

**Reprint  
as at 15 February 2014**



**Customs and Excise Act 1996**

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the New Zealand Customs Service.**

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	<b>Substituted Tariff items</b> <i>[Repealed]</i>	

An Act to—

- (a) reform the law relating to customs, excise, and other duties; and

- (b) **provide for the administration and enforcement of Customs controls at the border; and**
- (c) **repeal the Customs Act 1966; and**
- (d) **provide for related matters**

## **1 Short Title and commencement**

- (1) This Act may be cited as the Customs and Excise Act 1996.
- (2) Except as provided in subsection (3), this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.
- (3) Sections 81 and 306 shall come into force on the date on which this Act receives the Royal assent.

Section 1(2): this Act brought into force, on 1 October 1996, by the Customs and Excise Act Commencement Order 1996 (SR 1996/229).

## **2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—
  - 2010 Excise and Excise-equivalent Document** has the meaning given in section 76A
  - aircraft** means a machine that can derive support in the atmosphere from the reaction of the air
  - Armed Forces** has the meaning given to that term by section 2 of the Defence Act 1990
  - arrival**,—
    - (a) in relation to a craft, includes the arrival of the craft, whether lawfully or unlawfully, in New Zealand from a point outside New Zealand whether or not the craft lands at, hovers above, berths, moors, anchors, or stops at, or otherwise arrives at any place within New Zealand; and
    - (b) in relation to a person, means the entry of the person by any means, whether lawfully or unlawfully, into New Zealand from a point outside New Zealand;
  - and **arriving** and **arrived** have corresponding meanings
  - arrival hall** means a place licensed under section 12 for the processing of persons arriving in New Zealand
  - authorised person** means a person authorised under section 6

**beer** means the product of the alcoholic fermentation by yeast of liquid derived from a mash of drinking water and malt grains with hops or their extract

**biofuel** means any gaseous or liquid fuel produced from biomass that can be used as a fuel for engines

**biofuel blend** means a product that results from blending biofuel with petrol, diesel, or other substances

**boat** means a vessel other than a ship

**chief executive** means the person holding office under the State Sector Act 1988 as the chief executive of the New Zealand Customs Service

**coastal cargo**, in relation to any ship, means goods loaded on the ship at any port in New Zealand for carriage to and unloading at any other port in New Zealand

**compounding** means the manufacture of spirituous liquor, (other than perfume, culinary essences, or medicinal or toilet preparations) by imparting a flavour to, or mixing a material or ingredient with, spirits by a method of which the process of distillation is part; and **to compound** and **compounder** have corresponding meanings

**contractor** means a person who does work for valuable consideration on or in respect of any goods at the request of any other person (otherwise than as an employee of that other person) in circumstances where that other person supplies, but retains ownership of, some or all of the material used in the work

**craft** includes any aircraft, ship, boat, or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water

**the Customs** means the New Zealand Customs Service

**Customs airport** means an aerodrome designated as a Customs airport under section 9

**Customs Appeal Authority** or **Authority** means an Authority established under section 244

**Customs-approved area for storing exports or CASE** means an area—

- (a) that is used for the purpose in section 19B (whether or not it is used for any other purpose); and
- (b) that is not required to be, but that is, licensed as a Customs-approved area for storing exports (or CASE) under section 12(1) (as applied by section 19C(2))

**Customs-approved secure exports scheme** means, in relation to goods that are to be exported (whether under drawback or not), a scheme, approved by the chief executive under section 53C,—

- (a) for the packing of the goods, in a Customs-approved secure package, by approved persons, in approved conditions, and subject to approved requirements (including, without limitation, a requirement that a seal, marking, substance, or device in an approved form be applied to the package, as soon as it is secured,—
  - (i) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
  - (ii) to help to identify interference or tampering with the package after it is secured); and
- (b) for the immediate conveyance (on the completion of the packing of the goods in that way) of the Customs-approved secure package, by approved persons and in an approved manner, to the place of shipment for shipping, or, if it is not in that way immediately conveyed and shipped, to some approved place or places of security en route to the place of shipment; and
- (c) for the goods, from the time when they are first secured in a Customs-approved secure package until the exportation of the goods to a point outside New Zealand, to be goods subject to the control of the Customs; and
- (d) for the powers of detention and search in section 144(4) to be available in respect of a vehicle in New Zealand if there are suspected to be in or on the vehicle goods that are, or are suspected to be,—
  - (i) subject to the control of the Customs; and
  - (ii) in a Customs-approved secure package; and

- (e) for a Customs officer to be empowered, under section 146(2), to question any or all of the following persons about any cargo destined to be exported from New Zealand:
  - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, or has within the previous 72 hours had in or on it, goods subject to the control of the Customs and in a Customs-approved secure package:
  - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of the Customs and in a Customs-approved secure package:
  - (iii) a person employed by a person described in subparagraph (i) or (ii); and
- (f) for the powers in section 151 (which include powers of examination) to be available in respect of goods that are, or are suspected to be,—
  - (i) subject to the control of the Customs; and
  - (ii) in a Customs-approved secure package

**Customs-approved secure package** means a package of a kind that is approved by the chief executive under section 53C for the purposes of a Customs-approved secure exports scheme

**Customs controlled area** means an area that is required, for 1 or more of the purposes described in section 10, to be licensed and that is so licensed

**Customs direction** means a lawful request, order, command, or instruction given by a Customs officer to any person to do or to refrain from doing an act or to submit to a procedure for the purposes of this Act; and includes any notice, poster, or sign publicly displayed in a Customs place or Customs controlled area; and includes a direction contained in a form prescribed under this Act

**Customs dog** means a dog that is being used or intended for use by the Customs

**Customs officer or officer,—**

- (a) in any provision of this Act, and in any enactment that is not this Act or a portion of it but that uses the definition in this subsection of both or either of those terms, means a person who is—
  - (i) a person appointed by the chief executive as a Customs officer for the purpose of this Act; or
  - (ii) any other person employed by the chief executive and who is declared, whether at the time of appointment or otherwise, by the chief executive to be a Customs officer for the purpose of this Act; and
- (b) in a provision of this Act (other than this section, and sections 6(4), 7, 38P, and 175) includes an authorised person who—
  - (i) is performing or exercising a function or power in accordance with that person's authorisation; and
  - (ii) is therefore required by section 6(4) to be treated for the purposes of that provision as a Customs officer

**Customs place** means a Customs port or Customs airport designated under section 9

**Customs port** means a port of entry designated as a Customs port under section 9

**Customs revenue or revenue of the Customs** means revenue managed by the Customs on behalf of the Crown

**Customs seal**, in relation to a package of goods to be exported, means a seal, marking, substance, or device approved by the chief executive for use in relation to the package, as soon as it is secured (and in accordance with a notice under section 53A), to fulfil either or both of the following purposes:

- (a) to show that, when it was secured, the package contained only the goods, and was secured in an approved way;
- (b) to help to identify interference or tampering with the package after it is secured

**Customs value or value**, in relation to goods, means the Customs value of those goods determined in accordance with Schedule 2

**dangerous item** means—

- (a) any firearm (as defined in section 11(2) of the Aviation Crimes Act 1972); or
- (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

**defence area** has the meaning given to that term by section 2 of the Defence Act 1990

**Defence Force** has the meaning given to that term by section 2 of the Defence Act 1990

**departure hall** means a place licensed under section 12 for the processing of persons departing from New Zealand

**document**—

- (a) means a document in any form, whether or not signed or initialled or otherwise authenticated by the maker; and
- (b) includes—
  - (i) any form of writing on material:
  - (ii) information recorded, transmitted, or stored by means of a tape recorder, computer, or other device, and material subsequently derived from information so recorded, transmitted, or stored:
  - (iii) a label, marking, or other form of writing that identifies any thing of which it forms part or to which it is attached by any means:
  - (iv) a book, map, plan, graph, or drawing:
  - (v) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

**domestic cargo** means goods that, having been brought within a Customs controlled area at one Customs place for carriage by air or sea to any other Customs place in New Zealand on either—

- (a) a craft that—
  - (i) begins its journey outside New Zealand; and



- (ii) in the course of that journey, enters New Zealand and travels between at least 2 Customs places in New Zealand; or
- (b) a craft that—
  - (i) begins its journey at a Customs place in New Zealand; and
  - (ii) in the course of that journey, travels to at least 1 other Customs place in New Zealand before leaving New Zealand,—

are within that Customs controlled area or are being carried on such a craft from one Customs place to another Customs place or, having been so carried on such a craft, are awaiting removal from a Customs controlled area at a Customs place

**domestic passenger** means a passenger, not being an internationally ticketed passenger, who has an entitlement to air or sea travel for a domestic sector on either—

- (a) a craft that—
  - (i) begins its journey outside New Zealand; and
  - (ii) in the course of that journey, enters New Zealand and travels between at least 2 Customs places in New Zealand; or
- (b) a craft that—
  - (i) begins its journey at a Customs place in New Zealand; and
  - (ii) in the course of that journey, travels to at least 1 other Customs place in New Zealand before leaving New Zealand

**domestic sector** means a journey from one Customs place to another within New Zealand

**dutiable goods** means goods of a kind subject to duty within the meaning of this Act

**duty** means a duty, additional duty, tax, fee, charge, or levy imposed on goods by any of the provisions of this Act, and includes—

- (a) excise duty and excise-equivalent duty imposed under Part 7;
- (b) a duty imposed under the Tariff Act 1988;
- (c) a duty imposed pursuant to sections 14, 16, 17, 17A, or 17B of the Dumping and Countervailing Duties Act

- 1988, including a duty resulting from the application of section 18 or section 19 of that Act; and
- (d) a duty or tax imposed by section 12 of the Goods and Services Tax Act 1985;
  - (e) levies imposed by section 213(2)(c) of the Accident Compensation Act 2001;
  - (f) levies imposed by the Energy (Fuels, Levies, and References) Act 1989

**electronic publication** means a thing (including, but not limited to, a disc, or an electronic or computer file) on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words

**excisable goods** means goods on which excise duty is payable in accordance with Part A of the Excise and Excise-equivalent Duties Table

**Excise and Excise-equivalent Duties Table** has the meaning given in section 76A

**excise item number**—

- (a) means excise items that appear in the Excise and Excise-equivalent Duties Table and are identified by 6 digits and 1 alphabetical check letter; and
- (b) includes the heading to those excise items that appear in that Table and are identified in that way

**export warehouse** means a place licensed under section 12 for the purpose described in section 10(b)

**exportation**,—

- (a) except where otherwise expressly provided, means any shipment in any craft for transportation to a point outside New Zealand; and
- (b) in relation to an electronic publication referred to in section 56, includes the sending of the electronic publication from New Zealand by any means (other than by broadcasting) to a point outside New Zealand

**exporter** means a person by or for whom goods are exported; and includes a person who is or becomes the owner of or entitled to the possession of or is beneficially interested in goods

on or at any time after entry for export and before they are exported

**forfeited goods** means goods that are forfeited to the Crown under section 225

**goods** means all kinds of movable personal property, including animals

**goods subject to the control of the Customs** has the meaning given to that term by section 20

**importation**,—

- (a) in relation to any goods, means the arrival of the goods in New Zealand in any manner, whether lawfully or unlawfully, from a point outside New Zealand; and
- (b) in relation to electronic publications referred to in section 54(1)(aa), includes the arrival of the electronic publication in New Zealand by transmission by any means (other than by broadcasting) from a point outside New Zealand

**importer** means a person by or for whom goods are imported; and includes the consignee of goods and a person who is or becomes the owner of or entitled to the possession of or beneficially interested in any goods on or at any time after their importation and before they have ceased to be subject to the control of the Customs

**international cargo** means any cargo that has arrived from a point outside New Zealand or is destined to be exported from New Zealand

**international crew** means the crew or any member of the crew of a craft that is on a journey that—

- (a) began outside New Zealand; or
- (b) began in New Zealand and is to continue outside New Zealand

**international passenger** means a person who has an entitlement to travel on a craft within New Zealand where that travel is part of an international journey that—

- (a) began outside New Zealand; or
- (b) began in New Zealand and is to continue outside New Zealand

**internationally ticketed passenger** means a person who has an entitlement to air or sea travel for a domestic sector, being a sector included in tickets for an international journey that—

- (a) began outside New Zealand; or
- (b) began in New Zealand and is to continue outside New Zealand

**liquefied petroleum gas** means propane, propylene, butane, butylene, or isobutane; and includes a mixture consisting wholly or principally of any such substance, whether or not the mixture contains any other hydrocarbon

**manufacture**, in relation to goods specified in the Excise and Excise-equivalent Duties Table, means,—

- (a) if the goods are tobacco, the process of cutting, pressing, grinding, crushing, or rubbing raw or leaf tobacco, or otherwise preparing raw or leaf tobacco or manufactured or partially manufactured tobacco, and of making cigarettes whether from duty-paid or from non-duty-paid tobacco, and of putting up for use or consumption scraps, waste, chippings, stems, or deposits of tobacco resulting from processing tobacco:
- (b) if the goods are a fuel, any operation, or process, involved in the production of the goods:
- (c) if the goods are neither tobacco nor a fuel,—
  - (i) any operation, or process, involved in the production of the goods; and
  - (ii) any ancillary process (as defined in subsection (3)) that takes place on premises that are not licensed, or required to be licensed, under the Sale and Supply of Alcohol Act 2012

**manufactured tobacco** means tobacco that has been manufactured or prepared for smoking or any other purpose

**manufacturing area** means a place licensed under section 12 for the purpose described in section 10(a)

**Minister** means the Minister of Customs

**New Zealand**—

- (a) means the land and the waters enclosed by the outer limits of the territorial sea of New Zealand (as described

- in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977); and
- (b) includes the contiguous zone of New Zealand (as described in section 8A of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977) in—
- (i) sections 23(1) and (4) and 142; and
  - (ii) sections 22(1)(c) and (d), 28(1), 139(1) and (2), 140(1), 143(1AA), 143(1), and 149(a) and (b), in relation to a craft that is a ship, boat, or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by water or over or under water; and
  - (iii) section 149(a) and (b) and 149B(2), in relation to a person who has entered into or has arrived in or is about to depart from New Zealand in a craft that is a ship, boat, or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by water or over or under water; and
  - (iv) sections 166A and 226(2), in relation to goods found on a ship, boat, or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by water or over or under water

**New Zealand Customs Service** means the department of State referred to in section 5

**occupier**, in relation to land, means the owner; and includes a lessee or tenant, a licensee, or a person who has the right to occupy land under other authority

**operator**, in relation to a business, means the person actively engaged, whether alone or with others, in the carrying on of the business, and whether registered as such; and, in the case of a body corporate, includes every director, manager, secretary, or other similar officer engaged in the direct control or management of its business, and a person who purports to act in any of those capacities

**overseas company** has the meaning given to that term by section 2 of the Companies Act 1993

**overseas register** has the meaning given to that term by section 2 of the Companies Act 1993

**owner**,—

- (a) in relation to a craft, includes the owner or charterer of the craft, and a person acting as agent for the owner or charterer; and
- (b) in relation to goods, includes the importer or a person having possession of or who is beneficially interested in the goods; and
- (c) in relation to land, means the person entitled to receive the rack rent thereof, or who would be so entitled if the land were let to a tenant at the rack rent

**package** includes any means used or capable of being used to pack, cover, enclose, contain, or encase goods for carriage, a bulk cargo container, a pallet, or a similar device

**prescribed** means,—

- (a) in respect of the matters described in section 288, prescribed by the chief executive; and
- (b) in respect of all other matters, prescribed by regulations made under this Act

**prohibited exports** means goods or electronic publications the exportation of which is prohibited, whether conditionally or unconditionally, by or under section 56

**prohibited goods** means prohibited exports or prohibited imports

**prohibited imports** means goods the importation of which is prohibited, whether conditionally or unconditionally, by or under section 54

**Public Service** has the meaning given to that term by section 2 of the State Sector Act 1988

**rectifying**, in relation to spirits, means purifying by a process of redistillation

**Research Octane Number (RON)** means the octane rating as measured by the standard method of test for knock characteristics of motor fuels below 100 octane rating by the research method currently designated ASTM D2699:79 as set out in the American Standards for Testing Material

**responsible Minister of the Crown** means the Minister of the Crown who, under the authority of any enactment or a warrant signed by the Prime Minister, is responsible for a function or matter to which a provision in this Act refers

**ship** means a vessel used in navigation, not being a vessel propelled only by oars; and includes a hovercraft or submarine

**shipment** includes loading into a craft; and **to ship** and cognate expressions have corresponding meanings

**spirits** means ethyl alcohol, whether denatured or not, and includes spirituous beverages, including brandy, gin, rum, vodka, whisky and every description of spirituous liquor derived from ethyl alcohol

**tobacco** includes cigars, cigarettes, and snuff

**uncustomed goods** means goods on which duty has become due and payable but is unpaid

**unlawfully exported** means exported in breach of this Act or any other Act

**unlawfully imported** means imported in breach of this Act or any other Act

**vehicle** means a conveyance for use on land, whether or not it is also capable of being used on or over water

**working day** means a day of the week other than Saturday, Sunday, Good Friday, Easter Monday, Christmas Day, Boxing Day, New Year's Day, Anzac Day, the Sovereign's birthday, Labour Day, and Waitangi Day.

- (2) For the purposes of this Act,—
- (a) the term **alcoholic strength** means alcoholic strength by volume at a temperature of 20°C:
  - (b) the alcoholic strength by volume of a mixture of water and ethyl alcohol is the ratio of the volume of alcohol present in the mixture at 20°C to the total volume of the mixture at the same temperature:
  - (c) the expressions **percent volume** and **% vol** are used to express alcoholic strength in parts of alcohol per 100 parts of the mixture:
  - (d) the term **per litre**, in respect of the levying of excise duty, for all excise items under the heading **Fuels** in Part A of the Excise and Excise-equivalent Duties Table,

- means the quantity of product expressed in litres at a temperature of 15°C:
- (e) the term **per litre**, in respect of the levying of excise-equivalent duty, for all Tariff items under the heading **Fuels** in Part B of the Excise and Excise-equivalent Duties Table, means the quantity of product expressed in litres at a temperature of 15°C.
- (3) For the purposes of paragraph (c)(ii) of the definition of manufacture in subsection (1), the term **ancillary process**, in relation to the manufacture of goods specified in the Excise and Excise-equivalent Duties Table that are neither tobacco nor a fuel, means 1 or more of the following processes:
- (a) filtering the goods, diluting the goods, or blending the goods with other goods (whether the other goods are the same as, similar to, or different from, the goods):
  - (b) putting the goods for the first time into a container (for example, a bag, barrel, bottle, can, cask, drum, or keg) in which they might be presented, or from which they might be dispensed, for sale to the public or any member of the public:
  - (c) labelling or marking, for the first time, containers filled with the goods.

Section 2(1) **2010 Excise and Excise-equivalent Document**: inserted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **authorised person**: amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **biofuel**: inserted, on 6 April 2012, by section 4 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 2(1) **biofuel blend**: inserted, on 6 April 2012, by section 4 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 2(1) **Customs-approved area for storing exports** or **CASE**: inserted, on 2 July 2004, by section 3(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 2(1) **Customs-approved secure exports scheme**: inserted, on 2 July 2004, by section 3(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 2(1) **Customs-approved secure exports scheme** paragraph (a): amended, on 8 December 2009, by section 4(1) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **Customs-approved secure package**: inserted, on 2 July 2004, by section 3(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).



Section 2(1) **Customs dog**: inserted, on 6 April 2012, by section 4 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 2(1) **Customs officer** or **officer**: substituted, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **Customs seal**: inserted, on 2 July 2004, by section 3(2) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 2(1) **Customs seal**: amended, on 8 December 2009, by section 4(2)(a) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **Customs seal**: amended, on 8 December 2009, by section 4(2)(b) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **Customs seal**: amended, on 8 December 2009, by section 4(2)(c) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **Customs seal** paragraph (a): amended, on 8 December 2009, by section 4(2)(d) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **dangerous item**: inserted, on 6 March 2007, by section 4(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 2(1) **duty** paragraph (c): amended, on 22 November 2006, by section 6(2) of the Dumping and Countervailing Duties Amendment Act 2006 (2006 No 63).

Section 2(1) **duty** paragraph (e): added, on 1 July 2003, by section 13(1) of the Injury Prevention, Rehabilitation, and Compensation Amendment Act 2003 (2003 No 29).

Section 2(1) **duty** paragraph (e): amended, on 1 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 2(1) **duty** paragraph (f): added, on 1 October 2008, by section 4(1) of the Customs and Excise Amendment Act (No 2) 2008 (2008 No 61).

Section 2(1) **electronic publication**: substituted, on 22 February 2005, by section 39 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 2(1) **excisable goods**: substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **Excise and Excise-equivalent Duties Table**: inserted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **excise item number**: inserted, on 1 January 2010, by section 11(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **exportation**: substituted, on 22 February 2005, by section 39 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 2(1) **exportation** paragraph (b): amended, on 6 March 2007, by section 4(2) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 2(1) **importation**: substituted, on 9 October 2002, by section 3(2) of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 2(1) **manufacture**: substituted, on 9 October 2002, by section 3(3) of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 2(1) **manufacture**: amended, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(1) **manufacture** paragraph (c)(ii): amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 2(1) **Minister**: amended, on 1 October 1996, by section 2(1) of the Customs and Excise Amendment Act 1996 (1996 No 80).

Section 2(1) **New Zealand**: substituted (with effect on 1 October 1996), on 3 June 1998, by section 2(1) of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

Section 2(1) **New Zealand** paragraph (b)(ii): amended, on 6 March 2007, by section 4(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 2(1) **New Zealand** paragraph (b)(ii): amended (with effect on 9 October 2002), on 2 July 2004, by section 47(1)(a) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 2(1) **New Zealand** paragraph (b)(iii): amended (with effect on 9 October 2002), on 2 July 2004, by section 47(1)(b) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 2(1) **New Zealand** paragraph (b)(iv): amended, on 2 July 2004, by section 3(3) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 2(1) **prohibited exports**: substituted, on 22 February 2005, by section 39 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 2(1) **prohibited exports**: amended, on 6 March 2007, by section 4(4) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 2(1) **prohibited imports**: substituted, on 22 February 2005, by section 39 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 2(1) **Secretary of Commerce**: repealed, on 7 September 2000, by section 8(1) of the Ministry of Economic Development Act 2000 (2000 No 28).

Section 2(2)(d): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(2)(e): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 2(3): added, on 9 October 2002, by section 3(4) of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 2(3): amended, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

### 3 Act to bind the Crown

Except as provided in section 4, this Act binds the Crown.

### 4 Application of Act in certain cases

- (1) The circumstances in which and the conditions on which the powers conferred by Part 12 may be exercised in relation to—

- (a) a member of the Armed Forces; or
  - (b) access to a defence area; or
  - (c) a craft under the control of the Defence Force—  
shall be prescribed by regulations, and those powers may only be exercised in the circumstances and on the conditions so prescribed.
- (2) For the purposes of subsection (1), the Governor-General shall, by Order in Council, make regulations prescribing the circumstances in which and the conditions on which the powers conferred by Part 12 may be exercised in relation to—
- (a) a member of the Armed Forces; or
  - (b) access to a defence area; or
  - (c) a craft under the control of the Defence Force.
- (3) Subject to subsection (6), sections 30 to 37 shall not apply to any member of the Armed Forces or any craft under the control of the Defence Force during such time as that person or craft is required to respond to an emergency.
- (4) For the purposes of this section, **emergency** means—
- (a) an emergency due to an actual or imminent attack on New Zealand by an enemy, or to any actual or imminent warlike act whether directed against New Zealand or not, if loss of life or injury or distress to persons or danger to the safety of the public is caused or threatened to be caused in New Zealand or in any part of New Zealand; or
  - (b) a search and rescue event at any point outside New Zealand involving a serious and imminent threat to the safety of persons or craft; or
  - (c) a state of war or other like emergency in any place outside New Zealand; or
  - (d) such other circumstances as are agreed between the chief executive and the Chief of the Defence Force.
- (5) Subject to subsection (6), sections 21 to 29 shall not apply to any member of the Armed Forces or any craft under the control of the Defence Force during such time as that person or craft is involved in an emergency described in paragraph (a) or (d) of subsection (4).
- (6) Where a craft under the control of the Defence Force that is involved in, or is required to respond to, an emergency de-

parts from or returns to New Zealand, the Defence Force shall, within a period of 48 hours or such longer period as the chief executive may reasonably determine, notify the Customs that the craft has departed from or arrived in New Zealand, as the case may be, and provide to the Customs such details relating to goods and persons on the craft as the chief executive specifies.

- (7) The power of the chief executive under subsection (6) to determine a time or specify details required may be exercised generally or in respect of any particular case.
- (8) Nothing in this Act or in any regulations made under this Act shall be interpreted as limiting the immunities of—
- (a) any foreign warship or other foreign governmental ship operated for non-commercial purposes; or
  - (b) any foreign military aircraft; or
  - (c) members of the crew of any ship or aircraft to which paragraph (a) or paragraph (b) applies.

Section 4(4)(a): substituted, on 1 December 2002, by section 117 of the Civil Defence Emergency Management Act 2002 (2002 No 33).

## **Part 1**

### **Administration**

#### **5 New Zealand Customs Service**

- (1) There shall be a department of State called the New Zealand Customs Service which shall be the same entity known, before the commencement of this Act, as the Customs Department.
- (2) The chief executive of the New Zealand Customs Service shall be known as the Comptroller of Customs.

#### **6 Authorised persons**

- (1) The chief executive may authorise a suitably qualified and trained person who is not a Customs officer to perform or exercise any function or power that may be performed or exercised by a Customs officer under this Act.
- (2) The authorisation under subsection (1) shall be in writing (including any writing in electronic form) and shall specify—
- (a) the function or power that may be performed or exercised by the authorised person; and

- (b) the term of the authorisation, which shall be such period, not exceeding 3 years, as the chief executive thinks fit.
- (3) The chief executive may from time to time renew any authorisation given under this section for such further period, not exceeding 3 years, as the chief executive thinks fit.
- (4) A person who is authorised under this section must for the purposes of the provisions of this Act (other than section 2, this subsection, and sections 7, 38P, and 175) be treated as a Customs officer when performing or exercising a function or power in accordance with that person's authorisation.
- (5) The chief executive may revoke an authorisation given under this section for incapacity, neglect of duty, or misconduct, or where the authorised person gives written notice to the chief executive that he or she wishes the authorisation to be revoked, or in any other circumstance where, in the opinion of the chief executive, the authorisation is no longer necessary.
- (6) Where a person ceases to be an authorised person under this section, that person shall surrender to the chief executive all articles and documents received by him or her in relation to the authorisation.

Compare: 1966 No 19 s 8A; 1980 No 33 s 3

Section 6(4): substituted, on 8 December 2009, by section 5(1) of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **7 Identity cards**

- (1) The chief executive shall give an identity card or other means of identification to each Customs officer and any authorised person other than a constable or the Armed Forces.
- (2) Whenever a Customs officer or authorised person exercises any power under this Act he or she shall, on request, produce the identity card or other means of identification for inspection.
- (3) A person who ceases to be a Customs officer or authorised person shall, as soon as possible, return the identity card or other means of identification to the chief executive.

Section 7(1): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**8 Customs flag**

The Customs flag shall be the New Zealand Ensign with the addition in the fly of the words “NZ Customs Service” in bold characters.

Compare: 1966 No 19 s 11

**Part 2**  
**Customs places Customs controlled areas,**  
**and Customs-approved areas for storing**  
**exports**

Part 2 heading: amended, on 2 July 2004, by section 4 of the Customs and Excise Amendment Act 2004 (2004 No 55).

*Customs places*

Heading: inserted, on 2 July 2004, by section 5 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**9 Customs places**

- (1) For the purposes of this Act, the chief executive may from time to time, by notice in the *Gazette* and subject to such conditions or restrictions as the chief executive may determine, designate as a Customs port or as a Customs airport any port or airport specified in the notice, and such Customs ports and Customs airports shall be known collectively as **Customs places**.
- (2) The chief executive may in like manner vary or revoke a designation under this section or vary or revoke the conditions or restrictions to which it was subject or revoke those conditions or restrictions and impose new conditions or restrictions.

Compare: 1966 No 19 ss 26, 30

*Customs controlled areas*

Heading: inserted, on 2 July 2004, by section 6 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**10 Customs controlled areas**

Subject to such exemptions as may be prescribed and to sections 12(4), 68A, 68B, and 68C, no area shall be used for—

- (a) the manufacture of goods specified in Part A of the Excise and Excise-equivalent Duties Table; or
- (b) the deposit, keeping, or securing of imported or excisable goods, without payment of duty on the goods, pending the export of those goods; or
- (c) the temporary holding of imported goods for the purposes of the examination of those goods under section 151 (including the holding of the goods while they are awaiting examination); or
- (d) the disembarkation, embarkation, or processing of persons arriving in or departing from New Zealand; or
- (e) the processing of craft arriving in or departing from New Zealand or the loading or unloading of goods onto or from such craft; or
- (f) any other prescribed purpose,—  
unless that area is licensed as a Customs controlled area.

Section 10: amended, on 6 April 2012, by section 5 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 10: amended, on 8 December 2009, by section 7(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 10(a): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **11 Application for licence**

- (1) An application for an area to be licensed as a Customs controlled area may be made by the owner or occupier of, or person operating in, the area and shall be made in such form and shall contain such particulars as may be prescribed.
- (2) The chief executive may, at any time, request further information from an applicant if the chief executive considers that the information is relevant to the application.
- (3) An applicant may, at any time before the chief executive makes a decision on the application, advise the chief executive of any variations that the applicant wishes to make to the application.

## **12 Grant or refusal of licence**

- (1) On receipt of—
  - (a) an application for a licence; and

- (b) any information requested by the chief executive under section 11(2); and
  - (c) any variations to the application made under section 11(3),—  
the chief executive may grant a licence for the area, or may refuse the application.
- (2) A licence granted under subsection (1) may be granted subject to—
  - (a) such terms, conditions, or restrictions as the chief executive thinks fit; and
  - (b) the payment by the licensee of the prescribed annual licence fee (if any).
- (3) The licence shall—
  - (a) specify the area in respect of which it is granted; and
  - (b) specify the applicant as the licensee; and
  - (c) specify the purpose or purposes described in paragraphs (a) to (f) of section 10 for which the area is licensed.
- (4) Where, on an application for an area to be licensed as a Customs controlled area, the chief executive is of the opinion that—
  - (a) it is not in the public interest; or
  - (b) it is impracticable or unnecessary—  
that the area should be licensed as a Customs controlled area, the chief executive may, in his or her discretion, and under such conditions as the chief executive thinks fit, direct that the area need not be licensed as a Customs controlled area.
- (5) A direction given under subsection (4) may be given in respect of the whole or any specified part of the business carried on in the area, and shall exempt the area from such provisions of this Act as may be specified in the direction.
- (6) The applicant shall be advised by notice in writing of any decision of the chief executive under this section.
- (7) An applicant 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.

Compare: 1966 No 19 ss 84, 110; 1986 No 44 s 11



**13 Variation or revocation of conditions**

- (1) The chief executive may, by notice in writing, vary or revoke the terms, conditions, or restrictions to which the licence is subject or revoke those terms, conditions, or restrictions and impose new terms, conditions, or restrictions.
- (2) A licensee 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.

**14 Revocation or suspension of licence**

- (1) A licence issued under section 12 may, at any time, be revoked or suspended by the chief executive where—
  - (a) a term, condition, or restriction specified in the licence has been contravened; or
  - (b) the area in respect of which the licence was granted ceases to be used for any of the purposes described in paragraphs (a) to (f) of section 10 for which the area is licensed; or
  - (c) the licensee ceases to be the owner or occupier of, or operator in, the area in respect of which the licence was granted; or
  - (d) the chief executive considers that the licensee is no longer a fit and proper person to hold a licence; or
  - (e) the prescribed annual licence fee (if any) is due and has not been paid.
- (2) Notice in writing of the chief executive's intention to revoke or suspend a licence shall be given to the licensee unless the chief executive considers that there is good reason not to give such a notice.
- (3) Where the chief executive revokes or suspends a licence under subsection (1), the chief executive shall notify the licensee in writing of the revocation or suspension.
- (4) A person 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 Surrender of licence**

A licence for a Customs controlled area may be surrendered at any time by the licensee by the giving of 1 month's notice in writing to the chief executive.

Compare: 1966 No 19 s 88; 1986 No 44 s 11

**16 Closing of Customs controlled area**

Where any licence issued under section 12 is suspended, revoked, or surrendered, duty shall thereupon become due and payable on all goods within that area that are or were subject to the control of the Customs immediately prior to the suspension, revocation, or surrender, unless the chief executive permits the goods to be removed to another Customs controlled area or to be exported.

**17 Liabilities not affected by ceasing to act as licensee**

The obligations and liabilities under this Act of a licensee in respect of anything done or omitted to be done by the licensee while licensed shall not be affected by the fact that the licensee ceases to act as such nor by the fact that the licence is surrendered or suspended or revoked.

Compare: 1966 No 19 s 90; 1986 No 44 s 11

**18 Customs facilities in Customs controlled areas**

- (1) The licensee of any Customs controlled area licensed under this Act shall provide and maintain such operating areas, accommodation, facilities, buildings, equipment, and storage as the chief executive shall determine are reasonably necessary and suitable for the carrying out of the functions and responsibilities of the Customs.
- (2) Subject to subsection (3), the licensee may levy the Customs such charge or charges as are reasonable for any operating areas, accommodation, facilities, buildings, equipment, and storage provided in accordance with subsection (1).
- (3) Notwithstanding anything in the Airport Authorities Act 1966, no charge shall be levied on the Customs in respect of any operating area in a Customs controlled area where that operating area is used for—

- (a) the processing of persons arriving in or departing from New Zealand; or
  - (b) the processing of craft arriving in or departing from New Zealand; or
  - (c) the processing of postal articles arriving in or departing from New Zealand.
- (4) The licensee of every Customs controlled area shall store goods subject to the control of the Customs in such manner and in such location as the chief executive may direct.
- (5) The licensee shall be advised by notice in writing of any determination of the chief executive under subsection (1) or any direction of the chief executive under subsection (4).
- (6) A licensee who is dissatisfied with a determination by the chief executive under subsection (1) or a direction by the chief executive under subsection (4) may, within 20 working days after the date on which notice of the determination or direction is given, appeal to a Customs Appeal Authority against that determination or direction.

Compare: 1966 No 19 s 33; 1992 No 30 s 3(1)

Section 18 heading: amended, on 2 July 2004, by section 7 of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **19 Storage charges**

In such circumstances and for such period of time as may be prescribed, no charges shall be made by a licensee of a Customs controlled area for the reception or storage in that area of any imported goods.

Compare: 1966 No 19 s 34

### *Customs-approved areas for storing exports (CASEs)*

Heading: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **19A Purpose of sections 19B to 19H**

The purpose of sections 19B to 19H is to enable an area to be licensed as a CASE so that—

- (a) goods to be exported are (under section 20(1)(b) and (c)), from the time they are brought to the area (whether

or not the goods are later transported from that area to another area of any kind, and, if the goods are so transported, during the transportation) until they are exported to a point outside New Zealand, subject to the control of the Customs:

- (b) the Customs may, as provided in section 19E, access the area under section 150:
- (c) the powers in section 151 (which include powers of examination) are available in respect of goods that are subject to the control of the Customs because they are goods—
  - (i) to be exported; and
  - (ii) that have been brought to a CASE:
- (d) the powers of detention and search in section 144(3) are available in respect of a vehicle if there are suspected to be in or on the vehicle goods that are subject to the control of the Customs because they are goods—
  - (i) to be exported; and
  - (ii) that have been brought to a CASE:
- (e) the owner or occupier of the area or person operating in the area may be required to provide and maintain operating areas, accommodation, facilities, buildings, equipment, and storage reasonably necessary and suitable for the carrying out of the functions and responsibilities of the Customs.

Section 19A: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **19B Areas that may be licensed as CASEs**

- (1) An area may be licensed as a CASE only if the area is used (whether or not it is used for any other purpose) for the purpose of storing goods for export (temporarily or otherwise) until they are transported (either directly or via another area or areas) to the place of shipment and shipped.
- (2) An area used for the purpose of storing goods for export is used for the purpose stated in this section even though the area is also used for the purpose of consolidating, packing, repacking, treating, or otherwise handling those goods.

Section 19B: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**19C Application for area to be licensed as CASE**

- (1) An application for an area to be licensed as a CASE—
  - (a) may be made by the owner or occupier of, or person operating in, the area; and
  - (b) must be made in such form, and contain such particulars, as may be prescribed.
- (2) The following sections apply to an application under this section as if it were an application for the area concerned to be licensed as a Customs controlled area:
  - (a) section 11(2) and (3) (which relates to an application for a licence); and
  - (b) section 12 (except subsections (3)(c), (4), and (5)) (which relates to the grant or refusal of a licence).

Section 19C: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**19D Licences for CASEs**

- (1) If a licence for a CASE is granted under section 12(1) (as applied by section 19C(2)) and is subject to terms, conditions, or restrictions, section 13 (variation or revocation of conditions) applies to those terms, conditions, or restrictions as if the licence were a licence for a Customs controlled area.
- (2) Section 14 (revocation or suspension of licence) applies to a licence for a CASE that is granted under section 12(1) (as applied by section 19C(2)) as if it were a licence for a Customs controlled area.
- (3) However, for the purposes of subsection (2), section 14(1)(b) must be read as if for the words “any of the purposes described in paragraphs (a) to (f) of section 10 for which the area is licensed” there were substituted the words “the purpose in section 19B (whether or not it is used for any other purpose)”.

Section 19D: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**19E Access of Customs officers to CASEs**

Section 150 applies to a CASE as if the area were a Customs controlled area; and section 173 applies accordingly.

Section 19E: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**19F Examination of goods to be exported and that have been brought to CASE**

- (1) The powers in section 151 are available in respect of goods that a Customs officer has reasonable cause to suspect are subject to the control of the Customs because they are goods—
  - (a) to be exported; and
  - (b) that have been brought to a CASE.
- (2) Nothing in this section limits section 20 or section 151.

Section 19F: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**19G Detaining and searching vehicles for goods to be exported and that have been brought to CASE**

- (1) The powers in section 144(3) are available in respect of goods that a Customs officer has reasonable cause to suspect are subject to the control of the Customs because they are goods—
  - (a) to be exported; and
  - (b) that have been brought to a CASE.
- (2) Nothing in this section limits section 20 or section 144.

Section 19G: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**19H Customs facilities in CASEs**

- (1) The licensee of any CASE licensed under this Act must provide and maintain any operating areas, accommodation, facilities, buildings, equipment, and storage that the chief executive determines are reasonably necessary and suitable for the carrying out of the functions and responsibilities of the Customs.
- (2) The licensee may levy the Customs such charge or charges as are reasonable for any operating areas, accommodation, facilities, buildings, equipment, and storage provided in accordance with subsection (1).

- (3) The licensee of every CASE must store goods subject to the control of the Customs in such manner and in such location as the chief executive may direct.
- (4) The licensee must be advised by notice in writing of a determination by the chief executive under subsection (1) or a direction by the chief executive under subsection (3).
- (5) A licensee who is dissatisfied with a determination by the chief executive under subsection (1) or a direction by the chief executive under subsection (3) may, within 20 working days after the date on which notice of the determination or direction is given, appeal to a Customs Appeal Authority against that determination or direction.

Section 19H: inserted, on 2 July 2004, by section 8 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **Part 3**

#### **Arrival and departure of goods, persons, and craft**

#### **20 Goods subject to control of Customs**

- (1) Goods are subject to the control of the Customs,—
  - (a) where the goods have been imported, from the time of importation until the time the goods are lawfully removed for home consumption or exportation from a Customs controlled area; or
  - (aa) where the goods are lawfully removed from a Customs controlled area under a conditional permit granted pursuant to section 47(1)(c), until such time as the chief executive is satisfied that the conditions of the permit have been met; or
  - (ab) where the goods are to be exported (whether under drawback or not) and are in a package in relation to which a Customs seal has been used (whether or not any other paragraph of this subsection applies to the goods), from the time when a Customs seal is first used until the exportation of the goods to a point outside New Zealand; or
  - (ac) where the goods are to be exported (whether under drawback or not) under a Customs-approved secure

- exports scheme (whether or not any other paragraph of this subsection applies to the goods), from the time when the goods are first secured in a Customs-approved secure package until the exportation of the goods to a point outside New Zealand; or
- (b) where the goods are to be exported under drawback, from whichever is the earlier of the following times until the exportation of the goods to a point outside New Zealand:
- (i) the time of the claim for drawback; or
  - (ii) the time when the goods are brought to a Customs controlled area or to a CASE (whether or not the goods are later transported from that area to another area of any kind, and, if the goods are so transported, during the transportation); or
- (c) where the goods are to be exported otherwise than under drawback, from the time when the goods are brought to a Customs controlled area or to a CASE (whether or not the goods are later transported from that area to another area of any kind, and, if the goods are so transported, during the transportation), until their exportation to a point outside New Zealand; or
- (d) where the goods are on board any craft described in section 139(1), at all times that the craft is within New Zealand; or
- (e) where the goods are manufactured in a Customs controlled area, from the time of manufacture until the goods are lawfully removed for home consumption from a Customs controlled area, or the goods are exported to a point outside New Zealand, whichever happens first; or
- (f) where the goods are owned by or in the possession of an internationally ticketed passenger who is using air or sea travel for a domestic sector or a domestic passenger who is using air or sea travel for a domestic sector, from the time when, at the commencement of the domestic sector, the goods are—
- (i) brought into a Customs controlled area licensed for the disembarkation, embarkation, or process-



- ing of persons arriving in or departing from New Zealand; or
- (ii) accepted for carriage by an airline or shipping company—  
until the time when, at the end of the domestic sector, the goods are lawfully removed from a Customs controlled area licensed for the disembarkation, embarkation, or processing of persons arriving in or departing from New Zealand; or
- (g) in the case of domestic cargo (not being goods to which paragraph (f) applies), from the time when the goods are brought within a Customs controlled area that is in a Customs place until the time when the goods are lawfully removed from that or any other Customs controlled area.
- (2) For the purposes of subsection (1), goods that are removed from a Customs controlled area to another Customs controlled area are not removed for home consumption.

Compare: 1966 No 19 s 16

Section 20(1)(a): substituted, on 3 June 1998, by section 3(1) of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

Section 20(1)(aa): inserted, on 3 June 1998, by section 3(1) of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

Section 20(1)(ab): inserted, on 2 July 2004, by section 9 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 20(1)(ab): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 20(1)(ac): inserted, on 2 July 2004, by section 9 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 20(1)(b): substituted, on 2 July 2004, by section 9 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 20(1)(c): substituted, on 2 July 2004, by section 9 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 20(2): added, on 3 June 1998, by section 3(2) of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

*Arrival of craft into New Zealand***21 Advice of arrival, etc**

- (1) The person in charge of a craft that is en route to New Zealand from a point outside New Zealand must, unless otherwise approved by the chief executive,—
- (a) give to the Customs, in such form and manner (for example, in an electronic form and manner) as may be approved in writing by the chief executive (either generally or for a particular case or class of case), such advance notice as may be prescribed of any or all of the following matters:
    - (i) the impending arrival of the craft:
    - (ii) its voyage:
    - (iii) its crew:
    - (iv) its passengers:
    - (v) its cargo for discharge within New Zealand (whether commercial or non-commercial):
    - (vi) its commercial cargo not intended for discharge within New Zealand (if any):
    - (vii) the Customs place at which the craft will arrive; and
  - (b) on arriving within New Zealand, proceed directly to that Customs place, unless directed elsewhere by a Customs officer.
- (2) The owner or operator of the craft referred to in subsection (1), or an agent of the owner or operator, may provide the information referred to in paragraph (a) of that subsection to the Customs on behalf of the person in charge of the craft.

Section 21(1)(a): substituted, on 1 October 2004, by section 10 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**22 Requirement to answer questions**

- (1) Subsection (2) applies to—
- (a) a craft that has arrived in New Zealand from a point outside New Zealand:
  - (b) a craft departing from New Zealand for a point outside New Zealand:
  - (c) a craft that is within New Zealand and that is carrying international cargo or international crew or any inter-

- national passenger, whether or not the craft is also carrying domestic cargo:
- (d) any other craft that is within New Zealand and that a Customs officer has reasonable cause to suspect has been, or is about to be, involved in the commission of an offence against this Act or the importation or exportation of any dutiable, uncustomed, prohibited, or forfeited goods.
- (2) The person in charge of, the owner of, any member of the crew of, and any passenger on a craft to which this subsection applies must—
- (a) answer any question asked by a Customs officer under this Act relating to the craft and its voyage and any persons or goods that are or have been carried by the craft; and
  - (b) forthwith at the request of any Customs officer produce any documents within that person's possession or control relating to any of those matters.
- (3) A person referred to in section 145A(1) must—
- (a) answer any questions asked by a Customs officer under section 145A; and
  - (b) produce any documents within his or her possession or control that a Customs officer demands under section 147A.

Section 22(1): amended, on 2 July 2004, by section 11(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 22(1)(c): amended, on 1 October 1996, by section 3(1) of the Customs and Excise Amendment Act 1996 (1996 No 80).

Section 22(1)(d): amended, on 1 October 1996, by section 3(2) of the Customs and Excise Amendment Act 1996 (1996 No 80).

Section 22(2): amended, on 2 July 2004, by section 11(2) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 22(3): added, on 2 July 2004, by section 11(3) of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **23 Bringing-to of ship**

- (1) The master of a ship arriving within New Zealand must, on being directed by a Customs officer to do so,—
- (a) stop and bring the ship to for boarding; and

- (b) ensure that the ship remains stopped until a Customs officer directs that the ship may proceed.
- (2) The craft carrying the Customs officer or officers must identify itself as being a craft in the service of the Crown.
- (3) The master of the ship must by all reasonable means facilitate the boarding of the ship by Customs officers.
- (4) The master of a ship within New Zealand must, if so directed by any Customs officer, cause that ship to leave New Zealand forthwith.
- (5) A Customs officer who proposes to give a direction under subsection (4) shall consult with the chief executive or a person authorised by the chief executive.

Compare: 1966 No 19 s 41

Section 23(2): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 23(3): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### **24 Craft to arrive at nominated Customs place only**

- (1) Subject to sections 21 and 25, the person in charge of a craft—
  - (a) that arrives within New Zealand on a journey from a point outside New Zealand; or
  - (b) that is carrying—
    - (i) persons; or
    - (ii) goods subject to the control of the Customs—brought in that craft or any other craft from a point outside New Zealand—

must ensure that the craft lands, anchors, or otherwise arrives only at a Customs place, which, in the case of a craft to which section 21 applies, shall be the Customs place nominated by that person in accordance with that section.

- (2) On arrival at the nominated Customs place or Customs controlled area within that place, and until an inward report in accordance with section 26 has been made, no person shall leave or board the craft unless authorised to do so by a Customs officer.

Compare: 1966 No 19 ss 36, 37

**25 Craft arriving at place other than nominated Customs place**

- (1) Nothing in section 24 applies to a craft—
- (a) that is required or compelled to berth, land, anchor, or otherwise arrive at a place other than a Customs place, nominated in accordance with section 21(1)(a), if this arrival—
    - (i) is required by any statutory or other requirement relating to navigation; or
    - (ii) is compelled by accident, stress of weather, or other necessity; or
  - (b) that is authorised to berth, land, anchor, or otherwise arrive at a place other than a Customs place by the chief executive.
- (1A) An authorisation given under subsection (1)(b) may be granted subject to any conditions the chief executive considers appropriate (for example, conditions about the passengers and goods that may be carried on the craft).
- (1B) The chief executive may not grant any authorisation under subsection (1)(b) without consulting the chief executive of—
- (a) the Ministry of Agriculture and Forestry; and
  - (b) the Ministry of Health; and
  - (c) the New Zealand Police; and
  - (d) if the proposed authorisation relates to an aircraft, the Civil Aviation Authority; and
  - (e) if the proposed authorisation relates to a ship, the authority known as Maritime New Zealand; and
  - (f) every other department of State whose operations may, in the chief executive's opinion, be affected by the granting of an authorisation under subsection (1)(b).
- (1C) If any craft berths, lands, anchors, or otherwise arrives at a place other than a Customs place by reason of an authorisation under subsection (1)(b),—
- (a) the same powers may be exercised under this Act in relation to that craft as if it had arrived at a Customs place in accordance with Part 3, and the same obligations apply; and
  - (b) the same powers may be exercised under this Act in relation to persons and goods on that craft as if those

- persons or goods were in a Customs controlled area, following arrival of the craft in accordance with Part 3, and the same obligations apply.
- (2) The person in charge of the craft—
- (a) must forthwith report to a Customs officer or to a constable; and
  - (b) must not, without the consent of a Customs officer, permit any goods carried in the craft to be unloaded from it or any of the crew or passengers to depart from its vicinity; and
  - (c) must comply with any directions given by a Customs officer in respect of any goods, crew, or passengers carried in the craft.
- (3) Subject to section 43(a), no member of the crew and no passenger on the craft shall without the consent of a Customs officer—
- (a) unload goods from the craft; or
  - (b) depart from the vicinity of the craft,—
- and all such persons must comply with any directions given by a Customs officer.
- (4) Where a craft is directed by a Customs officer pursuant to section 21(1)(b) to arrive at a place other than the Customs place nominated in accordance with section 21(1)(a), no person shall depart from or board the craft unless authorised to do so by a Customs officer.

Compare: 1966 No 19 ss 35A, 38

Section 25(1): substituted, on 24 September 2009, by section 5 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 25(1A): inserted, on 24 September 2009, by section 5 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 25(1B): inserted, on 24 September 2009, by section 5 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 25(1C): inserted, on 24 September 2009, by section 5 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 25(2)(a): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **26 Inward report**

- (1) Unless otherwise approved by the chief executive, this section applies to a craft—

- (a) that arrives within New Zealand on a journey from a point outside New Zealand; or
  - (b) that is carrying—
    - (i) persons; or
    - (ii) goods subject to the control of the Customs—brought in that craft or any other craft from a point outside New Zealand.
- (2) On the arrival at a Customs place of craft to which this section applies, the person in charge or the owner of the craft, as the case may be, must—
- (a) deliver to the Customs within such time or times as may be prescribed an inward report in such form and manner and containing such particulars verified by declaration as may be prescribed and accompanied by such supporting documents as the chief executive may require; and
  - (b) comply with any Customs direction as to the movement of the craft within the Customs place, and as to the unloading of goods or the disembarkation of crew or passengers from the craft.
- (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.

Compare: 1966 No 19 ss 44, 45

Section 26(3): added, on 6 March 2007, by section 5 of the Customs and Excise Amendment Act 2007 (2007 No 9).

### *Arrival of persons*

#### **27 Persons arriving in New Zealand to report to Customs officer or Police station**

- (1) Unless otherwise required under any provision of this Act, every person arriving in New Zealand must, on his or her arrival, report to a Customs officer or to a Police station forthwith.
- (2) A person who reports to a Customs officer or to a Police station in accordance with subsection (1) shall remain at the place where the person reported for such reasonable time as the Customs may require for the purposes of enabling any Customs

officer to exercise in relation to that person any power under this Act.

## **28 Disembarkation**

- (1) Subject to such exemptions as may be prescribed, a person who is on board a craft that has arrived in New Zealand from a point outside New Zealand must comply with any Customs direction concerning disembarkation.
- (2) For the purposes of this section, a **Customs direction** includes a direction given by the person in charge of the craft or by a crew member at the direction of a Customs officer.
- (3) Subject to such exemptions as may be prescribed, every person who has disembarked from a craft to which this section applies must, unless otherwise directed by the Customs,—
  - (a) go to a Customs controlled area; and
  - (b) remain there for such reasonable time as the Customs may require for the purposes of enabling any Customs officer to exercise in relation to that person any power under this Act.

## **29 Baggage to be presented**

- (1) Subject to such exemptions as may be prescribed, every person who disembarks from a craft that has arrived in New Zealand from a point outside New Zealand or a craft that is at the end of a domestic sector must—
  - (a) make his or her accompanying baggage available for examination by a Customs officer; and
  - (b) comply with any Customs direction relating to the movement of the baggage within the Customs place or Customs controlled area or from any craft to a Customs controlled area.
- (2) Any person who is moving or handling the baggage referred to in subsection (1) shall comply with any Customs direction relating to the movement of the baggage within the Customs place or Customs controlled area or from any craft to a Customs controlled area.



*Departure of persons*

**30 Persons departing from New Zealand to depart from Customs place**

Subject to section 37 and to such exemptions as may be prescribed or unless otherwise authorised by the Customs, a person must not depart from New Zealand unless he or she departs from a Customs place.

Section 30: amended, on 24 September 2009, by section 6 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

**31 Embarkation**

A person preparing to board a craft for departure from New Zealand must comply with any Customs direction given to the person concerning embarkation.

**32 Outgoing baggage to be presented**

- (1) Subject to such exemptions as may be prescribed, every person who arrives at a Customs place or a Customs controlled area for embarkation on to a craft that has, as its destination, a point outside New Zealand must—
- (a) make his or her accompanying baggage available for examination by a Customs officer; and
  - (b) comply with any Customs direction relating to the movement of the baggage within the Customs place or Customs controlled area or from a Customs controlled area to any craft.
- (2) Any person who is moving or handling the baggage referred to in subsection (1) shall comply with any Customs direction relating to the movement of the baggage within the Customs place or Customs controlled area or from a Customs controlled area to any craft.

*Further requirements relating to persons  
arriving in or departing from New Zealand*

Heading: inserted, on 6 March 2007, by section 6 of the Customs and Excise Amendment Act 2007 (2007 No 9).

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

- (1) This section applies to any Customs place or Customs controlled area that is used by persons arriving in or departing from New Zealand.
- (2) 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).
- (3) If a sign has been erected in a place under subsection (2), 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.
- (4) Every person must comply with a requirement by a Customs officer under subsection (3).
- (5) 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).

Section 32A: inserted, on 6 March 2007, by section 6 of the Customs and Excise Amendment Act 2007 (2007 No 9).

**32B Completion of processing under Immigration Act 2009 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.
- (2) The person must remain in the designated place until the processing, under the Immigration Act 2009 and, if applicable, the Biosecurity Act 1993, in respect of the person's arrival in, or departure from, New Zealand, is completed.
- (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—
- (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 2009 and, if applicable, the Biosecurity Act 1993; and
  - (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 2009 or the Biosecurity Act 1993
- 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; or
  - (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 2009 or the Biosecurity Act 1993 to the person; and
  - (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 2009 or the Biosecurity Act 1993; and
  - (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 2009 or the Biosecurity Act 1993 that—
    - (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
- (iii) may be exercised or performed by the authorised officer to whom that request is made.

Section 32B: inserted, on 6 March 2007, by section 6 of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 32B heading: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 32B(2): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 32B(4)(a): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 32B(5) **authorised officer**: amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 32B(5) **processing** paragraph (a): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 32B(5) **processing** paragraph (b): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 32B(5) **processing** paragraph (c): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

### **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—
  - (a) is, under an enactment, liable to be detained because of an infectious disease; or
  - (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
  - (d) is liable to be prosecuted for an offence punishable by imprisonment; or
  - (e) has contravened any of the following enactments:
    - (i) the Biosecurity Act 1993:

- (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:
  - (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
- (f) is endangering, or threatening to endanger, the life, health, or safety of a person or group of persons.
- (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:
- (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.
- (4) A direction under this section ceases to have effect 4 hours after it is given.
- (5) In this section,—
- another officer** means—
- (a) a constable; 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.

Section 32C: inserted, on 6 March 2007, by section 6 of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 32C(5) **another officer** paragraph (a): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

### *Departure of craft*

#### **33 Clearance of craft**

- (1) Unless otherwise approved by the chief executive, no person in charge of a craft that has, as its destination, a point outside New Zealand shall cause that craft to depart from any Customs place unless that person has received a certificate of clearance in the prescribed form.
- (2) Subject to such exemptions as may be prescribed, no person in charge of a craft that has arrived in New Zealand from a point outside New Zealand shall cause that craft to depart from the place in New Zealand that it first arrived at, or from any subsequent place of call within New Zealand, without the permission of the Customs and subject to the production to the Customs of any documents that the chief executive may require and to any conditions imposed by the chief executive.

Compare: 1966 No 19 s 72

#### **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—

- (a) deliver to the Customs, within any time or times prescribed, an outward report in the prescribed form and manner 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

- (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
- (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
- (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.

Section 34: substituted, on 6 March 2007, by section 7 of the Customs and Excise Amendment Act 2007 (2007 No 9).

**34A Fees and charges relating to granting certificate of clearance**

- (1) The Governor-General may, on the recommendation of the Minister, make regulations under section 287(1)(a) prescribing fees or charges, or both, that are payable to the Customs to meet or assist in meeting costs and expenses incurred by the Customs in granting a certificate of clearance (for example, the costs and expenses incurred by the Customs in determining whether a person in charge of a craft that is departing New Zealand has complied with the requirements stated or referred to in or imposed under section 34).
- (2) No fees or charges prescribed by regulations of the kind described in subsection (1) may meet or assist in meeting costs or expenses that are—
  - (a) incurred by the Customs in granting a certificate of clearance; and
  - (b) related to clearance of passengers.
- (3) The provisions of Part 8 that relate to the collection and recovery of duty apply to fees and charges prescribed by regulations of the kind described in subsection (1), as if those fees and charges were a duty.
- (4) Before making a recommendation under subsection (1) in relation to any proposed regulations, the Minister must be satisfied that the persons that the Minister considers are representative of interests likely to be substantially affected by the proposed regulations have been consulted about the proposed regula-

tions to the extent that is reasonably practicable having regard to the circumstances of the case.

- (5) For the purposes of subsection (4), the Minister may take into account any relevant consultation undertaken by or on behalf of the Minister before this section comes into force.
- (6) A failure to comply with subsection (4) does not affect the validity of any regulations of the kind described in subsection (1).
- (7) Subsection (1) does not limit section 287.

Section 34A: inserted, on 2 July 2004, by section 13 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **35 Boarding of outward craft**

The person in charge of a craft departing from a Customs place, whether or not the immediate destination of the craft is a point outside New Zealand, shall, if required to do so by any Customs officer, by all reasonable means, facilitate boarding by Customs officers.

Compare: 1966 No 19 s 75

### **36 Production of certificate of clearance**

The person in charge of a craft to whom a certificate of clearance has been granted must, on demand by a Customs officer, produce the certificate of clearance for examination by the officer and answer any question that the officer may put to him or her concerning the craft and its passengers, crew, cargo, stores, and its intended voyage or journey.

Compare: 1966 No 19 s 76

### **37 Departure to be from Customs place only**

- (1) Subject to such exemptions as may be prescribed and subject to subsection (2), except with the prior permission of the chief executive, no person in charge of any craft shall—
  - (a) cause that craft to depart for a point outside New Zealand from a place in New Zealand other than a Customs place; or
  - (b) having obtained a certificate of clearance from a Customs place in New Zealand to depart for any point outside New Zealand, cause that craft—



- (i) to not depart immediately from that place; or
  - (ii) to go to any other place in New Zealand.
- (2) Nothing in subsection (1) applies to a craft—
  - (a) that is required to berth, land, anchor, or otherwise return to a place in New Zealand that is not a Customs place, if this return—
    - (i) is required by any statutory or other requirement relating to navigation; or
    - (ii) is compelled by accident, stress of weather, or other necessity; or
  - (b) that is authorised to depart for a point outside New Zealand from a place in New Zealand other than a Customs place, by the chief executive.
- (3) The provisions of section 25(1A) to (1C) apply with any necessary modifications in respect of—
  - (a) any authorisation given by the chief executive under subsection (2)(b); and
  - (b) any departure from a place in New Zealand (other than a Customs place) in reliance on such an authorisation.

Section 37(1)(b): substituted, on 2 July 2004, by section 14 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 37(2): substituted, on 24 September 2009, by section 7 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 37(3): added, on 24 September 2009, by section 7 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

### **38 Regulations relating to stores for craft**

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 prescribing—

- (a) the classes of goods that are, or are not, deemed to be stores for the use of passengers and crew or the service of craft about to depart from any Customs place; and
- (b) the conditions under which any such stores may be shipped free of duty or under drawback of duty; and
- (c) the conditions under which any such stores are subject to duty, and the form and manner in which those stores shall be entered.

