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LEGISLATIVE SUMMARY



Bill C-42:

An Act to amend the Firearms Act and the Criminal Code and to make a related amendment and a consequential amendment to other Acts

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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Legislative Summary of Bill C-42
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-42: AN ACT TO AMEND THE FIREARMS ACT AND THE CRIMINAL CODE AND TO MAKE A RELATED AMENDMENT AND A CONSEQUENTIAL AMENDMENT TO OTHER ACTS

1 BACKGROUND

Bill C-42: An Act to amend the Firearms Act and the Criminal Code and to make a related amendment and a consequential amendment to other Acts (short title: Common Sense Firearms Licensing Act) was introduced in the House of Commons on 7 October 2014 by the Honourable Steven Blaney, Minister of Public Safety and Emergency Preparedness.

In 1995, Parliament passed the *Firearms Act*,¹ most of which came into force in December 1998. The Act and its accompanying regulations govern the possession, transportation, transfer and storage of firearms. The *Firearms Act* is also a complement to Part III of the *Criminal Code*,² “Firearms and other Weapons,” which lists and defines the categories of firearms and contains firearms offences related to unlawful possession or misuse.

In 2000, the Supreme Court of Canada examined questions concerning the constitutional validity of the licensing and registration provisions introduced by the *Firearms Act*. In its *Reference re Firearms Act (Can.)* decision upholding the Act, the Court found that the Act “is directed to enhancing public safety by controlling access to firearms through prohibitions and penalties.”³ In short, the regime endeavours to deter and reduce the misuse of firearms.⁴

Bill C-42 amends both the *Firearms Act* and the Code. Generally, the bill:

- creates a statutory category for non-restricted firearms;
- gives the Governor in Council the power to make regulations carving out exceptions to the firearms classification regime;
- extends the application of the provisions that govern orders prohibiting the possession of firearms, weapons and other articles such as ammunition and explosives;
- makes the completion of a safety course a prerequisite to obtaining a new firearms licence;
- eliminates Possession Only Licences (POLs);
- provides for the automatic issuance of authorizations to transport upon licence renewal;
- renders the discretion of a Chief Firearms Officer to attach conditions to a licence, authorization to carry or authorization to transport subject to limits imposed by regulations;

- creates a grace period extending the validity of firearms licences for six months beyond the date that they would otherwise have expired; and
- imposes an obligation on businesses to report the importation of a prohibited or restricted firearm.

2 DESCRIPTION AND ANALYSIS

2.1 AMENDMENTS TO THE *CRIMINAL CODE*

2.1.1 NON-RESTRICTED FIREARMS (CLAUSE 18)

Firearms are broken down into three categories: prohibited firearms, restricted firearms or firearms that are neither prohibited nor restricted, commonly referred to as “non-restricted” firearms. The prohibited firearms category includes automatic firearms, smaller concealable handguns and sawed-off rifles. The restricted firearms category includes handguns that are not prohibited firearms and semi-automatic rifles. Although not currently defined in the Code, “non-restricted firearm” is a term used to describe ordinary hunting rifles and shotguns that have not been modified.⁵

A firearm’s classification is determined by comparing its type and attributes with the criteria provided in the Code and corresponding regulations. Its classification is validated by certified verifiers coordinated through the Royal Canadian Mounted Police Canadian Firearms Program. In some instances, a firearm will initially be classified pursuant to the information provided by its manufacturer or importer, prior to importation. However, upon inspection, it may be determined that the information initially provided was inaccurate or that the design of the firearm has changed from that of the initial shipment, resulting in different classification.⁶

Section 84 of the Code defines the first two categories, prohibited and restricted firearms, as follows:

- Prohibited firearm:
 - a handgun (except for certain prescribed handguns used in international sporting competitions) that has a barrel equal to or less than 105 mm in length, or is designed or adapted to discharge a 25 or 32 calibre cartridge;
 - a firearm that is adapted from a rifle or shotgun, whether by sawing, cutting or any other alteration, so that it is less than 660 mm in length, or is 660 mm or greater in length and has a barrel that is less than 457 mm in length;
 - an automatic firearm, whether or not it has been altered to discharge only one projectile with one pressure of the trigger; or
 - any firearm that is prescribed to be a prohibited firearm.
- Restricted firearm:
 - a handgun that is not a prohibited firearm;
 - a firearm that is not a prohibited firearm, has a barrel that is less than 470 mm in length, and is capable of discharging centre-fire ammunition in a semi-automatic manner;

- a firearm that is designed or adapted to be fired when reduced to a length of less than 660 mm by folding, telescoping or otherwise; or
- a firearm of any other kind that is prescribed to be a restricted firearm.

