

NB: Unofficial translation,  
legally binding only in Finnish and  
Swedish  
Ministry of the Interior, Finland

## **Border Guard Act**

(578/2005)

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### **Chapter 1**

#### **General provisions**

##### Section 1

###### *Scope of application*

This Act lays down provisions on the crossing of the national border and its surveillance and, in addition to the provisions elsewhere in the law, on the functions and powers of the Border Guard and border guardsmen.

The *Border Guard Administration Act* (577/2005) applies to the arrangement of the administration, training and research of the Border Guard, to Border Guard offices and to the special rights and obligations of Border Guard officials. The provisions on the processing of personal data and on the right to receive and transmit data when performing Border Guard functions are laid down in this Act, the Act on the Processing of Personal Data by the Border Guard (579/2005), the Maritime Search and Rescue Act (1145/2001) and elsewhere in the law.

### Section 2

#### *Definitions*

For the purposes of this Act:

1) *automatic identification* means the identification of a wanted person by technical means by comparing an image recording of the person to the image material available to the authority;

2) *administrative unit* means a unit of the Border Guard provided in section 3(1) of the Border Guard Administration Act;

3) *border troops* means the troops referred to in section 2 of the Border Guard Administration Act;

4) *border strip* means the areas specified in more detail in the agreements regarding the boundaries of the national territories concluded between Finland and its neighbouring States stretching to the borderline or strips stretching to the borderline with a width of border clearings or felling clearings established for each border stretch in the border protocols;

5) *border crossing point* means a port, railway station, airport or other place or area laid down by Government decree designated for carrying out border checks and used for crossing the external border;

6) *maintaining order along the border* means the enforcement and supervision of compliance with the provisions on the national border and the border crossing points and with the provisions on international cooperation between border authorities;

7) *ensuring effective border management* means the measures taken nationally and abroad for the purpose of preventing a breach of the provisions on crossing the national or external border and the threats arising from cross-border passenger traffic to public order and security, and ensuring the security of cross-border traffic;

8) *border check* means checking persons crossing or intending to cross the border, their goods and vehicles and questioning them with the aim of ensuring effective border management;

9) *border surveillance* means the measures carried out for the purpose of maintaining order along the border and ensuring effective border management whereby the national borders are kept under surveillance and the crossing of especially the external border is prevented in areas between border crossing points;

10) *border guardsman* means an official of the Border Guard further defined in the Border Guard Administration Act, who has the special powers provided for a border guardsman in this Act or elsewhere in the law;

11) *border guard authority* means the authority referred to in section 4 of the Border Guard Administration Act;

12) *Schengen acquis* means the entity integrated into the legal framework of the European Union by the Treaty of Amsterdam on 1 May 1999, which consists of the Schengen Agreement of 1985, the Schengen Convention of 1990, the accession agreements of the Member States, the decisions and declarations of the Schengen Executive Committee, and

any provisions issued under the acquis at a later stage;

13) *internal border* means an internal border referred to in the Schengen acquis;

14) *external border* means an external border referred to in the Schengen acquis;

15) *border zone* means the area to be established at the external border of Finland to maintain order along the border and to ensure effective border management.

### Section 3

#### *Security and surveillance operations produced by the Border Guard*

The objective of the operations of the Border Guard is to ensure effective border management. In order to ensure effective border management, the Border Guard cooperates with other authorities.

The Border Guard performs surveillance functions expressly laid down by law and takes measures to prevent and investigate offences and to bring charges in cooperation with other authorities.

The Border Guard performs police and customs functions, search and rescue operations and participates in military defence. Provisions on the functions of the Border Guard within the area of search and rescue at sea are laid down in the Maritime Search and Rescue Act.

### Section 4

#### *Regional targeting of the Border Guard operations*

The Border Guard operates wherever this is justified with regard to maintaining order along the border or ensuring effective border management or to performing military defence functions provided for the Border Guard, and in the sea area and in the economic zone referred to in the Act on the Economic Zone of

Finland (1058/2004). The Border Guard operates elsewhere only if this is necessary to perform its statutory function or to provide executive assistance.

## Chapter 2

### General principles to be followed in the operations of the Border Guard

#### Section 5

##### *Performance of functions and their order of importance*

The Border Guard shall perform its functions with all due efficiency and expediency. If circumstances so require, the functions shall be placed in order of importance.

#### Section 6

##### *Requirement of appropriateness, objectivity and conciliation*

The functions shall be performed in an appropriate and objective manner promoting equal treatment and a conciliatory spirit.

#### Section 7

##### *Proportionality requirement*

No one's rights may be interfered with more and no one may be caused more inconvenience or damage than is necessary to carry out the function. The measures relating to the performance of Border Guard functions shall be proportionate to the importance and urgency of the function and to factors influencing an overall assessment of the situation.

#### Section 8

##### *Stating the grounds for measures*

Border guardsmen shall inform the persons concerned or their representatives of the grounds for measures affecting their personal liberty unless this is impossible on account of the persons' condition or the prevailing circumstances.

Unless otherwise provided in this or any other Act, persons other than those subjected to measures, or their representatives, also have the right to know the grounds for the measures affecting their rights as soon as possible without jeopardising the completion of the measures.

#### Section 9

##### *Postponing measures or refraining from taking measures*

Border guardsmen have the right to refrain from taking measures if completing such measures could lead to unreasonable consequences compared with the outcome sought. Further, separate provisions apply to refraining from taking measures in criminal matters.

When carrying out information-gathering activities referred to in this Act, border guardsmen may postpone intervention in an offence that is in the process of being committed and that does not immediately put other people's lives, health or personal liberty in serious danger or immediately cause danger of substantial damage to the environment or property and if the postponement of the measure is essential to prevent the disclosure of the information-gathering activities or to ensure the attainment of the objectives of the activities.

Any person who is requesting Border Guard measures and whose immediate rights are affected by the matter has the right to know the grounds for refraining from measures.

## Section 10

*General principles to be followed in customs, police and pre-trial investigation functions*

The principles laid down in the Police Act (493/1995) and other legislation on police functions are followed in police functions. The principles laid down in the Customs Act (1466/1994) and other legislation on customs control are followed in customs functions. The principles laid down in the Pre-trial Investigation Act (449/1987) and other legislation on the functions of pre-trial investigation authorities are followed in pre-trial investigation functions.