Compare: 1966 No 19 ss 78, 79

**Part 3A**  
**Customs access to and use of information**  
**about border-crossing goods, persons,**  
**and craft**

Part 3A: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

*Preliminary provisions*

Heading: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38A Interpretation**

In this Part, unless the context otherwise requires,—

**border-crossing goods** means goods that are recorded by a person concerned in the movement of goods, persons, or craft—

- (a) as having been imported into, or exported from, New Zealand; or
- (b) as being imported into, or exported from, New Zealand; or
- (c) as intended to be imported into, or exported from, New Zealand

**border-crossing person or craft** means a person (for example, a passenger or a member of the crew of a craft) who, or craft that, is recorded by a person concerned in the movement of goods, persons, or craft—

- (a) as having arrived in, or departed from, New Zealand; or
- (b) as arriving in, or departing from, New Zealand; or
- (c) as intending to arrive in, or depart from, New Zealand

**person concerned in the movement of goods, persons, or craft** means any of the following:

- (a) an owner or an operator of a craft that carries or transports goods or persons, or both, from New Zealand to a point outside New Zealand, or from a point outside New Zealand to New Zealand, for commercial purposes, or the agent of an owner or an operator of that kind;
- (b) a travel operator (being a person who organises the carriage, handling, or transportation of goods or persons, or both, from New Zealand to a point outside New

Zealand, or from a point outside New Zealand to New Zealand, for commercial purposes) or the agent of a travel operator:

- (c) an owner, occupier, or operator of a Customs controlled area used for the purpose specified in section 10(d) or (e):
- (d) an operator of a business that handles, packs, stores, or transports goods that are to be transported from New Zealand to a point outside New Zealand:
- (e) any persons, or classes of persons, involved in any other way in the carriage, handling, or transportation of goods, or persons, or both, from New Zealand to a point outside New Zealand, or from a point outside New Zealand to New Zealand, for commercial purposes, being persons or classes of persons prescribed for the purposes of this paragraph.

Section 38A: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **38B Purpose of this Part**

- (1) The purpose of this Part is to facilitate—
  - (a) the exercise or performance of powers, functions, or duties under this Act:
  - (b) the prevention, detection, investigation, prosecution, and punishment of offences that are, or that if committed in New Zealand would be,—
    - (i) customs offences of any kind; or
    - (ii) other offences punishable by imprisonment:
  - (c) the processing of international passengers at the border by public authorities:
  - (d) the protection of border security:
  - (e) the protection of the health and safety of members of the public.
- (2) To that end, this Part—
  - (a) requires certain persons concerned in the movement of goods, persons, or craft to give the Customs access to certain information about border-crossing goods, persons, and craft; and
  - (b) controls the use of that information by the Customs.

Section 38B: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

*Who must give Customs access to information*

Heading: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38C Persons to whom section 38D or section 38E applies**

Section 38D or section 38E applies to a person only if the person—

- (a) is a person concerned in the movement of goods, persons, or craft; and
- (b) has been required by the chief executive by notice in writing to comply with that section on and after a date specified in the notice in writing.

Section 38C: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

*Information to which access must be given*

Heading: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38D Information about border-crossing craft**

- (1) A person to whom this section applies must give the Customs access, on and after the date specified in the notice referred to in section 38C(b), to information—
  - (a) that is of the kind specified in subsection (2); and
  - (b) that the person holds (whether in New Zealand or overseas) or has access to about any border-crossing craft.
- (2) The information referred to in subsection (1)(a) is information about the border-crossing craft, about what it is carrying or transporting, about its journey to or from New Zealand, and about its arrival at, or departure from, New Zealand, whether that journey or arrival or departure has occurred, is occurring, or will occur.
- (3) That information may include, but is not limited to, the following information about the border-crossing craft:
  - (a) if the craft is carrying or transporting goods,—
    - (i) loading and discharge details:

- (ii) goods storage details;
- (iii) goods records; and
- (b) if the craft is carrying or transporting persons,—
  - (i) the number of persons on the craft (whether passengers or crew or other persons);
  - (ii) the seating arrangements or on-board accommodation arrangements;
  - (iii) baggage storage details; and
- (c) if the craft is carrying or transporting goods and persons, the information in paragraphs (a) and (b).

Section 38D: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **38E Information about border-crossing persons**

- (1) A person to whom this section applies must give the Customs access, on and after the date specified in the notice referred to in section 38C(b), to information—
  - (a) that is of the kind specified in subsection (2); and
  - (b) that the person holds (whether in New Zealand or overseas) or has access to about any border-crossing person.
- (2) The information referred to in subsection (1)(a) is information held by the person, or to which the person has access, for the purpose of facilitating the border-crossing person's travel to, or departure from, New Zealand, whether that travel or departure has occurred, is occurring, or will occur.
- (3) That information may include, but is not limited to, the following information about the border-crossing person:
  - (a) the person's name, date of birth, place of birth, nationality, sex, and passport details;
  - (b) the person's contact details (including telephone number, address, and email address);
  - (c) information identifying the craft on which the person has travelled, is travelling, or intends to travel;
  - (d) any special conditions or arrangements the person has made regarding his or her travel;
  - (e) where the person booked his or her travel;
  - (f) on what date the person booked his or her travel;
  - (g) whether the person has checked baggage.

Section 38E: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38F Further provisions about giving Customs access to information under section 38D or section 38E**

- (1) A person to whom section 38D or section 38E applies must give the Customs access to the information referred to in the section in the form and manner prescribed (for example, in an electronic form and manner).
- (2) The chief executive may, by notice in writing, in all or any specified circumstances, exempt a person to whom section 38D or section 38E applies—
  - (a) from complying with some or all of the person's obligations under that section; and
  - (b) from complying with some or all of the person's obligations under subsection (1).
- (3) Nothing in section 38D or section 38E requires a person to whom the section applies to give the Customs access to information the person holds or has access to about an employee (for example, about a member of the crew of a craft), unless the information is information of a kind also generally held by the person, or to which the person generally has access, in relation to passengers.

Section 38F: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

*Use of information to which access must be given*

Heading: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38G Controls on use by Customs of information**

- (1) The Customs may without warrant view all information to which access is given under section 38D.
- (2) However, the Customs may view information to which access is given under section 38E only as provided in sections 38H to 38K.

- (3) Section 282A applies to the collection, use, and disclosure by the Customs of information viewed by the Customs under this section or any of sections 38H to 38K.

Section 38G: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

*Searching and viewing by Customs of  
information about border-crossing persons*

Heading: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38H Information about travel within 28-day period**

- (1) Information to which access is given under section 38E may be viewed by the Customs without warrant if it is information about travel within the 28-day period.
- (2) The Customs may without warrant search information that it may view under subsection (1) to determine whether that information includes information that is relevant to search criteria specified by the Customs.
- (3) However, if information is viewed under subsection (1), the Customs may collect, use, and disclose that information in accordance with section 282A whether or not it came to the attention of the Customs as a result of a search.
- (4) Powers under this section of viewing or searching are exercisable in a particular case even though, in the circumstances of that case, the purpose of the viewing or searching would not be, or would not be likely to be, frustrated if the viewing or searching were delayed until a warrant under section 38J could be obtained to authorise it.
- (5) For the purposes of this section and section 38I, **information about travel within the 28-day period** means information that, at any particular time, relates—
- (a) to an arrival in, or departure from, New Zealand that, according to the information,—
- (i) occurred within 14 days before that time; or
- (ii) is occurring at that time; or
- (iii) will occur within 14 days after that time; or

- (b) to travel that, according to the information, occurred, is occurring, or will occur, in connection with an arrival or departure referred to in paragraph (a),—
  - (i) whether that travel is travel within New Zealand or overseas; and
  - (ii) whether that travel is travel that occurred, is occurring, or will occur, before or after the arrival or departure of that kind.

Section 38H: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38I Information about other travel may be searched for information relating to travellers within 28-day period**

- (1) In this section, **information about other travel** means information—
  - (a) to which access is given under section 38E; and
  - (b) that is not information about travel within the 28-day period.
- (2) This section applies to the following situation:
  - (a) the Customs, in considering information viewed under section 38H, finds information about travel within the 28-day period that relates to an arrival or departure, and to travel, by a person:
  - (b) the Customs wishes—
    - (i) to search information about other travel to determine whether it includes information that relates to that person; and
    - (ii) to view any information that relates to that person and is found as a result of the search.
- (3) In that situation, the Customs may without warrant—
  - (a) search information about other travel to determine whether it includes information that relates to the person; and
  - (b) view information in accordance with subsection (5).
- (4) However, the search may be conducted only if it can be completed within 14 days after the arrival or departure to which the information about travel within the 28-day period relates (*see* section 38H(5)(a)).



- (5) The Customs must not view information about other travel unless that information relates to the person and is found as a result of the search.
- (6) Powers under this section of viewing or searching are exercisable in a particular case even though, in the circumstances of that case, the purpose of the viewing or searching would not be, or would not be likely to be, frustrated if the viewing or searching were delayed until a warrant under section 38J could be obtained to authorise it.

Section 38I: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **38J Search and viewing warrants**

- (1) This section applies to the following situation:
  - (a) the chief executive considers, in the light of information of any kind that is available to the Customs, that there are reasonable grounds to suspect that—
    - (i) there exists a risk or threat relevant to the purpose stated in section 38B(1); or
    - (ii) a relevant offence (as defined in subsection (6)) has been, is being, or will be committed:
  - (b) the Customs wishes—
    - (i) to search information to which access is given under section 38E to determine whether it includes information that is relevant to search criteria specified by the Customs (being search criteria that are reasonably related to the information available to the Customs that gives rise to the reasonable grounds to suspect required by paragraph (a)); and
    - (ii) to view any information that is relevant to the search criteria specified by the Customs and is found as a result of the search:
  - (c) the search cannot be conducted and the viewing done under section 38H or section 38I, or the Customs considers it would be inexpedient for those things to be done under section 38H or section 38I.

- (2) In that situation, the chief executive may, by application in writing made on oath, apply to a District Court Judge for a search and viewing warrant authorising—
- (a) the carrying out of the search within 14 days after the day on which the warrant is granted (or within any extension of that period granted by a District Court Judge on an application in writing for the purpose made within that period); and
  - (b) the viewing by the Customs of any information that is relevant to the search criteria specified by the Customs and that is included in information to which access is given under section 38E, but of no other information.
- (3) The application must give details of the reasonable grounds to suspect required by subsection (1), of the information available to the Customs that gives rise to those reasonable grounds to suspect, and of the search criteria specified by the Customs, and it must also indicate whether the search is to be of all, or of only a specified part or parts, of the information to which access is given under section 38E.
- (4) On an application under subsection (2), a District Court Judge may grant a search and viewing warrant in the prescribed form, but only if he or she is satisfied that—
- (a) the reasonable grounds to suspect required by subsection (1) exist; and
  - (b) the search criteria specified by the Customs are reasonably related to the information available to the Customs that gives rise to those reasonable grounds to suspect.
- (5) The warrant is sufficient authority for the doing of the things specified in subsection (2)(a) and (b).
- (6) In this section and section 38K, **relevant offence** means an offence described in section 38B(1)(b), or relevant to the purpose stated in section 38B(1) (except paragraph (b)).

Section 38J: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **38K Search and viewing without warrant in emergencies**

- (1) This section applies to the following situation:
- (a) the situation specified in section 38J(1) applies:

- (b) the chief executive considers that, if he or she were to apply to a District Court Judge for a search and viewing warrant under section 38J, the District Court Judge would grant the warrant:
- (c) the chief executive also considers that delaying a search and any resulting viewing until a search and viewing warrant can be obtained under section 38J would create a real risk that—
  - (i) the countering of the risk or threat referred to in section 38J(1)(a)(i) would be frustrated; or (as the case requires)
  - (ii) the prevention, detection, investigation, prosecution, or punishment of the relevant offence would be frustrated.
- (2) In that situation, the chief executive may, with no further authority than this section, have the things specified in section 38J(2)(a) and (b) done as if the doing of those things were authorised by a search and viewing warrant under section 38J(4).
- (3) However, if the chief executive acts under subsection (2), he or she must within 72 hours apply under section 38J(2) for a search and viewing warrant in relation to the matter.

Section 38K: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **38L Procedure if viewing of information not authorised**

- (1) This subsection applies to both of the following situations:
  - (a) the 72-hour period referred to in section 38K(3) expires and the chief executive has not made the application required by that subsection:
  - (b) the application required by section 38K(3) is made but, in response to it, either no warrant is granted under section 38J(4), or a warrant is granted under section 38J(4) authorising the doing of some only of the things done in reliance on section 38K(2).
- (2) In a situation to which subsection (1) applies, things done in reliance on section 38K(2) must, to the extent that the doing of those things is not authorised by a warrant granted under section 38J(4), be treated for the purposes only of the countering of the risk or threat referred to in section 38J(1)(a)(i) or (as

the case requires) of the prevention, detection, investigation, prosecution, or punishment of the relevant offence, as if they were done without the authority of section 38K or of a warrant granted under section 38J(4).

- (3) In a situation to which subsection (1) applies,—
- (a) the Customs must destroy immediately information viewed by it in reliance on section 38K(2) and that is collected by it for a purpose specified in section 282A if the viewing of that information is not authorised by a warrant granted under section 38J(4); and
  - (b) other persons or bodies must destroy immediately information viewed by the Customs in reliance on section 38K(2) and disclosed by it to the other persons or bodies for a purpose specified in section 282A(2) and collected by the other persons or bodies if the viewing of that information is not authorised by a warrant granted under section 38J(4).

Section 38L: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **38M Security of applications for warrants**

- (1) As soon as an application under section 38J(2) has been determined by the Judge, the Registrar must place all documents relating to the application (except the warrant itself) in a packet, seal the packet, and thereafter keep it in safe custody, except as provided in this section.
- (2) Despite any enactment or rule of law or rules of court entitling a party to proceedings to demand the production of documents, no party of that kind is entitled to demand the production of documents held in safe custody under subsection (1), except in accordance with this section.
- (3) Every party of that kind who requires the production of a document held in safe custody under subsection (1) must, except in a case to which subsection (9) or subsection (10) applies, apply in writing to the Registrar, who must promptly notify the chief executive.
- (4) If, within 3 days after notice is given to the chief executive under subsection (3), the chief executive gives written notice to the Registrar that he or she intends to oppose the produc-

tion of the documents, the Registrar must refer the matter to a District Court Judge.

- (5) If the chief executive does not give the written notice referred to in subsection (4), the Registrar must produce the documents to the party applying for production.
- (6) If a matter is referred to a Judge under subsection (4), both the person requesting production of the documents and the chief executive opposing production must be given an opportunity to be heard.
- (7) The Judge may order that all or a specified part of a document the production of which is in dispute not be produced if he or she is satisfied that—
  - (a) the document or part contains information of a kind referred to in section 38N(1); and
  - (b) production of that information would involve disclosure of a kind referred to in section 38N(2).
- (8) Subject to subsection (7), the Judge must order the production of the documents to the party requesting it.
- (9) If a request for the production of a document kept in safe custody under subsection (1) is made in the course of proceedings presided over by a District Court Judge and the request is opposed, the Judge must adjudicate upon the matter as if it had been referred to him or her under subsection (4).
- (10) If a request of that kind is made in the course of any other proceedings, the presiding judicial officer must promptly refer the matter to a District Court Judge for adjudication of the kind referred to in subsection (9).
- (11) Despite anything in this section, every District Court Judge or Judge of the High Court who is presiding over any proceedings in which the issue of a warrant under section 38J is in issue is entitled to inspect any relevant document held under subsection (1).

Compare: 1978 No 65 s 20

Section 38M: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **38N Information and disclosure in section 38M(7)**

- (1) Information falls within section 38M(7)(a) if it—

- (a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the Customs; or
  - (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the Customs; or
  - (c) has been provided to the Customs by the government of another country or by an agency of a government of another country or by an international organisation, and is information that cannot be disclosed by the Customs because the government or agency or organisation by which the information has been provided will not consent to the disclosure.
- (2) Disclosure of information falls within section 38M(7)(b) if the disclosure would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
  - (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or
  - (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
  - (d) to endanger the safety of any person.
- (3) In this section,—
- country** includes any State, territory, province, or other part of a country
- international organisation** means any organisation of States or Governments of States, or any organ or agency of any organisation of that kind.

Section 38N: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

*Miscellaneous provisions*

Heading: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38O Disposal of information collected by Customs**

- (1) This section applies to information—
  - (a) viewed under any of sections 38G to 38K; and
  - (b) collected for a purpose specified in section 282A(2).
- (2) The Customs must, at least once every 6 months after this section comes into force, determine whether the retention of the information by the Customs continues to be necessary for that purpose and, if it is not, must dispose of the information promptly.
- (3) This section does not limit section 38L(3)(a).

Section 38O: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38P Protection of persons acting under authority of Part**

Neither the Crown nor the chief executive or a Customs officer or an authorised person is liable for anything done or omitted to be done or purporting to have been done by a person in the exercise of a power conferred by this Part unless the person has not acted in good faith or has acted without reasonable care.

Section 38P: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**38Q Part does not limit other access to or use of information**

Nothing in this Part—

- (a) prevents a person concerned in the movement of goods, persons, or craft from giving Customs access to information otherwise than as required by or under this Part:
- (b) prevents the Customs from using otherwise than as provided in this Part information to which Customs is given access otherwise than as required by or under this Part:
- (c) affects any obligation a person may have to give the Customs advance notice of matters under section 21:
- (d) affects any obligation a person may have under this Act to make an entry in respect of goods that are imported or that are to be imported:

- (e) affects any powers the Customs has to collect and use information under section 279.

Section 38Q: inserted, on 1 October 2004, by section 15 of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **Part 4**

### **Entry and accounting for goods**

#### *Importation of goods*

#### **39 Entry of imported goods**

- (1) Subject to any regulations made under section 40, goods that are imported or that are to be imported must be entered by the importer—
  - (a) in such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
  - (b) within such time as may be prescribed or such further time as the chief executive may allow.
- (2) Where any entry required by this section relates to goods that are dutiable in accordance with the volume of alcohol present in the goods, the person making the entry shall specify the volume of alcohol in the prescribed manner.
- (3) Every person entering goods under this section must—
  - (a) answer any question asked by a Customs officer with respect to the goods; and
  - (b) on the request of a Customs officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.
- (3A) Every person entering goods under this section may, in accordance with any conditions a Customs officer may impose,—
  - (a) inspect the goods; or
  - (b) draw samples from the goods.
- (4) If—
  - (a) default is made in the entry of goods pursuant to this section; or
  - (b) the goods are not claimed within such period as may be prescribed,—



duty becomes due and payable on the goods, and the goods may be sold or otherwise disposed of by the chief executive.

Compare: 1966 No 19 ss 19, 55

Section 39(3A): inserted, on 27 September 2001, by section 3 of the Customs and Excise Amendment Act 2001 (2001 No 61).

### **39A Entry of imported goods in multiple or split shipments**

- (1) This section applies if the chief executive considers, after taking into account any criteria prescribed by regulations made under section 40, that goods cannot reasonably be imported into New Zealand in 1 shipment.
- (2) The chief executive may, on application by an importer, allow the goods to be—
  - (a) imported in multiple or split shipments; and
  - (b) entered by the importer under the same Tariff classification that they would have been entered under if they had been imported in 1 shipment.
- (3) In exercising the power conferred by subsection (2), the chief executive may impose any conditions on the importer that he or she considers to be reasonably necessary.

Section 39A: inserted, on 6 April 2012, by section 6 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### **40 Regulations relating to entry of imported goods**

Without limiting the power to make regulations under section 286, the Governor-General may from time to time, by Order in Council, make regulations—

- (a) prescribing when an entry is deemed to have been made for the purposes of this Act; and
- (b) prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act; and
- (c) exempting specified goods or goods of a specified class from the requirements of section 39(1), subject to such conditions as may be prescribed; and
- (d) prescribing goods or classes of goods that shall be deemed to have been entered under section 39(1) and the circumstances in which and the conditions subject to which those goods shall be so deemed; and

- (e) for the purposes of section 39A(1), prescribing criteria for determining whether goods cannot reasonably be imported in 1 shipment.

Compare: 1966 No 19 s 22; 1990 No 89 s 5

Section 40(d): amended, on 6 April 2012, by section 7 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 40(e): inserted, on 6 April 2012, by section 7 of the Customs and Excise Amendment Act 2012 (2012 No 25).

#### **40A Fees and charges relating to importation of goods**

- (1) Without limiting the power to make regulations under section 287, the Governor-General may, on the recommendation of the Minister, make regulations under section 287(1)(a) prescribing fees or charges, or both, that are payable to the Customs to meet or assist in meeting costs and expenses incurred by the Customs in exercising functions or powers, or performing duties, or providing services, under this Act that relate to the importation of goods.
- (2) The provisions of Part 8 that relate to the collection and recovery of duty apply to fees and charges prescribed by regulations of the kind described in subsection (1), as if those fees and charges were a duty.
- (3) Before making a recommendation under subsection (1) in relation to any proposed regulations, the Minister must be satisfied that the persons that the Minister considers are representative of interests likely to be substantially affected by the proposed regulations have been consulted about the proposed regulations to the extent that is reasonably practicable having regard to the circumstances of the case.
- (4) For the purposes of subsection (3), the Minister may take into account any relevant consultation undertaken by or on behalf of the Minister before this section comes into force.
- (5) A failure to comply with subsection (3) does not affect the validity of any regulations of the kind described in subsection (1).

Section 40A: inserted, on 9 October 2002, by section 4 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

**41 Imported goods to be dealt with according to entry**

Goods in respect of which entry has been made and passed must forthwith be dealt with in accordance with the entry and with the provisions of this Act in respect of the goods so entered.

Compare: 1966 No 19 s 25(1)

**42 Cancellation and amendments of entries**

*[Repealed]*

Section 42: repealed, on 6 March 2007, by section 25 of the Customs and Excise Amendment Act 2007 (2007 No 9).

**43 Unloading goods**

No person shall unload goods that are subject to the control of the Customs from a craft except—

- (a) pursuant to a permit or other authorisation granted by the chief executive, which permit or other authorisation shall be subject to such conditions as the chief executive may determine; or
- (b) where the safety of the craft, or the goods or persons in the craft, is threatened by collision, fire, the stress of weather, or similar circumstances, or such other circumstances as may be prescribed.

Compare: 1966 No 19 s 50(1)

**44 Craft imported otherwise than as cargo**

(1) Notwithstanding anything in this Act, such entries shall be made in respect of a craft imported into New Zealand otherwise than as cargo as the chief executive may from time to time determine in relation to any craft or class of craft by notice in the *Gazette*.

(2) For the purpose of making entries in respect of a craft imported into New Zealand otherwise than as cargo, the craft shall be deemed to have been imported as cargo and unloaded as such on its arrival.

Compare: 1966 No 19 s 56

**45 Samples or illustrations**

- (1) The importer of goods must furnish free of charge, such samples, illustrations, drawings, documents, or plans relating to the goods as may be required by a Customs officer for the purposes of analysis, classification, or record.
- (2) Any sample required to be furnished in accordance with subsection (1) must be as small as possible for the purpose for which it is taken.

Compare: 1966 No 19 s 61

Section 45(2): added, on 27 September 2001, by section 4 of the Customs and Excise Amendment Act 2001 (2001 No 61).

*Transportation within New Zealand***46 Transportation of imported goods**

Except as otherwise permitted by the chief executive, no goods subject to the control of the Customs shall be placed in a craft, vehicle, or other conveyance for transportation within New Zealand until entry has been made in accordance with section 39(1).

Compare: 1966 No 19 s 62(1)

**47 Removal of goods from Customs controlled area**

- (1) Goods that are subject to the control of the Customs must not be delivered or removed from a Customs controlled area except—
  - (a) as provided by this Act; or
  - (b) subject to subsection (3), with the permission of a Customs officer after entry has been made and passed in the prescribed form and manner; or
  - (c) pursuant to a permit or other authorisation granted by the chief executive in respect of those goods, subject to such conditions as the chief executive may determine; or
  - (d) by a Customs officer in the performance of his or her duties under this Act.
- (2) The chief executive may, by notice in writing, vary or revoke any conditions to which a permit granted by the chief executive under subsection (1)(c) is subject, or may revoke those

conditions and impose new conditions or may revoke the permit completely.

- (3) Notwithstanding subsection (1)(b), while goods remain subject to the control of the Customs, the chief executive may revoke any notice of delivery given in respect of those goods.
- (4) A person who is dissatisfied with a decision of the chief executive under subsection (1)(c) or subsection (2) 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.

Compare: 1966 No 19 ss 52A(1), 99(1)

#### **48 Temporary removal of goods from Customs controlled area**

- (1) Subject to section 156 and to any other provisions of this Act, the chief executive may permit goods to be temporarily removed from a Customs controlled area without payment of duty for such time and in such quantities as he or she may approve.
- (2) Goods so removed remain subject to the control of the Customs and are deemed to be within the Customs controlled area from which they were so removed, and the provisions of this Act continue to apply to them accordingly.

Compare: 1966 No 19 s 101

#### *Exportation of goods*

#### **49 Entry of goods for export**

- (1) Subject to any regulations made under section 50, goods that are exported or that are to be exported must be entered by the exporter—
  - (a) in such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
  - (b) before the prescribed deadline (if any) or any later deadline the chief executive may allow.
- (2) Every person who makes an entry under this section must—

- (a) answer any question relevant to matters arising under this Act asked by a Customs officer with respect to the goods; and
  - (b) at the request of a Customs officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.
- (3) In the case of goods to be exported under drawback, the making of any such entry is deemed to be the making of a claim for drawback.
- (4) Unless the chief executive in any particular case otherwise determines, no right to drawback exists in the case of goods placed on a craft before entry has been made and passed.
- (5) Except as otherwise permitted by the chief executive, goods must not be loaded for export until entry has been made and passed in the prescribed form and manner.
- (6) Despite an entry being passed in accordance with subsection (5), the chief executive may revoke the goods' permission to export if the chief executive has reasonable cause to suspect the goods endanger, or threaten to endanger,—
- (a) border security; or
  - (b) New Zealand's trade interests or international obligations; or
  - (c) the life, health, or safety of a person or group of persons; or
  - (d) the safety of the craft that will carry the goods, or of other goods to be carried on that craft.

Compare: 1966 No 19 ss 53, 63, 184

Section 49(1)(b): substituted, on 8 December 2009, by section 6(1) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 49(5): amended, on 1 October 2004, by section 16 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 49(6): added, on 8 December 2009, by section 6(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **50 Regulations relating to entry of goods for export**

Without limiting the power to make regulations under section 286, the Governor-General may from time to time, by Order in Council, make regulations—

- (aaa) specifying when an entry of goods for export is deemed to have been made; and
- (aa) prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act; and
- (a) exempting specified goods or goods of a specified class from the requirements of section 49(1), subject to such conditions as may be prescribed; and
- (b) prescribing goods or classes of goods that shall be deemed to have been entered under section 49(1) and the circumstances in which and the conditions subject to which those goods shall be so deemed.

Section 50(aaa): inserted, on 6 April 2012, by section 8 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 50(aa): inserted, on 1 October 2004, by section 17 of the Customs and Excise Amendment Act 2004 (2004 No 55).

#### **50A Fees and charges relating to exportation of goods**

- (1) The Governor-General may, on the recommendation of the Minister, make regulations under section 287(1)(a) prescribing fees or charges, or both, that are payable to the Customs to meet or assist in meeting costs and expenses incurred by the Customs in exercising functions or powers, or performing duties, or providing services, under this Act that relate to the exportation of goods.
- (2) The provisions of Part 8 that relate to the collection and recovery of duty apply to fees and charges prescribed by regulations of the kind described in subsection (1), as if those fees and charges were a duty.
- (3) Before making a recommendation under subsection (1) in relation to any proposed regulations, the Minister must be satisfied that the persons that the Minister considers are representative of interests likely to be substantially affected by the proposed regulations have been consulted about the proposed regulations to the extent that is reasonably practicable having regard to the circumstances of the case.
- (4) For the purposes of subsection (3), the Minister may take into account any relevant consultation undertaken by or on behalf of the Minister before this section comes into force.

(5) A failure to comply with subsection (3) does not affect the validity of any regulations of the kind described in subsection (1).

(6) Subsection (1) does not limit section 287.

Section 50A: inserted, on 2 July 2004, by section 18 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **51 Goods for export to be dealt with according to entry**

(1) In the case of goods that have been entered for export, the person making the entry, or the owner of the goods, as the case may be, must forthwith export the goods to a point outside New Zealand in accordance with the entry and with the provisions of this Act relating to the exportation of goods.

(2) If goods entered for export are not exported according to the entry, the person making the entry must immediately give notice to the Customs of the failure to export and the reasons for it and, in any such case, the chief executive—

(a) shall cancel or amend the entry; and

(b) may, where applicable, allow the goods to be released from the control of the Customs.

(3) Notwithstanding subsection (1), where the licence conditions of a Customs controlled area allow, an export entry may be made in the case of goods removed from that area for sales made for delivery to persons on their arrival in New Zealand from a point outside New Zealand.

Compare: 1966 No 19 ss 25, 66(1)

### **52 Goods for export not to be landed**

No goods loaded for export shall, without the permission of a Customs officer, be landed except at a point outside New Zealand.

Compare: 1966 No 19 s 68(1)

### **53 Time of exportation**

For the purposes of this Act, the time of exportation is the time when the exporting craft leaves the last Customs place at which that craft calls immediately before proceeding to a point outside New Zealand.

Compare: 1966 No 19 s 69



*Customs seals*

Heading: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**53A Customs seal may be used in relation to goods for export**

- (1) The chief executive may, by notice in writing specifying the date on and after which the appointment takes effect, appoint a Customs officer or other person to use (including to reuse) Customs seals in relation to packages of goods to be exported.
- (2) The notice must specify the circumstances in which the officer or other person may use a Customs seal in relation to a package of goods, and must prohibit him or her from using a Customs seal in all other circumstances.
- (3) Without limiting the generality of subsection (2), the notice must specify that the officer or other person may use a Customs seal in relation to a package of goods that has not had a Customs seal used in relation to it only if—
  - (a) the exporter concerned (or his or her agent or employee) consents to the seal being used; or
  - (b) the seal is used incidental to, and immediately after, the exercise by any person of a power under this Act to examine or search for goods of any kind.
- (4) The notice must also specify the circumstances in which the officer or other person may alter, remove, damage, dispose of, or otherwise interfere with a Customs seal used in relation to a package of goods, and must prohibit him or her from interfering in any way with a Customs seal of that kind in all other circumstances.
- (5) A notice of appointment under this section may be amended or revoked by the chief executive by a further notice in writing given to the officer or other person concerned and specifying the date on or after which the amendment or revocation takes effect.

Section 53A: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 53A heading: amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53A(1): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53A(2): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53A(3): substituted, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53A(4): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **53B Warning notices for packages in relation to which seal used**

A notice of appointment under section 53A must also require the officer or other person concerned, on using a Customs seal in relation to a package of goods that are not goods to be exported under a Customs-approved secure exports scheme, to ensure that there is attached to the package a warning notice that explains in terms approved by the chief executive—

- (a) that the goods in the package are, from the time when a Customs seal is first used in relation to the package until the exportation of the goods to a point outside New Zealand, goods subject to the control of the Customs;
- (b) that the powers of detention and search in section 144(4) are available in respect of a vehicle in New Zealand if there are suspected to be in or on the vehicle goods that are, or are suspected to be,—
  - (i) subject to the control of the Customs; and
  - (ii) in a package in relation to which a Customs seal has been used;
- (c) that a Customs officer may, under section 146(2), question any or all of the following persons about any cargo destined to be exported from New Zealand:
  - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, or has within the previous 72 hours had in or on it, goods subject to the control of the Customs and in a package in relation to which a Customs seal has been used;
  - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of the Customs and in a pack-

age in relation to which a Customs seal has been used:

- (iii) a person employed by a person described in subparagraph (i) or (ii):
- (d) that the powers in section 151 (which include powers of examination) are available in respect of goods that are, or are suspected to be,—
  - (i) subject to the control of the Customs; and
  - (ii) in a package in relation to which a Customs seal has been used.

Section 53B: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 53B heading: amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53B: amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53B(a): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53B(b)(ii): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53B(c)(i): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53B(c)(ii): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53B(d)(ii): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

### *Customs-approved secure exports schemes*

Heading: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

#### **53C Chief executive may approve secure exports scheme**

- (1) On an application for the purpose in writing by a person involved in the carriage, handling, transportation, or exportation of goods for export (in this section and sections 53F and 53I called an **exporter**), the chief executive may approve a secure exports scheme, and so make it a Customs-approved secure exports scheme.
- (2) The chief executive must ensure that the exporter concerned is notified promptly and in writing of any decision to give or to decline an approval under this section.

- (3) An approval under this section must be in writing, may be given subject to any conditions the chief executive specifies in the approval, and takes effect either on the day after the date on which it is given or on any later date specified in the approval.
- (4) An approval under this section may be revoked by the chief executive by notice in writing given to the exporter concerned and specifying both any conditions to which the revocation is subject and the date on or after which the revocation takes effect.
- (5) Subsections (1) to (4) apply (with all necessary modifications) to any amendment to a secure exports scheme.
- (6) On an application for the purpose by the exporter concerned, the chief executive must revoke an approval under this section of all of a secure exports scheme. However, the revocation must be subject to the condition that goods remain subject to the scheme until exported if, at the time the revocation takes effect, the goods have been secured in a Customs-approved secure package under the scheme but not yet exported.
- (7) An applicant 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.

Section 53C: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **53D Purpose of secure exports scheme**

The purpose of a secure exports scheme is to help to ensure that goods to be exported under the scheme are—

- (a) packaged securely and with no other goods; and
- (b) conveyed securely and without interference to the place of shipment and shipped.

Section 53D: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **53E Matters to be specified in secure exports scheme**

- (1) A secure exports scheme must specify how the goods to be exported under the scheme are to be packed, including—
  - (a) the secure package to be used:

- (b) the seal, marking, substance, or device to be used in relation to the package, as soon as it is secured,—
  - (i) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
  - (ii) to help to identify tampering or interference with the package after it is secured.
- (2) A secure exports scheme must also specify any conditions required by the chief executive as to—
  - (a) the persons who are to pack the goods, and the security checks to be applied to those persons:
  - (b) the conditions in which packing is to occur (for example, the area or areas in which packing is to occur, and the controls on the entry and exit of persons and goods to that area or those areas):
  - (c) any other requirements relating to how the goods are to be packed.
- (3) A secure exports scheme must also specify how, on the completion of the packing of the goods, the goods are to be conveyed to the place of shipment and shipped, including any conditions required by the chief executive as to—
  - (a) the persons who are to convey the goods, and the security checks to be applied to those persons:
  - (b) the manner in which the goods are to be conveyed:
  - (c) any place or places of security en route to the place of shipment in which the goods are to be stored in the course of being conveyed to the place of shipment and shipped.

Section 53E: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 53E(1)(b): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **53F Matters to be acknowledged in secure exports scheme**

A secure exports scheme must include express acknowledgements by the exporter concerned—

- (a) that the goods to be exported under the scheme are, from the time when they are first secured in a Customs-approved secure package until the exportation of

- the goods to a point outside New Zealand, goods subject to the control of the Customs:
- (b) that the powers of detention and search in section 144(4) are available in respect of a vehicle in New Zealand if there are suspected to be in or on the vehicle goods that are, or are suspected to be,—
    - (i) subject to the control of the Customs; and
    - (ii) in a Customs-approved secure package:
  - (c) that a Customs officer may, under section 146(2), question any or all of the following persons about any cargo destined to be exported from New Zealand:
    - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, or has within the previous 72 hours had in or on it, goods subject to the control of the Customs and in a Customs-approved secure package:
    - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of the Customs and in a Customs-approved secure package:
    - (iii) a person employed by a person described in subparagraph (i) or (ii):
  - (d) that the powers in section 151 (which include powers of examination) are available in respect of goods that are, or are suspected to be,—
    - (i) subject to the control of the Customs; and
    - (ii) in a Customs-approved secure package.

Section 53F: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**53G Goods to be exported under Customs-approved secure exports scheme may be exported under drawback**

- (1) Goods to be exported under a Customs-approved secure exports scheme may be exported under drawback.
- (2) If goods to be exported under a Customs-approved secure exports scheme are exported under drawback, then all conditions

(if any) as may be prescribed for allowing drawback of duty must be satisfied, even though satisfying those conditions may involve conveying or handling or storing the goods in a way not specified in the scheme.

Section 53G: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**53H Use of Customs seals in relation to goods to be exported under Customs-approved secure exports schemes**

- (1) Nothing in this Act prevents a Customs seal from being used in relation to a Customs-approved secure package after an approved seal, marking, substance, or device of the kind referred to in section 53E(1)(b) has been used in relation to the package in accordance with the relevant Customs-approved secure exports scheme.
- (2) Goods to be exported under a Customs-approved secure exports scheme must not be regarded as no longer to be exported under the scheme just because 1 or more Customs seals have been used in relation to the Customs-approved secure package concerned.

Section 53H: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 53H heading: amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53H(1): substituted, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 53H(2): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**53I Exporters may be involved in exportation of goods outside Customs-approved secure exports scheme**

- (1) This section applies to an exporter involved in the carriage, handling, transportation, or exportation of goods for export under 1 or more Customs-approved secure exports schemes.
- (2) Nothing in this Act prevents the exporter from being involved in the carrying, handling, transportation, or exportation of goods for export otherwise than under that scheme or those schemes.

Section 53I: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**53J Review of Customs-approved secure exports scheme**

The chief executive may, at any time, review the operation of any Customs-approved secure exports scheme.

Section 53J: inserted, on 2 July 2004, by section 19 of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **Part 5**

### **Prohibited imports and prohibited exports**

**54 Prohibited imports**

- (1) It is unlawful to import into New Zealand—
  - (a) any of the goods specified in Schedule 1; or
  - (aa) all publications as defined in section 2 of the Films, Videos, and Publications Classification Act 1993 that are objectionable within the meaning of that Act in the hands of all persons and for all purposes; and all other indecent or obscene articles; or
  - (b) goods the importation of which is prohibited by an Order in Council made under subsection (2).
- (1A) Electronic publications the importation of which is prohibited by subsection (1)(aa) must be treated as if they were goods for the purposes of this Act (except for section 12 of the Goods and Services Tax Act 1985 which is deemed by section 1(3) of that Act to be part of this Act).
- (2) The Governor-General may from time to time, by Order in Council, prohibit the importation into New Zealand of—
  - (a) any specified goods; or
  - (b) goods of a specified class or classes,—  
if, in the opinion of the Governor-General, the prohibition is necessary in the public interest.
- (3) A prohibition imposed under this section—
  - (a) may be general; or
  - (b) may be limited to the importation of goods from a specified place or by or from a specified person or class of persons; or
  - (c) may, whether general or limited, be absolute or conditional.



- (4) A conditional prohibition may allow the importation of goods—
- (a) under the authority of a licence or a permit (whether granted before or after the importation of the goods), or a consent, to be granted by the chief executive or by any other person named in the Order in Council, on or subject to such terms or conditions (if any) not inconsistent with the provisions of the prohibition, as may be imposed by the chief executive or other person granting the licence, permit, or consent; or
  - (b) on or subject to any other prescribed conditions.
- (5) An Order in Council made under subsection (2) shall,—
- (a) if made on or before 30 June in any year, expire on the close of 31 December of that year except so far as it is expressly confirmed by Act of Parliament passed during that year; and
  - (b) if made on or after 1 July in any year, expire on the close of 31 December in the following year except so far as it is expressly confirmed by Act of Parliament passed before the end of that following year.
- (6) The expiry of an Order in Council under subsection (5) shall not affect the validity of any act done pursuant to or in accordance with the provisions of that Order in Council before the date on which the Order in Council expires in accordance with that subsection.
- (7) No goods otherwise dutiable are exempt from duty because their importation is unlawful.
- (8) All Orders in Council made under the Customs Act 1966 in force at the commencement of this Act prohibiting the importation of goods into New Zealand are deemed to have been made and confirmed under this section and shall continue in force in accordance with the provisions of section 55.

Compare: 1966 No 19 s 48(2), (3)(a), (4), (5), (6), (12)

Section 54(1)(aa): substituted, on 22 February 2005, by section 40 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 54(1A): inserted, on 9 October 2002, by section 5(2) of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

**55 Duration of Orders in Council prohibiting imports**

- (1) Subject to subsection (2), an Order in Council made under section 54 shall expire 3 years after the date on which it comes into force.
- (2) Subsection (1) shall not apply where it is expressly provided in the Order in Council that it will expire after a period of less than 3 years, or if the Order in Council is sooner revoked.
- (3) Where an Order in Council made under section 54 would otherwise expire under subsection (1), the Governor-General may from time to time, by Order in Council, extend for a further period of 3 years or such lesser period as may be specified, the period for which that Order in Council shall be in force.
- (4) For the purposes of subsections (1) to (3), but not for any other purposes, the Orders in Council referred to in section 54(8) shall be deemed to have been made on the date that this Act comes into force.

**56 Prohibited exports**

- (1) It is unlawful to export from New Zealand—
  - (a) all publications as defined in section 2 of the Films, Videos, and Publications Classification Act 1993 that are objectionable within the meaning of that Act in the hands of all persons and for all purposes; and
  - (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).
- (1A) Electronic publications the exportation of which is prohibited by subsection (1) must be treated as if they were goods for the purposes of this Act (except for section 12 of the Goods and Services Tax Act 1985 which is deemed by section 1(3) of that Act to be part of this Act).
- (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:

- (a) any specified—
  - (i) electronic publications that have or may have a strategic use; or
  - (ii) goods; or
- (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—
  - (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.

(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

**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:
- (b) the development, production, or deployment of biological weapons (as defined in section 2 of the New Zealand 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:
- (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.

- (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:
  - (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).
- (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.
- (2E) The relevant exporter is deemed to have received the Secretary's notice under subsection (2D) in accordance with section 285.
- (2F) 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.
- (2G) 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.
- (2H) The Secretary must make the list maintained under subsection (2G) available by—
- (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.
- (2I) Any failure to publish a list under subsection (2H) does not invalidate the prohibition of goods or electronic publications mentioned in the list.

- (3) A prohibition imposed under this section—
  - (a) may be general; or
  - (b) may be limited to the export of goods or electronic publications to a specified place or by or to a specified person or class of persons; or
  - (c) may, whether general or limited, be absolute or conditional.
- (4) A conditional prohibition may allow the exportation of goods or electronic publications—
  - (a) under the authority of a licence, permit, or consent, to be granted by the chief executive or by any other person named in the Order in Council, on or subject to such terms or conditions (if any) not inconsistent with the provisions of the prohibition, as may be imposed by the chief executive or other person granting the licence, permit, or consent; or
  - (b) on or subject to any other prescribed conditions.
- (5) An Order in Council made under subsection (2) shall,—
  - (a) if made on or before 30 June in any year, expire on the close of 31 December of that year except so far as it is expressly confirmed by Act of Parliament passed during that year; and
  - (b) if made on or after 1 July in any year, expire on the close of 31 December in the following year except so far as it is expressly confirmed by Act of Parliament passed before the end of that following year.
- (6) The expiry of an Order in Council under subsection (5) shall not affect the validity of any act done pursuant to or in accordance with the provisions of that Order in Council before the date on which the Order in Council expires in accordance with that subsection.
- (7) No prohibition under this section applies to goods that are already loaded into the exporting craft at the time when the prohibition comes into force.
- (8) Unless otherwise specified in the order, an Order in Council under this section prohibiting the exportation of goods extends to and applies to the shipment of the goods for use as stores by a craft.

Compare: 1966 No 19 s 70(2)–(4), (8), (9)

Section 56(1): substituted, on 22 February 2005, by section 41 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 56(1)(b): substituted, on 6 March 2007, by section 8(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(1)(c): added, on 6 March 2007, by section 8(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(1A): inserted, on 22 February 2005, by section 41 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 56(1A): amended, on 6 March 2007, by section 8(2) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2): substituted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2A): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2B): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2C): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2D): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2E): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2F): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2G): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2H): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(2I): inserted, on 6 March 2007, by section 8(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(3)(b): amended, on 6 March 2007, by section 8(4) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 56(4): amended, on 6 March 2007, by section 8(5) of the Customs and Excise Amendment Act 2007 (2007 No 9).

## **57 Duration of Orders in Council prohibiting exports**

- (1) Subject to subsection (2), an Order in Council made under section 56 shall expire 3 years after the date on which it comes into force.
- (2) Subsection (1) shall not apply where it is expressly provided in the Order in Council that it will expire after a period of less than 3 years, or if the Order in Council is sooner revoked.

- (3) Where an Order in Council made under section 56 would otherwise expire under subsection (1), the Governor-General may from time to time, by Order in Council, extend for a further period of 3 years or such lesser period as may be specified, the period for which that Order in Council shall be in force.

**58 Production of licence or permit for goods**

Where, under this Act or any other Act or under any regulations or order made under this Act or any other Act, the importation or exportation of goods, or of goods of any class or kind, is prohibited except under the authority of a licence or permit, the chief executive may, if he or she thinks fit, refuse to pass an entry for those goods, or for goods of that class or kind until he or she is satisfied that a licence or permit has been issued.

Compare: 1966 No 19 s 57

**Part 6  
Duties**

**59 Certain terms defined in Tariff Act 1988**

For the purposes of this Act, unless the context otherwise requires, the terms **Normal Tariff**, **Preferential Tariff**, **rate of duty**, **Standard Tariff**, **Tariff**, **Tariff heading**, and **Tariff item** have the meanings given to them by section 2 of the Tariff Act 1988.

*Valuation of goods*

**60 Importer to specify Customs value on entry**

- (1) Every person who makes entry of goods imported or to be imported must, on making entry, specify the Customs value of the goods, determined in accordance with Schedule 2.
- (2) Every importer or agent of an importer who makes an assessment pursuant to subsection (1) must—
- (a) keep the documents, records, and information in respect of that entry in such manner and for such period as is required by section 95 and any regulations made for the purposes of that section; and

- (b) when required by the Customs, produce those documents, records, and information for the purpose of establishing the accuracy of the assessment.

Compare: 1966 No 19 s 140; 1981 No 20 s 10

## **61 Amendment of valuation assessment**

- (1) If the chief executive is satisfied, whether as the result of an investigation carried out pursuant to section 155, or as the result of an audit or examination carried out pursuant to section 159, or for any other reason, that an assessment made under section 60(1) in respect of goods is—
  - (a) inconsistent with Schedule 2; or
  - (b) for any other reason, incorrect,—the chief executive may amend that assessment, and that amended assessment shall be the Customs value for the purposes of this Act.
- (2) Notice in writing must be given to the importer of—
  - (a) an amended assessment made pursuant to subsection (1); and
  - (b) the basis for the amended assessment, and where applicable, the provisions of Schedule 2 that are relevant to the amended assessment.
- (3) Subsection (1) applies whether or not the goods have been released from the control of the Customs or whether or not any duty assessed has been paid.
- (4) An importer 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.

Compare: 1966 No 19 ss 140, 152B; 1981 No 20 s 7

## **62 Foreign currency**

- (1) Where an amount that is required under a provision of this Act to be taken into account for the purpose of assessing duty or for any other purpose is not an amount in New Zealand currency, the amount to be so taken into account shall be the equivalent amount in New Zealand currency in accordance with a fair rate of exchange determined by the chief executive and notified by such method as may be prescribed.



- (2) Where an amount is required to be converted into New Zealand currency pursuant to subsection (1), the amount shall be converted,—
- (a) in the case of goods in respect of which an entry has been made, at the rate applying as at the date of the making of the first entry (not being an entry for removal) for those goods:
  - (b) in the case of other goods, at the rate applying as at the date of the first assessment of Customs duty on those goods.

Compare: 1966 No 19 s 143; 1985 No 145 s 10

### **63 Crown's right of compulsory acquisition**

- (1) For the protection of the revenue against the undervaluation of goods subject to *ad valorem* duty, goods in respect of which entry is made may, at any time while they remain subject to the control of the Customs, be acquired by the Crown.
- (2) The right of taking goods under subsection (1) may be exercised by the chief executive, and the acquisition of the goods is effected as soon as a warrant in the prescribed form for their acquisition is signed by the chief executive.
- (3) Goods become the property of the Crown under this section on the signing of the warrant.
- (4) Notice in writing that the chief executive has signed a warrant under this section shall be given to the importer immediately after the signing of the warrant.
- (5) Goods acquired by the Crown under this section must, where no appeal is made under subsection (8), be sold by the chief executive or by his or her agent and the proceeds of sale must be accounted for as Customs revenue.
- (6) The price payable by the Crown for the goods acquired under this section shall be—
- (a) equal to their declared Customs value with the addition of—
    - (i) such charges for freight, insurance, and other matters incidental to their importation as the chief executive thinks reasonable; and
    - (ii) any duties already paid on the goods; and

- (b) paid to the importer without further appropriation than this section within 10 working days of the acquisition of the goods.
- (7) Nothing in this section limits or affects any other powers of the Customs in respect of the goods or any liability of the importer or any other person in respect of an offence committed in respect of the goods.
- (8) An importer 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.

Compare: 1966 No 19 s 147; 1981 No 20 s 11

*Origin and preferential Tariff provisions*

**64 Origin of fish or other produce of the sea**

- (1) In the case of fish or other produce of the sea, or goods produced or manufactured wholly or partly therefrom at sea, anything done by or on board a ship belonging to a country (other than New Zealand) is deemed, for the purposes of this Act and the Tariff Act 1988, to have been done in that country, and any such produce of the sea or goods so produced or manufactured at sea, if brought direct to New Zealand, are deemed to be imported into New Zealand from that country.
- (2) If any question arises as to the country to which any ship belongs for the purposes of subsection (1), the question shall be determined by the chief executive.
- (3) A person 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 the Customs Appeal Authority against that decision.

Compare: 1966 No 19 s 148(2), (3)

Section 64(2): amended, on 27 September 2001, by section 5(1) of the Customs and Excise Amendment Act 2001 (2001 No 61).

Section 64(3): added, on 27 September 2001, by section 5(2) of the Customs and Excise Amendment Act 2001 (2001 No 61).

**64A New Zealand certificates of origin for goods for export to party to free trade agreement**

- (1) A body authorised by the chief executive under section 64B (a **certification body**) in relation to a party to a free trade agreement may issue a New Zealand certificate of origin in respect of goods for export to that party.
- (2) A New Zealand certificate of origin, in respect of goods for export to a party to a free trade agreement, is a document issued by a certification body that—
  - (a) identifies the goods to which it relates; and
  - (b) certifies that those goods originate in New Zealand.
- (3) Goods originate in New Zealand if, for the purposes of the relevant free trade agreement, the goods satisfy the requirements of the rules of origin prescribed for that agreement.
- (3A) The Governor-General may, by Order in Council, declare a country that is a party to the AANZFTA to be a specified AANZFTA party for the purposes of this Act.

- (4) For the purposes of this section,—

**AANZFTA** means the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area done at Cha-am, Phetchaburi, Thailand on 27 February 2009

**ASEAN** means the Association of South East Asian Nations

**China FTA** means the Free Trade Agreement between the Government of New Zealand and the Government of the People’s Republic of China done at Beijing on 7 April 2008

**free trade agreement** means—

- (a) the China FTA; or
- (b) the AANZFTA

**party to a free trade agreement** means,—

- (a) in relation to the China FTA, China; or
- (b) in relation to the AANZFTA, a specified AANZFTA party

**specified AANZFTA party** means a country that is for the time being declared by Order in Council to be a specified AANZFTA party for the purposes of this Act.

Section 64A: inserted, on 29 July 2008, by section 5 of the Customs and Excise Amendment Act 2008 (2008 No 50).

Section 64A heading: amended, on 1 January 2010, by section 5(1) of the Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21).

Section 64A(1): amended, on 1 January 2010, by section 5(2)(a) of the Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21).

Section 64A(1): amended, on 1 January 2010, by section 5(2)(b) of the Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21).

Section 64A(2): amended, on 1 January 2010, by section 5(3) of the Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21).

Section 64A(3): amended, on 1 January 2010, by section 5(4)(a) of the Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21).

Section 64A(3): amended, on 1 January 2010, by section 5(4)(b) of the Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21).

Section 64A(3A): inserted, on 1 January 2010, by section 5(5) of the Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21).

Section 64A(4): substituted, on 1 January 2010, by section 5(6) of the Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21).

#### **64B Bodies authorised to issue New Zealand certificates of origin**

- (1) The chief executive may designate a body as a certification body if the chief executive is satisfied that the body meets the prescribed criteria (if any).
- (2) A designation may be subject to any prescribed terms and conditions and any additional terms and conditions the chief executive thinks fit.

Section 64B: inserted, on 29 July 2008, by section 5 of the Customs and Excise Amendment Act 2008 (2008 No 50).

#### **64C Regulations relating to New Zealand certificates of origin and certification bodies**

Without limiting the power to make regulations conferred by section 286, the Governor-General may make regulations for any of the following purposes:

- (a) prescribing forms for the purposes of sections 64A and 64B; and
- (b) prescribing the manner in which applications for designation as a certification body must be made; and
- (c) prescribing criteria for certification bodies; and
- (d) prescribing terms and conditions subject to which designations as a certification body may be made; and
- (e) prescribing fees.

Section 64C: inserted, on 29 July 2008, by section 5 of the Customs and Excise Amendment Act 2008 (2008 No 50).

**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:

- (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—
  - (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
- (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:
  - (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:
  - (iii) the required percentage of qualifying area content in case of unforeseen circumstances that are unlikely to continue:
  - (iv) variations or conditions relating to the goods entering the commerce of another country.

Section 65: substituted, on 6 March 2007, by section 9 of the Customs and Excise Amendment Act 2007 (2007 No 9).

**66 Conditions precedent to entry of goods at preferential rates of duty**

- (1) Where it is claimed in respect of any goods that they are entitled under this Act or any other Act or authority to be entered

free of duty or at any rate of duty lower than that set forth in the Normal Tariff in respect of such goods, the chief executive may require the claim to be verified at the time of entry or at any subsequent time (including any time after the goods have ceased to be subject to the control of the Customs).

- (2) Where the chief executive requires such a claim to be verified at the time of entry of the goods and the claim is not verified to the satisfaction of the chief executive at that time, the goods in respect of which the claim has been made shall not be so entered.

Compare: 1966 No 19 s 150; 1981 No 20 s 12; 1988 No 155 s 18; 1991 No 84 s 4(1)

#### **67 Unsubstantiated preference claims**

- (1) If the chief executive is satisfied, whether as the result of an investigation carried out pursuant to section 155, or as the result of an audit or examination carried out pursuant to section 159, or for any other reason, that the country of which goods are the produce or manufacture cannot be ascertained because no evidence can be found, or the available evidence is inconclusive as to that country, the goods are deemed, for the purposes of this Act or any other Act or authority to be the produce or manufacture of a country subject to the rates of duty set out in the Normal Tariff.
- (2) An importer shall be advised by notice in writing of a decision of the chief executive under this section.
- (3) An importer 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.
- (4) This section applies whether or not the goods have been released from the control of the Customs.

Compare: 1966 No 19 s 151(1), (4); 1985 No 145 s 13

## Part 7

### Excise and excise-equivalent duties

#### 68 Manufacture of excisable goods

- (1) No person may manufacture goods specified in Part A of the Excise and Excise-equivalent Duties Table except in a manufacturing area that is licensed under this Act.
- (2) Subsection (1) is subject to any exceptions provided for under this Act.

Compare: 1966 No 19 s 108; 1986 No 44 s 11

Section 68: substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### 68A Exemption for tobacco manufactured for personal use

- (1) Section 68 does not apply to the manufacture of tobacco in a private house or dwelling place, but only if and as long as the conditions specified in subsection (2) are met.
- (2) The conditions are as follows:
  - (a) the tobacco must be manufactured by an individual (the **individual**) who is 18 years or older:
  - (b) the individual must manufacture the tobacco in the individual's private house or dwelling place, for the individual's personal use and not for sale to any other person:
  - (c) the leaves or plants used in the manufacture of the tobacco must have been grown—
    - (i) on the land on which the individual's private house or dwelling place is located; and
    - (ii) for the individual's personal use and not for sale or other disposition to any other person:
  - (d) the amount of manufactured tobacco that is manufactured in the individual's private house or dwelling place, in any year ending with 30 June, must not exceed 15 kilograms.

Section 68A: inserted, on 1 October 2008, by section 8 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

#### 68B Exemption for alcohol manufactured for personal use

Section 68 does not apply to the manufacture of beer, wine, or spirits in an individual's private house or dwelling place, but

only if and as long as the beer, wine, or spirits are manufactured exclusively for the individual's personal use and not for sale or other disposition to any other person.

Section 68B: inserted, on 8 December 2009, by section 7(1) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**68C Exemption for biofuel and biofuel blends manufactured for personal use**

Section 68 does not apply to the manufacture of biofuel or biofuel blends on land where the private house or dwelling of the individual who is undertaking the manufacture is located, but only if and as long as the biofuel or biofuel blends are manufactured exclusively for the individual's personal use and not for sale or other disposition to any other person.

Section 68C: inserted, on 6 April 2012, by section 9 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**69 Goods deemed to have been manufactured**

- (1) For the purposes of this Act,—
- (a) compressed natural gas is deemed to have been manufactured by a licensee of a manufacturing area when natural gas supplied by the licensee to a compressed natural gas fuelling facility is compressed for use as a motor vehicle fuel;
  - (b) goods on which work has been done by a contractor shall be deemed to have been manufactured by the contractor;
  - (c) biofuel is deemed to have been manufactured by a licensee of a manufacturing area when biofuel supplied by the licensee to a biofuel fuelling facility is blended at the biofuel fuelling facility.
- (2) A licensee of a manufacturing area who supplies biofuel under subsection (1)(c) will be liable for duty under this Act for the biofuel blend that results from blending at a biofuel fuelling facility the biofuel supplied by the licensee.
- (3) The biofuel blend that results from blending at a biofuel fuelling facility under subsection (2) is, for the purposes of this Part, deemed to be removed for home consumption when the blending is undertaken.



- (4) In this section, **biofuel fuelling facility**—
- (a) means any installation, facility, or other place that—
    - (i) is used for fuelling any craft, vehicle, or other conveyance; and
    - (ii) is not, for the time being, licensed under section 12(1) or exempted under section 12(4); and
  - (b) includes any vehicle designed for the storage and transport of fuel in which a process of blending occurs; but
  - (c) does not include land to which an exemption under section 68C relates.

Compare: 1966 No 19 s 113(1); 1986 No 44 s 11

Section 69(1)(c): inserted, on 6 April 2012, by section 10(1) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 69(2): inserted, on 6 April 2012, by section 10(2) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 69(3): inserted, on 6 April 2012, by section 10(2) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 69(4): inserted, on 6 April 2012, by section 10(2) of the Customs and Excise Amendment Act 2012 (2012 No 25).

## 70 Entry of excisable goods

- (1) Subject to any regulations made under section 71, all goods that are specified in Part A of the Excise and Excise-equivalent Duties Table must, on removal from a Customs controlled area, be entered—
- (a) in such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
  - (b) within such time as may be prescribed.
- (1A) Goods required to be entered under subsection (1) must be entered—
- (a) by the licensee of the Customs controlled area from which the goods are removed; or
  - (b) in such circumstances as may be prescribed by regulations made under section 71, by the owner of the goods.
- (2) Where any entry required by this section relates to goods that are dutiable in accordance with the volume of alcohol present in the goods, the person making the entry shall specify the volume of alcohol in the prescribed manner.

- (3) Goods in respect of which entry has been made and passed must forthwith be dealt with in accordance with the entry and with the provisions of this Act in respect of the goods so entered.

Compare: 1966 No 19 ss 115, 116, 117, 118; 1986 No 44 s 11

Section 70(1): amended, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 70(1A): inserted, on 3 June 1998, by section 4(2) of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

Section 70(1A)(b): amended, on 8 January 2003, by section 6 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

## 71 Regulations relating to entry of excisable goods

Without limiting the power to make regulations under section 286, the Governor-General may from time to time, by Order in Council, make regulations—

- (a) prescribing when entries of excisable goods are deemed to have been made for the purposes of this Act; and
- (aa) prescribing the circumstances in which an entry of excisable goods must be made by the owner of the goods rather than by the licensee of the Customs controlled area from which the goods are removed; and
- (b) prescribing the conditions under which entries of excisable goods are deemed to have been passed for the purposes of this Act; and
- (c) exempting specified goods or goods of a specified class from the requirements of section 70, subject to such conditions as may be prescribed.

Section 71(aa): inserted, on 3 June 1998, by section 5 of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

Section 71(aa): amended, on 8 January 2003, by section 7 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

## 72 Removal for home consumption

For the purposes of this Part, goods are deemed to be removed for home consumption when the goods are physically removed from a Customs controlled area otherwise than when they are—

- (a) moved to another Customs controlled area pursuant to an approval given by the chief executive and for such purposes as may be approved by the chief executive; or
- (b) temporarily removed pursuant to an approval given by the chief executive and for such purposes as may be approved by the chief executive; or
- (c) removed for export or to an export warehouse.

