

In Confidence

Office of the Minister of Conservation
Chair, Cabinet Legislation Committee

CONSERVATION INFRINGEMENT OFFENCES REGULATIONS

Proposal

1. This paper seeks authorisation for submission to the Executive Council of five sets of conservation infringement offences regulations.

Executive Summary

2. The proposed five sets of conservation infringement offences regulations (the Regulations) will create infringement offences for less serious breaches of conservation legislation, as provided for by the Conservation (Infringement System) Act 2018 (2018/61). The five sets of regulations are:
 - 2.1. the Conservation (Infringement Offences) Regulations 2019;
 - 2.2. the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019;
 - 2.3. the National Parks (Infringement Offences) Regulations 2019;
 - 2.4. the Reserves (Infringement Offences) Regulations 2019; and
 - 2.5. the Wild Animal Control (Infringement Offences) Regulations 2019.
3. Breaches of statutory and regulatory requirements under conservation legislation are relatively common. Infringement notices will therefore be a valuable tool for dealing with minor offences, rather than the current situation of having to go through the courts or not undertake enforcement.
4. The Regulations provide infringement fees for less serious conservation offences but create no new offences. The Regulations set fees for new infringement offences now in the conservation legislation, and make most existing offences in conservation regulations to be infringement offences and set their fees.
5. Offences where any breach of the law would have a major effect on conservation values, safety, or be contrary to the administration of justice, are excluded from the infringement system.
6. The Regulations are proposed to come into force on 3 February 2020.

Policy

7. Making the proposed conservation infringement offences regulations (five sets of regulations in all – referred to collectively as the Regulations) is the final legislative

step for the creation of an infringement system for less serious breaches of conservation legislation.

8. The policy for the conservation infringement system was agreed to by the Cabinet Economic Growth and Infrastructure Committee on 6 April 2016 [EGI-16-MIN-0058].
9. The first step toward implementing the policy was to amend eight conservation Acts¹ through the Conservation (Infringement System) Act 2018 (2018/61)² to provide powers for an infringement regime. That Act provided powers to allow the Regulations to be made. The process of PCO drafting, Cabinet Legislation Committee consideration, and Parliamentary process (including Environment Select Committee and associated public consultation), scrutinized and refined the policy for the conservation infringement system.
10. New section 48C of the Conservation Act, and similar sections in the other primary conservation legislation, now provides for the making of regulations as follows:
 - (a) *prescribing infringement offences for the contravention of regulations made under this Act:*
 - (b) *prescribing penalties for infringement offences, which,—*
 - (i) *in the case of infringement fees, must not be more than \$1,000; and*
 - (ii) *in the case of maximum fines, must not be more than twice the amount of the infringement fee for the offence.*
 - (c) *prescribing information to be included in infringement notices and reminder notices.*
11. This paper proposes to complete the policy implementation by making the necessary regulations in accordance with these provisions. The five sets of regulations are:
 - 11.1. the Conservation (Infringement Offences) Regulations 2019;
 - 11.2. the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019;
 - 11.3. the National Parks (Infringement Offences) Regulations 2019;
 - 11.4. the Reserves (Infringement Offences) Regulations 2019; and
 - 11.5. the Wild Animal Control (Infringement Offences) Regulations 2019.
12. The Regulations will enable the infringement system under the Conservation (Infringement System) Act 2018 to come into effect. This infringement system sits within the Summary Proceedings Act 1957 and Criminal Procedure Act 2011, which provide the standard legal framework for infringement offences. The Regulations will provide for the form of infringement notices, fees for new infringement offences now

1 The statutes amended were: the Conservation Act 1987, Marine Mammals Protection Act 1978, Marine Reserves Act 1971, National Parks Act 1980, Reserves Act 1977, Trade in Endangered Species Act 1989, Wild Animal Control Act 1977, and Wildlife Act 1953.

2 The Conservation (Infringement System) Bill was introduced on 22 February 2017 (Bill 241-1), was considered by the Environment Select Committee during February–August 2018, and the Act came into force on 21 December 2018.

in the conservation legislation, and declare most offences in regulations and bylaws made under conservation legislation to be infringement offences and set their fees.

13. The Regulations create no new types of offences as the new infringement offences mirror the existing offences in the current regulations and bylaws under conservation legislation.
14. The absence of an infringement system in conservation legislation means that illegal activities are subject either to prosecution (and potential criminal conviction), or to warnings which are unlikely to be an effective deterrent in many cases. In contrast, in other similar contexts (such as the Resource Management Act 1991, Biosecurity Act 1993, or Fisheries Act 1996), illegal activities can be dealt with using an infringement notice. The inability to issue infringement notices also imposes undue costs on DOC and local authorities as enforcement agencies, and discourages enforcement of some less serious offending (such as damage to vegetation and inappropriate vehicle use).
15. The policy work identified a range of offences where any breach of the law would warrant prosecution, and those were excluded from the infringement system. That includes offences where every breach of the law would have a major effect on conservation values, safety (e.g. firearms offences), and/or be contrary to the administration of justice (e.g. obstruction of officers). Common breaches of hunting permit conditions that do not pose a risk to the public (such as hunting the wrong species or hunting without a permit) can be subject to an infringement notice, but an infringement notice is not available for any use of firearms that might jeopardise public safety.
16. The Conservation (Infringement System) Act 2018 allows the infringement system to be used only by:
 - 16.1. DOC for offences in all eight conservation statutes;
 - 16.2. local authorities for offences in relation to reserves they administer; and
 - 16.3. fish and game councils in relation to their sports fish and game bird functions, but only if the Minister of Conservation has approved a national fish and game compliance and law enforcement policy which includes provisions relating to infringements, and in accordance with some specific restrictions set out in the Conservation Act.
17. The policy work set a maximum level of \$1000 for an infringement fee, and Justice and Conservation officials have agreed on fee levels within that maximum. A schedule of fees, and most offences in current regulations becoming infringement offences, was provided in drafting instructions to PCO.

