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34 Warrants

Obtaining warrants

A warrant is a document issued by a justice of the peace (or a justice of the peace or sheriff in Scotland), authorising officers to arrest a specified person, enter specified premises for the purpose of arresting a specified person or enter specified premises for the purpose of searching for evidence. The effect is to authorise IOs to act when they have no statutory powers to do so without a warrant. It is important to ensure that the correct type of warrant is obtained for the purpose intended, for example, a warrant obtained to enter premises to search for evidence of a suspected offence (under section 28D of the 1971 Act) cannot be used to obtain relevant documents for a removal under Schedule 2 to the 1971 Act.

A warrant can be applied for under the following provisions of the 1971 Act:

- section 28AA (to arrest a person for an offence listed in that section);

- section 28B (to enter and search premises for the purpose of arresting a person for an offence listed in that section);
- section 28D (to enter premises for the purpose of searching for evidence relevant to the investigation of an offence listed in that section);
- section 28FB (to enter premises for the purpose of searching for personnel records where an employer has provided inaccurate or incomplete information under section 134 of the Nationality, Immigration and Asylum Act 2002);
- paragraph 17(2) of Schedule 2 (to enter premises for the purpose of searching for and arresting a person under paragraph 17(1) of that Schedule).

The entry and search of premises under a warrant is unlawful unless it complies with sections 28J and 28K of the 1971 Act. **Police and Criminal Evidence (PACE) Act 1984** Code of Practice B is also relevant.

Warrants issued under the 1971 Act can be obtained by UK Border Agency staff but, in certain circumstances, can be executed by either an IO or a police constable. Under sections 28AA and 28D of the 1971 Act only an IO can apply for and execute a warrant. However, under section 28B of the 1971 Act and paragraph 17(2) Schedule 2 of the 1971 Act either an IO or a police constable can be authorised to enter and search premises for the purpose of arresting the person. The Clerk of the Court will be able to provide the necessary forms to complete the application for a warrant in preparation for it being placed before a justice of the peace or sheriff.

When seeking to obtain a warrant, staff should note that only IOs operating within an arrest team can execute a warrant. In all other circumstances, IOs will still have to rely on the police to execute warrants. **It follows that IOs working outside of an arrest team should not obtain a warrant that cannot be executed by a police officer i.e. warrants obtained under section 28D of the 1971 Act.**

An application for a warrant to enter premises for the purpose of searching for and arresting a person can include the names of more than one person so it is not necessary to apply for and

obtain a separate warrant in respect of each individual suspected of living at the same address. However, it is recommended that when applying for a warrant involving a family, all family members are listed on the warrant. This allows the other family members to be arrested/detained in the event that one or more of the family members are absent at the time of the visit.

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34.1 Obtaining warrants - safeguards set out in section 28J of the 1971 Act

The entry or search of premises under a warrant is unlawful unless it complies with sections 28J and 28K of the 1971 Act

Section 28J of the 1971 Act sets out safeguards in relation to the application for, and issue, of warrants under Part III of the 1971 Act and under Schedule 2 to that Act. It replicates the safeguards in section 15 of PACE and specifies the information which must be provided when applying for a warrant. Section 28J states that in Northern Ireland, an application for a warrant must be supported by a complaint in writing and substantiated on oath. Otherwise, an application for a warrant is to be made 'ex parte' i.e. in the absence of the suspect, his/her legal representative and/or the public and supported by information in writing or, in Scotland, evidence on oath. It also states that an officer must answer on oath any question that the justice of the peace or sheriff asks him. Section 28J states that a warrant shall authorise an entry **on one occasion only** and must:

- specify the name of the person applying for it;
- specify the date on which it is issued;
- specify the premises to be searched;
- specify the provision of the 1971 Act under which it is issued; and
- identify the person(s) or article(s) to be sought, so far as is practicable.

Two copies of a warrant must be made and these must be clearly certified as copies.

In the case of a warrant obtained by a police constable, section 16(2) of PACE authorises persons to accompany a police officer. The IO(s) expected to attend should be specified on the warrant by title, grade or name depending on local practice in the court area.

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34.2 Procedure to be followed before applying for a warrant

Where information is received which appears to justify an application for a warrant, reasonable steps must be taken to check that the information is accurate, recent and has not been provided maliciously or irresponsibly. An application for a warrant may not be made on the basis of information from an anonymous source where corroboration has not been sought.

Before applying for a warrant, an IO must:

- Bear in mind that, except for Arrest teams, all warrants must still be executed by police officers and not IOs;
- Ensure that when a police officer will be required to execute a warrant obtained by an IO they have the power to do so as police officers cannot execute a warrant obtained under section 28D of the 1971 Act.
- If s28D applies ascertain as specifically as is possible, the nature of the articles concerned and their location;
- Make reasonable enquiries to establish what, if anything, is known about the likely occupier of the premises, the nature of the premises themselves, whether they have been previously searched and, if so how recently;
- Before attending court, check whether the court is willing to issue warrants to be executed outside of the court's area;
- Obtain the authority of a CIO to make the application.

