

Impact Summary - Customs' Infringement Notice Scheme

Section 1: General information

Purpose
<p>This Regulatory Impact Assessment details the impacts of a proposed Infringement Notice Scheme (INS) under the Customs and Excise Act 2018 (the Act). The preferred option is to create a suite of infringement offences covering a wide variety of low-level non-compliant behaviour. The INS is to be put in place by Order in Council and will replace the current petty offences regime.</p> <p>The Act creates a large number of offences. The Act enables the creation of the INS by specifying, via legislative instrument or regulations, which offences will become infringement offences. The INS requires a set of empowering regulations that will:</p> <ul style="list-style-type: none">• specify all offences that will become infringement offences• set the relevant fees for each of those infringement offences• prescribe an infringement notice form and reminder notice form. <p>Issuing infringement notices will form an integral part of Customs' wider enforcement policy. The INS will ensure there is a proportionate, timely and appropriate response to low-level offending. As an infringement scheme, the general legislation and guidelines covering infringement schemes will apply to the INS.</p> <p>Customs estimates that it will issue 1,800 infringement notices each year. These will be issued across 77 separate proposed infringement offences, derived from 41 separate sections of the Act. The 77 proposed infringement offences will ensure the widest coverage possible. Customs anticipates that the majority of the infringement notices will be issued to international passengers travelling by air.</p> <p>The proposed infringement fee will be \$400. For a subset of 49 (of the 77) offences, a higher fee of \$800 will be imposed on corporations when the corporation offended. This higher fee reflects the higher maximum penalty applicable to corporations for those 49 offences.</p> <p>The New Zealand Customs Service (Customs) is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing policy decisions to be taken by Cabinet.</p>

Key Limitations or Constraints on Analysis

Constraint: Level of non-compliance is unknown and likely variable, making predicting the effect of the INS difficult

Customs knows that there is some non-compliance, but the levels and the degree of variability make estimating the likely operations and impact of the INS difficult. Customs collects some information on current levels of non-compliance (and can gather some from other sources), but it provides a very incomplete picture. Customs does not observe all non-compliance instances. Even when observed, not every instance of non-compliance results in a Customs action, or a record of that non-compliance. Non-compliance rates vary dramatically as well, depending on the people and entities involved.

To provide a robust estimate of the level of non-compliance, Customs surveyed a number of operational staff from across operational units. They provided an estimate of the expected level of non-compliance, over and above those where an action had been taken (whether a warning, petty offence or other activity). These estimates were used to determine the likely number of infringement notices to be issued and will inform the implementation process. These are only estimates though.

Customs expects the INS to improve compliance over time, but measuring the timing and magnitude of these changes will not be easy. In part, this is because how Customs implements the INS will affect the outcome. For example, Customs will:

- strengthen its enforcement approach, making the detection and therefore the issuing of an infringement notice much more likely to occur, compared to the existing petty offences regime
- choose to issue more infringement notices, as the process for doing so is easier, simpler and quicker than for a petty offence.

Taking all those factors into account, Customs estimates that there will be 1,800 infringement notices issued each year. The total may range between 1,500 and 2,100 infringement notices. This estimate of 1,800 could be a low estimate though, as:

- the most common likely infringement offences (not declaring or under-declaring goods when travelling through the border) has significant volumes of non-compliance already known (estimated at between 20,000 and 30,000 instances each year)
- the number of instances will grow, reflecting the high rate of growth in passenger numbers/travellers.

The level of non-compliance could be much greater than anticipated. Customs taking a more enforcement-oriented approach could result in more non-compliance being observed and potentially more infringement notices being issued. For comparison, the infringement regime under the Biosecurity Act 1993 generates roughly 12,000 infringement notices each year from only two offences. A large proportion of those 12,000 notices are for similar behaviour to some of the proposed INS offences (including the one likely to generate the most infringement notices).

Limitation: Identifying the INS impact separately is complicated

Measuring the effect of the INS will be difficult to separate out. The Act brings a suite of revised powers, a change in enforcement approach and more modern processes to

Customs. The INS is just one part of that, and measuring its impact separately from the other changes will be difficult.

Limitation: Estimating size of downstream impacts

For the same reasons, estimating the downstream impacts and effects is problematic. Two examples are detailed below to indicate some of the issues.