## Section 11

*Coordination of the principles to be followed in Border Guard functions*

Unless otherwise provided elsewhere, the measure that best safeguards the observance of basic rights and liberties and human rights laid down in the Constitution of Finland shall primarily be chosen from among measures of equal value available for the performance of a function.

**Chapter 3****General provisions on border crossing**

## Section 12

*Crossing the external border*

The external border is crossed through a border crossing point during confirmed opening hours.

Provisions on border crossing points and their opening hours and on the division of border check tasks between the Border Guard, Police and Customs at different border crossing points are laid down by

Government decree.

## Section 13

*Border crossing permit*

The Border Guard issues people with a permit to cross the external border through a place other than a border crossing point and at times other than the confirmed opening hours of a border crossing point (*border crossing permit*). The permit is issued if there is a good reason for that and if the procedure does not endanger effective border management. Terms necessary for border management may be included in the permit.

The border crossing permit may be withdrawn or its terms may be amended if the circumstances change after the issue of the permit so that the procedure may endanger effective border management.

A decision refusing an application for a border crossing permit or withdrawing the permit or changing its terms may not be appealed.

## Section 14

*Carrying out border checks*

A border check is carried out when a person intends to cross the external border or has crossed the border without a border check.

A border check is carried out at a border crossing point. A border check can also be carried out in a vehicle used for public transport or in another place if so required to ensure a smooth flow of traffic or for another well-founded reason.

## Section 15

*Reintroducing internal border checks*

The Government makes a decision to implement national border checks at

internal borders for a limited period referred to in the Schengen acquis (*reintroduction of internal border checks*). However, if a threat to public order, national security or public health requires immediate action, the Ministry of the Interior shall decide any necessary measures pending a decision from the Government.

Further provisions on the prompt handling of issues relating to the reintroduction of internal border checks between the Police, Customs and the Border Guard, and the submission of the relevant notifications to the competent European Union bodies and other States applying the Schengen acquis are laid down by Government decree.

#### Section 16

##### *Closing border crossing points temporarily*

The Government may decide to close a border crossing point for a fixed period or until further notice if it is necessary to close it to prevent a serious threat to public order, national security or public health. The Ministry of the Interior shall decide any immediate necessary measures pending a decision from the Government.

Closing a border crossing point may not prevent the right of Finnish citizens to enter the country or the right of anyone to leave the country. Furthermore, it may not violate the rights of persons covered by Community legislation on free movement or the right of anyone to obtain international protection.

Further provisions on the prompt handling of issues relating to the closing of a border crossing point between the Police, Customs and the Border Guard, and on the submission of the relevant notifications to the competent European Union bodies and other States are laid down by Government decree.

## Chapter 4

### Provisions on functions and measures

#### Section 17

##### *Border surveillance and border checks*

The Border Guard carries out border surveillance and border checks. It leads and coordinates the operations of the authorities conducting border checks.

#### Section 18

##### *Border check procedure*

A border check shall be carried out without undue delay and without causing unnecessary inconvenience to the persons to be checked or damage to property, and without violating the protection of privacy laid down for confidential messages, unless otherwise provided.

At the request of a border guardsman, the persons to be checked shall be at a place designated for them with their goods and vehicles for the border check to be carried out.

#### Section 19

##### *Measures included in the border check*

The border check is carried out either as a minimum check or, if facts known to the authority performing the border check or matters emerging in the minimum check so require, as a thorough check.

The minimum check includes:

1) establishing identity to ensure the right to cross the border, to supervise compliance with a prohibition of entry, travel ban, decision on refusal of entry or deportation decision, and to take measures requested in search warrants;

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2) inspecting the travel document or other document indicating the right of travel to ensure the right to cross the border and to ensure that the document is authentic;

3) where necessary, giving the person an opportunity to be heard;

4) where necessary, controlling that the driver is fit to drive and that the vehicle is fit for traffic.

The thorough check includes the minimum check. In addition, it may include carrying out a non-intimate body search and searching the person's luggage and vehicle to find a document necessary for establishing his or her identity and for ensuring that the person does not have, on his or her person, in his or her luggage or vehicle, property obtained through a crime or property replacing such property or other property that he or she is not entitled to possess or take across the border.

#### Section 20

##### *Maintaining public order and security at a border crossing point*

The Border Guard attends to the maintenance of public order and security at a border crossing point when the police are prevented from doing it.

The provisions of the Public Order Act (612/2003) apply to supervising compliance with the provisions on the possession of dangerous objects and objects and substances suitable for harming other people and on the use of intoxicants.

#### Section 21

##### *Urgent police functions relating to public order and security*

At the request of a police officer, the Border Guard may, in individual cases, perform urgent police functions relating to

preventing or intervening in the commission of offences when the police are unable to perform these functions without delay.

In a matter at hand, a border guardsman may also without the request of a police officer perform a function specified in subsection 1, if the action cannot be delayed without danger to health or property. The police shall be notified of the action without delay. At the request of a police officer, any such action shall be abandoned or, if already started, discontinued.

#### Section 22

##### *Combating terrorism and other special circumstances*

At the request of a commanding police officer, the Border Guard may provide the police with vehicles, personnel and special expert services, if this is necessary owing to a special threat in order to combat offences committed with terrorist intent, to apprehend a dangerous person, to disperse a crowd endangering public order and security through gathering or unjustifiably obstructing traffic, or to protect against offences and disturbances.

The provisions of the Ship and Port Facility Security Act (485/2004), hereinafter the *Maritime Security Act*, apply to the functions of the Border Guard in preventing maritime security threats.

The provisions of section 77 of this Act apply to providing executive assistance.

#### Section 23

##### *Safeguarding functions*

The Border Guard may, on behalf of the State, handle a transport requiring preparedness for special protective measures to ensure the security of the transport.

Where necessary, the Border Guard may designate a border guardsman who has received special training laid down by Ministry of the Interior decree (*security guard*) to protect the security of the heads of State, official guests and the officials of the Border Guard and its guests or persons transported by it and needing special protection, or to protect the integrity of special property.

#### Section 24

##### *Customs functions*

The Border Guard carries out, along with Finnish Customs, customs controls and related preliminary customs functions at the national borders and border crossing points where Customs does not carry out customs controls.

