

# **Subordinate Legislation (Confirmation and Validation) Bill (No 3)**

Government Bill

As reported from the Regulations Review Committee

## **Commentary**

### **Recommendation**

The Regulations Review Committee has examined the Subordinate Legislation (Confirmation and Validation) Bill (No 3) and recommends that it be passed with the amendments shown.

### **Background**

The purpose of the bill is to confirm and validate subordinate legislation made under various Acts. Clauses 6 to 13 confirm and validate certain subordinate legislation that will lapse unless confirmed or validated by an Act of Parliament. The subordinate legislation referred to in clauses 6 to 11 is confirmed; the subordinate legislation referred to in clauses 12 and 13 is both validated and confirmed. Clause 5 repeals the Subordinate Legislation (Confirmation and Validation) Act 2003.

New clauses 12A and 14 to 17 set out our proposed amendments to the bill. These amendments are discussed below.

### **Validation and confirmation is warranted**

We asked the Government departments<sup>1</sup> responsible for administering the subordinate legislation to be confirmed and validated by the

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<sup>1</sup> Ministry of Agriculture and Forestry, Department of Internal Affairs, Ministry of Social Development, New Zealand Food Safety Authority, New Zealand Customs Service, Veterans' Affairs New Zealand.

bill (as introduced) to explain why confirmation or validation is warranted. We were satisfied by their responses.

### **Inclusion of additional order to be confirmed**

The Ministry of Agriculture and Forestry wrote to us requesting that we adopt amendments to the bill that would confirm the Deer Industry New Zealand Regulations 2004 (SR 2004/323). The regulations were not included in the bill as they were made only 2 days before the bill's introduction.

### **Recommendation**

We were satisfied with the ministry's explanation as to why the regulations should be confirmed, and we recommend that new clause 12A be inserted accordingly.

### **Amendments to validate ALAC levies**

The Minister in charge of the bill, Hon Dr Michael Cullen, wrote to us inviting us to adopt amendments to the bill that would validate payments made under levy notices issued under the Alcohol Advisory Council Act 1976. The payments were made under notices issued between 1983 and 2004.

We were advised that validation is necessary because of particular errors in these notices, including the following:

- for the notices issued in the years 1983 to 1987 and 1989, the unauthorised setting of levies by litre of alcohol, rather than by "proof litre", the correct unit at the time
- the unauthorised setting of differential rates for spirits depending on their alcoholic content, with the further unauthorised rating on the basis of litre of beverage, instead of by litre of alcohol, in the case of spirits with a lower alcoholic content
- for the notices issued in the years 1989 to 2004, a questionable indication that goods and services tax was payable on the levies
- for the notices issued in 2003 and 2004, a failure to follow the statutory formula for calculating the levies.

The proposed amendments are set out in new subpart 2 of Part 2 of the bill. New clause 15 states that payments made in accordance

with the levy notices are to be taken to comply with relevant enactments. New clause 16 sets the rate at which the levy is payable for the remainder of the 2004/05 year from 30 June 2004. New clause 17 lists the affected levy notices.

### **Comment sought from industry**

We wrote to key industry groups seeking their comments on the proposed amendments. There was no opposition to them, but two submitters raised other issues that were outside the scope of a confirmation and validation bill, which is limited to confirming or validating subordinate legislation. We cannot recommend any amendment that would require, in effect, a textual amendment to another Act.

The Distilled Spirits Association considered that the Alcohol Advisory Council Act 1976 should be overhauled, particularly the overall levy regime. The association:

- proposed a new model of product classification, in bands based on alcohol content
- suggested a requirement that information about how levy rates are determined be provided to interested parties
- suggested requirements for officials to consult with, and provide advance notice of levies to, the industry.

We invite the Minister to consider these matters at an appropriate time.

We note that ALAC is concerned that GST is not included in the levy payable for the balance of the 2004/05 year (new clause 16), and that its overall revenue may be reduced as a result.

### **Recommendation**

We are satisfied that it is appropriate to validate the defective notices. We recommend that proposed new subpart 2 of Part 2 (new clauses 14 to 17) be inserted accordingly.

**Appendix****Committee process**

The Subordinate Legislation (Confirmation and Validation) Bill (No 3) was referred to the committee on 7 October 2004. The closing date for submissions was 12 November 2004.

**Committee membership**

Richard Worth (Chairperson)

Dianne Yates (Deputy Chairperson)

Lianne Dalziel

Stephen Franks

Dail Jones

David Parker

H V Ross Robertson

Hon Clem Simich

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (unanimous)

**Subject to this Act,**

Text struck out unanimously

#### New (unanimous)

**Subject to this Act,**

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act.

