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NOTE: MANDATORY SYSTEMS CHECKS

For section 16.8, "...a search of the Case Information Database (CID)....cross referencing results With the Central Reference System (CRS), read:

CRS

If you have access to the Central Reference System (CRS) for visa applications made abroad, the person search is completed in a similar manner to that for CID. View the CRS guide.

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 Immigration Officer (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.

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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 Immigration Officer, 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.

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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 required by such an officer, without reasonable excuse.	As summary	28AA, 28B, 28CA, 28D, 28E, 28FA, 28G, 28H
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	Triable either way – on summary conviction or on indictment – 2 years imprisonment, unlimited fine or both	28A(1), 28B, 28CA, 28D, 28E, 28G, 28H

	deception		
25	Assisting unlawful immigration to a member State.	Triable either way – on summary conviction or on indictment – 14 years 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 or both	28FB
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)

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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 Immigration Officer or (ii) where there are reasonable grounds to suspect that removal directions may be given – see chapters 31.1 and 33.

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16.4 The power to enter business premises and arrest without warrant (AD letter)

Function of an AD letter

Section 28CA of the 1971 Act provides for the power to allow an Immigration Officer or Police Constable to enter and search any business premises in certain circumstances without a warrant for the purpose of arresting a person **for an offence under:**

- ◆ section 24 (illegal entry and similar offences),
- ◆ section 24A (deception) or

under paragraph 17 of Schedule 2 to the Immigration Act 1971 (administrative arrest of a person liable to detention under paragraph 16).

The power may only be exercised —

- ◆ To the extent that is reasonably required for a purpose specified i.e. the offence/section.

If the IO or constable has **reasonable grounds for believing** that the person whom he is seeking is on the premises.

- ◆ Where there is sufficient information/intelligence which gives the officer reasonable grounds to believe, i.e., as opposed to a lower level of intelligence which would only give grounds to

suspect. (The legal implication is that to have 'reasonable grounds to believe' requires a higher standard of supporting evidence than suspicion. Whilst it is not necessary to have substantial proof to 'believe' instead of to 'suspect', there is a clear implication that there must be more information available that turns suspicion into a belief that something is true).

- ◆ Where it has been authorised by the Secretary of State (or only by a civil servant of the rank of at least an Assistant Director on his behalf) for an IO or a Chief Superintendent in a case of a constable as dictated by legislation and
- ◆ If the IO or constable produces identification showing his status.

It must always be the case that the principle purpose of the visit was to arrest immigration offenders under section 24, section 24A or paragraph 17 of Schedule 2 to the Immigration Act 1971 (all powers of arrest in relation to the illegal worker/immigration offender rather than the employer) and not to serve a **Notice of Potential Liability**.

It should always be made clear to the employer at the beginning of the visit that the powers to enter the business premises are under Section 28CA of the Immigration Act 1971.

There will be cases where the service of a Notice of Potential Liability on the employer under section 15 of the Immigration, Asylum and Nationality Act 2006 can follow on from entry to business premises under the 28CA AD letter procedure but this is not the purpose of the provision and cannot form part of the basis for entry to the premises.

The AD should take the following considerations into account (amongst others) in determining whether to authorise entry without a warrant: -

In cases in which swift action is required and where there is an immediate threat of Immigration Offenders absconding, an AD letter may be obtained on the basis of urgency, where the AD considers there would be sufficient evidence to obtain a warrant, but the procedure to obtain the warrant would likely frustrate a successful operation.

Where there is insufficient urgency to justify the granting of an authorisation but the threshold for the grant of a warrant has been satisfied, the AD's first consideration should always be whether to seek to obtain a warrant to gain entry.

- ◆ That the AD letter only covers entry to the Business premises. If there are separate residential areas these are not covered by the letter.
- ◆ In cases of mixed team operations with the police, a separate letter signed by a Chief Superintendent is required to cover the entry of the police contingent. The AD letter only authorises immigration officers.

In order to authorise entry without warrant in these circumstances, the AD must be satisfied that the following criteria have been satisfied:

- ◆ The intention of the immigration officer requesting the authorisation is only to exercise the power to the extent reasonably required to arrest for an offence under section 24 or 24A or under paragraph 17 of Schedule 2.

The immigration officer requesting the authorisation has reasonable grounds for believing that the person whom he is seeking is on the premises.

If, where the officers are working with the employer after consent has been given but where it is considered that there is a reasonable foreseeable risk that the employer could withdraw consent part way through the operation, the recommendation would be that an AD letter should be sought.

