



Home Office

**Immigration Returns, Enforcement and Detention  
General Instructions**

# **Immigration Enforcement powers**

**Version 1.0**

# Contents

Contents.....	2
About this guidance.....	5
Contacts .....	5
Publication .....	5
Changes from last version of this guidance .....	5
Definitions of terms used.....	6
Powers: administrative and criminal .....	6
Powers: common expressions and definitions.....	6
Reasonable.....	6
Balance of probability.....	7
Burden of proof .....	7
Belief and suspicion .....	8
Suspicion .....	8
Belief.....	8
Material deception.....	8
Premises .....	8
Legal privilege .....	9
Relevant documents .....	9
False representations / material facts .....	9
Powers: types and constraints .....	10
Types of powers .....	10
Powers of entry .....	10
Power to use reasonable force .....	10
Power to retain relevant documents.....	10
Powers: constraints .....	10
Assistant immigration officers' powers and constraints.....	11
Administrative powers: purpose and sources.....	12
Purpose of administrative powers.....	12
Legislative sources .....	12
Immigration Act 1971 .....	12
Immigration and Asylum Act 1999.....	15
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 .....	16
UK Borders Act 2007 .....	16

Immigration Act 2016 .....	17
Administrative powers: by type .....	18
Immigration Act 1971 .....	18
Power of examination: paragraph 2 schedule 2.....	18
Searching vehicles outside a port: paragraph 1(5) schedule 2.....	18
Searching premises in connection with removal: paragraph 15A of schedule 2 .....	19
Power to detain: paragraph 16(1) schedule 2.....	20
Power to detain: paragraph 16(2) schedule 2.....	20
Identifying a person: paragraph 18(2) of schedule 2 .....	20
Immigration and Asylum Act 1999.....	20
Power to take fingerprints: section 141.....	20
Arrest for failure to comply with fingerprinting.....	21
Arrest without warrant: paragraph 17(1) schedule 2 .....	21
Entry to search and arrest with warrant: paragraph 17(2) schedule 2.....	21
Entry and search of premises following arrest: paragraph 25A schedule 2.....	21
Entry and search of premises with warrant following arrest: paragraph 25A(6A) schedule 2.....	22
Searching arrested people: paragraph 25B schedule 2 .....	22
Searching people in police custody: paragraph 25C schedule 2.....	22
Search for driving licence at premises: paragraph 25CA schedule 2 .....	23
Search person for driving licence: paragraph 25CB schedule 2 .....	23
Search of a business premises without warrant on the authority of an assistant director: section 28CA.....	23
UK Borders Act 2007 .....	24
Entry and search for evidence of nationality or identity without warrant: section 44 to 46 .....	24
Authority for section 44 to 45 searches .....	24
Entry and search for evidence of nationality or identity with warrant: section 45 of 2007 Act .....	26
Section 46 UK Borders Act 2007: seizing and retention of nationality documents.....	26
Immigration Act 2016 .....	26
Granting immigration bail: arrest without warrant: paragraph 1 schedule 10.....	26
People granted bail: arrest without warrant: paragraph 10(1) schedule 10 ...	27
Searching premises in connection with imposition of a civil penalty: section 47 .....	27
Criminal powers .....	28

Purpose of criminal powers .....	28
When to use administrative powers following a criminal arrest.....	29
Police and Criminal Evidence Act 1984 (PACE) .....	29
Criminal procedures: Scotland and Northern Ireland.....	29
Seizure and retention: sections 48 and 49 Immigration Act 2016 .....	30
Power to seize cash: Proceeds of Crime Act (POCA) .....	32
Retention of seized material under part 3 of the Immigration Act 1971 .....	33

# About this guidance

This guidance gives Immigration Enforcement immigration officers (IOs) an overview of the administrative powers available to them, with a brief introduction to criminal immigration powers and explains the intended use of each of the powers listed. This guidance is intended to be read alongside Dealing with potential criminality: ICE teams.

## 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 **1.0**
- published for Home Office staff on **03 August 2023**

## Changes from last version of this guidance

- New and retitled guidance- replaces former “Coercive powers”
- Amendments and additions to reflect Immigration Act 2016
- Updates to terms used and definitions
- Document generally re-ordered for better flow
- Section on criminal powers and offences moved to “Dealing with potential criminality” guidance

### Related content

Migration and Borders guidance

[Contents](#)

# Definitions of terms used

This page gives Immigration Enforcement immigration officers (IOs) the definitions of terms used when describing the type and use of powers available to them.

## Powers: administrative and criminal

The powers described are divided between:

- [administrative powers](#) - that enable you to arrest and detain suspected immigration offenders for the purpose of removing them from the UK
- [criminal powers](#) - that you normally use where it is intended to investigate a person for one of the criminal offences described within immigration legislation and you must only use it when there is an intention to prosecute an individual

When investigating illegal entry and general breaches of immigration conditions of stay you will use administrative powers of detention, arrest and search except where otherwise described.

## Powers: common expressions and definitions

The following explain some expressions commonly referred to in enforcement guidance.

### Reasonable

Many of the powers described in this section use the term 'reasonable', as in reasonable suspicion or reasonable belief.

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 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 the arrest notes. Record keeping during enforcement visits tells you how to make the record. There is more information on when you might use this in Arrest and restraint.

