

Countering Terrorist Fighters Legislation Bill

Government Bill

As reported from the Foreign Affairs,
Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Countering Terrorist Fighters Legislation Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Countering Terrorist Fighters Legislation Bill is an omnibus bill that would amend the Customs and Excise Act 1996, the New Zealand Security Intelligence Service Act 1969, and the Passports Act 1992.

The bill is a response to the rapidly evolving threat of terrorism both locally and internationally. It introduces short-term measures allowing the monitoring and investigation of foreign terrorist fighters and other violent extremists, and the restriction and disruption of their travel. The measures were identified during a recent review of the adequacy of New Zealand's capability, capacity, and legislation to respond to the threat, and how this country's safety and security could

be increased. The provisions in the bill as introduced would be subject to a sunset clause expiring on 1 April 2018. A more comprehensive intelligence review required under the Intelligence and Security Committee Act 1996 will begin no later than 30 June 2015.

New Zealand's domestic threat level was recently raised from very low to low, indicating that a terrorist attack is possible but not likely. Government agencies have identified 30 to 40 people of concern, and another 30 to 40 people requiring further investigation. The provisions in the bill reflect in part New Zealand's international obligation to comply with the recent United Nations Security Council resolution 2178, which includes concern about people travelling to become foreign terrorist fighters, and urges States to restrict their movements.

Monitoring and investigating foreign terrorist fighters

The bill as introduced includes provisions that would allow the New Zealand Security Intelligence Service (NZSIS) to carry out visual surveillance on private properties under warrant, and to conduct surveillance activities for up to 48 hours without a warrant in situations of emergency or urgency, such as where a person not previously identified as a risk is about to travel to a conflict zone. These powers are modelled on those available to the New Zealand Police under the Search and Surveillance Act 2012. Safeguards in the bill include external oversight by the Inspector-General of Intelligence and Security, and annual reporting to Parliament.

The bill would also amend the Customs and Excise Act 1996 to allow the NZSIS and the Police to access Customs information for counter-terrorism investigation purposes.

Restricting and disrupting travel

Existing provisions in the Passports Act 1992 provide for the cancellation of an individual's travel document for 12 months where the person poses a danger to security. The bill would extend this cancellation period to up to three years to address the small number of people who pose a danger for a longer period. The person concerned would have the right to make submissions to the Minister of Internal Affairs, and to appeal or seek a judicial review of the Minister's decision, and the Minister would undertake a periodic review every 12 months.

To respond to situations where the NZSIS becomes aware at short notice of a person seeking to travel imminently to take part in a terrorist act, the bill would allow the Minister to suspend a person's passport or other travel document for up to 10 working days.

Notice would have to be given to a person that their passport or travel document had been cancelled. However, the bill provides that if the Minister is satisfied that providing notice immediately would put an investigation at risk or endanger the safety of any person, the Minister could defer notification for up to 30 days.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

Sunset clause

We recommend bringing forward the expiry of the sunset clause from 1 April 2018 to 1 April 2017, so that the legislation would expire within the life of the current Parliament. We consider it appropriate that the extensive powers provided for by the legislation should operate for a shorter period, and that the comprehensive intelligence review should be completed in that time.

Passports

We recommend amending clause 4 to include a transitional provision in new section 46. It would provide that when the temporary provisions expire on 1 April 2017 a person may apply for the return of their travel document 12 months after the date it was recalled. The inclusion of this section, which would be repealed on 1 April 2018, would provide certainty for New Zealand citizens about the arrangements for when the temporary provisions expire.

We would like to address two concerns raised by a number of submitters regarding the effect of denial of a passport. The first is that where the passport of a person outside New Zealand is denied or cancelled the person concerned might be stranded with no way home. This is not the case; in this situation the Minister must upon application issue a journey-specific emergency travel document to the person so they could re-enter New Zealand. The second concern is that the denial of a passport would render a person "Stateless". This is also not the case; denial of a passport affects only a person's freedom to travel, it does not affect their nationality or citizenship.

Access to Customs information

Clause 7 of the bill would insert new section 280M into the Customs and Excise Act 1996, allowing authorised persons from the NZSIS and the New Zealand Police to access Customs databases to search for information for counter-terrorism investigation purposes.

We recommend the insertion of new subsection 280M(3A) to require the chief executive to consult the Privacy Commissioner before entering into a written agreement with the Director of Security or the Commissioner of Police. This would provide for appropriate consultation on the necessary information-sharing.

We also recommend amending the definition of “information” in new subsection 280M(5)(b)(ii) to read “information Customs is entitled to view under any of sections 38G to 38K”. We also recommend inserting new subsection (c) to exclude information which Customs is not entitled to view under sections 38G to 38K. This would make it clear that the legislation would not expand the existing access of the NZSIS or the Police to passenger name record information, and it would provide for the application of established controls to the accessing of this data.

Increased surveillance powers

Clause 9 of the bill would provide for the NZSIS to undertake visual surveillance, observing activity in private premises, based on similar provisions in the Search and Surveillance Act 2012 that apply to the Police. In line with the counter-terrorism intent of the bill, and to restrict the scope of visual surveillance warrants, we recommend amending subsection 4IB(3) to provide that warrants for visual surveillance must only be granted for the detection, investigation, or prevention of any actual, potential, or suspected terrorist act, or facilitation of a terrorist act.

We consider that given the intrusive nature of the proposed powers there should be more oversight of the issuing and execution of visual surveillance warrants, and our amendments reflect this. We recommend inserting new subsection 4IB(9A) to require the Director, as soon as practicable after a visual surveillance warrant is issued, to provide the Inspector-General with a copy of that warrant.

We also recommend amending subsections 4IB(11) and 4IE(8) to increase the fine for a person who knowingly fails to destroy irrelevant

records resulting from visual surveillance under subsections 4IB(10) and 4IE(7) from \$1,000 to \$10,000. This significant increase reflects the seriousness of the offence.

Warrantless emergency surveillance

We appreciate that the nature of intelligence investigations means that urgent situations can arise where immediate action may be necessary to ensure New Zealand's safety and security. Our amendments seek to provide appropriate safeguards for the expanded surveillance powers that the bill would confer on the NZSIS.

In line with the counter-terrorism intent of the bill, and to lessen the scope of warrantless surveillance we recommend amending subsection 4ID(1) to provide that authorisations for warrantless surveillance must only be granted for the detection, investigation, or prevention of any actual, potential, or suspected terrorist act, or facilitation of a terrorist act.

We recommend amending new section 4ID(3) to shorten the time for which the NZSIS could conduct surveillance without a warrant in situations of urgency or emergency, from up to 48 hours to up to 24 hours. In view of the many submissions on this matter we consider that a shorter period is appropriate, since it is a significant step to confer warrantless powers on the NZSIS, and this is interim legislation.

Because of the importance of notifying relevant persons as soon as possible of an authorisation for warrantless surveillance, we recommend amending subsection 4IE(1) to require the Director to inform them immediately.

