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### 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 (that is members of the arrest teams) are authorised to exercise the power of arrest.

It is important for all non-designated officers to note that they must not:

- ◆ carry out arrests,
- ◆ execute warrants,
- ◆ conduct searches of persons or property unless by consent,
- ◆ carry or use restraints,
- ◆ transport offenders in official vehicles (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 - operation notification form (ONF)

To take account of changes contained within the Joint Protocol for the Removal of Immigration Offenders (2nd Edition, dated 14 June 2002), arrangements for requesting police assistance and intelligence, a new streamlined process has been introduced.

Within the Immigration Enforcement Metropolitan area, intelligence units (IUs) should be the first point of contact before conducting visits and/or requesting police assistance. The ONF must be completed by the IUs and authorisation to conduct the visit must be sought from a CIO or above. For arrest team visits the authorising officer must be arrest trained.

Outside of the Metropolitan area, IUs should also use the ONF process but liaise with local police forces to complete the relevant sections highlighted on the form. The ONF has been devised to standardise enforcement visit documentation and has been introduced to all immigration compliance and enforcement (ICE) teams.

The ONF has been designed to enable:

1. Immigration Enforcement to request local police assistance for an enforcement visit.
2. Immigration Enforcement to notify the police of a planned enforcement visit where no additional local police assistance is required.
3. Immigration Enforcement to gather all the intelligence held by the police forces regarding the subjects and the addresses they plan to visit.
4. The local police commander to carry out a community impact assessment (CIA) of the proposed visit.
5. Immigration Enforcement to collect data in respect of the best value performance indicator (BVPI) 191 (police assistance to Immigration Enforcement).
6. Immigration Enforcement to notify police of the result of the visit using the intelligence feedback report.

## **Completing the ONF**

The ONF comprises 12 sections which must be completed.

### **London and all ICE teams who have access to the police intelligence systems:**

Sections one to 11 are to be completed by the IU. This will show the results of Home Office checks. The IU should refer to the ONF guidance sheet attached to the ONF form to assist in completing it correctly. Once the ONF is completed, it should be forwarded to the relevant local

police force **no** less than three days before the visit is due to take place. **It is important to note that the ONF is valid for one calendar month from the date when the police intelligence checks have been completed. This is the date that appears at the end of section 10.**

Only in exceptional circumstances can the ONF be sent less than three days before the proposed date of the visit. If there are exceptional circumstances, this should be discussed and documented by a CIO (arrest trained for arrest team visits) or above, to explain the reason why. The IO should then send the ONF to their local police force, but make sure they follow this up immediately by telephone to confirm receipt of the form.

**ICE teams with no access to the police intelligence systems:**

Sections one to five are to be completed by the IU and will show the results of Home Office checks. The IU should refer to the ONF guidance sheet attached to the ONF form to assist in completing it correctly.

Should police assistance be required on the visit, the IU will need to indicate this in section one of the ONF. 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 or upper tier operations, this will normally take the form of a formal planning meeting and will require approval from the local tasking and coordination group (TCG).

Once sections one to five have been completed, the ONF should be forwarded to a:

- ◆ seconded police officer for the relevant police force, or
- ◆ locally agreed point of contact at the relevant local police force.

Sections six to 10 (police checks) should be completed by either the seconded police officer or the nominated officer in the relevant local police force to show the results of the police checks. If the police officer is aware of any reasons why the visit should not take place, they will indicate this in section nine. Once the completed ONF is received back from the police force, it is the responsibility of the Immigration Enforcement police regional liaison officer (RLO) to discuss any concerns and options which are raised with the nominated police officer. RLOs are then instructed to document any discussions on section nine of the ONF.

Once the seconded police officer or the nominated officer in the relevant local police force has completed their checks, they need to return the ONF within 72 hours from when they received the

form. However, this may vary according to local procedures. **It is important to note that the ONF is valid for one calendar month from the date when the police intelligence checks have been completed. This is the date that appears at the end of section 10.**

### **Section 12 (Immigration Enforcement authorisation):**

Authorisation for the visit to go ahead rests with the appropriate ICE team manager (CIO/HMI/AD), based on the information shown on the ONF. ICE team operations involving arrest trained operational staff require the authority of an arrest trained CIO or above to authorise the visit.

### **Visit enforcement notification (VEN) forms**

The ONF replaced the VEN forms from 31 May 2012, in England, Wales and Northern Ireland and 3 December 2012 in Scotland.

### **Intelligence feedback report**

At the conclusion of the visit, the IO in charge will need to forward a copy of the intelligence feedback form to the local police intelligence unit and their local intelligence unit.

Before any visit, brief the police officers on the reasons for the visit with details as provided on the ONF. 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 only available to 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.

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.