Compare: 1966 No 19 s 17A; 1986 No 44 s 5

### **73 Excise duty on goods manufactured in manufacturing areas**

- (1) In respect of all goods that are manufactured in a manufacturing area and that are specified in Part A of the Excise and Excise-equivalent Duties Table there must be levied, collected, and paid excise duties, if any, at the appropriate rates set out in Part A of the Excise and Excise-equivalent Duties Table.
- (2) Subsection (1) does not apply to beer manufactured in quantities of not more than 100 litres per month by an individual other than the licensee where—
  - (a) the beer is exclusively for that individual's personal use and not for sale to any other person; and
  - (b) the licensee of the premises does not engage in any aspect or part of the brewing or bottling operation and provides no equipment, ingredients, or service other than—
    - (i) the equipment for the brewing and bottling of beer and the filling of kegs:
    - (ii) kegs, bottles, bottle caps, and labels:
    - (iii) the ingredients for brewing beer, in an unmixed and unfermented state:
    - (iv) the written or oral instructions for the manufacture of the beer.
- (2A) Subsection (1) does not apply to wine manufactured in quantities of not more than 45 litres per month by an individual other than the licensee where—
  - (a) the wine is exclusively for that individual's personal use and not for sale to any other person; and
  - (b) the licensee of the premises does not engage in any aspect or part of the wine making or bottling operation

and provides no equipment, ingredients, or service other than—

- (i) the equipment for the making and bottling of wine and the filling of casks or vats:
  - (ii) casks, vats, bottles, corks, and labels:
  - (iii) the ingredients for making wine, in an unmixed and unfermented state:
  - (iv) the written or oral instructions for making the wine.
- (3) If the excise duty applicable to any goods pursuant to subsection (1) is an *ad valorem* excise duty, the value of the goods for the purposes of such excise duty shall be determined in accordance with Schedule 4.
- (4) Notwithstanding anything in this Part, if the excise duty is a combination of a specific rate and an *ad valorem* rate, the excise duty payable shall be determined as the aggregate of—
- (a) the amount of excise duty calculated by applying the specific rate; and
  - (b) the amount of excise duty calculated by applying the *ad valorem* rate to the value for duty.
- (5) For the purposes of this section, **wine** means the goods referred to in any of excise item numbers 99.20.20L, 99.25.20B, 99.30.21D, 99.30.26E, 99.30.32K, and 99.30.47H of Part A of the Excise and Excise-equivalent Duties Table.

Compare: 1966 No 19 s 118B(1)–(4); 1986 No 44 s 12

Section 73(1): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 73(2A): inserted, on 15 November 2000, by section 3(1) of the Customs and Excise Amendment Act (No 2) 2000 (2000 No 58).

Section 73(5): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### **74 Excise duty on goods manufactured outside manufacturing area**

- (1) Subject to subsection (2), where goods specified in Part A of the Excise and Excise-equivalent Duties Table are manufactured in an area that is not licensed pursuant to section 12, the provisions of this Part and Part 8 apply as if the area were licensed as a manufacturing area under this Act.

- (2) Subsection (1) does not apply in respect of goods—
- (a) that are manufactured in an area that pursuant to a direction of the chief executive under section 12(4) is not required to be licensed; or
  - (b) that are covered by an exemption prescribed under section 10; or
  - (c) that are manufactured in accordance with the conditions specified by section 68A, 68B, or 68C.

Section 74 heading: amended, on 8 December 2009, by section 8(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 74(1): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 74(2)(b): amended, on 1 October 2008, by section 9 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 74(2)(c): added, on 1 October 2008, by section 9 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 74(2)(c): amended, on 6 April 2012, by section 11 of the Customs and Excise Amendment Act 2012 (2012 No 25).

## **75 Excise-equivalent duty on imported goods**

- (1) Subject to this Act, and in addition to any other duties or levies payable on imported goods, excise-equivalent duty at the appropriate rate specified in Part B of the Excise and Excise-equivalent Duties Table must be levied, collected, and paid on all goods specified in Part B of the Excise and Excise-equivalent Duties Table that are imported.
- (2) Where goods on which excise-equivalent duty is payable under this section are dutiable in accordance with the volume of alcohol present in the goods, the person making the entry in respect of those goods shall specify the volume of alcohol in the prescribed manner.
- (3) Excise-equivalent duty becomes payable—
- (a) when entry for home consumption is passed; or
  - (b) if, before entry for home consumption, the goods are dealt with in breach of a provision of this Act.
- (4) If the excise-equivalent duty applicable to such goods is an *ad valorem* duty, the value of the goods for the purposes of that excise-equivalent duty shall be determined in accordance with Schedule 2.

Section 75(1): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**75A Accident compensation levies are additional to excise duty on motor spirits**

*[Repealed]*

Section 75A: repealed, on 1 July 2003, by section 13(2) of the Injury Prevention, Rehabilitation, and Compensation Amendment Act 2003 (2003 No 29).

**76 Excise duty a Crown debt**

- (1) Excise duty is a debt due to the Crown and is recoverable by action at the suit of the chief executive on behalf of the Crown,—
  - (a) in relation to goods specified in Part A of the Excise and Excise-equivalent Duties Table that are manufactured in a manufacturing area, immediately on removal of the goods for home consumption in accordance with section 72:
  - (b) in relation to goods specified in Part A of the Excise and Excise-equivalent Duties Table that are, except as provided in section 74(2), manufactured outside a manufacturing area, immediately on manufacture.
- (2) Excise duty owed under subsection (1) is owed by—
  - (a) the occupier of the place where the goods have been or are manufactured; and
  - (b) every person who is or who becomes the owner of the goods before the excise duty has been fully paid.
- (3) The liability of the persons referred to in subsection (2) is joint and several.
- (4) For the purposes of this section, excise duty owed under subsection (1) must be paid to the Customs within the time required by or prescribed under this Act.

Section 76: substituted, on 8 December 2009, by section 8(1) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**76A Interpretation**

In this section and in sections 76B to 76G, unless the context otherwise requires,—

**2010 Excise and Excise-equivalent Duties Document** means the document certified under section 76B(1)

**Excise and Excise-equivalent Duties Table—**

- (a) means the table of excise and excise-equivalent duties as set out in the 2010 Excise and Excise-equivalent Duties Document; but
- (b) if, and in so far as, the table specified in paragraph (a) is on or after 1 January 2010 from time to time amended, modified, or revoked and replaced, then despite paragraph (a) means that table as from time to time amended, modified, or revoked and replaced

**Working Excise and Excise-equivalent Duties Document** means the document maintained by the chief executive that sets out the excise and excise-equivalent duties.

Section 76A: inserted, on 8 December 2009, by section 9 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**76B Certification of 2010 Excise and Excise-equivalent Duties Document**

- (1) The chief executive must, by the close of 31 December 2009,—
  - (a) certify a copy of the Working Excise and Excise-equivalent Duties Document; and
  - (b) retain that copy.
- (2) Before certifying a copy of the Working Excise and Excise-equivalent Duties Document under subsection (1), the chief executive must be satisfied that the copy is or includes a full and accurate copy of the contents of Schedule 3—
  - (a) as in force at the close of 31 December 2009; but
  - (b) as amended by any order made under section 79 and that comes into force on 1 January 2010.
- (3) The chief executive must ensure that—
  - (a) references in the certified copy to Schedule 1 of the Tariff Act 1988 are replaced with references to the Tariff (as defined in section 2(1) of the Tariff Act 1988); and
  - (b) the certified copy indicates clearly that any information in it that is not the contents of Schedule 3 as described in paragraphs (a) and (b) of subsection (2) does not form

part of, or have legal effect as part of, the Excise and Excise-equivalent Duties Table.

Section 76B: inserted, on 8 December 2009, by section 9 of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **76C Access to Excise and Excise-equivalent Duties Table**

- (1) The chief executive must—
  - (a) ensure that copies of the documents referred to in subsection (2) are published on an Internet site that is, so far as practicable, publicly available free of charge; and
  - (b) ensure that copies of the documents referred to in subsection (2) are available for purchase at a reasonable price at the places designated under section 7 of the Legislation Act 2012.
- (2) The documents are—
  - (a) the Excise and Excise-equivalent Duties Table as from time to time amended, modified, or revoked and replaced on or after 1 January 2010; and
  - (b) the 2010 Excise and Excise-equivalent Duties Document; and
  - (c) Orders in Council amending or modifying the Excise and Excise-equivalent Duties Table and made under section 77, 78, 79, 79AA(2), or 79A on or after 1 January 2010.
- (3) Every version of the Excise and Excise-equivalent Duties Table referred to in subsection (2)(a) and published or made available under subsection (1) must—
  - (a) indicate that it is that Table as in force at the beginning of a stated date; and
  - (b) list all Acts and Orders in Council that are enacted on or after 1 January 2010 and before the stated date and that amend, modify, revoke, or revoke and replace some or all of that Table.
- (4) Nothing in section 76B or this section prevents the chief executive from ensuring that other information is published or made available with the Excise and Excise-equivalent Duties Table, so long as in doing so the chief executive ensures that it is indicated clearly that the other information does not form part of, or have legal effect as part of, that table.



Section 76C: inserted, on 1 January 2010, by section 10 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 76C(1)(b): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 76C(2)(c): amended, on 29 April 2010, by section 8(2) of the Excise and Excise-equivalent Duties Table (Tobacco Products) Amendment Act 2010 (2010 No 23).

#### **76D Application of Legislation Act 2012**

Orders in Council amending or modifying the Excise and Excise-equivalent Duties Table and made under section 77, 78, 79, or 79A on or after the date on which section 77(3) of the Legislation Act 2012 comes into force—

- (a) are disallowable instruments for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives not later than 16 sitting days after the day on which they are made; but
- (b) are not legislative instruments for the purposes of the Legislation Act 2012 and do not have to be published under section 6 of that Act.

Section 76D: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

#### **76E Judicial notice of Table**

Judicial notice must be taken by all courts and persons acting judicially of the Excise and Excise-equivalent Duties Table.

Compare: 1989 No 142 ss 16A, 16B(1)

Section 76E: inserted, on 1 January 2010, by section 10 of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### **76F Evidence of Table**

Every copy of the documents referred to in section 76C(2) purporting to be published or made available under the authority of the chief executive is, unless the contrary is shown, deemed—

- (a) to be a correct copy of the document; and
- (b) to have been so published or made available.

Compare: 1989 No 142 s 16C

Section 76F: inserted, on 1 January 2010, by section 10 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**76G Table may be amended, and must be interpreted, as if it were an enactment**

- (1) The Excise and Excise-equivalent Duties Table may be amended, revoked, or revoked and replaced by an Act of Parliament as if it were an Act of Parliament.
- (2) The Excise and Excise-equivalent Duties Table may be altered or amended by an Order in Council made under section 77, 78, 79, 79AA(2), or 79A as if it were a regulation.
- (3) The Interpretation Act 1999 applies to the Excise and Excise-equivalent Duties Table as if it were an enactment.
- (4) Nothing in this Act limits or affects the application of—
  - (a) Part 2 of the Legislation Act 2012 and the Interpretation Act 1999 to an Act amending, revoking, or revoking and replacing the Excise and Excise-equivalent Duties Table, this Act (either alone or with other enactments), or both; or
  - (b) the Interpretation Act 1999 to an Order in Council made under section 77, 78, 79, 79AA(2), or 79A.

Section 76G: inserted, on 1 January 2010, by section 10 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 76G(2): amended, on 29 April 2010, by section 8(2) of the Excise and Excise-equivalent Duties Table (Tobacco Products) Amendment Act 2010 (2010 No 23).

Section 76G(4)(a): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 76G(4)(b): amended, on 29 April 2010, by section 8(2) of the Excise and Excise-equivalent Duties Table (Tobacco Products) Amendment Act 2010 (2010 No 23).

**76H References to Schedule 3**

Every reference in the following to Schedule 3 must be read as if it were a reference to the Excise and Excise-equivalent Duties Table (as defined by section 76A):

- (a) an enactment not added, amended, inserted, or substituted by the Customs and Excise Amendment Act 2009 and in force at the commencement of this section:
- (b) a document in operation at that commencement.

Section 76H: inserted, on 1 January 2010, by section 10 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**77 Modification of rates of excise duty and excise-equivalent duty**

- (1) The Governor-General may from time to time, by Order in Council, suspend the Excise and Excise-equivalent Duties Table in whole or in part, and by the same or a subsequent Order in Council, and in its place, impose on any goods specified in that table such excise duties and excise-equivalent duties as the Governor-General thinks fit.
- (1A) Subsection (1) is subject to subsection (2).
- (2) Excise duties and excise-equivalent duties imposed on goods pursuant to subsection (1) must not exceed the rate of excise duty or excise-equivalent duty on those goods set out in the Excise and Excise-equivalent Duties Table.

Compare: 1966 No 19 s 118C; 1986 No 44 s 12

Section 77(1): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 77(1A): inserted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 77(2): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**78 Power to amend Excise and Excise-equivalent Duties Table for certain purposes**

- (1) The Governor-General may from time to time, by Order in Council, amend the Excise and Excise-equivalent Duties Table by—
- (a) revoking, inserting, or amending any heading, heading number, subheading, item, or item number or the title of any Part, section, chapter, or subchapter of the Tariff referred to in the Excise and Excise-equivalent Duties Table in any manner necessary to ensure that that Table conforms to the Tariff; or
- (b) revoking, suspending, or amending a provision of the notes forming part of the Excise and Excise-equivalent Duties Table, or by inserting a new provision in the notes, for the purpose of ensuring the proper operation of the Excise and Excise-equivalent Duties Table; or
- (c) revoking, suspending, inserting, or amending a statistical unit in the Excise and Excise-equivalent Duties Table.

- (2) Despite subsection (1)(c), the chief executive may, by notice in the *Gazette*, revoke, suspend, insert, or amend a statistical unit in the Excise and Excise-equivalent Duties Table.
- (3) No amendment made pursuant to this section may alter the duties or exemptions from duty under this Act applicable to goods classified under an item or heading so amended.

Compare: 1966 No 19 s 118CA; 1987 No 128 s 4

Section 78: substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**79 Indexation of rates of excise duty and excise-equivalent duty on alcoholic beverages and tobacco products**

- (1) The Governor-General may from time to time, by Order in Council, amend the Excise and Excise-equivalent Duties Table to impose such rates of excise duty and excise-equivalent duty as the Governor-General thinks fit on all or any of the alcoholic beverages and tobacco products as defined in subsection (4).
- (1A) Subsection (1) is subject to subsections (2) to (4).
- (2) Any change in the rates of excise duty and excise-equivalent duty made by Order in Council under subsection (1),—
- (a) shall be limited in accordance with this section having regard to movements in the Consumers Price Index All Groups excluding credit services; and
  - (b) in the case of a change in the rates of excise duty and excise-equivalent duty for alcoholic beverages, may come into force only on 1 July in any calendar year; and
  - (c) in the case of a change in the rates of excise duty and excise-equivalent duty for tobacco products, may come into force only on 1 January in any calendar year.
- (3) No new rate of excise duty or excise-equivalent duty imposed on any goods under subsection (1) shall exceed a rate calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

- a is the Index number of the Consumers Price Index All Groups excluding credit services issued by the Government Statistician for—

- (i) the quarter ending on 31 March in the calendar year in which the order is to come into force, in the case of an order relating to alcoholic beverages; or
    - (ii) the quarter ending on 30 September immediately before the calendar year in which the order is to come into force, in the case of an order relating to tobacco products; and
  - b is the Index number of the quarterly Consumers Price Index All Groups excluding credit services issued by the Government Statistician for the quarter ending 12 months before, and expressed on the same base quarter as, the relevant quarter specified in item a of this formula; and
  - c is the existing rate of duty in respect of the goods to which the order relates.
- (3A) If an Order in Council is made under subsection (1), changes the rates of excise duty and excise-equivalent duty for tobacco products, and comes into force on 1 January in 2013, 2014, 2015, or 2016, then despite subsections (1) to (3),—
- (a) every new rate of excise duty or excise-equivalent duty that the Order in Council imposes on a tobacco product is calculated by adding 10% of the existing rate of duty on the product to the result achieved by applying the formula in subsection (3); and
  - (b) the Order in Council must be called (as the case requires) an Excise and Excise-equivalent Duties Table (Tobacco Products Indexation and Separate 10% Increase) Amendment Order 2012, 2013, 2014, or 2015.
- (4) In this section,—
- alcoholic beverages** means goods that are—
- (a) goods specified in headings 22.03, 22.04, 22.05, 22.06, 22.08, 99.10, 99.20, 99.25, 99.30, 99.45, and 99.50 of the Excise and Excise-equivalent Duties Table, not being goods that are exempt from excise duty and excise-equivalent duty; or
  - (b) undenatured ethyl alcohol and other goods specified in headings 21.05, 21.06, 22.07, 33.02, 99.05, 99.06, 99.35, 99.42, and 99.43 of that table (also not being

goods exempt from excise duty and excise-equivalent duty)

**tobacco products** means goods specified in headings 24.02, 24.03, 99.60, and 99.65 of the Excise and Excise-equivalent Duties Table.

Compare: 1966 No 19 s 118CB; 1993 No 83 s 3(1)

Section 79(1): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 79(1A): inserted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 79(2)(b): amended, on 6 March 2007, by section 10(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 79(2)(c): amended, on 6 March 2007, by section 10(2) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 79(3): amended, on 6 March 2007, by section 10(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 79(3A): inserted, on 24 October 2012, by section 5(1) of the Customs and Excise (Tobacco Products—Budget Measures) Amendment Act 2012 (2012 No 77).

Section 79(4): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**79AA Increases of 10% on 1 January 2011 and 2012 must be made in or by Excise and Excise-equivalent Duties Table (Tobacco Products Indexation or Other) Amendment Orders 2010 and 2011**

*[Repealed]*

Section 79AA: repealed, on 2 January 2012, by section 10(1) of the Excise and Excise-equivalent Duties Table (Tobacco Products) Amendment Act 2010 (2010 No 23).

**79AB Rates of duties for tobacco products increased by 10% if not indexed on 1 January in 2013 to 2016**

- (1) This section, in accordance with section 76G(1), amends the Excise and Excise-equivalent Duties Table.
- (2) A rate in that Table is amended by this section only if the rate is one that is—
  - (a) a rate of excise duty or excise-equivalent duty on a tobacco product (as defined in section 79(4)); and
  - (b) in force immediately before 1 January in 2013, 2014, 2015, or 2016; and

- (c) not changed on that date by an Order in Council made under section 79(1) and (3A).
- (3) The rate is on that date replaced with a new rate calculated by adding to the rate an amount equal to 10% of the rate.

Section 79AB: inserted, on 24 October 2012, by section 6(1) of the Customs and Excise (Tobacco Products—Budget Measures) Amendment Act 2012 (2012 No 77).

**79AC Rates of duties on motor spirits increased by 3 cents on 1 July in 2013, 2014, and 2015**

- (1) In accordance with section 76G(1), this section amends the Excise and Excise-equivalent Duties Table.
- (2) A rate in that Table is amended by this section only if the rate is one that is—
  - (a) a rate of excise duty or excise-equivalent duty on motor spirits (as defined in subsection (4)); and
  - (b) a rate of that kind expressed either as a rate “per l” or as a rate “per l ms”; and
  - (c) not a component of a rate of that kind that is a component expressed as plus a stated amount “per g of Pb”; and
  - (d) in force immediately before 1 July in 2013, 2014, or 2015.
- (3) The rate is on that date replaced with a new rate calculated by adding to the rate the amount of 3 cents.
- (4) **Motor spirits**, in this section, means any 1 or more fuels that are, or that contain, motor spirit.

Section 79AC: inserted, on 1 July 2013, by section 4 of the Customs and Excise (Budget Measures—Motor Spirits) Amendment Act 2013 (2013 No 24).

**79A Power to alter rates of excise duty and excise-equivalent duty on motor spirits by Order in Council**

- (1) At any time during the second financial year, or the third financial year, that follows the financial year in which any current rates of excise duty and excise-equivalent duty on motor spirits came into force, the Governor-General may, by Order in Council, reduce or increase any or all of those rates of excise duty and excise-equivalent duty by amending the Excise and Excise-equivalent Duties Table.

(2) In this section,—

**financial year** means the 12 months ending on the close of 30 June or any other date determined for the purposes of this section by the Minister of Finance and notified in the *Gazette*

**motor spirits** means motor spirit and fuels containing motor spirit specified in excise item numbers 99.75.05F, 99.75.23D, 99.75.29C, 99.75.37D, 99.75.51K, 99.75.59E, 99.75.73L, 99.75.81A, and 99.75.93E and Tariff items 2207.20.23, 2207.20.35, 2710.19.13, 2710.19.15, 2710.19.21, 2710.19.25, 2710.19.27, 2710.19.39, 2710.19.64, 2710.19.70, 3824.90.87, 3824.90.93, and 3824.90.97 set out in the Excise and Excise-equivalent Duties Table.

Section 79A: substituted, on 1 August 2008, by section 49(2) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 79A(1): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 79A(1): amended, on 1 July 2013, by section 5 of the Customs and Excise (Budget Measures—Motor Spirits) Amendment Act 2013 (2013 No 24).

Section 79A(2) **financial year**: amended, on 8 December 2009, by section 13 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 79A(2) **motor spirits**: substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

## 80 Certain Orders in Council subject to confirmation

- (1) This section applies to the following Orders in Council:
- (a) an Order in Council made under section 77(1); and
  - (b) an Order in Council made under section 79(1); and
  - (ba) *[Repealed]*
  - (c) an Order in Council made under section 79A(1) that has the effect of increasing the rates of excise duty or excise-equivalent duty on motor spirits (as defined in section 79A(2)).
- (1A) An Order in Council to which this section applies must,—
- (a) if made on or before 30 June in any year, expire on the close of 31 December of that year except so far as it is expressly confirmed by Act of Parliament passed during that year; and
  - (b) if made on or after 1 July in any year, expire on the close of 31 December in the following year except so far as



it is expressly confirmed by Act of Parliament passed before the end of that following year.

- (2) If any Order in Council or any provision of any Order in Council expires by virtue of subsection (1A), any duty collected under that Order in Council or provision shall, except in so far as any other provision is made by an Act of Parliament in respect thereof, be refunded.
- (3) If the House of Representatives resolves that any Order in Council to which this section applies should be revoked or varied, it shall thereupon be revoked or varied in accordance with the terms of the resolution, and any duty collected thereunder in excess of the duty otherwise payable shall, so far as such resolution provides, be refunded.
- (4) The repeal of any Act of Parliament that expressly confirms pursuant to subsection (1A) any Orders in Council does not, unless there is any express provision to the contrary, affect the validity or confirmation of those Orders in Council.

Section 80(1): substituted, on 1 August 2008, by section 49(3) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 80(1)(ba): repealed, on 1 January 2014, by section 10(2) of the Excise and Excise-equivalent Duties Table (Tobacco Products) Amendment Act 2010 (2010 No 23).

Section 80(1A): inserted, on 1 August 2008, by section 49(3) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 80(2): amended, on 1 August 2008, by section 49(4) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 80(3): amended, on 1 August 2008, by section 49(5) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 80(4): substituted, on 8 December 2009, by section 14 of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **81 Power of Governor-General in Council to suspend, remit, refund, or create exemptions from excise duties and excise-equivalent duties on goods supplied to certain organisations and their members**

- (1) The Governor-General may from time to time, by Order in Council, suspend, order the remission or refund of, or create exemptions from, excise duty and excise-equivalent duties in respect of goods or classes of goods manufactured in New Zealand or imported into New Zealand that are—

- (a) supplied solely for the use of such organisations, expeditions, or other bodies as may be approved by the Minister and as may, from time to time, be established or temporarily based in New Zealand under an agreement or arrangement entered into by or on behalf of the Government of New Zealand with the Government of any other country or with the United Nations; or
  - (b) supplied solely for the use of persons temporarily resident in New Zealand for the purpose of serving as a member of any such approved organisation, expedition, or other body.
- (2) The chief executive may at any time impose such conditions as he or she thinks fit in respect of goods or a class of goods to which an Order in Council made for the purposes of this section relates.

Compare: 1966 No 19 s 167

#### *Miscellaneous duty provisions*

### **82 Duty payable on goods consumed before removal from manufacturing area**

- (1) Duty is payable on goods consumed before removal from a manufacturing area in the same manner as if the goods had been removed on the date they had been consumed and the provisions of this Act apply, with all necessary modifications, accordingly.
- (2) Notwithstanding subsection (1), no liability for duty arises where excisable products manufactured within a manufacturing area are used in the manufacturing process carried on in that manufacturing area.
- (3) If, after making an allowance of not more than 2% on the quantity of spirits delivered to be rectified or compounded, it is found that the volume of alcohol rectified or compounded is less than the volume delivered, the full excise duty on the deficiency so found must immediately be paid by the rectifier or compounder to the chief executive.

Compare: 1966 No 19 ss 98, 118D(4); 1986 No 44 ss 11, 12

- 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.
  - (2) Subsection (1) applies to an approval granted under any of the following:
    - (a) excise item number 99.35.30E in Part A of the Excise and Excise-equivalent Duties Table:
    - (b) excise item number 99.55.00D in Part A of the Excise and Excise-equivalent Duties Table:
    - (c) tariff item number 2207.10.29 in Part B of the Excise and Excise-equivalent Duties Table.
  - (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.
  - (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.
  - (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.
  - (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.

Section 83: substituted, on 6 March 2007, by section 11 of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 83(2): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**84 Assessment of excise duty on beer or wine otherwise exempt**

- (1) If the chief executive has reasonable cause to suspect that any quantity of beer or wine that has been entered as exempt from excise duty under section 73(2) or (2A), as the case may be, has later been dealt with in any manner otherwise than in accordance with the provisions of section 73(2)(a) or (2A)(a), as the case may require, the chief executive may make an assessment of excise duty.
- (2) The duty assessed in accordance with this section is owed by—
  - (a) the licensee of the manufacturing area in which the beer or the wine was manufactured; and
  - (b) the individual who manufactured the beer or the wine.
- (3) The liability of the persons referred to in subsection (2) is joint and several.
- (4) 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.

Section 84 heading: substituted, on 15 November 2000, pursuant to section 5 of the Customs and Excise Amendment Act (No 2) 2000 (2000 No 58).

Section 84(1): substituted, on 15 November 2000, by section 5 of the Customs and Excise Amendment Act (No 2) 2000 (2000 No 58).

Section 84(2): substituted, on 15 November 2000, by section 5 of the Customs and Excise Amendment Act (No 2) 2000 (2000 No 58).

**85 Duty credits**

- (1) Where the licensee of a manufacturing area purchases materials or goods for use in manufacture, the licensee may, at the time of making an entry for home consumption as required by section 70, claim, as a credit, excise duty or excise-equivalent duty paid in respect of those materials or goods.
- (2) Where the licensee of a manufacturing area repurchases goods manufactured by the licensee at the same price at which the goods were sold, the licensee may, in such circumstances as may be prescribed, claim, as a credit in the home consumption entry required by section 70, excise duty or excise-equivalent duty paid in respect of the goods.

- (3) The amount of the excise duty or excise-equivalent duty that may be claimed by the licensee of a manufacturing area as a credit relating to materials—
- (a) to which subsection (1) applies, is the amount of excise duty or excise-equivalent duty originally paid by the licensee of a Customs controlled area, importer, or owner in respect of the materials; or
- (b) to which subsection (2) applies, is the amount of excise duty or excise-equivalent duty paid by the licensee—
- but, in either case, does not include any additional excise duty or excise-equivalent duty paid pursuant to section 87.
- (4) Where the amount of the credit exceeds the amount of excise duty payable by the licensee in the home consumption entry in which the credit is claimed, the amount of the excess may, at the discretion of the chief executive, be applied towards any other excise duty that is payable by the licensee or may be refunded to the licensee.

Compare: 1966 No 19 s 116(4); 1986 No 44 s 11

Section 85(1): amended, on 1 December 2001, by section 7(1) of the Customs and Excise Amendment Act 2001 (2001 No 61).

Section 85(2): amended, on 1 December 2001, by section 7(2) of the Customs and Excise Amendment Act 2001 (2001 No 61).

Section 85(3): amended, on 1 December 2001, by section 7(3) of the Customs and Excise Amendment Act 2001 (2001 No 61).

Section 85(3)(a): amended, on 1 December 2001, by section 7(3) of the Customs and Excise Amendment Act 2001 (2001 No 61).

Section 85(3)(b): amended, on 1 December 2001, by section 7(3) of the Customs and Excise Amendment Act 2001 (2001 No 61).

## Part 8

### Assessment and recovery of duty

#### **86 Duty on imported goods a Crown debt**

- (1) The duty on all goods imported constitutes, immediately on importation of the goods, a debt due to the Crown.
- (2) Such duty is owed by the importer of the goods, and, if more than 1 (whether at or at any time after the time of importation) then jointly and severally by all of them.
- (3) Subject to this Act, such debt becomes due and payable when—

- (a) goods have been entered in accordance with section 39 and the entry has been passed for home consumption; or
  - (b) goods have been entered in accordance with section 39 for removal to a manufacturing area; or
  - (c) goods have been wrongfully landed or otherwise wrongfully dealt with without having been entered pursuant to section 39; or
  - (d) an offence has been committed against this Act in respect of the goods.
- (4) Such debt is recoverable by action at the suit of the chief executive on behalf of the Crown.
- (5) The right to recover duty as a debt due to the Crown is not affected by the fact that—
- (a) the goods have ceased to be subject to the control of the Customs; or
  - (b) a bond or other security has been given for the payment of duty; or
  - (c) no proper assessment of duty has been made under this Act or that a deficient assessment of duty has been made.
- (6) The chief executive may, subject to such terms and conditions as he or she may impose, approve any person or class of persons as persons who may defer the payment of duty due under this section and, for that purpose, may determine a duty accounting period; and may suspend or withdraw that approval or vary any term or condition under which the approval is given or vary the duty accounting period.
- (7) Where the chief executive makes any decision under subsection (6), the persons or class of persons affected shall be advised of the decision by notice in writing.
- (8) All goods specified in the inward report of any craft shall be presumed to have been actually imported unless the contrary is proved.
- (9) A person who is dissatisfied with a decision of the chief executive under subsection (6) 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.

Compare: 1966 No 19 ss 152, 152A; 1986 No 44 s 14

**87 Additional duty imposed**

- (1) Where any duty the payment of which has been deferred in accordance with section 86(6), or which is due in accordance with section 76(4) remains unpaid by the due date for payment, there shall be imposed—
  - (a) additional duty of 5% of the amount of duty unpaid by the due date; and
  - (b) additional duty of 2% of the amount of duty, including additional duty, unpaid at the end of the period of 1 month after the due date; and
  - (c) additional duty of 2% of the amount of duty, including additional duty, unpaid at the end of each succeeding period of 1 month.
- (2) Notwithstanding subsection (1), the chief executive may, in his or her discretion, remit or refund the whole or any part of any additional duty imposed by that subsection.
- (3) Where, for any reason the amount of duty in respect of which additional duty has been imposed under subsection (1) is amended, the additional duty shall, where necessary, be adjusted accordingly.
- (4) A person liable for the payment of the duty who is dissatisfied with a decision of the chief executive under subsection (2) 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.

Compare: 1966 No 19 s 118G; 1986 No 44 s 12

**88 Assessment of duty**

- (1) An entry for goods made under this Act is deemed to be an assessment by the importer or licensee, as the case may be, as to the duty payable in respect of those goods.
- (2) If the chief executive has reasonable cause to suspect that duty is payable on goods by a person who has not made an entry in respect of the goods, the chief executive may assess the duty at such amount as the chief executive thinks proper.
- (3) The person liable for the payment of the duty shall be advised of the assessment by notice in writing.

- (4) A person liable for the payment of the duty who is dissatisfied with a decision of the chief executive under subsection (2) 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.

### **89 Amendment of assessment**

- (1) Subject to section 94, the chief executive may from time to time make such amendments to an assessment of duty as he or she thinks necessary in order to ensure the correctness of the assessment even though the goods to which the duty relates are no longer subject to the control of the Customs or that the duty originally assessed has been paid.
- (2) If the amendment has the effect of imposing a fresh liability or altering an existing liability, notice in writing shall be given by the chief executive to the person liable for the duty.
- (3) A person liable for the payment of the 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.

Compare: 1966 No 19 s 152B; 1987 No 128 s 8

### **90 Due date for payment of duty**

- (1) Unless otherwise specified in this Act, the due date for the payment of duty assessed under section 88(2) or reassessed under section 89 or demanded under section 103 or section 104 is the date that is 20 working days after the date on which written notice of the assessment or amended assessment or demand, as the case may be, is given by the chief executive.
- (1A) However, if the chief executive has reasonable cause to believe that a person will be unable to pay the duty by the due date required by subsection (1), the chief executive may, by notice in writing, require that person to pay the duty by an earlier date.
- (1B) A notice issued under subsection (1A) is a demand for payment, and the duty becomes due and payable on the date fixed by the chief executive.



(1C) A person liable for the payment of the duty who is dissatisfied with a decision of the chief executive under subsection (1A) 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.

(2) Where all or part of any duty remains unpaid by the due date, the amount outstanding is deemed to have been increased by an amount calculated in accordance with section 87(1).

Section 90(1A): inserted, on 8 December 2009, by section 15 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 90(1B): inserted, on 8 December 2009, by section 15 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 90(1C): inserted, on 8 December 2009, by section 15 of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **91 Assessment presumed to be correct**

(1) Every assessment made by the chief executive under this Act, including an assessment made by way of amendment, shall be taken to be correct and duty shall be payable accordingly unless on an appeal a different amount is determined to be the duty payable on the goods or it is determined that no duty is payable.

(2) Notwithstanding anything in this Act, where an appeal has been lodged under Part 6, 7, 8 or 10, the chief executive may, subject to receiving such security as he or she thinks sufficient to cover the full amount of duty, release the goods from the control of the Customs.

Compare: 1966 No 19 s 118E; 1986 No 44 s 12

## **92 Obligation to pay duty not suspended by appeal**

(1) Subject to subsection (3), the obligation to pay and the right to receive and recover duty under this Act are not suspended by any appeal or legal proceedings.

(2) Subject to subsection (3), if the appellant is successful in the appeal or the proceedings, the amount (if any) of the duty or any security received by the chief executive in excess of the amount that, in accordance with the decision on the appeal or the proceedings, was properly payable shall forthwith be refunded to the appellant by the chief executive, or as the case

may be, the appellant shall be released from the conditions of the security imposed under section 156.

- (3) Any obligation on the chief executive under subsection (2) shall be suspended pending the outcome of any appeal filed by the chief executive under this Act or any other Act against the decision requiring the duty to be refunded.

Compare: 1966 No 19 s 118H(5); 1986 No 44 s 12

**93 Chief executive to pay interest on duty refunded on appeal**

- (1) Subject to subsection (5) of this section, where duty is required to be refunded in accordance with section 92(2), there shall be paid by the chief executive interest calculated in accordance with subsection (2) of this section.
- (2) Interest payable in accordance with this section shall be calculated by reference to qualifying periods consisting of 12 consecutive months from 1 April in any year until 31 March in the following year, and shall be the sum of the amounts of interest payable in respect of each applicable qualifying period, the amount of interest in respect of an applicable qualifying period being determined in accordance with the following formula:

$$\frac{x \times y}{365} \times z$$

where—

- x is the number of days in the period that commences on the later of—
- (a) the day on which the relevant duty is lodged to the credit of the chief executive; or
  - (b) the first day of the qualifying period of 12 consecutive months;—
- and ends on the earlier of—
- (c) the day on which the relevant duty is refunded by the chief executive in accordance with this section; or
  - (d) the last day of the qualifying period of 12 consecutive months; and
- y is the amount of any duty being the relevant duty, which, having been paid in accordance with section 91(1), is

- caused to be refunded in accordance with the outcome of a successful appeal; and
- z is the specified rate of interest as determined in accordance with subsection (3).
- (3) The specified rate of interest per annum that is to apply for the purposes of this section shall be the rate determined by the Secretary to the Treasury pursuant to section 120(5) of the Tax Administration Act 1994, and that rate shall have application for the same period as specified for the purposes of section 120 of that Act.
- (4) Where the chief executive is satisfied that the amount of any interest paid to an appellant in accordance with subsection (2) is in excess of the proper amount, the chief executive may recover the amount of the excess in accordance with the provisions of section 115 as if that amount were money refunded by the Customs in error.
- (5) Any obligation on the chief executive under this section shall be suspended pending any appeal by the chief executive under this Act or any other Act against the decision requiring duty to be refunded.

#### **94 Limitation of time for amendment of assessments**

- (1) Where an assessment of duty has been made under this Act, the chief executive is not entitled to alter that assessment so as to increase the amount of the assessment after the expiration of 4 years from the date on which the original assessment was made.
- (2) Notwithstanding subsection (1), in any case where, in the opinion of the chief executive, the entry or any declaration made in relation to the goods was fraudulent or wilfully misleading, the chief executive may amend the assessment at any time so as to increase the amount of the assessment.

Compare: 1976 No 75 s 25; 1992 No 1 s 7

#### **95 Keeping of business records**

- (1) The following must keep or cause to be kept in New Zealand any prescribed records for the prescribed period of time, which must not exceed 7 years:

- (a) a licensee:
  - (b) an importer:
  - (c) an exporter:
  - (d) a person who acts as an agent of any person referred to in paragraphs (a) to (c):
  - (e) a body authorised to issue a New Zealand certificate of origin under section 64B.
- (2) Every such person must, as and when required by a Customs officer,—
- (a) make the records available to the Customs; and
  - (b) provide copies of the records as required; and
  - (c) answer any questions relevant to matters arising under this Act asked by any officer in respect of them.
- (3) Where, for the purposes of complying with subsection (2), information is recorded or stored by means of an electronic or other device, the licensee, importer, exporter, or agent thereof, shall, at the request of a Customs officer, operate the device, or cause it to be operated, to make the information available to the Customs officer.

Compare: 1966 No 19 ss 25A, 96; 1990 No 89 s 6(1)

Section 95(1): replaced, on 6 April 2012, by section 12 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### **95A Giving Customs access to business records**

- (1) This section applies to a person only if the person—
- (a) is a person to whom section 95(1) applies or a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, New Zealand (for example, a person involved in the transportation of goods to a Customs place from which goods for export will proceed to a point outside New Zealand); and
  - (b) has been required by the chief executive by notice in writing to comply with this section on and after a date specified in the notice in writing.
- (2) On and after the date specified in the notice in writing a person to whom this section applies must,—

- (a) if the person is a person to whom section 95(1) applies, give the Customs access to the records the person is required to keep under section 95; and
  - (b) if the person is a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, New Zealand, give the Customs access to any records the person may currently keep of the kind required to be kept under section 95.
- (3) A person to whom this section applies must give the Customs that access in the form and manner prescribed (for example, in an electronic form and manner), and must ensure that the Customs has that access at all reasonable times.
- (4) The chief executive may, by notice in writing, exempt a person to whom this section applies from complying with some or all of the person's obligations under this section in all or any specified circumstances.
- (5) To avoid doubt, nothing in this section affects any obligation under section 95 to keep or cause to be kept, make available, provide copies of, or answer questions in respect of, records.

Section 95A: inserted, on 1 October 2004, by section 20 of the Customs and Excise Amendment Act 2004 (2004 No 55).

## 96 Meaning of related

For the purposes of section 97, one person is related to another person,—

- (a) where the person is connected to the other person by blood relationship, marriage, civil union, de facto relationship, or adoption, or where the person is a trustee for the other person; and for the purposes of this paragraph—
  - (i) persons are connected by blood relationship if within the fourth degree of relationship traced through a common ancestor:
  - (ii) persons are connected by marriage, civil union, or de facto relationship if one—
    - (A) is married to, or in a civil union or a de facto relationship with, the other; or
    - (B) is married to, or in a civil union or a de facto relationship with, a person who

is connected by blood relationship to the other:

- (iii) persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other:
- (b) if the other person is a company, where the person is a director or officer of the other person, or is related (within the meaning of paragraph (a)) to a director or officer of the other person, or is directly or indirectly able to exercise control over the affairs of the other person:
- (c) if the person is a company, where the other person is a director or officer of the person, or is related (within the meaning of paragraph (a)) to a director or officer of the person, or is directly or indirectly able to exercise control over the affairs of the person:
- (d) if the person and the other person are companies,—
  - (i) where the person is a holding company or a subsidiary of the other person within the meaning of section 5 of the Companies Act 1993; or
  - (ii) where the person owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the other person or the other person owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the person; or
  - (iii) where the person and the other person have the same holding company within the meaning of section 5 of the Companies Act 1993, or a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.

Section 96(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 96(a)(ii): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 96(d)(i): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 96(d)(iii): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

**97 Duty a charge on goods**

- (1) Subject to subsection (3), the duty on any goods shall constitute a charge on those goods until fully paid.
- (2) Subject to the provisions of this section, if any duty charged on any goods under this section is due and unpaid, the chief executive may, whether or not the property in the goods has passed to a third party, take possession of the goods, and sell them or any part of them in satisfaction or part satisfaction of the charge.
- (3) Subsection (1) shall not apply as against a purchaser of the goods for valuable consideration and without knowledge that the duty was owing but had not been paid.
- (4) For the purposes of this section, **purchaser** means—
  - (a) a person (other than a person liable to pay the duty) who acquired the goods from a person liable to pay the duty; or
  - (b) a subsequent purchaser of the goods.
- (5) In any case where a person claims, at or before the taking of possession of the goods by the chief executive, that he or she is a purchaser to whom subsection (3) applies, and there is a dispute as to whether that subsection applies, the chief executive may,—
  - (a) where the goods are in the possession or control of the importer, take possession of the goods and, subject to subsection (7), retain possession of them;
  - (b) where the goods are in the possession or control of the purchaser, by notice in writing, direct the purchaser, subject to subsection (7), to retain the possession or control of the goods,—  
pending the resolution of the dispute, and subsections (7) to (9) shall apply.
- (6) In any case where—
  - (a) possession of the goods has been taken by the chief executive but the goods have not been sold; and

- (b) a person notifies the chief executive that he or she claims that he or she is a purchaser to whom subsection (3) applies; and
- (c) there is a dispute as to whether that subsection applies,—

the chief executive shall, subject to subsection (7), retain possession of the goods pending the resolution of the dispute, and subsections (7) to (9) shall apply.

- (7) Where any goods that the chief executive has taken possession of or has directed a purchaser to retain under this section consist wholly or partly of any living creature or any thing which, in the opinion of the chief executive, is of a perishable nature or which may otherwise lose its value if not sold as soon as possible, the chief executive may, or the purchaser in possession or control of the goods may with the prior consent of the chief executive, sell the goods, and the net proceeds of such sale shall be deemed to be substituted for the thing so sold.
- (8) The chief executive or the purchaser of the goods may apply to the court for a declaration as to whether the goods were acquired by the purchaser for valuable consideration and without knowledge that the duty was owing and unpaid.
- (9) In any proceeding under subsection (8), where the purchaser and a person liable to pay the duty are related, the onus of proving that the goods were acquired by the purchaser for valuable consideration and without knowledge that the duty was owing but unpaid shall be on the purchaser.

Compare: 1966 No 19 s 154; 1995 No 7 s 2

## **98 Application of section 99**

- (1) Section 99 applies to the recovery of unpaid duty that is due in relation to goods by—
  - (a) an individual who is bankrupt; or
  - (b) a company that is in liquidation; or
  - (c) a company in respect of the property of which a receiver has been appointed in circumstances to which section 30 of the Receiverships Act 1993 applies; or
  - (d) an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation; or



- (e) an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court—

where the unpaid duty is a charge on the goods.

- (2) In any case to which section 99 applies, the provisions of section 305 of the Companies Act 1993 and sections 243, 244, and 246 to 250 of the Insolvency Act 2006 shall not apply.

Section 98(2): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 98(2): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

## **99 Rights and duties of chief executive in recovery of duty**

- (1) In any case to which this section applies, the chief executive shall notify the Official Assignee or the liquidator or the receiver, as the case may be, that the unpaid duty constitutes a charge on the goods in accordance with section 97.
- (2) Every notice under subsection (1) shall be given within 60 days after,—
  - (a) in the case of an individual, the date of the notice in the *Gazette* that the individual has been adjudicated bankrupt; or
  - (b) in the case of a company, the date of the notice in the *Gazette* of the commencement of the liquidation, or of the appointment of a receiver, as the case may be; or
  - (c) in the case of an unincorporated body of persons described in subsection (1)(d) of section 98, the date of the notice in the *Gazette* of the commencement of the liquidation; or
  - (d) in the case of an unincorporated body of persons described in subsection (1)(e) of section 98, the date of the notice in the *Gazette* of the appointment of a receiver—  
or, if there is a dispute as to whether section 97(3) applies, within 30 days after the dispute is resolved or determined.
- (3) If any duty to which this section applies is due and unpaid, the chief executive may—
  - (a) realise the property subject to the charge; or

- (b) value the property subject to the charge and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of section 101, for the balance of the unpaid duty (if any); or
  - (c) realise the property subject to the charge and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of section 101, for any balance of the unpaid duty after deducting the amount realised; or
  - (d) surrender the charge to the Official Assignee or the liquidator or the receiver, as the case may be, for the general benefit of creditors and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of section 101, for the whole debt.
- (4) If the chief executive values the property subject to the charge and claims for the balance of unpaid duty (if any) in accordance with subsection (3)(b), the valuation and claim must—
- (a) contain full particulars of the valuation and claim; and
  - (b) contain full particulars of the charge; and
  - (c) identify any documents that substantiate the claim and the charge.
- (5) The Official Assignee or the liquidator or the receiver, as the case may be, may require production of any document referred to in subsection (4).
- (6) Where the chief executive realises the property subject to the charge, the provisions of any regulations made under section 286(dd) shall apply.
- (7) Where a claim is made by the chief executive under subsection (4), the Official Assignee, liquidator, or receiver, as the case may be, must—
- (a) accept the valuation and claim; or
  - (b) reject the valuation and claim in whole or in part, but,—
    - (i) where a valuation and claim is rejected in whole or in part, the chief executive may make a revised valuation and claim within 20 days of receiving notice of the rejection; and
    - (ii) the Official Assignee, liquidator, or receiver, as the case may be, may, if he or she subsequently

considers that a valuation and claim was wrongly rejected in whole or in part, revoke or amend that decision.

- (8) Where the Official Assignee, liquidator, or receiver, as the case may be,—
- (a) accepts a valuation and claim under subsection (7)(a); or
  - (b) accepts a revised valuation and claim under subsection (7)(b)(i); or
  - (c) accepts a valuation and claim on revoking or amending a decision to reject a claim under subsection (7)(b)(ii),—
- the Official Assignee, liquidator, or receiver, as the case may be, may, unless the chief executive has realised the property, at any time, redeem the charge on payment of the assessed value.
- (9) The Official Assignee, the liquidator, or the receiver, as the case may be, may at any time, by notice in writing, require the chief executive, within 30 days after receipt of the notice, to—
- (a) elect which of the rights referred to in subsection (3) the chief executive wishes to exercise; and
  - (b) if the chief executive elects to exercise the right referred to in paragraph (b) or paragraph (c) or paragraph (d) of subsection (3), exercise the right within that period.
- (10) If—
- (a) the chief executive fails to give notice to the Official Assignee or the liquidator or the receiver, as the case may be, in accordance with subsection (1) within the time specified in subsection (2); or
  - (b) having been required to make an election in accordance with subsection (9), the chief executive fails to do so within the time specified in that subsection,—
- the chief executive shall be taken to have surrendered the charge to the Official Assignee, or liquidator, or receiver, as the case may be, under subsection (3)(d) for the general benefit of creditors and the chief executive may claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of section 101.
- (11) Where the chief executive has surrendered a charge under subsection (3)(d) or is taken as having surrendered a charge under

subsection (10), the chief executive may, with the leave of the court or the Official Assignee or the liquidator or the receiver, as the case may be, and subject to such terms and conditions as the court or the Official Assignee or the liquidator or the receiver, as the case may be, thinks fit, at any time before the Official Assignee, liquidator, or receiver, as the case may be, has realised the property charged,—

- (a) withdraw the surrender and rely on the charge; or
- (b) submit a new claim under this section.

Compare: 1966 No 19 s 154A; 1995 No 7 s 2

Section 99(2)(b): amended, on 26 April 1999, by section 19 of the Companies Amendment Act 1999 (1999 No 19).

#### **100 Application of section 101**

Section 101 applies to the recovery of unpaid duty—

- (a) that is owing by—
  - (i) an individual who is bankrupt; or
  - (ii) a company that is in liquidation; or
  - (iii) a company in respect of the property of which a receiver has been appointed in circumstances to which section 30 of the Receiverships Act 1993 applies; or
  - (iv) an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation; or
  - (v) an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court—
- (b) that does not constitute a charge on goods; or
- (b) that the chief executive is entitled to claim under this section pursuant to section 99.

#### **101 Ranking of duty**

- (1) Unpaid duty to which this section applies shall be paid in accordance with the following provisions of this section.
- (2) In the case of an individual who is declared bankrupt, the amount of any duty to which this section applies shall be paid

in accordance with the requirements of section 274(5) of the Insolvency Act 2006.

- (3) In the case of a company that is in liquidation, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 312 of, and Schedule 7 of, the Companies Act 1993.
- (4) In the case of a company in respect of the property of which a receiver is appointed in circumstances to which section 30 of the Receiverships Act 1993 applies, the amount of duty to which this section applies shall be paid in accordance with the requirements of section 30(2) of the Receiverships Act 1993.
- (5) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation, the amount of any duty to which this section applies shall be paid in accordance with section 17B of the Judicature Act 1908.
- (6) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court, the amount of duty to which this section applies shall be paid in accordance with the directions of the court.
- (7) This section applies notwithstanding anything in any other Act.
- (8) Nothing in this section or in section 97 or section 99 derogates from section 102.

Compare: 1966 No 19 s 154B; 1995 No 7 s 2

Section 101(2): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 101(3): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

## **102 Release of goods subject to duty**

- (1) Except as otherwise provided in this Act, or in such cases as may be approved by the chief executive, and subject to such securities as the chief executive may require, no person is entitled to obtain release of goods from the control of the Customs until the sum payable by way of duty on the goods is paid in full.

- (2) No action or other proceeding shall be instituted against the Crown or the chief executive or any Customs officer in respect of the detention of any such goods during any period before the payment of the full sum so payable.
- (3) In any case where the chief executive considers that undue hardship would result from the payment of duty as required by this section, the chief executive may, subject to such conditions as he or she may think fit to impose, direct the release of the goods from the control of the Customs and accept payment of duty by instalment over a specified period.
- (4) Subsection (3) does not apply to duties imposed under the Dumping and Countervailing Duties Act 1988.

Compare: 1966 No 19 s 155

### **103 Liability for duty on goods wrongfully removed or missing**

- (1) The licensee of a Customs controlled area is liable for duty payable on goods that the chief executive is satisfied have been wrongfully removed from or are missing from that Customs controlled area as if the goods had been imported or manufactured by the licensee and entered pursuant to section 39 or section 70, as the case may be.
- (2) The licensee shall not be released from liability under this section by virtue of any other provision of this Act or any other Act.
- (3) If—
  - (a) dutiable goods are removed from a Customs controlled area without the authority of the Customs; or
  - (b) dutiable goods are not produced by the licensee to the Customs and are not accounted for as having been lawfully delivered from the Customs controlled area,—  
duty becomes due and payable as if the goods were removed for home consumption, or entry has been made and passed for home consumption.
- (4) The chief executive may, by notice in writing, demand from the owner or importer of the goods or the licensee of a Customs controlled area payment of any sum that the chief executive has reasonable cause to suspect is owing under this section.

- (5) Duty payable under this section constitutes a debt due to the Crown by the licensee and the importer of the goods and the owner of the goods, whose liability is joint and several.
- (6) A person liable for the payment of the 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.

Compare: 1966 No 19 ss 35(2), 102

**104 Liability of owners of craft for duty on goods unlawfully landed**

- (1) If cargo or stores or other goods are unlawfully landed in New Zealand in or from a craft that is within New Zealand, the owner and the person in charge of the craft (without prejudice to the liability of any other person) are jointly and severally liable for the payment of the duty on that cargo, stores, or other goods, as if that cargo or those stores or other goods had been imported by them and entry had been made and passed for home consumption pursuant to section 39.
- (2) The chief executive may, by notice in writing, demand from the owner or the person in charge of any craft payment of any sum that the chief executive has reasonable cause to suspect is owing under this section.
- (3) In any proceedings for the recovery of duty under this section, or for a refund of duty paid under this section, the sum so demanded by the chief executive shall be presumed to be due and payable unless the contrary is proved.
- (4) A person liable for the payment of the 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.

Compare: 1966 No 19 s 170(1), (2), (4)

**105 Effect of payment of duty by one person on liability of other persons**

The liability of a person under a provision of this Act for the payment of duty on goods is extinguished by the payment of that duty by any other person liable for the payment of it under any provision of this Act, unless that duty is subsequently refunded or remitted.

Compare: 1966 No 19 s 156

**106 Incidence of altered duties**

- (1) In the case of an alteration in the law relating to the liability of goods to duty or the rate of duty to which goods are liable, such liability or rate shall, except where otherwise expressly provided, be determined—
  - (a) in the case of goods held in an export warehouse, or produced in a manufacturing area, by the law in force at the time the goods are removed from the export warehouse or manufacturing area:
  - (b) in the case of other goods, by the law in force at the time the goods are imported into New Zealand.
- (2) In this section the term **alteration in the law** includes a variation that takes place at any time or periodically in the liability of goods to duty or in the rate of duty to which they are liable.

Compare: 1966 No 19 s 157; 1973 No 110 s 6; 1977 No 85 s 30

**107 Assessment of duty in particular cases**

- (1) When duties are imposed according to a specified quantity, weight, size, or value, the duties shall be charged proportionately on a greater or smaller quantity, weight, size, or value.
- (2) For the purposes of assessing duty on alcoholic beverages where the duty is to be calculated relative to the alcohol content of the beverage,—
  - (a) the means of ascertaining the volume of alcohol present in an alcoholic beverage is to be as determined from time to time by the chief executive; and
  - (b) if, on entry pursuant to sections 39 or 70, it is ascertained that the volume of alcohol has increased or diminished by natural process of change while subject to the control of the Customs, duty is payable in accord-



ance with the volume of alcohol as so increased or diminished.

Compare: 1966 No 19 s 160; 1981 No 2 s 5

**108 Goods from the Cook Islands and Niue**

- (1) Goods imported into New Zealand from the Cook Islands or Niue, whether the produce or manufacture of the Cook Islands or Niue or not, are to be admitted into New Zealand free of duty.
- (2) Nothing in this section applies to—
  - (a) goods in respect of which, on their exportation from the Cook Islands or Niue, a claim for drawback of duty has been made and allowed:
  - (b) goods that, by reason of warehousing or for any other reason, have been exported from the Cook Islands or Niue without payment of duty on their importation into the Cook Islands or Niue:
  - (c) goods produced in a manufacturing warehouse in the Cook Islands or Niue, unless they have been entered in the Cook Islands or Niue for home consumption and the duty (if any) paid on them:
  - (d) goods on which a rate of duty had been paid in the Cook Islands or Niue lower than that to which the goods would be subject in New Zealand at the time of their importation into New Zealand if imported directly from their country of origin or where the valuation of the goods for duty has been assessed in the Cook Islands or Niue on a different basis from that applying in New Zealand as at the date of the importation of the goods into New Zealand:
  - (e) goods subject to excise duty in the Cook Islands or Niue, unless such duty has been paid on them as if they had not been exported.

Compare: 1966 No 19 s 304

**109 Reimportation of goods exported**

- (1) Subject to subsection (2), goods exported from New Zealand may, in such cases and under such conditions as may from time to time be approved by the chief executive, be admitted free

of duty, or at such rate of duty as may be determined by the chief executive, not exceeding the duty that would be payable on the goods if imported for the first time.

- (2) This section applies to goods which, when reimported, are in substantially the same condition as when exported.

Compare: 1966 No 19 s 164; 1967 No 137 s 7

### **110 Importer, etc, leaving New Zealand**

- (1) If the chief executive has reasonable cause to believe that an importer, exporter, or licensee is about to leave New Zealand before duty owing by the importer, exporter, or licensee, as the case may be, becomes payable under this Act, the chief executive may, by notice in writing, require the importer, exporter, or licensee to pay the duty on such date that is earlier than the date on which the duty becomes payable as the chief executive fixes and notifies to the importer, exporter, or licensee.
- (2) A notice issued under subsection (1) constitutes a demand for payment and the duty becomes due and payable on the date fixed by the chief executive.
- (3) A person liable for the payment of the 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.
- (4) Section 109 of the District Courts Act 1947 or section 55 of the Judicature Act 1908, as the case may be, extends and applies in relation to a notice under this section as if it were a proceeding for the recovery of duty made in the ordinary course.

Compare: 1966 No 19 s 112; 1986 No 44 s 11

#### *Refunds, remissions, and drawbacks of duty*

### **111 Chief executive may refund duty paid in error**

- (1) If the chief executive is satisfied that duty has been paid in error, either of law or of fact, the chief executive shall, unless there is good reason not to, refund the duty—
- (a) at any time within 4 years after it has been paid; or
  - (b) at any later time, on an application made within 4 years after it has been paid.

- (2) This section extends and applies to duties paid in error before the commencement of this Act.
- (3) Where a calculation or a re-calculation of duty that apparently gives rise to an entitlement to a refund in accordance with subsection (1) is based on a manifest error in the legal instrument which establishes the duty that is payable, that shall be good reason under that subsection for the chief executive not to refund the duty.
- (4) A person 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.

Compare: 1966 No 19 s 172(1), (3); 1986 No 44 s 10

#### **112 Refunds of duty on goods under Part 2 of Tariff**

- (1) Where duty has been paid on imported goods and the Minister of Commerce subsequently approves, pursuant to section 8 of the Tariff Act 1988, a lower rate of duty or exempts the goods from duty, the chief executive shall refund in whole or in part the duty paid so that the total duty paid on the goods is in accordance with the terms (including the effective date) of the approval.
- (2) A person 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.

Compare: 1966 No 19 s 172B(1); 1988 No 182 s 2

#### **113 Other refunds and remissions of duty**

- (1) Subject to any prescribed exceptions, restrictions, or conditions, the chief executive may refund or remit any duty where the chief executive is satisfied that imported goods, or goods manufactured in New Zealand, as the case may be,—
  - (a) have been damaged, destroyed, pillaged, or lost, or have diminished in value or deteriorated in condition, prior to their release from the control of the Customs; or
  - (b) are of faulty manufacture; or

- (c) have been abandoned to the Crown for destruction or other form of disposal prior to their release from the control of the Customs.
- (2) Sample goods of such nature or value as may be prescribed and samples of the bulk of goods subject to the control of the Customs may, subject to such conditions as may be prescribed, be delivered free of duty.
- (3) The chief executive may refund or remit any excise-equivalent duty imposed under section 75—
  - (a) on goods of a class or kind that have been exempted from duty by the Minister of Commerce under section 8 of the Tariff Act 1988; or
  - (b) on alcoholic beverages (except ethyl alcohol of Tariff items 2207.10.19, 2207.10.29, 2207.20.01, or 2207.20.39) for use by the persons, in the places, and in the quantities that the chief executive may approve, and subject to any conditions that the chief executive thinks fit in the manufacture of any products approved in writing by the chief executive.
- (4) A person 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.
- (5) Except as the chief executive of the Ministry of Economic Development may permit, this section does not apply to duties imposed under the Dumping and Countervailing Duties Act 1988.

Compare: 1966 No 19 ss 168, 173; 1977 No 85 s 31; 1986 No 182 s 2

Section 113(3): substituted, on 27 September 2001, by section 8 of the Customs and Excise Amendment Act 2001 (2001 No 61).

Section 113(5): amended, on 7 September 2000, by section 8(1) of the Ministry of Economic Development Act 2000 (2000 No 28).

#### **114 Power to apply refunds towards payment of other duties**

Where under any provision of this Act duty is or becomes refundable to any person, the chief executive may, in his or her discretion, apply the whole or any part of the sum so refundable towards the payment of any other duty that is payable by that person, or may refund the whole sum to that person.

**115 Recovery of duty refunded in error**

Money refunded by the Customs in error of fact or law is recoverable by action at the suit of the chief executive on behalf of the Crown at any time within 4 years after the date of its payment, or at any time if the refund has been obtained by fraud.

