

# **Subordinate Legislation Confirmation Bill (No 5)**

Government Bill

As reported from the Regulations Review Committee

## **Commentary**

### **Recommendation**

The Regulations Review Committee has examined the Subordinate Legislation Confirmation Bill (No 5) and recommends that it be passed with the amendments shown.

### **Introduction**

The purpose of this bill is to confirm certain subordinate legislation that would be revoked if not confirmed through an Act of Parliament by a specified date. The bill relates to items of subordinate legislation made in the year ending 30 June 2020.

In passing this bill, the House would confirm the instruments in the bill, allowing them to continue in force.

### **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.

### **Confirmation is warranted**

The government departments responsible for administering the instruments listed in this bill were asked specific questions in relation to each confirmable instrument, to explain why the instruments should be confirmed. The committee wrote to the following departments:

- New Zealand Customs Service
- Ministry for Primary Industries
- New Zealand Police
- Ministry of Social Development

- Ministry of Transport.

Matters covered in the instruments include:

- customs import and export prohibitions
- continuation of commitments made under an agreement to amend the ANZS-CEP trade agreement with Singapore
- an increase to excise and excise-equivalent duty on tobacco products and alcoholic beverages
- continuation of the prohibition of certain ammunition and magazines
- increased rates of some benefits and allowances to reflect movements in the Consumers Price Index and the net average wage
- increased abatement thresholds for people on some benefits
- a \$25 increase to some benefits and doubling of the rate of the Winter Energy Payment in response to the economic impacts of COVID-19
- increases to road user charges.

After considering the responses, we found no reason why the orders and regulations should not be confirmed. We thank the departments for their responses and their cooperation with our processes for the bill.

### **Additional instrument to be confirmed**

The Ministry of Transport wrote to us requesting an amendment to the bill to confirm the Road User Charges (Rates) Amendment Regulations (No 2) 2020. These regulations were not originally included in the bill as they were not finalised before the bill's introduction. We agree that these regulations should be confirmed.

We recommend amending clause 12 to additionally confirm the Road User Charges (Rates) Amendment Regulations (No 2) 2020. The regulations would otherwise be revoked at the close of 30 June 2021.

### **Other matters**

#### **Progress on recommendations from the inquiry into parliamentary scrutiny of confirmable instruments**

*Administering agencies are assessing whether certain secondary legislation should be subject to the confirmation process*

In August 2020 the Regulations Review Committee of the 52nd Parliament presented a report to the House about parliamentary scrutiny of confirmable instruments.

The report noted that the confirmation process may not be appropriate in certain situations, such as where there will be little or no discretion involved in the substance of the secondary legislation.

The Ministry for Primary Industries wrote to us noting that it did not think commodity levy orders needed to be subject to the confirmation process. Under the primary

Act, the Minister has little discretion when recommending the making of a new order. Commodity levy orders also have significant safeguards to provide parliamentary scrutiny of the commodity organisation's activities and finances, and to audit its affairs.

We are pleased to see examples of government departments following the report's recommendations by assessing whether secondary legislation they have administration responsibilities over should be subject to the confirmation process. We note that exempting future instruments from the confirmation process would require changes to the relevant primary legislation.

*Using a standard list of questions helps administering agencies to provide suitable advice about confirmable instruments*

The report recommended sending a standard list of questions to the relevant administering government departments. These questions would clarify the constitutional significance of the confirmation process and be tailored to the empowering provision under which each confirmable instrument is made. The report noted that this would help agencies to provide relevant advice to better improve the committee's scrutiny.

Such a process was followed for this bill. A list of standard questions was sent out to the relevant administering agencies. This allowed agencies to assess and recommend the confirmation of instruments they administer, improving the scrutiny process.

*The Regulations Review Committee will continue to work towards recommendations made in the inquiry report*

The report recommended a number of other changes to the confirmation process. This included beginning scrutiny of confirmable instruments after they are made and presented to the House but, where possible, before the relevant bill is introduced and referred to the committee. Some of these recommendations were not implemented this year because this bill was referred before the inquiry was complete.

We will continue to implement the inquiry's recommendations that we consider necessary and desirable, and that are within our control, in the future. We look forward to a timely Government response to the inquiry report.

## **Appendix**

### **Committee process**

The Subordinate Legislation Confirmation Bill (No 5) was referred to the Regulations Review Committee of the 52nd Parliament on 2 July 2020. The committee invited written submissions from the government departments responsible for administering the subordinate legislation in the bill. It received and considered five submissions.

On 26 November 2020 the bill was reinstated with the Regulations Review Committee of the 53rd Parliament. We met on 3 December 2020 to consider it.

The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office provided advice and assisted with legal drafting.

### **Committee membership**

Chris Penk (Chairperson)

Rachel Brooking

Steph Lewis

Hon Eugenie Sage

Penny Simmonds

Vanushi Walters

Chris Baillie participated in this item of business.

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon Chris Hipkins*

## **Subordinate Legislation Confirmation Bill (No 5)**

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

**1 Title**

This Act is the Subordinate Legislation Confirmation Act **2020**.

