



Customs and Excise Amendment Regulations 2018

Patsy Reddy, Governor-General

Order in Council

At Wellington this 20th day of August 2018

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 403, 408, and 411 of the Customs and Excise Act 2018—

- (a) on the advice and with the consent of the Executive Council; and
- (b) to the extent that the regulations are made for the purposes of section 171 of that Act, on the recommendation of the Minister of Customs made after being satisfied of the matters set out in section 171(2).

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Regulations

1 Title

These regulations are the Customs and Excise Amendment Regulations 2018.

2 Commencement

These regulations come into force on 1 October 2018.

3 Principal regulations

These regulations amend the Customs and Excise Regulations 1996 (the **principal regulations**).

4 Regulation 3 revoked (Working hours of Customs)

Revoke regulation 3.

5 New regulation 5A inserted (Activities of Customs officer on cruise ships en route to New Zealand)

After regulation 5, insert:

5A Activities of Customs officer on cruise ships en route to New Zealand

The following classes of decisions and activities of a Customs officer, if made or carried out on board a cruise ship that is outside, but en route to, New Zealand, are prescribed for the purposes of section 411 of the Act (and are therefore to be treated as having been made or carried out in New Zealand):

- (a) assessing border risk in relation to the craft and its passengers and crew members:
- (b) collecting, storing, and transmitting information:
- (c) calculating any duty payable on goods being imported by any of the passengers or crew members:

- (d) recommending that further action be taken by Customs in relation to the craft or any of its passengers or crew members.

6 Regulation 21 amended (When entry of imported goods to be made)

- (1) In regulation 21(c), replace “Customs controlled” with “Customs-controlled” in each place.
- (2) In regulation 21, insert as subclause (2):
- (2) However, if goods that are exempt under regulation 25(1) cease to be exempt under regulation 25(2), they must be entered within 20 working days after the date on which they cease to be exempt.

7 Regulation 25 amended (Certain imported goods exempt from entry)

- (1) Replace regulation 25(b) with:
 - (b) a craft that—
 - (i) is not owned or registered in New Zealand; and
 - (ii) is visiting New Zealand temporarily as part of a commercial international voyage; and
 - (iii) arrives at a Customs place; and
 - (iv) is not engaged in the movement of cargo or passengers between places within New Zealand (otherwise than as a result of an unscheduled diversion of the international voyage):
 - (ba) a craft that—
 - (i) is not owned or registered in New Zealand; and
 - (ii) is visiting New Zealand temporarily as part of a commercial international voyage; and
 - (iii) arrives at a Customs place; and
 - (iv) is engaged in the movement of cargo or passengers between Customs places; and
 - (v) is intended to remain in New Zealand for less than 6 months:
 - (bb) an aircraft that—
 - (i) is not owned or registered in New Zealand; and
 - (ii) is visiting New Zealand temporarily as part of a private international voyage; and
 - (iii) arrives at a Customs place; and
 - (iv) is intended to remain in New Zealand for less than 6 months:
- (2) After regulation 25(d), insert:
 - (da) a craft owned or operated by the Government of a foreign country that arrives in New Zealand on official government business (other than a craft to which paragraph (d) applies):

- (3) After regulation 25(i), insert:
- (j) human remains being imported for burial or cremation, on condition that a bill of lading, air consignment note, or air waybill for the remains is presented to a Customs officer.
- (4) In regulation 25, insert as subclauses (2) to (5):
- (2) However, goods cease to be exempt under subclause (1) if any of the following occurs:
- (a) in the case of a craft exempt under subclause (1)(ba) or (bb), the craft does not depart from New Zealand within 6 months;
 - (b) in the case of goods exempt under subclause (1)(g) or (h)(ii), a condition referred to in that provision ceases to be met;
 - (c) in any case, the goods otherwise cease to meet the criteria set out in the paragraph of subclause (1) under which the goods were exempt.
- (3) If goods cease to be exempt under subclause (2)(a), the importer must notify the chief executive.
- (4) If goods cease to be exempt, the goods must be entered in accordance with section 75 of the Act.
- (5) In this regulation, **Customs place** includes a place at which a craft is authorised to arrive under section 21 of the Act.

8 Regulation 26 amended (Certain goods deemed to be entered)

- (1) Replace regulation 26(1)(b) with:
- (b) exempt goods that are the personal baggage or household or other effects belonging to and accompanying a passenger, or a crew member, in any craft, when—
 - (i) the passenger or crew member provides to a Customs officer, in the prescribed form, the prescribed information and declaration relating to—
 - (A) the passenger or crew member; and
 - (B) the passenger's or crew member's personal baggage or household or other effects; or
 - (ii) the exempt goods are lawfully removed from a Customs-controlled area:
- (2) After regulation 26(1), insert:
- (1A) In subclause (1)(b),—
- exempt goods** means goods that are exempt from duty under any of the following approvals given under section 8 of the Tariff Act 1988:
- (a) concession number 80:
 - (b) concession number 81:

(c) concession number 82

prescribed means prescribed by the chief executive's rules.

(1B) Subclause (1)(b) does not apply to the following:

(a) goods whose importation is, under the Act or any other enactment,—

(i) prohibited; or

(ii) lawful only if done under a licence, permit, or consent:

(b) a motor vehicle (including a motor cycle) or a craft:

(c) cash, if the passenger or crew member is bringing into New Zealand a total amount of cash that is equal to, or above, the applicable threshold value for the purposes of section 68(1)(a) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

(1C) In subclause (1B)(c), **cash** has the meaning given in section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

9 Regulation 29 amended (Goods for export exempt from entry)

(1) In regulation 29(1)(c)(i) and (j)(i), replace “Customs controlled” with “Customs-controlled”.

