

# **Firearms Prohibition Orders Legislation 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 single broad policy implemented by the amendments in this Bill is to improve public safety by preventing people whose behaviour and actions represent a high risk of violence, or reflect an underlying risk of violence, from being able to access firearms or restricted weapons.

The Bill complements recent amendments to the Arms Act 1983, which ensure that only those people considered fit and proper to possess firearms can be issued with a firearms licence.

The Bill introduces firearms prohibition orders (FPOs), which address some limitations with the Arms Act 1983 that might enable a high-risk person to legally access or use firearms or restricted weapons, associate with people in physical possession of firearms, or reside at or visit locations where firearms are held, including gun shops, arms fairs, or gun clubs.

Under the Bill, a court can make an FPO against an offender who is 18 years or over and who has been convicted of a specified offence under the Arms Act 1983, the Crimes Act 1961, or the Terrorism Suppression Act 2002, or is convicted of a serious violent offence as defined in section 86A of the Sentencing Act 2002 (qualifying offences). The court must be satisfied that, on the balance of probabilities, the order is reasonable, necessary, and appropriate to assist in managing the risk that the offender poses to public safety.

The making of an FPO means that the offender would be prohibited from accessing, possessing, or using any firearm, pistol, restricted weapon, airgun, imitation firearm,

magazine, part of a firearm or restricted weapon, pistol carbine conversion kit, prohibited item, or ammunition. The offender would also be disqualified from holding a firearms licence.

The Bill sets out a series of standard and special conditions for an FPO and the penalties for breaching those conditions. FPOs continue in force for 10 years and would take effect either on the date on which the order was made, or, where the offender is sentenced to a term of imprisonment, the date on which the offender is released from custody.

If an offender who is subject to an FPO is subsequently convicted of a qualifying offence, the court may impose special conditions on the FPO, or vary, modify, or replace it.

There are other technical amendments to the Arms Act 1983 as a consequence of the new FPO provisions.

The Bill comes into force 3 months after its enactment to give Police sufficient time to prepare information, systems, and processes to implement the changes.

### **Departmental disclosure statement**

The Police are 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=2021&no=106>

### **Regulatory impact statement**

The Police produced a regulatory impact statement on 22 July 2020 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—

- <https://www.police.govt.nz/firearms-prohibition-orders-legislation-bill-regulatory-impact-analysis>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Bill comes into force 3 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, which defines various terms, by inserting a definition of firearms prohibition order or FPO. An FPO is an order made under *new Part 7A* of the principal Act (inserted by *clause 8*).

*Clause 5* amends section 3 of the principal Act. The effect of the amendments is to provide to undercover officers investigating a suspected offence against *new section 42A or 42B* of the principal Act (inserted by *clause 10*) protection from liability in respect of those offences, and also in respect of offences of conspiring, or attempting, to commit those offences and certain other specified offences.

*Clause 6* amends section 22H of the principal Act to provide that a person who is subject to an FPO is disqualified from holding a firearms licence.

*Clause 7* amends section 24A of the principal Act to provide that a person who has, at any time, had an FPO made against them may be found not a fit and proper person to be in possession of a firearm or an airgun.

*Clause 8* inserts *new Part 7A* into the principal Act.

*New Part 7A (new sections 39 to 39H)* deals with firearms prohibition orders.

*New section 39* is an interpretation provision for *new Part 7A* and defines the term firearm or related item.

*New section 39A* sets out when an FPO may be made.

*New section 39B* sets out the effect of an FPO.

*New section 39C* sets out the standard conditions of an FPO.

*New section 39D* provides for the variation or modification of the standard conditions of an FPO.

*New section 39E* provides for special conditions to be imposed on an FPO.

*New section 39F* provides for the commencement and duration of an FPO.

*New section 39G* provides for the modification or replacement of an FPO when the offender against whom the FPO is made is subsequently sentenced in respect of a further conviction.

*New section 39H* provides for the filing of an appeal against a decision to make or not make an FPO.

*Clause 9* provides for the renumbering and repositioning of section 41A of the principal Act.

*Clause 10* inserts *new sections 42A and 42B* into the principal Act. Under *new section 42A*, it is an offence to breach an FPO. Under *new section 42B*, it is an offence to supply a firearm or certain other related items to a person who is subject to an FPO.

*Clause 11* inserts a new cross-heading into the principal Act.

*Clause 12* amends section 69 of the principal Act to provide for the forfeiture of any firearm or related item in the possession of a person convicted of an offence under *new section 42A*.

## **Part 2**

### **Amendments to other Acts**

#### Subpart 1—Amendment to Evidence Act 2006

*Clause 13* provides that *subpart 1* amends the Evidence Act 2006 (**the principal Act**).

*Clause 14* amends section 108 of the principal Act, which relates to undercover Police officers giving evidence as prosecution witnesses in certain proceedings. The effect of the amendment is to apply section 108 to proceedings relating to the prosecution of an offence against *new section 42A or 42B* of the Arms Act 1983.

#### Subpart 2—Amendment to Privacy Act 2000

*Clause 15* provides that *subpart 2* amends the Privacy Act 2000 (**the principal Act**).

*Clause 16* amends Schedule 4 of the principal Act to provide for the Department of Corrections to have access to information held by the Police about firearms prohibition orders made under the Arms Act 1983.

#### Subpart 3—Amendments to Search and Surveillance Act 2012

*Clause 17* provides that *subpart 3* amends the Search and Surveillance Act 2012 (**the principal Act**).

*Clause 18* amends section 3 of the principal Act to replace the definition of arms so that the term also includes pistol carbine conversion kits, all magazines, and parts.

