



Subordinate Legislation Confirmation Bill (No 4)

165—1

Report of the Regulations Review Committee

December 2019

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Alastair Scott
Chairperson

Subordinate Legislation Confirmation Bill (No 4)

Recommendation

The Regulations Review Committee has examined the Subordinate Legislation Confirmation Bill (No 4) and recommends that it be passed without amendment.

Introduction

The purpose of this bill is to confirm certain subordinate legislation that would be revoked at specified dates unless confirmed by an Act of Parliament. In passing this bill, the House would approve the instruments in the bill, allowing them to continue in force.

Confirmation is warranted

We wrote to the following seven government departments which have responsibility for administering the instruments listed in the bill, inviting them to explain why the instruments should be confirmed:

- Ministry of Business, Innovation and Employment
- New Zealand Customs Service
- Department of Internal Affairs
- New Zealand Police
- Ministry for Primary Industries
- Ministry of Social Development
- Ministry of Transport.

They all considered confirmation necessary to prevent the instruments from being automatically revoked on their statutory deadlines and thus ceasing to be legally enforceable.

Matters covered in the instruments include:

- commodity levy orders that enable industry groups to collect levies from producers for spending on activities beneficial to the industry
- changes to biosecurity levies after consultation with potential levy payers
- changes to civil aviation levies, including a domestic passenger security levy and an international passenger security levy
- increases to the petroleum or engine fuel monitoring levy
- increases to problem gambling levies
- increases to road user charges
- customs import prohibitions

- an increase to excise and excise-equivalent duty on tobacco products, alcoholic beverages, and motor spirits
- changes to the minimum holdings of annual catch entitlement for specific fish stocks
- an order that declared certain ammunition to be prohibited ammunition
- amendments to tariffs to implement agreements made during the CPTPP negotiations in Chile in March 2018
- amendments to tariffs consistent with the World Trade Organization Information Technology Agreement, which New Zealand implemented on 1 July 2016
- increased rates of most benefits and allowances to reflect movements in the Consumers Price Index.

After considering the departmental responses, we found no reason why the orders and regulations should not be confirmed. We discussed the Arms (Prohibited Ammunition) Order 2019 in detail. Our consideration is outlined below.

Our consideration of the Arms (Prohibited Ammunition) Order 2019

We received written evidence from six individuals raising concerns about the Arms (Prohibited Ammunition) Order 2019 (the Order). We are also treating these as a complaint under Standing Order 320. To support our consideration of the Order, we heard oral evidence from the New Zealand Police on two occasions.

Clause 9 of the bill would confirm the Arms (Prohibited Ammunition) Order 2019, which is made under section 74A(e) of the Arms Act 1983. The Order prohibits the following 10 categories of ammunition:

- tracer ammunition
- enhanced-penetration ammunition
- armour-piercing ammunition
- incendiary ammunition (excluding flares for flare guns)
- explosive ammunition
- multi-purpose ammunition
- discarding-sabot ammunition (excluding shotgun cartridges)
- multi-projectile ammunition (excluding shotgun ammunition)
- chemical or biological carrier ammunition (with some exclusions)
- flechettes (with some exclusions).

Reasons for prohibition

The Police told us that the ammunition in the Order should be prohibited because it is military-style. We heard that military-style ammunition is ammunition which presents an increased risk of harm and has very little legitimate civilian use. The Police said that amendments made to the Arms Regulations 1992 provide limited exemptions for the use of ammunition prohibited by the Order, and only where there is legitimate reason for their use.

Complaint about the Order

The complainants disagree with the prohibition of tracer ammunition and enhanced-penetration ammunition. They believe these categories of ammunition should not be prohibited.

The complainants maintain that ammunition being of military style or having limited civilian use is not sufficient to justify prohibition. They suggest that:

- military-style ammunition is not necessarily dangerous for civilian use
- there are a number of legitimate uses for tracer and enhanced-penetration ammunition
- some enhanced-penetration ammunition is a cheap and effective choice for shooting small pests.

Response from the Police about prohibition

The Police told us that ammunition that was designed and manufactured for a military purpose generally creates more harm than non-military ammunition. In determining what ammunition should be prohibited, they balanced civilian purposes against the harm that can be caused by the ammunition.

We understand that, as a result of the Order, firearms users will still be able to engage in their activity using alternative ammunition. They may, however, pay more for the ammunition.

Tracer ammunition

Tracer ammunition contains an element that enables the trajectory of ammunition to be observed. The complainants do not think that tracer ammunition should be prohibited because being able to observe the trajectory of ammunition is not a safety concern. They acknowledge that tracer ammunition containing a phosphorus element may be a fire hazard if fired into dry grass.

The complainants also argue that the prohibition of tracer ammunition as described in the Order unintentionally bans “cold tracer” ammunition¹ and glow-in-the-dark airsoft pellets and paint balls, which are not a safety concern or a fire hazard.

Response from the Police about tracer ammunition

The Police informed us that tracer ammunition is potentially lethal in some situations. They used an example of someone shooting at a plane whilst standing on a runway. In this situation, the shooter would increase their likelihood of hitting their target, which increases the probability of harm.

Enhanced-penetration ammunition

Enhanced-penetration ammunition has a steel or tungsten carbide penetrator intended to achieve better penetration. The complainants do not think that enhanced-penetration

¹ Ammunition which provides a non-incendiary, tracer-like effect using glow-in-the-dark technology.

ammunition should be prohibited because this ammunition passes through a target, rather than exploding on impact, making it less lethal in some circumstances.

The complainants also argue that the prohibition on enhanced-penetration ammunition includes ammunition with cores made of mild steel. This ammunition is not armour-piercing, and they consider it to be safe.

Response from the Police about enhanced-penetration ammunition

We heard that enhanced-penetration ammunition is designed to penetrate body protection. Police officers wearing body armour can be killed by this ammunition.

It is used for target shooting because it is cheap. Alternative ammunition, which is appropriate for hunting or for shooting at metal targets, is readily available.

Consultation undertaken by the Police

The complainants suggested that the Police did not consult adequately about the Order.

Response from the Police about consultation

We thoroughly tested the consultation process undertaken by the Police. We heard that they had consulted experts from the New Zealand Defence Force, Police in-house specialists, members of the Police's Firearms Community Advisory Forum, an ammunition manufacturer, an ammunition importer, zoo veterinarians, and the Department of Conservation. We asked whether hunting groups were consulted. We were told they were not consulted directly, but some members of the Firearms Community Advisory Forum who were consulted represent hunters.

Our response about the Order

After thoroughly examining the Arms (Prohibited Ammunition) Order 2019 we are satisfied that confirmation of the Order is warranted.

We wish to draw attention to the following matter.

Use of the term military-style to explain categories of prohibited ammunition

We consider that the term "military-style" is not helpful to explain categories of prohibited ammunition. We think it is more appropriate for the prohibition of ammunition to be justified by describing the function of the ammunition and why this results in a need for that particular category of ammunition to be prohibited. However, we note that the term "military-style" is not used in the Order.

Appendix

Committee procedure

The Subordinate Legislation Confirmation Bill (No 4) was referred to the committee on 8 August 2019. We received and considered seven submissions from government departments which have responsibility for administering the instruments in the bill.

We heard oral evidence from the New Zealand Police on 6 and 20 November 2019.

We received advice from the Parliamentary Counsel Office.

Committee members

Alastair Scott (Chairperson)
Harete Hipango
Jo Luxton
Rino Tirikatene
Dr Duncan Webb
Nicola Willis

Advice and evidence received

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