## Balance of probability

The term 'balance of probabilities' is used extensively throughout this guidance in relation to the necessary standard of proof required to decide a person is an illegal entrant. The balance of probabilities is the civil standard of proof. It requires that the decision maker reaches the conclusion that it is more likely than not that a particular event occurred.

Lord Nicholls in *re H (Minors)* [1996] AC 563 at 586:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability..... the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

In *Selamolele v Makhado* 1988 (2) SA 372 (V) at 374J–375B the approach to the question whether the onus has been discharged was dealt with as follows:

“Ultimately the question is whether the onus on the party, who asserts a state of facts, has been discharged on a balance of probabilities and this depends not on a mechanical quantitative balancing out of the pans of the scale of probabilities but, firstly, on a qualitative assessment of the truth and/or inherent probabilities of the evidence of the witnesses and, secondly, an ascertainment of which of two versions is the more probable.”

## Burden of proof

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

In the 3 jurisdictions of the UK (Northern Ireland; England & Wales; and Scotland) there are only two standards of proof in trials. (There are others which are defined in statutes, such as those relating to police powers.):

- the criminal standard: formerly described as "beyond reasonable doubt". That standard remains, and the words commonly used, though the Judicial Studies Board guidance is that juries might be assisted by being told that to convict they must be persuaded "so that you are sure"
- the civil standard is 'the [balance of probabilities](#)', often referred to in judgments as "more likely than not"

## 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**.

## Material deception

General Instructions refers to ‘material deception’ in relation to illegal entry or applications for leave. In this context ‘material deception’ means that the deception is used in relation to an issue which is or may be determinative of the application for leave. Whether or not it is necessary to prove that the deception used was material depends on the case types described within Initial consideration and assessment of liability to removal.

## Premises

A premises is defined as any property or building, whether residential or business, which an immigration officer 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 on:



- whether you have made an 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.

## 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

## Relevant documents

Relevant documents are those that might establish the arrested person's identity, nationality, or citizenship, or that might indicate which country they have travelled from, or to which country they are proposing to go. Relevant documents may include passports tickets and identity cards, but not items subject to legal privilege.

## False representations / material facts

"False representation" requires dishonesty on the applicant's part. "Concealment of material fact", means operative concealment, that is, the concealment had a direct bearing on the decision.

See also Initial consideration and assessment of liability to removal.

### Related content

[Contents](#)

# Powers: types and constraints

This page tells Immigration Enforcement immigration officers (IOs) the general types of powers available to them when they are exercising administrative or criminal powers.

## Types of powers

### Powers of entry

There are 4 powers of entry options:

- [with warrant](#)
- [without warrant](#) (for example under paragraph 17(2) and 25A of schedule 2 to the Immigration Act 1971 (the 1971 act), (see [Tables of powers](#))
- by informed consent (see Enforcement visits)
- by [assistant director \(AD\) letter](#) (section 28CA of the 1971 act).

### Power to use reasonable force

[Section 146\(1\) of the Immigration and Asylum Act 1999 \(the 1999 act\)](#) provides the power for an IO to use reasonable force in the exercise of any power conferred by the immigration acts. For the use of force to be lawful it must be:

- proportionate
- reasonable
- necessary

Any use of force (see Use of Force) must also be fully recorded and auditable.

### Power to retain relevant documents

Where a document comes into the possession of the Secretary of State or an IO in the course of exercising an immigration function, there is a power under [section 17 of the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) to retain [relevant documents](#) where you suspect an individual may be liable to removal, and the documents 'may facilitate removal'. For more information, see Retention of valuable documents.

## Powers: constraints

The power of IOs to carry out arrests or to exercise any other power is strictly controlled. No IO appointed by the Secretary State under [schedule 2 part 1\(1\) of the Immigration Act 1971](#) may exercise their powers unless they have been trained and accredited to do so.

As an IO you may only execute your powers in accordance with instructions and with the proper authority described in the instructions. See the guidance on health and competency, as well as role specific training and certification.

If you are a non-designated IO, you must not:

- carry out arrests
- execute warrants
- conduct searches of people or property unless by consent
- carry or use restraints
- transport offenders in official vehicles:
  - if you are a non-arrest trained IO you may drive official vehicles (but not escort detained persons) when a designated IO is present and holds the appropriate vehicle insurance

The police may expect all IOs to use their powers of arrest, entry, search and seizure when on joint operational visits. In such circumstances, you must explain that these powers are only available to a limited number of officers, (those who are authorised and have undertaken the necessary training). For further information on multi-agency visits, see Partnership working.

You are given these powers so you can act on information leading to the arrest or detention of immigration offenders. Ministers have stated publicly that the Home Office will act only where there is sound evidence to suggest that the appropriate evidence may lead to the apprehension of an immigration offender.

## **Assistant immigration officers' powers and constraints**

Assistant immigration officers (AIOs) may conduct interviews subject to the following constraints but may not make decisions as to what action, if any, to take as a result of the interview.

AIOs on Pathway mentoring with a view to becoming substantive immigration officers are permitted to conduct Police and Criminal Evidence Act 1984 (PACE) interviews. AIOs may apply to a court for a warrant to enter and search premises but may not execute the warrant.

### **Related content**

[Contents](#)

# Administrative powers: purpose and sources

This page tells Immigration Enforcement immigration officers (IOs) the purpose and sources of the administrative powers available to them.

