

Regulatory Impact Statement: Increases to maximum penalties for serious border offending

Decision sought	Analysis produced to inform Cabinet decisions
Agency responsible	New Zealand Customs Service
Proposing Ministers	Minister of Customs
Date finalised	10 July 2025

The regulatory proposal

To increase the maximum penalties (both financial and custodial) that can be imposed upon conviction for offences related to serious border offending in the Customs and Excise Act 2018 (CEA)¹.

Summary: Problem definition and options

What is the policy problem?

Offences in the CEA need penalty levels that will have an impact on offenders' behaviour, be consistent with other domestic legislation and be proportionate to the harm caused by the offending.

Maximum penalty levels (both financial and term of imprisonment) that apply to CEA offending, notably the specific areas where transnational, serious and organised crime (TSOC) groups are active, no longer reflect the seriousness, frequency or impact of offending and may not be having the deterrent effect expected.

In 2014 Australia changed its laws on migration to allow it to deport people who failed a character test. Subsequently, thousands of criminals with strong connections to Australian gangs were deported to New Zealand and quickly set up strong trans-national criminal operations facilitating illegal trade between the two countries.

This activity paired with other TSOC groups increasingly targeting New Zealand has significantly changed the criminal landscape, particularly at the border. More criminal activity is occurring at the border, and it is often at a much more serious level than when the CEA's penalties were last reviewed in 2015.

There are seven CEA penalties that are no longer fit for purpose due to the frequency or impact of serious offending. These relate to two categories of offending - bypassing Customs import controls (eg, through erroneous import entries) and knowingly importing prohibited goods (such as tobacco or child sexual exploitation material).

¹ This proposal only covers CEA offences. Customs can investigate offending under sections 6, 7, 12A, 13 or 22 of the Misuse of Drugs Act 1975 (MODA) or sections 123, 124, 131 or 131A the Films, Videos, and Publications Classification Act 1993 (FVPCA). The MODA and FVPCA are out of scope of this RIS.

In some cases, penalties are too low given the nature of criminal offending at the border. For example, the current penalty for knowingly exporting or importing objectionable publications (section 390 of the CEA) is a maximum of 10 years imprisonment. This penalty is more akin to possession offending than it is to organised distribution. The sharing of child sexual exploitation material across borders is evolving in its nature and scale, aided by technological developments. The penalty no longer reflects the harm caused by the offending.

Also, some penalties have become misaligned with penalties for similar offences in domestic legislation. For example, offences for knowingly providing erroneous entries (such as import or export entries) has a penalty of 6 months' imprisonment in the CEA (section 364). However, the offence for using forged documents, under the Crimes Act 1961 (section 257), has a maximum penalty of 10 years imprisonment. The penalty for the CEA offence no longer reflects the type of offending being seen at the border and is out of step with similar domestic offending.

Further detail on the examples above is set out in Appendix One on page 13, along with the other proposed changes.

What is the policy objective?

The primary objective is to ensure that Customs has a proportionate offence and penalty regime, aligned with domestic legislation, that responds more appropriately to the frequency and impact of serious CEA and TSOC-related offending at the border.

The secondary objective is to ensure offences in the CEA relating to objectionable publications reflect the nature of the offending being seen at the border.

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

There are no appropriate non-regulatory options. Customs considered charging the offending under the Crimes Act 1961 for where conduct would be covered by that statute as well as the CEA, but only the CEA offences trigger the ability to seize relevant goods.

The option compared to the status quo is to increase the maximum penalties for seven border offences.

What consultation has been undertaken?

The proposal has been consulted on with the Department of the Prime Minister and Cabinet, the Ministry of Justice, the Ministry of Business Innovation and Employment (Immigration New Zealand), the New Zealand Security Intelligence Service, New Zealand Police, the Ministry for Primary Industries, Department of Corrections (Corrections) and the Ministry of Defence.

No public consultation was undertaken over the proposal in this RIS. Groups representing the public interest in law enforcement matters, as well as the wider public, will have an opportunity for input at the Select Committee stage of the Bill.

