

Regulatory Impact Statement

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

Agency disclosure statement

The two attached Regulatory Impact Statements were prepared by New Zealand Police.

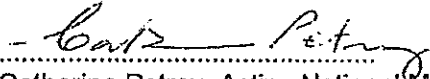
The first dated 11 August 2010 provided an analysis of options to amend the Arms Act 1983 to:

- (1) clarify the definition of "military style semi-automatic firearm" (MSSA) in order to avoid confusion over its interpretation and difficulties with determining whether firearms are MSSAs or in sporting configuration. This has become necessary because of a 2010 High Court decision *Lincoln v Police* that found against the way Police were interpreting the definition of MSSA following receipt of Crown Law advice and a review by Police in 2008; and
- (2) introduce import controls on airguns that have the appearance of real pistols, MSSAs or restricted weapons to reduce the likelihood of their being used for criminal purposes.

It also analysed the proposal to amend the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984 to reclassify fully automatic airguns used for airsoft and paintball sports as airguns (instead of restricted weapons) so they are classified according to their lower level of risk. They would still be subject to the proposed import controls on airguns that look like real pistols, MSSAs or restricted weapons.

The section in this RIS on the definition of MSSA has been withheld under section 9(2)(g)(1) of the Official Information Act 1982.

The second RIS signed on 16 November 2010 only discussed the issue of the definition of MSSA following further work on options to ensure clarity over what firearms are to be categorised as MSSAs and consequentially made subject to greater controls as intended by the Arms Amendment Act 1992.


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Catherine Petrey, Acting National Manager Policy
New Zealand Police

12/04/2011

Regulatory Impact Statement

Arms (Military Style Semi-Automatic Firearms and Import Controls) Amendment Bill – Policy Approval for definition of MSSA

Agency disclosure statement

This Regulatory Impact Statement has been prepared by New Zealand Police.

It provides an analysis of options to amend the Arms Act 1983 to clarify the definition of "military style semi-automatic firearm" (MSSA) in order to avoid confusion over its interpretation and difficulties with determining whether firearms are MSSAs or in sporting configuration. This has become necessary because of a 2010 High Court decision *Lincoln v Police* that found against the way Police were interpreting the definition of MSSA following a Crown Law opinion in 2008.

The preferred option will involve an amendment to the Act that will also allow firearms to be declared MSSAs (and particular features to be features of MSSAs) by regulations made under the Act. The new definition will clearly define a MSSA according to how the Act was being interpreted by Police prior to the Crown Law decision. It will avoid any firearms classified as MSSAs prior to 2008 being reclassified as in sporting configuration which is potentially the legal situation post the *Lincoln* decision.

The Bill will impose no material increase in compliance costs for business as this will represent a return to the status quo that existed from 1992 until the 2008 Crown Law opinion in respect of firearms that Police will be classifying as MSSAs.

The amendment will mean a small number of firearms reclassified as MSSAs after the Crown Law decision (which required their owners to apply for an E endorsement on their firearms licence) returning to the status of category A firearms (i.e. those in sporting configuration) if their owners choose this as an option.

The proposed amendments are unlikely to override fundamental common law principles.



Catherine Petrey, Acting National Manager Policy
New Zealand Police

16/11/2010

Status quo and problem definition

1. Under the Arms Act 1983 a semi-automatic firearm in "sporting configuration" is not a military style semi-automatic firearm (MSSA). People with a firearms licence (which allows the holder to have and use firearms in sporting configuration (sporting type shotguns and rifles) must obtain from Police an additional endorsement if they wish to possess a MSSA. The Act defines sporting configuration as being without certain features, including "a military pattern free-standing pistol grip". This particular feature has presented some problems in respect of its interpretation. As a result of a High Court decision *Lincoln v Police* in 2010, there has been some uncertainty as to whether some semi-automatic firearms are MSSAs or not, particularly because of how "a military pattern free-standing pistol grip" can be interpreted.
2. The practical issue is that some semi-automatic firearms that were, prior to the 2010 High Court decision, considered to be MSSAs can no longer be classified as such. Recently a number of licensed dealers have enquired about particular examples of free-standing pistol grips, which they consider are not in "military pattern". The situation remains unresolved.
3. Of the approximately 8,000 MSSAs in the possession of those with firearms licences in New Zealand (out of a total of just over 227,000 firearms licence holders), Police estimates that, as a result of *Lincoln*, over 2,000 will need to be reviewed to determine whether they are in sporting configuration or whether they are MSSAs.
4. There is also a need to review the limit on the magazine capacity for a semi-automatic firearm (currently 7 rounds) before it is classified as a MSSA, to take into account common manufacturing standards that make compliance with the current limit difficult. A maximum capacity of 7 rounds does not relate to international manufacturing standards¹, whereas magazines holding 10 rounds (and 5 rounds) are commonly produced. A strict interpretation of the law would criminalise a large number of licensed firearms owners who have used 10 round magazines that have been internally modified so that they only hold 7 rounds.

