

**Reprint
as at 29 November 2016**



Maritime Security Act 2004

Public Act 2004 No 16
Date of assent 5 April 2004
Commencement see section 2

Contents

	Page
1 Title	4
Part 1	
Preliminary provisions	
2 Commencement	4
3 Purpose	4
4 Application	4
5 Interpretation	5
6 Act binds the Crown	9
Part 2	
Ship and port facility security	
<i>Designated Authority</i>	
7 Appointment of Designated Authority	9
8 Principal objectives of Designated Authority	9
9 Functions and duties of Designated Authority	9
<i>Chief executive</i>	
10 Functions and duties of chief executive	11
11 Chief executive may delegate certain functions and powers	11

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Transport.

12	When declaration of security required	12
13	Request for declaration of security	12
14	Alternative security agreements	13
15	Equivalent security arrangements	13
16	Chief executive must specify security levels for ships and port facilities	14
17	Chief executive must ensure provision of security level information	14
18	Chief executive must test security plans	15

Ship security

19	Appointment of company security officers	15
20	Masters and companies must comply with ship security levels	15
21	Ship security assessment	16
22	Ship security plans	16
23	Ship security plan approval	16
24	Amendments to approved ship security plans	17
25	Review of decisions to not approve ship security plans	17
26	Ship must have ship security plan on board	17
27	Ships required to have ship security systems	18
28	Chief executive must notify alert	18
29	Certificate must be held on board	18
30	Advice required of ships intending to enter ports	18
31	Control of ships in ports	19
32	Inspection of security plans	21
33	Costs of detention	21
34	Steps to take if ship does not comply with Act	22
35	Certain provisions do not apply if master withdraws intention to enter port	23
36	Additional requirements	23
37	Master's responsibilities for ship safety and security	24

Port security

38	Duties of port facility operators	25
39	Port facility security assessments	26
40	Port facility security plans	27
41	Port facility security plan approval	27
42	Amendments to approved port facility security plans	27
43	Review of decision not to approve port facility security plans	28

Part 3

Preventive security measures

44	Appointment of maritime security organisations	28
45	Designation of port security areas	28
46	Restrictions with respect to port security areas	29
47	Powers and duties of Minister to require screening and searching	30

48	Powers and duties of chief executive to require screening and searching	31
49	Duration of directions	32
50	Taking weapons on to ships or into port security areas	33
51	Screening and searching powers	33
52	Power to seize items	36
53	Costs of seizures	37
54	Persons who refuse to consent to be screened or searched	37
55	Search of persons refusing consent to be searched	38
56	Powers of arrest	39
57	Arrest of persons delivered to Police	39
58	Right of access to port security areas and ships	40
59	Chief executive may declare exclusion zones for ships	41
60	Duration of declarations	41
61	No person, craft, or vessel may enter or leave exclusion zones without authorisation	42

Part 4

Miscellaneous provisions

Maritime security documents

62	Acceptance of Convention documents	42
----	------------------------------------	----

Ceasing work

63	Employees may cease work if security level 3 specified	43
----	--	----

Appeal rights

64	Right of appeal to District Court	43
----	-----------------------------------	----

Offences

65	Offences by masters	43
66	Offences by companies	44
67	Offences by masters and companies	44
68	Failure to comply with control measures	44
69	Failure to comply with steps	45
70	Offences by port facility operator	45
71	Failure to provide satisfactory evidence of name and address or authorisation to be in port security area	45
72	Failure to leave port security area	45
73	Entering or leaving exclusion zone without authorisation	45
74	Personation or obstruction of authorised person	46
75	Defence	46

Regulations

76	Regulations	46
77	Exemptions from regulations	47
78	Minister may extend application of Act	48

78A	Orders are confirmable instruments	49
	<i>Miscellaneous</i>	
79	Inspections and audits	49
80	Instructions of chief executive under certain provisions that conflict with other instructions	50
81	Consequential amendments	50
	Schedule	52
	Consequential amendments to Maritime Regulations and Maritime Rules	

1 Title

This Act is the Maritime Security Act 2004.

Part 1 **Preliminary provisions**

2 Commencement

- (1) Sections 12, 13, 15, 16, 20, 26, 27, 29 to 36, and 38 come into force on 1 July 2004.
- (2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

3 Purpose

The purpose of this Act is to—

- (a) enable New Zealand to meet its obligations under the Convention arising from amendments to the Annex to the Convention; and
- (b) enhance ship and port security; and
- (c) prevent international terrorism.

4 Application

- (1) This Act applies to—
 - (a) the following types of ships:
 - (i) passenger ships, including high-speed passenger craft, engaged on international voyages; and
 - (ii) cargo ships, including high-speed craft, of 500 gross tonnage or more engaged on international voyages; and
 - (iii) mobile offshore drilling units that are within New Zealand continental waters; and

- (b) port facilities within the territorial limits or continental waters of New Zealand that serve a ship of a type specified in paragraph (a); and
 - (c) ships and port facilities identified under section 78.
- (2) This Act does not apply to—
 - (a) warships; or
 - (b) naval auxiliaries; or
 - (c) other ships that are—
 - (i) owned or operated by the Crown; and
 - (ii) used on non-commercial government service; or
 - (d) pleasure craft (as defined in section 2(1) of the Maritime Transport Act 1994).

Compare: Annex to the Convention, Chapter XI-2 r 2; Code, Part A s 3

5 Interpretation

In this Act, unless the context otherwise requires,—

authorised person means—

- (a) a maritime security officer; or
- (b) a constable; or
- (c) a Customs officer

certificate means a valid International Ship Security Certificate issued under section 9(1)(l) or a valid Interim International Ship Security Certificate issued under section 9(1)(l)

chief executive means the person who for the time being is the chief executive officer of the Designated Authority

Code means the International Code for the Security of Ships and of Port Facilities, consisting of Part A (the provisions of which are mandatory) and Part B (the provisions of which are recommendatory), as adopted, on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the Convention, and as may be amended by the International Maritime Organization, provided that—

- (a) amendments to Part A of the Code are adopted, are brought into force, and take effect in accordance with article VIII of the Convention concerning the amendment procedures applicable under the Annex of the Convention other than Chapter I of that Annex; and
- (b) amendments to Part B of the Code are adopted by the Maritime Safety Committee of the International Maritime Organization in accordance with its Rules of Procedure

company means the owner of the ship or any other organisation or person who has assumed the responsibility for the operation of the ship from the owner of

the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code

company security officer means the person designated by the company to—

- (a) ensure that—
 - (i) a ship security assessment is carried out; and
 - (ii) a ship security plan is developed, submitted for approval, implemented, and maintained; and
- (b) liaise with port facility security officers and the ship security officer

Convention means the International Convention for the Safety of Life at Sea, done at London on 1 November 1974; and includes—

- (a) the Annex and Appendix to that Convention; and
- (b) all amendments of that Convention; and
- (c) all protocols to that Convention

Customs officer has the same meaning as in section 2(1) of the Customs and Excise Act 1996

declaration of security means an agreement between a ship and a port facility, or another ship, with which it interfaces that specifies the security measures each must implement

Designated Authority means the authority appointed under section 7

high-speed craft means a craft capable of a maximum speed in metres per second equal to or exceeding—

$$3.7\sqrt[0.1667]{V}$$

where V is the displacement corresponding to the design waterline (m^3)

in writing means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax or email or other electronic means

International Safety Management Code means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted on 4 November 1993 by the International Maritime Organization by Resolution A.741(18), as amended from time to time by the International Maritime Organization

maritime security document means a document issued or approved by a party to the Convention for the purposes of the Code

maritime security officer means an employee of a maritime security organisation who carries out maritime security functions

maritime security organisation means an organisation appointed by the Governor-General by Order in Council under section 44

master has the same meaning as in section 2(1) of the Maritime Transport Act 1994

medical officer of health has the same meaning as in section 2(1) of the Health Act 1956

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

mobile offshore drilling unit means a mechanically propelled unit or vessel that is capable of engaging in drilling operations for the exploration for, or exploitation of, resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur, or salt

New Zealand continental waters has the same meaning as in section 222(1) of the Maritime Transport Act 1994

New Zealand ship has the same meaning as in section 2(1) of the Ship Registration Act 1992

oil tanker means an oil tanker as defined in regulation 1 of Annex 1 of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973

passenger ship means a ship that carries more than 12 passengers

port has the same meaning as in section 2(1) of the Maritime Transport Act 1994

port facility means a location, as determined by the chief executive, where the ship-port interface takes place, including areas such as anchorages, waiting berths, and approaches from seaward; and includes fixed and floating platforms

port facility operator means—

- (a) the owner of the port facility; or
- (b) if the owner is not responsible for the management of the port facility,—
 - (i) the manager of the port facility; or
 - (ii) any other person who is, for the time being, responsible for the management of the port facility

port facility security officer means the person designated by the operator of a port facility as responsible for the development, implementation, revision, and maintenance of the port facility security plan and for liaison with the ship security officer

port facility security plan means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units, and ship's stores within the port facility from the risks of a security incident

port security area means an area designated under section 45 as a port security area

recognised security organisation means an organisation with appropriate expertise in security matters and with appropriate knowledge of ship and port operations that is authorised under section 9(j)

security incident means any suspicious act or circumstance threatening the security of a—

- (a) ship; or
- (b) port facility; or
- (c) ship-port interface; or
- (d) ship-to-ship activity

security level means the quantification of the degree of risk that a security incident will be attempted or will occur

security level 1 means the level for which minimum appropriate protective security measures must be maintained at all times

security level 2 means the level for which appropriate additional protective security measures must be maintained for a period of time as a result of heightened risk of a security incident

security level 3 means the level for which further specific protective security measures must be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target

ship means every description of self-propelled boat or craft used in navigation, and includes—

- (a) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- (b) a submarine or other submersible;
- (c) a high-speed craft;
- (d) a mobile offshore drilling unit

ship-port interface means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods, or the provision of port services to or from the ship

ship security officer means the person on board the ship who is accountable to the master and designated by the company as responsible for the security of the ship, including the implementation and maintenance of the ship security plan, and for liaison with the port facility security officer

ship security plan means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship's stores, or the ship from the risks of a security incident

ship-to-ship activity means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another

ship's administration means the government of the State in which the ship is registered

suspicious act does not include the lawful exercise of any right to demonstrate, protest, or strike.