Clause 18 of Bill C-42 adds a definition of non-restricted firearm to section 84 of the Code, defining the term to mean:

- a firearm that is neither a prohibited firearm nor a restricted firearm; or
- a firearm that is prescribed to be a non-restricted firearm.

As with restricted and prohibited firearms, the new definition of non-restricted firearms provides that firearms may be designated as falling within that category of firearms through regulations made by the Governor in Council (i.e., Cabinet).

2.1.2 FIREARMS CLASSIFICATION DEEMING PROVISIONS (CLAUSE 34)

Section 117.15(1) of the Code currently gives the Governor in Council the power to make regulations in relation to anything that may be prescribed under Part III of the Code, such as adding prohibited and restricted firearms to those that are already described in the definitions of “prohibited firearm” and “restricted firearm” in section 84 of the Code. However, section 117.15(2) of the Code limits those powers:

In making regulations, the Governor in Council may not prescribe anything to be a prohibited firearm, a restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or prohibited ammunition if, in the opinion of the Governor in Council, the thing to be prescribed is reasonable for use in Canada for hunting or sporting purposes.

Bill C-42 grants the Governor in Council the authority to override the firearms classifications definitions in section 84 of the Code by way of regulations carving out exceptions. This means that firearms that would otherwise be captured by the definitions of prohibited and restricted firearms could be deemed to be non-restricted firearms (new section 117.15(3) of the Code). Similarly, the Governor in Council could deem firearms that would otherwise be prohibited firearms to be restricted firearms (new section 117.15(4) of the Code). Section 117.15(2) of the Code, which limits the Governor in Council’s powers, is not modified by the provisions in Bill C-42. Therefore, the Governor in Council would not be empowered to reclassify ordinary hunting rifles and shotguns to the restricted or prohibited category.

2.1.3 TECHNICAL AMENDMENTS TO CERTAIN FIREARMS OFFENCES AND WARRANTLESS SEIZURE PROVISIONS (CLAUSES 19 TO 28 AND CLAUSE 33)

Bill C-42 makes amendments to several of the Code provisions relating to firearms possession, trafficking and export and import offences, offences relating to lost, found, stolen or destroyed firearms and the warrantless seizure of firearms that are technical in nature. These amendments substitute the more general term “firearm”⁷ for a listing of the three categories under which firearms are classified in the Code, namely, prohibited, restricted and non-restricted firearms. These amendments do not appear to modify the purpose of the provisions.⁸

2.1.4 PROHIBITION ORDERS (CLAUSES 30 TO 32)

2.1.4.1 MANDATORY PROHIBITION ORDER (CLAUSE 30)

Court orders prohibiting the possession of firearms, weapons and other articles, including ammunition and explosive substances, are mandatory when a person has been convicted or granted a discharge (section 730 of the Code):

- in relation to an offence listed in section 109(b) or section 109(c) of the Code;
- under circumstances involving violence as defined in section 109(a) of the Code; or
- in relation to an offence that involves, or the subject matter of which is, a firearm, any ammunition, a prohibited or restricted weapon, a cross-bow, a prohibited device or ammunition, or an explosive substance and, at the time the individual was prohibited from possessing any such thing.

A lifetime prohibition applies for prohibited firearms, restricted firearms, prohibited weapons, prohibited devices and prohibited ammunition. For other firearms, restricted weapons, cross-bows, ammunition and explosive substances, a 10-year prohibition applies for a first offence and a lifetime prohibition applies for second and subsequent offences.

Currently, one of the situations in which a mandatory prohibition order under section 109 applies is when a person is convicted of or granted a discharge for an indictable offence involving the use, attempted use or threats of violence against a person and for which the offender may be sentenced to imprisonment for 10 years or more (section 109(1)(a) of the Code). Bill C-42 adds that a mandatory prohibition order would apply, regardless of the possible sentence, when violence was used, threatened or attempted against the offender's current or former intimate partner, the child or parent of the offender or the offender's current or former intimate partner, or any person who resides with such a person (new section 109(1)(a.1) of the Code). "Intimate partner" is defined to include a spouse, a common-law partner and a dating partner (new section 110.1 of the Code).

2.1.4.2 DISCRETIONARY PROHIBITION ORDER (CLAUSE 31)

The discretionary prohibition order provision in section 110 of the Code applies when a person has been convicted or granted a discharge in relation to the following:

- circumstances involving violence other than those to which a mandatory section 109 prohibition order applies; or
- circumstances involving a firearm, prohibited weapon, restricted weapon or other articles such as ammunition or explosives and the offender was not subject to a prohibition order in relation to the thing.

