

# **Maritime Powers Extension Bill**

Government Bill

As reported from the Foreign Affairs, Defence and Trade Committee

## **Commentary**

### **Recommendation**

The Foreign Affairs, Defence and Trade Committee has examined the Maritime Powers Extension Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Maritime Powers Extension Bill would amend the Customs and Excise Act 2018 and the Misuse of Drugs Act 1975.

It seeks to incorporate into domestic law two provisions in international treaties to which New Zealand is a party:

- Article 108 of the United Nations Convention on the Law of the Sea (UNCLOS). This obliges signatory states to cooperate in suppressing the maritime transit of illicit substances. It provides a framework for cooperation when one State party has reasonable grounds to believe a ship flying the flag of another State party is engaged in the trafficking of illicit substances.<sup>1</sup>
- Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This provides a framework for states to board, search, and prosecute drug traffickers on the high seas.<sup>2</sup>

The bill would make a number of changes to existing law, including:

---

<sup>1</sup> United Nations Convention on the Law of the Sea.

<sup>2</sup> United Nations Convention against Illicit Trade in Narcotic Drugs and Psychotropic Substances.

- expanding the powers of the New Zealand Customs Service (Customs) to stop, board and search ships suspected of drug smuggling in international waters
- establishing offences that apply when an individual is on a ship outside New Zealand waters but intends to smuggle, or is involved in the smuggling of, controlled drugs or prohibited equipment or material in or out of New Zealand.

### **Proposed amendments**

We propose some minor drafting changes. For clarity and consistency in the bill's wording, we recommend amendments to headings in clause 4 and new Schedule 5A, and to clause 7, new section 12D(2).

## **Appendix**

### **Committee process**

The Maritime Powers Extension Bill was referred to the committee on 3 July 2018. The closing date for submissions was 20 July 2018. We received and considered three submissions from interested individuals.

We received advice from the New Zealand Customs Service and the Ministry of Foreign Affairs and Trade.

### **Committee membership**

Simon O'Connor (Chairperson)

Golriz Ghahraman

Hon Willie Jackson (until 15 August 2018)

Hon Tim Macindoe

Hon Todd McClay

Chris Penk

Priyanca Radhakrishnan (from 15 August 2018)

Jamie Strange (from 15 August 2018)

Louisa Wall

Dr Duncan Webb (until 15 August 2018)



**Maritime Powers Extension Bill**

---

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously



*Hon Meka Whaitiri*

## **Maritime Powers Extension Bill**

Government Bill

### **Contents**

		Page
1	Title	2
2	Commencement	2
<b>Part 1</b>		
<b>Main amendments to Customs and Excise Act 2018 and Misuse of Drugs Act 1975</b>		
Subpart 1—Amendments to Customs and Excise Act 2018		
3	Amendments to Customs and Excise Act 2018	2
4	New section 267A and cross-heading inserted	3
<i>Drugs smuggling outside New Zealand, etc</i>		
	267A Powers for dealing with drugs smuggling outside New Zealand, etc	3
5	New Schedule 5A inserted	3
Subpart 2—Amendment to Misuse of Drugs Act 1975		
6	Amendment to Misuse of Drugs Act 1975	3
7	New sections 12D to 12F inserted	3
	12D Drugs smuggling outside New Zealand, etc: application of sections 12E and 12F, supplementary provisions, and definitions	3
	12E Drugs smuggling outside New Zealand, etc: controlled drugs	4
	12F Drugs smuggling outside New Zealand, etc: prohibited equipment or material	6

