

Chapter 16 – Index

16.	Power to remove an illegal entrant
16.1.	Powers of arrest (persons liable to administrative removal)
16.2.	Offences where Immigration Officers have a power of arrest
16.3.	Basis of Immigration Officers Powers of Arrest
16.4.	Persons suspected of an immigration offence arrest without warrant
16.5.	Power of entry, search and arrest without warrant for the offence of assisting unlawful immigration
16.6.	Entry and search of business premises without warrant
16.7.	Entry and search without warrant for evidence following arrest

16. Power to remove an illegal entrant

The powers to remove an illegal entrant are found in paragraphs 9 and 10 of Schedule 2 to the 1971 Act and enable an IO to give any directions for removal as are authorised in paragraph 8 of Schedule 2 to the 1971 Act. This allows for an illegal entrant to be removed by ship or aircraft to a country or territory of which he is a national or citizen, or in which he has obtained a passport or other document or identity, or in which he embarked for the United Kingdom, or to which there is reason to believe that he will be admitted.

Where an illegal entrant has entered the UK by deception and there is evidence of the inbound carrier, he may be removed at the carrier's expense under paragraph 9 of Schedule 2 to the 1971 Act which was reinforced by paragraph 6 of Schedule 2 to the 1996 Act which amended paragraph 9 to state that any leave to enter obtained by deception may be disregarded.

Where an illegal entrant has entered without leave in breach of section 3(1) (a) of the 1971 Act or where the inbound carrier is not known, he may be removed at public expense under paragraph 10 of Schedule 2 to the 1971 Act.

Where a person obtained leave to enter by deception and has since been granted leave to remain by the same deception, he should be removed at public expense under paragraph 10 of Schedule 2 to the 1971 Act.

The power to remove an illegal entrant who has entered through the Channel Tunnel is found in Schedule 4 of the Channel Tunnel (International Arrangements) Order 1993.

Removal is usually to the country of which the illegal entrant is a citizen or a national, but removal may be to a third country provided the illegal entrant is acceptable there.

For removal of Third Country asylum cases and "Dublin Convention" cases, see Chapters 30 and 31.

The power to remove a seaman deserter is found in paragraphs 12 and 13 of Schedule 2 to the 1971 Act. A seaman deserter may also be removed to a country or territory in which he was engaged as a member of the crew of the ship or aircraft in which he arrived in the United Kingdom.

16.1. Powers of arrest (persons liable to administrative removal)

Section 28A of the 1971 Act created a power of arrest without warrant where a police officer (or IO, when duly authorised) has reasonable grounds for suspecting that a person has committed or has attempted to commit an offence under sections 24 or 24A. Section 152 of the NIA Act 2002 inserts a new S28AA which provides a power of arrest with a warrant for an offence under S24 (1) (d). In addition, persons liable to be detained in one of the above categories may be arrested without warrant in accordance with paragraph 17 of Schedule 2 to the 1971 Act. Further guidance on the exercise of the power of arrest is given in chapters 31 and 33.

16.2. Offences where Immigration Officers have a power of arrest

Section	Offence Immigration Act 1971	Penalty (Max)	Powers of Arrest, Entry & Search
24(1)(a)	Illegal entry – knowingly entering without leave or in breach of a DO.	Summary conviction – 6 months imprisonment, £5,000 fine or both	28A(1), 28B, 28CA, 28D, 28E, 28FA, 28G, 28H
24(1)(b)(i)	Knowingly overstaying.	As summary	28A(1), 28B, 28CA, 28D, 28E, 28FA, 28G, 28H
24(1)(b)(ii)	Knowingly failing to observe a condition of leave.	As summary	28A(1), 28B, 28CA, 28D, 28E, 28FA, 28G, 28H
24(1)(c)	Crew - failure to depart on designated ship or aircraft.	As summary	28A(1), 28B, 28CA, 28D, 28E, 28FA, 28G, 28H
24(1)(d)	Failure to report to a medical officer or to attend or submit to an examination or test as	As summary	28AA, 28B, 28CA, 28D, 28E, 28FA, 28G, 28H