## Purpose of administrative powers

Use administrative powers when your intention is to pursue removal from the UK rather than investigate a criminal offence with a view to prosecution.

Where you suspect that a criminal offence has been committed and that prosecution might be followed, but a Criminal and Financial Investigation (CFI) trained IO is not present on the visit, seek advice from the local crime team or their Priority and Volume Criminal Investigator. For more information, see [Criminal powers](#).

Powers are provided under [schedule 2 to the Immigration Act 1971](#) (the 1971 act) to allow you to locate, arrest and detain for removal those in respect of whom there are reasonable grounds for suspecting that removal directions may be given, pending a decision whether to give directions. There is more information on the conduct of arrests (see Arrest and restraint).

## Legislative sources

The following tables summarise the administrative powers of an Immigration Enforcement immigration officer (IO) under the various immigration acts.

### Immigration Act 1971

Paragraph	Description	Comments
Schedule 2 paragraph 2	Examination of passengers arriving with leave	A power of examination in order to determine a person's immigration status. The long-standing judgment of 'Singh v Hammond' provides the legal basis for the exercise of the power of examination away from the place of entry, subject to certain conditions being met.
Schedule 2 paragraph 1(5)	Search of vehicle which arrived by ship, aircraft, train for purposes of establishing if there are	Singh v Hammond principles apply. Power may only be exercised within reasonable

Paragraph	Description	Comments
	persons who should be examined under schedule 2.	timeframes of the vehicle having arrived in the UK, as detailed in “Irregular or unlawful entry and arrival” guidance. Power was amended by paragraph 1(11)(b) of sch4 to the Channel Tunnel (International Arrangements) Order 1993 to include vehicles which have entered the UK through the Channel Tunnel.
Schedule 2 paragraphs 9 to 10A	Set removal directions	Powers are for removal of people without leave at carriers’ expense, public expense, and removal of family members.
Schedule 2, paragraph 11	Authority to place person being removed on board a ship or aircraft	IO authorises owner or agent to place person onboard.
Schedule 2, paragraphs 12 to 14	Removal directions: Seamen and aircrews	IO gives directions to captain, owner or agent to remove person.
Schedule 2, paragraph 16(2)	Detention	Where there are reasonable grounds to suspect directions may be given under paragraphs 8 to 10A or 12 to 14, pending a decision on whether or not to give such directions, and pending removal in pursuance of such directions.
Schedule 2, paragraph 17(1)	Arrest of person liable to be detained under paragraph 16	Power also conferred on police constables.
Schedule 2, paragraph 17(2)	Entry warrant to arrest under paragraph 17(1)	The Justice of the Peace or sheriff may grant a warrant if they are satisfied by written information on oath that there is reasonable ground for suspecting that such a person is to be found on the premises in question.

Paragraph	Description	Comments
Schedule 2, paragraph 18(2)	Power to photograph, measure or otherwise identify detained person or person liable to detention	Also conferred on police constables, prison officers and other persons authorised by the Secretary of State. Includes the power to take biometric information.
Schedule 2, paragraph 18(3)	Authority to transport a detained person	Person may also be taken into the custody of a police constable for such purposes.
Schedule 2, paragraph 25A(2)	Entry and search of premises linked to person arrested without warrant for documents	<p>Power to enter and search premises:</p> <ul style="list-style-type: none"> <li>• occupied or controlled by a person arrested under the schedule</li> <li>• in which that person was when or immediately before they were arrested</li> </ul> <p>before the person is taken to detention, for relevant documents. You do not need CIO authority, but inform the CIO as soon as practical.</p> <p>Also applies in respect of a person arrested other than under the schedule and then detained by an immigration officer under the schedule. Authorised at CIO level.</p>
Schedule 2, paragraph 25A(7)	Entry and search of premises with warrant for documents	Power to enter and search any premises for nationality documents in accordance with the warrant.
Schedule 2, paragraph 25A(7)	Power to seize and retain documents found	You can only seize documents you have reasonable grounds for believing are relevant documents. You may not seize legally privileged

Paragraph	Description	Comments
		documents.
Schedule 2, paragraph 25B	Search of arrested person (not in police custody)  Power to seize and retain items found	Powers to search a person for items, which may cause harm, and items which may assist escape or relevant documents.  Power does not authorise you to require a person to remove their clothing in public (other than a jacket, coat or glove). Power does authorise you to search a person's mouth.
Schedule 2, paragraph 25C	Search of arrested person in police custody	Powers to search a person for items, which may cause harm, and items, which may assist escape or relevant documents.  You must be same sex as the person you are searching. You may not conduct an intimate search under the paragraph.
Schedule 2, paragraph 25C(4)	Power to seize and retain items found on a search	Seized items may only be retained while person is in custody.
Schedule 2, paragraph 25D(3)	Copying seized material	Power to photograph and copy, or have photographed or copied, material seized and retained under the schedule.