Timing and 28-day rule

18. All of the Regulations are proposed to come into force on 3 February 2020. The 28-day rule will therefore be complied with.

Compliance

19. The Regulations comply with each of the following:
 - 19.1. the principles of the Treaty of Waitangi;
 - 19.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 19.3. the principles and guidelines set out in the Privacy Act 1993;
 - 19.4. relevant international standards and obligations;
 - 19.5. the Legislation Guidelines (2018 edition) as maintained by the Legislation Design and Advisory Committee.
20. There are no statutory prerequisites for the making of these regulations.

Regulations Review Committee

21. I am not aware of any reasons why the Regulations Review Committee might draw the Regulations to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

22. The draft Regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

23. A Regulatory Impact Assessment was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet approval was sought of the policy relating to the infringement system [EGI-16-MIN-0058].
24. A copy of the Regulatory Impact Statement is publicly available on the Department of Conservation's website:
<https://www.doc.govt.nz/about-us/our-role/legislation/regulatory-impact-statements/proposal-to-introduce-an-infringement-notice-system-for-less-serious-offending-against-conservation-legislation/>

Implementation and publicity

25. There are already mechanisms in place that provide advice to the public on the rules that apply in regard to conservation areas and wildlife, including signage within protected areas, information on the website in relation to great walks camping, and publicity relating to wildlife and marine mammals. The infringement notice system does not make any additional activities illegal. What it does is ensure people who commit minor offences do not risk a criminal conviction.
26. The infringement system will be piloted in limited areas to begin with (funded from baseline in the short term) and this work will not be possible if the regulations are not promulgated. The adequacy of existing publicity mechanisms will be reviewed as part of this pilot work to ensure they are effective. In some cases, there may also be

specific publicity around the infringement system – for example, for activities such as whitebaiting and trout fishing – via methods such as articles in magazines and information provided by rangers on the ground.

Proactive release

27. I propose to release this paper proactively within 30 business days of its consideration by Cabinet.

Consultation

28. Policy work on this infringement system has been under way since 2003 and there has been consultation with agencies and stakeholders at various stages through this process.
29. The following agencies were consulted in the development of the policy for these proposed regulations: The Treasury, the Ministry of Justice, the Department of Internal Affairs, Te Puni Kōkiri, the Police, the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry for the Environment, the Ministry of Culture and Heritage, and Customs New Zealand. The Legislation Design and Advisory Committee was consulted. The Department of Prime Minister and Cabinet was informed.
30. Parliamentary Counsel Office was consulted on the development of the policy paper and advised that the parallel offence system would be appropriate in the context of conservation legislation. It noted that it is used in some other legislation.
31. The policy was further consulted on during the Parliamentary process, including the consideration by the Environment Select Committee and associated public process.
32. The Ministry of Justice is satisfied with the proposed infringement system, and has vetted the proposed infringement fees and the proposals for infringement offences that will replace the existing offences in current regulations and bylaws. The Minister of Justice has approved the infringement offence types and infringement fees for these offences as required by Cabinet [EGI-16-MIN-0058 decision 10].
33. There has been work with the New Zealand Fish and Game Council in relation to the requirements they would need to fulfil before they could have access to the system, and their advice was sought in determining the relative severity of various sports fish and game bird offences.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. note that on 6 April 2016 the Cabinet Economic Growth and Infrastructure Committee approved the introduction of an infringement system for less serious conservation offences subject to specified criteria [EGI-16-MIN-0058 decisions 4, 7, 8, 10-14, 17, 19, 22, 24, 26, 28, and 29];

2. note that on 21 December 2018 the Conservation (Infringement System) Act 2018 (2018/61) came into force and included the regulation-making power necessary to make the proposed:
 - 2.1 Conservation (Infringement Offences) Regulations 2019;
 - 2.2 Conservation (Infringement Offences in Regulations) Amendment Regulations 2019;
 - 2.3 National Parks (Infringement Offences) Regulations 2019;
 - 2.4 Reserves (Infringement Offences) Regulations 2019; and
 - 2.5 Wild Animal Control (Infringement Offences) Regulations 2019.
3. note that the proposed regulations will:
 - (a) prescribe infringement offences for the contravention of regulations made under the Conservation Act 1987, Marine Mammals Protection Act 1978, Marine Reserves Act 1971, National Parks Act 1980, Reserves Act 1977, Trade in Endangered Species Act 1989, Wild Animal Control Act 1977, and Wildlife Act 1953:
 - (b) prescribe penalties for infringement offences, which,—
 - (i) in the case of infringement fees, must not be more than \$1,000; and
 - (ii) in the case of maximum fines, must not be more than twice the amount of the infringement fee for the offence:
 - (c) prescribe information to be included in infringement notices and reminder notices;
4. note that the five sets of regulations will give effect to the decision referred to in paragraph 1 above, as adjusted by policy decisions made during Parliamentary consideration of the Act referred to in paragraph 2 above;
5. note that the legislation as enacted made it possible for fish and game councils to use an infringement system if certain conditions were met, which the Bill as introduced did not;
6. note that the infringement system cannot be implemented until regulations have been promulgated to set infringement fee levels, and to create infringement offences where the existing offences sit in regulations or bylaws rather than in primary legislation;
7. authorise the submission to the Executive Council of the five sets of regulations listed in paragraphs 2.1 to 2.5 above;

8. note that the regulations will come into force on 3 February 2020.

Authorised for lodgement

Hon. Eugenie Sage
Minister of Conservation

Released by the Minister of Conservation