



Home Office

Immigration Returns, Enforcement and Detention  
General instructions

# Dealing with potential criminality (Immigration Compliance & Enforcement teams)

Version 5.0

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# About this guidance

This guidance is an overview of the general policy and processes to be followed by ICE teams on encountering individuals who could be subject to criminal prosecution and provides:

- general principles to be followed by Immigration and Enforcement (ICE) teams in relation to the investigation of criminal offences
- liaison with Criminal and Financial Investigations (CFI) teams and other agencies
- an overview of CFI's remit and case types that might be considered for criminal investigation
- the areas of responsibility and the types of criminal offences investigated by Criminal and Financial Investigations (CFI)

Detailed guidance in relation to the conduct of criminal investigations is found in Criminal and Financial Investigation guidance.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email Enforcement Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **5.0**
- published for Home Office staff on **24 May 2024**

## Changes from last version of this guidance

Age dispute cases who are referred for prosecution.

### Related content

[Contents](#)

# Terms and definitions

## Arrival

An individual arrives in the UK when they reach UK land or inland waters. This does not extend to UK territorial waters. An individual may arrive before they enter the UK.

## Attempts

The Criminal Attempts Act 1981 makes it an offence to attempt to commit certain criminal acts 'If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence'. This applies to offences which are indictable or triable either way. With regard to the investigation and prosecution of migrants where they are intercepted in UK territorial waters, this should be on the basis of an attempted breach of immigration law based on that attempted arrival offence.

## Belief and suspicion

You must give the terms 'belief' and 'suspicion' their ordinary meaning, the starting point, therefore, being the dictionary definitions.

## Suspicion

A common direction given to criminal juries on what the term 'suspicion' means is that there must be **a possibility** that a person liable to arrest is on the premises **that is more than fanciful**.

Moreover, although a vague feeling of unease is not sufficient and there must be a reasonable basis for the possibility, it need not be 'clear' or 'firmly grounded and targeted on specific facts'.

## Belief

This is generally regarded as a higher threshold than suspicion. However, the difference between 'belief' and 'suspicion' is very slight – both may be satisfied at a low threshold. Belief is, for instance, more equivalent to **'knowing that a person may'** be on the premises in question. Belief should therefore be **clear and founded on specific intelligence**.

## CLUE

Clue3 is the criminal investigations case management system. See: CFI guidance – Clue.

## Entry

'Entry' is defined in section 11(1) of the 1971 Act as meaning disembarking and subsequently leaving the immigration control area. Where a person is detained and taken from the area, or granted immigration bail, they are not deemed to have entered the UK.

## Exhibit

An exhibit is a document or other thing shown to a witness and referred to by the witness in evidence. At common law it is within the power of, and is the duty of, constables to retain for use in court things which may be evidence of crime, and which have lawfully come into their possession.

Under the Code of Practice issued under part 2 of the Criminal Procedure and Investigations Act 1996, any officer investigating alleged crimes has a duty to record and retain material which may be relevant to the investigation.

Generally, the courts entrust the prosecution with the exhibits pending trial and after committal. The prosecution duty is:

- to take all proper care to preserve the exhibits safe from loss or damage
- to co-operate with the defence to allow them reasonable access to the exhibits for the purpose of inspection and examination
- to produce the exhibits at trial

## Legal privilege

Items subject to 'legal privilege' means:

- communications between a professional legal adviser and their client or any person representing their client made in connection with the giving of legal advice to the client
- communications between a professional legal adviser and their client or any person representing their client or between such an adviser or their client or any such representative and any other person made in connection with or in contemplation of legal proceedings
- items, when in the possession of a person entitled to them, that are enclosed with or referred to in such communications and made in connection with:
  - giving legal advice
  - contemplation of legal proceedings and for the purpose of such proceedings

## Organised crime groups (OCGs)

OCGs are individuals, working with others, with the capacity and capability to commit [serious crime](#) on a continuing basis. This must include elements of planning, control, coordination, structure and group decision making.



Section 93 of the Police Act 1997 is applicable in England, Wales, Scotland and Northern Ireland.

CFI focus on the most harmful OCGs and those who present the biggest threat to the government's target to reduce net migration. For more information see Criminal and financial investigations. CFI teams investigate where OCGs are involved in:

- offences relating to modern slavery including trafficking foreign nationals into the UK where there is a clear exploitation of the immigration system, this could be trafficking for:
  - the sex industry
  - organ harvesting
  - forced labour
  - other forms of involuntary servitude
- facilitation (assisting individuals to breach UK immigration law) of illegal migration in the UK, this includes:
  - marriage abuse
  - lorry drops (clandestine entrants)
  - bogus colleges
  - abuse of the points-based system (PBS)
  - rogue employers
- producing and supplying forged or false documents to undermine the UK's immigration controls

Officers also:

- assess all suspects for enhanced financial investigations
- seek to strip them of their criminal assets

For more information see: Financial investigation.

## PACE

PACE is used generically within this guidance to refer to [criminal investigation](#) procedures.

The Police and Criminal Evidence Act 1984 (PACE) 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, the 1989 Order, and equivalent Scottish criminal procedures legislation except where stated otherwise.

The [PACE codes of practice](#) apply to the police:

- exercising statutory powers to search people and vehicles
- detaining, treating, questioning and identifying people
- searching premises, and the seizure of property they find on people or premises

The [Criminal Justice \(Scotland\) Act 1980](#) details police powers, procedure and evidence and penalties as they apply in Scotland.

## Persistent offender

'Persistent offender' means a repeat offender who shows a pattern of offending over a period. This can mean a series of offences committed in a short timeframe, or which escalate in seriousness over time, or a long history of minor offences.

## PIP (Professionalising Investigation Programme)

PIP is referred to in this guidance in relation to levels of accreditation / training required for certain roles and activities.

- PIP Level 1: Foundation investigation course for Immigration Officers which includes the core investigatory principles and Authorised Professional Practice
- PIP Level 2: Serious and Complex crime course for officers who are accredited at PIP 1 and have undertaken the Immigration Enforcement Investigator Exam
- PIP Level 2 Supervisor/Manager: relates to officers who are managing teams undertaking investigation of serious and complex criminality
- PIP Level 2 Advanced Interview: is part of the PIP 2 learning programme and builds on PIP 1 foundation learning incorporating more complex structures in suspect, victim and witness interview
- PIP Level 2 Specialist Suspect Interview: for officers that hold Advanced accreditation, who are undertaking the most difficult interviews requiring significant planning structures and enhanced methodology

## Premises

A 'premises' is defined as any property or building, whether residential or business, which an IO seeks to enter or search under the immigration acts.

In England and Wales, [section 23 of Police and Criminal Evidence Act 1984 \(PACE\)](#) defines premises as any place and, in particular, includes any:

- vehicle, vessel, aircraft or hovercraft
- offshore installation
- renewable energy installation
- tent or movable structure

When where and how you are allowed to carry out a search of premises depends:

- whether you have made an administrative or criminal arrest
- where you made the arrest
- your powers to enter and search premises under the various acts

In Scotland and Northern Ireland, the definition of what constitutes premises is derived from [section 412 of the Proceeds of Crime Act 2002](#) and [article 25 Police and Criminal Evidence \(Northern Ireland\) Order 1989](#) respectively, but also includes

the categories described above (with the exception of renewable energy installations). There is more information on what may constitute premises in Search and seizure.

## Public interest

As part of their consideration under the Code for Crown Prosecutors whether to prosecute, the Crown Prosecution Service (CPS) considers two components - evidential and public interest – see also [consideration, referral and advice](#). Broadly, the presumption is that the public interest requires enforcement of the law to take place where there has been an administrative breach or contravention of the criminal law. That presumption is the starting point for consideration of each individual case.

ICE managers may make a pre-assessment of public interest prior to making a [Charging Decision Request](#) to CPS. The test is a specific analysis in light of the current circumstances, rather than being constrained by set criteria. The balance of public interest may change over time, and factors for and against any decision or disclosure must be weighed according to current guidance.

See also

- [The Code for Crown Prosecutors | The Crown Prosecution Service – Immigration](#)
- [Memorandum of Understanding between CPS and Immigration Enforcement](#)

Some immigration related offences carry severe penalties. However, it is generally the case that administrative removal action is a more proportionate and reasonable response, and that prosecution is sought only where there are ‘aggravating’ factors that make it right to prosecute in the public interest. See: [Consideration of aggravating factors](#)

Where an individual can be quickly removed from the UK and it is appropriate to do so, this is the normal case progression, subject to consideration of whether it is reasonable and proportionate to do so, unless there are [aggravating factors](#) in play such as repeat or persistent offending. Cases involving serious offences such as multiple use or possession of false documents and facilitation or those where there are possible links to organised crime will ordinarily be adopted for investigation.

## Reasonable and proportionate

Many of the powers described in this guidance and elsewhere use the terms ‘reasonable’, as in reasonable suspicion or reasonable belief and ‘proportionate’ in that the decision-maker considers whether exercising the legal power to limit the rights and freedoms of the individual is necessary to achieve the law enforcement objective and that it is in the public interest to do so.

Reasonable in law means fair, proper or moderate having regard for the circumstances, in this case including your knowledge and training as an IO. It applies an objective test when used with [‘suspicion’ or ‘belief’](#) so that decisions must be

based on a logical and rational assessment of the facts that other people (such as a court of law or your supervisors) could evaluate, for example:

- what another person has done or failed to do
- documentary evidence
- information from witnesses

Reasonable grounds can only be provided by a general assessment of the known facts, the situation, as it is known at the time and a reasonable conclusion drawn from the many possible circumstances that exist. Guesses, hunches and 'gut-feelings' are not considered to be reasonable. The reasonable grounds that form the basis of the action must be recorded in your [arrest notes](#).

## Relevant or listed offences

The terms 'listed offence' and 'relevant offence' mean offences for which an IO can arrest a person, or enter and search a premises for evidence:

- without warrant under section 28A of the Immigration Act 1971,
- with a warrant under sections 28AA of the Immigration Act 1971,
- with a warrant to search and arrest under section 28B of the Immigration Act 1971,
- without a warrant under section 28C of the Immigration Act 1971,
- with Grade 7 (Assistant Director (AD)) authority (an AD Letter) under section 28CA of the Immigration Act 1971
- with a warrant to enter and search for evidence under section 28D of the Immigration Act 1971
- without warrant under section 109A of the Immigration and Asylum Act 1999

### Section 28A - arrest without warrant

Section and Act	Offence
24(A1) IA1971	Knowingly entering the UK in breach of a deportation order
24(B1) IA 1971	Knowingly entering the UK without leave to enter
24(C1) IA 1971	Knowingly remaining in the UK beyond limited leave
24(D1) IA 1971	Knowingly arrives in the UK without valid entry clearance
24(E1) IA 1971	Knowingly arrives in the UK without an ETA <b>Note: for information only. Prospective offence not yet in force.</b>
24(1)(c) IA 1971	Crew member remaining in the UK without leave
24(1)(f) IA 1971	Disembarks in the UK from a ship or aircraft after being placed on board with a view to removal
24(1)(g) IA 1971	Embarks in contravention of a restriction imposed by Counsel under section 3(7) of this Act
24(1)(h) IA 1971	Without reasonable excuse, breaches a bail condition imposed under Schedule 10 to the IA16

Section and Act	Offence
24A IA 1971	Obtaining or seeking to obtain leave by deception
24B IA 1971	Working whilst disqualified
25 IA 1971	Assisting unlawful immigration to the UK
25A IA 1971	Knowingly facilitating the attempted or actual entry or arrival of an asylum seeker to the UK
26(1)(g) IA 1971	Obstructing an IO or other person lawfully acting in the execution of the IA71
26A IA 1971	Fraudulent use of a registration card
26B IA 1971	Possession of immigration stamps
453C POCA 2002	Obstructing an IO who is exercising a power of seizure under this Act
2 AI (Treatment of Claimants) Act 2004	Entering the UK without a passport
35 AI (Treatment of Claimants) Act 2004	Failure to cooperate with the documentation process
21 IAN Act 2006	Employing a person disqualified from working
33A IA 2016	Landlord renting premises to a disqualified person
33B IA 2016	Agent renting premises to a disqualified person

### Section 28AA - arrest with warrant

Section and Act	Offence
24(1)(d) IA 1971	Failure to comply with a requirement to report to a medical officer