We also recommend inserting new subsection 4IE(3A) to require the Director to refer the matter to the Inspector-General as soon as practicable after the Minister or Commissioner issues a direction under subsection 2 that an authorisation for warrantless surveillance not proceed or be discontinued and information collected be destroyed. We consider this oversight to be important in these situations.

We also recommend amending subsection 4IE(6) to provide that after receiving a report under subsection 4 (where an authorisation has expired and no application has been made for a warrant concerning the same matter) the Minister, or the Minister and Commissioner, must determine whether it was appropriate for the authorisation to have

been given, and they must refer the matter to the Inspector-General for investigation. This would allow an examination of each warrantless surveillance case that was not followed by a visual surveillance warrant or an intelligence warrant.

We recommend inserting new subsection 4IE(6A) to provide that if an authorisation for warrantless surveillance is followed by an application for a visual surveillance warrant or an intelligence warrant in relation to the same matter, and that application is refused, the Director must refer the matter to the Inspector-General for investigation.

We recommend inserting new subsection 4IE(7A) to require the Minister, as soon as practicable after having decided to retain records under a warrantless surveillance authorisation where no warrant is subsequently obtained, to refer the matter to the Inspector-General for investigation.

We recommend inserting new subsection 4IE(9)(ba) to require the Director to include in every annual report the length of time, expressed in 12-hour bands, that the authorisations for warrantless surveillance remained in force.

We would like to see more frequent reporting than the annual reporting that is provided for in the bill as introduced. We recommend the insertion of subsection 4IE(10) to require the Director, as soon as practicable after each year ending on 31 December, to provide the Minister with an interim report for the 6-month period from 1 July to 31 December on the detail of the authorisations.

We would like to thank the many individuals and organisations who have provided submissions on this bill at extremely short notice. The urgency under which this bill has been considered has also been very challenging for us. In recommending amendments we have sought to strike a balance between providing for the security of New Zealanders and protecting human rights and individual liberty.

New Zealand Labour Party minority view

Labour set out to achieve an appropriate balance between powers needed by security agencies to keep New Zealanders safe and necessary safeguards to avoid unwarranted intrusion into their privacy and freedoms.

This bill as introduced failed to find this balance. The process that the Government followed was appalling, pushing through legislation

with intrusive powers in just over a week with only two days allowed for public submission. For a bill of this significance, this timeframe was unacceptable.

Labour accepts that new emerging forms of terrorism potentially create risks for New Zealand. However, this legislation was hastily introduced and not subject to a full process of public scrutiny. Labour took the view that the legislation should not go further than is absolutely essential to address the issue of any new terrorist threat.

Our views were also borne out by strong submissions from groups such as the Law Society and the Legislation Advisory Committee. They were also supported by a large number of concerned New Zealanders, often making their first submission to a select committee, who felt strongly about the implications of this legislation and the way it was being rushed through.

On the insistence of Labour, the bill was released to key interested groups earlier than had been planned and at least some opportunity was provided for public submissions. Nearly 600 submissions were received within two days but it is likely hundreds of others were deprived of the opportunity because of the short timeframe.

Labour, in a paper to the select committee, pressed for limitations on the increased powers proposed. The government agreed to adopt these changes.

The powers proposed for the Security Intelligence Service (SIS) will be limited:

- The scope of new visual surveillance powers and warrantless surveillance powers will now be restricted to activities related to terrorism rather than the broad scope of the SIS's activities.
- Surveillance without a warrant will now be strictly limited to emergency situations and limited to 24 hours rather than the 48 hours proposed.
- Every case of warrantless surveillance, whether they proceed to a full warrant or not, will be referred to the Inspector-General of Intelligence and Security for scrutiny.
- The SIS will be required to report publicly six-monthly, rather than annually and with more detail, on the use of these powers.

Labour recommended in relation to changes to the Customs and Excise Act 1996, that the Privacy Commissioner's recommendations should be adopted. This will place safeguards on the use of the Cus-

tom's database to which the SIS and police have been given access and will ensure the involvement of the Privacy Commissioner. This has been agreed to.

Labour asked for clarification on the amendment being made to the Passports Act 1992. We sought and gained assurance that New Zealand citizens who have their passports revoked while overseas will be guaranteed the right to return to New Zealand on emergency travel documents.

The government is retaining the increased power to deny an individual a passport for up to three years. We were not convinced that this was necessary when passports can be currently withheld for 12 months and this period extended year by year.

Despite the inadequacies of the process this legislation followed, the provisions of the bill are subject to a sunset clause. The powers it contains will be comprehensively reviewed next year. We pressed for and achieved a reduction in the term of the sunset clause from 1 April 2018 to 1 April 2017. This means the legislation will be replaced within this parliamentary term.

As a result of the evidence we heard, we believe that in the forthcoming review the powers of the Inspector General of Intelligence should be strengthened and made more independent.

Green Party minority view

The Green Party opposes this bill. The primary case for the legislation has not been made, the political foundation for the legislation is weak, and the drafting of the legislation is flawed.

United Nations concern over terrorism is not new. In 1972 the General Assembly invited States to take appropriate measures at the national level for the speedy and final elimination of international terrorism. Concerns over the 2015 Cricket World Cup cannot be higher than those stemming from the Munich Olympics. Yet New Zealand did not overreact to resolution 3034 then. The rise of ISIL in 2014 has raised the threat-level, but the change is not qualitatively different from before and does not justify expansion of state powers. It is important not to overreact to the Security Council resolution 2178 today.

In making the political case for the legislation, the Prime Minister has described how our risk and threat profile is changing due to the "rapid

rise of ISIL” which poses an “immediate threat to national security”. But New Zealand’s threat-level has been increased from “Very Low” (highly unlikely) to “Low” (“possible but not expected”). There is cognitive dissonance between the excitable political narrative and the official judgement.

UN Security Council resolution 2178 requires States to ensure that their laws are sufficient to combat the threat, while leaving it to their discretion to judge what those might be “consistent with” international human rights, refugee and humanitarian law. In calibrating its response, the Government is unduly influenced by its Five-Eyes espionage partners, which have attracted higher threat-levels, and has not had sufficient regard for the other 188 member States. The case is not made for new intrusive powers for the SIS in response to 2178.

The day the bill was introduced, the independent Inspector-General for Security and Intelligence released a report with findings on actions by the SIS and the Prime Minister’s Office in 2011. These included disclosure of incomplete, inaccurate and misleading information; significant errors in considering media requests; failure to safeguard political neutrality; lack of trust and confidence with the Leader of the Opposition; and insufficiently rigorous and careful approach in handling security intelligence. Separately, PMO staff had disclosed information supplied by SIS to the media for political purposes. The Report recommended that SIS staff be trained in the release of information and published guidance be developed on their political neutrality obligations. It is in the context of these shortcomings and the need for guidance and training of the SIS that the Prime Minister asks the people of New Zealand to accept an expansion of its powers.

