

Customs and Excise Amendment Bill (No 2)

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 Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

Introduction

The purpose of the bill is to strengthen New Zealand's border security by clarifying Customs' border management role and improving the Customs Service's ability to work cooperatively with other agencies at the border. The bill amends the Customs and Excise Act 1996 (the Act) to ensure that individuals and items arriving or departing New Zealand are unable to slip through border processes without proper scrutiny. A particular area we examined in our consideration of the bill was that of controls over prohibited exports on the New Zealand Strategic Goods List.

Prohibited exports

The "catch-all" export control provisions in clause 8 are designed to prevent the one-off exportation of goods intended for an undesirable end-use. The clause amends section 56 of the Act, which prohibits the export of goods by an Order in Council. The section will be amended to extend its application to goods that are not on the New Zealand Strategic Goods List but which can be adapted for use in the

manufacture or delivery of systems of weapons of mass destruction, or for use as military goods themselves. The clause also extends control over goods on the strategic goods list to items that can be electronically exported.

We asked why the prohibited exports provided for in clause 8 were not listed in the legislation. We were advised that, except for items that are unquestionably undesirable such as illicit drugs and pornography, import and export prohibitions are usually covered by an Order in Council. We understand that the flexibility of the Order in Council option allows the Government to respond to new situations without delay. Flexibility is vital in the application of export controls over the strategic goods list and catch-alls if the scheme is to work properly without interfering unduly with legitimate trade, because the goods in question cannot be identified until their end-use is determined.

We were concerned about the sequencing of the prohibition on the export of goods covered by the catch-all control. The prohibition is effectively a two-stage process: the proposed export is not prohibited until the Secretary of Foreign Affairs and Trade determines that the export is intended for an undesirable use described in the Order in Council. Although the Secretary must notify both Customs and the exporter of the determination preventing the export of the goods, the proposed export is subject to controls when the determination is made, rather than when the parties are notified.

We recommend that clause 8 be amended to provide that the exporter should be notified of the Secretary's determination as soon as practicable, and that the Secretary be required to provide such notifications in writing, which will include facsimile transmissions or electronic communications. We recommend including amendments to section 285(2)(b) and (c) and (3) to set out the rules as to when a notice is deemed to have been received by the exporter.

We further recommend the addition of new section 209(4A), providing for a defence on the part of an exporter who does not receive the Secretary's notice through no fault of their own.

Offences in relation to import or export of prohibited goods

Clause 19 amends section 209(1) of the Act by making it an offence for a prospective exporter to fail to inform the Secretary under section 56(2E) that the goods or electronic publications he or she

wishes to export “are or may be intended for any of the uses described in an order made under” section 56(2)(c). The wording in proposed section 209(1)(ca) is slightly different from section 56(2E). We recommend that new section 209(1)(ca) be amended so that the wording more closely reflects the wording of new section 56(2E).

No penalty has been provided for a breach of new section 209(1)(ca). Section 209(1) currently refers to a number of acts that are offences under the Act. The penalties for some of these are set out in sections 209(2) and 209(3). We recommend that section 209(3) be amended to set out the penalties for the new offence created in section 209(1)(ca).

Definition of “New Zealand”

The definition of “New Zealand” in section 2 of the Act lists certain powers that can be exercised in New Zealand’s “contiguous zone”—the waters between 12 and 24 nautical miles offshore. These powers include the power to detain craft under section 143(1) of the Act. When the Act was amended in 2002, section 143(1) was replaced by new sections 143(1AA) and 143(1) to allow Customs to deal with people and craft suspected of being involved in people smuggling. However, the reference to “New Zealand” was not updated to include section 143(1AA). As a result, it is uncertain whether Customs’ control of craft and people implicated in people-smuggling extends beyond the 12 nautical mile limit.

Accordingly, we recommend that paragraph b of the definition of “New Zealand” in section 2(1) of the Act be amended to include reference to section 143(1AA) of the Act. This will clarify that Customs’ powers in relation to people smuggling can be exercised up to the 24 nautical mile limit as originally intended.

Indexation of rates of excise duty on alcohol and tobacco

Currently section 79(2)(b) of the Act provides for inflation-indexed adjustments to excise duty or excise equivalent duty on alcohol, to come into force on the first day of June each year. Similarly, section 79(2)(c) of the Act provides for inflation indexation of excise duty on tobacco to come into force on the first day of December each year.

There are two issues with these dates. To get the inflation-indexed increases through on 1 June and 1 December, the current law

requires Customs to seek waivers of the 28-day rule for notification in the *New Zealand Gazette*. This is because the rates of increase, which are based on the Consumer Price Index, are not available until mid-to-late April for alcohol, and mid-to-late October for tobacco. This leaves barely two weeks for Customs officials to obtain the new duty rate, prepare reports, instruct the Parliamentary Counsel Office, and arrange for the drafting of the Order in Council, before obtaining Cabinet approval—a process which usually takes about four weeks.