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

There is not expected to be any increase in costs to Customs.

There will be higher costs for Corrections if courts apply higher custodial sentences, due to prisoners being managed for longer. The magnitude of these impacts cannot accurately be predicted, but Customs anticipate it will be modest given the 12 individuals charged in 2024 under the relevant sections.

One of the proposed increases to the maximum penalty is to introduce a maximum penalty of a term of imprisonment to an offence that currently only has a fine. If the courts apply this penalty, there will be an increase in costs for Corrections. The magnitude of these impacts cannot accurately be predicted as it is a judicial decision, but Customs anticipate it will be modest.

The impacts will fall on persons convicted of serious offending through increasing the probability of receiving a higher financial or custodial sentence. The make-up of this group cannot be determined but is assumed to be a small number of persons.

Benefits

The benefits will come from improvements to New Zealand's border security by the extent that higher penalties deter TSOC groups and others from targeting New Zealand, and the extent that those engaged in this behaviour can receive a penalty that affects the seriousness of the offending. This may mean they are incarcerated longer and unable to offend in that time, and the public's perception of law enforcement is enhanced by seeing appropriate responses to serious illegal conduct.

As penalties are decided case-by-case by the courts based on the offending, Customs cannot precisely predict the benefits. Customs knows the scale and scope of TSOC offending is constantly increasing.

Balance of benefits and costs

The balance is between the anticipated higher prison population against the decrease in social harms from offenders and the benefit from the public's perception of law enforcement being enhanced.

The higher costs to the corrections system described above may be offset to the wider justice system to some extent if the higher penalties are successful in deterring offending from taking place.

Overall, Customs expects that the proposal will achieve fiscal net benefits. The scale of the actual costs and harms currently imposed on society by serious CEA offenders and TSOC groups is high. Therefore, even a marginal increase in the probability of offenders being deterred by increased penalties will be beneficial if it can be achieved at low cost.

Implementation

The increased penalties will be implemented through the Customs and Excise (Border Security) Amendment Bill (the Bill). Customs operational policies will be updated and a communications plan will be developed to publicise the changes in the Bill.

No implementation risks are anticipated.

Limitations and Constraints on Analysis

Due to variables involved, the scale or quantity of benefits cannot be accurately predicted or measured until after convictions have occurred and therefore must be qualitatively assessed against the costs and impacts.

Due to the relatively small number of CEA prosecutions Customs undertakes per year, these penalties are expected to be used infrequently. The trajectory of judicial sentencing means the highest level of penalty is likely to only apply to a very small number of individuals. Therefore, impacts on the population and on Corrections will be limited accordingly.

There is no evidence on the effectiveness of the proposed penalty increases in terms of how well they will deter offending behaviours. Criminals are also only able to be deterred if they know what the changes are, so publication of the new changes as widely as possible is crucial to ensure criminals and prospective criminals understand the harsher consequences.

For proposals where Customs is updating serious border offending maximum penalties to be consistent with domestic legislation, there is an assumption that penalties are set at appropriate levels in domestic legislation to deter offending behaviour.

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 and 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 summarised in the RIS partially meets the Quality Assurance criteria due to the lack of public consultation on the proposal. The lack of public consultation 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.