- If the number of infringement notices issued is much higher than estimated, the costs imposed on targeted people rise. These costs could build to a point where they are seen as too punitive, influencing people's perception and ultimately response to the INS. Though there will be some marginal costs to Customs as well, the cost impact of increasing the number of infringement notices is not significant.
- In section 4, Customs estimates the impacts on the Court system where disputes are referred to Court, or where unpaid infringement notices are filed into Court for collection. These estimates are based on the behaviour observed under the Biosecurity Act infringement regime. However, these estimates could be low if either or both of the following situations occur:
 - significantly more infringement notices are issued than estimated (as outlined earlier) leading to more work going to the District Court
 - behaviour of those issued infringement notices under the Customs and Excise Act is different to those issued infringement notices under the Biosecurity Act (that is, if there was a higher rate of dispute or a higher non-payment rate).

Responsible Manager (signature and date):

Signed by Anna Cook on 1 May 2018

Anna Cook
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Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

The proposed INS is part of the suite of enforcement tools provided for in the Act. It fits with a number of other enforcement actions, ranging from warnings, through forfeiture of goods and licences suspension, to prosecutions.

The INS will address low-level offending where warnings have been tried and have not worked, or where warnings are not appropriate. The INS will target low-level behaviours that people consistently and persistently fail to do, to encourage compliant behaviour. A common example of the type of offending where an infringement may be appropriate is where goods (such as tobacco or alcohol) are not declared, or are under-declared, on passenger arrival cards.

- Persistent low-level offending creates three different types of risks to New Zealand:
- erosion of confidence that the border is secure, as people question the ability of Customs to address larger offending (such as preventing the import of illicit materials, drugs or preventing terrorism)
 - escalation of offending, as high levels of successful low-level offending encourage some people to move up the criminality scale by importing more and more illicit goods
 - Crown revenue reduction, as persistent non-compliance tends to erode voluntary compliance levels, reducing the potential Crown revenue to be obtained.

If the proposed INS is not put into place, Customs would face an enforcement 'gap' between very minor offending (which would normally result in no follow-up or a warning) and very high level offending (which would normally result in an investigation and prosecution). While some proposed infringement offences can result in other sanctions (such as forfeiture of goods), the vast majority of non-compliant behaviour would result in no penalty to the person or entity responsible for the non-compliance. These people would face no effective sanction to improve their behaviour.

2.2 Who is affected and how?

Whose behaviour is Customs seeking to change?

There are three groups whose behaviour Customs seeks to change via the imposition (or the threat of potential imposition) of infringement notices. These three groups, and some indicative examples of the types of offences proposed to be made into infringement offences affecting them, are outlined below.

Group one: Travellers/Passengers/People interacting with Customs

This group covers passengers arriving into and departing from New Zealand, and to a lesser extent, the people in control of the craft (whether air or water) bringing them. This group has the largest number of individuals (and likely levels of observable non-compliance) with 6.1 million passenger arrivals/departures in 2017 (and numbers are growing strongly). This group of offences and offenders is expected to generate the bulk of infringement

offences/warnings, solely based on the number of people interacting with Customs or travelling across New Zealand's border.

These proposed infringement offences include a number of more general offences that apply to everyone interacting with Customs (not just passengers/travellers) as well, though these are estimated to generate relatively small numbers of infringement notices.

Examples of the type of offence that may attract an infringement for this group include:

- Failing to make a declaration where one is required
- Making a false or incomplete declaration
- Failing to state name and details on demand
- Continuing to use an electronic communication device when ordered not to
- Failing to produce evidence of identity or entitlement to travel on demand.

Group two: Importers, exporters, and those that handle, transport and store goods on their behalf

This group includes the people who hold the licences for, and the people working in, Customs Controlled Areas (CCAs) used for the storage and processing of goods for import, export and transit. While the target group is a fairly small number of entities (roughly 300 CCAs of this type exist), dealing with these entities and their facilities is a significant part of Customs' work. A small proportion of licence-holders and/or their staff consistently violate the rules on goods handling, storage or release. Maintaining control over goods is important to maintain the integrity of New Zealand's border, for both detection of illicit goods and ensuring duties are paid. While other sanctions and enforcement tools exist, they may be considered too harsh for some of the low-level offences observed.

Examples of offences that may attract an infringement in this category are:

- Unloading goods without permission, or where safety not threatened
- Person transports imported goods, other than as allowed by Customs
- Person removes goods without permission or without clearance
- Interfering with or accessing goods before Customs has released them

Group three: Manufacturers of excisable items

This group includes the people who hold the licences for, and people working in CCAs that are used for the manufacture and storage of excisable goods (tobacco, fuel, or alcohol). There are roughly 1,000 excise CCAs, which generate a significant volume of Customs work. The focus of these offences is more on the protection of excise revenue derived from the duties on these goods, than dealing with illicit or controlled substances. Without an effective tool to discourage low-level offending, Customs may see decreases in ongoing compliance over time, eroding the fairness of the revenue collected.

