

## **Part 7 Controlled deliveries**

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## Overview

### Controlled deliveries

The practice of controlled delivery has been used in some countries for many years as an aid in identifying and bringing to justice, organisers, principals and those involved in the illicit drug trade; rather than merely arresting couriers or seizing "un-owned" consignments of illicit drugs.

A properly conducted controlled delivery has no element of agent provocateur or entrapment. Indeed, the circumstances which support the use of these procedures are that at least some drug offences have already been committed, prohibitions have already been breached and the crimes are still in progress.

Article 11 at page 24 of the [United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988](#) endorses the investigative technique of controlled delivery at the international level.

Acknowledgement is given to New Zealand Customs Service for information sourced from the [NZCS Drug Investigators Manual](#) and used in the preparation of this section.

### Legislation

This table shows the legislation and corresponding area of enforcement.

Controlled deliveries	Misuse of Drugs Amendment Act 1978, section <a href="#">12</a> .
Search and seizure	Search and Surveillance Act, section <a href="#">81</a> .
Tracking devices	Search and Surveillance Act 2012, <a href="#">Subpart 1</a> of Part 3.

### What is a 'controlled delivery'?

A controlled delivery occurs when a consignment of illicit drugs is detected, often concealed in some other goods, in circumstances making it possible for the delivery of those goods to be made under the control and surveillance of NZ Customs and Police officers, with a view to identifying and securing evidence against those involved for the importation/exportation. This could also incorporate couriers caught body packing or travelling with drugs concealed within their luggage.

If the final destination of the "consignment" is within the borders of the country in which the initial detection occurred, an "internal controlled delivery" is possible. However, if the intended final destination is in a country other than that where the initial detection was made, then there is potential for an "external (international) controlled delivery".

Power to undertake a controlled delivery is vested in a Customs officer only, as per section [12](#) of the Misuse of Drugs Amendment Act 1978.

### Likely target areas for controlled deliveries

By far the best opportunities for a controlled delivery occur when Customs staff detect drugs or precursor substances concealed in consignments of goods that are moving unaccompanied in freight consignments, unaccompanied baggage, unaccompanied motor vehicles and in international post. Without using a controlled delivery, such detections would normally result in the seizure of the goods only. Those responsible for the smuggling may not be discovered, and the smuggling organisation would lose only the drugs or precursor substances.

The practical steps to be taken by law enforcement officers in exploiting detections of this type by means of controlled delivery have many features in common, whether the detection is in freight or in the post and whether the controlled delivery is to be internal or external, clean or otherwise.

### Situations that can trigger a controlled delivery operation

Controlled deliveries will generally occur from one of these situations.

Situation	Description
International Mail Centre	Inside mail articles.
International Airport	Arriving courier using either body packing, internal concealment, or concealed within the luggage.
Imported airfreight	Within a freight consignment either commercial or private.
Imported sea freight	As with airfreight.
Transhipped air or sea freight	Transiting New Zealand with a final destination in another country.
Arriving commercial vessel	Hidden onboard or attached to a vessel that is either unloading or picking up cargo from New Zealand, before continuing onto another country.

**Note:** The majority of controlled deliveries in New Zealand occur within the first 3 situations.

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## Health and safety

The expectation of the Commissioner and the [Health and Safety at Work Act 2015](#) is that employees investigating controlled deliveries offences will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of themselves or others, comply as far as they are reasonably able to with any reasonable instruction that is given to adhere with the Act and its regulations.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace. See also '[Health, safety and wellbeing](#)' for keeping our communities safe, and ensuring our people are safe and feel safe.

## Table of acronyms and definitions

This table defines acronyms and terms used in this chapter.