The second issue is that the Alcohol Liquor Advisory Council increases its levy annually on 1 July, which means that alcohol retailers must make adjustments to the selling price of alcohol in two consecutive months—firstly for inflation indexation, and then to cover the levy increase.

We recommend that the bill amend section 79(2)(b) of the Act to change the date of inflation indexation for alcohol to the first day of July each year. We similarly recommend amending section 79(2)(c) to change the date of tobacco inflation indexation to the first day of January in any year. These changes would enable Customs to meet the 28-day rule for notices in the *New Zealand Gazette*, and reduce compliance costs for alcohol retailers, who will need to adjust their prices on only the one date.

New section 32A

We recommend that the heading for new section 32A in the bill be amended to more accurately reflect the provisions contained in the section. The new heading of clause 6, “Further requirements for persons arriving in or departing from New Zealand”, relates to three proposed new sections 32A, 32B, and 32C. While the heading reflects the substantive provisions of 32B and 32C, the requirement in new section 32A to switch off electronic devices could apply to persons other than those arriving in, or departing from New Zealand—such as other people who were in the area designated for arriving and departing travellers, but not actually travelling themselves. However, there is a thematic link with arrivals and departures because the proposed power may be exercised only in places used for arriving or departing passengers. We further recommend that for the sake of consistency with the approach taken in new sections 32B and 32C, the definition currently in new section 32A(1) should be relocated to the end of the section.

Appendix

Committee process

The Customs and Excise Amendment Bill (No 2) was referred to the committee on 1 August 2006. The closing date for submissions was 22 September 2006. We received and considered four submissions from interested groups and individuals. We heard one submission.

We received advice from the New Zealand Customs Service, the Ministry of Foreign Affairs and Trade, the Regulations Review Committee, and Parliamentary Counsel Office.

Committee membership

Dianne Yates (Chairperson)

Dr Wayne Mapp (Deputy Chairperson)

Tim Groser

John Hayes

Keith Locke

Hon Murray McCully

Jill Pettis

H V Ross Robertson

Hon Paul Swain

During consideration of this bill, Hon Georgina te Heuheu was replaced by Dr Wayne Mapp.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

▬ Subject to this Act, **▬**

Text struck out unanimously

New (unanimous)

▭ Subject to this Act, **▭**

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Nanaia Mahuta

Customs and Excise Amendment Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Customs and Excise Amendment Act (No 2) **2006.**

- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

- 3 Principal Act amended**
This Act amends the Customs and Excise Act 1996.

Part 1

Main amendments to principal Act 10

- 4 Interpretation**
- (1) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
 - “**dangerous item** means—
 - “(a) any firearm (as defined in section 11(2) of the Aviation Crimes Act 1972); or 15
 - “(b) any dangerous or offensive weapon or instrument of any kind whatsoever; or
 - “(c) any ammunition; or
 - “(d) any explosive substance or device, or any other injurious substance or device of any kind whatsoever that could be used to endanger a person’s safety”. 20
- (2) The definition of **exportation** in section 2(1) is amended by omitting “section 56(1)(a)” and substituting “section 56”.

New (unanimous)

- (2A) Paragraph (b) of the definition of **New Zealand** in section 2(1) is amended by inserting “143(1AA),” after “140(1),”.
- (3) The definition of **prohibited exports** in section 2(1) is amended by inserting “or electronic publications” after “goods”.

5 Inward report

Section 26 is amended by adding the following subsection:

- “(3) The particulars and supporting documents referred to in subsection (2)(a) need not include information that has already been supplied to the Customs in any form and manner approved in writing by the Chief Executive under section 21(1)(a) or otherwise.”

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6 New heading and sections 32A to 32C inserted

The following heading and sections are inserted after section 32:

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“Further requirements (for) relating to persons arriving in or departing from New Zealand

“32A Use of electronic communication devices prohibited in certain places

Struck out (unanimous)

- “(1) In this section, **electronic communication device** includes an electronic communication device (except for a device that is being used to assist with a disability) that is capable of any or all of the following actions:
- “(a) transmitting sound:
 - “(b) computing information:
 - “(c) functioning as a telephone:
 - “(d) communicating in any other way using any technology (including telecommunication, radiocommunication, and broadcasting technology).

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- “(2) This section applies to any Customs place or Customs controlled area that is used by persons arriving in or departing from New Zealand.

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- “(3) A Customs officer may erect a sign prohibiting in a place or area to which this section applies the use of any electronic communication device identified on the sign (by words, or images, or both).

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- “(4) If a sign has been erected in a place under **subsection (3)**, a Customs officer may require a person in that place not to use, or to stop using, an electronic communication device identified on the sign.

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“(5) Every person must comply with a requirement by a Customs officer under **subsection (4)**.

