

TRANSITIONAL AND SAVINGS PROVISIONS GUIDE

CUSTOMS AND EXCISE ACT 2018

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Customs and Excise Act 2018 – transitional and savings provisions

Introduction

These guidelines provide an overview of the transitional, savings and related provisions in [Schedule 1 of the Customs and Excise Act 2018](#).

Schedule 1 sets out how matters under the 1996 Act are handled and continue to have legal effect upon commencement of the 2018 Act.

Most of the provisions under Schedule 1 relate to Customs transactional functions for managing the arrival and departure of people, goods and craft, and the manufacture of excisable goods.

There are also matters in the 1996 Act that relate to the status of Customs' customers, eg. Customs-controlled area licences and JBMS user registrations. Schedule 1 addresses these matters and carries them over to the 2018 Act.

The following tables set out some of the significant matters that Customs officers and customers need to be aware of. They are grouped as follows:

- **Table 1:** Immediate transition period – approximately two weeks before and two weeks after 1 October 2018.
- **Table 2:** Continuing 1996 Act provisions once the 2018 Act comes in – eg. statuses such as licensees, registered users, Customs rulings that carry over to the 2018 Act.
- **Table 3:** Longer term transitional arrangements – mainly impact Customs officers conducting investigations or audits on goods entered and duty-paid prior to 1 October 2018.
- **Table 4:** New initiatives – guidance on how the new initiatives eg. provisional values, storage of business records, should be dealt with.

These guidelines are for the use of:

- All Customs officers, staff and authorised persons
- All importers, exporters (including Secure Export Scheme members)
- Customs brokers, in-house declarants, freight forwarders, shipping agents, Trade Single Window users and service providers
- All Customs-controlled area licence holders, including excise manufacturers
- Issuing bodies for free trade agreement certificates of origin
- Craft owners and operators
- Crew, passengers and others involved in the international travel industry
- Anyone with an interest in Customs business and transactional processes.

Table 1 – Immediate transition period

Transaction	Obligation / requirement	Affected parties	Arrangements	Schedule 1 reference
Customers				
Craft arrival	Advance Notice of Arrival (ANA)	Craft owners / operators Shipping agents	An advance notice provided for a craft enroute to New Zealand before 1 October is valid even if the craft arrives on or after 1 October – the 2018 Act provisions apply as if the ANA was submitted under the 2018 Act.	CI 3(1) – (3)
	Inward report	Craft owners / operators Shipping agents	If a craft arrives at a Customs place (or other place) prior to 1 October the inward report requirements in the 1996 Act still apply as if s.26 of that Act was still in force.	CI 3(6) – (8)
	Inward Cargo Report (ICR)	Craft owners / operators Shipping agents Freight forwarders	An ICR that is provided for a craft enroute to New Zealand before 1 October is valid even if the craft arrives on or after 1 October – the 2018 Act provisions apply as if the ICR was submitted under the 2018 Act.	CI 3(4) – (5)
Craft departure	Advance Notice of Departure	Craft owners / operators Shipping agents	An advance notice of departure submitted before 1 October is valid as if submitted under the 2018 Act if the craft departs on or after 1 October.	CI 3(9)
	Certificate of Clearance	Craft owners / operators Shipping agents	A certificate granted before 1 October is valid and s.34 of the 1996 Act applies if the craft does not depart until on or after 1 October.	CI 3(10) – (11)

