



Regulatory Impact Statement: Road User Rules exemption

Decision sought	Analysis produced for the purpose of informing final Cabinet decisions
Agency responsible	New Zealand Customs Service
Proposing Ministers	Minister of Customs
Date finalised	24 June 2025

The Minister of Customs is proposing an amendment to the Customs and Excise Act 2018 to exempt Customs Officers in limited circumstances from certain classes of road user rules while undertaking covert vehicle surveillance. The objective is to enhance the efficacy of this crucial investigative technique and Customs' ability to respond to transnational and serious organised crime.

Summary: Problem definition and options

What is the policy problem?

Undertaking covert vehicle surveillance¹ (CVS) is one of Customs' most effective investigative techniques to tackle organised criminal activity with a border nexus. The nature of this operational technique is that at times Customs Officers (COs) must choose between abandoning the surveillance or making calculated decisions to breach road user rules (RURs) and absorbing the consequences of the breach personally.

Customs is seeking an exemption enabling COs to break the RURs governing special transport lanes, intersection controls, parking restrictions and speed limits, in limited circumstances.

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Background

Methamphetamine use has doubled in New Zealand in the last year, largely because transnational and serious organised crime (TSOC) groups are increasingly targeting New Zealand for illicit substance importations because of New Zealand's high street price of drugs and the potential for profit. The massive surge in drug importations and use is symptomatic of a larger issue of control of illicit trade, with TSOC groups constantly evolving their modus operandi to adapt to Customs' border controls and investigative capabilities.

Customs currently operates CVS as a key tool to address this ever-increasing threat of TSOC at the border. This operational technique is key for providing actionable evidence and identifying and arresting higher level subjects in organised criminal group (OCG) organisations. It produces actionable evidence and intelligence that an LEA would not otherwise have access to.

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¹ In this RIS, CVS is the process of a highly trained CO following a suspect and/or illicit goods with both parties in motor vehicles.

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Customs' operational planning and internal policies on surveillance include risk assessment and mitigations, and in 30 years of controlled deliveries and 20 years of CVS, Customs' highly trained drivers have had no recorded crashes. The New Zealand Security Intelligence Service (SIS), who already have the RURs exemption being sought by Customs, has also had no recorded crashes. Customs' lack of exemption to RURs was previously a peripheral issue, but has become a core problem because of the unprecedented increase in operations to address TSOC activity in the last five years.

What is the policy objective?

The overall goal is to contribute to the government's law enforcement objective to combat TSOC through reducing the ability of TSOC groups to import illicit goods into our communities, causing harm to New Zealand and its interests.

Specifically, the objective of this proposal is to limit harm from illicit commodities to our communities, by enabling COs to take calculated, managed risks when undertaking CVS to gather evidence of TSOC (being both OCGs and trans-national organised crime (TNOC)), offending and undertake more prosecutions. A further objective of this work assisted, by this exemption, is to gather actionable evidence to successfully identify and target higher tier operatives in OCGs, as they are responsible for the attempted importations.

Because of the reactive nature of this type of operation, and the changing circumstances of offending, success metrics are difficult to define in terms of quantities of drugs seized or number of successful operations. A higher proportion of successful operations with no injuries to the public or COs will demonstrate success in a meaningful way, however.

What policy options have been considered, including any alternatives to regulation?

The options considered were:

- a change to the Customs and Excise Act 2018 (CEA) to create an exemption to RURs in the Land Transport Act 1998 for COs, accompanied by a publicly published guidance setting out the ambit of the exemption (Minister's preferred option)
- instead of a public facing legislative change, and under current legislative settings, an application to the Director of Land Transport to exempt COs as a class from the RURs – this would have the same practical effect as the above option, but without the social licence of having gone through the Parliamentary process
- non-regulatory, non-vehicle surveillance options
- the status quo.