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Procedure to be followed when obtaining authority for an AD letter under 28CA

When relying on section 28CA to enter and search a property, a letter to the employer authorising entry is needed, signed by the Assistant Director. (A draft is attached at Annex A). This should either be obtained before the visit takes place (**dated no more than 7 days in advance**) or, in cases where oral agreement is given by the Assistant Director over the phone, where entry is unexpectedly refused, paperwork should be **sent within 48 hours** of the visit taking place, but if granted by phone, the reasons for the AD's decision to grant an authorisation should be recorded contemporaneously.

It is recommended that the following application procedure and application form (see Annex B), should be adhered to for audit purposes when applying for an AD letter.

- ◆ It is imperative that when applying for an AD letter you provide as much information as possible stating the details of immigration offenders that you have grounds to believe will be on the premise, if you do not have a name then a description if possible, or believed nationality.
- ◆ Date of intelligence.
- ◆ Specific checks conducted and results.
- ◆ The particulars of any previous visits to address, and the details of any intelligence analysis that has been undertaken.
- ◆ Specify why a warrant isn't appropriate.
- ◆ The original completed letter is to be placed in the visit pack.

Once the AD is content that all considerations and criteria have been fulfilled the AD will authorize and sign the application and return it to the Officer in Charge (OIC). It is recommended that the AD retains a copy of this application with a copy of the actual letter when it has been completed.

The Nod ev ref should be clearly visible on the letter (see Annex A) for future reference and audit purposes.

Officers are reminded that AD letters are only valid if they have been issued directly by a main nominated individual or, in their absence, another nominated individual at Assistant Director level, as a clear audit trail must be kept.

Any un-used letters must be returned to the AD within 21 days of date of issue.

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Verbal consent

If officers are working with the employer after consent has been given but entry is unexpectedly refused, the AD can give verbal authority for entry to business premises. In such situations, the time of authorisation and details of circumstances relayed to the AD must be:

- ◆ Recorded in the Officers pocket note book and the information form completed and forwarded to the AD.
- ◆ This needs to be expedited where verbal authority is given as we **MUST** ensure that an AD's letter is issued, to the business concerned, within 48 hours of the visit taking place.

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Evidence found under s28CA

In cases in which an AD's letter has been authorised to gain entry to a business premises and **during the visit** evidence subsequently comes to light that an immigration employment offence has been committed, an Immigration Officer has the power to search for employee records under section 28FA without a warrant. The following restrictions apply in terms of basis for the exercise of this power:-

- ◆ Either an arrest must have been made under section 24(1), section 24A(1) or paragraph 17 of Schedule 2 or the constable or immigration officer must reasonably believe a person is liable to arrest under that paragraph; and
- ◆ The constable or immigration officer must reasonably believe that a person has committed an immigration employment offence in relation to the person arrested or liable to arrest; and
- ◆ The constable or immigration officer must reasonably believe that employee records other than items subject to legal privilege will be found on the premises and will be of substantial value in the investigation of the immigration employment offence.

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Warrant vs AD letter under 28CA

If prior to the visit, the intention is to prosecute the employer under Section 21 of the Immigration, Asylum and Nationality Act 2006 or S8 of the Immigration and Asylum Act 1996, or this is a reasonably foreseeable eventuality, you must obtain the appropriate warrant to enter the premises under Section 28B or Section 28D of the Immigration Act 1971. (Both offences are relevant offences for the purpose of the exercise of both these powers). This will safeguard the prospects of success of any future prosecution. See link to Chapter 34 on the procedures to be followed when obtaining and executing a warrant.

If a warrant is applied for prior to the visit this will certify that there is a judicial authority for the visit and as such it will help to safeguard the integrity of any future prosecution, minimise the risk that the prosecution may fail and provide a lawful basis for the further actions of officers once on the premises (which must also be exercised in accordance with the relevant powers available to officers in these circumstances). If the decision is taken by an Assistant Director to grant entry, the basis for this authorisation, the circumstances in which the authorisation was given, the evidence in support of the grant of authorisation and the time at which the authorisation was granted could, for example, all be open to challenge and scrutiny in an enquiry or by an independent external agency. As a consequence, it is likely that the AD would be requested to justify their decision and actions.

Powers under section 28CA (AD letter) should **not** be exercised:

- ◆ In circumstances where an Immigration Officer suspects that there would be insufficient intelligence to obtain a warrant for entry and arrest.
- ◆ In circumstances where the basis for seeking AD authorisation is to avoid the associated charges which might be attached to an application for a warrant or to alleviate pressure on UKBA resources more generally, rather than due to the urgency of the situation.