Main offence types:

- Not keeping required records
- Failing to make records available and/or answer questions about them
- Manufacturing goods without licence
- Failing to comply with other requirements for goods or people in Customs-controlled areas

What do these groups think about the proposal?

In general, there is widespread support for the INS as proposed. More detail on the results of the consultation is included in section 5.

2.3 Are there any constraints on the scope for decision making?

The INS fits within the general approaches and rules governing infringement schemes, such as the Summary Proceedings Act 1957. The proposed set of infringement offences complies with the Legislation Advisory Committee Guidelines on creating infringement offences. All proposed offences are strict liability offences, and none have the possibility of imprisonment as a penalty.

The proposed infringement fees are set at levels lower than the maximum specified in the Act (\$1,000) and at a level where they meet the Legislation Advisory Committee Guidelines.

The Ministry of Justice recommends that there should be relativity between the proposed infringement fee and the maximum penalty levels specified for those offences. The Ministry recommends that the infringement fee should be somewhere between one third and one half of the maximum penalty. Only nine of the infringement offences for persons meet this guideline, if the fee is set at \$400. Sixty eight infringement offences would be below one third of the maximum penalty. None of the corporate infringement fees meet the guideline – the \$800 fee proposed is less than one-third of the maximum penalty in all cases, as the lowest body corporate maximum penalty is \$5,000.

Customs has proposed infringement fees that do not fit within this guideline, in order to maintain relativity at the border. The individual fee is proposed to be set at \$400 as this is consistent with the infringement regime under the Biosecurity Act 1993. Both are enforceable at the border and the offence that generates the most infringement notices under that Act covers similar behaviour to some of the proposed offences in the INS. Maintaining relativity for both infringement systems operating at the border is important.

Customs has also considered the nature of the offending covered by the proposed 77 infringement offences. While a wide variety of behaviour is covered, Customs considers the level of offending to be broadly consistent in seriousness across those offences. The effect the fee will have on the recipient was also considered – will the fee be sufficient to provide an effective sanction (encouraging future good behaviour), without being considered too punitive?

Considering these two things together suggests that one fee is an appropriate approach across all 77 proposed infringement offences. As \$400 is consistent with the Biosecurity Act infringement fee, Customs proposes to make this the fee for all 77 offences. With the large number of infringement offences proposed, setting one fee has a key advantage of being administratively simple. The fee will be set and the Customs officer only need determine that the elements of the offence have been observed, and that it is appropriate to issue the infringement notice.

Section 3: Options identification

3.1 What options have been considered?

Two options were considered during the policy development process for a replacement for the petty offences regime. The options were assessed against three criteria:

- There should be a proportionate, timely and appropriate response for low-level offending
- The replacement should cover the widest possible breadth of offending
- The replacement should be effective and efficient at encouraging compliant behaviour – compliance should be easy to do and hard to avoid.

The two options are outlined in detail below.

Option one: Comprehensive Infringement Notice Scheme (preferred)

Option one proposes to make all offences, that meet the legislative rules and that comply with Legislation Advisory Committee Guidelines, into infringement offences. This gives the INS the widest coverage possible. It excludes four offences, which could technically have been made into infringement offences. An infringement is not considered an appropriate enforcement action for:

- Sections 352 and 353 which specify three offences relating to the powers of the Customs Appeal Authority to order people to comply with its directions and requirements. As the Authority is acting judicially, it would be unusual for it (as a judicial body) to issue non-compliant people with an infringement.
- Section 381 makes it an offence to make, possess and/or use counterfeit seals or documents that resemble Customs' equivalents. This type of offending is excluded as financial penalty is unlikely to dissuade or punish someone for doing these acts, and issuing an infringement would be an unlikely choice of enforcement action to use when encountering such offending.

This option would make a regulation that would result in 77 infringement offences being created applying to all persons (individuals and corporations). There would be a subset of 49 of those 77 offences where the infringement fee for corporations would be higher. The higher infringement fee reflects that the maximum penalty specified in the Act for corporations committing those offences is higher.

Option two: No infringement system (not recommended)

The alternative is to define no infringement offences under the new Act. If the proposed INS is not put into place, Customs would face an enforcement 'gap' between very minor offending (which would normally result in no follow-up or a warning) and very high level offending (which would normally result in an investigation and prosecution). As Customs does fewer than 100 prosecutions a year, such an enforcement 'gap' would be expected to erode the incentive for compliance over time.

