with the Privacy Commissioner consultation requirement under section 74(3), as it would conceivably allow the Commissioner of Police to include *any* information, including that obtained through operation of the regulations, in the registry. In doing so, the Commissioner of Police could include information in the registry without consulting the Privacy Commissioner, circumventing the consultation provision set out in section 74(3). Correspondence with the Police has not confirmed that section 94(2)(b) is used in this way currently, but we are concerned that there is scope for such use in the current state of the legislation. We also note that, in its submission on the Arms Legislation Act 2020, the Privacy Commissioner recommended removing section 94(2)(b). Consequently, we decided to raise this issue with the Ministers in charge of the Arms Act: the Minister of Police and the Associate Minister of Justice.

Response from the Associate Minister of Justice

We received a response from the Associate Minister of Justice on 15 May 2024. The Associate Minister agreed with our view on new regulation 28GT(2)(b) and the matters raised by us regarding definitions in the Arms Act. She informed us that the Government is committed to rewriting the Act to provide greater protection of public safety and simplify

⁷ Under section 117 of the Legislation Act 2019, any member of the committee may give notice of a motion to disallow. Unless the House disposes of the motion (by agreeing or not to it) within 21 sitting days, the regulation is disallowed. Despite being one of the committee's core powers, it is rarely used in practice.

regulatory requirements to improve compliance. She also indicated that the Government would begin to repeal and replace Part 6 of the Arms Act relating to shooting clubs and ranges and conduct a review of the registry's effectiveness in improving public safety.

We were pleased to learn that the Minister's work in this area would be guided by our recommendations. We are satisfied that the Minister has responded appropriately to our concerns and is committed to resolving the matters raised in our letter. We note that the Government has recently started consulting on a package of proposals relating to the regulation of shooting clubs and ranges.⁸ We will closely monitor upcoming changes to the regulations in the coming months.

⁸ [Government to consult on regulation of shooting clubs and ranges](https://www.beehive.govt.nz/news/government-to-consult-on-regulation-of-shooting-clubs-and-ranges), Beehive.govt.nz, 28 May 2024.

Appendix

Committee procedure

The Regulations Review Committee of the 53rd Parliament received this complaint on 15 February 2023. It met between 15 February and 6 September 2023 to consider it. The committee received written submissions from the complainant and the New Zealand Police. It heard oral evidence from the complainant, the New Zealand Deerstalkers Association, and the New Zealand Police. The committee received advice from the Office of the Clerk's Legislative Counsel.

We readopted the complaint in the 54th Parliament, and met between 13 December 2023 and 24 July 2024 to consider it. We received written submissions from the complainant and the New Zealand Police.

Committee members

Hon David Parker (Chairperson)
Ryan Hamilton
James Meager
Joseph Mooney
Hon Jenny Salesa

Related resources

The documents we received as evidence in relation to this complaint are available on the [Parliament website](#).