

Firearms Prohibition Orders Legislation Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

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

About the bill as introduced

The Firearms Prohibition Orders Legislation Bill is an omnibus bill that aims to improve public safety. It would do so by preventing people whose behaviour and actions represent a high risk of violence, or reflect an underlying risk of violence, from accessing firearms or restricted weapons.

The bill would introduce firearms prohibition orders (FPOs). A court could make an FPO against a person who had been convicted of any of the following:

- specified offences under the Arms Act 1983 that disqualify a person from holding a firearms licence
- a serious violent offence as defined in section 86A of the Sentencing Act 2002
- an offence under section 98A of the Crimes Act 1961, which relates to participation in an organised criminal group
- specified offences under the Terrorism Suppression Act 2002.

The relevant offence would need to have been committed when the person was 18 years or older and after the FPO provisions commenced.

The court would need to be satisfied that, on the balance of probabilities, the FPO was reasonable, necessary, and appropriate to help manage the risk that the offender posed to public safety.

An offender who was subject to an FPO would be prohibited from accessing, possessing, or using firearms or related items, and be disqualified from holding a firearms licence. An FPO would also be subject to standard conditions and any special conditions that the court imposed. Under the standard conditions a person could not:

- be around firearms or related items unless they were securely stored
- reside at any premises where firearms or related items were stored
- join or visit shooting clubs, ranges, or galleries
- attend any activity that used firearms or related items
- visit places where firearms or related items were manufactured, sold, repaired, hired, lent, or otherwise supplied.

An FPO would continue for a period of 10 years unless sooner revoked by a court.

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 two amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Adding strangulation or suffocation as a qualifying offence

Clause 8 would insert new sections 39 to 39H (new Part 7A) into the Arms Act. New section 39A sets out when an FPO could be made and includes the list of qualifying offences.

We were advised that the offences that would qualify for an FPO in the bill as introduced are serious violent offences. They primarily have penalties of up to 7 years imprisonment, except for some offences under the Arms Act, which have penalties of up to 5 years imprisonment.

In 2016, the Law Commission noted that victims of family violence who had been strangled were seven times more likely to later be killed by an intimate partner than those who had experienced violence other than strangulation. In 2018, section 189A was inserted into the Crimes Act, creating the offence of strangulation or suffocation. The maximum penalty for the offence is 7 years imprisonment.

Several submitters expressed concern that the strangulation or suffocation offence is not included as a qualifying offence under the new section 39A. We consider that the serious nature of this offence and its maximum penalty are consistent with other serious violent offence(s) listed in section 86A of the Sentencing Act. We also acknowledge evidence of the link between family violence and firearms use, and the risk of further serious offending associated with strangulation. We therefore recommend

amending clause 8, proposed new section 39A(1)(a)(iii), to include section 189A of the Crimes Act as a qualifying offence.

Special conditions of an FPO

Clause 8, proposed new section 39E, would enable a court to impose additional special conditions on an FPO. The court would need to consider that the conditions were necessary to prevent the offender from accessing, possessing, or using any firearms or related items. We understand that this provision is intended to enable the sentencing judge to tailor FPO conditions to an individual's circumstances.

We consider that the discretion granted to a sentencing judge to impose special conditions is too broad. We recommend amending section 39E to require the court to consider the proposed special conditions "reasonably necessary" to prevent the offender from accessing, possessing, or using any firearms or related items. We believe this would provide guidance to the decision maker to ensure that special conditions were reasonable in the individual's circumstances. We also note that this standard is consistent with other legislation where special conditions can be imposed.

New Zealand National Party differing view

The National Party is disappointed that the Police Commissioner, the Police Minister, and the current Government have not sought or recommended that stronger warrantless search powers be included in the Firearms Prohibition Orders Legislation Bill, noting that the Police Association shares our view that these are critical to disrupting the dangerous people who will be subject of the FPOs.

Our view is that the only way to achieve the objective of this legislation is to provide the Police with wide ranging search powers and the ability to be able to conduct warrantless searches of a person, vehicle, or premise without the requirement to have cause to suspect the person is currently in breach of the order. It is disappointing that the Police have not sought or recommended stronger search powers, and that the Government has failed to take the initiative and provide stronger search powers in this bill. Without additional search powers, most of what is trying to be achieved by this bill is already available through the Arms Act 1983.

