



FAQ – Extended Amnesty

Introduction

Regulations from the Government now protect people who took steps to comply with the new firearm laws before 20 December 2019 but have been caught by delays in processing applications or carrying out modifications. These regulations make for complex reading. We have tried to cover off the circumstances of most individual LFOs. We recommend that dealers and manufacturers look at the regulations directly as there are a number of other provisions that govern your circumstances.

People will be protected from prosecution until 20 December 2020 if:

- a) They applied for an endorsement and/or permit before 20 December 2019 but did not receive a decision before 20 November 2019. These endorsements / permits include an application under s29 of the Arms Act by:
 - i) a member of an incorporated pistol shooting club
 - ii) a bona fide collector of firearms
 - iii) a person to whom the pistol or restricted weapon has special significance
 - iv) the director or curator of a bona fide museum
 - v) an approved employee of a broadcasting or theatre company
 - vi) a licensed dealer or their employees
- b) They applied for compensation before 20 December 2019 and have arranged for the Police to collect the prohibited items
- c) They made arrangements for an approved gunsmith to modify the prohibited firearm before 20 December 2019 but were told after 20 November 2019 that the firearm cannot be modified (this applies even if you still have possession of the prohibited firearm) or they are waiting for the modification to occur.
- d) Their application for endorsement and/or permit was declined after 20 November 2019, so they applied for compensation
- e) Their application for endorsement and/or permit was declined after 20 November 2019, so they made arrangements for a gunsmith to modify the prohibited firearm.

They applied for compensation after 20 December 2019 because:

- a) their application for endorsement and/or permit was declined, and
- b) they made arrangements with an approved gunsmith to have the firearm modified, and
- c) the gunsmith told them that the firearm could not be modified

Note that there are further provisions that apply to dealers and manufacturers. We recommend that people who are in these categories examine the regulations directly.

1. I haven't received an answer on my application for endorsement and/or permit

The regulation doesn't differentiate between different endorsements (s 30B) or permits (s 35A). If you have an outstanding application for any endorsement or any permit, then you will be protected from prosecution until 20 December 2020 as long as you:

- a) Possessed the prohibited item before 12 April 2019, and
- b) Applied for an endorsement under s 30B or a permit under s 35A before 20 December 2019, and
- c) You have not yet received a decision.

2. Could I be prosecuted for having a prohibited firearm while I wait for my application to be processed?

The new regulations protect you from prosecution for possession of a prohibited item while you wait for a decision on an application for endorsement under s 30B or a permit under s 35A of the Arms Act.

Remember, you are only protected if your prohibited items are kept in secure storage and not used during the extended amnesty. The only exception is when you are transporting the prohibited item to either surrender it to the Police, have it valued by a licensed dealer or to have it modified by an approved gunsmith. This exception includes transportation to and from the licensed dealer or approved gunsmith.

3. What happens if my application is then declined?

If the decision is declined, you have the choice to either apply for compensation or make arrangements for it to be modified by an approved gunsmith.

If you make arrangements for modification but learn that they cannot be made, then you will still be able to apply for compensation. You will be protected from prosecution for possession of the prohibited firearm until compensation is determined.

4. Do I still get compensation if I apply after 20 December 2019?

You have 30 days from the date you receive the decision to apply for compensation. However, new regulation 28LB only allows you to apply for compensation for the prohibited firearms and magazines that were listed in your application for endorsement and permit. It doesn't include prohibited parts. The Police have not provided any information on why they decided to exclude compensation for prohibited parts after the end of the amnesty.

5. Will I still get the same amount of compensation?

Compensation will be awarded in accordance with the schedule but the Commissioner may change the amounts listed in the schedule at any time. There is a risk that the schedule will be amended before you are eligible for compensation.

6. What if I apply for compensation before 20 December 2019? Have the rules changed?

If you apply for compensation for prohibited parts or magazines before 20 December 2019, the Commissioner may decide not to pay you full compensation if he believes that the quantity of prohibited magazines or parts exceeds what is appropriate for reasonable personal use.

This is another inconsistency in the new regulations. The Police have not explained why they decided to impose a new limit on compensation or why this new limit only applies to applications for compensation lodged before 20 December 2019.

7. How will the Commissioner decide what is more than "appropriate" for "reasonable personal use"?

Regulation 28LA(2) lists a number of things the Commissioner may have regard to when making his decision. This means that he does not have to consider all of these things in order for a decision to be valid:

- a) the number and type of firearms owned by the person in respect of which the prohibited items may be used
- b) the age of the prohibited items
- c) the quantity of the prohibited items typically possessed by a LFO with the same kind of firearm in respect of which the prohibited item may be used
- d) any other matter the Commissioner considers appropriate.