The timing of this bill could not, therefore, be less opportune. There is a need for rectification of these shortcomings, and a consequent restoration of public trust in these institutions, before any such bill could be contemplated, and a sufficient case would still need to be made.

The drafting is flawed. The bill contains no statement of general purpose. The critical concepts are left undefined. There is confusion over, or deliberate blurring of, those concepts. The link from the political narrative to the bill’s content is illogical, with consequent imprecision in terminology. This would never be tolerated in criminal

legislation, and should not appear in legislation with constitutional implications.

The essential source of the legislation (UN Security Council resolution 2178) places binding obligations on States to respond to the “growing threat posed by foreign terrorist fighters” (FTFs). The resolution expresses concern that FTFs are being recruited by, and joining, “entities”. The only examples offered of such “entities” are confined to three Islamic terrorist groups: ISIL, ANF and AQ. A “foreign terrorist fighter” is defined in SCR 2178 but not in the NZ legislation, either in the text or even the Explanatory Note.

SCR 2178 seeks also to counter “violent extremism” in order to prevent terrorism. The UN resolution does not define the term. It nonetheless encourages “relevant local communities and non-governmental actors” in each country to develop strategies to counter “the violent extremist narrative that can incite terrorist acts”. The Government is thus utilising the Security Council resolution to expand intrusive powers of warrantless surveillance by the SIS into areas of domestic security. This is unprecedented for New Zealand. Thus, in legislation designed to combat “foreign terrorist fighters”, the NZSIS will have power to access customs data and covertly plant cameras anywhere in NZ homes, including without warrant. The justification is ISIL terrorism in the Middle East; but those powers extend to “local extremists”, including those suspected of planning environmental or economic damage in New Zealand. This is wrong, and unacceptable.

New Zealand First minority view

New Zealand First reserves its position on the bill.

Appendix

Committee process

The Countering Terrorist Fighters Legislation Bill was referred to the committee on 25 November 2014. The closing date for submissions was 27 November 2014. We received 588 submissions from interested groups and individuals, and heard 63 of these. We received advice from the Department of the Prime Minister and Cabinet, the New Zealand Customs Service, the New Zealand Security Intelligence Service, and the Parliamentary Counsel Office.

Committee membership

Mark Mitchell (Chairperson)

David Bennett

Hon Phil Goff

Dr Kennedy Graham

Dr Shane Reti

Jami-Lee Ross

David Shearer

Fletcher Tabuteau

Lindsay Tisch

Dr Jian Yang

**Countering Terrorist Fighters
Legislation Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Rt Hon John Key

Countering Terrorist Fighters Legislation Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
	Part 1	
	Amendments to Passports Act 1992	
3	Principal Act	3
4	New cross-heading and section 45 inserted	3
	<i>Application</i>	
	45 Application of temporary provisions in Schedule	3
	46 Transitional provision	4
5	New Schedule inserted	4
	Part 2	
	Amendments to other enactments	
	Subpart 1—Amendments to Customs and Excise Act 1996	
6	Principal Act	4
7	New section 280M inserted (Direct access to database information for counter-terrorism investigation purposes)	4
	280M Direct access to database information for counter-terrorism investigation purposes	4
	Subpart 2—Amendments to New Zealand Security Intelligence Service Act 1969	
8	Principal Act	6
9	New cross-headings and sections 4IA to 4IG inserted	7
	1—2	1

cl 1	Countering Terrorist Fighters Legislation Bill	
	<i>Visual surveillance warrants</i>	
	4IA Interpretation	7
	4IB Issue of visual surveillance warrant	7
	4IC Provisions applying to visual surveillance warrants	9
	<i>Situations of emergency or urgency</i>	
	4ID Intelligence warrant or visual surveillance warrant need not be obtained in some situations of emergency or urgency	10
	4IE Requirements after authorisation under section 4ID(1) given	12
	4IF Provisions applying to authorisations under section 4ID(1)	14
	<i>Repeals</i>	
	4IG Repeals	15
10	Section 4H amended (Prevention or detection of serious crime)	15
11	Section 5G amended (Exercise of Commissioner's functions during absence, etc)	15
12	Section 12A amended (Prohibition on unauthorised disclosure of information)	15
13	Consequential amendment to Search and Surveillance Act 2012	16
14	Consequential amendment to Telecommunications (Interception Capability and Security) Act 2013	16
	Schedule	17
	New Schedule inserted	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Countering Terrorist Fighters Legislation Act **2014**.
- 2 Commencement**
This Act comes into force on **12 December 2014**.

Part 1 Amendments to Passports Act 1992

3 Principal Act

This **Part** amends the Passports Act 1992 (the **principal Act**).

4 New cross-heading and section 45 inserted

5

After section 44, insert:

“Application

“45 Application of temporary provisions in Schedule

“(1) The temporary provisions set out in the **Schedule** apply during the period—

10

“(a) beginning on **12 December 2014**; and

“(b) ending with the close of **31 March 2018** ~~2017~~.

“(2) The temporary provisions have the following effect while they apply:

“(a) **clause 1** of the **Schedule** replaces section 4A:

15

“(b) **clause 2** of the **Schedule** replaces section 8A:

“(c) **clause 3** of the **Schedule** replaces section 20A:

“(d) **clause 4** of the **Schedule** replaces section 25A:

“(e) **clause 5** of the **Schedule** replaces section 27B:

“(f) **clause 6** of the **Schedule** replaces section 27E:

20

“(g) **clauses 7 to 9** of the **Schedule** supplement the provisions set out in the body of this Act.

“(3) If a temporary provision replaces a provision in the body of this Act, the application of the replaced provision is suspended.

25

“(4) If a temporary provision duplicates, modifies, supplements, or is inconsistent with a provision in the body of this Act, the temporary provision prevails.

~~**“(5)** To avoid doubt, sections 28 and 29 apply to **clauses 4 to 6** of the **Schedule** as if those clauses were in Part 1.~~

30

“(5) To avoid doubt,—

“(a) any replaced provision continues to apply with respect to any relevant matter arising before the commencement of this section:

“(b) any cross-reference in this Act or any other enactment or document to a replaced provision is to be treated as a

35

- cross-reference to the corresponding replacement provision with respect to any relevant matter arising on or after the commencement of this section:
- “(c) sections 28 and 29 apply to **clauses 1 to 6** of the **Schedule** as if those clauses were in Part 1. 5
- “(6) This section and the **Schedule** are repealed on **1 April 2018** **2017**.
- “**46 Transitional provision**
- “(1) On or after **1 April 2017**, any person whose New Zealand travel document was recalled under **clause 2, 3, 4, or 6** of the **Schedule** (as inserted by the **Passports Amendment Act 2014**) may, 12 months after the date on which that person’s New Zealand travel document was recalled, apply for— 10
- “(a) the return of that New Zealand travel document; or
- “(b) a new New Zealand travel document. 15
- “(2) This section is repealed on **1 April 2018**.”
- 5 New Schedule inserted**
- After **section 45** (as inserted by **section 4** of this **Part**), insert the **Schedule** set out in the **Schedule** of this Act.