The Minister's and Custom's preferred option is a change to the CEA, accompanied by a publicly published guidance on the use of the power. The published guidance will be very similar to the SIS's on the same issue, with appropriate modifications reflecting Customs' different operating environment.

Non-regulatory options including further driver training are always considered and employed but will not address the issue of adhering to the RURs at all times making operations less likely to succeed. The need to ensure appropriate scrutiny and social licence meant the option to go through Parliamentary processes was selected over the regulatory adjustment option.

What consultation has been undertaken?

Departmental consultation on this issue through the Cabinet paper has been undertaken, with additional targeted consultation undertaken with the agencies most impacted: the Ministry of Transport (Transport), New Zealand Transport Authority (NZTA), the SIS and Police.

Police and SIS are frequent operational partners alongside Customs in relevant operations, and interested parties in the border LEA space, with Transport and NZTA as agencies with a mandate to lower road user risk.

Police have authority to enforce the RURs in question, and local councils have shared jurisdiction over parking and special vehicle lane infringements. The nature of the detail on this issue made it

inappropriate for wider circulation to agencies and councils, particularly because the RURs they enforce are not safety related.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

The additional costs to this option compared to the status quo are the expected increase in infringement fines. While Police enforced fines will be cancelled through an arrangement, local council fines will not be because of operational security issues. Forecasting the exact number is impossible but Customs expects the quantum to not exceed \$15,000 per annum. Training costs are unlikely to change as Customs already engage in expert driver training.

The non-monetised cost is a carefully managed, low level of risk increase to COs and the public compared to driving to the RURs at all times.

Benefits (Core information)

The primary benefit is a significantly higher likelihood of successfully undertaking operations (primarily measured in respect of being more likely to gather actionable evidence, a higher likelihood of identifying and catching higher tier operatives in OCGs, and limiting the amount of successful illicit good importations) to combat TSOC with a border offending nexus compared to not breaching RURs, and individual drivers are not personally held liable for RUR infringements.

These benefits are impossible to quantify as there will be no counterfactual to compare against since each operation is different, and traffic patterns cannot be predicted.

The qualitative assessment is that based on years of experience running operations, S6(c) having a deep understanding of traffic patterns and the operational environment, Customs assesses that it is almost certain this change will lead to significantly more successful operations, compared to running those same operations while observing RURs.

Balance of benefits and costs (Core information)

Customs considers that the benefits from this proposal outweigh the costs, which in this case are composed of risks to other road users.

The nature of CVS means that overtly breaking RURs is a likely failure condition for operations. With highly trained and experienced drivers, and an indicative increase of 10-15% per hour at maximum over the current limit, it is estimated that the increased risk of a crash is very low.

Wastewater analysis shows the use of methamphetamine in New Zealand has doubled in the last year. Customs' best estimation based on precursor detection and seizures is that 85% of domestically consumed methamphetamine is produced offshore, so if 800kg more is seized through the use of this power in a year (a conservative estimate based on current seizures), the balancing equation is \$155m less methamphetamine on our streets, and \$839m less social harm to our communities offsetting the small increase to those same communities through higher risk on the roads. Cocaine is less used but Customs still expects to seize 200kg of it this year, at \$100m street price and \$75m of social harm.

The more successful Customs is at tackling and dismantling TSOC groups, the less this power will be used over time, and the level of risk will drop.

Implementation

COs undertaking CVS are currently specially trained to operate in these specific circumstances and this will continue. Publicly published guidance, setting out the bounds of the authority and the limits of its use, will be created and published on Customs' website, and more specific operational guidance produced. Any CO operating out of the bounds of the exemption will be liable for prosecution for reckless driving. The nature of maintaining operational cover means that reckless driving will never be reasonable in succeeding in an operation.

Customs will use the existing procedures if a crash does happen, which are subject to both an internal and external (by the SIS) review, and the use of the power will be reported annually to Customs' Chief Executive. For operational security reasons, it will not be published in Customs' Annual Report.