### **33.2.1 Prosecution by Immigration Enforcement crime teams**

Those who commit immigration offences are liable to prosecution and Immigration Enforcement has 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** (that is 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.

Immigration Enforcement criminal financial investigation teams (CFIs) operate throughout the country investigating those who commit immigration offences.

Under section 164 of the 1999 Act and section 7 of the 2004 Act, there is a provision which allows the Crown Prosecution Service (CPS) to accept criminal proceedings instituted by an IO. An undertaking has been given to CPS that **only** those immigration staff currently working on a CFI or within a joint police and Immigration Enforcement unit will contact CPS for advice.

Immigration Enforcement does not have the resources to take on all potential immigration prosecution work, but it is playing an increasing role in certain targeted areas.

### 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 ( <b>except ARCs</b> )
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.
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Police officers in England and Wales 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 or CPS. 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 an offender has been charged 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 an offender is charged with illegal entry, overstaying or breaching their conditions of entry 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, criminal casework (CC) will decide if this is to be continued as a deportation case or an illegal entry or administrative removal case and will advise the ICE team accordingly.

If the court does not recommend deportation for the criminal offence, this does not preclude deportation action on non-conducive grounds (see chapter 12). The administrative process of illegal entry, administrative removal or deportation and the criminal process are distinct from each other. Advice on criminal cases can be obtained from CC.

### **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. This was superseded by [HOC 02/2006](#) in March 2006. The main points for the law enforcement agency (LEA) to consider are:

- ◆ The LEA should contact Immigration Enforcement 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 UK immigration control is maintained, that due regard is 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 Immigration Enforcement.
- ◆ 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.
- ◆ Immigration Enforcement 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 CPS 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 Immigration Enforcement. 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 Immigration Enforcement nominee.
- ◆ The central point of contact (CPC) within Immigration Enforcement should be consulted in all witness cases. Further action within Immigration Enforcement, including liaison with international operations and visas, will be co-ordinated by the CPC. All covert human intelligence source (CHIS) referrals and requests for Immigration Enforcement support of covert investigations will be co-ordinated by Immigration Enforcement operational intelligence.

[HOC 02/2006](#) can be viewed on the Home Office website.

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

The Police and Criminal Evidence Act (PACE) 1984 provides for the Secretary of State to issue codes of practice in connection with:

- ◆ the exercise by the police of statutory powers to search persons and vehicles
- ◆ the detention, treatment, questioning and identification of persons by the police
- ◆ the searches of premises by the police, and 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 of the codes. IOs must have regard to any relevant provision of the PACE Codes of Practice when investigating an offence. In addition, Section 145 of the 1999 Act requires the Secretary of 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 Directions as follows:

- Officers exercising the specified powers in England and Wales must adhere to the Immigration (PACE Codes of Practice) Direction 2013. This covers all relevant powers available to an IO.
- Officers exercising the specified powers in Northern Ireland must adhere to the Immigration (PACE Codes of Practice) Direction 2000 and the Immigration (PACE Codes of Practice No 2 and Amendment) Direction 2000. These cover the power of arrest and the powers of entry, search and seizure introduced by the 1999 Act.

The Directions may be viewed at the [Home Office website](#).

The Directions contain, in their schedules, specified modifications to the PACE Codes of Practice, which make them applicable to IOs.

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 Immigration Enforcement arrest teams in chapter 61.

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, where the Criminal Procedure (Scotland) Act 1995 is the relevant legislation.

### **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 following premises for a 'relevant document':

- ◆ the premises where the person was arrested
- ◆ the premises where the arrested person was immediately before arrest
- ◆ any premises occupied by the arrested person
- ◆ any premises controlled by the arrested person

'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 **only** be exercised:

- ◆ if the IO has reasonable grounds for believing that there are relevant documents on the premises
- ◆ to the extent that is reasonably required for the purpose of discovering relevant documents

- ♦ if a senior officer has authorised its exercise in writing.

An IO may conduct a search:

- ♦ before taking the arrested person to a place where he is to be detained
- ♦ 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:

- ♦ the grounds for the search
- ♦ the nature of the documents that were sought.

### **33.8. Execution of warrants by the police on behalf of Immigration Enforcement**

Please refer to chapter 34 - warrants for guidance.

### **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 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 guidance in chapters: 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, for example under the Forgery and Counterfeiting Act 1981.

Warrants to search for evidence that is ‘special procedure material’ under section 14 of 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. The Immigration (PACE Codes of Practice) Direction 2013, the Immigration (PACE Codes of Practice) Direction 2000 and the Immigration (PACE Codes of Practice No 2 and Amendment) Direction 2000 set out the modifications required to make the PACE Codes of Practice applicable to IOs.

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 office 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, for example as an illegal entrant or person liable 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.