New (unanimous)

“(5A) In this section, electronic communication device includes an electronic communication device (except for a device that is being used to assist with a disability) that is capable of any or all of the following actions:	5
“(a) transmitting sound:	
“(b) computing information:	
“(c) functioning as a telephone:	
“(d) communicating in any other way using any technology (including telecommunication, radiocommunication, and broadcasting technology).	10

“32B Completion of processing under Immigration Act 1987 and Biosecurity Act 1993

“(1) This section applies to a person in a designated place who has arrived in New Zealand or who departs, or attempts to depart, from New Zealand. 15

“(2) The person must remain in the designated place until the processing, under the Immigration Act 1987 and, if applicable, the Biosecurity Act 1993, in respect of the person’s arrival in, or departure from, New Zealand, is completed. 20

“(3) A Customs officer may direct the person to comply with the person’s obligation under **subsection (2)**.

“(4) For the purposes of **subsection (2)**, the processing referred to in that subsection is completed when— 25

 “(a) the person has complied with all obligations imposed on the person, in respect of the person’s arrival in, or departure from, New Zealand, under the Immigration Act 1987 and, if applicable, the Biosecurity Act 1993; and 30

 “(b) the powers and duties under those Acts that are, in relation to the person, required to be exercised or performed in the designated place have, so far as practicable, been exercised or performed in that place.

“(5) In this section,—

“**authorised officer** means an officer authorised under the Immigration Act 1987 or the Biosecurity Act 1993

“**designated place** means—

- “(a) a Customs controlled area; or 5
- “(b) a Customs place; or
- “(c) a place approved by the Chief Executive for the purposes of—
 - “(i) the arrival of a craft in New Zealand; or
 - “(ii) the departure of a craft from New Zealand; or 10
- “(d) a police station to which a person reports under section 27(1)

“**processing** includes—

- “(a) consideration by any authorised officer as to the applicability of powers and duties under the Immigration Act 1987 or the Biosecurity Act 1993 to the person; and 15
- “(b) reconsideration by any authorised officer, in the light of any new information, of a previous exercise or performance of a power or duty under the Immigration Act 1987 or the Biosecurity Act 1993; and 20
- “(c) any reasonable time following a request by a Customs officer that an authorised officer who is not present at the designated place consider, exercise, or perform a particular power or duty under the Immigration Act 1987 or the Biosecurity Act 1993 that— 25
 - “(i) may, in the opinion of the Customs officer, be applicable to the person; and
 - “(ii) may not be exercised or performed by any authorised officer present at the designated place at the time of the request; but 30
 - “(iii) may be exercised or performed by the authorised officer to whom that request is made.

“**32C Cases requiring investigation for public health or law enforcement purposes**

- “(1) This section applies to a person in a designated place who has arrived in New Zealand or who departs, or attempts to depart, from New Zealand, if a Customs officer has reasonable cause to suspect that the person— 35
 - “(a) is, under an enactment, liable to be detained because of an infectious disease; or 40

- “(b) is liable to be arrested under a warrant issued by a court or by any registrar; or
- “(c) is, in attempting to depart from New Zealand or in attempting to remove another person from New Zealand, contravening, or about to contravene, an enactment or an order issued by a court; or 5
- “(d) is wanted by the police on suspicion of having committed an offence punishable by imprisonment; or
- “(e) has contravened any of the following enactments:
 - “(i) the Biosecurity Act 1993: 10
 - “(ii) the Human Assisted Reproductive Technology Act 2004:
 - “(iii) the Misuse of Drugs Act 1975:
 - “(iv) the Passports Act 1992:
 - “(v) the Terrorism Suppression Act 2002: 15
 - “(vi) the Trade in Endangered Species Act 1989:
 - “(vii) regulations under the United Nations Act 1946:
 - “(viii) any enactment specified for the purposes of this section by the Governor-General in Council, being an enactment that contains an offence involving the unlawful entry into New Zealand, or the unlawful removal from New Zealand, of a person, matter, or thing; or 20
- “(f) is endangering, or threatening to endanger, the life, health, or safety of a person or group of persons. 25
- “(2) The Customs officer may direct the person to remain in the designated place for the purposes of obtaining the attendance of, or making inquiries of, another officer who is authorised, in respect of a matter specified in **subsection (1)**, to do 1 or more of the following: 30
 - “(a) question the person:
 - “(b) ascertain or determine the status of the person:
 - “(c) detain the person:
 - “(d) arrest the person.
- “(3) The person must comply with any direction given under this section. 35
- “(4) A direction under this section ceases to have effect 4 hours after it is given.
- “(5) In this section,—
 - “**another officer** means— 40
 - “(a) a member of the police; or