### Section 28B - arrest with warrant

Section and Act	Offence
24(A1) IA 1971	Knowingly entering the UK in breach of a deportation order
24(B1) IA 1971	Knowingly entering the UK without leave to enter
24(C1) IA 1971	Knowingly remaining in the UK beyond limited leave
24(D1) IA 1971	Knowingly arrives in the UK without valid entry clearance
24(E1) IA 1971	Knowingly arrives in the UK without an ETA <b>Note: for information only. Prospective offence not yet in force.</b>
24(1)(a) IA 1971	Knowingly enters the UK in breach of a deportation order or without leave
24(1)(b) IA 1971	Remains in the UK beyond the time limited by the leave
24(1)(c) IA 1971	Crew member remaining in the UK without leave
24(1)(d) IA 1971	Failure to comply with a requirement to report to a medical officer
24(1)(f) IA 1971	Disembarks in the UK from a ship or aircraft after being placed on board with a view to removal

Section and Act	Offence
24(1)(h) IA 1971	Without reasonable excuse, breaches a bail condition imposed under Schedule 10 to the IA16
24A IA 1971	Obtaining or seeking to obtain leave by deception
24B IA 1971	Working whilst disqualified
24C IA 1971	Driving when unlawfully in the United Kingdom <b>Note: for information only. Prospective offence not yet in force.</b>
26A IA 1971	Fraudulent use of a registration card
26B IA 1971	Possession of immigration stamps

### Section 28C - arrest without warrant

Section and Act	Offence
25 IA 1971	Assisting unlawful immigration to the UK
25A IA 1971	Knowingly facilitating the attempted or actual entry or arrival of an asylum seeker to the UK

### Section 28CA - power of entry to arrest on Grade 7 (Assistant Director) authority (AD Letter)

Section and Act	Offence
24 IA 1971	Illegal entry and similar offences [24A1-24E1] (as above)
24A IA 1971	Obtaining or seeking to obtain leave by deception
24B IA 1971	Working whilst disqualified
(Paragraph) 17 of sch 2 to the IA 1971	Sect 28CA applies as a power to enter a business premises to arrest a person under para 17 who is liable to be detained under para 16 of sch 2

### Section 28D - power of entry to search for evidence with warrant

Section and Act	Offence
24 IA 1971	Illegal entry and similar offences [24A1-24E1] (as above)
24(1)(b) IA 1971	Remains in the UK beyond the time limited by the leave
24(1)(c) IA 1971	Crew member remaining in the UK without leave
24(1)(d) IA 1971	Failure to comply with a requirement to report to a medical officer
24(1)(f) IA 1971	Disembarks in the UK from a ship or aircraft after being placed on board with a view to removal
24(1)(h) IA 1971	Without reasonable excuse, breaches a bail condition imposed under Schedule 10 to the IA16

Section and Act	Offence
24A IA 1971	Obtaining or seeking to obtain leave by deception
24B IA 1971	Working whilst disqualified
25 IA 1971	Assisting unlawful immigration to the UK
25A IA 1971	Knowingly facilitating the attempted or actual entry or arrival of an asylum seeker to the UK
26A IA 1971	Fraudulent use of a registration card
26B IA 1971	Possession of immigration stamps

### Section 109A Immigration and Asylum Act 1999 - arrest without warrant

Section and Act	Offence
105 IAA 1999	Making false representations in respect of support for self or another
106 IAA 1999	Making dishonest representations in respect of benefits or payments to self or another

## Serious crime

Serious crime is defined by [section 93\(4\) of the Police Act 1997](#) as crime:

- involving the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose
- where one of the offences is an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of 3 years or more

## Serious harm

An offence that has caused 'serious harm' means an offence that has caused serious physical or psychological harm to a victim or victims, or that has contributed to a widespread problem that causes serious harm to a community or to society in general.

## Stowaways

Stowaways are not crew members and are not treated as such. Stowaways are non-paying passengers who board transport without the knowledge of the captain, master, driver and/or crew.

For the purpose of the statutory defence under s.25BB a stowaway is an individual who boards a ship without the knowledge of the master of the ship and the master was not aware of their presence on the ship when it departed from the port.

Stowaways should be examined and, where appropriate, refused as arriving passengers under the Immigration Rules.

### Related content

[Contents](#)



# Immigration related crimes

See also:

- [Other relevant criminality](#)
- [The Code for Crown Prosecutors | The Crown Prosecution Service – Immigration](#)

## Criminal prosecution for facilitation

For the purposes of this section of guidance, clandestine or irregular entry / arrival means:

- entry or attempted entry by foot or in an aircraft, train, vehicle or vessel where the individual has evaded the control
- arrival or attempted arrival by foot or in an aircraft, train, vehicle or vessel where the individual has no entry clearance to enter the UK

In either case, an individual subject to control commits a criminal offence and you should investigate and consider whether there is evidence to support prosecution.

In addition, you must consider the circumstances of their arrival and whether their arrival has been facilitated by any person whose circumstances and actions suggest strongly that they have not acted in good faith. See: [consideration and referral](#).

If there is a [reasonable suspicion](#) that the driver or controller of a vessel has facilitated illegal entry or arrival and Criminal and Financial Investigations (CFI) officers are able to attend they will take the lead in gathering evidence. If they are unavailable, ICE officers should attempt to gather as much evidence as is practically possible, taking advice from a CFI officer as soon as possible after the suspected crime has been encountered.

Early liaison with CFI and/or police provides the best opportunity for the evidence to be secured. If CFI officers are unable to attend the scene, National Command and Control Unit (NCCU) will alert the on-call CFI officer to liaise with the ICE team or police officer on the scene.

## Modern slavery and facilitation offences

See also: [Identifying people at risk](#).

Immigration Enforcement must refer, and CFI managers must adopt, human trafficking cases referred whatever nationality the victim or offender is, if there is:

- prima facie evidence (actual evidence) to show an offence has been committed
- clear evidence those involved have exploited the immigration system

For more information see:

- victims of modern slavery: competent authority guidance
- victims of modern slavery: guidance for frontline staff including national referral mechanism (NRM) guidance and forms

CFI will consider adopting a facilitation case if they have prima facie evidence (actual evidence) to show an offence has been committed. See: [offences](#).

## Facilitation by lorry drivers

Where a prosecution of the driver for facilitation of illegal entry is being pursued the officer in charge must, if possible:

- gather further witness statements
- commission expert tachograph analysis
- commission expert refrigerator temperature recorder analysis
- commission expert analysis of electronic devices (such as satellite navigation units, mobile phones and laptops)

## Civil penalty referral notices

Independent of the decision as to whether to prosecute, if there is evidence to suggest that the driver failed to prevent the carriage of clandestine entrants in a vehicle, as required by Part II of the Immigration and Asylum Act 1999, you must refer the incident to NCCU. NCCU will take you through a set of questions and complete a clandestine script on your behalf. They will also inform you what evidence they require you to photograph and email to them, including the email address they wish you to use.

Make your referral to NCCU using the contact details below:

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### Official – sensitive: end of section

## Counterfeit or forged documents for facilitation

This has a wide meaning as a category and is often linked to other categories such as marriage abuse, college abuse and abuse of PBS.

This category includes:

- any document which supports the forgery
- anyone producing:
  - the forgery itself
  - anything else to support that document
- the act of supplying false documentation

If guilty knowledge can be proven it could also include any persons who:

- provide the equipment, funding or material to make the false documents
- attempted, conspired, aided, abetted, counselled or procured the crime.

This type of crime will underpin most forms of facilitation and it is important to establish whether it is part of a wider series of forged or counterfeit documents linked to an [OCG](#). If you encounter an individual in possession of a counterfeit or forged document for facilitation you and/or CFI must investigate further to establish how the person came to possess the document and where they got it from.

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**Official – sensitive: start of section**

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**Official – sensitive: end of section**

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## Facilitation through other means including internal corruption

This concerns any other offence where the main part of the investigation is the illegal facilitation of migrants into the UK. This could include many offence types such as:

- people smuggling across the border
- cheating on the knowledge of life test
- cheating on the long residency rule
- corrupt Home Office staff members involved in this abuse

It deals with any other facilitation not covered in any of the other categories and includes any people involved in the process, for example the:

- overseas agents
- transporters
- arrangers
- fixers
- Home Office staff

It includes those who attempted, conspired, aided, abetted, counselled or procured the crime.

CFI teams only consider whether it is possible to take on an investigation under this category where:

- an [OCG](#) has been identified
- significant abuse has occurred

It is important with all investigations to establish the full circumstances surrounding the facilitation, including details of any suspects or witnesses. You must debrief all those involved to establish whether this is an isolated incident or part of a wider series connected to an OCG to provide CFI with the relevant information.

Where the offence involves corrupt Home Office staff members all investigations are undertaken by Home Office Security Investigation team. If you have any concerns at all about the possible involvement of corrupt Home Office staff you must not discuss this with any other member of staff including your line manager and contact Home Office Security Investigation team, see Security.

## Criminal offences in immigration law

### Offences and maximum penalties

The following tables summarise the maximum penalty that may be applied to a person for an offence under the various immigration acts.

Note: The maximum fine that can be given for summary offences in Scotland is £10,000 and in Northern Ireland is £5,000.

### Immigration Act 1971

Paragraph	Offence	Maximum penalty
24(A1)	Illegal entry, knowingly entering in breach of a deportation order	<b>Summary conviction</b> E&W- 12 months' imprisonment or a fine (or both); S- 12 months or fine not exceeding statutory maximum (or both); NI- 6 months' imprisonment or fine not exceeding statutory maximum (or both) <b>Conviction on indictment where offence committed on or after 28 June 2022</b> 5 years' imprisonment or a fine (or both)
24(B1)	Illegal entry, knowingly entering without leave.	<b>Summary conviction</b> As above <b>Conviction on indictment where offence committed on or after 28 June 2022</b>

Paragraph	Offence	Maximum penalty
		4 years' imprisonment or a fine (or both)
24(C1)	Knowingly overstaying	<b>Summary conviction</b> As above <b>Conviction on indictment where offence committed on or after 28 June 2022</b> As above for 24(B1)
24(D1)	Knowingly arrives without entry clearance under the immigration rules	<b>Summary conviction</b> As above <b>Conviction on indictment</b> As above
24(E1)	Knowingly arrives without an ETA that is valid for travel to the UK under the immigration rules NB: Not yet in force. Date of commencement to be confirmed	<b>Summary conviction</b> As above <b>Conviction on indictment</b> As above
24(1)(b)	Knowingly failing to observe a condition of leave	<b>Summary conviction</b> 6 months' imprisonment, or unlimited fine (or both). Applies in E, W, S & NI.
24(1)(c)	Crew: failure to depart on designated ship or aircraft	As above
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 above
24(1)(f)	Disembarking prior to removal	As above
24(1)(g)	Embarking contrary to an Order in Council (Where Order in Council has been made and is in force)	As above
24(1)(h)	Failing to comply with a condition of bail under Schedule 10 of the 2016 Act	As above
24A	Obtaining or seeking to obtain leave to enter or remain or an ETA by deception, or securing or	<b>Summary conviction</b> 6 months' imprisonment or fine not exceeding

Paragraph	Offence	Maximum penalty
	seeking to secure the avoidance, postponement or revocation of enforcement action, by means which include deception	statutory maximum (or both) <b>Conviction on indictment</b> 2 years' imprisonment or a fine (or both)
25	Assisting unlawful immigration to a member state or the United Kingdom	<b>Conviction on indictment where offence committed on or after 28 June 2022</b> Life imprisonment, or a fine, or both <b>Summary conviction</b> 6 months' imprisonment, fine not exceeding statutory maximum (or both)
25A	Knowingly facilitating the arrival in, or entry into, the UK of an asylum seeker	As above
25B	Assisting entry to the UK of an EU national in breach of a deportation order or exclusion order	As above
26(1)(a)	Refusing or failing to submit to an examination under schedule 2 without reasonable excuse	<b>Summary conviction</b> 6 months' imprisonment, unlimited fine (or both). Applies in E, W, S & NI.
26(1)(b)	Refusing or failing to furnish or produce information or documents in their control or possession required on examination under schedule 2 without reasonable excuse	As above
26(1)(c)	Knowingly making a false statement on examination	As above
26(1)(d)	Altering, without lawful authority, any documents issued or used for the purposes of this act, or having possession of such documents which are known to be false	As above
26(1)(e)	Failing to complete and produce a landing or embarkation card without reasonable excuse	As above

Paragraph	Offence	Maximum penalty
26(1)(f)	Failing to comply with requirements to register with the police, or requirements to make and keep hotel records	As above
26(1)(g)	Obstructing an immigration officer without reasonable excuse	As above
26A(3)(a), (b), (d), (e), (f) or (g)	Making, altering, or using a false registration card or making an article designed to make one	<b>Conviction on indictment</b> Maximum 10 years' imprisonment, unlimited fine or both <b>Summary conviction</b> 6 months' imprisonment and a fine not exceeding the statutory maximum (or both). Applies in E, W, S & NI.
26A(3)(c) or (h)	Having a false registration card without reasonable excuse or possessing an article designed to be used in making one	<b>Conviction on indictment</b> 2 years' imprisonment, unlimited fine (or both) <b>Summary conviction</b> as above. Applies in E, W, S & NI.
26B	Possessing an immigration officer's stamp or replica of such a stamp	As above