Words inserted unanimously

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*Hon Dr Michael Cullen*

# **Subordinate Legislation (Confirmation and Validation) Bill (No 3)**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Subordinate Legislation (Confirmation and Validation) Act (No 3) **2004**.
- 2 Commencement**

**Struck out (unanimous)**

This Act comes into force on the day after the date on which it receives the Royal assent. 5

**New (unanimous)**

- (1) **Section 3(3) and subpart 2 of Part 2** come into force on the first day of the month that immediately follows the month in which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent. 5

**Part 1**  
**General and technical provisions**

**3 Purpose of this Act**

- (1) The purpose of *(this Act)* **subpart 1 of Part 2** is to confirm and validate certain subordinate legislation made under Acts providing that it lapses after a time unless confirmed or validated by Act of Parliament. 10
- (2) The validations effected by **sections 12 and 13** are for the purpose only of preventing the expiry of the enactments validated; and do not— 15
  - (a) express an intention to give legislative force to the provisions of those enactments; or
  - (b) apply to any reason for invalidating any of those enactments; or
  - (c) override any presumption that would otherwise apply to any of those enactments. 20

**New (unanimous)**

- (3) The purpose of **subpart 2 of Part 2** is to validate payments made under levy notices issued under the Alcohol Advisory Council Act 1976.

- 4 Act binds the Crown** 25  
This Act binds the Crown.

- 5 Repeal**  
The Subordinate Legislation (Confirmation and Validation) Act 2003 (2003 No 120) is repealed.

## Part 2 Confirmations and validations

### New (unanimous)

#### Subpart 1—Formal confirmations and validations to prevent lapse

- |           |  |          |
|-----------|--|----------|
| <b>6</b>  | <b>Animal Products Act 1999</b><br>The Animal Products (Fees, Charges, and Levies) Amendment Regulations (No 2) 2003 (SR 2003/338) are confirmed.  | 5        |
| <b>7</b>  | <b>Animal Welfare Act 1999</b><br>The Animal Welfare (Codes of Welfare Extension) Order 2003 (SR 2003/372) is confirmed.   | 10       |
| <b>8</b>  | <b>Biosecurity Act 1993</b><br>The following orders are confirmed:<br>(a) Biosecurity (American Foulbrood – Apiary and Beekeeper Levy) Order 2003 (SR 2003/283):<br>(b) Biosecurity (Bovine Tuberculosis—Otago Land Levy) Amendment Order 2004 (SR 2004/183):<br>(c) Biosecurity (Bovine Tuberculosis—Cattle Levy) Amendment Order 2004 (SR 2004/266). | 15       |
| <b>9</b>  | <b>Commodity Levies Act 1990</b><br>The following orders are confirmed:<br>(a) Commodity Levies (Tamarillos) Order 2003 (SR 2003/319):<br>(b) Commodity Levies (Meat) Order 2004 (SR 2004/91):<br>(c) Commodity Levies (Wool) Order 2004 (SR 2004/92):<br>(d) Commodity Levies (Winegrapes) Order 2004 (SR 2004/249).                                  | 20<br>25 |
| <b>10</b> | <b>Customs and Excise Act 1996</b><br>The following orders are confirmed:<br>(a) Excise and Excise-Equivalent Duties (Tobacco Products Indexation) Amendment Order 2003 (SR 2003/320):   | 30       |



(b) Excise and Excise-Equivalent Duties (Alcoholic Beverages Indexation) Amendment Order 2004 (SR 2004/118).

**11 Gambling Act 2003**  
The Gambling (Problem Gambling Levy) Regulations 2004 (SR 2004/275) are confirmed. 5

**12 New Zealand Superannuation Act 2001 and Social Security Act 1964**  
The Social Security (Rates of Benefits and Allowances) Order 2004 (SR 2004/52) is validated and confirmed. 10

**New (unanimous)**

**12A Primary Products Marketing Act 1953**  
The Deer Industry New Zealand Regulations 2004 (SR 2004/323) are confirmed.

