

SUPPLEMENTARY MATERIAL

Confirmable instruments

Consider whether it is necessary or desirable for secondary legislation to be subject to confirmation.

What is a confirmable instrument?

A confirmable instrument is secondary legislation that is automatically revoked at a particular deadline unless it has been confirmed by an Act of Parliament.

Confirmable instruments are instruments made under the section or sections listed in [Schedule 4](#) of the Legislation Act 2019.

Confirmation generally is governed by [Subpart 3 of Part 5](#) of the Legislation Act 2019.

The confirmation process remains a valuable and vital part of parliamentary scrutiny of some legislation. The confirmation process is designed as an additional layer of scrutiny as it requires proactive confirmation by Parliament.

Confirmation by Act is usually, but not invariably, done by the annual Subordinate Legislation (Confirmation and Validation) Bill.

[Standing Order 333](#) allows for an abbreviated parliamentary process for Subordinate Legislation (Confirmation and Validation) Bills. There is no amendment or debate on the question for first reading. The Bill is referred to the Regulations Review Committee for consideration. The scope of consideration by the Regulations Review Committee is not limited to the grounds for disallowance and can extend to the policy of the secondary legislation. There is no committee of the whole house stage unless the Minister requires the House to go into committee or a Supplementary Order Paper has been circulated. There is no amendment or debate on the question for third reading.

A confirmable instrument is revoked if it is not confirmed by an Act of Parliament.

The revocation of an instrument does not affect the previous operation of anything done or suffered under it, except there are special rules for the effect of revocation for instruments that impose, or vary, any duties, levies or road user charges (see [section 125](#) and [126](#) of the Legislation Act 2019).

The deadlines for automatic revocation are in [section 121](#) of the Legislation Act 2019:

- 30 June in the year after it was made (for instruments made in the first half of a year); and
- 31 December in the year after it was made (for instruments made in the second half of a year).

When might it be appropriate for instruments to be subject to confirmation?

The confirmation processes should be applied sparingly and only where it is necessary or desirable to give particular types of instruments additional layers of parliamentary scrutiny. Confirmation processes may be necessary or desirable for the following categories of secondary legislation:

- emergency regulations;

- secondary legislation imposing a financial charge in the nature of a tax;
- secondary legislation amending the empowering Act or another Act or Acts; or
- secondary legislation on issues of policy under a broad empowering provision.

When might it not be appropriate for instruments to be subject to confirmation?

Confirmation processes may not be appropriate for the following categories of secondary legislation:

- when there will be little or no discretion involved in the substance of the secondary legislation;
- the secondary legislation will be subject to a sunset clause or will be otherwise automatically revoked within the timeframe for confirmation;
- the secondary legislation will involve a Henry VIII power, but that power will not affect the scope of the Act or another Act;
- the secondary legislation will incorporate into New Zealand law international obligations that will have already been subject to a treaty examination process in Parliament, or
- there will be other significant safeguards on the exercise of the power to make the secondary legislation that would render parliamentary scrutiny of the secondary legislation largely redundant.

Referral to the Regulations Review Committee

The Regulations Review Committee considers that draft confirmable instruments should be referred to it, by the Minister under Standing Order 326(2), in the following circumstances:

- when exercising the power to make a confirmable instrument for first time under an empowering provision;
- when considering making a confirmable instrument under a broad regulation-making power;
- when contemplating exercising a well-used power to make a confirmable instrument, but in a manner or to an extent that constitutes a significant departure from established precedents.

Further information

- Regulations Review Committee, Regulation Making Powers in Legislation (4 February 1987) [1986 – 1987] AJHR I.16A at [8.1]. I.16D
- [Regulations Review Committee, Inquiry into parliamentary scrutiny of confirmable instruments August 2020](#)
- [Government Response to the Report of the Regulations Review Committee on its Inquiry into parliamentary scrutiny of confirmable instruments, 16 February 2021](#)
- [Subpart 3 of Part 5 of the Legislation Act 2019](#)

- [Standing Order 333 \(Confirmation Bills\)](#)