## Immigration and Asylum Act 1999

Section	Offence	Maximum penalty
91	Providing immigration advice or services when not a qualified person or in contravention of a restraining order	<b>Conviction on indictment</b> 2 years' imprisonment, unlimited fine (or both) <b>Summary conviction</b> <b>6 months' imprisonment, or a fine not exceeding the statutory maximum, (or both)</b> <u>Applies E, W, S &amp; NI.</u>
105	False representations to obtain asylum support	<b>Summary conviction</b> 3 months' imprisonment, or a fine not exceeding the statutory maximum (or

Section	Offence	Maximum penalty
		both). Applies E, W, S & NI
106	Dishonest representations to obtain asylum benefits or payments	<b>Conviction on indictment</b> 7 years' imprisonment, unlimited fine (or both). <b>Summary conviction</b> 6 months' imprisonment or to a fine not exceeding the statutory maximum (or both). Applies E, W, S & NI

### Nationality, Immigration and Asylum Act 2002

Section	Offence	Maximum penalty
137	Failure, without reasonable excuse, to disclose specified information (employer or financial institution)	<b>Summary conviction</b> 3 months' imprisonment, or to a fine not exceeding the statutory maximum, (or both) Applies E, W, S & NI

### Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

Section	Offence	Maximum penalty
2(1) and (2)	Entering the UK without a passport, without reasonable excuse	<b>Conviction on indictment</b> 2 years' imprisonment, unlimited fine (or both). <b>Summary conviction</b> 12 months' imprisonment, to a fine not exceeding the statutory maximum (or both). Applies E, W, S & NI
4	Trafficking people for exploitation Replaced in E & W by <a href="#">section 2</a> of the Modern Slavery Act 2015).  Replaced in S by <a href="#">section 1 of Human Trafficking and Exploitation (Scotland) Act 2015</a>  See also the Human Trafficking and	<u>S2 MSA 2015</u> <b>Conviction on indictment</b> Life imprisonment <b>Summary conviction</b> <b>12 months' imprisonment or a fine (or both)</b>  <b>S1 HT&amp;E (Scotland) Act 2015</b> <b>Conviction on indictment</b>



Section	Offence	Maximum penalty
	<p>Exploitation (Scotland) Act 2015, s 43, Schedule, para 4 and Scottish SI 2016/385 reg 2</p> <p><a href="#">Replaced in NI by sections 1 and 2 of Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</a></p>	<p><b>Life imprisonment, or a fine (or both)</b>  <b>Summary conviction 12 months' imprisonment, or to a fine not exceeding the statutory maximum (or both)</b></p> <p><b>S1&amp;2 HT&amp;E (CJSV) Act (NI) 2015</b>  <b>Conviction on indictment</b>  <b>Life imprisonment.</b></p> <p><b>(S3 of this Act- "Intent to commit an offence under S1 or 2")</b>  <b>Conviction on indictment</b>  <b>10 years' imprisonment</b>  <b>Summary conviction</b>  <b>6 months' imprisonment or a fine not exceeding the statutory maximum (or both).</b></p>
35	Failing, without reasonable excuse, to comply with specified action to enable a travel document to be obtained	<p><b>Conviction on indictment</b>  2 years' imprisonment, unlimited fine (or both)  <b>Summary conviction</b>  12 months' imprisonment, to a fine not exceeding the statutory maximum (or both).  Applies E, W, S &amp; NI</p>

## Immigration, Asylum and Nationality Act 2006

Section	Offence	Maximum penalty
21	Knowingly employing an adult without leave to be in the UK or whose conditions of leave prohibit employment	<p><b>Conviction on indictment</b>  (applies E, W, S &amp; NI)  5 years' imprisonment, unlimited fine (or both)  <b>Summary conviction</b>  (applies E, W)</p>

Section	Offence	Maximum penalty
		12 months' imprisonment, or to a fine not exceeding the statutory maximum (or both) <b>Summary conviction</b> (applies S & NI) 6 months' imprisonment or to a fine not exceeding the statutory maximum (or both)

## UK Borders Act 2007

Section	Offence	Maximum penalty
22	Assaulting an immigration officer	<b>Summary conviction</b> (applies E, W) Imprisonment not exceeding 51 weeks, or to a fine not exceeding the statutory maximum (or both) <b>Summary conviction</b> (applies in S) 12 months' imprisonment or to a fine not exceeding the statutory maximum (or both) <b>Summary conviction</b> (applies in NI) 6 months' imprisonment or to a fine not exceeding the statutory maximum (or both)

### Related content

[Contents](#)

# Criminal powers and constraints

This page tells Immigration Compliance and Enforcement officers about their powers to undertake criminal investigations and the constraints within which they must operate. ICE teams must follow guidance published by Criminal and Financial Investigation (CFI). Links to relevant areas within that guidance are included within this document for ease of reference.

## Purpose of criminal powers

You must only use criminal powers when there is a genuine intention to prosecute an individual for immigration related criminal offences. These powers directly relate to the investigation of a suspected immigration offence. They are not about establishing immigration status and are distinct and separate from your administrative powers.

Part 3 of the [Immigration Act 1971](#) (the 1971 act), section 109A of the [Immigration and Asylum Act 1999](#) (the 1999 act), sections 2(10), 14 and 35(5) of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (the 2004 act) and section 23 (relating to offence of assaulting an IO) of the [UK Borders Act 2007](#) (the 2007 act) provide powers to IOs, allowing you, in certain circumstances, to:

- search persons and [premises](#)
- enter premises for the purposes of searching for and arresting persons
- seize and retain relevant material in relation to criminal offences

Investigation of an offence involves the process of examining whether an offence has been committed and if so by whom. The usual purpose of investigation where a criminal offence is detected is prosecution; however, in the context of immigration investigations it is often a more proportionate approach to pursue administrative removal action and this remains the policy for most cases detected. See: [Referral and consideration](#)

Using criminal powers to obtain information for the purpose of administrative removal action (such as by searching for evidence of identity to document the offender to effect removal), could be using the powers for an improper purpose. Searching on behalf of other agencies is, similarly, likely to be using powers for an improper purpose.

## Criminal powers by type

See also: CFI guidance: legislation and powers

### Arrest without warrant section 28A

[Section 28A of the 1971 act](#) gives a power of arrest without warrant where you have reasonable grounds for suspecting that a person has committed an offence under section 24 (other than section 24(1)(d)) or has committed or attempted to commit an offence under section 24A.

## Special note for Immigration Officers in Scotland

In Scotland, police constables **may still exercise** arrest powers under section 28A(3) and (5). See [section 28A](#) of the Immigration Act 1971 for further details of extent of these powers within England and Wales, Scotland and Northern Ireland.

See also: The [Criminal Justice \(Scotland\) Act 1980](#) which details police powers, procedure and evidence and penalties as they apply in Scotland.

### Arrest with warrant: section 28AA

[Section 28AA of the 1971 act](#) provides a power of arrest with a warrant for an offence under [section 24\(1\) \(d\) of the 1971 act](#) or [section 21\(1\) of the Immigration, Asylum and Nationality Act 2006 \(the 2006 act\)](#).

### Entry with warrant to search and arrest: section 28B

[Section 28B of the 1971 Act](#) allows a Justice of the Peace (JP) or sheriff, to issue a warrant authorising a police constable or an IO to enter specified premises, by force if necessary, to search for and arrest a person. However, they must be satisfied that there are [reasonable grounds](#) for suspecting that the person, who is liable to be arrested for a 'relevant offence', is to be found on the premises. Most of the relevant offences for the purposes of section 28B are covered in section 28B(5), that is sections 24(A1), (B1), (C1), (D1), (E1) or (1)(b), (c), (d), but note that section 28B also applies to some offences in later immigration acts.

### Entry without warrant to search and arrest: section 28C

[Section 28C of the 1971 act](#) empowers an IO to enter and search any premises to arrest a person for the offences of facilitation under [section 25, 25A and 25B of the 1971 act](#). This section is based on [section 17 of PACE](#) and applies only to the facilitation offences.

Section 28C can also be used for the offences listed in [section 14\(2\) of the 2004 act](#).

### Entry of business premises with Grade 7 (Assistant Director) authority to search and arrest: section 28CA (AD Letter)

[Section 28CA](#) of the Immigration Act 1971 (the 1971 Act), provides the power to enter and search a business premises without warrant on the authority of at least an Assistant Director(AD), for the purpose of arresting an immigration offender where there are reasonable grounds to believe they are on the premises. Authorisation to enter a business premises under section 28CA is referenced in legislation as the rank of at least Assistant Director and therefore the power of entry is referred to throughout as an AD Letter. For operational purposes, the equivalent rank for authorisation is Grade 7 (Assistant Director).

An AD letter can only be authorised where entry is reasonably required in order to arrest a person for offences of:

- illegal entry under section 24 of the 1971 act
- deception under section 24A of the 1971 act
- illegal working under section 24B of the 1971 act

or to administratively arrest a person on the basis that there are reasonable grounds to suspect that they are someone in respect of whom removal directions might be given under paragraph 17 of schedule 2 to the 1971 act.

It should be noted, therefore, that this power of entry can be used both to arrest for criminal offences but is also used widely by ICE teams where the intention is to administratively arrest under the schedule 2 power.

See also the detailed explanation and application of the use of this power in Warrants: procurement and use.

## Entry and search of premises for evidence: section 28D

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 based on [section 8 of PACE](#) and contains similar safeguards.

Before issuing a warrant under section 28D of the 1971 Act, a JP or sheriff has to be satisfied that there are [reasonable grounds](#) for believing that:

- a relevant offence has been committed as defined in section 28D(4), that is under sections 24(A1), (B1), (C1), (D1), (E1) or (1)(b), (c), (d), (f), (h), 24A, 24B, 25, 25A, 26A and 26B.
- 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
- the material sought is likely to be relevant evidence
- 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 [section 10](#), [section 11](#) and [section 14](#) of PACE)

## Entry and search without warrant for evidence following arrest under part 3 of the 1971 Act: section 28E

Where a person is arrested for an offence under [part 3 of the 1971 act](#), [section 28E](#) allows an IO to enter and search any premises in which the person:

- was when arrested
- were in immediately before they were arrested, for evidence relating to the offence for which the arrest was made

You may only rely upon the power where you have [reasonable grounds](#) for believing that there is relevant evidence on the premises, and you may only search as far as it is reasonably required to discover that evidence.

Section 28E also allows you to seize and retain relevant evidence found during any search, although you may not seize material, which you have reasonable grounds to believe to be subject to [legal privilege](#).

## Entry and search of premises following arrest under section 25, 25A, or 25B: section 28F

Where you arrest a person for a suspected criminal offence under [section 28F of the 1971 act](#), you may use the power to search for relevant evidence in connection with the offence to support a possible prosecution for facilitation. In these circumstances, you must get advice from CFI.

## Search for personnel records: section 28FA

In cases in which you are lawfully on the premises and you have reasonable grounds to believe that an immigration employment offence under [section 21 of the 2006 act](#) has been committed, you have the power to search for employee records under [section 28FA of the 1971 act](#) without a warrant. The following restrictions apply in terms of the basis for exercising this power:

- you must have made an arrest under [section 24](#), [section 24A\(1\)](#) or [paragraph 17 of schedule 2](#), or you or the police constable must reasonably believe a person is liable to arrest under those provisions
- you or the police constable must reasonably believe that a person has committed an immigration employment offence in relation to the person arrested or liable to arrest
- you or the police constable 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

## Entry and search of business premises with warrant: section 28FB

[Section 134 of the Nationality, Immigration and Asylum Act 2002](#) (the 2002 act) allows the Home Office to require an employer to supply information about an employee in order to establish both:

- where the employee is
- the employee's earnings and employment history

If there are reasonable grounds for believing that the employer has provided inaccurate or incomplete information, you can consider applying for a warrant under [section 28FB of 1971 act](#).

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:

- an employer has provided inaccurate or incomplete information under section 134 of the 2002 act
- 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
- one of the conditions in section 28FB(2) are met

You must read [section 28FB](#) before applying for the warrant to ensure the limitations and/or conditions are met.