If an application for a warrant is made, but subsequently refused on the basis of insufficient intelligence, then the section 28CA power **must not** on any account be exercised as an alternative means of entering and searching the property in order to arrest.

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“Grounds to suspect” vs “Grounds to believe”

Reminder

The amount of intelligence required to justify the issuing of an AD letter is such that there are “reasonable grounds to believe” that an individual will be encountered at the address. This is higher than the level of intelligence required to apply for a warrant, which requires the lower “reasonable grounds to suspect” threshold.

In cases where there is a possibility of pursuing a prosecution against the employer under section 21 of the Immigration, Asylum and Nationality Act 2006, Immigration Officers **must not** rely on the AD letter (power to enter without warrant to gain entry into business premises), but must obtain a warrant to enter the premises under section 28B or section 28D of the Immigration Act 1971. The section 21 offence is a relevant offence for the purpose of the exercise of both these powers.

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ANNEX A

DRAFT LETTER TO BUSINESSES WHERE THE POWER OF ENTRY WITHOUT WARRANT IS EXERCISED

Business Address

NOD ev ref no:

Dear Sir/ Employer name if known

ENTRY WITHOUT WARRANT TO "X" BUSINESS PREMISES

This letter is to confirm that in accordance with Section 28CA of the Immigration Act 1971, I have given/gave my authority for entry to the above named business premises in order to assist in the detection of immigration offenders believed to be on the premises.

If you would like to discuss any aspect of this visit, please contact on Tel.No..... at this office. Equally, if you have any future concerns about the eligibility of your employees to work, please do not hesitate to contact this office direct or alternatively, you may wish to use the Employer helpline provided by the United Kingdom Border Agency which can be contacted on 0300 123 4699

Yours faithfully /sincerely

(For signature by the Assistant Director)

Annex B

INFORMATION TO ASSISTANT DIRECTOR REQUESTING AUTHORITY TO ENTER AND SEARCH PREMISES WITHOUT WARRANT UNDER SECTION 28CA OF THE IMMIGRATION ACT 1971 AS AMENDED BY SECTION 153 OF THE NATIONALITY, IMMIGRATION & ASYLUM ACT 2002

Date: *Detail the date the application is being made*

The information of: *IO/CIO requesting AD's letter*

To enter and search

Premises at: *Full details of address and post code*

Search for: (identify as far as possible
persons believed to be Immigration offenders) *Detail immigration offenders that you have grounds to believe will be on the premise, if you do not have a name then a description if possible, or believed nationality.*

Grounds of application:

(If verbal authority obtained because entry unexpectedly refused detail information passed to AD and confirm time of authorisation)

This must include the following: Date of intelligence, checks conducted and results, details of any previous visits to address, details of any intelligence analysis that has been undertaken. Detail why a warrant is not considered appropriate and also indicate if we have any grounds to suspect that the owner is knowingly involved in the employment of illegal workers.

Signature of Informant

Rank

Before me

T / Assistant Director

Authority issued

Authority refused

Enter date and time
(delete as appropriate)

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

An Immigration Officer (IO) 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.

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16.6. Entry and search of business premises without warrant

Section 28FA of the 1971 Act allows an Immigration Officer (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.

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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.

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16.8 Borders Act 2007, Section 44 – 47: Powers to enter & search for nationality documents following arrest for any offence

Sections 44 - 47 of the UK Borders Act 2007 came into force on 31 March 2008 to improve the effectiveness of handling foreign nationals within the criminal justice process. Following several pilots the powers were rolled out for national use on 1 April 2010 enabling searches for documentation (evidence of nationality) following arrest for any offence.

Searches under these powers will be necessary only where

- an individual fails to co-operate in establishing his or her identity; or

the officer has reasonable grounds to believe that they are not telling the truth. (This must be recorded)

Before the powers are used a search must first be made of UKBA records to check whether the individual's nationality is already confirmed and documented. To ensure consistency searches of UKBA records should at least include:

- a search of the Case Information Database (CID) against name and date of birth
- if required, further checks against the date of birth
- cross referencing results with the Central Reference System (CRS)

The search and seizure powers may also be used where officers are already on the premises searching for evidence of the criminal offence.

The power may not be exercised once the suspect has been released without charge for the criminal offence. However if the individual has been identified as an Immigration Offender, any relevant documents which have been seized under section 46 may be passed to or retained by the UK Border Agency in order to facilitate the person's removal from the UK.