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34.3 Procedure to be followed when making an application for a warrant

By virtue of section 28J of the 1971 Act, when making an application for a warrant an IO must:

- State the grounds on which the application is being made and under which provision of the 1971 Act the warrant would be issued;
- Specify the premises to be entered and searched;
- Identify, as far as is practicable, the person(s) or article(s) being sought;
- Be prepared to be tested by the justice of the peace or sheriff on the details of the case and on the legal basis for requesting a warrant;
- Ensure that the information provided is clear, accurate and up to date;
- Observe the standards of the court in respect of dress and behaviour;
- For arrest trained IOs, be prepared to specify who will accompany the IO or to state 'any immigration officer, chief immigration officer or police officer required for the effective conduct of the visit';
- For IOs operating in all other circumstances, if required to specify who will accompany the police officer, state 'any immigration officer or police officer required for the effective conduct of the visit';
- Check that the warrant can be executed within one month of its issue.

In addition, when making an application for a warrant under section 28D of the 1971 Act you must satisfy the justice of the peace that:

- A relevant offence has been committed as defined in section 28D(4);

- There is material on the premises to be searched which is likely to be of substantial value (either by itself or together with other material) to the investigation of the offence;
- That the material sought is likely to be relevant evidence;
- That the material does not consist of or include items subject to legal privilege, excluded material or special procedure material (definitions of these terms can be found in PACE sections 10,11 and 14);
- One of the conditions specified in section 28D(2) applies.

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34.4 Executing warrants

Following the implementation of the relevant sections of the 1999 Act, warrants issued under the 1971 Act may now be executed by IOs. However, only arrest trained IOs should execute warrants. In all other circumstances, warrants should be executed by police officers, accompanied by IOs. The police will act in accordance with guidelines laid down in the revised PACE Codes of Practice. IOs conducting searches under section 28B and 28D also have to abide by the relevant provisions of PACE Code B.

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34.5 Executing warrants - safeguards set out in section 28K of the 1971 Act

IOs should not execute warrants unless they are arrest trained. In all other circumstances, officers must continue to rely on the police to execute warrants.

Section 28K of the 1971 Act lays down the procedures for the execution and subsequent disposal of warrants issued under Part III of the 1971 Act and under Schedule 2 to that Act. It provides for warrants to be executed by any IO and the attendant provisions are based on section 16 of PACE. It also allows for a warrant to authorise persons to accompany the officer executing it.

Section 28K sets out that entry and search under a warrant must be:

- Within one month from the date of its issue; and
- At a reasonable hour, unless it appears to the officer executing it that the purpose of the search might be frustrated.

If the occupier of the premises to be entered and searched is present at the time an IO seeks to execute a warrant, the officer must:

- Identify himself to the occupier and produce identification showing that he is an IO;
- Show the occupier the warrant; and
- Supply him with a copy of it.

If the occupier is not present but some other person is who appears to be in charge of the premises, the IO must treat that person as if he were the occupier.

If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises. Before executing a warrant, take reasonable steps to ensure the premises are occupied. Where it is clear that the premises are unoccupied or that the subject of the warrant is not present, the warrant should not be executed unless the warrant is to search for evidence and not a person.

A search under warrant may only be a search to the extent required for the purpose for which the warrant was issued. For example, when a warrant is issued to search for an individual, it does not extend to the searching of drawers etc where it is clear the subject could not be concealed.

An officer executing a warrant must make an endorsement on it stating whether the persons or articles sought were found and whether any articles, other than those sought, were seized.

In addition to these procedures, when a warrant has been executed:

- Check that along with a copy of the warrant, suitably endorsed, a contact number for the immigration office concerned is left with the occupier or the person who appears to be in charge of the premises;
- Take full notes including the names of all those involved and details of any incidents;
- Return the warrant to the court (see 34.19);
- Minute the case papers and bring any difficulties or incidents to the attention of a CIO.

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34.6 Entry and search without warrant for evidence following arrest under Part III of the 1971 Act

Where a person is arrested for an offence under Part III of the 1971 Act, section 28E allows an IO to enter and search any premises (i) in which the person was when arrested, or (ii) in which he was immediately before he was arrested, for evidence relating to the offence for which the arrest was made. The power may only be relied upon where the IO has reasonable grounds for believing that there is relevant evidence on the premises, and he may only search as far as it is reasonably required to discover that evidence. The section also allows for the seizure and retention of relevant evidence found during any search; although nothing which it is reasonably suspected is legally privileged material may be seized.

