Subordinate Legislation Confirmation Bill

55—1

Report of the Regulations Review Committee

November 2021

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Chris Penk
Chairperson

Subordinate Legislation Confirmation Bill

Recommendation

The Regulations Review Committee has examined the Subordinate Legislation Confirmation Bill and recommends that it be passed without amendment.

Introduction

The purpose of this bill is to confirm certain subordinate legislation that would be revoked if not confirmed through an Act of Parliament by a specified date. The bill relates to items of subordinate legislation made in the year ending 30 June 2021.

In passing this bill, the House would confirm the instruments in the bill, allowing them to continue in force.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Progress on recommendations from the inquiry into parliamentary scrutiny of confirmable instruments

The Regulations Review Committee of the 52nd Parliament undertook an inquiry into parliamentary scrutiny of confirmable instruments. The purpose of the inquiry was to determine whether parliamentary scrutiny of these instruments was effective and whether any improvements were needed.

Outcome of the inquiry

The previous committee reported to the House on its inquiry and noted its intention to adopt the following processes to improve its scrutiny of confirmable instruments:

- scrutiny of confirmable instruments begins at the time they are identified under the committee's existing processes for routine scrutiny of secondary legislation
- the practice of inviting agencies administering confirmable instruments to provide advice on whether those instruments should be confirmed should continue
- questions sent to administering agencies when requesting information should be more specific by referring to the constitutional significance of the confirmation process.[1]

We implemented these processes in our consideration of this bill.

1 *Inquiry into parliamentary scrutiny of confirmable instruments*, Report of the Regulations Review Committee, August 2020.

Confirmation is warranted

Orders made under the Biosecurity Act 1993

We wrote to the Ministry for Primary Industries about seven confirmable instruments that it administers.

The Biosecurity (American Foulbrood—Beekeeper Levy) Amendment Order (No 2) 2020 was made under Part 5 of the Biosecurity Act, as part of the national pest management plan. The other six instruments were made under Part 5A of the Act, to fund commitments under the Government Industry Agreement for Biosecurity Readiness and Response.

The ministry told us that it had consulted levy payers about the relevant levy orders, and the majority had expressed support.

Sections 100L and 100ZB of the Act state that levy orders may be only be made on the recommendation of the responsible Minister, if the Minister is satisfied that a number of grounds have been met. We asked about the effect on the principal regulations of amendments made to the Biosecurity (Response—Apples and Pears Levy) Order 2020, and the Biosecurity (American Foulbrood—Beekeeper Levy) Amendment Order (No 2). The ministry said that neither amendment affected the Minister’s consideration under sections 100L and 100ZB.

After considering the ministry’s response, we recommend that the orders be confirmed.

Orders made under the Commodity Levies Act 1990

We wrote to the Ministry for Primary Industries about two confirmable instruments that it administers.

The Commodity Levies (Milksolids) Order 2020 and the Commodity Levies (Feijoas) Order 2020 were both made under section 4 of the Commodity Levies Act 1990. Both orders were made in accordance with sections 5 and 6 of the Act. Section 5 provides restrictions on the making of orders, and section 6 specifies the matters to be included in orders.

As well as imposing levies, the orders specify the following things:

- how a levy should be paid
- how levy money should be spent
- collection of levies and records of collection
- how disputes should be resolved.

We asked the ministry about consultation on the Commodity Levies (Milksolids) Order. The ministry said that 57 percent of all eligible voters participated, and that 69 percent of those who voted, voted in favour.

We also asked the ministry if it knew of any reason why the Commodity Levies (Feijoas) Order should not be confirmed. The ministry told us that the Act provides safeguards for levy payers and others affected by levy orders. It said that it was unaware of any reason that the order should not be confirmed.

After considering the ministry’s response, we recommend that the orders be confirmed.

Orders made under the Customs and Excise Act 2018

We wrote to the New Zealand Customs Service about two confirmable instruments that it administers.

The following orders were made in accordance with clause 21 of Schedule 3 of the Customs and Excise Act 2018:

- Excise and Excise-equivalent Duties Table (Tobacco Products Indexation) Amendment Order 2020
- Excise and Excise-equivalent Duties Table (Alcoholic Beverages Indexation) Amendment Order 2021.

Clause 21 of Schedule 3 of the Act enables the Governor-General, by Order in Council, to amend the Excise and Excise-equivalent Duties Table.

Customs told us that the annual indexation carried out by these instruments gives effect to a policy that is well understood. The objective of excise and annual indexation includes raising revenue and discouraging consumption.

