

Chapter 33 – Index

33.	Working with the Police
33.1.	Requesting police assistance
33.2.	Advice to police on Immigration Act prosecutions
33.3.	Offences where Immigration Officers have no power of arrest
33.4.	Procedures when an offender is prosecuted under the 1971 Act
33.5.	Procedure when police officers wish to bring to the UK, or allow to remain, a foreign national to assist with investigations
33.6.	Police and Criminal Evidence Act 1984 (PACE) and PACE Codes of Practice
33.7.	Power of entry and search of premises for relevant documents following arrest and/or detention under Schedule 2 to the 1971 Act
33.8.	Execution of warrants by the police on behalf of the IS
33.9.	Access and copying of seized material
33.10.	Use of force
33.11.	Other powers
33.12.	PACE detention
33.13.	PACE detention - initial action
33.13.1.	Reviews of detention under PACE

33. Working with the Police

(See also chapter 31.1 and chapter 31.7) Whilst IOs have power to arrest, enter, search and seize, in certain circumstances, it is **still** Home Office Policy for police officers to effect arrests when operating in mixed teams with non arrest trained officers. Only designated officers (i.e. members of the Arrest Teams) are authorised to exercise the power of arrest.

Although this section has been updated to include the powers introduced by part VII of the Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 it is important for all officers not designated for the Arrest Team to note that they should not:

- ◆ carry out arrests;
- ◆ execute warrants;
- ◆ conduct searches of persons or property unless by consent;
- ◆ carry or use restraints; or

- ◆ transport offenders in official vehicles (Note: Non-designated IO's may drive official vehicles (but not escort detained persons) subject to a designated IO being present and vehicle insurance).

Where an arrest and/or detention is likely to be required, or where there may be a breach of the peace, an IO should always be accompanied by a police officer.

33.1. Requesting police assistance

To take account of changes contained within the Joint Protocol for the Removal of Immigration Offenders (2nd Edition, dated 14 June 2002), new arrangements for requesting police assistance have been introduced nationally, **except in the Metropolitan Region**. These cover, for example, the secondment of police officers to the IS and the introduction of IS arrest teams.

Within the IS Metropolitan area, Intelligence Units (IUs) are now in existence. These have been established to meet the needs of the Metropolitan area and should be the first point of contact before conducting visits and/or requesting police assistance.

Outside of the Metropolitan area, Intelligence Units (IUs) are also in existence but function differently. Regional IUs use the Visit/Enforcement Notification forms which have been devised to standardise IS enforcement visit documentation and have been introduced nationally (*except within the Metropolitan Region as detailed in the paragraphs below*).

The VEN forms have been designed to enable:

1. IS to request local police assistance for an enforcement visit;
2. IS to notify the police of a planned enforcement visit where no additional local police assistance is required.
3. The local police commander to carry out a Community Impact Assessment (CIA) of the proposed visit;
4. IS to collect data in respect of the Best Value Performance Indicator (BVPI) 191 (police assistance to IS).
5. IS to notify police of the result of the visit.

VEN 1 (4 parts)

Part One (Immigration details) will be completed by the IO (or under the supervision of the IO) dealing with the enquiry and will show the results of IS checks. A continuation sheet will be used as necessary for additional information, for example:

- ◆ Date and time of the proposed visit;
- ◆ Whether a warrant has been obtained;
- ◆ To make a specific request for police assistance;
- ◆ To make a specific request for custody facilities, police transport, or other operational support;
- ◆ Any other relevant information.

In most cases where a request is made for police assistance, discussion will take place between the IO and local police officers to agree resources and tactics for the planned operation. For middle/upper tier operations, this will normally take the form of a formal planning meeting and will require approval from the local TCG (see chapter 47.1.3).

VEN 1 - will then be forwarded to either:

1. Seconded police officers for the relevant police force, or
2. A locally agreed point of contact at the relevant Borough Command Unit (BCU) or police force HQ.

Part Two (Police checks) will be completed by either the seconded police officers or the relevant BCU/police force HQ and will show the results of police checks. A Community Impact Assessment (CIA) using VEN 2 will be completed by the police as directed locally.

Part Three (BCU Commanders recommendation)

If the BCU Commander, or other nominated officer, is not content for the operation to take place, they should contact the Police Regional Liaison Officer (RLO) to discuss their concerns and options. If concerns cannot be resolved, the BCU Commander, or other nominated officer, will indicate one of the following five reasons:

1. Risk of adverse impact on good community relations;
2. Risk to health and safety;
3. Further development of intelligence required;
4. Insufficient police resources available to meet request;
5. Any other reason.