**Part 2**  
**Consequential and related amendments**

	Subpart 1—Amendments to Customs and Excise Act 2018	
8	Amendments to Customs and Excise Act 2018	8
9	Section 4 amended (Overview of Act)	9
10	Section 176 amended (Goods forfeited)	9
11	Section 199 amended (Detention of craft suspected to be involved in offences or smuggling migrants)	9
	Subpart 2—Amendments to Misuse of Drugs Act 1975	
12	Amendments to Misuse of Drugs Act 1975	9
13	Section 28A amended (Consent of Attorney-General required in proceedings under section 12C)	9
14	Section 29 amended (Mistake as to nature of controlled drug or precursor substance)	10
15	Section 35A amended (Further provision on crimes to be treated as included in extradition treaties)	10
16	Section 35C amended (Restrictions on surrender of offenders)	10
	Subpart 3—Amendment to Search and Surveillance Act 2012	
17	Amendment to Search and Surveillance Act 2012	10
18	Schedule amended	10
	<b>Schedule</b>	11
	<b>New Schedule 5A inserted</b>	

**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Maritime Powers Extension Act **2018**.
- 2 Commencement**  
This Act comes into force on **1 October 2018**. 5

**Part 1**  
**Main amendments to Customs and Excise Act 2018 and Misuse of Drugs Act 1975**

- |          |  |    |
|----------|--|----|
|          | Subpart 1—Amendments to Customs and Excise Act 2018  |    |
| <b>3</b> | <b>Amendments to Customs and Excise Act 2018</b>     | 10 |
|          | This subpart amends the Customs and Excise Act 2018. |    |

#### 4 New section 267A and cross-heading inserted

After section 267, insert:

*Drugs smuggling outside New Zealand, etc*

#### 267A Powers for dealing with drugs smuggling outside New Zealand, etc

- (1) **Schedule 5A** contains powers for dealing with drugs smuggling outside New Zealand, etc. 5
- (2) The purpose of **Schedule 5A** is to further New Zealand's implementation of the following (which relate to the suppression of illicit traffic in narcotic drugs and psychotropic substances at sea):
- (a) article 108 of the United Nations Convention on the Law of the Sea: 10
- (b) article 17 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

#### 5 New Schedule 5A inserted

After Schedule 5, insert the **Schedule 5A** set out in the **Schedule** of this Act.

Subpart 2—Amendment to Misuse of Drugs Act 1975 15

#### 6 Amendment to Misuse of Drugs Act 1975

This subpart amends the Misuse of Drugs Act 1975.

#### 7 New sections 12D to 12F inserted

After section 12C, insert:

#### 12D Drugs smuggling outside New Zealand, etc: application of sections 12E and 12F, supplementary provisions, and definitions 20

*Application of sections 12E and 12F*

- (1) **Sections 12E and 12F** apply to any ship that is in any of the following:
- (a) New Zealand's exclusive economic zone:
- (b) the high seas: 25
- (c) the exclusive economic zone of another State.

*Supplementary provisions relating to offences under sections 12E and 12F*

- (2) For the purposes of **sections 12E(1)(b) and (2)(d) and 12F(1)(b) and (2)(d)**, in a case where it is another person who intends to import the controlled drugs or prohibited equipment or material into New Zealand, it does not matter if— 30
- (a) the other person is not on a ship to which **section 12E or 12F** applies:
- (b) D does not know the other person's identity:

- (c) D does not know of the other person's intention to import the controlled drugs or prohibited equipment or material into New Zealand.
- (3) For the purposes of **sections 12E(2)(a) and 12F(2)(a)**, it does not matter if D does not know the identity of the other ship.
- (4) For the purposes of **sections 12E(3)(b) and (4)(a) and 12F(3)(b) and (4)(a)**, it does not matter if— 5
- (a) the other person is not on a ship to which **section 12E or 12F** applies:
- (b) D does not know the other person's identity:
- (c) D does not know of the exportation of, or of the other person's intention to export, the controlled drugs or prohibited equipment or material from New Zealand. 10
- (5) For the purposes of **sections 12E and 12F**, it does not matter if any intended importation or exportation does not actually occur.
- (6) Section 28A applies to proceedings for an offence under **section 12E or 12F**.
- (7) Section 29C does not apply to an offence under **section 12E or 12F**. 15
- Definitions*
- (8) In this section and **sections 12E and 12F**,—
- exclusive economic zone**, in relation to New Zealand, has the meaning given to that term in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 20
- high seas** means all parts of the sea not included in—
- (a) the internal waters, territorial sea, or exclusive economic zone of New Zealand or another State; or
- (b) the archipelagic waters of an archipelagic State
- prohibited equipment or material** means— 25
- (a) a precursor substance; or
- (b) any equipment or material, other than a precursor substance, that is capable of being used in, or for, the commission of an offence under section 6(1)(b)
- ship** has the meaning given to that term in section 5(1) of the Customs and Excise Act 2018. 30
- 12E Drugs smuggling outside New Zealand, etc: controlled drugs**
- Offences*
- (1) A person (**D**) who is on a ship to which this section applies commits an offence if— 35
- (a) there are controlled drugs on the ship and—
- (i) the controlled drugs are in D's possession; or

