



The attached document has been proactively released by the New Zealand Customs Service on behalf of the acting Minister of Customs.

Paper prepared by:	Hon Damien O'Connor, acting Minister of Customs
Date considered by Cabinet:	4 May 2023
Name of paper:	Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023
Cabinet Reference:	LEG-23-MIN-0044
Purpose of the paper:	Paper seeks Cabinet approval to submit proposed regulations to the Executive Council. These regulations will empower Customs to remit or refund interest automatically accruing on unpaid duty, where the duty payer was affected by the adverse weather events in late January and February 2023.
Redactions	Some parts of these papers have been withheld under section 9(2)(a) of the Official Information Act 1982. The redactions appear in the text as a black box.



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REPORT

UNCLASSIFIED



NEW ZEALAND
CUSTOMS SERVICE
TE MANA ĀRAI O AOTEAROA

~~IN CONFIDENCE~~

24 April 2023

RPT 23/058

Minister of Customs


DRAFT LEG PAPER: “CUSTOMS AND EXCISE (SEVERE WEATHER—REFUNDS AND REMISSIONS OF INTEREST) REGULATIONS 2023”

Key points

- › The draft LEG paper attached seeks authorisation to submit the Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023 to the Executive Council.
- › Cabinet has already agreed that Customs remit or refund interest, where the affected duty payers have been put on payment plans due to the effects of the recent adverse weather events¹ across the North and East of the North Island.
- › The proposed regulation will give effect to Cabinet’s decision by empowering the Chief Executive of Customs to remit or refund interest where the criteria are met.
- › If you agree, the paper will be submitted to LEG on 4 May 2023.
- › Cabinet has approved a waiver of the 28-day rule so the regulations will come into force when they are notified in the Gazette. This reflects the urgency of the response to these events, and the desire to give affected businesses certainty about their potential financial situation going forward.
- › You made announcements about the policy when Cabinet made the decision.

¹ Cyclone Hale, Cyclone Gabrielle, and subsequent heavy rainfall/flooding events in areas previously hit by those cyclones.

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New Zealand across borders**

Recommendations

I recommend that you authorise the attached Cabinet paper for submission to LEG.

9(2)(a) OIA

David Soper
Acting Deputy Chief Executive
Policy, Legal and Strategy
For Comptroller of Customs

Minister of Customs
Date

Primary contact	Secondary contact
John Wardrop, Manager, Revenue Policy	Warwick Bignell, Senior Policy Analyst
Mob: 9(2)(a) OIA	Mob: 9(2)(a) OIA

Minister's feedback on the quality of this report

1	2	3	4	5
Was not satisfactory	Fell short of my expectations in some respects	Met my expectations	Met and sometimes exceeded my expectations	Greatly exceeded my expectations

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AIDE MEMOIRE

28 April 2023

RPT 23/058A

SUBMISSION OF CUSTOMS AND EXCISE (SEVERE WEATHER—REFUNDS AND REMISSIONS OF INTEREST) REGULATIONS 2023 TO THE EXECUTIVE COUNCIL

LEG on 4 May 2023

SPEAKING POINTS

- I seek authorisation to submit the Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023 to the Executive Council.
- Cabinet has already agreed that Customs be empowered to remit or refund interest, where the affected duty payers have been put on payment plans due to the effects of the adverse weather events across the North and East of the North Island (Cyclones Hale and Gabrielle, and other adverse weather in early 2023).
- The proposed regulation will give effect to Cabinet's decision.
- I made an announcement when the policy was agreed, to give affected businesses some assurance and certainty.
- The proposed regulation will come into force the day it is notified in the *Gazette*. Cabinet waived the 28 day rule to provide certainty to the affected people, and the regulations only have beneficial effects.

SUPPORTING INFORMATION

- Customs will work with businesses affected by the adverse weather and, where appropriate, will put payment plans in place for money that they owe the Crown. Customs will consider:
 - not charging late penalties for these payment plans
 - using the new regulation to waive interest where it accrues
 - where excisable goods have been destroyed while still inside a Customs-controlled area, remitting or refunding (if paid) the excise tax.
- Based on Customs work so far, relatively few businesses have been affected (though the impact on some of those is significant), mainly in Gisborne and Hawke's Bay.

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- The regulations expire automatically after six months, which should be sufficient to enable affected parties to seek arrangements and resolve their debts.
- The majority of the arrangements will likely be for three months (95% of the arrangements during the COVID-19 Response were for three months).
- The cost to the Crown of not charging interest on delayed payments because a business has been put on a payment plan will be low – it is expected to be less than \$50,000.

Officials attending

- John Wardrop, Manager, Revenue Policy.

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Office of the Minister of Customs
Chair, Cabinet Legislation Committee

Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023

Proposal

- 1 This paper seeks authorisation for submission of the Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023 (the Regulations) to the Executive Council.

