



# NOTICE OF SEIZURE OF GOODS UNDER CUSTOMS AND EXCISE ACT 1996

## Section 227, Customs and Excise Act 1996

CUSTOMS OFFICE: \_\_\_\_\_, New Zealand.

No. \_\_\_\_\_

(1) *Insert name of importer or other person known or believed to have an interest in the goods.*

To

(2) *Insert particulars of the goods seized.*

**Take Notice** that

(3) *State the provision of section 225 of Act that applies.*

*has/have* been seized on the \_\_\_\_\_ of \_\_\_\_\_ 20 as forfeited to the Crown under 225(1)(a)(v) of the Customs and Excise Act 1996 as being goods in respect of which an offence has been committed under section 209 of that Act, which relates to offences in relation to importation or exportation of prohibited goods.

(4) *Insert particulars as to cause of forfeiture.*

on the grounds that on the *(date)* you imported *(description of goods i.e. personal effects)* at which time *(description of objectionable material i.e. discs, laptop, phone)* was detained by the New Zealand Customs Service.

The *(description of objectionable material)* is/are considered objectionable in terms of section 2 of the Films, Videos, and Publications Classification Act 1993 in that they *(explain why objectionable)*.

The importation into New Zealand of *(description of goods)* is prohibited under section 54(1)(aa) of the Customs and Excise Act 1996 which states that it is unlawful to import all publications as defined in section 2 of the Films, Videos, and Publications Classification Act 1993 that are objectionable within the meaning of that Act in the hands of all persons and for all purposes; and all other indecent or obscene articles.

It is considered an offence has been committed under section *(209(1)(a)/209(1A)(a) which ever one applies)* of the Customs and Excise Act 1996, which relates to offences in relation to importation and exportation of prohibited goods;

The *(item)* is/are forfeited to the Crown under section 225(1)(a)(v) of the Customs and Excise Act 1996, which relates to offences in relation to importation of prohibited goods.

Section 225(3) of the Customs and Excise Act 1996 states the forfeiture of goods extends to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container, pallet or similar device, in or on which the goods are contained at the time of seizure. *(Use this if OM located on phones/laptops)*.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

John McLeod  
District Port Manager  
Wellington

## INFORMATION ON FORFEITURE AND SEIZURE OF GOODS

### INFORMATION ON FORFEITURE AND SEIZURE OF GOODS

The Customs officer who has seized the goods will provide any further information relating to the seizure. Alternatively, you can get information from the Customs office nearest to where the seizure occurred, including a copy of the Service's policy on forfeiture and seizure.

The following information is intended to provide a guide on steps that may be taken to recover goods which have been seized.

### APPLICATION FOR REVIEW OF SEIZURE

Section 231 of the Customs and Excise Act 1996 (the Act) provides that a person with an interest in seized goods can apply to the Chief Executive of the Customs Service for a review of the seizure. The application must be made within 20 working days of the seizure notice being given. In certain circumstances the Chief Executive may allow further time for an application to be lodged.

The application for review may be made for the following reasons:

- that there was no legal basis for seizure of the goods, and/or
- that in the relevant circumstances the applicant should be granted relief.

The written application must be addressed to the Chief Executive and include the grounds for the review and the address for the applicant. The applicant must establish their interest in the seized goods, and that their interest was acquired in good faith.

### DELIVERY OF GOODS SEIZED ON DEPOSIT OF VALUE

In some circumstances, section 229 of the Act allows Customs to release seized goods to the owner or other person from whom they were seized on the payment of a deposit. This deposit is a cash sum equal to the Customs value of the goods plus any duty payable on the goods (If the seized goods were excisable goods manufactured in New Zealand the value is calculated differently).

The money will be lodged in an interest bearing account, and is deemed to be substituted for the goods seized.

An application for delivery of seized goods under this provision must be made **URGENTLY** by writing to the Customs Service office nearest to where the seizure occurred. Approval or otherwise of such an application is discretionary. Urgency is important because delivery can only be given **BEFORE** condemnation (see below).

### DECISION ON REVIEW

The Chief Executive must make a decision on the review within 20 working days of receiving the application, or such further time that is reasonable. This decision may be one of the following to:

- dismiss the application, or
- disallow the seizure if there is no legal basis for it, or
- grant relief to the applicant (either conditionally or unconditionally) if it is deemed equitable to do so.