Limitations and Constraints on Analysis

The nature of this proposed change means it is not possible to project an exact change picture, because the use of the power responds to events out of Customs' control which cannot be replicated. It is not possible to run a control sample or to know what might happen to traffic patterns mid-operation, or to project how often the power will be used beyond the trajectory of operations Customs runs, noting not all operations require or would benefit from breaking RURs.

It is also impossible to predict how often operations would fail without the power, as there will be circumstances where COs lose the target due to speed restrictions but catch up with them later because of an unexpected, unrelated crash or traffic congestion.

Existing data on traffic infringements by COs undertaking CVS (eg tickets and demerits) has not been included in this analysis. It was considered carefully, but on balance the limitations and complications of this information would outweigh its analytical benefits. Actual infringements would be likely seen as a proxy for RUR breaches instead when it only captures the times when COs were identified breaching RURs, and actual data collected by COs and held by Customs on all breaches would paint a picture of a much more dangerous practice, when the vast majority of these breaches pose no risk.

Customs has used intelligence community qualitative assessment in terms of projected impacts – the expected response to anticipated circumstances.

While there are many facets that cannot accurately be projected, there are core elements that are known:

- TSOC groups are increasingly targeting New Zealand for importations of drugs that cause massive harm to communities
- arresting easily replaced couriers will not stem the tide of illicit good imports as they are organised by higher tier members of these OCGs
- these types of surveillance operations are highly successful at gathering information, stopping the flow of drugs and weapons into communities, and leading to prosecutions of OCGs.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

S9(2)(a)

Group Manager, Policy & Strategy
10 July 2025

Quality Assurance Statement	
Reviewing Agency: New Zealand Customs Service	QA rating: Partially meets
Panel Comment: The Customs' Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement and considers the information and analysis partially meets the Quality Assurance criteria due to the lack of public consultation on the proposal. The lack of consultation other than with Government agencies due to the 'restricted' security classification is fully acknowledged in the RIS. Taking this into account and the nature of the proposal, the Panel considers Ministers have enough information of sufficient quality, to make an informed decision.	

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Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. TSOC has been a constant, and now exponentially growing, threat to law and order, our communities, and border control in New Zealand. TSOC groups have rapidly shifting modus operandi that challenge the operational limits of LEA and deliberately seek to subvert the limits of Customs' operational powers.
2. Customs uses several intelligence operation types to gather evidence and address offending in the border system.
3. The most effective operational intervention is a controlled delivery (CD), which is when a consignment of concealed illicit drugs is detected, in circumstances that make it possible for the delivery of these goods to be made under the control and surveillance of law enforcement agencies, with a view to identifying and securing evidence against those responsible and involved with the importation. They are endorsed internationally through Article 11 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, and domestically through section 12 of the Misuse of Drugs Amendment Act 1978.
4. S6(c) [REDACTED]
5. S6(c) [REDACTED]
6. The use of vehicles to covertly surveil targets during an operation is a frequently used operation methodology to collect evidence and is required to support effective control in addition to other specialist technical capabilities.

S6(c) [REDACTED]

S6(c) [REDACTED]

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[REDACTED]

What is the policy problem or opportunity?

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[REDACTED]

14. These elements add up to the problem of one of the most effective investigative techniques Customs has for disrupting TSOC either failing because of the need to comply with RURs or creating personal liability for COs operating in good faith for a valuable purpose.

What objectives are sought in relation to the policy problem?

15. The overall objective is to contribute to the government's law enforcement objective to combat TSOC through reducing the ability of TSOC groups to import illicit goods into our communities, causing harm to New Zealand and its interests.
16. Specifically, the objective of this proposal is to limit harm from illicit commodities to our communities, by enabling COs to take calculated, managed risks when undertaking CVS to gather evidence of TSOC (being both OCGs and TNOC) offending and undertake more prosecutions.
17. A further objective of this work assisted, by this exemption, is to gather actionable evidence to successfully identify and target higher tier operatives in OCGs, as they are responsible for the attempted importations.