(2) After regulation 29(1)(j), insert:

(k) human remains being exported for burial or cremation.

10 New regulation 31A inserted (Importer to amend assessment that includes provisional Customs value)

After regulation 31, insert:

31A Importer to amend assessment that includes provisional Customs value

(1) For the purposes of section 112(2)(a) of the Act, the importer must amend the assessment for the goods before the expiration of 12 months after the end of the financial year during which the entry for the goods was made.

(2) In this regulation, **financial year**, in relation to an importer, means a period of 12 months beginning on—

(a) 1 April; or

(b) if the importer has notified Customs of a different date for the start of the importer's financial year, that other date.

(3) However, if, as a result of a change to the start date of an importer's financial year, a new financial year starts before what would have been the end of the previous financial year, then—

(a) the shortened period is taken to be a financial year (even though it is shorter than 12 months); and

- (b) for entries made during that period, the importer must amend the assessment before the expiration of 24 months after the beginning of that period.

Example for subclause (3)

An importer has a standard financial year, so its financial years would have been 1 April 2019 to 31 March 2020, then 1 April 2020 to 31 March 2021.

However, in February 2020 the importer notifies Customs that it is changing its financial year to begin on 1 July, starting on 1 July 2020. As a result, what would have been the financial year 1 April 2020 to 31 March 2021 is shortened to be 1 April 2020 to 30 June 2020.

The time periods for the importer to amend its provisional Customs values are as follows:

- for entries made 1 April 2019 to 31 March 2020, subclause (1) applies and the amended assessment is due by 31 March 2021:
- for entries made 1 April 2020 to 30 June 2020, subclause (3) applies and the amended assessment is due by 31 March 2022:
- entries made 1 July 2020 to 30 June 2021, subclause (1) applies and the amended assessment is due by 30 June 2022.

11 Regulation 57C amended (Specified alcoholic products: conditions for extension of time for lodgement of entry and payment of excise duty)

- (1) In regulation 57C(1)(a)(i) and (b)(i) and (ii), replace “Customs controlled” with “Customs-controlled”.
- (2) After regulation 57C(1)(b)(ii), insert:
- (iii) made all returns required to be made by A under section 82 of the Act in the previous 12 months in respect of specified alcoholic products held at A’s Customs-controlled area; and
- (3) In regulation 57C(5)(a) and (b), replace “Customs controlled” with “Customs-controlled”.
- (4) After regulation 57C(5)(b), insert:
- (c) all returns required to be made under section 82 of the Act in respect of specified alcoholic products held at A’s Customs-controlled area will be made within the time prescribed by these regulations.

12 New regulations 58A to 58C inserted

After regulation 58, insert:

58A Nil returns

- (1) The circumstances in which section 82 of the Act applies are when specified alcoholic products are held—
- (a) in a manufacturing area; or

- (b) in a Customs-controlled area that is licensed to be used for the purpose set out in regulation 6(a).
- (2) For the purposes of section 82(2) of the Act, the periods in respect of which the licensee must make a return are,—
- (a) if the licensee’s prescribed entry time is the time specified in regulation 57A(1)(a), each month; or
- (b) if the licensee’s prescribed entry time is the time specified in regulation 57A(1)(b), each year commencing on 1 July; or
- (c) if the licensee’s prescribed entry time is the time specified in regulation 57A(1)(c), each 6-month period commencing on 1 July or 1 January.
- (3) However, if regulation 57C(4) applies to a licensee during a period prescribed under subclause (2)(b) or (c) (**period A**), the periods in respect of which the licensee must make a return are—
- (a) the period commencing at the beginning of period A and ending at the close of the month in which the suspension took effect; and
- (b) each subsequent month until the suspension ceases to have effect; and
- (c) the period commencing when the suspension ceases to have effect and ending at the close of period A.
- (4) For the purposes of section 82(3) of the Act, a return for a period must be made within 15 working days after the end of that period.
- (5) In this regulation, **prescribed entry time**, for a licensee, means the time prescribed for the purposes of section 81(2)(b) of the Act as the time within which specified alcoholic products removed from the licensee’s Customs-controlled area must be entered.

58B Removal of motor spirits from Customs-controlled areas

- (1) This regulation is made for the purposes of clause 10(1) of Schedule 3 of the Act.
- (2) The chief executive must not exercise the chief executive’s powers under section 85(1)(b) or 235(1) of the Act in respect of dutiable motor spirits held at a Customs-controlled area.
- (3) However, the chief executive may exercise those powers if satisfied that there is an emergency situation that makes it impracticable for the dutiable motor spirits to remain at the Customs-controlled area.

58C Excise duty on new dutiable motor spirits

For the purposes of clause 10(4) of Schedule 3 of the Act, the volume of new dutiable motor spirits manufactured in a manufacturing area during a period that is attributable to other substances is to be determined using the following formula:

$$n = (r + e) - (b + a + w)$$

where—

- n is the volume (in litres) of new dutiable motor spirits attributable to other substances
- r is the volume (in litres) of dutiable motor spirits removed for home consumption from the area during the period
- e is the volume (in litres) of dutiable motor spirits held in the area at the end of the period
- b is the volume (in litres) of dutiable motor spirits held in the area at the beginning of the period
- a is the volume (in litres) of original dutiable motor spirits received into the area during the period
- w is the volume (in litres) (if any) of other substances received into the area during the period—
 - (a) that are identifiable as dutiable motor spirits; and
 - (b) in respect of which excise or excise-equivalent duty has already become payable.

