



# Regulatory Impact Statement: Offence for deliberately circumventing Customs controls

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| <b>Decision sought</b>     | Analysis produced for the purpose of informing final Cabinet decisions |
| <b>Agency responsible</b>  | New Zealand Customs Service                                            |
| <b>Proposing Ministers</b> | Minister of Customs                                                    |
| <b>Date finalised</b>      | 25 June 2025                                                           |

## Regulatory Proposal

The regulatory proposal is to add a new offence to the Customs and Excise Act 2018 (**CEA**) for deliberately circumventing Customs controls.

This offence will capture behaviour where the person is not directly connected to illicit goods but uses their position or knowledge within the supply chain to facilitate smuggling.

## Summary: Problem definition and options

### What is the policy problem?

The CEAs current offences are not fit-for-purpose as they do not cover aspects of offending by people who occupy trusted positions in the supply chain, who intentionally manipulate information or processes to bypass Customs' risk assessment processes and interactions, and who are not directly connected to the goods that are being smuggled (eg importers and exporters). Customs powers and offences are primarily targeted at those who are directly involved with smuggling goods and know the nature of the goods being unlawfully moved across the border.

Transnational, serious and organised crime (**TSOC**) groups are using people with positions in supply chains to undertake activities such as facilitating access to secure areas or angling a camera away from an area at a certain time. These people are not directly involved with importing illicit goods, but they are enabling Customs controls to be circumvented, undermining the trust in the system.

This type of offending covers a wide range of activities, some of which can be prosecuted under existing CEA offences. Other types of offending can engage offences such as under the Crimes Act 1961. However, Customs does not have authority to investigate and prosecute Crimes Act offences, and Police may not have the resources available at the time to involve themselves in an investigation. In other situations, Customs is unable to prosecute as there is no suitable offence.

A specifically tailored offence will allow Customs to capture offending in all situations where someone is not directly associated with illicit goods (they are not the importer, exporter, or agent of the goods) but are facilitating their importation.

**What is the policy objective?**

The objective is to contribute to the government's law enforcement objective to combat TSOC through reducing the ability of TSOC groups to infiltrate legitimate supply chains to cause harm to New Zealand and its interests.

The intended outcome is that New Zealand's border security is improved through increasing the probability that organised crime and its networks and support systems are identified, investigated and disrupted.

Success will be measured by the extent to which intelligence and evidence obtained through investigations linked to the proposed offence and resulting prosecutions assists in the disruption of TSOC activity.

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

There are no non-regulatory options.

The option compared to the status quo is the creation of a new offence in the CEA for deliberately circumventing Customs controls.

**What consultation has been undertaken?**

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

Targeted consultation with industry, representative of those businesses most likely to be subject to trusted insider threat<sup>1</sup>, was undertaken and no concerns were raised.

**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

The monetised costs fall on government and are estimated to be small with a high level of certainty. There are one-off costs of making legislation and updating operational policies and procedures. There will be minor ongoing costs to maintain policies and procedures and provide training to Customs officers.

The preferred option is considered straightforward to integrate within "business as usual" border management practice. Customs expects there will be an increase in prosecution costs for Customs' Legal, but this is difficult to quantify. Departmental prosecutions can cost between \$10,000 and \$50,000. The new offence may be pursued infrequently but may have a higher cost for early test cases. Successful implementation is expected to result in fewer operational impediments to legal action. Costs are able to be met from within baseline.

There may be consequential cost implications on the justice sector in areas such as investigation, prosecution, and incarceration costs depending on the extent to which trusted

<sup>1</sup> 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.

insiders are identified and prosecuted. The magnitude cannot be estimated with any certainty.

### Benefits

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

The benefits would come from:

- deterrence – from the perception of trusted insiders, it increases New Zealand's border security and the possibility of detection and punishment
- improving the quality of intelligence and evidence to support investigations – the nature of this criminality is strongly tied to trusted insiders. Investigating these cases gives Customs a better view of TSOC.

Successfully disrupting the activities of TSOC groups and trusted insiders benefits New Zealand by minimising illicit goods being smuggled across the border. It will also enable Customs to appropriately prosecute those aiding in the facilitation of crime, effectively disrupting TSOC activities.

### Balance of benefits and costs

There is confidence that the proposal will achieve net benefits. The scale of the actual costs and harms currently imposed on society by TSOC groups are high and so even a marginal increase in the probability of offenders being deterred, or detected and prosecuted using the proposed offence, will be beneficial if it can be achieved at low cost.