See: General Instructions: Warrants

## Search of people arrested who are not in a police station: section 28G

[Section 28G of the 1971 act](#) applies where a person has been arrested for an offence under [part 3 of the 1971 act](#) at a place other than a police station. Under subsection (2), an IO may search the arrested person if they have reasonable grounds for believing that the arrested person may present a danger to themselves or others. Under subsection (3), an IO may search the arrested person for anything which:

- they might use to assist their escape
- might be evidence relating to the offence for which they have been arrested

## Searching people in police custody: section 28H

[Section 28H of the 1971 act](#) applies where a person has been arrested for an offence under [part 3 of the 1971 act](#) and is in police custody. The police custody officer will determine if a search is required.

Searches must be conducted by officers who are the same gender as the suspect. You may not conduct an intimate search (defined in section 28H(11)).

The police may retain seized items which might be used to cause harm or to assist escape.

Immigration Officers may retain seized items which are evidence relating to the offence.

See also:

- General Instructions: Search and seizure
- CFI guidance: Property procedures



## Obstruction or assault: section 23 of 2007 Act

Under [section 26\(1\)\(g\) of the 1971 act](#) a person is guilty of an offence if, without reasonable excuse, they obstruct an Immigration Officer (IO) or other person lawfully acting in the execution of the 1971 act.

Assaulting an IO is an offence under [section 22 of the 2007 act](#). A person assaulting an IO may be arrested without warrant in accordance with section 23.

## Power to seize cash: Proceeds of Crime Act (POCA)

Cash seizure is important as the lifestyle and status organised crime brings is the main motivation for most criminals. [Section 24 of the UK Borders Act 2007](#) gives immigration officers powers under [chapter 3, part 5 of the Proceeds Of Crime Act 2002](#), to search for, seize, detain and forfeit cash, suspected of being recoverable property obtained through or for use in unlawful conduct, which is linked to immigration or nationality offences. CFI and ICE team officers have comprehensive cash seizure guidance and must ensure that they read this policy in conjunction with these instructions.

During a search of a person or premises, officers may come into possession of cash in the following ways:

- seized under [section 294 of the Proceeds of Crime Act 2002 \(POCA\)](#) on suspicion of being recoverable property or intended by any person for use in unlawful conduct
- seized under [section 48 of the Immigration Act 2016](#) on reasonable belief of being obtained through committing an offence (such as illegal working, made a criminal offence in the [Immigration Act 2016](#))
- seized as relevant evidence of an offence for which a person has been arrested

Immigration Enforcement ICE team officers who have completed a National Police Improvement Agency (NPIA) one day cash seizure course may seize cash where:

- they are lawfully on the premises
- the cash is estimated to be more than the minimum amount (£1,000)
- authorisation to seize the cash has been given by a criminal or financial investigator

Cash seizure guidance advises you not to count cash until you are in a sterile environment where the counting can be recorded and witnessed – such as a bank. Allegations of theft can be best avoided by cash remaining uncounted on detection and by keeping a full and accurate (witnessed) record of handling.

See also:

- General Instructions - Search and seizure.
- CFI guidance - cash seizure



## S 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

Immigration Officers have additional powers of arrest conferred by [S 14 of the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#), However, as a matter of Home Office policy, only appropriately trained arrest and prosecution officers may exercise the powers of arrest and seizure for offences specified under this Act.

### **Related content**

[Contents](#)

# Criminal procedures: relevant legislation and regulations

## Criminal Procedures and Investigations

See: CFI guidance – Criminal investigation guidance on arrest

Relevant legislation is:

- [Criminal Procedures and Investigations Act 1996](#)
- [Criminal Justice and Licensing \(Scotland\) Act 2010 \(legislation.gov.uk\)](#)

Although Immigration Compliance and Enforcement (ICE) team officers are not bound by [Criminal Procedures and Investigations Act 1996](#), (CPIA) you must ensure that its contents are respected and rules of investigation are followed when encountering evidence of other criminal activity and the [Code of Practice issued under section 23\(1\) of the CPIA](#) repeats section 21A(3) of the CPIA and makes clear that (as well as police officers) persons other than police officers who are charged with the duty of investigating offences or who are arranging or conducting an interview are to have regard to the relevant provisions of that Code of Practice.

In particular, areas such as:

- record keeping
- information gathering
- securing witnesses
- preserving the scene for best evidence

All officers involved in general enforcement and criminal investigations must be aware that the Criminal Procedure and Investigations Act 1996 (CPIA) places a requirement on the police and/or investigating body to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may have some bearing to:

- any offence under investigation
- any person being investigated
- the surrounding circumstances of the case

unless it is incapable of having any impact on the case.

Where there is any doubt about the relevance of the material, it must be retained and may be used a part of a criminal investigation. See: [Evidence](#).

## Police and Criminal Evidence Act 1984 (PACE) powers

[The Police and Criminal Evidence Act 1984 \(PACE\)](#) 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, the 1989 order, and equivalent Scottish criminal procedures legislation except where stated otherwise.

The [PACE codes of practice](#) apply to the police (but see below about the requirement for I/Os to have regard to certain PACE codes of practice when exercising particular powers):

- exercising statutory powers to search people and vehicles
- detaining, treating, questioning and identifying people
- searching premises, and the seizure of property they find on people or premises

[Section 67\(9\) of PACE](#) makes provision for people other than police officers who are charged with the duty of investigating offences or charging offenders in England and Wales to have regard to any relevant parts of the codes.

You must comply with any relevant provision of the PACE codes of practice when investigating a criminal offence in England and Wales. In addition, [section 145 of the 1999 Act](#) permits the Secretary of State to issue a direction specifying which provisions of the PACE codes of practice I/Os must have regard to when exercising certain specified powers.

The specified powers and provisions are laid out in directions, when exercising the specified powers in England and Wales you must adhere to the [Immigration \(PACE Codes of Practice\) Direction 2013](#). This covers all relevant powers available to an IO.

The powers and functions in the PACE order 2013 must only be used by I/Os in England and Wales who are:

- authorised to do so by the Secretary of State
- working in a criminal and financial investigation team
- [professionalising investigation programme \(PIP\) level 1](#) officers working in Immigration Compliance and Enforcement (ICE) teams tasked with a relevant immigration investigation by an accredited Chief Immigration Officer (CIO)
- undertaking a relevant immigration investigation (Relevant immigration investigations and applying PACE)
- conducting a formal investigative interview in relation to a criminal offence

A person arrested for a criminal offence must be taken to PACE designated custody area in England and Wales, or equivalent in Scotland. However, a formal interview under caution could be conducted elsewhere if the person is not under arrest. See: Enforcement interviews

## Criminal procedures: Scotland and Northern Ireland

PACE does not apply in Scotland, where the [Criminal Justice \(Scotland\) Act 2016](#) is the relevant legislation.

When exercising the specified powers in Northern Ireland you must adhere to the [Immigration \(PACE Codes of Practice\) Direction 2000](#) and the [Immigration \(PACE Codes of Practice No 2 and amendment\) Direction 2000](#).

The directions contain, in their schedules, a list of immigration powers and against those powers the relevant provision of the [PACE codes of practice](#) (in some cases modified in their application to los) which must be complied with in the exercise of the power.

#### **Related content**

[Contents](#)

# Role of ICE officers in investigating criminal offences

Immigration Officers in Immigration Compliance and Enforcement (ICE) teams have a vital role to play in recording and securing evidence, identifying criminal activity and alerting or referring suspicion of crime to the police, NCA and Criminal and Financial Investigation (CFI) officers. ICE officers have powers with which to pursue arrest and seek to prosecute offences as described above and may do so in certain circumstances which are discussed below.

For a summary of the most common offences likely to be encountered by ICE officers, see CFI adoption criteria – offences commonly encountered by immigration officers.

ICE officers have a primary role as first responders for cases of:

- trafficking in human beings (THB) and [Modern Slavery Act 2015](#) offences where they apply in England and Wales. In Northern Ireland and Scotland, refer to [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(legislation.gov.uk\)](#) and [Human Trafficking and Exploitation \(Scotland\) Act 2015 \(legislation.gov.uk\)](#)
- facilitation through:
  - lorry drops
  - marriage abuse
  - college abuse
  - points-based system (PBS) abuse
  - rogue employers
  - producing or supplying counterfeit or forged documents
  - other means, including internal (Home Office staff) corruption

See also:

- [Cash seizure powers and constraints](#)
- Search and seizure

## ICE teams: criminal investigation adoption criteria

Not all criminal offences that are encountered will result in an investigation and arrest with a view to pursuing prosecution. The primary role of ICE officers is to consider administrative action in relation to those who are liable to removal. It remains Home Office policy that most immigration offences will be dealt with under administrative powers with a view to removing those in breach of immigration law where it is appropriate to do so. Referral to the Crown Prosecution Service (CPS) will therefore be appropriate only where the seriousness of the offence or additional 'aggravating' factors means that it is in the public interest to do so. See: [consideration and referral](#).

As a general guide, the ICE remit in relation to criminal investigation is to pursue the following case types through to prosecution subject to consideration of '[aggravating factors](#)':

- crimes related directly to a breach of immigration law that would normally result in administrative action (removal) – but there are aggravating factors that make the crime sufficiently serious that it is in the [public interest](#) to seek prosecution
- crimes involving identity / document / marriage fraud by foreign nationals where there is no element /suspicion of organised crime activity
- Prosecution under s35 Asylum and Immigration (Treatment of Claimants) Act 2004 for failure to comply with the documentation process
- Entry in breach of a deportation order detected in-country

ICE teams also have a remit to support the investigation of other criminal offences that may be pursued by CFI, police or NCA. Support in this context is provided by:

- identification and referral of appropriate cases
- gathering and securing evidence for colleagues in those areas

CFI will provide advice to ICE officers and/or (where resources allow) deploy officers to the scene of the suspected criminal offence to establish if the case meets the current adoption criteria.

See also:

- CFI adoption criteria

## ICE team: decision to initiate criminal investigation

The decision whether to initiate supporting action by gathering and securing evidence must be made in consultation with the duty CFI Chief Immigration Officer

Whether to proceed to a criminal investigation with the intention to prosecute for an offence is a decision that:

- must comply with [ICE team adoption criteria](#)
- be authorised by silver commander

## General principles and constraints

- a clear separation must be maintained between administrative and criminal investigations and the use of powers relating to each. The decision-maker considering whether it is right to administratively enforce liability to removal cannot be the same officer as that investigating a crime by the same individual – to do so may result in a conflict of interests
- suspected non-immigration criminal offences relating to British citizens must be referred to the police
- where intelligence suggests criminal offences are being committed at the address to be visited, CFI and/or police must be notified, consideration of joint

working and the appropriate Enforcement Planning Assessment and risk assessment completed: see: Enforcement Planning Assessments

- evidence must be gathered and secured by PIP1 trained officers
- a power to arrest for an immigration offence does not provide powers to examine or search in relation to other unrelated offences and cannot be cited as justification.

In the course of exercising immigration powers, such as search, you may note evidence of other non-immigration offences, [Section 48 of the Immigration Act 2016](#) provides officers with power in certain circumstances to secure and seize any evidence that may have been obtained in the consequence of the commission of an offence, or may be evidence of an offence. The officers must be lawfully on the premises and **find the evidence while exercising a function under the Immigration Acts**. This power does not entitle the officer to look for this evidence alone. For further information see: Search and Seizure – non-immigration offences.

Interviews and searches at a police station must be conducted in accordance with [PACE](#), or the [Criminal Justice \(Scotland\) Act 2016](#), and the requirements as directed by the police custody officer. See: [working under PACE](#).

## Role of OIC in criminal investigations

An Officer in Charge (OIC) must be appointed who shall be in charge of each investigation in accordance with the CPIA Code of Practice and who has the appropriate skills to pursue and manage the investigation and thereafter collect evidence for the case. The responsibilities of an OIC are set out in more detail in the CPIA Code of Practice. The OIC:

- is responsible for pursuing all reasonable lines of enquiry and may delegate tasks to other officers
- has responsibility for referring a suspected criminal offence to the Gold Commander and/or CFI and/or the police
- is responsible for assigning team members to conduct and record searches, record and secure evidence

## Role of Disclosure Officer in criminal investigations

See: CFI guidance – disclosure.

A trained Disclosure Officer (DO) must be appointed from the outset of an investigation and, in accordance with the Code of Practice to the [Criminal Procedure and Investigations Act 1996](#) (CPIA), they must have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge their functions effectively. In more complex cases, a disclosure officer must be appointed who is separate from the SIO/ officer in charge of the investigation.