What consultation has been undertaken?

18. Customs has consulted with our operational partners – SIS and Police, who support Customs having this power, and the NZTA and Transport, who have a vested interest in road safety. Based on proposed risk mitigations of clear direction on the maximum ambit of

judgement in breaching RURs, Customs' successful track record of use of vehicle surveillance without incident, and the proposed monitoring and evaluation, these agencies accepted the additional level of risk is offset by the benefit to society from successful operations. Police also enforce many of the RURs Customs is seeking an exemption from.

19. Wider consultation on the issue was not appropriate because of the nature of the proposal and the detail discussed, but the issue was signalled in the Cabinet paper.

What criteria will be used to compare options to the status quo?

20. It is difficult to come up with quantitative options for assessment, because of the nature of this authorisation. It's not possible to measure an operation done with and without change or assess what might have happened previously.

21. The criteria used are:

- the expected increase in risk to other road users
- the increased likelihood of success in reducing risk to our communities from illicit imports
- the effectiveness of options.

22. Use of this power inexorably carries a small level of increased, managed risk. That extra risk is inseparable from the expected likelihood of increased operational success.

What scope will options be considered within?

23. The limitations on the scope of options are the need to maintain operational control and covertness, and the need for legislative over regulatory options to ensure the scrutiny of Parliament on this issue giving appropriate social licence.

Option One – Status Quo

24. There would be no change to laws, and COs are required to follow Customs' internal policy requiring them to follow RURs, with any sanctions falling on them personally if they operate outside the law.

Option Two – Legislative change to add an exemption to COs in certain operational circumstances from following RURs (preferred option)

25. A new section in the CEA created to exempt COs from certain classes of RURs (special driving lanes, intersection controls, and speed limits) in narrow operational circumstances, with appropriate use of the power (including the limits of what will be considered appropriate judgement) set out in publicly published guidance.

Option Three – Regulatory exemption

26. This would be an application to the Director of Land Transport to exempt Customs from the same elements of the RUR in Option Two.
27. Section 168D of the Land Transport Act 1998 provides that the Director (of the Land Transport Authority) can provide an exemption to RURs for any person or class of person. Here, it would be an application to exempt COs during an operation involving CVS from the same classes of RUR as option 2.

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How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Legislative change to add an exemption to COs in certain operational circumstances from following RURs (preferred option)	Option Three – Regulatory exemption	Option Four – Prioritising use of non-vehicular surveillance
Risk to community from breach of RURs	0 RURs are breached in minor ways during some operations now, so the status quo will still carry some of this risk.	- COs will sometimes make a complicated value judgement now around breaching RURs against the importance of an operation, so the preferred option won't introduce risk to other road users, but the power is more likely to be used more frequently so it is likely to raise that risk, despite mitigations.	- Same as Option Two.	+ Shifting away from CVS and controlled deliveries will mean fewer driving related risks.
Risk to community from increased level of drugs and other illicit substances	- RURs are occasionally broken to complete operations now, but COs are much less likely to assume personal risk and liability without a legal exemption. This means operations are less likely to succeed, and while the ratio is unknown, there will be more illicit substances in communities.	++ Controlled deliveries and CVS generally are not a total panacea for the issue of drugs and illicit commodities in our community, since they come in through many pathways that Customs does not manage. However, the expected likelihood of increased success means a significant amount of this material is removed from circulation.	++ Same as Option Two.	-- CVS and CDs are employed because they are the most effective tools Customs has to combat the most common attempts at bypassing our controls. S6(c) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Effectiveness of option	N/A	++ This will remove the issue of COs making judgement calls and ultimately losing opportunities to gather evidence, it will provide operational alignment with partner agencies, and it will provide more leads for investigation and actionable evidence, leading to a significantly increased ability to dismantle OCGs.	++ Same as Option Two.	-- S6(c) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Overall assessment	- The rapidly escalating breaches of border controls and domestic use of substances known to be manufactured offshore means that not adjusting legislative settings to maximise the chance of successful operations is inappropriate.	++ This option will add a small, managed level of risk to the public and to COs, but this is offset against the expected major advance in prosecutions of OCG members and drugs removed from circulation undertaken based on the evidence gathered by these operations. COs operating in the ambit of this power and exercising good judgement are no longer personally liable for RUR breaches and the consequent demerits or fines.	+ This option will have the benefits of the preferred option but miss the social licence and transparency benefits.	-- Lacks the fundamental efficacy to deliver the results Customs needs to gather evidence of TSOC offending.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