At the request of a commanding customs officer, the Border Guard may also carry out customs controls on people entering or leaving the country at border crossing points where Customs otherwise carries out customs controls. At the request of a customs officer, a border guardsman may participate in the performance of an individual customs function.

#### Section 25

##### *Military defence functions*

The Border Guard participates in national defence and to this end provides military training to its personnel, to conscripts allocated to the Border Guard and to women performing voluntary military service. Furthermore, it maintains and promotes defence capability in cooperation with the Defence Forces.

Where necessary in the interests of defence capability, the border troops or parts thereof may be attached to the Defence Forces by Decree of the President of the Republic.

The Border Guard may participate in the promotion of voluntary national defence.

#### Section 26

##### *Participation in search and rescue functions and medical transportation*

In addition to the provisions of the Maritime Search and Rescue Act, the Border Guard participates in other search and rescue functions and in the search of persons lost in open country or otherwise in need of immediate assistance by providing vehicles, personnel and expert services if this is to be deemed necessary in view of the special nature or extent of the accident or incident.

The Border Guard may arrange urgent medical transportation if the authority responsible for it or the medical transportation service provider is unable to perform the transportation without jeopardising the rescue.

#### Section 27

##### *Investigation of border incidents and requirements for entry and departure of aliens*

The provisions on pre-trial investigation and police investigation apply, where applicable, to an investigation performed by the Border Guard to establish the requirements for an alien to enter the country or stay there, to leave or be removed from the country and to establish the identity, entry into the country and travel route of a person applying for international protection. The same applies to the investigation of a border incident referred to in the agreement concerning the régime of the Finnish-Soviet State Frontier and the procedure for the settlement of frontier incidents (Treaty Series of the Statute Book of Finland 32/1960).

If the investigation relates to a matter belonging to a person's rights or obligations, the provisions on an injured party in a pre-trial investigation apply to his or her status. When explaining a matter under investigation and answering the questions on it, the party and his or her legal representative and agent are under obligation to tell the truth, unless the investigation is conducted to establish whether the person under investigation should be subject to a punitive sanction either by sentence or order. A person under investigation is liable to submit to the investigation for a maximum of twelve hours at a time.

## **Chapter 5**

### **Provisions on powers**

#### Section 28

##### *Powers relating to border checks*

In order to carry out a border check, border guardsmen have the right to:

- 1) take temporary possession of a travel document as provided separately;
- 2) carry out a non-intimate body search in compliance with the provisions of Chapter 5, sections 10 and 12 of the Coercive Measures Act (450/1987), where applicable;
- 3) conduct a search of a vehicle in compliance with the provisions of Chapter 5, section 8 of the Coercive Measures Act on the search of premises, where applicable;
- 4) prevent a person from leaving a border check in compliance with the provisions of Chapter 6, section 1 of the Coercive Measures Act, where applicable;
- 5) temporarily take into the possession of the Border Guard, for the duration of the border check, goods and a vehicle to be checked.

The border guardsman acting as the

superior of the border crossing point decides on the prevention of departure and the taking into possession of goods and a vehicle temporarily for the duration of the border check. In an urgent case, the prevention of departure and the taking into possession is carried out by the border guardsman performing the border check. The border guardsman shall without delay refer the matter to be decided by the border guardsman acting as the superior of the border crossing point.

Refraining from the intention to cross the border does not prevent the performance of a border check if this is necessary to establish identity and to ensure that the person is not carrying objects or substances which he or she is not entitled to possess or carry across the border. A border check is discontinued if continuing the measures is deemed clearly unnecessary because of an obstacle to the crossing of the border or for a comparable reason.

On the basis of the check, a border guardsman has the right to take appropriate measures that are part of the statutory Border Guard functions.

#### Section 29

##### *Automatic identification performed at a border crossing point*

The Border Guard has the right to use images and voice accrued in technical monitoring for performing the automatic identification of persons to be summoned, apprehended, arrested, placed in detention, imprisoned or taken to be monitored by the authorities on the basis of a warrant issued by a competent authority, and for preventing, intervening in and detecting offences investigated by the Border Guard. Automatic identification may not, however, be performed in a lavatory, dressing room or other corresponding place or in personnel premises or work

rooms designated for the personal use of employees.

An appropriate sign shall be displayed to notify people of automatic identification.

### Section 30

#### *Right to obtain control facilities*

The Border Guard has the right to obtain, at a going rate, control facilities required for the implementation of border checks from the owner or holder of a traffic location serving as the border crossing point.

### Section 31

#### *Technical monitoring relating to border surveillance*

To perform border surveillance, the Border Guard has the right, in the immediate vicinity of the border and at the border crossing point and in its immediate vicinity, at places open to the public, to use technical monitoring referred to in the Police Act and directed at an area outside domestic premises. Technical monitoring may not, however, be used in a lavatory, dressing room or other corresponding place or in personnel premises or work rooms designated for the personal use of employees.

An appropriate sign shall be displayed to notify people of technical monitoring taking place at a border crossing point.

### Section 32

#### *Powers of border guardsmen to maintain public order and security at border crossing points*

The provisions on police officers of sections 14, 16 and 18(1) of the Police Act apply to the right of border guardsmen to take measures to maintain public order and

security at border crossing points. The provisions of section 16 of the Police Act on commanding police officers are applied in the Border Guard to officials entitled to make an arrest and to border guardsmen acting as superiors of a border crossing point.

### Section 33

#### *Powers of border guardsmen in police functions*

Border guardsmen have the powers laid down for police officers in Chapter 2 of the Police Act to perform urgent police functions relating to public order and security under section 21, to combat offences committed with terrorist intent under section 22, to handle special situations and to perform functions belonging to the Border Guard under the Maritime Security Act, unless a commanding police officer or a field commander of the police restricts them.

### Section 34

#### *Powers of border guardsmen in customs functions*

In a customs function under section 24, border guardsmen have the powers laid down for another competent authority in section 14 of the Customs Act.

If the performance of a customs function requires that an intimate body search or a check other than a check on the person's luggage or outer clothing be carried out without a pre-trial investigation, the provisions of section 15 of the Customs Act are observed in the performance of such a measure. An official with the right to make an arrest or a border guardsman with the rank of at least major decides on the measure.