After making the decision, the applicant, any person who had been given a seizure notice, and any person who claims an interest in the goods, must be advised in writing the outcome of the decision. If the application is dismissed, reasons for the decision must be given. A person who is dissatisfied with the decision has the right to appeal the decision to a Customs Appeal Authority.

### RIGHT OF APPEAL TO CUSTOMS APPEAL AUTHORITY

If a person is dissatisfied with the decision on an application for review, including any condition that has been set, they can within 20 working days of the date of the decision, appeal to a Customs Appeal Authority.

Appeals must be made on Form 14 – *“Notice of Appeal to the Customs Appeal Authority”*, available from the Customs Service's website [www.customs.govt.nz](http://www.customs.govt.nz), or from your nearest Customs office. The appeal must be lodged along with the appropriate fee directly with the Customs Appeal Authority in Wellington.

## **CUSTOMS AND EXCISE ACT 1996**

The full text of the Customs and Excise Act 1996, and in particular the sections of that Act that are mentioned, can be viewed:

- on the Customs Service website <http://www.customs.govt.nz>
- at any Public Library
- at any Customs Office

## **WHY GOODS ARE FORFEITED AND LIABLE TO SEIZURE**

Section 225 of the Act sets out the reasons goods become forfeit. The first page of the Seizure Notice sets out, at point 3, the provision(s) of the section considered to be applicable in this instance.

## **THE ACT OF SEIZURE**

Section 226 of the Act provides that a Customs officer or member of the Police may seize any forfeited goods or any goods that he or she has reasonable cause to suspect are forfeited, wherever the goods are found in New Zealand.

Goods that are forfeited because they are prohibited goods may be seized at any time after the forfeiture has arisen, while other goods may be seized within two years after the forfeiture has arisen.

A Customs officer or member of the Police may use reasonable force to make the seizure and secure the goods.

*NOTE:* Where goods are forfeited and the goods are seized, the forfeiture relates back to the date of the act or event from which the forfeiture arose. This provision is contained in section 228 of the Act.

## **NOTICE OF SEIZURE**

Pursuant to section 227 of the Act, Customs must, as soon as is reasonable, give notice in writing of the seizure and the reasons for the seizure to any person known or believed to have an interest in the goods, or where that person is overseas, to their agent in New Zealand.

You are reading the notice given under this statutory requirement relating to the goods described in this notice.

## **CHIEF EXECUTIVE TO CONDUCT REVIEW**

On receipt of the application, the Chief Executive must conduct a review and consider:

- the application and any written submissions made by the applicant
- any statement, document information or matter that may assist to deal effectively with the review
- any supplementary information requested from the applicant.

## **MATTERS CONCERNING GRANT OF RELIEF**

Factors to be considered by the Chief Executive, under section 234 of the Act, include but are not limited to:

- The seriousness and nature of any act or omission giving rise to the seizure.
- Whether or not the person who is alleged to have done any act or omitted to do any act giving rise to the seizure has previously engaged in any similar conduct.
- Whether the seizure has arisen from, or is related to, a deliberate breach of the law.
- The nature, quality, quantity, and estimated value of the seized goods.
- The nature and extent of any loss or damage suffered by any person as a consequence of the seizure.
- Whether or not granting relief would undermine the purpose or objective of any import or export prohibition or restriction imposed by this Act.
- The effect of any other action that has been taken or is proposed to be taken in respect of any offence related to the seizure.

## DETERMINATION WHERE RELIEF GRANTED

The Chief Executive may decide to grant relief under any condition. These conditions may include, but are not limited to the following:

- that the goods are returned to the applicant or to another person who is entitled to them
- that the goods are sold and that the money is paid, in part or full, to one or a combination of the following:
  - (i) the applicant
  - (ii) any other person who has an interest in the goods
  - (iii) the Crown.

Any relief granted may be conditional on the applicant:

- paying to the Crown in respect of the goods or property a sum equal to the whole or part of:
  - (i) any costs or expenses incurred by the Customs
  - (ii) any duty not already paid
  - (iii) any duty already refunded
  - (iv) the value of the goods or property.
- having the goods modified, in a manner to make them unsuitable for unlawful purposes.
- paying for any costs incurred in modifying the goods.

## CONDEMNATION OF SEIZED GOODS

Dismissal of a review is taken as an order for condemnation of the goods to the Crown.

The order takes effect 20 working days after the advice of the decision, unless an appeal against the decision is lodged.

If no application for review is lodged, or an application is discontinued, the seized goods are automatically condemned to the Crown.