29. Option 2 (preferred option) is the one Customs considers to be the most likely to lead to the policy objectives being met, as it will best meet the balance of objectives of managing risk to other road users, be the most likely to limit importations of illicit commodities and produce evidence to dismantle OCGs by identifying higher tier operatives.
30. Its efficacy is tied with Option 3 (the regulatory exemption to the RURs) but has the additional benefit of enhanced social licence through the scrutiny of Parliament and a primary law change being more enduring than a regulatory exemption.
31. The proposed change is the only proposal that can address the complex balance of increased public road risk and the actual harm to our communities from illicit drugs and other illicit items.
32. Wastewater testing shows methamphetamine consumption has doubled, and Customs best estimate based on precursor seizures and other intelligence is that 10-15% of methamphetamine is domestically manufactured.
33. This means that 85-90% of methamphetamine crosses New Zealand's border, and for the reasons stated earlier, identifying the people organising the importations instead of just catching the couriers is how Customs will make the biggest impact into this offending.
34. Identifying and extrapolating how much extra illicit material that will be seized is impossible for reasons discussed above, and because this type of operation is reactive to what OCGs attempt. Based on a conservative estimate of the success of CVS and controlled deliveries, this year COs expect to seize 800kg of methamphetamine (\$155m street price, \$839m of social harm) and 200kg of cocaine (\$100m street price, \$75m social harm), for a total drug harm index of \$914m.³
35. The most effective tool Customs has to identify these people is CVS, because of the limitations of other surveillance forms.
36. In reviewing the options, it is assumed that:
 - the current crash record, or only a slight increase, will continue to be accurate
 - the current trajectory of illicit drugs seized by LEA will continue.
37. There will be limited additional costs to Customs. While training will remain as-is, Customs anticipates more infringement fines. Infringements triggered by the Police surveillance will be cancelled via an agreed process with Police Infringement Bureau, but for operational security reasons local authority administered fines will be paid. Customs anticipates this cost to scale with operations, but to not exceed \$15,000 per annum.
38. This figure is significantly higher than the level of fines currently generated and paid by individual officers, but is based on the first year of operation being 2027, an additional operations team undertaking CVS, higher levels of fines due to more actions that would otherwise be rule violations due to the exemption, and more operations because of the increasing trajectory of drug importations and detections.

³ This number is estimated from the 2023 New Zealand Illicit Drug Harm Index, published by the Ministry of Health, which lists a per-kilogram harm from illicit drugs.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

39. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	The people put under surveillance and any connected OCG members are more likely to be found undertaking illegal activity and prosecuted.	Any person put through the judicial system faces serious personal and reputational costs, which are higher if convicted.	High
Regulators	Customs will now pay the fines from local council. The quantum is projected but with a medium level of certainty as it is dependent on growing but unforeseeable levels of activity.	\$15,000 per annum	Medium
Others (eg, wider govt, consumers, etc.) <i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	Public: Ongoing, very slight extra risk from COs not always following RURs, mainly the speeding and intersection controls. This risk elevation is more likely to occur if the exemption is progressed, but each instance will remain carefully managed.	Low	High
Total monetised costs	N/A	N/A	N/A
Non-monetised costs	Assessment of risk is based on the operations over the last decade from Customs S6(c) producing no crashes.	Low	High
Additional benefits of the preferred option compared to taking no action			
Regulated groups	N/A	N/A	N/A