- “(b) a bailiff; or
“(c) an employee or agent of a department of State
“**designated place** means—
“(a) a Customs controlled area; or
“(b) a Customs place; or
“(c) a place approved by the Chief Executive for the purposes of—
“(i) the arrival of a craft in New Zealand; or
“(ii) the departure of a craft from New Zealand.”
- 7 New section 34 substituted** 10
Section 34 is repealed and the following section substituted:
- “34 Certificate of clearance**
Unless otherwise approved by the Chief Executive, before any certificate of clearance is granted to the person in charge of any craft to which section 33 applies, that person must— 15
“(a) deliver to the Customs, within any time or times prescribed, an outward report in the prescribed form and manner (*which*) that contains the prescribed particulars verified by declaration, and which is accompanied by any supporting documents the Chief Executive may require (the outward report and any supporting documents may be delivered to the Customs within any time or times after departure that is or are prescribed either generally or for a particular case or class of case); and 20
“(b) answer any question asked by a Customs officer relating to the craft and its passengers, crew, cargo, stores, and intended voyage or journey; and 25
“(c) produce any other documents required by a Customs officer relating to the craft and its passengers, crew, cargo, stores, and intended voyage or journey; and 30
“(d) comply with all requirements in this or any other Act concerning the craft and its passengers, crew, cargo, stores, and intended voyage or journey.”
- 8 Prohibited exports**
(1) Section 56(1) is amended by repealing paragraph (b) and substituting the following paragraphs: 35
“(b) goods or electronic publications the exportation of which is prohibited by an order under **subsection (2)(a) or (b)**; and

- “(c) goods or electronic publications the exportation of which the Secretary has determined is prohibited under an order under **subsection (2)(c).**”
- (2) Section 56(1A) is amended by omitting “subsection (1)(a)” and substituting “subsection (1)”. 5
- (3) Section 56(2) is repealed and the following subsections are substituted:
- “(2) If the Governor-General considers prohibition is necessary in the public interest, the Governor-General may by Order in Council prohibit the exportation from New Zealand of any or all of the following: 10
- “(a) any specified—
- “(i) electronic publications that have or may have a strategic use; or
- “(ii) goods; or 15
- “(b) a specified class or classes of—
- “(i) electronic publications that have or may have a strategic use; or
- “(ii) goods; or
- “(c) goods or electronic publications described by any use to which— 20
- “(i) they may be put; or
- “(ii) any information recorded on them may be put; or
- “(iii) any information capable of being derived from them may be put. 25
- “(2A) For the purposes of this section,—
- “**military** includes any armed force, paramilitary force, police force, or militia
- “**Secretary** means the Secretary of Foreign Affairs and Trade
- “**software** is, depending on its form, either goods or an electronic publication 30
- “**strategic use**, in relation to goods or an electronic publication, means use of the goods or electronic publication for any or all of the following:
- “(a) the development, production, or deployment of nuclear explosive devices (as defined in section 2 of the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987) and their means of delivery: 35
- “(b) the development, production, or deployment of biological weapons (as defined in section 2 of the New Zealand 40

Nuclear Free Zone, Disarmament, and Arms Control Act 1987) and their means of delivery:

- “(c) the development, production, or deployment of chemical weapons (as defined in the Schedule of the Chemical Weapons (Prohibition) Act 1996) and their means of delivery: 5
- “(d) military use or applications; or the development, production, or deployment of military goods or other goods that have a civilian use but that are intended for military use or that may have military applications. 10
- “(2B) An order under **subsection (2)(c)** must describe goods or electronic publications by reference only to uses that relate (directly or indirectly) to either or both of the following:
- “(a) where contrary to New Zealand’s interests, strategic uses: 15
- “(b) terrorist acts (as defined in section 5 of the Terrorism Suppression Act 2002).
- “(2C) The Secretary may determine that any goods or electronic publications are goods or electronic publications described by an order under **subsection (2)(c)**. 20

Struck out (unanimous)

- “(2D) As soon as practicable after making a determination under **subsection (2C)**, the Secretary must—
- “(a) notify the Chief Executive of the determination; and
- “(b) inform relevant exporters about the determination.

New (unanimous)

- “(2D) As soon as practicable after making a determination under **subsection (2C)**, the Secretary must give notice in writing (which includes, without limitation, by facsimile or electronic means) of the determination to the Chief Executive and to each relevant exporter. 25
- “(2DA) The relevant exporter is deemed to have received the Secretary’s notice under **subsection (2D)** in accordance with section 285. 30
- “(2E) If any person is aware or should reasonably be aware that any goods or electronic publications the person wishes to export

are intended for or may have any of the uses described in an order made under **subsection (2)(c)**, the person must, before exporting the goods or electronic publications, inform the Secretary.