Compare: Annex to the Convention, Chapter XI-2 r 1; Code, Part A s 2

Section 5 **authorised person** paragraph (b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

6 Act binds the Crown

This Act binds the Crown.

Part 2

Ship and port facility security

Designated Authority

7 Appointment of Designated Authority

The Governor-General may, by Order in Council, appoint a Crown entity as the Designated Authority.

8 Principal objectives of Designated Authority

The principal objectives of the Designated Authority are to ensure that—

- (a) the chief executive undertakes the activities that the Designated Authority considers necessary for the effective implementation of the Code; and
- (b) its decisions and the actions of the chief executive are consistent with the Convention and the Code.

9 Functions and duties of Designated Authority

- (1) In furtherance of its principal objectives, the Designated Authority must ensure that the chief executive,—
 - (a) with respect to each port facility within the territorial limits or continental waters of New Zealand, ensures that—
 - (i) port facility security assessments are carried out, reviewed, and approved in accordance with section 39; and
 - (ii) port facility security plans are developed, implemented, and maintained in accordance with section 40 and approved in accordance with section 41; and
 - (b) with respect to New Zealand ships, ensures that—

- (i) ship security assessments are carried out, reviewed, and updated in accordance with section 21; and
 - (ii) ship security plans are developed, implemented, and maintained in accordance with section 22 and approved in accordance with section 23; and
- (c) specifies, in accordance with section 16, the appropriate security level for—
 - (i) port facilities within the territorial limits or continental waters of New Zealand; and
 - (ii) ships—
 - (A) registered in New Zealand; or
 - (B) using port facilities within the territorial limits or continental waters of New Zealand; or
 - (C) conducting ship-to-ship activities within New Zealand continental waters; and
- (d) approves any amendment to an approved ship security plan in accordance with section 24; and
- (e) specifies and communicates the measures that must be addressed in a port facility security plan or a ship security plan for each security level; and
- (f) determines—
 - (i) in accordance with section 12 whether a declaration of security is required; and
 - (ii) the requirements for any declaration of security; and
- (g) approves—
 - (i) any port security assessment carried out by a recognised security organisation in accordance with section 39; and
 - (ii) any port facility security plan in accordance with section 41; and
 - (iii) any amendment to an approved port facility security plan in accordance with section 41; and
- (h) exercises the control measures specified in section 31(1) or takes 1 or more steps under section 34(1)(b); and
- (i) for the purpose of providing further information, publishes standards and codes of practice; and
- (j) authorises recognised security organisations in accordance with regulations made under this Act; and
- (k) undertakes any other functions or duties specified in regulations made under this Act; and

- (1) issues certificates; and
 - (m) carries out the verification process necessary to issue certificates; and
 - (n) issues continuous synopsis records; and
 - (o) carries out any lawful direction of the Designated Authority.
- (2) In accordance with regulations made under this Act, the Designated Authority may approve—
 - (a) training courses relevant to the Convention or the Code; and
 - (b) the providers of those training courses.

Compare: Annex to the Convention, Chapter XI-2 r 10

Chief executive

10 Functions and duties of chief executive

The chief executive must—

- (a) discharge the functions and duties specified in section 9; and
- (b) carry out, execute, or act on any lawful direction given by the Designated Authority under this Act or regulations made under this Act.

11 Chief executive may delegate certain functions and powers

- (1) The chief executive, either generally or particularly, may delegate to any employee of the Designated Authority any of the chief executive's functions and powers under this Act or regulations made under this Act.
- (2) The chief executive may delegate any of his or her functions and powers under this Act or regulations made under this Act to a recognised security organisation with the exception of the following functions and powers:
 - (a) specifying the applicable security level for any port facility or ship; and
 - (b) approving—
 - (i) any port facility security assessment; or
 - (ii) any amendment to an approved port facility security assessment; or
 - (iii) any port facility security plan; or
 - (iv) any amendment to an approved port facility security plan; and
 - (c) exercising the control measures specified in section 31(1) or taking a step under section 34(1)(b); and
 - (d) specifying the requirements for a declaration of security.
- (3) A delegation—
 - (a) must be in writing; and
 - (b) must be given for a specified period but in any event is revocable at will; and

- (c) does not affect or prevent the performance of any function or the exercise of any power by the chief executive; and
 - (d) may not be delegated; and
 - (e) does not affect the responsibility of the chief executive for the actions of any person acting under the delegation.
- (4) A delegation under subsection (2) may not be made without the prior written consent of the Minister.

Compare: Code, Part A s 4.3; 1994 No 104 ss 443(1), 444(3), (4), (8), (9)

12 When declaration of security required

The chief executive may require a declaration of security if he or she is satisfied that the ship-port interface or ship-to-ship activity poses a risk to persons, property, or the environment.

Compare: Code, Part A s 5

13 Request for declaration of security

- (1) The master of a ship or the ship security officer may lodge a request with the port facility security officer, or with the master of another ship or the ship security officer of another ship for a declaration of security, or the modification of a declaration of security, if—
- (a) the ship is operating at a higher security level than the port facility or the other ship with which it is interfacing or intends to interface; or
 - (b) the ship—
 - (i) is registered in a State that is a party to the Convention; and
 - (ii) can cite an agreement on a declaration of security between that State and New Zealand covering certain international voyages or specific ships on those voyages; or
 - (c) a security incident involving the ship, or the port facility it is using or intends to use, has occurred; or
 - (d) the ship is at a port that is not required to have and implement an approved port facility security plan.
- (2) The master of a ship or the ship security officer may lodge a request with the master of another ship for a declaration of security or the modification of a declaration of security if that ship is conducting ship-to-ship activities with that other ship, being a ship that is not required to have and implement an approved ship security plan.
- (3) A port facility security officer may, before or during a ship-port interface, lodge a request with the master of a ship or the ship security officer for a declaration of security, or the modification of a declaration of security, if—
- (a) the port facility security plan identifies the ship-port interface as being susceptible to a security incident; or

- (b) the port facility is operating at a higher security level than the ship with which it is interfacing or intends to interface.

Compare: Code, Part A s 5

14 Alternative security agreements

- (1) If New Zealand has entered into an alternative security agreement in accordance with the Convention, the chief executive must supervise the alternative security arrangement for a ship or a port facility covered by that agreement.
- (2) A master of a ship covered by an alternative security agreement may not conduct any ship-to-ship activity with a ship not covered by that agreement unless that ship-to-ship activity is part of a search and rescue operation.
- (3) The chief executive must review each alternative security agreement—
 - (a) periodically—
 - (i) at an interval specified by the Minister; or
 - (ii) in the absence of a specification by the Minister, at an interval specified by the alternative security agreement under review; or
 - (b) in the absence of a specification by the Minister or by the alternative security agreement under review, every 5 years.
- (4) The review must take into account—
 - (a) the experience gained from the agreement; and
 - (b) any changes in the particular circumstances of the ships, port facilities, or routes covered by the agreement; and
 - (c) any changes in the assessed threats to the security of the ships, port facilities, or routes covered by the agreement.

Compare: Annex to the Convention, Chapter XI-2 r 11

15 Equivalent security arrangements

- (1) The chief executive may authorise a ship or group of ships registered in New Zealand to implement other security measures equivalent to those prescribed in this Act or regulations made under this Act if those security measures are at least as effective as those prescribed.
- (2) The chief executive may authorise a port facility or group of port facilities within the territorial limits or continental waters of New Zealand to implement other security measures equivalent to those prescribed in this Act or regulations made under this Act if those security measures are at least as effective as those prescribed.
- (3) If the chief executive authorises an equivalent security arrangement, the chief executive must report the particulars of that arrangement to the International Maritime Organization as soon as practicable.

- (4) Subsection (2) does not apply if the port facility or group of port facilities is covered by an alternative security agreement.

Compare: Annex to the Convention, Chapter XI-2 r 12

16 Chief executive must specify security levels for ships and port facilities

The chief executive must—

- (a) specify, as security level 1, security level 2, or security level 3, the security level of every—
 - (i) New Zealand ship; and
 - (ii) port facility within the territorial limits or continental waters of New Zealand; and
- (b) change the security level specification if the chief executive considers it necessary to reduce the risk of a security incident; and
- (c) periodically review, and update as necessary, any security level that the chief executive specifies.

Compare: Annex to the Convention, Chapter XI-2 r 3; Code, Part A ss 4.1, 7; 1994 No 104 s 55(8)

17 Chief executive must ensure provision of security level information

- (1) The chief executive must ensure the provision of—
- (a) security level information to—
 - (i) every New Zealand ship; and
 - (ii) any other ship intending to operate, or operating, within the territorial limits of New Zealand; and
 - (iii) every port facility within the territorial limits or continental waters of New Zealand; and
 - (b) updated security level information to any—
 - (i) New Zealand ship whose security level has been changed; and
 - (ii) other ship intending to operate, or operating, within the territorial limits of New Zealand if the ship's security level has been changed; and
 - (iii) port facility within the territorial limits or continental waters of New Zealand if the port facility's security level has been changed; and
 - (c) with respect to each security level 3 specification under section 16, appropriate instructions, as necessary, to—
 - (i) every affected New Zealand ship; and
 - (ii) any other ship affected intending to operate, or operating, within the territorial limits of New Zealand; and

- (iii) every affected port facility within the territorial limits or continental waters of New Zealand.
- (2) For the purpose of this section, the chief executive must provide the master of the ship with any information or instructions required under subsection (1), as the chief executive considers necessary, by any means of communication, whether or not of a permanent nature, that the chief executive considers appropriate in the circumstances.