Part 2 20

Amendments to other enactments

Subpart 1—Amendments to Customs and Excise Act 1996

- 6 Principal Act**
- This **subpart** amends the Customs and Excise Act 1996 (the **principal Act**). 25
- 7 New section 280M inserted (Direct access to database information for counter-terrorism investigation purposes)**
- After section 280L, insert:
- “**280M Direct access to database information for counter-terrorism investigation purposes** 30
- “(1) The purpose of this section is to facilitate access by the New Zealand Security Intelligence Service and the New Zealand

Police, for counter-terrorism investigation purposes, to information stored in a database.

- “(2) The chief executive may allow the following persons to access a database to search for information, including personal information, for counter-terrorism investigation purposes: 5
- “(a) the Director of Security:
- “(b) 1 or more suitable employees or officers of the New Zealand Security Intelligence Service designated by the Director of Security:
- “(c) the Commissioner of Police: 10
- “(d) 1 or more suitable Police employees designated by the Commissioner.
- “(3) Before allowing access to a database in accordance with **subsection (2)**, the chief executive must enter into a written agreement with the Director of Security or the Commissioner of Police (as the case may be). 15
- “(3A) Before entering into a written agreement under **subsection (3)**, the chief executive must consult with the Privacy Commissioner.
- “(4) The Director of Security and the Commissioner of Police must take all reasonable steps to ensure that— 20
- “(a) a record is kept of—
- “(i) every occasion on which persons access a database; and
- “(ii) the reason for accessing the database; and 25
- “(iii) the identity of the person who accessed the database; and
- “(b) every person who accesses a database—
- “(i) searches only for information for counter-terrorism investigation purposes; and 30
- “(ii) complies with the terms of the written agreement referred to in **subsection (3)**.
- “(5) In this section,—
- “**access a database** includes remote access to a database
- “**counter-terrorism investigation purposes** means the detection, investigation, and prevention of any actual, potential, or suspected— 35
- “(a) terrorist act; or

“(b) facilitation of a terrorist act

“**database** means any information recording system used by the Customs to store information

“**Director of Security** means the Director of Security holding office under the New Zealand Security Intelligence Service Act 1969 5

“**information**—

“(a) means—

“(i) any information held by the Customs that relates to goods, passengers, crew, or craft and their movements: 10

“(ii) any other border-related information held by the Customs; and

“(b) includes, but is not limited to,—

“(i) arrival and departure information: 15

~~“(ii) information collected by the Customs under Part 3A:~~

“(ii) information the Customs is entitled to view under any of sections 38G to 38K:

“(iii) information specified in section 282(1): 20

“(iv) border information (as defined in section 282D):

“(v) information collected or generated by the Customs in the course of preventing, detecting, or investigating border-related offences; but

“(c) except as provided in **paragraph (b)(i) and (iii) to (iv)**, does not include information which the Customs is not entitled to view under sections 38G to 38K 25

“**terrorist act** has the same meaning as in section 5(1) of the Terrorism Suppression Act 2002.

“(6) This section is repealed on **1 April 2018**~~2017~~.” 30

Subpart 2—Amendments to New Zealand Security Intelligence Service Act 1969

8 Principal Act

This **subpart** amends the New Zealand Security Intelligence Service Act 1969 (the **principal Act**). 35

9 New cross-headings and sections 4IA to 4IG inserted

After section 4I, insert:

“Visual surveillance warrants

“4IA Interpretation

In **sections 4IB to 4IF**,—

5

“**Inspector-General** means the Inspector-General under the Inspector-General of Intelligence and Security Act 1996

“**visual surveillance** means the observation of private activity in private premises, with or without the use of a visual surveillance device, and includes any recording of that observation

10

“**visual surveillance device** has the same meaning as in section 3(1) of the Search and Surveillance Act 2012

“**visual surveillance warrant** means a domestic visual surveillance warrant issued under **section 4IB(1)** or a foreign visual surveillance warrant issued under **section 4IB(2)**.

15

“4IB Issue of visual surveillance warrant

“(1) The Minister and the Commissioner may jointly issue a domestic visual surveillance warrant authorising a person to undertake visual surveillance if the Minister and the Commissioner are both satisfied on evidence on oath given by the applicant for the warrant that the conditions specified in **subsection (3)** apply to the proposed warrant.

20

“(2) The Minister may issue a foreign visual surveillance warrant authorising a person to undertake visual surveillance if the Minister is satisfied on evidence on oath given by the applicant for the warrant that—

25

“(a) the conditions specified in **subsection (3)** apply to the proposed warrant; and

“(b) there are reasonable grounds for believing—

“(i) that no New Zealand citizen or permanent resident is to be identified by the proposed warrant as a person who is to be subject to the warrant; and

30

“(ii) that any place to be specified in the proposed warrant is occupied by a foreign organisation or a foreign person.

35

“(3) The conditions referred to in **subsections (1) and (2)** are that—

-
- “(a) ~~the visual surveillance to be authorised by the proposed warrant is necessary—~~
- “(i) ~~for the detection of activities prejudicial to security; or~~
- “(ii) ~~for the purpose of gathering foreign intelligence information that is essential to security; and~~ 5
- “(aa) the visual surveillance to be authorised by the proposed warrant is necessary for the detection, investigation, or prevention of any actual, potential, or suspected—
- “(i) terrorist act; or 10
- “(ii) facilitation of a terrorist act; and
- “(b) the value of the information sought to be obtained under the proposed warrant justifies the visual surveillance; and
- “(c) the information is not likely to be obtained by any other means; and 15
- “(d) any recording of activity that is sought to be obtained under the proposed warrant is not privileged in proceedings in a court of law under—
- “(i) section 58 or 59 of the Evidence Act 2006; or 20
- “(ii) any rule of law that confers privilege on communications of a professional nature between a lawyer and his or her client.
- “(4) Every visual surveillance warrant must specify—
- “(a) the identity of the person to be observed: 25
- “(b) the place, facility, or thing to be observed.
- “(5) A visual surveillance warrant may be issued only on an application made in writing by the Director or by the person for the time being acting as the Director.
- “(6) A combined application for both a visual surveillance warrant and an intelligence warrant may be made, in which case the Minister and the Commissioner (in the case of a domestic warrant), or the Minister (in the case of a foreign warrant), may issue— 30
- “(a) a visual surveillance warrant only; or 35
- “(b) an intelligence warrant only; or
- “(c) both.
- “(7) ~~Before issuing a visual surveillance warrant in respect of any matter specified in paragraph (b) of the definition of security in~~

~~section 2(1), the Minister must consult the Minister of Foreign Affairs about the proposed warrant.~~

“(8) The expiry of a visual surveillance warrant does not prevent a further application under **subsection (1) or (2)** in respect of the same subject matter. 5

“(9) **Subsections (1) to (8)** have effect despite anything to the contrary in any other Act.