While some proposed infringement offences can result in other sanctions (such as forfeiture of goods), the vast majority of non-compliant behaviour would result in no penalty to the person or entity responsible for the non-compliance. These people would face no effective sanction to improve their behaviour. The alternative would be greatly expanding the

investigation and prosecutions undertaken, which would have significant resource costs for the targeted individuals, for Customs and for the courts and wider justice system.

Other sub-options considered

A number of sub-options were considered. Customs considered specifying a subset of the possible infringement offences (rather than all of the qualifying ones). This was not progressed as in choosing subsets, comprehensive coverage is lost. The widest coverage is preferred, to ensure Customs has an effective tool to address all low-level offending.

Customs also considered whether the infringement fees should be differentiated. Under such differentiation, some infringement offences would attract a lower or higher fee than others. Customs believes that all low-level offending proposed to in the INS is of roughly equivalent seriousness, so the addition of differentiated fees adds significant complexity to the INS, without any strong basis for a difference between offences. The INS covers a wide range of behaviours but Customs considers the level of seriousness can be considered broadly consistent across the 77 proposed offences.

Increase in proposed number of infringement notices from 51 to 77

The version of this document circulated in February 2018 suggested there would be 51 infringement offences. Customs is now proposing 77 infringement offences. The change is not an actual increase in the proposed coverage of the INS. Instead, it reflects that Customs has separated out a number of subsections and now counted them individually. Previously some sections contained two or three subsections, which were all proposed to become separate infringement offences, but we only counted them as one (the relevant section). The 77 counts all subsections individually.

3.2 Which of these options is the proposed approach?

Option one is the recommended option. Option one proposes an INS that will be the best way to meet the three assessment criteria.

The recommended option would result in 77 infringement offences being created, applying to most low-level offending in the Act. There would be a subset of 49 of those where the infringement fee for corporations would be higher (reflecting that the maximum penalty for corporations committing those offences is higher).

Option one:

- makes all appropriate offences into infringement offences, ensuring the infringement scheme is complete and comprehensive within itself. No 'gap' is created for some offences where an infringement notice cannot be considered/used as an enforcement tool where a particular offence is observed.
- proposes an infringement fee of \$400 for individuals, and a \$800 corporate infringement fee where a higher maximum penalty exists for corporations. These infringement fee levels are considered sufficient to provide an incentive for compliance, without generally being unaffordable to those who have to pay them. Having only one fee makes implementation simpler - the offence and the nature of the offender is all it takes to determine the penalty and issue the infringement.

Having a comprehensive infringement scheme will be an important tool to address the risks created by persistent, low-level offending:

- infringement notices and the public awareness generated by them will generate an underlying confidence that the border is being effectively policed, leading to people becoming more likely to voluntarily comply with the rules for importing and exporting
- generating high levels of voluntary compliance makes it easier to detect those higher up the criminality scale, and allows Customs to focus its resources on more serious offending
- greater voluntary compliance also protects the revenue stream generated by duties.

The INS will be simpler and more cost effective to operate than the current petty offences regime.

Creating 77 infringement offences will generate some additional implementation costs compared to a lesser number. Customs officers will need to be aware of the potential to issue infringement notices for a wider set of offences. Guidelines, training and support materials will need to be prepared for each offence. Customs does not consider the additional costs significant.

To aid transparency and enhance compliance across the board, Customs will create a set of intervention guidelines to aid compliance and enforcement decisions. The proposed INS will operate alongside the other penalties and sanctions available under the Customs and Excise Act.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits		
Affected parties (<i>identify</i>)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>

Additional costs of proposed approach, compared to taking no action		
Regulated parties	Payment of issued infringement notices (predicted non-compliant behaviours will mostly be observed at airports, and thus these costs will fall on passengers using international airports) <ul style="list-style-type: none"> Estimate 1,800 infringement notices each year, mainly targeted at individuals 	\$0.7 million each year
Regulators	Additional funding to Customs for the INS	\$0.22 million
Wider government	Some adjudication and fines enforcement costs (District Court) <ul style="list-style-type: none"> Estimate 100 disputes or submission submitted each year Estimate 230 unpaid infringement notices submitted each year to become fines for collection [Estimates based on Biosecurity Act infringement regime]	\$0.04
Other parties	-	\$0
Total Monetised Cost		\$0.96 million
Non-monetised costs	-	\$0

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	-	\$0
Regulators	Infringement fee/fine revenue (collected on behalf of the Crown)	\$0.7 million
Wider government	-	\$0
Other parties	-	\$0
Total Monetised Benefit		\$0.7 million
Non-monetised benefits	More compliance with border and revenue collection requirements	<i>High</i>

