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as at 1 October 2018**

Customs and Excise Amendment Act 2004

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Customs and Excise Amendment Act 2004.
- (2) In this Act, the Customs and Excise Act 1996 is called “the principal Act”.

2 Commencement

- (1) Sections 10, 15 to 17, 20, 39, and 44(3) and (4) come into force on the day that is 3 months after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Interpretation

- (1) Section 2(1) of the principal Act is amended by inserting, after the definition of **Customs Appeal Authority** or **Authority**, the following definitions:

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 or markings 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.

- (2) Section 2(1) of the principal Act is amended by inserting, immediately before the definition of **Customs value** or **value**, the following definition:

Customs seal, in relation to a package of goods to be exported, means a seal approved by the Chief Executive for application to the package, as soon as it is secured (and in accordance with a notice under section 53A)—

- (a) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
 - (b) to help to identify interference or tampering with the package after it is secured
- (3) The definition of **New Zealand** in section 2(1) of the principal Act is amended by omitting from paragraph (b)(iv) the expression “section 226(2)”, and substituting the expression “sections 166A and 226(2)”.

4 **Part 2 heading amended**

The Part 2 heading of the principal Act is amended by omitting the words “and Customs Controlled Areas”, and substituting the words “Customs controlled areas, and Customs-approved areas for storing exports”.

5 New heading inserted

The principal Act is amended by inserting, before section 9, the following heading:

Customs places

6 New heading inserted

The principal Act is amended by inserting, before section 10, the following heading:

Customs controlled areas

7 Customs facilities

The heading to section 18 of the principal Act is amended by adding the words “in Customs controlled areas”.

8 New heading and sections 19A to 19H inserted

The principal Act is amended by inserting, after section 19, the following heading and sections:

Customs-approved areas for storing exports (CASEs)

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.

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.

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).

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 of this Act 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).”

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.

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.

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.

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.

9 Goods subject to control of Customs

Section 20(1) of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraphs:

- (ab) where the goods are to be exported (whether under drawback or not) and are in a package to which a Customs seal has been applied (whether or not any other paragraph of this subsection applies to the goods), from the time when a Customs seal is first applied to the package 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

10 Advice of arrival, etc

Section 21(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

- (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

11 Requirement to answer questions

- (1) Section 22(1) of the principal Act is amended by omitting the words “This section”, and substituting the expression “Subsection (2)”.
- (2) Section 22(2) of the principal Act is amended by omitting the word “section”, and substituting the word “subsection”.
- (3) Section 22 of the principal Act is amended by adding the following subsection:
 - (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.

12 Certificate of clearance

Section 34(a) of the principal Act is amended by inserting, after the word “Customs”, the words “within such time or times as may be prescribed”.

13 New section 34A inserted

The principal Act is amended by inserting, after section 34, the following section:

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 Min-

ister 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.

- (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.

14 Departure to be from Customs place only

Section 37(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

- (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.

15 New Part 3A inserted

The principal Act is amended by inserting, after section 38, the following Part:

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

Preliminary provisions

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.

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.

*Who must give Customs access to information***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.

*Information to which access must be given***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).

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.

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) of this section.
- (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.

Use of information to which access must be given

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.

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

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.

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.

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)).

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.

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).

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 production 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

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.

Miscellaneous provisions

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).

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.

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.

16 Entry of goods for export

Section 49(5) of the principal Act is amended by inserting, after the word “made”, the words “and passed”.

17 Regulations relating to entry of goods for export

Section 50 of the principal Act is amended by inserting, before paragraph (a), the following paragraph:

- (aa) prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act; and

18 New section 50A inserted

The principal Act is amended by inserting, after section 50, the following section:

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.

