



Subordinate Legislation Confirmation Bill (No 2)

81-1

Report of the Regulations Review Committee

November 2018

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Hon Gerry Brownlee
Chairperson

Subordinate Legislation Confirmation Bill (No 2)

Recommendation

The Regulations Review Committee has examined the Subordinate Legislation Confirmation Bill (No 2) and recommends that it be passed with no amendments.

The committee has found no reason why the particular instruments specified in the bill should not be confirmed. However, we could not agree on whether the confirmation process allows for appropriate scrutiny of subordinate legislation or whether changes are desirable.

Introduction

The purpose of this bill is to confirm certain subordinate legislation that would be revoked at a specified date unless confirmed by an Act of Parliament.

Submissions from government departments

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

- New Zealand Customs Service
- Ministry of Business, Innovation and Employment
- Ministry of Foreign Affairs and Trade
- Ministry of Social Development
- Ministry for Primary Industries.

They all considered confirmation necessary to prevent the instruments from being automatically revoked in accordance with their respective statutory deadlines and thus ceasing to be legally enforceable. The reasons for these confirmations include:

- customs import and export prohibitions
- an increase to excise and excise-equivalent duty on tobacco products and alcoholic beverages
- amendments to tariff concessions that have been agreed to by the New Zealand Government in the Korea–New Zealand Free Trade Agreement
- amendments to Annex 2 of the Antarctic Environmental Protocol which concerns the conservation of Antarctic fauna and flora
- increased rates of most benefits and allowances to reflect movements in the Consumers Price Index
- prescribing changes to fees and levies.

Advice about the confirmation process

We sought advice from the Parliamentary Counsel Office about how the confirmation process currently works, and possible improvements.

At present, the confirmation process works as follows:

- The empowering Act passed by Parliament requires that the legislative instrument be confirmed by legislation within a specified period of the legislative instrument being made.
- Confirmable instruments are made, notified in the *Gazette*, and published (either on the New Zealand legislation website or as required by the empowering Act) before being presented to the House.
- A Subordinate Legislation Confirmation Bill is prepared annually to confirm the confirmable instruments made in the relevant previous 12-month period.
- Parliamentary Counsel Office drafts the bill in consultation with administering departments.
- Standing Order 325 sets out a streamlined House process for confirmation bills:
 - there is no debate for the first reading, and the bill stands referred to the Regulations Review Committee
 - after the bill's second reading it proceeds straight to third reading, unless the House resolves into committee to consider an amendment.

If a confirmable instrument is not confirmed, it is automatically revoked on the deadline. In that case the general rules are:

- Acts done under the instrument before its revocation remain valid, but
- amendments made by the instrument are reversed from the date of revocation; and
- duties or levies collected under the instrument must generally, with certain exceptions, be refunded.¹

Committee members' views on the confirmation process

National Party members of the committee believe that the committee's scrutiny work would be more effective if it was able to consider the instruments before they were finalised. They think the confirmable instruments should be referred to the Regulations Review Committee under Standing Order 318(2) for consideration before they are made. This would allow the committee to report to the relevant Minister, if necessary, before the instruments came into force.

Labour Party members of the committee are of the view that the confirmation process is well established. They note that, under Standing Orders and section 41 of the Legislation Act, all such regulations come before this committee immediately when made. They also observe that in passing empowering legislation Parliament turns its mind to whether the confirmation process is suitable for the legislative instruments which may be made (including consideration by this committee). These members do not think the confirmable instruments

¹ See sections 47H and 47I of the Legislation Act 2012. For example, section 42C(3) of the Civil Aviation Act 1990 does not require refunds.

should be referred to the Regulations Review Committee under Standing Order 318(2) for consideration before they are made, as this would cause the committee unnecessary work and be duplicative of a number of checks which already exist.

Conclusion

We have found no reason why the particular instruments specified in the bill should not be confirmed. However, we could not agree on whether the confirmation process allows for appropriate scrutiny of subordinate legislation, or whether changes are desirable.

Appendix

Committee procedure

The Subordinate Legislation Confirmation Bill (No 2) was referred to the committee on 2 August 2018. We received and considered five submissions from government departments which have responsibility for administering the instruments in the bill.

We received advice from the Parliamentary Counsel Office, the New Zealand Customs Service, and the Office of the Clerk.

Committee members

Hon Gerry Brownlee (Chairperson)
Kiritapu Allan
Simeon Brown
Liz Craig
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.