Compare: Annex to the Convention, Chapter XI-2 r 3; Code, Part A ss 4.2, 7; 1994 No 104 s 55(8)

18 Chief executive must test security plans

- (1) The chief executive must, to the extent that he or she considers appropriate, test the effectiveness of—
 - (a) each approved port facility security plan; and
 - (b) any amendment to an approved port facility security plan; and
 - (c) each approved ship security plan of a New Zealand ship to which this Act applies; and
 - (d) any amendment to an approved ship security plan of a New Zealand ship to which this Act applies.
- (2) If, after testing, the chief executive is satisfied that a plan or an amendment to a plan is not effective, the chief executive may require an amendment to be—
 - (a) made to that plan or that amendment to a plan; and
 - (b) submitted to him or her for approval.

Compare: Code, Part A s 4.4

Ship security

19 Appointment of company security officers

A company must appoint company security officers in accordance with regulations made under this Act.

20 Masters and companies must comply with ship security levels

The master of a ship and the company must comply with any requirements specified in regulations made under this Act for the security level specified for that ship or class of ship—

- (a) before entering a port within the territorial limits or continental waters of New Zealand; and
- (b) while in a port within the territorial limits of New Zealand.

Compare: Annex to the Convention, Chapter XI-2 rr 3, 4; Code, Part A s 7

21 Ship security assessment

- (1) The company of a New Zealand ship must ensure that a security assessment of that ship is carried out by a person with the appropriate skills to evaluate the security of that ship, taking into account any requirements specified in regulations made under this Act.
- (2) A company may engage a recognised security organisation to carry out the security assessment of a New Zealand ship.
- (3) A ship security assessment must comply with any requirements prescribed in regulations made under this Act.
- (4) The company of a New Zealand ship must ensure that each ship security assessment is—
 - (a) periodically reviewed and updated, taking into account changing threats or minor changes in the ship; and
 - (b) if major changes take place to the ship, reviewed and updated as soon as practicable.

Compare: Code, Part A s 8

22 Ship security plans

- (1) The company of a New Zealand ship must—
 - (a) develop, implement, and maintain a ship security plan for the ship based on the ship security assessment of that ship; and
 - (b) update that ship security plan as required by a review of that plan under section 21(4).
- (2) A recognised security organisation may prepare the New Zealand ship security plan.
- (3) A ship security plan or amendments to a previously approved ship security plan must be approved by the chief executive before effect may be given to that plan or amendments to that plan.
- (4) The chief executive may engage a recognised security organisation to review and approve a ship security plan if that recognised security organisation has not been involved in the preparation of that ship's—
 - (a) security assessment; or
 - (b) security plan; or
 - (c) security plan amendments.

23 Ship security plan approval

The chief executive, or a recognised security organisation engaged under section 22(4), must approve a ship security plan or any amendment to the plan if it—

- (a) is consistent with the—

- (i) purposes of this Act; and
 - (ii) security assessment for that ship; and
- (b) complies with the—
 - (i) requirements of this Act; and
 - (ii) requirements prescribed in regulations made under this Act.

24 Amendments to approved ship security plans

- (1) An amendment to a ship security plan approved under section 23, or a change to any security equipment specified in a security plan approved under section 23,—
 - (a) must be at least as effective as those measures prescribed in this Act or regulations made under this Act; and
 - (b) may not be implemented unless the amendment or change is given written approval by the chief executive or a recognised security organisation engaged under section 22(4).
- (2) The master and the company must ensure that the written approval is—
 - (a) held on board the ship; and
 - (b) presented when required by the chief executive.
- (3) If written approval is given for a temporary amendment to an approved ship security plan or for a temporary change to any security equipment specified in an approved plan, once the original approved measures or equipment are reinstated, retention of the written approval for the temporary amendment or temporary change is no longer required.

Compare: Code, Part A s 9

25 Review of decisions to not approve ship security plans

- (1) If the chief executive decides not to approve a ship security plan, or an amendment to a previously approved ship security plan, the company may request the chief executive to review his or her decision.
- (2) If the chief executive receives a request to review his or her decision, the chief executive must carry out his or her review and report the results of the review to the requesting company within 15 working days of the date on which the chief executive received the request.
- (3) If, after a review, the chief executive or recognised security organisation declines to approve a ship security plan, the company may appeal against that decision to a District Court under section 64.

26 Ship must have ship security plan on board

The master and the company of a ship must ensure that the ship has on board a ship security plan that—

- (a) the chief executive, or a recognised security organisation, has approved under section 23; and
- (b) provides for security level 1, security level 2, and security level 3; and
- (c) is protected from unauthorised access or disclosure.

Compare: Code, Part A s 9

27 Ships required to have ship security systems

- (1) A ship must have a ship security alert system, an automatic identification system, a continuous synopsis record, and a ship identification number in accordance with the requirements set out in the Maritime Rules made under the Maritime Transport Act 1994.
- (2) Before a master takes responsibility for a ship, the ship's company must ensure that the ship has the required security alert system.
- (3) When a master takes responsibility for a ship, the master must ensure that the ship has the required security alert system.

Compare: Annex to the Convention, Chapter XI-2 r 6

28 Chief executive must notify alert

- (1) If the chief executive receives notification of a ship security alert, he or she must immediately notify the States in the vicinity of which the ship is operating.
- (2) If the chief executive receives notification of a ship security alert from a ship that is not registered in New Zealand, he or she must immediately notify—
 - (a) the ship's administration; and
 - (b) if appropriate, the States in whose vicinity the ship is operating.

Compare: Annex to the Convention, Chapter XI-2 r 6

29 Certificate must be held on board

- (1) The master and the company must ensure that a certificate is held on board the company's ship.
- (2) The chief executive may verify that a certificate is on board a ship if that ship is in a port within the territorial limits or continental waters of New Zealand.
- (3) The master of a ship in a port within the territorial limits or continental waters of New Zealand must,—
 - (a) on the request of the chief executive, produce the certificate; and
 - (b) co-operate with the chief executive.

30 Advice required of ships intending to enter ports

- (1) The master must keep a record of the advice specified in subsection (2) for the last 10 calls at port facilities.

- (2) A master intending to enter a port within the territorial limits or continental waters of New Zealand must, prior to entry into that port, provide advice on the following matters to the chief executive to ensure compliance with this Act:
- (a) whether or not the ship possesses a certificate; and
 - (b) the security level at which the ship is currently operating; and
 - (c) the security level at which the ship operated in any previous port where it conducted a ship-port interface during the period of its last 10 calls at port; and
 - (d) whether or not any special or additional security measures were taken by the ship in any previous port where it conducted a ship-port interface during the period of its last 10 calls at port taking into account any requirements prescribed in regulations made under this Act; and
 - (e) whether or not the appropriate ship security procedures were maintained during any ship-to-ship activity during the period of its last 10 calls at port taking into account any requirements prescribed in regulations made under this Act; and
 - (f) any other practical security-related matters, excluding details of the ship security plan, taking into account any requirements prescribed in regulations made under this Act.
- (3) If the chief executive requests evidence to confirm the advice specified in subsection (2), the master or the company must provide confirmation that is acceptable to the chief executive.
- (4) If a master or company declines to provide the advice or confirmation specified in subsection (2) or subsection (3), the chief executive may deny the ship entry to the port.

Compare: Annex to the Convention, Chapter XI-2 r 9

31 Control of ships in ports

- (1) If a certificate is not produced when required under section 29 without a lawful or justifiable excuse, or if the chief executive has clear grounds, as set out in regulations made under this Act, to believe that a ship is not in compliance with the requirements of this Act, the chief executive must, for the purpose of ensuring compliance with this Act, impose 1 or more of the following control measures:
- (a) inspection of that ship for the purpose of ascertaining compliance with the certification requirements of this Act, including (but not limited to) requiring the master to—
 - (i) provide the information that the chief executive considers relevant to the inspection; and
 - (ii) demonstrate to the chief executive that—

- (A) the master or the relevant crew are familiar with essential shipboard security procedures; and
 - (B) any shipboard security procedure is capable of being carried out in a competent manner:
- (b) delay of that ship:
- (c) detention of that ship:
- (d) restriction of the operations of that ship, including movement within the port:
- (e) expulsion of that ship from the port if—
 - (i) the chief executive has reasonable grounds to believe that the ship poses an immediate threat to the security or safety of persons, ships, or other property; and
 - (ii) there are no other appropriate means for removing that threat; and
 - (iii) the chief executive has complied with section 36(4).
- (2) A ship may be expelled under subsection (1)(e) despite the provisions of any other enactment.
- (3) A control measure that is imposed under subsection (1)—
 - (a) must be proportionate and reasonable, and of the minimum severity and duration necessary to rectify or mitigate any non-compliance; and
 - (b) may additionally or alternatively include other lesser administrative or corrective measures.
- (4) A control measure imposed under subsection (1) may continue until the non-compliance that gave rise to the control measure is corrected to the satisfaction of the chief executive, taking into account actions proposed (if any) by the ship or the chief executive.
- (5) If a ship is expelled from a port under subsection (1)(e),—
 - (a) the chief executive may require the ship to proceed to a specified location within New Zealand's territorial sea or internal waters or continental waters; and
 - (b) the port facility operator must cease providing services to that ship if the chief executive directs the port facility operator to do so; and
 - (c) all possible efforts must be made to avoid a ship being unduly detained or delayed; and
 - (d) a person may be allowed to leave the ship, or access to the ship must be allowed, for—
 - (i) emergency reasons; or
 - (ii) humanitarian reasons; or

- (iii) security purposes.