Compare: 1966 No 19 s 182

**116 Goods temporarily imported**

- (1) Subject to this section, where the chief executive is satisfied that goods have been temporarily imported, a sum equal to the amount of the duty payable on the goods may be secured, pursuant to section 156, in such cases as may be approved by the chief executive, and on receipt of such security the chief executive may release the goods from the control of the Customs without payment of duty.
- (2) Subject to such conditions (if any) as may be prescribed, the person giving the security must be released from the conditions of the security or, as the case may be, subject to subsection (4), a deposit of money made must be returned to the person by whom it was made if, within 12 months from the date of their importation or within such longer period as the chief executive may determine in any particular case, the chief executive is satisfied that the goods have been—
  - (a) exported; or
  - (b) shipped for export; or
  - (c) packed for export into a bulk cargo container in a Customs controlled area and the container secured to the satisfaction of the chief executive; or
  - (d) destroyed; or
  - (e) dealt with in such manner as the chief executive may allow.
- (3) Where in any case goods temporarily imported are used for industrial or commercial purposes or such other purposes as the chief executive may consider applicable, duty shall be payable in respect of the goods on the amount by which their value for duty, as determined by the chief executive at the time that he or she is satisfied pursuant to subsection (2) that the goods have been dealt with under any of paragraphs (a) to (e) of that

- subsection, is less than their value for duty, as ascertained in accordance with this Act, at the time of their importation.
- (3A) For the purposes of subsection (3), the chief executive must determine the value for duty of goods that have been dealt with under any of subsection (2)(a) to (e) by using—
- (a) the straight-line method of calculating an amount of depreciation loss described in section EE 12(2)(b) of the Income Tax Act 2007; and
  - (b) the depreciation rate for that method determined by the Commissioner of Inland Revenue under section 91AAF or 91AAG of the Tax Administration Act 1994 or the rate specified in the table appended to the General Depreciation Rates published by the Commissioner of Inland Revenue; and
  - (c) for duty calculation purposes, the depreciation rate applicable on the date the goods are imported.
- (4) Where an amount of duty is payable in accordance with subsection (3), that duty may be deducted from any deposit of money given as security under subsection (1).
- (5) Notwithstanding subsection (3), but subject to such conditions as the chief executive may impose, duty is not payable on goods temporarily imported in accordance with any treaty, agreement, or arrangement concluded by the Government of New Zealand.
- (6) If, at the expiry of the period prescribed by subsection (2), the goods have not been dealt with in accordance with that subsection,—
- (a) any sum secured by way of deposit of money must be retained by the Crown; or
  - (b) any sum otherwise so secured must be paid to the Crown by the importer within 10 working days after the expiry of that period or such longer period as the chief executive may allow, and on such payment the security shall be released.
- (7) Except as the chief executive of the Ministry of Economic Development may permit, this section does not apply to duties imposed under the Dumping and Countervailing Duties Act 1988.

- (8) This section does not apply to any goods that are, by regulations made under the Tariff Act 1988, declared to be goods to which this section does not apply.

Compare: 1966 No 19 s 181; 1980 No 33 s 8

Section 116(3A): inserted, on 6 April 2012, by section 13 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 116(7): amended, on 7 September 2000, by section 8(1) of the Ministry of Economic Development Act 2000 (2000 No 28).

### **117 Drawbacks of duty on certain goods**

- (1) Subject to this section, drawbacks of duty may be allowed, at such amounts and subject to such conditions as may be prescribed, on—
- (a) goods imported into New Zealand that are later exported from New Zealand:
  - (b) goods that are produced in a manufacturing area and exported from New Zealand:
  - (c) imported parts and materials used in, worked into, or attached to, goods manufactured or produced in New Zealand and exported from New Zealand:
  - (d) imported materials, except fuel or plant equipment, consumed in the manufacture or production of goods produced in New Zealand and exported from New Zealand.
- (2) Where—
- (a) the chief executive is satisfied that goods have been shipped for export; or
  - (b) goods have been packed for export into a bulk cargo container in a Customs place or Customs controlled area and the container has been secured to the satisfaction of the chief executive; or
  - (c) goods have been entered into an export warehouse and the chief executive is satisfied that they will be exported,—
- the chief executive may, for the purposes of this section, if he or she thinks fit, treat the goods as having been exported.
- (3) Where drawback has been allowed on any goods so treated as exported or on goods consumed in the manufacture of those goods, the goods must not, without the permission of the chief

executive, be unshipped or relanded or unpacked before export.

- (4) Where drawback has been allowed on goods so treated as exported or on goods consumed in the manufacture of those goods and drawback has been paid in respect of any goods that are unshipped or relanded or unpacked before export, the amount of drawback allowed in respect of those goods or on goods consumed in the manufacture of those goods shall, immediately on their unshipment or relanding or unpacking, constitute a debt due to the Crown; and such debt shall immediately be payable by the owner of the goods at the time of their unshipment or relanding or unpacking.
- (5) Such debt is recoverable by action at the suit of the chief executive on behalf of the Crown.
- (6) The right to recover drawback as a debt due to the Crown under this section is not affected by the fact that a bond or other security has been given in respect of the unshipment or relanding or unpacking of the goods before export.
- (7) Where under this section drawback is allowed to any person, the chief executive may, in his or her discretion, apply the whole or any part of the sum allowed towards the payment of any duty that is payable by that person.
- (8) Except as the chief executive of the Ministry of Economic Development may permit, this section does not apply to duties imposed under the Dumping and Countervailing Duties Act 1988.
- (9) This section does not apply to any goods that are, by regulations made under the Tariff Act 1988, declared to be goods to which this section does not apply.

Compare: 1966 No 19 s 183; 1968 No 31 s 15; 1977 No 85 s 35; 1980 No 33 s 9(1); 1986 No 44 s 21

Section 117(8): amended, on 7 September 2000, by section 8(1) of the Ministry of Economic Development Act 2000 (2000 No 28).

### **118 Regulations may prescribe minimum duty collectable or refundable and minimum drawback allowable**

Without limiting the power to make regulations conferred by section 286, regulations made under that section may prescribe—



- (a) an amount of duty below which that duty need not be collected, and the circumstances in which that duty need not be collected; and
- (b) the minimum amount of duty refundable on goods, and the circumstances in which duty below the prescribed amount shall not be refunded; and
- (c) the minimum amount of drawback of duty allowable on goods, and the circumstances in which drawback below the prescribed amount will not be allowed.

Compare: 1966 No 19 s 162

## **Part 9**

### **Customs rulings**

#### **119 Application for Customs ruling**

- (1) A person may make an application, in respect of particular goods specified in the application, to the chief executive for a Customs ruling in respect of any 1 or more of the following matters:
  - (a) the Tariff classification of those goods under Part 1 of the Tariff;
  - (b) the excise classification of those goods under the Excise and Excise-equivalent Duties Table;
  - (c) whether or not those goods are, for the purposes of the Tariff and in accordance with any applicable regulations made under this Act, the produce or manufacture of a particular country or group of countries, referred to in the application;
  - (d) whether or not those goods are subject to a specified duty concession under Part 2 of the Tariff referred to in the application.
- (2) An application under subsection (1) may be made—
  - (a) in respect of imported goods—
    - (i) at any time before the date of importation into New Zealand of the goods that are the subject of the application; or
    - (ii) at any later time, if the chief executive in his or her discretion permits; or

- (b) in respect of goods manufactured in a manufacturing area—
  - (i) at any time before the date of manufacture of the goods; or
  - (ii) at any later time, if the chief executive in his or her discretion permits.
- (3) A person may make an application in relation to a particular matter specified in the application, to the chief executive for a Customs ruling as to the correct application of any provision contained in regulations made under section 65.
- (4) Every application under subsection (1) or subsection (3) must be in the prescribed form, and must—
  - (a) state the name and address of the applicant; and
  - (b) in the case of an application under subsection (1),—
    - (i) specify the particular goods that are the subject of the application; and
    - (ii) specify, in respect of those goods, the matter or matters listed under subsection (1) on which the applicant requests a Customs ruling and the applicant's opinion as to what the Customs ruling should be; and
    - (iii) unless the chief executive agrees otherwise, be accompanied by the goods or a sample of the goods; and
  - (c) contain, or have attached, all information that is relevant to a proper consideration of the application; and
  - (d) be accompanied by the prescribed fee.
- (5) The chief executive may, at any time, request further information from an applicant if the chief executive considers that the information is relevant to the application.

Compare: 1966 No 19 s 151B; 1994 No 129 s 7

Section 119(1)(a): substituted, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

Section 119(1)(b): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 119(1)(d): substituted, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

## **120 Making of Customs ruling**

- (1) Subject to subsection (4), the chief executive shall—
  - (a) in the case of an application made under section 119(1), make a Customs ruling in respect of any particular goods specified in the application and in respect of the matter or matters on which the ruling is sought; or
  - (b) in the case of an application made under section 119(3), make a Customs ruling in respect of the particular matter specified in the application.
- (2) The chief executive must make a Customs ruling under subsection (1) within such time or times as may be prescribed after receipt of,—
  - (a) in the case of an application under section 119(1),—
    - (i) a properly completed application in respect of particular goods; and
    - (ii) the goods or a sample of the goods, unless the chief executive has agreed not to require receipt of the goods; and
  - (b) all information that the chief executive considers relevant to a proper consideration of the application; and
  - (c) all information that the chief executive requests under section 119(5); and
  - (d) payment of the prescribed fee.
- (3) A Customs ruling may be made subject to such conditions as the chief executive thinks fit.
- (4) The chief executive may decline to make a Customs ruling if, in the chief executive's opinion, he or she has insufficient information to do so.

Compare: 1966 No 19 s 151C; 1994 No 129 s 7

## **121 Notice of Customs ruling**

The chief executive shall promptly give notice in writing to the applicant of—

- (a) a Customs ruling, together with the reasons for the ruling, and the conditions (if any) to which it is subject; or
- (b) a decision to decline to make a Customs ruling, together with the reasons for that decision.

Compare: 1966 No 19 s 151D; 1994 No 129 s 7

**122 Effect of Customs ruling**

- (1) Subject to section 125, a Customs ruling in respect of particular goods is conclusive evidence for the purposes of this Act and, where applicable, the Tariff Act 1988, that the goods—
- (a) have a particular Tariff classification under Part 1 of the Tariff; or
  - (b) have a particular excise classification under the Excise and Excise-equivalent Duties Table; or
  - (c) are or are not, as the case may be in accordance with applicable regulations made under this Act, the produce or manufacture of a particular country, or group of countries, for the purposes of the Tariff Act 1988; or
  - (d) are or are not, as the case may be, subject to a specified duty concession under Part 2 of the Tariff.
- (2) Subject to section 125, a Customs ruling in respect of a particular matter in respect of which a ruling has been given under section 120(1)(b) is conclusive evidence for the purposes of this Act and, where applicable, the Tariff Act 1988, of the application of the regulation or regulations on which the ruling was made in relation to that matter.

Compare: 1966 No 19 s 151E(1); 1994 No 129 s 7

Section 122(1)(a): substituted, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

Section 122(1)(b): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 122(1)(d): substituted, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

**123 Confirmation of basis of Customs ruling**

At any time after a Customs ruling is made, the chief executive may, by notice in writing, require the applicant to satisfy the chief executive in such manner and within 20 working days or such longer period as the chief executive considers appropriate,—

- (a) that the facts or information on which the Customs ruling was made remain correct; and
- (b) that any conditions on which the Customs ruling was made have been complied with.

Compare: 1966 No 19 s 151F; 1994 No 129 s 7

**124 Amendment of Customs ruling**

- (1) The chief executive may from time to time amend a Customs ruling to correct any error contained in that ruling.
- (2) The chief executive shall, promptly after making the amendment, give notice in writing to the applicant of the amended Customs ruling and, subject to subsection (3), the ruling as amended shall be applied to the applicant as from the date on which notice of the amendment was given to the applicant.
- (3) Notwithstanding subsection (2), if the amendment to the ruling has the effect of increasing any duty liability in respect of any goods,—
  - (a) where the goods are imported within 3 months of the date notice of the amendment is given, pursuant to a binding contract entered into before that date; or
  - (b) where the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to New Zealand at the date notice of the amendment of the ruling is given; or
  - (c) where the goods are imported on or before the date notice of the amendment is given but have not been entered for home consumption,—then the ruling as given prior to amendment under this section shall be applied to those goods.
- (4) Notwithstanding subsection (2), if the amendment to the ruling has the effect of decreasing any duty liability in respect of any goods, then the provisions of section 111 shall apply as if the higher duty had been paid in error.

Compare: 1966 No 19 s 151G; 1994 No 129 s 7

**125 Cessation of Customs ruling**

- (1) A Customs ruling ceases to have effect on the earliest to occur of the following dates:
  - (a) the date on which any information on which the Customs ruling was made ceases to be correct in all material respects; or
  - (b) the date of a material change in any of the information or facts on which the Customs ruling was made; or
  - (c) the date of a material change to the Tariff Act 1988, or to the Excise and Excise-equivalent Duties Table, or to

- any applicable regulations made under this Act or the Tariff Act 1988, if that date occurs prior to importation or manufacture of the relevant goods, as the case may be; or
- (d) the date on which any of the conditions to which the Customs ruling was made subject cease to be met or complied with; or
  - (e) the date of a failure to satisfy the requirements of the chief executive under section 123; or
  - (f) the date of expiry of 3 years from the date that notice of the Customs ruling, or any amendment to that Customs ruling under section 124, is given to the applicant.
- (2) A Customs ruling shall not come into effect if—
- (a) information on which it was made was not correct in all material respects; or
  - (b) a material change has occurred in any information or facts on which it was made.

Compare: 1966 No 19 s 151H; 1994 No 129 s 7

Section 125(1)(c): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **126 Appeal from decisions of chief executive**

An applicant who is dissatisfied with a Customs ruling, or a decision to decline to make a Customs ruling, or a decision to amend a Customs ruling, under this Part may, within 20 working days after the date on which notice of the ruling or decision is given, appeal to a Customs Appeal Authority against that ruling or decision.

Compare: 1966 No 19 s 151I; 1994 No 129 s 7

## **127 No liability where Customs ruling relied on**

- (1) Where an applicant has relied on a Customs ruling in relation to specific goods or a specific matter, and, as a result,—
- (a) the applicant has not paid the amount of duty that, but for this section, is payable on the goods; or
  - (b) the applicant would, but for this section, be liable to the imposition of a penalty under section 128A; or
  - (c) goods, but for this section, would be liable to seizure under this Act,—

the amount of the duty otherwise payable is not recoverable as a debt due to the Crown and no penalty shall be imposed under section 128A and the goods shall not be liable to seizure under this Act, as the case may be.

- (2) Subsection (1) applies only in relation to a matter on which the Customs ruling was given and where the Customs ruling has not ceased under section 125, and in accordance with any amendment to a Customs ruling that the applicant has received notice of under section 124.

Section 127(1): amended, on 6 April 2012, by section 14 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 127(1)(b): amended, on 6 April 2012, by section 14 of the Customs and Excise Amendment Act 2012 (2012 No 25).

## **Part 10**

### **Administrative penalties**

#### **128 Definitions for Part**

In this Part,—

**entry** includes—

- (a) an entry required under this Act; and
- (b) every declaration, invoice, certificate, written statement, or other document required or authorised by or under this Act to be made or produced by a person making the entry; and
- (c) every amendment of the entry; and
- (d) for any goods or class of goods deemed by regulations made under section 40(d) to have been entered under section 39(1), a document that, under those regulations, the chief executive requires to be lodged with the Customs before the goods or class of goods will be deemed to be entered; and
- (e) for any goods or class of goods deemed by regulations made under section 50(b) to have been entered under section 49(1), a document that, under those regulations, the chief executive requires to be lodged with the Customs before the goods or class of goods will be deemed to be entered

**materially incorrect** means,—

- (a) for an entry under section 39, that the entry contains an error or omission in relation to any of the following matters:
  - (i) the overseas supplier's identity:
  - (ii) the importer's identity:
  - (iii) the identity of the person making the entry:
  - (iv) the identification of the importing craft or its voyage number:
  - (v) the bill of lading, air waybill, or container identification details:
  - (vi) the supplier's invoice number:
  - (vii) any permit number or code:
  - (viii) the Tariff item in which the goods are classified under the Tariff Act 1988:
  - (ix) the statistical quantity of the goods:
  - (x) the currency code for the currency in which the goods are traded:
  - (xi) the value for duty expressed in the currency in which the goods are traded:
  - (xii) the value for duty expressed in New Zealand currency:
  - (xiii) the country of origin of the goods:
  - (xiv) the country from which the goods have been exported:
  - (xv) the amount paid or payable to transport the goods to New Zealand from the country of exportation, including any amount paid or payable for internal transportation of the goods in that country:
  - (xvi) the insurance costs associated with transporting the goods to New Zealand, inclusive of any insurance costs in the country of exportation:
- (b) for an entry under section 49 in respect of goods for which drawbacks of duty may be allowed under section 117, that the entry contains a material error or omission in relation to a matter that the entry is required by or under this Act to address:
- (c) for an entry that is not an entry under section 39 or 49, that the entry contains a material error or omission in



relation to a matter that the entry is required by or under this Act to address.

Section 128: replaced, on 6 April 2012, by section 15 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### **128A Imposition of penalty**

- (1) The chief executive may issue a penalty notice to a person if the chief executive is satisfied that—
  - (a) an entry of goods made by the person contains an error or omission; and
  - (b) either of the following applies:
    - (i) as a result of the error or omission, an amount of duty payable under this Act has not been paid or declared for payment or would not have been paid or declared for payment; or
    - (ii) the entry is otherwise materially incorrect.
- (2) The penalty notice may require the person to pay to the chief executive by way of penalty and in addition to the duty payable under this Act (if any) the amount referred to in section 128B(1).
- (3) Within 20 working days after the date on which the penalty notice is issued by the chief executive under subsection (1) (the **due date**), the person to whom it was issued—
  - (a) must pay the penalty;
  - (b) may request the chief executive to review the decision to issue the notice.
- (4) However, section 129(2) applies if the person to whom the penalty notice was issued requests the chief executive to review the decision to issue the notice under subsection (3)(b).
- (5) The amount of the penalty, including any additional penalty imposed under section 128C, constitutes a debt due to the Crown and is recoverable by the chief executive in a court of competent jurisdiction.
- (6) A person who pays the amount of the penalty, or for whom that amount is paid, is not liable to prosecution for an offence in relation to the error or omission and the goods in relation to which the error or omission occurred are not liable to seizure under this Act.

- (7) Subsection (6) does not apply to a prosecution or seizure in relation to goods that have been forfeited to the Crown because the importation or exportation of the goods is prohibited or unlawful.
- (8) This section is subject to section 130.
- Section 128A: inserted, on 6 April 2012, by section 15 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**128B Calculation of amount of penalty**

- (1) The amount of the penalty imposed under section 128A(2) is the amount specified under subsection (2) or (3), as the case may be.
- (2) If the error or omission has resulted in an amount of duty payable under this Act (including any liability for goods and services tax) not being paid or declared for payment, the amount is the greater of—
- (a) \$200; or
  - (b) an amount (up to a maximum of \$50,000) that is equal to whichever one of the following applies:
    - (i) 20% of the duty unpaid or undeclared, if the chief executive is satisfied that the error or omission occurred because the person did not take reasonable care; or
    - (ii) 40% of the duty unpaid or undeclared, if the chief executive is satisfied that the error or omission occurred because the person was grossly careless; or
    - (iii) 100% of the duty unpaid or undeclared, if the chief executive is satisfied that the error or omission was made knowingly.
- (3) If the error or omission has resulted in the entry being materially incorrect, the amount is the greater of—
- (a) \$200 for each entry; or
  - (b) an amount (up to a maximum of \$50,000) that is equal to whichever one of the following applies:
    - (i) 20% of the excess drawback paid or claimed, if the chief executive is satisfied that the error or omission occurred because the person did not take reasonable care; or

- (ii) 40% of the excess drawback paid or claimed, if the chief executive is satisfied that the error or omission occurred because the person was grossly careless; or
  - (iii) 100% of the excess drawback paid or claimed, if the chief executive is satisfied that the error or omission was made knowingly.
- (4) If the goods referred to in section 128A(1) and entered under section 39 become free of duty or subject to a lower rate of duty under Part 1 or Part 2 of the Tariff after the entry is made, the amount of the penalty must be calculated under subsection (2)(b) as if the duty liability had not changed.

Section 128B: inserted, on 6 April 2012, by section 15 of the Customs and Excise Amendment Act 2012 (2012 No 25).

#### **128C Additional penalty may be imposed**

- (1) The additional penalties specified in subsection (2) are imposed (as the case may be) on a person to whom a penalty notice is issued under section 128A(1) if the penalty remains unpaid by the due date referred to in section 128A(3), unless the chief executive decides that the notice should not have been issued following a request for review under section 128A(3)(b).
- (2) The additional penalties are—
  - (a) 5% of the amount of the penalty unpaid by the due date; and
  - (b) 2% of the amount of the penalty, including any additional penalty, unpaid at the end of the period of 1 month after the due date; and
  - (c) 2% of the amount of the penalty, including any additional penalty, unpaid at the end of each succeeding period of 1 month.
- (3) However, the chief executive may, in his or her discretion, remit or refund the whole or any part of any additional penalty imposed under subsection (1).

Section 128C: inserted, on 6 April 2012, by section 15 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**128D Right of appeal to Customs Appeal Authority**

A person who is dissatisfied with a decision of the chief executive under section 128A, 128B, or 128C 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.

Section 128D: inserted, on 6 April 2012, by section 15 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**129 Obligation to pay penalty not suspended by review or appeal**

- (1) The obligation to pay and the right to receive and recover any penalty imposed under section 128A are not suspended by any request for review under section 128A(3)(b) or by any appeal or legal proceedings.
- (2) Subject to the provisions of subsection (3), if the person who requested the review, or the appellant, is successful, the amount of the penalty imposed under this section shall forthwith be refunded to the person or the appellant by the chief executive.
- (3) The provisions of section 92(3) and section 93 shall, with all necessary modifications, apply to an administrative penalty required to be refunded under this section as if such penalty were duty.

Section 129 heading: amended, on 6 April 2012, by section 16(1) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 129(1): amended, on 6 April 2012, by section 16(2) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 129(2): amended, on 6 April 2012, by section 16(3)(a) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 129(2): amended, on 6 April 2012, by section 16(3)(b) of the Customs and Excise Amendment Act 2012 (2012 No 25).

**130 No penalty in certain cases**

A person is not liable to the imposition of a penalty under section 128A, if—

- (a) that person has voluntarily disclosed the error or omission to the Customs before the Customs has notified the person that—

- (i) the goods to which the entry relates have been selected for examination by the Customs;
  - (ii) documentation is required to be presented to the Customs in relation to that entry;
  - (iii) the Customs intends to conduct an audit or investigation in relation to a selection of entries that includes that entry, or in relation to entries made over a period of time that includes the time the entry was made; or
- (b) that person satisfies the chief executive that the person formed a view as to the relevant facts pertaining to the entry which, while incorrect, was reasonable having regard to the information available to that person when the entry was prepared; or
- (c) that person satisfies the chief executive that he or she acted in good faith on information provided by the importer, exporter, or supplier of the goods to which the entry relates, and reliance on the accuracy or completeness of the information so provided was reasonable in the circumstances; or
- (d) *[Repealed]*
- (e) a charging document for an offence against this Act has been filed in relation to the error or omission; or
- (f) the period between the date of lodgement of the entry of the goods and the date on which the error or omission was first identified exceeds 4 years; or
- (g) the provisions of section 127 apply.

Section 130: amended, on 6 April 2012, by section 17(1) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 130(c): amended, on 8 December 2009, by section 16(7) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 130(d): repealed, on 6 April 2012, by section 17(2) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 130(e): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **Part 11**

### **Customs computerised entry processing systems**

#### **131 Access to Customs computerised entry processing systems**

No person shall transmit to, or receive information from, a Customs computerised entry processing system unless that person is an individual who is registered by the chief executive as a user of that Customs computerised entry processing system.

#### **132 Application to be registered user**

- (1) An individual who wishes to be registered as a user of a Customs computerised entry processing system may apply in writing to the chief executive in the prescribed form and shall provide such information in relation to the application as is prescribed.
- (2) The chief executive may require an applicant for registration to provide either or both of the following:
  - (a) any additional information the chief executive considers necessary for the purposes of the application;
  - (b) evidence of his or her competence in any area the chief executive considers relevant to the application (for example, tariff classification).
- (3) The chief executive may—
  - (a) grant the application subject to such conditions as the chief executive thinks fit; or
  - (b) refuse the application.
- (4) The chief executive shall give notice in writing to the applicant of his or her decision.
- (5) An applicant 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.

Section 132 heading: substituted, on 2 July 2004, by section 21(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 132(2): substituted, on 2 July 2004, by section 21(2) of the Customs and Excise Amendment Act 2004 (2004 No 55).

**133 Registered users to be allocated unique user identifier**

- (1) An individual who is registered as a user of a Customs computerised entry processing system shall be allocated a unique user identifier for use in relation to that Customs computerised entry processing system by the chief executive in such form or of such a nature as the chief executive may determine.
- (2) The unique user identifier allocated pursuant to subsection (1) shall be used by the registered user for the purpose of transmitting information to or receiving information from that Customs computerised entry processing system.
- (3) The chief executive may, by notice in writing, impose conditions on a particular registered user, or on registered users generally, relating to the use and security of unique user identifiers.

**134 Use of unique user identifier**

- (1) Where information is transmitted to a Customs computerised entry processing system using a unique user identifier issued to a registered user by the chief executive for that purpose, the transmission of that information shall, in the absence of proof to the contrary, be sufficient evidence that the registered user to whom the unique user identifier has been issued has transmitted that information.
- (2) Where a unique user identifier is used by an individual who is not entitled to use it, subsection (1) does not apply if the registered user to whom the unique user identifier was issued has, prior to the unauthorised use of that unique user identifier, notified the Customs that the unique user identifier is no longer secure.

**134A Conditions may be imposed on registered users**

- (1) The chief executive may impose a condition on the registration of either or both of the following:
  - (a) a specified registered user or class of registered users:
  - (b) all registered users.
- (2) A condition imposed under subsection (1) must be notified in writing to the 1 or more registered users concerned and must,

unless the 1 or more registered users concerned appeals under subsection (3), be complied with on or before—

- (a) the 20th working day after the date of notification of the imposition of the condition on the registered user's registration; or
  - (b) a later date specified by the chief executive.
- (3) A registered user who is dissatisfied with the imposition of a condition on his or her user registration under subsection (1) may appeal in writing to the Customs Appeal Authority within 20 working days after the date of notification of the imposition of the condition on the registered user's registration.
- (4) If the Customs Appeal Authority is of the view that the imposition of the condition under subsection (1) was reasonable in the circumstances the registered user must comply with the condition on or before—
- (a) the 10th working day after the date of notification of the Authority's decision; or
  - (b) a later date specified by the Customs Appeal Authority.

Section 134A: inserted, on 2 July 2004, by section 22 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **135 Suspension or cancellation of registration of registered user**

- (1) The chief executive may by written notice to a registered user (which must state grounds for the cancellation) cancel that user's registration if satisfied that the user—
- (a) has failed to comply with a condition imposed by the chief executive under section 132(3) or section 133(3); or
  - (b) has failed to comply with a condition imposed by the chief executive under section 134A(1) within the time frame specified in that section; or
  - (c) has been convicted of—
    - (i) an offence against this Act or the Misuse of Drugs Act 1975; or
    - (ii) a crime involving dishonesty (as defined in section 2 of the Crimes Act 1961); or
  - (d) is, on 1 or more prescribed grounds, unfit to continue to be a registered user.



- (1A) Despite subsection (1), the chief executive may by written notice to a registered user (which must state grounds for the suspension) suspend that user's registration until a date or event specified in the notice if satisfied that the user's registration should not be cancelled, but should instead be suspended until that date or event, because the user—
- (a) has failed to comply with a condition imposed by the chief executive under section 132(3) or 133(3); or
  - (b) has failed to comply with a condition imposed by the chief executive under section 134A(1) within the time frame specified in that section.
- (1B) The date or event specified in the notice under subsection (1A) may, but need not, be the user's compliance with a condition imposed by the chief executive under section 132(3), 133(3), or 134A(1).
- (2) If the person whose registration is suspended or cancelled is dissatisfied with the decision of the chief executive under this section, that person 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.

Section 135 heading: amended, on 8 December 2009, by section 17(1) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 135(1): substituted, on 2 July 2004, by section 23 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 135(1A): inserted, on 8 December 2009, by section 17(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 135(1B): inserted, on 8 December 2009, by section 17(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 135(2): amended, on 8 December 2009, by section 17(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **136 Customs to keep records of transmissions**

- (1) The Customs must keep a record of every transmission sent to or received from a registered user using a Customs computerised entry processing system.
- (2) The record described in subsection (1) must be kept for a period of 7 years from the date of the sending of or the receipt of the transmission, or for such other period as may be prescribed.

## Part 12

### Powers of Customs officers

#### 137 Patrols and surveillance

Any Customs officer may, for the purposes of the detection of offences against this Act, at any time and in such manner as the officer considers appropriate,—

- (a) patrol on or over any part of the foreshore or the shore of any lake or lagoon or the banks of any river and any structure extending therefrom, or any part of the adjacent land, or any Customs place or Customs controlled area; and
- (b) enter and inspect any aircraft landing strip and any building thereon,—

and may remain in any such area for the purposes of carrying out investigations or surveillance.

Compare: 1966 No 19 s 210; 1982 No 112 s 11

Section 137: amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### 138 Landing or mooring of Customs craft

A Customs officer or other person in charge of any craft employed in the service of the Customs may anchor, moor, berth, or land the craft, or haul the craft ashore, at any place within New Zealand and, in any such case, no charge shall be levied against the Customs.

Compare: 1966 No 19 s 211

#### 139 Boarding craft

- (1) Any Customs officer may at any time board a craft that is within New Zealand if—
  - (a) the craft has arrived in New Zealand from a point outside New Zealand; or
  - (b) the craft is departing from New Zealand to a point outside New Zealand, including while the craft is travelling within New Zealand en route to a point outside New Zealand; or
  - (c) the craft (not being a craft to which paragraph (a) or paragraph (b) applies) is carrying any domestic cargo or

- international cargo while the craft remains within New Zealand; or
- (d) the Customs officer has reasonable cause to suspect that the craft (not being a craft to which paragraph (a) or paragraph (b) or paragraph (c) applies)—
- (i) is carrying any dutiable, uncustomed, prohibited, or forfeited goods; or
- (ii) has been, is being, or is about to be, involved in the commission of an offence against this Act.
- (2) The chief executive may station Customs officers on board any craft that has arrived in New Zealand from a point outside New Zealand for the purposes of performing any function or exercising any power that the officers may be required, authorised, or empowered to perform or exercise under this Act.
- (3) Where a Customs officer is stationed on board a craft pursuant to subsection (2), the person in charge of the craft must ensure that the officer is provided with—
- (a) suitable accommodation and board in accordance with the reasonable requirements of that officer; and
- (b) safe access to any part of the craft; and
- (c) safe means of leaving the craft.
- (4) No charge shall be levied against the Customs for the carriage of a Customs officer who is stationed on board a craft or for his or her accommodation and board.
- (5) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3) apply in respect of the power conferred by subsection (1)(d).
- (6) Despite subsection (5), sections 125(4), 131(5)(f), and 133, and subparts 6 and 8 of Part 4 of the Search and Surveillance Act 2012 do not apply to any goods forfeited to the Crown under section 225 of this Act.

Compare: 1966 No 19 s 205(1), (2); 1983 No 41 s 12

Section 139(1): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 139(5): inserted, on 1 October 2012, by section 221(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 139(6): inserted, on 1 October 2012, by section 221(1) of the Search and Surveillance Act 2012 (2012 No 24).

**140 Searching of craft**

- (1) Any Customs officer may search—
- (a) a craft that has arrived in New Zealand from a point outside New Zealand; or
  - (b) a craft that is departing from New Zealand to a point outside New Zealand and at all times while the craft is travelling within New Zealand en route to a point outside New Zealand; or
  - (c) a craft (not being a craft to which paragraph (a) or paragraph (b) applies) that is carrying any domestic cargo or international cargo while the craft remains within New Zealand; or
  - (d) a craft (not being a craft to which paragraph (a) or paragraph (b) or paragraph (c) applies) that is within New Zealand and that a Customs officer has reasonable cause to suspect—
    - (i) is carrying any dutiable, uncustomed, prohibited, or forfeited goods; or
    - (ii) has been, is being, or is about to be, involved in the commission of an offence against this Act—for the purpose of performing any function or exercising any power that the officer may be required, authorised, or empowered to perform or exercise under this Act.
- (2) In the exercise of the power conferred by subsection (1)(a) to (c), any Customs officer may, using such force as in the circumstances is reasonable, enter every part of the craft and open any package, locker, or other place, and may examine all goods found on the craft.
- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3) apply in respect of the power conferred by subsection (1)(d).
- (4) Despite subsection (3), sections 125(4), 131(5)(f), and 133, and subparts 6 and 8 of Part 4 of the Search and Surveillance Act 2012 do not apply to any goods forfeited to the Crown under section 225 of this Act.

Compare: 1966 No 19 s 206; 1983 No 41 s 13

Section 140(1): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 140(1)(d): amended, on 1 October 1996, by section 4 of the Customs and Excise Amendment Act 1996 (1996 No 80).

Section 140(2): amended, on 1 October 2012, by section 221(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 140(2): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 140(3): inserted, on 1 October 2012, by section 221(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 140(4): inserted, on 1 October 2012, by section 221(3) of the Search and Surveillance Act 2012 (2012 No 24).

#### **141 Securing goods on craft**

For the purpose of performing any function or exercising any power that the Customs is required, authorised, or empowered to perform or exercise under this Act, a Customs officer may at any time while boarding or searching any craft under section 139(1)(a) to (c) or 140(1)(a) to (c),—

- (a) secure, by appropriate means, goods on board that craft;  
or
- (b) remove goods on board that craft to a secure place.

Compare: 1966 No 19 s 209(1)

Section 141: amended, on 1 October 2012, by section 221(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 141: amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### **142 Firing on ship**

The officer commanding or in charge of any craft in Her Majesty's service having hoisted and carrying or displaying the proper ensign or the Customs flag shall, at the request of the chief executive, within New Zealand, chase any ship where—

- (a) the ship does not immediately bring-to when signalled or required to do so; or
- (b) the master refuses to permit the ship to be boarded,—  
and may, as a last resort after having fired a warning, fire at or onto the ship to compel it to bring-to.

Compare: 1966 No 19 s 208

**143 Detention of craft**

(1AA) Subsection (1) applies to a Customs officer and a craft—

- (a) if the officer has reasonable cause to believe that an offence against this Act has been, is being, or is about to be committed on or in respect of the craft while it was or is within New Zealand; or
- (b) if the craft is within New Zealand, and the officer has reasonable cause to believe that—
  - (i) there is on the craft a person who was carried into New Zealand on it; and
  - (ii) the carriage of the person into New Zealand on the craft constituted an offence against section 98C(1) of the Crimes Act 1961.

(1) If subsection (1AA) applies to a Customs officer and a craft, the Customs officer—

- (a) may—
  - (i) direct the craft to proceed to the nearest Customs place, or any other place the officer considers appropriate; or
  - (ii) direct that the craft remain where it is; and
- (b) in either case, may detain the craft for any time and for any purposes reasonably necessary to carry out an investigation into the commission of the offence concerned.

(2) If the person in charge of a craft attempts or threatens to cause the craft to depart from a place to which the craft has been directed to proceed or in which the craft has been directed to remain pursuant to subsection (1) without a certificate of clearance, a Customs officer may (in addition to any power of seizure under Part 14 for any offence so committed) seize and detain the craft until a certificate of clearance has been obtained, and, in any such case, section 215 applies in the same manner as if the craft had been seized under Part 14.

Compare: 1966 No 19 ss 72(3), 289

Section 143(1AA): inserted, on 18 June 2002, by section 8(1) of the Crimes Amendment Act 2002 (2002 No 20).

Section 143(1): substituted, on 18 June 2002, by section 8(1) of the Crimes Amendment Act 2002 (2002 No 20).

#### **144 Searching vehicles**

- (1) A Customs officer who has reasonable cause to suspect that—
  - (a) there are in or on any vehicle that is within a Customs place any dutiable, uncustomed, prohibited, or forfeited goods; or
  - (b) there is evidence relating to any such goods; or
  - (c) there is evidence relating to any offence against this Act,—may stop the vehicle and search it and may detain the vehicle for such period as may be reasonably necessary for that purpose.
- (2) A Customs officer or constable who has reasonable grounds to believe that—
  - (a) there are in, or on, any vehicle (not being a vehicle to which subsection (1) applies) any goods that have been unlawfully imported or are in the process of being unlawfully exported; or
  - (b) there is evidence relating to the unlawful importation of any goods or an attempt to unlawfully export any goods,—may stop the vehicle and search it and may detain the vehicle for such period as may be reasonably necessary for that purpose.
- (3) A Customs officer who has reasonable cause to suspect that there are in or on a vehicle goods subject to the control of the Customs because they are goods to be exported and that have been brought to a CASE—
  - (a) may stop the vehicle and search it; and
  - (b) may detain the vehicle for such period as may be reasonably necessary for that purpose and for exercising powers under section 151 in relation to any goods of that kind.
- (4) A Customs officer who has reasonable cause to suspect that there are in or on a vehicle goods subject to the control of the Customs and in a Customs-approved secure package or in a package in relation to which a Customs seal has been used—
  - (a) may stop the vehicle and search it; and
  - (b) may detain the vehicle for such period as may be reasonably necessary for that purpose and for exercising

powers under section 151 in relation to any goods of that kind.

- (5) Powers given by any other subsection of this section apply even if the vehicle need not be stopped because it is not moving, and whether or not it is attended, and include the power to use reasonable force, if necessary, to stop, detain, enter in or on, and search the vehicle (or for any of those purposes) as authorised by that other subsection.
- (6) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subparts 2 and 3) apply in respect of a search undertaken under this section.
- (7) Despite subsection (5), sections 125(4), 131(5)(f), and 133, and subparts 6 and 8 of Part 4 of the Search and Surveillance Act 2012 do not apply to any goods forfeited to the Crown under section 225 of this Act.

Compare: 1966 No 19 s 215

Section 144(1)(a): amended, on 2 July 2004, by section 24(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 144(2): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 144(2)(a): amended, on 2 July 2004, by section 24(2) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 144(3): added, on 2 July 2004, by section 24(3) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 144(4): added, on 2 July 2004, by section 24(3) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 144(4): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 144(5): added, on 8 December 2009, by section 18 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 144(6): inserted, on 1 October 2012, by section 222 of the Search and Surveillance Act 2012 (2012 No 24).

Section 144(7): inserted, on 1 October 2012, by section 222 of the Search and Surveillance Act 2012 (2012 No 24).

## **145 Questioning persons about goods and debt**

- (1) This section applies to—
  - (a) any person who—
    - (i) has within the preceding 72 hours arrived in New Zealand; or
    - (ii) is departing from New Zealand; or



- (b) any person, not being a person to whom paragraph (a) applies, who is within a Customs controlled area licensed for—
    - (i) the temporary holding of imported goods for the purposes of the examination of those goods under section 151 (including the holding of the goods while they are awaiting examination); or
    - (ii) the disembarkation, embarkation, or processing of persons arriving in or departing from New Zealand; or
    - (iii) the processing of craft arriving in or departing from New Zealand or the loading or unloading of goods onto or from such craft; or
  - (c) any person, not being a person to whom paragraph (a) applies, who is on board or is in the process of embarking onto or disembarking from a craft that has arrived from, or is departing to, a point outside New Zealand, while the craft is within New Zealand.
- (2) A Customs officer may question a person to whom this section applies as to any 1 or more of the following matters:
- (a) whether or not that person has or has had in that person's possession any dutiable, prohibited, uncustomed, or forfeited goods:
  - (b) the nature, origin, value, ownership, or intended destination of any goods of that kind:
  - (c) whether, under this Act, any debt (for example, in respect of any duty, duty refunded in error, recovery of the drawback of any duty, or penalty) is due to the Crown and payable by the person, or by a company, trust, partnership, or other enterprise of which that person is or was a director, manager, secretary, officer, or agent:
  - (d) the nature and extent of the debt (if any) of that kind.

Compare: 1966 No 19 s 212(1), (1A); 1994 No 100 s 7

Section 145 heading: amended, on 2 July 2004, by section 25 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 145(2): substituted, on 9 October 2002, by section 10 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

**145A Questioning persons about identity, address, travel movements and entitlement, and other matters**

- (1) This section and sections 147A and 148A apply to the following persons:
  - (a) a person who—
    - (i) has, or is suspected of having, disembarked from a craft that has arrived in New Zealand; and
    - (ii) has not, or is suspected of having not, reported to a Customs officer or a Police station on his or her arrival, contrary to section 27:
  - (b) a person who is, or is suspected of, attempting to depart from New Zealand from a place other than from a Customs place, contrary to section 30.
- (2) This section and sections 147A and 148A do not apply,—
  - (a) in the case of a person referred to in subsection (1)(a), to a person whose actions are authorised by another section of this Act; and
  - (b) in the case of a person referred to in subsection (1)(b), to a person who is complying with an exemption prescribed by regulations made under this Act or whose actions are authorised by the Customs.
- (3) A Customs officer may question a person to whom this section applies as to any 1 or more of the following matters:
  - (a) the person's identity:
  - (b) the person's residential address:
  - (c) the person's travel movements:
  - (d) the person's entitlement to travel:
  - (e) any of the matters specified in section 145(2):
  - (f) the craft—
    - (i) from which the person disembarked or is suspected of disembarking; or
    - (ii) on which the person attempted to depart, or is suspected of attempting to depart, from New Zealand:
  - (g) any other person who is, or was, involved in the person's arrival, suspected arrival, departure, attempted departure, or suspected departure, whether or not the other person was on the craft—

- (i) from which the person disembarked or is suspected of disembarking; or
  - (ii) on which the person attempted to depart, or is suspected of attempting to depart, from New Zealand.
- (4) A question under subsection (3)(f) may, but need not, relate to the craft's voyage and any persons or goods carried by the craft.
- (5) Section 185(3) does not apply in respect of a question asked under this section (and so it is a reasonable excuse for the purposes of section 185(1)(a) if a person fails or refuses to answer the question on the basis that the person's answer would incriminate or tend to incriminate the person).

Section 145A: inserted, on 2 July 2004, by section 26 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**146 Questioning employees of airlines, shipping companies, owners or operators of certain vehicles, etc**

- (1) A Customs officer may question any or all of the following about any international cargo or domestic cargo:
  - (a) a person who, as an employee of an airline or shipping company, manages or carries out the receipt, handling, custody, or dispatch of international cargo or domestic cargo by that airline or shipping company:
  - (b) a person employed by the licensee of a Customs controlled area licensed for—
    - (i) the temporary holding of imported goods for the purposes of the examination of those goods under section 151 (including the holding of the goods while they are awaiting examination); or
    - (ii) the processing of craft arriving in or departing from New Zealand or the loading or unloading of goods onto or from such craft:
  - (c) a person (not being a person described in paragraph (a) or (b)) who is in a Customs controlled area licensed for a purpose described in paragraph (b)(i) or (ii).
- (2) A Customs officer may question any or all of the following about any cargo destined to be exported from New Zealand:

- (a) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, or has within the previous 72 hours had in or on it, goods subject to the control of the Customs and in a Customs-approved secure package or in a package in relation to which a Customs seal has been used:
  - (b) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of the Customs and in a Customs-approved secure package or in a package in relation to which a Customs seal has been used:
  - (c) a person employed by a person described in paragraph (a) or paragraph (b).
- (3) A question under subsection (2) about cargo destined to be exported from New Zealand may relate to any or all of the following:
- (a) whether, and if so how, goods that are or were some or all of the cargo are or were packed in a package in relation to which a Customs seal was used or in a Customs-approved secure package in relation to which a seal, marking, substance, or device of the kind referred to in section 53E(1)(b) was used:
  - (b) the transportation or storage of packages of the kind referred to in paragraph (a) at any time before they are or were exported:
  - (c) tampering or interference with a package of the kind referred to in paragraph (a) or with a seal, marking, substance, or device of the kind referred to in that paragraph.
- (4) Subsection (3) does not limit subsection (2).
- (5) Section 185(3) does not apply in respect of a question asked under this section (and so it is a reasonable excuse for the purposes of section 185(1)(a) if a person fails or refuses to answer the question on the basis that the person's answer would incriminate or tend to incriminate the person).
- (6) Nothing in this section limits sections 145 and 145A.

Section 146: substituted, on 2 July 2004, by section 27 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 146(2)(a): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 146(2)(b): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 146(3)(a): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 146(3)(c): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### **147 Evidence of identity and entitlement to travel**

- (1) This section applies to a person who is—
  - (a) an internationally ticketed passenger using air or sea travel for a domestic sector; or
  - (b) a domestic passenger using air or sea travel for a domestic sector; or
  - (c) within a Customs controlled area licensed for the disembarkation, embarkation, or processing of persons arriving in or departing from New Zealand.
- (2) A person to whom this section applies shall, on demand by a Customs officer,—
  - (a) state that person's full name and residential address; and
  - (b) if required, produce for inspection such prescribed document as the officer may specify; or
  - (c) if the person is unable to produce the prescribed document specified, complete a declaration in the prescribed form.
- (3) A demand under paragraph (b) or (c) of subsection (2) may be made of a person only for the purpose of enabling the Customs officer to establish that person's identity or that person's travel movements or that person's entitlement to air or sea travel for a domestic sector, or all of those.
- (4) A document produced by a person to a Customs officer under subsection (2)(b) shall be either—
  - (a) inspected immediately and returned to the person as soon as the inspection has concluded; or
  - (b) retained by the Customs officer for as long as is necessary to ascertain whether or not the chief executive

wishes to exercise his or her power under section 164 to retain the document.

- (5) This section is subject to section 175B.

Compare: 1966 No 19 s 218B; 1994 No 100 s 9

Section 147(5): added, on 6 March 2007, by section 26 of the Customs and Excise Amendment Act 2007 (2007 No 9).

#### **147A Evidence of answers to questions under section 145A**

- (1) A person to whom this section applies in accordance with section 145A must, on demand by a Customs officer, produce documents that—

- (a) are in the person's possession or control; and
- (b) relate to the matters the person has been questioned about under section 145A.

- (2) When a person produces a document in response to a demand under subsection (1), a Customs officer may do any of the following things:

- (a) inspect the document immediately and return it to the person when the officer has finished inspecting it;
- (b) inspect the document and retain it for the length of the person's detention under section 148A;
- (c) inspect the document and retain it for as long as necessary to ascertain whether or not the chief executive wishes to exercise his or her power under section 164 to retain the document;
- (d) inspect the document and remove it for the purpose of making a copy under section 165;
- (e) inspect the document and retain it under section 166.

- (3) This section is subject to section 175B.

Section 147A: inserted, on 2 July 2004, by section 28 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 147A(3): added, on 6 March 2007, by section 27 of the Customs and Excise Amendment Act 2007 (2007 No 9).

#### **148 Detention of persons questioned about goods or debt**

- (1) Where a Customs officer—

- (a) is not satisfied that the answer to a question put to the person under section 145 is correct; or

- (b) has not been given an answer to a question put to the person under that section; or
  - (c) is not satisfied as to a reason or explanation given by the person in respect of goods that are or have been, or that the officer suspects are or have been, in that person's possession or under that person's control,—  
and the officer has reasonable cause to suspect that an offence has been, is being, or is about to be, committed against this Act by that person or any other person associated with that person, the officer may detain that person.
- (2) A Customs officer may detain a person under subsection (1) only for either or both of the following purposes:
- (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.
- (3) A person must not be detained under this section for a period exceeding 4 hours.

Section 148 heading: amended, on 2 July 2004, by section 29 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 148(2): substituted, on 6 March 2007, by section 28 of the Customs and Excise Amendment Act 2007 (2007 No 9).

#### **148A Detention of person questioned under section 145A**

- (1) A Customs officer may detain a person to whom this section applies in accordance with section 145A for 1 or more of the following purposes:
- (a) to question him or her under section 145A:
  - (b) to enable the officer to make the inquiries that are necessary to establish whether an answer to a question asked under section 145A is correct:
  - (c) to obtain the attendance of, or make inquiries of, another Customs officer or an officer entitled to exercise a power to question, detain, or arrest a person under this Act or the Crimes Act 1961 following the questioning of a person under section 145A.

- (2) A Customs officer may detain a person under subsection (1) for up to 12 hours.
- (3) The questioning of a person under section 145A must take place as soon as practicable after the person is detained under subsection (1).
- (4) A Customs officer must release a person detained under subsection (1) immediately after the person answers the questions asked under section 145A if the officer—
  - (a) is satisfied that the person has correctly answered the questions; and
  - (b) has no reasonable cause to suspect that the person questioned under that section has—
    - (i) committed an offence under section 180(1) by not complying with section 27 or section 30; or
    - (ii) committed an offence under section 98C(1) of the Crimes Act 1961.
- (5) A Customs officer may continue to detain a person under subsection (1) after the person is questioned under section 145A if the Customs officer—
  - (a) is not satisfied that the person has correctly answered a question asked under section 145A; or
  - (b) is not satisfied that the person has given an answer to a question asked under section 145A; or
  - (c) has reasonable cause to suspect that the person questioned under that section has—
    - (i) committed an offence under section 180(1) by not complying with section 27 or section 30; or
    - (ii) committed an offence under section 98C(1) of the Crimes Act 1961.
- (6) Despite subsection (2), a person may be detained for a further reasonable period if, and only if, accident, stress of weather, or some other difficulty of transport or special circumstance makes it impossible for a Customs officer to do what is specified in subsection (1) within the 12-hour period specified in subsection (2).
- (7) Reasonable force may be used, if it is necessary, to detain a person under subsection (1).
- (8) In this section, unless the context otherwise requires,—



**detain**, in relation to a person, includes to move the person to a Customs place or Police station where the person may be, or may continue to be, questioned

**further reasonable period** means a period no longer than is necessary in the circumstances for a Customs officer to do what is specified in subsection (1).

Section 148A: inserted, on 2 July 2004, by section 30 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**148B Detention of persons committing or about to commit certain offences**

- (1) A Customs officer and, in the case of paragraph (b), a constable may detain a person who, the Customs officer or, if applicable, the constable believes on reasonable grounds is committing, or is about to commit, an offence under section 180 or 191(1)(e) by,—
- (a) if a craft has arrived at a nominated Customs place or a Customs controlled area within that place under section 24, leaving or boarding the craft without the authority of a Customs officer before an inward report is made under section 26 (in contravention of section 24(2)); or
  - (b) if the person has arrived in New Zealand, not reporting forthwith to a Customs officer or a Police station (in contravention of section 27(1)); or
  - (c) if the person has arrived in New Zealand and reported to a Customs officer or a Police station under section 27(1), leaving the Customs officer or Police station to which he or she reported, despite a Customs officer or, if applicable, a constable requiring the person to remain for a reasonable time in order that the Customs officer or, if applicable, the constable might exercise a power under this Act in relation to that person (in contravention of section 27(2)); or
  - (d) if the person is on board a craft that has arrived in New Zealand, not complying with any Customs direction concerning disembarkation (in contravention of section 28(1)); or
  - (e) having disembarked from a craft that has arrived in New Zealand, leaving a Customs controlled area when the

- Customs requires the person to remain there for such reasonable time as is required to enable a Customs officer to exercise a power under this Act in relation to that person (in contravention of section 28(3)); or
- (f) if the person is required to comply with a direction given under section 32B(3), failing to comply with that direction.
- (2) A Customs officer or, if applicable, a constable may only detain a person under subsection (1) for the purpose of ensuring the person's compliance with 1 or more of the provisions referred to in subsection (1).
- (3) *[Repealed]*
- (4) A Customs officer or, if applicable, a constable must release a person detained under subsection (1) immediately after the person has complied with the requirements of the provision in relation to which he or she was detained and any other applicable provision referred to in subsection (1).
- (5) Reasonable force may be used, if necessary, to detain a person under subsection (1).
- (6) A person must not be detained under subsection (1) if a Customs officer or, if applicable, a constable believes on reasonable grounds that a person has already committed an offence under section 180 by contravening a provision referred to in subsection (1).
- (7) 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
- (b) being arrested under section 174.
- (8) In this section, unless the context otherwise requires, **detention** includes the delivery of a person to a Police station or the custody of a constable.

Section 148B: inserted, on 2 July 2004, by section 30 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 148B(1): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 148B(1): amended, on 17 September 2008, by section 10 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 148B(1)(c): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 148B(1)(c): amended, on 1 October 2008, pursuant to section 116(a)(i) of the Policing Act 2008 (2008 No 72).

Section 148B(1)(e): amended, on 6 March 2007, by section 29(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 148B(1)(f): added, on 6 March 2007, by section 29(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 148B(2): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 148B(3): repealed, on 6 March 2007, by section 29(2) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 148B(4): substituted, on 6 March 2007, by section 29(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 148B(4): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 148B(6): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 148B(8): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **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.
- (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—
  - (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.
- (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:
  - (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
  - (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.
- (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
  - (b) being arrested under section 174.
- (7) In this section,—

**another officer** means—

- (a) a constable; or
- (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 constable.

Section 148C: inserted, on 6 March 2007, by section 12 of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 148C(7) **another officer** paragraph (a): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 148C(7) **detention**: amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### **149 Persons to whom sections 149A, 149B(1), and 149BA apply**

Sections 149A, 149B(1), and 149BA apply to—

- (a) a person on board a craft that has arrived in, or is departing from, New Zealand; or

- (b) a person in the process of disembarking from, or embarking on to, a craft described in paragraph (a); or
- (c) a person who, having entered into New Zealand at a Customs place, remains in that Customs place.

Section 149: substituted, on 9 October 2002, by section 11 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 149 heading: amended, on 2 July 2004, by section 31(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 149: amended, on 2 July 2004, by section 31(2) of the Customs and Excise Amendment Act 2004 (2004 No 55).

#### **149AA Powers in relation to unauthorised persons remaining in certain Customs controlled areas**

- (1) This section applies to a person who remains in a Customs controlled area licensed for any of the purposes described in section 10(c) to (e) when directed to leave that area by a Customs officer.
- (2) A Customs officer may detain a person to whom this section applies for a reasonable period, for the purpose of questioning the person about 1 or more of the following matters:
  - (a) the person's identity;
  - (b) the person's residential address;
  - (c) the person's reason or purpose for entering, or remaining in, the Customs controlled area.
- (3) A Customs officer may remove a person to whom this section applies from the Customs controlled area.
- (4) A Customs officer may use reasonable force, if necessary, when exercising any of the powers conferred by subsections (2) and (3).

Section 149AA: inserted, on 6 April 2012, by section 18 of the Customs and Excise Amendment Act 2012 (2012 No 25).

#### **149A Preliminary search of persons by use of aids**

- (1) A Customs officer or constable may conduct a preliminary search of a person to whom this section applies, and may detain that person for the purposes of conducting that preliminary search.
- (2) A **preliminary search** is a search that—

- (a) involves little or no physical contact between the person conducting the search and the person being searched; and
  - (b) is conducted by using an aid or aids such as a Customs dog, or a chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device, or other similar aid, but not by any more invasive means.
- (3) If, after a preliminary search under subsection (1), a Customs officer or constable has reasonable cause to suspect that a person has hidden on or about his or her person any thing described in section 149B(1)(a), (b), or (c), sections 149B to 149C apply.

Section 149A: inserted, on 9 October 2002, by section 11 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 149A(1): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149A(2)(b): amended, on 6 April 2012, by section 19 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 149A(2)(b): amended, on 2 July 2004, by section 34(2) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 149A(3): amended, on 1 October 2012, by section 223(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 149A(3): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **149B Searching of persons if reasonable cause to suspect items hidden**

- (1) A Customs officer or a constable may cause to be detained and searched a person to whom this subsection applies if the officer or constable has reasonable cause to suspect that the person has hidden on or about his or her person—
- (a) any dutiable, uncustomed, prohibited, or forfeited goods; or
  - (b) evidence relating to any such goods; or
  - (c) any thing that is or might be evidence of the contravention or possible contravention of this Act.
- (2) A Customs officer or a constable may also cause a person to be detained and searched if the officer or constable has reasonable cause to believe that the person—

- (a) either—
    - (i) has, within the preceding 24 hours, arrived in New Zealand at a place other than a Customs place; or
    - (ii) is about to depart from New Zealand from any place other than a Customs place; and
  - (b) has hidden on or about his or her person any thing described in subsection (1)(a), (b), or (c).
- (3) A Customs officer or constable may also cause a person to be detained and searched if the officer or constable has reasonable cause to believe that the person—
- (a) is not a person described in subsection (2) or section 149; and
  - (b) is in a Customs place; and
  - (c) has hidden on or about his or her person any thing described in subsection (1)(a), (b), or (c).
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*
- (7) A search of a person may be conducted under this section whether or not that person has earlier been the subject of a preliminary search under section 149A.
- (8) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3) apply in respect of the powers conferred by this section.
- (9) Despite subsection (8), sections 125(4), 131(5)(f), and 133, and subparts 6 and 8 of Part 4 of the Search and Surveillance Act 2012 do not apply to any goods forfeited to the Crown under section 225 of this Act.

Section 149B: inserted, on 9 October 2002, by section 11 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 149B(1): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149B(2): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149B(3): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149B(4): repealed, on 1 October 2012, by section 223(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 149B(5): repealed, on 1 October 2012, by section 223(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 149B(6): repealed, on 1 October 2012, by section 223(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 149B(8): inserted, on 1 October 2012, by section 223(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 149B(9): inserted, on 1 October 2012, by section 223(3) of the Search and Surveillance Act 2012 (2012 No 24).

### **149BA Searching of persons for dangerous items**

- (1) A Customs officer or constable may immediately detain and search a person to whom this section applies if, and only if, the Customs officer or constable has reasonable grounds to suspect that—
  - (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 constable, or any other person; and
  - (c) there is a need to act immediately in order to address that threat; and
  - (d) a search under section 149A or section 149B(1) would expose the Customs officer or constable, or any other person, to greater risk from the threat.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (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 149A or section 149B(1).
- (5) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3) apply in respect of the powers conferred by this section.
- (6) Despite subsection (5), sections 125(4), 131(5)(f), and 133, and subparts 6 and 8 of Part 4 of the Search and Surveillance Act 2012 do not apply to any goods forfeited to the Crown under section 225 of this Act.

Section 149BA: inserted, on 2 July 2004, by section 32 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 149BA(1): amended, on 1 October 2012, by section 223(4) of the Search and Surveillance Act 2012 (2012 No 24).



Section 149BA(1): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149BA(1)(b): amended, on 8 December 2009, pursuant to section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149BA(1)(d): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149BA(2): repealed, on 6 March 2007, by section 30(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 149BA(3): repealed, on 1 October 2012, by section 223(5) of the Search and Surveillance Act 2012 (2012 No 24).

Section 149BA(5): replaced, on 1 October 2012, by section 223(6) of the Search and Surveillance Act 2012 (2012 No 24).

Section 149BA(6): inserted, on 1 October 2012, by section 223(6) of the Search and Surveillance Act 2012 (2012 No 24).

#### **149C Seizure of items found**

- (1) A Customs officer or constable may seize any thing found on or about a person when carrying out a search under section 149B(1), (2), or (3) that the Customs officer or constable has reasonable cause to suspect is—
  - (a) a thing described in section 149B(1)(a), (b), or (c); or
  - (b) a dangerous item.
- (1A) A Customs officer or constable may seize any thing found on or about a person when carrying out a search under section 149BA that the Customs officer or constable has reasonable cause to suspect is—
  - (a) a dangerous item; or
  - (b) a thing described in section 149B(1)(a), (b), or (c).
- (2) The provisions of subparts 1, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply in respect of the powers conferred by this section.
- (3) Despite subsection (2), sections 125(4), 131(5)(f), and 133, and subpart 6 of Part 4 of the Search and Surveillance Act 2012 do not apply to any goods forfeited to the Crown under section 225 of this Act.

Section 149C: inserted, on 9 October 2002, by section 11 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 149C(1): substituted, on 2 July 2004, by section 33 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 149C(1): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149C(1A): inserted, on 2 July 2004, by section 33 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 149C(1A): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 149C(2): replaced, on 1 October 2012, by section 223(7) of the Search and Surveillance Act 2012 (2012 No 24).

Section 149C(3): inserted, on 1 October 2012, by section 223(7) of the Search and Surveillance Act 2012 (2012 No 24).

### **149D Rights of persons detained under section 149B**

*[Repealed]*

Section 149D: repealed, on 1 October 2012, by section 223(8) of the Search and Surveillance Act 2012 (2012 No 24).

### **150 Access of Customs officers to Customs controlled area**

Subject to section 173, the Customs may, at any time of the day or night, enter any part of a Customs controlled area and examine goods in that area, and may, for that purpose, enter any other area that it is necessary to pass through.

