

# Regulatory Impact Statement

## EXECUTIVE SUMMARY

Legislation is required to implement proposals to address emerging Customs and border management issues. Given the wide ranging nature of the reforms to Customs law proposed, there is no alternative to the promulgation of legislation to give effect to the recommended changes and to address deficiencies in the existing law. This paper is a discussion of the amendments for the Border (Customs, Excise and Tariff) Processing Bill.

The proposed amendments to the Customs and Excise Act 1996 can be divided into three categories. The first category are amendments which are minor or machinery in nature and do not substantially alter existing arrangements. These include the amendments related to the automated processing system “Smartgate”, and eight minor amendments that:

- clarify the provisions in the Act relating to “authorised persons”
- allow for the revocation of a Customs Export Delivery Order in certain circumstances
- allow material usually set out in the Schedules to the Customs and Excise Regulations to be incorporated by reference
- relocate the alcohol personal use exemption from the Customs and Excise Regulations 1996 to the Act
- allow the Chief Executive to nominate non-Customs officer employees to lay informations
- allow for the suspension of a registered user’s registration
- clarify that the Chief Executive can grant further time for lodgement of an entry of goods for exporting in appropriate cases
- allow for the imposition of administrative penalties for entries containing an error or omission.

The second category is one amendment with regulatory impacts on either the public or business. This amendment requires the payment of debts within the legislated 20-day period when Customs receives advance warning that a company has a precarious financial situation.

The remaining proposed amendments have a law enforcement focus. The intent of existing legislation is not changed and there are no regulatory impacts on either the public or business. These amendments are to:

- enable Customs officers to search a vehicle, whether it is being operated or is unattended, and the ability to use reasonable force to gain entry to effect the search of the vehicle
- create a power to arrest any person committing an offence punishable by imprisonment under the Act, whether or not that person is on a craft or not
- provide that duty on goods manufactured other than in a manufacturing area becomes due immediately upon the manufacture of the goods
- create a new offence of making a false allegation or report to Customs that an offence has been committed knowing that the statements are not true, or making statements with intention of wasting or diverting personnel or resources
- enable Customs to utilise future technology in those provisions that relate to the detection of tampering or interference with goods containers or packages.

The Bill amends the Tariff Act 1988 primarily to allow for faster and more efficient implementation of tariff reductions arising from trade agreements by:

- allowing material usually set out in Tariff Amendment Orders to be incorporated by reference
- making the Working Tariff Document, maintained by the New Zealand Customs Service, the legal Tariff.

## ADEQUACY STATEMENT

Customs has reviewed the RIS guidelines, and has determined that this RIS is adequate according to the criteria agreed to by Cabinet. The Regulatory Impact Analysis Unit is not required to review this RIS because none of the proposals will have a significant impact upon economic growth.

## OBJECTIVES

All of the amendments proposed in the Bill stem from the following policy objectives. These objectives are to:

- ensure the orderly administration of the law
- modernise legislation to meet new technologies
- rectify legislative gaps and inconsistencies identified within border legislation
- fully meet international obligations, including those relating to cross border crime
- ensure Customs participation in a whole of Government approach by helping to minimise resource waste and inefficiencies between government departments.