13 Regulation 59 amended (Business records)

- (1) In regulation 59(1)(c) and (ca), replace “the Customs” with “Customs”.
- (2) After regulation 59(2)(d)(viii), insert:
 - (ix) annual financial statements:
- (3) In regulation 59(3) and (4), replace “Customs controlled” with “Customs-controlled”.

14 New regulation 59A inserted (Interest on duty refunded on appeal)

After regulation 59, insert:

59A Interest on duty refunded on appeal

- (1) For the purposes of section 128(2) of the Act, the prescribed rate of interest applying on a day is the 90-day bank bill rate for that day.
- (2) In this regulation,—
 - 90-day bank bill rate**, for a day (**day A**), means the Reserve Bank of New Zealand 90-day bank bill rate as published on the last day on which that rate was published before the beginning of the financial year in which day A falls
 - financial year** means a period of 12 months beginning on 1 July.

15 Regulation 68 amended (Conditions on which drawback allowed)

- (1) In the heading to regulation 68, after “allowed”, insert “at time of entry”.
- (2) In regulation 68(1), after “be allowed”, insert “on a claim made with the entry of the goods under section 89 of the Act”.

- (3) Revoke regulation 68(1)(a).

16 New regulations 68A and 68B inserted

After regulation 68, insert:

68A Periodic drawbacks

- (1) Except as provided in regulation 69, drawback of duty in respect of goods entered under section 89 of the Act may be allowed under this regulation subject to the following conditions:
- (a) the exporter must have been approved under subclause (3) at the time the goods were entered;
 - (b) the claim for drawback must be made within 15 working days after the end of the drawback period during which the goods were entered;
 - (c) the exporter must comply with any conditions to which the exporter's approval under subclause (3) is subject;
 - (d) the exporter must provide any evidence requested by the chief executive in relation to any of the following:
 - (i) the nature and quantity of the goods;
 - (ii) the exportation of the goods;
 - (iii) the duty paid in respect of the goods;
 - (iv) any other matter relating to the claim.
- (2) A single claim for drawback of duty under this regulation may be made in respect of all goods exported by the exporter during a drawback period.
- (3) The chief executive may approve an exporter for the purposes of this regulation if satisfied that—
- (a) requiring the exporter to make a separate drawback claim each time the exporter exports goods would be unduly onerous; and
 - (b) the exporter has adequate and effective systems in place to ensure that evidence of the kind referred to in subclause (1)(d) will be available if requested; and
 - (c) the exporter has a satisfactory record of compliance with the Act.
- (4) An approval—
- (a) must specify the exporter's drawback period (which must be either each month, or 3-month periods as specified in the approval); and
 - (b) may be subject to any conditions that the chief executive considers appropriate.
- (5) In this regulation, **drawback period**, for an exporter, means the period specified in the exporter's approval under subclause (4)(a).

68B Late drawbacks

- (1) Except as provided in regulation 69, drawback of duty in respect of goods entered under section 89 of the Act may be allowed under this regulation subject to the following conditions:
 - (a) the chief executive must be satisfied that the exporter had a good reason for not claiming the drawback when the goods were entered:
 - (b) the exporter must provide any evidence requested by the chief executive in relation to any of the following:
 - (i) the nature and quantity of the goods:
 - (ii) the exportation of the goods:
 - (iii) the duty paid in respect of the goods:
 - (iv) any other matter relating to the claim.
- (2) A claim for drawback under this regulation must be made within 4 years after the goods are entered.

17 New regulations 71A to 71D inserted

After regulation 71, insert:

71A Interest rate for late payment, etc

For the purposes of sections 154(3) and 161(3) of the Act, the prescribed rate of interest applying on a day is the rate applying on that day for the purposes of section 120E(1)(a) of the Tax Administration Act 1994.

71B Remission or refund where inadvertent error by duty payer

- (1) In the circumstances described in section 166(1) of the Act, the chief executive must remit or refund an amount calculated under subclause (3).
- (2) For the purposes of section 166(1)(b) of the Act, the prescribed conditions are that—
 - (a) the error referred to in section 166(1)(a) of the Act must have been disclosed to Customs voluntarily by the licensee or owner or importer; and
 - (b) the duty must have been paid in full within the time required by section 124 of the Act.
- (3) The amount to be remitted or refunded is to be calculated in accordance with the following formula:

$$r = f - b$$

where—

- r is the amount to be remitted or refunded
- f is the amount of interest that would be payable in respect of the duty under section 154 of the Act if no remission or refund were allowed

b is the amount of interest that would have been payable in respect of the duty under section 154 of the Act if the prescribed rate of interest applying under that section on any day were the 90-day bank bill rate for that day.

(4) In this regulation,—

90-day bank bill rate, for a day (**day A**), means the Reserve Bank of New Zealand 90-day bank bill rate as published on the last day on which that rate was published before the beginning of the financial year in which day A falls

financial year means a period of 12 months beginning on 1 July.