This legislation will not provide the powers for a Police officer to stop a gang member with an FPO in a public place and search either their person or their vehicle for firearms. The status quo search powers contained within this bill require a reasonableness test that would not be met in this situation. It begs the question as to why you would pass a bill that provides no new search powers for frontline Police officers to be able to take guns out of the hands of serious offenders.

The National Party contends that the existence of an FPO should be the test on which a Police officer can conduct a warrantless search, in order to establish the presence and confiscation of an illegal firearm.

Appendix

Committee process

The Firearms Prohibition Orders Legislation Bill was referred to the committee on 9 February 2022.

We called for submissions on the bill with a closing date of 29 March 2022. We received and considered 54 submissions from interested groups and individuals. We heard oral evidence from 12 submitters at hearings in Wellington and by videoconference.

We received advice on the bill from the New Zealand Police. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ginny Andersen (Chairperson)

Hon Paul Goldsmith

Dr Emily Henderson

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Willow-Jean Prime

Vanushi Walters

Arena Williams

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Chris Hipkins

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Firearms Prohibition Orders Legislation Act **2021**.

2 Commencement

This Act comes into force 3 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.
- 4 Section 2 amended (Interpretation)** 5
In section 2(1), insert in its appropriate alphabetical order:
firearms prohibition order or **FPO** means an order made against a person by a court under **section 39A**
- 5 Section 3 amended (Act to bind the Crown)**
(1) Replace section 3(6) with: 10
(6) Except with the leave of the Attorney-General, no prosecution for any of the following offences may be commenced or continued against any constable in respect of any act they commit at a time or during a period when they are acting as an undercover officer:
(a) an offence against **section 42A, 42B, 55D, 55E, 55F, or 55G**; or 15
(b) an offence of conspiring to commit an offence against **section 42A, 42B, 55D, 55E, 55F, or 55G**; or
(c) an offence of attempting to commit an offence against **section 42A, 42B, 55D, 55E, 55F, or 55G**.
(2) In section 3(7)(a), after “sections”, insert “**42A, 42B**,”. 20
- 6 Section 22H amended (Persons disqualified from holding firearms licence)**
After section 22H(b), insert:
(c) the person is subject to a firearms prohibition order.
- 7 Section 24A amended (Fit and proper person to possess firearm or airgun)**
After section 24A(1)(c), insert: 25
(ca) the person has, or has had at any time, a firearms prohibition order made against them:
- 8 New Part 7A inserted**
After section 38ZH, insert:

Part 7A

Firearms prohibition orders

39 Interpretation

For the purposes of this Part, **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.

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39A When FPO may be made

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

(a) has been convicted of—

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(i) an offence under section 16(4), 16A, 44A, 50A, 50D, 51A, 53A, 54, 54A, 55, 55A, 55D, 55E, or 55F; or

(ii) a serious violent offence as defined in section 86A of the Sentencing Act 2002; or

(iii) an offence under section 98A or 189A of the Crimes Act 1961; or

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(iv) an offence under any of sections 6A to 10 or sections 12 to 13E of the Terrorism Suppression Act 2002; and

(b) committed the offence—

(i) when aged 18 years or over; and

(ii) after the commencement of this section.

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(2) The court may make an FPO against the offender if the court is satisfied, on the balance of probabilities, that the imposition of an FPO is necessary, reasonable, and appropriate to assist in managing the risk that the offender poses to public safety.

39B Effect of FPO

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(1) An FPO made against an offender prohibits the offender from accessing, possessing, or using any firearm or related item.

(2) An FPO is subject to—

(a) the standard conditions set out in **section 39C**, as may be varied or modified under **section 39D** by the court making the FPO; and

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(b) any special conditions imposed under **section 39E** by the court making the FPO.

39C Standard conditions of FPO

(1) The standard conditions of an FPO are that the offender against whom the order is made must not—