Compare: 1966 No 19 s 94; 1986 No 44 s 11

### **151 Examination of goods subject to control of Customs**

- (1) A Customs officer may examine, weigh, analyse, or test, or cause to be examined, weighed, analysed, or tested goods subject to the control of the Customs or goods that the officer has reasonable cause to suspect are subject to the control of the Customs, and may, for that purpose, open or cause to be opened any packages in which the goods are contained or suspected to be contained.
- (2) All reasonable expenses incurred by the Customs under subsection (1), are a debt due to the Crown by the importer or exporter or the owner of the goods, as the case may be, and are recoverable in the same manner as duty under this Act.
- (3) The powers conferred by subsection (1) extend to the examination, weighing, analysing, or testing of a suitcase, pallet, bulk cargo container, or other package.
- (4) The examination—
  - (a) may include the physical or chemical testing of, or the drilling into, or the dismantling of, the goods; and

- (b) may be facilitated by any means whatever (for example, by a Customs dog, a chemical substance, x-ray or imaging equipment, or some other mechanical, electrical, or electronic device).
- (5) Samples of goods subject to the control of the Customs or suspected to be subject to the control of the Customs may be taken and used by the Customs for the purposes of this section, and disposed of in the prescribed manner.
- (6) Any sample taken in accordance with subsection (5) must be as small as possible for the purpose for which it is taken.
- (7) A Customs officer must, subject to section 173, be allowed free access to all lands, buildings, and places, and to all goods in or on any lands, buildings, or places, for the purpose of exercising powers under this section in respect of goods that are, or are suspected to be,—
  - (a) subject to the control of the Customs; and
  - (b) in a Customs-approved secure package or in a package in relation to which a Customs seal has been used.
- (8) Despite subsection (7), a Customs officer must not enter a private dwelling except with the consent of an occupier or owner of that dwelling or pursuant to a warrant issued under this Act.

Compare: 1966 No 19 ss 203, 221, 222

Section 151(4): substituted, on 2 July 2004, by section 34(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 151(4)(b): amended, on 6 April 2012, by section 20 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 151(6): added, on 27 September 2001, by section 9 of the Customs and Excise Amendment Act 2001 (2001 No 61).

Section 151(7): added, on 2 July 2004, by section 34(4) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 151(7)(b): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 151(8): added, on 2 July 2004, by section 34(4) of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **152 Examination of goods no longer subject to control of Customs**

- (1) This section applies to goods that have ceased to be subject to the control of the Customs but that the chief executive has reasonable grounds to suspect are—

- (a) goods in respect of which an offence against this Act has been committed; or
  - (b) goods that are forfeited to the Crown under section 225.
- (2) The chief executive may require a person who has, or who the chief executive believes has, possession or control of the goods to produce them for inspection by a Customs officer.
- (3) A Customs officer may exercise in respect of the goods all the powers given by section 151.
- (3A) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3) apply in respect of the powers conferred by this section.
- (3B) Despite subsection (3A), sections 125(4), 131(5)(f), and 133, and subparts 6 and 8 of Part 4 of the Search and Surveillance Act 2012 do not apply to any goods forfeited to the Crown under section 225 of this Act.
- (4) A Customs officer may take and retain possession of goods produced under subsection (2) for the purposes of exercising the powers given by subsection (3), and may retain possession of the goods until the completion of the investigation into the grounds for suspecting that the goods—
- (a) are goods in respect of which an offence against this Act has been committed; or
  - (b) are goods that are forfeited to the Crown under section 225.

Compare: 1966 No 19 s 204(1), (2)

Section 152: substituted, on 9 October 2002, by section 12 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 152(3A): inserted, on 1 October 2012, by section 224 of the Search and Surveillance Act 2012 (2012 No 24).

Section 152(3B): inserted, on 1 October 2012, by section 224 of the Search and Surveillance Act 2012 (2012 No 24).

### **153 Accounting for goods**

The chief executive may, from time to time by notice in writing, require the licensee of a Customs controlled area to—

- (a) account forthwith for goods that the chief executive believes have been entered into that Customs controlled area; and

- (b) produce any documents relating to the movement of goods into or out of that Customs controlled area.

**154 Production of goods**

A Customs officer may require the licensee of a Customs controlled area to produce to that officer goods that are shown in any record as being within that area.

**155 Verification of entries**

- (1) The chief executive may require from a person making entry of goods proof by declaration or the production of documents (in addition to any declaration or documents otherwise required by this Act or by regulations made under this Act) of the correctness of the entry, and may refuse to deliver the goods or to pass the entry before such proof is provided.
- (2) This section extends and applies to entries made pursuant to section 70.
- (3) Where the chief executive is not satisfied with the correctness of any entry in relation to any goods, or with any other aspect of the importation or exportation of those goods, as the case may be, he or she may detain the goods for a period that is reasonably necessary to enable the goods to be examined and, if necessary, to cause an investigation to be made, whether in New Zealand or elsewhere, into the importation or exportation, as the case may be, of those goods.

Compare: 1966 No 19 s 20(1), (2); 1985 No 145 s 4

**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.
- (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.
- (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.

Section 155A: inserted, on 6 March 2007, by section 13 of the Customs and Excise Amendment Act 2007 (2007 No 9).

### **156 Securities for payment of duty**

(1) The chief executive may require and take securities of such kinds as may be prescribed for payment of duty.

(2) The chief executive may, pending the giving of the required security, refuse to pass an entry or to do any other act in relation to any matter in respect of which the security is required.

(3) A security may be required in relation to a particular transaction, or in relation to transactions generally or to a class of transactions, and for such period and amount, and on such conditions as to penalty or otherwise, as the chief executive may direct.

(4) The security shall be in such form as the chief executive approves.

(4A) If the chief executive is satisfied that the obligations for which any security given in accordance with this section have been fulfilled, the person who gave the security must be released from the conditions of the security as soon as possible.

(4B) Subsection (4A) is subject to section 92 and section 116.

(5) A person 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.

Compare: 1966 No 19 s 229(1)–(3), (5); 1986 No 44 s 23

Section 156(4A): inserted, on 27 September 2001, by section 10 of the Customs and Excise Amendment Act 2001 (2001 No 61).

Section 156(4B): inserted, on 27 September 2001, by section 10 of the Customs and Excise Amendment Act 2001 (2001 No 61).

**157 New securities may be required**

- (1) If at any time the chief executive is dissatisfied with the sufficiency of any security, he or she may require a new security in place of or in addition to the existing security.
- (2) If the new security is not given, the chief executive may refuse to pass an entry or to do any other act in relation to any matter in respect of which the new security is required.
- (3) A person 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.

Compare: 1966 No 19 s 230; 1986 No 44 s 24

**158 Written authority of agents**

A Customs officer may require a person acting or holding himself or herself out as the agent of another person in any matter relating to this Act to produce a written authority from his or her principal, and if such an authority is not produced the officer may refuse to recognise the agency.

Compare: 1966 No 19 s 233

**159 Audit or examination of records**

- (1) A Customs officer may at all reasonable times enter any premises or place where records are kept pursuant to section 95 and audit or examine those records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored.
- (2) For the purposes of subsection (1), a Customs officer shall, subject to section 173, have full and free access to all lands, buildings, and places and to all books, records, and documents, whether in the custody or under the control of the licensee, importer, or exporter, or any other person, for the purpose of inspecting any books, records, and documents and any property, process, or matter that the officer considers—
  - (a) necessary or relevant for the purpose of collecting any duty under this Act or for the purpose of carrying out any other function lawfully conferred on the officer; or

- (b) likely to provide any information otherwise required for the purposes of this Act or any of those functions.
- (3) The Customs officer may, without fee or reward, make extracts from or copies of any such books or documents.
- (4) Notwithstanding subsection (2) and subsection (3), a Customs officer shall not enter any private dwelling except with the consent of an occupier or owner thereof or pursuant to a warrant issued under this Act.

Compare: 1966 No 19 s 215B; 1990 No 89 s 8

#### **160 Requisition to produce documents**

- (1) Where—
  - (a) a Customs officer has reasonable cause to suspect that goods have been unlawfully imported, exported, manufactured, undervalued, entered, removed, or otherwise unlawfully dealt with by any person contrary to this Act or that any person intends to so import, export, manufacture, undervalue, enter, remove, or otherwise deal with any goods; or
  - (b) goods have been seized under this Act,—

the chief executive may, by notice in writing, require that person or any person whom the officer suspects to be or to have been the owner or importer or exporter or manufacturer of those goods, or agent thereof, as the case may be, as and when required, to produce and deliver to that officer or any other specified Customs officer all books of account, invoice-books, or other books, records, or documents in which any entry or memorandum appears or may be supposed to appear in respect of the purchase, importation, exportation, manufacture, cost, or value of, or payment for, the goods and any other goods so imported or exported or manufactured or otherwise dealt with within a period of 7 years preceding the date of the notice.
- (2) In addition to the requirements of subsection (1), the chief executive may require the owner or importer or exporter or manufacturer of those goods, or agent thereof, as the case may be, as and when required, to—
  - (a) produce for the inspection of the officer or any specified Customs officer, and allow the officer to make copies



of or extracts from, any of the documents, books, or records referred to in that subsection; and

- (b) answer any question concerning those documents, books, or records.

Compare: 1966 No 19 s 218(1)

### **161 Further powers in relation to documents**

- (1) The chief executive may, by notice in writing, require a person, as and when specified in the notice,—
- (a) to produce for inspection by a specified Customs officer documents or records that the chief executive considers necessary or relevant to—
- (i) an investigation under this Act; or
- (ii) an audit under this Act; or
- (iii) the recovery of a debt due and payable to the Crown under this Act:
- (b) to allow the specified Customs officer to take extracts from, or make copies of, documents or records of the kind referred to in paragraph (a):
- (c) to appear before a specified Customs officer and answer all questions put to the person concerning—
- (i) goods, or transactions relating to those goods, that are the subject of the investigation or audit, or that are relevant to the recovery of the debt, referred to in paragraph (a); or
- (ii) documents or records of the kind referred to in paragraph (a).
- (2) In this section, **person** includes an officer employed in, or in connection with, a government department, corporation, or local authority or, despite section 75 of the Evidence Act 2006, an officer employed in, or in connection with, a bank.

Compare: 1966 No 19 s 218(2)

Section 161: substituted, on 9 October 2002, by section 13 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 161(2): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

**162 Privilege in respect of confidential communications between legal practitioners and between legal practitioners and their clients**

- (1) Subject to subsection (2), any information or document is, for the purposes of sections 160 and 161, privileged from disclosure if—
  - (a) it is a confidential communication, whether oral or written, passing between—
    - (i) a legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or
    - (ii) a legal practitioner in his or her professional capacity and his or her client,—  
whether made directly or indirectly through an agent of either; and
  - (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
  - (c) it is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.
- (2) Where the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it shall not be privileged from disclosure if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner within the meaning of section 6 of the Lawyers and Conveyancers Act 2006.
- (3) Except as provided in subsection (1), no information or document shall, for the purposes of sections 160 and 161, be privileged from disclosure on the ground that it is a communication passing between one legal practitioner and another legal practitioner or between a legal practitioner and his or her client.
- (4) Where a person refuses to disclose any information or document on the ground that it is privileged under this section, a Customs officer or that person may apply to a District Court Judge for an order determining whether or not the claim of privilege is valid; and, for the purposes of determining any

such application, the District Court Judge may request the information or document to be produced to him or her.

- (5) For the purposes of this section, the term **legal practitioner** means a barrister or solicitor of the High Court, and references to a legal practitioner include a firm or an incorporated law firm (within the meaning of the Lawyers and Conveyancers Act 2006) in which he or she is, or is held out to be, a partner, director, or shareholder.

Compare: 1966 No 19 s 218A; 1985 No 145 s 15

Section 162(2): amended, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 162(5): substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

### **163 Documents in foreign language**

Where a document in a foreign language is presented to a Customs officer in relation to the carrying out of any duty or the exercise of any power of the Customs under this Act or any other Act, the officer may require the person who presented the document to supply to the officer an English translation of the document prepared by such person as the officer may approve and at the expense of the person who presented it.

Compare: 1966 No 19 s 219

### **164 Chief executive may take possession of and retain documents and records**

- (1) The chief executive may take possession of and retain any document or record presented in connection with any entry or required to be produced under this Act.
- (2) Where the chief executive takes possession of a document or record under subsection (1), the chief executive shall, at the request of the person otherwise entitled to the document or record, provide that person with a copy of the document certified by or on behalf of the chief executive under the seal of the Customs as a true copy.
- (3) Every copy so certified is admissible as evidence in all courts as if it were the original.

Compare: 1966 No 19 s 220(1)

**165 Copying of documents obtained during inspection**

- (1) Where a Customs officer carries out any lawful inspection, audit, or examination under this Act, and has reasonable cause to believe that documents coming into his or her possession during such inspection, audit, or examination are evidence of the commission of an offence against this Act, he or she may remove the documents for the purpose of making copies.
- (2) Subject to section 166, the documents must, as soon as practicable after copies of the documents have been taken, be returned to the person otherwise entitled to them.
- (3) A copy of any such document certified by or on behalf of the chief executive under the seal of the Customs is admissible in evidence in all courts as if it were the original.

Compare: 1966 No 19 s 220(2); 1983 No 41 s 17

Section 165 heading: amended, on 1 October 2012, by section 225(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 165(1): amended, on 1 October 2012, by section 225(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 165(1): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**166 Retention of documents and goods obtained during inspection**

- (1) Where a Customs officer carries out any lawful inspection, audit, or examination under this Act, and has reasonable cause to believe that any documents or goods coming into his or her possession during such inspection, audit, or examination are evidence of the commission of an offence against this Act, or are intended to be used for the purpose of committing any offence against this Act, the officer may, subject to subsection (4), take possession of and retain the documents or goods.
- (2) Where a Customs officer takes possession of a document under subsection (1), he or she shall, at the request of the person otherwise entitled to the document, provide that person with a copy of the document certified by or on behalf of the chief executive under the seal of the Customs as a true copy.
- (3) Every copy so certified is admissible in evidence in all courts as if it were the original.

- (4) Where a Customs officer takes possession of and retains documents or goods under this section, the following provisions shall apply:
- (a) in any proceedings for an offence relating to the documents or goods, the court may order, either at the hearing or on a subsequent application, that the documents or goods be delivered to the person appearing to the court to be entitled to them, or that they be otherwise disposed of in such manner and under such conditions as the court thinks fit;
  - (b) a Customs officer may at any time, unless an order has been made under paragraph (a), return the documents or goods to the person from whom they were taken or apply to a District Court Judge for an order as to their disposal; and on any such application the District Court Judge may make any order that a court may make under paragraph (a);
  - (c) if proceedings for an offence relating to the goods or documents are not brought within a period of 3 months after the date on which possession of the document or goods was taken, any person claiming to be entitled to the goods or documents may, after the expiration of that period, apply to a District Court Judge for an order that they be delivered to that person; and on any such application the District Court Judge may adjourn the application, on such terms as he or she thinks fit, for proceedings to be brought, or may make any order that a court may make under paragraph (a).
- (5) Where a person is convicted in proceedings for an offence relating to documents or goods to which this section applies, and an order is made under this section, the operation of the order shall be suspended,—
- (a) in any case until the expiration of the time prescribed by Part 6 of the Criminal Procedure Act 2011 for the filing of notice of appeal or of an application for leave to appeal; and
  - (b) where notice of appeal is filed within the time so prescribed, until the determination of the appeal; and

- (c) where application for leave to appeal is filed within the time so prescribed, until the application is determined and, where leave to appeal is granted, until the determination of the appeal.
- (6) Where the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may by order annul or vary the order made under this section; and that order, if annulled shall not take effect, and, if varied, shall take effect as so varied.
- (7) In this section the term **court** includes the High Court, and any reference to a District Court Judge includes a reference to a High Court Judge.

Compare: 1966 No 19 s 220; 1983 No 41 s 17

Section 166 heading: amended, on 1 October 2012, by section 225(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 166(1): amended, on 1 October 2012, by section 225(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 166(1): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 166(2): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 166(4): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 166(4)(b): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 166(5)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **166A Detention of goods suspected to be instrument of crime or tainted property**

A Customs officer may, without warrant, seize and detain goods if—

- (a) the goods are in New Zealand and he or she is satisfied that they either—
- (i) are being, or are intended to be, exported from New Zealand; or
  - (ii) are being, or have been, imported into New Zealand; and

- (b) the goods came to his or her attention, or into his or her possession, during a search, inspection, audit, or examination under—
  - (i) this Act; or
  - (ii) subpart 6 of Part 2 and sections 114 and 115 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
- (c) he or she has good cause to suspect that the goods are an instrument of crime or tainted property (as those terms are defined in section 5(1) of the Criminal Proceeds (Recovery) Act 2009).

Section 166A: inserted, on 2 July 2004, by section 35 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 166A heading: substituted, on 1 December 2009, by section 180(1) of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 166A: amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 166A(b)(ii): substituted, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Section 166A(c): substituted, on 1 December 2009, by section 180(2) of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

### **166B Return of cash necessary to satisfy essential human needs**

- (1) The power to detain goods under section 166A does not extend to, and the Customs must if practicable return immediately, cash seized under section 166A if the Customs is satisfied that the cash is (or that things for which it might be exchanged are) necessary to satisfy essential human needs—
  - (a) of (or of a dependant of) an individual from whom the cash has been seized; and
  - (b) arising on, or within 7 days after, the date on which detention would otherwise be effected.
- (2) Nothing in subsection (1) requires the Customs to return any cash that the Customs is satisfied is not necessary for the purpose specified in that subsection.
- (3) If the 7-day period referred to in section 166D(1)(a) is extended under section 166E, subsection (1) of this section applies to the extension, and the reference in subsection (1)(b) of

this section to 7 days must be read as a reference to the number of days (not exceeding 21) of that 7-day period as extended.

Section 166B: inserted, on 2 July 2004, by section 35 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **166C Further provisions about detention under section 166A**

- (1) Reasonable force may be used if it is necessary for any of the following purposes:
  - (a) to seize goods under section 166A:
  - (b) to detain goods under section 166A.
- (2) If the person from whom goods have been seized and detained under section 166A is identified but is not present when the seizure and detention occurs (for example, because the goods concerned are in mail or cargo or in unaccompanied baggage), the Customs must make all reasonable efforts to notify that person of the detention and seizure as soon as practicable.
- (3) Goods detained under section 166A must be taken to such place of security as a Customs officer directs, and there detained, unless section 166F applies.
- (4) Nothing in section 166A limits or affects powers under the following enactments:
  - (a) the rest of this Act (for example, Part 14):
  - (b) Financial Transactions Reporting Act 1996:
  - (ba) Anti-Money Laundering and Countering Financing of Terrorism Act 2009:
  - (c) Mutual Assistance in Criminal Matters Act 1992:
  - (d) Criminal Proceeds (Recovery) Act 2009:
  - (e) Terrorism Suppression Act 2002.

Section 166C: inserted, on 2 July 2004, by section 35 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 166C(3): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 166C(4)(ba): inserted, on 17 October 2009, by section 161(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35).

Section 166C(4)(d): substituted, on 1 December 2009, by section 181 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).



**166D Return of goods detained under section 166A**

- (1) In this section, **investigation period**, in relation to goods seized and detained under section 166A,—
  - (a) means the period of 7 days after the date on which the goods were seized and detained; and
  - (b) includes any extension of that period granted by the High Court under section 166E.
- (2) Goods seized and detained under section 166A must be returned to the person from whom they were seized as soon as practicable after whichever of the following occurs first:
  - (a) the completion of all relevant investigations, if they show that the goods are not tainted property;
  - (b) the expiry of the investigation period.
- (3) However, the Customs need not return the goods as provided in subsection (2), and may continue to detain them until the relevant proceedings or requests (including any resulting applications) are determined if, on or before the expiry of the investigation period,—
  - (a) a charging document is filed in respect of the relevant qualifying instrument forfeiture offence (as defined in section 5(1) of the Criminal Proceeds (Recovery) Act 2009); or
  - (b) a foreign country makes a request to the Attorney-General under any of the following sections of the Mutual Assistance in Criminal Matters Act 1992:
    - (i) section 54 (relating to a request to enforce a foreign restraining order); and
    - (ii) section 60 (relating to an interim foreign restraining order).

Section 166D: inserted, on 2 July 2004, by section 35 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 166D(3)(a): substituted, on 1 December 2009, by section 182 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 166D(3)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 166D(3)(b): substituted, on 1 December 2009, by section 14 of the Mutual Assistance in Criminal Matters Amendment Act 2009 (2009 No 9).

**166E Extension of 7-day period in section 166D(1)(a)**

- (1) The 7-day period in section 166D(1)(a) may be extended (once only) by order of the High Court for a reasonable period up to a further 14 days if, on an application for the purpose made before the expiry of that 7-day period, that court is satisfied—
  - (a) that the good cause to suspect required by section 166A(c) exists; and
  - (b) that the extension to be granted is necessary to enable investigations in or outside New Zealand in relation to the goods to be completed.
- (2) The application must be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and must include the following particulars:
  - (a) a description of the goods detained;
  - (b) the date on which the detention commenced;
  - (c) a statement of the facts supporting the good cause to suspect required by section 166A(c);
  - (d) a statement of reasons why the extension sought is necessary to enable investigations in or outside New Zealand in relation to the goods to be completed.
- (3) The person from whom the goods were seized is entitled to appear and be heard on the application.
- (4) The Customs must make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

Section 166E: inserted, on 2 July 2004, by section 35 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**166F Custody of certain goods detained under section 166A**

- (1) If goods detained under section 166A are a craft, vehicle, or animal, a Customs officer may leave those goods in the custody of either—
  - (a) the person from whom the goods have been seized; or
  - (b) any other person authorised by the Customs officer and who consents to having such custody.
- (2) Every person who has the custody of goods under subsection (1) must, until a final decision is made under section 166D as to

whether or not they are to be returned, hold them in safe-keeping, without charge to the Crown and in accordance with any reasonable conditions that may be imposed by the Customs.

- (3) A person to whom subsection (2) applies must also—
- (a) make the goods available to a Customs officer on request; and
  - (b) not alter, or dispose of, the goods, or remove them from New Zealand, unless he or she is authorised to do so by a Customs officer; and
  - (c) return the goods on demand to the custody of the Customs.

Section 166F: inserted, on 2 July 2004, by section 35 of the Customs and Excise Amendment Act 2004 (2004 No 55).

#### **167 Search warrants**

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a search warrant if he or she is satisfied, on an application by a Customs officer made in the manner provided in subpart 3 of Part 4 of that Act, that there are reasonable grounds to believe that there is, in or on any place or thing,—
- (a) any thing that there are reasonable grounds to believe may be evidence of—
    - (i) the commission of an offence against this Act or regulations made under this Act; or
    - (ii) the unlawful exportation or importation of goods; or
  - (b) any thing that there are reasonable grounds to believe is intended to be used for the purpose of—
    - (i) committing an offence against this Act or regulations made under this Act; or
    - (ii) unlawfully exporting or importing goods; or
  - (c) any thing that is liable to seizure under this Act.
- (2) The provisions of Part 4 of the Search and Surveillance Act 2012 apply.
- (3) Despite subsection (2), sections 125(4), 131(5)(f), and 133, and subparts 6 and 8 of Part 4 of the Search and Surveillance Act 2012 do not apply to any goods forfeited to the Crown under section 225 of this Act.

(4) *[Repealed]*

Section 167(1): substituted, on 8 January 2003, by section 14 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 167(1): amended, on 1 October 2012, by section 225(5) of the Search and Surveillance Act 2012 (2012 No 24).

Section 167(2): replaced, on 1 October 2012, by section 225(6) of the Search and Surveillance Act 2012 (2012 No 24).

Section 167(3): replaced, on 1 October 2012, by section 225(6) of the Search and Surveillance Act 2012 (2012 No 24).

Section 167(4): repealed, on 1 October 2012, by section 225(6) of the Search and Surveillance Act 2012 (2012 No 24).

**168 Entry and search under warrant**

*[Repealed]*

Section 168: repealed, on 1 October 2012, by section 226(1) of the Search and Surveillance Act 2012 (2012 No 24).

**168A Searching of persons for dangerous items when executing search warrant**

*[Repealed]*

Section 168A: repealed, on 1 October 2012, by section 226(1) of the Search and Surveillance Act 2012 (2012 No 24).

**168B Detention of dangerous items**

*[Repealed]*

Section 168B: repealed, on 1 October 2012, by section 226(1) of the Search and Surveillance Act 2012 (2012 No 24).

**169 Search warrant to be produced**

*[Repealed]*

Section 169: repealed, on 1 October 2012, by section 226(1) of the Search and Surveillance Act 2012 (2012 No 24).

**170 Duty to inform owner where thing seized**

*[Repealed]*

Section 170: repealed, on 1 October 2012, by section 226(1) of the Search and Surveillance Act 2012 (2012 No 24).

## **171 Emergency warrants**

*[Repealed]*

Section 171: repealed, on 1 October 2012, by section 226(1) of the Search and Surveillance Act 2012 (2012 No 24).

## **172 Use of aids by Customs officer**

- (1) In exercising any power of boarding, entry, or search conferred by this Act (other than a power of search to which Part 4 of the Search and Surveillance Act 2012 applies), a Customs officer or any constable may have with him or her, and use for the purposes of searching, a Customs dog, a chemical substance, x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.
- (2) Nothing in this section applies to a search carried out on residential premises except pursuant to a warrant issued under section 167.

Compare: 1966 No 19 s 217A; 1974 No 142 s 4

Section 172(1): amended, on 1 October 2012, by section 226(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 172(1): amended, on 6 April 2012, by section 21 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 172(1): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 172(1): amended, on 2 July 2004, by section 34(3) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 172(2): amended, on 1 October 2012, by section 226(3) of the Search and Surveillance Act 2012 (2012 No 24).

## **173 Conditions applying to entry of buildings**

*[Repealed]*

Section 173: repealed, on 1 October 2012, by section 226(1) of the Search and Surveillance Act 2012 (2012 No 24).

## **174 Arrest of suspected offenders**

- (1) A Customs officer who has reasonable cause to suspect that a person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against this Act punishable by imprisonment, or an offence against section 209, may, while that cause to suspect

continues and before the end of the seventh day after the date on which it arose, arrest that person without warrant.

- (1A) A Customs officer who has reasonable cause to suspect that a person has carried some other person into New Zealand on a craft, and that the carriage of the other person into New Zealand on the craft constituted an offence against section 98C(1) (which makes it an offence to smuggle unauthorised migrants) of the Crimes Act 1961 may, while that cause to suspect continues and before the end of the seventh day after the date on which it arose, and on the craft or elsewhere, arrest the person without warrant.
- (2) A constable who has reasonable cause to suspect that a person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against section 176, 188A, 209, or 211 may, while that cause to suspect continues and before the end of the seventh day after the date on which it arose, arrest that person without warrant.
- (3) Where a Customs officer arrests a person under a power conferred by this section, the officer shall, unless the person is sooner released, as soon as practicable call a constable to his or her aid and deliver the arrested person into the custody of that constable.
- (4) If the person so delivered into custody is issued with a summons pursuant to sections 28 and 30 of the Criminal Procedure Act 2011, the duties under section 31 of that Act relating to the filing of a charging document are the duties of a Customs officer and not of a constable.

Compare: 1966 No 19 s 267

Section 174 heading: amended, on 8 December 2009, by section 19(1) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 174(1): substituted, on 8 December 2009, by section 19(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 174(1A): inserted, on 8 December 2009, by section 19(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 174(2): substituted, on 8 December 2009, by section 19(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 174(3): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 174(4): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**175 Protection of persons acting under authority of Act**

Neither the Crown nor a Customs officer, constable, a member of the Armed Forces, an authorised person, or a person lawfully assisting any such person is liable for the loss of or damage to any document, goods, vehicle, or craft occasioned by anything done or omitted to be done or purporting to have been done by a Customs officer, constable, member of the Armed Forces, authorised person, or person lawfully assisting in the exercise of any power conferred on him or her by this Act unless he or she has not acted in good faith or has acted without reasonable care.

Compare: 1966 No 19 s 228A; 1971 No 42 s 10

Section 175: amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**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—
  - (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.
- (4) In this section,—

**Aviation Security Service** has the same meaning as in section 2 of the Civil Aviation Act 1990

**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.

Section 175A: substituted, on 6 March 2007, by section 16 of the Customs and Excise Amendment Act 2007 (2007 No 9).

**175B Unlawful travel document**

(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—

- (a) is false; or
- (b) relates in fact to some other person

**forged**, in relation to a travel document, means that the travel document—

- (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

**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
- (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
- (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
- (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.



- (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.
- (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.
- (6) Section 175C(2) to (5) apply with all necessary modifications to any documents or goods retained or seized under this section.

Section 175B: inserted, on 6 March 2007, by section 16 of the Customs and Excise Amendment Act 2007 (2007 No 9).

**175C Seizure and detention of goods or documents 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 or documents—
  - (a) are risk goods (within the meaning of the Biosecurity Act 1993) for which no biosecurity clearance has been given under that Act; or
  - (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 342(1)(c) or 345(1) of the Immigration Act 2009;
    - (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 or documents under subsection (1) must, as soon as practicable, deliver those goods or documents into the custody of the appropriate person specified in subsection (4).

- (3) Once goods or documents have been delivered to a person under subsection (2), responsibility for those goods or documents 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 or documents, a constable; and
  - (b) if the Customs officer believes that another provision of subsection (1) applies to the goods or documents, an appropriately authorised officer who holds office under the Act specified in that provision or is employed by the department of State that administers the Act.

- (5) Part 4 of the Search and Surveillance Act 2012 (except subparts 2 and 3) applies with any necessary modifications.

Section 175C: inserted, on 6 March 2007, by section 16 of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 175C heading: amended, on 1 October 2012, by section 227(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 175C(1): amended, on 1 October 2012, by section 227(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 175C(1)(b)(iv): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 175C(2): amended, on 1 October 2012, by section 227(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 175C(3): amended, on 1 October 2012, by section 227(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 175C(4)(a): amended, on 1 October 2012, by section 227(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 175C(4)(a): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 175C(4)(b): amended, on 1 October 2012, by section 227(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 175C(5): replaced, on 1 October 2012, by section 227(4) of the Search and Surveillance Act 2012 (2012 No 24).

### **175D Seizure and detention of certain drugs and objectionable publications**

- (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 or documents are evidence of the commission of 1 or more offences under 1 or more of the following enactments:
- (a) section 6, 7, 12A, 13, or 22 of the Misuse of Drugs Act 1975;
  - (b) section 123, 124, 131, or 131A of the Films, Videos, and Publications Classification Act 1993.
- (2) A Customs officer who detains goods or documents under subsection (1) may, if the appropriate person specified in subsection (3) agrees, do any of the following:
- (a) deliver the goods or documents into the custody of that person;
  - (b) retain the goods or documents pending further investigation;
  - (c) treat the goods or documents as forfeited within the meaning of this Act.
- (3) The appropriate person referred to in subsection (2) is,—
- (a) if the Customs officer believes that subsection (1)(a) applies, a constable; or
  - (b) if the Customs officer believes that subsection (1)(b) applies, an Inspector of Publications within the meaning of the Films, Videos, and Publications Classification Act 1993.
- (4) Once goods or documents have been delivered to a person under subsection (2)(a), responsibility for those goods or documents passes to that person.
- (5) The provisions of subparts 1, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply in respect of the powers conferred by this section.
- (6) Despite subsection (5), sections 125(4), 131(5)(f), and 133, and subpart 6 of Part 4 of the Search and Surveillance Act 2012 do not apply to any forfeited goods (within the meaning of this Act).

Section 175D: inserted, on 1 October 2012, by section 228 of the Search and Surveillance Act 2012 (2012 No 24).

## Part 13

### Offences and penalties

#### *Offences in relation to Customs*

#### **176 Threatening or resisting Customs officer**

- (1) Every person commits an offence who—
- (a) threatens or assaults; or
  - (b) by force resists or intentionally obstructs or intimidates,—
- any Customs officer in the execution of his or her duties or a person acting in the officer's aid.
- (2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000.

Compare: 1966 No 19 s 238

#### **177 Obstructing Customs officer or interfering with Customs property**

- (1) Every person commits an offence who,—
- (a) otherwise than by force, intentionally obstructs any Customs officer acting in the execution of his or her duties; or
  - (b) intentionally interferes with a Customs dog, or any equipment, vehicle, craft, communications system, or other aid used, or intended for use, by the Customs; or
  - (c) does any act with the intention of impairing the effectiveness of a Customs dog, or any equipment, vehicle, craft, communications system, or other aid used, or intended for use, by the Customs.
- (2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000.

Compare: 1966 No 19 s 239; 1982 No 112 s 17

Section 177(1)(a): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 177(1)(b): replaced, on 6 April 2012, by section 22 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 177(1)(c): replaced, on 6 April 2012, by section 22 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**177AA Killing or injuring Customs dog**

- (1) Every person who intentionally kills, maims, wounds, or otherwise injures a Customs dog without lawful authority or reasonable excuse commits an offence.
- (2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 24 months, to a fine not exceeding \$15,000, or to both.

Section 177AA: inserted, on 6 April 2012, by section 23 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**177A False allegation or report to Customs officer**

- (1) Every person commits an offence who,—
  - (a) contrary to the fact and without a belief in the truth of the statement, makes or causes to be made to a Customs officer a written or verbal statement alleging that an offence has been committed; or
  - (b) with the intention of causing wasteful deployment, or of diverting deployment, of the Customs personnel or resources, or being reckless as to that result,—
    - (i) makes a statement to any person that gives rise to serious apprehension for the person's own safety or the safety of any person or property, knowing that the statement is false; or
    - (ii) behaves in a manner that is likely to give rise to such apprehension, knowing that such apprehension would be groundless.
- (2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000.

Compare: 1981 No 113 s 24

Section 177A: inserted, on 8 December 2009, by section 20 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**178 Personation of Customs officer**

- (1) Every person commits an offence, who,—
  - (a) not being a Customs officer for the purposes of this Act, by words, conduct, or demeanour pretends to be a Customs officer or wears or uses the uniform, name, designation, or description of a Customs officer; or

- (b) without authority represents any craft, vehicle, or other conveyance as being in the service of the Customs.
- (2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000.

Compare: 1966 No 19 s 241; 1982 No 112 s 17

Section 178(1)(a): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **179 Counterfeit seals, stamps, markings, substances, or devices**

- (1) Every person commits an offence who, without lawful authority or excuse, has in his or her possession, or makes, or uses any counterfeit seal, stamp, marking, substance, or device in imitation of or closely resembling any seal, stamp, marking, substance, or device used by the Customs for the purposes of this Act.
- (2) Every person who commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$2,000;
- (b) in the case of a body corporate, to a fine not exceeding \$12,000.

Compare: 1966 No 19 s 251; 1982 No 112 s 17

Section 179 heading: amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 179(1): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **180 Obligations of persons arriving in or departing from New Zealand**

- (1) Every person commits an offence who wilfully fails to comply with any requirement imposed on that person by or under any of sections 27 to 32C (other than section 32A).
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$1,000.

Compare: 1966 No 19 s 212(2); 1982 No 112 s 17

Section 180(1): amended, on 6 March 2007, by section 31 of the Customs and Excise Amendment Act 2007 (2007 No 9).

**181 Unauthorised presence in certain Customs controlled areas**

- (1) Every person commits an offence who, without the permission of a Customs officer, enters into, or remains in when directed by a Customs officer to leave, a Customs controlled area licensed for—
- (a) the temporary holding of imported goods for the purposes of the examination of those goods under section 151 (including the holding of the goods while they are awaiting examination); or
  - (b) the disembarkation, embarkation, or processing of persons arriving in or departing from New Zealand; or
  - (c) the processing of craft arriving in or departing from New Zealand or the loading or unloading of goods onto or from such craft,—
- when that area is being, or is about to be, used for any of the purposes for which it is licensed.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$1,000.

Compare: 1966 No 19 s 248A; 1973 No 110 s 7

**182 Unauthorised access to or improper use of Customs computerised entry processing system**

- (1) Every person commits an offence who,—
- (a) knowingly and without lawful authority by any means gains access to or attempts to gain access to any Customs computerised entry processing system; or
  - (b) having lawful access to any Customs computerised entry processing system, knowingly uses or discloses information obtained from such a computer system for a purpose that is not authorised; or
  - (c) knowing that he or she is not authorised to do so, receives information obtained from any Customs computerised entry processing system, and uses, discloses, publishes, or otherwise disseminates such information.
- (2) Every person who commits an offence against this section is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$15,000;
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Section 182(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **183 Interference with Customs computerised entry processing system**

- (1) Every person commits an offence who—
  - (a) by any means knowingly falsifies any record or information stored in any Customs computerised entry processing system; or
  - (b) knowingly damages or impairs any Customs computerised entry processing system; or
  - (c) knowingly damages or impairs any duplicate tape or disc or other medium on which any information obtained from a Customs computerised entry processing system is held or stored otherwise than with the permission of the chief executive.
- (2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$25,000.

Section 183(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **184 Offences in relation to security of, or unauthorised use of, unique user identifiers**

- (1) A registered user of a Customs computerised entry processing system who fails to comply with or acts in contravention of any condition imposed by the chief executive relating to the security of that registered user's unique user identifier commits an offence.
- (2) A person who,—
  - (a) not being a registered user, uses a unique user identifier; or
  - (b) being a registered user, uses the unique user identifier of any other registered user,—



to authenticate a transmission of information to the Customs computerised entry processing system commits an offence.

- (3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$5,000.

*Offences in relation to Customs officers' powers*

**185 Failure to answer questions**

- (1) Every person commits an offence who, when required under this Act to answer any question put to that person,—
- (a) without reasonable excuse, fails or refuses to answer it; or
- (b) gives an incorrect answer.
- (2) It is a defence to a prosecution for an offence against this section if the person proves that he or she did not, when required to answer the question, have the information required to answer the question in his or her knowledge, possession, or control, or honestly and reasonably believed that the answer he or she gave was, in all the circumstances, correct at that time.
- (3) It is not a reasonable excuse for the purposes of subsection (1)(a) if a person fails or refuses to answer a question on the ground that to answer the question would or might incriminate or tend to incriminate that person.
- (4) Every person who commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$1,000; and
- (b) in the case of a body corporate, to a fine not exceeding \$5,000.

Compare: 1966 No 19 ss 19, 212(2), 212A(2), 218(4), 255; 1985 No 145 s 14(2); 1990 No 89 s 4; 1994 No 100 ss 7, 8

**186 Failure to produce evidence of identity, entitlement to travel, or other matters**

- (1) Every person commits an offence who fails without reasonable excuse to comply with a demand made under section 147 or section 147A.

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

Compare: 1966 No 19 s 218B; 1994 No 100 s 9

Section 186 heading: amended, on 2 July 2004, by section 36(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 186(1): amended, on 2 July 2004, by section 36(2) of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **187 Failure to produce or account for goods**

- (1) Every person commits an offence who fails or refuses to produce or account for any goods when required to do so under section 152(2) or section 153 or section 154.

- (2) It is a defence to a prosecution for an offence against this section if the person proves that he or she did not have possession or control of the goods or was otherwise unable, for good reason, to comply with the chief executive's requirements.

- (3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$5,000.

Compare: 1966 No 19 s 204(3); 1982 No 112 s 17

Section 187(1): amended, on 9 October 2002, by section 18(a) of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 187(1): amended, on 9 October 2002, by section 18(b) of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

### **188 Failure to comply with requisition**

- (1) Every person commits an offence who fails or refuses to comply with a requirement of the chief executive under section 160 or section 161.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that he or she did not have possession or control of the documents or information or did not have knowledge of the relevant documents, books, or records.

- (3) Every person who commits an offence against this section is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding \$1,000;

(b) in the case of a body corporate, to a fine not exceeding \$5,000.

Compare: 1966 No 19 s 218(4); 1985 No 145 s 14

**188A Failure or refusal to remain at place**

- (1) A person commits an offence who—
  - (a) fails or refuses to remain at the place that is being searched under section 168(1)(a) until the earlier of the events specified in section 168(3A)(a) and (b); or
  - (b) fails or refuses to remain at the place where that person is being searched under section 168(3)(b) until that search is completed.
- (2) Every person who commits an offence against this section is liable on conviction to a term of imprisonment not exceeding 3 months, or to a fine not exceeding \$1,000, or both.

Compare: 1998 No 110 s 59(1)(a)

Section 188A: inserted, on 8 January 2003, by section 19 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

*Offences in relation to Customs controlled areas*

**189 Use of area without licence**

- (1) Every person who contravenes section 10 commits an offence.
- (2) Every person who commits an offence against this section is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

**190 Failure to comply with conditions of licence**

- (1) Every person commits an offence who fails to comply with, or acts in contravention of, any term, condition, or restriction subject to which a licence has been granted under section 12.
- (2) Every person who commits an offence against this section is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$1,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$5,000.

*Offences in relation to arrival and departure of  
craft and persons*

Heading: amended, on 6 March 2007, by section 32 of the Customs and Excise  
Amendment Act 2007 (2007 No 9).

**191 Offences in relation to arrival of craft**

- (1) Every person commits an offence who,—
- (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):
    - (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; or
    - (iv) to proceed to a Customs place; or
    - (v) to proceed as directed by a Customs officer:
  - (b) being the person in charge of, or the owner of, or a member of the crew of, or a passenger on, any craft,—
    - (i) refuses to answer any question put to that person by a Customs officer under subsection (2)(a) of section 22 (which relates to a requirement to answer questions) or knowingly gives a false answer to the question; or
    - (ii) fails to comply with any request made under subsection (2)(b) of that section:
  - (c) being the master of a ship, fails to comply with any direction of a Customs officer under subsection (1) or subsection (4) of section 23 (which relates to the bringing to of a ship), or fails to comply with subsection (3) of that section:
  - (d) being the person in charge of any craft, fails to comply with section 24(1) (which relates to the arrival of craft at a nominated Customs place only):
  - (e) being a member of the crew of, or a passenger on, any craft, or being any other person (other than a Customs officer), acts in contravention of section 24(2):

- (f) being a person in charge of any craft, fails to comply with, or acts in contravention of, section 25(2) (which relates to craft arriving at a place other than a nominated Customs place):
  - (g) being a member of the crew of, or a passenger on, any craft, acts in contravention of section 25(3) or (4):
  - (h) being the person in charge of or the owner of any craft,—
    - (i) fails to comply with subsection (2)(a) of section 26 (which relates to inward reports); or
    - (ii) fails to obey a Customs direction given under subsection (2)(b) of that section.
- (2) Every person who commits an offence against paragraph (a), (c), or (d) of subsection (1) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$75,000.
- (3) Every person who commits an offence against subsection (1)(b) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$15,000.
- (4) Every person who commits an offence against paragraph (e), (f), (g), or (h) of subsection (1) is liable on conviction to a fine not exceeding \$5,000.

Section 191(1)(a): substituted, on 6 March 2007, by section 17 of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 191(1)(e): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 191(1)(e): amended, on 2 July 2004, by section 37 of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **192 Offences in relation to inward report**

- (1) If—

- (a) an inward report delivered pursuant to section 26 is erroneous, misleading, or defective in any material particular; or
  - (b) a document delivered in support of the report is not genuine or is erroneous or misleading,—  
the person in charge of the craft and the owner of the craft each commits an offence.
- (2) Every person who commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$15,000.

Compare: 1966 No 19 s 45(4); 1982 No 112 s 17

### **193 Offences in relation to departure of craft**

- (1) Every person commits an offence who,—
- (a) being the person in charge of any craft, contravenes section 33 (which relates to clearance of craft):
  - (b) being the person in charge of any craft,—
    - (i) fails to comply with section 34(a) (which relates to outward reports); or
    - (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):
  - (c) being a person in charge of or a member of the crew, of any craft, fails to comply with section 35 (which relates to boarding of outward craft):
  - (d) being a person in charge of any craft, fails to comply with a demand made by a Customs officer under section 36 (which relates to the production of a certificate of clearance), or refuses to answer any question put to that person under that section or knowingly gives a false answer to the question:

- (e) being a person in charge of any craft, acts in contravention of section 37 (which relates to the departure of craft only from a Customs place).
- (2) Every person who commits an offence against paragraph (a), (c), or (e) of subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000.
- (3) Every person who commits an offence against paragraphs (b) or (d) of subsection (1) is liable on conviction to a fine not exceeding \$5,000.

Section 193(1)(b): substituted, on 6 March 2007, by section 18 of the Customs and Excise Amendment Act 2007 (2007 No 9).

#### **194 Offences in relation to outward report**

- (1) If—
  - (a) an outward report delivered pursuant to section 34 is erroneous, misleading, or defective in any material particular; or
  - (b) any document delivered in support of the report is not genuine or is erroneous or misleading,—the person in charge of the craft and the owner of the craft each commits an offence.
- (2) Every person who commits an offence against this section is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000; and
  - (b) in the case of a body corporate, to a fine not exceeding \$15,000.

Compare: 1966 No 19 s 73

#### **194A Failure to comply with requirement to cease using electronic communication device**

- (1) Every person commits an offence who fails to comply with any requirement imposed on that person by or under section 32A(3).
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$1,000.

Section 194A: inserted, on 6 March 2007, by section 19 of the Customs and Excise Amendment Act 2007 (2007 No 9).

**195 Defences**

It is a defence to any prosecution for an offence against sections 191 to 194A if the defendant proves—

- (a) that, in any case where it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or
- (b) that, in any case where it is alleged that anything unlawful was done, the defendant took all reasonable steps to ensure that it was not done.

Section 195: amended, on 6 March 2007, by section 33 of the Customs and Excise Amendment Act 2007 (2007 No 9).

*Other offences***196 Adapting craft for smuggling**

- (1) If any craft comes to or is found within New Zealand having—
  - (a) any part or place adapted for the purpose of concealing goods or persons; or
  - (b) any hole, pipe, or device adapted for the purpose of concealing goods or persons,—the person in charge and the owner of the craft each commits an offence.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

Compare: 1966 No 19 s 250

**197 Interference with seals, etc**

- (1) Where any fastening, lock, mark, seal, marking, substance, or device that has been used by a Customs officer in relation to any goods or on a hatchway, opening, or other place or device on any craft is, without the authority of a Customs officer, opened, altered, broken, or erased by any person while the craft is within New Zealand, the person so acting and the person in charge of the craft each commits an offence.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$5,000.

Compare: 1966 No 19 s 209(2)

Section 197 heading: amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).



Section 197(1): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**198 Interference with cargo**

- (1) If at any time after any craft carrying goods from a point outside New Zealand arrives within New Zealand, and before a report is made in accordance with section 26,—
  - (a) any cargo is interfered with; or
  - (b) any alteration is made in the storage of goods carried, so as to facilitate the unloading of any of the goods before the report has been made; or
  - (c) any of the goods are staved, removed, destroyed, or thrown overboard, or any package is opened,—the person so acting and the person in charge of the craft each commits an offence.
- (2) Subsection (1) does not apply if the act—
  - (a) was authorised by the chief executive or a Customs officer; or
  - (b) was required by any statutory or other requirement relating to navigation; or
  - (c) was compelled by accident, stress of weather, or other necessity.
- (3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$5,000.

Compare: 1966 No 19 s 40

**199 Unloading goods without authorisation**

- (1) Every person who acts in contravention of section 43 commits an offence.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$5,000.

Compare: 1966 No 19 s 50(4)

**200 Offences in relation to manufacture, movement, and storage of goods**

- (1) Every person commits an offence who—
  - (a) fails to comply with subsection (1) or subsection (4) of section 18 (which relates to Customs facilities in Customs controlled areas):

- (ab) fails to comply with subsection (1) or subsection (3) of section 19H (which relates to Customs facilities in CASEs):
  - (b) acts in contravention of section 46 (which relates to transportation of imported goods):
  - (c) acts in contravention of section 47 (which relates to the removal of goods from a Customs controlled area):
  - (d) takes goods out of a Customs controlled area or does any act in relation to goods taken out of a Customs controlled area that constitutes a contravention of the permission granted by the chief executive under section 48 (which relates to the temporary removal of goods from a Customs controlled area):
  - (e) manufactures any excisable goods in contravention of section 68 (which relates to manufacture of excisable goods).
- (2) Every person who commits an offence against paragraphs (a) to (d) of subsection (1) (other than an offence under paragraphs (b) to (d) involving goods that are tobacco) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$25,000.
- (2A) Every person who commits an offence against subsection (1)(b), (c), or (d) involving goods that are tobacco is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$20,000, or to both; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) Every person who commits an offence against paragraph (e) of subsection (1) (other than an offence relating to goods that are tobacco) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$25,000; or

- (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- (4) Every person who commits an offence against subsection (1)(e) involving goods that are tobacco is liable on conviction,—
  - (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or to a fine not exceeding \$20,000, or to both; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (5) To avoid doubt, in this section, **tobacco** means all tobacco (as defined in section 2(1)), whether manufactured or not manufactured.

Section 200(1)(a): substituted, on 2 July 2004, by section 38 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 200(1)(ab): inserted, on 2 July 2004, by section 38 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 200(2): amended, on 24 September 2009, by section 11(1) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 200(2A): inserted, on 24 September 2009, by section 11(2) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 200(3): amended, on 24 September 2009, by section 11(3) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 200(4): added, on 24 September 2009, by section 11(4) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 200(5): added, on 24 September 2009, by section 11(4) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

## 201 Interference with goods

- (1) Every person commits an offence who, except with the permission of a Customs officer,—
  - (a) makes any alteration in the condition of goods subject to the control of Customs; or
  - (b) interferes with, including by way of addition to or taking away from, such goods; or
  - (c) unpacks or repacks such goods; or
  - (d) removes such goods from any place in which a Customs officer has directed that the goods are to be stored.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding,—

- (a) in the case of an individual, \$5,000:
- (b) in the case of a body corporate, \$25,000.

Compare: 1966 No 19 s 248; 1983 No 41 s 8

## **202 Contravention of direction of chief executive under section 97**

- (1) Any purchaser who, except with the consent of the chief executive, takes any action in contravention of a direction given by the chief executive under section 97(5), commits an offence and is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$15,000.
- (2) Any purchaser who, knowingly and without the consent of the chief executive, takes any action in contravention of a direction given by the chief executive under section 97(5), commits an offence and is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$15,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000; or
  - (c) in either case, to an amount not exceeding 3 times the value of the goods to which the offence relates.

## **203 Offences in relation to entries**

- (1) Every person commits an offence who—
  - (a) fails to make an entry required under this Act:
  - (b) makes an entry required under this Act that is erroneous or defective in a material particular.
- (2) It is a defence to a prosecution for an offence against subsection (1) if the person proves—
  - (a) that, in the case of a prosecution for an offence against subsection (1)(a), the person took all reasonable steps to ensure that an entry was made; or
  - (b) that, in the case of a prosecution for an offence against subsection (1)(b), the person took all reasonable steps to ensure that the entry was not erroneous or defective.

- (3) Every person who commits an offence against subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$1,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$5,000.
- (4) Every person commits an offence who is concerned in the making of an entry that the person knows is erroneous or defective in a material particular.
- (5) Every person who commits an offence against subsection (4) is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000; or
  - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.

Compare: 1966 No 19 ss 21, 21A; 1986 No 44 s 6

#### **204 Offences in relation to declarations and documents**

- (1) Every person commits an offence who—
  - (a) makes a declaration or a written statement under this Act that is erroneous in a material particular;
  - (b) produces or delivers to a Customs officer any document that is not genuine;
  - (c) produces or delivers to a Customs officer any document that is erroneous in any material particular.
- (2) It is a defence to a prosecution for an offence against subsection (1) if the person proves that the person took all reasonable steps to ensure—
  - (a) that the declaration, statement, or document, as the case may be, was not erroneous; or
  - (b) in the case of a prosecution for an offence against subsection (1)(b), that the document was genuine.
- (3) Every person who commits an offence against subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$1,000;

- (b) in the case of a body corporate, to a fine not exceeding \$5,000.
- (4) Every person commits an offence who—
  - (a) makes a false declaration under this Act, knowing it to be false:
  - (b) produces or delivers to a Customs officer any document that is not genuine, knowing that it is not genuine:
  - (c) produces or delivers to a Customs officer any document that is erroneous in any material particular, knowing that it is erroneous.
- (5) Every person who commits an offence against subsection (4) is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000; or
  - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.

**205 Offences in relation to records**

- (1) Every person commits an offence who fails to keep records that are required to be kept by section 95.
- (2) Every person who commits an offence against subsection (1) is liable on conviction,—
  - (a) in the case of the first conviction of that person, to a fine not exceeding \$2,000:
  - (b) in the case of the second conviction, to a fine not exceeding \$4,000:
  - (c) in the case of every subsequent conviction, to a fine not exceeding \$6,000.
- (3) Every person commits an offence who—
  - (a) fails without reasonable excuse to make available to the Customs, on the request of a Customs officer, the records that are required to be kept by section 95:
  - (b) fails, when requested by a Customs officer, to operate any mechanical, or electronic device on which any records are, or information is, stored for the purpose of

enabling the Customs officer to obtain those records or that information.

- (4) Every person who commits an offence against subsection (3) is liable on conviction,—
  - (a) in the case of the first conviction of that person, to a fine not exceeding \$2,000;
  - (b) in the case of the second conviction of that person, to a fine not exceeding \$4,000;
  - (c) in the case of any subsequent conviction, to a fine not exceeding \$6,000.
- (5) Every person commits an offence who, with intent to defeat the purposes of this Act, destroys, alters, or conceals any book, document, or record required to be kept under this Act, or sends or attempts to send out of New Zealand any such book, document, or record.
- (6) Every person who commits an offence under subsection (5) is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$50,000.
- (7) If, in any prosecution for an offence alleged to have been committed against subsection (5), it is proved that the person charged with the offence has destroyed, altered, or concealed any book, document, or record, or has sent, or attempted to send, out of New Zealand, any such book, document, or record, it shall be presumed in the absence of evidence to the contrary that in so doing that person intended to defeat the purposes of this Act.

Section 205(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **205A Offences relating to failure to give Customs access to information**

- (1) Every person commits an offence who fails, without reasonable excuse, to give the Customs access to information under any of sections 38D and 38E and 95A.
- (2) Every person who commits an offence under subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or

- (b) in the case of a body corporate, to a fine not exceeding \$15,000.
- (3) Every person commits an offence who fails, without reasonable excuse, to give the Customs access to information under any of sections 38D and 38E and 95A in the form and manner prescribed.
- (4) Every person who commits an offence under subsection (3) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$15,000.

Section 205A: inserted, on 1 October 2004, by section 39 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**205B Offence relating to disclosing whether required to give  
Customs access to information**

- (1) This section applies to a person if the person is a person concerned in the movement of goods, persons, or craft (as defined in section 38A).
- (2) The person must not disclose to another person who is not the chief executive, a Customs officer, or an agent or employee of the person—
  - (a) whether the person is a person to whom section 38D or section 38E applies; or
  - (b) whether the person has been exempted from complying with obligations under that section.
- (3) If the person, without reasonable excuse, contravenes subsection (2), the person commits an offence and is liable on conviction to a fine not exceeding,—
  - (a) in the case of an individual, \$5,000;
  - (b) in the case of a body corporate, \$25,000.

Section 205B: inserted, on 1 October 2004, by section 39 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 205B(2): amended, on 8 December 2009, by section 5(2) of the Customs and Excise Amendment Act 2009 (2009 No 61).



**206 Possession of incomplete documents**

- (1) Every person commits an offence who, without lawful authority or excuse, has in his or her possession or brings into New Zealand any uncompleted document or form capable of being used for any purpose under this Act if the document is signed or certified or bears any such mark or inscription to indicate that it is correct or authentic.
- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$5,000.

Compare: 1966 No 19 s 251A; 1985 No 145 s 16

**207 Offences in relation to use of goods**

- (1) Where under any provision of this Act or of the Tariff Act 1988 goods are, if entered for a particular purpose or under any condition imposed by the Minister or other responsible Minister of the Crown, exempt from duty or liable to a lower rate of duty than if entered otherwise than for that purpose or under that condition, and any goods have been entered under that provision, every person commits an offence who knowingly—
  - (a) uses or deals with those goods for a purpose other than that for which they have been so entered; or
  - (b) fails to comply with a condition imposed by the responsible Minister in respect of the goods so entered.
- (2) Whenever beer is entered as exempt from excise duty under section 73(2), or wine is entered as exempt from excise duty under section 73(2A), the beer or the wine is, for the purposes of this section, to be regarded as having been entered for the purpose of the personal use of the individual who manufactured the beer or the wine and not for sale to any other person.
- (3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding an amount equal to 3 times the amount of the duty that would have been payable if the goods had been entered otherwise than under the provision under which they were entered, or a fine not exceeding \$5,000, whichever sum is the greater.

Compare: 1966 No 19 s 252

Section 207(2): substituted, on 15 November 2000, by section 6 of the Customs and Excise Amendment Act (No 2) 2000 (2000 No 58).

**208 Provisions relating to offences against sections 203 to 207**

For the purposes of this Act,—

- (a) every declaration, invoice, certificate, written statement, or other document required or authorised by or under this Act to be made or produced by a person making an entry is deemed to form part of that entry;
- (b) every amendment of an entry is deemed to form part of that entry, but an amendment to an entry does not relieve a person from liability to the imposition of a penalty or liability to seizure of goods or criminal liability incurred in respect of the entry before its amendment.

Compare: 1966 No 19 s 21(3), (4)

**209 Offences in relation to importation or exportation of prohibited goods**

- (1) Every person commits an offence who—
  - (a) imports into New Zealand or unships or lands in New Zealand goods the importation of which is prohibited by or under section 54; or
  - (b) exports, or transports with intent to export, goods from New Zealand the exportation of which is prohibited by or under section 56; or
  - (c) is knowingly concerned in any importation, exportation, transportation, shipment, unshipment, or landing of goods (other than objectionable publications) to which paragraph (a) or (b) applies; or
  - (ca) fails, in breach of section 56(2F), to inform the Secretary of Foreign Affairs and Trade that any goods or electronic publications he or she wishes to export are intended for or may have any of the uses described in an order made under section 56(2)(c); or
  - (d) without lawful justification or excuse, removes from a Customs controlled area imported goods the importation of which is prohibited by or under section 54; or
  - (e) is knowingly concerned or conspires, in the removal from a Customs controlled area of goods (other than objectionable publications) the importation of which is prohibited by or under section 54; or

- (f) commits a breach of, or fails to comply with, a term or condition on or subject to which a licence, permit, or consent has been granted, under an Order in Council made under section 54(2) or section 56(2); or
  - (g) is knowingly concerned in a breach or failure to comply to which paragraph (f) applies.
- (1A) Every person commits an offence who—
- (a) is knowingly concerned in any importation, exportation, transportation, shipment, unshipment, or landing of an objectionable publication; or
  - (b) is knowingly concerned in the removal from a Customs controlled area of an objectionable publication or conspires to remove an objectionable publication from a Customs controlled area.
- (1B) In this section, **objectionable publication** means, as the case requires, a publication as defined in section 2 of the Films, Videos, and Publications Classification Act 1993—
- (a) the importation of which is prohibited by or under section 54; or
  - (b) the exportation of which is prohibited by or under section 56.
- (2) Every person who commits an offence against any of paragraphs (c), (e), or (g) of subsection (1) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000; or
  - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- (3) Every person who commits an offence against paragraph (a), (b), (ca), (d), or (f) of subsection (1) is liable on conviction,—
- (a) in the case of an individual to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate to a fine not exceeding \$10,000.
- (4) It is not a defence in a prosecution for an offence referred to in subsection (3) that the defendant had no knowledge or no rea-

sonable cause to believe that the goods in respect of which the offence was committed were prohibited imports or prohibited exports, as the case may be.

- (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) Every person who commits an offence against subsection (1A) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 5 years; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (6) Section 132A of the Films, Videos, and Publications Classification Act 1993 (which specifies an aggravating factor to be taken into account in sentencing, etc, for certain publications offences) applies to an offence against subsection (1A) of this section, and an offence of that kind is also a **relevant offence** as defined in section 145A(1) of that Act (which relates to extraterritorial jurisdiction).