“(9A) As soon as practicable after a visual surveillance warrant is issued under **subsection (1)**, the Director (or the person for the time being acting as the Director) must provide a copy of the visual surveillance warrant to the Inspector-General. 10

“(10) As soon as practicable after the expiry of a visual surveillance warrant, the Director must ensure that any records resulting from the visual surveillance undertaken under that warrant are destroyed, except to the extent that those records are relevant— 15

“(a) to the detection of activities prejudicial to security; or

“(b) to the gathering of foreign intelligence information that is essential to security.

“(11) Every person who knowingly fails to comply with **subsection (10)** commits an offence and is liable on conviction to a fine not exceeding ~~\$1,000~~\$10,000. 20

“4IC Provisions applying to visual surveillance warrants

“(1) The following provisions apply, with any necessary modifications, as if references to an intelligence warrant or a warrant in those provisions were references to a visual surveillance warrant: 25

“(a) section 4A(6) to (8) (which confers immunities on persons giving effect to warrants):

“(b) section 4B(2) to (5) (which allows the Minister and the Commissioner to impose terms and conditions in the public interest or to minimise the impact on third parties): 30

“(c) section 4C (which relates to the term of a warrant):

“(d) section 4D (which empowers the Director or a delegate of the Director to give effect to a warrant and to request third parties to assist): 35

- “(e) section 4E (which provides powers to persons acting under warrants):
- “(f) section 4F (which imposes a duty to minimise the impact of a warrant on third parties):
- “(g) section 4I (which enables the Minister to issue a warrant for the removal of equipment installed under a warrant): 5
- “(h) section 4K (which requires the Director to include information in every annual report on the warrants in force during the relevant reporting period):
- “(i) section 4L (which requires the Minister to certify that the information on warrants in the annual report is correct): 10
- “(j) section 5AA (which permits the Director to delegate certain functions or powers relating to warrants, but not the function involved in applying for a warrant): 15
- “(k) section 5AAC (which requires delegations involving the execution of warrants to be entered in a register).
- “(2) The immunities referred to in **subsection (1)(a)** have effect despite anything to the contrary in any other Act.

“Situations of emergency or urgency” 20

“4ID Intelligence warrant or visual surveillance warrant need not be obtained in some situations of emergency or urgency

- “(1) The Director (or the person for the time being acting as the Director) may authorise a person to exercise a power specified in **subsection (2)** without an intelligence warrant or a visual surveillance warrant if the Director (or the person acting as the Director) is satisfied— 25
 - “(aa) that the exercise of the power is necessary for the detection, investigation, or prevention of any actual, potential, or suspected— 30
 - “(i) terrorist act; or
 - “(ii) facilitation of a terrorist act; and
- “(a) ~~the Director (or the person acting as the Director) is satisfied that,—~~ 35
 - “(i) in the case of an intelligence warrant, the conditions set out in section 4A(3)(b) to (d) apply; or

- “(ii) in the case of a visual surveillance warrant, the conditions set out in section **41B(3)(b) to (d)** apply; and
 - “(b) that obtaining an intelligence warrant or a visual surveillance warrant within the time in which it is proposed to exercise the power is impracticable in the circumstances and a delay is likely to result in a loss of intelligence. 5
- “(2) The powers are the power to,—
 - “(a) in relation to an intelligence warrant,— 10
 - “(i) intercept or seize any communication, document, or thing not otherwise lawfully obtainable by the person:
 - “(ii) undertake electronic tracking:
 - “(b) in relation to a visual surveillance warrant, undertake visual surveillance. 15
- “(3) An authorisation under **subsection (1)** is valid for a period not exceeding ~~48~~24 hours that is specified by the person giving the authorisation.
- “(4) On the expiry of an authorisation under **subsection (1)**, no further application may be made for an authorisation under **subsection (1)**, in respect of the same subject matter. 20
- “(5) An authorisation under **subsection (1)** may contain any terms and conditions that the Director (or the person for the time being acting as the Director) considers advisable— 25
 - “(a) in the public interest; or
 - “(b) to minimise any risk that the warrant may affect third parties, if, in the opinion of the Director (or the person for the time being acting as the Director), that risk is significant because of— 30
 - “(i) the name, alias, or other description of the person whose communications are sought to be intercepted; or
 - “(ii) the nature of the place or the facility in respect of which communications may be intercepted. 35
- “(6) **Subsections (1) to (4)** have effect despite anything to the contrary in any other Act.

“4IE Requirements after authorisation under section 4ID(1) given

- “(1) ~~As soon as practicable, and no later than 12 hours,~~ Immediately**
 after an authorisation is given under **section 4ID(1)**, the Director (or the person for the time being acting as the Director) 5
 must advise the following persons of the authorisation:
- “(a) the Minister; and**
 - “(b) the Inspector-General; and**
 - “(c) if the authorisation is to exercise a power that would**
 otherwise be required to be exercised under a domestic 10
 intelligence warrant or a domestic visual surveillance
 warrant, the Commissioner; **and**
 - ~~“(d) if the authorisation relates to any matter specified in~~**
~~paragraph (b) of the definition of security in section~~
~~2(1); the Minister of Foreign Affairs.~~ 15
- “(2) When the Minister or the Commissioner is advised under **sub-****
****section (1)**** of an authorisation, the Minister or the Commis-
 sioner may direct every person acting under the authorisa-
 tion—
- “(a) not to proceed with, or to discontinue, any or all activity** 20
 under the authorisation:
 - “(b) to destroy any or all of the information collected.**
- “(3) The Director (or the person for the time being acting as the**
 Director) must ensure that every direction under **subsection**
(2) is carried out without delay. 25
- “(3A) As soon as practicable after the Minister or the Commissioner**
issues a direction under **subsection (2), the Director (or the**
person for the time being acting as the Director) must refer the
matter to the Inspector-General for investigation.
- “(4) As soon as practicable after the expiry of an authorisation** 30
 under **section 4ID(1)**, if no application has been made for an
 intelligence warrant or a visual surveillance warrant in relation
 to the same subject matter, the Director (or the person for the
 time being acting as the Director) must provide a report—
- “(a) to the Minister; or** 35
 - “(b) if the authorisation was to exercise a power that would**
 otherwise be required to be exercised under a domestic
 intelligence warrant or a domestic visual surveillance
 warrant, to the Minister and the Commissioner.