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 and CEA offending is increasing in frequency and scale and is causing significant harm to New Zealand.
2. TSOC networks have developed a good understanding of border processes and procedures, the extent or limitations of legislation and the operation of international supply chains. Consequently, they exploit vulnerabilities especially by infiltrating, corrupting, and intimidating people in positions within the supply chain (ie, trusted insiders²).
3. In the last decade, driven in part by changes to the Australian migration system (the “section 501” law change deporting persons who fail character tests), TSOC has been a constant and 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 law enforcement agencies and deliberately seek to subvert the limits of Customs’ operational powers and legislative responses.
4. Removal of goods from Customs-controlled areas (CCAs) before they have been cleared for release by Customs is a longstanding and serious Customs offence. With the increasing trusted insider threat Customs is seeing people in positions of responsibility, trust, and access breaching Customs controls in a manner and scale that has not been seen before.
5. Recent operations have identified serious breaches, where trusted insiders intentionally circumvented Customs controls:
 - Operation Waxeye saw two airline engineers and one airline manager smuggle cigarettes by removing them from the aircraft and taking them into their offices, bypassing Customs formalities entirely
 - Operation Selena saw a total of 24 people charged and millions of dollars’ worth of assets seized in relation to drug smuggling through Auckland Airport. Several of those charged were airline and airport staff who assisted in moving goods past Customs controls.
6. This activity is a direct example of the changing offending at the border. Penalties for this offending in the CEA were designed around individuals bypassing controls to avoid paying goods and services tax and tariff and excise-equivalent duties or around importing small amounts of controlled or prohibited substances. Now it is commercial, organised offending committed by mainly TSOC groups which is on a more significant scale than the penalties were designed for.
7. The tobacco smuggling penalties were reviewed in 2015 as part of the review of the Customs and Excise Act 1996 and increased as reflected in the CEA. The penalty was calibrated around the level of tobacco smuggling Customs saw at the time, around 200 cigarettes at a time. Tobacco excise and excise-equivalent rates were lower then, making

² A trusted insider is any person who, through their employment (past or present) in a supply chain business, uses their access to goods, systems or premises for malicious purposes.

it cheaper. Since then, tobacco smuggling has increased significantly both in terms of volumes and frequency.

8. In 2016 large illicit importations (250,000 or more cigarettes) were virtually unheard of. By late 2018 the largest seizure to date was 340,000 cigarettes. In 2024, large seizures were common. For example, in March, 230,600 cigarettes and 110 kg of loose tobacco was seized, in May, 1.36 million cigarettes were seized, and in June, over 400 kg of tobacco was seized.
9. Customs also detects and responds to child sexual exploitation material entering New Zealand, both at the physical and digital border.
10. In 2014 there were 623 reports relating to cross-border child sexual exploitation material, while in 2024 there were 16,225 reports. This is an increase of 2,600 percent within ten years. As well as the number of reports, the average number of images in each is rising dramatically.
11. Over the past few years, the largest operations were:
 - in Operation Palantir (2022) – approximately 21,801 objectionable files seized
 - in Operation Longbow (2023) – approximately 88,867 objectionable files seized
 - in Operation Simulator (2024) – approximately 201,232 objectionable files seized³.

What is the policy problem or opportunity?

12. Given the increases in serious offending activity at the border, there is a need to review and strengthen the current penalty regime. Offences in the CEA need penalty levels that will have an impact on offenders' behaviour, be consistent with other domestic legislation, and be proportionate to the harm caused by the offending.
13. In some cases, penalties are too low given the nature of criminal offending at the border. For example, the current penalty for knowingly exporting or importing objectionable publications (section 390 of the CEA) is a maximum of 10 years imprisonment. This penalty is more akin to possession offending than it is to organised distribution. The sharing of child sexual exploitation material across borders is evolving in its nature and scale, aided by technological developments. The penalty no longer reflects the harm caused by the offending.
14. Also, some penalties have become misaligned with penalties for similar offences in domestic legislation. For example, offences for knowingly providing erroneous entries (such as import or export) have a penalty of 6 months' imprisonment in the CEA (section 364). However, the offence for using forged documents, under the Crimes Act (section 257), has a maximum penalty of 10 years imprisonment. The penalty for the CEA offence no longer reflects the type of offending being seen at the border and is out of step with similar domestic offending.
15. In addition, these penalties also cover systems New Zealand has international responsibilities in such as the anti-money laundering system. The current penalty for

³ "Approximately" is used here as it is not known whether all seized files contained objectionable content.

knowingly importing or exporting prohibited goods does not reflect the significance of the offending as money laundering is a core function of TSOC.⁴

16. Further detail on the examples above is set out in Appendix One on page 13 along with the other proposed changes.

What objectives are sought in relation to the policy problem?