Transaction	Obligation / requirement	Affected parties	Arrangements	Schedule 1 reference
Craft departure	Outward Cargo Report (OCR)	Craft owners / operators Shipping agents Freight forwarders	Where a craft departs before 1 October, the requirement to submit the OCR is still under s.37A of the 1996 Act even if the time for lodging the OCR is on or after 1 October. Where a person has submitted an OCR before 1 October for a craft that departs on or after 1 October, the OCR is treated as if it were made under the 2018 Act.	CI 3(12) – (14)
Goods clearances	Import entry	Importers Customs brokers In-house declarants	Where goods are entered before 1 October but arrive on or after 1 October, the entry applies as if it had been made under the 2018 Act (and is a duty assessment under the 2018 Act). Note that for mail or courier items, which Act applies will depend on when the step required for deeming (listed in regulations 25 and 26) is carried out.	CI 10(1) – (2)
	Export entry	Exporters Customs brokers In-house declarants	An export entry that is made prior to 1 October for goods that are not exported until on or after 1 October is treated as if it was made under the 2018 Act (including any Secure Exports Scheme-related actions that occur before 1 October).	CI 12(1) – (4) CI 12(5) – (6)
	Exemptions	Freight forwarders Importers	Export-related entry exemptions are valid if the goods in question fulfil the exemption requirement prior to 1 October, but only depart on or after 1 October. This would cover Electronic Cargo Information (ECI) /Cargo Report Export (CRE) lodgements prior to export.	CI 12(4)
Excise goods	Excise entry	Manufacturing area licensees	Excise goods that are not entered for home consumption prior to 1 October are dealt with under the provisions of the 2018 Act. This covers goods removed prior to 1 October	CI 9(5) – (8)

Transaction	Obligation / requirement	Affected parties	Arrangements	Schedule 1 reference
		Off-site storage licensees	where the requirement to enter them does not arise until on or after 1 October. This may depend on the licensee's entry timeframes (i.e. the 2018 Act provisions may apply for goods that are manufactured up to a year prior to commencement, if duty isn't assessed or demanded beforehand).	
Refunds and remissions	n/a	Importers Excise-payers	The application of the refund and remission provisions is linked to whichever Act imposes duty liability.	CI 13 CI 31
Passenger arrival and departure	Presentation	Passengers Aircrew	Which Act applies will depend on the precise time that the person presents themselves to a Customs officer. No transitional issues should arise and the 2018 Act only addresses eGate, which transitions to the 2018 Act.	CI 18
	Duty payable	Passengers Aircrew	As with mail items, passenger and aircrew baggage is deemed to be entered via Regulation except where a person has declared that they have duty payable. In that case the entry will occur when the excess duty is paid. If this occurs on or after 1 October, the 2018 Act will apply.	CI 9(1) and (2)

Transaction	Obligation / requirement	Affected parties	Arrangements	Schedule 1 reference
Staff				
Powers	Forfeiture and seizure	Customs officers CRAMS team	<ul style="list-style-type: none"> Any goods seized before the commencement date are to be dealt with under the 1996 Act – including reviews of seizure and any proceedings before the Authority. 	CI 14

Transaction	Obligation / requirement	Affected parties	Arrangements	Schedule 1 reference
			<ul style="list-style-type: none"> • Any goods which are otherwise forfeit (even if they are forfeit under the 1996 Act) are to be dealt with under the 2018 Act. 	
	General	Customs officers	<p>In most cases powers under the 1996 Act will cease on 1 October. The main exceptions are:</p> <ul style="list-style-type: none"> • Powers exercised for duty assessments and recovery where that duty liability arises before commencement; • Powers that are exercised across a span of time rather than in single discrete instances. Examples include: <ul style="list-style-type: none"> ○ An audit started before the commencement period under s.159 of the 1996 Act. ○ A request for information under s.161 of the 1996 Act where the completion of it (such as the appearance of a person to answer questions) is after the commencement date. 	CI 15