	Greater revenue paid, as people voluntarily comply, to avoid infringement fees	<i>Medium</i>
	Level playing field for industry (non-compliant methods removed; some additional costs imposed on non-compliant actors)	<i>Medium</i>
	All entities issued infringement notices avoid the costs of more costly actions such as prosecutions. Costs avoided include the preparation time, appearance time and any lawyer costs.	<i>Medium</i>

4.2 What other impacts is this approach likely to have?

Scope of INS can change dramatically

Estimating the impact of the INS over time is complex, as the scope of the underlying offending changes over time. In particular, the scope of section 365 relating to import or export of prohibited goods can change through three separate mechanisms:

- the Customs and Excise Act can prohibit import or export of goods
- other Acts and regulations can prohibit import or export of goods (though these should not usually result in infringement notices)
- decisions made by judicial or other regulatory bodies can determine what is a prohibited import or export.

As section 365 is predicted to generate a large number of infringement notices, these mechanisms for determining what is prohibited can dramatically increase or potentially curtail how many infringement notices are issued. As a result, predicting the outcomes and impact of the INS over time is difficult.

Proposed delay for six months from commencement of the Act

The INS will come into force six months after commencement of the Act. During this period, Customs will warn and otherwise encourage people to comply before moving fully into the issuing of infringement notices.

Infringement notices issued to short-term visitors

Customs plans to collect payment wherever possible at time of issue. While this will not always be possible, Customs will put processes in place to collect payment efficiently and effectively when dealing with travellers.

Some infringement notices will be issued to people only in New Zealand for a short time and may not be collected from them before they depart. While Customs will do its best to collect payment, people can then leave New Zealand without paying. Once they have departed, the infringement notice is essentially uncollectible, as is the case with other operating infringement regimes.

Customs estimates that a larger proportion of infringement notices will be issued to New Zealanders, given they constitute a larger proportion of travellers. Post-issue collection from New Zealanders or residents is more feasible.

Potential higher impacts on the justice system

As noted in section 4.1, some portion of the infringement notices issued in the INS will enter the District Court as either:

- (a) disputes, as to liability or penalty, to be adjudicated
- (b) unpaid infringement notices, to be collected by the fines enforcement system in the District Court.

Customs has estimated the numbers of people going to the District Court based on the observed outcomes for the infringement regime currently operating under the Biosecurity Act 1993. If the behaviour of people receiving INS infringement notices is different, then these figures could be very different. For example, if more people dispute INS infringement notices compared to infringement notices issued under the Biosecurity Act, there will be more work for the District Court.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Previous consultation outcomes (on concept of infringement system)

Amongst the majority of industry groups that expressed a preference, there is wide acceptance of the need for an intervention which potentially addresses persistent yet low-level offending. Industry participants want a clear set of rules, applied consistently to ensure a level playing field. To aid transparency, Customs is preparing a set of intervention guidelines including guidance on the use of infringement notices. These guidelines will make the enforcement decisions and processes more transparent. A key part of the intervention guidelines is to communicate them, so people will be encouraged to comply with the rules.

They were also concerned that the monetary impositions could be perceived as 'revenue raising' rather than encouraging compliance. To avoid any perception of revenue gathering, the fees and fines collected are Crown revenue. Crown revenue is returned to the government, and does not form part of Customs' budget or operational funding.

Feb 2018 Consultation Outcomes (on detailed proposal)

Travellers or passengers are the group most likely to receive an infringement notice under the INS as proposed. However, there is no specific group or agency that represents the interests of travellers or passengers. There were some general comments from some submitters suggesting that Customs must be careful in how we implement the INS, as it may potentially affect New Zealand's international reputation and desirability as a tourism destination.

Some commenters expressed concerns that infringement notices issued to non-residents of New Zealand would not be paid before they leave. If this becomes prevalent, the New Zealand public could conclude that New Zealanders were being unfairly treated.

Collectively four key themes emerged from the consultation across all groups:

- consistency in the use of discretion, warnings and issuing infringement notices is the key to effectively encouraging compliance and behavioural change
- to ensure consistency, effective review and challenge systems should be in place, and the operation of the review system should be clear and transparent, so both Customs and affected parties can adjust their behaviour
- to aid compliance by affected groups, effective guidelines and criteria used will need to be available for both Customs Officers and affected parties
- information and education programmes will be required, and these need to be in place in a timely manner to encourage good behaviour before the INS gets started.