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- (a) associate with or, in any place (including a vehicle), otherwise be in the presence of a person who has with them any firearms or related items that are not in secure storage: 5
- (b) reside at any premises in which any firearms or related items are stored:
- (c) join, or remain a member of, any shooting club (including an airsoft shooting club) or firearms club of any kind, visit the premises of such clubs, or attend the events of such clubs: 5
- (d) attend any shooting range or shooting gallery:
- (e) attend an activity of any kind that involves the use of any firearms or related items: 10
- (f) visit any premises or place at which firearms or related items are manufactured, sold, repaired, hired, lent, or otherwise supplied.
- (2) For the purposes of **subsection (1)(b)**, a person **resides** at any particular premises if they reside at the premises for at least 2 days (whether consecutive or not) in any period of 12 months. 15
- 39D Varying or modifying standard conditions of FPO**
- (1) When making an FPO against an offender, the court may vary or modify the standard conditions of the FPO set out in **section 39C** having regard to—
- (a) the nature and seriousness of the offence in respect of which the offender has been convicted; and 20
- (b) the circumstances of the offending; and
- (c) the offender’s personal circumstances (for example, the effect the standard conditions would have on the offender’s employment opportunities); and
- (d) any other matters that the court considers relevant. 25
- (2) The court may not vary or modify the standard condition in **section 39C(1)(b)** unless it is satisfied that there are sufficient safeguards in place to ensure that the offender is not reasonably likely to obtain access to the firearms or related items stored on the premises.
- (3) For the purposes of **subsection (2)**, the court may take into account any proposal agreed between the responsible person and a member of the Police for the Commissioner to prescribe conditions on the responsible person’s firearms licence. 30
- (4) In **subsection (3)**, **responsible person** means the firearms licence holder responsible for the secure storage of the firearms and related items in the premises referred to in **section 39C(1)(b)**. 35

39E Special conditions of FPO

When making an FPO against an offender, the court may impose any 1 or more conditions, additional to the standard conditions, that the court considers are

reasonably necessary to prevent the offender from accessing, possessing, or using any firearms or related items.

39F Commencement and duration of FPO

- (1) If a court makes an FPO when imposing a non-custodial sentence on the offender, the FPO commences when it is made. 5
- (2) If a court makes an FPO when imposing a custodial sentence on the offender, the FPO commences when the offender is released from custody (not being a temporary release under section 62 of the Corrections Act 2004).
- (3) An FPO continues in force for a period of 10 years unless sooner revoked by a court. 10

39G Modifying or replacing FPO on subsequent conviction

If a person who is subject to an FPO is subsequently convicted of an offence of the kind specified in **section 39A(1)(a)**, the court may, when sentencing the person in respect of that offence,—

- (a) vary or modify any of the existing conditions of the FPO; or 15
- (b) impose any special conditions, or additional special conditions; or
- (c) revoke the FPO and make a new FPO.

39H Appeal against decision to make or not make FPO is appeal against sentence

An FPO is a sentence, and subpart 4 of Part 6 of the Criminal Procedure Act 2011 (appeals against sentence) applies to any decision to make or not make an FPO. 20

9 Section 41A renumbered and repositioned (Marking of firearms)

Renumber section 41A as **section 59AAA** and reposition it immediately after the Part 9 heading. 25

10 New sections 42A and 42B inserted

After section 42, insert:

42A Offence to breach firearms prohibition order

- (1) A person commits an offence if the person breaches a firearms prohibition order by— 30
 - (a) accessing, possessing, or using any firearm, pistol, pistol carbine conversion kit, restricted weapon, airgun, imitation firearm, magazine, part of a firearm or restricted weapon, prohibited item, or ammunition; or
 - (b) failing, without reasonable excuse, to comply with any condition of the order. 35
- (2) A person who is convicted of an offence under **subsection (1)(a)** is liable,—

