

Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Arms Act 1983 (the **Act**) to—

- amend the definition of military style semi-automatic firearm (**MSSA**); and
- enable regulations to be made declaring a firearm or type of firearm to be an MSSA, and to define or describe features of a firearm that is an MSSA; and
- provide for an appeal process to the District Court to apply when a firearms owner disagrees with a classification of a firearm as an MSSA; and
- place restrictions on the importation of airguns that look like real pistols, MSSAs, or restricted weapons.

Definition of MSSA

One feature of a semi-automatic firearm that characterises it as an MSSA is a military pattern free-standing pistol grip. Firearms that do not have such a pistol grip (along with other features) are deemed to be in sporting configuration and are, by law, not MSSAs. A High Court decision (*Lincoln v New Zealand Police* HC Palmerston North

CIV-2009-454-473, 1 March 2010) has made it difficult for the Police to determine with certainty whether some makes of firearm are in sporting configuration, and, as a consequence, which firearms are MSSAs and subject to additional licensing conditions. There is a need for a clearer definition of the term MSSA.

This Bill proposes that a different approach to defining an MSSA is taken to make it more easily understood and more adaptable to future changes in firearms manufacturing. This involves wording the definition in the positive as a semi-automatic firearm that has 1 or more specified features, rather than in the negative with a list of features that a firearm in sporting configuration (that is not an MSSA) must be without. The definition also provides for certain features to be defined in regulations. This applies in respect of the feature of a pistol grip. The definition also allows for particular firearms and types of firearms to be declared as MSSAs in regulations.

The inclusion of a definition of pistol grip in regulations also provides flexibility for this definition to be readily adjusted if the manufacture of pistol grips changes in a way that gets around the intention of what the definition attempts to capture.

In addition, under the Act, firearms maintained in a sporting configuration must not have a magazine that holds, or appears to hold, more than 7 rounds (with an exception for magazines designed to hold up to 0.22 calibre ammunition where the limit is 15 rounds).

A maximum capacity of 7 rounds does not relate to international manufacturing standards, whereas magazines designed to hold 5 or 10 rounds are commonly produced. Many owners of semi-automatic firearms have internally modified 10-round magazines so that they are only capable of holding 7 rounds, in the belief that this will mean the firearm will not qualify as an MSSA. To reflect this fact and legitimise an adaptation that was intended to conform with the law (although it was not in accordance with a strict interpretation of the law), the Bill will retain the current limit of 7 rounds but the definition will refer to actual capacity only (and allow a limit of 10 rounds in relation to what the magazine appears to be capable of holding).

Consistent with the proposed new definition of an MSSA, the Bill will amend section 74 of the Act to include new regulation-making powers to declare a firearm or type of firearm to be an MSSA, and define or describe features of a firearm that is an MSSA.

The Bill also amends section 62 of the Act (right of appeal from official decisions) to include a right of appeal to the District Court to apply when there is a classification by the Police of a firearm as an MSSA that the firearms owner disagrees with.

*Airguns that replicate real pistols, restricted
weapons, and MSSAs*

Although there are offence provisions relating to the unlawful use of airguns that look like real pistols, restricted weapons, and MSSAs, the Act does not provide for any controls on importing these types of airguns into New Zealand. These airguns are usually soft airguns that can be mistaken for real pistols, restricted weapons, or MSSAs. Because of their appearance, such airguns have been used by criminals for intimidation purposes.

While no statistics have been collected on those occurrences, the Police estimate that there is at least 1 incident a week where a member of the public has presented an airgun that looks like a real pistol, restricted weapon, or an MSSA requiring an armed Police response, sometimes involving a call-out of the Armed Offenders Squad.

Under the Act, real pistols, restricted weapons, and MSSAs can only be imported by firearms licence holders with an appropriate endorsement on their licence. A permit to import must also be obtained. The permit to import can only be granted by the Commissioner of Police who must first be satisfied there are special reasons for the importation.

Special reasons that are generally accepted for an import permit include—

- for MSSAs, as an exchange for an existing MSSA, for example, because the existing MSSA is worn and no longer working;
- for pistols, if the importer is a member of a Police-recognised pistol club and the club committee endorses the application for a permit to import a particular pistol for the purposes of target pistol shooting; and the particular pistol is approved by Police;
- for pistols and restricted weapons, if the importer is a bona fide collector, heirloom or memento holder, a director or curator of a bona fide museum, or an employee of a bona fide theatrical group or film-making organisation.