Explanation of reason and details of discussion with RLO (as above) will be shown on a VEN continuation sheet. VEN 1, with Parts Two and Three completed, and together with VEN 2 should be returned from the police within 72 hours of receipt of the original VEN1 application. This may vary according to local procedures.

Part Four (IS authorisation)

Authorisation for the visit to go ahead rests with the appropriate IS manager (CIO/HMI/AD), based on the information shown on VEN 1 and VEN 2. Where authorised, the visit will be carried out **within 14 days**.

VEN 2

This is the equivalent of the Metropolitan area intelligence summary on the Risk assessment. This will show in greater detail the results of the police checks from part 2 of the VEN 1 and list any community impact factors or specific risks identified with either the subject of the visit or the address itself.

VEN 3 (See Annex A)

Best Value Performance Indicator

The VEN3 form is now obsolete and is no longer used. The VEN form itself is under review and this section will be updated in due course.

VEN 4

Visit/Enforcement Result

The IO in charge will forward a copy of VEN 4 to the local police intelligence unit and the local IS intelligence unit at the conclusion of the operation. A VEN 4 continuation sheet should be used if required.

Before any visit, brief the police officers on the reasons for the visit with details as provided on the pro-forma. If the police indicate that they expect an IO to use any of his powers of arrest, search or seizure whilst on a joint operational visit, it should be explained that these powers are being

phased in and that they are only available to a limited number of designated arrest trained officers. Ensure the police officers are aware of their role.

Before an arrest tell the police officer the name of the offender and details of the offence committed.

33.2. Advice to police on Immigration Act prosecutions

You may be asked by the police to give advice on provisions of the Immigration Acts. You should ensure that police officers are aware of the fact that an immigration offender can be administratively removed from the UK, rather than (or as well as) being prosecuted. Each case will need to be considered on its own merits after liaison with the police.

Those who commit immigration offences are liable to prosecution and over the past few years the IS has been developing expertise in the specialist area of investigating immigration offences. However, before a person can be charged and/or prosecuted, there must be an investigation and evidence gathered. There is an extent to which an IO can engage in this process. An IO has the power to **investigate (i.e. gather evidence in relation to)** an offence and **question** a person who has been arrested and cautioned for an offence. An IO does not have the power to **detain or charge** a person arrested for an offence, this must be done by the police.

Border and Immigration Agency Criminal Investigation Teams (CITs) are now in existence, some of which work alongside the police although others work independent of them. CITs operate throughout the country assisting in prosecuting those who commit immigration offences.

Historically the IS did not institute proceedings for prosecution under the criminal provisions of the 1971 Act (sections 24 - 28) as they were matters for the police and the CPS. However, with the introduction of these CITs and under section 164 of the 1999 Act and section 7 of the 2004 Act, there is a provision which will allow the CPS to accept criminal proceedings instituted by an IO. This direct access of operation allows the IS to contact the CPS directly without having to use police criminal justice units or police officers. This will reduce delays and encourage earlier contact between investigators and lawyers. This direct access of operation to the CPS came into force on the 1st August 2005. Additionally, an undertaking has been given to the CPS that **ONLY** those immigration staff currently working on a CIT or within a joint police/IS unit will contact the CPS for advice.

Note: The IS does not have the resources to take on all potential immigration prosecution work, but it is playing an increasing role in certain targeted areas. The institution of these prosecution proceedings is subject to the provisions outlined in chapter 16.4.

The following chart lists immigration offences and those where IOs have arrest and supplementary powers. Remind police officers that all non-British suspects charged with offences carrying a possible sentence of imprisonment may be served with a notice of liability to deportation, the IM3 form.

33.3. Offences where Immigration Officers have no power of arrest

26(1)(a)	Failure to submit to Schedule 2 examination without reasonable excuse
26(1)(b)	Failure to furnish information or documentation without reasonable excuse
26(1)(c)	False statements and returns
26(1)(d)	Alteration, without lawful authority, of documentation or use of/ possession of false documentation for use (except ARCs)
26(1)(e)	Failure to complete and produce a landing/embarkation card without reasonable excuse
26(1)(f)	Failure to register with police/or keep hotel registers without reasonable excuse
27(a)	Where the captain of a ship or aircraft fails without reasonable excuse to take required steps as regards disembarkation and examination of passengers. Or to comply with removal directions given under schedule 2 or 3.
27(b)	Failure(s) by the owner or agent of a ship or aircraft without reasonable excuse.
27(c)	Failure(s) by the owner or agent of a ship or aircraft or a port manager in relation to schedule 2 embarkation or disembarkation requirements.