Objective

5. The objective of amending the Arms Act is to bring clarity to the definition of MSSAs so that Police can correctly identify firearms that should be categorised as MSSAs and that will consequentially be subject to greater controls (as was the intention of the Arms Amendment Act 1992). There is also a need to clarify the magazine capacity that qualifies a firearm as a MSSA.

Regulatory impact analysis

Amendments to the Arms Act 1983 to define firearms that qualify as MSSAs

6. Four options to remove the uncertainty around the definition in the Arms Act are set out below.

¹ A seven round capability was selected for the 1992 Amendment Act because at that time there were particular firearms with a 7 round built-in magazine.

7. One option is to amend the Arms Act so that all semi-automatic firearms are treated in the same way as MSSAs. This would represent a significant policy change requiring any person with a semi-automatic firearm to obtain the appropriate endorsement (and corresponding security). It would also make it much more difficult to import a semi-automatic firearm (as a special reason would be required). This option would make the definition of MSSA very clear but would also extend the coverage of what was covered by the definition to a greater number of firearm users than is necessary.
8. A second option is to create a regime where MSSAs are limited to particular firearms or classes of firearms listed in regulations as MSSAs. An oversight body in Police would need to be established, with the role of recommending which particular firearms would be placed in this category. There would need to be a clear policy rationale underlying which types of firearms should be subject to greater controls in terms of possession and import. This option could be quite resource intensive to administer and require frequent changes to regulations. It would also be difficult to administer because of the way firearms can be modified.
9. A third option is to remove the feature of "a military pattern free-standing pistol grip" from the list of features in the Act that a firearm must not have if it is to be in sporting configuration. This would make the interpretation simpler but would mean that some types of firearms that are currently viewed as MSSAs (there are currently approximately 7,800 MSSAs in the possession of licensed firearm holders) being reclassified as A category firearms.
10. The fourth and preferred option is to take a different approach to the definition of a MSSA so that it is worded in the 'positive' as a semi-automatic firearm that has one or more of specified features, rather than in the 'negative' with a list of features that a firearm in sporting configuration (that is not a MSSA) must be without. This would also involve making provision for definitions of certain features to be included in regulations. This would apply in respect of the feature of a pistol grip. The definition would also allow for particular firearms and types of firearms to be declared as MSSAs in regulations.
11. This approach ensures that Police and firearm owners can obtain clarity as to which firearms are MSSAs through the inclusion of any type of firearm in regulations that Police considers should be appropriately classified as a MSSA but over which there may be some potential difference of interpretation by Police and firearm owners.
12. The inclusion of definitions of certain features in regulations also provides flexibility for these definitions to be readily adjusted if firearms manufacture changes in a way that attempts to get round what the definition intends to capture.
13. The options for the actual wording of the amendment are to redefine a MSSA to accord with either:
 - A. a firearm with a free-standing pistol grip that is obviously not substantially connected to the stock (in accordance with the interpretation by Police prior to 2008); or
 - B. a firearm with a pistol grip that either appears or can function as freestanding (the approach taken from 2008 in accordance with advice from Crown Law); or

- C. a firearm with a pistol grip that is totally independent and removable from the stock (in accordance with the High Court's decision in *Lincoln v Police* in March 2010).
14. It is proposed that the new definition of MSSA be in accordance with the interpretation by Police prior to the Crown Law opinion. It will result in a small number of firearms with a certain type of stock that were reclassified as MSSAs after the Crown Law opinion (requiring their owner to apply for an E endorsement on their firearms licence) reverting back to firearms in sporting configuration. More importantly, this definition will avoid some current MSSAs (both before and after the Crown Law opinion) being potentially reclassified as firearms in sporting configuration because of *Lincoln*. It will take the situation back to a classification regime administered between 1992 and 2008 that was generally understood and accepted by the firearms community but with added clarity in the legislation.

Magazine size

15. In relation to setting the size of the magazine that keeps a firearm within sporting configuration, three options were considered.
16. One option is to retain the current limit of 7 rounds and modify the definition so that this refers to actual capability rather than also include what a magazine appears to be able to hold. This would legitimise magazines with 10 round capacity and upwards that were modified to only hold a maximum of 7 rounds. The disadvantage with this is that limiting magazines by actual capacity would be very difficult to enforce because Police would not be able to make judgments on appearance and internal modifications could be made and unmade.
17. A second option is to increase the limit to no more than 10 rounds (instead of the current 7 rounds) with the current exception for up to .22 calibre ammunition. The limit would refer to both capability and appearance. If a magazine is internally reduced to fall within the maximum number of cartridges allowed, the magazine must also be externally modified to reflect the change and not be capable of being increased again.
18. A third and preferred option is to reduce the maximum magazine size (by appearance and acceptability) to 5 rounds. This has the advantage of being clear and straightforward. It would face some opposition from firearm user groups, to the extent that current owners of semi-automatic sporting rifles use 7 round magazines rather than 5 round magazines. It does not give the impression that the laws controlling MSSAs are being relaxed which the second option may be seen as doing.
19. For magazines holding up to .22 inch rimfire cartridges, the current limit of 15 rounds would continue to apply as there is no identified need to change the allowable magazine capacity for small calibre ammunition. The limit also would not affect pistols.