There is a risk of increased costs to the justice system, noting that the number of additional offenders expected to be prosecuted is low. An increase in deterrence may also reduce the overall level of activity by TSOC groups (possibly encouraged and supported by an initial increase in successful prosecutions). This risk does not alter the assessment of the balance of costs and benefits.

It is considered with high certainty that the proposal has no risk of producing unintended outcomes that for example might bring about a worsening of border security – either actual or perceived.

### Implementation

Changes to the CEA are required for implementation. This change is intended to be made under the Customs and Excise (Border Security) Amendment Bill with Royal Assent expected by late-2026.

Customs will make changes to operational procedures and practice and update training material for Customs officers.

The new offence will form part of the current business-as-usual work for Customs legal, intelligence and investigations teams.

No implementation risks are anticipated.

### Limitations and constraints on analysis

There is a lack of data to give more certainty to the link between the effect of strengthening border control legislation with this proposed new offence and the beneficial outcomes. The realisation of benefits must be qualitatively assessed.

The lack of public consultation is a limitation on understanding whether the wider public would accept the preferred option and its likely impacts.

Despite these limitations the analysis is considered adequate to support Cabinet making an informed decision.

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  
25 June 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

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

Transnational, serious and organised crime is causing significant harm to New Zealand

1. TSOC groups are becoming increasingly sophisticated and adaptive.
2. TSOC includes crime that operates across national borders and often links with domestic criminal groups. It systematically targets New Zealand for profit, power or influence. It undermines our sovereignty by breaching our borders (illicit goods), our institutions (fraud and corruption), and our financial systems (money laundering).
3. TSOC groups are targeting legitimate supply chains to gain direct access to the New Zealand and global markets to move illicit goods. Customs expects TSOC groups will increasingly infiltrate international and domestic supply chains. This includes gaining access to premises or information, coordinating approaches with domestic gangs, and using technology to track the movement of illicit goods.
4. The use of trusted insiders to facilitate importation of illicit goods into New Zealand signals a shift in understanding and approach from risks being solely understood in relation to the goods themselves to include people (eg, employees within the supply chain and others who access a Customs-controlled area (CCA)<sup>2</sup> when they should not be). This has exposed critical vulnerabilities at the border.
5. An issue Customs is seeing is that TSOC groups are increasingly using trusted insiders to get around Customs' and CCAs controls. Trusted insiders who have direct access to uncleared goods (eg baggage handlers and stevedores), people who work in restricted areas (eg cleaners or retail workers), logistics and freight employees, CCA employees, and people who have access to systems that deal with physical controls on the movement of goods (eg people who can access port company systems) are all in positions desired by TSOC groups.
6. TSOC groups 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 corrupting and intimidating people in positions within legitimate supply chains who act as trusted insiders.
7. TSOC networks operate in a compartmentalised way where a person is often not provided with the details of the whole operation, but rather just told to do something, such as move a bag or angle a camera away at a certain time. Despite the person not being directly involved in the importation of the illicit goods, they are enabling the circumvention of Customs controls and undermining the trust in the system.

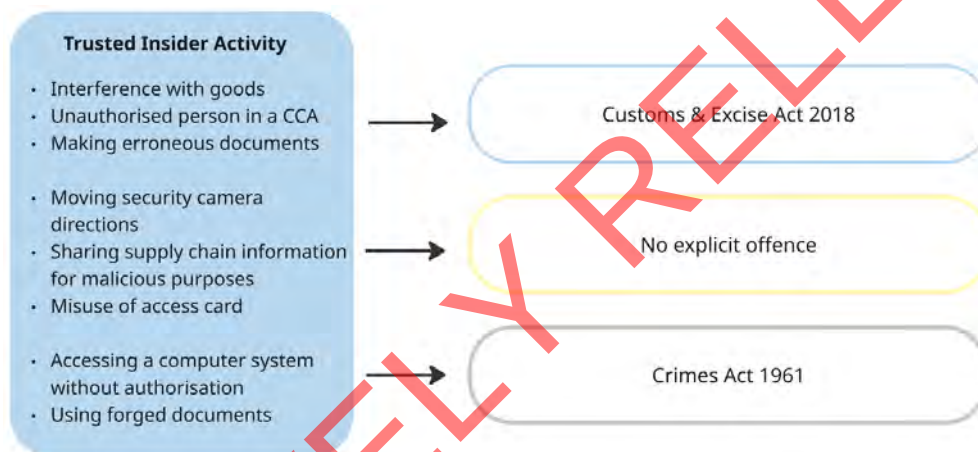
### What is the policy problem or opportunity?

8. The CEAs current offences do not cover aspects of offending by people who occupy trusted positions in the supply chain who intentionally manipulate information or processes to bypass Customs' risk assessment processes and interactions, but who are not directly connected to the goods that are being smuggled.