## Immigration and Asylum Act 1999

Section	Description	Comments
Section 36	Detention of vehicles etc. in connection with civil penalties for carrying clandestine entrants	Power reserved to CIOs or above. Under section 35, the Secretary of State must issue a notice if they decide a person is liable to a penalty under section 32 (penalty for carrying clandestine entrants).
Section 141	Fingerprinting	Power also conferred on

Section	Description	Comments
		police constables, prison officers, authorised officers of the Secretary of State and people employed by a contractor under a removal centre contract. Power only applies during 'the relevant period'.
Section 142(3)	Attendance for fingerprinting	Power to arrest (without warrant) a person who fails to comply with a requirement imposed under the section to attend a specified place for fingerprinting.
Section 146	Reasonable force	Power to use reasonable force, if necessary, in exercising any power conferred on IOs under the immigration acts.

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

Section	Description	Comments
Section 17(1)	Retention of documents	Power applies while officer or the Secretary of State suspects that a person to whom the document in their possession relates may be liable to removal and that retention of the document may facilitate removal.

## UK Borders Act 2007

Section	Description	Comments
Section 44	Entry and search for identity or nationality documents without warrant	Applies to IOs on written authorisation of at least a CIO. Applies to constables on written authorisation of at least an Inspector. Power applies to a person arrested for any criminal offence.
Section 45	Entry and search for	Power applies to a person



Section	Description	Comments
	identity or nationality documents with warrant	arrested for any criminal offence.
Section 46	Seizure of nationality documents	Power to seize identity or nationality document found under a section 44 or 45 search and to retain while person may be liable to removal.

## Immigration Act 2016

Section	Description	Comments
Schedule 10, paragraph 1	Power to grant immigration bail	Where person is being detained, or liable to be detained under paragraph 16 of schedule 2 or paragraph 2 of schedule 3 to the IA 2016, section 62 of the NIA 2002, and section 36 of the UKBA 2007. Granting bail does not prevent the person being re-detained under any of the schedules or sections listed.
Schedule 10, paragraph 2	Conditions of Immigration Bail	SoS granting bail may attach such conditions to that bail as to require person to appear before the SoS or First Tier Tribunal at a specified time/place; to restrict work, occupation or studies; may set a condition as to residence; to requiring the person to report to the SoS or other person as specified; may set an electronic monitoring condition; may set other conditions as the SoS thinks fit.
Schedule 10, paragraph 10(1)	Power to arrest (without warrant) a person granted immigration bail under paragraph 1	Applies if the officer has reasonable grounds for believing that a person on immigration bail is likely to fail to comply with a bail condition, is breaking or

Section	Description	Comments
		has reasonable grounds for suspecting that the person is failing, or has failed, to comply with a bail condition. Power of arrest also conferred on police constables. Paragraph 17(2) applies for the arrest of a person under the paragraph as it applies for the arrest of a person under paragraph 17.
Section 47	Power to search premises in connection of imposition of a civil penalty	Applies if the officer is lawfully on the premises and has reasonable grounds for believing that relevant documents, relating to the potential imposition of a civil penalty, are on the premises. Relevant documents for this purpose include payslips, timesheets, tenancy agreements and letting paperwork.

## Administrative powers: by type

The following powers are listed according to legislative source.

### Immigration Act 1971

#### Power of examination: paragraph 2 schedule 2

[Paragraph 2 of schedule 2 to the 1971 act](#) provides a power of examination in order to determine a person's immigration status. The long-standing judgment of 'Singh v Hammond' provides the legal basis for the exercise of the power of examination away from the place of entry subject to certain conditions being met. There is more information in the Enforcement visits guidance and the Enforcement interviews guidance.

#### Searching vehicles outside a port: paragraph 1(5) schedule 2

Outside of a port area, where a vehicle has been taken off a ship or aircraft, or a Channel Tunnel train, on which it has been brought to the UK, IOs can, within a reasonable timeframe of it having arrived, search it under [paragraph 1\(5\) of schedule](#)

[2 to the Immigration Act 1971](#) to satisfy themselves that there may be migrants on board they may wish to examine under paragraph 2 of that schedule.

In applying this power, the principles of [Singh v. Hammond](#) apply as detailed in Enforcement interviews. See the “Vehicle: in-country powers of search” section of Irregular or unlawful entry and arrival for details of the restrictions and conditions attached to this power of search.

## Searching premises in connection with removal: paragraph 15A of schedule 2

Paragraph 15A of schedule 2 to the Immigration Act 1971 ([inserted by section 46 of the Immigration Act 2016](#)) allows an IO, who is lawfully on any premises and who has reasonable grounds to suspect that a person on that premises is liable to removal from the UK to search for and seize documents which both:

- relate to that person
- may be evidence for grounds on which that person’s permission to enter or stay in the UK may be cancelled

Search under this power may only be carried out where an IO has reasonable grounds for believing that such documents are on the premises and to such an extent as is required to find them.

Where you have reasonable grounds to believe that such documents are stored in any electronic form and accessible from the premises, this power also allows you to require that it is produced, or can be produced, in a form that it can be taken away and in which it is visible and legible. Where this requirement is not or cannot be fulfilled, you may seize the device or medium on which the document is stored.

For practical purposes, if a photocopy or copy of a relevant document is suitable then seizure of the original document is not necessary. Seizure is likely to be a secondary option where it is not possible or practical to print or copy a document or provide a photograph. It may also be appropriate to request that the holder emails a copy of the documents.

You must not seize, copy, or take away any documents which you believe are subject to legal privilege.

