

Arms (Firearms Prohibition Orders) Amendment Bill

Member's Bill

Explanatory note

General policy statement

This Bill provides strong new powers for Police to make sure the most dangerous gang members don't have firearms, while not putting unnecessary restrictions on legal gun owners. This Bill puts in place new Firearms Prohibition Orders (FPOs) which will apply to the toughest gang members with serious offending histories. Gang members won't be able to hold firearms licences.

FPOs provide new powers for Police to search the persons, vehicles and premises of specified serious and violent gang members for firearms at any time. They will only apply to a very small group of the most dangerous gang offenders who have convictions for firearms offences and serious violence. A pool of eligible people will be based on criteria set out in this legislation and will include being a gang member, and having recent firearms or violence offences.

The Commissioner of Police will have the power to make an FPO in respect of these offenders and any decision made to make a FPO will be reviewable by the District Court. About 600 gang members will initially be eligible for a FPO however not all of those individuals will have an FPO issued straight away. Police will decide how to prioritise the most serious offenders within that group with the aim to prevent firearms being used in criminal activities.

The offending history and profile of these gang members makes it reasonable for Police to be able to check that they do not have access to guns, ammunition or firearms parts. The Police Commissioner will have to personally sign off on each order and any person subject to a FPO will have the ability to challenge this in Court. Currently all warrantless searches require specialist internal reporting and Police would be expected to continue reporting searches of persons, vehicles and premises under this regime.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Arms Act 1983 (the **principal Act**).

Clause 4 inserts additional definitions into the principal Act.

Clause 5 amends section 24 of the principal Act to prohibit a firearms licence being issued to a person who is a member of a gang or is subject to a **firearms prohibition order**.

Clause 6 amends section 27 of the principal Act to provide that a person becoming subject to a firearms prohibition order revokes any firearms licence that has been issued to that person.

Clause 7 inserts new provisions into the principal Act to make provision for firearms prohibition orders.

Clause 8 amends section 62 of the principal Act to include the making of a firearms prohibition order as a decision which can be appealed to the District Court.

Clause 9 amends section 72 of the principal Act to prevent the Commissioner delegating his or her power to make firearms prohibition orders.

Hon Paula Bennett

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Arms (Firearms Prohibition Orders) Amendment Act **2018**.

2 Commencement

This Act comes into force on day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Arms Act 1983 (the **principal Act**). 5

4 Section 2 amended (Interpretation)

In section 2(1), insert the following definitions in their appropriate alphabetical order:

firearms prohibition order means an order made by the Commissioner under **section 59A** of this Act 10

gang has the same meaning as in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013

possess, in relation to a firearm, part, or ammunition, includes a firearm, part, or ammunition that is subject to a person’s control but that is in the custody of another person 15

5 Section 24 amended (Issue of firearms licence)

(1) In section 24(1), replace “subsection (2)” with “**subsection (1A)** and (2)”.

(2) After section 24(1), insert:

(1A) A firearms licence must not be issued to a person— 20

(a) who, in the opinion of a commissioned officer of Police, is a member of a gang; or

(b) who is subject to a firearms prohibition order.

(3) Replace section 24(2)(d) with:

(d) who, in the opinion of a commissioned officer of Police, is not a fit and proper person to be in possession of a firearm or airgun; or 25

(e) who, in the opinion of a commissioned officer of Police, is a member of a gang; or

(f) who is subject to a firearms prohibition order.

6 Section 27 amended (Revocation and surrender of firearms licence)

(1) Before section 27(1), insert: 30

(1AA) If a person becomes subject to a firearms prohibition order, any firearms licence that has been issued to that person is revoked, and the person to whom that firearms licence has been issued must immediately surrender the licence to a member of the Police.

(2) After section 27(1)(a), insert: 35

- (ab) any person who has been issued with a firearms licence is, or is seeking become, a member of a gang; or
- (3) Replace section 27(1)(b)(iii) and (iv) with:
- (iii) whose firearms licence has been revoked in accordance with this section; or 5
- (iv) who, in the opinion of a commissioned officer of Police, is not a fit and proper person to be in possession of a firearm or airgun, or is a member of a gang; or
- (v) who is subject to a firearms prevention order—
- (4) In section 27(3), replace “subsection (1)” with “**subsection (1AA)** or (1)” 10

7 New sections 59A to 59E and cross-heading inserted

After section 59, insert:

Firearms prohibition orders

59A Firearms prohibition orders

- (1) The Commissioner may make a firearms prohibition order against a person if: 15
- (a) in the opinion of the Commissioner, it is necessary, in the public interest, to ensure that the person does not have possession of a firearm; and
- (b) the person is a member of a gang; and
- (c) the person has, within the past 10 years, been convicted of— 20
- (i) an offence under this Act: 20
- (ii) an offence under the Domestic Violence Act 1995:
- (iii) a serious violent offence.
- (2) A firearms prohibition order takes effect when it has been served on the person who is to be subject to the order in accordance with section 72A of this Act.
- (3) The Commission may revoke a firearms prohibition order at any time. 25
- (4) In this section, **serious violent offence** has the same meaning as in section 86A of the Sentencing Act 2002.

59B Offences in respect of firearms prohibition orders

- (1) A person who is subject to a firearms prohibition must not acquire, possess or use a firearm or part. 30
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) where the firearm is a pistol or restricted weapon, to a term of imprisonment not exceeding 14 years:
- (b) in any other case, to a term of imprisonment not exceeding 5 years. 35

- (3) A person who is subject to a firearms prohibition order must not acquire or possess ammunition.
- (4) A person who contravenes **subsection (3)** commits an offence and is liable on conviction to a term of imprisonment not exceeding 5 years.
- 59C Prohibition on supplying firearms, parts or ammunition to persons subject to firearms prohibition order** 5
- (1) Every person commits an offence if they supply, or give possession of, a firearm, part or ammunition to another person knowing that the other person is subject to a firearms prohibition order.
- (2) A person who contravenes **subsection (1)** is liable, on conviction,— 10
- (a) where the firearm is a pistol or restricted weapon, to a term of imprisonment not exceeding 14 years:
- (b) in any other case, to a term of imprisonment not exceeding 5 years.
- 59D Prohibition on person subject to firearms prohibition order residing at premises where firearms, parts or ammunition are present** 15
- (1) A person who is subject to a firearms prohibition order commits an offence if a firearm, part, or ammunition is kept or found on premises at which the person is residing.
- (2) A person who contravenes **subsection (1)** is liable, on conviction, to a term of imprisonment not exceeding 12 months. 20
- (3) It is a good defence to a prosecution for an offence against **subsection (1)** if the defendant proves—
- (a) that he did not know, and could not reasonably be expected to have known, that the firearm, part, or ammunition was on the premises; or
- (b) that he took reasonable steps to prevent the firearm, part, or ammunition 25 from being on the premises.
- 59E Prohibition on person subject to firearms prohibition order attending certain premises**
- (1) A person who is subject to a firearms prohibition order must not, without reasonable excuse, attend or be present at— 30
- (a) the place of business of a licensed dealer:
- (b) a shooting range:
- (c) the premises of a firearms club.
- (2) For the avoidance of doubt, membership of a firearms club it is not a reasonable excuse for the purposes of **subsection (1)**. 35
- 8 Section 62 amended (Right of appeal from official decisions)**
- After section 62(1)(a), insert:

(ab) a person who has had a firearms prohibition order made against them; and

9 Section 72 amended (Delegation of powers by Commissioner)

After section 72(1), insert:

(1A) **Subsection (1)** does not apply to the making of firearms prohibition orders under **section 59A**.

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