Table 2 – Continuing 1996 Act provisions once the 2018 Act comes in

Status / instrument	Parties affected	2018 Act arrangements
Customs-controlled area (CCA) Licences	CCA licensees	All CCA licences and any associated terms / conditions / restrictions will remain in effect as if granted under the 2018 Act, except those parts of procedure statements for fuel blending calculations (this is now overtaken by the 2018 Act and regulations specifically). This includes any directions the Chief Executive has made for storage of goods or provision of facilities for Customs. Any outstanding applications made for a CCA licence under the 1996 Act can be determined under the 2018 Act.
Customs-approved area for storing exports (CASE) Licences	CASE licensees	Any CASE licences and any associated terms / conditions / restrictions remain in effect as if granted under the 2018 Act. This includes any directions the Chief Executive has made for storage of goods or provision of facilities for Customs. Any outstanding applications made for a CASE licence under the 1996 Act can be determined under the 2018 Act.
Joint Border Management System Registrations	Customs brokers In-house declarants Trade Single Window (TSW) users	All existing TSW user registrations continue as if they had been granted under the 2018 Act, including terms and conditions. Any outstanding applications for registration will be decided under the 2018 Act.
Customs places	n/a	All Customs places designations made under the 1996 Act remain in force as if made under the 2018 Act.

Status / instrument	Parties affected	2018 Act arrangements
Customs officer appointments	Customs officers	All Customs officer appointments or declarations made under the 1996 Act remain in force under the 2018 Act.
Customs powers authorisations	Authorised persons	Any section 6 authorisations under the 1996 Act remain in effect, with any associated restrictions/conditions.
Customs and Excise Regulations 1996	n/a	The Regulations remain in force as if made under the 2018 Act.
Customs Import Prohibition Orders	n/a	All import prohibition orders remain in force as if made under the 2018 Act, subject to the 3 year maximum time period which continues to have effect.
Customs Export Prohibition Orders	n/a	All export prohibition orders remain in force as if made under the 2018 Act, subject to the 3 year maximum time period which continues to have effect.
Schedule 1 Prohibitions	n/a	All Schedule 1 prohibitions (except drug utensils) remain in effect for a period of 1 year from date of commencement, during which time they will be migrated into prohibition orders. Drug utensils will remain prohibited under the primary legislation and will vary only on the basis of the order made by the Director-General of Health.
Customs Rules	n/a	All Customs Rules (with one exception) will remain in force as if made under the 2018 Act. The exception is the rule on applications for JBMS user registration, which is repealed and must be replaced before commencement.
Nominations – charging documents	Nominated persons	Any persons nominated to file charging documents on the Chief Executive's behalf remain in force as if made under the 2018 Act.

Status / instrument	Parties affected	2018 Act arrangements
Customs Appeal Authorities	The Customs Appeal Authority	The Authority (and his registrar) remain in office as if appointed under the 2018 Act.
Customs Co-operative Arrangements	Overseas border or revenue agencies	Any Arrangement made by the Chief Executive under the 1996 Act for disclosure of information with overseas agencies remains in force as if made under the 2018 Act.
Data-matching arrangements	Other government departments	Any data-matching arrangements remain in force as if made under the 2018 Act.
Secure Export Schemes (SES)	SES participants	Any secure exports scheme or amendment to a scheme remains in place as if made under the 2018 Act.
Deferred payment accounts	Deferred account holders	Any deferred payment arrangements made under the 1996 Act continue in force as if made under the 2018 Act.
Designated Certificate of Origin-issuing bodies	Certificate-issuing bodies	Anybody authorised to issue Certificates of Origin under the Act is treated as having been designated under the 2018 Act.
Customs rulings	Persons who have a ruling	Customs rulings remain in force as if they had been issued under the 2018 Act and can be dealt with under the 2018 Act provisions.

Table 3 – Longer term transitional arrangements

Issue	Parties affected	2018 Act arrangements	Notes
Assessment and collection of duty	Trade Assurance Revenue Management	Where duty liability arose on importation or manufacture before 1 October, and the goods are either entered or specifically dealt with (eg.	This transitional arrangement will require careful management where audits are being undertaken for a