The Bill proposes to introduce import controls over airguns that have the appearance of being real pistols, restricted weapons, or MSSAs so that they are subject to the same import controls as real pistols, restricted weapons, and MSSAs.

With import controls in place, anyone proposing to import an airgun that looks like a real pistol, restricted weapon, or an MSSA must first obtain a permit to import from the Commissioner of Police. A special reason would need to be provided as to why the item should be allowed into New Zealand.

Import controls over airguns that look like real pistols, restricted weapons, or MSSAs would limit the number of these types of airguns being brought into the country, and therefore reduce the likelihood that they will be used illegally. Firearms users advise that within a relatively short time most of the cheaper replicas already in New Zealand will be lost, broken, or discarded.

Commencement of Bill

It is proposed that the Bill be brought into force by Order in Council. The reason for this is that one of the features in the new definition of MSSA in the Bill is a pistol grip as defined in regulations. Accordingly, the definition of MSSA cannot be fully applied until pistol grip is defined in the Arms Regulations 1992. The Bill will be brought into force at the same time as the amendment to the Arms Regulations 1992.

Regulatory impact statement

The New Zealand Police has developed a regulatory impact statement based on regulatory impact statements produced on 17 September 2010 and 19 November 2010 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.police.govt.nz/new-zealand-police-miscellaneous-reports>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

Clause by clause analysis

Clause 1 sets out the Title of the Bill.

Clause 2 is the commencement clause. The Bill comes into force 1 year after the date on which it receives the Royal assent unless it is earlier brought into force by the Governor-General by Order in Council. It is proposed that the Bill be brought into force by Order in Council so that the Bill can come into force at the same time as amendments are made to the Arms Regulations 1992 in order to complete the definition of a military style semi-automatic firearm.

Clause 3 provides that the Bill amends the Arms Act 1983.

Part 1

Amendments to principal Act

Clause 4 amends section 2 (the interpretation section) by replacing the definition of military style semi-automatic firearm, inserting a new definition of restricted airgun, and repealing the definition of sporting configuration.

The new definition of military style semi-automatic firearm provides greater certainty about what is and is not a military style semi-automatic firearm for the purposes of the Act, and permits certain aspects of the definition to be defined, declared, or described by regulations in order to provide greater adaptability to changing circumstances as they arise in the future.

The phrase sporting configuration is used only in the existing definition of military style semi-automatic firearm. Accordingly, the phrase is repealed as a consequence of the repeal of the existing definition of military style semi-automatic firearm.

A new definition of restricted airgun is inserted. In essence, a restricted airgun is an airgun that appears to be a pistol, a restricted weapon (including those that are designed for use in airsoft or paintball sports), or a military style semi-automatic firearm. This definition is inserted as a consequence of the changes that are made in *clauses 5 to 9*.

Sections 16 to 19 concern the importation of firearms. The amendments made by *clauses 5 to 9* place restrictions on the importation of restricted airguns. This is done by amending sections 16, 17, 18, 18B, and 19 so as to add restricted airguns to the list of firearms and weapons to which the import controls in those sections apply.

Clause 10 amends section 62 which provides a right of appeal from certain decisions made under the Act. The amendment inserts a new ground of appeal for a person who must apply for certain specified permits or an endorsement as a result of a firearm being determined to be a military style semi-automatic firearm. The appeal is by way of originating application to a District Court Judge and, with limited exceptions, the Judge's decision is final and conclusive.

Clause 11 consequentially amends section 74. Certain elements of the new definition of military style semi-automatic firearm (as inserted by *clause 4*) may be defined, declared, or described by regulation. *Clause 11* expands the regulation-making powers in section 74 by inserting 4 new paragraphs that permit regulations to be made for this purpose.

Part 2

Consequential amendments

Amendments to Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984

Clause 12 consequentially amends the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984. It clarifies the categories of semi-automatic and full automatic firearms that are restricted weapons. This is necessary in order to ensure that the new definition of restricted airgun (as inserted by *clause 4*), which refers to restricted weapons, is correct.