<b>Term / acronym</b>	<b>Definition</b>
<b>CDIU</b>	Customs Drug Investigation Unit
<b>CMC</b>	Crime Monitoring Centre
<b>CusMod</b>	NZ Customs Service Border Alert System
<b>CTU</b>	Customs Technical Unit
<b>DNA</b>	Deoxyribonucleic acid: A nucleic acid that contains the genetic code.
<b>IMEI</b>	International Mobile Equipment Identity: is a unique number given to every single mobile phone.
<b>HSMU</b>	Human Source Management Unit
<b>NIA</b>	National Intelligence Application
<b>OP</b>	Observation Post
<b>SIM</b>	Subscriber Identity Module: A SIM card is a microchip in a mobile phone that connects it to a particular phone network
<b>TOG</b>	Technical Operations Group

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## Powers of search without warrant (controlled deliveries)

The warrantless powers of search contained in this section are from the [Search and Surveillance Act 2012](#).

### When you should search without warrant

Your powers to search without warrant should only be invoked in situations such as the package going mobile or being moved to an address in which you do not have a Search Warrant for, and it is a matter of urgency that a search is conducted without warrant.

### Police and Customs powers relating to delivery of drugs

This table outlines Police powers when, during the course of a delivery, a Customs Officer has exercised their powers under section [12](#) of the Misuse of Drugs Amendment Act 1978:

If you or the Customs Officer have reasonable grounds to...	you or the Customs Officer may without a warrant...
<p><b>believe</b> the person is in possession of, or the place, craft, or vehicle contains, any 1 or more of the following:</p> <ul style="list-style-type: none"><li>- a controlled drug</li><li>- a precursor substance</li><li>- a package in relation to which the Customs officer has replaced all or a portion of any controlled drug or precursor substance</li><li>- evidential material in relation to the commission of an offence under section <a href="#">6(1)(a)</a> or <a href="#">12AB</a> of the Misuse of Drugs Act 1975</li></ul>	<ul style="list-style-type: none"><li>- search a person involved in a delivery under section <a href="#">12</a> of the Misuse of Drugs Amendment Act 1978</li><li>- enter and search any place, craft, or vehicle</li><li>- seize anything you or the Customs officer have reasonable grounds to believe is a:<ul style="list-style-type: none"><li>- a controlled drug</li><li>- a precursor substance</li><li>- a package in relation to which the Customs officer has replaced all or a portion of any controlled drug or precursor substance</li></ul></li><li>- evidential material.</li></ul>

(s81)

See Simon France (ed) Adams on Criminal Law for commentary about when the power may be exercised and the scope of the power.

### Advice to persons

If executing your powers to search without warrant, there is a statutory obligation to advise the persons being searched and the occupants of places or the person in charge of vehicle or other thing that the search is being conducted under the Search and Surveillance Act 2012.

(ss [125](#) and [131](#))

During controlled deliveries you have these powers:

- search without warrant under section [81](#) of the Search and Surveillance Act 2012
- you may also rely on the power to search places, vehicles, other things or persons without warrant under sections [20](#), [21](#) and [22](#) of the Search and Surveillance Act 2012, in the appropriate circumstances

### Stopping a vehicle for the purpose of arresting an occupant

If you wish to stop a vehicle for the purpose of arresting an occupant the vehicle is stopped under section [9](#) of the Search and Surveillance Act 2012 and the person arrested under section [315](#) of the Crimes Act 1961.

**Note:** Under section [10](#) of the Act you have additional powers after the vehicle is stopped and also an obligation to tell the driver the object of the proposed search, if the driver is not the person sought to be arrested.

## Other considerations

Consider:

- Roll over, further (secondary) controlled delivery
- Occupational Health and Safety (OSH) of staff
- Other Specialist Groups - Dogs, Specialist Search Group (SSG), [AOS](#) etc
- Misuse of Drugs Act responsibilities
- Device (audio/tracking) retrieval
- Disclosure - care with written notes to avoid disclosing methodologies

## Documentation

- Request for [TOG Assistance form](#).
- [TOG Risk Assessment form](#).

## Related information

See these parts in the 'Search' chapter:

- [Part 2 - Search warrants](#)
  - [Part 3 - Warrantless powers to search places, vehicles and things](#)
  - [Part 5 - Carrying out search powers with or without warrants](#)
  - [Part 6 - Road blocks and stopping vehicles for search purposes](#)
  - [Part 7 - Methods for searching places and vehicles](#)
  - [Part 8 - Searching people](#).
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