<ul style="list-style-type: none"> (a) if the person accesses, possesses, or uses a prohibited firearm, to a term of imprisonment not exceeding 7 years: (b) in any other case, to a term of imprisonment not exceeding 5 years. 	5
<p>(3) A person who is convicted of an offence under subsection (1)(b) is liable to a term of imprisonment not exceeding 2 years.</p>	5
<p>42B Offence to supply firearms, etc, to person subject to firearms prohibition order</p>	
<p>(1) A person must not supply, or give possession of, a<u>any</u> firearm, pistol, pistol carbine conversion kit, restricted weapon, airgun, imitation firearm, magazine, part of a firearm or restricted weapon, prohibited item, or ammunition to another person knowing that the other person is subject to a firearms prohibition order.</p>	10
<p>(2) A person who contravenes subsection (1) commits an offence and is liable on conviction,—</p> <ul style="list-style-type: none"> (a) if the person supplies or gives possession of a prohibited firearm, to a term of imprisonment not exceeding 7 years: (b) in any other case, to a term of imprisonment not exceeding 5 years. 	15
<p>11 New cross-heading above section 59AAA inserted</p>	
<p>Before section 59AAA (as renumbered and repositioned by section 9 of this Act), insert:</p>	20
<p><i>Marking of firearms</i></p>	
<p>12 Section 69 amended (Forfeitures)</p>	
<p>(1) After section 69(1), insert:</p>	
<p>(1A) If a person is convicted of an offence under section 42A for breaching a firearms prohibition order and is in possession of any firearms or related items, the convicting court must, as part of the sentencing, order that the firearms or related items be forfeited to the Crown.</p>	25
<p>(2) In section 69(2), after “subsection (1)”, insert “or (1A)”.</p>	
<p>(3) In section 69(3), replace “Any specified item ordered under subsection (1)” with “Anything ordered under subsection (1) or (1A)”.</p>	30
<p>(4) Replace section 69(4) with:</p>	
<p>(4) In this section,—</p> <p>firearm or related item has the meaning given in section 39</p> <p>specified item means any firearm, airgun, pistol, restricted weapon, imitation firearm, prohibited item, pistol carbine conversion kit, ammunition, or explosive.</p>	35

Part 2 Amendments to other Acts

Subpart 1—Amendment to Evidence Act 2006

13 Principal Act

This subpart amends the Evidence Act 2006.

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14 Section 108 amended (Undercover Police officers)

After section 108(1)(c), insert:

(ca) for an offence against **section 42A or 42B** of the Arms Act 1983; or

Subpart 2—Amendment to Privacy Act 2020

15 Principal Act

This subpart amends the Privacy Act 2020.

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16 Schedule 4 amended

In Schedule 4, under the heading “*Police records*”, after the item relating to firearms licences, insert:

Firearms prohibition order	Details of firearms prohibition orders made under the Arms Act 1983	Department of Corrections (access is limited to obtaining information about any offender who is subject to a firearms prohibition order while also subject to— <ul style="list-style-type: none"> (a) a full-time custodial sentence (including while released on parole or subject to conditions imposed under section 93 of the Sentencing Act 2002); or (b) a sentence of supervision, intensive supervision, community work, or community detention; or (c) a non-association order; or (d) a sentence of home detention (including while subject to post-detention conditions); or (e) an extended supervision order; or
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(f) a public protection order, a prison detention order, or a protective supervision order under the Public Safety (Public Protection Orders) Act 2014

Access is for the purpose of managing the offender's sentence, any post-sentence conditions, any post-sentence supervision, or any order under the Public Safety (Public Protection Orders) Act 2014 in a manner consistent with the conditions of any firearms prohibition order)

Subpart 3—Amendments to Search and Surveillance Act 2012

17 **Principal Act**

This subpart amends the Search and Surveillance Act 2012.

18 **Section 3 amended (Interpretation)**

In section 3(1), replace the definition of **arms** with:

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arms means any firearm, airgun, pistol, pistol carbine conversion kit, restricted weapon, prohibited magazine, non-prohibited magazine, part, imitation firearm, or explosive (as those terms are defined in the Arms Act 1983), or any ammunition

19 **Section 45 amended (Restrictions on some trespass surveillance and use of interception device)**

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In section 45(1)(b) and (2)(b), after “16A,”, insert “**42A, 42B,**”.

Subpart 4—Amendment to Sentencing Act 2002

20 **Principal Act**

This subpart amends the Sentencing Act 2002.

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21 **New section 111A and cross-heading inserted**

After section 111, insert:

*Firearms prohibition orders***111A Firearms prohibition order**

- (1) If an offender is convicted of a specified offence committed by the offender when aged 18 years or older, the court may make a firearms prohibition order against the offender under **Part 7A** of the Arms Act 1983. 5
- (2) In this section, specified offence means any of the following offences committed after the commencement of **Part 7A** of the Arms Act 1983:
- (a) a serious violent offence as defined in section 86A:
 - (b) an offence under section 16(4), 16A, 44A, 50A, 50D, 51A, 53A, 54, 54A, 55, 55A, 55D, 55E, or 55F of the Arms Act 1983: 10
 - (c) an offence under section 98A or 189A of the Crimes Act 1961:
 - (d) an offence under any of sections 6A to 10 or sections 12 to 13E of the Terrorism Suppression Act 2002.

Legislative history

15 December 2021
9 February 2022

Introduction (Bill 106–1)
First reading and referral to Justice Committee