Policy

- 2 On 20 March 2023 [EWR-23-MIN-0021 refers], Cabinet agreed that regulations would be made to allow Customs to remit interest charges that automatically accrue on late payments by duty and excise payers, where those duty payers are put on payment plans by Customs because of the adverse impact of recent weather events.¹
- 3 These Regulations are required to give effect to this Cabinet decision.

Timing and waiver of the 28-day Rule

- 4 Cabinet approved a waiver of the 28-day rule meaning the regulations will come into effect on their notification in the *Gazette*. There is no reason for implementation to be delayed - exercise of this power is not expected to affect anyone negatively, and impacted businesses need certainty about their positions as soon as possible.
- 5 The Regulations will expire six months after the date they come into force. This will ensure affected duty payers operating on six monthly or yearly timeframes (whose first payments will be due in July) would also be eligible for interest relief if appropriate.

Compliance

- 6 The Order complies with the following:

The principles of the Treaty of Waitangi	Not applicable
Advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions (include a summary of any concerns raised);	Not applicable

¹ Cyclone Hale, Cyclone Gabrielle and subsequent damaging weather events occurring late January and over February 2023.

The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993	Not applicable
The principles and guidelines set out in the Privacy Act 2020	Not applicable
Relevant international standards and obligations	Not applicable
The Legislation Guidelines (2021 edition), maintained by the Legislation Design and Advisory Committee	Compliant

- 7 The regulations are made under section 165 of the Customs and Excise Act 2018. Section 165 allows the regulation to apply retrospectively, so this regulation will allow interest to be remitted or refunded to duty payers affected by the specified events in January and February despite the interest becoming payable after that date.

Regulations Review Committee

- 8 There are no grounds for the Regulations Review Committee to draw the proposed Regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 9 The Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 10 The Treasury's Regulatory Impact Analysis team has determined that this proposal to declare the recent adverse weather events to be an emergency under the Customs and Excise Act 2018 is exempt from the requirement to provide a Regulatory Impact Statement. This exemption is granted on the grounds that it provides limited temporary exemptions or modifications to existing legislative requirements in a situation where a declared emergency has made compliance with existing legislative requirements impossible, impractical or unreasonably burdensome.

Publicity

- 11 I have already made announcements of the policy decision to grant interest relief to duty payers.

Proactive Release

- 12 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers in whole within 30 working days of Cabinet making final decisions.

Consultation

- 13 Customs consulted the Department of Prime Minister and Cabinet, The Treasury and Inland Revenue in the preparation of this paper.

Recommendations

- 14 The Minister of Customs recommends that the Cabinet Legislation Committee:
- 1 **note** that on 14 March 2023 the Extreme Weather Response Committee agreed to regulations being made to allow Customs to remit interest charges that automatically accrue on late payments by duty and excise payers, where those duty payers are put on payment plans by Customs because of the adverse impact of weather events that occurred over late January and February 2023 [EWR-23-MIN-0021 refers];
 - 2 **note** that the Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023 will give effect to the decision referred to in paragraph 1 above;
 - 3 **authorise** the submission of the Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023 to the Executive Council;
 - 4 **note** that a waiver of the 28-day rule was approved by Cabinet [see recommendation 5 of EWR-23-MIN-0021] on the basis that:
 - 4.1 the power is an emergency response; and
 - 4.2 there are only beneficial effects arising from the regulation;
 - 5 **note** that the proposed regulations will come into force on the day they are notified in the *Gazette*.

[Authorised for lodgement]

Hon Meka Whaitiri

Minister of Customs



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023

Portfolio Customs

On 4 May 2023, the Cabinet Legislation Committee:

- 1 **noted** that in March 2023, the Extreme Weather Response Committee agreed to regulations being made to allow Customs to remit interest charges that automatically accrue on late payments by duty and excise payers, where those duty payers are put on payment plans by Customs because of the adverse impact of weather events that occurred over late January and February 2023 [EWR-23-MIN-0021];
- 2 **noted** that the Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023 (the Regulations) give effect to the decision referred to in paragraph 1 above;
- 3 **authorised** the submission to the Executive Council of the Customs and Excise (Severe Weather—Refunds and Remissions of Interest) Regulations 2023 [PCO 25449/2.0];
- 4 **noted** that a waiver of the 28-day rule was approved by the Cabinet Extreme Weather Response Committee on the basis that:
 - 4.1 the power is an emergency response;
 - 4.2 there are only beneficial effects arising from the Regulations;
- 5 **noted** that the Regulations come into force on the day they are notified in the Gazette.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Kiri Allan
Hon Andrew Little
Hon David Parker
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Dr Duncan Webb
Hon Willow-Jean Prime
Tangi Utikere, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG