

Proposal

To seek Cabinet approval for regulatory amendments that will reduce the negative impact of fireworks by improving management of the retail sale of fireworks to the New Zealand public.

Executive summary

On 6 September 2006, I presented a paper to Cabinet identifying a range of regulatory and non-regulatory options to improve the management of the retail sale of fireworks. Cabinet directed officials from the Ministry for the Environment to provide a more in-depth analysis of the available regulatory options to manage fireworks better in the 2007 season. Cabinet agreed to the use of non-regulatory actions before the 2006 fireworks season, including the annual public awareness campaign promoting fireworks safety (POL Min (06) 19/14).

The Ministry for the Environment, Environmental Risk Management Authority (ERMA) New Zealand, the New Zealand Police and the New Zealand Fire Service worked collaboratively on a communications project to emphasise the fireworks safety message for 2006. Activities included:

- safety pamphlets and posters;
- a Guy Fawkes 2006 information website;
- a letter from the Minister of Police, Minister of Internal Affairs and me to fireworks retailers encouraging the responsible selling of fireworks.

Despite these efforts to encourage the safe use of fireworks, statistics from the New Zealand Fire Service and New Zealand Police show a further increase in fireworks-related call-outs this year compared with the 2005 season. There was also a slight increase in the quantity of fireworks imported, but not on the scale of the 40 percent increase seen in 2004 and 2005.

I have developed a list of options for regulatory amendment to improve the management of the retail sale of fireworks. The proposed amendments are primarily to the Hazardous Substances (Fireworks) Regulations 2001 (the Fireworks Regulations).

The following options have been identified for Cabinet consideration:

- Raise the legal age limit for purchasing fireworks from 14 to 18 years, to reduce the increasing number of fireworks incidents involving youths;
- Reduce the fireworks sales period from ten days to three days. This will delay the lighting of fireworks to closer to Guy Fawkes night, and the sales period will include only one weekend;
- Narrow the definition of 'firework' in the Fireworks Regulations, to ensure the percussive nature of fireworks is no greater than necessary to achieve its visual effect – thereby eliminating unnecessarily noisy fireworks;

- Change the design, performance and testing of retail fireworks to limit the explosiveness of fireworks and eliminate the more powerful and noisy fireworks, and improve the safety of fireworks presently available;
- Limit the sale of sparklers to reduce the increasing incidence of their misuse in the form of sparkler bombs by banning their individual sale. Sparklers would then be available only in larger, assorted retail packs.

These regulatory actions would not detract from families enjoying fireworks, while helping minimise the impacts of those who act irresponsibly. The proposed regulatory amendments to the Fireworks Regulations are relatively minor; and will affect retail fireworks only, as pyrotechnic fireworks used for displays are regulated separately.

Background

The Cabinet paper Regulatory and Non-Regulatory Options to Manage the Retail Sale of Fireworks was presented to Cabinet on Wednesday 6 September 2006. Cabinet directed officials from the Ministry for the Environment to provide a more in-depth analysis of the available regulatory actions to improve management of fireworks in the 2007 season. Cabinet agreed to the use of non-regulatory actions before the 2006 fireworks season, including the annual public awareness campaign promoting fireworks safety (POL Min (06) 19/14).

The public awareness fireworks safety campaign was well-received. This involved a joint collaboration between the New Zealand Fire Service, New Zealand Police, ERMA New Zealand, and Ministry for the Environment. The campaign urged the public to “make 2006 the safest Guy Fawkes ever” and included 180,000 safety pamphlets and posters being distributed to fireworks retailers and importers.

I also sent a letter to fireworks retailers, co-signed by the Minister of Police and the Minister of Internal Affairs, asking for greater retailer responsibility with sale of fireworks this year. Many of the major fireworks retailers endorsed our safety message, and some are reviewing their store policies on how they sell fireworks.

Current Regulation of Fireworks

Retail fireworks are regulated under the Hazardous Substances and New Organisms (HSNO) Act 1996, specifically through the Hazardous Substances (Fireworks) Regulations 2001. These regulations are based very closely on the previous Explosives Regulations 1959 (as amended). They do not completely address more recent developments such as increased quantities of fireworks being imported (resulting in greater competition among retailers and lower prices), and the use of more powerful explosive materials in the fireworks composition.

Fire crackers and skyrockets were banned in 1994 after Parliament debated the question of banning the public sale of all fireworks. Parliament debated the question again when the Hazardous Substances and New Organisms Bill was considered in 1996. On both occasions it was decided that the irresponsible use of fireworks by a few could not justify depriving families of the enjoyment of fireworks through a total ban.