Clause 12 also clarifies the exclusion for airguns that are used in airsoft or paintball sports in the definition of specified pre-charged pneumatic air rifles in clause 1A of the order.

Amendments to Arms Regulations 1992

Clause 13 provides that *clauses 14 to 18* amend the Arms Regulations 1992.

Clauses 14 to 18 amend the Arms Regulations 1992 by adding restricted airguns to the list of weapons set out in various places in regulations 10 to 13. Regulations 10 to 13 concern the importation of firearms, pistols, military style semi-automatic firearms, starting pistols, and restricted weapons. The amendments made by *clauses 14*

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to 18 are made as a consequence of the amendments made in *clauses 5 to 9*.

Hon Judith Collins

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Amendments to Arms Regulations 1992

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Arms (Military Style Semi-automatic Firearms and Import Controls) Amendment Act **2011**.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council. 5
- (2) However, if this Act has not earlier been brought into force, it comes into force on the day that is 1 year after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Arms Act 1983.

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Part 1

Amendments to principal Act

4 Interpretation

- (1) Section 2 is amended by repealing the definition of **military style semi-automatic firearm** and substituting the following definition: 15

“**military style semi-automatic firearm**—

- “(a) means a firearm that, after being loaded, fires and ejects a cartridge, and chambers another cartridge, with each pull of the trigger and has 1 or more of the following features: 20

- “(i) a folding or telescopic butt:
- “(ii) a magazine that is designed to hold rimfire cartridges of a calibre of 0.22 inches or less and that is capable of holding, or that, by its appearance, indicates that it is capable of holding, more than 5
15 cartridges:
- “(iii) a magazine (other than one that is designed to hold rimfire cartridges of a calibre of 0.22 inches or less) that is capable of holding more than 7
10 cartridges or that, by its appearance, indicates that it is capable of holding more than 10 cartridges:
- “(iv) bayonet lugs:
- “(v) a flash suppressor:
- “(vi) a pistol grip as defined in regulations made under 15
this Act; and
- “(b) means a firearm that is declared by regulations made under this Act to be a military style semi-automatic firearm for the purposes of this Act; and
- “(c) means a firearm that is of a type described in regulations 20
made under this Act as a military style semi-automatic firearm for the purposes of this Act; and
- “(d) means a firearm that has a feature that is defined or described in regulations made under this Act as a feature of a military style semi-automatic firearm for the purposes of this Act; but 25
- “(e) does not include a pistol”.
- (2) Section 2 is amended by inserting the following definition in its appropriate alphabetical order:
 - “**restricted airgun** means— 30
 - “(a) an airgun that has the appearance, with or without attachments, of being—
 - “(i) a pistol; or
 - “(ii) a restricted weapon; or
 - “(iii) a military style semi-automatic firearm: 35
 - “(b) an airgun that—
 - “(i) is designed for use in airsoft or paintball sports; and

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- “(ii) has the appearance, with or without attachments, of being a firearm that is capable of full automatic fire”.
- (3) The definition of **sporting configuration** in section 2 is repealed. 5
- 5 Offence to import firearms or parts of firearms without permit**
Section 16(1) is amended by inserting “restricted airgun,” after “starting pistol,” in each place where it appears.
- 6 Burden of proof** 10
Section 17 is amended by inserting “restricted airgun,” after “starting pistol,”.
- 7 Issue of permits to import firearms or parts of firearms**
(1) Section 18(1)(a) is amended by inserting “restricted airguns,” after “starting pistols,”. 15
(2) Section 18(1)(b) is amended by inserting “restricted airgun,” after “starting pistol,” in each place where it appears.
(3) Section 18(2) is amended by inserting “restricted airgun,” after “military style semi-automatic firearm,” in each place where it appears. 20
- 8 Samples**
Section 18B is amended by inserting “restricted airgun,” after “starting pistol,” in each place where it appears.
- 9 Seizure of illegally imported firearms or parts of firearms**
(1) Section 19 is amended by omitting “that any firearm or restricted weapon or part of a firearm or restricted weapon” and substituting “that a firearm, pistol, military style semi-automatic firearm, starting pistol, restricted airgun, or restricted weapon or part of a firearm, pistol, military style semi-automatic firearm, starting pistol, restricted airgun, or restricted weapon” 25
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(2) Section 19(a) and (b) are amended by omitting “that firearm or restricted weapon or part of a firearm or restricted weapon”

and substituting in each case “that firearm, pistol, military style semi-automatic firearm, starting pistol, restricted airgun, or restricted weapon or that part of a firearm, pistol, military style semi-automatic firearm, starting pistol, restricted airgun, or restricted weapon”.