Under section 110, a sentencing court has the discretion to impose a prohibition against the possession of firearms, weapons and other articles such as ammunition and explosive substances when it considers that such an order is in the interests of the safety of the offender or any other person. Unlike the mandatory section 109

prohibition orders, discretionary section 110 orders are not blanket orders applying to all firearms, weapons, cross-bows, ammunition or explosive substances; they may prohibit a person from possessing any or all such specified articles.

Discretionary prohibition orders have a maximum length of 10 years, calculated from the date of conviction or discharge, or the date on which the person was released from imprisonment. Bill C-42 extends the maximum length of section 110 discretionary prohibition orders if, in the commission of the offence, violence was used, threatened or attempted against the offender's current or former intimate partner, the child or parent of the offender or the offender's current or former intimate partner, or any person who resides with such a person. Bill C-42 provides that in such circumstances, the prohibition orders may be imposed for life or for any shorter period (new section 110(2.1) of the Code). As is the case for section 109, for the purpose of section 110, "intimate partner" is defined to include a spouse, a common-law partner and a dating partner (new section 110.1 of the Code).

2.2 AMENDMENTS TO THE *FIREARMS ACT*

2.2.1 LICENSING (CLAUSE 4)

Licensing requirements under the *Firearms Act* depend on the firearm's classification, and it is the firearm licence that sets out the class of firearms for which it is valid (i.e., prohibited, restricted or firearms that are neither prohibited nor restricted). One must hold a valid firearms licence in order to lawfully possess or acquire a firearm and buy ammunition. Generally speaking, a licence that is issued to an individual 18 years of age or older expires after five years and then needs to be renewed.

Section 7 of the *Firearms Act* prescribes the safety training and testing required in order to obtain a licence, as well as the circumstances under which a person may be exempt from those requirements. As a general rule, applicants for a Possession and Acquisition Licence (PAL), the only licence currently available to new applicants, must have passed the Canadian Firearms Safety Course.

Section 7(1) deals with individuals seeking to acquire a licence for non-restricted firearms. Currently, in order to obtain such a licence, an individual must meet one of the following conditions:

- have successfully completed the Canadian Firearms Safety Course and passed the administered tests;
- have passed the tests, as administered by an instructor (i.e., without having completed the safety training course);
- before 1 January 1995, have successfully completed a course approved for the purposes of section 106 of the former Act;⁹ or
- before 1 January 1995, have passed a test approved for the purposes of section 106 of the former Act.

Section 7(2) deals with individuals seeking to acquire a licence for restricted and prohibited firearms. In order to obtain such a licence, an individual must currently meet one of the following conditions:

- have successfully completed a restricted firearms safety course and passed the administered tests; or
- have passed a restricted firearms safety test, as administered by an instructor (i.e., without having completed the safety training course).

Bill C-42 amends sections 7(1)(b) and 7(2)(b), which currently allow licences to be obtained after passing the applicable test without having successfully completed the required safety course. Under Bill C-42, this option is available only to applicants who have passed the required test before the date on which the new provisions come into force. In other words, the option of obtaining a licence by passing the test without having successfully completed the required safety course is no longer available to new applicants – instead, they are required to successfully complete a firearms safety training course.

The second type of firearms licence, a Possession Only Licence (POL), allows no new firearm acquisition privileges. It is issued under sections 6 to 8 of the *Firearms Licences Regulations*¹⁰ to persons who meet the requirements in section 7(4)(c) of the *Firearms Act*, namely, that they lawfully possessed a firearm when the Act came into force and do not intend to acquire any new firearms.

The requirements for a POL are less strict than those for a PAL, in that the individual is not required to pass the safety training course and testing requirements found within sections 7(1) and 7(2) of the *Firearms Act*. According to the *Annotated Firearms Act and Related Legislation*,

the apparent rationale behind the creation of POLs was that, having been in lawful possession of firearms for a significant period of time, and seeking to acquire no additional firearms, these individuals had demonstrated a history of safe and responsible firearms ownership with the only firearm they would continue to be allowed to possess under the non-acquisition licence.¹¹

Clause 4 of Bill C-42 repeals section 7(4)(c) of the *Firearms Act*, which contains the safety training and testing exemption applying to POL licensees. As a result, it will no longer be possible to obtain a POL.