To address the harm caused by those who use fireworks irresponsibly, regulations were put in place that:

- limited the total amount of explosive material allowed in any one firework, and the design and nature of fireworks acceptable for use by the public; and
- limited the period for which fireworks can be sold to the ten days prior to Guy Fawkes Night; and
- limited the sale to persons aged 14 years and over.

The Fireworks Regulations are intended to balance the use and enjoyment of retail fireworks with the need to protect the safety of the community. Pyrotechnic fireworks used for displays are separately regulated under the Hazardous Substances (Class 1-5) Regulations 2001. Both of these regulations are administered by the Ministry for the Environment and implemented by ERMA New Zealand.

Test Certifiers approved by ERMA New Zealand are responsible for ensuring imported retail fireworks meet the requirements of the Fireworks Regulations. Samples from imported retail fireworks consignments are routinely tested to meet the standards imposed by Regulation 11, and if compliant, the consignment is issued a test certificate.

A Code of Practice for the Design, Performance and Testing of Retail Fireworks is being prepared by ERMA New Zealand. The code is scheduled to be issued in December 2006, although may be delayed if the regulatory amendments proposed in this paper are approved by Cabinet.

Some of the proposed regulatory amendments outlined below are modelled on the Australian Capital Territory (ACT) Dangerous Substances (Explosives) Regulations 2004. These regulations cover the advertising, sale and use of fireworks in the ACT. The changes were introduced due to concerns relating to the quality of fireworks being imported, and a black market trade of fireworks in neighbouring states which do not allow retail sales. Although this is not a major issue in New Zealand, some of the controls imposed in the ACT are likely to assist in managing the misuse of fireworks.

The 2006 Fireworks Season

Statistics from the New Zealand Fire Service show a six percent increase in fireworks-related call-outs this year compared with the 2005 season. There were 1729 call-outs, 98 more than last year, making 2006 the worst Guy Fawkes recorded since reliable records began in 1996. The New Zealand Police have also recorded more call-outs for fireworks-related incidents this year, with 1815 call-outs during the 2006 season (compared to 1189 calls in 2005 – a 52 percent increase). The number of Police call-outs increased in the areas of disorder, property damage and bomb incidents.

We have not seen the same significant increase in the quantity of fireworks imported this year as occurred in previous years. 2006 saw 1763 tonnes entering the country – a five percent increase on the 2005 figure of 1685 tonnes. The 2004 and 2005 fireworks seasons saw 40 percent increases in fireworks imports from the previous years.

At this early stage I am unable to determine the total financial and health costs to New Zealanders for 2006. Property damage statistics estimate that confirmed fireworks incidents resulted in \$670,000 in property damage for the ten days of Guy Fawkes 2006, and \$720,000 since 1 January 2006. This compares with \$446,000 for the 10 days of Guy Fawkes 2005 (a 50 percent increase), and \$589,000 for all of 2005 (a 22 percent increase). Most fireworks-related injuries do not require overnight stays in hospital, and are therefore not recorded in great detail. Eighteen injuries attributable to the 'discharge of fireworks' required overnight medical treatment in 2005. Figures for 2006 will not be available until June 2007.

Regulatory options to reduce the impact of fireworks

Ministry for the Environment officials, working with ERMA New Zealand, have developed the following options for regulatory amendments for Cabinet consideration. The regulatory amendments aim to improve the management of the retail sale of fireworks and reduce the potential for their misuse, while not detracting from families enjoying fireworks for Guy Fawkes celebrations.

This paper seeks approval from Cabinet to amend specific regulations in the Fireworks Regulations. Once approved, there will be consultation between various departments, agencies, fireworks importers and retailers in the development of the regulatory amendments. The proposed regulatory amendments will then be presented to the Legislative Committee for approval by 28 February 2007.

Raise the legal age limit for purchasing fireworks to 18 years

The legal age limit to purchase fireworks in New Zealand is 14 years. An option would be to amend Regulation 6 of the Fireworks Regulations to raise the age limit to 18 years. This would address the issue of increasing fireworks incidents involving youths.

The Police have found it difficult to determine the age of most fireworks offenders, as it is difficult to apprehend offenders in isolated fireworks incidents. Anecdotal reports from the Police state that most eye-witness accounts of fireworks incidents blame persons aged under the age of 18. The vast majority of major incidents which were reported in the media this year involved male offenders aged 18 years or under. In 2005 a police report stated that 125 out of 755 fireworks-related call-outs specifically referred to "youths" being involved in sparkler or fireworks incidents. Other reports of misuse did not specify age, but many occurred in and around schools.