Importers and exporters generally support the existence of the INS, but expressed a few reservations. In particular, they wanted:

- Customs to ensure consistency of application between regions and Customs officers was in place, to ensure the INS operated fairly and consistently

- clarity about what happens when infringement notices and administrative penalties could be levied for the same behaviour/transaction, and what will happen in that situation
- where offences could arise from high volume transactions where it is simple to make a mistake (relating to the entry of goods mainly), the proposed infringement fee could be seen as too punitive. If each transaction was punished with a \$400 infringement notice, this could rapidly escalate into an unduly punitive and unaffordable situation. They suggested an overall upper limit or threshold for transactional offences.

Manufacturers also generally supported the INS. They expressed similar concerns to the exporters and importers (outlined above). One particular additional concern expressed was that there needed to be an extensive effort to engage and work with the industries to improve compliance, rather than simply issue infringement notices.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

As previously noted, infringement offences and fees must be specified in a legislative instrument (regulation). These regulations are intended to come into force six months after the Act.

The INS will become part of Customs' enforcement tools. It will be built into Customs' intervention guidelines, and will guide Customs' enforcement approach.

As the INS is a new tool for Customs to use, extensive guidance material will need to be prepared to ensure consistency in its application and effective operation. Amongst other things, this guidance will need to cover the issues raised by those consulted including:

- what will happen when both an infringement notice and an administrative penalty could be issued? We have determined that only one will apply, but the 'give way' rules will need to be specified
- what will happen when multiple infringement offences of the same type are detected arising from the same event? Will more than one infringement be issued?
- what will happen where multiple offences of different types are detected arising from the same event? Again, will more than one infringement be issued? If so, which one takes precedence?

These guidelines will be developed and prepared in consultation with the affected parties.

For it to operate, the INS will have the necessary supporting systems and processes put into place. The final design for some of these has yet to be finalised but some of the broad decisions have been made and these are listed below.

- all Customs Officers will have the power to issue infringement notices
- there will be a review prior to the issue of the infringement (by a peer/supervisor). This is standard practice now for most decision making. The times and places where infringement notices may be issued make this practical to do, without this adding costs or time requirements to the issuing process.
- Customs will have an internal review process (by someone other than the issuing officer) if the person issued the infringement wishes to challenge it. This will also assist Customs to improve consistency over time as Customs Officers respond to the review decisions. This is a change suggested by industry commentators.
- the person receiving the infringement notice will also be able to either seek to dispute liability or make a submission as to the penalty in the District Court under the Summary Proceedings Act (which applies to all infringement notices).
- once issued, all subsequent actions and transactions will be managed centrally (not at operational areas), as there is no further local input or management required.

Customs will be the only agency whose officers are empowered to issue infringement notices under the INS. No other agency will be directly involved in issuing infringement notices in the INS.

Customs has an implementation programme, which has made plans to implement the INS (as part of the overall suite of changes made by the new legislation). The Act is scheduled to come into force on 1 October 2018. It is anticipated that the INS will come into force six

months after the commencement of the Act or on 1 April 2019. During this period, Customs will be engaging with and undertaking a process of educating and encouraging compliance, prior to the INS going live.

This phase will also allow Customs to ensure the systems, tools and processes for the INS are in place and operating correctly. Customs will work with affected parties during this period to ensure information and education about how to work within the INS is available.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Measuring the success of the INS will be difficult as many parts of the broader enforcement system are changing at the same time. There are no specific measures that can be put in place to separate out the effects of the INS from other changes in the enforcement system.

Some partial indicators of impact will exist. Customs will record actions taken for the INS, as is done for all enforcement activities. Customs' systems will continue to record warnings issued (as they do now) and how often those warnings aren't effective (i.e. where there is a subsequent infringement notice issued). Customs officers will use warnings and previous infringement notices to determine what action should occur if the same behaviour is subsequently observed.

Measures of activity are limited in their capacity to determine impact. The number of infringement notices issued over time is likely to increase. As the bulk of infringement notices will be issued to travellers, separating out whether an increase is due to increases in:

- rates of non-compliance
- rates of detection
- rates of intervention

or simply from growth in the number of travellers, is very difficult.

7.2 When and how will the new arrangements be reviewed?

A review of the implementation and functioning of the infringement scheme will be conducted after two years of operation of the INS. During the policy development phase, Customs committed to such a review after one year. One year is considered too short for any effective measure of the impact to be determined, so we propose to review after two years of operation.

In response to some of the suggestions from the consultation, Customs will ensure that there are effective reporting and analysis systems in place. This will allow both Customs and the affected parties to make changes immediately and to continuously improve their operations, outside of any particular review timeframe.

Transparency in the operation and reporting of activities aids both Customs and affected parties' decision making as both can see where non-compliance is occurring. Individual situations and trends can be identified, and Customs can work with all parties to improve compliance.

