

Hon Kiri Allan
Minister of Justice

Proactive release – Documents relating to the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022

Date of issue: 13 September 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	Anti-Money Laundering and Countering Financing of Terrorism Act 2009 Regulations: Technical Amendments <i>Cabinet Paper</i> Ministry of Justice 28 July 2022	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• S9(2)(h) to maintain legal professional privilege
2.	LEG-22-MIN-0123: Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 <i>Cabinet Committee Minute</i> Cabinet Legislation Committee 28 July 2022	

In-Confidence

Office of the Minister of Justice
Cabinet Legislation Committee

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 Regulations: Technical Amendments

Proposal

1. This paper seeks authorisation for submission to the Executive Council of Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 to be made under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act).

Border Cash Reporting requirements are currently unenforceable

2. The AML/CFT (Cross-border Transportation of Cash) Regulations 2010 (the Regulations) require people to make a declaration when physical cash crosses New Zealand's border. People are required to submit a Border Cash Report (BCRs) whenever they move NZD 10,000 or more into or out of New Zealand. The Regulations prescribe the value above which physical cash must be declared as well as the form of the report that must be submitted.
3. As part of submitting a BCR, people are required to provide detail about why the money is being moved and the source of the funds. Failing to submit a BCR, or providing false information in a BCR, is an offence against the AML/CFT Act. By requiring additional information about the cash, BCRs play a crucial role in detecting money-laundering and terrorist financing.
4. In July 2021, the Regulations were amended (2021 amendments) to prescribe the information a BCR must contain rather than prescribing a specific physical form (LI 2021/144). This was done to make it possible to take modern approaches to declaring cash movements through using an electronic form.
5. However, the 2021 amendments inadvertently removed the reference to the prescribed timeframes for when a BCR must be submitted that were contained in the physical form¹, meaning there is no longer a time by which a person is required to submit a BCR. s9(2)(h)

¹ The prescribed timeframes require: for accompanied cash, the person to provide a cash report to a Customs officer at the same time as the person presents themselves at an immigration control area when arriving in or leaving New Zealand; for unaccompanied cash sent from New Zealand, the person must provide a cash report to a Customs officer before the cash leaves New Zealand; and, for unaccompanied cash sent to New Zealand, the person must submit a cash report to a Customs officer before (or as soon as practicable after) it is received in New Zealand.

s9(2)(h)

6. Furthermore, the revised wording of the BCR focuses on cash being carried across the border by a traveller, thus limiting the information that can be required in relation to cash that is moved across the border as a freight consignment or postal article. This was overlooked by officials when the 2021 amendments were drafted, as the ability to require certain information on cash being so moved across the border was contained in the previously prescribed physical form.
7. The 2021 amendments have already received policy approval; however, they were approved by the government in the previous term [DEV-20-MIN-0040 refers]. Upon advice from the Parliamentary Counsel Office, I am asking the Committee to confirm these policy changes.
8. Given that the BCR obligations are currently unenforceable, officials have progressed changes at pace. The previous Minister of Justice received permission from the Attorney-General to issue drafting instructions to the Parliamentary Counsel Office in lieu of Cabinet approval.

Timing and 28-day rule

9. The Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 will rectify Customs' inability to enforce the Regulations. There have already been instances of cash crossing New Zealand's border where enforcement was considered but not pursued due to the gaps in the current requirements. I am therefore requesting that the 28-day implementation rule be waived for the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022.

Compliance

10. The Order in Council complies with each of the following:
 - a. the principles of the Treaty of Waitangi;
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - c. the principles and guidelines set out in the Privacy Act 2020
 - d. relevant international standards and obligations;
 - e. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory requirements

11. The Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 relate to the

application of the AML/CFT Act and are made pursuant to sections 70 and 153 of the AML/CFT Act.

Regulations Review Committee

12. I do not consider there are any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

13. The Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet with two qualifications. s9(2)(h)

The second qualification is that the regulations will come into force earlier than the 28th day after their notification in the Gazette.

Impact Analysis

14. A Regulatory Impact Assessment (RIA) was prepared for the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Regulations 2021 in accordance with the necessary requirements and was submitted at the time that earlier Cabinet approval was sought for the policy relating to the Regulations. That RIA covered the components of the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022.

Publicity

15. The nature of the proposed amendments, which correct previous omissions, do not require general publication apart from a proactive release (refer paragraph 16).

Proactive release

16. I propose to proactively release this paper on the Ministry of Justice's website, subject to redactions as appropriate and consistent with the Official Information Act 1982.

Consultation

17. The Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 directly affect the ability of the New Zealand Customs Service to administer the legislation at the border, therefore, the New Zealand Customs Service was consulted. The Department of Prime Minister and Cabinet and the Treasury were informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that omissions from the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2021 have impacted on Customs' enforcement obligations;
- 2 **agree** to issue new Regulations that reinstate the timeframe for lodging a Border Cash Report and include the ability to fully report cash being moved across the border other than being carried by a passenger;
- 3 **authorise** the submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 which would reinstate the prescribed timeframes for submitting a Border Cash Report and the obligation to provide a report relating to unaccompanied cash; and
- 4 **agree** to waive the 28-day rule the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 so it comes into force on the day after it has been notified in the New Zealand Gazette, subject to approval by the Executive Council.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022

Portfolio Justice

On 28 July 2022, the Cabinet Legislation Committee:

- 1 **noted** that omissions from the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2021 have impacted on Customs' enforcement obligations;
- 2 **agreed** to issue new Regulations that reinstate the timeframe for lodging a Border Cash Report and include the ability to fully report cash being moved across the border other than being carried by a passenger;
- 3 **authorised** the submission to the Executive Council of the Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Amendment Regulations 2022 [PCO 24814/2.0] (the Regulations), to give effect to the decision in paragraph 2;
- 4 **noted** that a waiver of the 28-day rule is sought so that the Regulations come into force on the day after it has been notified in the New Zealand Gazette, subject to approval by the Executive Council, as there have already been instances of cash crossing New Zealand's border where enforcement was considered but not pursued due to the gaps in the current requirements;
- 5 **agreed** to waive the 28-day rule so that the Regulations will come into force the day after it has been notified in the New Zealand Gazette.

Jenny Vickers
Committee Secretary

Present:

Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Michael Wood (Chair)
Dr Duncan Webb, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG