New Zealand House of Representatives
Te Whare Māngai o Aotearoa

Regulations Review Committee
Komiti Arotake Waeture

54th Parliament
November 2025

Secondary Legislation Confirmation Bill (No 3)

182—1

Presented to the House of Representatives
by Arena Williams, Chairperson

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Recommendation

The Regulations Review Committee has examined the Secondary Legislation Confirmation Bill (No 3) and recommends that the bill proceed without amendment.

Introduction

The purpose of this bill is to confirm certain pieces of secondary legislation that would be revoked at specified dates unless previously confirmed by an Act of Parliament ("confirmable instruments"). In passing this bill, the House would approve the instruments in the bill, allowing them to continue in force. The Regulations Review Committee is referred a Secondary Legislation Confirmation Bill for this purpose each year. The bill relates to secondary legislation made between 1 July 2024 and 30 June 2025.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring to the House's attention some concerns relating to clause 11(b), which we discuss in more detail later in this report.

Confirmation is warranted

The bill would confirm 22 confirmable instruments. The instruments cover a range of matters, including:

- commodity levy orders on animal products, seafood, fruit, vegetables, and paeonies
- civil aviation levies
- biosecurity levies on slaughtered livestock
- excise and excise-equivalent duties on alcoholic beverages and tobacco products
- levies and fees for services and functions provided under the Food Act 2014
- gambling levies
- fees for the licensing of motor vehicles
- benefits, allowances, asset limits, and superannuation entitlements
- amendments to the ACCTS tariff (Agreement on Climate Change, Trade and Sustainability).[1]

As part of our regular scrutiny of secondary legislation, we had already considered 15 of the instruments in the bill and received justification from their administering agencies as to why they should be confirmed. We wrote to the administering agencies of the remaining seven instruments—the New Zealand Customs Service (Customs NZ), the Department of Internal Affairs, and the Ministry for Primary Industries—to request justification for their confirmation. Each of these agencies considered that confirmation was necessary to prevent the

[1] The ACCTS is an agreement between New Zealand, Costa Rica, Iceland, and Switzerland.

instruments from being revoked and ceasing to be legally enforceable. After considering the responses, we were satisfied that the instruments should be confirmed.

We discussed the Excise and Excise-equivalent Duties Table (Tobacco Products Indexation and Reduction) Amendment Order 2024 in more detail with Customs NZ. Our consideration of this instrument is outlined below.

Excise and Excise-equivalent Duties Table (Tobacco Products Indexation and Reduction) Amendment Order 2024

Clause 11(b) of the bill would confirm the Excise and Excise-equivalent Duties Table (Tobacco Products Indexation and Reduction) Amendment Order 2024. We considered the Order earlier in 2025 during our regular scrutiny of secondary legislation.

Excise is a tax or duty on the domestic manufacture of goods that contribute to social costs, like alcohol, transport fuels, and tobacco. Excise-equivalent duty is an equivalent tax or duty, applied to imported goods of the same nature. The Order adjusts the excise and excise-equivalent duties on tobacco products to reflect changes in the consumers price index (CPI) over the 12-month period ending on 30 September 2024. It also reduces excise and excise-equivalent duty rates for heated tobacco products by 50 percent. It does this by amending the Excise Table, which contains all duties for tobacco, alcohol, and motor spirits products.

The empowering provision for the Order is set out in clause 21 of Schedule 3 of the Customs and Excise Act 2018. Clause 21(1) states that:

> The Governor-General may, by Order in Council, amend the Excise and Excise-equivalent Duties Table so as to change a rate of duty that applies to an alcoholic product or a tobacco product.

Concerns regarding the duty decrease for heated tobacco products

We were concerned that the intent of the Order's empowering provision appeared to be to provide for CPI adjustments to excise and excise-equivalent duty, rather than providing a broad power to make non-CPI-related reductions. We wrote to Customs NZ, which administers the Order, to note our concern that the Order appeared to go beyond what was intended. We also requested that it provide examples of any comparable excise reductions made under clause 21. It was unable to provide any examples.

The broad policy intent behind the empowering Act's provisions about tobacco excise is to deter tobacco use and to recover socialised public health costs. Excise is also generally imposed on the assumption that the affected product is harmful, and for the purpose of deterring consumption of that product. However, the 50 percent decrease was made on the basis that reducing the price of heated tobacco products would encourage cigarette smokers to transition to them.[2] Although the 50 percent reduction is technically permitted by the empowering provision, we consider that it does not align with the general policy intent of the empowering Act.

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2 This reasoning is discussed in a Cabinet paper released by Customs NZ on behalf of the Minister of Customs.

Further, some of us consider that the decrease constitutes a significant enough public health policy decision to be better suited for enactment in primary legislation. This would allow it to be subject to parliamentary scrutiny and public input through a select committee submission process.

As part of our scrutiny of this Order, we considered the implications of withholding confirmation of this Order. We note that, if the Order is not confirmed, anything levied under that Order or the relevant part of that Order would be required to be refunded in accordance with section 125(1)(a) of the Legislation Act 2019.

We have not reached unanimous agreement to recommend amending the bill to remove confirmation of the Order.

Appendix

Committee procedure

The Secondary Legislation Confirmation Bill (No 3) was referred to the committee on 17 July 2025. We received and considered three submissions, from the New Zealand Customs Service, the Department of Internal Affairs, and the Ministry for Primary Industries. During our regular scrutiny of secondary legislation, we considered correspondence about instruments in the bill from the Ministry for Primary Industries, the Ministry of Transport, the New Zealand Customs Service, and the Ministry of Social Development. These responses will be tabled and released along with the evidence we received as part of our consideration of the bill.

We received advice on the bill from the Parliamentary Counsel Office. The Office of the Clerk provided advice on the bill’s legislative quality. The Parliamentary Counsel Office was available to assist with legal drafting.

Committee members

Arena Williams (Chairperson)
Miles Anderson
Nancy Lu
Joseph Mooney
Hon Jenny Salesa

Dr Lawrence Xu-Nan also participated in our consideration of this bill.

Related resources

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