## Section 35

*Use of force by border guardsmen*

Border guardsmen acting in an official capacity are entitled, unless otherwise provided by law, to use necessary force that can be considered justifiable to overcome resistance, remove a person from the scene, apprehend a person, prevent the escape of a person who has lost his or her liberty, eliminate an obstacle or address an immediate risk of a crime or other dangerous act being committed or some other dangerous situation developing. When judging the justifiability of force by a border guardsman, the importance and urgency of the official function, the danger posed, the resources available and other factors influencing an overall assessment of the situation shall be taken into account. If the use of force is necessary, it shall be used only to the extent and to the point necessary to perform the statutory official function (*the principle of minimum force*).

In a situation in which it is vital to enlist the help of bystanders in carrying out an extremely important and urgent Border Guard function requiring the use of force, persons temporarily assisting border guardsmen at their request or with their consent have the right, under Border Guard guidance, to exercise any essential force authorised by border guardsmen acting within their powers.

Provisions on the excessive use of force are laid down in Chapter 4, sections 6(3) and 7 of the Penal Code (39/1889). Provisions on the use of force in territorial surveillance functions are laid down in the Territorial Surveillance Act (755/2000). Provisions on the application of the right to use force by a soldier in the Border Guard referred to in Chapter 45, section 26a of the Penal Code are laid down in section 31 of the Border Guard Administration Act.

## Section 36

*Establishing identity*

To perform an individual function provided for the Border Guard, border guardsmen have the right to obtain from anyone information on their name, personal identity code, or, if this does not exist, date of birth and nationality and the place where they can be reached.

Border guardsmen have the right to apprehend anyone who refuses to give the information referred to in subsection 1 or gives what is likely to be false information on the said matters. Persons so apprehended shall be released as soon as the necessary information has been obtained, but no later than 24 hours after being apprehended.

## Section 37

*Apprehending wanted persons*

Border guardsmen have the right to apprehend persons who, in accordance with a search warrant issued by a competent authority, shall be apprehended, arrested, detained or taken into custody. Apprehended persons shall be transferred into police custody without delay unless they have to be released immediately.

## Section 38

*Stopping a vehicle and controlling traffic*

Border guardsmen have the right to order a vehicle to be stopped and moved or to move a vehicle and control traffic if this is necessary to carry out a border check or border surveillance or to maintain public order and security at a border crossing point or to perform a police function under section 33.

## Section 39

*Right to access to other persons' property*

Border Guard officials and conscripts and persons performing voluntary military service used to support the operations of the Border Guard have the right to access the land and water areas of other persons by foot, skis or a vehicle used by the Border Guard if this is necessary to perform a Border Guard function. Access to yard areas and corresponding areas reserved for special purposes should, however, be avoided unless there is a compelling reason for such access owing to a Border Guard function. The right to access laid down in this subsection does not apply to a military defence exercise arranged by the Border Guard, unless otherwise agreed with the owner of the land or water area.

The owner or holder of the land or water area is paid compensation at a going rate for any damage or harm caused by the access to the area.

## Section 40

*Authority of border guardsmen*

When exercising the powers laid down in this or any other Act, border guardsmen have the right, in individual cases and within their competence, to issue necessary orders and prohibitions binding on everyone.

**Chapter 6****Preventing and investigating offences**

## Section 41

*Powers of border guardsmen to prevent and investigate offences*

The Border Guard is a pre-trial

investigation authority under the Pre-Trial Investigation Act. The Border Guard takes measures to prevent and investigate offences and bring charges independently or in cooperation with other authorities as provided in this Chapter or elsewhere in the law. The provisions of the Military Discipline Act (331/1983) also apply to the pre-trial investigation of an offence under the Military Court Procedure Act (326/1983) and to the coercive measures used in that.

With the exception of undercover activities, undercover transactions, telecommunications interception and telecommunications monitoring, the provisions of the Police Act, the Pre-Trial Investigation Act, the Coercive Measures Act or any other Act on the powers of police officers to prevent and investigate offences and to bring charges apply to the powers of border guardsmen within their competence to prevent and investigate offences and to bring charges. The provisions of section 31f of the Police Act and Chapter 5a, section 3a of the Coercive Measures Act on the right of police officers to obtain information on mobile stations and the provisions of section 33 of the Police Act on technical surveillance also apply to the Border Guard. When participating in a pre-trial investigation led by another pre-trial investigation authority, border guardsmen have the right to process information obtained by a method not available to the Border Guard.

The provisions on the powers of commanding police officers to prevent and investigate offences and to bring charges apply to officials with the right to make an arrest and to heads of investigation in the Border Guard. Orders for interception lasting more than three days referred to in section 31(1) of the Police Act are issued by the chief, bureau chief or senior officer of the Legal Division of the Border Guard Headquarters.

## Section 42

*Criminal matters to be investigated by the Border Guard*

Unless otherwise provided below, the Border Guard conducts a pre-trial investigation where, on the basis of a notification made to it or otherwise, there is reason to suspect that an offence has been committed involving a violation of provisions or orders on crossing a border under the control of the Border Guard as provided in Chapter 17, section 7 or 7a of the Penal Code or as otherwise provided by law, facilitation of illegal entry under Chapter 17, sections 8 and 8a of the Penal Code and human trafficking relating to the above actions under Chapter 25, sections 3 and 3a of the Penal Code or other offences against liberty under Chapter 25 of the Penal Code, forgery offences under Chapter 33, sections 1-4 of the Penal Code and relating to a document to be inspected by the Border Guard, territorial violations under Chapter 17, section 7b of the Penal Code or another infringement of Finnish territorial integrity or failure to comply with other provisions or orders legally enforceable by the Border Guard.

The Border Guard also conducts a pre-trial investigation where there is reason to suspect an offence against a border guard authority or border markers or border equipment maintained by it or a violation of the provisions on the border zone, and where there is reason to suspect that a person employed by the Border Guard has committed an offence under section 2 of the Military Court Procedure Act which is handled as a military offence or that the person has committed an offence under Chapter 40 of the Penal Code subject to the provisions on the powers of the Defence Forces or the police concerning pre-trial investigation.

## Section 43

*Other pre-trial investigation conducted by the Border Guard*

At the request of another pre-trial investigation authority, the Border Guard may also conduct a pre-trial investigation in a matter other than the one referred to in section 42, if the matter relates to a pre-trial investigation started by the Border Guard and if related charges could be handled in court together with the charges for the offence investigated by the Border Guard.