	required by such an officer, without reasonable excuse.		
24(1)(e)	Failure to comply with TA restrictions without reasonable excuse.	As summary	28A(1), 28B 28CA, 28D, 28E, 28FA, 28G, 28H
24(1)(f)	Disembarking prior to removal.	As summary	28A(1), 28B, 28CA, 28D, 28E, 28FA, 28G, 28H
24(1)(g)	Embarking contrary to an Order in Council.	As summary	28A(1), 28CA, 28E, 28FA, 28G, 28H
24A	Obtaining or seeking to obtain leave to enter or remain, or securing or seeking to secure the avoidance, postponement or revocation of enforcement action, by means which include deception	Triable either way – on summary conviction or on indictment – 2 years imprisonment, unlimited fine or both	28A(1), 28B, 28CA, 28D, 28E, 28G, 28H
25	Assisting unlawful immigration to a member State.	Triable either way – on summary conviction or on indictment – 14years imprisonment, unlimited fine or both	28A(3), 28C, 28D, 28E, 28F, 28G, 28H
25A	Knowingly and for gain, facilitating the arrival in the UK of an asylum seeker.	Triable either way – as above	28A(3), 28C, 28D, 28E, 28F, 28G, 28H
25B	Assisting entry to the UK of an EU national in breach of a Deportation Order or exclusion order.	Triable either way – as above	28A(3), 28C, 28D, 28E, 28F, 28G, 28H
26(1)(g)	Obstructing an immigration officer without reasonable excuse.	Summary conviction	28A(5), 28E 28G, 28H

26A	Various offences involving the ARC. Maximum penalties differ depending upon the offence:	Triable either way	28A(9A), 28B, 28D, 28E, 28G, 28H
26A(5)	An offence under subsection (3) (a), (b), (d), (e), (f) or (g).	Triable either way – indictment – 10 yrs imprisonment, unlimited fine or both. Summary – 6 months imprisonment, £5,000 fine or both	
26A(6)	An offence under subsection (3) (c) or (h)	Triable either way – indictment – 2 yrs imprisonment, unlimited fine or both. On summary – 6 months imprisonment, £5,000 fine or both	
26B	Possessing an Immigration Officer's stamp or replica of such a stamp.	Triable either way	28A(9A), 28B, 28D, 28E, 28G, 28H
SECTION	1996 Act.	PENALTY	POWERS
8	Persons subject to immigration control: Restrictions on employment.	Summary conviction	28AA
SECTION	1999 Act.	PENALTY	POWERS
105	False representations to obtain support	Summary conviction – 3 months imprisonment, £5,000 fine or both	28FB
106	Dishonest representations to obtain benefits	Triable either way – indictment – 7 yrs imprisonment, unlimited fine or both. Summary conviction – 6 months imprisonment, £5,000 fine	28FB

		or both	
SECTION	2002 Act.	PENALTY	POWERS
137	Disclosure of information: Offences.	Summary conviction – 3 months imprisonment, £5,000 fine or both	28FB
SECTION	2004 Act.	PENALTY	POWERS
2(1)and (2)	Entering the United Kingdom without a passport.	Triable either way	2(10)
14	Immigration officer: Power of arrest. Various non-immigration related offences, for use only by IOs working on Criminal Investigation Teams.	See individual legislation in the 2004 Act.	14(1), 28C, 28E, 28F, 28G, 28H, 28I
35	Deportation or removal: Cooperation.	Triable either way	35(5)

16.3. Basis of Immigration Officers Powers of Arrest

An Immigration officer's power of arrest comes from either Part III of the 1971 Act **or** Paragraph 17(1) of Schedule 2 of the 1971 Act. Part III allows an IO to arrest under Section 28A, without warrant, a person who is reasonably suspected of having committed, or attempted to commit an offence under the 1971 Act. Those offences are listed at chapter 16.2. An IO can also arrest under Para 17(1) Schedule 2 of the 1971 Act, without warrant, a person who is liable to be detained. This includes (i) a person whose removal directions have been or may be given by an IO or (ii) where there are reasonable grounds to suspect that removal directions may be given – see chapters 31.1 and 33.

16.4. Persons suspected of an immigration offence - arrest without warrant

Chapter 16.2 details the immigration offences where an IO has the power of arrest without warrant under Section 28A of the 1971 Act. However, section 28CA of the 1971 Act allows an officer

(immigration or police) to enter and search business premises for the purposes of arresting a person for an offence under section 24, 24A or under paragraph 17 Schedule 2 of the 1971 Act. This power may only be exercised (i) to the extent that is reasonably required for a purpose specified i.e. the offence/section, (ii) if the IO or constable has reasonable grounds for believing that the person whom he is seeking is on the premises, (iii) has been authorised by the Secretary of State (or an Assistant Director on his behalf) for an IO and a Chief Superintendent for a constable and (iv) if the IO or constable produces identification showing his status.