17. The primary objective is to ensure that Customs has a proportionate offence and penalty regime, aligned with domestic legislation, that responds more appropriately to the frequency and impact of serious CEA and TSOC-related offending at the border.
18. The secondary objective is to ensure offences in the CEA relating to objectionable publications reflect the nature of the offending being seen at the border.

What consultation has been undertaken?

19. The proposal has been consulted on with the Department of the Prime Minister and Cabinet, the Ministry of Justice, Corrections, the Ministry of Business, Innovation and Employment (Immigration New Zealand), the New Zealand Security Intelligence Service, New Zealand Police, the Ministry for Primary Industries, and the Ministry of Defence.

⁴ Undeclared cash of \$10,000 or more becomes a prohibited goods, as per s114(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Section 2: Assessing options to address the policy problem

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

20. Options regarding updates to CEA penalties were assessed against the following criteria:
- deterrence – penalties should be at levels which are sufficient to encourage compliance and deter non-compliance
 - proportionality – penalties should be at levels which are proportionate to the harm caused by offending
 - consistency – penalties should be consistent with other relevant legislation.

What scope will options be considered within?

21. There are no feasible non-regulatory options.
22. Consideration was given to other potential legislative and non-legislative options, such as increasing prosecutions. This was ruled out due to not meeting the objective of increasing the social and legal censure attached to this type of offending.

What options are being considered?

Option one – status quo

23. This option will retain the current penalty levels. See paragraph 28 for the list of current relevant penalty levels.

Option two – updating penalty levels (preferred)

24. This option will increase the proposed maximum penalty levels (see paragraph 28) to meet the objective for better addressing TSOC activities and other serious CEA offending.
25. There are seven penalty updates proposed in this RIS. These proposals intend to ensure consistency across domestic legislation, sufficiently deter non-compliance, and be proportionate with the harm caused by offending.
26. These changes relate to two categories of CEA offending: bypassing Customs import controls and knowingly importing prohibited goods, primarily tobacco and objectionable publications. The serious nature of prohibited goods and objectionable publications importations means the priority is increasing the custodial sentence rather than increasing financial penalties.
27. One of the proposed penalty increases includes adding a penalty of a maximum of 5 years imprisonment to section 86 for offending relating to the removal of goods from a CCA. Currently there is only a fine.
28. The proposed penalty updates are as follows:

Section	Current penalty and proposed update
Section 86 Offences in relation to removal of goods from Customs-controlled areas.	For non-tobacco related offending: • For an individual: increase maximum \$5,000 fine to \$10,000 and/or a maximum of 5 years' imprisonment. • For a body corporate: increase maximum \$25,000 fine to \$50,000.

Section	Current penalty and proposed update
	For tobacco related offending: - For an individual: increase from maximum 6 months' imprisonment to 5 years' imprisonment, and/or maximum \$20,000 fine to \$50,000. - For a body corporate: increase maximum \$100,000 fine to \$250,000.
Section 364(5) Offences in relation to knowingly erroneous or defective entries.	For an individual: maximum 6 months' imprisonment to 7 years. This offence also has the option of a fine, however there are no proposed increases to the maximum fine level.
Section 368 Offences in relation to declarations and documents that are known to be faulty.	For an individual: maximum 6 months' imprisonment to 7 years. This offence also has the option of a fine, however there are no proposed increases to the maximum fine level.
Section 372 Possession or custody of uncustomed goods or prohibited imports.	For tobacco related offending: For an individual: increase maximum 6 months' imprisonment to 2 years. This offence also has the option of a fine, however there are no proposed increases to the maximum fine level.
Section 373 Purchase, sale, exchange, etc, of uncustomed goods or prohibited imports.	For tobacco related offending: For an individual: increase maximum 6 months' imprisonment to 2 years. This offence also has the option of a fine, however there are no proposed increases to the maximum fine level.
Section 389 Offences in relation to knowingly importing or exporting prohibited goods.	For an individual: increase maximum 6 months' imprisonment to 5 years. This offence also has the option of a fine, however there are no proposed increases to the maximum fine level.
Section 390(2)(a) Offences in relation to knowingly importing or exporting objectionable publications.	For an individual: increase maximum 10 years' imprisonment to 14 years. This offence also has the option of a fine, however there are no proposed increases to the maximum fine level.

