

Customs and Excise (Arrival Information) Amendment Bill

Government Bill

As reported from the Foreign Affairs, Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Customs and Excise (Arrival Information) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

The bill as introduced seeks to amend the Customs and Excise Act 2018. It would clarify arrival information obligations, and create new offences for travellers who fail to provide arrival information, or fail to provide it in the way that is required, or who provide false information.

Under the Act, the chief executive of the New Zealand Customs Service is already able to set rules specifying what arrival information travellers must provide and how they must provide it. The bill would allow for regulations to be made that would set the time by which travellers must provide information. This could include requiring information to be provided offshore.

The bill would also empower the New Zealand Customs Service to collect information to verify travellers' compliance with requirements in legislation administered by other agencies.

The amendments proposed in the bill are intended to support the New Zealand Passenger Arrival Card to be digitised. While a digital arrival card could already be implemented under the existing legislation, the bill would clarify what is expected of arriving passengers and improve the functionality and enforcement of the system.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We initially had concerns regarding digital access, management of Māori data, and how exemptions would be applied. We are satisfied that our concerns have been adequately addressed.

We also considered privacy issues, which we discuss in more detail later in this commentary.

Proposed amendments

Clause 4 of the bill would insert new sections 28A and 28B, which relate to the requirement for people to provide information. We recommend amending new sections 28A and 28B to clarify that:

- information would be required by a set time, rather than within a time period
- people arriving in New Zealand would be required to provide information both in the way required and by the prescribed deadline
- a person would commit an offence if they fail to provide information, or if they provide information but not in the way required or by the set time, rather than an offence being committed only by failing to comply with both of these requirements.

We also recommend that clause 6A be inserted so that the bill would apply to arrivals on Defence Force ships and cruise ships from 31 October 2023.

Further comments on the bill

We considered the Privacy Commissioner's submission about collecting, storing, and sharing private information. Like the Privacy Commissioner, some of us wondered whether it was appropriate to set information requirements by secondary, rather than primary, legislation.

We sought additional advice and assurances on privacy matters. Although our inquiries have not resulted in any recommended amendments to the bill, we believe our comments regarding our consideration of privacy concerns are important.

Collection of personal information

The chief executive already has powers in the principal Act to require that specified personal information be collected. The bill would provide for regulations to prescribe when such information would be provided. Alongside this, the bill would introduce offences for people who fail to provide this information, or fail to provide it by the set time and in the required form.

We asked whether this would expand the range of personal information which people could be required to provide under this bill. We discussed the Privacy Commissioner's recommendation that the specific information that people can be required to provide be listed in primary legislation, rather than being delegated to the chief executive.

We received advice that the bill would make arriving passengers' existing obligations to provide arrival information more transparent, rather than expanding the range of personal information that they must provide. We note that the chief executive's rules would continue to have the same level of Parliamentary oversight as at present.

We are satisfied that the bill would not expand the personal information that may be collected beyond that already provided for in section 421(2) of the Customs and Excise Act 2018.

Data sharing

The bill would allow the New Zealand Customs Service to collect information to verify that an arriving passenger has complied with a requirement under another Act.

We asked whether the proposed new provisions would affect existing data-sharing arrangements, such as those with other government departments and sector organisations. We received advice that section 317 of the Act already provides an appropriate process for setting up agreements to share information with private sector organisations. The process includes consulting with the Privacy Commissioner.

Some of us sought assurances that the sharing of travel information with government departments would not have negative consequences for superannuitants and beneficiaries. We were advised that the Act already allows information sharing with the Ministry of Social Development to verify eligibility for a benefit. Safeguards to ensure this information sharing is appropriate include:

- specifying the purpose of access, such as verifying the entitlement or eligibility of a specified person to any benefit
- requiring a chief executive to chief executive agreement on access to information
- limiting the search to specific named persons identified on a list
- limiting access to the database to people with appropriate delegated power from the chief executive
- requiring that a record be kept of who has accessed personal information and the reasons for doing so.

The New Zealand Customs Service advised us that digitising arrival information would provide greater control over privacy than the existing paper record. It told us the service would be able to improve access controls. It would also be able to limit access to extraneous information by sharing only the specific answers to specific questions.

We are satisfied that this bill would not expand existing provisions in the Act to collect and share information.