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34.7 Entry, search and arrest with warrant under section 28B of the 1971 Act

Section 28B of the 1971 Act allows a justice of the peace (JP) or sheriff, if he is satisfied that there are reasonable grounds for suspecting that a person who is liable to be arrested for a 'relevant offence' is to be found on any premises, to issue a warrant authorising a police constable or an IO to enter specified premises, by force if necessary, to search for and arrest the person. Relevant offences for the purposes of s28B are covered in s28B(5).

Note: if you are obtaining a warrant for a specific room/flat within multi-occupancy premises then that is the address which needs to be shown on the warrant i.e. Flat 4, 12 Green Street etc. There is no reason why you could not specify on the reverse of the 'Information' that you also require access through the front door, then into the specific room/flat and any communal areas. However, district judges in different parts of the country may not be of the same opinion. The Chief Clerk of the particular court will be able to provide further guidance.

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34.8 Entry and search for evidence with warrant

Under section 28D of the 1971 Act a JP or sheriff may issue a warrant authorising an IO to enter and search premises. The section is akin to section 8 of PACE and contains similar safeguards. **In all circumstances outside of arrest teams, officers must continue to rely on the police obtaining and executing a warrant under PACE in order to enter and search for evidence.**

The purpose of this section is **not**, however, to provide UK Border Agency staff and the police with the opportunity to organise speculative visits to homes and businesses. Ministers have stated publicly that the UK Border Agency will act only where there is sound evidence to suggest that the appropriate evidence may lead to the apprehension of an immigration offender.

Investigation of an offence involves the process of examining whether the offence has been committed and by whom. The usual purpose of investigation in the criminal context is prosecution. Obtaining information for the purpose of removal action (e.g. by searching for evidence of identity in order to document the offender to effect removal), in no way satisfies these criteria and constitutes an abuse of power. Searching on behalf of other agencies is, similarly, an abuse of power.

Before issuing a warrant under s28D of the 1971 Act, a JP or Sheriff has to be satisfied that there are reasonable grounds (see 34.3) **and** that any of the following conditions apply:

- That it is not practicable to communicate with any person entitled to grant entry to the premises;

- That it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- That entry to the premises will not be granted unless a warrant is produced;
- That the purpose of the search may be frustrated or seriously prejudiced unless an IO arriving at the premises can secure immediate entry to them.

An IO may seize and retain anything for which a search has been authorised under section 28D of the 1971 Act (except items subject to legal privilege).

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34.9 Entry and search of business premises with warrant

Under section 28FB of the 1971 Act a JP or sheriff may issue a warrant authorising an IO to enter and search business premises for personnel records. The warrant will only be issued provided that there are reasonable grounds for believing (i) that an employer has provided inaccurate or incomplete information under section 134 of the 2002 Act; (ii) that employee records, other than items subject to legal privilege, will be found on the premises and will enable deduction of some, or all, of the information which the employer was required to provide; and (iii) that one of the conditions in s28FB (2) are met. Section 28FB must be read before applying for the warrant to ensure the limitations and/or conditions are met.

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34.10 Arrest with warrant under s28AA of the 1971 Act

Section 28AA of the 1971 Act allows an IO to apply for a warrant to arrest a person for an offence under section 24(1)(d) of the 1971 Act or section 8 of the 1996 Act.

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34.11 Persons liable to be detained - arrest without warrant

Paragraph 17(1) of Schedule 2 to the 1971 Act provides that a person liable to be detained under paragraph 16 of Schedule 2 to the 1971 Act may be arrested without warrant. Paragraph 16 states that:

- A person who may be required to submit to examination under paragraph 2 may be detained pending his examination and pending a decision to give, or refuse, him leave to enter;
- A person whose leave to enter has been suspended under paragraph 2A may be detained pending the completion of his examination under that paragraph and a decision on whether to cancel his leave to enter; and
- If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10A or 12 to 14, that person may be detained pending a decision whether, or not, to give such directions and (if directions are given) his removal in pursuance of such directions.

Paragraph 2(4) of Schedule 3 to the 1971 Act allows for the provisions of paragraphs 17 and 18 of Schedule 2 to that Act to apply to persons liable to be detained under paragraphs 2(2) and 2(3) of Schedule 3. This means that in certain circumstances those who are liable to detention on the grounds that they are the subject of a notice of intention to deport or deportation order may also be arrested without warrant.

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34.12 Persons granted bail - arrest without warrant

Paragraph 24(1) (a) of Schedule 2 to the 1971 Act allows an IO (or police constable) to arrest without warrant a person bailed under paragraph 22 of Schedule 2, if he has reasonable grounds to believe (i) that the person is likely to break the condition of his bail, that he will appear at the time and place required, or to break any other condition of it, or (ii) that the person is breaking or has broken any such other condition. Under paragraph 24(1)(b), an IO (or police constable) may also arrest a person bailed under paragraph 22 if he is notified in writing by any surety of (i) the

surety's belief that the person is likely to break the condition that he will appear at the time and place required, and (ii) the surety's wish, for that reason, to be relieved of his obligations as a surety.