- (ii) D is knowingly concerned in the transportation, holding, or handling of the controlled drugs on the ship; and
- (b) D or another person intends to import those controlled drugs into New Zealand; and
- (c) the importation would (if completed) be an offence under section 6(1)(a). 5
- (2) A person (**D**) who is on a ship (**D's ship**) to which this section applies commits an offence if—
- (a) there are controlled drugs on another ship to which this section applies; and 10
- (b) there is an arrangement for moving those controlled drugs onto D's ship; and
- (c) D knowingly— 15
- (i) takes steps to implement, or to facilitate the implementation of, the arrangement; or
- (ii) makes preparations for the arrival of those controlled drugs onto D's ship; and
- (d) D or another person intends to import those controlled drugs into New Zealand; and
- (e) the importation would (if completed) be an offence under section 6(1)(a). 20
- (3) A person (**D**) who is on a ship to which this section applies commits an offence if—
- (a) there are controlled drugs on the ship and— 25
- (i) the controlled drugs are in D's possession; or
- (ii) D is knowingly concerned in the transportation, holding, or handling of the controlled drugs on the ship; and
- (b) another person exported those controlled drugs from New Zealand; and
- (c) the exportation was an offence under section 6(1)(a).
- (4) A person (**D**) who is on a ship (**D's ship**) to which this section applies commits an offence if— 30
- (a) another person intends to export, or has exported, controlled drugs from New Zealand; and
- (b) the exportation would (if completed) be, or was, an offence under section 6(1)(a); and 35
- (c) there is an arrangement for moving those controlled drugs onto D's ship; and
- (d) D knowingly—

(i)	takes steps to implement, or to facilitate the implementation of, the arrangement; or	
(ii)	makes preparations for the arrival of those controlled drugs onto D's ship.	
	<i>Penalty</i>	5
(5)	A person who commits an offence under this section is liable on conviction in accordance with section 6(2)(a) to (c).	
	<i>Defence</i>	
(6)	It is a defence to a prosecution for an offence under <b>subsection (1) or (3)</b> if the person charged ( <b>D</b> ) proves,—	10
(a)	as the case may be, that—	
(i)	D was in possession of the controlled drugs solely for the purpose of preventing their use or trafficking:	
(ii)	D was knowingly concerned in the transportation, holding, or handling of the controlled drugs solely for the purpose of preventing their use or trafficking; and	15
(b)	that, as soon as possible after D became aware that the controlled drugs were on the ship,—	
(i)	D took all reasonable steps to inform the person in charge of the ship that the controlled drugs were on the ship; or	20
(ii)	if D was the person in charge of the ship, D took all reasonable steps to inform at least 1 of the following that the controlled drugs were on the ship:	
(A)	a representative of the company operating the ship (other than a representative who was on the ship):	25
(B)	an appropriate governmental authority at the port that, at the time D became aware that the controlled drugs were on the ship, was the next intended port of arrival for the ship.	
<b>12F</b>	<b>Drugs smuggling outside New Zealand, etc: prohibited equipment or material</b>	30
	<i>Offences</i>	
(1)	A person ( <b>D</b> ) who is on a ship to which this section applies commits an offence if—	
(a)	there is prohibited equipment or material on the ship and—	
(i)	the prohibited equipment or material is in D's possession; or	35
(ii)	D is knowingly concerned in the transportation, holding, or handling of the prohibited equipment or material on the ship; and	