71C Remission of interest accruing after statement of liability issued

(1) This regulation applies if—

(a) the chief executive issues a statement of liability to a duty payer under section 164 of the Act; and

(b) the statement specifies that, if the unpaid duty, interest, and penalties are paid within 20 working days after the date on which the statement is issued, no further interest will accrue on the unpaid amounts; and

(c) the unpaid duty, interest, and penalties are paid in full before the expiry of that period.

(2) The chief executive must remit or refund any interest payable under subpart 8 of Part 3 of the Act in respect of the unpaid duty for a day after the date as at which the statement of liability was issued.

71D Interest and penalties need not be collected on small amounts

(1) This regulation prescribes amounts and circumstances for the purposes of section 174(6)(b) and (c) of the Act.

(2) If the amount of duty payable by a person who is not a deferred account importer in relation to an entry, an assessment, an amendment of an assessment (other than a provisional value amendment), or a demand is less than \$1,000, interest or penalties in respect of that duty need not be collected.

(3) If the amount of duty payable by a deferred account importer in relation to a duty accounting period (other than duty payable in relation to a provisional value amendment) is less than \$1,000, interest or penalties in respect of that duty need not be collected.

(4) If the amount of duty payable by a person in relation to provisional value amendments in a financial year is less than \$1,000, interest or penalties in respect of that duty need not be collected.

(5) In this regulation,—

deferred account importer means a person who is authorised under section 123 of the Act to defer the payment of duty on imported goods

duty accounting period means the period determined under section 123(1)(b) of the Act

financial year has the same meaning as in regulation 31A

interest or penalties means interest or penalties under subpart 8 of Part 3 of the Act

provisional value amendment means an amendment of an assessment that is required by section 112 of the Act.

18 Regulation 72 replaced (Fee for application for Customs ruling)

Replace regulation 72 with:

72 Fee for application for Customs ruling

- (1) For a Customs ruling other than a valuation ruling, the application fee is \$40.88.
- (2) For a valuation ruling, the following fees and charges are payable:
 - (a) an application fee of \$300; and
 - (b) a charge of—
 - (i) \$116.48 per hour in excess of 2.5 hours spent by Customs in considering the application (with parts of an hour charged on a pro rata basis); plus
 - (ii) reimbursement of any reasonable costs incurred by Customs in relation to the application with the prior agreement of the applicant.
- (3) A fee under subclause (1) or (2)(a) must be paid when the application is made.
- (4) A charge under subclause (2)(b) must be paid on the issue of an invoice by Customs and within the time specified in the invoice.
- (5) To avoid doubt, the fees and charges payable under this regulation are payable regardless of the outcome of the application (including if the application is withdrawn or the chief executive declines to make a ruling due to insufficient information).
- (6) The fees and charges prescribed in this regulation are inclusive of goods and services tax under the Goods and Services Tax Act 1985.
- (7) In this regulation, **valuation ruling** means a Customs ruling under section 336(1)(c) of the Act.

19 Regulation 73 amended (Time for making of Customs ruling)

In regulation 73(a), after “section 333(1)(c)”, insert “or (2)(b)”.

20 New regulation 76A inserted (Forfeiture of electronic devices)

After regulation 76, insert:

76A Forfeiture of electronic devices

For the purposes of section 228(10) of the Act, the prescribed period is 20 working days from the date on which a Customs officer retained the device under section 228(9).

21 New Part 12A inserted

After regulation 80, insert:

Part 12A
Registered user systems

80A Definitions for Part

In this Part,—

act professionally has the meaning set out in regulation 80G

border law means any of the following:

- (a) the Act;
- (b) the Biosecurity Act 1993;
- (c) the Food Act 2014;
- (d) the Hazardous Substances and New Organisms Act 1996;
- (e) any other enactment that regulates the import or export of goods or the arrival or departure of craft or passengers;
- (f) a law of another country that corresponds to a law referred to in paragraphs (a) to (e)

competent has the meaning set out in regulation 80F

Ministry has the meaning set out in section 302(4) of the Act

opportunity to comment has the meaning set out in regulation 80B

related person, in relation to a person (**person A**), means any of the following:

- (a) an employee or agent of person A;
- (b) a nominated representative of person A;
- (c) a director or senior manager of person A

relevant offence means an offence against any of the following:

- (a) a border law;
- (b) the Agricultural Compounds and Veterinary Medicines Act 1997;
- (c) the Animal Products Act 1999;
- (d) Part 10 of the Crimes Act 1961 (other than sections 267 to 271);
- (e) the Human Assisted Reproductive Technology Act 2004;
- (f) the Immigration Advisers Licensing Act 2007;

- (g) the Immigration Act 2009:
- (h) the Misuse of Drugs Act 1975:
- (i) the Passports Act 1992:
- (j) the Protected Objects Act 1975:
- (k) the Terrorism Suppression Act 2002:
- (l) the Trade in Endangered Species Act 1989:
- (m) the United Nations Act 1946:
- (n) the Wine Act 2003:
- (o) a law of another country that corresponds to a law referred to in paragraphs (b) to (n).

80B Opportunity to comment

If a provision of this Part requires the chief executive to give a person an opportunity to comment before a power is exercised, before exercising the power the chief executive must—

- (a) notify the person of the chief executive's intention to exercise the power and the reasons for doing so; and
- (b) allow the person a reasonable opportunity to make submissions on the matter to the chief executive; and
- (c) take any submissions made by the person into account.