Essentially, the Commissioner will look at the number of prohibited magazines and parts typically owned by someone who held them for the same purpose as the applicant.

8. How much compensation will I get if the Commissioner decides I have more magazines and parts than is appropriate for reasonable personal use?

The Commissioner will separate the prohibited magazines and parts he thinks is 'reasonable' for personal use (set A) from the surplus (set B).

For set A, you will get the amount of compensation listed in the schedule for or the amount determined by the Commissioner under regulation 28P (used for valuing unique prohibited items).

For set B, you will get the lowest of:

- a) the amount listed in the schedule,
- b) the amount determined by the Commissioner under regulation 28P, or
- c) the price you paid for the prohibited items.

9. Do I need to provide proof of purchase?

The Police can now ask you to provide proof of purchase and/or proof that you lawfully possessed the prohibited items before 12 April 2019 when they assess compensation. New Regulation 28LC says that you must provide proof if requested, regardless of when you applied for compensation. The regulation does not specify what constitutes 'proof' or what will happen if you cannot provide 'proof' to the standard required by Police. A sales receipt will clearly be sufficient but with a private purchase this may not be available.

10. How do I make sure my prohibited items are assessed as unique prohibited items?

You now need to apply to have your items valued as unique prohibited items under regulation 28P at the time you apply for compensation. Previously you could do it after you made your initial application for compensation against the schedule. Now you MUST do it at the same time.

We suspect that this is simply a tidy up provision. However, you will need to make sure that you know ahead of time whether you want to apply to have your prohibited items assessed for compensation as unique prohibited items and make sure you submit the relevant application.

11. What if I have already applied for compensation? Can I hold onto my prohibited item in the meantime?

Yes. If you applied for compensation before the end of the amnesty period, you can hold onto the item, so long as a member of the Police has already agreed to collect it.

12. What if I apply for compensation after the amnesty? Can I still hold onto my prohibited item?

You are allowed to hold onto your firearms while an application for endorsement and/or permit is being decided or while you wait for your booking with the gunsmith to carry out the modification.

The rule of thumb seems to be that you must surrender your prohibited items as soon as you have exhausted all options which would allow you to keep them (i.e. endorsement and permit or modification) and this date must not be later than 20 December 2020. You may hold onto to

your prohibited items while you apply for compensation but you will need to surrender them before compensation is paid out.

13. Can I arrange to have my prohibited firearm modified after the amnesty if my application for endorsement/permit is declined?

New regulation 28UA allows you to arrange modification of your prohibited firearm after the amnesty, provided that:

- a) you lawfully possessed the prohibited firearm before 12 April 2019, and
- b) you applied for endorsement under s 30B or a permit under s 35A before 20 December 2019, and
- c) you received notice that your application was declined after 20 November 2019.

Unlike compensation, there is no time limit for arranging modification. This hasn't been dealt with in the regulations. However, the modification must be completed before 20 December 2020 when the new protections expire.

If you opt to modify your prohibited firearm, you can still seek payment of up to \$300 (including GST) from the Crown. The rules for seeking payment are the same as if you had applied for modification during the amnesty under regulation 28U.

14. What arrangements do I have to have with the gunsmith? Does he have to hold it?

If you arranged modification and the gunsmith doesn't have room to hold your prohibited firearms, you can keep them in your possession but can't use them, provided you arranged the modification before the end of the amnesty. You will need to keep it in secure storage as per the requirements of the Police (available here: <https://www.police.govt.nz/sites/default/files/publications/firearms-secure-storage-guidance.pdf>)

This protection does not extend to people who arranged modification after the end of the amnesty (unless you have been had a declined application as per question 15).

15. What if the gunsmith tells me that it can't be modified (do I still get compensation / can I be prosecuted)?

You have 30 days apply for compensation after the date the gunsmith tells you your prohibited firearm can't be modified.

You will be protected from prosecution while you apply for compensation (so long as you surrender your prohibited firearm before 20 December 2020).

16. I have applied for my firearm to be treated as a unique prohibited firearm but haven't received an answer – can I hold on to it?

If you applied to have your firearm treated as a unique prohibited item before 20 December 2019, you will be able to hold onto it while you wait for the Commissioner's decision.

17. I don't agree with the price Police will pay for it under this process – can I appeal it (and can I be prosecuted during the appeal / can I still get compensation)

This is not specifically covered in the new regulations

The protections in regulation 28WA do not extend to a person exercising their right of appeal against any decision under the Act. We recommend that you either ask the Police to hold onto the prohibited items while the decision is under appeal, or alternatively, pass them to an endorsed licensed firearm owner to hold while the process continues.

The Arms Act provides your rights of appeal.