Where a photograph or copy of it is not sufficient to cancel the person’s permission you may retain a document seized under this paragraph:

- while the person to whom the document relates is someone who may be removed from the UK
- if it is evidence upon which the person’s permission may be cancelled

## Power to detain: paragraph 16(1) schedule 2

For further information on the circumstances in which an ICE team IO would use the paragraph 16(1) power, see Irregular or unlawful entry and arrival.

## Power to detain: paragraph 16(2) schedule 2

The power to detain an overstayer, a person breaching conditions of leave, or people who are seeking or have obtained leave by deception (or someone suspected to be such a person) is in [paragraph 16\(2\) of schedule 2 to the 1971 act](#). Paragraph 16(2) states:

If there are [reasonable grounds](#) for suspecting that a person is someone in respect of whom directions may be given under any of the paragraphs 8 to 10A or 12 to 14, that person may be detained under the authority of an immigration officer pending:

- a) a decision whether or not to give such directions
- b) his removal in pursuance of such directions

The power to detain a person who is subject to deportation action is set out in of [paragraph 2 of schedule 3 to the 1971 act](#), and [section 36 of the UK Borders Act 2007 \(the 2007 act\)](#) (automatic deportation).

For further information, see the Detention – general guidance.

## Identifying a person: paragraph 18(2) of schedule 2

[Paragraph 18\(2\) of schedule 2 to the 1971 act](#) allows for the Secretary of State or an IO to take all reasonable steps necessary for photographing, measuring or otherwise identifying (including the power to take biometric information) a person who is detained or liable to be detained under paragraph 16.

## Immigration and Asylum Act 1999

### Power to take fingerprints: section 141

[Section 141 of the Immigration and Asylum Act 1999 \(the 1999 act\)](#) provides the power to take fingerprints in immigration cases from any person who:

- fails to produce a valid passport with photograph or some other document, satisfactorily establishing their identity and nationality and citizenship, when required to do so by an IO, on their arrival in the UK
- has been refused leave to enter the UK but granted immigration bail under [paragraph 1 of schedule 10 to the IA16](#), if an IO reasonably suspects they might break any condition imposed on them relating to residence as to reporting to the police or an IO
- requires leave to enter or remain but does not have it

In addition, an individual may be fingerprinted who has been arrested under [paragraph 17 of schedule 2 to the 1971 act](#) including an individual who:

- has made a claim for asylum
- is the dependant of someone who falls into one of the above categories

### Arrest for failure to comply with fingerprinting

Under [section 142\(3\) of the 1999 act](#), an IO or police constable may arrest without warrant a person who has failed to comply with a requirement imposed on them to comply with fingerprinting requirements (see Identity management (enforcement)) under section 141 of the 1999 act.

### Arrest without warrant: paragraph 17(1) schedule 2

Under [paragraph 17\(1\) of schedule 2 to the 1971 act](#), IOs and police constables have the power to arrest people who are liable to be detained under [paragraph 16 of schedule 2](#) without a warrant.

### Entry to search and arrest with warrant: paragraph 17(2) schedule 2

[Paragraph 17\(2\) of schedule 2 to the 1971 act](#) allows a Justice of the Peace (JP) or sheriff to issue a warrant authorising any IO (or police constable) to enter a named address to search for and arrest a person. However, they must be satisfied that there are [reasonable grounds](#) for suspecting that a person is liable to be arrested under paragraph 17(1) and is to be found on the premises named in the warrant.

See also Warrants: procurement and use.

### Entry and search of premises following arrest: paragraph 25A schedule 2

Where an immigration officer (IO) or constable arrests a person under schedule 2 to the Immigration Act 1971, or if a person is arrested using another power and subsequently detained by an IO under schedule 2, [paragraph 25A of schedule 2](#) allows an IO to search without warrant, and seize [relevant documents](#), such as passports, tickets and identity cards, but not items subject to legal privilege, at:

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

This is provided that there are reasonable grounds to believe that such documents may be found there.

Where you have reasonable grounds for believing that a person has a copy of a relevant document mentioned above, in any electronic form on a device or medium at the premises, you are also empowered to require that the document is produced, or can be produced, in a form that it can be taken away and in which it is visible and legible.

Where this requirement is not or cannot be fulfilled, you may seize the device or medium on which the document is stored.

Where a search is to be conducted after the arrested person has been taken to a place of detention, authority for the search must be given and recorded by a chief immigration officer (CIO) or above.

The search may be conducted before taking the arrested person to a place of detention if the presence of that person is necessary to conduct an effective search. In this case authority is not required to conduct the search, though a CIO or above must be informed of the search as soon as practicable.

In both cases the CIO or above must make a written record of the grounds of the search and the nature of the documents being sought.

## Entry and search of premises with warrant following arrest: paragraph 25A(6A) schedule 2

Under [paragraph 25A\(6A\)](#) of schedule 2 to the 1971 act , a JP or sheriff may issue a warrant to an IO to enter and search one or more sets of premises:

- occupied or controlled by an arrested person
- in which the person was when arrested, or immediately before being arrested

for relevant documents, if there are [reasonable grounds](#) for believing that such documents may be found there and the conditions in paragraph 25A(6B) are met. See also Warrants: procurement and use.