Registration

80C Registration

- (1) The chief executive may, on application, register a person to use all of, or 1 or more parts of, a registered user system.
- (2) If a person is registered to use only part of a registered user system, the chief executive may, on application, change the person's registration to register the person to use all of, or 1 or more additional parts of, the system.
- (3) An application for registration must be made in the way prescribed by the chief executive's rules.

80D Criteria for registration

- (1) The chief executive must not register a person as a registered user unless satisfied that the person—
 - (a) is a fit and proper person to be a registered user of the system; and
 - (b) is competent to use the system; and
 - (c) will act professionally in relation to the person's use of the system.

- (2) The chief executive may register the person as a user of those parts of the system that the chief executive considers appropriate having regard to the following:
- (a) the size and complexity of the person's business;
 - (b) the nature of the person's likely dealings with Customs and the Ministry;
 - (c) the matters referred to in regulation 80E;
 - (d) the level of competence and professionalism of the person and the person's employees and agents who use the system;
 - (e) any other matters that the chief executive considers relevant.

80E Fit and proper person

In determining whether a person (**person A**) is a fit and proper person to be a registered user, the chief executive may consider any of the following:

- (a) any serious or repeated failure by person A or a related person to comply with a border law;
- (b) any conviction of person A or a related person for a relevant offence;
- (c) any other matters that the chief executive considers relevant to whether person A and all related persons are likely to comply with the Act and the Biosecurity Act 1993.

80F Competence

A person (**person A**) is **competent** to use a registered user system if—

- (a) person A and person A's employees and agents who use the system are competent to do so; and
- (b) person A has adequate and effective systems in place to ensure that—
 - (i) person A remains competent to use the system; and
 - (ii) only employees and agents who are competent to do so are permitted to use the system.

80G Acting professionally

A person **acts professionally** in relation to the person's use of a registered user system if the person takes all reasonable steps to ensure that—

- (a) all documents and information that the person is required to provide to Customs or the Ministry are provided when required; and
- (b) the documents and information provided are complete and accurate; and
- (c) the person has evidence to support any claims made using the system; and
- (d) the person and the person's employees and agents who use the system otherwise act honestly and reasonably in their use of the system and their dealings with Customs or the Ministry.

*Conditions***80H Conditions on registration**

- (1) The chief executive may impose any conditions of the kinds permitted by subclause (2) on the registration of a registered user as the chief executive considers appropriate.
- (2) The kinds of conditions that may be imposed are as follows:
 - (a) standard administrative conditions imposed on the registration of all registered users, or all users in a particular class, for the purpose of ensuring the efficient operation of the registered user system;
 - (b) user-specific conditions imposed on the registration of a particular user for a specified period of time for the purpose of ensuring that the user and the user's employees and agents act competently and professionally in their use of the system;
 - (c) other conditions that the chief executive considers appropriate for the purpose of protecting the integrity of the registered user system and ensuring compliance with the Act and the Biosecurity Act 1993.
- (3) In deciding whether to impose a user-specific condition and the period for which it is to be imposed, the chief executive must have regard to the matters set out in regulation 80D(2).

80I Procedure to impose, vary, or revoke conditions

- (1) The chief executive may impose conditions on a user's registration—
 - (a) when the user is first registered; or
 - (b) at any later time by giving written notice to the user.
- (2) The chief executive may vary or revoke a condition on a user's registration at any time by giving written notice to the user.
- (3) Before imposing, varying, or removing a condition of the kind referred to in regulation 80H(2)(b), the chief executive must consult the Director-General of Biosecurity.
- (4) Before imposing or varying a condition to make it more restrictive, the chief executive must give the user an opportunity to comment.
- (5) However, subclause (4) does not apply in relation to a standard administrative condition if—
 - (a) the condition is being imposed when the user is first registered; or
 - (b) the condition, or varied condition, does not take effect until the user has had reasonable time to take any steps necessary to comply with it.

*Suspension or revocation***80J Suspension of registration**

- (1) The chief executive may suspend a registered user's registration under this regulation if—
 - (a) the chief executive has reasonable cause to believe that the user or a related person has seriously or repeatedly failed to comply with a border law; or
 - (b) the user or a related person is convicted of a relevant offence; or
 - (c) at the time the user became a registered user, the user or a related person had a prior conviction for a relevant offence but the chief executive was not aware of that conviction; or
 - (d) the chief executive is satisfied that the user—
 - (i) has otherwise ceased to be a fit and proper person to be a registered user; or
 - (ii) has persistently failed—
 - (A) to be competent to use the system; or
 - (B) to act professionally in the user's use of the system; or
 - (iii) has failed to comply with any conditions on the user's registration.
- (2) The chief executive may suspend the user's registration—
 - (a) in full (that is, in relation to all parts of the system that the person is registered to use); or
 - (b) in part (that is, only in relation to 1 or more, but not all, parts of the system that the person is registered to use).
- (3) Before suspending a registration, the chief executive must—
 - (a) consult the Director-General of Biosecurity; and
 - (b) give the user an opportunity to comment.
- (4) The chief executive must give written notice of the suspension to the user.
- (5) The suspension—
 - (a) takes effect on the date on which the notice is given or any later date specified in it; and
 - (b) remains in force for 3 months or any shorter period specified in the notice, unless the suspension is lifted before then.
- (6) The chief executive must lift the suspension before its expiry date if—
 - (a) the user applies for the suspension to be lifted; and
 - (b) the chief executive is satisfied that the grounds for the suspension no longer exist.