Compare: 1966 No 19 ss 48(7), (8), 70(6)

Section 209(1)(a): amended, on 22 February 2005, by section 42(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209(1)(b): amended, on 22 February 2005, by section 42(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209(1)(c): amended, on 22 February 2005, by section 42(4) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209(1)(ca): inserted, on 6 March 2007, by section 20(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 209(1)(d): amended, on 22 February 2005, by section 42(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209(1)(e): amended, on 22 February 2005, by section 42(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209(1)(e): amended, on 22 February 2005, by section 42(4) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209(1A): substituted, on 17 September 2008, by section 12 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 209(1B): inserted, on 22 February 2005, by section 42(3) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209(3): amended, on 6 March 2007, by section 20(2) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 209(4A): inserted, on 6 March 2007, by section 20(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 209(5): added, on 22 February 2005, by section 42(5) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 209(6): added, on 22 February 2005, by section 42(5) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

## **209A Publications imported or exported in course of official duties**

- (1) Nothing in section 209 makes it an offence for a New Zealand official to do either or both of the following things for the purpose of, and in connection with, his or her official duties:
  - (a) import a publication (whether with the involvement of an overseas official or not):
  - (b) export a publication (for example, an electronic publication) to an overseas official.
- (2) In this section,—

**New Zealand official** means a person referred to in any of paragraphs (a) to (l) of section 131(4) of the Films, Videos, and Publications Classification Act 1993

**overseas official** means a person in a country other than New Zealand who holds an office in that country that corresponds to an office referred to in section 131(4) of the Films, Videos, and Publications Classification Act 1993, and who is exercising or performing the duties, functions, or powers of that office

**publication** has the same meaning as in section 2 of the Films, Videos, and Publications Classification Act 1993.

Section 209A: inserted, on 9 October 2002, by section 20 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 209A heading: amended, on 22 February 2005, by section 43(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 209A(1): substituted, on 22 February 2005, by section 43(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

## **210 Offences in relation to exportation of goods**

- (1) Every person commits an offence who—
  - (a) acts in contravention of subsection (1), (5), or (6) of section 49 (which relates to entries required):
  - (b) fails to comply with a request made under section 49(2)(b):
  - (c) fails, or is knowingly concerned in any failure, to comply with section 51 (which requires goods for export to be dealt with according to entry):
  - (d) acts in contravention of section 52 (which relates to the requirement for goods for export not to be landed):
  - (e) is knowingly concerned in a contravention of section 117(3) (which relates to drawbacks of duty on certain goods).
- (2) Every person who commits an offence against paragraph (a), (b), (c), or (d) of subsection (1) is liable on conviction to a fine not exceeding \$5,000.
- (3) Every person who commits an offence against paragraph (e) of subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000; or
  - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.

Section 210(1)(a): amended, on 8 December 2009, by section 6(4) of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **210A Offences in relation to Customs seals and Customs-approved secure exports schemes**

- (1) Every person commits an offence who, without lawful justification or reasonable excuse,—

- (a) uses a Customs seal in relation to a package of goods otherwise than in accordance with the relevant notice of appointment under section 53A; or
  - (b) alters, removes, damages, disposes of, or otherwise interferes with a Customs seal used in relation to a package of goods otherwise than in accordance with the relevant notice of appointment under section 53A; or
  - (c) uses an approved seal or markings of the kind referred to in section 53E(1)(b) in relation to a Customs-approved secure package otherwise than in accordance with the relevant Customs-approved secure exports scheme.
- (2) This subsection applies to a package if the package is—
- (a) a package in relation to which a Customs seal has been lawfully used; or
  - (b) a Customs-approved secure package in relation to which a seal or marking of the kind referred to in section 53E(1)(b) has been lawfully used.
- (3) Every person commits an offence who, without lawful justification or reasonable excuse, tampers or interferes with a package to which subsection (2) applies by adding other goods to the goods in it when it was secured.
- (4) Every person who commits an offence against this section is liable on conviction to a fine not exceeding,—
- (a) in the case of an individual, \$5,000;
  - (b) in the case of a body corporate, \$25,000.

Section 210A: inserted, on 2 July 2004, by section 40 of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 210A(1)(a): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 210A(1)(b): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 210A(1)(c): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 210A(2)(a): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 210A(2)(b): amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**211 Defrauding the revenue of Customs**

- (1) Every person commits an offence who does any act or omits to do any act for the purpose of—
- (a) evading, or enabling any other person to evade, payment of duty or full duty on goods;
  - (b) obtaining, or enabling any other person to obtain, money by way of drawback or a refund of duty on goods to which that person or that other person is not entitled under this Act;
  - (c) conspiring with any other person (whether that other person is in New Zealand or not) to defraud the revenue of the Customs in relation to goods;
  - (d) defrauding in any other manner the revenue of the Customs in relation to goods.
- (2) Every person who commits an offence against this section (other than an offence involving goods that are tobacco) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000; or
  - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- (3) Every person who commits an offence against this section involving goods that are tobacco is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$20,000, or to both; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) To avoid doubt, in this section and sections 212 and 213, **tobacco** means all tobacco (as defined in section 2(1)), whether manufactured or not manufactured.

Compare: 1966 No 19 s 243; 1983 No 41 s 24(1)

Section 211(2): amended, on 24 September 2009, by section 13(1) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 211(3): added, on 24 September 2009, by section 13(2) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).



Section 211(4): added, on 24 September 2009, by section 13(2) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

**212 Possession or custody of uncustomed goods or prohibited imports**

- (1) Every person commits an offence who knowingly and without lawful justification has in his or her possession or custody goods that the person knows are uncustomed goods or prohibited imports.
- (2) Every person who commits an offence against this section (other than an offence involving goods that are tobacco) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000; or
  - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- (3) Every person who commits an offence against this section involving goods that are tobacco is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$20,000, or to both; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Compare: 1966 No 19 s 253

Section 212(2): amended, on 24 September 2009, by section 14(1) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 212(3): added, on 24 September 2009, by section 14(2) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

**213 Purchase, sale, exchange, etc, of uncustomed goods or prohibited imports**

- (1) Every person commits an offence who knowingly and without lawful justification purchases, sells, exchanges, or otherwise acquires or disposes of, goods that the person knows are uncustomed goods or prohibited imports.

- (2) Every person who commits an offence against this section (other than an offence involving goods that are tobacco) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate to a fine not exceeding \$50,000; or
  - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- (3) Every person who commits an offence against this section involving goods that are tobacco is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$20,000, or to both; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Section 213(2): amended, on 24 September 2009, by section 15(1) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 213(3): added, on 24 September 2009, by section 15(2) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

#### **214 Possession or control of concealed goods**

- (1) Every person commits an offence who knowingly conceals any goods that the person knows are dutiable or prohibited goods.
- (2) Every person who commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000; or
  - (c) in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.

Compare: 1966 No 19 s 254; 1982 No 112 s 17

#### **215 Offences in relation to seized goods**

- (1) Every person commits an offence who, having custody of goods pursuant to section 226, acts in breach of any requirement of or imposed pursuant to subsection (8) of that section.

- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$5,000.
- (3) Every person commits an offence who, without the permission of the chief executive, takes or carries away or otherwise converts to his or her own use goods, including any vehicle or craft, that have been seized as forfeited.
- (4) Every person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates.

Compare: 1966 No 19 ss 277, 292

#### **215A Offences in relation to certain detained goods**

- (1) Every person commits an offence who, having custody of goods pursuant to section 166F(1), acts in breach of any requirement of or imposed pursuant to section 166F(2) or (3).
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$5,000.
- (3) Every person commits an offence who, without the permission of the chief executive, takes or carries away or otherwise converts to his or her own use goods to which section 166F(2) and (3) applies.
- (4) Every person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates.

Section 215A: inserted, on 2 July 2004, by section 41 of the Customs and Excise Amendment Act 2004 (2004 No 55).

#### **216 Offences in relation to Customs Appeal Authorities**

- (1) Every person commits an offence who, with intent to deceive, makes any false or misleading statement or any material omission in any information given to a Customs Appeal Authority for the purposes of this Act.
- (2) Every person who commits an offence against subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$15,000:

- (b) in the case of a body corporate, to a fine not exceeding \$50,000.
- (3) Every person commits an offence who, after being summoned to attend to give evidence before an Authority or to produce to it any papers, documents, records, or things, without sufficient cause—
  - (a) fails to attend in accordance with the summons; or
  - (b) refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Authority to answer concerning the subject of the proceedings; or
  - (c) fails to produce any paper, document, record, or thing.
- (4) No person summoned to attend proceedings before an Authority shall be convicted of an offence against subsection (3) unless at the time of the service of the summons, or at some other reasonable time before the date on which that person was required to attend, there was made to that person a payment or tender of the amount fixed under section 265(2).
- (5) Every person commits an offence who—
  - (a) wilfully obstructs or hinders an Authority or any person authorised by an Authority in any inspection or examination of papers, documents, records, or things pursuant to section 261(1)(a); or
  - (b) without sufficient cause, fails to comply with any requirement of an Authority or any person authorised by an Authority made under section 261(1)(b); or
  - (c) without sufficient cause, acts in contravention of or fails to comply with any order made by an Authority under section 261(3) or any term or condition of the order.
- (6) Every person who commits an offence against subsection (3) or subsection (5) is liable on conviction to a fine not exceeding \$1,000.

*Miscellaneous provisions relating to offences*

**217 Liability of officers of corporations**

- (1) For the purposes of this section, the term **corporation** includes a company, trust, partnership, or other enterprise.

- (2) If a corporation commits an offence against any provision of this Act, every director, manager, secretary, officer, or agent of the corporation and every person purporting to act in any such capacity, who participated in, directed, authorised, acquiesced in, or assented to the act or omission constituting the offence also commits an offence against that provision.
- (3) Every individual who commits an offence under this Act as provided by subsection (2) is liable on conviction to the penalty prescribed by the section creating the offence in respect of any individual who is convicted of the offence or, if no penalty is prescribed in respect of an individual, to the penalty prescribed for the offence.
- (4) A person may be convicted of the offence, even though the corporation has not itself been charged with, or convicted of, the offence.

Compare: 1966 No 19 s 256

### **218 Liability of principal and agent**

- (1) Every declaration made or other act done by an agent, whether or not the agent is in New Zealand, in the course of his or her agency in relation to the report, entry, or clearance of any craft or goods or any other matter under this Act is deemed also to have been made or done by the agent's principal, and the principal is liable accordingly to the penalties imposed by this Act.
- (2) For the purposes of this section, the knowledge or intent of the agent is imputed to the principal in addition to the principal's own knowledge or intent.
- (3) For the purposes of this section,—
  - (a) an employee of the agent; or
  - (b) a person performing any function of or for the agent; or
  - (c) a person acting under the instruction of the agent,—is deemed also to be the agent of the principal.
- (4) Where any person acts or purports to act as the agent of any other person in relation to the report, entry, or clearance of any craft or goods or any other matter under this Act, that person is liable to the same penalties as if he or she were the principal for whom he or she so acts or purports to act.

Compare: 1966 No 19 s 235

**219 Attempts**

An attempt to commit an offence against this Act is an offence punishable in the same manner and gives rise to the same cause for seizure as if the offence attempted had been committed.

Compare: 1966 No 19 s 257

**220 Offences punishable on summary conviction**

*[Repealed]*

Section 220: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**221 Filing of charging document**

- (1) Proceedings for any offence against this Act (other than for an offence against section 216) must be commenced by—
  - (a) the chief executive; or
  - (b) any Customs officer nominated by the chief executive; or
  - (c) any person who is not a Customs officer but is an agent or employee of the Customs nominated by the chief executive.
- (2) Any Customs officer or agent or employee of the Customs purporting to act pursuant to a nomination of the chief executive under subsection (1)(b) or (c) is, in the absence of proof to the contrary, presumed to have been so nominated.
- (3) Proceedings for an offence against section 216 of this Act must be commenced by the Registrar of a Customs Appeal Authority.
- (4) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act ends on the date that is 5 years after the date on which the offence was committed.

Compare: 1966 No 19 ss 259, 260

Section 221: substituted, on 8 December 2009, by section 21 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 221 heading: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 221(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 221(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 221(4): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**222 Court may order payment of money in respect of duty**

- (1) Where any person is convicted of an offence against section 176, 177, 187, or 188 and the court is of the opinion that the offence has been committed for the purpose of enabling the destruction or concealment of any evidence that would support a claim for duty under this Act, the court may, in addition to any other penalty, order the defendant to pay to the Crown such further sum in respect of that claim as it thinks fit.
- (2) Any order for payment under this section may be enforced in the same manner as a fine.
- (3) The recovery of any amount under this section in respect of a claim does not extinguish the claim for duty, but shall be taken into account in determining the amount (if any) to be awarded in any subsequent proceedings that may be taken in respect of that claim.

Compare: 1966 No 19 s 264

**223 Power of chief executive to deal with petty offences**

- (1) This section applies to the following offences:
  - (a) an offence against this Act that is committed—
    - (i) in relation to goods; and
    - (ii) in circumstances that the chief executive is satisfied would not amount to more than minor offending;
  - (b) an offence against this Act that is not punishable by imprisonment.
- (2) At any time before a charging document has been filed against a person for an offence to which this section applies, the chief executive may accept from the person—
  - (a) a written admission that he or she committed the offence; and
  - (b) a request that the offence be dealt with summarily by the chief executive; and
  - (c) payment of an amount, not exceeding the limit specified in subsection (2B), that the chief executive thinks just in the circumstances of the case in full satisfaction of

any fine or other penalty to which the person would otherwise be liable under this Act.

- (2A) For the purposes of subsection (2), the chief executive may indicate to the person at the time of the commission of the alleged offence or as soon as practicable after that whether the chief executive considers that the offence is an offence to which this section applies.
- (2B) The amount referred to in subsection (2)(c) must not exceed one-third of the maximum total monetary penalty to which the person would be liable if the person were convicted of the offence by a court.
- (3) If the chief executive accepts payment of an amount under subsection (2)(c), the offender is not liable to be prosecuted for the offence in respect of which the payment was made.
- (4) If the chief executive declines to exercise his or her power under subsection (2), the admission in writing made by the offender is not admissible as evidence in any prosecution for that offence.

Compare: 1966 No 19 s 266

Section 223: substituted, on 9 October 2002, by section 21 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 223(1): replaced, on 6 April 2012, by section 24(1) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 223(2): replaced, on 6 April 2012, by section 24(1) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 223(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 223(2A): inserted, on 6 April 2012, by section 24(1) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 223(2B): inserted, on 6 April 2012, by section 24(1) of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 223(3): amended, on 6 April 2012, by section 24(2) of the Customs and Excise Amendment Act 2012 (2012 No 25).

## **Part 14**

### **Forfeiture and seizure**

#### **224 Application of this Part**

This Part shall apply to all forfeitures that arise under this Act.

Compare: 1966 No 19 s 269



**225 Goods forfeited**

- (1) The following goods shall be forfeited to the Crown:
- (a) goods in respect of which an offence has been committed under—
    - (i) section 179 (which relates to counterfeit seals or marks):
    - (ii) section 203 (which relates to offences in relation to entries):
    - (iii) section 204 (which relates to offences in relation to declarations and documents):
    - (iv) section 206 (which relates to possession of incomplete documents):
    - (v) section 209 (which relates to offences in relation to importation or exportation of prohibited goods):
    - (vi) section 210 (which relates to offences in relation to exportation of goods):
    - (vii) section 211 (which relates to defrauding the revenue of Customs):
    - (viii) section 212 (which relates to possession or custody of uncustomed goods or prohibited imports):
    - (ix) section 213 (which relates to purchase, sale, exchange, etc of uncustomed goods or prohibited imports):
    - (x) section 214 (which relates to possession or control of concealed goods):
  - (b) goods dealt with in contravention of section 41, 43, 46, or 47:
  - (c) dutiable or prohibited goods found in the possession of any person who, when questioned under section 145 or section 146, denied or failed to disclose the possession of those goods:
  - (d) dutiable or prohibited goods found in the course of a search under section 144 or seized under section 149C(1) or section 149C(1A)(b):
  - (da) dangerous items seized under section 149C(1A)(a) or section 149C(1)(b):

- (e) goods in respect of which an erroneous statement, declaration, certificate, or claim as to the country of which the goods are the produce or manufacture has been made or produced to any Customs officer:
- (f) dutiable or prohibited goods found on or in any craft, bulk cargo container, or pallet or a similar device that is unlawfully in any place:
- (g) dutiable or prohibited goods found on or in any craft, bulk cargo container, or pallet or a similar device after arrival in any Customs place from a point outside New Zealand, not being goods specified or referred to in the inward report or baggage belonging to the crew or passengers, and not being accounted for to the satisfaction of a Customs officer:
- (h) dutiable or prohibited goods found concealed in or on any craft, vehicle, bulk cargo container, pallet or a similar device, or any other thing:
- (i) goods in any package where those goods are not fully accounted for in the entry or declaration relating to that package:
- (j) dutiable or prohibited goods found so packed as to be likely to deceive the Customs officers:
- (k) uncustomed goods that are found in any place:
- (l) goods imported into New Zealand that have been acquired in a country outside New Zealand, whether by the importer or some other person, by an act which, if done in New Zealand would have amounted to a crime involving dishonesty within the meaning of section 2(1) of the Crimes Act 1961:
- (la) goods exported, or in respect of which an attempt to export has been made, that have been acquired in New Zealand, whether by the exporter or some other person, by an act that amounts to a crime involving dishonesty within the meaning of section 2(1) of the Crimes Act 1961:
- (m) all goods unlawfully exported or in respect of which an attempt to so export has been made:
- (n) all goods that have been unlawfully imported into New Zealand:

- (o) any goods, equipment, or apparatus used or intended for use in contravention of section 68 and any goods manufactured wholly or partly using such goods, equipment, or apparatus.
- (2) Notwithstanding section 53, for the purposes of subsection (1)(m), goods the exportation of which is prohibited under this Act are deemed to have been exported as soon as they are placed in or on any craft for exportation.
- (3) The forfeiture of goods extends to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container, pallet or a similar device, in or on which the goods are contained at the time of seizure, importation, or exportation.
- (4) Notwithstanding subsection (3), forfeiture of goods extends to the forfeiture of a bulk cargo container, pallet or a similar device where that bulk cargo container, pallet, or other similar device has been adapted for the purpose of concealing goods.
- (5) Every craft, vehicle, or any other thing, including any machinery or equipment on or in the craft or vehicle or thing, or any animal that is being or has been used for the carriage, handling, deposit, or concealment of any goods referred to in subsection (1), whether at or after the time of any alleged offence in relation to those goods, is also forfeited to the Crown.
- (6) Without limiting subsection (5), a craft is also forfeited to the Crown if—
  - (a) the craft is one in respect of which an offence under section 191(1)(a) or (d) is committed; and
  - (b) that offence was committed to facilitate non-compliance with a requirement in any of sections 27 to 29 by a person or persons who arrived in New Zealand having been brought (in that craft or in any other craft) from a point outside New Zealand.

Compare: 1966 No 19 ss 270, 271, 272, 273; 1979 No 137 s 11; 1982 No 112 s 15

Section 225(1)(d): substituted (with effect on 9 October 2002), on 2 July 2004, by section 47(2) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 225(1)(d): amended, on 6 March 2007, by section 21(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 225(1)(da): inserted (with effect on 9 October 2002), on 2 July 2004, by section 47(3) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 225(1)(da): amended, on 6 March 2007, by section 21(2) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 225(1)(l): amended, on 9 October 2002, by section 22(1) of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 225(1)(la): inserted, on 9 October 2002, by section 22(2) of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 225(6): added, on 2 July 2004, by section 42 of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **226 Procedure for seizure**

- (1) A Customs officer or constable may seize any forfeited goods or any goods that he or she has reasonable cause to suspect are forfeited.
- (2) Goods may be seized as forfeited wherever the goods are found within New Zealand.
- (3) Forfeited goods, other than prohibited goods, may be seized at any time within 2 years after the forfeiture has arisen.
- (4) Goods that are forfeited because they are prohibited goods may be seized at any time after the forfeiture has arisen.
- (5) A Customs officer or constable may use such force as is reasonably necessary for effecting the seizure and securing the goods.
- (6) Except as provided in subsections (7) and (8), all goods seized shall be taken to such place of security as a Customs officer directs, and there detained.
- (7) Where goods, including any craft, vehicle, or animal, have been seized under this section, any Customs officer may leave those goods in the custody of either—
  - (a) the person from whom the goods have been seized; or
  - (b) any other person authorised by the Customs officer and who consents to having such custody.
- (8) Every person who has the custody of goods under subsection (7) must hold them in safekeeping, without charge to the Crown and in accordance with any reasonable conditions that may be imposed by the Customs, until a final decision is made as to whether or not they are to remain forfeit, and must—
  - (a) make the goods available to a Customs officer on request; and

- (b) not alter, or dispose of, or remove the goods from New Zealand, unless he or she is authorised to do so by a Customs officer; and
- (c) return the goods on demand to the custody of the Customs.

Compare: 1966 No 19 ss 275, 276; 1982 No 112 s 16; 1986 No 44 s 26

Section 226(1): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 226(5): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

## **227 Notice of seizure**

- (1) When any goods have been seized under section 226, the Customs must, as soon thereafter as is reasonably practicable in the circumstances, give notice in writing of the seizure and the reasons for the seizure, in the prescribed form, to any person known or believed to have an interest in the goods, or where that person is overseas, to his or her agent in New Zealand.
- (2) A seizure is not invalidated or illegal by reason of any failure to give such notice if reasonable steps were taken to give the notice.

Compare: 1966 No 19 s 278

## **228 Forfeiture to relate back**

Where, pursuant to section 225, goods are forfeited and the goods are seized the forfeiture relates back to the date of the act or event from which the forfeiture arose.

Compare: 1966 No 19 s 274

## **229 Delivery of goods seized on deposit of value**

- (1) Where any goods have been seized as forfeited, the chief executive may, at any time before their condemnation, deliver the goods to the owner or other person from whom they were seized, on the deposit with the Customs of a cash sum equal,—
  - (a) in the case of imported goods, to the Customs value of the goods; or
  - (b) in the case of goods manufactured in a Customs controlled area, to the excise value of the goods as determined in accordance with Schedule 4,—

together with any duty to which the goods may be liable as determined by the chief executive.

- (2) The money deposited is deemed to be substituted for the goods seized, and all the provisions of this Part so far as they are applicable extend and apply to the money accordingly.

Compare: 1966 No 19 s 284

### **230 Sale of certain seized goods**

- (1) Where—

- (a) a living creature; or
- (b) any thing that, in the opinion of the chief executive, is of a perishable nature; or
- (c) any thing that, in the opinion of the chief executive, is likely to deteriorate or diminish in value by keeping; or
- (d) any thing that, in the opinion of the chief executive, it is desirable to sell—

has been seized as forfeited, the chief executive may sell the thing seized before its condemnation.

- (2) The net proceeds of sale are deemed to be substituted for the thing sold, and all the provisions of this Part so far as they are applicable extend and apply to those proceeds accordingly.

Compare: 1966 No 19 s 285

#### *Applications to review seizure of goods*

Heading: substituted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

### **231 Application for review of seizure**

- (1) Any person who has an interest in goods that have been seized under section 226 may, within the time specified in subsection (2), apply in writing to the chief executive for a review of the seizure.

- (2) The time is—

- (a) 20 working days after the date on which the notice of seizure is given to the applicant; or
- (b) any further time allowed by the chief executive if satisfied that the applicant did not receive the notice of seizure or that a further period is otherwise required in the interests of justice.

- (3) An application under this section may be made on either or both of the following grounds:
  - (a) that there was no legal basis for the seizure of the goods;
  - (b) that the applicant should, in all the circumstances, be granted relief.
- (4) The application must—
  - (a) state the ground or grounds on which it is made; and
  - (b) give an address at which the applicant wishes to receive correspondence relating to the application; and
  - (c) be sent to the chief executive.

Section 231: substituted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

### **232 Conduct of review**

- (1) On receipt of an application under section 231, the chief executive must conduct the review on the papers unless the chief executive otherwise directs.
- (2) In undertaking the review, the chief executive —
  - (a) must consider the application and any written submissions made by the applicant; and
  - (b) may consider any statement, document, information, or matter that in the chief executive's opinion may assist the chief executive to deal effectively with the subject of the review, whether or not it would be admissible in a court of law.
- (3) The chief executive may ask the applicant for supplementary information and have regard to that supplementary information.
- (4) The applicant must establish, on the balance of probabilities, that the applicant has an interest in the seized goods and acquired that interest in good faith.

Section 232: substituted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

### **233 Decision on review**

- (1) The chief executive must dispose of the application for review by making one of the following decisions:
  - (a) to dismiss the application for review:

- (b) if satisfied that there was no legal basis for the seizure of all or any of the goods, to disallow the seizure (in whole or in part) and to direct that the goods be given (in whole or in part) to—
    - (i) the person from whom the goods were seized; or
    - (ii) if the goods were not seized from a particular person, the person who, in the opinion of the chief executive, is entitled to possess the goods:
  - (c) to grant relief by making any of the determinations described in section 235 (either unconditionally or subject to any conditions described in that section), if satisfied that it is equitable to do so, having regard to the matters specified in section 234.
- (2) The chief executive must make his or her decision on the application within 20 working days after the day on which the chief executive receives the application.
  - (3) If, in the opinion of the chief executive, the circumstances of the case do not permit a decision to be made within the period specified in subsection (2), the chief executive may extend that period by a further period that is reasonable in the circumstances.
  - (4) As soon as practicable after making a decision on the application, the chief executive must give written notice of the decision to—
    - (a) the applicant; and
    - (b) any other person on whom the notice of seizure was served under section 227; and
    - (c) any person, other than a person referred to in paragraph (b), who claims an interest in the goods.
  - (5) If the application for review is dismissed, the written notice must contain the reasons for the decision.
  - (6) The written notice must state that a person who is dissatisfied with the decision of the chief executive has a right to appeal to a Customs Appeal Authority against the decision.

Section 233: substituted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).



**234 Matters concerning grant of relief**

The matters the chief executive may take into account when deciding whether or not to grant relief include, without limitation,—

- (a) the seriousness and nature of any act or omission giving rise to the seizure:
- (b) whether or not the person who is alleged to have done any act or omitted to do any act giving rise to the seizure has previously engaged in any similar conduct:
- (c) whether the seizure has arisen from, or is related to, a deliberate breach of the law:
- (d) the nature, quality, quantity, and estimated value of the seized goods:
- (e) the nature and extent of any loss or damage suffered by any person as a consequence of the seizure:
- (f) whether or not granting relief would undermine the purpose or objective of any import or export prohibition or restriction imposed by this Act:
- (g) the effect of any other action that has been taken or is proposed to be taken in respect of any offending related to the seizure.

Section 234: substituted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

**234A Condemnation if application discontinued**

*[Repealed]*

Section 234A: repealed, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

**235 Determinations where relief granted**

- (1) If the chief executive decides, under section 233(1)(c), to grant relief, the chief executive may do so by making any of the following determinations:
  - (a) that the goods be given to the applicant or to another person who, but for the seizure, is entitled to their possession:
  - (b) that the goods be sold and that 1 or more of the following persons be paid the part or parts of the proceeds that the chief executive specifies:

- (i) the applicant;
  - (ii) any other person who has an interest in the goods;
  - (iii) the Crown.
- (2) The chief executive may make a determination described in this section subject to any conditions that the chief executive thinks just.
- (3) Without limiting subsection (2), the chief executive may impose any of the following conditions:
- (a) that there be paid to the Customs in respect of the seized goods a sum equal to the whole or any part of 1 or more of the following:
    - (i) any costs or expenses incurred by the Customs in transporting, storing, or disposing of the goods (including returning or giving the goods to any person), or any incidental costs or expenses relating to their detention;
    - (ii) any duty not already paid;
    - (iii) any duty already refunded;
    - (iv) the value of the detained goods, as determined by the chief executive;
  - (b) that the goods be modified, in a manner directed by the chief executive, so as to render them inoperable for unlawful purposes;
  - (c) that the costs or expenses incurred by the Customs in modifying the goods in accordance with a direction under paragraph (b) be paid to the Customs.
- (4) The chief executive must not make a determination described in this section if he or she is of the opinion that all or any of the goods may be required to be produced in evidence in any criminal proceedings.

Section 235: substituted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

### **235A Condemnation of seized goods**

- (1) If the chief executive dismisses an application for review, the dismissal is deemed to be an order for condemnation of the goods to the Crown.
- (2) The order for condemnation of the goods takes effect on the close of the 20th working day after the chief executive gives

his or her decision on the application unless an appeal against the decision on the application is lodged before then.

- (3) If no application for review is made within the time specified by section 231(2), or if such an application is discontinued, the seized goods are condemned to the Crown.

Section 235A: inserted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

#### *Appeal from review*

Heading: inserted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

### **235B Right of appeal to Customs Appeal Authority from decision on review**

- (1) A person who is dissatisfied with a decision of the chief executive made under section 233 (including any determination or condition described in section 235) may appeal to a Customs Appeal Authority against the decision or any part of the decision.
- (2) The appeal must be brought within 20 working days after the date on which notice of the decision under section 233 is given.

Section 235B: inserted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

### **235C Condemnation of goods subject to appeal**

The goods that are the subject of an appeal under section 235B are condemned to the Crown if—

- (a) the appeal is discontinued; or
- (b) the decision of the Customs Appeal Authority on the appeal neither—
- (i) disallows the seizure of the goods under section 233(1)(b) (as applied by section 255(1)); nor
  - (ii) grants relief under section 233(1)(c) (as applied by section 255(1)).

Section 235C: inserted, on 24 September 2009, by section 16 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

*General provisions as to forfeiture***236 Condemnation of seized goods on conviction**

- (1) Subject to subsection (2), where this Act provides that on the commission of any offence any goods are forfeited, the conviction of any person for that offence has effect as a condemnation, without suit or judgment, of any goods that have been seized in accordance with this Act and—
- (a) in respect of which the offence was committed; or
  - (b) which were forfeited under any of subsections (3), (4), or (5) of section 225.
- (2) Where the court imposes a sentence on any person on the conviction of that person for an offence to which subsection (1) applies, the court may, if it thinks fit, order the restoration of the goods forfeited to the person from whom the goods were seized and, where such an order is made, the conviction does not have effect as a condemnation of those goods.
- (3) In making an order pursuant to subsection (2) the court may impose such conditions as it thinks fit.
- (4) Subsection (2) does not apply where the goods have, before the conviction, been sold, or restored to the person from whom they were seized, or otherwise disposed of by the chief executive under any other provision of this Act.

Compare: 1966 No 19 s 283(1); 1983 No 41 s 23

**237 Disposal of forfeited goods**

- (1) The Crown has the property in forfeited goods, or in any deposit made under section 229 or in the proceeds of sale under section 230, as the case may be.
- (2) In the case of goods, the goods may be sold, used, destroyed, or otherwise disposed of after their condemnation as the chief executive may direct.

Compare: 1966 No 19 s 286

**238 Application of forfeiture provisions**

All the provisions of this Act with respect to the forfeiture of goods extend and apply to any craft, vehicle, or other thing forfeited under this Act.

## Part 15 Evidence

### 239 Burden of proof

- (1) In any proceedings under this Act instituted by or on behalf of or against the Crown (other than a prosecution for an offence against section 182(2), 183(2), 205(6), or 209(5)) every allegation made on behalf of the Crown in any statement of claim, statement of defence, plea, or charge, that relates to—
- (a) the identity or nature of any goods; or
  - (b) the value of any goods for duty; or
  - (c) the country or time of exportation of any goods; or
  - (d) the fact or time of the importation of any goods; or
  - (e) the place of manufacture, production, or origin of any goods; or
  - (f) the payment of any duty on goods,—
- shall be presumed to be true unless the contrary is proved.
- (2) The presumption in subsection (1) shall not be excluded by the fact that evidence is produced on behalf of the Crown in support of any such allegation.
- (3) The provisions of this section shall extend and apply to proceedings in which the existence of an intent to defraud the revenue of the Customs is in issue.
- (4) Notwithstanding the foregoing provisions of this section, in any proceedings for an offence against this Act where it is alleged that the defendant intended to commit the offence, the prosecution has the burden of proving that intent beyond reasonable doubt.

Compare: 1966 No 19 s 299

Section 239(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 240 Documents made overseas

In any proceeding under this Act (other than a prosecution for an offence against section 182(1), 183(1), 205(5), or 209(1A)) the court may admit in evidence as proof of any fact in issue a document made in a country outside New Zealand, whether the document is legally admissible as evidence in other proceedings or not.

Compare: 1966 No 19 s 302

Section 240: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**241 Proof of rules made under section 288**

- (1) The production of a copy of the *Gazette* purporting to contain a copy of any rule made under section 288(1) that is required to be published in the *Gazette* shall, in all courts and in all proceedings, be sufficient evidence, until the contrary is proved, of the existence, publication, and provisions of the rule, and of the date of its coming into force.
- (2) The production of—
  - (a) any document under the hand of a Customs officer purporting to be a rule or an extract from a rule that is required to be notified in the *Gazette* in accordance with section 288(6), or a copy of any such rule or extract; and
  - (b) a copy of the *Gazette* in which the rule was notified,—shall, in all courts and in all proceedings, be sufficient evidence, until the contrary is proved, of the existence, notification, and provisions of the rule, and of the date of its coming into force.

**242 Customs record of computer transmission admissible in evidence**

In any proceedings under this Act or any other Act a computer printout of an extract of a record kept by the Customs under section 136, certified by or on behalf of the chief executive under the seal of the Customs as a true copy, shall in all courts, be admissible as evidence of the electronic message received by or sent to the Customs set out in that printout, unless the contrary is proved.

**243 Presumption of authenticity of documents**

All documents purporting to be signed by or on behalf of the chief executive, or to be sealed with the seal of the Customs, are, in all courts and in all proceedings under this Act and any other Act, deemed to have been so signed or sealed with due authority, unless the contrary is proved.

Compare: 1966 No 19 s 301

## **Part 16** **Customs Appeal Authorities**

### *Customs Appeal Authorities*

#### **244 Establishment of Customs Appeal Authorities**

- (1) There shall be established 1 or more Customs Appeal Authorities.
- (2) If more than 1, any Authority may be given such distinctive designation as the Governor-General determines, and any such designation may from time to time be changed by the Governor-General.
- (3) Every Authority shall consist of 1 person, being a District Court Judge or a barrister or solicitor of the High Court of not less than 7 years' practice.
- (4) Every Authority shall be appointed by the Governor-General on the joint recommendation of the Minister of Customs and the Minister of Justice.
- (5) No person shall be deemed to be employed in the service of Her Majesty for the purpose of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person being an Authority.
- (6) Customs Appeal Authorities shall be administered by the Ministry of Justice.

Section 244(6): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

#### **245 Term of office of Authority**

- (1) Except as otherwise provided in this Act, every person appointed as an Authority shall be appointed for such term, not exceeding 7 years, as the Governor-General thinks fit, and may from time to time be reappointed.
- (2) Subject to subsection (3), any person appointed as an Authority may at any time be suspended or removed from office by the Governor-General for engaging in any occupation for reward outside the duties of his or her office, or for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign his or her office by writing addressed to the Minister of Customs and the Minister of Justice.

- (3) Where the terms of appointment of any person appointed as an Authority permit that person to engage in any occupation for reward outside the duties of his or her office, he or she is not liable to be suspended or removed from office under subsection (2) by reason of his or her so engaging in any occupation for reward so permitted.
- (4) Notwithstanding that the term of office of a person appointed as an Authority has expired or that the person has resigned his or her office, he or she shall be deemed to continue to be an Authority for the purpose of deciding any appeal that was wholly heard before the expiration of his or her term of office or before his or her resignation took effect, as the case may be.

Section 245(2): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

**246 Oath to be taken by Authority**

Before entering upon the exercise of the duties of his or her office, every person appointed as an Authority shall take and subscribe an oath before a Judge of the High Court that he or she will faithfully and impartially perform the duties of his or her office.

**247 Remuneration and travelling expenses**

There shall be paid out of money appropriated by Parliament for the purpose to any person appointed as an Authority remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if that person were a statutory Board within the meaning of that Act.

**248 Sickness or incapacity**

- (1) In the event of the sickness or other incapacity of an Authority, the Minister of Customs and the Minister of Justice, jointly, may appoint any person who is qualified to be appointed as an Authority to act in the place of that person during the incapacity.
- (2) Any person so appointed has authority to act on behalf of the Authority, and while so acting, is deemed to be an Authority.



**249 Validity of appointment not to be questioned in proceedings**

No appointment of a person under section 248 and no act done by any person by virtue of such appointment shall in any proceedings be questioned on the ground that the occasion of the appointment had not arisen or had ceased.

**250 Authority not personally liable**

No person appointed as an Authority and no person appointed under section 248 is personally liable for any act done or omitted to be done by him or her in good faith in pursuance or intended pursuance of his or her powers and authorities under this Act.

**251 Registrars of Authorities**

- (1) There shall from time to time be appointed under the State Sector Act 1988 such Registrars of the Authorities as may be required, and 1 person may be appointed Registrar of 2 or more Authorities.
- (2) The office of Registrar may be held either separately or in conjunction with any other office in the Public Service.

**252 Seal**

Every Authority shall have a seal which shall be judicially noted in all courts.

**253 Functions of Authority**

The functions of an Authority shall be to sit as a judicial authority for hearing and deciding such appeals as are authorised by this Act or any other Act against assessments, decisions, rulings, determinations, and directions of the chief executive.

*Proceedings*

**254 Procedure**

- (1) The procedure of an Authority shall be in accordance with this Act and any regulations made under this Act and, subject to this Act and those regulations, shall be such procedure as an Authority thinks fit.

- (2) Proceedings before an Authority shall be commenced by the lodging of an application in the prescribed form, together with the prescribed fee (if any), with the Authority.

**255 Nature of appeal**

- (1) Appeals shall be by way of a hearing *de novo*.
- (2) For the purpose of hearing and deciding any appeal, an Authority shall have all the powers, duties, functions, and discretions of the chief executive in making the assessment, decision, ruling, determination, or direction appealed from.

**256 Authority may extend time for appeal**

Where under this Act a person is entitled to appeal to a Customs Appeal Authority within a specified time, an Authority may, on an application made within the specified time, extend the time within which the appeal may be brought.

**257 Hearing**

- (1) Subject to section 258, as soon as an Authority considers that an appeal is ready to be heard, the Authority shall fix a date, time, and place for the hearing of the appeal and shall notify the appellant and the chief executive of the date, time, and place fixed.
- (2) A notice to the appellant under subsection (1)—
  - (a) shall, in addition to the matters referred to in subsection (1), inform the appellant of the provisions of subsections (5) and (6); and
  - (b) shall be served on the appellant by personal service or by post in accordance with section 284(4)(b).
- (3) At the hearing of an appeal before an Authority the appellant and the chief executive may call evidence and shall be given an opportunity to be heard either in person or by a person authorised by the appellant or the chief executive, as the case may be, in that behalf whether or not that person is a barrister or solicitor of the High Court.
- (4) If the appellant or the chief executive, or both, fail to appear before an Authority at the time and place appointed, the Au-

thority may nevertheless, upon proof of service of the notice of the hearing, proceed to determine the appeal.

- (5) Subject to subsection (6), the hearing of an appeal before an Authority shall be in public.
- (6) If the Authority is of the opinion that it is proper to do so, having regard to the interests of any party and to the public interest, it may hold a hearing or any part of a hearing in private.
- (7) The Authority may order that any part of any evidence given or the name of any witness not be published, and any such order may be subject to such conditions as the Authority thinks fit.

**258 Authority may decide appeal without oral hearing if both parties consent**

- (1) Notwithstanding section 257, an Authority may, if it thinks fit and if both parties consent, decide an appeal without holding an oral hearing.
- (2) If an Authority at any time during its consideration of an appeal in accordance with subsection (1) considers that an oral hearing should be held, the Authority shall fix a date, time, and place for the hearing of the appeal in accordance with section 257.

**259 Authority's powers**

For the purposes of dealing with the matters before it, an Authority shall have the powers of a District Court, in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearings of the Authority.

**260 Evidence**

- (1) An Authority may receive as evidence any statement, document, information, or matter that, in the opinion of the Authority, may assist the Authority to deal effectually with the proceedings, whether or not it would be admissible in a court of law.
- (2) An Authority may take evidence on oath.
- (3) An Authority may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Authority thinks fit, verifying it by oath.

**261 Powers of investigation**

- (1) For the purposes of dealing with the matters before it, an Authority or any person authorised by the Authority in writing to do so may—
  - (a) inspect and examine any papers, documents, records, or things:
  - (b) require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made:
  - (c) require any person to furnish, in a form approved by or acceptable to the Authority, any information or particulars that may be required by it, and any copies of or extracts from any papers, documents, or records in that person's possession or under that person's control.
- (2) The Authority may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section shall be verified by statutory declaration or otherwise as the Authority may require.
- (3) For the purposes of dealing with the matters before it, an Authority may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Authority, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.
- (4) Every person shall have the same privileges in relation to the giving of information to the Authority, the answering of questions put by the Authority, and the production of papers, documents, records, and things to the Authority as witnesses have in courts of law.

**262 Power to summon witnesses**

For the purposes of dealing with the matters before it, an Authority may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to

produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the matters before the Authority.

**263 Service of summons**

- (1) A summons to a witness may be served—
  - (a) by delivering it to the person summoned; or
  - (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence or business.
- (2) The summons shall—
  - (a) where it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required;
  - (b) where it is served under subsection (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.
- (3) If the summons is posted by registered letter it shall be deemed for the purposes of subsection (2)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

**264 Protection of persons appearing**

Every witness giving evidence, and every counsel or agent or other person appearing before the Authority, shall have the same privileges and immunities as witnesses and counsel in courts of law.

**265 Witnesses' allowances**

- (1) Every witness attending the hearing to give evidence pursuant to a summons shall be entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations shall apply accordingly.
- (2) On each occasion on which the Authority issues a summons under section 262, the Authority shall fix an amount which, on the service of the summons, or at some other reasonable time

before the date on which the witness is required to attend, shall be paid or tendered to the witness.

- (3) The amount fixed under subsection (2) shall be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Authority, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.
- (4) The whole or part of any amount fixed under subsection (2) may, with the consent of the witness, be paid or tendered in the form of vouchers or tickets.

Section 265(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **266 Payment of witnesses' allowances**

- (1) Where a party to the proceedings has requested the issue of a witness summons, that party—
  - (a) shall be liable for payment of the witness's fees, allowances, and expenses; and
  - (b) shall, on making application for the issue of a witness summons, deposit with the Authority such sums as the Authority thinks sufficient.
- (2) The amounts of a witness's fees, allowances, and expenses shall be paid out of the sum deposited under subsection (1)(b).
- (3) Where the Authority has of its own motion issued the witness summons, the Authority may direct that the amount of those fees, allowances, and travelling expenses shall be paid by the Crown.

#### **267 Grounds of appeal and burden of proof**

- (1) Subject to subsection (2), in an appeal the appellant is limited to the grounds stated in the appellant's notice of appeal, and the burden of proof is on the appellant.
- (2) The Authority may, either on the application of the appellant or of its own motion, amend the grounds stated in the notice of appeal.

**268 Sittings of Authority**

- (1) Sittings of an Authority shall be held at such times and places as the Authority from time to time appoints.
- (2) An Authority may adjourn a sitting from time to time or place to place before the time of the sitting or at the sitting.
- (3) During the absence of the Authority or his or her inability from any cause to act, the Registrar of the Authority has the same powers as the Authority to adjourn a sitting.

**269 Authority may dismiss frivolous or vexatious appeal**

An Authority may at any time dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

**270 Decision of Authority**

- (1) Every decision of an Authority shall be given in writing, with a statement of the Authority's reasons for the decision.
- (2) A copy of the decision shall be given to the appellant and to the chief executive and shall be accompanied by a written statement of the provisions of section 272(1).

**271 Power to award costs**

- (1) An Authority may in any proceedings order a party to pay to the other party such costs and expenses (including witnesses' expenses) as it considers reasonable, and may apportion any such costs between the parties or any of them in such manner as it thinks fit.
- (2) Where, through failure to prosecute any proceedings at the time fixed for a hearing or to give adequate notice of the abandonment of any proceedings, an Authority considers it proper to do so, the Authority may order the party in default to pay to the Crown such sum for costs as it considers reasonable.

**272 Appeals to High Court**

- (1) Any party who is dissatisfied with a decision of an Authority under this Act as being erroneous in point of law or fact may appeal to the High Court.
- (2) Every such appeal shall be made by filing a notice of appeal in the appropriate registry of the High Court within 20 working

days after the date of the decision appealed against or within such further time as the High Court may allow.

- (3) Where a notice of appeal is filed in accordance with subsection (2), the appellant shall also, within the time specified in that subsection, file with the Authority a notice of appeal specifying the registry of the High Court in which the appellant intends to file the case on appeal, and, except in the case of an appeal by the chief executive, shall give security for the costs of the appeal of such amount and in such form as may be fixed by the Authority.
- (4) The appellant shall prepare a case setting forth the facts and the questions of law or fact arising for the determination of the High Court, and shall, within 2 months after the date of the giving by the Authority of his or her decision, submit the case to the Authority.
- (5) An Authority may return to an appellant a case submitted to the Authority under subsection (4) or further submitted under this subsection for such amendment as the Authority shall direct, and the appellant shall further submit the case to the Authority within such time as the Authority shall allow.
- (6) Where an Authority accepts a case submitted or further submitted to him or her under subsection (4) or subsection (5), the Authority shall sign the case, and shall deliver the case to the appellant.
- (7) The appellant shall, within 14 days after the date of receipt of the case delivered by the Authority pursuant to subsection (6), transmit it to the Registrar of the High Court in the registry specified in the notice of appeal, and the Registrar shall thereupon enter the appeal for hearing at the first practicable sitting of the court.
- (8) On the hearing of the appeal the High Court may, if it thinks fit, cause the case so stated to be sent back to the Authority for amendment, and subsections (5), (6) and (7) shall, with any necessary modifications, apply as if the case had been submitted to the Authority under subsection (4).



**273 Appeal to Court of Appeal**

Any party who is dissatisfied with a decision of the High Court on any case on appeal under section 272 as being erroneous in point of law may appeal to the Court of Appeal.

**274 Stating case for High Court**

- (1) An Authority may at any time, on the application of the appellant or the chief executive or of its own motion, state a case for the opinion of the High Court on any question of law arising in respect of any appeal before the Authority.
- (2) The Authority shall give notice to the chief executive and the appellant of the Authority's intention to state a case under this section specifying the registry of the High Court in which the case is to be filed.
- (3) Subsections (4), (5), (6), (7), and (8) of section 272 shall apply to a case stated under this section as if the case were an appeal to the High Court on a question of law in which the party on whose application the Authority intends to state the case, or the chief executive where the Authority intends to state the case of its own motion, is the appellant, except that the time for submitting a case to the Authority shall be within 20 working days after the date of the giving by the Authority of notice under subsection (2), or such further time as the Authority may allow.

**Part 17**

**Miscellaneous provisions**

**274A Use of automated electronic systems by Customs to make decisions, exercise powers, comply with obligations, and take related actions**

- (1) The chief executive may arrange for the use, under the chief executive's control, of automated electronic systems for any purposes for which the chief executive, the Customs, or a Customs officer may, or must, under the designated border processing law,—
  - (a) make a decision; or
  - (b) exercise a power, or comply with an obligation; or

- (c) do anything else related to making a decision, exercising a power, or complying with an obligation.
- (2) An arrangement under subsection (1)(a) may (without limitation) involve use of an automated electronic system to make a decision by analysing the information (if any) about a person that is held by the chief executive, or to which the chief executive has access, using criteria predetermined by the chief executive.
- (3) The chief executive must not under subsection (1) arrange for use of an automated electronic system in relation to a decision, power, obligation, or related action unless satisfied that—
  - (a) the system has the capacity with reasonable reliability to make the decision, exercise the power, comply with the obligation, or take the related action; and
  - (b) there are also available for the person affected 1 or more alternative ways of making the decision, exercising the power, complying with the obligation, or taking the related action, and each of those alternative ways involves a person.
- (4) Before concluding for the first time, varying significantly, or revoking and replacing an arrangement under subsection (1), the chief executive must consult with the Privacy Commissioner on the terms, and any privacy implications, of the proposed initial arrangement, significant variation, or replacement arrangement.
- (5) A decision made, power exercised, obligation complied with, or related action taken using an automated electronic system in accordance with an arrangement under subsection (1) must for all purposes be treated as a decision made, power exercised, obligation complied with, or related action taken by the chief executive, the Customs, or a Customs officer (as the case may be) who or that is authorised by the designated border processing law to make that decision, exercise that power, comply with that obligation, or take that related action.
- (6) An automated electronic system used in accordance with an arrangement under subsection (1) may include components outside New Zealand, and may also be used—

- (a) for making decisions, exercising powers, complying with obligations, or taking related actions under other enactments; and
  - (b) in accordance with provisions of those other enactments on use of automated electronic systems.
- (7) For the purposes of this section and sections 274B and 274C, the following provisions (and any regulations made under them, or made under this Act and made for their purposes) are the **designated border processing law**:
- (a) Part 3 (arrival and departure of goods, persons, and craft):
  - (b) Part 12 (powers of Customs officers):
  - (c) Parts 13 to 15 and 17 (offences, forfeiture and seizure, evidence, and miscellaneous provisions):
  - (d) any other provisions of this Act (other than Part 3A) that are declared by regulations under section 286(1)(ii) to be for those purposes part of the designated border processing law.

Compare: 1987 No 74 s 125AB(5); Australian Citizenship Act 2007 (Aust) s 48; Migration Act 1958 (Aust) s 495A

Section 274A: inserted, on 8 December 2009, by section 22 of the Customs and Excise Amendment Act 2009 (2009 No 61).

#### **274B Publication of details of arrangements for use of automated electronic systems**

- (1) The chief executive must ensure that details of arrangements under section 274A(1), and variations, revocations, or revocations and replacements of details of that kind, are published promptly—
  - (a) in the *Gazette*; and
  - (b) (so far as practicable) on an Internet site that is maintained by, or on behalf of, the chief executive, and that is publicly available free of charge.
- (2) Those details must include, for every arrangement under section 274A(1), and for every variation, revocation, or revocation and replacement of such an arrangement, information identifying the relevant decision, power, obligation, or related action under the designated border processing law, and information identifying the automated electronic system that is to

make, exercise, comply with, or take that decision, power, obligation, or related action.

- (3) No arrangement, variation, revocation, or revocation and replacement is made invalid by reason only of a failure to publish details of it promptly in accordance with subsection (1).

Section 274B: inserted, on 8 December 2009, by section 22 of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **274C Variation and substitution of decisions made by automated electronic systems**

- (1) This section applies to a decision—
- (a) that, under the designated border processing law, may or must be made by the chief executive, the Customs, or a Customs officer (as the case may be); and
  - (b) that is made by an automated electronic system in accordance with an arrangement under section 274A(1).
- (2) The chief executive, the Customs, or a Customs officer (as the case may be) may, despite section 274A or any other enactment or other law to the contrary,—
- (a) vary or add to terms or conditions of, or imposed in or in relation to, the decision; or
  - (b) substitute a decision (the **substituted decision**) for the decision (the **initial decision**) if satisfied that the substituted decision could have been made under the same provision of the designated border processing law as the initial decision and that the substituted decision is more favourable to the person affected.
- (3) The chief executive, the Customs, or the Customs officer (as the case may be) does not have a duty to consider whether to exercise all or any of the powers in subsection (2) in respect of a decision, whether or not he or she is asked to do so by the person affected or in any other circumstances.

Compare: Migration Act 1958 (Aust) s 495B

Section 274C: inserted, on 8 December 2009, by section 22 of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **274D Appeals and reviews unaffected**

Sections 274A to 274C do not limit or affect any rights to appeal against, or to apply, in accordance with law, for adminis-

trative or judicial review of, any arrangement, decision (initial or substituted), power, obligation, or other action under or specified in those sections.

Compare: 2002 No 34 s 33; 2004 No 115 s 21(d); 2005 No 39 s 61(6)

Section 274D: inserted, on 8 December 2009, by section 22 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**274E No limitation of claims by Crown to recover duties or interest on duties, or on forfeiture proceedings, under this Act**

No relief in respect of a claim by the Crown to recover any tax or duty, or interest on any tax or duty, or in respect of any forfeiture proceedings, under this Act, is barred or otherwise affected by the following:

- (a) the Limitation Act 2010:
- (b) any other enactment that prescribes a limitation period or other limitation defence.

Compare: 1950 No 65 proviso to s 32

Section 274E: inserted, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

**275 Payments by chief executive out of public money**

Subject to any limitations imposed in regulations made under this Act, the chief executive may incur expenses without further appropriation than this section to pay—

- (a) all lawful refunds of duty:
- (b) all lawful drawbacks of duty:
- (c) all lawful refunds of administrative penalties under section 129(2):
- (d) all lawful payments of interest pursuant to section 93(1).

Compare: 1966 No 19 s 226; 1989 No 44 s 86(1)

**276 Application of Act to postal articles**

- (1) Subject to any regulations made under subsection (3), the provisions of this Act apply to postal articles and to goods contained in postal articles in the same manner as those provisions apply to other goods.
- (2) In this section,—

- (a) the term **postal article** means any letter, parcel, packet, or other article whatever received or transmitted by or through a postal operator; and includes any such articles imported by air courier companies:
  - (b) the term **postal operator** means a postal operator within the meaning of the Postal Services Act 1998.
- (3) 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 or any of the following purposes:
- (a) providing that any separate postal articles and goods contained in them, whether addressed to the same or to different persons, may be treated for the purposes of this Act as a single postal article consigned to a single person:
  - (b) prescribing the persons who are to be deemed for the purposes of this Act to be the importers or exporters of such postal articles or goods.
- (4) For the purposes of this Act, a postal article is deemed to have been produced or delivered to a Customs officer when it is brought within a Customs controlled area.

Compare: 1966 No 19 s 305(1), (2)(e), (f), (3)

Section 276(2): substituted, on 1 April 1998, by section 62(1) of the Postal Services Act 1998 (1998 No 2).

Section 276(4): inserted, on 6 April 2012, by section 25 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### **277 Declarations under this Act**

- (1) Every declaration, including a declaration that is made and transmitted electronically, that is required or authorised by this Act must be made in the prescribed form.
- (2) Where any form requires that a declaration must be made before any person, the declaration may be made before a Customs officer, or before a person authorised under the Oaths and Declarations Act 1957 to take declarations, or before such other person as may be prescribed.

Compare: 1966 No 19 s 303

**278 Power of chief executive to determine seals, etc**

The chief executive may, from time to time, determine any seal, stamp, mark, marking, substance, or device for the use of the Customs.

Section 278 heading: amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 278: amended, on 8 December 2009, by section 4(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

**279 Arrival and departure information**

The Customs may, for the purposes of monitoring the movement of craft and persons, passenger and crew processing and border security, collect and use the following information about craft and persons arriving in or departing from New Zealand:

- (a) details of craft movements including the craft name, and registration number or identifier, estimated date and time of arrival or departure and place of origin and destination; and
- (b) personal information including the person's name, date of birth, gender, passport number, nationality, and travel movements.

**280 Supply of arrival and departure information for benefit and benefit debt recovery purposes**

- (1) In this section, unless the context otherwise requires, the term **benefit** has the same meaning as in section 3(1) of the Social Security Act 1964; and includes—
  - (a) a lump sum payable under section 61DA or section 61DC or section 61DD of that Act;
  - (b) any special assistance granted out of a Crown Bank Account from money appropriated by Parliament under section 124(1)(d) or (da) of that Act;
  - (c) an allowance established by regulations made under section 303 of the Education Act 1989.
- (2) The purpose of this section is to facilitate the exchange of information between the Customs and the department for the time being responsible for the administration of the Social Security Act 1964 for all or any of the following purposes:

- (a) to verify the entitlement or eligibility of any person to or for any benefit:
  - (b) to verify the amount of any benefit to which a person is or was entitled or for which a person is or was eligible:
  - (c) to enable the recovery of any debt due to the Crown in respect of any benefit.
- (3) For the purposes of this section, the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 may from time to time, in accordance with arrangements made from time to time between that chief executive and the chief executive of the Customs, request the supply, in respect of persons who depart from New Zealand or persons who arrive in New Zealand from another country, or both, of the information specified in subsection (5).
- (4) Nothing in subsection (3) applies in respect of persons who are exempted by regulations or a special direction made under the Immigration Act 2009 from, as the case may require, the requirement to—
- (a) apply for a visa or entry permission in the prescribed manner under section 103(1)(b), (c), and (d) of that Act; or
  - (b) complete documentation on departure from New Zealand under section 119(1)(c) of that Act.
- (5) The information referred to in subsection (3) is as follows:
- (a) the person's full name:
  - (b) the person's date of birth:
  - (c) the person's sex:
  - (d) the person's passport number:
  - (e) the person's country of citizenship:
  - (f) if the person arrived or, as the case may be, departed by aircraft, the flight number:
  - (g) if the person arrived or, as the case may be, departed by ship, the name of the ship:
  - (h) the date on which the person arrived in or, as the case may be, departed from New Zealand.
- (6) On receipt of a request made under subsection (3), the chief executive of the Customs may supply the information requested to any officer or employee or agent of the other department



who is authorised for the purpose by the chief executive of that department.

- (7) Information supplied under a request made under subsection (3) may be supplied in such a form as is determined by agreement between those chief executives.

Section 280: substituted, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 280 heading: amended, on 9 April 2008, by section 5(1) of the Customs and Excise (Social Assistance) Amendment Act 2008 (2008 No 25).

Section 280(1)(b): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 280(1)(c): added, on 6 March 2007, by section 22 of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 280(2): substituted, on 9 April 2008, by section 5(2) of the Customs and Excise (Social Assistance) Amendment Act 2008 (2008 No 25).

Section 280(4): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

## 280A Interpretation

In section 280B, unless the context otherwise requires,—

**authorised officer** means any officer, employee, or agent of the department who, with the approval of the chief executive of the Customs, is authorised by the chief executive of the department to supply information or receive information from the chief executive of the Customs under section 280B

**department** means the department for the time being responsible for the administration of the Social Security Act 1964

**identifying information** means personal information that identifies an individual, which may include the individual's passport number

**social security agreement** means an agreement or convention, or alteration to an agreement or convention, in respect of which an Order in Council has been made under section 19 of the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990.

Compare: 1994 No 166 ss 85B, 85C

Section 280A: inserted, on 27 April 2002, by section 8 of the Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Act 2002 (2002 No 8).

Section 280A **social security agreement**: amended, on 5 December 2013, by section 11(2)(a) of the Social Welfare (Transitional Provisions) Amendment Act 2013 (2013 No 132).

**280B Disclosure of arrival and departure information for purposes of mutual assistance provision contained in social security agreement**

- (1) The purpose of this section is to facilitate the exchange of information between the Customs and the department for the purpose of giving assistance to the Government of a country with which New Zealand has a social security agreement that contains a mutual assistance provision of the kind referred to in section 19A(2)(b) of the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990, to enable compliance with that agreement.
- (2) For the purpose of this section, the chief executive of the department may supply to the chief executive of Customs—
  - (a) any identifying information supplied to the department by the Government of that country; and
  - (b) any identifying information obtained by the department about a person who has applied for a benefit to which that social security agreement applies.
- (3) If, in relation to any person, identifying information is supplied in accordance with subsection (2), the chief executive of the Customs may compare that information with any arrival and departure information held by the Customs that relates to that person.
- (4) If the Customs has arrival or departure information relating to a person, the chief executive of the Customs may, for the purpose of this section, supply to an authorised officer any of the following information held by the Customs if that information is of a type specified in an agreement made under section 19C(1)(d) of the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990:
  - (a) the person's full name:
  - (b) the person's date of birth:
  - (c) the person's sex:
  - (d) the person's passport number:
  - (e) the person's nationality:

- (f) if the person arrived or, as the case may be, departed by aircraft, the flight number:
  - (g) if the person arrived or, as the case may be, departed by ship, the name of the ship:
  - (h) the date on which the person arrived in, or, as the case may be, departed from, New Zealand.
- (5) If the chief executive of the Customs has supplied information under subsection (4) to an authorised officer, the department may supply that information to the competent institution of the Government of the other country in accordance with the mutual assistance provision of the social security agreement.
- (6) If information is supplied to the chief executive of the Customs under subsection (2), that chief executive—
- (a) may use that information for the purposes set out in subsections (3) and (4):
  - (b) may not supply that information to any other country without the prior written consent of the chief executive of the department, and that supply or consent may be subject to any conditions that the chief executive of the department considers appropriate to impose.

Section 280B: inserted, on 27 April 2002, by section 8 of the Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Act 2002 (2002 No 8).

Section 280B(1): amended, on 5 December 2013, by section 11(2)(b) of the Social Welfare (Transitional Provisions) Amendment Act 2013 (2013 No 132).

Section 280B(4): amended, on 5 December 2013, by section 11(2)(b) of the Social Welfare (Transitional Provisions) Amendment Act 2013 (2013 No 132).

### 280C Interpretation

In sections 280D and 280E, unless the context otherwise requires,—

**amount of reparation** has the same meaning as in section 79 of the Summary Proceedings Act 1957

**authorised officer**—

- (a) means any officer, employee, or agent of the Department who is authorised by the chief executive of the Department to supply information to, or receive information from, the chief executive of the Customs under sections 280D; and
- (b) includes a constable

**Department** means the Ministry of Justice or other department of State that, with the authority of the Prime Minister, is for the time being responsible for the enforcement of fines

**fine** means—

- (a) a fine within the meaning of section 79 of the Summary Proceedings Act 1957;
- (b) a fine to which section 19 of the Crimes Act 1961 applies;
- (c) a fine to which section 43 or 45 of the Misuse of Drugs Amendment Act 1978 applies;
- (d) *[Repealed]*
- (e) any amount payable under section 138A(1) of the Sentencing Act 2002

**finer enforcement action** includes the execution of a warrant to arrest a person in respect of the non-payment of the whole, or of any part, of any fine

**identifying information** means personal information that identifies an individual, which may include the individual's passport number

**serious default**, in relation to a person, means that—

- (a) the person owes—
  - (i) an amount of \$1,000 (or any other amount that may be fixed by the Governor-General by Order in Council) or more in relation to 1 or more unpaid fines (other than an amount of reparation); or
  - (ii) any amount of reparation; and
- (b) a warrant to arrest the person has been issued in respect of the non-payment of the whole, or of any part, of any amount referred to in paragraph (a); and
- (c) the warrant has not been withdrawn or executed.