- (b) D or another person intends to import that prohibited equipment or material into New Zealand; and
- (c) D or the other person (as the case may be) knows that, if the importation is completed, that prohibited equipment or material will be used in New Zealand to commit an offence under section 6(1)(b). 5
- (2) A person (**D**) who is on a ship (**D's ship**) to which this section applies commits an offence if—
- (a) there is prohibited equipment or material on another ship to which this section applies; and
- (b) there is an arrangement for moving that prohibited equipment or material onto D's ship; and 10
- (c) D knowingly—
- (i) takes steps to implement, or to facilitate the implementation of, the arrangement; or
- (ii) makes preparations for the arrival of that prohibited equipment or material onto D's ship; and 15
- (d) D or another person intends to import that prohibited equipment or material into New Zealand; and
- (e) D or the other person (as the case may be) knows that, if the importation is completed, that prohibited equipment or material will be used in New Zealand to commit an offence under section 6(1)(b). 20
- (3) A person (**D**) who is on a ship to which this section applies commits an offence if—
- (a) there is prohibited equipment or material on the ship and—
- (i) the prohibited equipment or material is in D's possession; or 25
- (ii) D is knowingly concerned in the transportation, holding, or handling of the prohibited equipment or material on the ship; and
- (b) another person exported that prohibited equipment or material from New Zealand knowing that it will be used to commit an offence under a provision of the law of the country to which it is being exported that corresponds to an offence under section 6(1)(b). 30
- (4) A person (**D**) who is on a ship (**D's ship**) to which this section applies commits an offence if—
- (a) another person intends to export, or has exported, prohibited equipment or material from New Zealand knowing that it will be used to commit an offence under a provision of the law of the country to which it would be, or is being, exported that corresponds to an offence under section 6(1)(b); and 35
- (b) there is an arrangement for moving that prohibited equipment or material onto D's ship; and 40

(c)	D knowingly—	
(i)	takes steps to implement, or to facilitate the implementation of, the arrangement; or	
(ii)	makes preparations for the arrival of that prohibited equipment or material onto D’s ship.	5
	<i>Penalty</i>	
(5)	A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 7 years.	
	<i>Defence</i>	
(6)	It is a defence to a prosecution for an offence under <b>subsection (1) or (3)</b> if the person charged ( <b>D</b> ) proves,—	10
(a)	as the case may be, that—	
(i)	D was in possession of the prohibited equipment or material solely for the purpose of preventing its use or trafficking:	
(ii)	D was knowingly concerned in the transportation, holding, or handling of the prohibited equipment or material solely for the purpose of preventing its use or trafficking; and	15
(b)	that, as soon as possible after D became aware that the prohibited equipment or material was on the ship,—	
(i)	D took all reasonable steps to inform the person in charge of the ship that the prohibited equipment or material was on the ship; or	20
(ii)	if D was the person in charge of the ship, D took all reasonable steps to inform at least 1 of the following that the prohibited equipment or material was on the ship:	
	(A) a representative of the company operating the ship (other than a representative who was on the ship):	25
	(B) an appropriate governmental authority at the port that, at the time D became aware that the prohibited equipment or material was on the ship, was the next intended port of arrival for the ship.	30

## Part 2

### Consequential and related amendments

#### Subpart 1—Amendments to Customs and Excise Act 2018

<b>8</b>	<b>Amendments to Customs and Excise Act 2018</b>	
	This subpart amends the Customs and Excise Act 2018.	35

