

Firearms Prohibition Orders Legislation Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Firearms Prohibition Orders Legislation Amendment Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

About firearms prohibition orders

Part 7A of the Arms Act 1983 sets out the firearms prohibition orders (FPO) regime. A sentencing court can impose an FPO against an offender who has been convicted of a specified serious offence. The court must be satisfied on the balance of probabilities that the FPO is necessary, reasonable, and appropriate to assist in managing the risk that the offender poses to public safety. An FPO prohibits an offender from obtaining or holding a firearms licence, and from accessing, possessing, or using any firearm or related item. Standard conditions of an FPO include prohibiting an individual associating with people in possession of firearms or related items, and residing at or visiting locations where firearms or related items are held.

About the bill as introduced

The purpose of the bill is to reduce firearms crime and its effects on communities. It seeks to do so by enabling FPOs to be made and monitored against a wider group of people whose behaviour and actions indicate they pose a high risk of violence. The bill would amend the Arms Act 1983, the Sentencing Act 2002, and the Search and Surveillance Act 2012. It would:

- specify new qualifying offences for members and associates of a gang or an organised criminal group
- establish a review process to enable a person who is subject to an FPO to apply to the court to have their FPO varied, modified, or revoked

- give the Police additional warrantless search powers to monitor the persons subject to an FPO.

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.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Definitions

Associate of a gang or an organised criminal group

Clause 6 of the bill would replace section 39 of the Arms Act, which is the interpretation provision for the FPO regime. The clause inserts a definition of an “associate of a gang or an organised criminal group”. This is defined as an individual who associates with a member of a gang or an organised criminal group, and who is not a mere acquaintance of the member.

We note that the link to an association with a gang member rather than a gang itself could capture many people who are unlikely to be a risk to the public. Examples provided by submitters include a gang member's relatives, colleagues, counsellors, or religious leaders. We agree that the definition is too broad. We were advised that the definition is based on that of an “associate” in relation to an organised criminal group in section 5A of the Criminal Proceeds (Recovery) Act 2009, expanded to also apply to gangs.

We understand that the proposed definition was intended to capture a wider group than just gang members because people who associate with gangs may also be high-risk offenders. However, the definition was not intended to be so broad as to capture the groups highlighted by submitters. We therefore recommend amending clause 6 to specify that an associate of a gang or an organised criminal group is an individual who associates with a gang or an organised criminal group. In this way the association is linked to a gang or an organised criminal group rather than to a member of a gang or an organised criminal group. We consider that a person could be shown to associate with the gang or organised criminal group where they, for example:

- participate in criminal offending with gang members
- demonstrate support for the gang's activities and aims
- attend gang events.

Gang insignia

Clause 6 contains a definition of a “member of a gang or an organised criminal group”. It includes an individual who demonstrates affiliation to a gang or an organ-

ised criminal group by displaying the gang’s or group’s insignia. However, the bill as introduced does not define “insignia”.

We reported to the House on 3 July 2024 about the Gangs Legislation Amendment Bill. That bill includes a definition of “gang insignia”, which we recommend be relied on for the purpose of defining “insignia” in clause 6, to ensure a consistent interpretation.

When an FPO could be made

Clause 7 would amend section 39A of the Arms Act to insert subsection (1A). A sentencing court could impose an FPO against an offender who was:

- convicted of an offence under the Arms Act, the Crimes Act 1961, the Misuse of Drugs Act 1975, or the Psychoactive Substances Act 2013 that is punishable by a term of imprisonment of 1 year or more; and
- aged 18 years or over and a member or associate of a gang or an organised criminal group when the offence was committed.

Some submitters commented that many of the additional offences are potentially minor, and many are not connected to firearms, organised crime, or violent offending, and may not be indicative of the offender posing a risk to public safety. We also think that many of the offences are not serious or violent offences. We sought advice as to whether the expanded offences were appropriate to trigger the potential additional sentence of an FPO. We were advised that the Crimes Act contains numerous offences that are more closely related to gang offending and organised crime. They include assaulting and wounding offences, burglary, robbery, money laundering, threats of harm to people or property, and conspiring to commit an offence. We therefore recommend changing proposed section 39(1A) to include offences against the following provisions of the Crimes Act:

- Part 8 (crimes against the person)
- Part 10 (crimes against rights of property)
- Part 11 (threatening, conspiring, and attempting to commit offences).