19 New headings and sections 53A to 53J inserted

The principal Act is amended by inserting, after section 53, the following headings and sections:

*Customs seals***53A Customs seal may be applied 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 apply (including to reapply) Customs seals to packages of goods to be exported.
- (2) The notice must specify the circumstances in which the officer or other person may apply a Customs seal to a package of goods, and must prohibit him or her from applying 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 apply a Customs seal to a package of goods to which no Customs seal has earlier been applied only if—
 - (a) the exporter concerned (or his or her agent or employee) consents to the seal being applied; or
 - (b) the seal is applied 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 applied 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.

53B Warning notices for packages to which seal applied

A notice of appointment under section 53A must also require the officer or other person concerned, on applying a Customs seal 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 applied 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 to which a Customs seal has been applied:
- (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 to which a Customs seal has been applied:
 - (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 package to which a Customs seal has been applied:
 - (iii) a person employed by a person described in sub-paragraph (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 to which a Customs seal has been applied.

Customs-approved secure exports schemes

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.

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.

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 or markings to 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 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.

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.

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.

53H Application of Customs seals to goods to be exported under Customs-approved secure exports schemes

- (1) Nothing in this Act prevents a Customs seal from being applied to a Customs-approved secure package after an approved seal or markings of the kind referred to in section 53E(1)(b) have been applied 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 applied to the Customs-approved secure package concerned.

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.

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.

20 New section 95A inserted

The principal Act is amended by inserting, after section 95, the following section:

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.

21 Registered users

- (1) The principal Act is amended by omitting the heading to section 132, and substituting the following heading: “Application to be registered user”.
- (2) Section 132 of the principal Act is amended by omitting subsection (2), and substituting the following subsection:
 - (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).

22 New section 134A inserted

The principal Act is amended by inserting, after section 134, the following section:

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.

23 Cancellation of registration of registered user

Section 135 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- (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.

24 Searching vehicles

- (1) Section 144(1)(a) of the principal Act is amended by omitting the word “is” in the first place where it occurs, and substituting the word “are”.
- (2) Section 144(2)(a) of the principal Act is amended by omitting the word “is” in the first place where it occurs, and substituting the word “are”.
- (3) Section 144 of the principal Act is amended by adding the following subsections:
 - (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 to which a Customs seal has been applied—
 - (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.

25 Questioning persons

Section 145 of the principal Act is amended by adding to the heading the words “about goods and debt”.

26 New section 145A inserted

The principal Act is amended by inserting, after section 145, the following section:

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).

27 New section 146 substituted

The principal Act is amended by repealing section 146, and substituting the following section:

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 of this Act (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 to which a Customs seal has been applied:
 - (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 to which a Customs seal has been applied:
 - (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 to which a Customs seal was applied or in a Customs-approved secure package to which a seal or marking of the kind referred to in section 53E(1)(b) was applied:
 - (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 or marking 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.

28 New section 147A inserted

The principal Act is amended by inserting, after section 147, the following section:

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.

29 Detention of persons

Section 148 of the principal Act is amended by adding to the heading the words "questioned about goods or debt".

30 New sections 148A and 148B inserted

The principal Act is amended by inserting, after section 148, the following sections:

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).

148B Detention of persons committing or about to commit certain offences

- (1) A Customs officer and, in the case of paragraph (b), a member of the police may detain a person who, the Customs officer or, if applicable, the member of the police believes on reasonable grounds is committing, or is about to commit, an offence under section 180 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 member of the police requiring the person to remain for a reasonable time in order that the Customs officer or, if applicable, the member of police 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)).
- (2) A Customs officer or, if applicable, a member of the police 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) However, a Customs officer may also detain 2 person under subsection (1) for the purpose of obtaining the attendance of, or for the purpose of making inquiries of, another Customs officer or of a person who is entitled to exercise any power to question, detain, or arrest the person if, during the person's detention for the purpose referred to in subsection (2), the Customs officer develops reasonable cause to suspect that the person may have contravened any of the following enactments:—
 - (a) Misuse of Drugs Act 1975:

- (b) Health (Quarantine) Regulations 1983:
 - (c) Trade in Endangered Species Act 1989:
 - (d) Biosecurity Act 1993.
- (4) A Customs officer or, if applicable, a member of the police must release a person detained under subsection (1)—
- (a) 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); or
 - (b) 4 hours after the person is first detained if, once the detention begins, the Customs officer develops reasonable grounds to suspect that the person may have contravened any of the enactments listed in subsection (3).
- (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 member of the police 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 member of the police.

