



## Biosecurity Amendment Act 2012

Public Act    2012 No 26  
 Date of assent    5 April 2012  
 Commencement    see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Biosecurity Amendment Act 2012.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**3 Principal Act amended**

This Act amends the Biosecurity Act 1993.

**4 New headings and sections 41A to 41I inserted**

The following headings and sections are inserted after section 41:

*“Definitions for information-sharing provisions*

**“41A Definitions**

In this section and sections 41B to 41I, unless the context otherwise requires,—

“**access**, in relation to any information, means search, inspect, copy, process, analyse, manipulate, receive, or otherwise make use of the information in a way that is consistent with the purpose for which access has been allowed

“**agency** includes a government department or Crown entity

“**biosecurity-related border management function** means—

“(a) any function, duty, or power imposed or conferred on the Ministry by or under this Part:

“(b) any other function, duty, or power imposed or conferred on the Ministry by or under this Act that is necessary—

“(i) to achieve the purpose of this Part; or

“(ii) for the administration of this Part:

“(c) any function, duty, or power imposed or conferred on the Ministry by or under any of the following Acts in relation to the effective management of risks associated with the movement of goods, persons, or craft into or out of New Zealand:

“(i) the Food Act 1981:

“(ii) the Hazardous Substances and New Organisms Act 1996:

“(iii) the Agricultural Compounds and Veterinary Medicines Act 1997:

“(iv) the Animal Products Act 1999:

“(v) the Wine Act 2003:

“(vi) any other Act that is specified by the Governor-General, by Order in Council made under section 165A, to be an Act for the purposes of this definition

“**border information**—

“(a) means information—

“(i) that is required to be supplied to the Ministry or the Customs by or under this Act or the Customs and Excise Act 1996, or both, for a border protection purpose; or

“(ii) that is otherwise lawfully supplied or collected for a border protection purpose; and

“(b) includes, without limitation, information about—

“(i) goods, persons, or craft:

“(ii) import or export transactions:

“(iii) importers or exporters; and

“(c) also includes data or information that is derived from, or related to, any information referred to in paragraphs (a) and (b) or any analysis of that information

“**border protection purpose** means any lawful purpose relating to, or connected with, the performance or exercise of either or both of the following, as the case may be:

“(a) a biosecurity-related border management function:

“(b) a customs-related border management function

“**chief executive** means the chief executive of the Customs

“**computer system**—

“(a) means—

- “(i) a computer; or
  - “(ii) 2 or more interconnected computers; or
  - “(iii) any communication links between computers or from computers to remote terminals or other devices; or
  - “(iv) 2 or more interconnected computers combined with any communication links between computers or from computers to remote terminals or other devices; and
  - “(b) includes any part of the items described in paragraph (a) and all related input, output, processing, storage, software, or communication facilities, and stored information
- “**Customs**—
- “(a) means the New Zealand Customs Service; and
  - “(b) includes the chief executive and any Customs officer
- “**customs-related border management function** means any function, duty, or power imposed or conferred on the Customs by or under the Customs and Excise Act 1996 that is necessary—
- “(a) to achieve the purpose of that Act; or
  - “(b) for the administration of that Act
- “**Joint Border Management System** or **JBMS** means an integrated border management computer system that—
- “(a) is designed for the collection, storage, and use of border information by the Ministry and the Customs; and
  - “(b) is administered by, and under the control of, the Customs
- “**Ministry** includes—
- “(a) the Director-General; and
  - “(b) any inspector appointed under section 103.

*“Interim arrangements for information sharing*

**“41B Purpose of sections 41C to 41E**

The purpose of sections 41C to 41E is to support certain interim information-sharing measures (relating to joint border management initiatives between the Ministry and the Cus-

toms) that are required to be in place until the JBMS becomes operational by allowing—

- “(a) the Ministry or an agency appointed under section 41C to collect or store any border information:
- “(b) the Customs to access that border information for a customs-related border management function.

**“41C Interim collection of border information**

- “(1) The Ministry may—
  - “(a) collect any border information:
  - “(b) store any border information.
- “(2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 2 or 3 of the Privacy Act 1993.
- “(3) The Minister may appoint any agency (in addition to, or instead of, the Customs) to exercise any of the powers conferred on the Ministry by subsection (1).