However, clause 4 of the bill also modifies sections 7(1) (eligibility to hold a non-restricted firearms licence) and 7(2) (eligibility to hold a prohibited and restricted firearms licence), thereby allowing existing POLs to be converted to PALs. The bill adds the following wording to one of the situations in which an individual may obtain a licence: “on the commencement day, was an individual referred to in paragraph 7(4)(c) as it read immediately before that day and held a licence.” The amendments would thus allow an individual to obtain a licence under sections 7(1) or 7(2) of the *Firearms Act* if, at the time of proclamation of the new provisions, he or she held a licence, possessed one or more firearms at the time of proclamation of the *Firearms Act* (1998) and did not require a licence to acquire other firearms.

2.2.2 TRANSPORTING PROHIBITED AND RESTRICTED FIREARMS (CLAUSE 6)

Section 19 of the *Firearms Act* currently sets out the circumstances under which a Chief Firearms Officer (CFO) may grant an authorization to transport prohibited and restricted firearms between two or more specified places as follows:

- where the firearm is to be used in target practice or target shooting competition, under specified conditions or under the auspices of a shooting club or approved shooting range;
- where the firearm is to be used to provide instructions in the use of firearms as part of a restricted firearms safety course;
- where the registered owner of the firearm is changing residence;
- for the transportation of the firearm to a peace officer, firearms officer or chief firearms officer for registration or disposal;
- for the transportation of the firearm for repair, storage, sale, exportation or appraisal;
- for the transportation of the firearm to a gun show; or
- for “any good and sufficient reason.”¹²

Section 19 is amended by clause 6 of the bill to provide for automatic authorizations to transport upon licence renewal. A person who holds a licence to possess prohibited or restricted firearms is therefore authorized to transport them “within [their] province of residence” for the following purposes:

- travel “to and from all shooting clubs and shooting ranges that are approved under section 29”;
- travel “to and from any place a peace officer, firearms officer or chief firearms officer is located, for verification, registration or disposal”;
- travel to and from a business for the purpose of repair or appraisal;
- travel to and from a gun show; and
- travel to a port of exit and from a port of entry.

A person in possession of a prohibited or restricted firearm in a province or territory that does not have a port of exit is therefore required to apply for an authorization to transport under current section 19(1) of the *Firearms Act* in order to be authorized to take the firearm to a port of exit or from a port of entry in a province other than “the individual’s province of residence.”¹³ The terms “port of exit” and “port of entry” are not defined in the *Firearms Act* or in Bill C-42.

Currently, an authorization to transport issued by a CFO “may” take the form of a condition attached to a licence (section 61(3) of the *Firearms Act*).¹⁴ Clause 13 of Bill C-42 amends section 61 in order to prescribe that an authorization to transport referred to in new sections 19(1.1), 19(2.1) and 19(2.2) “must” (as opposed to “may”) take the form of a condition attached to a licence (new section 61(3.1) of the *Firearms Act*).

2.2.2.1 DISCRETION OF CHIEF FIREARMS OFFICERS TO ATTACH CONDITIONS TO LICENCES (CLAUSE 12)

CFOs exercise their discretion in the determination of the applicant's eligibility to obtain a firearms licence. They decide whether to issue, renew or revoke licences and authorizations to transport, carry and transfer firearms. Moreover, in issuing a licence, an authorization to carry or an authorization to transport, a CFO may attach any reasonable condition to the licence or authorization that he or she considers desirable in the particular circumstances and in the interests of the safety of the holder or any other person (section 58(1) of the *Firearms Act*). Under Bill C-42, the discretion of CFOs to attach such conditions is subject to limits imposed by regulations (new section 58(1.1) of the *Firearms Act*).

2.2.2.2 SIX-MONTH GRACE PERIOD AFTER THE EXPIRY OF A LICENCE (CLAUSES 14 AND 16)

Under section 64(1) of the *Firearms Act*, a licence issued to an individual who is over the age of 18 expires on the earlier of five years after the next birthday of the holder following the issuance of the licence, or the termination of the period for which it is issued. Subject to limited exceptions,¹⁵ the possession of firearms without a licence (and a registration certificate for prohibited and restricted firearms) constitutes an offence under section 91(1) of the Code. Bill C-42 creates a grace period extending the validity of a firearms licence for six months beginning on the day that the licence would otherwise have expired (new section 64(1.1) of the *Firearms Act*).

Licences that are extended as a result of the new grace period are subject to limitations:

- the holder of such a licence must not, until the renewal of the licence, use his or her firearms or acquire any firearms or ammunition (new section 64(1.2) of the *Firearms Act*);
- the extension of the licence does not result in the extension of any authorization to carry or authorization to transport beyond the day on which the licence would have expired (new section 64(1.3) of the *Firearms Act*); and
- during the extension period, the availability of authorizations to carry and authorizations to transport is limited (new section 64(1.4)).