Compare: Annex to the Convention, Chapter XI-2 r 9(1), (3)

32 Inspection of security plans

- (1) The chief executive may inspect ship security plans to carry out control measures if—
 - (a) the chief executive has clear grounds to believe that the ship is not in compliance with this Act or regulations made under this Act; and
 - (b) the only means to verify or to rectify the non-compliance is to review the relevant requirements of the ship security plan; and
 - (c) consent for the inspection to review the relevant requirements of the ship security plan is obtained from—
 - (i) the master; or
 - (ii) the ship's administration, if the State is a party to the Convention.
- (2) The chief executive may only have access to the specific sections of the ship security plan that relate to the suspected non-compliance.
- (3) Despite subsections (1) and (2), the provisions of a ship security plan that are specified as confidential in regulations made under this Act may not be subject to inspection unless agreed to by—
 - (a) the chief executive; and
 - (b) the ship's administration, if the State is a party to the Convention.
- (4) Despite subsection (3)(b), if the ship is registered in New Zealand or if the ship is registered in a State that is not a party to the Convention, the chief executive may authorise the inspection.

Compare: Code, Part A s 9

33 Costs of detention

- (1) If a ship is detained under section 31(1)(c),—
 - (a) the company is liable to pay to the Designated Authority the costs of, and incidental to, the detention and any inspection and audit under this Act, including any costs that the port facility operator has met as the result of the detention; and
 - (b) those costs are, without prejudice to any other remedy, recoverable as a debt due to the Designated Authority in a court of competent jurisdiction.
- (2) The Designated Authority is liable to pay to the company compensation for any loss resulting from unduly detaining or unduly delaying the ship.
- (3) The complainant is liable to indemnify the Designated Authority for all costs for which the Designated Authority is liable under subsection (2), if—

- (a) a ship is detained under section 31(1)(c) on the information of the complainant; and
 - (b) the information is subsequently found to be false; and
 - (c) the complainant knew that the information was false at the time he or she provided it.
- (4) Despite subsection (3), the complainant is not liable to indemnify the Designated Authority for any costs arising from the detention of a ship incurred on or after a date 2 days after the Designated Authority determines that the information provided by the complainant was false.

Compare: 1994 No 104 s 56

34 Steps to take if ship does not comply with Act

- (1) If, after receipt of the advice or confirmation specified in section 30(2) and (3), the chief executive has clear grounds, as set out in regulations made under this Act, to believe that a ship is not in compliance with this Act, the chief executive—
 - (a) must attempt to establish communication with the master and the ship's administration to rectify the non-compliance; and
 - (b) if the communication does not result in rectification, may take 1 or more of the following steps:
 - (i) require rectification of the non-compliance;
 - (ii) require the ship to proceed to a specified location within New Zealand's territorial sea or internal waters or continental waters, if the chief executive has complied with section 36(4);
 - (iii) inspect the ship for the purpose of ascertaining compliance with the certification requirements of this Act, if the ship is within the territorial limits of New Zealand;
 - (iv) deny the ship entry, if—
 - (A) the chief executive has reasonable grounds to believe that the ship poses an immediate threat to the security or safety of persons, ships, or other property; and
 - (B) there are no other appropriate means for removing that threat; and
 - (C) the chief executive has complied with section 36(4).
- (2) Before taking a step specified in subsection (1)(b), the chief executive must inform the master of the ship of the chief executive's intention to take the step by giving notice to the master as the chief executive considers necessary by means of communications, whether or not of a permanent nature, as the chief executive considers appropriate in the circumstances.
- (3) A step that is taken under subsection (1)(b)—

- (a) must be proportionate and reasonable, and of the minimum severity and duration necessary to rectify or mitigate any non-compliance; and
 - (b) may additionally or alternatively include other lesser administrative or corrective measures.
- (4) A ship may be denied entry under subsection (1)(b)(iv) despite the provisions of any other enactment.
- (5) If a ship is denied entry under subsection (1)(b)(iv),—
 - (a) all possible efforts must be made to avoid a ship being unduly detained or delayed; and
 - (b) a person may be allowed to leave the ship, or access to the ship must be allowed, for—
 - (i) humanitarian reasons; or
 - (ii) emergency reasons; or
 - (iii) security purposes.
- (6) On receiving the notice under subsection (2), the master may withdraw the intention to enter the port.
- (7) If a ship is denied entry to the port under subsection (1)(b)(iv) or section 30(4), a port facility operator must cease providing services to that ship if the chief executive directs the port facility operator to do so.
- (8) A step taken under subsection (1)(b) may be imposed until the non-compliance that gave rise to the step is corrected to the satisfaction of the chief executive, taking into account actions proposed (if any) by the ship or the chief executive.

Compare: Annex to the Convention, Chapter XI-2 r 9(2), (3); 1994 No 104 s 55(8)

35 Certain provisions do not apply if master withdraws intention to enter port

If the master withdraws the intention to enter the port, sections 30(2) and (3) and 34(1) do not apply.

36 Additional requirements

- (1) If a control measure is imposed under section 31(1) or if a step is taken under section 34(1)(b), the chief executive must—
 - (a) advise, in writing, the ship's administration of—
 - (i) the control measure imposed or step taken; and
 - (ii) the reasons for imposing the control measure or taking the step; and
 - (b) provide written notice, specifying when the control measure was imposed or the step taken, to—
 - (i) the International Maritime Organization; and

- (ii) either—
 - (A) the recognised security organisation that issued a certificate to the ship concerned; or
 - (B) if a recognised security organisation did not issue a certificate, the ship's administration.
- (2) If a ship is expelled from a port under section 31(1)(e), or entry into a port is denied under section 34(1)(b)(iv), the chief executive must communicate the appropriate facts to the relevant authorities of—
 - (a) the State of the next appropriate port of call, if known; and
 - (b) any other appropriate coastal State.
- (3) The communication must—
 - (a) take into account any relevant guidelines promulgated by the International Maritime Organization; and
 - (b) be secure and confidential.
- (4) The chief executive may not take any action under section 31(1)(e) or section 34(1)(b)(ii) or (iv) without consulting—
 - (a) the chief executives of—
 - (i) the New Zealand Police; and
 - (ii) the New Zealand Customs Service; and
 - (iii) the Ministry of Health; and
 - (iv) the Department of Labour; and
 - (v) any other department of State whose operations may, in the opinion of the chief executive, be affected by the action; and
 - (b) the local medical officer of health.

Compare: Annex to the Convention, Chapter XI-2 r 9(3); 1993 No 95 s 37D

37 Master's responsibilities for ship safety and security

- (1) A company, a charterer, or any other person may not interfere with a decision of a master that is necessary to maintain the safety and security of a ship, including (but not limited to)—
 - (a) a decision by the master to deny access to persons (except those persons identified as authorised by the chief executive) or their effects; and
 - (b) a decision by the master to refuse to load cargo, including containers or other closed cargo transport units.
- (2) A company of a New Zealand ship must ensure that the master and the ship security officer are given the necessary support to fulfil their duties and responsibilities under this Act.
- (3) If, in the judgment of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master—

- (a) must give effect to those requirements necessary to maintain the safety of the ship; and
 - (b) may implement temporary security measures commensurate with the prevailing security level; and
 - (c) must inform the chief executive as soon as practicable; and
 - (d) in the case of a New Zealand ship that enters a port outside the territorial limits of New Zealand, must inform the government of the State in which the port is located.
- (4) If the chief executive is informed under subsection (3)(c), the chief executive must meet with the master of the ship to agree—
 - (a) the nature of the conflict; and
 - (b) the most appropriate resolution of the conflict.
- (5) If the conflict identified under subsection (3) involves a port facility, the master and the chief executive must consult the port facility security officer of that port facility before taking the steps specified in subsection (3).
- (6) A person on official duties acting under a statutory power to board a ship to carry out his or her statutory functions or duties—
 - (a) may board a ship; and
 - (b) if requested by the master or the ship security officer, must present his or her warrant or certificate of employment to that master or officer.

Compare: Annex to the Convention, Chapter XI-2 r 8; Code, Part A s 6

Port security

38 Duties of port facility operators

- (1) A port facility operator must—
 - (a) act on the security level specified by the chief executive; and
 - (b) apply security measures and procedures in a manner that minimises interference with, or delay to, passengers, ships, the personnel of ships, visitors, goods, and services; and
 - (c) appoint port facility security officers in accordance with regulations made under this Act; and
 - (d) comply with any requirements specified in regulations made under this Act for the security level specified for that port facility or class of port facility.
- (2) The port facility security officer and the ship security officer must liaise and co-ordinate appropriate actions—
 - (a) if that port facility security officer is advised that a ship is encountering difficulties in—
 - (i) complying with the requirements of this Act; or

- (ii) implementing the appropriate security measures and procedures specified in the ship security plan; or
 - (iii) in the case of security level 3, following any security instructions given by the chief executive; or
- (b) if a ship has a higher security level than that of the port facility.
- (3) If a ship has a higher security level than that of the port facility, the port facility security officer must report the matter to the chief executive.

Compare: Code, Part A s 14

39 Port facility security assessments

- (1) The chief executive must carry out a port facility security assessment of each port facility within the territorial limits or continental waters of New Zealand.
- (2) The chief executive may authorise a recognised security organisation to carry out a port facility security assessment.
- (3) If a port facility security assessment is carried out by a recognised security organisation, the chief executive—
 - (a) must review it for compliance with subsection (5); and
 - (b) if satisfied that it complies with subsection (5), may approve the assessment.
- (4) The chief executive must ensure that each port facility security assessment is—
 - (a) periodically reviewed and updated, taking into account changing threats or minor changes in the port facility; and
 - (b) if major changes take place in the port facility, reviewed and updated as soon as practicable.
- (5) A port facility security assessment must include any elements specified in regulations made under this Act.
- (6) A port facility security assessment may cover more than 1 port facility if—
 - (a) the operator, location, operation, equipment, and design of those port facilities are similar; and
 - (b) the chief executive agrees.
- (7) When a port facility security assessment is completed, the person carrying out the port facility security assessment must prepare a report for the Designated Authority that consists of—
 - (a) a summary of how the assessment was conducted; and
 - (b) a description of each vulnerability found during the assessment; and
 - (c) a description of countermeasures that could be used to address each vulnerability.
- (8) The report must be protected from unauthorised access or disclosure.