Section 14 of the 2004 Act also gives IO's a power of arrest without warrant, and ancillary powers of entry, search and seizure, in respect of a number of specified offences. Empowering IO's to arrest for these specified offences recognises the fact that they regularly feature in the criminal activity used to circumvent immigration laws. However, there are limitations to the use of these powers – **they can only be used by arrest trained officers who have undergone a criminal investigations course and who are working in a specialist crime team.**

16.5. Power of entry, search and arrest without warrant for the offence of assisting unlawful immigration

IOs should not exercise these powers except under the arrangements outlined in chapter 16 Immigration and Asylum Act 1999: implementation of Part VII In all other circumstances, officers must rely on the police to carry out such actions under PACE powers.

Sections 25, 25A and 25B of the 1971 Act replaced the previous legislation on 'facilitation' and 'harbouring'. For information on offences relating to this committed before 10th February 2003 contact EPU.

Section 28C of the 1971 Act empowers an IO to enter and search any premises for the purpose of arresting a person for an offence under section 25, 25A or 25B of the 1971 Act. The power may be exercised only to the extent that it is reasonably required for that purpose and only if the IO has reasonable grounds for believing that the person whom he is seeking is on the premises.

Section 28C (3) of the 1971 Act relates to multi-occupancy premises i.e. those premises consisting of 2 or more dwellings. An IO is empowered to enter and search communal areas and any dwelling within the premises where the officer has reasonable grounds for believing that the person whom he is seeking may be.

In addition to the above, section 14(3) (a) of the 2004 Act empowers an IO to enter and search premises in relation to specified offences.

Any IO exercising these powers must produce identification showing that he is an IO, whether or not he is asked to do so.

16.6. Entry and search of business premises without warrant

Section 28FA of the 1971 Act allows an IO or constable to enter and search business premises, without a warrant, for personnel records. This only applies where (i) a person has been arrested for an offence under section 24(1) or 24A (1), (ii) a person has been arrested under paragraph 17 of Schedule 2, (iii) an IO or constable reasonably believes that a person is liable to arrest for an offence under section 24(1) or 24A (1) or (iv) an IO or constable reasonably believes that a person is liable to arrest under paragraph 17 of Schedule 2. An IO or constable may search business premises where the arrest was made or where the person liable to arrest is providing that the IO or constable reasonably believes (i) that a person has committed an immigration employment offence in relation to the person arrested or liable to arrest and (ii) that employee records, other than items subject to legal privilege, will be found on the premises and will be of substantial value (whether on their own or together with other material) in the investigation of the immigration employment offence.

Section 28FA(3) of the 1971 Act, subject to the provisions stated above, only allows an IO or constable to seize and retain employee records in the investigation of (i) an immigration employment offence or (ii) an offence under section 105 or 106 of the 1999 Act. Section 28FA contains further sections where there are limitations on the seizure and retention of employee records and these must be read before exercising this power.

“Employment offence” means an offence under section 8 of the 1996 Act.

Under section 32(2)(b) of PACE, a police constable may enter and search any premises in which a person subject to arrest is present at the time of arrest or was immediately before he was arrested for evidence relating to the offence for which he has been arrested. The power may only be relied upon where the police constable has reasonable grounds for believing that there is relevant evidence on the premises, and he may only search to the extent that is reasonably required for the purpose of discovering that relevant evidence.

16.7. Entry and search without warrant for evidence following arrest

Section 28F of the 1971 Act is linked to section 28C (see chapter 16.5) and allows an IO to enter and search any premises occupied or controlled by a person arrested for an offence under section 25, 25A or 25B of the 1971 Act. However, section 28F (2) to section 28F (8) contain limitations and conditions and must be read before exercising this power. See also section 14(3) (b) of the 2004 Act and 49.3.1.

Section 28F of the 1971 Act is based on section 18 of PACE. Under section 18 of PACE, a police constable may enter and search any premises occupied or controlled by a person who is under arrest for an **indictable offence** if he has reasonable grounds for suspecting that there is evidence on the premises, other than items subject to legal privilege, that relates to that offence or to some other indictable offence which is connected with or similar to that offence. This search can only be undertaken with the authority of a police Inspector.

Note: An 'indictable' offence is an offence which is tried by a judge and jury whereas a 'summary' offence is an offence which is tried by a magistrate only. An offence which is 'triable either way' can be tried on indictment or summary conviction. Indictable offences, summary offences and offences which are triable either way under immigration legislation are shown in chapter 16.2. IOs may also become involved in cases where a suspect has been arrested on suspicion of other, unconnected offences (such as theft). Searches under section 18 of PACE are permitted only where the officer reasonably suspects that evidence relevant to the offence is on the premises. The IO, however, should ensure that police officers conducting a search under section 18 of PACE are aware of the importance of items concerning identity and nationality should they be found, in particular that such items are likely to be relevant both to the investigation of an offence and to administrative action by the IS.