Paragraph 33(1) of the Schedule contains identical provision in relation to persons released on bail under paragraph 29 of the Schedule.

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34.13 Persons subject to restrictions imposed by a court pending deportation - arrest without warrant

Paragraph 7(1) of Schedule 3 to the 1971 Act allows for the arrest, without warrant, of a person subject to restrictions imposed by a court under that Schedule (pending deportation), if there are reasonable grounds for believing the restrictions have been, are being, or are likely to be contravened. A persons arrested under this paragraph must be brought before a magistrate as soon as practicable, and in any event within 24 hours of his arrest, under paragraph 8(1) of Schedule 3 to the 1971 Act.

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34.14 Persons liable to be detained - entry, search and arrest with warrant

Paragraph 17(2) of Schedule 2 to the 1971 Act allows a JP or sheriff to issue a warrant authorising any IO or police constable to enter a named address to search for and arrest a person. However, he must be satisfied that there are reasonable grounds for suspecting that a person is liable to be arrested under paragraph 17(1) and is to be found on the premise named in the warrant.

Under paragraph 2 of Schedule 3 of the 1971 Act (detention or control pending deportation) officers can apply their existing powers under Schedule 2 to persons liable to be detained under paragraphs 2(2) and 2(3) of Schedule 3. This relates to those who are the subject of a notice of intention to deport or a deportation order. In Scotland the JP or sheriff may only issue a warrant if the premises are in a place within his jurisdiction. Section 53 of the 2006 Act refers.

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34.15 Execution of warrants by the police on behalf of the UK Border Agency

The police will often seek guidance from immigration staff particularly where the warrant has been issued on information provided by the UK Border Agency. Before proceeding to an address:

- Check that the warrant is still valid (note in particular that entry and search under a warrant must be within one month from the date of its issue);
- Check that the warrant is to be used only for the purpose for which it was issued. A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued. When a warrant is issued to search for an individual, it does not extend to the searching of drawers etc where it is clear the subject could not be concealed;
- If the search is to be conducted either early or late in the day, be prepared to justify the unsociable hour. Entry and search under a warrant must be at a reasonable hour unless it appears to the police constable executing it that the purpose of a search may be frustrated on an entry at a reasonable hour;
- Liaise with the police so that both parties are aware of the circumstances likely to be encountered and agree a proposed course of action.

Before the police execute a warrant, you should take reasonable steps to ensure that the premises are occupied. Where there is no indication that anyone is present, liaise with the police to assess whether it is likely that persons are seeking to conceal their presence. Where it is clear that the premises are unoccupied or that the subject of the warrant is not present, the warrant should not be executed (unless the warrant is to search for evidence under s28D and not a person).

When a warrant has been executed:

- Check that an endorsed copy of the warrant has been left with the occupants along with a contact number for the immigration office concerned;
- Ensure that the police complete the reverse of the warrant;

- Take full notes including the names of all those involved and details of any incidents.

If a warrant is executed but no one is found at the address, the police will secure the premises and a copy of the warrant should be left in a prominent place on the premises with a contact name and number. Submit a report to the CIO who authorised the visit setting out the circumstances, and;

- Return the warrant to the court (see 34.19);
- Minute the local case papers and bring any difficulties or incidents to the attention of a CIO.

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34.16 Disposal of warrants

A warrant is valid for one calendar month and is not renewable. It can be returned personally or by post but the responsibility for doing so rests with the officer in charge of the case.

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34.17 Unused warrants

If action is not taken within one calendar month, or the warrant is no longer required, return it to the court (see 34.19). If another visit is planned, a new warrant must be obtained.

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34.18 Executed warrants

Once executed, a warrant cannot be used for follow up action at the same address. If another visit is planned, a new warrant must be obtained.

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34.19 Returning warrants to the court

A warrant which has been executed, or which has not been exercised within the time authorised for its execution, must be returned:

- If issued by a justice of the peace in England and Wales - to the justices' chief executive appointed by the magistrates' court committee whose area includes the petty sessions area for which the justice acts;
- If issued by a justice of the peace in Northern Ireland - to the clerk of petty sessions for the petty sessions district in which the premises are situated;
- If issued by a justice of the peace in Scotland - to the clerk of the district court for the commission area for which the justice of the peace was appointed;
- If issued by the sheriff - to the sheriff clerk.

A warrant so returned will be retained for 12 months. During this time the occupier of the premises to which it relates may ask to see it, and if he does ask to see it he must be allowed to do so.

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