

Schedule 5

in accordance with section 315 of the Customs and Excise Act 2018

Terms & Conditions of use of the Customs database by Authorised Persons

- 1.1. This direct access agreement (**Schedule 5**) is entered into by the Minister of Police and the Minister of Customs and sets out the terms and conditions on which access to Customs database is granted by the Comptroller of the New Zealand Customs Service (**Customs**) to the Commissioner of Police (**Police**) (**the parties**).

2. Introduction

- 2.1. This is Schedule 5 to the Memorandum of Understanding between the New Zealand Customs Service and the New Zealand Police signed by the Comptroller of Customs and the Commissioner of Police in 2016 (**MOU**).
- 2.2. Schedule 5 concerns Police direct access to information held by Customs and is made in accordance with section 315 of the Customs and Excise Act 2018 (**the Act**). Direct access by Police to Customs' database may only occur in accordance with the terms of Schedule 5.
- 2.3. Schedule 5 sets out the responsibilities of the parties and the terms and conditions upon which Police access to the Customs database is granted.

3. Background

- 3.1. Police require access to the Customs database for the purposes of creating, amending and cancelling Border Alerts not only for Police criminal offence related matters, but also on behalf of other New Zealand agencies, for example; Ministry of Justice for Court orders for children not to be removed from New Zealand; Parole Board; the Serious Fraud Office; Inland Revenue; Ministry of Health for special patients; and to locate, detain and/or arrest people under various related enactments.
- 3.2. Border Alerts created and managed by Police in accordance with Schedule 5 trigger actions taken by Customs officers in relation to the subject of the alert, pursuant to section 208 of the Act.

4. Definitions

- 4.1. The terms relevant to Schedule 5 are:

- 4.1.1. **Authorised person** means a Police officer authorised pursuant to paragraph 10.2 of Schedule 5 who has a legitimate need to access the Customs database in order to carry out the functions set out at paragraph 7.
- 4.1.2. **Border Alert** means an alert entered into the Customs database that will trigger at the New Zealand border area, when the subject of the alert attempts to depart or enter New Zealand. Examples of situations for which border alerts are needed include (but not limited to):
- 4.1.2.1. **Child custody matters:** Where a Court has ordered that a child under 16 years old may not be removed from New Zealand.
- 4.1.2.2. **Criminal and corrections matters:** Where a person is wanted for arrest pursuant to a warrant; for having breached their bail or parole conditions by attempting to leave New Zealand; or for serious criminal offending.
- 4.1.2.3. **Mental health cases:** Cases involving Special and Restricted Patients under the Mental Health (Compulsory Assessment and Treatment) Act 1992 care who are not allowed to leave New Zealand.
- 4.1.3. **Contact Persons** for each party set out at paragraph 20 of Schedule 5.
- 4.1.4. **Customs database** means the Customs Modernisation system (CusMod), including;
- 4.1.4.1. All of its components, including software, underlying data repositories, and any system interface required to access the database information; or
- 4.1.4.2. Any replacement database that fulfils similar functions.
- 4.1.5. **Customs officer** means a person appointed by the Comptroller of Customs as a Customs officer, or any other person employed by the Comptroller of Customs and who is declared, whether at the time of appointment or otherwise, by the Comptroller of Customs to be a Customs officer for the purposes of the Act.
- 4.1.6. **INTERPOL** means the International Criminal Police Organisation, which is an organisation that promotes international cooperation in the prevention, detection and suppression of crime.
- 4.1.7. **Police officer** means any employee of the New Zealand Police, as well as secondees or contractors working on behalf of the New Zealand Police.

5. Particular type of information that may be accessed

- 5.1. Police may access an individual's travel movements and identity information held in the Customs database, only to the extent necessary to manage the Border Alert function as set out in paragraph 7.
- 5.2. Access to the Customs database is technologically restricted to limit the information capable of being accessed by Police under Schedule 5.