## Role of Chief Immigration Officers in criminal investigations

CIO authority required:

- Where criminal investigation was not part of the operational planning assessment
- for not proceeding with a case that otherwise meets the criteria for prosecution
- for referral to CPS]

## Statements and ICE Officers' role as witness

Where an ICE officer has performed a role in connection with a criminal investigation, they may be required to provide a statement of evidence and may be required to appear in court at a later date to be examined regarding that evidence.

**The statement must be based on the contemporaneous notes that you record at the time of the visit, or as soon as practicable immediately following the visit. It is essential therefore that full and accurate notes are recorded on PRONTO.**

Your statement must include an account of your actions and the justification for them. Relevant actions may include:

- entry to premises and your power to do so
- decision to administratively arrest and the grounds for this
- decision to search for evidence
- seizure of cash, documents or other items

In some instances, your statement may be taken by a police officer.

See also

- CFI guidance – Giving evidence in court
- Record keeping during enforcement visits

## Suspicion that a crime has been committed: general principles

Immigration Officers conduct operations in accord with policy guidance designed to detect individuals who are in breach of immigration law and then consider whether it is right to use administrative powers to arrest and remove them from the UK.

Immigration officers may encounter during such investigation an individual who is a:

- foreign national or British citizen who is suspected of having committed an offence that carries a power of arrest under the Immigration Act 1971, for instance: facilitation of illegal entry / arrival See: Immigration Enforcement powers



- foreign national, subject to immigration control, suspected of a crime that may or may not be related to an immigration offence, for instance: forgery or identity theft
- foreign national, subject to immigration control, suspected of a non-immigration criminal offence, for instance: theft, deception, violent crime.
- foreign national not subject to immigration control or a British Citizen suspected of a criminal offence

## Deciding whether to begin criminal investigation or administrative action

Suspicion of criminality may arise either during or after an investigation into an immigration breach and, except in certain circumstances as described elsewhere in this guidance, the broad policy approach is to prioritise the administrative removal process. Administrative action, that is, service of notice of liability to removal, should proceed as normal and the question of whether to take alternative or additional criminal action can be considered separately.

For practical purposes, consideration of prosecution for immigration offences is reserved for the most serious cases and where there are [aggravating circumstances](#) that make it in the public interest to do so.

It is likely that cases where [consideration of prosecution](#) is appropriate will also have met the criteria for administrative detention or the individual may also be in police custody in relation to other offences. Any individual so detained, who is to be questioned in relation to a criminal offence, must be arrested and dealt with under [criminal procedures](#).

The appropriate course of action where a crime is suspected will differ according to the nature of the offence.

### Related content

[Contents](#)

# Preserving a crime scene

See also:

- CFI guidance – search and seizure
- Search of person

## Preserving a crime scene: general considerations

Where evidence of serious crimes is detected, officers must secure the scene, maintain a detailed record of events and actions and await assistance.

The College of Policing authorised professional practice states that, 'The purpose of securing a scene is to maintain the integrity and provenance of any material which may be recovered from it. This simple and important action reduces the opportunities for the material to become contaminated or inadvertently cross-contaminated'.

Things that immigration officers (IOs) should secure:

- any victims
- witnesses
- suspects – keeping them away from each other should there be more than one
- weapons – ensuring they are not moved or touched
- entry to property by anyone not part of the crime scene

IOs have no power to close highways or roads, but depending on the severity of the crime, and the risk to third parties, a cordon may be required around the immediate vicinity of an address. This might be done through using officers to restrict entry to the address or a small area around the address where possible.

**When in doubt use the command structure or call in the police.**

These are the general principles and processes to be followed where there is reasonable belief that a criminal offence has been committed:

- inform the officer in charge (OIC) as soon as possible
- if necessary, secure the area:
- secure relevant [evidence](#)
- initiate / maintain communication with the responsible person at the relevant investigating agency - this could be police, HMRC, DWP, CFI or another government organisation
- if the scene involves injury, death or any other serious crime, officers may consider calling a critical incident and keeping the incident in play until police arrive:
  - police will take over the scene and investigate, but will require full accounts from officers

Although officers are ‘seizing in situ’ when they are securing the scene, they would have to rely on the power of arrest in [section 28A\(8\) of the Immigration Act 1971](#) for obstruction (see [section 26\(1\)\(g\)](#) of that act) to prevent anyone who is obstructing the enquiry.

The following table the types of material or situations an IO may encounter and what action to take.

Scene preservation	Seize on advice	Seize
<ul style="list-style-type: none"> <li>• serious injury</li> <li>• organised crime</li> <li>• drug offences</li> <li>• terrorism related</li> <li>• weapons or explosives</li> <li>• indecent images of children</li> </ul>	<ul style="list-style-type: none"> <li>• small quantity of drugs</li> <li>• nationality documents</li> <li>• other government documents</li> <li>• currency (POCA)</li> </ul>	<ul style="list-style-type: none"> <li>• nationality documents</li> <li>• other government documents</li> <li>• currency (POCA)</li> </ul>

## Preserving a crime scene: necessity to arrest

**In certain, very limited, circumstances, it may be necessary to use any person powers to detain a suspect and evidence in one location. This is to preserve the scene until a police constable can attend to assume responsibility and/or prevent the destruction or disruption of evidence or crime scene.**

See Arrest and restraint: any person power of arrest.

## Witnesses

See:

- CFI guidance – Witness statements
- Witness care and services
- Form MG11 witness statement

Where IE have a ‘twin aim’ of seeking prosecution and removing/deporting people who may be witnesses, this needs to be highlighted and discussed with the CPS at an early stage, to ensure the required evidence is available to be adduced at any subsequent trial. [HO Circular 2 of 2006](#) should be followed.

Where law enforcement officers encounter a foreign national as either a witness, their immigration status must be immediately established in order to avoid any suggestions of inducement. The procedures to ensure that obligations surrounding duty of care issues are complied with are set out in Home Office Circular 12/1997.

## Property handling procedures

See:

- CFI guidance – Property control and storage
- Property forfeiture and disposal
- Tamper evident bags

#### **Related content**

[Contents](#)

# Evidence

## Evidence handling general principles

If you do not handle evidence correctly:

- the case may fail
- your evidence may be excluded
- the defence may try to have your evidence discredited
- you may be required to attend court and explain
- the prosecution may not be willing to take the case forward
- there will be a financial cost to the department if the case collapses
- the reputation of the Home Office may be damaged

It is important in all cases where a criminal prosecution could be a potential outcome that on encountering a suspect, you complete the following actions:

- make a contemporaneous (at the time) note of any questions asked and the suspect's replies
- seize and retain any evidence related to the offence and safeguard its forensic integrity by placing it in an evidence bag:
  - the bag must be completed and signed by the officer exhibiting the evidence
  - everyone who handles the evidence should provide a statement as explained below and complete the evidence bag with their details
- the suspect must not be given an opportunity to destroy evidence, therefore, in cases where prosecution is likely individuals must be searched as soon as possible and must not be left unsupervised
- where an officer discovers documents as part of a search which appear to be evidence of a criminal offence they must be retained and handed over to the criminal investigator at the earliest opportunity

**Once evidence has been seized it becomes an exhibit - it is important to be able to account for every exhibit from the moment the offence takes place.**

- retain all original notes made - no matter what their format and whether or not they were made in an official notebook
- in cases involving concealments and where facilities exist take photographs to illustrate how individuals or items were hidden

See also:

- CFI guidance- Evidence in criminal investigations
- [CPS guidance – definitions of exhibits](#)

For all evidence you seize, you must:

- seal it in a tamper evident bag or any other bag provided for that purpose
- follow all procedures for:

- recording the seizure
- completing the sections on the evidence bag
- store the evidence as soon as possible in a secure property store:
- make a detailed record of it, stating exactly what evidence was stored and the date and time it was stored

You must record in the property book, and complete the continuation section on the tamper evident bag, if you:

- remove a piece of evidence from the property store
- open the bag for any reason
- hand the evidence to somebody else
- take a piece of evidence into your possession

When transferring pieces of evidence to another person or to other locations you must ensure that you hand over the evidence in person. You must:

- ensure the security of the evidence
- ensure continuity and the chain of evidence is maintained
- record your actions on PRONTO and/or in the 'record of investigation' relating to your case

Retention (keeping), continuity and safe storage of all exhibits is critical. For more information, see search and seizure.

## Chain of evidence

See: CFI guidance – Evidence in criminal investigations.

The 'chain of evidence' refers to the handling of evidence from the moment it is identified and seized, right through the prosecution process. **An audit trail must be provided showing where that evidence has been at all times to prove its integrity.**

It needs to show how the evidence was seized, including details of:

- where it was found
- where it was seized
- the time of seizure
- the date it was seized
- who seized it
- what was done with it after it was seized

It is important for criminal investigators to be able to show the chain of evidence has been maintained because:

- it proves the integrity of the evidence
- allegations that the evidence has been tampered with or changed in any way can be refuted

Maintaining the chain of evidence helps to ensure the integrity of that evidence when it is presented in court.

## Continuity of evidence

You must keep accurate records in relation to who has handled evidence at the beginning of a prosecution case. Failure to do so may result in the case later being considered by CPS or the court to be fatally flawed, and that it is not appropriate to continue with prosecution action.

Once evidence has been seized it becomes an exhibit. It is important to be able to account for every exhibit from the moment the offence takes place. This may present problems for ICE officers as it is usual for documents to be handed to a variety of officers. It is important to have accurate timings of when things happen and for witness statements to cover the relevant time periods.

All evidence must be placed in an evidence bag which must be completed and signed by the officer exhibiting the evidence. **Everyone who handles the evidence must provide a statement** and complete the evidence bag with their details.

You must not give the suspect any opportunity to destroy evidence and you must not leave them unsupervised. In cases where prosecution is likely, you must arrange for the search of the suspect to be completed as soon as possible, subject to any advice from CFI.

## Recording and preserving evidence

There will be obvious crimes where officers must preserve the scene and await investigators to arrive. If you uncover a serious indictable offence, police will respond. Immigration officers (IOs) being present and securing the scene will allow the police to better consider their priorities in responding. IOs need to be aware of the estimated response time.

In other areas you must seek advice of CFI and may seize items on behalf of another responsible authority, for instance, following detection of a small quantity of drugs when searching a person under arrest. Police may ask officers to seize on their behalf and bring the evidence to them. This is the time when officers need to record everything on PRONTO, place objects in evidence bags and fully complete the evidence bag. You are expected to provide a statement when you pass over the evidence.

Items such as nationality documents, particularly false documents, must be removed if doing so will prevent the items being concealed, lost, damaged, altered or destroyed. There may be a chance that CFI and/or professionalising investigations programme (PIP) level 1 officers are unable to deal with this offence but following the process of seizure will assist with any investigation that may commence.

## Contemporaneous notes

The reasonable grounds that form the basis of the action must be recorded in the arrest notes on PRONTO. Further information on record keeping during visits is found in:

- CFI guidance: Notebooks, day logs and decision logs
- General Instructions: Record keeping during visits
- General Instructions: PRONTO

## Witness statements

See also: CFI guidance – witness statements

In all cases those officers involved in processing a suspect must complete a witness statement on form MG11 - this is particularly important in the case of the officer conducting the initial examination, forgery officer or person who discovers key evidence of an offence - there should be a large variety of example witness statements held locally by your local CFI, which should provide a starting point.

Witness statements should be produced on form MG11 and should include the following:

- timings, to show when things happened
- who the exhibit was handed to when you finished handling any exhibit
- your personal details so the Crown Prosecution Service (CPS) can contact you if necessary
- the names of anyone who brought the evidence to you
- any relevant questions and answers noted in question and answer format.

Once the witness statement is completed it must be dated and each page signed. It should then be checked by the Gold Commander or the local CFI office.

You must ensure the above actions are completed before relinquishing responsibility for a case and in all circumstances before going off duty.

## Evidence of document abuse

In case of forgery/document abuse, the PRONTO record should reflect clearly who **first** suspected that the document(s) may be forged or counterfeit and to whom the document(s) were passed. This is particularly important where one person hands the case to another to deal with before the documents are examined by a forgery trained officer. This will enable CFI to know which member of staff to approach to provide a witness statement and will ensure continuity of evidence.

The forgery officer will be required to make a statement in line with the Joint Protocol published in 2006

See:



- National Document Forgery Unit
- Prosecution protocols
- Document examination report template
- Witness forgery statement example / template

The forgery statement should be placed on file in a clear plastic sleeve along with the application form and the suspected forged document. The exception is the passport which should be placed in a secure passport bank by the forgery officer for seizure in due course.