2.2.3 OBLIGATION ON BUSINESSES TO REPORT THE IMPORTATION OF PROHIBITED AND RESTRICTED FIREARMS (CLAUSES 10, 15 AND 35)

New section 42.2 of the *Firearms Act* imposes an obligation on businesses importing a prohibited or restricted firearm to complete a prescribed form and submit it to the Registrar of Firearms before the importation and to a customs officer before or at the time of the importation. The Registrar and a customs officer may provide each other with any form or information received through this process (clause 10). Under new section 83(1)(d.1) of the *Firearms Act*, the information provided to the Registrar under section 42.2 is to be kept in the Canadian Firearms Registry (clause 15).

Bill C-42 makes a related amendment to section 107(5) of the *Customs Act*¹⁶ to allow federally or provincially appointed public servants to provide customs information to other federally or provincially appointed public servants for the sole purpose of the administration or enforcement of the *Firearms Act* (new section 107(5)(k.1) of the *Customs Act*).

NOTES

1. [Firearms Act](#), S.C. 1995, c. 39.
2. [Criminal Code](#) [Code], R.S.C., 1985, c. C-46.
3. [Reference re Firearms Act \(Can.\)](#), 2000 SCC 31, par. 4.
4. *Ibid.*, par. 24.
5. A statutory definition of the term “non-restricted firearm” (i.e., “a firearm that is neither a prohibited firearm nor a restricted firearm”) is found in section 1 of [Storage, Display, Transportation and Handling of Firearms by Individuals Regulations](#), SOR/98-209, and is limited in application to the purposes of those regulations.
6. See Royal Canadian Mounted Police, [Classes of firearms](#).
7. The term “firearm” is defined in section 2 of the Code.
8. These amendments are made to the warrantless firearms seizure provision (section 117.03 of the Code) and to some (but not all) of the current firearms offence provisions, namely, the unauthorized possession of a firearm (section 91 of the Code); the possession of a firearm knowing its possession is unauthorized (section 92 of the Code); the possession of a weapon at an unauthorized place (section 93 of the Code); the unauthorized possession of a weapon in a motor vehicle (section 94 of the Code); weapons trafficking (section 99 of the Code); the possession for the purpose of weapons trafficking (section 100 of the Code); the transfer of a weapon without authority (section 101 of the Code); importing or exporting a weapon knowing it is unauthorized (section 103 of the Code); the unauthorized importing or exporting of a weapon (section 104 of the Code); failing to report a lost or stolen weapon, licence or registration certificate or a found weapon (section 105 of the Code), and making a false statement concerning the loss, theft or destruction of a weapon, licence or registration certificate (section 107 of the Code).
9. “Former Act” means Part III of the *Criminal Code* as it read prior to the coming into force of the *Firearms Act* (*Firearms Act*, s. 2).
10. [Firearms Licences Regulations](#), SOR/98-199.
11. J. Brunet, P. Goode and S. Friedman, *Annotated Firearms Act & Related Legislation, 2013/2014 Edition*, LexisNexis Canada, 2013, p. 36.
12. CFOs are designated in each province or territory. When a province or territory does not designate a CFO, the federal Minister of Public Safety and Emergency Preparedness must designate a person to act as the CFO (*Firearms Act*, s. 2(1)). In practice, chief firearms officers have only issued authorizations to transport for the purposes specified in the legislation (Brunet, Goode and Friedman [2013], p. 62).

13. New section 19(2.1) appears to authorize individuals to transport their firearms across long distances within their respective provinces of residence. That being said, section 4 of the *Authorizations to Transport Restricted Firearms and Prohibited Firearms Regulations* states that the “chief firearms officer who issues an authorization to transport shall attach to it the condition that the firearm be transported by a route that, in all the circumstances, is reasonably direct” (see [Authorizations to Transport Restricted Firearms and Prohibited Firearms Regulations](#), SOR 98-206).
14. “To date, authorizations to transport have not, in practice, been attached as licence conditions” (Brunet, Goode and Friedman [2013], p. 140).
15. Under section 91(4) of the Code, no offence is committed if the person is under the direct and immediate supervision of someone authorized to have the firearm, if the person is using the firearm in a manner in which the supervising person is authorized or the person comes into possession by operation of law and, within a reasonable time, lawfully disposes of the firearm or obtains a licence and registration certificate, if necessary.
16. [Customs Act](#), R.S.C., 1985, c. 1 (2nd Supp.).