After two years of operation, a more comprehensive review will be undertaken. The review is likely to cover the following matters:

- effectiveness of the scheme from the perspective of Customs officers, and other operational staff
- areas of improvement, in terms of the fair and consistent application of infringement notices

- numbers of reviews, appeals and levels of non-payment (to ensure these are not excessive)
- an assessment of the benefits compared to the actual cost of administering the scheme
- whether the infringement fees and the one fee structure is working to encourage compliance
- success of the scheme as a deterrent for non-compliance.

Appendix: List of proposed infringement offences

The table is arranged according to the “Expected number of infringements each year” column. This column has been estimated using Customs’ current knowledge and understanding of patterns of non-compliance. It is an estimate, and is indicative only.

The “Description of offence provision” is not a precise outline of the offence, but is intended to indicate the general nature of the offence. Only offences being proposed to become infringement offences are included in the table.

Tse proposed infringement offences that will have a separate higher infringement fee (\$800) for corporations have a ‘Y’ in column 2. The “Specific legislative references” column now refers to the Customs and Excise Act 2018.

Description of offence provision	Higher corporate fee?	Specific legislative references	Expected number of infringements each year
Person makes declarations or written statement that is erroneous in a material particular	Y	366(1)(a)	1,050 (across two offences)
Person produces or delivers documents that are erroneous in a material particular	Y	366(1)(b)	
Person ordered to stop using electronic communication device (where sign prohibits) fails to do so.	N	217(1)	120
Person imports or unships or loads prohibited goods	Y	388(1)(a)	438 (across five offences)
Person exports or unships or loads prohibited goods	Y	388(1)(b)	
Exporter fails to notify Customs of goods potentially to be used for prohibited uses	Y	388(1)(c)	

Description of offence provision	Higher corporate fee?	Specific legislative references	Expected number of infringements each year
Person removes prohibited goods from Customs-controlled area	Y	388(1)(d)	
Person fails to comply with conditions of licence, permit or consent to import or export prohibited goods	Y	388(1)(e)	
Person fails to state name and details, or to produce evidence of identity entitlement to travel	N	202(1)	12
Person fails to provide knowledge/information to customs officer when required to, when needed to access to electronic device	N	228(8)	12
Specified person must retain prescribed records for prescribed period	Y	356(1)	12
Specified person must make records available and answer questions about them	Y	356(2)	12
Person required to answer question fails or refuses to do so	Y	383(1)(a)	12
Person required to answer question gives incorrect answer	Y	383(1)(b)	12
Person in charge of arriving craft fails to immediately report to Customs officer or constable allows unloading of goods or allows passengers to leave vicinity of craft	N	23(1)	6
Person fails to comply with term, condition, or restriction of licence in Customs-controlled area	Y	69(1)	6

Description of offence provision	Higher corporate fee?	Specific legislative references	Expected number of infringements each year
Licensee fails to comply with requirement to provide Customs facilities or store goods in Customs-controlled area	Y	71(1)	6
Person unloads goods without permission or where safety not threatened	N	79(1)	6
Person removes goods (other than tobacco) without permission from Customs-controlled areas	Y	86(1)(a) (non-tobacco)	6
Person removes goods (other than tobacco) from Customs-controlled areas in contravention of permitted conditions	Y	86(1)(b) (non-tobacco)	6
Person fails to produce evidence of identity, entitlement to travel, or other matters, on demand	N	219(1)	4
Registered user fails to comply with conditions of chief executive for security of unique user identifiers	N	331(1)	4
Person who is not registered user uses a unique user identifier to authenticate transmission of document	N	331(2)	4
Registered user uses a unique user identifier that is not theirs to authenticate a transmission	N	331(3)	4
Person leaves arriving craft without authorisation	N	18(3)	3
Person leaving or boarding arriving craft before inward report made	N	20(1)	3

Description of offence provision	Higher corporate fee?	Specific legislative references	Expected number of infringements each year
Person unloads goods or allows passengers to leave vicinity of arriving craft without permission	N	23(2)(a)	3
Crew or passenger fails to comply with Customs Officer's direction	N	23(2)(b)	3
Person manufactures Part A goods (non-tobacco) outside of Customs-controlled area	Y	68(1) (non-tobacco)	3
Person uses an area not licensed as a Customs-controlled area for actions that must be done in Customs-controlled areas	Y	68(4)	3
Person with custody of detained goods fails to keep them safe	N	246(1)	3
Person transports imported goods (other than tobacco), other than as allowed by the chief executive	Y	84(1) (non-tobacco)	2
Person fails to produce, prevents officer making extracts or copies, or does not answer questions about documents	Y	253(1)(a)	2
Person opens, alters, breaks or erases seals affixed to any goods or craft without permission	Y	361(2)	2
Person in charge of craft fails to ensure no one opens, alters, breaks or erases seals affixed to any goods or craft	Y	361(4)	2
Person enters Customs controlled area being or about to be used for the purposes for which it is licensed	N	382(2)	2