*Clause 19* amends section 45 of the principal Act so that trespass surveillance may be undertaken, and interception devices may be used, to obtain evidential material in relation to the offences in *new sections 42A and 42B* of the Arms Act 1983.

#### Subpart 4—Amendment to Sentencing Act 2002

*Clause 20* amends the Sentencing Act 2002 (**the principal Act**).

*Clause 21* inserts a new cross-heading and *new section 111A* into the principal Act. These amendments are a signpost to *new Part 7A* of the Arms Act 1983, which provides for the making of firearms prohibition orders when an offender is sentenced after being convicted of a specified offence.

*Hon Poto Williams*

## **Firearms Prohibition Orders Legislation Bill**

Government Bill

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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.

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- 4 Section 2 amended (Interpretation)**
- 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)** 5
- (1) Replace section 3(6) with:
- (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: 10
- (a) an offence against **section 42A, 42B, 55D, 55E, 55F, or 55G**; or
- (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**. 15
- (2) In section 3(7)(a), after “sections”, insert “**42A, 42B**”.
- 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)** 20
- After section 24A(1)(c), insert:
- (ca) the person has, or has had at any time, a firearms prohibition order made against them:
- 8 New Part 7A inserted** 25
- 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. 30
- 39A When FPO may be made**
- (1) This section applies when a court is sentencing an offender who—

<p>(a) has been convicted of—</p> <p style="padding-left: 2em;">(i) an offence under section 16(4), 16A, 44A, 50A, 50D, 51A, 53A, 54, 54A, 55, 55A, 55D, 55E, or 55F; or</p> <p style="padding-left: 2em;">(ii) a serious violent offence as defined in section 86A of the Sentencing Act 2002; or</p> <p style="padding-left: 2em;">(iii) an offence under section 98A of the Crimes Act 1961; or</p> <p style="padding-left: 2em;">(iv) an offence under any of sections 6A to 10 or sections 12 to 13E of the Terrorism Suppression Act 2002; and</p> <p>(b) committed the offence—</p> <p style="padding-left: 2em;">(i) when aged 18 years or over; and</p> <p style="padding-left: 2em;">(ii) after the commencement of this section.</p> <p>(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.</p> <p><b>39B Effect of FPO</b></p> <p>(1) An FPO made against an offender prohibits the offender from accessing, possessing, or using any firearm or related item.</p> <p>(2) An FPO is subject to—</p> <p style="padding-left: 2em;">(a) the standard conditions set out in <b>section 39C</b>, as may be varied or modified under <b>section 39D</b> by the court making the FPO; and</p> <p style="padding-left: 2em;">(b) any special conditions imposed under <b>section 39E</b> by the court making the FPO.</p> <p><b>39C Standard conditions of FPO</b></p> <p>(1) The standard conditions of an FPO are that the offender against whom the order is made must not—</p> <p style="padding-left: 2em;">(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:</p> <p style="padding-left: 2em;">(b) reside at any premises in which any firearms or related items are stored:</p> <p style="padding-left: 2em;">(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:</p> <p style="padding-left: 2em;">(d) attend any shooting range or shooting gallery:</p> <p style="padding-left: 2em;">(e) attend an activity of any kind that involves the use of any firearms or related items:</p> <p style="padding-left: 2em;">(f) visit any premises or place at which firearms or related items are manufactured, sold, repaired, hired, lent, or otherwise supplied.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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- (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.
- 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
  - (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.
- (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.
- (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)**.
- 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 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.
- (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.

**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 5
- (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. 10

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

Renumber section 41A as **section 59AAA** and reposition it immediately after the Part 9 heading. 15

**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— 20
  - (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. 25
- (2) A person who is convicted of an offence under **subsection (1)(a)** is liable,—
  - (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.
- (3) A person who is convicted of an offence under **subsection (1)(b)** is liable to a term of imprisonment not exceeding 2 years. 30

**42B Offence to supply firearms, etc, to person subject to firearms prohibition order**

- (1) A person must not supply, or give possession of, a firearm, pistol, pistol carbine conversion kit, restricted weapon, airgun, imitation firearm, magazine, part of a firearm or restricted weapon, prohibited item, or ammunition to 35

- another person knowing that the other person is subject to a firearms prohibition order.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) if the person supplies or gives possession of a prohibited firearm, to a term of imprisonment not exceeding 7 years: 5
- (b) in any other case, to a term of imprisonment not exceeding 5 years.

### 11 New cross-heading above **section 59AAA** inserted

Before **section 59AAA** (as renumbered and repositioned by **section 9** of this Act), insert: 10

#### *Marking of firearms*

### 12 Section 69 amended (Forfeitures)

- (1) After section 69(1), insert:
- (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. 15
- (2) In section 69(2), after “subsection (1)”, insert “or **(1A)**”.
- (3) In section 69(3), replace “Any specified item ordered under subsection (1)” with “Anything ordered under subsection (1) or **(1A)**”. 20
- (4) Replace section 69(4) with:
- (4) In this section,—
- firearm or related item** has the meaning given in **section 39**
- specified item** means any firearm, airgun, pistol, restricted weapon, imitation firearm, prohibited item, pistol carbine conversion kit, ammunition, or explosive. 25

## Part 2

### Amendments to other Acts

#### Subpart 1—Amendment to Evidence Act 2006

- 13 **Principal Act** 30
- This subpart amends the Evidence Act 2006.
- 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.

**16 Schedule 4 amended**

In Schedule 4, under the heading “*Police records*”, after the item relating to firearms licences, insert: 5

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

5

**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.

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(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:

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(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:

(c) an offence under section 98A 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.

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**Firearms Prohibition Orders Legislation Bill**

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Wellington, New Zealand:

Published under the authority of the New Zealand Government—2021