**“41D Requirement by or under this Act to supply border information is complied with if information is supplied to Customs or other agency**

- “(1) A person must be taken to have complied with a requirement by or under this Act to supply any border information to the Ministry if, instead of to the Ministry, the person supplies the border information to—
  - “(a) the Customs, for the purposes of, and in accordance with, section 282F(1) of the Customs and Excise Act 1996:
  - “(b) an agency appointed under section 41C(3), for the purposes of, and in accordance with, section 41C(1) of this Act or section 282F(1) of the Customs and Excise Act 1996.
- “(2) However, subsection (1) does not apply if the Director-General has given the person a written notice requiring the border information to be supplied to the Ministry instead of to the Customs or an agency appointed under section 41C(3).

**“41E Interim access to border information**

- “(1) The Director-General may, in accordance with a written agreement entered into by the Director-General and the chief executive, allow the Customs to access any border information that was or is collected or stored before, on, or after the commencement of this section.
- “(2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 10 or 11 of the Privacy Act 1993.
- “(3) An agreement must state—
- “(a) the purpose of the agreement; and
  - “(b) the border information that can be accessed; and
  - “(c) the conditions subject to which the border information will be accessed; and
  - “(d) how the Customs will use the border information (including the limits on any further disclosure by the Customs); and
  - “(e) the method and form of access.
- “(4) An agreement may be varied by the Director-General and the chief executive in writing.
- “(5) The Director-General and the chief executive must consult the Privacy Commissioner before entering into or varying an agreement.
- “(6) To avoid doubt, nothing in subsection (1) limits or prevents the Customs from carrying out an analysis of any border information to which it has access under that subsection for the purpose of examining risk patterns or risk profiles in relation to any or all of the following:
- “(a) goods, persons, or craft:
  - “(b) import or export transactions:
  - “(c) importers or exporters.

**“41F Expiry of sections 41B to 41E and agreements made under section 41E**

Sections 41B to 41E and any agreement made under section 41E expire, or must be taken to have expired, on the date of expiry of sections 282E to 282H of the Customs and Excise Act 1996 (as provided for in section 282I of that Act).

*“Information sharing for joint border  
management*

**“41G Collection of border information**

- “(1) The Ministry may—
- “(a) collect any border information:
  - “(b) store any border information in the JBMS.
- “(2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 2 or 3 of the Privacy Act 1993.
- “(3) The Minister may appoint any agency (in addition to, or instead, of the Customs) to exercise any of the powers conferred on the Ministry by subsection (1).

**“41H Requirement by or under this Act to supply border information is complied with if information is supplied to Customs or other agency**

- “(1) A person must be taken to have complied with a requirement by or under this Act to supply any border information to the Ministry if, instead of to the Ministry, the person supplies the border information to—
- “(a) the Customs, for the purposes of, and in accordance with, section 282J(1) of the Customs and Excise Act 1996:
  - “(b) an agency appointed under section 41G(3), for the purposes of, and in accordance with, section 41G(1) of this Act or section 282J(1) of the Customs and Excise Act 1996.
- “(2) However, subsection (1) does not apply if the Director-General has given the person a written notice requiring the border information to be supplied to the Ministry instead of to the Customs or an agency appointed under section 41G(3).

**“41I Ministry may access border information**

- “(1) The Ministry may access any border information stored in the JBMS that is needed for, or relevant to, a biosecurity-related border management function.

- “(2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 10 of the Privacy Act 1993.
- “(3) Subsections (1) and (2) apply to any border information stored in the JBMS, whether the border information was or is collected—
  - “(a) before, on, or after the commencement of this section; or
  - “(b) by an agency appointed under section 41G(3).
- “(4) To avoid doubt, nothing in subsection (1) limits or prevents the Ministry from carrying out an analysis of any border information to which it has access under that subsection for the purpose of examining risk patterns or risk profiles in relation to any or all of the following:
  - “(a) goods, persons, or craft:
  - “(b) import or export transactions:
  - “(c) importers or exporters.”

**5 New section 165A inserted**

The following section is inserted after section 165:

**“165A Regulations relating to definition of biosecurity-related border management function in section 41A**

The Governor-General may, by Order in Council, make regulations specifying any Act to be an Act for the purposes of the definition of **biosecurity-related border management function** in section 41A.”

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**Legislative history**

6 March 2012	Divided from Customs and Excise (Joint Border Management Information Sharing and Other Matters) Amendment Bill (Bill 200–2) by committee of the whole House as Bill 200–3B
27 March 2012	Third reading
5 April 2012	Royal assent

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This Act is administered by the Ministry of Agriculture and Forestry.

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