## Seizing vehicles: prosecution evidence

In the event that a vehicle requires further examination or is required as evidence as part of a prosecution, the investigating officer will seize the vehicle under [section 19 of Police and Criminal Evidence Act \(PACE\) 1984](#). Arrangements will then be made by the police to take the vehicle to the most appropriate vehicle or evidence storage location. See also search and seizure

### Related content

[Contents](#)

# Criminal arrests: working under PACE

See:

- CFI guidance – criminal investigation guidance on arrest
- General Instructions – arrest and restraint

## Interviews in relation to criminal offences

See: CFI guidance – Interviewing suspects.

## Working with police

### Police call outs: initial contact with National Command and Control Unit

The first point of contact for the police relating to foreign nationals to the National Command and Control Unit (NCCU) based in Manchester, which is Immigration Enforcement's 24/7 primary point of contact for police forces nationally. NCCU can be approached by all police officers who have arrested, are investigating or have encountered a non-British person.

NCCU will look to identify the best option for the public, police and immigration to prioritise action against suspected immigration offenders believed to be engaged in criminality, and particularly the most harmful. Enquiries will be made to ascertain whether they:

- might be referred to FNORC to pursue deportation action
- are subject to deportation or administrative removal immediately
- should be referred to Border Force for consideration of refusal on their next entry into the UK

## Working within police custody areas

Be aware of your surroundings and act under the assumption that conversation and actions may be recorded for future inspection in case of disputes or incidents - custody has 24hr CCTV and audio recording. Consider who is in the custody area – who may include other arrested persons, solicitors, interpreters, appropriate adults, social workers. It may not be appropriate to discuss confidential case details and care must be taken to preserve data confidentiality.

Best practice:

- identify yourself to custody officers - the [Custody Officer](#) is responsible for the custody suite and supported by the detention officer: IE staff should introduce themselves, be in uniform and identifiable

- be courteous, professional and informed as to what action you plan to take - the custody area is busy, and staff should be patient, wait their turn and be aware that they represent the Home Office
- custody record - this will detail specifics about the detainee - ask for a printed copy for the file: this will confirm details but also make you aware of medical conditions or welfare concerns that may be relevant
- property – any passport, identity document or property that may be relevant?
- custody handover time - custody officers have a handover time where they transfer responsibility of detainees - this can be busy and IE staff will have to be patient during these times
- previous experience with Immigration Enforcement - custody may not be aware of your powers, responsibilities or procedures - staff should ensure they are prepared when they arrive, be able to explain any of our powers and processes

## Police and Criminal Evidence Act 1984 (PACE) codes of practice

Section 145 of the Immigration and Asylum Act 1999 states that an immigration officer exercising a specified power of arrest, question, search or seizure must have regard to the provisions in the Police and Criminal Evidence Act 1984 (PACE) codes of practice specified in a direction issued by the Secretary of State. See: [PACE powers](#).

Code G (1.3) of PACE states: The use of the power of arrest must be fully justified and must consider if the necessary objective can be met by other less intrusive means. When the power of arrest is exercised it is essential that it is exercised in a non-discriminatory and proportionate manner which is compatible with the Right to Liberty under Article 5. Arrest must never be used simply because it can be used. Court cases may be challenged if you cannot justify using the power of arrest.

If you have [reasonable grounds](#) for suspecting that an offence has been committed as listed in section 28A of the Immigration Act 1971, you may arrest without warrant anyone whom you have reasonable grounds to suspect of being guilty of it.

Information to be given on arrest: PACE Code G (3.3 note 3) Officers must give an arrested person sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested, as soon as practicable after the arrest. They must be informed of the suspected offence's nature, when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided.

Failure to inform someone of their arrest and the grounds can render the arrest unlawful.

See: [Arrest and restraint](#).

## Police and Criminal Evidence (PACE) clock

Where a criminal investigation is undertaken with further enquiries to determine the individual's immigration status and whether they are liable to administrative removal must be conducted by separate officers.

A person detained under PACE can ordinarily be kept at the police station for a maximum of 24 hours from the relevant time. This is known as the 'PACE clock'. Detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him provided that:

- the offence for which he is under arrest is an indictable offence
- the investigation is being conducted diligently and expeditiously

The 24-hour period can only be extended in particular circumstances by a police superintendent or above but is very unlikely to be extended where the only issue to be determined is that of the person's immigration status. In cases where a person is being held pending further investigation relating to a criminal offence, officers are restricted to completing their investigation within the 24-hour period. Whether or not the person is held for the maximum period is a matter for the police.

In accordance with PACE, a person can ordinarily only be held for a maximum of 24 hours during which time a decision must be made to:

- charge them with an offence
- serve a notice of liability to administrative removal

After which they may be:

- granted immigration bail (depending on bail compliance criteria, see Bail
- released without charge or further administrative action.

During this period, the detained person must be allowed access to legal advice and 8 hours of continuous rest. When a decision is taken to grant police bail to the detained person so that further enquiries can be undertaken, the 24-hour clock will recommence when the individual reports in compliance with their bail conditions. If there are only 3 hours left when the detained person is bailed, there will only be 3 hours left when they report off bail to conclude the investigation and make a decision on a case.

If the police have arrested the person for a criminal offence but do not intend to pursue the case further, the following options apply. The person must be either:

- arrested and detained under schedule 2 or 3 to the Immigration Act 1971
- arrested in connection with an immigration related criminal offence and released on immigration bail

The person's detention is reviewed by a police inspector at the following points:

- 6 hours after the relevant time (that is, when they arrived at the station)
- then after a further 9 hours (15 hours) and 9 hours (24 hours)

It is possible the inspector might ask you for an update of the case for his/her review. You will need to show that you are actively pursuing the case where the subject is detained under PACE.

## The role and duties of the custody officer

The custody officer has personal responsibility for the safe and lawful operation of activities in the custody suite and you must act in accordance with their instructions. They may delegate some tasks and functions to officers and staff to assist them. Where this is done, the custody officer must be satisfied that the officers or police staff concerned are suitable, trained and competent to carry out the task or action in question (refer to note 3F PACE Code C).

The custody officer may be supported by a DDO or Designated Detention Officer, who have designated powers to undertake specific duties – such as taking DNA, fingerprints and photographs, searching of detainees.

When a person is taken to a police station, the custody officer will apply the provisions of PACE Code of Practice C regarding the recording of his presence, belongings and conditions of detention.

These provisions of PACE Code of Practice C apply to persons who are in custody in a police station. Paragraph 2.1A of PACE Code C states that when a person is brought to a police station:

- (i) under arrest
- (ii) is arrested at the police station having attended there voluntarily; or
- (iii) attends a police station to answer bail,

they must be brought before the custody officer as soon as practicable after their arrival at the station or, if appropriate, following arrest after attending the police station voluntarily. When attending a police station you must comply with the [PACE Codes of Practice](#).

Once a person has been served with papers and is detained under Immigration Act powers only certain parts of Pace Code of Practice C apply (sections 8 and 9 of the Code).

If custody officers are requested to serve forms on behalf of IE they should be asked to explain the forms fully and informed that they should provide relevant interpreters to achieve this if necessary.

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. The person must also sign the custody record confirming whether they require legal advice.

If the person appears to be deaf or there is doubt about their hearing or speaking ability or their 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 their welfare (their parent, guardian, care worker or any other person who has assumed responsibility for their welfare). That person must be informed, as soon as practicable, that the juvenile has been arrested, why they have been arrested and where they are 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 their welfare) of the grounds for their detention and their 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 them when they come to the police station and for the safekeeping of any property which is taken from them, and which remains at the police station. If, after service of immigration notices the IO requires some of the person's property, he or she will have to sign the custody record to confirm that they have taken receipt of the items.

## Rights of the individual

When a person is brought to a police station under arrest for a criminal offence, they will have 3 basic rights under PACE:

- free legal advice
- have someone informed of their arrest
- to consult the Codes of Practice.

These rights can be requested at any time whilst the detained person is at the police station, even if they initially declined or they can do so in the middle of an interview for example.

## Reviews of detention under PACE

Section 40 of PACE requires reviews of detention at a police station, initially after a maximum of 6 hours and subsequently at periods not in excess of 9 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 instance, 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, they should discuss the matter with a senior police officer.

## The right not to be held incommunicado

If a person is held at a police station, section 5 of PACE Code of Practice C will apply. Amongst other things, it provides that a person may, on request, have a person known to him or who is likely to take an interest in his welfare, informed of his whereabouts at public expense as soon as practicable.

PACE Code of Practice C includes (see: Section 7) a statement of a person's right to communicate at any time with their High Commission, Embassy or Consulate. This applies to citizens of independent Commonwealth countries and nationals of foreign countries including the Republic of Ireland. Such a person must be informed of this right as soon as practicable. They must also be informed as soon as practicable of their right to have their High Commission, Embassy or Consulate told of their whereabouts and the grounds for their detention. If a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest, the appropriate High Commission, Embassy or Consulate shall be informed as soon as practicable. Consular officers may visit one of their nationals in police detention to talk to them and, if required, to arrange for legal advice. However, notwithstanding this and provisions of Consular Conventions, where the person is a refugee or is seeking asylum, a Consular Officer must not be informed of the arrest of one of their nationals or given access to or information about them except at the person's express request.

If a person is held in a police station, the police will deal with such matters of notification in accordance with [PACE Code of Practice C](#).



A written report must be retained of any notification made to a persons' High Commission, Embassy or Consular representative.

## The right to legal advice

On arrival at a police station, the custody officer must advise the person of their right to consult and communicate privately with a solicitor, and of the fact that independent legal advice is available free of charge. Whenever legal advice is requested, the custody officer must act without delay to secure the provision of such advice. Although not required under the PACE Codes of Practice, in cases in which IE is involved, the person should be advised by the IO that they can contact a representative of an immigrant welfare organisation.

If an IO wants to interview a person about immigration offences at a place other than a police station, the person must be advised that they are entitled to legal representation but that they should arrange this.

Every effort should be made to contact a particular solicitor, or firm of solicitors, who have been dealing with the person's immigration situation, unless the person specifies otherwise. Paragraph 6.6 of PACE Code of Practice C (including sub-paragraphs (a) to (d)) states that a person who wants legal advice may not be interviewed, or continue to be interviewed until they have received such advice unless:

(a) the restriction on drawing adverse inferences from silence because the detainee is not allowed an opportunity to consult a solicitor applies (see Annexes B and C of PACE Code C); or

(b) an officer of Superintendent rank or above has reasonable grounds for believing that:

(i) the consequent delay might:

- lead to interference with, or harm to, evidence connected with an offence; or
- lead to interference with, or physical harm to, other people; or
- lead to serious loss of, or damage to, property; or
- lead to alerting other people suspected of having committed an offence but not yet arrested for it; or
- hinder the recovery of property obtained in consequence in the commission of an offence.

(ii) when a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting their arrival would cause unreasonable delay to the process of investigation.



In considering whether this applies, the officer should ask the solicitor how long it is likely to be before he arrives and relate this to the time detention is permitted, the time of day and the requirements of the investigation. When a solicitor is on his or her way or is to set off immediately, it will not normally be appropriate to begin an interview before their arrival. If, however, it seems necessary to begin before a solicitor's arrival, the solicitor should be given an indication of how long the police would be able to wait so there is an opportunity to make arrangements for someone else to provide legal advice.

If the solicitor nominated or selected by the individual either:

- cannot be contacted
- has previously indicated they do not wish to be contacted
- having been contacted, has declined to attend and the person, having been advised of the availability of a duty solicitor has declined to ask for the duty solicitor

the interview may be started or continued without further delay provided an officer of police inspector rank or above has agreed.

If a person requesting legal advice changes their mind, the interview may be started or continued without further delay provided that the person has given their agreement in writing or on tape to being interviewed without receiving legal advice, and an officer of police inspector rank or above has inquired about the person's reasons for their change of mind and gives authority for the interview to proceed. An entry should be made on the person's custody record by the custody officer. A record of the person's agreement, their change of mind, the reasons for it (if given) and, unless paragraph 2.6A of PACE [Code of Practice C](#) applies, the name of the authorising officer must be recorded in the taped or written interview record.

A solicitor may only be required to leave an interview if their conduct is such that the interviewer is unable properly to put questions to a person. If you consider that the solicitor is acting in such a way, you may stop the interview and consult an officer not below the rank of superintendent if one is readily available (or otherwise an officer not below inspector rank who is not connected with the investigation). If that officer, after speaking to the solicitor decides that they should be excluded, the person must be allowed to consult another solicitor before the interview continues and that solicitor will be given the opportunity to be present at the interview. A solicitor is not guilty of misconduct if they seek to challenge an improper question to their client or the way it is put or if they advise the client not to reply to particular questions or if they wish to give their client further legal advice. It is the duty of a solicitor to look after the interests of their client and to advise them without obstructing the interview.