- (7) The chief executive may suspend a registration for 2 or more consecutive periods if the grounds for the suspension still exist.

80K Revocation of registration

- (1) The chief executive may revoke a registered user's registration if—
- (a) the user or a related person is convicted of a relevant offence; or
 - (b) at the time the user became a registered user, the user or a related person had a prior conviction for a relevant offence but the chief executive was not aware of that conviction; or
 - (c) the user's registration has previously been suspended (in full or in part) and grounds exist under regulation 80J to again suspend the registration.
- (2) The chief executive may revoke the user's registration—
- (a) in full (that is, in relation to all parts of the system that the person is registered to use); or
 - (b) in part (that is, only in relation to 1 or more, but not all, parts of the system that the person is registered to use).
- (3) Before revoking a registration, the chief executive must—
- (a) consult the Director-General of Biosecurity; and
 - (b) give the user an opportunity to comment.
- (4) The chief executive must give written notice of the revocation to the user.
- (5) The revocation takes effect on the date on which the notice is given or any later date specified in it.
- (6) If a person's registration is revoked, the person cannot be reregistered as a registered user of the system, or the relevant part of the system, within 6 months after the revocation.
- (7) However, the chief executive may waive the application of subclause (6) if satisfied that there are exceptional circumstances that justify the reregistration of the person before the expiration of those 6 months.

80L Urgent short-term suspension of registration

- (1) The chief executive may suspend a registered user's registration under this regulation if satisfied that—
- (a) grounds exist under regulation 80J(1)(a) to suspend the registration; and
 - (b) further time is required to determine whether the user's registration should be suspended or revoked or other action should be taken in relation to the user; and
 - (c) it is necessary to suspend the user's registration in order to protect the integrity of the border management system; and
 - (d) in all the circumstances, it is in the public interest to suspend the registration immediately.

- (2) Before suspending the registration, the chief executive must consult the Director-General of Biosecurity.
- (3) The suspension may be for a period of up to 1 month and takes effect immediately.
- (4) The chief executive must give written notice of the suspension to the user as soon as practicable after making the decision.
- (5) The chief executive may suspend a registration under this regulation for 2 or more consecutive periods if the grounds for doing so still exist, but the total period of suspension must not exceed 6 months.

22 Schedule 2 amended

- (1) In Schedule 2, form 2 heading, replace “Customs controlled” with “Customs-controlled”.
- (2) In Schedule 2, form 2, replace “Customs controlled” with “Customs-controlled”.
- (3) In Schedule 2, revoke forms 3 to 7.

23 Further amendments to principal regulations

Amend the principal regulations as set out in the Schedule.

Schedule

Further amendments to principal regulations

r 23

Regulation 4

In regulation 4(1), replace “Customs controlled” with “Customs-controlled”.

Regulation 5

In regulation 5(d), replace “Customs controlled” with “Customs-controlled”.

Part 2 heading

In the Part 2 heading, replace “**Customs controlled**” with “**Customs-controlled**”.

Regulation 6

In the heading to regulation 6, replace “**Customs controlled**” with “**Customs-controlled**”.

In regulation 6, replace “Customs controlled” with “Customs-controlled”.

Regulation 9

In regulation 9, replace “Customs controlled” with “Customs-controlled”.

Regulation 10

In regulation 10(1), (4), and (5), replace “Customs controlled” with “Customs-controlled” in each place.

Regulation 11

In regulation 11, replace “Customs controlled” with “Customs-controlled” in each place.

Regulation 24A

In regulation 24A(4)(b), replace “the Customs” with “Customs”.

In regulation 24A(4)(b), replace “Customs controlled” with “Customs-controlled” in each place.

Regulation 52

In regulation 52(1), (5), (6)(a) and (b), (7), and (8)(a) and (b), replace “Customs controlled” with “Customs-controlled”.

Regulation 52A

In regulation 52A(1)(a), (c), and (d) and (2)(a), replace “Customs controlled” with “Customs-controlled”.

Regulation 57

In regulation 57(1)(a), (c), (d)(i) and (ii), (e), (f)(i) and (ii), (g), and (j), replace “Customs controlled” with “Customs-controlled”.

Regulation 57A

In regulation 57A(1) and (1)(b) and (c)(i) and (ii), replace “Customs controlled” with “Customs-controlled”.

Regulation 57B

In regulation 57B(1) and (1)(b) and (c)(i) and (ii), replace “Customs controlled” with “Customs-controlled”.

Regulation 60

In regulation 60(1) and (3)(c) and (d)(iii), replace “the Customs” with “Customs”.

In regulation 60(1)(a), replace “Customs controlled” with “Customs-controlled”.

Regulation 61

In regulation 61(a), replace “the Customs” with “Customs”.

In regulation 61(b), replace “Customs controlled” with “Customs-controlled”.

In regulation 61(c), replace “customs controlled” with “Customs-controlled”.

Regulation 62

In regulation 62, replace “control of the Customs” with “control of Customs”.

In regulation 62(a), replace “Customs controlled” with “Customs-controlled”.

Regulation 63

In regulation 63(3)(c) and (d)(iii), replace “the Customs” with “Customs”.

Regulation 65

In regulation 65(1), replace “the Customs” with “Customs”.

Regulation 87

In regulation 87(1)(c), replace “Customs controlled” with “Customs-controlled”.

Regulation 88

In regulation 88(7), replace “Customs controlled” with “Customs-controlled”.

