

Firearms Prohibition Orders Legislation Amendment Bill

Government Bill

Explanatory note

General policy statement

This is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The interrelated topic is firearms prohibition orders (**FPOs**). The single broad policy is to reduce firearms crime and its impacts on communities by enabling FPOs to be made and monitored against a wider group of persons whose behaviour and actions pose a high risk of violence.

This Bill aims to improve public safety and complements other initiatives being introduced to help tackle crime and address unsafe behaviours associated with gangs.

An FPO may be made by a sentencing court against an offender who has been convicted of a specified offence if the court considers that the FPO is necessary, reasonable, and appropriate to assist in managing the risk that the offender poses to public safety. An FPO disqualifies an offender from obtaining a firearms licence and prohibits the offender from accessing firearms and restricted weapons (for example, the offender must not associate with persons in possession of firearms, or reside at, or visit, locations at which firearms are stored).

The Bill strengthens the FPO legislation by making 3 key changes.

First, the Bill amends the Arms Act 1983 to extend the group of persons against whom an FPO may be made. Currently, an FPO is only able to be made against a person aged 18 years or over who has been convicted of a specified serious offence. The Bill provides that an FPO may also be made against a person aged 18 years or over who is a member or an associate of a gang or an organised criminal group who has been convicted of an offence under the Arms Act 1983, Crimes Act 1961, Misuse of Drugs Act 1975, or Psychoactive Substances Act 2013 that is punishable by a term of imprisonment of 1 year or more. This change enables courts to make FPOs against gang and organised criminal offenders who have been convicted of a wider range of

offences and who pose a risk to public safety. The Sentencing Act 2002 is amended to reflect this amendment.

Second, the Bill amends the Arms Act 1983 to establish a new review process that enables persons subject to an FPO to apply to the court to have their FPO varied, modified, or revoked. An FPO continues in force for 10 years and currently there is no right to challenge the FPO other than as part of an appeal against the sentence. The new review process enables a person who has been subject to an FPO for at least 5 years to apply to the court for an order varying or revoking their FPO. This affords a review mechanism for persons subject to the significant restrictions of an FPO who believe they no longer pose a risk to public safety.

Third, the Bill amends the Search and Surveillance Act 2012 to introduce a new “without cause” search power that enables the New Zealand Police (the **Police**) to conduct searches in respect of a person who the Police suspects, on reasonable grounds, is subject to an FPO. A search can be conducted at any time and may be exercised without the Police having reasonable grounds to suspect that any offence has been, is being, or will be committed by the person. As a person who is subject to an FPO has been identified as posing a high risk to public safety, they should be subject to the highest level of monitoring to ensure that they are not accessing firearms and are complying with their FPO. The new search power allows the Police to search the person, any thing in the person’s possession or control, any premises in which the person is present or that the person owns, occupies, or controls, and any vehicle in which the person is present and any other persons present in the vehicle believed to be in possession of arms, and to seize and detain any arms found.

These 3 changes will result in an improved FPO regime that supports FPOs to be better targeted to more high-risk offenders and provides the Police with more effective tools to monitor whether persons who pose a high risk to public safety are accessing firearms.

Departmental disclosure statement

The New Zealand Police is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=24>

Regulatory impact statement

A supplementary analysis report (**SAR**) has been prepared for this Bill instead of a regulatory impact statement. The New Zealand Police produced a SAR on 14 February 2024 to help inform decisions by the Government on the introduction of this Bill. A copy of the SAR can be found at <https://www.police.govt.nz/about-us/publications-statistics>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force 6 months after the date on which it receives the Royal assent.

Part 1

Amendments to Arms Act 1983

Clause 3 provides that *Part 1* amends the Arms Act 1983 (the **principal Act**).

Clause 4 amends section 2 of the principal Act to insert definitions of gang and organised criminal group. These terms are used in section 24A of the principal Act and *new section 39A(1A)* of the principal Act (inserted by *clause 7*).

Clause 5 amends section 24A of the principal Act to repeal the definitions of gang and organised criminal group as these terms will be defined in section 2 of the principal Act (*see clause 4*).