Note: Police Officers have a power of arrest for any offence under section 24 of the Police and Criminal Evidence Act (PACE) 1984 based upon a necessity test.

33.4. Procedures when an offender is prosecuted under the 1971 Act

The decision as to whether criminal charges should be brought rests with the police. In practice, however, offenders are not charged with immigration offences unless serious criminal offences and/or a history of immigration deception are disclosed. The reasons for this are that:

- ◆ it is more effective and practicable to act administratively;
- ◆ it is normally desirable that an offender is removed from the UK as soon as possible;
- ◆ courts are often unwilling to recommend deportation except for serious criminal offences;
- ◆ bail may be granted and the offender may then go to ground.

The fact that police may have charged an offender with an offence under the Immigration Act 1971 does not, under section 28(4) of the 1971 Act, preclude administrative action being taken as well. If, however, the person is acquitted in court, it will be difficult to continue with administrative enforcement action, even though the standard of proof may be different.

Where the police charge an offender with illegal entry or with overstaying/breaching his conditions of entry and serve him with a notice of liability to deportation (sometimes known as IM3), you may serve form IS151a in order to take removal action should the Court not recommend deportation action. If the Court does recommend deportation action, the Criminal Casework Team (CCT) will decide if this is to be continued as a deportation case or an illegal entry/administrative removal case and will advise the enforcement office accordingly.

If the Court does not recommend deportation for the criminal offence, it does not preclude deportation action on non-conducive grounds (see chapter 12). In essence, the administrative process of illegal entry/administrative removal/deportation and the criminal process are distinct from each other. Advice on criminal cases can be obtained from the CCT.

33.5. Procedure when police officers wish to bring to the UK, or allow to remain, a foreign national to assist with investigations

In relation to foreign nationals who may be of interest to the police, chief police officers were informed in HON 12/97 of correct procedures. These have now been superseded by HON 02/2006 in March 2006. The main points for LEA's to consider are:

- ◆ The LEA should contact Border and Immigration Agency in every case involving a person whose entry into the UK they are seeking or whose stay in the UK they wish to extend.
- ◆ It is essential that the integrity of the United Kingdom immigration control is maintained, that due regard to be given to all relevant legislation and consequently that in all cases sponsored by an LEA, all information relevant to the entry, or stay, of a person in the UK is provided to Border and Immigration Agency.

- ◆ Where an LEA is sponsoring an extension of stay in the UK for a foreign national subject to immigration control, they will be liable for the appropriate fee, which is incurred by an applicant seeking further leave to remain here.
- ◆ Prior to the consideration of any application for an extension of stay, it will be necessary for the subject's immigration status to be formally established.
- ◆ Border and Immigration Agency must always be provided with the subject's true identity and other details.
- ◆ Where the person is a witness in a criminal prosecution, a letter from the crown prosecution service confirming the necessity of their presence will be required.
- ◆ The final decision concerning the grant of leave to enter or remain in the UK, or deferral of removal from the UK, will be made by Border and Immigration Agency. In appropriate cases ministers may be consulted.
- ◆ Whilst initial advice may be sought by an officer of any rank within an LEA, any formal written approach must be made at Assistant Chief Constable/ Commander/Band 11 HM Revenue & Customs and Deputy Director Level in the Serious Organised crime Agency to the Border and Immigration Agency nominee.
- ◆ The Central Point of Contact (CPC) within Border and Immigration Agency should be consulted in all witness cases. Further action within Border and Immigration Agency, including liaison with UK visas, will be co-ordinated by the CPC. All CHIS referrals and requests for Border and Immigration Agency support of covert investigations will be co-ordinated by BIA Intelligence Directorate.

Anyone with access to the Briefing and Reference Database (BARD) can read HOC 02/2006. For those that do not there is now a Central Point of Contact (CPC).

33.6. Police and Criminal Evidence Act 1984 (PACE) and PACE Codes of Practice

The Police and Criminal Evidence Act (PACE) 1984 provides, amongst other things, for the Secretary of State to issue codes of practice in connection with (a) the exercise by the police of statutory powers to search persons and vehicles, (b) the detention, treatment, questioning and identification of persons by the police, (c) the searches of premises by the police, and (d) the seizure of property found by the police on persons or premises.