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<sup>2</sup> A CCA is a secure and controlled licensed environment that is approved to conduct certain functions or activities such as processing international passengers and loading or unloading cargo and items.

9. Various operations and investigations have identified situations where someone has used their position, access, and/or knowledge to support the facilitation of importing illicit goods, whether knowingly or unknowingly.
10. Operation DRAIN involved a trusted insider informing the offender about when Customs had interest in an import consignment, this assisted in methamphetamine smuggling.
11. Operations SELENA, ORLANDO, SANTANA and SOAR revealed several methods for importing controlled drugs where syndicates of corrupt baggage handlers and airline staff have worked together.
12. There are a range of activities that constitutes trusted insider behaviour, some of which is covered by CEA offending, and some of which is covered under the Crimes Act. However, there is also a grey area where a lot of this activity is not covered by an existing offence, for example moving cameras so the offending is out of view. A tailored and targeted Customs offence would cover all these possibilities so that Customs is able to investigate and prosecute this type of offending.



13. The CEA has a few offences with lower fines or prescribed as infringement offences (\$400 fine for an individual) that can be used in some situations to prosecute. However, these do not proportionately reflect the seriousness of the harm caused by this type of offending.
14. Customs can, in some cases, successfully prosecute trusted insiders for the specific commodity imported (e.g. under the Misuse of Drugs Act 1975), but this can be much harder for Customs to prove, as this requires a link to the goods. Another alternative is to charge people using generically worded offences in the Crimes Act 1961 that might cover the behaviour involved, but Customs cannot use its investigative powers to specifically gather evidence of non-Customs offending<sup>3</sup>. Police must become involved for this to happen.
15. Currently, in situations where Customs is unable to connect goods directly to a person there is a chance they will not be prosecuted despite having played a role in criminal activity. This can be for two reasons. First, when there is no Customs offence involved, or second where offending may be investigated and prosecuted under another Act such as the Crimes Act, Customs does not have the necessary authority to investigate, and Police may not have the resources available at the time to involve themselves in an

<sup>3</sup> For example, Customs cannot get a search warrant in relation to an offence under the Crimes Act 1961.

investigation. Customs needs its own suitable offence to assist investigative activity when deliberate indirect offending like this arises.

16. A specifically tailored offence would allow Customs to capture offending in all situations where someone is not directly associated with illicit goods but are facilitating their importation.

**What objectives are sought in relation to the policy problem?**

17. The objective is to contribute to the government's law enforcement objective to combat TSOC through reducing the ability of TSOC groups to infiltrate legitimate supply chains to cause harm to New Zealand and its interests.

**What consultation has been undertaken?**

18. The options analysed in this RIA have been consulted with the Department of Prime Minister and Cabinet, the Ministry of Justice, the Ministry of Business Innovation and Employment (New Zealand Immigration Service), the New Zealand Security Intelligence Service, the New Zealand Police, the Ministry for Primary Industries, and the Ministry of Defence.
19. Targeted consultation with industry has been undertaken. Industry was broadly supportive of the proposal. They noted that they are also very concerned about insider threat behaviour within the supply chain.

## Section 2: Assessing options to address this gap

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

20. The criteria used to compare options to the status quo are:
- deterrence
  - fit-for-purpose
  - proportionate to the risk
  - effective means to counter behaviour through prosecutions.
21. All the criteria have equal weighting.

### What scope will options be considered within?

22. The options being considered are legislative as there are no feasible non-regulatory alternatives to address this problem.

### What options are considered?

23. The Ministry of Justice was consulted on the scope of the offence and on the proposed penalty levels to apply. This influenced the design of options through comparison with similar offending in domestic legislation, which then helped to establish the penalty levels for the preferred option.

#### Option one - status quo

24. This option would retain the gap in Customs' offence regime and limit Customs' ability to deter and prosecute criminal activities that aid in facilitating the movement of illicit goods across the border.
25. There are a range of behaviours that constitute trusted insiders' behaviours. If those behaviours are perpetuated by someone who is not the import or exporter, then there are limited options to deal with this. Currently there are two options available:
- decide whether they have committed an existing Customs offence, and whether the related penalty reflects the seriousness of the behaviour, and
  - decide whether this should be dealt with under the Crimes Act 1961 and warrants getting Police involved.
26. There was consideration as to whether Customs could work with Police to close this gap, however operational realities (eg resource constraints) make this inadequate.