## Searching arrested people: paragraph 25B schedule 2

[Paragraph 25B of schedule 2 to the 1971 act](#) allows an IO to search a person who has been arrested under [schedule 2 to the 1971 act](#) but is not in custody at a police station. The search may be for the purposes of seizing [relevant documents](#) and items, which may cause harm or be used to assist escape. See also the “searching people” section of Search and seizure.

You cannot retain anything seized under this paragraph relating to harm or escape for longer than the offender is in custody or until they are granted bail.

## Searching people in police custody: paragraph 25C schedule 2

[Paragraph 25C of schedule 2 to the 1971 act](#) allows an IO to search a person who has been arrested under [schedule 2 to the 1971 act](#) and is in custody at a police

station. It also provides for the seizure of [relevant documents](#) and items that may cause harm or be used to assist escape. See also Search and seizure.

## Search for driving licence at premises: paragraph 25CA schedule 2

[Paragraph 25CA of schedule 2 to the 1971 act](#) (as inserted by [section 43 of Immigration Act 2016](#)), allows you to enter and search premises under this section where there are reasonable grounds for believing that the person is not lawfully present in the UK, and that they are in possession of a driving licence, and that there are reasonable grounds to believe that the licence is on the premises.

## Search person for driving licence: paragraph 25CB schedule 2

[Paragraph 25CB of schedule 2 to the 1971 act](#) (as inserted by [section 43 of Immigration Act 2016](#)), allows you to search a person and seize a driving licence (paragraph 25CC) under this section where there are reasonable grounds for believing that the person is not lawfully present in the UK, and they are in possession of a driving licence, and that there are reasonable grounds to believe that the licence is concealed on the person.

## Search of a business premises without warrant on the authority of an assistant director: section 28CA

[Section 28CA of the 1971 act](#) provides the power to enter and search a business premises without warrant on the authority of an assistant director (AD). This is normally provided by use of an AD's letter (see Warrants: procurement and use).

An AD's letter can only be issued where the constable or IO has reasonable grounds for believing that the person whom they are seeking is on the premises and entry is reasonably required in order to:

- criminally arrest a person for the offence of:
  - illegal entry (section 24B1 of the 1971 act)
  - deception (section 24A of the 1971 act)
  - illegal working (section 24B of the 1971 act)
- 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 (paragraph 17 of schedule 2 to the 1971 act)

See also Warrants: procurement and use for full details of application criteria and process.

## UK Borders Act 2007

### Entry and search for evidence of nationality or identity without warrant: section 44 to 46

[Section 44 to 46 of the 2007 act](#) enables IOs or police constables to search for [relevant documents](#) without warrant following arrest for any criminal offence.

It applies to premises:

- occupied or controlled by the individual
- where the individual was arrested
- where the individual was immediately before their arrest

The power applies to people arrested on suspicion of involvement in the commission of an offence and where there are reasonable grounds to suspect that:

- the individual is not a British citizen
- nationality documents may be found on the premises

You may not exercise the power once the suspect has been released without charge for the criminal offence. However if the individual has been identified as an immigration offender, any relevant documents which have been seized under [section 46 of the 2007 act](#) may be passed to, or retained by, the Home Office to facilitate the person's removal from the UK.

Searches under this power will only be necessary where:

- an individual fails to co-operate in establishing their identity
- you have reasonable grounds to believe that they are being deceptive over their identity, and you must record this (see Record keeping during enforcement visits)

### Authority for section 44 to 45 searches

[Section 44 of the UK Borders Act 2007](#) provides a power of entry on the written authority of a senior officer. In relation to an immigration officer (IO), a senior officer is of at least the rank of chief immigration officer (CIO). In relation to a constable, a senior officer is of at least the rank of inspector.

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

The senior officer who authorises the search must make a written record of:

- the nature of the documents sought



- the immigration officer's (ie the person seeking authorisation) grounds for the suspicion

Examples of the grounds for suspicion may include:

- suspicion that a nationality or identity document in the individual's possession may have been forged, altered or fraudulently obtained
- the individual is unable or unwilling to give a credible account, or corroborative detail, of how they obtained their claimed nationality or their history in the UK
- the individual states that they are a foreign national and there is no evidence of their lawful entry to the UK
- a Home Office record of the individual exists but the person's nationality has not yet been established
- third party witnesses have given conflicting or incredible accounts of the individual's national status
- the individual has exercised dishonesty and or deception in relation to their identity which materially damages their credibility in relation to their claimed nationality

[Section 45 of the UK Borders Act 2007](#) provides for entry and search with a warrant on application from an IO (or constable) to a JP or sheriff.

Before issuing a warrant under section 45 of the Act, a JP or sheriff has to be satisfied that there are reasonable grounds to believe that the individual may not be a British citizen, that nationality documents which relate to the individual (and which are not exempt from seizure) may be found at the premises and that any of the following conditions apply:

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

If a warrant is to be obtained by or executed by a police constable, the safeguards in [section 15](#) and [section 16](#) of Police and Criminal Evidence Act 1984 (PACE) will apply.

Safeguards set out in [section 28J](#) and [section 28K](#) of the Immigration Act 1971 apply to the execution of warrants by IOs.

Any [relevant documents](#) which have been seized under section 46 may be passed to or retained by the Home Office in order to facilitate the person's removal from the UK.

## **Entry and search for evidence of nationality or identity with warrant: section 45 of 2007 Act**

[Section 45 of the 2007 act](#) provides for entry and search with warrant, in the same circumstances as section 44 above, but in relation to premises not controlled by the individual and/or were not the premises at which they were arrested. See also: Warrants: procurement and use.