Compare: Code, Part A s 15

40 Port facility security plans

- (1) A port facility operator must—
 - (a) develop, implement, and maintain a port facility security plan based on the port facility security assessment of that port facility; and
 - (b) update that port facility security plan as required by a review of that plan under section 39(4); and
 - (c) protect that port facility security plan from unauthorised access or disclosure.
- (2) A port facility security plan—
 - (a) must—
 - (i) be adequate for the ship-port interface; and
 - (ii) provide for security level 1, security level 2, and security level 3; and
 - (b) may cover more than 1 port facility if—
 - (i) the operator, location, operation, equipment, and design of those port facilities are similar; and
 - (ii) the chief executive agrees.
- (3) A recognised security organisation may prepare the port facility security plan for a port facility.
- (4) A port facility security plan or amendments to a previously approved port facility security plan must be approved by the chief executive before effect may be given to that plan or amendments to that plan.

41 Port facility security plan approval

The chief executive must approve a port facility security plan, or any amendment to the plan, if it—

- (a) is consistent with—
 - (i) the purposes of this Act; and
 - (ii) the security assessment for that port facility; and
- (b) complies with—
 - (i) the requirements of this Act; and
 - (ii) requirements prescribed in regulations made under this Act.

Compare: Code, Part A s 16

42 Amendments to approved port facility security plans

- (1) An amendment to an approved port facility security plan, or a change to any security equipment specified in an approved plan,—
 - (a) must be at least as effective as those measures prescribed in this Act or regulations made under this Act; and

- (b) may not be implemented unless the amendment or change is given written approval by the chief executive.
- (2) The written approval must be—
 - (a) kept at the port facility; and
 - (b) presented when required by the chief executive.
- (3) If written approval is given for a temporary amendment to an approved port facility security plan or for a temporary change to any security equipment specified in an approved plan, once the original approved measures or equipment are reinstated, retention of the written approval for the temporary amendment or temporary change is no longer required.

43 Review of decision not to approve port facility security plans

- (1) If the chief executive decides not to approve a port facility security plan, or an amendment to a previously approved port facility security plan, the port facility operator may request the chief executive to review his or her decision.
- (2) If the chief executive receives a request to review his or her decision, the chief executive must carry out the review and report the results of the review to the requesting port facility operator within 15 working days of the date on which the chief executive received the request.
- (3) If, after a review, the chief executive declines to approve a port facility security plan, the port facility operator may appeal against that decision to a District Court under section 64.

Part 3

Preventive security measures

44 Appointment of maritime security organisations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister,—
 - (a) appoint a government department or Crown entity as a maritime security organisation;
 - (b) assign particular port security functions to a government department or Crown entity appointed as a maritime security organisation.
- (2) For the purposes of this section, **Crown entity** includes the Aviation Security Service established under the Civil Aviation Act 1990.

45 Designation of port security areas

- (1) The Minister or the chief executive may, by notice in the *Gazette*, designate a port facility, any area in a port facility, or any other area in a port as a port security area.

- (2) A designation made under subsection (1) takes effect on the date specified in the notice which may be a date before the notice is published in the *Gazette*.
- (3) A designation made under subsection (1) by—
 - (a) the Minister may be revoked, in whole or in part, or amended by the Minister by notice in the *Gazette*;
 - (b) the chief executive may be revoked, in whole or in part, or amended by the chief executive by notice in the *Gazette*.

Compare: 1990 No 98 s 82

46 Restrictions with respect to port security areas

- (1) No person other than a person on official duties acting in accordance with subsection (7) may enter or remain in a port security area unless authorised by the chief executive or the port facility operator.
- (2) Every person in a port security area must, on the request of an authorised person or a port facility security officer, state his or her name and address, the purpose of his or her presence in the port security area, and his or her authority to enter it, and must produce satisfactory evidence of the correctness of his or her stated name and address.
- (3) If a person fails or refuses to provide an authorised person or a port facility security officer with satisfactory evidence of his or her name and address when requested by the authorised person or port facility security officer, or if a person fails to satisfy the authorised person or port facility security officer that he or she is authorised to be there, the authorised person or port facility security officer may order that person to leave the port security area.
- (4) An authorised person or a port facility security officer, and any person whom he or she calls to his or her assistance, may use any force that is reasonably necessary to remove from any port security area any person who fails or refuses to leave the port security area immediately after having been ordered by an authorised person or a port facility security officer to do so under subsection (3).
- (5) A person who refuses to comply with subsection (2) or subsection (3) and, after being warned that he or she commits an offence by not complying, persists in its commission,—
 - (a) may be detained, with reasonable force (if necessary), by an authorised person or a port facility security officer; and
 - (b) in that case he or she must be delivered to a constable as soon as practicable.
- (6) A passenger or crew member embarking or disembarking directly through gateways or thoroughfares in a port facility approved for that purpose by the port facility operator is deemed to be authorised by the chief executive to pass through any port security area forming part of those gateways or thoroughfares.

- (7) A person on official duties acting under a statutory power to enter an area to carry out his or her statutory functions or duties—
- (a) may enter a port security area; and
 - (b) if requested by an authorised person or a port facility security officer, must present his or her warrant or certificate of employment to the authorised person or port facility security officer.

Compare: 1990 No 98 s 84

Section 46(5)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

47 Powers and duties of Minister to require screening and searching

- (1) The Minister may, if necessary to improve or enhance maritime security to enable New Zealand to be part of a concerted international response to a threat to maritime security or if it is in the national interest, direct a maritime security organisation, by notice in the *Gazette*,—
- (a) to screen—
 - (i) any person boarding a ship; and
 - (ii) any thing to be carried by a ship; and
 - (iii) any thing in a port security area; and
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
 - (b) if necessary, to undertake reasonable searches of—
 - (i) any person boarding a ship; and
 - (ii) any thing to be carried by a ship; and
 - (iii) any thing in a port security area; and
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
 - (v) any (as specified in the *Gazette* notice)—
 - (A) ship or class of ship; or
 - (B) port security area.
- (2) The *Gazette* notice must specify—
- (a) which of the screenings under subsection (1)(a) and which of the searches under subsection (1)(b) are part of the Minister's directive; and
 - (b) the permitted extent of those screenings and searches.
- (3) Before directing a maritime security organisation under subsection (1), the Minister must, to determine whether the direction is necessary to improve or enhance maritime security to enable New Zealand to be part of a concerted international response to a threat to maritime security or whether it is in the national interest, consult—

- (a) the chief executive; and
 - (b) as the Minister in each case considers appropriate, representative groups in the maritime industry, government departments, Crown entities, and the New Zealand Defence Force.
- (4) Nothing in this section empowers the Minister to exercise the powers of the chief executive under section 48.

Compare: 1990 No 98 s 77A

48 Powers and duties of chief executive to require screening and searching

- (1) The chief executive may, if he or she believes on reasonable grounds that there is a risk of a security incident occurring, direct a maritime security organisation, by notice in the *Gazette*,—
- (a) to screen—
 - (i) any person boarding a ship; and
 - (ii) any thing to be carried by a ship; and
 - (iii) any thing in a port security area; and
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
 - (b) if necessary, to undertake reasonable searches of—
 - (i) any person boarding a ship; and
 - (ii) any thing to be carried by a ship; and
 - (iii) any thing in a port security area; and
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
 - (v) any (as specified in the *Gazette* notice)—
 - (A) ship or class of ship; or
 - (B) port security area.
- (2) The *Gazette* notice must specify—
- (a) which of the screenings under subsection (1)(a) and which of the searches under subsection (1)(b) are part of the chief executive's directive; and
 - (b) the permitted extent of those screenings and searches.
- (3) Before directing a maritime security organisation under subsection (1), the chief executive must, to determine whether the direction is necessary to meet the maritime security risk, consult, as the chief executive in each case considers appropriate, representative groups in the maritime industry, government departments, Crown entities, and the New Zealand Defence Force.

Compare: 1990 No 98 s 77B

49 Duration of directions

- (1) A direction made under section 47(1) takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the Minister—
 - (a) considers on reasonable grounds that urgent action is required; and
 - (b) has consulted the chief executive before that date; and
 - (c) has notified the master of the affected ship and the operator of the affected port facility before that date.
- (2) A direction made under section 48(1) takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the chief executive—
 - (a) considers on reasonable grounds that urgent action is required; and
 - (b) has notified the master of the affected ship and the operator of the affected port facility before that date.
- (3) If a direction made under section 47(1) or section 48(1) takes effect on a date before the notice is published in the *Gazette*,—
 - (a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and
 - (b) if the notice is published in the *Gazette* within 28 days of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period,—
 - (i) the Minister, after complying with subsection (1)(b) and (c), extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days); or
 - (ii) the chief executive, after complying with subsection (2)(b), extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days).
- (4) The notice is not a legislative instrument for the purposes of the Legislation Act 2012, but if the direction in the notice takes effect on a date on or after the notice is published in the *Gazette*, the notice is a disallowable instrument for the purposes of that Act and must be presented to the House of Representatives under section 41 of that Act.
- (5) A direction may,—
 - (a) if made under section 47(1), be rescinded by the Minister; or
 - (b) if made under section 48(1), be rescinded by the chief executive.
- (6) Subject to subsection (3), a direction remains in effect until it is rescinded.

Compare: 1990 No 98 ss 77A, 77B

Section 49(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

50 Taking weapons on to ships or into port security areas

- (1) A person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the written permission of the ship security officer (with respect to boarding a ship) or the port facility security officer (with respect to entering a port security area), intentionally takes, or attempts to take, on board a ship or into a port security area—
 - (a) a firearm, or any other dangerous or offensive weapon or instrument of any kind; or
 - (b) any ammunition; or
 - (c) an explosive, incendiary, biological, or chemical substance or device, or any other injurious substance or device of any kind, that could be used to endanger the safety of—
 - (i) the ship; or
 - (ii) persons on board the ship; or
 - (iii) the port security area; or
 - (iv) persons in the port security area.
- (2) A person who has obtained the written permission of a ship security officer or a port facility security officer must, upon the request of an authorised person, present the written permission to that authorised person.
- (3) For the purposes of this section, **firearm** means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any gun, rifle, or pistol that—
 - (a) is not capable of discharging any shot, bullet, or other missile, but that by its completion or by the replacement of any component part or parts or by the correction or repair of any defect or defects, would be so capable; or
 - (b) is dismantled.