- “(5) A report under **subsection (4)** must include the following information:
- “(a) the reason why the authorisation was given; and
 - “(b) the reason why no application for a warrant was made; and 5
 - “(c) the nature of the information collected under the authorisation.
- ~~“(6) After receiving a report under **subsection (4)** the Minister, or the Minister and the Commissioner jointly (as the case may be), must determine whether it was appropriate for that authorisation to have been given and, if not, refer the matter to the Inspector-General for investigation. 10~~
- “(6) As soon as practicable after receiving a report under **subsection (4)**, the Minister (in the case of an authorisation to exercise a power that would otherwise be required to be exercised under a foreign intelligence warrant or a foreign visual surveillance warrant) or the Minister and the Commissioner (in the case of an authorisation to exercise a power that would otherwise be required to be exercised under a domestic intelligence warrant or a domestic visual surveillance warrant) must— 15
- “(a) determine whether it was appropriate for that authorisation to have been given; and
 - “(b) refer the matter to the Inspector-General for investigation. 20
- “(6A) If an authorisation under **section 41D(1)** is followed by an application for a visual surveillance warrant or an intelligence warrant in relation to the same subject matter, and that application is refused, the Director must refer the matter to the Inspector-General for investigation. 25
- “(7) As soon as practicable after the expiry of an authorisation under **section 41D(1)**, if no warrant is issued in relation to the same subject matter, the Minister must ensure that any records resulting from activities undertaken pursuant to that authorisation are destroyed, except to the extent that those records are relevant— 30
- “(a) to the detection of activities prejudicial to security; or
 - “(b) to the gathering of foreign intelligence information that is essential to security. 35

- “(7A) As soon as practicable after a decision is made to retain records under **subsection (7)(a) or (b)**, the Minister must refer the matter to the Inspector-General for investigation.
- “(8) Every person who knowingly fails to comply with **subsection (7)** commits an offence and is liable on conviction to a fine not exceeding ~~\$1,000~~\$10,000. 5
- “(9) The Director must include in every annual report prepared under section 4J a statement, in relation to the reporting period to which the report relates, of—
- “(a) the number of authorisations given under **section 4ID(1)**: 10
- “(b) how many of those authorisations were to exercise powers that would otherwise be required to be exercised under—
- “(i) intelligence warrants: 15
- “(ii) visual surveillance warrants:
- “(ba) the length of time, expressed in 12-hour bands, that those authorisations remained in force before expiring or being replaced by an intelligence warrant or a visual surveillance warrant: 20
- “(c) how many of those authorisations were followed by an application for an intelligence warrant or a visual surveillance warrant in relation to the same subject matter:
- “(d) how many determinations were made under **subsection (6)** that it was not appropriate for an authorisation under **section 4ID(1)** to have been given. 25
- “(10) As soon as practicable after each year ending on 31 December, the Director must deliver to the Minister an interim report of the matters in **subsection (9)(a) to (d)** in relation to the 6-month period from 1 July to 31 December. 30
- “(11) Section 4J(2) to (4) (except section 4J(3)(b)) applies to an interim report under **subsection (10)**.
- “4IF Provisions applying to authorisations under section 4ID(1)**
- “(1) The following provisions apply, with any necessary modifications, to an authorisation under **section 4ID(1)** as if references to an intelligence warrant or a warrant in those provisions were references to an authorisation under **section 4ID(1)**: 35

- “(a) section 4A(6) to (8) (which confers immunities on persons giving effect to warrants):
- “(b) section 4D (which empowers the Director or a delegate of the Director to give effect to a warrant and to request third parties to assist): 5
- “(c) section 4E (which provides powers to persons acting under warrants):
- “(d) section 4F(1) and (2) (which imposes a duty to minimise the impact of a warrant on third parties):
- “(e) section 4I (which enables the Minister to issue a warrant for the removal of equipment installed under a warrant). 10
- “(2) The immunities conferred under **subsection (1)(a)** have effect despite anything to the contrary in any other Act.

“Repeals

“**4IG Repeals** 15
Sections 4IA to 4IF and this section are repealed on **1 April 2018****2017**.”

10 Section 4H amended (Prevention or detection of serious crime)
In section 4H(1), replace “sections 4(1)(a) and 4G(1)(a),” with “sections 4(1)(a), **4IB(10)**, **4IE(7)**, 4G(1)(a), and 4G(2A),” 20

11 Section 5G amended (Exercise of Commissioner’s functions during absence, etc)
In section 5G(2), replace “sections 4A and 4F” with “sections 4A, 4F, **4IB**, and **4ID**”. 25

12 Section 12A amended (Prohibition on unauthorised disclosure of information)
(1) In section 12A(2), replace “intelligence warrant” with “intelligence warrant, visual surveillance warrant, or authorisation under **section 4ID(1)**”. 30
(2) In section 12A(3), replace “intelligence warrant” with “intelligence warrant, visual surveillance warrant, or authorisation under **section 4ID(1)**”.

13 Consequential amendment to Search and Surveillance Act 2012

- (1) This section amends the Search and Surveillance Act 2012.
- (2) In section 47(1)(c)(i), replace “section 4A(1) or (2)” with “section 4A(1) or (2), **4IB(1) or (2), or 4ID(1)**”.

5

14 Consequential amendment to Telecommunications (Interception Capability and Security) Act 2013

- (1) This section amends the Telecommunications (Interception Capability and Security) Act 2013.
- (2) In section 3(1), definition of **interception warrant**, paragraph (b), replace “section 4A(1) or (2)” with “section 4A(1) or (2), **4IB(1) or (2), or 4ID(1)**”.

10

Schedule
New Schedule inserted

s 5

Schedule
Temporary provisions

s 45

- 1 Refusal to issue passport on grounds of national security**
- (1) The Minister may refuse to issue a New Zealand passport to a person if the Minister believes on reasonable grounds that— 5
- (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
- (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
- (ii) the proliferation of weapons of mass destruction; 10
- or
- (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and 15
- (b) the danger to the security of New Zealand cannot be effectively averted by other means; and
- (c) the refusal to issue a passport will prevent or effectively impede the ability of the person to carry out the intended action. 20
- (2) The Minister may also refuse to issue a New Zealand passport to a person if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage 25
- in, or facilitate,—
- (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
- (ii) the proliferation of weapons of mass destruction; 30
- and
- (b) the danger to the security of that country cannot be effectively averted by other means; and
- (c) the refusal to issue a passport will prevent or effectively impede the ability of the person to carry out the intended action. 35

Schedule	Countering Terrorist Fighters Legislation Bill	
(3)	To avoid doubt, the Minister may refuse to issue a New Zealand passport to a person who is outside New Zealand.	
(4)	If the Minister refuses to issue a passport under this clause,—	
	(a) the Minister must notify the person in writing of the refusal, and the reasons for it; and	5
	(b) the person is not entitled to obtain a New Zealand passport during the 12-month period starting with the date of the decision, unless the Minister’s decision under this clause is revoked by the Minister or by a court.	
(5)	Despite subclause (4)(a) ,—	10
	(a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk:	15
	(b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.	
(6)	Despite subclause (4)(b) , the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.	20
(7)	If the period exceeds 12 months,—	
	(a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person’s submission; and	25
	(b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—	30
	(i) inviting the person to make a written submission to the Minister about the decision; and	
	(ii) determining whether the decision should be revoked, having regard to the person’s submission (if any).	35
(8)	The Minister may, at any time before the expiry of the period referred to in subclause (4)(b) or (6) , apply to a Judge of the High Court for an order to extend for a further period not	

exceeding 12 months the period during which the person is not entitled to obtain a New Zealand passport.