29. For more detail on the current and proposed increases to maximum penalty levels, please refer to Appendix One.

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

	Option one – status quo	Option two – updating penalty levels
Deterrence	0 This option maintains the current deterrent levels of the relevant penalties, where Customs is seeing an increase in the	++ This option will increase penalty levels to better deter non-compliance.

	Option one – status quo	Option two – updating penalty levels
	seriousness of offending and current penalties are not enough of a deterrent, therefore does not adequately meet the objective.	
Proportionality	0 This option maintains the current level of proportionality for the relevant penalties, which is not proportionate to the level of offending Customs is seeing and therefore does not adequately meet the objective.	++ This option will ensure penalty levels are proportionate to the harm being caused by offenders.
Consistency	0 This option maintains the current level of consistency which is not consistent with other similar offending in domestic legislation and therefore does not adequately meet the objective.	++ This option ensures penalty levels are consistent with other relevant legislation.
Overall assessment	0 This option does not meet the objective.	++ This option meets the objective.

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

30. Option two is the only option that would best address the problem, meet the policy objective and deliver the best benefits.
31. Option two will increase the maximum penalty, outlined in paragraph 28, to ensure that they are fit for purpose in the current border environment.

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

32. Yes.

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

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Offenders	Ongoing – higher penalties will act as a deterrent to offending behaviour and when offending does occur higher and harsher penalties can be used	Medium – only the most serious offenders will likely get the maximum penalty levels This proposal is not going to capture more people but ensure that it	Medium – there is limited information to confidently forecast impacts, but it is anticipated that serious offenders will

	Where imprisonment is being proposed to a penalty that currently has a fine only there will now be a potential term of imprisonment for offenders People who are currently evading controls will face consequently higher (appropriate) costs	would give judges expanded scope to impose a higher penalty to those who are serious offenders	receive higher penalties
Customs	One-off – making legislation, updating guidance, gazetting, and updating training	Low – the costs to Customs to make legislation can happen within baseline funding	High – the costs are reasonably certain as they are compared against implementation of previous law changes
Department of Corrections	Ongoing – if longer and/or new sentences are imposed it will have an impact on the overall corrections system costs	Medium – there will be increased costs to the Department of Corrections due to the increases in maximum imprisonment levels proposed. This cannot be predicted as it is judicial decision-making that will influence these costs	Medium – there is limited information to confidently forecast impacts, but it is anticipated that serious offenders will receive higher penalties
Total monetised costs	n/a	n/a	n/a
Non-monetised costs	Ongoing	Low to Medium	Medium to High
Additional benefits of the preferred option compared to taking no action			
General public	Ongoing – an increase in the deterrence value of CEA offences may also reduce the overall level of activity by offenders Customs' implementation plan will involve publication of the changes and updates to Customs' operational training to ensure that the deterrent effect of these changes is maximised	Medium – public perception of rule of law is enhanced Removing high-risk persons from the community and preventing further offending	High – public perception will be improved with the public facing communications Customs' will promulgate

Total monetised benefits	n/a	n/a	n/a
Non-monetised benefits	Ongoing	Medium	High

Section 3: Delivering an option

How will the proposal be implemented?

33. This change is a part of a package of changes being proposed to amend the CEA.
34. Changes to the CEA are required for implementation. This is expected to be completed by late-2026. The legislative amendment resulting from the preferred options will come into effect following Royal Assent of the Bill.
35. As a part of the implementation of the Customs and Excise (Border Security) Amendment Bill, a communications plan will be developed to publicise the changes. Wide publication of the new changes is crucial to ensure criminals and prospective criminals understand the harsher consequences.
36. The updated penalty levels will form part of the current business-as-usual work for Customs Legal, Intelligence and Investigation teams. No implementation risks are anticipated.