- “(2F) The Secretary must maintain an up-to-date list of all goods, classes of goods, electronic publications, and classes of electronic publications that are prohibited under **subsection (2)(a) and (b)** because they have or may have a strategic use. 5
- “(2G) The Secretary must make the list maintained under **subsection (2F)** available by— 10
 - “(a) notifying the Chief Executive of it; and
 - “(b) publishing it on the Internet (at all reasonable times) on a website maintained by, or on behalf of, the Secretary.
- “(2H) Any failure to publish a list under **subsection (2G)** does not invalidate the prohibition of goods or electronic publications mentioned in the list.” 15
- (4) Section 56(3)(b) is amended by inserting “or electronic publications” after “goods”.
- (5) Section 56(4) is amended by inserting “or electronic publications” after “goods”. 20

9 New section 65 substituted

Section 65 is repealed and the following section substituted:

“65 Regulations for determining country of produce or manufacture

Without limiting the power to make regulations conferred by section 286, the Governor-General may from time to time, by Order in Council, make regulations for all the following purposes: 25

- “(a) prescribing the goods or any type or class of goods that are deemed to be the produce or manufacture of any country or group of countries— 30
 - “(i) for the purposes of this Act; or
 - “(ii) for the purposes of the Tariff Act 1988, on the recommendation of the Minister after consultation with the Minister of Commerce; and 35
- “(b) prescribing the conditions to be fulfilled before goods are deemed to be the produce or manufacture of any country; and

- “(c) authorising the Chief Executive to determine (in relation to specific goods)—
- “(i) that the percentage of the goods’ factory or works costs is to be increased or decreased: 5
 - “(ii) the valuation or method of valuation (including a reduced or zero valuation) if any material, labour, or overhead used in the goods’ production has been supplied free of charge or at a reduced cost: 5
 - “(iii) the required percentage of qualifying area content in case of unforeseen circumstances that are unlikely to continue: 10
 - “(iv) variations or conditions relating to the goods entering the commerce of another country.”

New (unanimous)

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|-----------|--|----|
| 9A | Indexation of rates of excise duty and excise-equivalent duty on alcoholic beverages and tobacco products | 15 |
| (1) | Section 79(2)(b) is amended by omitting “June” and substituting “July”. | |
| (2) | Section 79(2)(c) is amended by omitting “December” and substituting “January”. | |
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- 10** **New section 83 substituted** 20
- Section 83 is repealed and the following section substituted:
- “83 Excise duty and excise-equivalent duty on spirits and other alcoholic beverages if approval not complied with**
- “(1) The Chief Executive may make an assessment of duty if the Chief Executive has reasonable cause to suspect that a person granted an approval to which this subsection applies has not complied with the conditions of the approval. 25
 - “(2) **Subsection (1)** applies to an approval granted under any of the following:
 - “(a) excise item number 99.35.30E in Part A of Schedule 3: 30
 - “(b) excise item number 99.55.00D in Part A of Schedule 3:
 - “(c) tariff item number 2207.10.29 in Part B of Schedule 3.
 - “(3) Where an assessment is made under **subsection (1)**, the rate of duty to be applied must be the rate that would be applicable if the goods to which the relevant approval relates were entered for home consumption. 35

- “(4) The duty assessed in accordance with this section must be paid in accordance with **subsection (5)** by the person to whom the approval was granted.
- “(5) The due date for the payment of any duty assessed in accordance with this section is the date that is 20 working days after the date on which written notice of the assessment is given by the Chief Executive. 5
- “(6) The Chief Executive must, if satisfied that the non-compliance with the conditions was neither intentional nor negligent, remit or refund the duty on the goods. 10
- “(7) A person liable for the payment of the excise duty who is dissatisfied with a decision of the Chief Executive under this section may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.” 15

11 New section 148C inserted

The following section is inserted after section 148B:

“148C Detention for public health or law enforcement purposes

- “(1) A Customs officer may detain a person who is required to comply with a direction given under **section 32C** and who fails to comply with that direction. 20
- “(2) If a Customs officer has reasonable cause to suspect that a person who is detained under section 148 or 148A or 148B is a person to whom 1 or more of the provisions of **section 32C(1)** apply, the Customs officer may— 25
 - “(a) detain the person under this section as well as the other section; or
 - “(b) if the detention under the other section has ended or is about to end, further detain the person under this section. 30
- “(3) A Customs officer may detain or further detain a person under this section only for the purposes of obtaining the attendance of, or making inquiries of, another officer who is authorised, in respect of a matter specified in **section 32C(1)**, to do 1 or more of the following: 35
 - “(a) question the person:
 - “(b) ascertain or determine a matter relating to the status of the person:

- “(c) detain the person:
“(d) arrest the person.
- “(4) A person must not be detained or further detained under this section for a period exceeding the shorter of—
- “(a) 4 hours; or 5
“(b) if the person’s detention commenced under section 148 or 148A, the maximum period for which the person could, at the time of his or her detention or further detention under **subsection (2)**, have been detained under section 148 or, as the case requires, section 148A. 10
- “(5) Reasonable force may be used, if necessary, to detain or further detain a person under this section.
- “(6) Nothing in this section prevents a person—
- “(a) being detained or further detained under another provision of this Act or under any other enactment if there are lawful grounds for that detention; or 15
“(b) being arrested under section 174.
- “(7) In this section,—
- “**another officer** means—
- “(a) a member of the police; or 20
“(b) a bailiff; or
“(c) an employee or agent of a department of State
- “**detention** includes the delivery of a person to a police station or into the custody of a member of the police.”
- 12 New section 155A inserted 25**
The following section is inserted after section 155:
- “155A Cancellation and amendment of entries**
- “(1) The Chief Executive may cancel or amend any entry required under this Act for the purpose of preventing duplication of entries or for the purpose of correcting any entry or any part of an entry. 30
- “(2) No cancellation or amendment of an entry by the Chief Executive in accordance with **subsection (1)** affects any penalty, liability to seizure, or criminal liability already accrued or incurred in respect of that entry by the person making it. 35
- “(3) The Chief Executive may make a refund of duty in accordance with any cancellation or amendment of an entry.

- “(4) A person who is dissatisfied with a decision of the Chief Executive under **subsection (3)** may, within 20 working days after the date on which notice of the decision is given, appeal to a Customs Appeal Authority against that decision.
- “(5) **Subsection (3)** is subject to section 111.” 5
- 13 Entry and search under warrant**
 Section 168 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) Every search warrant authorises the officer executing the warrant to search for and seize any thing referred to in section 167(1) and, while on the premises in accordance with the warrant, to seize either or both of the following: 10
- “(a) any other thing that the officer finds and has reasonable cause to suspect may be evidence of the commission of an offence in respect of which that officer could have obtained a warrant under section 167(1); or 15
- “(b) any dangerous item in the circumstances described in **section 168A(2)**.”
- 14 New sections 168A and 168B inserted**
 The following sections are inserted after section 168: 20
- “168A Searching of persons for dangerous items when executing search warrant**
- “(1) This section applies to any person who is at the place referred to in the search warrant when the Customs officer arrives at that place, or who arrives at that place when the officer is executing the warrant. 25
- “(2) A Customs officer may immediately detain and search a person to whom this section applies for dangerous items, and may seize such items under **section 168(2)** if, and only if, the officer has reasonable grounds to believe that— 30
- “(a) the person has a dangerous item hidden or in clear view on or about his or her person; and
- “(b) the item poses a threat to the safety of the officer or any other person; and
- “(c) there is a need to act immediately in order to address that threat. 35
- “(3) If necessary, reasonable force may be used for any or all of the following purposes:

- “(a) to detain the person:
“(b) to search the person:
“(c) to seize any dangerous item found in carrying out a search under **subsection (2)**.
- “(4) To avoid doubt, a search may be conducted under this section whether or not the person has earlier been the subject of a search under section 168. 5
- “(5) A Customs officer who undertakes a search under this section must, within 3 working days of the search, give the Chief Executive a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by **subsection (2)**. 10
- “168B Detention of dangerous items**
- “(1) A Customs officer may detain goods that he or she seizes in the course of exercising a power of search under section 168 or **168A(2)**, if he or she believes on reasonable grounds that the goods are dangerous items as defined in **section 2(1)**. 15
- “(2) If a Customs officer detains goods under **subsection (1)**, he or she must—
- “(a) as soon as practicable, deliver those goods into the custody of the police; or 20
- “(b) comply with section 170 and retain those goods if the goods may be required for a proceeding under this Act.
- “(3) Once goods have been delivered under **subsection (2)**, responsibility for them passes from the Customs to the police. 25
- “(4) Section 199 of the Summary Proceedings Act 1957 applies with any necessary modifications to goods detained under **subsection (1)**.”

15 Sections 175A to 175C substituted

Section 175A is repealed and the following sections are substituted: 30

“175A Seizure and detention of dangerous civil aviation goods

- “(1) A Customs officer may seize and detain goods that are presented or located in the course of exercising any power of inspection, search, or examination under this Act, if he or she has cause to suspect on reasonable grounds that the goods— 35
- “(a) are dangerous civil aviation goods that may not be lawfully carried on an aircraft; and