- (9) The Judge must make the order applied for if satisfied that—
- (a) the information presented in support of the application is credible, having regard to its source or sources; and 5
 - (b) the information reasonably supports a finding that **sub-clause (1) or (2)** still applies in relation to the person concerned.

2 **Cancellation of passport on grounds of national security**

- (1) The Minister may, by notice in writing, recall any New Zealand passport, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that— 10
- (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
 - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or 15
 - (ii) the proliferation of weapons of mass destruction; or
 - (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and 20
 - (b) the danger to the security of New Zealand cannot be effectively averted by other means; and
 - (c) the cancellation of the passport, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action. 25
- (2) The Minister may also, by notice in writing, recall any New Zealand passport, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that— 30
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—
 - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or 35
 - (ii) the proliferation of weapons of mass destruction; and

Schedule	Countering Terrorist Fighters Legislation Bill	
	(b) the danger to the security of that country cannot be effectively averted by other means; and	
	(c) the cancellation of the passport, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.	5
(3)	To avoid doubt, the Minister may recall, cancel, or retain possession of a New Zealand passport for a person who is outside New Zealand.	
(4)	If the Minister cancels or retains possession of a passport under this clause,—	10
	(a) the Minister must notify the person in writing of the cancellation or retention, and the reasons for it; and	
	(b) the person is not entitled to obtain that passport or another New Zealand passport during the 12-month period starting with the date of the decision, unless the Minister’s decision under this clause is revoked by the Minister or by a court.	15
(5)	Despite subclause (4)(a) ,—	
	(a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk:	20
	(b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.	25
(6)	Despite subclause (4)(b) , the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.	
(7)	If the period exceeds 12 months,—	30
	(a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person’s submission; and	35
	(b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—	

- (i) inviting the person to make a written submission to the Minister about the decision; and
 - (ii) determining whether the decision should be revoked, having regard to the person's submission (if any). 5
 - (8) The Minister may, at any time before the expiry of the period referred to in **subclause (4)(b) or (6)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the passport or another New Zealand passport. 10
 - (9) The Judge must make the order applied for if satisfied that—
 - (a) the information presented in support of the application is credible, having regard to its source or sources; and
 - (b) the information reasonably supports a finding that **subclause (1) or (2)** still applies in relation to the person concerned. 15
- 3 Cancellation of certificate of identity on grounds of national security**
- (1) The Minister may, by notice in writing, recall any certificate of identity issued to any person by or on behalf of the New Zealand Government, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
 - (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
 - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
 - (ii) the proliferation of weapons of mass destruction; or
 - (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and 25
 - (b) the danger to the security of New Zealand cannot be effectively averted by other means; and 30
 - (c) the cancellation of the certificate of identity, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action. 35

Schedule	Countering Terrorist Fighters Legislation Bill	
(2)	The Minister may also, by notice in writing, recall any certificate of identity issued to any person by or on behalf of the New Zealand Government, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—	
(a)	the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—	5
(i)	a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or	
(ii)	the proliferation of weapons of mass destruction; and	10
(b)	the danger to the security of that country cannot be effectively averted by other means; and	
(c)	the cancellation of the certificate of identity, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.	15
(3)	To avoid doubt, the Minister may recall, cancel, or retain possession of a certificate of identity for a person who is outside New Zealand.	
(4)	If the Minister cancels or retains possession of a certificate of identity under this clause,—	20
(a)	the Minister must notify the person in writing of the cancellation or retention, and the reasons for it; and	
(b)	the person is not entitled to obtain that certificate of identity or another New Zealand travel document during the 12-month period starting with the date of the decision, unless the Minister’s decision under this clause is revoked by the Minister or by a court.	25
(5)	Despite subclause (4)(a) ,—	
(a)	the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk:	30
(b)	notice is to be treated as given if the Minister has taken all practicable steps to provide it.	35
(6)	Despite subclause (4)(b) , the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister	

is satisfied that the person would continue to pose a danger to New Zealand or any other country.

- (7) If the period exceeds 12 months,—
 - (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person's submission; and 5
 - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by— 10
 - (i) inviting the person to make a written submission to the Minister about the decision; and
 - (ii) determining whether the decision should be revoked, having regard to the person's submission (if any). 15
- (8) The Minister may, at any time before the expiry of the period referred to in **subclause (4)(b) or (6)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the certificate of identity or another New Zealand travel document. 20
- (9) The Judge must make the order applied for if satisfied that—
 - (a) the information presented in support of the application is credible, having regard to its source or sources; and 25
 - (b) the information reasonably supports a finding that **subclause (1) or (2)** still applies in relation to the person concerned.

4 Cancellation of emergency travel document on grounds of national security 30

- (1) The Minister may, by notice in writing, recall any emergency travel document issued to any person (other than a journey-specific emergency travel document issued under section 23(3)), and cancel it or retain possession of it, if the Minister believes on reasonable grounds that— 35
 - (a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—

Schedule	Countering Terrorist Fighters Legislation Bill	
	(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or (ii) the proliferation of weapons of mass destruction; or (iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and	5
	(b) the danger to the security of New Zealand cannot be effectively averted by other means; and	10
	(c) the cancellation of the emergency travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.	
(2)	The Minister may also, by notice in writing, recall any emergency travel document issued to any person (other than a journey-specific emergency travel document issued under section 23(3)), and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—	15
	(a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,—	20
	(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or (ii) the proliferation of weapons of mass destruction; and	25
	(b) the danger to the security of that country cannot be effectively averted by other means; and	
	(c) the cancellation of the emergency travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.	30
(3)	To avoid doubt, the Minister may recall, cancel, or retain possession of an emergency travel document for a person who is outside New Zealand.	35
(4)	If the Minister cancels or retains possession of an emergency travel document under this clause,—	
	(a) the Minister must notify the person in writing of the cancellation or retention, and the reasons for it; and	

- (b) the person is not entitled to obtain that emergency travel document or another New Zealand travel document (other than a journey-specific emergency travel document issued under section 23(3)) during the 12-month period starting with the date of the decision, unless the Minister's decision under this clause is revoked by the Minister or by a court. 5
- (5) Despite **subclause (4)(a)**,—
 - (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk: 10
 - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it. 15
- (6) Despite **subclause (4)(b)**, the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country.
- (7) If the period exceeds 12 months,— 20
 - (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person's submission; and 25
 - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by—
 - (i) inviting the person to make a written submission to the Minister about the decision; and 30
 - (ii) determining whether the decision should be revoked, having regard to the person's submission (if any).
- (8) The Minister may, at any time before the expiry of the period referred to in **subclause (4)(b) or (6)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the emergency travel document or another New Zealand travel document. 35