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

37. The CEA is subject to Customs' ongoing regulatory stewardship function as the agency responsible for administration of the CEA.

Appendix one: table of current penalty levels and proposed new maximum penalty levels

Offence under the CEA	Current penalty	Proposed penalty	Rationale
Section 86 Offences in relation to removal of goods from Customs-controlled areas.	<i>For non-tobacco related offending:</i> For an individual: maximum \$5,000 fine. For a body corporate: maximum \$25,000 fine. <i>For tobacco related offending:</i> For an individual: maximum 6 months imprisonment, and/or maximum \$20,000 fine. For a body corporate: maximum \$100,000 fine.	<i>For non-tobacco related offending:</i> For an individual: maximum \$10,000 fine and/or maximum 5 years' imprisonment. For a body corporate: maximum \$50,000 fine. <i>For tobacco related offending:</i> For an individual: maximum 5 years' imprisonment, and/or maximum \$50,000 fine. For a body corporate: maximum \$250,000 fine.	This is a longstanding Customs offence, however, with the increasing trusted insider threat, Customs is seeing people in positions of responsibility, trust, and access breaching Customs requirements in a manner and scale that has not been seen before. This type of offending should be considered as similar to theft under the Crimes Act 1961 which can hold a maximum imprisonment level of 7 years. Recent operations have identified serious breaches, yet the penalty levels do not reflect the seriousness of the offending, the harm to the integrity of the system, and are increasingly not sufficiently deterring for this behaviour. Operation Waxeye saw airline staff members smuggling cigarettes by removing them from the aircraft and taking them into their offices, bypassing Customs formalities entirely. This was occurring on a regular basis. Operation Selena saw a total of 24 people charged and millions of dollars' worth of assets seized in relation to drug smuggling through Auckland Airport. Several of those charged were airline and airport staff who assisted in moving goods past Customs controls. This update is needed to increase deterrence and proportionality to the harm caused and level of revenue evasion.

Offence under the CEA	Current penalty	Proposed penalty	Rationale
Section 364(5) Offences in relation to knowingly erroneous or defective entries.	For an individual: maximum 6 months' imprisonment, or fine not exceeding either – maximum \$10,000 fine or an amount equal to 3 times the value of the goods to which the offence relates. For a body corporate: a fine not exceeding either – \$50,000 or an amount equal to 3 times the value of the goods to which the offence relates.	For an individual: maximum 7 years' imprisonment. No proposed changes to the fine.	The current penalty level is not enough to actively reflect the seriousness of some Customs fraud. Similar offending in the Crimes Act 1961 is between 7 – 10 years' imprisonment. A Customs operation identified erroneous export invoices being used, charges were laid in relation to section 364(5). The invoice values were lowered to render a greater value of goods overseas, using trade to launder the proceeds of crime. Another Customs operation saw an offender defrauding various parts of industry by creating documents and invoicing for shipments that never existed. This update is needed to align with similar forgery, deception and fraud offending in the Crimes Act 1961, including obtaining by deception or causing loss by deception (s240) and using forged documents (s257).
Section 368 Offences in relation to declarations and documents that are known to be faulty.	For an individual: maximum 6 months' imprisonment, or fine not exceeding either – maximum \$10,000 fine or an amount equal to 3 times the value of the goods to which the offence relates. For a body corporate: a fine not exceeding either – \$50,000 or an amount equal to 3 times the value of the goods to which the offence relates.	For an individual: maximum 7 years' imprisonment. No proposed changes to the fine.	The current penalty level is not enough to actively reflect the seriousness of some high-level Customs fraud. Similar offending in the Crimes Act 1961 is between 7 – 10 years' imprisonment. A Customs operation saw a customs broker in New Zealand requested by a freight forwarder to falsify shipping documents to make it appear that goods were being sent to a different destination, normally done to avoid an evidence trail for Customs to follow or to evade the higher scrutiny that comes from goods being sent to high-risk areas.