## **Related content**

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# Consideration of prosecution, referral, and advice

See also: [The Code for Crown Prosecutors | The Crown Prosecution Service – Immigration](#)

## Consideration of aggravating factors and the public interest

Immigration breaches may, on their own, not be given the same gravity as the criminal offences described in other sections; however, your assessment may take account of other ‘aggravating’ factors that make it right to prosecute:

- a pattern of repeat offending that displays a consistent and ongoing disregard for the law
- the breach is directly associated with, or is the cause, of wider breaches and/or criminality
- multiple breaches of different types or combined with lower-level criminality and/or anti-social behaviour, means that there is a disproportionate negative impact on the community and public services

## Section 24 illegal entry and similar offences

The following aggravating factors are relevant when considering a decision in favour of prosecution:

- a potentially substantial confiscation order and the likelihood of timely enforcement
- evidence of violence / harm or risk to life, health or safety to (including those who rescue migrants at sea)
- disruption to services, such as those relating to train services in the Channel Tunnel, disruption to flights or disruption to shipping / vessels
- economic loss, which may, for example, be linked to any disruption of services
- the offending caused a significant investment of police or Immigration resources
- evidence of money flows or financial advantage / gain or benefit
- evidence of repeated attempts to enter the UK illegally
- evidence of having been more than just a passenger in a small boat or vehicle, for example, evidence of steering the boat, or driving the vehicle
- evidence that the suspect was previously refused entry clearance or a prior application for an Electronic Travel Authorisation (ETA) to the UK
- the offending compromised the genuine identity of another person, causing them loss, distress, or inconvenience (obtaining leave by deception / entering without leave through fraud)
- evidence of provable involvement with an organised crime group behind the criminality

The different levels of culpability of migrants in boats or lorries, in particular between those who travel on RHIBs with the intention or expectation that they will be intercepted and those whose intention is to avoid immigration controls altogether through concealed entry.

A single aggravating factor does not automatically mean that it is the public interest to pursue prosecution. Each must be considered relative to the other individual circumstances of the case. In considering the [public interest](#) you must consider the following:

- the more serious the offence and the greater the number of previous offences committed by a foreign criminal, the greater the public interest in prosecution
- where a foreign criminal has also been convicted of an offence outside the UK, the overseas conviction will usually add to the public interest in pursuing prosecution - an example of an exception to this general rule might be where there is evidence that prosecution was pursued solely for political reasons
- there are factors that add weight to the public interest in prosecution, including where a foreign criminal:
  - has a seriously adverse immigration history that includes non-compliance with restrictions and/or deception
  - has entered the UK in breach of a deportation order

You must consider the extent to which the individual has complied with any conditions attached to previous grants of leave, or any conditions of immigration bail. Evidence that the individual has significantly and deliberately sought to delay or frustrate the decision-making process or removal or has not complied with other requirements may be included in an assessment of compliance. This may include:

You must take account of:

- evidence of deception practised at any stage in the immigration process, including submitting a false identity to the Home Office
- any other type of fraud or deception, such as benefit fraud or NHS debt
- failure to attend interviews as requested
- evidence of persistent failure to cooperate with redocumentation or returns processes
- evidence of clearly unfounded applications or further submissions lodged to frustrate enforced removal
- persistent failure to comply with bail conditions:
  - appearance before the First-tier Tribunal or Secretary of State
  - restrictions on work or study
  - residence
  - reporting
  - electronic monitoring
  - such other conditions as specified
- failure to demonstrate genuine efforts to leave the UK voluntarily
- whether they have worked illegally
- an individual's lawful employment history and how they have supported themselves and/or their family

- a sustained history of compliance, including providing full information in their application, attending interviews, compliance with reporting requirements

## Entry in breach of a deportation order

Multiple instances of entry in breach of an extant deportation order carry an assumption of prosecution. The usual approach for a single breach without additional aggravating factors is likely to be re-deportation. However, in all cases, where the individual was released from a custodial sentence on the premise that they would leave the UK, consideration will be given to whether they should be recalled to prison. In other cases, aggravating factors may include an assessment of other known offences since initial deportation, the nature of their return and the factors described in relation to s24 and s25 cases above.

## Illegal working:

See also: CFI Illegal working guidance

A distinction is made between illegal working and working in breach. The distinction is subtle; illegal working covers a wider area than working in breach. In addition, illegal working includes individuals who have no conditions on their stay that they can breach. Working in breach could simply involve a student working more than their permitted hours. Illegal working could involve those using forged passports with no leave.

A single instance of working in breach of a condition of stay may also be mitigated but, where it is associated with wider harm, it is reasonable to take account of that fact. If the illegal working facilitates others to work illegally, is the cause of breaches of workplace safety or labour exploitation, or public health concerns, it may be appropriate to assign a higher public impact rating. Similarly, an unqualified or unlicensed individual working within a sector or service industry that requires accreditation and/or licensing for the safety of the public, for instance: health workers, may be considered for prosecution.

## Overstaying

A short period of overstaying may be outweighed by mitigating circumstances. Longer periods will require a proportionately higher level of mitigation and detailed evidence. Multiple instances of overstaying or breaching restrictions will similarly be less likely to be justified.

Your assessment may take account of whether the individual has been warned regarding their behaviour, the circumstances of their coming to notice (whether it was voluntary) and the length of the period over which the breaches occurred. It is reasonable to attach more seriousness to repeated disregard for lawful restrictions where it can be shown that the individual had full knowledge of their status. In addition, you may take account of the cost to the public purse where repeated non-compliance can be shown to have caused a significant administrative and operational burden.

Mitigating factors may include evidence of administrative error in service of relevant notices or circumstances beyond the individual's control which must be considered on their individual merits.

## Section 25 and 25A offences

You must take account of:

- the level of culpability involved in securing or assisting the illegal entry of individuals or asylum-seekers to the UK or a member State in breach of immigration laws (this might include other offences committed alongside immigration offences)
- the suspect's actions caused harm to others, or placed other persons' life, health or safety at risk (including those who rescue migrants at sea)
- where the only evidence of facilitation is steering the boat for a short period, for example a hand on the tiller, it may be more appropriate to charge for attempted entry or arrival. Where there is significant evidence however of organised facilitation and piloting the boat and/or arranging the journey, a charge of facilitation would be appropriate
- disruption to services, such as those relating to train services in the Channel Tunnel, flights or disruption to shipping / vessels
- economic loss, which may, for example, be linked to any disruption of services
- the offending caused a significant investment of police or Immigration resources

## Exclusion from s25 and s25A prosecution and reasonable excuse

S25A(1) of the Immigration Act describes how assisting as asylum seeker to enter may constitute an offence. However, it also states that this 'does not apply to anything done by a person acting on behalf of an organisation which:

- aims to assist asylum-seekers
- does not charge for its services'

The requirement for 'significant' evidence of facilitation applies also to those who rescue those in apparent distress at sea. It is in the public interest that organisations and individuals who rescue those in distress may continue to do so and will not be convicted for facilitation offences. Under s25BA, those organisations, bodies or individuals who provide assistance and who are acting on behalf of or co-ordinated by Her Majesty's Coastguard (HMCG), are protected from prosecution for the offence of facilitation. Most vessels that come across another vessel or persons in danger or distress at sea will inform HMCG or their foreign equivalent or will be responding to a mayday relay from them.

Seafarers may however act independently of HMCG, and it may be the case that there is a good reason for this, such as there not being enough time to contact HMCG, or not being able to make contact due to technical issues. A statutory defence exists for persons who can show that they had to assist an individual in

danger or distress at sea for the time between that individual first being in danger and them being delivered to the nearest place of safety on land unless there is good reason for not doing so. The effect is that we will assume that, in such circumstances, the seafarer is telling the truth and acting in good faith unless we can disprove what he or she says beyond all reasonable doubt. The statutory defence will not be available to those persons steering small boats as it is not acceptable that those who are assisting unlawful immigration in this way should be able to easily escape prosecution if they claim that they were doing so as an act of rescue. However, such individuals will still have access to defences available at common law.

It is right that in investigating a serious offence, all available evidence should be considered, and all relevant behaviours considered. Investigators will consider evidence that the rescuer is not acting in good faith, such as intelligence suggesting they are linked to people smuggling gangs, or the same person launching multiple 'rescues' over several days with no good reason for being at that location.

### **Stowaways: statutory defences**

Section 25BB provides statutory defences for the master of a ship and crew in relation to stowaways. As long as they appropriately notify the authorities as soon as reasonably practicable before they then dock in the UK, and for crew members or passengers to provide humanitarian assistance to the stowaway so long as the presence of the stowaway is reported to the master of the ship as soon as reasonably practicable.

For stowaways on other modes of transport (that is, aviation and international rail), investigative and independent prosecutorial discretion will be relied on, on a case-by-case basis, in deciding whether a prosecution is in the public interest, taking into account what security measures are in place to prevent access to potential stowaways.

### **Referral to Criminal and Financial Investigation (CFI)**

ICE officers and NCCU must, in all cases, refer details of a clandestine arrival to CFI who will decide whether to attend and consider criminal arrest and scene of crime procedures. CFI teams are responsible for investigating organised immigration crime and disrupting and dismantling organised crime groups (OCGs). and deal with immigration related criminal investigations categorised as level 1 and level 2, as defined within the [Professionalising investigations programme \(PIP\)](#). They are divided into 3 operational areas:

- criminal investigation
- financial investigation
- cash forfeiture and condemnation legal team.

During office hours, the referral will normally be directly to the CFI team with responsibility for the area where the event has taken place. Out of office hours, NCCU will make the referral to the on-call CFI CIOI for the relevant area who will decide on whether the case can be adopted.



Outside of office hours, when you suspect a criminal offence has taken place inland and you need an immediate decision on whether CFI will adopt a case, you must contact the National Command and Control Unit (NCCU) by email or telephone and provide details of the relevant points regarding the suspected offences and offenders. NCCU will assess whether it meets CFI adoption criteria.

NCCU hold copies of the CFI on-call rota. Once the referral has been made by NCCU, CFI will also contact the police for further information as required telephone NCCU on 03000 194 999

Contact NCCU by:

- telephone NCCU on 03000 194 999
- email NCCU at CCU CIO

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- contact the on-call CFI manager (available on a 24/7 basis) for the region in which the suspected offence was committed who will assess the information and decide whether to adopt and direct resources accordingly
- provide CFI with contact name and number of ICE officer or police officer at the scene if applicable.

If no response from on call CFI manager ICE must:

- contact on-call regional Inspector (HMI)
- contact on-call grade 7 if no response received from HMI
- assess the case in real-time
- contact the referring officer for further information and make a decision based on the facts
- consider each case on an individual basis
- decide:
  - if the adoption criteria have been met
  - whether to adopt the case and decide the appropriate level of response
  - what resources are available
- if not arrested, decide whether the suspected offenders must be arrested immediately
- update:
  - Pronto and Atlas/CID with actions taken
  - CLUE as soon as practicable with the referral details.

Some referrals may not immediately meet the [adoption criteria](#) for CFI to adopt them as a criminal investigation case. ICE teams should consider whether the known

facts of the case indicate that it falls within the current remit for criminal investigations by ICE teams or whether it may be better adopted by:

- [NCA or Border Police Command \(BPC\)](#)

Immigration Enforcement officers will record the referrals on PRONTO, CLUE and Atlas/CID.

## CFI - Threshold for adoption

CFI will consider adoption of all cases referred to it by ICE teams, NCCU, the NCA, Border Force and other partner agencies. Cases will only be adopted where the facts of the case indicate that it meets the current CFI remit and objectives and where there is clear evidence of an offence and a realistic prospect of obtaining evidence sufficient to support a prosecution. A decision to adopt may also be subject to any joint tasking and co-ordination criteria that may apply.

It should be noted there is no power to detain individuals under the immigration act solely for the purpose of prosecuting a facilitator and that there have been successful prosecutions of facilitators when the illegal entrants have been removed and that an ICE officer may be required to give evidence that the persons removed were illegal entrants.