Consultation

20. The NZ Customs Service, Ministry of Justice, Treasury, Ministry of Foreign Affairs and Trade, and State Services Commission were consulted. The Department of the Prime Minister and Cabinet was informed.

Conclusion

21. Amendments to the Arms Act are proposed to ensure clarity over what firearms are to be categorised as MSSAs. It involves defining an MSSA as a semi-automatic firearm with one or more of certain specified features. One of these features (sporting grip") would be defined in regulations. The definition would also allow for particular firearms and types of firearms to be declared as MSSAs in regulations.
22. It is proposed that the new definition of MSSA would be in accordance with the interpretation by Police prior to the Crown Law opinion of 2008. This will take the situation back to a classification regime administered between 1992 and 2008 that was generally understood and accepted by the firearms community but with added clarity in the legislation to back that interpretation.
23. It is proposed that there would be one difference in this definition. This would be that a MSSA would include any semi-automatic firearm having a magazine capable of holding more than 5 rounds, compared to more than 7 rounds in the current definition of MSSA. For magazines holding up to .22 inch rimfire cartridges, the threshold would continue to be more than 15 rounds.

Implementation

24. A formal implementation plan and communications strategy will be developed to ensure Police is in a position to enforce this amendment to the Arms Act when it comes into effect.
25. Police currently has an established network of gun dealers and firearms user organisations through which it communicates with the general gun owning community. This network will be used, in addition to other forms of communication aimed at the general public, to provide information about the legislative changes and the possible implications.
26. Information about the legislation will also be provided to all Police staff. District Arms Officers will be given appropriate training/advice to ensure the new legislation is enforced correctly. The same will apply to Customs officers.
27. A period of time will be provided for firearm owners to make the necessary adjustments to their licensing status or magazine where the amendment to the definition of MSSA in the Arms Act has resulted in any of their firearms in sporting configuration being recategorised as MSSAs.

Regulatory Impact Statement

Arms (Military Style Semi-Automatic Firearms and Import Controls) Amendment Bill and an amendment to the Arms (Restricted Weapons and Specially Dangerous Airguns) Order – Policy Approval

Agency disclosure statement

This Regulatory Impact Statement has been prepared by New Zealand Police.

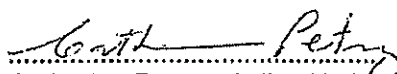
It provides an analysis of options to amend the Arms Act 1983 to

- (1) clarify the definition of "sporting configuration" in order to avoid confusion over its interpretation and difficulties with determining whether firearms are military style semi-automatic firearms (MSSAs) or not, and
- (2) introduce import controls on airguns that look like real pistols, MSSAs and restricted weapons to reduce the likelihood of their being used for criminal purposes.

It also analyses the proposal to amend the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984 to reclassify fully automatic airguns used for airsoft and paintball sports as airguns (instead of restricted weapons) so they are classified according to their lower level of risk. This amendment to the Order is subject to the proposed amendments to the Arms Act relating to import controls over imitation firearms proceeding first.

The Bill will impose no material increase in compliance costs for business. There will be some small additional costs for individuals and businesses associated with the new requirement to obtain permits to import airguns that look like pistols, restricted weapons or MSSAs. However, this requirement is considered necessary to promote the safe use and control of these types of airguns.

None of the options considered in this Statement are likely to override fundamental common law principles.


Catherine Petrey, Acting National Manager Policy
New Zealand Police

10/9/2010

Status quo and problem definition

1. Under the Arms Act 1983 a semi-automatic firearm in "sporting configuration" is not a military style semi-automatic firearm (MSSA). People with a firearms licence (which allow the holder to have and use A category firearms which are sporting type shotguns and rifles) must obtain from Police an additional endorsement if they wish to possess a MSSA. The Act defines sporting configuration as being without certain features, including "a military pattern free-standing pistol grip". As a result of a High Court decision in 2010, there has been some uncertainty as to whether some semi-automatic firearms are MSSAs or not, particularly because of how "a military pattern free-standing pistol grip" can be interpreted. Recently a

number of licensed dealers have made enquiries with Police about particular examples of features, which may or may not qualify a firearm as a MSSA. The situation remains unresolved.

