



Home Office

## Arrest

Version 4.0

This guidance tells criminal investigators in Immigration Enforcement (IE) in England, Wales and Northern Ireland how to make a lawful arrest.

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## About this guidance

This guidance tells criminal investigators in Immigration Enforcement (IE) in England, Wales and Northern Ireland about how to make a lawful arrest.

It applies only to staff in England, Wales and Northern Ireland who:

- have successfully completed specialist immigration arrest and criminal investigation training
- are employed in immigration enforcement criminal investigation teams
- are investigating immigration related offences

It is based on immigration acts and the Police and Criminal Evidence Act 1984.

For more information, see:

- [Immigration Act 1971](#)
- [Immigration and Asylum Act 1999](#)
- [Police and Criminal Evidence Act 1984](#)

For guidance on arrests in Scotland, see: [Arrests in Scotland](#).

The Home Office has a duty to safeguard and promote the welfare of children. For more information see: [Safeguard and promote child welfare](#).

## 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 criminal investigation operational guidance inbox.

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.

## Clearance and publication

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

- version 4.0
- published for Home Office staff on 08 June 2017

## Changes from last version of this guidance

Guidance placed into the new template.

Minor housekeeping changes.

Updated links.

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## Making sure the arrest is lawful

This page tells criminal investigators in Immigration Enforcement (IE) about how to make sure you make a lawful arrest.

### Lawful arrest

For an arrest to be lawful, you must:

- be investigating an immigration related offence
- be investigating an offence for which a power of arrest exists
- have reasonable grounds to suspect the person:
  - has committed or attempted to commit the offence
  - is committing or attempting to commit the offence
  - is about to commit the offence
- have reasonable grounds to believe the arrest is necessary

You must then:

- explain to the person in plain language:
  - they are under arrest and not free to leave
  - the offence for which they have been arrested
  - the grounds for the arrest
  - why it is necessary to arrest them
- give the caution

Although not a requirement, it is good practice to demonstrate to the arrested person that the arrest is an exercise of force and they have been deprived of their liberty. You can do this taking hold of the arrested person or restricting their movement in other ways. See: [Using force during an arrest](#).

If it is not possible to give the person an explanation or caution at the time of arrest, for example, because they are violent or too drunk to understand what is being said, you must do this as soon as possible afterwards.

If you have communication difficulties because the person has limited understanding of English, you can contact an interpreter by phone through the Bigword interpreter system on 0800 8620624.

For more information on making an arrest, see:

- [Code G Police and Criminal Evidence Act 1984](#)
- Arrest aide memoire

### Consequences of an unlawful arrest

Even if suspects think they are under arrest, your arrest may be unlawful if you do not satisfy the [lawful arrest](#) conditions. The possible consequences include:

- evidence obtained after the arrest being considered inadmissible (not allowed to be used in court)
- any use of force after the arrest being considered unlawful
- losing your case at court
- you or the Home Office being sued for compensation

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## Who can make the arrest

This section tells criminal investigators in Immigration Enforcement (IE) about who can make an arrest.

If you have successfully completed the specialist immigration arrest and criminal investigation training and work in an appropriately authorised role in an immigration enforcement criminal investigation team, you are:

- a designated officer
- allowed to use arrest and criminal investigation powers

As a designated officer, you must only use the power of arrest if you are following the criteria for making a lawful arrest see: [Making sure the arrest is lawful](#).

You must have the reasonable grounds to make a lawful arrest, otherwise you cannot be ordered to make an arrest.

For more information on designated criminal investigators powers see:

- Arrest and searches under PACE
- [Making sure the arrest is lawful](#)
- [When and why it may be necessary to arrest](#)

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## When and why it may be necessary to arrest

This page tells criminal investigators in Immigration Enforcement (IE) about if you need to arrest a person and why it might be necessary.

As the arresting officer it is your responsibility to decide if there are reasonable grounds to suspect that the person:

- has committed or attempted to commit an offence
- is committing an offence
- is about to commit an offence

For more information on whether to arrest see: Arrest aide memoire.

[Section 145 of the Immigration and Asylum Act 1999](#) states that when using a specified power of arrest, questioning, search or seizure:

- English and Welsh immigration officers must follow the [Police and Criminal Evidence Act 1984](#) (PACE)
- Northern Ireland immigration officers must follow the [The Police and Criminal Evidence \(Northern Ireland\) Order 1989](#) codes of practice

### Necessity to arrest

To make an arrest, you must have reasonable grounds to believe that the arrest is necessary for one or more of the following reasons:

- to find out the person's name and address if you:
  - do not know the details
  - cannot easily find the details out
- if you doubt the details they have given you are their real name or address
- to prevent the person:
  - causing physical injury to themselves or any other person
  - suffering physical injury
  - causing loss or damage to property
  - committing an offence against public decency
  - causing an unlawful obstruction of the highway
- to protect a child or other vulnerable person
- to allow the prompt and effective investigation of the offence

You must satisfy yourself that an arrest is lawful. See: [Making sure the arrest is lawful](#).