6. The particular purposes for which the information is accessed

- 6.1. Schedule 5 enables Authorised persons at Police to directly access certain specific information stored in the Customs database for the purpose of assisting the Police to carry out its functions related to, or involving the prevention, detection, investigation, prosecution, or punishment of offences and the protection of public health and safety.
- 6.2. Specifically Schedule 5 enables Authorised persons to directly access the Customs database for the purposes of:
 - 6.2.1. Creating, amending and cancelling Border Alerts related to monitoring and enforcing travel restrictions on persons, including Border Alerts managed by Police on behalf of other agencies; and
 - 6.2.2. Creating, amending and cancelling Border Alerts related to monitoring travel movements of persons subject to criminal offence related matters; and
 - 6.2.3. facilitating international Police cooperation through INTERPOL.

7. The particular functions being, or to be, carried out by Police for which access is required

- 7.1. The specific functions being carried out by Police for which access is required are:
 - 7.1.1. the monitoring and enforcement of travel restrictions imposed by an order of a New Zealand Court or tribunal and the New Zealand Parole Board; and
 - 7.1.2. locating and arresting fugitives crossing international borders and locating missing persons in accordance with New Zealand's international obligations, for example under the Hague Convention on the Civil Aspects of International Child Abduction.
- 7.2. Access to Customs' database under Schedule 5 is limited to Authorised persons for the purposes of:
 - 7.2.1. creating, amending and cancelling Border Alerts; and

7.2.2. conducting checks to confirm the accuracy of any information in the process of creating, amending or cancelling any Border Alert.

7.3. Authorised persons must only access information that is required to fulfil the functions set out at paragraph 7.1 and must not access any information that is designated by Customs as "Restricted I" or "Restricted II", except in such specific instances as may be approved in writing by a Supervising Customs Officer or Customs Technical Specialist, Intelligence or a Supervising Customs Officer or Customs Technical Specialist, Customs Integrated Targeting and Operations Centre (ITOC).

7.4. Any amendment or cancellation of Border Alerts carried out by Authorised persons must be limited to those Border Alerts which have been created by or on behalf of the New Zealand Police. All other alerts may only be amended or cancelled with the permission of either a Supervising Customs Officer or a Customs Technical Specialist, ITOC.

7.5. Amendment and cancellation of Border Alerts must be in accordance with all applicable New Zealand Police policies and will be limited to those Border Alerts which have been created by or on behalf of the New Zealand Police.

8. Mechanism by which the Customs database is accessed

8.1. Border Alerts are to be created, amended or cancelled in the Customs database through dedicated terminals located in the Interpol Office, Police National Headquarters, and accessible only to Authorised persons.

9. How the information accessed will assist in the carrying out of the particular function

9.1. When a Border Alert is triggered by a person attempting to cross the border, Customs officers interact with the subjects of those Border Alerts as instructed and in accordance with section 208 of the Act.

9.2. As a result of that interaction with Customs officers, Police are able to carry out their purposes as set out in paragraph 6.

10. The positions or designations of the persons in the government agency who may access the Customs database

10.1. Access to the Customs database under this agreement is limited to Authorised persons solely for the functions specified in paragraph 7 where access is required to carry out those functions and is in accordance with all applicable Police policies.

10.2. The parties will maintain an up-to-date and accurate list of Authorised persons, which will be held by the Contact person for each party.

10.3. Prior to accessing the Customs database, all Authorised persons must:

- 10.3.1. Agree to Customs conducting a search of the Customs database on users;
- 10.3.2. Complete training on the use and operation of the Customs database;
- 10.3.3. Complete training delivered by Customs regarding the legal, privacy and policy obligations relating to access and use of the Customs database; retention, disclosure of, and record-keeping in relation to the information accessed;
- 10.3.4. Read this agreement and sign the Declaration at Annex 6 to declare that they have understood and will comply with their obligations.
- 10.4. Police must keep all signed Declarations and provide copies to Customs for auditing purposes if requested by Customs.
- 10.5. Customs may revoke the access of any Authorised person at any time.
- 10.6. Authorised persons must only be Police officers from the team or teams at Police that perform the function of managing border alerts.