## CONDEMNATION OF GOODS SUBJECT TO APPEAL

If an appeal is discontinued, or the Customs Appeal Authority dismisses the appeal, the goods are condemned to the Crown.

## CONDEMNATION OF SEIZED GOODS ON CONVICTION

Usually when goods have become forfeited to the Crown under the Act there is an associated offence under the Act that has been committed. Section 236 of the Act provides that goods seized in respect of an offence are condemned to the Crown upon conviction of any person for that offence. The decision as to whether or not to prosecute a person for any offence is made quite independently of whether or not that person or any other person has applied for a review of the seizure. Lack of an application does not lead to less likelihood that there will be a prosecution, and the making of an application does not lead to a greater likelihood that there will be a prosecution.

However if a prosecution for such an offence does proceed and the person is convicted of that offence, the conviction has the effect of condemnation of any goods that have been seized in accordance with the Act.

The Court may however, subject to such conditions as it thinks fit, order restoration of the goods to the person from whom the goods were seized and, where such an order is made, the conviction does not have the effect of condemnation of those goods.

**NOTE:** The foregoing information is intended as a guide only. You may consider it prudent to consult your solicitor.

## EXTRACTS OF RELEVANT OFFENCE PROVISIONS OR PROHIBITION

### Films, Videos and Publications Classification Act 1993

#### Section 2 – Interpretation

**objectionable** has the meaning given to it in [section 3](#)

#### Section 3 – Meaning of objectionable

(1) For the purposes of this Act, a publication is **objectionable** if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

(1A) Without limiting subsection (1), a publication deals with a matter such as sex for the purposes of that subsection if—

- (a) the publication is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and
- (b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

(1B) Subsection (1A) is for the avoidance of doubt.

(2) A publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support,—

- (a) the exploitation of children, or young persons, or both, for sexual purposes; or
- (b) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct; or
- (c) sexual conduct with or upon the body of a dead person; or
- (d) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or
- (e) bestiality; or
- (f) acts of torture or the infliction of extreme violence or extreme cruelty.

(3) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with [section 23\(2\)](#) be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which, the publication—

- (a) describes, depicts, or otherwise deals with—
  - (i) acts of torture, the infliction of serious physical harm, or acts of significant cruelty;
  - (ii) sexual violence or sexual coercion, or violence or coercion in association with sexual conduct;
  - (iii) other sexual or physical conduct of a degrading or dehumanising or demeaning nature;
  - (iv) sexual conduct with or by children, or young persons, or both;
  - (v) physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain;
- (b) exploits the nudity of children, or young persons, or both;
- (c) degrades or dehumanises or demeans any person;
- (d) promotes or encourages criminal acts or acts of terrorism;
- (e) represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in [section 21\(1\)](#) of the Human Rights Act 1993.

(4) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with [section 23\(2\)](#) be given a classification other than objectionable, the following matters shall also be considered:

- (a) the dominant effect of the publication as a whole;
- (b) the impact of the medium in which the publication is presented;
- (c) the character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters;
- (d) the persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available;
- (e) the purpose for which the publication is intended to be used;
- (f) any other relevant circumstances relating to the intended or likely use of the publication.

### The Customs and Excise Act 1996

#### Section 54 – Prohibited imports

(1) It is unlawful to import into New Zealand—

- (a) any of the goods specified in Schedule 1; or
- (aa) all publications as defined in section 2 of the Films, Videos, and Publications Classification Act 1993 that are objectionable within the meaning of that Act in the hands of all persons and for all purposes; and all other indecent or obscene articles; or
- (b) goods the importation of which is prohibited by an Order in Council made under subsection (2).

**Section 209 – Offences in relation to importation or exportation of prohibited goods**

(1) Every person commits an offence who—

(a) imports into New Zealand or unships or lands in New Zealand goods the importation of which is prohibited by or under section 54;

(1A) Every person commits an offence who—

(a) is knowingly concerned in any importation, exportation, transportation, shipment, unshipment, or landing of an objectionable publication;

**Section 225 – Goods forfeited**

(1) The following goods shall be forfeited to the Crown:

(a) goods in respect of which an offence has been committed under—

(v) section 209 (which relates to offences in relation to importation or exportation of prohibited goods):

(3) The forfeiture of goods extends to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container, pallet or a similar device, in or on which the goods are contained at the time of seizure, importation, or exportation.