Section 280C: inserted, on 10 April 2006, by section 4 of the Customs and Excise Amendment Act 2006 (2006 No 7).

Section 280C **amount of reparation**: inserted, on 13 February 2012, by section 4(3) of the Customs and Excise Amendment Act 2011 (2011 No 36).

Section 280C **authorised officer** paragraph (b): amended, on 8 December 2009, by section 24 of the Customs and Excise Amendment Act 2009 (2009 No 61).

Section 280C **fine**: replaced, on 13 February 2012, by section 4(1) of the Customs and Excise Amendment Act 2011 (2011 No 36).

Section 280C **fine** paragraph (d): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 280C **reparation**: repealed, on 13 February 2012, by section 4(2) of the Customs and Excise Amendment Act 2011 (2011 No 36).

**280D Disclosure of arrival and departure information for fines enforcement purposes**

- (1) The purpose of this section is to facilitate the exchange of information between the Customs and the Department to enable—
  - (a) the Department to locate any person who is in serious default in the payment of any fine; and
  - (b) appropriate fines enforcement action to be taken against that person.
- (2) For the purpose of this section, an authorised officer may supply to the chief executive of the Customs any identifying information about a person who is in serious default.
- (3) If, in relation to a person who is in serious default, identifying information is supplied in accordance with subsection (2), the chief executive of the Customs may compare that information with any information held by the Customs that relates to that person.
- (4) If the Customs has information relating to a person who is in serious default, the chief executive of the Customs may, for the purpose of this section, supply to an authorised officer any of the following information relating to that person held by the Customs:
  - (a) the person's full name:
  - (b) the person's date of birth:
  - (c) the person's sex:
  - (d) the person's passport number:
  - (e) the person's nationality:
  - (f) if the person arrived or, as the case may be, departed by aircraft, the flight number of the aircraft:
  - (g) if the person arrived or, as the case may be, departed by ship, the name of the ship:
  - (h) the date on which the person arrived in, or (as the case may be) departed from, New Zealand.

- (5) The chief executive of the Customs and the chief executive of the Department may, for the purpose of this section, determine by agreement between them—
- (a) the frequency with which information may be supplied; and
  - (b) the form in which information may be supplied; and
  - (c) the method by which information may be supplied.

Section 280D: inserted, on 10 April 2006, by section 4 of the Customs and Excise Amendment Act 2006 (2006 No 7).

**280E No Crown liability to third parties for fines enforcement action**

- (1) This section applies to the taking of any fines enforcement action against a person who is alleged to be in serious default (the **alleged defaulter**), or to the questioning of any alleged defaulter with a view to taking any fines enforcement action, immediately—
- (a) after the arrival of the alleged defaulter in New Zealand; or
  - (b) before the departure of the alleged defaulter from New Zealand.
- (2) The Crown is not liable to any person (for example, an airline operator or a passenger on an airline) for any loss or damage caused as a result of, or in connection with, the actions described in subsection (1) unless the person or persons taking those actions, or any employee of the Crown performing any function directly or indirectly connected with those actions, has not acted in good faith or has been grossly negligent.
- (3) Nothing in subsection (2) applies to or affects any question of the liability of the Crown to the alleged defaulter.

Section 280E: inserted, on 10 April 2006, by section 4 of the Customs and Excise Amendment Act 2006 (2006 No 7).

**280F Customs may supply information concerning specified fines defaulters to chief executive of Department of Labour**

- (1) The chief executive of the Customs may supply to the chief executive of the Department of Labour the following information about a person who is a specified fines defaulter:

- (a) the person's full name:
  - (b) the person's date of birth:
  - (c) the person's sex:
  - (d) the person's passport number:
  - (e) notice of the fact that the person is a specified fines defaulter.
- (2) The information given under subsection (1)—
- (a) may be given in any form and by any method agreed upon by the chief executive of the Department (as that term is defined in section 280C), the chief executive of the Customs, and the chief executive of the Department of Labour; and
  - (b) may, in whole or in part, be in the form of a code representing the information.
- (3) In this section,—
- fine** means a fine within the meaning of that term in section 280C, other than—
- (a) a fine imposed by, or resulting from the enforcement of, an order made or deemed to have been made under section 21(5), (5A), or (9) of the Summary Proceedings Act 1957; or
  - (b) any amount payable under section 138A(1) of the Sentencing Act 2002
- specified fines defaulter** means a person—
- (a) who owes—
    - (i) an amount of \$5,000 (or any other amount that may be fixed by the Governor-General by Order in Council) or more in relation to 1 or more unpaid fines (other than an amount of reparation); or
    - (ii) any amount of reparation within the meaning of that term in section 280C; and
  - (b) for whom a warrant to arrest has been issued (and not withdrawn or executed) in respect of the non-payment of the whole or any part of any amount referred to in paragraph (a).

Section 280F: inserted, on 10 April 2006, by section 4 of the Customs and Excise Amendment Act 2006 (2006 No 7).

Section 280F(3) **fine**: replaced, on 13 February 2012, by section 5 of the Customs and Excise Amendment Act 2011 (2011 No 36).

### **280G Defined terms for sections 280H and 280I**

In sections 280H and 280I, unless the context otherwise requires,—

**borrower** has the meaning given to it by section 4(1) of the Student Loan Scheme Act 2011

**Commissioner** means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994

**Department** means the Inland Revenue Department

**identifying information** means the information set out in section 208(2) of the Student Loan Scheme Act 2011 that identifies a borrower

**officer of the Department** has the meaning given to it by section 3(1) of the Tax Administration Act 1994

**serious default** means the state of having an unpaid amount due and owing under the Student Loan Scheme Act 2011 and satisfying criteria established in a manner to be determined by the Commissioner

**unpaid amount** has the meaning given to it by section 5 of the Student Loan Scheme Act 2011.

Section 280G: inserted, on 28 March 2007, by section 41 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 280G **borrower**: amended, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 280G **identifying information**: amended, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 280G **serious default**: inserted, on 30 March 2013, by section 47 of the Student Loan Scheme Amendment Act 2013 (2013 No 10).

Section 280G **unpaid amount**: inserted, on 30 March 2013, by section 47 of the Student Loan Scheme Amendment Act 2013 (2013 No 10).

### **280H Disclosure of arrival and departure information for purposes of Student Loan Scheme Act 2011**

- (1) The purpose of this section is to facilitate the exchange of information between the Customs and the Department for the purposes of assisting the Commissioner to—



- (a) verify whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act 2011:
  - (b) verify whether borrowers are New Zealand residents for the purposes of that Act:
  - (c) locate, when they enter or leave New Zealand, borrowers who are in serious default in relation to a student loan.
- (2) For the purpose of this section, the Commissioner may supply any identifying information to the chief executive.
- (3) If, in relation to any borrower, identifying information is supplied in accordance with subsection (2), the chief executive may compare that information with any arrival and departure information held by the Customs that relates to that borrower.
- (4) If the Customs has arrival or departure information relating to a borrower, the chief executive may, for the purpose of this section, supply to the Commissioner any of the following information held by the Customs:
  - (a) the borrower's name:
  - (b) the borrower's date of birth:
  - (c) the borrower's tax file number:
  - (d) the time and date on which the borrower arrived in, or, as the case may be, departed from, New Zealand:
  - (e) information provided by the borrower when arriving in or, as the case may be, departing from New Zealand.
- (5) The chief executive and the Commissioner may, for the purpose of this section, determine by written agreement between them—
  - (a) the frequency with which information may be supplied; and
  - (b) the form in which information may be supplied; and
  - (c) the method by which information may be supplied.

Section 280H: inserted, on 28 March 2007, by section 41 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 280H heading: amended, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 280H(1): replaced, on 30 March 2013, by section 48(1) of the Student Loan Scheme Amendment Act 2013 (2013 No 10).

Section 280H(4)(e): inserted, on 30 March 2013, by section 48(2) of the Student Loan Scheme Amendment Act 2013 (2013 No 10).

**280I Direct access to arrival and departure information for purposes of Student Loan Scheme Act 2011**

- (1) The purpose of this section is to facilitate the Department's access to information stored in a database for the purpose of assisting the Commissioner to—
  - (a) verify whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act 2011;
  - (b) verify whether borrowers are New Zealand residents for the purposes of that Act;
  - (c) verify whether borrowers are in New Zealand for the purposes of that Act;
  - (d) locate, when they enter or leave New Zealand, borrowers who are in serious default in relation to a student loan.
- (2) The chief executive may, for the purpose of this section, allow the Commissioner to access a database in accordance with a written agreement entered into by the chief executive and the Commissioner.
- (3) In accessing a database for the purpose of this section, the Commissioner—
  - (a) may only search for arrival or departure information relating to pre-selected borrowers who are of interest to the Commissioner; and
  - (b) must not search for—
    - (i) any information other than arrival or departure information; or
    - (ii) any information about a person who is not a borrower.
- (4) The Commissioner must take all reasonable steps to ensure that—
  - (a) only persons who have had appropriate powers delegated to them by the Commissioner—
    - (i) have access to the database; and
    - (ii) use the database; and
  - (b) a record is kept of—
    - (i) every occasion on which persons access a database; and
    - (ii) the reason for accessing the database; and

- (iii) the identity of the person who accessed the database; and
  - (c) every person who accesses a database for the purpose of this section complies with subsection (3).
- (5) In this section,—

**access a database** includes remote access to a database  
**database** means any information recording system used by the Customs to store arrival or departure information.

Section 280I: inserted, on 28 March 2007, by section 41 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 280I heading: amended, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 280I(1): replaced, on 30 March 2013, by section 49 of the Student Loan Scheme Amendment Act 2013 (2013 No 10).

#### **280J Defined terms for sections 280K and 280L**

In sections 280K and 280L, unless the context otherwise requires,—

**Commissioner** means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994

**Department** means the Inland Revenue Department

**financial support debt** means an amount owing to the Commissioner of—

- (a) financial support as defined in section 2 of the Child Support Act 1991;
- (b) a penalty or interest under the Child Support Act 1991

**identifying information** means personal information that identifies an individual

**officer of the Department** has the meaning given to it by section 3(1) of the Tax Administration Act 1994

**serious default** means the state of having an amount of financial support debt due and owing to the Commissioner of Inland Revenue and satisfying criteria agreed by the Commissioner and the Privacy Commissioner in consultation with the chief executive.

Section 280J: inserted, on 8 August 2008, by section 293 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**280K Disclosure of arrival and departure information for purposes of Child Support Act 1991**

- (1) The purpose of this section is to facilitate the exchange of information between the Customs and the Department for the purpose of assisting the Commissioner to—
  - (a) locate any person who is in serious default in the payment of any financial support debt; and
  - (b) take appropriate debt recovery action against that person.
- (2) For the purpose of this section, the Commissioner may supply any identifying information to the chief executive.
- (3) If, in relation to a person who is in serious default, identifying information is supplied in accordance with subsection (2), the chief executive may compare that information with any arrival and departure information held by the Customs that may relate to that person.
- (4) If the Customs has arrival or departure information relating to a person who is in serious default, the chief executive may, for the purpose of this section, supply to the Commissioner any of the following information held by the Customs:
  - (a) the person's name:
  - (b) the person's date of birth:
  - (c) the person's tax file number:
  - (d) the time and date on which the person arrived in New Zealand or, as the case may be, departed from New Zealand:
  - (e) information provided by the person when arriving in New Zealand or, as the case may be, departing from New Zealand.
- (5) The chief executive and the Commissioner may, for the purpose of this section, determine by written agreement between them—
  - (a) the frequency with which information may be supplied:
  - (b) the form in which information may be supplied:
  - (c) the method by which information may be supplied.

Section 280K: inserted, on 8 August 2008, by section 293 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**280L Direct access to arrival and departure information for purposes of Child Support Act 1991**

- (1) The purpose of this section is to facilitate the Department's access to information stored in a database for the purpose of assisting the Commissioner to—
  - (a) locate any person who is in serious default in the payment of any financial support debt;
  - (b) take appropriate debt recovery action against that person.
- (2) The chief executive may, for the purpose of this section, allow the Commissioner to access a database in accordance with a written agreement entered into by the chief executive and the Commissioner.
- (3) In accessing a database for the purpose of this section, the Commissioner—
  - (a) may only search for arrival or departure information relating to preselected persons who are of interest to the Commissioner; and
  - (b) must not search for—
    - (i) any information other than arrival or departure information;
    - (ii) any information about a person who is not in serious default.
- (4) The Commissioner must take all reasonable steps to ensure that—
  - (a) only persons with appropriate powers delegated to them by the Commissioner—
    - (i) have access to the database; and
    - (ii) use the database; and
  - (b) a record is kept of—
    - (i) every occasion on which persons access a database; and
    - (ii) the reason for accessing the database; and
    - (iii) the identity of the person who accessed the database; and
  - (c) every person who accesses a database for the purpose of this section complies with subsection (3).
- (5) In this section,—

**access a database** includes remote access to a database

**database** means any information recording system used by the Customs to store arrival or departure information.

Section 280L: inserted, on 8 August 2008, by section 293 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

## **281 Disclosure of information overseas**

- (1) The chief executive may disclose any information specified in section 282(1) to an overseas agency, body, or person, whose functions include—
  - (a) the prevention, detection, investigation, prosecution, or punishment of offences that are, or that if committed in New Zealand would be,—
    - (i) customs offences of any kind; or
    - (ii) other offences punishable by imprisonment; or
  - (b) the processing of international passengers at the border by public authorities; or
  - (c) border security; or
  - (d) the enforcement of a law imposing a pecuniary penalty; or
  - (e) the protection of public revenue.
- (2) The disclosure of information under subsection (1) must be—
  - (a) in accordance with an agreement between the chief executive and the agency, body, or person concerned that complies with subsections (3) and (4); or
  - (b) in accordance with subsection (8).
- (3) The chief executive must not enter into an agreement for the purpose of subsection (2)(a) unless satisfied that it is justified to help prevent, identify, or respond to violations of New Zealand law or,—
  - (a) in the case of an agreement with an international agency or body, to help prevent, identify, or respond to actions of a kind whose prevention or identification, or responding to which, is among the functions of the agency or body;
  - (b) in any other case, to help prevent, identify, or respond to violations of the law of the State concerned.
- (4) For the purposes of subsection (2)(a), an agreement—
  - (a) must be in writing; and

- (b) must state criteria for the disclosure of information under it; and
  - (c) must state, in respect of information to be disclosed,—
    - (i) the use that the agency, body, or person may make of it; and
    - (ii) either—
      - (A) that the agency, body, or person must not disclose it to any other agency, body, or person; or
      - (B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which, and conditions subject to which, the agency, body, or person may do so; and
  - (d) may state—
    - (i) the form in which the information may be disclosed;
    - (ii) the method by which the information may be disclosed; and
  - (e) may be varied from time to time.
- (5) The chief executive—
- (a) must consult the Privacy Commissioner before entering into an agreement under this section, or varying such an agreement; and
  - (b) if the Privacy Commissioner so requires, must undertake a review of the agreement under this section, and the arrangements for disclosure under it; and
  - (c) as soon as practicable after conducting a review required to be undertaken under paragraph (b), must report the result to the Privacy Commissioner.
- (6) The Privacy Commissioner must not require the chief executive to undertake a review of an agreement under subsection (5)(b) within 12 months of last doing so.
- (7) This section does not limit the general powers of the chief executive to enter into agreements not related to the disclosure of information with any overseas agency, body, or person.

- (8) The chief executive may disclose information to an overseas agency, body, or person without a written agreement specified in subsection (2)(a) if—
- (a) the functions of the agency, body, or person include the prevention, detection, investigation, prosecution, or punishment of customs offences of any kind or of other offences punishable by imprisonment; and
  - (b) the information is disclosed subject to conditions stating—
    - (i) the use that the agency, body, or person may make of it; and
    - (ii) either—
      - (A) that the agency, body, or person must not disclose it to any other agency, body, or person; or
      - (B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which, and conditions subject to which, the agency, body, or person may do so; and
  - (c) the chief executive makes and keeps a record of—
    - (i) the information that was disclosed; and
    - (ii) the agency, body, or person to which it was disclosed; and
    - (iii) the conditions subject to which it was disclosed.
- (9) If, before the commencement of this Act, the Government of New Zealand or chief executive has entered into any agreement or arrangement with any overseas agency, body, or person and that agreement or arrangement could have been made or entered into under this section, the agreement or arrangement continues and has effect as if it had been made or entered into under this section. This subsection prevails over subsection (4).
- (10) The chief executive must not disclose any information under subsection (8) unless satisfied that it relates to a suspected violation of New Zealand law or,—
- (a) in the case of disclosure to an international agency or body, to a suspected action of a kind whose prevention



or identification, or responding to which, is among the functions of the agency or body:

- (b) in any other case, to a suspected violation of the law of the State concerned.

Section 281: substituted, on 2 July 2004, by section 43 of the Customs and Excise Amendment Act 2004 (2004 No 55).

## **282 Information that may be disclosed**

- (1) The information that may be disclosed under section 281 is—
  - (a) airline passenger and crew lists:
  - (b) craft movements (which may include passenger and crew lists):
  - (c) past travel movements of specified people:
  - (d) previous convictions of specified people:
  - (e) general history of specified people (which may include associates and networks):
  - (f) modus operandi of specified people:
  - (g) known currency and other financial transactions of relevant interest, including involvement in money laundering:
  - (h) intelligence analysis assessments and reports:
  - (i) details of mail interceptions:
  - (j) personal identification details (which may include photographs, distinguishing features, and details of identity or travel documents):
  - (k) names and details of Customs personnel, freight forwarding and transport personnel, and personnel in the trade and travel business:
  - (l) details of known or suspected involvement of persons in illicit activities.
- (2) Section 281 does not prevent or limit any disclosure of information otherwise than under that section that may be required or authorised by or under law, or any treaty, agreement, or arrangement concluded by the Government of New Zealand.

Section 282: substituted, on 2 July 2004, by section 43 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**282A Customs may for certain purposes collect, use, or disclose certain information**

- (1) This section applies to information viewed by the Customs under any of sections 38G to 38K, and to information to which the Customs is given access under section 95A.
- (2) The Customs may collect, use, or disclose the information for any of the following purposes (and, in the case of personal information, despite anything in information privacy principles 2, 3, 10, or 11 of the Privacy Act 1993):
  - (a) exercising or performing a power, function, or duty under this Act:
  - (b) the prevention, detection, investigation, prosecution, and punishment of offences that are, or that if committed in New Zealand would be,—
    - (i) customs offences of any kind; or
    - (ii) other offences punishable by imprisonment:
  - (c) the processing of international passengers at the border by public authorities:
  - (d) the protection of border security:
  - (e) the protection of the health and safety of members of the public.
- (3) To avoid doubt, if the information is personal information and is disclosed by the Customs to an agency, body, or person under subsection (2) and for a purpose specified in that subsection, then the agency, body, or person—
  - (a) is authorised by this section to obtain and collect that information for that purpose; but
  - (b) may keep, use, or disclose that information only in accordance with the Privacy Act 1993.
- (4) Section 281 applies, with all necessary modifications, to the disclosure of the information to an overseas agency, body, or person whose functions include—
  - (a) the prevention, detection, investigation, prosecution, and punishment of offences that are, or that if committed in New Zealand would be,—
    - (i) customs offences of any kind; or
    - (ii) other offences punishable by imprisonment; or
  - (b) the processing of international passengers at the border by public authorities; or

- (c) border security; or
  - (d) the protection of the health and safety of members of the public.
- (5) Nothing in this section limits section 38L(3)(a) or section 38O.

Section 282A: inserted, on 2 July 2004, by section 43 of the Customs and Excise Amendment Act 2004 (2004 No 55).

**282B Access by accessing agency to border information**

- (1) The purpose of this section is to facilitate the exchange of information between agencies at the border to enable them to co-ordinate their border protection functions.
- (2) An accessing agency may, for the purpose of this section, access any border information held by a holder agency if the access is authorised by regulations made under this Act.
- (3) In this section,—

**accessing agency** means any agency or any class of agencies for the time being specified in regulations made under this Act as an agency or a class of agencies to which border information is available

**border information**—

- (a) means any information or class of information that is—
- (i) held by a holder agency; and
  - (ii) specified in regulations made under this Act; and
- (b) includes, without limitation, information about—
- (i) goods, persons, or craft;
  - (ii) import or export transactions;
  - (iii) importers or exporters

**holder agency** means any agency or any class of agencies for the time being specified in regulations made under this Act as an agency or a class of agencies whose border information is available to an accessing agency.

Section 282B: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**282C Chief executive must review operation of section 282B**

- (1) After the expiry of 5 years, but before the expiry of 6 years, after the commencement of section 282B, the chief executive must—
- (a) review the operation of that section; and

- (b) assess the impact of that section on the privacy of individuals, in consultation with the Privacy Commissioner; and
  - (c) consider whether any amendments to the law are necessary or desirable and, in particular, whether there is a need to retain this section and sections 282B, 286A, and 286B; and
  - (d) report his or her findings to the Minister.
- (2) The Minister must present a copy of a report provided under this section to the House of Representatives as soon as practicable after receiving it.

Section 282C: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

#### *Definitions for information-sharing provisions*

Heading: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

#### **282D Definitions**

In this section and sections 282E to 282L, unless the context otherwise requires,—

**access**, in relation to any information, means search, inspect, copy, process, analyse, manipulate, receive, or otherwise make use of the information in a way that is consistent with the purpose for which access has been allowed

**biosecurity-related border management function** means—

- (a) any function, duty, or power imposed or conferred on the Ministry by or under Part 3 of the Biosecurity Act 1993;
- (b) any other function, duty, or power imposed or conferred on the Ministry by or under the Biosecurity Act 1993 that is necessary—
  - (i) to achieve the purpose of Part 3 of that Act; or
  - (ii) for the administration of Part 3 of that Act;
- (c) any function, duty, or power imposed or conferred on the Ministry by or under any of the following Acts in relation to the effective management of risks associated with the movement of goods, persons, or craft into or out of New Zealand:

- (i) the Food Act 1981:
- (ii) the Hazardous Substances and New Organisms Act 1996:
- (iii) the Agricultural Compounds and Veterinary Medicines Act 1997:
- (iv) the Animal Products Act 1999:
- (v) the Wine Act 2003:
- (vi) any other Act specified by Order in Council made under section 165A of the Biosecurity Act 1993

**border information—**

- (a) means information—
  - (i) that is required to be supplied to the Ministry or the Customs by or under this Act or Part 3 of the Biosecurity Act 1993, or both, for a border protection purpose; or
  - (ii) that is otherwise lawfully supplied or collected for a border protection purpose; and
- (b) includes, without limitation, information about—
  - (i) goods, persons, or craft:
  - (ii) import or export transactions:
  - (iii) importers or exporters; and
- (c) also includes data or information that is derived from, or related to, any information referred to in paragraphs (a) and (b) or any analysis of that information

**border protection purpose** means any lawful purpose relating to, or connected with, the performance or exercise of either or both of the following, as the case may be:

- (a) a biosecurity-related border management function:
- (b) a customs-related border management function

**computer system—**

- (a) means—
  - (i) a computer; or
  - (ii) 2 or more interconnected computers; or
  - (iii) any communication links between computers or from computers to remote terminals or other devices; or
  - (iv) 2 or more interconnected computers combined with any communication links between comput-

ers or from computers to remote terminals or other devices; and

- (b) includes any part of the items described in paragraph (a) and all related input, output, processing, storage, software, or communication facilities, and stored information

**Customs** includes the chief executive and any Customs officer  
**customs-related border management function** means any function, duty, or power imposed or conferred on the Customs by or under this Act that is necessary—

- (a) to achieve the purpose of this Act; or
- (b) for the administration of this Act

**Director-General** means the chief executive of the Ministry

**Joint Border Management System** or **JBMS** means an integrated border management computer system that—

- (a) is designed for the collection, storage, and use of border information by the Ministry and the Customs; and
- (b) is administered by, and under the control of, the Customs

**Ministry**—

- (a) means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Biosecurity Act 1993; and
- (b) includes—
  - (i) the Director-General; and
  - (ii) any inspector appointed under section 103 of the Biosecurity Act 1993.

Section 282D: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### *Interim arrangements for information sharing*

Heading: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

## **282E Purpose of sections 282F to 282H**

The purpose of sections 282F to 282H is to support certain interim information-sharing measures (relating to joint border management initiatives between the Ministry and the Cus-

toms) that are required to be in place until the JBMS becomes operational by allowing—

- (a) the Customs to collect or store any border information:
- (b) the Ministry to access that border information for a bio-security-related border management function.

Section 282E: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### **282F Interim collection of border information**

- (1) The Customs may—
  - (a) collect any border information:
  - (b) store any border information.
- (2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 2 or 3 of the Privacy Act 1993.

Section 282F: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### **282G Requirement by or under this Act to supply border information is complied with if information is supplied to Ministry or other agency**

- (1) A person must be taken to have complied with a requirement by or under this Act to supply any border information to the Customs if, instead of to the Customs, the person supplies the border information to—
  - (a) the Ministry, for the purposes of, and in accordance with, section 41C(1) of the Biosecurity Act 1993:
  - (b) an agency appointed under section 41C(3) of the Biosecurity Act 1993, for the purposes of, and in accordance with, section 41C(1) of that Act.
- (2) However, subsection (1) does not apply if the chief executive has given the person a written notice requiring the border information to be supplied to the Customs instead of to the Ministry or an agency appointed under section 41C(3) of the Biosecurity Act 1993.

Section 282G: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**282H Interim access to border information**

- (1) The chief executive may, in accordance with a written agreement entered into by the chief executive and the Director-General, allow the Ministry to access any border information that was or is collected or stored by the Customs before, on, or after the commencement of this section.
- (2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 10 or 11 of the Privacy Act 1993.
- (3) An agreement must state—
  - (a) the purpose of the agreement; and
  - (b) the border information that can be accessed; and
  - (c) the conditions subject to which the border information will be accessed; and
  - (d) how the Ministry will use the border information (including the limits on any further disclosure by the Ministry); and
  - (e) the method and form of access.
- (4) An agreement may be varied by the chief executive and the Director-General in writing.
- (5) The chief executive and the Director-General must consult the Privacy Commissioner before entering into or varying an agreement.
- (6) To avoid doubt, nothing in subsection (1) limits or prevents the Ministry from carrying out an analysis of any border information to which it has access under that subsection for the purpose of examining risk patterns or risk profiles in relation to any or all of the following:
  - (a) goods, persons, or craft;
  - (b) import or export transactions;
  - (c) importers or exporters.

Section 282H: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**282I Expiry of sections 282E to 282H and agreements made under section 282H**

- (1) The following expire, or must be taken to have expired, on 1 July 2015 or on a later date appointed by the Governor-Gen-



eral by Order in Council made on the recommendation of the Minister:

- (a) sections 282E to 282H:
  - (b) any agreement made under section 282H.
- (2) The Minister may recommend the making of an Order in Council under subsection (1) only if he or she is satisfied, after consulting the Minister for Biosecurity, that a later date is necessary because of a delay in the implementation of the JBMS.

Section 282I: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

*Information sharing for joint border  
management*

Heading: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**282J Collection of border information**

- (1) The Customs may—
- (a) collect any border information:
  - (b) store any border information in the JBMS.
- (2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 2 or 3 of the Privacy Act 1993.

Section 282J: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**282K Requirement by or under this Act to supply border information is complied with if information is supplied to Ministry or other agency**

A person must be taken to have complied with a requirement by or under this Act to supply any border information to the Customs if, instead of to the Customs, the person supplies the border information to—

- (a) the Ministry, for the purposes of, and in accordance with, section 41G(1) of the Biosecurity Act 1993:
- (b) an agency appointed under section 41G(3) of the Biosecurity Act 1993, for the purposes of, and in accordance with, section 41G(1) of that Act.

Section 282K: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### **282L Customs may access border information**

- (1) The Customs may access any border information stored in the JBMS that is needed for, or relevant to, a customs-related border management function.
- (2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 10 of the Privacy Act 1993.
- (3) Subsections (1) and (2) apply to any border information stored in the JBMS, whether the border information was or is collected before, on, or after the commencement of this section.
- (4) To avoid doubt, nothing in subsection (1) limits or prevents the Customs from carrying out an analysis of any border information to which it has access under that subsection for the purpose of examining risk patterns or risk profiles in relation to any or all of the following:
  - (a) goods, persons, or craft:
  - (b) import or export transactions:
  - (c) importers or exporters.

Section 282L: inserted, on 6 April 2012, by section 26 of the Customs and Excise Amendment Act 2012 (2012 No 25).

### **283 Chief executive to give written reasons for decisions open to appeal to Customs Appeal Authority**

Without limiting any other obligation imposed on the chief executive to give notice in writing or to give reasons, in any case where a decision of the chief executive is open to an appeal to a Customs Appeal Authority, the notice of the decision of the chief executive must be given without undue delay and shall include or be accompanied by a written statement of the reasons for that decision.

Section 283: amended, on 27 September 2001, by section 11 of the Customs and Excise Amendment Act 2001 (2001 No 61).

### **284 Giving of notice**

- (1) A notice by the chief executive or an officer of Customs to a company may be given,—

- (a) *[Repealed]*
  - (b) in the case of a company within the meaning of section 2 of the Companies Act 1993, by delivery to a person named as a director of the company on the New Zealand register; or
  - (c) by delivery to an employee of the company at the company's head office or principal place of business; or
  - (d) by leaving it at the company's registered office; or
  - (e) by posting it to the company's registered office or delivering it to a box at a document exchange which the company is using at the time; or
  - (f) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company's registered office or its head office or principal place of business; or
  - (g) where an individual who is a director, or an employee, or an agent of the company is a registered user of a Customs computerised entry processing system and uses the system for the purposes of the business of the company, by transmitting it by electronic means to the registered user at the company's registered office or at its head office or principal place of business or otherwise in accordance with the normal procedure of operation of the relevant Customs computerised entry processing system in relation to that registered user in respect of the business of the company.
- (2) A notice by the chief executive or an officer of Customs to an overseas company may be given,—
- (a) by delivery to a person named in the overseas register as a director of the overseas company and who is resident in New Zealand; or
  - (b) by delivery to a person named in the overseas register as being authorised to accept service in New Zealand of documents on behalf of the overseas company; or
  - (c) by delivery to an employee of the overseas company at the overseas company's place of business in New Zealand or, if the overseas company has more than 1 place of business in New Zealand, at the overseas company's principal place of business in New Zealand; or

- (d) by posting it to the address of the overseas company's principal place of business in New Zealand or delivering it to a box at a document exchange which the overseas company is using at the time; or
  - (e) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal place of business in New Zealand of the overseas company; or
  - (f) where an individual who is a director, or an employee, or an agent of the overseas company is a registered user of a Customs computerised entry processing system and uses the system for the purposes of the business of the overseas company, by transmitting it by electronic means to the registered user at the principal place of business in New Zealand of the overseas company or otherwise in accordance with the normal procedure of operation of the relevant Customs computerised entry processing system in relation to that registered user in respect of the business of the overseas company.
- (3) A notice by the chief executive or an officer of Customs to a body corporate, other than a company or an overseas company, may be given,—
- (a) by delivery to a person who is a principal officer of the body corporate; or
  - (b) by delivery to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
  - (c) by posting it to the address of the principal office of the body corporate or delivering it to a box at a document exchange which the body corporate is using at the time; or
  - (d) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate; or
  - (e) where an individual who is an employee or an agent of the body corporate is a registered user of a Customs computerised entry processing system and uses the system for the purposes of the business of the body corpo-

rate, by transmitting it by electronic means to the registered user at the principal office or principal place of business of the body corporate or otherwise in accordance with the normal procedure of operation of the relevant Customs computerised entry processing system in relation to that registered user in respect of the business of the body corporate.

- (4) A notice by the chief executive or an officer of Customs to an individual may be given,—
- (a) by delivery to that person; or
  - (b) by posting it to that person's address or delivering it to a box at a document exchange which that person is using at the time; or
  - (c) by sending it by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile; or
  - (d) where the individual is a registered user of a Customs computerised entry processing system, by transmitting it by electronic means to that individual in accordance with the normal procedure of operation of the relevant Customs computerised entry processing system in relation to that individual.

Section 284(1)(a): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 284(1)(g): substituted, on 3 June 1998, by section 8(1) of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

Section 284(2)(f): substituted, on 3 June 1998, by section 8(2) of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

Section 284(3)(e): substituted, on 3 June 1998, by section 8(3) of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

## **285 Additional provision relating to notices under this Act**

- (1) For the purposes of this Act, a notice is deemed to be given when it is deemed to be received in accordance with subsection (2).
- (2) For the purposes of this Act,—
- (a) a notice posted or delivered to a document exchange is deemed to be received 5 working days after it is posted or delivered:

- (b) a notice sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent, except that a notice sent under section 56(2D) is deemed to have been received at the time it is sent:
  - (c) a notice transmitted by electronic means is deemed to have been received on the working day following the day on which it was transmitted, except that a notice sent under section 56(2D) is deemed to have been received at the time it is sent:
  - (d) in proving the giving of notice by post or by delivery to a document exchange, it is sufficient to prove that—
    - (i) the document was properly addressed; and
    - (ii) all postal or delivery charges were paid; and
    - (iii) the document was posted or was delivered to the document exchange:
  - (e) in proving the giving of notice by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile machine to the person concerned:
  - (f) in proving the transmitting of notice by electronic means, it is sufficient to prove that the notice was properly transmitted by electronic means in accordance with the normal operating procedure of the relevant Customs computerised entry processing system.
- (3) A notice is not to be deemed to have been given to a person if the person proves that, through no fault on the person's part, the notice was not received within the time specified or was not received at all.

Section 285(2)(b): amended, on 6 March 2007, by section 23(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 285(2)(c): amended, on 6 March 2007, by section 23(2) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 285(3): amended, on 6 March 2007, by section 23(3) of the Customs and Excise Amendment Act 2007 (2007 No 9).

## **286 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing purposes in respect of which areas used for those purposes are or are not required to be licensed as Customs controlled areas; and prescribing circumstances in respect of which areas used in any or all of those circumstances are—
  - (i) exempted from the requirement to be licensed as a Customs controlled area (whether or not the exemption is on terms and conditions set by the chief executive):
  - (ii) required to be licensed as a Customs controlled area:
- (b) prescribing the form and content of, and the procedure to be followed in making, an application for an area to be licensed as a Customs controlled area:
- (ba) prescribing the form and content of, and the procedure to be followed in making, an application for an area to be licensed as a CASE:
- (c) prescribing the circumstances in which and the period or periods of time for which no charges shall be made by the licensee of a Customs controlled area for the reception or storage of imported goods:
- (d) prescribing the content of the notice required to be given to the Customs by the person in charge of a craft under section 21, and prescribing the period of advance notice required to be given for the purposes of that section:
- (e) prescribing the time within which inward reports must be delivered under this Act:
- (f) prescribing the persons or classes of persons who are exempted from the requirements of sections 28, 29, 30, and 32:
- (g) prescribing the craft or classes of craft that are exempt from the application of section 33 or section 37:
- (ga) prescribing the time within which outward reports required by section 34 must be delivered to the Customs:
- (gb) prescribing, for the purposes of paragraph (e) of the definition of **person concerned in the movement of goods, persons, or craft** in section 38A, persons, or classes of persons, involved in the carriage, handling, or transportation of goods, or persons, or both, from New

Zealand to a point outside New Zealand, or from a point outside New Zealand to New Zealand, for commercial purposes:

- (gc) prescribing the form and manner in which the Customs must be given access to information under section 38D or section 38E or both:
- (h) prescribing the time within which goods to which section 39(1) applies must be entered:
- (i) prescribing the time within which goods must be claimed for the purposes of section 39(4)(b):
- (j) prescribing the circumstances in which goods subject to the control of the Customs may be unloaded:
- (k) prescribing the time within which goods to which section 49(1) applies must be entered:
- (l) prescribing the method by which the chief executive shall notify the rates of exchange of foreign currency to New Zealand currency:
- (m) prescribing the time within which goods to which section 70 applies must be entered, the time within which excise duty owing must be paid, and the manner in which the volume of alcohol is to be specified on entry:
- (n) prescribing the manner in which the volume of alcohol in an alcoholic beverage shall be specified on entry:
- (o) prescribing, for the purposes of section 85(2), the circumstances in which a licensee may claim as a duty credit excise duty or excise-equivalent duty already paid on goods repurchased by that licensee:
- (p) prescribing the records that are required to be kept for the purposes of section 95 by each category or sub-category of persons described in subsection (1) of that section, and the period of time, not exceeding 7 years, for which the records are required to be kept:
- (pa) prescribing the form and manner in which the Customs must be given access to information under section 95A:
- (q) prescribing exceptions, restrictions, or conditions to which the chief executive's power to refund or remit duty is subject:



- (r) prescribing the nature or value of sample goods that may be delivered free of duty and the conditions subject to which sample goods may be delivered free of duty:
- (s) prescribing the conditions subject to which a person may be released from a security given for the payment of duty on goods temporarily imported:
- (t) prescribing the conditions subject to which drawbacks of duty may be allowed, and the amounts of drawback that may be allowed:
- (u) prescribing the times within which Customs rulings must be made by the chief executive, which time shall, in the case of a ruling described in section 119(1)(c), not exceed 150 days after the requirements specified in section 120(2) have been met:
- (v) providing for the manner of taking, use, and disposal of samples of goods taken by Customs officers for the purpose of section 151:
- (w) prescribing the kinds of securities that may be taken under section 156:
- (x) prescribing the form of application for registration as a user of a Customs computerised entry processing system, and the information to be provided by the applicant:
- (xa) prescribing, for the purposes of section 135(1)(d), 1 or more other grounds on which a registered user may be considered unfit to continue to be a registered user:
- (y) prescribing the period for which records of transmissions to or from a Customs computerised entry processing system shall be kept by the Customs:
- (z) prescribing the documents that a Customs officer may require and the form of declaration to be completed under section 147(2):
- (aa) *[Repealed]*
- (bb) prescribing the procedure to be followed in the making of applications to Customs Appeal Authorities and in the conduct of appeals by Customs Appeal Authorities:
- (cc) making any provision which may be necessary or desirable to enable Customs Appeal Authorities to publish their decisions:

- (dd) prescribing the manner by which the chief executive may exercise any power to sell goods under this Act, and the manner (including the order of priority) in which the proceeds of sale shall be dispersed:
  - (ee) prescribing the working hours of the Customs, and providing for the fixing by the chief executive of particular working hours in respect of any particular place:
  - (ff) prescribing the form of warrants, declarations, and notices for the purposes of this Act:
  - (gg) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this Act; and prescribing the fines, not exceeding \$1,000, that may be imposed in respect of any such offence:
  - (hh) conferring or providing for exemptions from any provision of any regulation made under this Act:
  - (ii) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (1A) Without limiting subsection (1)(a), any regulations made under that provision prescribing areas used for the manufacture or processing of goods (other than tobacco) that are exempted from the requirement of section 10 to be licensed as a Customs controlled area may impose conditions—
- (a) as to the nature of the goods being manufactured or processed:
  - (b) as to the source of the product being manufactured or processed:
  - (c) limiting the use that may be made of the goods (for example, permitting personal use only):
  - (d) limiting the age of any person involved in the manufacture or use of the goods:
  - (e) limiting the quantity of goods that may be produced by any measure or other form of description.
- (2) Different dates for the payment of excise duty may be prescribed in accordance with subsection (1)(m) in respect of different classes of goods subject to excise duty, or different classes of persons, or on any other differential basis.

Compare: 1966 No 19 s 306; 1990 No 89 s 9

Section 286(1)(a): substituted, on 1 October 2008, by section 6 of the Customs and Excise Amendment Act (No 2) 2008 (2008 No 61).

Section 286(1)(ba): inserted, on 2 July 2004, by section 44(1) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 286(1)(ga): substituted, on 24 September 2009, by section 17(1) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 286(1)(gb): inserted, on 1 October 2004, by section 44(3) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 286(1)(gc): inserted, on 1 October 2004, by section 44(3) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 286(1)(o): amended, on 9 October 2002, by section 26 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 286(1)(pa): inserted, on 1 October 2004, by section 44(4) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 286(1)(xa): inserted, on 2 July 2004, by section 44(5) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 286(1)(aa): repealed, on 1 October 2012, by section 229(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 286(1A): inserted, on 24 September 2009, by section 17(2) of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

### **286A Regulations relating to information sharing**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the purpose of section 282B—
  - (a) specifying any agency or any class of agencies as an accessing agency;
  - (b) specifying any information or any class of information held by a holder agency as border information available to an accessing agency;
  - (c) specifying any agency or any class of agencies as a holder agency;
  - (d) authorising an accessing agency to access border information held by a holder agency;
  - (e) prescribing the conditions under which an accessing agency may access border information held by a holder agency.
- (2) Before recommending the making of regulations under this section, the Minister must consider the following matters and consult on them in accordance with subsection (3):

- (a) whether the proposed regulations are consistent with the purpose of section 282B and how they are consistent with that purpose:
  - (b) whether the border information to be made available to an accessing agency under the proposed regulations includes personal information:
  - (c) if the border information to be made available to an accessing agency under the proposed regulations includes personal information,—
    - (i) the amount of personal information to be made available:
    - (ii) whether that personal information represents a significant or negligible proportion of the border information:
    - (iii) the sensitivity of that personal information:
    - (iv) the level of accuracy of that personal information:
    - (v) whether the proposed regulations will be consistent with, or will detract from, the information privacy principles of the Privacy Act 1993:
    - (vi) whether there are alternative ways to achieve the purpose of section 282B besides making personal information available under the proposed regulations.
- (3) The Minister must—
- (a) consult with the following:
    - (i) the Privacy Commissioner:
    - (ii) the agencies that may be affected by the proposed regulations:
    - (iii) those organisations considered by the Minister to be representative of interests likely to be substantially affected by the proposed regulations:
    - (iv) members of the public; and
  - (b) give public notice of the consultation being undertaken; and
  - (c) take the results of the consultation into account.

Section 286A: inserted, on 6 April 2012, by section 27 of the Customs and Excise Amendment Act 2012 (2012 No 25).

**286B Regulations made under section 286A to be confirmed**

- (1) Any regulations made under section 286A and laid before the House of Representatives in accordance with the Legislation Act 2012 expire on the close of 31 December in the calendar year following the calendar year during which they were laid, except to the extent that they are expressly validated and confirmed by an Act of Parliament passed before that date.
- (2) The validity of any regulations made under section 286A is not affected merely because of the repeal of an Act of Parliament validating and confirming them.

Section 286B: inserted, on 6 April 2012, by section 27 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Section 286B(1): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

**287 Regulations for fees, charges, and expenses**

- (1) Without limiting the power to make regulations conferred by any other section of this Act, but subject to the provisions of this Act, the Governor-General may from time to time, by Order in Council, make regulations—
  - (a) prescribing the amounts of fees and charges payable under this Act or the method by which they are to be assessed, and the persons liable for payment of the fees and charges:
  - (b) prescribing a rate or rates of charges for the attendance of Customs officers for the purposes of this Act:
  - (c) providing for the liability of any person to pay any actual and reasonable expenses incurred by any Customs officer in respect of any attendance by that officer for the purposes of this Act:
  - (d) prescribing the person or persons or classes of persons by whom the charges or expenses referred to in paragraphs (b) and (c) shall be paid, or authorising the chief executive to determine the person by whom they shall be paid.
- (2) Different rates of fees or charges, or both, may be prescribed in accordance with subsection (1)(a) in respect of different classes of persons, or different types of Customs controlled areas, or on any other differential basis.

- (3) Different rates of charges may be prescribed in accordance with subsection (1)(b) in respect of attendances during the working hours of the Customs or attendances outside the working hours of the Customs, or on any other differential basis.
- (4) Any regulation made under subsection (1) may—
  - (a) prescribe the circumstances in which any fee, charge, or expense may be refunded, remitted, or waived, in whole or in part:
  - (b) fix a date by which any fee or charge is to be paid.
- (5) This section does not authorise the making of regulations prescribing fees and charges to recover the costs of processing travellers to which the Airports (Cost Recovery for Processing of International Travellers) Act 2014 applies.

Section 287(5): inserted, on 15 February 2014, by section 21(1) of the Airports (Cost Recovery for Processing of International Travellers) Act 2014 (2014 No 3).

#### **287A Incorporation of provisions by reference in regulations**

- (1) Regulations made under this Act (for example, regulations made under section 65) may incorporate by reference any provisions set out in—
  - (a) an international trade agreement to which New Zealand is a party (for example, a free trade agreement); or
  - (b) another document made to give effect to such an agreement.
- (2) The provisions may be incorporated in the regulations—
  - (a) in whole or in part; and
  - (b) with modifications, additions, or variations specified in the regulations.
- (3) The incorporated provisions—
  - (a) are the provisions as they exist at the time that the regulations are made; and
  - (b) form part of the regulations for all purposes and have legal effect accordingly.

Section 287A: inserted, on 8 December 2009, by section 23 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**287B Effect of amendments to, or replacement of, provisions incorporated by reference**

An amendment to, or replacement of, provisions incorporated under section 287A has legal effect as part of the regulations only if regulations are made that state that the particular amendment or replacement has that effect.

Section 287B: inserted, on 8 December 2009, by section 23 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**287C Proof of provisions incorporated by reference**

- (1) A copy of the provisions incorporated under section 287A, including any amendment to, or replacement of, the provisions, must be—
  - (a) certified as a correct copy of the provisions by the chief executive; and
  - (b) retained by the chief executive.
- (2) The production in proceedings of a certified copy of the provisions is, in the absence of proof to the contrary, sufficient evidence of the incorporation in the regulations of the provisions.

Section 287C: inserted, on 8 December 2009, by section 23 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**287D Access to provisions incorporated by reference**

- (1) The chief executive must—
  - (a) ensure that copies of any provisions incorporated under section 287A are available for inspection during working hours, free of charge, at places specified in a notice given under paragraph (d); and
  - (b) ensure that copies of the provisions are published on an Internet site that is, so far as practicable, publicly available free of charge; and
  - (c) ensure that copies of the provisions are available for purchase at a reasonable price at places specified in a notice given under paragraph (d); and
  - (d) give notice in the *Gazette* stating that—
    - (i) the provisions are incorporated in particular regulations and the date on which the regulations were made; and

- (ii) copies of the provisions are available (at all reasonable times) for inspection during working hours, free of charge, at specified places; and
  - (iii) copies of the provisions are available on a specified Internet site; and
  - (iv) copies of the provisions can be purchased at specified places.
- (2) A failure to comply with this section does not invalidate regulations that incorporate provisions under section 287A.

Section 287D: inserted, on 8 December 2009, by section 23 of the Customs and Excise Amendment Act 2009 (2009 No 61).

**287E Application of Legislation Act 2012 to provisions incorporated by reference**

- (1) Part 2 of the Legislation Act 2012 does not apply to provisions incorporated under section 287A or to an amendment to, or replacement of, those provisions.
- (2) Subpart 1 of Part 3 of the Legislation Act 2012 applies to regulations that incorporate provisions under section 287A.
- (3) However, nothing in section 41 of the Legislation Act 2012 requires provisions incorporated under section 287A to be presented to the House of Representatives.

Section 287E: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

**287F Application of Regulations (Disallowance) Act 1989 to provisions incorporated by reference**

*[Repealed]*

Section 287F: repealed, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

**288 Chief executive may make rules for certain purposes**

- (1) The chief executive may from time to time make rules for all or any of the following purposes:
  - (a) prescribing the form and content of, and the particulars to be verified by declaration in, inward reports or outward reports required to be delivered under this Act and the manner in which those reports must be delivered to the Customs:



- (b) *[Repealed]*
  - (c) prescribing the form, or forms, of certificates of clearance to be issued under this Act:
  - (d) prescribing the form and manner in which goods to which section 39(1) applies must be entered, and the particulars to be provided in the entry, and the form of any declaration to be made in the entry:
  - (e) prescribing the form and manner in which goods to which section 49(1) applies must be entered, and the particulars to be provided in the entry, and the form of any declaration to be made in the entry:
  - (f) prescribing the form and manner in which goods to which section 70 applies must be entered, and the particulars to be provided in the entry, and the form of any declaration to be made in the entry:
  - (g) prescribing the manner in which the volume of alcohol in an alcoholic beverage is to be ascertained for the purposes of this Act:
  - (h) prescribing the form of application for a Customs ruling:
  - (i) prescribing the form and manner in which, and the time within which, the following goods must be reported to the Customs:
    - (i) goods exempted from the requirements of section 39(1) by regulations made under section 40(c):
    - (ii) goods deemed to be entered for the purposes of section 39(1) by regulations made under section 40(d):
    - (iii) goods exempted from the requirements of section 49(1) by regulations made under section 50(a):
    - (iv) goods deemed to be entered for the purposes of section 49(1) by regulations made under section 50(b).
- (2) The power to prescribe forms under this section includes the power to prescribe electronic message formats to be used for the electronic transmission of data to or between computers.
- (3) Every rule made under this section shall be signed by the chief executive.

- (4) The power of the chief executive to make rules under this section shall not be delegated to any other person.
- (5) Every rule made under paragraph (a), (b), (c), (g), (h), or (i) of subsection (1) shall be published in the *Gazette*.
- (6) Where any rule is made under paragraph (d), (e), or (f) of subsection (1), the chief executive shall arrange for the publication in the *Gazette* of a notice indicating that the rule has been made.
- (7) Where any rule is published or notified in the *Gazette* in accordance with subsections (5) and (6), there shall also be included a notice showing a place at which copies of the rules made under subsection (1) are available for inspection free of charge and for purchase.
- (8) The chief executive shall make copies of the rules available—
  - (a) for inspection by members of the public free of charge; and
  - (b) for purchase by members of the public at a reasonable price.
- (9) On the revocation of any rule made under subsection (1), subsection (8) shall cease to apply in relation to that rule.
- (10) Every rule made under this section shall come into force on the 28th day after the date of its publication or notification, as the case may be, in the *Gazette* in accordance with the provisions of this section, or on such later date as may be specified in the rule.
- (11) Every rule made under subsection (1) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (12) The chief executive may, from time to time, amend or revoke any rules made under subsection (1), and the provisions of this section, with all necessary modifications, shall apply in respect of any such amendment or revocation.

Section 288(1)(a): amended, on 24 September 2009, by section 18 of the Customs and Excise Amendment Act (No 3) 2008 (2008 No 68).

Section 288(1)(a): amended, on 2 July 2004, by section 45(a) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 288(1)(b): repealed, on 6 March 2007, by section 24(1) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 288(1)(i): added, on 9 October 2002, by section 27 of the Customs and Excise Amendment Act (No 2) 2002 (2002 No 31).

Section 288(1)(i): amended, on 2 July 2004, by section 45(c) of the Customs and Excise Amendment Act 2004 (2004 No 55).

Section 288(5): amended, on 6 March 2007, by section 24(2) of the Customs and Excise Amendment Act 2007 (2007 No 9).

Section 288(11): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### **288A Use of reasonable force must be reported**

A Customs officer must, within 5 working days of using reasonable force under any provision of this Act, give the chief executive a written report on—

- (a) the use of the force; and
- (b) the circumstances in which it was used.

Section 288A: inserted, on 2 July 2004, by section 46 of the Customs and Excise Amendment Act 2004 (2004 No 55).

### **289 Acts and regulations amended**

- (1) The Acts specified in Schedule 5 are hereby amended in the manner indicated in that schedule.
- (2) The regulations specified in Schedule 6 are hereby amended in the manner indicated in that schedule.

### **290 Repeals and revocations**

- (1) The enactments specified in Schedule 7 are hereby repealed.
- (2) The regulations, orders, and notices specified in Schedule 8 are hereby revoked.

### *Validation and savings provisions*

### **291 Validation of acts done pursuant to Customs Duties Suspension (Inter-Governmental Agreements) Order 1963**

Any act done pursuant to and in accordance with the provisions of the Customs Duties Suspension (Inter-Governmental Agreements) Order 1963 (SR 1963/150) before the commencement of this Act is hereby declared to be and to always have been validly done.

**292 Savings for proceedings and other matters**

- (1) The repeal of the Customs Act 1966 by section 290 of this Act does not affect—
- (a) proceedings commenced in any court before the commencement of this Act:
  - (b) the laying of any information pursuant to section 259 of the Customs Act 1966 by any person who was a Collector under that Act in respect of an alleged offence committed before the commencement of this Act:
  - (c) an application under subsection (1) of section 19A of the Customs Act 1966 made before the commencement of this Act:
  - (d) any Tariff classification opinion given by a Collector of Customs under section 19A of the Customs Act 1966 on or after 1 May 1994 or by the Comptroller of Customs on or after 9 December 1994:
  - (e) any referral under section 19B(2) of the Customs Act 1966 made before the commencement of this Act:
  - (f) any appeal under section 19C(1) of the Customs Act 1966 made before the commencement of this Act or the right of appeal under that section where the initial application made under section 19A of that Act was made before the commencement of this Act:
  - (g) any application under section 140(3) of the Customs Act 1966 made before the commencement of this Act:
  - (h) any appeal under section 140A(1) of the Customs Act 1966 made before the commencement of this Act or the right to appeal under that section when the initial application for the determination was made before the commencement of this Act:
  - (i) any application for a determination or any determination made under section 151C of the Customs Act 1966 before the commencement of this Act:
  - (j) any appeal under section 151I of the Customs Act 1966 made before the commencement of this Act or the right to appeal under that section where the initial application under section 151C of that Act was made before the commencement of this Act:

- (k) any right or proceedings relating to a refund, remission, or drawback of duty under any of sections 171 to 177, and 183 of the Customs Act 1966 existing before the commencement of this Act:
  - (l) any right to recover money under section 182 of the Customs Act 1966 whether paid before or after the commencement of this Act:
  - (m) any application made to the Comptroller of Customs under section 287 of the Customs Act 1966 for the waiver by the Minister of any forfeiture:
  - (n) the condemnation of any goods in accordance with section 283 of the Customs Act 1966.
- (2) For the purposes of subsection (1), the provisions of the Customs Act 1966 referred to in that subsection shall continue in force as if that Act had not been repealed.

**293 Savings provision in relation to Customs officers**

A person who, immediately before the commencement of this Act, was an officer of Customs appointed in accordance with section 8 of the Customs Act 1966 shall be deemed to be a Customs officer appointed by the chief executive for the purposes of this Act.

*Transitional provisions*

**294 Transitional provision relating to terminology**

- (1) Subject to any other provisions of this Act, and unless the context otherwise requires, every reference in any enactment, regulation, rule, order, or in any document in force or existing immediately before the commencement of this Act to the Customs Department shall, on and after the commencement of this Act, be read as a reference to the New Zealand Customs Service established by this Act.
- (2) Subject to any other provisions of this Act, and unless the context otherwise requires, every reference in any enactment, regulation, rule, order, or in any document in force or existing immediately before the commencement of this Act to an officer of Customs shall, on and after the commencement of

this Act, be read as a reference to a Customs officer appointed under this Act.

- (3) Subject to any other provisions of this Act, and unless the context otherwise requires, every reference in any enactment, regulation, rule, order, or in any document in force or existing immediately before the commencement of this Act to the Comptroller of Customs shall, on and after the commencement of this Act, also be read as a reference to the chief executive of the New Zealand Customs Service.
- (4) On and after the commencement of this Act,—
- (a) all proceedings that were pending by or against the Customs Department immediately before the commencement of this Act may be carried on, completed, or enforced by or against the New Zealand Customs Service; and
  - (b) all rights and obligations of the Customs Department existing immediately before the commencement of this Act shall become the rights and obligations of the New Zealand Customs Service.
- (5) Every reference in any enactment in force immediately before the commencement, on 1 October 1996, of this Act to Schedule 3 of the Customs Act 1966 must, on and after that commencement, be read as a reference to (as the case may be)—
- (a) Schedule 3 of this Act; or
  - (b) the Excise and Excise-equivalent Duties Table.

Section 294(5): substituted, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

### **295 Transitional provision concerning assessment and payment of duty**

The provisions of the Customs Act 1966 and all regulations, Orders in Council, warrants, and acts of authority under that Act shall continue in force and apply to—

- (a) the payment of duty payable before the commencement of this Act;
- (b) the assessment and payment of duty assessable before the commencement of this Act—  
as if this Act had not been passed.

**296 Examination station deemed to be Customs controlled area**

Any place that was, immediately before the commencement of this Act, an examination station appointed by the Comptroller of Customs in accordance with section 31 of the Customs Act 1966 shall be deemed for the purposes of this Act to be a Customs controlled area licensed under section 12 for the purposes described in paragraphs (d) and (e) of section 10.

**297 Examining place, Customs containerbase, sufferance wharf, and wharf deemed to be Customs controlled area**

(1) Any place that was, immediately before the commencement of this Act,—

- (a) an examining place appointed by the Comptroller of Customs in accordance with section 32 of the Customs Act 1966; or
- (b) a Customs containerbase appointed by the Comptroller of Customs in accordance with section 32A of the Customs Act 1966; or
- (c) a sufferance wharf appointed by the Comptroller of Customs in accordance with section 29 of the Customs Act 1966—

shall be deemed for the purposes of this Act to be a Customs controlled area licensed under section 12 for the purpose described in section 10(c).

(2) Any place that was, immediately before the commencement of this Act, a wharf appointed by the Comptroller of Customs in accordance with section 28 of the Customs Act 1966 shall be deemed for the purposes of this Act to be a Customs controlled area licensed under section 12 for the purpose described in section 10(d).

**298 Staff accommodation, facilities, and transit buildings deemed to be Customs controlled area**

(1) Any place that was, immediately before the commencement of this Act,—

- (a) staff accommodation or facilities directed by the Minister of Customs to be for the exclusive use of officers

of Customs pursuant to section 33(1)(a) of the Customs Act 1966; or

- (b) a transit building declared by the Minister of Customs to be required pursuant to section 33(1)(b) of the Customs Act 1966—

shall be deemed for the purposes of this Act to be a Customs controlled area licensed under section 12 for the purposes described in paragraphs (d) and (e) of section 10.

- (2) Where any area in any place referred to in subsection (1)(a) of this section was, immediately before the commencement of this Act, entitled to be exempt from charges in accordance with section 33(2A) of the Customs Act 1966, that area shall continue to be exempt from those charges until an application in respect of that area has been made in accordance with section 302 of this Act and dealt with in accordance with this Act.

**299 Export warehouse deemed to be Customs controlled area**  
Any place that was, immediately before the commencement of this Act, an export warehouse licensed under the Customs Act 1966 shall be deemed for the purposes of this Act to be a Customs controlled area licensed under section 12 of this Act for the purpose described in section 10(b) of this Act.

**300 Manufacturing area deemed to be Customs controlled area**  
Any place that was, immediately before the commencement of this Act, a manufacturing area licensed under the Customs Act 1966 shall be deemed for the purposes of this Act to be a Customs controlled area licensed under section 12 of this Act for the purpose described in section 10(a) of this Act.

**301 Transitional provision relating to conditions of appointment or licence**  
Any specification, limitation, condition, or restriction that, immediately before the commencement of this Act, applied to any examination station, examining place, Customs container-base, wharf, sufferance wharf, export warehouse, or manufacturing area shall continue to apply notwithstanding the passing of this Act until an application in respect of that area has been



made in accordance with section 302 and dealt with in accordance with this Act.

**302 Application for licence as Customs controlled area to be made within 40 working days**

Not later than 40 working days after the commencement of this Act the owner or occupier of or person operating in any area to which sections 296 to 300 apply shall make an application in accordance with section 11 for the area to be licensed as a Customs controlled area and all the provisions of this Act shall apply to that application.

**303 Transitional status to continue until application made and disposed of**

- (1) Subject to subsection (2), an area that is deemed to be a Customs controlled area under any of sections 296 to 300 shall continue to be a Customs controlled area until an application in respect of that area has been made in accordance with section 302 and dealt with in accordance with this Act.
- (2) Where, at the expiry of the period specified in section 302, no application has been made in accordance with that section in respect of an area to which any of sections 296 to 300 apply, that area shall cease to be a Customs controlled area.