11. Use of unique usernames and passwords by Authorised persons

- 11.1. Customs will issue each Authorised person with a unique system username and password which will enable them to access the Customs database.
- 11.2. In accordance with the Customs Security Manual and part 5 of the New Zealand Police Information Management, Privacy and Assurance Policy, Authorised persons must keep their unique username and password secure and not share it with any other person, including any other Authorised person, or any other Police officer.
- 11.3. If an Authorised person leaves Police or changes roles within Police, meaning that person no longer requires access to the Customs database, Police must notify Customs as soon as possible.
- 11.4. Police can request that Customs authorises new or additional Authorised persons.
- 11.5. Customs will create a new unique username and password for the new Authorised person.
- 11.6. As required by paragraph 10.2, the parties will amend the list of Authorised persons by removing the departing Authorised person and adding the new Authorised person.

12. Training requirements

- 12.1. Customs will provide appropriate training as per paragraphs 10.3.2 and 10.3.3 to all Authorised persons in the use and operation of the Customs database for the functions set out in paragraph 7 of Schedule 5.

- 12.2. Customs will maintain a record of all Authorised persons who have completed training to access the Customs database.
- 12.3. Police are responsible for maintaining a register of training received by Authorised persons.
- 12.4. All Authorised persons must participate in any further training as required by Customs, to maintain their status as an Authorised person.

13. Records to be kept in relation to each occasion on which the Customs database is accessed

- 13.1. The parties must ensure that an up-to-date and accurate record is kept of every instance in which the Customs database is accessed by a Police employee. This will include:
 - 13.1.1. every instance of a Police employee accessing the Customs database;
 - 13.1.2. the identity of the person who accessed the database;
 - 13.1.3. every Border Alert created, amended or cancelled; and
 - 13.1.4. the reason for the Police employee accessing the Customs database.
- 13.2. Records of the above information must be maintained in a way that can be audited by the parties.
- 13.3. Any records maintained by Police must be provided to Customs when requested for auditing purposes.

14. Audit and monitoring

- 14.1. The parties will develop a set of agreed procedures regarding record keeping and audit processes prior to the first audit being completed. This procedure will be managed by the Contact Person for each party.
- 14.2. Customs is responsible for initiating and leading a joint audit with Police of Police access, pursuant to Schedule 5. This audit must be undertaken at least once within the first year of the signing of Schedule 5, and then every second year following that.
- 14.3. Police are responsible for assisting Customs with the operation of any joint or additional audits as required.
- 14.4. The purpose of the joint audit is to confirm the safeguards in this agreement are operating and being implemented as intended. The joint audit also provides an opportunity to ascertain whether any practical issues have arisen regarding Police access of the Customs database and provides a mechanism to resolve these.

- 14.5. Customs will complete a report on the audit findings and provide that report to the Contact person at Police.
- 14.6. Where potential privacy incidents are identified, the parties will be jointly responsible for addressing those issues within a reasonable time period.
- 14.7. Where potential privacy incidents are identified and where the parties agree it is necessary they will, as part of investigating the incident, notify the Office of the Privacy Commissioner, and/or as required by any law.
- 14.8. In addition, Customs or Police may undertake internal monitoring by way of sampling of records at any time.
- 14.9. Additional audits can be undertaken if Customs or Police consider it necessary or desirable, including as a result of the sampling.

15. Safeguards to be applied for protecting particular information

- 15.1. Detailed operational safeguards for access to the Customs database are being developed and will be maintained by agreement between the parties. The parties will ensure that these safeguards are kept current and up to date as required and reflect any systems, legislative, policy or other changes.
- 15.2. General safeguards:
 - 15.2.1. All Authorised persons will have training prior to accessing the Customs database.
 - 15.2.2. All Authorised persons are subject to the Police Code of Conduct.
 - 15.2.3. All Authorised persons will sign a Declaration as per paragraph 10.3.4.
 - 15.2.4. All access by Authorised persons to the Customs database is subject to auditing to ensure compliance with this agreement.
- 15.3. Access to the Customs database:
 - 15.3.1. Only Authorised persons may access the Customs database.
 - 15.3.2. Authorised persons may only access the Customs database for the limited functions set out in paragraph 7.
 - 15.3.3. Border Alerts will be reviewed as required to ensure that any Border Alerts that cease to be relevant will be cancelled.