This option may result in a reduced market size for retailers, but may not result in significantly fewer fireworks being sold in general. However, this option should result in a reduction in incidents of fireworks misuse by young people, and may see a reduction in the number of incidents happening in and around schools. It may not, however, result in a reduction in the total number of fireworks incidents.

Eighteen is already a recognised age of consent for many laws, and at this age purchasers will be likely to have access to valid identification for proof of age. The

process to comply and enforce the raised age limit is already in place with current age restrictions on other consumer goods such as alcohol and tobacco.

Reduce the fireworks sales period

The sales period for fireworks currently runs over ten days from 27 October to 5 November. Occasionally the fireworks sales period encompasses two weekends (as in 2005 and 2006). As fireworks tend to be let off as soon as the sales period begins, Guy Fawkes celebrations are effectively prolonged.

Restricting the sales period to three days by amending Regulation 6 of the Fireworks Regulations would delay the lighting of fireworks to closer to Guy Fawkes night, The fireworks sales period would also fall over only one weekend each year. A three day fireworks sales period is regulated in the Australian Capital Territory.

It is expected that this shortened time period will result in reduced sales of fireworks. This will have a financial impact on retailers, although it is difficult to estimate the extent of this financial impact. Retailers will also face pressure in the three days of retail sale to cater for demand.

Narrow the definition of 'firework' in the Fireworks Regulations

Fireworks are defined in the HSNO Act as:

..means an object containing small quantities of hazardous substances with explosive properties enclosed in a case of paper or similar material of such a strength, construction, and character that the ignition of one such firework will not cause the explosion en masse of similar fireworks kept or carried with it, and whose sole or principal effect is not percussive or vertical or horizontal flight.

The last phrase of the definition effectively bans crackers (solely percussive effect) and skyrockets (sole effect is vertical flight). However, the word 'principal' is subjective, and further definition could be used to ensure the percussive nature of fireworks is no greater than necessary to achieve its visual effect.

One way of addressing this issue is to narrow the definition of 'firework' in the Fireworks Regulations by adopting the following definition from the Australian Capital Territory (ACT) regulations:

Any aural effect of a consumer firework must be

- (a) no greater than is necessary to achieve the visual effect of the firework; AND
- (b) a subsidiary effect only

This definition can be inserted into the Fireworks Regulations to eliminate unnecessarily noisy fireworks, and has already been adopted in the Design, Performance and Testing of Retail Fireworks Code of Practice which is currently being prepared by ERMA New Zealand. This will give Test Certifiers the ability to

determine whether a firework has an unnecessarily noisy percussive effect in relation to the resulting visual effect when approving a firework.

This option is unlikely to result in much change if chosen individually, but complements the regulatory changes proposed below with the design, performance and testing of fireworks.

Change the design, performance and testing of retail fireworks

This option would be most effective in combination with the previous option to narrow the definition of 'firework'. This option would require technical amendments to Regulation 11 of the Fireworks Regulations.

One particular amendment would restrict the composition of retail fireworks to eliminate the more powerful and noisy fireworks presently available. The Fireworks Regulations currently allow a maximum of 40 grams of pyrotechnic substance and do not specify the allowed types of pyrotechnic that can make up the total 40 gram limit. In recent years there has been greater use of perchlorate-based 'flash powder' – leading to more powerful, noisier fireworks.

The ACT regulations allow some types of fireworks to have up to 60 grams of composition which is greater than New Zealand's 40 grams, but others are restricted to lower quantities. However, the ACT regulations provide for a breakdown of this composition, for example: maximum 20 grams for a lift charge. Most significantly, the ACT regulations also have a limit on the amount of flash powder that can be used in a firework (5 percent or less), which, if introduced to the Fireworks Regulations here, would eliminate the more powerful and noisy fireworks presently available.

This option will require industry consultation and may need further development or review if there are changes in fireworks technology, for example if new types of explosive are developed. Due to synergies with the ACT regulations, compositional changes in New Zealand should require minimal adjustment for fireworks importers and retailers as they can order the same types of fireworks already being sold in the ACT.

Further amendments to Regulation 11 have the potential to greatly improve the quality, and safety, of fireworks. One example is to put a one year expiry on a firework's test certificate, which may stop the old, residual fireworks stock being sold years after their approval.

The exact compositional changes and regulatory amendments will be developed by the Ministry for the Environment and ERMA New Zealand, in consultation with the fireworks industry and other relevant departments.