Issue	Parties affected	2018 Act arrangements	Notes
	Investigations	<p>due to a statutory demand) prior to 1 October, then the 1996 Act will continue to apply for the purposes of entering the goods and the payment / assessment / collection / recovery / any other matter related to duty. This will cover things such as amendments of existing assessments, additional duty, and debt recovery functions.</p> <p>However, the Comptroller’s discretion and obligations in Part 4 Subpart 7 of the 2018 Act can apply to potential exercises of power under the 1996 Act.</p>	<p>period covering before and after 1 October. Trade Assurance officers may need to exercise powers under both Acts when dealing with the end of an audit. Care will also need to be taken in working out which entries / assessments / additional duty may apply as opposed to interest and penalties under the 2018 Act.</p>
Investigation of offending	Investigations	<p>Charging documents that have been filed under the 1996 Act remain in force as if filed under the 2018 Act.</p>	<p>There are two particular issues:</p> <ul style="list-style-type: none"> Existing charges remain valid. Where offending spans both sides of the commencement period care will need to be taken over how charges are filed and what penalties are sought, noting that the penalties for most offences are significantly higher.
Administrative Penalties	Revenue and Assurance Service Delivery	<p>All entries made either before 1 October or after 1 October and made under the 1996 Act (as that might still apply under the transitional schedule) are liable to administrative penalty under the 1996 Act, not the 2018 Act.</p>	<p>When issuing penalties for pre-commencement entries, Part 10 of the 1996 Act should be used (including the relevant review provisions rather than the new administrative review mechanism).</p>

Table 4 – New initiatives

New initiative	Issue	2018 Act arrangements
Business records	Storage of records generated pre-commencement off-shore	Prescribed classes (eg. licensee, importer, exporter, agent/broker, body authorised to issue New Zealand Certificates of Origin) must continue to keep records required under the Regulations for the required period, however records that are created and held under the 1996 Act may be stored offshore once approvals are given.
	Approval of applications to store documents offshore – timing	While Customs can start processing applications for storage of business records off-shore prior to commencement, notification of a decision will occur on 1 October (or later).
Provisional values	Application for, and approval for, use of provisional values by importers	Customs can start processing applications to use provisional values but any formal notification of a decision must wait until 1 October.
	Acceptance and processing of notification of automatic entitlement to use provisional values	Customs can process notifications prior to commencement, provided the importer understands that the entitlement cannot be used before 1 October.
Nil returns	Return period where part of period occurs pre - commencement	<p>Nil returns are required from licensed alcohol manufacturers from 1 October.</p> <p>For licensees on monthly returns, the obligation to make a nil return would only arise in November for the October period.</p> <p>For licensees on 6-monthly or yearly entry periods the return will need to cover the period 1 July 2018 - 31 December 2018 or 1 July 2018 - 30 June 2019 respectively.</p>

New initiative	Issue	2018 Act arrangements
Interest and penalties	Identifying which transactions trigger compensatory interest and which incur additional duty	For goods entered and dealt with under the 1996 Act, additional duty may still be charged post 1 October. Interest and penalties will not be payable where liability to duty arises under the 1996 Act and is dealt with using that Act. Compensatory interest and late payment penalties-related provisions should only be used on and after 1 October. The exception to this is if there is a prescribed emergency event, which can occur before 1 October.
Searching e-devices	When thresholds become applicable	Thresholds will become applicable on or after 1 October where it is appropriate to exercise the power to examine. An officer examining a device on or after 1 October must do so using the thresholds.
Motor spirit blending	Applying the fuel blending calculation where additional volume of dutiable motor spirits is created by blending of substances with motor spirits	No changes will be required. Licensees should complete their excise entries as required by their procedure statement with their licence. Licensees are applying a formula in their existing procedure statements that produces the same outcome as the calculation of additional volume codified in the Regulations.
Reduction in personal use exemption for tobacco	When and how the 5kg limit comes into effect for those growing and manufacturing their own tobacco	The lower threshold for personal use will phase in slowly and come into force on 1 July 2019. Until then a person can manufacture 15kg of tobacco less the amount of tobacco manufactured between 1 July 2018 and 1 October 2018.
Curing of tobacco leaf	Requirements where leaf being cured at time of commencement	Tobacco leaf which is already cured does not count toward the personal use exemption figure if the curing process is finished prior to 1 October 2018. Any curing occurring on or after that date will count toward the total.

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