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BILLS DIGEST

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Subordinate Legislation (Confirmation and Validation) Bill 2009

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| Date of Introduction: | 23 September 2009 |
| Portfolio: | Leader of the House |
| Select Committee: | As at 15 October, 1st Reading not held. |
| Published: 15 October 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250 | Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill. |

Purpose

The Bill confirms and/or validates subordinate legislation (i.e. orders and regulations) made under Acts which provide that such subordinate legislation will lapse after the elapse of a certain time, unless confirmed or validated by Act of Parliament.

Background

Subordinate Legislation (Confirmation and Validation) Bills are introduced at least annually to confirm and/or validate subordinate legislation.

Subordinate legislation may need to be confirmed to avoid the effect of provisions ("sunset clauses") of the Acts authorising them, which provide that subordinate legislation will be deemed to be revoked on specified dates unless confirmed or validated by Act of Parliament before those specified dates.

The Bill is therefore an opportunity for Parliament to decide whether in each case the effect of the relevant "sunset clause" should be avoided and the subordinate legislation continue in force. This is effected by confirmation where the House considers that the policy which lies behind the relevant regulations continues to justify it.

Amongst the areas of law-making where Parliament has decided that it does not wish to give the executive carte blanche in the making of regulations, but wishes to reserve to itself this extra control, the following are dealt with in the Bill:

- levies imposed on primary producers under the Animal Products Act 1999 ;
- levies imposed on primary producers under the Commodity Levies Act 1990 and the Wine Act 2003;
- orders made under the Customs and Excise Act 1996;
- rates of benefits of pensions, benefits and allowances under the New Zealand Superannuation and Retirement Income Act 2001, the Social Security Act 1964 and the War Pensions Act 1954;
- road user charges imposed under the Road User Charges Act 1977; and
- orders made under the Tariff Act 1988.

The Bill is also an opportunity to validate subordinate legislation. Parliament examines the legislation for conflict with delegated legislation principles or for any other defect in the regulation or in the making of it, which could lead to the regulation being regarded as invalid and to cure any such potential defect by validating provisions.

In such bills, some regulations are only confirmed (to avoid automatic revocation because of “sunset clauses”). Other regulations are merely validated (to cure potential invalidity). Some regulations are both confirmed and validated.

Subordinate Legislation (Confirmation and Validation) Bills are similar to money bills in that they must be passed to continue vital government activities. It is legally necessary that they be passed within certain statutory periods.

David McGee has written: "Confirmation is the House's opportunity to consider the policy which lies behind the regulation to be confirmed. It is not an exercise confined to examining regulations for conflict with delegated legislation principles"¹.

Main Provisions

General and technical provisions

Most subordinate legislation referred to in the Bill is confirmed, but the orders made under the New Zealand Superannuation and Retirement Income Act 2001 and Social Security Act 1964 (*Clause 10*), the Tariff Act 1988 (*Clause 12*) and the War Pensions Act 1954 (*Clause 13*) are both validated and confirmed because the Acts under which they are made provide that they expire at a stated time unless earlier validated and confirmed. However, these validations are limited as their purpose is only to prevent the expiry of those orders and the validations so effected do not also cure any invalidity. The Bill also provides that the resulting Act will bind the Crown (*Part 1, Clauses 3, 4 and 5*).

Confirmations and validations

The Bill confirms orders under the Animal Products Act 1999 (*Clause 7*), the Commodity Levies Act 1990 (*Clause 8*), the Customs and Excise Act 1996 (*Clause 9*), the Road User Charges Act 1977 (*Clause 11*) and the Wine Act 2003 (*Clause 14*). The Bill validates and confirms orders under the New

¹ David McGee, *Parliamentary Practice in New Zealand*, Third edition, Dunmore, Wellington, 2005, p. 410.

Zealand Superannuation and Retirement Income Act 2001 and the Social Security Act 1964 (*Clause 10*), the Tariff Act 1988 (*Clause 12*) and the War Pensions Act 1954 (*Clause 13*).

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