#### Option two – inclusion of an offence in the CEA for deliberately circumventing Customs controls (preferred option)

##### Features of the option

27. This option would establish a mens rea<sup>4</sup> offence under the CEA for deliberate offending behaviour related to the circumvention of Customs controls.

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<sup>4</sup> Mens rea refers to the intention or knowledge of offending. It requires the prosecution to prove that the defendant committed a criminal act and that they committed the act deliberately and knowingly.

28. The creation of the offence would enable Customs to exercise its full range of enforcement powers to investigate offending (including powers of search and the requirement to produce documents).
29. This offence would have the following penalties attached:
  - a. imprisonment of up to 5 years' and/or,
  - b. a fine not exceeding:
    - i. \$20,000 for an individual, or
    - ii. \$100,000 for a body corporate.
30. The fine penalty levels have been aligned with the proposed new offence for failing to investigate non-compliance proposal in the "Strengthening supply chain security through Customs-controlled areas to combat organised crime" RIS.
31. Imprisonment is justified in this circumstance due to the intentionality. The intentionality element of a crime (also known as mens rea) refers to the mental state of the offender at the time of committing the offence. This mental state needs to be proven for a person to be held responsible for the crime.

#### How do the options compare to the status quo

|                                             | Option one – status quo                                                                                                                                                                                    | Option two – addition of new offence for deliberately circumventing Customs controls (preferred)                                                                                                                                                                                                                                                                      |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Deterrence</b>                           | 0<br>Currently there is little deterrence effect as it is difficult to investigate and prosecute trusted insiders who are not directly related to goods under the current offence regime.                  | ++<br>This option will create a deterrence effect for trusted insiders by ensuring the associated penalty is at a higher level than the existing alternative offences.<br><br>This option also provides transparency around the unacceptability of this type of behaviour, which will support Customs' educational and outreach work with supply chains participants. |
| <b>Fit-for-purpose</b>                      | 0<br>The current offence regime leaves a gap for the kind of behaviour Customs is trying to investigate and prosecute when it comes to trusted insiders.                                                   | ++<br>This option will allow Customs to capture offending behaviour that Customs is seeing but is not currently being captured in the current offence regime if the offending is not connected to the goods.                                                                                                                                                          |
| <b>Proportionate to Risk</b>                | 0<br>The current offences and related penalties that Customs is sometimes able to charge under are not proportionate to the risk Customs is seeing as it does not capture deliberate offending adequately. | ++<br>This option is proportionate to the risk Customs is seeing as the offence and penalty are targeted toward the type of behaviour Customs is seeing at the border. By having the power to investigate Customs can capture more offending.                                                                                                                         |
| <b>Effective means to counter behaviour</b> | 0<br>The current offence and penalty regime is not an effective means to counter                                                                                                                           | ++<br>This option ensures Customs' offence regime remains effective within the current border                                                                                                                                                                                                                                                                         |

|                             | Option one – status quo                                                                                                                                                                 | Option two – addition of new offence for deliberately circumventing Customs controls (preferred)                                                                                    |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>through prosecutions</b> | behaviour through prosecutions as often Customs is unable to charge appropriately and if Customs is able to, they are strict liability <sup>5</sup> and therefore have lower penalties. | environment. Customs expects the preferred option will bring benefits to Customs' targeting of TSOC activities at the border. This option also aligns with other similar offending. |
| <b>Overall assessment</b>   | 0<br>This option does not address the gap in the CEA offence regime or meet the policy objective.                                                                                       | ++<br>This option ensures Customs has the right offences to capture the type of criminal behaviour, which will allow us to better tackle TSOC.                                      |

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

32. Option two would best address the problem, meet the policy objective, and deliver benefits.
33. Option two addresses the gap in the CEAs offence regime and in doing so it ensures that Customs is better able to contribute to the government's law enforcement objective to combat TSOC through reducing the ability of TSOC groups to infiltrate legitimate supply chains to cause harm to New Zealand and its interests.

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

34. Yes.

**Marginal costs, benefits and impacts of the preferred option**

| Affected groups                                                                    | Comment                                                                                                                         | Impact                                                                       | Evidence Certainty                                                                                        |
|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| <b>Additional costs of the preferred option compared to taking no action</b>       |                                                                                                                                 |                                                                              |                                                                                                           |
| Persons who are deliberately circumventing Customs' controls (eg trusted insiders) | <b>Ongoing</b> – increases the probability of being prosecuted for persons who are deliberately circumventing Customs' controls | <b>Medium to High</b> – legal defence costs and a potential for imprisonment | <b>Low</b> – it is not possible to predict how many persons will be prosecuted under the proposed offence |

<sup>5</sup> Strict liability is when the prosecution is not required to prove that the defendant knowingly or deliberately committed a crime.

