

IMMIGRATION ACT 2009: IMMIGRATION OFFICERS' POWERS

The majority of the provisions in the Immigration Act 2009 (the Immigration Act) came into effect on 29 November 2010. The Act also included provisions that introduced new powers for immigration officers, including powers of detention, and entry and search, but these provisions did not take effect immediately. This staggered commencement was to allow time for appropriate training and safeguards to be developed. From 3 September 2012 immigration officers will be able to exercise these new powers.

POWERS OF IMMIGRATION OFFICERS CARRIED OVER FROM THE IMMIGRATION ACT 1987

The Immigration Act 2009 generally carried over powers that were in the Immigration Act 1987 allowing authorised immigration officers to:

- Enter and inspect the records of accommodation providers and employers, when investigating people who may be working in New Zealand unlawfully, or people with no right to remain in New Zealand.
- Require people suspected to be liable for deportation or turnaround to provide certain information or documents.

The Immigration Act also enhanced immigration officers' powers to request address and identity information, by updating the list of agencies and private sector organisations from which information relating to people who are in New Zealand unlawfully can be sought (section 274). Immigration officers may use this power if they have good cause to suspect a person may be, or may become as a result of investigations, liable for deportation.

POWERS OF IMMIGRATION OFFICERS THAT WILL COME INTO FORCE ON 3 SEPTEMBER 2012

The following sections of the Immigration Act introduced powers that are new for immigration officers. These sections come into force on 3 September 2012.

SECTION 312

This section provides a limited power for an authorised immigration officer to detain a person for up to four hours. Until now, only the police could detain a person under the Immigration Act 2009.

[See also related sections 327 (Duties of detaining officers) and 328 (Additional powers relating to detention)]

SECTION 286

This section allows an authorised immigration officer to enter and search a building for the purpose of serving a deportation liability notice or executing a deportation order.

SECTION 278

This section allows an authorised immigration officer to enter and inspect records of education providers. See also the factsheet Immigration Act 2009: Education providers.

SECTIONS 283–285

These sections allow an authorised immigration officer to enter and search places and craft (including air and sea craft) at the border and in territorial waters.

SECTION 287

This section allows an authorised immigration officer to take photographs, fingerprints, or other identifying information for the purpose of arranging their entry or transit requirements to another country.

POWERS OF DETENTION

Section 312 of the Immigration Act gives authorised immigration officers a limited power to detain persons who are liable for arrest and detention under the Immigration Act until the earliest of the following:

- the person is arrested and detained by police
- the person is delivered into custody under the Immigration Act
- the person is no longer liable for arrest and detention
- the purpose of the detention is achieved or
- four hours have elapsed.

In most cases, the power of detention will be used to deliver a person to the custody of police at a police station, or to wait for a police officer to come to the location of the detained person, and to take them into custody. In some cases, the power may be used to deliver a person to an international airport to be placed aboard a flight.

A person may only be detained by an immigration officer for up to four hours. If the person is to be detained beyond this time, he or she must be transferred to the custody of police. A person may be arrested and detained by police for a period of up to 96 hours (including any initial period of detention by an immigration officer). If the purpose of the detention cannot be achieved within this period, an immigration officer may apply for a warrant of commitment for a period of up to 28 days. Further warrants of commitment may be sought as required.

ARREST AND DETENTION

People who are liable for turnaround or deportation under the Immigration Act, or who are suspected to be liable for turnaround or deportation but who are unable to supply satisfactory evidence of their identity, may be subject to arrest and detention under the Immigration Act. People who are suspected, on reasonable grounds, to constitute a threat or risk to security are also liable for arrest and detention.

The purpose of the detention will, in most circumstances, be to place the person on the first available flight departing from New Zealand or to satisfactorily establish a person's identity.

A person who has refugee or protection status may not be arrested and detained, unless it has been determined that their deportation is not prohibited in terms of the Refugee Convention.

DUTIES OF DETAINING OFFICERS

The immigration officer must inform the person of the reason for the detention, the maximum period of detention, and that they may seek legal advice. The immigration officer must also show their immigration warrant card to the person being detained.

USE OF FORCE

An immigration officer may use such physical force as he/she has reasonable grounds to believe is reasonably necessary in order to:

- prevent the detainee from harming any person, damaging property, escaping or attempting to escape
- re-capture a person who has fled.

The officer may use handcuffs to restrain the person, if required in the circumstances.

POWER TO SEARCH A PERSON

The officer may search the person, using reasonable force if necessary, to ensure the safety of the officer, the detainee, and the public, and to manage the risk of the person absconding.

TRAINING

Immigration officers authorised to exercise the power of detention, have been provided with specialist training in legislation and theory on topics such as the rights of detainees, the use of force, and risk assessment and management.

Practical training has included safe detention and transportation, tactical communication skills, use of tools such as handcuffs, as well as learning risk management protocols, driver training, first aid and conflict de-escalation techniques.

This training was developed in conjunction with the New Zealand Police and was delivered at the Royal New Zealand Police College. This provides assurance that immigration officers have been trained according to best practice in all matters relating to detention, and in line with training provided to enforcement officers from other agencies with similar powers, such as New Zealand Customs officers.

MAKING A COMPLAINT

If a person wishes to complain about the use of powers by an immigration officer, they may use the existing Client Complaint Resolution Process or lodge a complaint through the Office of the Ombudsman.

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DISCLAIMER

Every care has been taken to ensure the information in this factsheet is accurate. If the information in this factsheet differs from the Immigration Act 2009 or any related regulations, the Act and regulations prevail.