Section 67(9) of PACE makes provision for persons other than police officers who are charged with the duty of investigating offences or charging offenders to have regard to any relevant parts

Enforcement Instructions and Guidance of the codes. IOs are required to have regard to any relevant provisions of the PACE codes of practice when investigating an offence. In addition, Section 145 of the 1999 Act required the Secretary to State to issue a direction specifying which provisions of the PACE codes of practice IOs must have regard to when exercising certain specified powers. The specified powers and provisions are laid out in the Immigration (PACE Codes of Practice) Direction 2000 and the Immigration (Pace Codes of Practice No 2 and Amendment) directions 2000 (see annex B). These Directions cover the power of arrest and the powers of entry, search and seizure introduced by the 1999 Act. The Directions also contain, in their Schedules, specified modifications to the PACE Codes of Practice, which make them applicable to IOs. A revised version of the PACE Codes of Practice, to take account of the Direction, has been produced and copies have been distributed to LEOs for individual issue to operational staff.

Chapter 37.7 details further the applicability of the PACE Codes of Practice to aspects of enforcement work carried out by all enforcement IOs. It does not include details of the applicability of the PACE Codes of Practice to the powers introduced by the 1999 Act that can only be carried out by officers operating under the arrangements set out in chapter 31.1. This information is included in the separate guidance for the IS arrest teams.

*The Police and Criminal Evidence Act 1984 applies in England and Wales only. The Police and Criminal Evidence (Northern Ireland) Order 1989 applies in Northern Ireland. References to PACE in this manual cover both the 1984 Act and the 1989 Order, except where stated otherwise. PACE does not apply in Scotland.

33.7. Power of entry and search of premises for relevant documents following arrest and/or detention under Schedule 2 to the 1971 Act

IOs should not exercise this power except under the arrangements outlined in chapter 31.1.

If an IO arrests a person under Schedule 2 to the 1971 Act, or if a person is arrested by a constable and subsequently detained under that Schedule, then paragraph 25A of that Schedule allows an IO (not a police officer) to enter and search:

- ◆ the premises where the person was arrested;
- ◆ the premises where the arrested person was immediately before arrest;

- ◆ any premises occupied by the arrested person; and
- ◆ any premises controlled by the arrested person

for "relevant documents". "Relevant documents" means any documents which might establish the arrested person's identity, nationality or citizenship or indicate the place from which he has travelled or is proposing to go. "Relevant documents" can be seized and retained (but they can only be retained for as long as is necessary in view of the purpose for which the person was arrested).

The power may be exercised (i) only if the IO has reasonable grounds for believing that there are relevant documents on the premises; (ii) only to the extent that is reasonably required for the purpose of discovering relevant documents; and (iii) only if a senior officer has authorised its exercise in writing.

An IO may conduct a search (i) before taking the arrested person to a place where he is to be detained; and (ii) without obtaining an authorisation, if the presence of that person at a place other than one where he is to be detained is necessary to make an effective search for any relevant documents. An IO who has conducted a search under paragraph 25A must inform a senior officer as soon as is practicable. The officer authorising a search, or who is informed of one, must make a record in writing of (i) the grounds for the search; and (ii) the nature of the documents that were sought.

33.8. Execution of warrants by the police on behalf of the IS

See Chapter 34	
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33.9. Access and copying of seized material

IOs should continue to rely on the police to seize and retain material unless operating under the arrangements set out in chapter 31.1.

Section 28I of the 1971 Act provides, inter alia, for access to and copying of material seized and retained by an IO or police officer under part III of the 1971 Act by the person from whom the

material was seized or someone acting on his behalf. The section is based on section 21 of PACE.

Section 14(d) of the 2004 Act gives IO's the power to seize material in relation to specified offences. These powers of seizure should only be used by appropriately trained officers – **see also:** 16.4, 34.6, 36.1 and 36.3.

Paragraph 25D of Schedule 2 of the 1971 Act provides for access to and copying of material seized under Schedule 2 to the 1971 Act by the person from whom the material was seized or someone acting on his behalf. It is also based on section 21 of PACE.

33.10. Use of force

Section 146 of the 1999 Act states that an IO is entitled to use reasonable force, not only when exercising the new powers introduced by the 1999 Act but when exercising any of his powers under the 1971 Act. However, force can only be used if it is necessary, and to the extent needed to achieve its lawful purpose. IOs not operating under the arrangements set out in chapter 46.1 should not have occasion to use force.

33.11. Other powers – police constables

A police constable may obtain a warrant to search premises for other reasons e.g. under the Forgery and Counterfeiting Act 1981.