## Section 44

*Transferring pre-trial investigation to another pre-trial investigation authority*

Unless otherwise provided on the division of duties between the Border Guard, Police and Customs, the Border Guard transfers the pre-trial investigation of a customs offence referred to in the Customs Act to Customs and the pre-trial investigation of another offence to the police if the nature or scope of the matter or of the necessary pre-trial investigation methods so require or if the pre-trial investigation authority in question so demands. Where a matter is to be transferred, the Border Guard shall ensure that the pre-trial investigation is carried out until such time as the pre-trial investigation has been transferred.

The pre-trial investigation authority to whom the pre-trial investigation is transferred provides the Border Guard with an opportunity to participate in the pre-trial investigation after the transfer if the pre-trial investigation concerns a violation of provisions or orders on crossing a border under the control of the Border Guard or facilitation of illegal entry and offences against liberty relating to these acts, or a forgery of a document to be inspected by

the Border Guard or a violation of Finland's territorial integrity.

The Border Guard shall transfer a pre-trial investigation to be conducted by the police where there is reason to suspect that a person employed by the Border Guard has committed an offence to be handled as a military offence or an offence under Chapter 40 of the Penal Code, if the severity of the offence or trust in the impartiality of the investigation so requires.

#### Section 45

##### *Assistance to another pre-trial investigation authority*

Upon request, the Border Guard may render assistance to another pre-trial investigation authority to prevent and investigate offences and to have charges brought for these offences.

The Border Guard may institute measures to ensure the prevention and investigation of offences and to make sure that charges are brought for these offences in a matter belonging to another pre-trial investigation authority, if the offence is not minor and the measures cannot be postponed without endangering the success of the pre-trial investigation. The authority on whose behalf the measures have been initiated shall be notified immediately of the safeguarding measures.

The measures referred to in this section shall be abandoned if the authority on whose behalf the measures are carried out so requests.

#### Section 46

##### *Head of investigation*

The head of a pre-trial investigation conducted by the Border Guard is an officer of the Border Guard referred to in

Chapter 1, section 6(4) of the Coercive Measures Act or a border guardsman who has received the training and gained the experience laid down by Government decree and designated as head of investigation by the chief of the administrative unit in question.

#### Section 47

##### *Issuing a summary penal order and imposing a fixed fine*

A border guardsman issues a summary penal order as provided in sections 3-7 of the Summary Penal Orders Act (692/1993). A border guardsman imposes a fixed fine as provided in the Fixed Fines Act (66/1983). The provisions of the Fixed Fines Act on the tasks of the chief of a police district apply to the tasks of a chief of a border guard district or coast guard district.

#### Section 48

##### *Notification of a crime prevention measure*

The Border Guard notifies other pre-trial investigation authorities of a suspected offence that has come to its knowledge and of a measure it has taken to prevent or investigate the offence or to have charges brought for the offence as further provided by Ministry of the Interior decree.

### **Chapter 7**

#### **Provisions on the border zone**

#### Section 49

##### *Border zone*

A border zone may be established along the external border if this is necessary to maintain order along the border and to

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ensure effective border management. The border zone may extend to a distance of at most three kilometres on land and at most four kilometres at sea from the Finnish national border referred to in international agreements binding on Finland (*border line*).

Further provisions on the establishment of a border zone, its width and location are laid down by Government decree. The border zone may not be spaced wider than what is required for border surveillance.

#### Section 50

##### *Border fence*

By virtue of international agreements binding on Finland, a landowner or a holder of a land area in the border zone is obliged to allow a fence to be built at the cost of the State along the edge of a border opening cleared along the Finnish border (*border fence*).

#### Section 51

##### *Prohibitions relating to the border zone*

Unless otherwise provided in this Act, the following are prohibited in the border zone:

1) building fences and corresponding structures closer than 50 meters to the border line which hinder the patrolling and other operations of the Border Guard necessary to ensure effective border management;

2) moving between sunset and sunrise in such parts of rivers and narrow straits of lakes along which the border line runs, and closer than 100 meters to the border line in all rivers crossed by the border line and in lakes and bays along which the border line runs (*border waters*);

3) herding reindeer and domestic animals without supervision where there is no

fence to prevent them from crossing the border line.

#### Section 52

##### *Border zone permit*

Unless otherwise provided in this or any other Act, the following activities are subject to a permit in the border zone:

- 1) staying in the border zone;
- 2) moving in border waters in daytime and moving in the border strip;
- 3) building structures closer than 50 meters to the border line;
- 4) possessing firearms, ammunition, explosives and spring-operated weapons;
- 5) using the objects and substances referred to in paragraph 4;
- 6) excavating earth and mineral aggregates and searching for minerals closer than 20 meters to the border line.

A permit (*border zone permit*) is issued if it is acceptable for reasons of residence, work, profession, livelihood, business, hobby or otherwise, and if the exercise of the right granted in the permit is not likely to cause danger to maintaining order along the border or ensuring effective border management.

#### Section 53

##### *Period of validity of the border zone permit and permit terms*

A border zone permit is granted to:

1) a person residing in the border zone or holding a residential building or property there and persons close to him or her, being valid until further notice;

2) a person working in the border zone or carrying out a profession, livelihood or business there, the permit being valid until further notice unless, for a special reason, it shall be granted for a fixed term;

3) a person other than the one referred to in paragraphs 1 and 2 for a fixed term.

Terms relating to moving in the border zone and necessary to maintain order along the border and ensure effective border management may be included in the border zone permit. The permit terms may be changed if the requirements for issuing the permit change significantly.

#### Section 54

##### *Expiry and cancellation of a border zone permit*

A border zone permit expires when the permit holder dies. A border zone permit shall be cancelled if the permit holder so requests.

A border zone permit may be cancelled if:

- 1) the permit holder commits an offence which endangers order along the border or effective border management;
- 2) the permit holder violates the terms of the permit or the provisions on the border zone in a manner other than that referred to in paragraph 1;
- 3) the grounds for granting the permit no longer exist.

A border zone permit may be cancelled for a fixed term during a pre-trial investigation and possible court proceedings if there is probable cause to suspect that the permit holder has committed an offence under subsection 2(1) or if he or she has committed a violation under paragraph 2.