2. The Arms Act contains provisions relating to the unlawful use of airguns that look like pistols, restricted weapons, or MSSAs. Unlike real pistols, restricted weapons and MSSAs, these look-alike airguns are not subject to any import controls. These types of airguns are regularly used illegally in situations that require Police to provide an armed response.
3. Fully automatic airguns used for airsoft and paintball sports ("milsim" sports) are currently declared restricted weapons in the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984 (the Order). However, this does not accurately reflect their lower power and reduced ability to cause harm.

Objective

4. The objective of amending the Arms Act is to bring clarity to the definition of MSSAs and to reduce the risk to public safety associated with the import of airguns that replicate pistols, MSSAs and restricted weapons. The objective of amending the Arms Order is to align the treatment of all airguns used in milsim sports with the treatment of other airguns in the Arms Act to better reflect their reduced ability to cause harm.

Regulatory impact analysis

Amendments to the Arms Act 1983

The definition of firearms that qualify as MSSAs

5. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982]
6. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982]
7. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982]
8. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982]
9. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982]
10. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982].
11. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982]
12. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982]

13. [information withheld under section 9(2)(g)(1) of the Official Information Act 1982]

Airguns that look like real pistols, restricted weapons or MSSAs

14. In respect of airguns that look like real pistols, restricted weapons or MSSAs, one option could be to continue to be able to import them without any controls, as is currently the situation (other than those airguns that are declared to be specially dangerous airguns). However, because these types of airguns can easily be mistaken for real firearms, they are being used for criminal purposes. Police estimates that there is at least one incident a week where a member of the public has presented an airgun that looks like a real pistol, restricted weapon or MSSA requiring an armed Police response, including calling out the Armed Offenders Squad.
15. There could be an attempt to raise awareness of the offences relating to the unlawful use of imitation firearms to discourage their irresponsible use. This could be done through a publicity campaign which could include the provision of information to gun dealers and other retailers to be passed on to purchasers. It has been assessed that this is unlikely to deter offenders who seek out these airguns to assist with their offending and who can easily purchase them because of their ready availability. Some legal regulation is required in this area.
16. The preferred option is to make the import of these types of replica pistols, MSSAs and restricted weapons subject to the same import permit controls as apply to actual pistols, MSSAs and restricted weapons. This would reduce their availability on the market. Controlling the import of these airguns that replicate real firearms would supplement existing provisions in the Arms Act relating to the unlawful use of imitation firearms.
17. Police has received advice from the NZ Mountain Safety Council that it is likely that over a period of time the numbers of airguns that look like real firearms already possessed by people will be greatly diminished through loss, deterioration, or being discarded.

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

18. Fully automatic airguns used in milsim sports are currently declared to be restricted weapons in the Arms Order, and this situation could continue. However, these airguns are low powered, of lesser risk, and arguably do not fit comfortably alongside other restricted weapons currently in the Arms Order (which include rocket launchers and anti-tank projectors).
19. Being classed as restricted weapons means that Police and Customs officials are required to test the fully automatic milsim airguns when they are imported, to check that their fully automatic circuit board is removed. This has resource implications for importers, Police and Customs. These costs outweigh the risks that these airguns present.
20. The preferred (and most straightforward) option is to remove these types of airguns from the Schedule to the Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984 that lists the weapons that are declared as restricted weapons. This would enable fully automatic airguns used for airsoft and paintball sports to be categorised like other airguns in the Arms Act, reflecting

their lower level of risk. It is proposed that this amendment to the Order is subsequent to the proposed amendments to the Arms Act relating to import controls over imitation firearms proceeding first.

Consultation

21. The NZ Customs Service, Ministry of Justice, Treasury, Ministry of Foreign Affairs and Trade, Ministry of Economic Development and State Services Commission have been consulted on this paper. The Department of the Prime Minister and Cabinet has been informed of this paper.

Conclusion

22. An amendment is proposed to the Arms Act to ensure there is clarification over which semi-automatic firearms are deemed to be MSSAs. This will involve simplifying the definition of "sporting configuration" which a semi-automatic firearm must be maintained in at all times to avoid being classified as a MSSA. A further amendment to the Arms Act is proposed to limit the availability of airguns that can be easily mistaken for real pistols, MSSAs or restricted weapons. It is also proposed to amend the Arms Order to align the treatment of fully automatic milsim airguns with the treatment of other airguns in the Arms Act.

Implementation

23. A formal implementation plan and communications strategy will be developed to ensure Police are in a position to enforce the amended Arms Act and amended Arms Order when they come into effect.
24. Police currently has an established network of gun dealers and firearms user organisations through which it communicates with the general gun owning community. This network will be used, in addition to other forms of communication aimed at the general public, to provide information about the proposed legislative changes and the possible implications.
25. Information about the legislation will also be provided to all Police staff. District Arms Officers will be given appropriate training/advice to ensure the new legislation is enforced correctly. The same will apply to Customs officers.