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|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Customs                                                                         | <b>Ongoing</b> – cost of investigation and enforcement of offences                                                     | <b>Medium</b> – prosecutions can cost between \$10,000 and \$50,000                                                                                                                                                                                                                                                                            | <b>Low to medium</b> – Customs expects there will be an increase in overall prosecution costs, but this is difficult to quantify |
|                                                                                 | <b>One-off</b> – making legislation and updating operational policies and procedures                                   | <b>Low</b> - costs can be met from within baseline                                                                                                                                                                                                                                                                                             | <b>High</b>                                                                                                                      |
| Justice system                                                                  | <b>Ongoing</b> – the inclusion of a new offence may lead to increased court costs and increased costs of imprisonments | <b>Low</b> – the number of additional offenders expected to be prosecuted is low, noting that there is limited information to confidently forecast impacts<br><br>An increase in deterrence may also reduce the overall level of activity by TSOC groups (possibly encouraged and supported by an initial increase in successful prosecutions) | <b>Low</b> – there is limited information to confidently forecast impacts                                                        |
| <b>Total monetised costs</b>                                                    | n/a                                                                                                                    | n/a                                                                                                                                                                                                                                                                                                                                            | n/a                                                                                                                              |
| <b>Non-monetised costs</b>                                                      | Largely <b>ongoing</b>                                                                                                 | <b>Low</b> costs to government but <b>high</b> impact on offenders                                                                                                                                                                                                                                                                             | <b>Low to Medium</b>                                                                                                             |
| <b>Additional benefits of the preferred option compared to taking no action</b> |                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                  |
| General public                                                                  | <b>Ongoing</b> – increased possibility of detecting and disrupting offenders (eg trusted insiders) and deters          | <b>High</b> – costs and negative impacts of offending on society are well understood                                                                                                                                                                                                                                                           | <b>Low to Medium</b> – limited understanding of the deterrent value of the                                                       |

|                                                                           |                                                                                                                                             |                                                                                                                      |                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                           | involvement in offending which reduces the potential for social harm                                                                        |                                                                                                                      | offence and depends on successful prosecutions                                                                                                                                                                          |
| Customs                                                                   | <b>Ongoing</b> – will improve Customs’ ability to tackle TSOC activity at all levels                                                        | <b>High</b> – will assist make it more difficult for trusted insiders to move goods across the border undetected     | <b>Low to Medium</b> – limited understanding of the deterrent value of the offence and depends on how TSOC groups respond                                                                                               |
| Supply chain participants – eg ports and airports and transport operators | <b>Ongoing</b> – reduces TSOC groups’ ability to infiltrate and corrupt supply chains                                                       | <b>High</b> – costs and negative impacts of corruption on business operators are well understood                     | <b>Low to medium</b> – limited understanding of the deterrent value of the offence and depends on how TSOC groups respond                                                                                               |
| Wider government                                                          | <b>Ongoing</b> – will assist with maintaining confidence in our trusted trader status and reputation as a relatively corruption-free nation | <b>Medium</b> – impacts on the costs of doing trade and rate of intervention at overseas borders are well understood | <b>Low to Medium</b> – border intervention rates are monitored, and Global Corruption Index is reported annually<br><br>But impossible to isolate this one measure’s impact from others aimed at securing supply chains |
| <b>Total monetised benefits</b>                                           | n/a                                                                                                                                         | n/a                                                                                                                  | n/a                                                                                                                                                                                                                     |
| <b>Non-monetised benefits</b>                                             | <b>Ongoing</b>                                                                                                                              | <b>Medium to High</b><br><br>Benefit realisation is at risk through TSOC                                             | <b>Low to Medium</b><br><br>There is limited understanding of the deterrent                                                                                                                                             |

|  |  |                                  |                                                                                                                                            |
|--|--|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | groups adapting their behaviour. | value of the offence<br><br>There are no real ways to isolate this one measure's impact from other measures aimed at securing supply chain |
|--|--|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|

PROACTIVELY RELEASED

## Section 3: Delivering an option

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### How will the proposal be implemented?

35. This change is a part of a package of changes being proposed in the Customs and Excise (Border Security) Amendment Bill.
36. Changes to the CEA are required for implementation. This is expected to be completed by late-2026.
37. Customs will be required to make necessary changes to operational procedures and practice and update training material for Customs officers.
38. The proposed new offence 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?

39. The CEA is subject to Customs' ongoing regulatory stewardship function as the agency responsible for administration of the CEA.
40. Customs will need to monitor investigations made under this offence to ensure that they do not overlap with Police operations.