- 26

- (c) the refusal to issue a refugee travel document will prevent or effectively impede the ability of the person to carry out the intended action.
- (3) To avoid doubt, the Minister may refuse to issue a New Zealand refugee travel document to a person who is outside New Zealand. 5
- (4) If the Minister refuses to issue a New Zealand refugee travel document under this clause,—
 - (a) the Minister must notify the person in writing of the refusal, and the reasons for it; and 10
 - (b) the person is not entitled to obtain a New Zealand refugee travel document during the 12-month period starting with the date of the decision, unless the Minister’s decision under this clause is revoked by the Minister or by a court. 15
- (5) Despite **subclause (4)(a)**,—
 - (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk: 20
 - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.
- (6) Despite **subclause (4)(b)**, the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country. 25
- (7) If the period exceeds 12 months,—
 - (a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person’s submission; and 30
 - (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by— 35
 - (i) inviting the person to make a written submission to the Minister about the decision; and

Schedule	Countering Terrorist Fighters Legislation Bill	
	(ii) determining whether the decision should be revoked, having regard to the person's submission (if any).	
(8)	The Minister may, at any time before the expiry of the period referred to in subclause (4)(b) or (6) , apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain a New Zealand refugee travel document.	5
(9)	The Judge must make the order applied for if satisfied that—	
	(a) the information presented in support of the application is credible, having regard to its source or sources; and	10
	(b) the information reasonably supports a finding that subclause (1) or (2) still applies in relation to the person concerned.	
6	Cancellation of refugee travel document on grounds of national security	15
(1)	The Minister may, by notice in writing, recall any New Zealand refugee travel document, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—	20
	(a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—	
	(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or	
	(ii) the proliferation of weapons of mass destruction; or	25
	(iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and	30
	(b) the danger to the security of New Zealand cannot be effectively averted by other means; and	
	(c) the cancellation of the New Zealand refugee travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.	35
(2)	The Minister may also, by notice in writing, recall any New Zealand refugee travel document, and cancel it or retain pos-	

- session of it, if the Minister believes on reasonable grounds that—
- (a) the person is a danger to the security of a country other than New Zealand because the person intends to engage in, or facilitate,— 5
 - (i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
 - (ii) the proliferation of weapons of mass destruction; and
 - (b) the danger to the security of that country cannot be effectively averted by other means; and 10
 - (c) the cancellation of the New Zealand refugee travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action. 15
- (3) If the Minister cancels or retains possession of a New Zealand refugee travel document under this section,—
- (a) the Minister must notify the person in writing of the cancellation or retention, and the reasons for it; and
 - (b) the person is not entitled to obtain that New Zealand refugee travel document or another New Zealand refugee travel document during the 12-month period starting with the date of the decision, unless the Minister’s decision under this section is revoked by the Minister or by a court. 20 25
- (4) Despite **subclause (3)(a)**,—
- (a) the Minister may defer notifying the person for a period not exceeding 30 days if the Minister is satisfied that giving notice sooner would prejudice an ongoing investigation or put the security or safety of any person at risk: 30
 - (b) notice is to be treated as given if the Minister has taken all practicable steps to provide it.
- (5) Despite **subclause (3)(b)**, the Minister may specify a longer period in the notice, not exceeding 36 months, if the Minister is satisfied that the person would continue to pose a danger to New Zealand or any other country. 35
- (6) If the period exceeds 12 months,—

Schedule	Countering Terrorist Fighters Legislation Bill	
	(a) the person may, within 30 days after the date on which the notice was issued, make a written submission to the Minister about the length of the period and, if a submission is made, the Minister must review the length of the period, having regard to the person's submission; and (b) the Minister must, every 12 months after the date on which the notice was issued (if yet to expire), review the decision by— (i) inviting the person to make a written submission to the Minister about the decision; and (ii) determining whether the decision should be revoked, having regard to the person's submission (if any).	5
	(7) The Minister may, at any time before the expiry of the period referred to in subclause (3)(b) or (5) , apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the New Zealand refugee travel document or another New Zealand refugee travel document.	15
	(8) The Judge must make the order applied for if satisfied that—	20
	(a) the information presented in support of the application is credible, having regard to its source or sources; and (b) the information reasonably supports a finding that subclause (1) or (2) still applies in relation to the person concerned.	25
	(9) Nothing in this section authorises the Minister to cancel a New Zealand refugee travel document at a time when its holder is outside New Zealand.	
	7 Temporary suspension of New Zealand travel documents	
	(1) The Minister may suspend a person's New Zealand travel document for a period not exceeding 10 working days if the Minister is satisfied that—	30
	(a) a report is, in respect of clause 2, 3, 4, or 6, being prepared regarding the danger that the person presents to the security of New Zealand or another country; and (b) the person is likely to travel before the report is prepared.	35

- (2) If, during the preparation of the report, it becomes apparent that the grounds for cancellation (as specified in **clause 2, 3, 4, or 6**) cannot be established,—
- (a) the Minister must be notified immediately; and
 - (b) the suspension lapses when the Minister is notified. 5

8 Proceedings where national security involved

- (1) Sections 29AA to 29AC also apply to—
- (a) any application for judicial review of a decision made under **clause 1, 2, 3, 4, 5, 6, or 7**; and
 - (b) any other proceedings that challenge a decision made under this Act that involves matters of security. 10
- (2) With respect to section 29AA, if a decision, which may be made at any time, is made to withdraw any classified security information,—
- (a) the classified security information— 15
 - (i) must be kept confidential and must not be disclosed by the court; and
 - (ii) must be returned to the relevant agency; and
 - (b) the court must continue to make the decision or determine the proceedings— 20
 - (i) without regard to that classified security information; and
 - (ii) in the case of an appeal or a review of proceedings, as if that information had not been available in making the decision subject to the appeal or review. 25

Compare: 2009 No 51 s 37(4), (5)

9 Limitation of Crown liability

- (1) This clause applies to any decision made under **clause 1, 2, 3, 4, 5, 6, or 7**. 30

**Countering Terrorist Fighters
Legislation Bill**

- (2) The Crown is not liable to any person for any loss or damage as a result of, or in connection with, a decision referred to in **subclause (1)** unless the person or persons taking those actions, or any employee of the Crown performing any function directly or indirectly connected with those actions, has not acted in good faith or has been grossly negligent. 5
- Compare: 1996 No 27 s 280E(1), (2)

Legislative history

25 November 2014

Introduction (Bill 1–1), first reading and referral to Foreign Affairs, Defence and Trade Committee