In our letter to Customs we noted that the Cabinet paper for the Tobacco Products Indexation order provides that taxation is used as part of a tobacco control programme. We asked whether this policy intent should be referenced in the order itself. Customs said it did not consider it necessary to set out the reasons for taxing tobacco as they are well understood and well publicised. It said that those affected had an opportunity to participate in public consultation when the bill providing for annual indexation was considered by Parliament in 2018.

After considering the ministry’s response, we recommend that the orders be confirmed.

Orders made under the Fisheries Act 1996

We wrote to the Ministry for Primary Industries about the Fisheries (Alteration of Quota Management Area—Paua Kaikōura Coast) Order 2021.

This instrument amends the quota management areas for pāua on the Kaikōura coast by amending Schedules 1 and 8 of the Fisheries Act 1996. Amendments are made on the recommendation of the Minister following consultation with representatives of those who have a significant interest.

The ministry told us that the majority of submissions made during consultation were supportive of the amendments.

After considering the ministry’s response, we recommend that the order be confirmed.

Orders made under the New Zealand Superannuation and Retirement Income Act 2001 and Social Security Act 2018

We wrote to the Ministry of Social Development about the Social Security (Rates of Benefits and Allowances) Order 2021.

This order makes mandatory and discretionary increases to a range of benefits and allowances under the New Zealand Superannuation and Retirement Income Act and the Social Security Act. The majority of the increases are mandatory to reflect requirements in the Social Security Act.

The ministry told us that the increases are in line with the consumers price index (CPI) and with longstanding policy.[2] Other increases made to rates and thresholds linked to New Zealand Superannuation and the Veterans Pension give effect to Cabinet decisions made in February 2021.

After considering the ministry's response, we recommend that the orders be confirmed.

Orders made under the Social Security Act 2018

We wrote to the Ministry of Social Development about two confirmable instruments it administers.

The Social Security (Rates of Main Benefits) Order 2021 makes mandatory and discretionary increases to a range of benefits and allowances. Mandatory increases reflect requirements in the Social Security Act. We were told that discretionary increases are broadly in line with the CPI.

The Social Security (Definitions of Income Test 1, Income Test 2, Income Test 3, and Income Test 4) Order 2021 increases the abatement threshold for beneficiaries and the spouses and partners of superannuitants.

The ministry told us that the increases to benefits are, as above, in line with the CPI and longstanding policy. In relation to the Social Security (Definitions of Income Test 1, Income Test 2, Income Test 3, and Income Test 4) Order 2021, the ministry said that the regulatory changes give effect to Cabinet decisions made in December 2020.

After considering the ministry's response, we recommend that the orders be confirmed.

Orders made under the Tariff Act 1988

We wrote to the New Zealand Customs Service about the Tariff (PACER Plus) Amendment Order 2020.

This order was made in accordance with section 9 of the Tariff Act 1988. Section 9 of the Act allows wide discretion for amending a tariff and imposing duties or creating exemptions. This instrument is part of the legislative amendments made to bring New Zealand into line with the agreements made in the Pacific Agreement on Closer Economic Relations Plus.

Customs told us that it is not aware of any reason that this instrument should not be confirmed. After considering its response, we recommend that the order be confirmed

Orders made under the Waste Minimisation Act 2008

We wrote to the Ministry for the Environment about the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021.

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[2] The consumers price index (CPI) is a measure of inflation for New Zealand households.

This instrument gives effect to an increase in the levies payable on waste disposed of at particular classes of disposal facility. It creates classes of disposal facility under section 41 of the Waste Minimisation Act 2008.

Regulations under relevant parts of section 41 require Ministerial recommendation following advice from the Waste Advisory Board, consultation with significantly affected persons, and consideration of costs and benefits.

We asked the ministry why it did not support even higher levies, despite some submitters being supportive of this. The ministry told us that, on balance, it considered it was more appropriate to set the levy rate at an intermediate level and continue to monitor and assess the effects of the policy settings.

After considering the ministry’s response, we recommend that the order be confirmed.

Appendix

Committee procedure

The Subordinate Legislation Confirmation Bill was referred to the committee on 5 August 2021. We received and considered five submissions from interested groups and individuals.

We received advice on the bill from the Parliamentary Counsel Office. The Office of the Clerk provided advice on the bill’s legislative quality.

Committee members

Chris Penk (Chairperson)
Chris Bishop (from 31 August 2021)
Rachel Brooking
Steph Lewis
Hon Eugenie Sage
Toni Severin
Penny Simmonds (until 31 August 2021)
Vanushi Walters

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.