## Age dispute and criminal prosecutions

Some of those who claim to be children and whose claimed ages are disputed by the Home Office, including those who have been determined to be a different age than claimed for immigration purposes, may also be subject to criminal investigation and, subsequently, prosecution for immigration related crimes, such as under section 24 or 25 of the Immigration Act 1971 (1971 Act). Any decision on age made by the Home Office for immigration purposes is not binding on the criminal courts. Where the court has doubt whether the individual is a child or not, the court can make a separate decision on the age of an individual based on the available evidence or can order a Merton compliant age assessment. It is therefore essential when making referrals in these cases to a Criminal and Financial Investigation (CFI) team for potential criminal prosecution, that CFI are provided with the following information:

- that the claimant claimed to be a child but they were determined to be significantly over 18 or their claimed age was disputed (and they were referred for further consideration of their age by a local authority) by the Home Office
- attach copies of the age assessment decision letter (IS.97M or IS.98M), the age assessment minute sheet (ASL.3596 (BP7)) and the Initial decision on age factsheet

CFI teams are responsible for investigating organised immigration crime and disrupting and dismantling organised crime groups (OCGs) and deal with certain immigration related criminal investigations. Note that CFI officers must reveal the information to custody staff upon arrival in the custody suite and reveal to the CPS the information relating to the age dispute in the MG3 Form when referring for



charging advice and any further information regarding this which may be requested by the CPS.

## Asylum cases

All cases involving suspected criminal offences committed by asylum seekers have to be considered in the context of [section 31 of the Immigration and Asylum Act 1999](#) which enshrined key principles of article 31 of the 1951 Convention Relating to the Status of Refugees in UK law. Article 31(1) of the convention states that penalties should not be imposed on refugees where certain criteria apply.

Not all immigration offences covered by Article 31 Refugee Convention are covered by s.31 IAA 1999. In that case the CPS will consider the matter under its prosecutorial discretion - see [Immigration | The Crown Prosecution Service \(cps.gov.uk\) - Public Interest, point 1.](#)

Where an individual makes a claim for asylum on arrival or subsequent detection, and is suspected of committing a criminal offence, the CFI team will consider whether to adopt such cases for further investigation but depending on the circumstances of a case and the potential availability of a section 31 defence may defer any arrest or further investigation until the post decision stage. In this instance the CFI team may request initial information including a copy of the asylum screening record before making their decision. In cases where no immediate action is to be taken by CFI, officers should process the applicant in the normal manner.

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## Multi-agency public protection arrangements MAPPA: scope

[Section 325 of the Criminal Justice Act 2003](#) (CJA 2003) provides for the establishment of MAPPA in all of the criminal justice areas in England and Wales. These are designed to protect the public, including victims of crime, from serious harm by sexual and violent offenders. They require the local criminal justice agencies and other bodies dealing with offenders to work together in partnership in dealing with these offenders.

## Responsible authority

The responsible authority is the primary agency for MAPPA. This is the police, prison and Probation Service in each area, working together. The responsible authority has a duty to ensure that the risks posed by specified sexual and violent offenders are assessed and managed appropriately.

Other bodies have a duty to co-operate with the responsible authority in this task. The duty to co-operate agencies (DTC agencies) will need to work with the responsible authority on particular aspects of an offender's life (such as education, employment, housing and social care).

MAPPA' role is to ensure the successful management of violent and sexual offenders. The National MAPPA team, HM Prison and Probation Services, Public Protection Group has produced guidance which sets out the responsibilities of the police, probation service and prison service. It also touches on how other agencies may become involved, for example the Youth Justice Board will be responsible for the care of young offenders.

See also Foreign National Offender Returns command (FNO RC) guidance Multi-agency public protection (MAPPA) cases.

### **Related content**

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# Decision and disposal

## Decision to pursue administrative removal action rather than prosecution

Criminal or administrative action against law-breakers has the aim of removing or limiting the harm caused by an individual to the community and to act as a deterrent for others. It is not always in the public interest to pursue prosecution where other avenues are available and another approach would achieve the same objective. A rational balance has to be achieved and it is reasonable to take account of all relevant factors including the seriousness and frequency of offences, the cost of judicial action, whether it is in the public / community interest to prolong the stay of an individual that could be removed.

Administrative removal is therefore the normal course of action where an immigration offender is encountered. However, IE will consider adopting individual volume immigration crime (VIC) (level 1) cases for investigation depending on the level of harm they present to national security, to our immigration and border controls or the community.

In reaching decisions to adopt an investigation or not, IE will consider other available sanctions such as refusal of leave or curtailment of leave, service of civil penalties, removal and withdrawal of services.

Administrative removal will normally be appropriate where:

- an immigration offender can be removed within a reasonable time period
- the immigration offender has previously complied with directions such as temporary release and the re-documentation process
- there are no outstanding applications for leave to remain or enter which require consideration or outstanding applications can be resolved within a reasonable time period
- the immigration offender is not suspected of having committed an offence which would attract a prison sentence of 12 months or more

## Decision to prosecute

See: [The Code for Crown Prosecutors | The Crown Prosecution Service – Immigration](#)

## Referral to Crown Prosecution Service

CFI or ICE Volume Crime Team officers must notify the CPS as soon as possible where substantial prosecution resources are likely to be required, whether in relation to a specific case, or a series of cases as appropriate.

Early advice to CPS is strongly recommended in respect of the following case types:

- where the case is serious, sensitive, or complex
- where the case involves another death or risk of death to a passenger
- where there are multiple suspects involved in the facilitation or arrangement of illegal entry
- where the case involves Modern Slavery and Human Trafficking including cases involving exploitation where charges under the Modern Slavery Act 2015 are under consideration
- large scale human facilitation / trafficking bearing the hallmarks of organised crime, including the employment of illegal workers
- where an International Letter of Request is required, or where a Joint Investigation Team is being considered
- where the suspect(s) is a minor
- extensive volumes of electronic data, multi-media evidence, or third-party material
- where the suspect(s) is wanted by Europol or Interpol
- organised manufacture or sale of forged or stolen documents for use in immigration crime
- serious and complex money laundering offences, with complex restraint and confiscation issues
- cases requiring multiple foreign enquiries and overseas liaison
- extensive or complex and sensitive disclosure issues

## Conditional cautions

See:

- CFI guidance – Foreign national offenders and criminal cautions
- Ministry of Justice information – [MoJ Code of Practice Adult Conditional Cautions](#).

A conditional caution allows an authorised person (usually a police officer) or a relevant prosecutor (usually the CPS) to decide to give a caution with one or more conditions attached. When an offender is given a conditional caution for an offence, criminal proceedings for that offence are halted while the offender is given an opportunity to comply with the conditions

You cannot administer (give) a conditional caution with foreign offender conditions because criminal investigators in IE are not authorised to do this. However, you can advise the police lead or the CPS whether it might be an appropriate disposal. Only the police lead or the CPS can make the final decision on:

- whether a foreign offender conditional caution will be given
- what the conditions will be

If you have established the offender's removability you must first seek authority from a CIO to inform the police or CFI team of this. You must:

- complete the conditional caution notification form and indicate whether the person is either:

- a 'relevant foreign offender' (see [Conditional cautions](#)) and may be removed
- not a 'relevant foreign offender'
- immediately email the form to the requesting police officer, custody officer or CFI team

The police or CPS will then decide whether a conditional caution is the appropriate disposal option.

## Consideration of liability to civil penalty

In addition to, or as well as, prosecution, you must consider whether to also pursue a civil penalty.

- if there is not adequate evidence to pursue a prosecution for facilitation, is there adequate evidence to pursue the civil penalty where there is insufficient evidence of a crime but there has been a failure to comply with the requirements in Part II of the Immigration and Asylum Act 1999, that require carriers to take steps to prevent the carriage of clandestine entrants in a vehicle?
  - see: [Civil penalty notices](#)

### Related content

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# Other relevant criminality by type

## War crimes and counter terrorism

What to do when checks or investigation shows that a person has been involved in terrorism, war crimes or crimes against humanity.

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## Marriage abuse

See also:

- General Instructions – Marriage investigations

- CFI guidance – Criminal investigations – sham marriages

The facilitation of individuals in relation to marriage, often referred to as a ‘sham marriage’, commonly involves marriage between a person subject to immigration control and:

- a person with indefinite leave to remain in the UK
- an individual with right of abode in the UK
- a British citizen

so they gain some entitlement or right to stay in the UK and access to provision of services. This could include anybody involved in the sham marriage, for example the:

- bride or groom
- witnesses
- church or registrar staff
- immigration advisor or solicitor, if you can prove they acted in their capacity knowing it was a ‘sham marriage’

It can also include anybody else who:

- conspired
- aided
- abetted
- counselled
- procured the crime:

‘Procure’ means ‘arrange’ or ‘facilitate’ – the courts have defined it as ‘to produce by endeavour, by setting out to see that it happens and taking the appropriate steps to produce that happening’

If, on investigating the marriage, guilty knowledge can be proven the offence can include those who are remotely involved. For example, the people organising the plans, such as booking the flights going in and out of the UK or booking the registry office, to assist the sham marriage taking place.

There is a duty on a registrar to report a suspicious marriage under [section 24 Immigration and Asylum Act 1999](#).

CFI teams are responsible for investigating and prosecuting OCGs involved in marriage abuse. This does not include ‘single event’ marriages unless there is evidence it is linked to a wider series of crimes or there are other factors that mean a prosecution will be pursued. These factors are:

- high harm
- community impact
- reputational damage to the Home Office

If you have a single event marriage, that does not have these factors, it will be referred to the local ICE team.

In any investigation of a 'sham marriage' it is important to establish the full facts including details of the:

- bride and groom
- witnesses
- organisers
- any illegal involvement by persons conducting the ceremony or registry office staff

An important element in intelligence gathering is the debriefing and prompt submission of relevant intelligence to ascertain if an OCG is involved. Retention (keeping), continuity and safe storage of all [exhibits](#) are critical.

For more information see:

- Search and seizure
- section 'Operational debriefing' of Post enforcement visit actions

Although criminal prosecution is normally the best solution when an OCG is involved, each case is judged on its own merits as there might be occasions when administrative removal (providing an immigration solution of removing the person from the UK rather than prosecuting them) for some suspects is the most proportionate option and in the public interest.

For more information on administrative removals see Initial consideration and assessment of liability to administrative removal.

## College abuse

This is linked to the Student route under [Immigration Rules: Appendix Student](#) where a prospective student receives a visa to enter the UK on the condition that they will study at a nominated college. Abuse of this system happens when the:

- college does not exist
- student is not enrolled
- student is enrolled but they do not attend

As a result, bogus students receive access to the UK and entitlements, such as the ability to legally work. The scope of this offence is wide. It would involve any person knowingly involved. This could include:

- an immigration advisor or solicitor submitting a false application to the Home Office
- staff at the college
- anybody else providing false information to undermine Home Office procedures or UK laws



In any college abuse investigation, it is important to establish the full facts including details of:

- how the person got their leave to enter or remain
- whether a legal representative or staff member from the college was involved

The debriefing and submission of relevant intelligence of all those involved is an important element in building intelligence to link college abuse and determine any OCG involvement.

## Abuse of points-based system (PBS)

CFI teams are responsible for tackling OCGs involved in PBS abuse. This does not include individuals who have fraudulently gained or attempted to gain leave under one of the PBS routes unless there is evidence it is linked to a wider series of abuse. In all PBS investigations it is important to establish the full facts including details of the:

- abuse
- method used
- suspects involved
- whether there is enough information to establish a pattern of abuse involving an OCG or whether it is an individual acting alone

## Rogue employers / labour exploitation

See also:

- Illegal working operations
- CFI Illegal working guidance

This category applies to:

- employers who knowingly, or with reasonable cause to believe, employ illegal workers
- any other person involved in the chain, up and down, who knowingly committed a criminal act connected to employing illegal workers, providing guilty knowledge can be proven, it could include:
  - those who supply illegal immigrants knowing they are going to be employed
  - contractors
  - first line managers
  - directors
  - company owners
- those who attempted, conspired, aided, abetted, counselled or procured the crime

One of the aims of CFI teams is to tackle rogue employers who are knowingly, or with reasonable cause to believe, employing illegal workers in the UK. Rogue employers are often closely linked with facilitating illegal immigrants of whom some

might have been trafficked into and across the UK. The focus must be on prosecuting those who are ultimately benefiting from exploiting vulnerable people. CFI will:

- evidence (record) previous illegal working visits
- gather the details of:
  - who was in charge
  - the illegal workers encountered
- get accounts of who employed them and under what circumstances
- evidence (record) what action was taken to:
  - establish if a referral notice has been served
  - determine what was the outcome

## Non-compliance with documentation process

[Section 35 of the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) is aimed at dealing with foreign nationals who try to avoid removal by refusing to cooperate with the documentation process. It allows the Secretary of State to require a person to take specified actions that will assist the removal process. If the individual fails to comply with these requirements, they can be prosecuted. For more information see Travel document interview process and prosecution under section 35.

CFI only consider adopting section 35 cases when:

- the section 35 process has been followed correctly up to the point of referral
- there are no barriers to removal
- immediate removal would take place if the suspected offender possessed a valid travel document

These cases will not be adopted if there is no intention to remove the suspected offender as soon as a travel document is available.

### **Related content**

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