- “(b) are proposed to be carried by an operator.
- “(2) If a Customs officer detains goods under **subsection (1)**, he or she must, as soon as practicable, deliver those goods into the custody of the Aviation Security Service or the operator.
- “(3) Once goods have been delivered under **subsection (2)**, responsibility for them passes from the Customs to the Aviation Security Service or to the operator. 5
- “(4) In this section,—
- “**Aviation Security Service** has the same meaning as in section 2 of the Civil Aviation Act 1990 10
- “**dangerous civil aviation goods** has the same meaning as dangerous goods in section 2 of the Civil Aviation Act 1990
- “**operator** has the same meaning as in section 2 of the Civil Aviation Act 1990.
- “**175B Unlawful travel document** 15
- “(1) In this section—
- “**false**, in relation to a travel document, means that the travel document contains information purporting to relate to the person to whom it was issued (being information supplied by or on behalf of the person as part of or in connection with the person’s application for the document) that— 20
- “(a) is false; or
- “(b) relates in fact to some other person
- “**forged**, in relation to a travel document, means that the travel document— 25
- “(a) has not been issued by the government by which it purports to have been issued; or
- “(b) has been altered without authority
- “**misused**, in relation to a travel document, means that the travel document has been, is being, or is intended to be used for the purposes of identification by a person who is not the person in respect of whom the document was issued 30
- “**travel document** means any document that is or purports to be—
- “(a) a New Zealand travel document within the meaning of the Passports Act 1992; or 35

- “(b) a passport (within the meaning of that Act) that has been issued by the government of a country other than New Zealand; or
- “(c) a certificate of identity (within the meaning of that Act) that has been issued by the government of a country other than New Zealand; or 5
- “(d) a refugee travel document that has been issued by the government of a country other than New Zealand
- “**unlawful travel document** means—
- “(a) a travel document that is false, forged, or misused; and 10
- “(b) includes any item involved in the production of a document referred to in **paragraph (a)** or in the unauthorised alteration of a travel document.
- “(2) A Customs officer may retain or seize any document presented for inspection if the Customs officer has reasonable cause to suspect that the document is an unlawful travel document. 15
- “(3) A Customs officer may seize any goods found in the course of a search or examination under this Act if the Customs officer has reasonable cause to suspect that the goods are unlawful travel documents. 20
- “(4) Sections 22, 139, 140, 144, 145, 148, and 149B must each be read as if unlawful travel documents were prohibited goods.
- “(5) Any documents or goods retained or seized under this section must be dealt with in accordance with **section 175C**. 25
- “(6) **Section 175C(2) to (5)** apply with all necessary modifications to any documents or goods retained or seized under this section.
- “**175C Seizure and detention of goods suspected to be certain risk goods or evidence of commission of certain offences**
- “(1) A Customs officer may seize and detain goods or documents that are presented or located in the course of exercising any power of inspection, search, or examination under this Act, if he or she has cause to suspect on reasonable grounds that the goods— 30
- “(a) are risk goods (within the meaning of the Biosecurity Act 1993) for which no biosecurity clearance has been given under that Act; or 35
- “(b) are evidence of the commission of 1 or more offences under 1 or more of the following enactments:

- “(i) section 130 of the Animal Products Act 1999:
 - “(ii) section 98C of the Crimes Act 1961:
 - “(iii) section 232 or 233 of the Fisheries Act 1996:
 - “(iv) section 126(4) or 142(1)(d) of the Immigration Act 1987: 5
 - “(v) section 37 or 43 of the Medicines Act 1981:
 - “(vi) section 29A, 30, or 31 of the Passports Act 1992.
- “(2) A Customs officer who detains goods under **subsection (1)** must, as soon as practicable, deliver those goods into the custody of the appropriate person specified in **subsection (4)**. 10
- “(3) Once goods have been delivered to a person under **subsection (2)**, responsibility for those goods passes to that person.
- “(4) The appropriate person referred to in **subsection (2)** is—
- “(a) if the Customs officer believes that **subsection (1)(b)(ii), (iv), or (vi)** applies to the goods, a member of the police; 15
and
 - “(b) if the Customs officer believes that another provision of **subsection (1)** applies to the goods, an appropriately authorised officer who holds office under the Act specified in that provision or is employed by the department 20
of State that administers the Act.
- “(5) Section 199 of the Summary Proceedings Act 1957 applies with any necessary modifications to goods detained under **subsection (1)**.”
- 16 Offences in relation to arrival of craft 25**
- Section 191(1) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) being the person in charge of any craft, fails to comply with any of the following requirements in section 21(1) (which relates to advice of arrival): 30
- “(i) to give advance notice of any or all of the matters prescribed; or
 - “(ii) to give advance notice in the form and manner approved in writing by the Chief Executive; or
 - “(iii) to give advance notice within the time prescribed; 35
or
 - “(iv) to proceed to a Customs place; or
 - “(v) to proceed as directed by a Customs officer:”.