Limit the sale of sparklers

The increase in illegal 'sparkler bombs' continues to be an issue, with more sparklers being imported to cater for the increasing demand. When used properly, sparklers are a relatively benign firework, popular with families with young children, and do not warrant being banned. However, certain limits to their sale should reduce the number of sparkler bomb incidents.

I propose to limit the availability of sparklers to the larger, assorted retail packs of fireworks, and ban their separate sale. This option would be achieved through amendments to Regulation 6 of the Fireworks Regulations. This option would make abusers of sparklers less likely to stockpile supplies, as it would be more expensive to have to buy a large mixed bag for the purpose of obtaining sparklers. This will result in savings to the community in repairing property (for example, letterboxes) damaged through sparkler bombs. However, families who only wish to use sparklers for Guy Fawkes celebrations will be forced to buy the larger consumer packs.

Consultation

The following departments have been consulted in the development of this paper: Ministry of Economic Development, Ministry of Justice, Treasury, State Services Commission, Ministry of Health, Department of Internal Affairs, New Zealand Police, Department of Prime Minister and Cabinet, Ministry of Social Development, Ministry of Youth Development, Department of Labour. ERMA New Zealand has also been consulted.

Please note that members of the fireworks industry have not been consulted in the preparation of this paper. There will be extensive consultation with all relevant agencies and industry in the development of the regulatory amendments.

The Ministry of Economic Development is concerned that no consultation outside of government, including importers and retailers, has been undertaken on these proposals. As a result, the impacts stakeholders may face might not be fully covered in this paper. MED notes that consultation will be undertaken on the specifics of some proposals, however, decisions on the overall proposals will have been made by that point and so the scope for consultation will be limited.

Financial implications

Implementing the regulatory changes has some financial implications for Government, such as reduced GST from fireworks sales. Some of the proposed regulatory amendments will result in losses in earnings for importers and retailers in the fireworks industry, but the exact financial costs to industry are not known. Further consultation on these proposals will provide a better estimate of these costs.

Human rights

The paper proposes that the Fireworks Regulations be amended to raise the legal age limit to purchase fireworks to 18 years. This proposal raises a prima facie issue in terms of section 19 of the New Zealand Bill of Rights Act 1990, the right to freedom from discrimination.

A final view as to whether the proposals comply with the Bill of Rights Act will be possible once the amendments to the Regulations have been drafted, and justificatory material is provided and considered. Officials from the Ministry for the

Environment are continuing to work with officials from the Ministry of Justice in this regard.

The other proposals do not appear to raise any issues of inconsistency with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative implications

All options for regulatory change will require amendments to the Hazardous Substances (Fireworks) Regulations 2001.

Regulatory impact and compliance cost statement

A Regulatory Impact Statement is attached that complies with the requirements for Regulatory Impact Statements as set out in Cabinet Office Circular CO (04) 4. No compliance costs to business arise from the proposal.

Gender implications

There are no gender implications.

Publicity

No publicity is planned at this stage. Officials will develop a communications plan before consultation begins on proposed regulatory amendments.

Recommendations

I recommend that the Committee:

- Note that in September 2006 Cabinet directed officials from the Ministry for the Environment to provide a more in-depth analysis of the available regulatory actions to improve the management of retail fireworks in the 2007 season (POL Min (06) 19/14).
- Note that the Ministry for the Environment, ERMA New Zealand, the New Zealand Police and New Zealand Fire Service have collaborated in a fireworks safety campaign that was endorsed by industry and the media.
- Note that the 2006 fireworks season has shown increased fireworks incidents and imports compared with 2005.
- Agree to raise the legal age limit to purchase fireworks to 18 years, to reduce the increasing number of fireworks incidents involving 'youths'.
- Agree to reduce the fireworks sales period to three days to delay the lighting of fireworks until closer to Guy Fawkes night, and to have a sales period in the future that will not encompass two weekends.

- Agree to narrow the definition of 'firework' in the Fireworks Regulations, ensuring the percussive nature of fireworks is no greater than necessary to achieve its visual effect – thereby eliminating unnecessarily noisy fireworks.
- Agree to change the design, performance and testing of fireworks to limit their explosiveness and eliminate the more powerful and noisy fireworks, and improve the safety of fireworks presently available.
- Agree to limit the sale of sparklers to reduce the increasing incidence of their misuse in the form of sparkler bombs, by banning their individual sale - thereby making them available only in larger, assorted retail packs.
- Agree for my officials to consult with departments, industry and stakeholders over the chosen proposals and report back to the Legislative Committee with proposals for amendments to the Hazardous Substances (Fireworks) Regulations 2001 by 28 February 2007.

Hon David Benson-Pope
Minister for the Environment