## AMENDMENT WITH REGULATORY IMPACTS

<b>Due Date for Payment of Duty</b>
<b>Status Quo:</b> When Customs issues an assessment notice to a company owing duty under the Customs and Excise Act the company has 20 days to pay the duty owed.
<b>Problem:</b> If a company which receives an assessment notice is in a precarious financial situation then waiting 20 days to collect the debt can mean that the full debt cannot be recovered. This has occurred on a number of occasions with companies collectively owing millions of dollars in unpaid duty to the Crown at the point of insolvency.
<b>Preferred Option:</b> The preferred option is to allow Customs to waive the 20-day period that a company has to pay an assessment notice, where it has been identified that the company is in a precarious financial situation.
<b>Implementation and Review:</b> Customs is not intending to implement any review requirements beyond those it employs to monitor its current procedures. Customs' current practice is for its auditors to make an initial assessment. If the situation appears complex and a decision cannot be made then an independent chartered accountant will be consulted. All auditing work is reviewed by Audit New Zealand.
<b>Impact Upon Business:</b> The power for Customs to insist upon immediate payment may have implications for businesses. When Customs requests immediate payment of duty owed to the Crown the business could face financial hardship in order to comply. Customs may need to apply to have a company placed into liquidation. The waiver of the 20-day period is only intended to apply where a company is already assessed as being in a serious financial situation and collection of duty is likely to be frustrated by voluntary liquidation or dispersal of the company assets to avoid payment. This power would only be used on selected occasions where it was felt that it was warranted and it is expected that a person would have a right of appeal to a Customs Appeal Authority, similar to that of section 110(3) of the Customs and Excise Act 1996.

## AMENDMENTS WITH NO REGULATORY IMPACT FOR BUSINESS OR THE PUBLIC

The issues below affect Customs' ability to operate effectively in the current border environment. The proposed legislative amendments to address these problems do not materially alter the status quo and have no inherent regulatory costs. These amendments are intended to improve the enforceability of existing laws and regulations.

<b>Searching Vehicles</b>
<b>Problem/Status Quo:</b> Customs officers have an existing power to stop and search vehicles for dutiable and prohibited goods. Because of the way that this provision is drafted, Customs officers are currently limited in their ability to deal with unattended or abandoned vehicles.
<b>Preferred Option:</b> The preferred option is to grant Customs the ability to search unattended and/or motionless vehicles and to use reasonable force to enter the vehicle for the purpose of searching it. Currently Customs is undertaking these functions as the Act is regarded as potentially allowing searches of stationary vehicles, however it is possible that this may be challenged in court. This option may infringe upon individuals rights, however it is in line with the intention of the Customs and Excise Act 1996. If Customs was to be given the power to search stationary vehicles in many cases they will need to use force to open the vehicle whether it is locked and/or unattended. If a Customs officer cannot use reasonable force to enter a vehicle in many cases it will mean that Customs cannot search the vehicle without a court order. There are emergency procedures available that are designed for an emergency situation – in this case we have a clear anticipation of the problem and are of the view that using 'emergency' provisions for that reason could be seen as both an abuse and inappropriate. In the time that it takes to obtain the warrant the vehicle could have been moved, the prohibited imports could have been disposed of and the people responsible for the vehicle could have departed the site. Customs inability to search stationary vehicles is potentially a major gap in border security and a potential waste of Customs resources. This issue was not considered by the recent Law Commission review of Search and Surveillance Powers.
<b>Regulatory Impact:</b> Amending this section to allow stationary or motionless vehicles to be searched will rectify an inconsistency within Customs' search power under the legislation and will not alter the status quo between Government, business and the public.

<b>Exercise of Warrantless Arrest Powers at Places other than on a Craft</b>
<b>Problem/Status Quo:</b> Section 147(1) of the Customs and Excise Act 1996 provides a Customs officer with the power to make a warrantless arrest of an offender for four specified imprisonable offences, wherever the person happens to be. Section 147(2) provides a Customs Officer with the power to arrest a person for any imprisonable offence under the Customs and Excise Act 1996. However the power to arrest can only be exercised if the subject is 'on a craft'. Many of the offences covered by section 147(2) are unlikely to be committed on a craft, for example the offence for personation of a Customs officer, unauthorised access to a Customs computerised entry processing system and the offence for removing a seized good without permission of the Chief Executive of Customs. In order for the person who committed an offence to be apprehended an arrest warrant needs to be obtained by the Police who will undertake the arrest for Customs. Under section 147(3) of the Act provides that where a Customs officer arrests a person under section 147, unless the person is sooner released, the officer shall call a member of the Police to their aid and deliver the arrested person into the custody of that member of the Police.