We understand that the offences specified by the bill in relation to the Arms Act, the Misuse of Drugs Act, and the Psychoactive Substances Act are connected to gang offending and organised crime. Accordingly, we recommend no change to them.

Varying, modifying, or revoking an FPO

Clause 8 would insert new section 39FA into the Arms Act to enable the variation, modification, and revocation of FPOs. After an FPO had been in force for 5 years, a person subject to an FPO could apply to the relevant court to:

- vary or modify any of the conditions of the FPO (new section 39FA(1)(a))
- revoke the FPO (new section 39FA(1)(b)).

Proposed new section 39FA(4) would enable a court to revoke an FPO following an application made under subsection (1)(b). The court would need to be satisfied, on

the balance of probabilities, that the FPO was no longer necessary, reasonable, and appropriate to assist in managing the risk that the applicant posed to public safety. Proposed new section 39FA(3) applies similar provisions to applications made under subsection (1)(a). It provides that the court could vary or modify any standard or special condition of the FPO. The court would need to be satisfied that the condition was no longer reasonably necessary to prevent the applicant from accessing, possessing, or using any firearms or related items. We note, however, that new section 39FA(3) does not explicitly state the burden of proof—that is, the balance of probabilities. For clarity and consistency, we recommend amending section 39FA(3) to require the court to be satisfied on the balance of probabilities that the condition was no longer reasonably necessary.

Warrantless searches associated with FPOs

Clause 14 would insert section 18AA into the Search and Surveillance Act, to expand the search powers of the Police. A constable who had reasonable grounds to suspect that a person was subject to an FPO made before or after the section commenced could search any of the following without a warrant:

- the person
- any thing in the person’s possession or under the person’s control (including a vehicle)
- any premises in which the person is present, or that the person owns, occupies, or controls
- any vehicle in which the person is present, and any other people present in the vehicle whom the constable has reasonable grounds to believe are in possession of arms.

A constable could also enter a place or vehicle to carry out any activity under the provisions listed above and seize and detain any arms found.

We received advice that when the Police are interacting with the public, they cannot be completely certain that someone is who they say there are. The threshold for exercising the proposed search power must therefore contain a margin of error. However, we consider that the threshold of having reasonable grounds to suspect that a person is subject to an FPO is too low. We recommend amending section 18AA(1) to replace “suspect” with “believe”.

Some submitters expressed concern that the new search power could be exercised without cause to suspect that a person was breaching the conditions of their FPO. They stated that this would be considered unreasonable search and seizure under the New Zealand Bill of Rights Act 1990 (NZBORA). We understand that the purpose of the search is to monitor compliance with the conditions of an FPO rather than locating evidence of offending. The search may be conducted proactively, by visiting a person subject to an FPO to check whether they are complying, or when the person comes to the Police’s attention. To mitigate potential misuse of the search power and

address concerns about its purpose, we think that the purpose should be explicitly stated. We recommend amending section 18AA(1) to this effect.

We also discussed whether the provisions in clause 14 are too broad and could result in entire premises being searched. Examples are where the search power could technically extend to include tenanted properties or every room in a hotel. We recognise the general requirement under NZBORA that a search must be reasonable when exercising a search power. Further, a search of an entire hotel because an individual with an FPO was in the bar is unlikely to be considered reasonable. However, we consider that the search power should be limited to places where the person subject to an FPO has influence, control, or direct access to. We therefore recommend amending proposed section 18AA(1)(c) by removing the reference to premises “that the person owns”.