**304 Transitional provision relating to persons approved to defer payment of duty**

- (1) Subject to subsection (2) of this section, every person who, immediately before the commencement of this Act, was approved under section 152A(2) of the Customs Act 1966 to defer the payment of duty shall be deemed to be an approved person for the purposes of section 86(6) of this Act.
- (2) As soon as practicable after the commencement of this Act the chief executive shall issue to the person referred to in subsection (1) a notice under this Act specifying the terms and conditions applicable for the deferment of duty in place of the conditions imposed under section 152A of the Customs Act 1966.

- (3) Notwithstanding the provisions of subsection (2), the chief executive may vary or cancel any approval to which subsection (1) applies, or may vary or cancel any term or condition affecting the approval.

**305 Transitional provision relating to businesses not required to be licensed**

- (1) Where, immediately before the commencement of this Act, a person carrying on business as a manufacturer of goods specified in Schedule 3 of this Act was, pursuant to a direction given by the Minister of Customs under section 110 of the Customs Act 1966, not required to be licensed, the area in which that person carries on the business shall be deemed to be an area in respect of which the chief executive has given a direction under section 12(4) of this Act.
- (2) A direction of the chief executive deemed to be given under subsection (1) shall be deemed to be given in respect of the part of the business and the areas specified in the direction given by the Minister under the Customs Act 1966.
- (3) Not later than 40 working days after the commencement of this Act, a person to whom this section applies shall make an application under this Act for the area in which the person carries on business as described in subsection (1) to be licensed as a Customs controlled area, and all the provisions of this Act shall apply to that application.
- (4) An area described in subsection (1) of this section shall continue to be deemed to be an area in respect of which the chief executive has given a direction under section 12(4) until an application in respect of that area has been made in accordance with subsection (3) of this section and dealt with in accordance with this Act.
- (5) Where, at the expiry of the period specified in subsection (3) of this section, no application has been made in accordance with that subsection, that area shall cease to be an area in respect of which the chief executive has given a direction under section 12(4).

**305A Transitional provisions relating to investigations of offences under Customs Act 1966**

- (1) A person who may exercise a power under any of sections 146, 152, 160, 161, 165, 166, and 167 for the purpose of investigating offences suspected of having been committed against this Act may also exercise that power in accordance with this Act for the purpose of investigating offences suspected of having been committed against the Customs Act 1966.
- (2) For the purposes of subsection (1), a reference to this Act—
  - (a) in relation to any offence in sections 152(1), 165(1), 166(1), and 167(1):
  - (b) in relation to goods in section 160(1):
  - (c) in relation to a thing in section 167(1)(c),—is taken to include a reference to the Customs Act 1966.
- (3) After exercising, by virtue of subsection (1), any power under this Act in relation to a suspected offence against the Customs Act 1966, the chief executive or a Customs officer, as the case may be, must not exercise any corresponding power under the Customs Act 1966 in relation to that suspected offence.
- (4) Nothing in this section limits or affects the application of section 19 of the Interpretation Act 1999 in relation to the prosecution of offences against the Customs Act 1966.

Section 305A: inserted, on 3 June 1998, by section 9 of the Customs and Excise Amendment Act (No 2) 1998 (1998 No 38).

Section 305A(1): amended, on 1 October 2012, by section 229(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 305A(4): amended, on 1 November 1999, pursuant to section 38(1) of the Interpretation Act 1999 (1999 No 85).

**306 Power to amend Schedule 3 before this Act comes into force**

*[Repealed]*

Section 306: repealed, on 1 January 2010, by section 11(3) of the Customs and Excise Amendment Act 2009 (2009 No 61).

*Amendment to Goods and Services Tax Act 1985*

**307 Zero-rating—duty-free goods**

- (1) *Amendment(s) incorporated in the Act(s).*

- (2) This section shall apply to supplies made on or after 1 October 1986.

*Amendments to Tariff Act 1988*  
*[Repealed]*

Heading: repealed, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

**308 Tariff items substituted**

*[Repealed]*

Section 308: repealed, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

**309 New concession reference inserted**

*[Repealed]*

Section 309: repealed, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

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## Schedule 1 Prohibited imports

s 54(1)

False or counterfeit coin or banknotes; and any coin that is not of the established standard in weight or composition; and any coin or banknotes that are intended for circulation in New Zealand and are not legal tender in New Zealand.

Goods manufactured or produced wholly or in part by prison labour, or within or in connection with any prison, jail, or penitentiary, excluding a bona fide gift made by a prisoner for the personal use of a private individual, also goods similar in character to those manufactured or produced in such institutions when sold or offered for sale by any person, firm, or corporation having a contract for the manufacture or production of such articles in such institutions, or by an agent of such person, firm, or corporation, or when originally purchased from or transferred by any such contractor.

Every article whose sale in New Zealand would be an offence against the Food Act 1981 or the Food (Safety) Regulations 2002.

Every pipe, other utensil, or identifiable component of a pipe or other utensil whose importation into New Zealand is absolutely prohibited by a notice issued under section 22(1A) of the Misuse of Drugs Act 1975.

Goods that are designed, manufactured, or adapted with intent to facilitate the commission of a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961).

Goods that, having regard to all relevant circumstances, it would be reasonable to believe—

- (a) are part of, or involved in, an attempt, to which section 72 of the Crimes Act 1961 applies, to commit a crime involving dishonesty (as defined in section 2(1) of that Act); or
- (b) relate to a conspiracy, to which section 310 of the Crimes Act 1961 applies, to commit a crime involving dishonesty (as defined in section 2(1) of that Act).

Schedule 1: amended, on 6 April 2012, by section 28 of the Customs and Excise Amendment Act 2012 (2012 No 25).

Schedule 1: amended, on 9 August 2011, by section 13(2) of the Misuse of Drugs Amendment Act (No 2) 2011 (2011 No 54).

Schedule 1: amended, on 6 March 2007, by section 35 of the Customs and Excise Amendment Act 2007 (2007 No 9).

Schedule 1: amended, on 22 February 2005, by section 44 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Schedule 1: amended, on 21 August 1997, by section 3 of the Misuse of Drugs Amendment Act 1997 (1997 No 57).

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## Schedule 2

ss 60, 61

### Valuation of goods for the purposes of the Tariff

#### 1 Interpretation

(1) In this schedule—

**computed value** means the value determined in accordance with clause 7

**country of export, or the country from which any goods are exported**, means the country from which the goods are shipped directly to New Zealand, or, as the case may be, the country from which the goods are deemed to be shipped pursuant to this Act

**deductive value** means the value determined in accordance with clause 6

**goods of the same class or kind**, means imported goods that—

- (a) are within a group or range of imported goods produced by a particular industry or industry sector that includes identical goods or similar goods in relation to the goods being valued; and
- (b) for the purposes of—
  - (i) clause 6, were exported from any country; and
  - (ii) clause 7, were produced in and exported from the country in and from which the goods being valued were produced and exported

**identical goods** means imported goods that—

- (a) are the same in all respects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods; and
- (b) were produced in the country in which the goods being valued were produced; and
- (c) were produced by or on behalf of the person who produced the goods being valued,—

but does not include imported goods where engineering, development work, artwork, designwork, plans, or sketches undertaken in New Zealand were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a re-

duced cost for use in connection with the production and sale for export of those imported goods

**price paid or payable**, in relation to any goods, means the aggregate of all amounts paid or payable by the buyer to or for the benefit of the seller in respect of the goods

**to produce** includes to grow, to manufacture, and to mine

**similar goods** means imported goods that—

- (a) closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued having regard to the quality and reputation of the goods and the goods being valued; and
- (b) were produced in the country in which the goods being valued were produced; and
- (c) were produced by or on behalf of the person who produced the goods being valued,—

but does not include imported goods where engineering, development work, artwork, designwork, plans, or sketches undertaken in New Zealand were supplied, directly or indirectly, by the buyer of those imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of those imported goods

**sufficient information**, in respect of the determination of any amount, difference, or adjustment, means objective and quantifiable information that clearly establishes the accuracy of the amount, difference, or adjustment

**transaction value** means the value determined in accordance with clauses 2 and 3.

- (2) For the purposes of this schedule, persons shall be deemed to be related only if—
  - (a) they are officers or directors of one another's business; or
  - (b) they are legally recognised partners in business; or
  - (c) they are employer and employee; or
  - (d) any person directly or indirectly owns, controls, or holds 5% or more of the outstanding voting stock or shares of both of them; or
  - (e) one of them directly or indirectly controls the other; or



- (f) both of them are directly or indirectly controlled by a third person; or
  - (g) together they directly or indirectly control a third person; or
  - (h) they are members of the same family.
- (3) For the purposes of this schedule persons shall be deemed to be members of the same family if—
- (a) they are connected by blood relationship within the fourth degree of relationship; or
  - (b) they are married to, or in a civil union or a de facto relationship with, one another or if one is married to, or in a civil union or a de facto relationship with, a person who is within the fourth degree of relationship to the other; or
  - (c) one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.
- (4) For the purposes of this schedule, where there are no goods that were produced by or on behalf of the person who produced the goods being valued and that are otherwise identical goods or similar goods, goods that were produced by or on behalf of a different person and that are otherwise identical goods or similar goods shall be deemed to be identical goods or similar goods, as the case may be.
- (5) For the purposes of this schedule, charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the Customs value in any case where—
- (a) the charges are distinguished from the price actually paid or payable for the goods; and
  - (b) such goods are actually sold at the price declared as the price actually paid or payable; and
  - (c) the buyer, if required, can demonstrate that—
    - (i) the financing arrangement was made in writing;
    - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

Schedule 2 clause 1(3)(b): substituted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **2 Transaction value as primary basis of valuation**

- (1) The Customs value of imported goods shall be their transaction value, that is, the price paid or payable for the goods when sold for export to New Zealand, adjusted in accordance with clause 3, if—
- (a) there are no restrictions respecting the disposition or use of the goods by the buyer, other than restrictions that—
    - (i) are imposed by law; or
    - (ii) limit the geographical area in which the goods may be resold; or
    - (iii) do not substantially affect the value of the goods; or
  - (b) the sale of the goods or the price paid or payable for the goods is not subject to some condition or consideration in respect of which a value cannot be determined; or
  - (c) where any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer is to accrue, directly or indirectly, to the seller, the price paid or payable for the goods includes the value of that part of the proceeds or can be adjusted in accordance with clause 3; or
  - (d) the buyer and seller of the goods are not related at the time the goods are sold for export or, where the buyer and seller are related at that time,—
    - (i) their relationship did not influence the price paid or payable for the goods; or
    - (ii) the importer demonstrates that the transaction value of the goods meets the requirements set out in subclause (2).
- (2) In a sale between related persons, for the purpose of showing that the relationship did not influence the transaction value, the importer shall produce evidence that the transaction value of the goods being valued, taking into consideration any relevant factors including such factors and differences as may be prescribed, closely approximates the Customs value of other

- goods exported at the time or substantially at the same time as the goods being valued, being—
- (a) the transaction value of identical goods or similar goods in respect of a sale of those goods for export to New Zealand between a seller and buyer who are not related at the time of the sale; or
  - (b) the deductive value of identical or similar goods determined in accordance with clause 6; or
  - (c) the computed value of identical or similar goods determined in accordance with clause 7.
- (3) In any case where the chief executive is of the opinion that the relationship between the buyer and seller of any goods influenced the price paid or payable for the goods, the chief executive shall inform the importer, in writing if so requested, of the grounds on which the chief executive formed that opinion, and shall give the importer a reasonable opportunity to satisfy the chief executive that the relationship did not influence the price.
- (4) Where subclause (2) applies, the importer shall, without limiting the generality of subclause (2), provide the following information:
- (a) the nature of the goods being valued:
  - (b) the nature of the industry that produces the goods being valued:
  - (c) the season in which the goods being valued are imported:
  - (d) whether a difference in values is commercially significant:
  - (e) the trade levels at which the sales take place:
  - (f) the quantity levels of the sales:
  - (g) any of the amounts referred to in clause 3:
  - (h) the costs, charges, or expenses incurred by a seller when the seller sells to a buyer to whom the seller is not related that are not incurred when the seller sells to a buyer to whom the seller is related.
- (5) Where,—
- (a) in the opinion of the chief executive, the Customs value cannot be determined under this clause; or

- (b) the chief executive has reason to doubt the truth or accuracy of the declared Customs value and, after having sought further explanation or other evidence that the declared Customs value represents the total amount actually paid or payable for the imported goods, the chief executive is still not satisfied that the Customs value can be determined under this clause—

the chief executive may determine the Customs value of the goods by proceeding sequentially through clauses 4 to 8 to the first such clause of this schedule under which the Customs value can, in the opinion of the chief executive, be determined.

- (6) Notwithstanding subclause (5), on the written request of the importer to the chief executive, the order of consideration of the valuation basis provided for in clauses 6 and 7 shall be reversed.

### **3 Adjustment of price paid or payable**

- (1) In determining the transaction value of goods under clause 2, the price paid or payable for the goods shall be adjusted—
- (a) by adding thereto amounts, to the extent that each such amount is not otherwise included in the price paid or payable for the goods and is determined on the basis of sufficient information, equal to—
- (i) commissions and brokerage in respect of the goods incurred by the buyer, other than fees paid or payable by the buyer to the buyer's agent for the service of representing the buyer overseas in respect of the purchase of the goods; and
- (ii) the packing costs and charges incurred by the buyer in respect of the goods, including the cost of cartons, cases, and other containers and coverings that are treated for customs purposes as being part of the imported goods and all expenses of packing incidental to placing the goods in the condition in which they are shipped to New Zealand; and
- (iii) the value of any of the following goods and services:

- (A) materials, component parts, and other goods incorporated in the imported goods:
- (B) tools, dies, moulds, and other goods utilised in the production of the imported goods:
- (C) materials consumed in the production of the imported goods:
- (D) engineering, development work, artwork, designwork, plans, and sketches undertaken elsewhere than in New Zealand and necessary for the production of the imported goods,—  
determined in accordance with subclause (2), that are supplied, directly or indirectly, by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the imported goods in a reasonable manner and in accordance with generally accepted accounting principles; and
- (iv) royalties and licence fees, including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to New Zealand, exclusive of charges for the right to reproduce the imported goods in New Zealand; and
- (v) the value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller; and
- (vi) the value of any materials, component parts, and other goods incorporated in the imported goods for the purpose of repair to, or refurbishment of, those goods prior to export of the goods to New Zealand, and the price paid for the service of repair or refurbishment, as the case may be; and
- (vii) the costs of transportation and insurance of, and the loading, unloading, and handling charges,

and other charges and expenses associated with the transportation of, the imported goods until the goods have left the country of export if such costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or for the benefit of the seller as a condition of the transaction:

- (b) by deducting therefrom amounts, to the extent that each such amount is otherwise included in the price paid or payable for the goods, equal to—
  - (i) the costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods from the time the goods have left the country of export, other than any cost, charge, or expense referred to in subparagraph (ii)(B); and
  - (ii) any of the following costs, charges, or expenses:
    - (A) any reasonable cost, charge, or expense that is incurred for the construction, erection, assembly, or maintenance of, or technical assistance provided in respect of, the goods after the goods are imported:
    - (B) any reasonable cost, charge, or expense that is incurred in respect of the transportation or insurance of the goods within New Zealand and any reasonable cost, charge, or expense associated therewith:
    - (C) any Customs duties or other taxes payable in New Zealand by reason of the importation or sale of the goods,—  
if the cost, charge, or expense is identified separately from the balance of the price paid or payable for the goods:
- (c) in respect of carrier media bearing data or instructions, by deducting the value of the data or instructions from the price paid or payable for the goods if:

- (i) the value of the data or instructions is distinguished from the cost or value of the carrier media; and
  - (ii) the data or instructions are not incorporated in data processing equipment.
- (2) The value of the goods and services described in subclause (1)(a)(iii) shall be determined—
  - (a) in the case of materials, components, parts and other goods incorporated in the goods being valued or any materials consumed in the production of the goods being valued—
    - (i) by ascertaining—
      - (A) their cost of acquisition where they were acquired by the buyer from a person who was not related to the buyer at the time of their acquisition; or
      - (B) their cost of acquisition incurred by the person related to the buyer, where the goods were acquired by the buyer from a person who was related to the buyer at the time of their acquisition but who did not produce them; or
      - (C) their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and
    - (ii) by adding thereto—
      - (A) the cost of their transportation to the place of production of the goods being valued; and
      - (B) the value added to them by any repairs or modifications made to them after they were so acquired or produced:
  - (b) in the case of tools, dies, moulds, and other goods, utilised in the production of the goods being valued—
    - (i) by ascertaining—
      - (A) their cost of acquisition where they were acquired by the buyer from a person who

- was not related to the buyer at the time they were so acquired; or
- (B) their cost of acquisition incurred by the person related to the buyer, where they were acquired by the buyer from a person related to the buyer at the time they were so acquired but who did not produce them; or
  - (C) their cost of production where they were produced by the buyer or a person related to the buyer at the time of their production; and
- (ii) by adding thereto—
    - (A) the cost of their transportation to the place of production of the goods being valued; and
    - (B) the value added to them by any repairs or modifications made to them after they were so acquired or produced; and
  - (iii) by deducting therefrom an amount to account for any previous use of the goods made after the goods were so acquired or produced:
- (c) in the case of engineering, development work, artwork, designwork, plans and sketches, undertaken elsewhere than in New Zealand and necessary for the production of the goods being valued by ascertaining—
    - (i) their cost of acquisition or of the lease thereof, where they were acquired or leased by the buyer from a person who was not related to the buyer at the time they were so acquired or leased and are not generally available to the public; or
    - (ii) their cost of acquisition or of the lease thereof incurred by the person related to the buyer, where they were acquired or leased by the buyer from a person related to the buyer at the time they were so acquired or leased, but who did not produce them and are not generally available to the public; or



- (iii) the cost to the public of obtaining them where they are available generally to the public; or
  - (iv) the cost of production thereof where they were produced by the buyer or a person related to the buyer at the time of their production.
- (3) For the purposes of paragraph (c) of subclause (1), the expression **carrier media** does not include integrated circuits, semi-conductors and similar devices, or articles incorporating such circuits or devices; and the expression **data or instructions** does not include sound, cinematic, or video recordings.
- (4) Where any adjustment in terms of the foregoing subclause cannot, in the opinion of the chief executive, be made because of the lack of sufficient information, the transaction value of the goods being valued cannot be determined under clause 2.

#### **4 Transaction value of identical goods as Customs value**

- (1) Subject to subclauses (2) to (4), where the Customs value of imported goods cannot, in the opinion of the chief executive, be determined under clause 2, the Customs value of the goods shall be the transaction value of identical goods in respect of a sale of those goods for export to New Zealand if that transaction value is the Customs value of the identical goods and the identical goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions:
  - (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
  - (b) in the same or substantially the same quantities as the goods being valued.
- (2) Where the Customs value of imported goods cannot be determined under subclause (1) because identical goods were not sold under the conditions described in subclause (1)(a) and (b), there shall be substituted therefor identical goods sold under any of the following conditions:
  - (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued but in quantities different from the quantities in which those goods were sold; or

- (b) to a buyer at a trade level different from that of the buyer of the goods being valued but in the same or substantially the same quantities as the quantities in which those goods were sold; or
  - (c) to a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold.
- (3) For the purposes of determining the Customs value of imported goods under subclause (1), the transaction value of identical goods shall be adjusted by adding thereto or deducting therefrom, as the case may be, amounts to account for—
  - (a) commercially significant differences between the costs, charges, and expenses referred to in clause 3(1)(a)(vii) in respect of the identical goods and those costs, charges, and expenses in respect of the goods being valued that are attributable to differences in distances and modes of transport:
  - (b) where the transaction value is in respect of identical goods sold under the conditions described in any of paragraphs (a) to (c) of subclause (2), differences in the trade levels of the buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both, as the case may be,—if each amount can, in the opinion of the chief executive, be determined on the basis of sufficient information. Where any such amount cannot be so determined, the Customs value of the goods being valued shall not be determined on the basis of the transaction value of those identical goods under this clause.
- (4) Where, in relation to imported goods being valued, there are 2 or more transaction values of identical goods that meet all the requirements set out in subclauses (1) and (3) or where there is no such transaction value but there are 2 or more transaction values of identical goods sold under the conditions described in any of paragraphs (a) to (c) of subclause (2) that meet all the requirements set out in this clause that are applicable by virtue of subclause (2), the Customs value of the goods being valued shall be determined on the basis of the lowest such transaction value.

**5 Transaction value of similar goods as Customs value**

- (1) Subject to subclause (2) of this clause and subclauses (2) to (4) of clause 4, where the Customs value of imported goods cannot, in the opinion of the chief executive, be determined under clause 4, the Customs value of the goods shall be the transaction value of similar goods in respect of a sale of those goods for export to New Zealand if that transaction value is the Customs value of the similar goods and the similar goods were exported at the same or substantially the same time as the goods being valued and were sold under the following conditions:
  - (a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and
  - (b) in the same or substantially the same quantities as the goods being valued.
- (2) Subclauses (2) to (4) of clause 4 shall apply to this clause in respect of similar goods as if every reference in those subclauses to “identical goods” were a reference to “similar goods”.

**6 Deductive value as Customs value**

- (1) Subject to subclauses (5) and (6) of clause 2, where the Customs value cannot, in the opinion of the chief executive, be determined under clause 5, the Customs value of the goods shall be the deductive value in respect of the goods.
- (2) Where the goods being valued or identical goods or similar goods are sold in New Zealand in the condition in which they were imported at the same or substantially the same time as the time of importation of the goods being valued, the deductive value of the goods being valued shall be the price per unit in respect of sales described in subclause (5), determined in accordance with that subclause and adjusted in accordance with subclause (6), at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold.
- (3) Where the goods being valued or identical goods or similar goods are sold in New Zealand in the condition in which they were imported before the expiration of 90 days after the importation of the goods being valued but are not so sold at the same or substantially the same time as the time of that importation, the deductive value of the goods being valued shall be

the price per unit in respect of sales described in subclause (5), determined in accordance with that subclause and adjusted in accordance with subclause (6), at which the greatest number of units of the goods being valued or identical goods or similar goods are so sold at the earliest date after the importation of the goods being valued.

- (4) Where the goods being valued or identical goods or similar goods are not sold in New Zealand in the circumstances described in subclause (2) or subclause (3), but the goods being valued, after being assembled, packaged, or further processed in New Zealand, are sold in New Zealand before the expiration of 90 days after the importation thereof and the importer of the goods being valued requests that this subclause be applied in the determination of the Customs value of those goods, the deductive value of the goods being valued shall be the price per unit, in respect of sales described in subclause (5), determined in accordance with that subclause and adjusted in accordance with subclause (6), at which the greatest number of units of the goods being valued are so sold.
- (5) For the purposes of subclauses (2) to (4), the price per unit in respect of any goods being valued or identical goods or similar goods, shall be determined by ascertaining the unit price in respect of sales of the goods at the first trade level after their importation to persons who—
- (a) are not related to the persons from whom they buy the goods at the time the goods are sold to them; and
  - (b) have not supplied, directly or indirectly, free of charge or at a reduced cost for use in connection with the production and sale for export of the goods, any of the goods or services referred to in clause 3(1)(a)(iii),—
- at which the greatest number of units of the goods is sold where, in the opinion of the chief executive, a sufficient number of such sales have been made to permit a determination of the price per unit of the goods.
- (6) For the purposes of subclauses (2) to (4), the price per unit in respect of any goods being valued or identical goods or similar goods, shall be adjusted by deducting therefrom an amount equal to the aggregate of—

- (a) an amount, determined in accordance with subclause (7), equal to—
    - (i) the amount of commission generally earned on a unit basis; or
    - (ii) the amount for profit and general expenses, including all costs of marketing the goods, considered together as a whole, that is generally reflected on a unit basis—  
in connection with sales in New Zealand of goods of the same class or kind as those goods:
  - (b) reasonable costs, charges, and expenses that are incurred in respect of the transportation and insurance of the goods within New Zealand and reasonable costs, charges, and expenses associated therewith to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a):
  - (c) the costs, charges, and expenses referred to in clause 3(1)(b)(i) incurred in respect of the goods, to the extent that an amount for such costs, charges, and expenses is not deducted in respect of general expenses under paragraph (a) of this subclause:
  - (d) any Customs duties or other taxes payable in New Zealand by reason of the importation or sale of the goods, to the extent that an amount for such duties and taxes is not deducted in respect of general expenses under paragraph (a):
  - (e) where subclause (4) applies, the amount of the value added to the goods that is attributable to the assembly, packaging, or further processing in New Zealand of the goods, if that amount is determined, in the opinion of the chief executive, on the basis of sufficient information.
- (7) The amount considered to be equal to the amount of commission or the amount for profit and general expenses referred to in subclause (6)(a) shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally accepted accounting principles that is supplied—

- (a) by or on behalf of the importer of the goods being valued; or
  - (b) where the information supplied by or on behalf of the importer of the goods being valued is not sufficient information, but an examination of sales in New Zealand of the narrowest group or range of goods of the same class or kind as the goods being valued from which sufficient information can, in the opinion of the chief executive, be obtained.
- (8) Where an amount referred to in subclause (6)(e) in respect of any goods being valued cannot, in the opinion of the chief executive, be determined on the basis of sufficient information, the Customs value of the goods cannot be determined on the basis of the deductive value under subclause (4).

#### **7 Computed value as Customs value**

- (1) Subject to subclauses (3) and (5) of clause 2, where the Customs value of imported goods cannot, in the opinion of the chief executive be determined under clause 6, the Customs value of the goods shall be the computed value in respect of those goods.
- (2) The computed value of the goods being valued is the aggregate of amounts equal to—
- (a) the costs, charges, and expenses incurred in respect of, or the value of,—
    - (i) materials employed in producing the goods being valued; and
    - (ii) the production or other processing of the goods being valued,—determined on the basis of—
    - (A) the commercial accounts of the producer of the goods being valued; or
    - (B) any other sufficient information relating to the production of the goods being valued—that are supplied by or on behalf of the producer of the goods and prepared in a manner consistent with the generally accepted accounting principles of the country of

- production of the goods being valued, including, without limiting the generality of the foregoing,—
- (iii) the costs, charges, and expenses referred to in clause 3(1)(a)(ii):
  - (iv) the value of any of the goods and services referred to in clause 3(1)(a)(iii) and (vi), determined and apportioned to the goods being valued as referred to in that clause, whether or not such goods and services have been supplied free of charge or at a reduced cost:
  - (v) the costs, charges, and expenses incurred by the producer in respect of engineering, development work, artwork, designwork, plans, or sketches undertaken in New Zealand that were supplied, directly or indirectly, by the buyer of the goods being valued for use in connection with the production and sale for export of those goods to the extent that such elements are charged to the producer of the goods, apportioned to the goods being valued as referred to in clause 3(1)(a)(iii):
- (b) the amount, determined in accordance with subclause (4), for profit and general expenses, considered together as a whole, generally reflected in sales for export to New Zealand of goods of the same class or kind as the goods being valued, made by the producers of the goods to buyers in New Zealand who are not related to the producers from whom they buy the goods at the time the goods are sold to them.
- (3) For the purposes of this clause, the expression **general expenses** means the direct and indirect costs, charges, and expenses of producing and selling goods for export, other than the costs, charges, and expenses referred to in subclause (2)(a).
- (4) The amount of profit and general expenses referred to in subclause (2)(b) shall be calculated on a percentage basis and determined on the basis of information prepared in a manner consistent with generally acceptable accounting principles of the country of production of the goods being valued and that is supplied—

- (a) by or on behalf of the producer of the goods being valued; or
- (b) where the information supplied by or on behalf of the producer of the goods being valued is not sufficient information, by an examination of sales for export to New Zealand of the narrowest group or range of goods of the same class or kind from which sufficient information can, in the opinion of the chief executive, be obtained.

## **8 Residual basis of valuation**

- (1) Where the Customs value of imported goods cannot, in the opinion of the chief executive, be determined under clause 7, it shall be determined on information available in New Zealand on the basis of a value derived from the methods of valuation set out in clauses 2 to 7 interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a Customs value of the goods.
  - (2) A Customs value shall not be determined on the basis of—
    - (a) the selling price in New Zealand of goods produced in New Zealand; or
    - (b) a basis which provides for the acceptance of the higher of 2 alternative values; or
    - (c) the price of goods on the domestic market of the country of exportation; or
    - (d) the cost of production, other than computed values that have been determined for identical or similar goods in accordance with clause 7; or
    - (e) the price of goods for export to a country other than New Zealand, unless the goods were imported into New Zealand; or
    - (f) minimum customs values; or
    - (g) arbitrary or fictitious values.
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**Schedule 3**

ss 68, 70, 73, 75

**Excise and excise-equivalent duties**

*[Repealed]*

Schedule 3: repealed, on 1 January 2010, by section 11(1) of the Customs and Excise Amendment Act 2009 (2009 No 61).

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s 73(3)

**Schedule 4**  
**Valuation of goods for the purposes of**  
**excise**

**1 Value of goods for excise duty**

The value of any goods for the purposes of section 73(3) shall be the price at which the goods are sold exclusive of excise duty and goods and services tax by a person licensed under section 12 if—

- (a) the sale is a sale in the open market as defined in clause 4(1)(c); and
- (b) the sale is made on or prior to the date on which the goods are removed from the manufacturing area.

**2 Value of goods manufactured by contractor**

The value of any goods for the purposes of section 69 that are deemed to have been manufactured by a contractor shall be their fair market value as determined under clause 4.

**3 Value of goods not sold in open market**

Where the value of the goods cannot be determined under clause 1 for the reason that the goods were not sold under the conditions specified in paragraphs (a) and (b) of that clause, the value shall be the fair market value of those goods as determined under clause 4.

**4 Fair market value**

(1) For the purposes of this section,—

- (a) the expression **identical goods** means goods that are the same in all respects, including physical characteristics, quality, and reputation, as the goods being valued, except for minor differences (if any) in appearance that do not affect the value of the goods:
- (b) the expression **similar goods** means goods that closely resemble the goods being valued in respect of component materials and parts and characteristics and are functionally and commercially interchangeable with the goods being valued, having regard to the quality and reputation of the goods being valued:

- (c) a sale in the open market means—
    - (i) that the price is the sole consideration; and
    - (ii) that the price is not influenced by any commercial, financial, or other ties, whether by contract or otherwise, between the seller, or any person associated in business with the seller, and the buyer, or any person associated in business with the buyer (other than the relationship created by the sale of the goods in question); and
    - (iii) that no part of the proceeds of any subsequent resale, use, or disposal of the goods will accrue, either directly or indirectly, to the seller, or to any person associated in business with the seller:
  - (d) 2 persons shall be deemed to be associated in business with each other if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them:
  - (e) in determining a fair market value in accordance with this section, the chief executive shall—
    - (i) use only those prices which represent a sale between buyers and sellers independent of each other; and
    - (ii) exclude from the price any excise duty and goods and services tax.
- (2) For the purposes of this schedule, the fair market value of any goods shall be determined by proceeding sequentially through subclauses (3) to (8) to the first such subclause under which fair market value can be determined.
- (3) The fair market value of any goods at the date of removal shall be the lowest price for which identical goods in the same or substantially the same quantities are generally sold at that date in the open market in New Zealand on sales freely offered and made on ordinary trade terms by the licensee of an area licensed under section 12, other than a contractor.
- (4) Where, in the opinion of the chief executive, the fair market value cannot be determined under subclause (3), it shall be deemed to be the lowest price for which identical goods in

quantities different from those being sold are generally sold at that date in the open market in New Zealand on sales freely offered and made on ordinary trade terms by the licensee of an area licensed under section 12, other than a contractor.

- (5) Where, in the opinion of the chief executive, the fair market value cannot be determined under subclause (4), it shall be deemed to be the lowest price for which similar goods in the same or substantially the same quantities are generally sold at that date in the open market in New Zealand on sales freely offered and made on ordinary trade terms by the licensee of an area licensed under section 12, other than a contractor.
  - (6) Where, in the opinion of the chief executive, the fair market value cannot be determined under subclause (5), it shall be deemed to be the lowest price for which similar goods in quantities different from those being sold are generally sold at that date in the open market in New Zealand on sales freely offered and made on ordinary trade terms by the licensee of an area licensed under section 12, other than a contractor.
  - (7) Where, in the opinion of the chief executive, the fair market value cannot be determined under subclause (6), the chief executive shall ascertain the price which the goods would generally fetch at the retail level and deduct from that price such amount as would reasonably represent the profit margin and other costs beyond the manufacturing level on those goods.
  - (8) Where, in the opinion of the chief executive, the fair market value cannot be determined under subclause (7), the chief executive shall compute the value of the goods by taking the costs of the production of the goods and adding such amount as reasonably represents the profit margin and other costs to the manufacturing level of those goods.
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**Schedule 5**  
**Acts amended**

s 289(1)

**Accident Rehabilitation and Compensation Insurance Act 1992  
(1992 No 13)**

*Amendment(s) incorporated in the Act(s).*

**Air Facilitation Act 1993 (1993 No 6)**

*Amendment(s) incorporated in the Act(s).*

**Air Facilitation (Domestic Passengers and Cargo) Act 1994  
(1994 No 100)**

*Amendment(s) incorporated in the Act(s).*

**Alcoholic Liquor Advisory Council Act 1976 (1976 No 143)**

*Amendment(s) incorporated in the Act(s).*

**Alcoholic Liquor Advisory Council Amendment Act 1978 (1978  
No 7)**

*Amendment(s) incorporated in the Act(s).*

**Alcoholic Liquor Advisory Council Amendment Act 1989 (1989  
No 96)**

*Amendment(s) incorporated in the Act(s).*

**Animal Remedies Act 1967 (1967 No 51) (RS Vol 21, p 11)**

*Amendment(s) incorporated in the Act(s).*

**Antiquities Act 1975 (1975 No 41) (RS Vol 26, p 31)**

*Amendment(s) incorporated in the Act(s).*

**Biosecurity Act 1993 (1993 No 95)**

*Amendment(s) incorporated in the Act(s).*

**Civil Aviation Act 1990 (1990 No 98)**

*Amendment(s) incorporated in the Act(s).*

**Companies Act 1955 (1955 No 63) (RS Vol 15, p 89)***Amendment(s) incorporated in the Act(s).***Companies Act 1993 (1993 No 105)***Amendment(s) incorporated in the Act(s).***Cook Islands Act 1915 (1915 No 40) (Reprinted 1976,  
Vol 4, p 3119)***Amendment(s) incorporated in the Act(s).***Cook Islands Amendment Act 1961 (1961 No 15) (Reprinted  
1976, Vol 4, p 3313)***Amendment(s) incorporated in the Act(s).***Copyright Act 1994 (1994 No 143)***Amendment(s) incorporated in the Act(s).***Customs Law Act 1908 (1908 No 36) (RS Vol 2, p 273)***Amendment(s) incorporated in the Act(s).***Dangerous Goods Act 1974 (1974 No 26) (RS Vol 24, p 241)***Amendment(s) incorporated in the Act(s).***Dumping and Countervailing Duties Act 1988 (1988 No 158)***Amendment(s) incorporated in the Act(s).***Explosives Act 1957 (1957 No 19) (RS Vol 6, p 361)***Amendment(s) incorporated in the Act(s).***Fair Trading Act 1986 (1986 No 121)***Amendment(s) incorporated in the Act(s).***Films, Videos, and Publications Classification Act 1993 (1993  
No 94)***Amendment(s) incorporated in the Act(s).*

**Finance Act 1989 (1989 No 13)**

*Amendment(s) incorporated in the Act(s).*

**Finance Act (No 2) 1993 (1993 No 83)**

*Amendment(s) incorporated in the Act(s).*

**Financial Transactions Reporting Act 1996 (1996 No 9)**

*Amendment(s) incorporated in the Act(s).*

**Flags, Emblems, and Names Protection Act 1981 (1981 No 47)**

*Amendment(s) incorporated in the Act(s).*

**Food Act 1981 (1981 No 45)**

*Amendment(s) incorporated in the Act(s).*

**Forests Act 1949 (1949 No 19) (RS Vol 23, p 473)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Act 1985 (1985 No 141) (RS Vol 27,  
p 425)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act 1986 (1986 No 43)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act 1988 (1988 No 7)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act 1989 (1989 No 8) (RS  
Vol 27, p 595)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act (No 2) 1989 (1989  
No 152) (RS Vol 27, p 598)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act 1990 (1990 No 64)  
(RS Vol 27, p 601)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act 1992 (1992 No 2)**

*Amendment(s) incorporated in the Act(s).*

**Harbours Act 1950 (1950 No 34) (RS Vol 2, p 551)**

*Amendment(s) incorporated in the Act(s).*

**Harbours Amendment Act (No 2) 1988 (1988 No 92)**

*Amendment(s) incorporated in the Act(s).*

**Heavy Engineering Research Levy Act 1978 (1978 No 81)**

*Amendment(s) incorporated in the Act(s).*

**Immigration Act 1987 (1987 No 74)**

*Amendment(s) incorporated in the Act(s).*

**Import Control Act 1988 (1988 No 157)**

*Amendment(s) incorporated in the Act(s).*

**Income Tax Act 1994 (1994 No 164)**

*Amendment(s) incorporated in the Act(s).*

**Insolvency Act 1967 (1967 No 54) (RS Vol 18, p 289)**

*Amendment(s) incorporated in the Act(s).*

**Marine Mammals Protection Act 1978 (1978 No 80)**

*Amendment(s) incorporated in the Act(s).*

**Maritime Transport Act 1994 (1994 No 104)**

*Amendment(s) incorporated in the Act(s).*

**Meat Export Control Act 1921–22 (1921–22 No 73) (RS Vol 26,  
p 537)**

*Amendment(s) incorporated in the Act(s).*



**Medicines Act 1981 (1981 No 118)**

*Amendment(s) incorporated in the Act(s).*

**Misuse of Drugs Act 1975 (1975 No 116) (RS Vol 26, p 567)**

*Amendment(s) incorporated in the Act(s).*

**Misuse of Drugs Amendment Act 1978 (1978 No 65) (RS Vol 26, p 618)**

*Amendment(s) incorporated in the Act(s).*

**Niue Act 1966 (1966 No 38) (Reprinted 1976, Vol 5, p 4005)**

*Amendment(s) incorporated in the Act(s).*

**Ombudsmen Act 1975 (1975 No 9) (RS Vol 21, p 657)**

*Amendment(s) incorporated in the Act(s).*

**Ozone Layer Protection Act 1990 (1990 No 50)**

*Amendment(s) incorporated in the Act(s).*

**Ozone Layer Protection Amendment Act 1993 (1993 No 3)**

*Amendment(s) incorporated in the Act(s).*

**Passports Act 1992 (1992 No 92)**

*Amendment(s) incorporated in the Act(s).*

**Postal Services Act 1987 (1987 No 113)**

*Amendment(s) incorporated in the Act(s).*

**Privacy Act 1993 (1993 No 28)**

*Amendment(s) incorporated in the Act(s).*

**Ship Registration Act 1992 (1992 No 89)**

*Amendment(s) incorporated in the Act(s).*

**State Sector Act 1988 (1988 No 20)**

*Amendment(s) incorporated in the Act(s).*

**Summary Proceedings Act 1957 (1957 No 87) (RS Vol 9, p 583)***Amendment(s) incorporated in the Act(s).***Tariff Act 1988 (1988 No 155)***Amendment(s) incorporated in the Act(s).***Tariff Amendment Act 1989 (1989 No 48)***Amendment(s) incorporated in the Act(s).***Temporary Safeguard Authorities Act 1987 (1987 No 88)***Amendment(s) incorporated in the Act(s).***Toxic Substances Act 1979 (1979 No 27)***Amendment(s) incorporated in the Act(s).***Trade in Endangered Species Act 1989 (1989 No 18)***Amendment(s) incorporated in the Act(s).***Trade in Endangered Species Amendment Act 1991 (1991 No 100)***Amendment(s) incorporated in the Act(s).***Trade Marks Act 1953 (1953 No 66) (RS Vol 11, p 563)***Amendment(s) incorporated in the Act(s).***Transit New Zealand Act 1989 (1989 No 75)***Amendment(s) incorporated in the Act(s).***Wheat Industry Research Levies Act 1989 (1989 No 64)***Amendment(s) incorporated in the Act(s).***Wine Makers Act 1981 (1981 No 125)***Amendment(s) incorporated in the Act(s).***Wool Industry Act 1977 (1977 No 92) (RS Vol 24, p 861)***Amendment(s) incorporated in the Act(s).*

Reprinted as at  
15 February 2014

**Customs and Excise Act 1996**

Schedule 5

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**Wool Industry Act 1977 (1977 No 92) (RS Vol 24, p 861)—*continued***

Schedule 5: amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

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**Schedule 6**  
**Regulations amended**

s 289(2)

**Anthrax Prevention Regulations 1987 (SR 1987/345)***Amendment(s) incorporated in the regulations.***Copyright (Border Protection) Regulations 1994 (SR 1994/309)***Amendment(s) incorporated in the regulations.***Forest Produce Import and Export Regulations 1989  
(SR 1989/235)***Amendment(s) incorporated in the regulations.***Immigration Regulations 1991 (SR 1991/241)***Amendment(s) incorporated in the regulations.***Trade Marks (Border Protection and Transitional Applications)  
Regulations 1994 (SR 1994/306)***Amendment(s) incorporated in the regulations.***United Nations Sanctions (Angola) Regulations 1993  
(SR 1993/336)***Amendment(s) incorporated in the regulations.***United Nations Sanctions (Federal Republic of Yugoslavia  
(Serbia and Montenegro)) Regulations 1992 (SR 1992/160)***Amendment(s) incorporated in the regulations.***United Nations Sanctions (Haiti) Regulations 1994 (SR 1994/113)***Amendment(s) incorporated in the regulations.***United Nations Sanctions (Iraq) Regulations 1991 (SR 1991/92)***Amendment(s) incorporated in the regulations.***United Nations Sanctions (Liberia) Regulations 1992  
(SR 1992/371)***Amendment(s) incorporated in the regulations.*

**United Nations Sanctions (Libya) Regulations 1993  
(SR 1993/377)**

*Amendment(s) incorporated in the regulations.*

**United Nations Sanctions (Republic of Bosnia and Herzegovina)  
Regulations 1994 (SR 1994/281)**

*Amendment(s) incorporated in the regulations.*

**United Nations Sanctions (Rwanda) Regulations 1994  
(SR 1994/114)**

*Amendment(s) incorporated in the regulations.*

**United Nations Sanctions (Somalia) Regulations 1992  
(SR 1992/42)**

*Amendment(s) incorporated into the regulations.*

**United Nations Sanctions (Yugoslavia) Regulations 1991  
(SR 1991/237)**

*Amendment(s) incorporated in the regulations.*

**Wine Makers Regulations 1990 (SR 1990/77)**

*Amendment(s) incorporated in the regulations.*

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**Schedule 7**  
**Enactments repealed**

s 290(1)

**Age of Majority Act 1970 (1970 No 137) (RS Vol 21, p 1)**  
*Amendment(s) incorporated in the Act(s).*

**Constitution Act 1986 (1986 No 114)**  
*Amendment(s) incorporated in the Act(s).*

**Customs Act 1966 (1966 No 19) (RS Vol 2, p 57)**

**Customs Acts Amendment Act 1966 (1966 No 96) (RS Vol 2,  
p 246)**

**Customs Acts Amendment Act 1970 (1970 No 28) (RS Vol 2,  
p 249)**

**Customs Acts Amendment Act 1974 (1974 No 4) (RS Vol 2,  
p 249)**

**Customs Acts Amendment Act (No 2) 1974 (1974 No 142) (RS  
Vol 2, p 251)**

**Customs Acts Amendment Act 1975 (1975 No 3) (RS Vol 2,  
p 252)**

**Customs Acts Amendment Act 1976 (1976 No 5) (RS Vol 2,  
p 255)**

**Customs Acts Amendment Act (No 2) 1977 (1977 No 85) (RS  
Vol 2, p 266)**

**Customs Acts Amendment Act 1978 (1978 No 2) (RS Vol 2,  
p 268)**

**Customs Acts Amendment Act (No 2) 1978 (1978 No 78) (RS  
Vol 2, p 269)**

**Customs Acts Amendment Act (No 2) 1979 (1979 No 137)**

**Customs Acts Amendment Act 1980 (1980 No 5)**

**Customs Acts Amendment Act (No 2) 1980 (1980 No 33)**

**Customs Acts Amendment Act 1981 (1981 No 2)**

**Customs Acts Amendment Act (No 2) 1981 (1981 No 6)**

**Customs Acts Amendment Act 1982 (1982 No 9)**

**Customs Acts Amendment Act (No 2) 1982 (1982 No 112)**

**Customs Acts Amendment Act 1983 (1983 No 5)**

**Customs Acts Amendment Act (No 2) 1983 (1983 No 41)**

**Customs Acts Amendment Act 1984 (1984 No 6)**

**Customs Acts Amendment Act 1985 (1985 No 145)**

**Customs Amendment Act 1967 (1967 No 137) (RS Vol 2, p 217)**

**Customs Amendment Act 1968 (1968 No 31) (RS Vol 2, p 219)**

**Customs Amendment Act 1971 (1971 No 42) (RS Vol 2, p 221)**

**Customs Amendment Act 1972 (1972 No 7) (RS Vol 2, p 225)**

**Customs Amendment Act 1973 (1973 No 110) (RS Vol 2, p 225)**

**Customs Amendment Act 1976 (1976 No 15) (RS Vol 2, p 232)**

**Customs Amendment Act 1981 (1981 No 20)**

**Customs Amendment Act 1982 (1982 No 126)**

**Customs Amendment Act 1985 (1985 No 131)**

**Customs Amendment Act 1986 (1986 No 44)**

**Customs Amendment Act 1987 (1987 No 63)**

**Customs Amendment Act (No 2) 1987 (1987 No 75)**

**Customs Amendment Act (No 4) 1987 (1987 No 128)**

**Customs Amendment Act 1988 (1988 No 17)**

**Customs Amendment Act (No 2) 1988 (1988 No 127)**

**Customs Amendment Act (No 3) 1988 (1988 No 182)**

**Customs Amendment Act 1989 (1989 No 47)**

**Customs Amendment Act 1990 (1990 No 89)**

**Customs Amendment Act (No 2) 1990 (1990 No 117)**

**Customs Amendment Act 1991 (1991 No 73)**

**Customs Amendment Act (No 2) 1991 (1991 No 84)**

**Customs Amendment Act (No 3) 1991 (1991 No 130)**

**Customs Amendment Act 1992 (1992 No 30)**

**Customs Amendment Act 1994 (1994 No 129)**

**Customs Amendment Act (No 2) 1994 (1994 No 136)**

**Customs Amendment Act 1995 (1995 No 7)**

**Dumping and Countervailing Duties Act 1988 (1988 No 158)**

*Amendment(s) incorporated in the Act(s).*



**Finance Act 1989 (1989 No 13)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act 1986 (1986 No 43)  
(RS Vol 19, p 485)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act 1988 (1988 No 7)**

*Amendment(s) incorporated in the Act(s).*

**Goods and Services Tax Amendment Act 1989 (1989 No 8)**

*Amendment(s) incorporated in the Act(s).*

**Official Information Amendment Act 1987 (1987 No 8) (RS  
Vol 21, p 634)**

*Amendment(s) incorporated in the Act(s).*

**Public Finance Act 1989 (1989 No 44)**

*Amendment(s) incorporated in the Act(s).*

**State-Owned Enterprises Amendment Act 1987 (1987 No 117)**

*Amendment(s) incorporated in the Act(s).*

**State Sector Act 1988 (1988 No 20)**

*Amendment(s) incorporated in the Act(s).*

**Tariff Act 1988 (1988 No 155)**

*Amendment(s) incorporated in the Act(s).*

**Tariff Amendment Act 1989 (1989 No 48)**

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**Schedule 8**

s 290(2)

**Regulations, orders, and notices revoked**

**Appointment of Customs Airports Notice 1969 (*Gazette* 1969,  
p 1836)**

**Customs Acts Amendment Act Commencement Order 1967  
(SR 1967/135)**

**Customs Airports Examination Stations Notice 1987  
(SR 1987/35)**

**Customs Amendment Act Commencement Order 1992  
(SR 1992/339)**

**Customs Amendment Act Commencement Order 1994  
(SR 1994/313)**

**Customs Amendment Act Commencement Order 1995  
(SR 1995/9)**

**Customs Districts Notice 1989 (SR 1989/349)**

**Customs Duties (Timber) Suspension Order 1974 (SR 1974/97)**

**Customs Duty on Government Goods Order 1986 (SR 1986/212)**

**Customs Examining Place Fees Regulations 1985 (SR 1985/275)**

**Customs Examining Place Fees Regulations 1985, Amendment  
No 1 (SR 1986/317)**

**Customs (Excise) Amendment Order 1988 (SR 1988/307)**

**Customs Import Prohibition (Brazilian Fila Dogs) Order 1991  
(SR 1991/31)**

**Customs Ports of Entry Notice 1980 (SR 1980/122)**

**Customs Ports of Entry Notice 1980, Amendment No 1  
(SR 1984/311)**

**Customs Ports of Entry Notice 1980, Amendment No 2 (*Gazette*  
1986, p 5095)**

**Customs Ports of Entry Notice 1980, Amendment No 3  
(SR 1987/25)**

**Customs Ports of Entry Notice 1980, Amendment No 4  
(SR 1989/273)**

**Customs Ports of Entry Notice 1980, Amendment No 5  
(SR 1990/253)**

**Customs Regulations 1968 (SR 1968/169)**

**Customs Regulations 1968, Amendment No 1 (SR 1969/196)**

**Customs Regulations 1968, Amendment No 2 (SR 1969/260)**

**Customs Regulations 1968, Amendment No 3 (SR 1970/189)**

**Customs Regulations 1968, Amendment No 4 (SR 1970/241)**

**Customs Regulations 1968, Amendment No 5 (SR 1971/258)**

**Customs Regulations 1968, Amendment No 6 (SR 1972/238)**

**Customs Regulations 1968, Amendment No 7 (SR 1973/66)**

**Customs Regulations 1968, Amendment No 8 (SR 1974/154)**

**Customs Regulations 1968, Amendment No 9 (SR 1975/229)**

**Customs Regulations 1968, Amendment No 10 (SR 1976/331)**

**Customs Regulations 1968, Amendment No 11 (SR 1977/69)**

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- Customs Regulations 1968, Amendment No 12 (SR 1977/146)**
- Customs Regulations 1968, Amendment No 13 (SR 1978/278)**
- Customs Regulations 1968, Amendment No 14 (SR 1979/97)**
- Customs Regulations 1968, Amendment No 15 (SR 1980/190)**
- Customs Regulations 1968, Amendment No 16 (SR 1980/238)**
- Customs Regulations 1968, Amendment No 17 (SR 1981/163)**
- Customs Regulations 1968, Amendment No 18 (SR 1981/238)**
- Customs Regulations 1968, Amendment No 19 (SR 1981/303)**
- Customs Regulations 1968, Amendment No 20 (SR 1982/136)**
- Customs Regulations 1968, Amendment No 21 (SR 1983/143)**
- Customs Regulations 1968, Amendment No 22 (SR 1983/183)**
- Customs Regulations 1968, Amendment No 23 (SR 1984/277)**
- Customs Regulations 1968, Amendment No 24 (SR 1986/282)**
- Customs Regulations 1968, Amendment No 26 (SR 1986/383)**
- Customs Regulations 1968, Amendment No 27 (SR 1987/94)**
- Customs Regulations 1968, Amendment No 28 (SR 1988/21)**
- Customs Regulations 1968, Amendment No 29 (SR 1988/236)**
- Customs Regulations 1968, Amendment No 30 (SR 1989/129)**
- Customs Regulations 1968, Amendment No 31 (SR 1989/244)**

**Customs Regulations 1968, Amendment No 32 (SR 1992/340)**

**Customs Regulations 1968, Amendment No 33 (SR 1992/389)**

**Customs Regulations 1968, Amendment No 34 (SR 1994/146)**

**Customs Regulations 1968, Amendment No 35 (SR 1994/238)**

**Customs Regulations 1968, Amendment No 36 (SR 1994/314)**

**Customs Regulations 1968, Amendment No 37 (SR 1995/4)**

**Customs Regulations 1968, Amendment No 38 (SR 1995/8)**

**Customs Tariff Classification Opinion Fees Regulations 1988  
(SR 1988/237)**

**Customs Wharves Notice 1990 (SR 1990/137)**

**Customs Wharves Notice 1990, Amendment No 1 (SR 1991/48)**

**Distillation Regulations 1977 (SR 1977/284)**

**Distillation Regulations 1977, Amendment No 1 (SR 1981/164)**

**Distillation Regulations 1977, Amendment No 2 (SR 1983/261)**

**Distillation Regulations 1977, Amendment No 3 (SR 1986/280)**

**Excise Duty (Alcoholic Beverages Indexation) Amendment  
Order 1989 (SR 1989/347)**

**Excise Duty (Alcoholic Beverages Indexation) Amendment  
Order 1991 (SR 1991/74)**

**Excise Duty (Alcoholic Beverages Indexation) Amendment  
Order 1993 (SR 1993/10)**

**Excise Duty (Alcoholic Beverages Indexation) Amendment Order 1994 (SR 1994/6)**

**Excise Duty (Tobacco Products Indexation) Amendment Order 1990 (SR 1990/20)**

**Excise Duty (Tobacco Products Indexation) Amendment Order (No 2) 1990 (SR 1990/184)**

**Excise Duty (Tobacco Products Indexation) Amendment Order 1991 (SR 1991/12)**

**Excise Duty (Tobacco Products Indexation) Amendment Order 1994 (SR 1994/72)**

**Excise Duty (Tobacco Products Indexation) Amendment Order (No 2) 1994 (SR 1994/247)**

**Excise Duty (Tobacco Substitutes) Amendment Order 1994 (SR 1994/102)**

**Order Prohibiting the Importation of certain Egg Pulp, and White or Yolk of Eggs made on 21 April 1921 (*Gazette* 1921, p 1019)**

**Tariff Classification Opinion Fees Regulations 1988, Amendment No 2 (SR 1989/130)**

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## Schedule 9

s 308

### Tariff items removed from Tariff

*[Repealed]*

Schedule 9: repealed, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

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**Schedule 10**  
**Substituted Tariff items**  
*[Repealed]*

s 308

Schedule 10: repealed, on 1 January 2010, by section 9(6) of the Tariff Amendment Act 2009 (2009 No 62).

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## Goods and Services Tax Act 1985

Public Act 1985 No 141  
Date of assent 3 December 1985  
Commencement 3 December 1985

### **1 Short Title, etc**

- (1) This Act may be cited as the Goods and Services Tax Act 1985.
- (2) This Act, other than section 12, is hereby declared to be one of the Inland Revenue Acts within the meaning of the Tax Administration Act 1994.
- (3) Section 12 of this Act shall be deemed to be part of the Customs and Excise Act 1996.

Section 1(2): substituted, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 1(2): amended, on 1 October 1996, by section 51 of the Taxation (Remedial Provisions) Act 1998 (1998 No 7).

Section 1(3): substituted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

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## **Customs and Excise Amendment Act (No 3) 2008**

Public Act 2008 No 68  
Date of assent 16 September 2008  
Commencement see section 2

### **1 Title**

This Act is the Customs and Excise Amendment Act (No 3) 2008.

### **2 Commencement**

- (1) Sections 3, 10, and 12 come into force on the day after the date on which this Act receives the Royal assent.
- (2) Sections 4, 8, 9, 20, and 23 come into force on 1 October 2008.
- (3) The rest of this Act comes into force on a day to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.

Section 2(3): sections 5–7, 11, 13–19, 21, 22, and 24 brought into force, on 24 September 2009, by the Customs and Excise Amendment Act (No 3) 2008 Commencement Order 2009 (SR 2009/252).

## **Part 2 Consequential amendments and transitional provisions**

### *Transitional provisions*

### **23 Transitional provision relating to exemption for tobacco manufactured for personal use**

Until the close of 30 June 2009, section 68A(2)(d) of the principal Act, as inserted by section 8 of this Act, must be read as if for “any year ending with 30 June” there were substituted “the period commencing on 1 October 2008 and ending with the close of 30 June 2009”.

- 24 Transitional provision relating to appeals against seizure**  
Sections 231 to 235 of the principal Act, as in force before the commencement of section 16 of this Act, continue to apply in respect of goods seized, under section 226 of the principal Act, before the commencement of section 16 of this Act.
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## Reprints notes

### 1 *General*

This is a reprint of the Customs and Excise Act 1996 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Airports (Cost Recovery for Processing of International Travellers) Act 2014 (2014 No 3): section 21(1)

Social Welfare (Transitional Provisions) Amendment Act 2013 (2013 No 132): section 11

Companies Amendment Act 2013 (2013 No 111): section 14

Customs and Excise (Budget Measures—Motor Spirits) Amendment Act 2013 (2013 No 24)

Student Loan Scheme Amendment Act 2013 (2013 No 10): sections 47–49

Sale and Supply of Alcohol Act 2012 (2012 No 120): section 417(1)

Legislation Act 2012 (2012 No 119): section 77(3)

Customs and Excise (Tobacco Products—Budget Measures) Amendment Act 2012 (2012 No 77)

Customs and Excise Amendment Act 2012 (2012 No 25)

Search and Surveillance Act 2012 (2012 No 24): sections 221–229

Criminal Procedure Act 2011 (2011 No 81): section 413

Student Loan Scheme Act 2011 (2011 No 62): section 223

Misuse of Drugs Amendment Act (No 2) 2011 (2011 No 54): section 13(2)

Customs and Excise Amendment Act 2011 (2011 No 36)  
Limitation Act 2010 (2010 No 110): section 58  
Excise and Excise-equivalent Duties Table (Tobacco Products) Amendment Act 2010 (2010 No 23): sections 8, 9, 10  
Accident Compensation Amendment Act 2010 (2010 No 1): section 5(1)(b)  
Tariff Amendment Act 2009 (2009 No 62): section 9(6)  
Customs and Excise Amendment Act 2009 (2009 No 61)  
Immigration Act 2009 (2009 No 51): section 406(1)  
Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42): section 10  
Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35): section 161(2)  
Customs and Excise (AANZFTA) Amendment Act 2009 (2009 No 21)  
Mutual Assistance in Criminal Matters Amendment Act 2009 (2009 No 9): section 14  
Criminal Proceeds (Recovery) Act 2009 (2009 No 8): sections 180–182  
Policing Act 2008 (2008 No 72): section 116(a)(i)  
Customs and Excise Amendment Act (No 3) 2008 (2008 No 68)  
Customs and Excise Amendment Act (No 2) 2008 (2008 No 61)  
Customs and Excise Amendment Act 2008 (2008 No 50)  
Land Transport Management Amendment Act 2008 (2008 No 47): section 49  
Customs and Excise (Social Assistance) Amendment Act 2008 (2008 No 25)  
Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109): section 293  
Student Loan Scheme Amendment Act 2007 (2007 No 13): section 41  
Customs and Excise Amendment Act 2007 (2007 No 9)  
Evidence Act 2006 (2006 No 69): section 216  
Dumping and Countervailing Duties Amendment Act 2006 (2006 No 63): section 6(2)  
Insolvency Act 2006 (2006 No 55): section 445  
Customs and Excise Amendment Act 2006 (2006 No 7)  
Lawyers and Conveyancers Act 2006 (2006 No 1): section 348  
Relationships (Statutory References) Act 2005 (2005 No 3): section 7  
Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2): sections 39–44  
Customs and Excise Amendment Act 2004 (2004 No 55)  
State Sector Amendment Act 2003 (2003 No 41): section 14(1)  
Injury Prevention, Rehabilitation, and Compensation Amendment Act 2003 (2003 No 29): section 13  
Civil Defence Emergency Management Act 2002 (2002 No 33): section 117  
Customs and Excise Amendment Act (No 2) 2002 (2002 No 31)  
Crimes Amendment Act 2002 (2002 No 20): section 8  
Social Welfare (Transitional Provisions—Overseas Pensions) Amendment Act 2002 (2002 No 8): section 8  
Human Rights Amendment Act 2001 (2001 No 96): section 70(1)

Customs and Excise Amendment Act 2001 (2001 No 61)  
Customs and Excise Amendment Act (No 2) 2000 (2000 No 58)  
Ministry of Economic Development Act 2000 (2000 No 28): section 8(1)  
Interpretation Act 1999 (1999 No 85): section 38(1)  
Companies Amendment Act 1999 (1999 No 19): section 19  
Employment Services and Income Support (Integrated Administration) Act  
1998 (1998 No 96): section 11  
District Courts Amendment Act 1998 (1998 No 76): section 7  
Customs and Excise Amendment Act (No 2) 1998 (1998 No 38)  
Postal Services Act 1998 (1998 No 2): section 62(1)  
Misuse of Drugs Amendment Act 1997 (1997 No 57): section 3  
Customs and Excise Act Commencement Order 1996 (SR 1996/229)  
Customs and Excise Amendment Act 1996 (1996 No 80)  
Public Finance Act 1989 (1989 No 44): section 65R(3)

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