Schedule 1

In the Schedule 1 heading, replace “**Customs controlled**” with “**Customs-controlled**”.

In Schedule 1, heading to first column, replace “**Customs controlled**” with “**Customs-controlled**”.

In Schedule 1, replace “Customs controlled” with “Customs-controlled” in each place.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Customs and Excise Regulations 1996 (the **principal regulations**). The principal regulations were made under the Customs and Excise Act 1996 (the **1996 Act**) but are continued by the Customs and Excise Act 2018 (the **Act**). These amendments are made as a result of the enactment of the Act and come into force on 1 October 2018.

Goods exempt from entry—craft arriving in New Zealand under their own power

Under the 1996 Act, the requirement for imported goods to be entered only applied to craft arriving in New Zealand under their own power if they were covered by a determination under section 44 of that Act. The requirement for imported goods to be

entered is continued by section 75 of the Act but without an equivalent of former section 44.

Regulation 25 of the principal regulations (which exempts various classes of goods from the requirement to be entered) is amended to include craft that were previously covered by a section 44 determination so that they remain exempt from the requirement to be entered.

New regulation 25(da) exempts non-military craft of foreign countries that are in New Zealand on official business from the requirement to be entered. This brings them into line with foreign military craft, which are exempt under regulation 25(d).

Regulations 21 and 25 of the principal regulations are amended to clarify that if goods are exempt under regulation 25 but subsequently cease to meet the exemption criteria, they must then be entered within 20 working days.

Human remains

Human remains are not usually “goods” for the purposes of the Act. To give Customs some control over the movement of human remains into and out of New Zealand, section 441 of the Act applies some provisions of the Act to human remains as if they were goods. However, it is considered unnecessary to require entries to be lodged for human remains that are imported or exported for the purpose of burial or cremation and regulations 25 and 29 of the principal regulations are amended accordingly.

Goods deemed to be entered—personal effects of passengers and crew

Regulation 26 of the principal regulations is amended to take account of the fact that the passenger arrival card and other forms, which are currently prescribed in the principal regulations, will now be prescribed in the chief executive’s rules under section 421 of the Act. Forms 3 to 7 in Schedule 2 of the principal regulations are revoked accordingly.

Amending assessments that include provisional Customs value

When entering imported goods, an importer must include the value of the goods. If the value is not known at the time of import, the importer may be able to record a provisional value and amend the entry when the actual value is known (*see* sections 101, 102, and 112 of the Act). *New regulation 31A* prescribes the time limit for amending the entry as the expiration of 12 months after the end of the financial year during which the entry for the goods was made.

Excise duty—nil returns

Excise duty is levied on certain goods when they are imported or are manufactured in a Customs-controlled area (a CCA). The duty becomes payable when the goods are removed from the CCA for home consumption. The time periods for licensees of CCAs to lodge entries and pay duty are set out in Part 7 of the principal regulations. Generally entries must be lodged and duty paid monthly but, depending on the amount of estimated duty, a licensee may be able to lodge entries and pay duty 6-

monthly or annually. Section 82 of the Act introduces a new requirement for licensees to lodge nil returns for periods during which no products are removed from the CCA.

New regulation 58A prescribes the circumstances in which nil returns must be made and the time periods in which they must be lodged. Consequential amendments are made to regulation 57C.

Excise on motor spirits

To enable goods that are subject to excise duty to be moved from one CCA to another during the course of the manufacturing process, the chief executive can authorise the movement of goods duty-unpaid in certain circumstances. The Act allows the regulations to limit the circumstances in which the chief executive can exercise this power in relation to motor spirits. Under *new regulation 58B*, the chief executive may permit motor spirits to be moved duty-unpaid only in emergency situations. As a result, duty on motor spirits will ordinarily become payable when the fuel is moved from the primary refining facility or when it is imported.

If further manufacturing of the motor spirits occurs after that duty has become payable (for example, as a result of blending of fuels at a tank farm), additional duty will become payable on the newly manufactured fuel (*see* clause 10 of Schedule 3 of the Act). *New regulation 58C* prescribes the formula for calculating the volume of the new fuel that is attributable to the other substances that are mixed with the duty-paid motor spirit, and on which the additional duty is levied. This formula takes into account that duty may already have been paid on those other substances.

Business records

Regulation 59 of the principal regulations prescribes records that must be kept and produced to Customs on request. Customs considers that annual financial statements are covered, but, as they are not specifically mentioned, some businesses have been reluctant to provide them. *New regulation 59(2)(d)(ix)* is inserted to clarify the matter.

Drawback of duty

A drawback is a form of refund of duty paid on imported or domestically manufactured goods that are later exported. Drawback is usually claimed by the exporter as part of lodging the export entry, but late claims for drawback may be allowed in prescribed circumstances. *New regulation 68A* allows regular exporters (such as duty-free retailers and suppliers of maritime stores) who are approved by the chief executive to make monthly or 3-monthly drawback claims covering all of the goods they have exported in that period.

Under *new regulation 68B*, the chief executive is able to allow a late drawback claim to be made up to 4 years after the goods were exported if the exporter has a good reason for not making the claim at the time of export.

Regulation 68 is amended to make it clear that it applies to drawback claims made at the time of entry and to remove the 6-hour notice period in regulation 68(1)(a), which is no longer required.

Interest and remissions or refunds

Under section 128 of the Act, the chief executive is required to pay interest on duty that is refunded on appeal or in similar circumstances. *New regulation 59A* prescribes the Reserve Bank's 90-day bank bill rate as the rate at which this interest is to be calculated.