<p><b>Preferred Option:</b> To enable Customs to arrest people without warrant whether they are on a craft or not. This will lead to streamlined processes and allow Customs officers immediate recourse to prevent damage to systems and goods. The requirement under section 174(3) to call a member of the Police to a Customs officer's aid and to deliver an arrested person to that member of the Police is retained.</p>
<p><b>Regulatory Impact:</b> This provision is a law enforcement provision and is designed to aid efficient law enforcement processes. It is expected that there will be no compliance impact from this legislative change for the public or business as the people who will fall subject to this provision are already liable for arrest after a warrant is obtained.</p>

<p><b>Duty on Unlawfully Manufactured Excisable Goods</b></p>
<p><b>Problem/Status Quo:</b> When excisable goods such as tobacco are removed from a designated manufacturing area duty on them becomes payable. As unlawfully manufactured goods are not manufactured in a designated manufacturing area, it becomes uncertain when and if the goods are removed from the 'manufacturing area' and become liable for duty. The Customs and Excise Act 1996 intends duty on unlawfully manufactured excisable goods manufactured in an unlicensed area to be liable for duty as if the area were licensed as a manufacturing area. This means that the goods are not liable for duty until the goods are removed from the manufacturing area for home consumption. However as there is no defined manufacturing area, at no point are the goods removed from the manufacturing area.</p>
<p><b>Preferred option:</b> It is recommended that rather than linking the timing of the obligation to pay excise duty to the unlawfully manufactured goods leaving the "manufacturing area", that the excise duty becomes payable upon the point of unlawful manufacture.</p>
<p><b>Regulatory Impact:</b> This provision is designed to tidy legislative inconsistencies as the Customs and Excise Act 1996 intended for the duty to be payable upon the goods. This therefore means that there is no material change to the current situation and there will be no impact upon business or the public.</p>

<p><b>Offence for Making a Malicious Allegation or Report to Customs</b></p>
<p><b>Problem/Status Quo:</b> If members of the public maliciously send Customs false information concerning persons or businesses Customs will follow up on that information. The follow up action can prove embarrassing for innocent persons involved and may waste Customs time.</p>
<p><b>Preferred option:</b> It is recommended that making a malicious allegation to a Customs officer be made an offence, similar to the offence provision contained in the Summary Offences Act 1981 (section 24).</p>
<p><b>Regulatory Impact:</b> This provision will not impose compliance costs upon the public as all allegations are laid voluntary. If the person makes a malicious allegation they have done so knowing that they can be prosecuted. This provision is designed to remedy a gap in legislation and will not materially alter the status quo.</p>

<p><b>Use of Future Technology to Detect Interference with Goods Containers</b></p>
<p><b>Problem:</b> Currently the Customs and Excise Act 1996 does not recognise the use of developing technology to detect tampering or interference with goods or packages. As technology advances it provides more effective methods of detecting tampering with containers than the currently utilised Customs seal. Current definitions within the Customs and Excise Act do not allow for modern and future advances with technology. This is especially pertinent as the United States is making rapid advances in their use of technology for their trade security.</p>
<p><b>Preferred option:</b> To amend the Act to allow Customs to utilise technological advances in those provisions that relate to the detection of tampering or interference with goods containers or packages.</p>
<p><b>Regulatory Impact:</b> There will be no compliance costs for the public as this provision is meant to be an enabling provision, rather than a regulatory provision. This provision will not constrain the public or business to undertake a course of action.</p>

## CONSULTATION

The following Government departments and agencies will be consulted and their views incorporated: Ministry of Justice, Ministry of Transport, the New Zealand Police, Department of Labour, Department of Internal Affairs, Ministry of Fisheries, Ministry of Agriculture and Forestry, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Economic Development, Treasury, Parliamentary Counsel Office, the Law Commission and the Office of the Privacy Commissioner.

The Department of Prime Minister and Cabinet was informed of this paper.