## **Section 46 UK Borders Act 2007: seizing and retention of nationality documents**

Under [section 46 of the UK Borders Act 2007](#) an IO may seize a document which they think is a nationality document relating to the arrested person, provided it is not a document subject to legal privilege (subsection (2)). Under the legislation documents subject to legal privilege may not be seized.

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

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

## **Immigration Act 2016**

### **Granting immigration bail: arrest without warrant: paragraph 1 schedule 10**

[Paragraph 1 of schedule 10 to the Immigration Act 2016](#) allows the Secretary of State (which includes an IO), to grant bail to a person who is being detained under:

- paragraphs 16(1), (1A) or (2) of sch2 to the IA71 (detention of persons liable to examination or removal)
- paragraphs 2(1), (2) or (3) of sch3 to the IA71 (detention pending deportation)
- section 62 of the Nationality Immigration and Asylum Act 2002 (detention of persons liable to examination or removal)
- section 36(1) of the UK Borders Act 2007 (detention pending deportation).

Under paragraph 1(3), the First-tier Tribunal may, on an application made to the Tribunal for the grant of bail to a person, grant the person bail if they are detained under the powers listed above.

Under paragraph 1(8), the grant of immigration bail ends when the person is:

- no longer detainable under immigration powers
- granted leave to enter or remain in the UK
- detained under any of the powers listed above
- removed from or otherwise leaves the UK

## People granted bail: arrest without warrant: paragraph 10(1) schedule 10

[Paragraph 10\(1\) of schedule 10 to the Immigration Act 2016](#) allows an IO (or police constable) to arrest without warrant a person bailed under [paragraph 1 of schedule 10 to the IA16](#), if they have reasonable grounds to believe that the person is either:

- likely to fail to comply with a bail condition
- the officer has reasonable grounds for suspecting that the person is failing, or has failed to comply with a bail condition

Under paragraph 10 (3), the relevant judicial officer may issue a warrant authorising any IO (or police constable) to enter, by reasonable force if necessary, the premises named on the warrant to search for and arrest the person concerned.

Paragraphs 25A to 25C of schedule 2 to the IA71 apply to a person arrested under paragraph 10 as they do to a person arrested under schedule 2 to the IA71.

## Searching premises in connection with imposition of a civil penalty: section 47

[Section 47 of the Immigration Act 2016](#) allows an IO, who is lawfully on any premises, to search for and seize documents which they have reasonable grounds for believing might be of assistance in determining whether a person is liable to the imposition of a penalty under either:

- [section 15 of the Immigration, Asylum and Nationality Act 2006](#) (penalty for employing illegal worker)
- [section 23](#) or [section 25](#) of the Immigration Act 2014 (penalty for leasing premises to disqualified person)

A search under this power may only be carried out where an IO has reasonable grounds for believing that documents relating to the potential imposition of these civil penalties, such as:

- payslips or timesheets (illegal working)
- tenancy agreements or letting paperwork (illegal renting)

are on the premises and to such an extent as is required to find them.

See also: “Carrying out premises search: conducting the search” in Search and seizure.

### Related content

[Contents](#)

# Criminal powers

This page tells Immigration Enforcement immigration officers (IO) the purpose and sources of the criminal powers available to them.

## 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 the administrative powers. **It is expected that Immigration Compliance and Enforcement (ICE) team officers would rarely use these 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

The provision of these powers is necessary to allow the Home Office to make use of existing powers of arrest and to operate, in appropriate circumstances, without accompanying police support when conducting operational visits.

Investigation of an offence involves the process of examining whether the offence has been committed and by whom. The usual purpose of investigation in the criminal context is prosecution.

Using criminal powers to obtain information for the purpose of administrative removal action (such as by searching for evidence of identity in order 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 and financial investigation (CFI) and Volume Crime Teams (VCT) teams in Immigration Enforcement have relevant powers and expertise in the specialist area of investigating immigration related offences. Where a criminal offence is suspected, you must refer the case to the local CFI team immediately (see Dealing with potential criminality: ICE teams).

## When to use administrative powers following a criminal arrest

Where you have investigated a criminal offence and the Crown Prosecution Service (CPS) subsequently make a decision that it is not in the public interest to proceed with charging the individual (such as where it is a less serious immigration offence), then you must consider whether the person may be liable to removal from the UK using the relevant administrative powers to achieve this end.

## Police and Criminal Evidence Act 1984 (PACE)

[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 and the 1989 order, 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

[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 have regard to 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 IOs 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.

## Criminal procedures: Scotland and Northern Ireland

PACE does not apply in Scotland, where the [Criminal Procedure \(Scotland\) Act 1995](#) 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, specified modifications to the [PACE codes of practice](#), which make them applicable to IOs.

## Seizure and retention: sections 48 and 49 Immigration Act 2016

As mentioned above, CFI and VCT officers will exercise and have experience of criminal powers and offences, whilst as an ICE officer, you will concentrate on the exercise of administrative powers. However, ICE officers are often aware that criminal offences have been committed during operational visits. There are criminal powers of seizure and retention of evidence under sections 48 and 49 of the Immigration Act 2016 that an ICE officer may be required to exercise on behalf of a competent authority in order to ensure that the evidence is not lost, altered or destroyed. You must be specifically trained in securing and handling evidence to use this power.