Clause 6 replaces section 39 of the principal Act, which is the interpretation provision for Part 7A of the principal Act relating to firearms prohibition orders (**FPOs**). *New section 39* of the principal Act inserts definitions for terms used in *new section 39A(1A)*, including associate of a gang or an organised criminal group and member of a gang or an organised criminal group (*see clause 7*).

Clause 7 amends section 39A of the principal Act to insert *new subsection (1A)*. Under *new section 39A(1A)*, a sentencing court may make an FPO against an offender who—

- is convicted of an offence under the principal 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
- was aged 18 or over and a member of a gang or an organised criminal group or an associate of a gang or an organised criminal group at the time of committing the offence.

Clause 8 inserts *new section 39FA* into the principal Act that provides for the variation, modification, and revocation of FPOs. After an FPO has been in force for 5 years, an application may be made by the person subject to the FPO for its variation, modification, or revocation. An application may not be made more frequently than every 2 years.

Clause 9 replaces section 39G of the principal Act. *New section 39G* provides that if an offender who is subject to an FPO appears before the court for sentencing in respect of subsequent offending in the circumstances described in section 39A(1) or *new section 39A(1A)* the court may, in sentencing the offender, vary or modify the FPO, impose any special conditions or additional special conditions, or replace the FPO with a new FPO.

Part 2

Amendments to other Acts

Subpart 1—Amendment to Sentencing Act 2002

Clause 10 provides that *subpart 1* amends the Sentencing Act 2002 (the **principal Act**).

Clause 11 replaces section 111A of the principal Act to reflect that an FPO may also be made by a sentencing court under *new section 39A(1A)* of the Arms Act 1983 (inserted by *clause 7*).

Subpart 2—Amendments to Search and Surveillance Act 2012

Clause 12 provides that *subpart 2* amends the Search and Surveillance Act 2012 (the **principal Act**).

Clause 13 amends the subpart 6 heading in Part 2 of the principal Act to extend its scope to cover *new section 18AA* (inserted by *clause 14*).

Clause 14 inserts *new section 18AA* into the principal Act to expand the search powers of the New Zealand Police. A constable who has reasonable grounds to suspect that a person is subject to an FPO made before or after this clause comes into force may, without a warrant, search the person, any thing in the person's possession or control, any premises in which the person is present or that the person owns, occupies or controls, and any vehicle in which the person is present as well as any other persons present in the vehicle believed on reasonable grounds to be in possession of arms, and seize and detain any arms found. A constable may exercise this power without having reasonable grounds to suspect that the person is breaching any conditions of their FPO or that any offence has been, is being, or will be committed by the person.

Hon Nicole McKee

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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—

- (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

member of a gang or an organised criminal group includes the following: 10

- (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;
- (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 15

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.

7 Section 39A amended (When FPO may be made) 20

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

- (ii) after 15 November 2022.

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

(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: 25
 - (i) this Act;
 - (ii) the Crimes Act 1961;
 - (iii) the Misuse of Drugs Act 1975;
 - (iv) the Psychoactive Substances Act 2013; and 30
- (b) committed the offence—
 - (i) when aged 18 years or over; and
 - (ii) after the commencement of this subsection; and
- (c) at the time of committing the offence was—
 - (i) a member of a gang or an organised criminal group; or 35
 - (ii) an associate of a gang or an organised criminal group.

8 New section 39FA inserted (Varying, modifying, or revoking FPOs)

After section 39F, insert:

39FA Varying, modifying, or revoking FPOs

- (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— 5
 - (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. 10
- (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 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. 15

9 Section 39G replaced (Modifying or replacing FPO on subsequent conviction) 20

Replace section 39G with:

39G Modifying or replacing FPO on subsequent conviction

- (1) This section applies if— 25
 - (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— 30
 - (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.

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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.

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Subpart 2—Amendments to Search and Surveillance Act 2012

12 Principal Act

This subpart amends the Search and Surveillance Act 2012.

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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

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- (1) A constable who has reasonable grounds to suspect that a person is subject to a firearms prohibition order made under Part 7A of the Arms Act 1983 before or after the commencement of this section may, without a warrant, do any or all of the following:
 - (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:
 - (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:

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- (e) enter a place or vehicle to carry out any activity under **paragraphs (a) to (d)**:
 - (f) seize and detain any arms found.
- (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. 5