#### Section 55

##### *Warning*

In the cases referred to in section 54(2), the permit holder may be issued with a warning instead of cancelling the permit if it would be unreasonable to cancel the permit considering the circumstances.

#### Section 56

#### *Competent authorities*

The Border Guard, Police and Customs supervise compliance with the provisions on the border zone.

The border zone permit shall be carried at all times by the permit holder. Upon request, it shall be presented to a border guardsman, police officer or customs official. If the permit holder cannot present evidence of a valid permit, he or she may be made liable to present evidence thereof to the authority conducting the supervision within seven days of issuing the order (*order to present evidence*).

An issue relating to a border zone permit or a warning is decided by the regional border guard authority whose operating area the issue concerns.

#### Section 57

##### *Border zone notification*

In addition to the provisions of section 52 on activities subject to a permit, the border guard authority shall be notified of the following in advance (*border zone notification*):

- 1) use of a firearm, explosive substance or a spring-operated weapon and of timber felling and forest thinning closer than 500 meters to the border line;
- 2) logging, fishing and moving in border waters with a vehicle.

A border zone notification is submitted to the regional or local border guard authority whose operating area the notification concerns. The border guard authority issues further provisions on the moving relating to the activity referred to in subsection 1, on the targeting of weapons, the amount of explosive substances to be used at one time, the direction for felling the trees and the felling methods and on other measures to prevent unintentional border incidents if this is necessary to maintain order along

the border and to ensure effective border management.

#### Section 58

##### *Restrictions on the scope of application of the provisions on the border zone*

As an exception to the statutory prohibitions concerning the border zone, the Border Guard, Police, Customs and the Defence Forces carrying out their official duties and persons performing rescue operations or crossing the national border legally are allowed to move in the border strip and border waters.

The Border Guard, Police, Customs and the Defence Forces carrying out their official duties and persons performing rescue operations are not required to have a border zone permit or a border zone notification. Such a permit or notification is not required either for staying in the border zone, moving in the border waters or border clearing or for possessing and using firearms, ammunition, explosives and spring-operated weapons if this is necessary for the purpose of crossing the national border legally.

#### Section 59

##### *Intervening in the commission of violations of border zone provisions*

A border guardsman, police officer or customs official performing border surveillance functions in the border zone has the right to:

- 1) prevent activities carried out without a required border zone permit or border zone notification;
- 2) remove an unauthorised person from the border zone;
- 3) take possession of firearms, ammunition, explosives and spring-operated weapons held without a permit or

used without an advance notification in the border zone.

The regional border guard authority may order a building, fence or other structure built without a permit or against a prohibition to be pulled down or removed and forbid the use of the building and impose a penalty payment or issue a threat of action or suspension as further provided in the Penalty Payment Act (1113/1990).

The decisions referred to in this section may be enforced regardless of appeal unless the appeal authority decides otherwise.

#### Section 60

##### *Decision given orally*

A permit under section 52(1)(4-5) may in urgent cases be given orally. A decision where the application is approved in full is not subject to appeal. An oral decision which is not subject to appeal is issued in writing only on a separate request.

A decision other than a decision on a border zone permit under subsection 1 may be appealed as provided in the Administrative Judicial Procedure Act (586/1996).

## Chapter 8

### **Treatment of persons deprived of liberty**

#### Section 61

##### *Provisions applicable to the treatment of persons deprived of liberty*

The provisions of the Detention Act (615/1974) apply in the Border Guard to the treatment of persons deprived of liberty, where applicable, unless otherwise provided below.

The provisions of the Act on the Treatment of Aliens Placed in Detention

and on Detention Units (116/2002) apply to the treatment of aliens placed in detention and the provisions of the Act on Treating Intoxicated Persons (461/1973) to the treatment of intoxicated persons. Provisions on apprehension relating to military discipline and on the enforcement of a sentence are laid down in the Military Discipline Act.

#### Section 62

##### *Handing over apprehended or arrested persons*

Persons apprehended or arrested by the Border Guard shall be handed over to the police without undue delay unless they have to be released immediately or handed over to another pre-trial investigation authority, the alien detention unit or to prison authorities. The handing over shall take place within 48 hours of the apprehension.

#### Section 63

##### *Transporting persons deprived of liberty*

A border guard has the right to carry out the transport required for handing a person deprived of liberty over to another authority.

#### Section 64

##### *Detention facilities for persons deprived of liberty*

A person deprived of liberty may be detained in appropriate Border Guard facilities approved for that purpose by the Border Guard Headquarters.

When approving the detention facilities, account shall be taken of the rights secured to a person deprived of liberty by the Detention Act.

The detention facilities of the Border

Guard shall be guarded 24 hours a day.

### **Chapter 9**

#### **Special provisions on the security of the operations and premises of the Border Guard**

#### Section 65

##### *Security search*

When apprehending, arresting, placing in detention, taking into custody or carrying out executive assistance affecting personal liberty, border guardsmen have the right to search the persons in question and their personal goods in order to ensure that they are not carrying any objects or substances that could be used to jeopardise their custody arrangements or to cause danger to themselves or to others. At the same time, the persons can also be searched in order to find documents necessary for their identification.

If necessary, dangerous objects and substances shall be removed from the persons searched. They shall be returned to them upon release, provided that there is no legal impediment to do so.

#### Section 66

##### *Taking possession of dangerous objects and substances*

In addition to what is provided in this or any other Act, border guardsmen carrying out their statutory duties have the right to take temporary possession of firearms, explosives and other dangerous objects and any parts belonging or connected to them and other dangerous substances from any person whose age, state of intoxication, state of mind or other circumstances may reasonably be thought to pose an immediate danger to public order and

security. Instead of the whole object, a part belonging or connected to it may be taken into possession if its removal may prevent the danger.

The property taken into possession shall be returned to its holder immediately and at the latest within 14 days. If the object or substance cannot be returned to the holder without danger, it shall be handed over to the police either to be returned to the holder or for measures laid down in section 24 of the Police Act or in the Firearms Act (1/1998).

A record shall be drawn up or an entry made in some other document of the property taken into possession.

#### Section 67

##### *Security check within the Border Guard premises or area*

Security checks may be organised in the Command Headquarters of the Border Guard and on other important Border Guard premises and in areas under its jurisdiction to ensure security and good order and to protect property.