17 Offences in relation to departure of craft

Section 193(1) is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) being the person in charge of any craft,—
- “(i) fails to comply with **section 34(a)** (which relates to outward reports); or 5
- “(ii) refuses to answer any question put to that person by a Customs officer under **section 34(b)** or knowingly gives a false answer to the question; or
- “(iii) fails to produce any documents required by a Customs officer under **section 34(c)**.” 10

18 New section 194A inserted

The following section is inserted after section 194:

- “**194A Failure to comply with requirement to cease using electronic communication device** 15
- “(1) Every person commits an offence who fails to comply with any requirement imposed on that person by or under **section 32A(4)**.
- “(2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$1,000.” 20

19 Offences in relation to importation or exportation of prohibited goods

- (1) Section 209(1) is amended by inserting the following paragraph after paragraph (c):
- “(ca) fails, in breach of **section 56(2E)**, to inform the Secretary of Foreign Affairs and Trade that any goods or electronic publications he or she wishes to export are (*or may be*) intended for or may have any of the uses described in an order made under **section 56(2)(c)**; or”. 25

New (unanimous)

- (2) Section 209(3) is amended by inserting “(ca)”, after “(b)”. 30
- (3) Section 209 is amended by inserting the following subsection after subsection (4):

New (unanimous)

“(4A) However, it is a defence in a prosecution for an offence relating to an export of goods prohibited by or under **section 56(1)(c)** if the defendant proves that, through no fault of the relevant exporter, the relevant exporter did not actually receive the Secretary’s notice of the prohibition sent under **section 56(2D)**.” 5

20 Goods forfeited

- (1) Section 225(1)(d) is amended by adding “or section 149C(1A)(b)”.
- (2) Section 225(1)(da) is amended by adding “or section 149C(1)(b)”.

21 Supply of arrival and departure information for benefit purposes

Section 280(1) is amended by adding the following paragraph: 15

- “(c) an allowance established by regulations made under section 303 of the Education Act 1989.”

New (unanimous)

21A Additional provision relating to notices under this Act

- (1) Section 285(2)(b) is amended by adding “, except that a notice sent under **section 56(2D)** is deemed to have been received at the time it is sent”. 20
- (2) Section 285(2)(c) is amended by adding “, except that a notice sent under **section 56(2D)** is deemed to have been received at the time it is sent”.
- (3) Section 285(3) is amended by adding “or was not received at all”. 25

22 Chief Executive may make rules for certain purposes

- (1) Section 288(1)(b) is repealed.
- (2) Section 288(5) is amended by omitting “or (h)” and substituting “(h), or (i)”. 30

Part 2

Consequential amendments to principal Act

- 23 Section 42 repealed**
Section 42 is repealed.
- 24 Evidence of identity and entitlement to travel** 5
Section 147 is amended by adding the following subsection:
“(5) This section is subject to **section 175B**.”
- 25 Evidence of answers to questions under section 145A**
Section 147A is amended by adding the following subsection:
“(3) This section is subject to **section 175B**.” 10
- 26 Detention of persons questioned about goods or debt**
Section 148 is amended by repealing subsection (2) and substituting the following subsection:
“(2) A Customs officer may detain a person under subsection (1) only for either or both of the following purposes: 15
 “(a) to enable the officer to make any inquiries necessary to establish whether the answer to the question or the reason or explanation is correct:
 “(b) to obtain the attendance of, or make inquiries of, another Customs officer or a person who is entitled to exercise any power to question, detain, or arrest a person under this Act.” 20
- 27 Detention of persons committing or about to commit certain offences**
(1) Section 148B(1) is amended by adding “; or” and also by adding the following paragraph: 25
 “(f) if the person is required to comply with a direction given under **section 32B(3)**, failing to comply with that direction.”
(2) Section 148B(3) is repealed. 30
(3) Section 148B is amended by repealing subsection (4) and substituting the following subsection:
“(4) A Customs officer or, if applicable, a member of the police must release a person detained under subsection (1) immediately after the person has complied with the requirements of 35

the provision in relation to which he or she was detained and any other applicable provision referred to in subsection (1).”

- 28 Searching of persons for dangerous items**
- (1) Section 149BA(2) is repealed.
- (2) Section 149BA(5)(a) is amended by omitting “Comptroller of Customs” and substituting “Chief Executive”. 5
- 29 Obligations of persons arriving in or departing from New Zealand**
- Section 180(1) is amended by omitting “sections 27 to 32 of this Act” and substituting “sections 27 to **32C** (other than **section 32A**)”. 10
- 30 Heading above section 191 amended**
- The heading above section 191 is amended by adding “and persons”.
- 31 Defences** 15
- Section 195 is amended by omitting “sections 191 to 194 of this Act” and substituting “sections 191 to **194A**”.
- 32 Power of Chief Executive to deal with petty offences**
- Section 223(1)(b) is amended by omitting “and 186” and substituting “, 186, and **194A**”. 20
- 33 Schedule 1 amended**
- Schedule 1 is amended by omitting “Food Regulations 1984” and substituting “Food (Safety) Regulations 2002”.

Legislative history

20 July 2006
1 August 2006

Introduction (Bill 67-1)
First reading and referral to Foreign Affairs, Defence
and Trade Committee