31 Persons to whom sections 149A and 149B(1) apply

- (1) The heading to section 149 of the principal Act is amended by omitting the expression “and 149B(1)”, and substituting the expression “, 149B(1), and 149BA”.
- (2) Section 149 of the principal Act is amended by omitting the words “and 149B(1)”, and substituting the words “, 149B(1), and 149BA”.

32 New section 149BA inserted

The principal Act is amended by inserting, after section 149B, the following section:

149BA Searching of persons for dangerous items

- (1) A Customs officer or member of the police may immediately detain and search a person to whom this section applies if, and only if, the Customs officer or member of the police has reasonable grounds to believe 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 member, 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 member of the police, or any other person, to greater risk from the threat.
- (2) For the purposes of this section and section 149C, **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.
- (3) If necessary, reasonable force may be used for either or both of the following purposes:—
- (a) to detain the person:
 - (b) to search the person.
- (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) A customs officer or member of the police who undertakes a search under this section must, within 3 working days of the search, give a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by subsection (1) to,—
- (a) in the case of a customs officer, the Comptroller of Customs; and
 - (b) in the case of a member of the police, the Commissioner of Police.

33 Seizure of items found

Section 149C of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

- (1) A Customs officer or member of the police 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 member of the police 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 member of the police may seize any thing found on or about a person when carrying out a search under section 149BA that the Customs officer or member of the police has reasonable cause to suspect is—
 - (a) a dangerous item; or
 - (b) a thing described in section 149B(1)(a), (b), or (c).

34 Examination of goods subject to control of Customs

- (1) Section 151 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

- (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 dog, a chemical substance, x-ray or imaging equipment, or some other mechanical, electrical, or electronic device).

- (2) Section 149A(2)(b) is consequentially amended by omitting the words “or a mechanical, electrical, x-ray, imaging, or electronic device”, and substituting the words “or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device”.

- (3) Section 172(1) of the principal Act is consequentially amended by omitting the words “or a”, and substituting the words “x-ray or imaging equipment, or some other”.

- (4) Section 151 of the principal Act is amended by adding the following subsections:

- (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 to which a Customs seal has been applied.

- (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.

35 New sections 166A to 166F inserted

The principal Act is amended by inserting, after section 166, the following sections:

166A Detention of goods suspected to be tainted property

A Customs officer or authorised person 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) Part 5 of the Financial Transactions Reporting Act 1996 (which relates to reporting of imports and exports of cash); and
- (c) he or she has good cause to suspect that the goods are tainted property (as defined in section 2(1) of the Proceeds of Crime Act 1991).

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.

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 or authorised person 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:
 - (c) Mutual Assistance in Criminal Matters Act 1992:
 - (d) Proceeds of Crime Act 1991:
 - (e) Terrorism Suppression Act 2002.

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) an information is laid in respect of the relevant serious offence (as defined in section 2(1) of the Proceeds of Crime Act 1991); 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 55 (which relates to registration of foreign restraining orders):
 - (ii) section 60 (which relates to the issue in New Zealand of a restraining order).

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.

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.

36 Failure to produce evidence of identity and entitlement to travel

- (1) Section 186 of the principal Act is amended by omitting from the heading the words “and entitlement to travel”, and substituting the words “, entitlement to travel, or other matters”.
- (2) Section 186(1) of the principal Act is amended by omitting the words “of this Act”, and substituting the words “or section 147A”.

37 Offences in relation to arrival of craft

Section 191(1)(e) of the principal Act is amended by inserting, after the words “any craft,”, the words “or being any other person (other than a Customs officer or authorised person),”.