Decisions on carrying out security checks are made by the head of the administrative unit of the Border Guard responsible for the premises or area. The security check may be carried out by a border guardsman. The security check may also be carried out by a police-approved person (*security inspector*) trained for the task of a security inspector as provided by Ministry of the Interior decree.

The security check shall be carried out in such a manner that it does not cause any unnecessary inconvenience to the persons inspected or damage to property.

#### Section 68

##### *Carrying out security checks*

A border guardsman or a security

inspector has the right, using a metal detector or other similar technical devices or a trained animal, to inspect persons entering the Border Guard premises or the area under its jurisdiction, persons already there and their belongings in order to ensure that the persons concerned do not carry any objects or substances that can be used for endangering security and order or for damaging property. The belongings of the person to be inspected may also be inspected by other means.

If there are reasonable grounds for suspecting that the persons to be inspected are carrying objects or substances under subsection 1, the persons can be inspected in order to find the objects or substances.

#### Section 69

##### *Taking possession of objects found in a security check*

A border guardsman and a security inspector have the right to take possession of objects or substances found in the check or otherwise referred to in section 68(1) or the possession of which is otherwise prohibited under law or a provision or regulation issued under law.

The objects and substances taken into possession shall be returned to the inspected persons when they leave the Border Guard premises, provided that there is no legal impediment to do so.

#### Section 70

##### *Using force in a security check*

A border guardsman or a security inspector may remove from the Border Guard premises or an area under its jurisdiction anyone refusing to undergo a security check.

When removing a person from the Border Guard premises or an area under its jurisdiction, a border guardsman may,

when necessary, use force that can, considering the person's behaviour and other circumstances, be deemed justified.

Provisions on the excessive use of force are laid down in Chapter 4, section 6(3) and section 7 of the Penal Code.

#### Section 71

##### *Restrictions on movement relating to Border Guard premises and exercises*

Provisions on restrictions or prohibitions on movement in the premises or area under the jurisdiction of the Border Guard may be issued by Ministry of the Interior decree if this is necessary to protect persons from danger or to protect very important Border Guard operations. A border guardsman of at least the rank of captain or captain lieutenant may order a temporary restriction or prohibition on movement in a part of a military exercise area for the duration of the exercise.

A person staying in the premises or the area concerned against the prohibition or restriction may be removed from there. If removing the person from the place is evidently an insufficient measure and if the violation of the restriction cannot be prevented in any other manner, the person may be apprehended. The apprehended person may be kept in custody as long as it is likely that he or she will violate the restriction, however, no more than 24 hours of the apprehension.

### Chapter 10

#### Provisions on punishments

##### Section 72

##### *Border zone violation*

Anyone who deliberately or through gross negligence

1) violates the prohibition laid down in section 51;

2) violates the permit requirement laid down in section 52;

3) fails to comply with the term of the border zone permit referred to in section 53(2);

4) fails to comply with the liability laid down in section 56(2) to carry the permit or to present evidence of that; or

5) fails to comply with the duty to notify the authorities laid down in section 57,

shall be sentenced to a fine for *a border zone violation*, unless a more severe punishment for the act is provided elsewhere in the law.

##### Section 73

##### *Violation of the restriction on moving within the Border Guard premises or area*

Anyone who deliberately or through gross negligence violates the restriction or prohibition on moving within the premises or area under the jurisdiction of the Border Guard shall be sentenced to a fine for *a violation of the restriction on moving within the Border Guard premises or area*, unless a more severe punishment for the act is provided elsewhere in the law.

##### Section 74

##### *Other penal provisions*

Provisions on penalties for recalcitrance towards a border guardsman are laid down in Chapter 16, section 4a of the Penal Code. Provisions on penalties for a border offence are laid down in Chapter 17, sections 7 and 7a of the Penal Code, provisions on penalties for a territorial violation in section 7b of the said Chapter and provisions on penalties for facilitation of illegal entry are laid down in sections 8 and 8a of the said Chapter. Provisions on the invasion of public premises are laid

down in Chapter 24, section 3 of the Penal Code.

## Chapter 11

### Miscellaneous provisions

#### Section 75

##### *Aviation in the Border Guard*

To perform its functions, the Border Guard may engage in aviation solely for State purposes under section 4(1) of the Aviation Act (281/1995). The Aviation Act applies to the aviation of the Border Guard unless otherwise provided elsewhere in the law or in an international agreement binding on Finland as regards State aircraft used for similar purposes.

If it is essential for the performance of an aviation function of the Border Guard, aircraft used by the Border Guard may land and take off at a place other than an airfield referred to in the Aviation Act. The insurance obligation laid down in the Aviation Act does not apply to aircraft used by the Border Guard for State purposes.

The chief of the Border Guard makes decisions on landing and taking off at a place other than an airfield referred to in the Aviation Act and on an exceptional procedure in the aviation of the Border Guard laid down in section 4(3) of the Aviation Act. The aviation authorities shall be heard before the procedure is carried out or the exception made, if the exceptional procedure may cause danger to air safety.

#### Section 76

##### *Navigation by the Border Guard*

To perform its functions, the Border

Guard may engage in navigation, other than merchant shipping, for State purposes. Provisions on the application of the Maritime Code (674/1994) to such navigation are laid down in Chapter 1, section 9 of the said Act.

The Border Guard has the right to waive the right to remuneration under the Maritime Code for rescue operations it has carried out in respect of the State and Border Guard officials, conscripts and persons in voluntary military service participating in the rescue operation on behalf of the State. The provisions issued by Government decree on the grounds for division of remuneration for rescue operations in such cases apply to the division if the right to remuneration is not waived.

#### Section 77

##### *Executive assistance by the Border Guard*

In addition to the provisions elsewhere in the law, the Border Guard may, on request, provide executive assistance to State authorities performing their statutory supervisory duties.

The Border Guard is obliged to provide executive assistance to rescue, police and customs authorities and the Defence Forces, if the function calls for the use of Border Guard equipment, personnel resources or expert services that are not available to these authorities at the time. A requirement for providing executive assistance is that it can be provided without jeopardising the performance of other important statutory Border Guard functions.

The head of the administrative unit or the emergency preparedness officer of the administrative unit required to be on call for executive assistance issues makes decisions on providing executive assistance. Decisions on providing executive assistance relating to a pre-trial

investigation or coercive measures are taken by an official entitled to make an arrest or by some other head of investigation.