Compare: 1972 No 137 s 11

Section 50(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

51 Screening and searching powers

- (1) An authorised person may—
 - (a) screen, using a detector dog, or a mechanical or electronic device or similar mechanism,—
 - (i) any person boarding a ship; and
 - (ii) any thing to be carried by a ship; and
 - (iii) any thing in a port security area; and

- (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
- (b) if the screening device or mechanism that is used malfunctions or produces indeterminate results or if there are reasonable grounds to believe that an offence against this Act has been, is being, or is likely to be committed, search—
 - (i) any person boarding a ship; and
 - (ii) any thing to be carried by a ship; and
 - (iii) any thing in a port security area; and
 - (iv) any person (including that person's personal effects) or vehicle entering, or within, a port security area; and
 - (v) any ship or class of ship specified in a *Gazette* notice issued under section 47 or section 48.
- (2) Despite subsection (1), a maritime security officer may only exercise the powers in subsection (1) if that maritime security officer is employed by a maritime security organisation that is directed by the Minister under section 47 or by the chief executive under section 48.
- (3) The powers in—
 - (a) subsection (1) may only be exercised—
 - (i) for the purposes of preventing the commission of an offence against section 50; and
 - (ii) at a port security area or on a ship; and
 - (iii) in the case of a person, or his or her vehicle or things, who is to be screened or searched, with the consent of that person or the person in control of the vehicle or things; and
 - (b) subsection (1)(b)(i) and (iv) may only be exercised if—
 - (i) the person has consented; or
 - (ii) the authorised person has a search warrant; and
 - (c) subsection (1)(b)(v) may only be exercised if—
 - (i) the company or master has consented; or
 - (ii) the authorised person has a search warrant.
- (4) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on an application made in the manner provided in sub-part 3 of Part 4 of that Act, is satisfied that there are reasonable grounds to believe that an offence against this Act has been, is being, or is likely to be committed, may issue to an authorised person (named in the warrant) a warrant to search—
 - (a) a person specified in subsection (1)(b)(i); or

- (b) a person (including that person's personal effects) or vehicle specified in subsection (1)(b)(iv); or
 - (c) a ship specified in subsection (1)(b)(v).
- (5) If a search is conducted under a search warrant by an authorised person who is not a constable, that authorised person must be accompanied by a constable.
- (6) If a person allows his or her person to be searched or is subject to a search warrant,—
 - (a) that person may not be required to remove any article of clothing (other than a coat or similar article) for the purposes of being searched; and
 - (b) if the search is not made by means of a mechanical or electronic device or similar mechanism, that person must be searched by an authorised person of the same gender.
- (6A) Subject to subsections (5), (6), and (6B), the provisions of Part 4 of the Search and Surveillance Act 2012 apply in respect of a warrant issued under subsection (4).
- (6B) Despite subsection (6A), sections 118 and 119 of the Search and Surveillance Act 2012 apply only in respect of a constable.
- (7) Screening and searching may only be undertaken in a port security area in areas that are designated for that purpose by signage that—
 - (a) is posted in the appropriate places; and
 - (b) states the statutory authority for the screening and searching; and
 - (c) has lettering of a size sufficient to indicate clearly to all persons on first entry to a port security area that screening and searching is being undertaken.
- (8) Screening and searching may only be undertaken by an authorised person—
 - (a) dressed in a uniform that clearly displays that person's identity and employer; or
 - (b) who, if not in uniform, provides, if asked, evidence that he or she is an authorised person to the person to be screened or searched.
- (9) To avoid doubt, things, personal effects, and vehicles may be screened or searched without consent if they are unattended.
- (10) Despite subsection (1)(a)(ii) and (b)(ii), goods subject to the control of Customs may not be screened or searched without the authorisation of the New Zealand Customs Service.
- (11) Subsection (10) does not apply if the chief executive has specified that security level 3 applies to the port facility or ship where the screening or searching is to be done.
- (12) *[Repealed]*

Section 51(4): amended, on 1 October 2012, by section 277(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 51(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 51(6A): inserted, on 1 October 2012, by section 277(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 51(6B): inserted, on 1 October 2012, by section 277(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 51(12): repealed, on 1 October 2012, by section 277(4) of the Search and Surveillance Act 2012 (2012 No 24).

52 Power to seize items

- (1) If an authorised person detects an item specified in section 50(1), and has reasonable grounds to believe that the item may not lawfully be taken on board a ship or into a port security area, the authorised person may seize the item for the purpose of determining whether the item may lawfully be taken on board a ship or into a port security area.
- (2) If an item is seized under subsection (1), the authorised person must—
 - (a) keep a record of the item; and
 - (b) make available to the owner or the person from whom the item was seized a copy of the record.
- (3) If the authorised person determines that the item may lawfully be taken on board a ship or into a port security area, the authorised person must, as far as practicable, return the item to the person from whom the item was seized under subsection (1).
- (4) If the authorised person determines that the item may not lawfully be taken on board a ship or into a port security area, the authorised person must allow the person from whom the item was seized under subsection (1) to arrange for the item to be—
 - (a) taken off the ship; or
 - (b) taken out of the port security area; or
 - (c) taken off the ship and taken out of the port security area.
- (5) Despite subsection (4),—
 - (a) if the authorised person has reasonable grounds to believe that the seized item poses an imminent risk to safety, the authorised person may—
 - (i) destroy or otherwise dispose of the item; or
 - (ii) deliver the item to the Police; or
 - (b) if the authorised person has reasonable grounds to believe that the seized item may not be lawfully possessed, the authorised person may deliver the item to the Police.

53 Costs of seizures

- (1) If an authorised person has seized an item under section 52(1), the Designated Authority may recover from either the owner of the item or the person who was in possession of the item all reasonable costs of and incidental to that seizure.
- (2) The Designated Authority is liable to pay to the owner of the item compensation for any loss resulting from an authorised person unduly—
 - (a) maintaining the seizure of the item; or
 - (b) delaying the use of the item.
- (3) The complainant is liable to indemnify the Designated Authority for all costs for which the Designated Authority is liable under subsection (2), if—
 - (a) an authorised person has taken action under section 52(1) on the information of the complainant; and
 - (b) the information is subsequently found to be false; and
 - (c) the complainant knew that the information was false at the time he or she provided it.
- (4) Despite subsection (3), the complainant is not liable to indemnify the Designated Authority for any costs arising from the detention of a ship incurred on or after a date 2 days after the Designated Authority determines that the information provided by the complainant was false.

Compare: 1994 No 104 s 56

54 Persons who refuse to consent to be screened or searched

- (1) If a person refuses to consent to the screening or searching of his or her person or personal effects or vehicle, an authorised person may require that person to leave the ship or port security area or both.
- (2) If a person required to leave refuses to leave, an authorised person, and anyone asked to assist, may use any force that is reasonably necessary to remove that person.
- (3) A person who refuses to leave as required under subsection (1) and, after being warned that he or she commits an offence by not leaving, persists in its commission,—
 - (a) may be forcibly detained by an authorised person; and
 - (b) if detained, must be delivered to a constable as soon as practicable.
- (4) If the person who refuses to consent is a passenger or a crew member, a company or master may refuse to allow that passenger or crew member to board that company's ship.
- (5) A company or master who refuses to carry a passenger who refuses to consent is not liable to any civil proceedings, other than a proceeding in respect of any

right that the passenger may have for the recovery of the fare or part of the fare.

Compare: 1990 No 98 s 84

Section 54(3)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

55 Search of persons refusing consent to be searched

- (1) A constable may, without a warrant, search a person and that person's personal effects or vehicle, and may detain that person for the purposes of that search, and may take possession of any article referred to in section 50(1) found in the course of that search, if—
 - (a) a company or master refuses to carry a person who has refused to consent to the searching of his or her person or personal effects or vehicle; and
 - (b) the constable has reasonable grounds to suspect that—
 - (i) an offence against this Act has been, is being, or will be committed, whether by that person or any other person; and
 - (ii) a search of the person refusing to consent will disclose evidential material relating to that offence.
- (2) The refusal of a person to consent to the searching of his or her person or personal effects or vehicle does not of itself constitute reasonable grounds for suspecting that an offence against this Act has been, is being, or is likely to be, committed.
- (3) A constable exercising the power of search under subsection (1) must, before the search is conducted, and on any subsequent request,—
 - (a) provide evidence of his or her identity to the person to be searched; and
 - (b) inform the person to be searched that the search is authorised under this section; and
 - (c) if not in uniform, provide evidence, if asked, that he or she is a constable to the person to be searched.
- (4) If a constable exercises the power of search under subsection (1), he or she must, within 3 days after the day on which he or she exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

Compare: 1972 No 137 s 13

Section 55(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 55(1)(b): replaced, on 1 October 2012, by section 277(5) of the Search and Surveillance Act 2012 (2012 No 24).

Section 55(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 55(3)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 55(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

56 Powers of arrest

- (1) An authorised person may, without a warrant, arrest any person in, or in the vicinity of, a port security area or on board a ship or in an exclusion zone if that authorised person has reasonable grounds to believe that the person has committed, or is committing, an offence against any of the following enactments:
 - (a) section 50:
 - (b) section 73:
 - (c) section 45 of the Arms Act 1983 (which relates to unlawful carriage of firearms or explosives):
 - (d) section 4 of the Maritime Crimes Act 1999 (which relates to crimes relating to ships).
- (2) A person may, in good faith, assist an authorised person in arresting any person if called upon to do so by that authorised person.
- (3) An authorised person who is not a constable must, as soon as practicable, deliver any person that he or she arrests to a constable.
- (4) An authorised person exercising the power of arrest under subsection (1) must—
 - (a) provide evidence of his or her identity to the person to be arrested; and
 - (b) inform the person to be arrested that the arrest is authorised under this section; and
 - (c) if not in uniform, provide, if asked, evidence that he or she is an authorised person to the person to be arrested.
- (5) An authorised person who arrests a person and delivers him or her to a constable, and any person who at the request of the authorised person and in good faith assists an authorised person in doing so, is justified in so arresting and delivering that person and in using any force that may be reasonably necessary.