Warrants to search for evidence that is “special procedure material” under section 14 PACE must be made by a police constable to a circuit Judge under Schedule 1 of PACE. Strict conditions apply to the issue of this type of warrant.

33.12. PACE detention

When a person is detained at a police station, he is dealt with in accordance with Part IV of PACE and Code C of the PACE Codes of Practice. IOs are required to adhere to the PACE Codes of Practice when investigating offences and interviewing suspects at a police station. A revised version has been produced for use by IOs in accordance with the Immigration (PACE Codes of

Enforcement Instructions and Guidance
Practice) Direction 2000 and the Immigration (PACE Codes of Practice No 2 and Amendment)
Direction 2000.

In addition to dealing with the provisions of the PACE Codes of Practice in relation to a person's rights and conditions of detention, the custody officer has responsibility for such matters as charging of offenders, the initial detention, reviews of detention and release of those who have been detained.

Those persons detained under Schedule 2 to the 1971 Act but are held in police custody do not come under PACE but are entitled to certain welfare provisions. Code C of the PACE Codes of Practice makes it clear that it does not apply to people detained under Schedule 2 of the 1971 Act. See also chapter 32.5.8

33.13. PACE detention - initial action

When a person is brought to a police station under arrest or is arrested at the police station having attended there voluntarily, the custody officer will require a brief explanation as to the circumstances of arrest (why, when, by whom, where). The custody officer must tell him clearly of the following rights and of the fact that they are continuing rights that may be exercised at any stage during the period in custody.

- ◆ the right to have someone informed of his arrest in accordance with section 5 of Code C of the PACE Codes of Practice;
- ◆ the right to consult privately with a solicitor and the fact that independent legal advice is available free of charge; and
- ◆ the right to consult the PACE Codes of Practice.

The custody officer must also give the person various notices in writing for which the person must acknowledge receipt by signing the custody record. He must also sign the custody record confirming whether he requires legal advice.

In accordance with section 7 of PACE code of practice C, a citizen of an independent Commonwealth country or a foreign national (including the Republic of Ireland) must be informed as soon as practicable of his rights of communication with his High Commission, Embassy or

Consulate. However, where the person is seeking asylum, a consular officer shall not be informed of the person's arrest, or given information about him except at the person's express request.

If the person appears to be deaf or there is doubt about his hearing or speaking ability or his ability to understand English, and the custody officer cannot establish effective communication, the custody officer must as soon as practicable call for an interpreter. In addition to the notices in English, translations should be available in the main ethnic minority languages and the principal European languages.

If the person is a juvenile, the custody officer must, if it is practicable, ascertain the identity of a person responsible for his welfare (his parent, guardian, care worker or any other person who has assumed responsibility for his welfare). That person must be informed, as soon as practicable, that the juvenile has been arrested, why he has been arrested and where he is detained. This right is in addition to the juvenile's right in paragraph 5 of the Code not to be held incommunicado.

If the person is a juvenile, is mentally handicapped or appears to be suffering from a mental disorder, the custody officer must, as soon as practicable, inform the appropriate adult (who in the case of a juvenile may or may not be a person responsible for his welfare) of the grounds for his detention and his whereabouts and ask the adult to come to the police station to see the person.

The custody officer is responsible for ascertaining what property a detained person has with him when he comes to the police station and for the safekeeping of any property which is taken from him and which remains at the police station. If, after service of immigration notices the IO requires some of the person's property, he will have to sign the custody record to confirm that he has taken receipt of the items.

33.13.1. Reviews of detention under PACE

Section 40 of PACE requires reviews of detention at a police station, initially after a maximum of six hours and subsequently at periods not in excess of nine hour intervals. You may be asked to explain any perceived needs for continuing detention. In the event of a disagreement with a reviewing officer over the need for a further period of detention (where detention under the 1971 Act has not yet been authorised), you should explain the situation to a senior police officer (consulting a CIO/Inspector if appropriate). However, the police decision will be final.

Section 51(a) of PACE preserves powers of detention under the 1971 Act. Therefore, when a person is detained in a police station under the 1971 Act, e.g. as an illegal entrant or person liable

Enforcement Instructions and Guidance
for administrative removal, your written authority should suffice for detention to be maintained when reviews are conducted. But if a reviewing officer (whose attention has been brought to section 51(a) of PACE) requires the release of a person detained under the 1971 Act, and this is not agreed, consult a CIO or Inspector at once. If necessary, he should discuss the matter with a senior police officer.

The PACE review arrangements apply only to a person detained in a police station. They do not apply to interviews at enforcement offices or other premises.