- 9 Section 4 amended (Overview of Act)**  
In section 4(5), after “Part 4”, insert “(including **Schedule 5A**)”.
- 10 Section 176 amended (Goods forfeited)**  
After section 176(1)(u), insert:  
(v) a ship treated as forfeited under **clause 8(3) of Schedule 5A.** 5
- 11 Section 199 amended (Detention of craft suspected to be involved in offences or smuggling migrants)**  
Replace section 199(2) and (3) with:
- (2) A Customs officer— 10  
(a) may detain the craft at the place where it is:  
(b) may also direct—  
(i) that the craft proceed to the nearest Customs place or to any other place that the officer considers appropriate; and  
(ii) that the craft’s detention continue during the craft’s journey to that place, and at that place once the craft arrives there. 15
- (2A) A power in **subsection (2)** is exercisable only if, and for so long as, a Customs officer is satisfied that the exercise of the power is reasonably necessary to carry out an investigation into the commission of the offence concerned.
- (2B) If a direction is given under **subsection (2)(b)**, a Customs officer may, for the purpose of implementing the direction, do any of the following: 20  
(a) direct any person on the craft to take any specified action:  
(b) take charge of the craft:  
(c) arrange for the craft to be towed by another craft.
- (3) Subsection (4) applies if the person in charge of the craft attempts, or threatens, to cause the craft to depart, without a certificate of clearance, from a place where it is detained under **subsection (2)**. 25

## Subpart 2—Amendments to Misuse of Drugs Act 1975

- 12 Amendments to Misuse of Drugs Act 1975**  
This subpart amends the Misuse of Drugs Act 1975.
- 13 Section 28A amended (Consent of Attorney-General required in proceedings under section 12C)** 30
- (1) In the heading to section 28A, after “**12C**”, insert “, **12E, or 12F**”.
- (2) In section 28A(1) and (2), after “**12C**”, insert “, **12E, or 12F**”.

**14 Section 29 amended (Mistake as to nature of controlled drug or precursor substance)**

In section 29, after “section 12AC”, insert “or **section 12E or section 12F**”.

**15 Section 35A amended (Further provision on crimes to be treated as included in extradition treaties)**

5

In section 35A(1), replace “and 12C” with “12C, **12E**, and **12F**”.

**16 Section 35C amended (Restrictions on surrender of offenders)**

In section 35C(1), replace “and 12C” with “12C, **12E**, and **12F**”.

Subpart 3—Amendment to Search and Surveillance Act 2012

**17 Amendment to Search and Surveillance Act 2012**

10

This subpart amends the Search and Surveillance Act 2012.

**18 Schedule amended**

In the Schedule, after the item relating to section 243 of the Customs and Excise Act 2018, insert:

**clause 9(2)  
to (5) of  
Schedule 5A**

Customs officer may exercise search powers in dealing with drugs smuggling outside New Zealand, etc

Subparts 1, 2, and 4 to 10 (except that sections 125(4), 131(5)(f), and 133 and subparts 6 and 8 do not apply to forfeited goods)

**Schedule**  
**New Schedule 5A inserted**

s 5

**Schedule 5A**  
**Powers for dealing with drugs smuggling outside New Zealand, etc** 5

s 267A

*Preliminary provisions*

**1 Definitions for schedule**

(1) In this schedule,—

**controlled drug** has the meaning given to that term in section 2(1) of the Misuse of Drugs Act 1975 10

**data** has the meaning given to that term in section 228(5) of this Act

**drugs smuggler** means a person who—

(a) has committed, is committing, or is likely to commit a drugs smuggling offence; or 15

(b) has been, is, or is likely to be otherwise concerned in the commission of a drugs smuggling offence

**drugs smuggling evidence** means any of the following:

(a) a controlled drug or precursor substance:

(b) any equipment or material that is capable of being used in, or for, the commission of an offence under section 6(1)(b) of the Misuse of Drugs Act 1975: 20

(c) anything else that is evidence of 1 or more of the following:

(i) that a drugs smuggling offence has been, is being, or is likely to be committed: 25

(ii) that a ship is involved in drugs smuggling:

(iii) that a drugs smuggler is on a ship

**drugs smuggling offence** means an offence—

(a) under section 6(2) or (2A) of the Misuse of Drugs Act 1975 in relation to a contravention of, or a conspiracy to contravene, section 6(1)(a) of that Act; or 30

(b) under section 12AB(1) of the Misuse of Drugs Act 1975; or

(c) under section 12C of the Misuse of Drugs Act 1975 in relation to an act or omission that would be an offence—

- (i) under section 6(2) or (2A) of the Misuse of Drugs Act 1975 in relation to a contravention of, or a conspiracy to contravene, section 6(1)(a) of that Act; or
- (ii) under section 12AB(1) of the Misuse of Drugs Act 1975; or
- (d) under **section 12E or 12F** of the Misuse of Drugs Act 1975 5
- electronic device** has the meaning given to that term in section 228(5) of this Act
- exclusive economic zone**, in relation to New Zealand, has the meaning given to that term in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 10
- flag State**, in relation to a foreign ship, means—
- (a) the State in which the ship is registered; or
- (b) if the ship is unregistered, the State whose flag the ship is entitled to fly or whose marks of registry the ship is entitled to display
- foreign ship** means a ship— 15
- (a) that is not a New Zealand ship; and
- (b) that—
- (i) is registered in a State other than New Zealand; or
- (ii) is entitled to fly the flag, or to display the marks of registry, of a State other than New Zealand 20
- high seas** means all parts of the sea not included in—
- (a) the internal waters, territorial sea, or exclusive economic zone of New Zealand or another State; or
- (b) the archipelagic waters of an archipelagic State
- New Zealand ship** means a ship that— 25
- (a) is registered under the Ship Registration Act 1992; or
- (b) is not registered under the Ship Registration Act 1992 but is required or entitled to be registered under that Act
- precursor substance** has the meaning given to that term in section 2(1) of the Misuse of Drugs Act 1975 30
- preliminary search** has the meaning given to that term in section 210(6) of this Act
- relevant matter**, in relation to a ship, means a matter relating to 1 or more of the following:
- (a) the ship itself (for example, its registration or technical specifications): 35
- (b) past, current, or intended journeys of the ship:
- (c) activities that have been, are being, or are intended to be carried out on or from the ship:

(d)	goods that have been on, are on, or are intended to be brought onto the ship:	
(e)	persons who have been on, are on, or are expected to board the ship:	
(f)	without limiting <b>paragraphs (a) to (e)</b> , any matter that is relevant to investigating 1 or more of the following:	5
(i)	whether the ship has been, is, or will be involved in drugs smuggling:	
(ii)	whether drugs smugglers have been, are, or will be on the ship:	
(iii)	whether drugs smuggling evidence has been, is, or will be on the ship	10
	<b>rub-down search</b> has the meaning given to that term in section 3(1) of the Search and Surveillance Act 2012	
	<b>travel document</b> means any document that is—	
(a)	a New Zealand travel document (as that term is defined in section 2 of the Passports Act 1992); or	15
(b)	a passport (as that term is defined in section 2 of the Passports Act 1992) that has been issued by the Government of a State other than New Zealand; or	
(c)	a certificate of identity (as that term is defined in section 2 of the Passports Act 1992) that has been issued by the Government of a State other than New Zealand; or	20
(d)	a refugee travel document that has been issued by the Government of a State other than New Zealand.	
(2)	For the purposes of this schedule, a ship is <b>involved in drugs smuggling</b> if—	
(a)	a drugs smuggling offence has been, is being, or is likely to be committed on the ship; or	25
(b)	the ship has been, is, or is likely to be otherwise involved in the commission, or in facilitating the commission, of a drugs smuggling offence.	
<b>2</b>	<b>Ships to which schedule applies</b>	
	This schedule applies to any ship that is in any of the following:	30
(a)	New Zealand’s exclusive economic zone:	
(b)	the high seas:	
(c)	the exclusive economic zone of another State.	
<b>3</b>	<b>Application of schedule to foreign ships</b>	
(1)	In relation to a foreign ship, the powers under this schedule are exercisable—	35
(a)	only if, and to the extent that, the flag State has consented to the exercise of the powers; and	