38 Offences in relation to manufacture, movement, and storage of goods

Section 200(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraphs:

- (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):

39 New sections 205A and 205B inserted

The principal Act is amended by inserting, after section 205, the following sections:

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.

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, an authorised person, 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.

40 New section 210A inserted

The principal Act is amended by inserting, after section 210, the following section:

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) applies a Customs seal 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 applied to a package of goods otherwise than in accordance with the relevant notice of appointment under section 53A; or
 - (c) applies an approved seal or markings of the kind referred to in section 53E(1)(b) 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 to which a Customs seal has been lawfully applied; or
 - (b) a Customs-approved secure package to which a seal or marking of the kind referred to in section 53E(1)(b) has been lawfully applied.
- (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.

41 New section 215A inserted

The principal Act is amended by inserting, after section 215, the following section:

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.

42 Goods forfeited

Section 225 of the principal Act is amended by adding the following subsection:

- (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.

43 New sections 281 to 282A substituted

The principal Act is amended by repealing sections 281 and 282, and substituting the following sections:

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.

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.

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.

44 Regulations

- (1) Section 286(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:
- (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:
- (2) Section 286(1) of the principal Act is amended by inserting, after paragraph (g), the following paragraph:

- (ga) prescribing the form and content of outward reports required by section 34, and the manner in which, and time within which, those reports must be delivered to the Customs:
- (3) Section 286(1) of the principal Act is amended by inserting, before paragraph (h), the following paragraphs:
 - (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:
- (4) Section 286(1) of the principal Act is amended by inserting, after paragraph (p), the following paragraph:
 - (pa) prescribing the form and manner in which the Customs must be given access to information under section 95A:
- (5) Section 286(1) of the principal Act is amended by inserting, after paragraph (x), the following paragraph:
 - (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.

45 Chief Executive may make rules for certain purposes

Section 288(1) of the principal Act is amended—

- (a) by adding to paragraph (a) the words “and the manner in which those reports must be delivered to the Customs”:
- (b) by adding to paragraph (b) the words “and the manner in which those reports must be delivered to the Customs”:
- (c) by inserting in paragraph (i), after the word “which”, the words “, and the time within which,”.

46 New section 288A inserted

The principal Act is amended by inserting, after section 288, the following section:

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.

47 Amendments consequential on enactment of section 24 of Customs and Excise Amendment Act (No 2) 2002 and section 32 of this Act

- (1) The definition of **New Zealand** in section 2(1) of the principal Act is amended, as from the relevant time,—
 - (a) by omitting from paragraph (b)(ii) the expression “149(1)(a) and (b)”, and substituting the expression “149(a) and (b)” ; and
 - (b) by omitting from paragraph (b)(iii) the expression “149(1)(c) and (3)”, and substituting the expression “149(a) and (b) and 149B(2)”.
- (2) Section 225(1) of the principal Act is amended, as from the relevant time, by omitting paragraph (d), and substituting the following paragraph:
 - (d) dutiable or prohibited goods found in the course of a search under section 144 or seized under section 149C(1):
- (3) Section 225(1) of the principal Act is amended by inserting, after paragraph (d), the following paragraph:
 - (da) dangerous items seized under section 149C(1A)(a):
- (4) Each of the following sections is amended, as from the relevant time, by omitting the expression “149”, and substituting the expression “149A, 149B, 149C(1) and (2), 149D,”:
 - (a) section 36 of the Misuse of Drugs Act 1975; and
 - (b) section 38A of the Trade in Endangered Species Act 1989; and
 - (c) section 56A of the Wildlife Act 1953.
- (5) In this section, **relevant time** means the close of 8 October 2002 (which is the commencement of section 11 of the Customs and Excise Amendment Act (No 2) 2002).

Eprint notes**1 *General***

This is an eprint of the Customs and Excise Amendment Act 2004 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Customs and Excise Act 2018 (2018 No 4): section 442