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16.8.1 Section 44: Search for evidence of nationality: Entry *without* a warrant

Section 44 subsections (1) and (2) state that where an individual has been arrested on suspicion of an offence and an Immigration Officer or Constable suspects that:

- (a) the individual may not be a British citizen
- (b) nationality documents relating to the individual may be found on:
 - (i) premises occupied or controlled by the individual
 - (ii) premises on which the individual was arrested, or
 - (iii) premises on which the individual was, immediately before being arrested

The Immigration Officer or Constable may enter and search the premises for the purpose of finding those documents.

Every case must be considered on its individual merits and the grounds to suspect that the individual may not be a British citizen must be based on a range of factors which includes, but is not limited to:

- responses to questions about their nationality
- ability to provide contact details for others who can corroborate their claims

- inability or unwillingness to provide evidence of nationality
- language
- the bona fides of their stated identity based on documentary or other evidence

Under subsection (3) the power of entry and search may only be exercised with the written authority of a senior officer. In relation to an Immigration Officer, a senior officer is an Immigration Officer of at least the rank of Chief Immigration Officer (CIO). In relation to a constable, a senior officer is a constable of at least the rank of inspector.

There cannot be any 'cross' authorisation; i.e: a police Inspector cannot authorise an immigration officer and a CIO cannot authorise a police officer. Separate authorisation must be obtained from respective chains of command even if it is for the same search, so this will need to be borne in mind for operational planning.

In some cases searches may relate to premises located in the jurisdiction of another Local Immigration Team (LIT). In these circumstances the enforcement team leading the search must comply with relevant pre-search checks procedures and processes that apply in the local area where the premises are situated.

It is possible for one enforcement team to carry out a search in their local area on behalf of another enforcement team. In these circumstances the authorisation for the search should come from within the enforcement team carrying out, rather than requesting, the search.

Under subsection (3)(b) the senior officer who authorises the search must make a written record of:

- the nature of the documents sought
- **And**, the grounds for the suspicions in reliance on which the power was exercised, for example:
 - There is suspicion that a nationality or identity document in the individuals possession may have been forged, altered or fraudulently obtained
 - The individual is unable or unwilling to give a credible account, or corroborative detail, of how they obtained their claimed nationality or their history in the UK
 - The individual states that they are a foreign national and there is no evidence of their lawful entry to the UK
 - A UKBA record of the individual exists but the persons nationality has not yet been established

- Third party witnesses have given conflicting or incredible accounts of the individual's national status.
- The individual has exercised dishonesty and or deception in relation to their identity which materially damages their bona fides in relation to their claimed nationality
- Other reasons which must be stated

Under subsection (4) the power of search may not be exercised where the arrested person has been released without charge.

Subsection (5) defines nationality documents in relation to an individual as a document showing:

- (a) the individual's identity, nationality or citizenship
- (b) the place from which the individual travelled to the United Kingdom, or
- (c) a place to which the individual is proposing to go from the United Kingdom

For further guidance see:

EIG Chapter 31 - Enforcement Visits

EIG Chapter 41 - Searching of premises

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16.8.2 Section 45: Search for evidence of nationality in other premises: Entry *with* a warrant

Section 45 states, where on application from an Immigration Officer (or constable) a justice of the peace (or Sheriff) believes that an individual may not be a British citizen, that identity documents may be held at premises *other* than those set out in section 44 and that any of the statutory conditions apply (see 34.10), they may issue a warrant authorising entry and search of those premises.

If a warrant is to be obtained by or executed by a police constable the safeguards in sections 15 and 16 of the Police and Criminal Evidence Act (PACE) 1984 will apply. Subsection (4) provides additional safeguards for when a warrant may be sought.

Before applying for a warrant, it is important to familiarise yourself with EIG Chapter 34 - Warrants

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16.8.3 Section 46: Seizing and Retention of nationality documents

Under section 46 an Immigration Officer may seize a document which he thinks is a nationality document relating to the arrested person, provided it is not a document subject to legal privilege (subsection (2)). Under the legislation documents subject to legal privilege may not be seized.

Under these powers, it is only appropriate to seize items that are likely to assist in confirming the individual's nationality.

An Immigration Officer or a constable may retain the seized document while he suspects that the individual to whom the document relates may be liable to removal, and that retention of the document may facilitate removal.

Subsection (4) and (5) provide for the access to and copying of any documents seized.

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16.8.4 Section 47: Extension of powers to Designated Police Civilians.

Section 47 inserts a new paragraph 18A to Part 2 of Schedule 4 to the Police Reform Act 2002 (powers exercisable by police civilians: investigating officers). This enables a civilian investigating officer to exercise the new powers of entry, search, seizure and retention, in the same way that a constable can, provided he is designated as having these particular powers.

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