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10 Right of appeal from official decisions

(1) Section 62 is amended by repealing subsection (1) and substituting the following subsections:

“(1) This subsection applies to—

“(a) a person who is affected by a determination by the Commissioner that a firearm is a military style semi-automatic firearm; and

“(b) a person whose application for 1 of the following has been refused:

“(i) a dealer’s licence: 15

“(ii) consent under section 7A:

“(iii) a permit for the purposes of **section 16(1)**:

“(iv) a firearms licence:

“(v) an endorsement under section 30, 30B, or 36:

“(vi) a permit under section 35 to procure a pistol, military style semi-automatic firearm, or restricted weapon; and

“(c) a person who has had 1 of the following issued subject to conditions imposed by a member of the Police or revoked: 25

“(i) a dealer’s licence:

“(ii) a permit for the purposes of **section 16(1)**:

“(iii) a firearms licence:

“(iv) an endorsement under section 30, 30B, or 36:

“(v) a permit under section 35 to procure a pistol, military style semi-automatic firearm, or restricted weapon; and

“(d) a person who has been served with a notice under section 41 or 59.

“(1A) A person to whom **subsection (1)** applies may, by way of originating application, appeal to a District Court Judge from the determination, refusal, imposition of conditions, revocation, or service.” 35

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- (2) Section 62(2) is amended by omitting “subsection (1)” and substituting “**subsection (1A)**”.

11 Regulations

Section 74(1) is amended by inserting the following paragraphs after paragraph (1a):

“(1b) defining a pistol grip for the purposes of the definition of military style semi-automatic firearm: 5

“(1c) declaring a firearm to be a military style semi-automatic firearm for the purposes of this Act:

“(1d) describing a type of firearm as a military style semi-automatic firearm for the purposes of this Act: 10

“(1e) defining or describing features of a firearm as features of a military style semi-automatic firearm for the purposes of this Act.”.

Part 2

Consequential amendments

Amendments to Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984

12 Amendments to Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984

- (1) This section amends the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984. 20

- (2) The definition of **specified pre-charged pneumatic air rifles** in clause 1A is amended by omitting “that are not for use in airsoft or paintball sports” and substituting “, other than airguns that are designed for use in airsoft or paintball sports and are in the same configuration as when they were manufactured”. 25

- (3) The Schedule is amended by revoking clause 4 and substituting the following clauses:

“4 Machine carbines or guns, submachine carbines or guns, and machine pistols of any kind, including those operated by gas or compressed air. 30

“4A Firearms and airguns that are capable of full automatic fire, excluding airguns that are designed for use in airsoft or paintball sports and are in the same configuration as when they were manufactured.” 35

Amendments to Arms Regulations 1992

- 13 Amendments to Arms Regulations 1992**
Sections 14 to 18 amend the Arms Regulations 1992.
- 14 Heading above regulation 10 amended**
The heading above regulation 10 is amended by inserting “re- 5
stricted airguns,” after “*starting pistols,*”.
- 15 Permits to import firearms, pistols, military style
semi-automatic firearms, starting pistols, or restricted
weapons**
- (1) The heading to regulation 10 is amended by inserting “re- 10
stricted airguns,” after “**starting pistols,**”.
- (2) Regulation 10 is amended by inserting “restricted airgun,”
after “starting pistol,” in each place where it appears.
- (3) Regulation 10(2)(g) is amended by inserting “restricted air- 15
gun,” after “military style semi-automatic firearm,”.
- 16 Place of application**
Regulation 11 is amended by inserting “restricted airgun,”
after “starting pistol,”.
- 17 Identification numbers**
Regulation 12(1) is amended by inserting “restricted airgun,” 20
after “military style semi-automatic firearm,” in each place
where it appears.
- 18 Notification of importation**
Regulation 13 is amended by inserting “restricted airgun,”
after “starting pistol,” in each place where it appears. 25