Appendix

Committee process

The Customs and Excise (Arrival Information) Amendment Bill was referred to the committee on 8 November 2022.

We called for submissions on the bill with a closing date of 18 December 2022. We received and considered submissions from five interested groups and individuals. We heard oral evidence from one submitter.

We received advice on the bill from the New Zealand Customs Service. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Hon Jenny Salesa (Chairperson)

Hon Gerry Brownlee

Golriz Ghahraman

Ingrid Leary (until 8 February 2023)

Hon Todd McClay (until 29 March 2023)

Todd Muller (from 29 March 2023)

Ibrahim Omer

Dan Rosewarne (from 8 February 2023)

Simon O'Connor also participated in our consideration of this bill.

**Customs and Excise (Arrival Information) Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Meka Whaitiri

Customs and Excise (Arrival Information) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Customs and Excise (Arrival Information) Amendment Act **2022**.

2 Commencement

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This Act comes into force on **21 June 2023**.

3 Principal Act

This Act amends the Customs and Excise Act 2018.

Part 1

Amendments about requirement to provide information

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4 New sections 28A and 28B inserted

After section 28, insert:

28A Persons arriving in New Zealand to provide information

(1) Every person arriving in New Zealand must provide Customs with the information prescribed by the chief executive's rules.

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(2) The information must be provided—

(a) in the way prescribed by the chief executive's rules; and

(b) ~~within~~ by the prescribed time.

~~(3) Regulations may require a person's information to be provided at any time before they enter New Zealand from a point outside New Zealand.~~

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~~(3) The prescribed time may be before a person arrives in New Zealand.~~

(3A) In that case, the person is to be treated as complying with **subsections (1) and (2)** if (and only if) they have provided the information—

(a) in the way prescribed by the chief executive's rules; and

(b) by that prescribed time.

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(4) Regulations may prescribe exemptions from **subsection (1)**.

28B Offences in relation to providing information

(1) A person commits an offence if the person—

(a) fails to comply with **section 28A(1) and or (2)**; or

(b) provides Customs with information under **section 28A(1)** that is erroneous in a material particular.

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(2) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$1,000.

5	Section 34 amended (Offence in relation to wilful failure to comply with requirements when arriving in, or departing from, New Zealand)	
	In section 34(1), replace “any of sections 28 to 33” with “section 28 or any of sections 29 to 33”.	
6	Section 54 amended (Defences for offences under subpart)	5
	After section 54(2), insert:	
(3)	It is a defence to a prosecution for an offence under section 28B(1)(b) if the defendant proves that the defendant took all reasonable steps to ensure that the information provided was not erroneous in a material particular.	
6A	Schedule 1 amended	10
	In Schedule 1,—	
(a)	<u>insert the Part set out in the Schedule of this Act as the last Part; and</u>	
(b)	<u>make all necessary consequential amendments.</u>	
Part 2		
Amendment about power to collect information		15
7	New section 53A and cross-heading inserted	
	After section 53, insert:	
<i>Power to collect other arrival information</i>		
53A	Power to collect information designated as arrival information	
(1)	Customs may collect information from a person to verify their compliance with a requirement under another Act if—	20
(a)	the information is designated as arrival information by 1 or more provisions of that Act (the relevant provisions); and	
(b)	the relevant provisions are listed in subsection (2) ; and	
(c)	the person must comply with the requirement before or when they arrive in New Zealand.	25
(2)	There are no relevant provisions for the purpose of this section as enacted.	
(3)	Section 28A does not apply to information designated as arrival information for the purposes of this section (<i>see</i> the relevant provisions for requirements relating to how and when the information is to be provided).	30

Schedule
New Part 6 inserted into Schedule 1

s 6A

Part 6
Provisions relating to Customs and Excise (Arrival Information)
Amendment Act 2022

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45 Application of section 28A to arrivals on Defence Force ships and cruise ships

Section 28A applies to a person arriving in New Zealand on one of the following kinds of ship only on or after 31 October 2023:

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- (a) a ship under the control of the Defence Force;
- (b) a ship operated as part of an international cruise business.

Legislative history

26 October 2022
8 November 2022

Introduction (Bill 180–1)
First reading and referral to Foreign Affairs, Defence and Trade
Committee