**2 Commencement**

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

**Part 1****Preliminary provisions**

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**3 Purpose**

The purpose of this Act is to confirm certain confirmable instruments and annual confirmable instruments that, unless earlier confirmed by an Act of Parliament, are—

- (a) revoked at the applicable deadline under section 47C(1)(a) or (b) of the Legislation Act 2012; or 10
- (b) taken after the applicable deadline to have been invalid for their past operation (because they have been revoked with effect before or on the deadline) under section 47D of the Legislation Act 2012.

**4 Interpretation**

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In this Act, unless the context otherwise requires, **confirmable instrument** and **annual confirmable instrument** have the same meanings as in section 47B of the Legislation Act 2012.

**5 Act binds the Crown**

This Act binds the Crown.

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**6 Repeal**

The Subordinate Legislation Confirmation Act 2019 (2019 No 82) is repealed.

**Part 2****Confirmations****7 Arms Act 1983**

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The following orders are confirmed:

- (a) Arms (Prohibited Ammunition) Amendment Order 2019 (LI 2019/248):
- (b) Arms (Prohibited Magazine) Order 2019 (LI 2019/289).

**8 Biosecurity Act 1993**

The following orders are confirmed:

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- (a) Biosecurity (Response—Milksolids Levy) Order 2019 (LI 2019/181):
- (b) Biosecurity (Response—Onions Levy) Order 2019 (LI 2019/242):

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- (c) Biosecurity (Readiness and Response—Summerfruit Levy) Order 2019 (LI 2019/243):
- (d) Biosecurity (Response—Plantation Forestry Levy) Order 2019 (LI 2019/244):
- (e) Biosecurity (Readiness and Response—Fresh Tomatoes Levy) Order 2019 (LI 2019/322): 5
- (f) Biosecurity (Readiness and Response—Meat Levy) Order 2019 (LI 2019/323):
- (g) Biosecurity (Readiness and Response—Citrus Fruit Levy) Order 2019 (LI 2019/324): 10
- (h) Biosecurity (American Foulbrood—Beekeeper Levy) Amendment Order 2020 (LI 2020/43).
- 9 Commodity Levies Act 1990**
- The following orders are confirmed:
- (a) Commodity Levies (Blackcurrants) Order 2019 (LI 2019/213): 15
- (b) Commodity Levies (Harvested Wood Material) Order 2019 (LI 2019/232):
- (c) Commodity Levies (Citrus Fruit) Order 2019 (LI 2019/295):
- (d) Commodity Levies (Strawberries) Order 2020 (LI 2020/25):
- (e) Commodity Levies (Wheat Grain) Order 2020 (LI 2020/86): 20
- (f) Commodity Levies (Passionfruit) Order 2020 (LI 2020/140):
- (g) Commodity Levies (Summerfruit) Order 2020 (LI 2020/141):
- (h) Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2020 (LI 2020/142).
- 10 Customs and Excise Act 2018** 25
- The following orders are confirmed:
- (a) Customs Export Prohibition (Green-lipped Mussel Spat) Order 2019 (LI 2019/209):
- (b) Customs Import Prohibition (Coins and Bank Notes) Order 2019 (LI 2019/210): 30
- (c) Customs Import Prohibition (Goods Produced by Prison Labour) Order 2019 (LI 2019/211):
- (d) Customs Import Prohibition (High-power Laser Pointers) Order 2019 (LI 2019/294):
- (e) Excise and Excise-equivalent Duties Table (Tobacco Products Indexation and Separate 10% Increase) Amendment Order 2019: 35

- (f) Excise and Excise-equivalent Duties Table (Alcoholic Beverages Indexation) Amendment Order 2020.
- 11 New Zealand Superannuation and Retirement Income Act 2001 and Social Security Act 2018**  
The Social Security (Rates of Benefits and Allowances) Order 2020 (LI 2020/13) is confirmed. 5
- 12 Road User Charges Act 2012**  
~~The Road User Charges (Rates) Amendment Regulations 2020 (LI 2020/73) are confirmed.~~  
The following regulations are confirmed: 10
- (a) Road User Charges (Rates) Amendment Regulations 2020 (LI 2020/73):  
(b) Road User Charges (Rates) Amendment Regulations (No 2) 2020 (LI 2020/143).
- 13 Social Security Act 2018**  
The following orders are confirmed: 15
- (a) Social Security (Definitions of Income Test 1, Income Test 2, Income Test 3, and Income Test 4) Order 2020 (LI 2020/14):  
(b) Social Security (Rates of Benefits and Allowances) (COVID-19 Recovery Package) Amendment Order 2020 (LI 2020/49):  
(c) Social Security (COVID-19 Increase to Rates of Orphan’s Benefit and Unsupported Child’s Benefit) Order 2020 (LI 2020/126). 20
- 14 Tariff Act 1988**  
The Tariff (ANZSCEP) Amendment Order 2019 is confirmed.

### Legislative history

29 June 2020  
2 July 2020

Introduction (Bill 300–1)  
First reading and referral to Regulations Review Committee