#### Section 78

##### *Executive assistance to the Border Guard*

Authorities shall provide, within their competence, the Border Guard with executive assistance that is necessary to perform statutory Border Guard functions.

The head of the administrative unit or the emergency preparedness officer of the administrative unit required to be on call for executive assistance issues makes decisions on requesting executive assistance. Decisions on requesting executive assistance relating to a pre-trial investigation or coercive measures are taken by an official entitled to make an arrest or by some other head of investigation.

#### Section 79

##### *Defence Forces' executive assistance to the Border Guard*

The Border Guard has the right to receive as executive assistance from the Defence Forces:

- 1) equipment used for searching and personnel resources used for searching and guiding traffic if this is necessary to find, without delay, a person in Finland who has apparently crossed the national border illegally;
- 2) protective equipment necessary for the safe performance of a dangerous Border Guard function;
- 3) special expertise necessary to perform a border surveillance function or to investigate a border incident;
- 4) equipment and special expertise necessary to combat a security threat to a ship at sea or to passengers on board

referred to in the Ship and Port Facility Security Act.

The executive assistance referred to in this section does not include the use of firearms or military force. The provisions of section 35(2) apply to the right of a bystander to use necessary force under the guidance of a border guardsman and the provisions of Chapter 4, section 4 of the Penal Code to the right to self-defence.

Executive assistance is requested by the Border Guard Headquarters or, in urgent cases, by the administrative unit needing executive assistance. Decisions on the provision of executive assistance are made by the Defence Command or the Navy, Air Force or Command Headquarters. In urgent cases, decisions on the provision of executive assistance may be made by the chief of a garrison or the commander of a unit.

#### Section 80

##### *Personal injury and damage to property*

Border Guard officials shall notify their superior officers without delay of any personal injury or damage to property caused in the performance of official functions, unless the injury or damage is minor. An investigation shall be carried out of the incident if the injured party or the person who performed the official function so requires or if the investigation is otherwise deemed necessary. The investigation is conducted by the police unless the injury or damage is to be handled as a military-court matter.

A person injured in the performance of an official function shall be given necessary treatment without delay. A person who notifies that he or she has been injured as a result of a measure taken by a border guardsman shall be given an opportunity to have a medical examination. If an examination cannot be arranged immediately, the person shall be

given an opportunity to be examined by another impartial person.

The costs arising from the acquisition of necessary treatment and examinations for a person injured in the performance of official functions are paid in advance from State funds. The costs paid from State funds, for which the State is not liable, are reclaimed unless this is manifestly unreasonable.

## Section 81

### *Border Guard service charges*

Executive assistance given to another authority by the Border Guard may be subject to a fee lower than the cost price referred to in the Act on Criteria for Charges Payable to the State (150/1992) or the fee may be left fully uncharged if the function referred to in the executive assistance request is a Border Guard function or if the executive assistance is given in connection with the performance of a Border Guard function or if there are provisions to that effect elsewhere in the law.

Notwithstanding the provisions of the Act on Criteria for Charges Payable to the State, the Border Guard has the right to waive a fee for transport of patients as referred to in section 26(2) if collecting a fee in an individual case would be manifestly unreasonable.

The Border Guard may charge an official in its employment a rent for accommodation that is lower than the current rate, if there is a special reason for that resulting from the obligation to transfer from one place to another that the Border Guard is bound by or from the arrangement of functions in the Border Guard.

## Section 82

### *Crime-combating measures extending to the area of a foreign State*

To investigate an offence or to apprehend a person suspected of an offence, the Border Guard has the right to continue in the area of a foreign State a chase, surveillance or technical surveillance commenced in Finland as provided on the continuance of such measures in the area of a foreign State in European Union legislation or international agreements binding on Finland.

Border guardsmen performing the functions referred to in subsection 1 have the powers under this Act, as further specified in European Union legislation and international agreements binding on Finland. The provisions and regulations on official duties performed in Finland also apply, where applicable, to the official duties and rights of border guardsmen and to the benefits of the position of a public servant in the territory of a foreign State.

## Section 83

### *International cooperation agreements*

The Ministry of the Interior may, with regard to issues belonging to the field of the Border Guard and not belonging to the legislative field or not requiring the consent of Parliament or action by the President of the Republic, conclude cooperation agreements, which are deemed ordinary agreements, with the authorities of other States performing border guard functions.

## Section 84

### *Further provisions*

Further provisions are given by Government decree on:

1) apprehending a person referred to in sections 36(2), 37 and 71(2), taking possession of property referred to in sections 28, 59, 66 and 69 and drawing up a record or making some other entry of a measure relating to a non-intimate body search under sections 19 and 28;

2) equipping border guardsmen for the use of force and protective equipment and, where necessary, border guardsmen's other equipment;

3) where necessary, handling a permit or notification issue provided in this Act and following the right procedure when applying for a permit or submitting a notification;

4) coordinating the functions of the Police, Customs and the Border Guard and mutual cooperation and executive assistance procedures between these authorities.

Further provisions are issued by Ministry of the Interior decree on:

1) keeping property taken into possession;

2) procedures for stopping a vehicle and using force;

3) capturing, keeping and putting down an animal;

4) where necessary, "do not cross" tapes and other signs which, under the Coercive Measures Act, may be used to mark a building, room or area closed by the Border Guard to ensure the investigation of an offence;

5) where necessary, "do not cross" signs and other signs which may be used to mark the Border Guard premises and exercises referred to in section 71 and the border zone referred to in Chapter 7;

6) where necessary, technical procedures of security checks relating to Border Guard

premises or area and practical arrangement of security checks.

## **Chapter 12**

### **Transitional provisions and entry into force**

#### **Section 85**

##### *Entry into force*

This Act comes into force on 1 September 2005.

This Act repeals the Border Guard Act (320/1999) of 12 March 1999 and the Border Zone Act (403/1947) of 17 May 1947, as amended.

Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.

#### **Section 86**

##### *Transitional provision on the border zone*

The provisions of this Act on the border zone permit also apply to a border zone permit granted before the Act's entry into force.

The owner of fences and corresponding structures built closer than 50 meters to the border line and hampering the patrolling and other functions necessary to ensure effective border management has the right to receive compensation based on the current value of the fence or corresponding structure when the fence or corresponding structure is ordered to be taken down and the order has been enforced.