Description of offence provision	Higher corporate fee?	Specific legislative references	Expected number of infringements each year
Person fails to leave Customs controlled area after being directed to do so by Customs officer	N	382(3)	2
Owner/person in charge of craft fails to file inward report within the prescribed time	N	25(1)(a)	1
Owner/person in charge of craft does not provide inward report in accordance with the relevant chief executive rules	N	25(1)(b)	1
Person in charge of craft fails to comply with Customs direction	N	25(2)	1
Person refuses to answer question from Customs Officer	Y	27(1)(a)	1
Person fails to comply immediately with Customs Officer request to produce documents	Y	27(1)(c)	1
Person in charge of craft fails to provide advance notice of departure or fails to provide advance notice of departure in accordance with the relevant chief executive rules	N	38(1)(a)	1
Person in charge of craft fails to provide documentation	N	38(1)(b)	1
Person in charge of craft refuses to answer question from Customs Officer	N	38(1)(c)	1
Person in charge of craft fails to produce certificate of clearance	N	40(1)(a)	1
Person in charge of craft refuses to answer question from Customs Officer	N	40(1)(b)	1

Description of offence provision	Higher corporate fee?	Specific legislative references	Expected number of infringements each year
Purchaser does not retain or control goods as directed by chief executive pending dispute resolution	Y	132(1)	1
Person with custody seized goods does not secure the goods or provide them to Customs officers	N	180(1)	1
Person fails to account for goods or produce documentation relating to the movement of goods	Y	234(1)(a)	1
Person fails to produce goods	Y	234(1)(b)	1
Person in control of goods fails to produce them for inspection	Y	234(1)(c)	1
Person acts contrary to permission of chief executive where non-tobacco goods temporarily removed from Customs-controlled area	Y	236(1) (non-tobacco)	1
Person fails to produce, prevents officer making extracts or copies, or does not answer questions about documents	Y	253(1)(b)	1
Licensee of CASE fails to provide Customs facilities or store goods appropriately as required by the chief executive	Y	280(1)	1
Specified person fails to provide access to records in the prescribed form and manner	Y	358(3)	1
Person alters or alters the condition of any goods subject to the control of Customs	Y	359(1)(a)	1

Description of offence provision	Higher corporate fee?	Specific legislative references	Expected number of infringements each year
Person interferes with any goods subject to the control of Customs	Y	359(1)(b)	1
Person unpacks or repacks any goods subject to the control of Customs	Y	359(1)(c)	1
Person removes any goods subject to the control of Customs	Y	359(1)(d)	1
Person uses Customs seal in relation to package of goods	Y	362(1)(a)	1
Person alters, removes, damages or otherwise interferes with a Customs seal used in relation to package of goods	Y	362(1)(b)	1
Person uses Customs seals, markings or devices other than in accordance with secure exports scheme	Y	362(1)(c)	1
Person tampers or interferes with sealed Customs package by adding other goods to a package that was secured	Y	362(1)(d)	1
Person fails to make entry in required manner	Y	363(1)(a)	1
Person fails to make return or assessment as to value of goods in prescribed manner	Y	363(1)(b)	1
Person makes erroneous or defective entry	Y	364(1)(a)	1
Person makes erroneous or defective return	Y	364(1)(b)	1
Person makes erroneous or defective amendment of an assessment	Y	364(1)(c)	1

Description of offence provision	Higher corporate fee?	Specific legislative references	Expected number of infringements each year
Person produces or delivers documents that are not genuine	Y	367(1)	1
Person fails to update information supplied in advance where they ought reasonably to know it has become erroneous or misleading	Y	369(4)	1
Person possesses or brings to New Zealand incomplete documents able to be used of Customs and Excise Act purposes	N	386(1)	1
Person fails to enter goods for export in accordance with the relevant chief executive rules, loads goods for export before entry is made, or export goods, delays them or relands them in New Zealand	N	393(1)(a)	1
Person fails to comply with request of Customs Officer in relation to goods being entered for export	N	393(1)(b)	1
Person fails to keep or maintain records they are required to keep in a levy order	Y	419(1)	1
Person fails to make return or produce records they are required to provide in a levy order	Y	419(2)	1
Person fails to produce records they are required to provide by an auditor	Y	419(4)	1