Regulators	LEAs in the border system will see benefits from increased numbers of higher tier OCG members identified and caught, and their criminal activities and efforts to undermine and subvert the border system restricted. COs will be protected for good faith use of the power. Certainty is assessed at medium, as it is dependent on unforeseeable levels of future activity and a knowledge that OCGs shift methodology frequently.	High impact	Medium
Others (eg, wider govt, consumers, etc.)	The more illicit commodities are intercepted before reaching communities, the less government and ultimately taxpayers spend on policing, rehabilitation, and the wider effects of crime. The public is safer since there are fewer methamphetamine users and/or existing users have a harder time sourcing this drug, and OCGs have a harder time operating as more of their members are found and prosecuted through the actionable evidence collected.	High	High
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits		High	High

Section 3: Delivering an option

How will the proposal be implemented?

40. The law change will be progressed through the Customs and Excise (Border Security) Amendment Bill, due for introduction into the House in early 2026. It will be a new section added to the CEA, essentially mirroring the formulation of section 231 of the Intelligence and Security Act 2017 (the ISA).
41. When enacted, it will be accompanied by published guidance akin the SIS's Ministerial Policy Statement, spelling out the ambits of the power and judgement. This again mirrors the SIS's power – the emergent nature of the use of the power means that a moment-to-moment prescriptive control of the power is not possible. So, setting out the ambit of judgement and what will and what will not be allowed will be crucial to its effective use.
42. The details of this guidance will be developed in consultation with related agencies.

43. Customs will continue to use the same skilled driver training, and a more robust oversight and an enhanced framework will be created through guidance published on Customs' website and specific operational guidance detailing operational security tactics not appropriate for public release.
44. This framework will include internal controls such as independent authorisation for specific officers to use the power, and they will only be able to use power after completing applicable training. The framework will be clear misuse of the power is contrary to Customs' Code of Conduct.
45. Because the training will not change **S6(c)** – there are no implementation lag issues, given additional regulatory guidance is expected to be prepared as part of implementation after royal assent and before the legislation comes into force.

The Ministerial Policy Statement

46. Section 206 of the ISA creates an obligation on the Minister responsible for an intelligence and security agency to issue a public-facing policy called a Ministerial Policy Statement that provides guidance to the intelligence and security agency in relation to the use of certain powers, including section 231, the ability to be exempt from RURs.
47. While Customs is not proposing a similar style obligation in legislation in the CEA, Customs will still issue public facing guidance on the use of the power akin to the SIS's Ministerial Policy Statement. The aim is to retain social licence through transparency and accountability.
48. The guidance on the use of the power will set out the limits of its use, the circumstances when it can be used, and the relevant principles for its use – likely to be necessity, proportionality, minimising risk, legal obligations and oversight.

How will the proposal be monitored, evaluated, and reviewed?

49. Customs will report to its Chief Executive annually on the use of the power, with details on:
- the number of operations where RURs have been breached while undertaking surveillance
 - the number of officers approved to use the power
 - any instances of driving that falls outside the ambit of the power (i.e., excessive speed or undue risk created when intersection controls were not followed)
 - any vehicle collisions.
50. Any near misses are included in Health and Safety reporting to the Customs Executive Board as soon as they happen.
51. Additionally, depending on if it compromises ongoing operations, Customs will consider publishing in our Annual Report all significant incidents under (e) above.
52. Customs will continue to keep and review records of infringements and review operational debriefs to ensure the power is used within policy.
53. Existing operational controls to manage risk around the use of motor vehicles generally will remain in place, with the Customs' Authorising Officer providing senior checks and advice where greater risk is assessed.