**13 War Pensions Act 1954**  
The War Pensions (Rates of Pensions, Lump Sum Payments, and Allowances) Order 2004 (SR 2004/58) is validated and confirmed. 15

**New (unanimous)**

Subpart 2—Validation of payments under levy notices under Alcohol Advisory Council Act 1976

**14 Interpretation** 20  
In this subpart, unless the context otherwise requires,—  
**Act** means the Alcohol Advisory Council Act 1976  
**levy notice** means any notice specified in **section 17**  
**liable person** means a person who, at any time during the application or purported application of a levy notice, was, or could have become, liable to pay a levy under the Act. 25

**New (unanimous)**

**15 Payments made in accordance with levy notices to be taken to comply with enactments**

- (1) For the purposes of this section,—
- (a) a reference to spirits in each of the levy notices specified in **paragraphs (f) to (l) of section 17** must be taken to be a reference to spirits containing 23% or more alcohol by volume: 5
  - (b) a reference to spirits of less than 23% alcohol by volume in each of the levy notices specified in **paragraphs (m) to (s) of section 17** must be taken to include spirits containing 23% alcohol by volume. 10
- (2) If, at any time, during the application or purported application of a levy notice, a liable person paid or caused to be paid an amount purporting to have been payable under the levy notice, the amount is to be taken,— 15
- (a) so far as it purported to have been paid as a levy, to have been payable under the Act; and
  - (b) so far as it purported to have been paid as goods and services tax, to have been payable under the Goods and Services Tax Act 1985. 20

**16 Rates at which levy payable for balance of 2004/05 year**

- (1) On and after the commencement of this section and until the close of 30 June 2005, the rate at which the levy imposed by section 28 of the Act is payable on each basic unit of liquor of each of the classes of liquor referred to in section 26 of the Act must be taken to be as follows: 25
- (a) beer—1.17 cents per litre:
  - (b) spirits containing more than 23% alcohol by volume—38.51 cents per litre of alcohol:
  - (c) spirits containing not more than 23% alcohol by volume—7.06 cents per litre: 30
  - (d) fortified wine—7.06 cents per litre:
  - (e) unfortified wine—4.32 cents per litre.
- (2) This section applies despite section 27 of the Act or the notice specified in **section 17(u)**. 35
- (3) The Alcohol Advisory Council Levy Notice 2004 (*Gazette*, 2004, page 1841) is revoked.

**New (unanimous)**

**17 Levy notices**

The levy notices are—

- (a) Alcoholic Liquor Advisory Council Levy Notice 1983  
(*Gazette*, 1983, page 933):
- (b) Alcoholic Liquor Advisory Council Levy Notice 1984 5  
(*Gazette*, 1984, page 575):
- (c) Alcoholic Liquor Advisory Council Levy Notice 1985  
(*Gazette*, 1985, page 1409):
- (d) Alcoholic Liquor Advisory Council Levy Notice 1986 10  
(*Gazette*, 1986, page 1306):
- (e) Alcoholic Liquor Advisory Council Levy Notice 1987  
(*Gazette*, 1987, page 1331):
- (f) Alcoholic Liquor Advisory Council Levy Notice 1989  
(*Gazette*, 1989, page 1211):
- (g) Alcoholic Liquor Advisory Council Levy Notice 1990 15  
(*Gazette*, 1990, page 1120):
- (h) Alcoholic Liquor Advisory Council Levy Notice 1991  
(*Gazette*, 1991, page 1039):
- (i) Alcoholic Liquor Advisory Council Levy Notice 1992 20  
(*Gazette*, 1992, page 961):
- (j) Alcoholic Liquor Advisory Council Levy Notice 1993  
(*Gazette*, 1993, page 1851):
- (k) Alcoholic Liquor Advisory Council Levy Notice 1994  
(*Gazette*, 1994, page 2288):
- (l) Alcoholic Liquor Advisory Council Levy Notice 1995 25  
(*Gazette*, 1995, page 1731):
- (m) Alcoholic Liquor Advisory Council Levy Notice 1996  
(*Gazette*, 1996, page 1636):
- (n) Alcoholic Liquor Advisory Council Levy Notice 1997 30  
(*Gazette*, 1997, page 1507):
- (o) Alcoholic Liquor Advisory Council Levy Notice 1998  
(*Gazette*, 1998, page 1943):
- (p) Alcoholic Liquor Advisory Council Levy Notice 1999  
(*Gazette*, 1999, page 1683):
- (q) Alcoholic Liquor Advisory Council Levy Notice 2000 35  
(*Gazette*, 2000, page 1438):
- (r) Alcohol Advisory Council Levy Notice 2001  
(*Gazette*, 2001, page 1555):

**New (unanimous)**

- |     |                                      |      |   |
|-----|--------------------------------------|------|---|
| (s) | Alcohol Advisory Council Levy Notice | 2002 |   |
|     | (Gazette, 2002, page 1905):          |      |   |
| (t) | Alcohol Advisory Council Levy Notice | 2003 |   |
|     | (Gazette, 2003, page 1889):          |      |   |
| (u) | Alcohol Advisory Council Levy Notice | 2004 | 5 |
|     | (Gazette, 2004, page 1841).          |      |   |

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**Legislative history**

22 September 2004

Introduction (Bill 204-1)

7 October 2004

First reading and referral to Regulations Review  
Committee

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