New Zealand Labour Party differing view

The Labour Party opposes the Firearms Prohibition Orders Legislation Amendment Bill for two main reasons. Firstly, the firearms prohibition legislation passed in 2021 has been enacted for an insufficient period of time to effectively understand whether it needs to be strengthened, or not. This legislation established new criteria for Firearms Prohibition Orders (FPOs), which prevent individuals from possessing, acquiring, or using firearms. These orders have been issued by the courts to prevent high-risk individuals from accessing firearms. There has been no evaluation undertaken of the prior legislation and how it is operating in the preparation of the current bill. Labour considers this legislation needs to fully bed in and then be assessed before we can know whether widening the current Police powers to warrantless, causeless searches is necessary.

Secondly, there is concern that this new search power is too broad and could be exercised without cause to suspect that a person was breaching the conditions of their FPO. The legislation would also mean that someone who is in the company of a person who has an FPO could have their home or vehicle searched, even if they had no knowledge the person they are with has an FPO. We understand the purpose of the search is to monitor compliance with the conditions of the FPO. We are supportive of the mitigating change made to section 18AA(1) by the committee to this new search power but we do not think it goes far enough. We consider that there is potential to misuse this broad new search power and therefore cannot support this bill as it does not clearly define the limits and guidelines for conducting these searches.

Appendix

Committee process

The Firearms Prohibition Orders Legislation Amendment Bill was referred to the committee on 5 March 2024. We called for submissions on the bill with a closing date of 5 April 2024. We received and considered submissions from 40 interested groups and individuals. We heard oral evidence from 11 submitters at hearings in Wellington and by videoconference.

Advice on the bill was provided by the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Related resources

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

**Firearms Prohibition Orders Legislation Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nicole McKee

Firearms Prohibition Orders Legislation Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Firearms Prohibition Orders Legislation Amendment Act **2024**.
- 2 Commencement**
This Act comes into force 6 months after the date on which it receives the Royal assent. 5

Part 1 Amendments to Arms Act 1983

- 3 Principal Act**
This Part amends the Arms Act 1983. 10
- 4 Section 2 amended (Interpretation)**
In section 2(1), insert in their appropriate alphabetical order:

gang has the meaning given to it by **section 4 of the Gangs Legislation Amendment Act 2024**

organised criminal group has the meaning given to it by section 98A of the Crimes Act 1961 15
- 5 Section 24A amended (Fit and proper person to possess firearm or airgun)**
In section 24A(6), repeal the definitions of—
 - (a) **gang**; and
 - (b) **organised criminal group**. 20
- 6 Section 39 replaced (Interpretation)**
Replace section 39 with:

39 Interpretation
In this Part,—

associate of a gang or an organised criminal group means an individual who— associates with a gang or an organised criminal group

- (a) ~~associates with a member of a gang or an organised criminal group; and~~
- (b) ~~is not a mere acquaintance of the member~~

criminal activity means an activity that constitutes the commission of an offence 5

firearm or related item means any firearm, pistol, pistol carbine conversion kit, restricted weapon, airgun, imitation firearm, magazine, part of a firearm or restricted weapon, prohibited item, or ammunition

insignia, in relation to a gang or an organised criminal group,— 10

- (a) means a sign, symbol, or representation commonly displayed to denote membership of, or an affiliation with, a gang or an organised criminal group, not being a tattoo; and
- (b) includes any item or thing to which a sign, symbol, or representation referred to in **paragraph (a)** is attached or affixed (for example, clothing or a vehicle) 15

member of a gang or an organised criminal group includes the following:

- (a) an individual who is a prospective member or nominee:
- (b) an individual who demonstrates affiliation to a gang or an organised criminal group by displaying the gang's or group's insignia: 20
- (c) an individual who is involved in the affairs of a gang or an organised criminal group for the likely purpose of participating in a criminal activity

prospective member or nominee, in relation to a gang or an organised criminal group, means a person who is a member of the gang or the organised criminal group but who does not have full membership status. 25

7 Section 39A amended (When FPO may be made)

- (1) Replace section 39A(1)(b)(ii) with:

(ii) after 15 November 2022.