Compare: 1990 No 98 ss 85, 86(3)

Section 56(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 56(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

57 Arrest of persons delivered to Police

- (1) A constable must accept delivery of a person that an authorised person arrests under section 56(1) or detains under section 46(5) or section 54(3) if that constable has reasonable grounds to suspect that person of having done, or having

omitted to do, any thing that constitutes an offence under this Act or any enactment specified in section 56(1).

- (2) A constable who accepts delivery of a detained person may arrest that person.

Compare: 1990 No 98 s 86

Section 57(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 57(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

58 Right of access to port security areas and ships

- (1) An authorised person at any time while on duty may enter a port security area, or any building, vehicle, or place in any part of a port security area, or any ship, for the purpose of exercising and carrying out his or her powers, functions, and duties under this Act.
- (2) Unless a maritime security officer is accompanied by a constable, the power of entry conferred by subsection (1) is limited to peaceful and non-forcible entry.
- (3) If the Police have taken command of any situation at a port security area, the right of a maritime security officer to enter any part of the port security area or any ship, building, or place is subject to the limitations that the senior constable present at the port security area specifies.
- (4) If a ship, building, vehicle, or place is not being used for commercial purposes, subsection (1) does not apply unless the authorised person believes on reasonable grounds that a person or thing likely to endanger the port security area or any of its facilities or any person is in that ship, building, vehicle, or place.
- (5) An authorised person may not enter a dwellinghouse, crew quarters, or a passenger cabin without—
- (a) a search warrant; or
 - (b) the consent of the occupier of that dwellinghouse, crew quarters, or passenger cabin.
- (6) An authorised person exercising the power of entry under subsection (5) must, before the entry takes place, and on any subsequent request,—
- (a) provide evidence of his or her identity to the occupier; and
 - (b) inform the occupier that the entry is authorised under this section; and
 - (c) if not in uniform, provide, if asked, evidence that he or she is an authorised person to the occupier.

Compare: 1990 No 98 s 83

Section 58(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 58(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

59 Chief executive may declare exclusion zones for ships

- (1) The chief executive may declare an exclusion zone around a ship if—
 - (a) the chief executive—
 - (i) considers it necessary for the maintenance of effective security for that ship following consultation with the master; and
 - (ii) has consulted the chief executives of—
 - (A) the New Zealand Police; and
 - (B) the New Zealand Customs Service; and
 - (C) the Ministry of Agriculture and Forestry; and
 - (D) the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Immigration Act 2009; and
 - (E) the Ministry of Health; and
 - (F) any other department of State whose operations may, in the opinion of the chief executive, be affected by the action; and
 - (iii) has consulted the local—
 - (A) harbourmaster; and
 - (B) port facility operator; and
 - (C) medical officer of health; and
 - (b) that ship is—
 - (i) berthed in port or is at an anchorage; or
 - (ii) moored at a buoy; or
 - (iii) in the approaches to a port.

- (2) If the chief executive makes a declaration under subsection (1), the chief executive must notify the master, the port facility security officer, the port facility operator, and the harbourmaster by the means of communication, whether or not of a permanent nature, that the chief executive considers appropriate in the circumstances.

Section 59(1)(a)(ii)(D): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

60 Duration of declarations

- (1) A declaration made under section 59(1) takes effect on the date that it is communicated to the master.
- (2) The declaration expires 5 days after the date on which it takes effect unless, before the expiry of the 5-day period, the chief executive extends the period for a further specified period not exceeding 5 days (the aggregate period may not exceed 10 days).

- (3) Despite subsection (2), the chief executive may revoke a declaration at any time.

61 No person, craft, or vessel may enter or leave exclusion zones without authorisation

- (1) No person, craft, or vessel may enter or leave an exclusion zone unless authorised by the chief executive.
- (2) Subsection (1)—
- (a) applies to all craft and vessels whether or not section 4(1) applies to them; but
 - (b) does not apply to the craft and vessels referred to in section 4(2)(a) and (b).
- (3) If necessary to protect an exclusion zone, an authorised person may, with reasonable force, remove, or prevent from leaving, a person or vessel that has entered, or attempted to leave, the exclusion zone without authority.

Part 4

Miscellaneous provisions

Maritime security documents

62 Acceptance of Convention documents

- (1) The chief executive must accept any maritime security document.
- (2) Despite subsection (1), the chief executive may not accept, or must suspend acceptance of, any maritime security document if he or she has clear grounds to believe that—
- (a) the relevant ship or company—
 - (i) does not correspond substantially with the particulars of that maritime security document; or
 - (ii) is no longer in compliance with the provisions of any requirements—
 - (A) leading to the issue of that maritime security document; or
 - (B) imposed by that maritime security document; or
 - (b) the relevant ship has been materially altered without the sanction of the State that issued or approved that maritime security document; or
 - (c) the maritime security document has been fraudulently obtained or the holder of that maritime security document is not the person to whom the maritime security document was originally issued.
- (3) This section applies in respect of—

- (a) every ship, other than a New Zealand ship, registered in a State that is a party to the Convention:
- (b) the company and the crew of every ship referred to in paragraph (a).

Compare: 1994 No 104 s 42

Ceasing work

63 Employees may cease work if security level 3 specified

No employee of a port facility or an organisation servicing a port facility, or the crew member of any ship may be required by his or her employer to work at a port facility, or on a ship when the security level for that port facility or ship is specified as security level 3 under section 16(a).

Appeal rights

64 Right of appeal to District Court

- (1) A person has a right of appeal to a District Court if affected by a decision of the chief executive under section 23, section 25, section 41, or section 43.
- (2) The court may confirm, reverse, or modify the decision appealed against.
- (3) Every decision appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.
- (4) Even though an appeal under this section may have been determined in favour of the appellant, the chief executive may, subject to the like right of appeal, revoke the District Court's approval of a ship security plan or a port facility security plan if the chief executive has sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.
- (5) If the chief executive revokes the District Court's approval of—
 - (a) a ship security plan, the chief executive must notify the company in writing; or
 - (b) a port facility security plan, the chief executive must notify the port facility operator in writing.

Compare: 1990 No 98 ss 27P, 66

Offences

65 Offences by masters

- (1) Every master who fails to comply with—
 - (a) section 14(2) or section 20 commits an offence and is liable to—
 - (i) imprisonment for a term not exceeding 1 year; and
 - (ii) a fine not exceeding \$20,000:

- (b) section 29(3)(a) or (b) or section 30(1) or (2) is liable to a fine not exceeding \$5,000.
- (2) Every master who provides false advice under section 30(2) commits an offence and is liable to a fine not exceeding \$5,000.

66 Offences by companies

Every company that fails to comply with section 21 or section 22 commits an offence and is liable,—

- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

67 Offences by masters and companies

- (1) The master and the company each commits an offence if—
 - (a) a ship security plan is not held on board the company's ship as required under section 26; or
 - (b) written approval for an amendment to a ship security plan is not held on board the company's ship as required under section 24(2); or
 - (c) a certificate is not held on board the company's ship as required under section 29(1).
- (2) If an offence is committed against subsection (1)(a) or (b),—
 - (a) the master is liable to a fine not exceeding \$5,000; and
 - (b) the company is liable,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000; or
 - (ii) in the case of a body corporate, to a fine not exceeding \$30,000.
- (3) If an offence is committed against subsection (1)(c),—
 - (a) the master is liable to a fine not exceeding \$5,000; and
 - (b) the company is liable,—
 - (i) in the case of an individual, to a fine not exceeding \$7,500; or
 - (ii) in the case of a body corporate, to a fine not exceeding \$30,000.

68 Failure to comply with control measures

Every person who, without reasonable excuse, acts in contravention of, or fails to comply with, a control measure imposed by the chief executive under section 31(1) commits an offence and is liable,—

- (a) in the case of an individual, to—
 - (i) a term of imprisonment not exceeding 1 year; and
 - (ii) a fine not exceeding \$10,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.

69 Failure to comply with steps

Every person who, without reasonable excuse, acts in contravention of, or fails to comply with, a step taken by the chief executive under section 34(1)(b) commits an offence and is liable,—

- (a) in the case of an individual, to—
 - (i) a term of imprisonment not exceeding 1 year; and
 - (ii) a fine not exceeding \$10,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.

70 Offences by port facility operator

- (1) Every port facility operator who fails to comply with section 38(1)(a), (b), (c), or (d) commits an offence and is liable to a fine not exceeding \$100,000.
- (2) Every port facility operator who fails to put in place a port facility security plan under section 40 that complies with a port facility security assessment carried out under section 39 commits an offence and is liable,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$30,000.

71 Failure to provide satisfactory evidence of name and address or authorisation to be in port security area

Every person who intentionally fails or refuses to provide a maritime security officer with satisfactory evidence of his or her name and address or authorisation to be in a port security area under section 46(2) commits an offence and is liable,—

- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

72 Failure to leave port security area

Every person who intentionally fails or refuses to leave a port security area when ordered by an authorised person to do so under section 46(3) or section 54(3) commits an offence and is liable,—

- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

73 Entering or leaving exclusion zone without authorisation

Every person who intentionally contravenes section 61 by entering or leaving an exclusion zone without authorisation commits an offence and is liable,—

- (a) in the case of an individual, to a fine not exceeding \$10,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.