16. Requirements relating to the storage and disposal of disclosed information

- 16.1. All information accessed pursuant to Schedule 5 will be handled and stored strictly in accordance with any security endorsement, caveat (including any Government Security Classification) and the requirements set out in the Government's Protective Security Requirements (PSR), including the New Zealand Information Security Manual (NZISM).
- 16.2. Police may not copy any information that is accessed pursuant to Schedule 5 except for;
 - 16.2.1. the information required by paragraph 13.2 (record keeping requirements), and
 - 16.2.2. the Border alert number.
- 16.3. Any information copied pursuant to 16.2 will be handled and stored strictly in accordance with any security endorsement or caveat including any Government Security Classification, and the requirements set out in the PSR and NZISM.
- 16.4. Any information that is copied as per 16.2 above will be retained by the parties only for as long as required for the purposes for which it was obtained.
- 16.5. Subject to 16.3, disposal is subject to the requirements of the Public Records Act 2005 and any applicable disposal authorities under that Act, and any other legal requirements that may apply.

17. Disclosure by the parties to third party agency

- 17.1. Police may not disclose the information accessed via direct access to the Customs database to any third party, except as required for the purpose the Customs database was accessed.
- 17.2. If the Police receive a request for Customs' information accessed pursuant to Schedule 5, Police will forward that request to Customs.

18. Relationship with other legislation

- 18.1. Nothing in Schedule 5 affects Police's ability to request information under the other schedules in the MOU or under any other legislation.

19. Commencement review and termination

- 19.1. Schedule 5 shall come into effect on the date of signature. It remains in effect unless otherwise notified and agreed to by both parties.
- 19.2. The parties shall review Schedule 5 at intervals of no more than three (3) years.

- 19.3. Ministers are able to review Schedule 5 without the requirement to wait for three years.
- 19.4. Each party has the right to review at any time on providing 30 days' notice in writing.
- 19.5. All notices of review shall be in writing and sent to the Contact Persons.
- 19.6. If the outcome of the review is that a variation needs to be made to Schedule 5, the Privacy Commissioner must be consulted in accordance with section 315(3)(b) of the Act.
- 19.7. Schedule 5 may be terminated at any time by the Minister of Customs providing formal notice in writing to the Deputy Commissioner: National Operations at Police. The termination will take effect immediately after the notice is received by Police.

20. Contact Persons

- 20.1. Customs Contact Person – Senior Advisor, Strategic Coordination, Intelligence Investigations and Enforcement.
- 20.2. Police Contact Person – Manager: Interpol and PLO Desk.



Minister of Customs

Date: 9/12/18



Minister of Police

Date: 11 Dec 2018.

Annex 6

Declaration for Authorised Police Employees' Access to the Customs database

1. I confirm that I am employed by the Police and am an Authorised person as per paragraph 10 of Schedule 5 of the Memorandum of Understanding (**MOU**) between Customs and Police.
2. I acknowledge that I have read the MOU and Schedule 5 and understand my obligations in relation to both of these documents.
3. I will adhere to the obligations set out in Schedule 5 and act in accordance with any other operational guidance issued in line with it.
4. I acknowledge that I am responsible for all activity on any Customs database occurring on my individual account(s) once my username credential and password have been issued to me.
5. I will promptly notify my manager of any privacy breaches in accordance with Police Policy.
6. In addition, it is my responsibility to ensure the proper marking, storage, protection, and disposal of all non-public information to which I am given access as a result of my work with Police.

Authorised person:

Date:

Signature: _____

Manager Name:

Date:

Signature: _____