- (2) After section 39A(1), insert: 30

- (1A) This section also applies when a court is sentencing an offender who—

- (a) ~~has been convicted of an offence, under any of the following Acts, that is punishable by a term of imprisonment of 1 year or more:~~
 - (i) ~~this Act:~~
 - (ii) ~~the Crimes Act 1961:~~ 35
 - (iii) ~~the Misuse of Drugs Act 1975:~~
 - (iv) ~~the Psychoactive Substances Act 2013; and~~

- 8 New section 39FA inserted (Varying, modifying, or revoking FPOs)**
- After section 39F, insert:
- 20

- (1) A person who is subject to an FPO may, at any time after the FPO has been in force for 5 years, apply to the court that made the FPO for an order—
 - (a) varying or modifying any of the conditions of the FPO; or
 - (b) revoking the FPO.
- (2) An application under **subsection (1)(a) or (b)** may not be made in respect of an FPO if an application has previously been made under **subsection (1)(a) or (b)** in respect of the FPO within the previous 2 years.
- (3) On an application made under **subsection (1)(a)**, the court may vary or modify any standard or special condition of the FPO if it is satisfied, on the balance of probabilities, that the condition is no longer reasonably necessary to prevent the applicant from accessing, possessing, or using any firearms or related items.
- (4) On an application made under **subsection (1)(b)**, the court may revoke the FPO if it is satisfied, on the balance of probabilities, that the FPO is no longer necessary, reasonable, and appropriate to assist in managing the risk that the applicant poses to public safety.

9 Section 39G replaced (Modifying or replacing FPO on subsequent conviction)

Replace section 39G with:

39G Varying, modifying, or replacing FPO on subsequent conviction

- (1) This section applies if—
 - (a) a court is sentencing an offender in the circumstances described in section 39A(1) or **(1A)**; and
 - (b) the offender is already subject to an FPO in respect of previous offending.
- (2) The court may—
 - (a) vary or modify any of the existing conditions of the FPO; or
 - (b) impose any special conditions, or additional special conditions; or
 - (c) revoke the FPO and make a new FPO.

Part 2

Amendments to other Acts

Subpart 1—Amendment to Sentencing Act 2002

10 Principal Act

This subpart amends the Sentencing Act 2002.

11 Section 111A replaced (Firearms prohibition order)

Replace section 111A with:

111A Firearms prohibition order

- (1) When sentencing a specified offender, the court may make a firearms prohibition order against the offender under Part 7A of the Arms Act 1983.
- (2) In this section, **specified offender** means an offender described in section 39A(1) or **(1A)** of the Arms Act 1983.

Subpart 2—Amendments to Search and Surveillance Act 2012

12 Principal Act

This subpart amends the Search and Surveillance Act 2012.

13 Subpart 6 heading in Part 2 amended

In Part 2, in the subpart 6 heading, delete “offences”.

14 New section 18AA inserted (Warrantless searches associated with FPOs)

After section 18, insert:

18AA Warrantless searches associated with firearms prohibition orders FPOs

- (1) A constable, who has reasonable grounds to ~~suspect~~ believe that a person is subject to a ~~firearms prohibition order made under Part 7A of the Arms Act 1983~~ an FPO made before, on, or after the commencement of this section, may, without a warrant, do any or all of the following for the purpose of checking whether the person is complying with the conditions of the FPO: 5
- (a) search the person:
 - (b) search any thing in the person’s possession or under the person’s control (including a vehicle):
 - (c) ~~search any premises in which the person is present, or that the person owns, occupies, or controls:~~ 10
 - (i) in which the person is present; or
 - (ii) that the person occupies or controls:
 - (d) search any vehicle in which the person is present and any other persons present in the vehicle whom the constable has reasonable grounds to believe are in possession of arms: 15
 - (e) enter a place or vehicle to carry out any activity under **paragraphs (a) to (d)**: 20
 - (f) seize and detain any arms found. 20
- (2) A constable may exercise the power in **subsection (1)** without having reasonable grounds to suspect that any offence has been, is being, or will be committed by the person.
- (3) In this section, FPO means a firearms prohibition order made, varied, or modified under Part 7A of the Arms Act 1983. 25

Legislative history

1 March 2024
5 March 2024

Introduction (Bill 24–1)
First reading and referral to Justice Committee