	(b) subject to any conditions that the flag State attaches to its consent.	
(2)	<b>Subclause (1)</b> is subject to <b>subclauses (3) and (4)</b> .	
(3)	<b>Subclause (4)</b> applies if—	
	(a) a foreign ship is pursued out of New Zealand or the contiguous zone; and	5
	(b) the pursuit is a hot pursuit in accordance with article 111 of the United Nations Convention on the Law of the Sea.	
(4)	Consent is not required under <b>subclause (1)</b> for stopping the ship to end the pursuit or for the exercise of any powers following the end of the pursuit.	
<b>4</b>	<b>Schedule does not affect other powers</b>	10
	This schedule does not affect any other powers that are exercisable by any person outside New Zealand under any enactment or otherwise.	
	<i>Powers</i>	
<b>5</b>	<b>Investigatory powers</b>	
(1)	This clause applies in relation to a ship if a Customs officer has reasonable cause to suspect 1 or both of the following:	15
	(a) that the ship is involved in drugs smuggling:	
	(b) that a person on the ship is a drugs smuggler.	
(2)	A Customs officer may do any of the following:	
	(a) stop the ship:	20
	(b) board the ship:	
	(c) search the ship, or any person on the ship, for drugs smuggling evidence:	
	(d) question any person on the ship about a relevant matter.	
(3)	A Customs officer may also do any of the following:	
	(a) require any person on the ship to produce to a Customs officer, or otherwise to give a Customs officer access to, any document—	25
	(i) that is a travel document relating to the person; or	
	(ii) that relates to a relevant matter and that is in the person's possession or under the person's control:	
	(b) inspect the document.	30
(4)	If a document is stored, or is accessible, on or from any electronic device on the ship, the power in <b>subclause (3)(a)</b> includes (without limitation) the power to require the person to operate the device as is reasonably necessary.	
(5)	If a Customs officer has reasonable cause to suspect that a person has refused or failed to comply with a requirement imposed under <b>subclause (3)(a)</b> , a Customs officer may search the ship or the person (or both) for the document.	35

- (6) The powers to search the ship under **subclauses (2)(c) and (5)** include the power to search data in an electronic device on the ship as follows:
- (a) an initial search may be carried out in accordance with the definition of that term in section 228(5) of this Act:
  - (b) if a Customs officer has (as a result of an initial search under **paragraph (a)** or otherwise) reasonable cause to believe that drugs smuggling evidence is in the electronic device, a full search may be carried out in accordance with the definition of that term in section 228(5) of this Act (reading the reference in paragraph (f) to evidence of relevant offending as a reference to drugs smuggling evidence):
  - (c) there is no power under **paragraph (a) or (b)** to search material (of any kind) that is accessible from the electronic device but is not stored on it:
  - (d) the powers under **paragraphs (a) and (b)** may be used for the purpose of determining whether drugs smuggling evidence is in the electronic device.
- (7) The powers to search a person under **subclauses (2)(c) and (5)** are limited to conducting a preliminary search or a rub-down search, unless a Customs officer has (as a result of a preliminary search or a rub-down search of the person or otherwise) reasonable cause to believe that the person has drugs smuggling evidence or the document (as the case may be) on or about their body.
- 6 Power of arrest**
- (1) A Customs officer may, without warrant, arrest a person listed in **subclause (2)** if—
- (a) both of the following apply:
    - (i) a Customs officer finds drugs smuggling evidence on a ship:
    - (ii) wholly or partly on the basis of that drugs smuggling evidence, a Customs officer has reasonable cause to believe that the person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, a drugs smuggling offence; or
  - (b) both of the following apply:
    - (i) a Customs officer has reasonable cause to believe that drugs smuggling evidence has been on a ship:
    - (ii) wholly or partly on the basis of that belief, a Customs officer has reasonable cause to believe that the person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, a drugs smuggling offence.
- (2) The persons are as follows:
- (a) a person on the ship:

- (b) a person who has left the ship if the arresting officer is freshly pursuing the person.
- (3) Section 263(2) and (3) of this Act applies in relation to an arrest under **subclause (1)**.
- 7 Detention of ship** 5
- (1) A power in **subclause (2)** is exercisable in relation to a ship only if, and for so long as, a Customs officer is satisfied that the exercise of the power is reasonably necessary to enable the other powers in this schedule to be exercised in relation to the ship.
- (2) A Customs officer— 10
- (a) may detain the ship at the place where it is stopped under **clause 5(2)(a)**;
- (b) may also direct—
- (i) that the ship proceed to the nearest Customs place or to any other place (in New Zealand or elsewhere) that the officer considers appropriate; and 15
- (ii) that the ship's detention continue during the ship's journey to that place, and at that place once the ship arrives there.
- (3) If a direction is given under **subclause (2)(b)**, a Customs officer may, for the purpose of implementing the direction, do any of the following: 20
- (a) direct any person on the ship to take any specified action;
- (b) take charge of the ship;
- (c) arrange for the ship to be towed by another craft.
- 8 Forfeiture**
- (1) A Customs officer may treat as forfeited to the Crown any of the following goods that are seized in the exercise of a search power under this schedule: 25
- (a) a controlled drug or precursor substance;
- (b) any equipment or material that is capable of being used in, or for, the commission of an offence under section 6(1)(b) of the Misuse of Drugs Act 1975. 30
- (2) If goods are treated as forfeited under **subclause (1)**,—
- (a) the goods are forfeited to the Crown; and
- (b) subpart 9 of Part 3 of this Act does not apply, despite section 175; and
- (c) a Customs officer may dispose of the goods as a Customs officer considers appropriate. 35
- (3) If a ship arrives in New Zealand under a direction given under **clause 7(2)(b)**, a Customs officer may, at any time when the ship is in New Zealand, treat the ship as forfeited to the Crown if 1 or both of the following apply:

- (a) a drugs smuggling offence has been, or is being, committed on the ship:
- (b) the ship has been, or is, otherwise involved in the commission, or in facilitating the commission, of a drugs smuggling offence.
- (4) Subpart 9 of Part 3 of this Act applies if a ship is treated as forfeited under **subclause (3)**. 5
- 9 Supplementary provisions**
- Communication with flag State*
- (1) If a ship is a foreign ship, a Customs officer must not interfere with any attempt by the person in charge of the ship to communicate with the authorities of the flag State at any time while powers under this schedule are being exercised. 10
- Part 4 of Search and Surveillance Act 2012*
- (2) Part 4 of the Search and Surveillance Act 2012, except subpart 3, applies in respect of the search powers in **clause 5(2)(c) and (5)**.
- (3) If a document that is produced to a Customs officer, or to which a Customs officer is given access, under **clause 5(3)(a)** is drugs smuggling evidence, Part 4 of the Search and Surveillance Act 2012 applies to the document as if it had been found by the Customs officer during a search for the document to which that Part applied. 15
- (4) Despite **subclauses (2) and (3)**, sections 125(4), 131(5)(f), and 133, and subparts 6 and 8 of Part 4, of the Search and Surveillance Act 2012 do not apply to goods treated as forfeited under **clause 8** or to any other forfeited goods. 20
- (5) Part 4 of the Search and Surveillance Act 2012, as applied by **subclauses (2) and (3)**, applies subject to **clause 5(6) and (7) and subclause (7)**. 25
- Use of force*
- (6) A Customs officer may use reasonable force for the purpose of exercising a power under this schedule.
- (7) If the ship is a foreign ship, a Customs officer must not use force that exceeds the minimum degree of force that is necessary in the circumstances.

### Legislative history

27 June 2018

Introduction (Bill 71–1)

3 July 2018

First reading and referral to Foreign Affairs, Defence and Trade Committee