

# GUIDELINES FOR STRIP SEARCHES

One of the ways Customs manages risks to New Zealand's border security is by carrying out searches of people. Customs officers may carry out personal searches, including strip searches, if there is a reasonable basis for suspecting a person is carrying goods, or items that are evidence of offending.

Customs officers are authorised under New Zealand law – through the Customs and Excise Act 2018 (the Customs and Excise Act), the Search and Surveillance Act 2012 (the Search and Surveillance Act), and the Misuse of Drugs Amendment Act 1978 (Misuse of Drugs Amendment Act) – to detain and search people.

How these powers are to be exercised is set out in the Search and Surveillance Act 2012 and the Misuse of Drugs Amendment Act. The method of search must be the least intrusive while effective for the purpose for which the search is being conducted.

Customs officers must exercise good judgement when deciding the most appropriate method of search, bearing in mind the search must be both reasonable, and be the least intrusive, yet effective to ensure safety. If a personal search requires a strip search the details of this process must be fully explained to the person, including their rights.

A 'rub down' search may be the most appropriate type of search in some cases; however in others, a strip search or partial strip search may be required. Section 3 of the Search and Surveillance Act defines a strip search as:

*A search where the person conducting the search may require the person being searched to undress, or to remove, raise, lower, or open any item or items of clothing so that the genitals, buttocks, or (in the case of a female) breasts are;*  
(a) uncovered, or  
(b) covered only by underclothing.

## Guidelines for carrying out a strip search

### Careful assessment is necessary before exercising the power

Officers must ensure they search in a manner that is lawful and reasonable.

The first step is to determine that the search is lawful. For example, before conducting a search under section 210(3)(a) of the Customs and Excise Act, Customs officers must be able to demonstrate that the person subject to the search meets the criteria and that the officer has reasonable cause to suspect that the person has on or about them hidden items that may be dutiable, uncustomed, prohibited, forfeited, or that are evidence of a breach of the Act.



The second step is to ensure the search is exercised in accordance with the New Zealand Bill of Rights Act 1990 (such as rights protecting individuals from unreasonable searches and seizures). There will be circumstances where the use of a strip search would be unreasonable, and a pat down search is all that is reasonably required. No single rule can be applied here and therefore officers need to decide how to achieve compliance on a case-by-case basis and be able to demonstrate their reasons for doing so.

Before undertaking a strip search, approval to do so must be obtained and documented using form NZCS312 from a, Supervising Customs Officer (Sup Co), Customs Technical Specialist (CTS) or a Senior Customs Officer (SCO). The Sup Co/CTS/SCO must validate the reasonable cause to suspect as part of the confirmation of the search approval.

## **Making sure people understand**

A power to search carries with it a power of detention, but only to the extent it is required and only for as long as is necessary, to achieve the purpose.

Officers must ensure the detained person clearly understands what is about to happen.

## **Searching children or young people**

When searching a child or young person a Customs officer may consider that it is in the best interests of the person being searched to obtain the assistance of a parent, guardian or other person responsible for the care of the person being searched.

A child or young person may nominate a person (an adult who has responsibilities for the child or young person) to be present during the search).

## **Search location**

If possible, people subject to a search must be searched in a room used only for that purpose. The officer conducting the search must search the room before and after the search takes place.

## **Method of search**

One officer will undertake the search and the other will act as the witness. Officers conducting searches must be trained and use their discretion when choosing the search method, whilst also taking care to ensure the chain of evidence is maintained.

A Customs officer will explain the search procedure to the person about to be searched. If the officer is going to conduct a strip search they must advise that:

- all items of clothing may be removed; and
- if the person cooperates they will not be touched; and
- the person should follow the officer's instructions.

The person will be asked to remove one item of clothing at a time and pass it to the officer, who will closely examine each item.

The person will not be touched in any way unless it is necessary to use 'reasonable force' to carry out the search.

Searches must not include a search of any body cavity.

## **Aids, specialised equipment, or personnel**

To assist in the search of a person and their clothing, Customs officers may use:

- drugs or cash detector dogs,
- chemical substances such as drug test kits,
- mechanical, electrical, or electronic devices.

The use of such equipment and aids must involve no or minimal contact with the person being searched and the use must be reasonable in the circumstances.

Where an officer considers it in the best interests of the person being searched, they may seek the assistance of a:

- medical practitioner or nurse
- parent, guardian or person responsible for the day-to-day care of the person to be searched.

## **Treat people with respect**

A strip search must be conducted with decency and sensitivity and in a manner that allows the person being searched the degree of privacy and dignity that is consistent with achieving the purpose of the search.

## **Suitability of searcher**

Searches must be conducted in the presence of at least two officers of the same gender identity as the person being searched. A strip search may not be carried out in view of any person who is not the same gender identity as the person being searched. If a Customs officer of the same gender identity is not available, section 125(h) of the Search and Surveillance Act permits another authorised enforcement officer of the same gender identity to conduct or assist with the search, for example a constable.

A transgender person may specify the gender of the searchers.

Where no suitable searcher is available, the person may be taken to another place to be searched.

## **Identification**

Customs officers detaining and searching persons must wear an approved uniform, or carry and produce an approved identification card. The officer must also tell the person the name of the Act under which the search is taking place and the reason for the search, unless it is impracticable to do so.

## **Use of reasonable force**

Section 125(1)(e) of the Search and Surveillance Act permits the use of reasonable force for the purposes of search of a person. The amount of force used must be necessary and proportionate to the circumstances.

If a situation arises where it is necessary to use reasonable force, Customs officers must advise their SupCo, CTS or SCO as soon as possible.

Any use of reasonable force must be reported to the Chief Executive within five working days of the event.

A search of the person is not unlawful by reason only of failure by the person conducting the search to comply with these guidelines (section 126(3) of the Search and Surveillance Act).

## **Reporting**

If a Customs officer exercises a warrantless strip search power, s 169(2) of the Search and Surveillance Act requires the officer to complete a written report following the search.

## **After the Search**

The officer authorising the search (SupCO/CTS/SCO) should speak with the person that was the subject of the search. This is to ensure that the person was treated with dignity and respect. This check is to be recorded on the NZCS form 312.