[Section 48 of the Immigration Act 2016](#) allows an IO to seize and retain anything which the officer finds when lawfully on any premises and whilst exercising a function under the Immigration Acts if that officer has reasonable grounds for believing that either:

- it has been obtained through the commission of an offence
- it is evidence in relation to an offence

**and** that it is necessary to seize it only if doing so will prevent it being concealed, lost, damaged, altered or destroyed.

In addition to being able to seize evidence of an immigration or nationality offence (such as a genuine passport being used by a third person), this effectively gives Immigration Compliance and Enforcement (ICE) teams an equivalent of the [section 19 Police and Criminal Evidence Act 1984 \(PACE\)](#) general power of seizure, to also seize evidence of non-immigration crime on behalf of Criminal and Financial Investigations (CFI), the police or other investigating agencies (for example NCA or Trading Standards). Typical examples of such items are forged documents, drugs and prohibited weapons.

Section 48 also empowers an IO to require that any information stored in any electronic form and accessible from the premises which that officer has reasonable grounds for believing:

- is evidence in relation to an offence
- has been obtained through the commission of an offence

**and** it needs to be seized in order to prevent it being concealed, lost, tampered with or destroyed, is produced in such a way that it can be taken away and is visible or legible.

Where an item is seized in relation to an immigration offence, and where a photograph or photocopy would not be sufficient, it may be retained so long as necessary in all the circumstances and in particular:

- for use as evidence at a trial
- for forensic examination or for investigation of an offence

- in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained illegally

In seizing evidence you must:

- always wear suitable gloves
- preserve the scene as much as possible
- take photographs of the items in situ
- seize any evidence you find correctly, for more information, see:
  - evidence
  - tamper evident bags

Where any item has been so seized under section 48, [section 49 Of the Immigration Act 2016](#), ensures that the IO who seized it must, as soon as is reasonably practicable, inform a relevant body or agency who can investigate the offence. This body will, in turn, accept the item unless it is decided that either:

- the item or information contained in it has not been obtained through the commission of an offence or is not evidence of an offence
- they do not have functions in relation to the investigation of the offence
- it should be investigated by a different agency

If the investigating agency refuses to accept the item, but not on one of the grounds listed above, then IOs should note this down in their pocket notebook (PNB), including the suspected nature of the item or items, who they have spoken to, the time and date, and the reasons given for refusing to accept the item or items, and leave/return the item where it was found. IOs have no powers to dispose of the item themselves.

Where it is decided that the item has not been obtained illegally or is not evidence of an offence, the IO must, as soon as reasonably practicable, return it to the person from whom it was seized or to the place from which it was seized or taken away. If it needs to be referred to a different competent investigatory body, the IO must refer it immediately. Where a different competent body agrees to accept the item, the IO who seized it must give it to that body as soon as is practicable.

If the IO has reasonable grounds to believe that the item has been obtained in the commission of, or is evidence in relation to, an immigration offence, then the IO may notify the CFI team.

Sections 48 and 49 do not apply to items which the officer has reasonable grounds for believing are subject to legal privilege.

[Section 281 of the Immigration Act 1971](#) (seized material: access and copying) applies to a document seized and retained under this section. If:

- the occupier of the premises
- the controller of material immediately before it was seized
- a person acting on their behalf

asks you for a record of what was seized, for supervised access to, or a photograph or copy of what was seized, you must provide this within reasonable time unless there are reasonable grounds for believing that to do so would be prejudicial to an investigation or any functions in connection with which the material was seized.

In practical terms, sections 48 and 49 mean that you have a power to seize and preserve evidence, so that the item cannot be removed or destroyed, whilst you contact CFI or the police, it does not necessarily mean that you will be removing items from premises, but seizing items in situ. The investigating agency will decide how to proceed, either by attending the scene themselves, or asking you to physically retrieve the item and take it to them, or to temporarily store the item until it can be handed over. Where you have to store evidence overnight before delivering to the investigating agency, secure it in the “drop safe” or CIO/manager safe at the ICE location. As part of your record keeping of the seizure, record the facts of how, where and for how long you are securing it, in the “notes” tab and field in the “search and premises” form on Pronto.

Remember that there is an exception to this as you must never store drugs in Home Office premises. They should always be handed immediately to police if you have been asked to seize in extremis because police cannot attend the premises. Evidence of cannabis cultivations or significant quantities of class A drugs will require crime scene preservation (and not seizure) until police attend.

See the “preserving a crime scene” section in Dealing with potential criminality: ICE teams.

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

[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.

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

See also:

- General Instructions - Dealing with potential criminality: ICE teams
- General Instructions - Search and seizure
- CFI guidance - cash seizure



## Retention of seized material under part 3 of the Immigration Act 1971

Under [section 28Z1 of the Immigration Act 1971 \(inserted by section 50 of the Immigration Act 2016\)](#), anything seized under part 3 of that act as potential evidence of an offence may be retained so long as necessary in all the circumstances, where a photograph or copy of it would not be sufficient. In particular, seized material may be retained in order to be used either:

- as evidence at a trial for an offence
- for forensic examination or for investigation of an offence

to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained illegally

### **Related content**

[Contents](#)