74 Personation or obstruction of authorised person

- (1) Every person commits an offence who, not being an authorised officer,—
 - (a) by words, conduct, demeanor, or the assumption of the dress, name, designation, or description of an authorised person, holds himself or herself out as being an authorised person; or
 - (b) wilfully obstructs or invites or encourages any person to obstruct an authorised person in the execution of his or her duties.
- (2) Every person who commits an offence against subsection (1) is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

Compare: 1990 No 98 s 55

75 Defence

- (1) It is a defence in any proceedings for an offence under section 65, section 66, section 67, section 68, section 69, or section 71 if the defendant proves that—
 - (a) the failure to comply was due to safety concerns; and
 - (b) the act or omission constituting the failure was the best option to resolve those safety concerns.
- (2) In this section, **best option** means the option that maximises safety.

*Regulations***76 Regulations**

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) prescribing, or providing for the fixing of, fees and charges payable in respect of security functions provided by, or security activities undertaken by, a government department or Crown entity;
 - (b) prescribing the security requirements for a ship or port facility, including (but not limited to)—
 - (i) a declaration of security;
 - (ii) a ship security assessment or a port facility security assessment;
 - (iii) a ship security plan or a port facility security plan;
 - (iv) an identification system for accessing a port security area or a port facility;
 - (c) prescribing—
 - (i) the scope and subject matter of training courses relevant to the Convention or Code; and
 - (ii) the criteria and process to be used by the Designated Authority to approve—
 - (A) those training courses (if any); and

- (B) the providers of those training courses (if any):
 - (d) prescribing the functions and duties of any person under an obligation to carry out responsibilities in accordance with the Convention and the Code;
 - (e) providing for any other matters that are contemplated by, or necessary for giving full effect to, the provisions of this Act or for its due administration.
- (2) Regulations made under this section may prescribe offences and penalties for contravention of, or non-compliance with, their provisions, on the conviction of any offender, not exceeding,—
 - (a) in the case of an individual, a fine of \$5,000; and
 - (b) in the case of a body corporate, a fine of \$30,000.
- (3) For the purposes of this section, **Crown entity** includes the Aviation Security Service established under the Civil Aviation Act 1990.

Section 76(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

77 Exemptions from regulations

- (1) The chief executive may, if he or she considers it appropriate and on the conditions that he or she considers appropriate, exempt any person, ship, or port facility from any requirement specified in regulations made under this Act.
- (2) The chief executive may not grant an exemption under subsection (1) unless he or she is satisfied in the circumstances that—
 - (a) the exemption will not breach New Zealand's international obligations under any maritime convention; and
 - (b) 1 or more of the following applies:
 - (i) the prescribed requirements have been substantially complied with and that further compliance is unnecessary; or
 - (ii) the action taken or provision made in respect of the matter to which the prescribed requirements relate is as effective or more effective than actual compliance with the prescribed requirements; or
 - (iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
 - (iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and
 - (c) the risk to safety will not be significantly increased by the granting of the exemption.
- (3) The number and nature of any exemptions granted under subsection (1) must be notified as soon as practicable in the *Gazette*.

- (4) Nothing in this section applies in any case where the Maritime Rules specify that exemptions may not be granted.

Compare: 1994 No 104 s 47

78 Minister may extend application of Act

- (1) If the Designated Authority has reasonable cause to believe that a security risk exists that may warrant the extension of this Act to a ship or port facility to enhance ship or port security or to prevent terrorism, the Designated Authority may—
- (a) conduct a security assessment of that ship or port facility; or
 - (b) require a security assessment of that ship or port facility to be carried out.
- (2) For the purposes of subsection (1), reasonable cause to believe that a security risk exists may be based on—
- (a) the receipt of threat or security information; or
 - (b) the results of a security assessment of a ship under this Act.
- (3) If, following a security assessment under subsection (1), the Designated Authority considers that the Act should be extended to a ship or class of ship or a port facility, the Designated Authority must make a recommendation to that effect to the Minister.
- (4) Following a recommendation by the Designated Authority under subsection (3),—
- (a) in an emergency, the Minister may extend the application of this Act to a ship or port facility by notice in the *Gazette*; and
 - (b) in any other case, the Governor-General, on the recommendation of the Minister, may extend the application of this Act to a ship or port facility by Order in Council.
- (5) For the purposes of subsection (4)(b), the Minister must consult with the affected ship (if any) and the affected port facility (if any).
- (6) A *Gazette* notice or Order in Council under subsection (4)—
- (a) must—
 - (i) clearly identify the ship or port facility concerned; and
 - (ii) state which sections of this Act apply to that ship or port facility; and
 - (iii) state the time period for the extension of this Act; and
 - (b) may cover—
 - (i) more than 1 ship or port facility; and
 - (ii) any combination of ships and port facilities.
- (7) A *Gazette* notice issued under subsection (4)(a)—

- (a) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act; and
- (b) expires 90 days after the day on which it is published in the *Gazette*.
- (8) *[Repealed]*
- (9) A *Gazette* notice issued under subsection (4)(a) may be replaced by an Order in Council made under subsection (4)(b).
- (10) For the purposes of subsections (1) to (6),—
port facility means a port facility that is not included in section 4(1)(b)
ship means a ship that is not included in section 4(1)(a).
- (11) To avoid doubt, the Minister may not extend the application of this Act to—
 - (a) warships; or
 - (b) naval auxiliaries; or
 - (c) other ships that are—
 - (i) owned or operated by the Crown; and
 - (ii) used on government non-commercial service; or
 - (d) pleasure craft (as defined in section 2(1) of the Maritime Transport Act 1994).

Section 78(7)(a): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 78(8): repealed, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

78A Orders are confirmable instruments

The explanatory note of an Order in Council made under section 78(4)(b) must indicate that—

- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 78A: inserted, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Miscellaneous

79 Inspections and audits

For the purposes of any inspection or audit carried out in respect of any person under this Act, the chief executive may, in writing,—

- (a) require from that person the information that the chief executive considers relevant to the inspection or audit:
- (b) require that person to demonstrate to the chief executive the familiarity of the master or crew with essential shipboard procedures for the security of the ship:
- (c) require that person to demonstrate to the chief executive that any operational, maintenance, or servicing procedure in respect of the security of a ship is capable of being carried out in a competent and timely manner.

Compare: 1994 No 104 s 54(3)

80 Instructions of chief executive under certain provisions that conflict with other instructions

- (1) If a harbourmaster or any other person gives instructions under Part 3A of the Maritime Transport Act 1994 (**harbourmaster's instructions**) that conflict with instructions given by the chief executive under section 30(4), section 31(1), or section 34(1) (**chief executive's instructions**), the chief executive's instructions prevail.
- (2) If the chief executive becomes aware of any conflict between any chief executive's instructions and any harbourmaster's instructions, the chief executive must, as soon as practicable, advise the person who has made the harbourmaster's instructions of the conflict, and that person must immediately upon being so advised withdraw those instructions or alter them so as to remove the conflict.
- (3) The chief executive must not issue chief executive's instructions that conflict with the exercise of a power by—
 - (a) a person under Part 5 of the Civil Defence Emergency Management Act 2002; or
 - (b) the person who is serving as the National Recovery Manager under the Civil Defence Emergency Management Act 2002; or
 - (c) any constable under section 10 of the International Terrorism (Emergency Powers) Act 1987; or
 - (d) a person under Part 4 of the Health Act 1956.

Compare: 1994 No 104 s 254

Section 80(1): amended, on 23 October 2013, by section 90 of the Maritime Transport Amendment Act 2013 (2013 No 84).

Section 80(3)(b): replaced, at 9.59 pm on 29 November 2016, by section 42 of the Civil Defence Emergency Management Amendment Act 2016 (2016 No 88).

Section 80(3)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

81 Consequential amendments

- (1)–(8) *Amendment(s) incorporated in the Act(s).*

- (9) The Maritime (Offences) Regulations 1998 (SR 1998/444) are amended in the manner set out in Part 1 of the Schedule.
- (10) The Maritime Rules are amended in the manner set out in Part 2 of the Schedule.

Schedule
Consequential amendments to Maritime Regulations and Maritime Rules

s 81(9), (10)

Part 1
Maritime Regulations

Maritime (Offences) Regulations 1998 (SR 1998/444)

Amendment(s) incorporated in the regulations.

Part 2
Maritime Rules

Rule 40B.32

Add, after rule 40B.32, the following rules:

40B.33 Automatic identification system

- (1) The owner of a ship must ensure that an automatic identification system is fitted on board the ship in accordance with the requirements of regulation 19 of Chapter V of SOLAS (as amended in December 2002).
- (2) The master of a ship must ensure that an automatic identification system is in operation at all times.
- (3) The master of a ship is not in breach of clause (2) if the failure to comply is due to reasons beyond the master's control.

40B.34 Ship identification number

The owner of a ship must ensure that the ship is permanently marked with the ship's identification number in accordance with regulation 3 of Chapter XI-1 of SOLAS (as amended in December 2002).

40B.35 Continuous synopsis record

- (1) The owner of a ship must ensure that the ship carries a continuous synopsis record in accordance with regulation 5 of Chapter XI-1 of SOLAS (as amended in December 2002).
- (2) The master of a ship must ensure a continuous synopsis record is maintained in accordance with regulation 5 of Chapter XI-1 of SOLAS (as amended in December 2002).

40B.36 Ship security alert system

The owner of a ship must ensure that the ship is fitted with a ship security alert system in accordance with regulation 6 of Chapter XI-2 of SOLAS (as amended in December 2002).

Reprints notes

1 *General*

This is a reprint of the Maritime Security Act 2004 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Civil Defence Emergency Management Amendment Act 2016 (2016 No 88): section 42

Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120): section 14

Maritime Transport Amendment Act 2013 (2013 No 84): section 90

Legislation Act 2012 (2012 No 119): section 77(3)

Search and Surveillance Act 2012 (2012 No 24): section 277

Criminal Procedure Act 2011 (2011 No 81): section 413

Immigration Act 2009 (2009 No 51): section 406(1)

Policing Act 2008 (2008 No 72): section 116(a)(ii)