Section 154 of the Act provides for interest to accrue on late or incorrect payments of duty in certain cases. Section 161 of the Act also provides for interest to accrue on incorrect refunds of duty or drawback incorrectly allowed in certain cases. In both cases, interest accrues at the prescribed rate, and *new regulation 71A* provides for that rate to be the same as the rate applying for interest on unpaid tax under section 120E(1)(a) of the Tax Administration Act 1994.

If a duty payer makes an error in a self-assessment of duty that results in an underpayment of duty, the duty payer will be liable for interest on the underpayment. However, if the duty payer voluntarily corrects the error and pays the outstanding duty, *new regulation 71B* requires the chief executive to remit or refund part of the interest.

Section 164 of the Act allows the chief executive to issue a statement of liability to a person who is liable to pay interest or penalties under subpart 8 of Part 3 of the Act. If the person pays the interest and penalties in full by the date specified in the statement, *new regulation 71C* requires the chief executive to remit or refund any additional interest that has accrued since the statement of liability was issued.

Under section 174 of the Act and *new regulation 71D*, the chief executive need not collect interest or penalties under subpart 8 of Part 3 of the Act in respect of an amount of duty that is less than \$1,000.

Customs rulings about valuations

The Act allows the chief executive to make binding rulings on various matters, including as to the valuation of goods under Schedule 4 of the Act. The valuation rules in Schedule 4, which incorporate international rules agreed to under the General Agreement on Tariffs and Trade, are lengthy and complex. Making rulings as to their application may therefore require considerable work on the part of Customs.

To enable Customs to recover the cost of providing these valuation rulings, *new regulation 72* prescribes a fixed application fee, an hourly charge, and recovery of agreed expenses (which might include, for example, the cost of obtaining external advice). The hourly charge is set at approximately 80% of the expected actual cost of considering valuation ruling applications. The remaining 20% of the cost will be absorbed by Customs.

As provision of valuation rulings is a new service, there is some uncertainty about the actual time and costs likely to be incurred and whether full cost recovery is appropriate. The fee and charges and the 80/20 cost recovery split will therefore be reviewed after 2 years and adjusted if appropriate.

The application fee for all other types of Customs rulings, currently \$40 inclusive of GST, was set in 1996 when the GST rate was 12.5%. Since the GST rate increased to

15% in 2010, Customs has been able to collect the increased rate of GST by relying on section 78 of the Goods and Services Tax Act 1985. The fee is now updated to reflect the current GST rate of 15% but is not otherwise changed.

Section 336 of the Act requires a Customs ruling to be made within the prescribed time after an application is received. Regulation 73 of the principal regulations is amended to prescribe a period of 150 days for valuation rulings.

Forfeiture of electronic devices

Section 228 of the Act gives Customs various search and seizure powers in relation to electronic devices. Under section 228(10), a device that is retained under that section may be treated as forfeited after the prescribed period. *New regulation 76A* prescribes the period to be 20 working days from the date on which the device was retained.

Registered user systems

Subpart 7 of Part 5 of the Act allows Customs to establish electronic document exchange systems and allows the chief executive to register people as users of those systems. *New Part 12A* of the principal regulations—

- sets out the criteria for registration as a user:
- allows the chief executive to impose conditions on a user's registration:
- allows for the suspension or revocation of a user's registration.

Administration

Section 440 of the Act allows the chief executive to determine the working hours of Customs. As a consequence, regulation 3 of the principal regulations is redundant and is revoked.

Section 411 of the Act allows the regulations to prescribe circumstances in which decisions and activities of Customs officers made or carried out outside New Zealand are to be treated as having been made or carried out in New Zealand. Customs places officers on board cruise ships heading to New Zealand to carry out en route processing of passengers and crew who are finishing their cruise in New Zealand. Participation is voluntary but allows people to disembark more quickly than they would otherwise be able to. *New regulation 5A* facilitates this practice by providing for the actions and decisions of these officers to be treated as having been made or carried out in New Zealand.

Terminology updating

These regulations also amend various provisions of the principal regulations to update terminology for consistency with the Act.

Regulatory impact assessments

The New Zealand Customs Service produced 11 regulatory impact assessments to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of the regulatory impact assessments can be found at—

- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-18-customs-and-excise-act-review-provisional-values-time-limit-ris....pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-19-customs-and-excise-act-review-nil-returns-for-excisable-alcohol-products-manufactured-in-new-zealand.pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-19-customs-and-excise-act-review-removal-of-motor-spirits-from-cus....pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-19-customs-and-excise-act-review-drawback-ris.pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-17-customs-and-excise-act-review-compensatory-interest-incurred-be....pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-17-customs-and-excise-act-review-reduced-compensatory-interest-rat....pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-17-customs-and-excise-act-review-de-minimis-threshold-for-compensa....pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-20-customs-and-excise-bill-customs-valuation-rulings-regulations-f....pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/impact-summary-time-limit-for-customs-valuation-rulings.pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-19-customs-and-excise-act-review-forfeiture-of-electronic-devices-when-access-is-refused.pdf>
- <https://www.customs.govt.nz/globalassets/documents/legal-documents/paper-15-customs-and-excise-act-review-maintaining-registration-as-a-use....pdf>

They are also available at <http://www.treasury.govt.nz/publications/informationreleases/ria>

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