Offence under the CEA	Current penalty	Proposed penalty	Rationale
			This update is needed to align with similar offending in the Crimes Act 1961.
Section 372 Possession or custody of uncustomed goods or prohibited imports. ⁵	<i>For non-tobacco related offending:</i> Maximum 6 months' imprisonment, or fine not exceeding either – maximum \$10,000 fine or an amount equal to 3 times the value of the goods to which the offence relates. For a body corporate: a fine not exceeding either – \$50,000 or an amount equal to 3 times the value of the goods to which the offence relates. <i>For tobacco related offending:</i> For an individual: maximum 6 months' imprisonment and/or maximum \$20,000 fine. For a body corporate: maximum \$100,000 fine.	For tobacco related offending: For an individual: maximum 2 years' imprisonment. No proposed changes to the fine.	Persons possessing large amounts of uncustomed tobacco are knowingly driving the illicit tobacco trade which includes TSOC involvement. A Customs operation into uncustomed cigarettes being sold by a retailer saw section 372 charges laid in relation to over 390,000 cigarettes, the estimated revenue loss to Crown was over \$700,000. This update is needed to increase deterrence and proportionality to the harm caused.
Section 373 Purchase, sale, exchange of uncustomed goods or prohibited imports.	<i>For non-tobacco related offending:</i> For an individual: a fine not exceeding either – \$10,000 or an amount equal to 3 times the value of the goods to which the offence relates. For a body corporate: a fine not exceeding either – \$50,000 or an amount equal to 3 times the value of the goods to which the offence relates. <i>For tobacco related offending:</i> For an individual: maximum 6 months' imprisonment and/or maximum \$20,000 fine. For a body corporate: maximum \$100,000 fine.	For tobacco related offending: For an individual: maximum 2 years' imprisonment. No proposed changes to the fine.	Large scale sellers of uncustomed goods are facilitating importers to continue importing as their demand and purchasing from the importers allows them to keep importing, supplying, and therefore profiting. Operation Whitethorn saw three people smuggle over 19.4 million cigarettes and commit revenue fraud of more than \$18.7 million in tobacco revenue over a four-year period. One of these people was identified supplying large amounts of cigarettes to wholesale purchasers. This update is needed to increase deterrence and proportionality to the harm caused.

⁵ Uncustomed goods means goods on which duty has become due and payable but is unpaid.

Offence under the CEA	Current penalty	Proposed penalty	Rationale
Section 389 Offences in relation to knowingly importing or exporting prohibited goods.	For an individual: maximum 6 months' imprisonment or a fine not exceeding either – \$20,000 or an amount equal to 3 times the value of the goods to which the offence relates. For a body corporate: a fine not exceeding either – \$100,000 or an amount equal to 3 times the value of the goods to which the offence relates.	For an individual: maximum 5 years' imprisonment. No proposed changes to the fine.	The penalty for knowingly importing or exporting prohibited goods ⁶ does not reflect the seriousness of the offending or harm caused. This update is needed to increase deterrence and proportionality to the harm caused.
Section 390(2)(a) Offences in relation to knowingly importing or exporting objectionable publications.	For an individual: maximum 10 years' imprisonment. For a body corporate: maximum \$100,000 fine.	For an individual: maximum 14 years' imprisonment. No proposed changes to the fine.	The penalty for movement of objectionable publications across the border is less akin to possession offending (10 years) than it is to organised distribution (14 years under the Misuse of Drugs Act 1975). While import and export can be independent of distribution offending, the fact that such material is being moved across the border creates a far greater risk or propagation than simple possession. This would align with other commodities such as drugs, where (domestic) possession-type offending is distinctly less serious than import and export offences and where import and export is considered as serious as distribution offending. This update is needed to align with similar offending due to the harm caused by offenders.

⁶ Including undeclared cash, as per section 114(2) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 where cash over the threshold becomes a prohibited good.