As a designated officer your reason for arresting someone will often be 'to enable the prompt and effective investigation of the offence'.



You need to justify why you think the investigation would be frustrated, unreasonably delayed or otherwise hindered if the person was not arrested. Examples include a belief that the person:

- would not attend voluntarily for interview
- has made false statements or presented false evidence
- might steal or destroy evidence
- might contact or collude with co-suspects or conspirators

For further information, see:

- Arrest aide memoire
- National Police Chiefs Council (NPCC) position statement necessity to arrest
- [Arrest criteria under PACE code G](#)

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## Cautioning on arrest

This page tells criminal investigators in Immigration Enforcement (IE) about how and when to give the caution following an arrest.

### The purpose of the caution

A caution is given on arrest so that the arrested person understands:

- that if they say anything they may potentially incriminate themselves
- there may be consequences of failing to answer questions
- what they say following the caution may be given in evidence at court

### The effect of a caution

Although what is said before the caution can be admissible as evidence in court, anything said after the caution is almost always admissible. There are exceptions to this, but they are not relevant to you at the time of the arrest.

### When to give a caution

At the time of the arrest or, if this is not practicable as soon afterwards as reasonably practicable, for example, if the person is violent or too drunk to understand, you must:

- caution the person
- confirm they understand the caution, if you are in any doubt you must:
  - explain the caution in simple terms
  - make a note of the explanation you have given
- note any significant:
  - silences
  - statements

### The terms of the caution

You must give the caution contained in section 10.5 of [code C of the Police and Criminal Evidence Act 1984](#) (PACE):

You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.

You must make sure the individual understands the meaning of the caution. You can use your own words to explain it if necessary, as minor deviations of the caution are acceptable, provided the meaning is retained.

Simply put, the caution has three elements:

- the person does not have to say anything at all, it is entirely their choice
- a court can (but will not necessarily) draw its own conclusions if the person:

- declines to answer questions when interviewed but later comes up with answers to those same questions and they could have given them when first asked
- answers questions then later comes up with different answers to the same questions
- anything that is said may be given in evidence whether that is to the person's advantage or disadvantage

If you have communication difficulties because the person has limited understanding of English, you can contact an interpreter by phone through the Bigword interpreter system on 0800 8620624.

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## Powers of search after arrest

This page tells criminal investigators in Immigration Enforcement (IE) about when you can use your search powers following an arrest.

### Searching arrested people

[Section 32 of the Police and Criminal Evidence Act 1984](#) (PACE) gives you power to search an arrested person if you have reasonable grounds to believe they may:

- be a danger to themselves or others
- have items which might be used to assist an escape
- possess evidence relating to the offence

### Searching premises following arrest: section 32 PACE

[Section 32 of PACE](#) gives you the power to search for evidence of an indictable offence at any premises where the person was:

- when arrested
- immediately before arrest

### Searching premises following arrest: section 18 PACE

[Section 18 of PACE](#) gives you the power to search premises that are occupied or controlled by a person who is under arrest for an indictable offence (an offence which can or must be tried at a crown court). You must have reasonable grounds to suspect that you may find evidence, other than anything [subject to legal privilege](#) which relates to:

- that offence
- some other indictable offence similar to or connected with that offence

If you need the arrested person to be present whilst you search the premises you can carry out a section 18 search before you take them to the police station. You do not need to get authority from a senior person beforehand but you must:

- make a note of why it is necessary
- inform Her Majesty's inspector (HMI) as soon as practicable
- make sure it is noted on the person's custody record

For example, if the person is willing to show you where in the premises the evidence is located, and the premises are on the way to the police station.

### Items subject to legal privilege

Legal professional privilege includes all communications that relate to the provision of legal advice between a lawyer and their client or any other person representing their client.

However, if you find items that could be used by that person in furtherance of a criminal purpose they are not subject to legal privilege. For example, their solicitor has provided them with false documents to use to gain leave to enter into the UK.

For further information on your search powers, see: Arrest and searches under PACE.

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## Children and vulnerable people

This page tells criminal investigators in Immigration Enforcement (IE) about the special requirements you must use when arresting children and vulnerable people.

In England and Wales, [section 34 of the Crime and Disorder Act 1998](#) sets the age of criminal responsibility (the age below which someone is considered too young to be guilty of an offence) as 10 years old. [Section 118 of the Crime and Disorder Act 1998](#) extends this provision to Northern Ireland.

### Children

Children under the age of criminal responsibility:

- cannot be guilty of any offence
- must not be arrested for an offence

For the purposes of criminal proceedings, you must arrest a child as an adult if you have:

- a power of arrest
- reasonable grounds to suspect the child of committing an offence

### Vulnerable people

A vulnerable person could include a person who is:

- a child
- physically disabled
- mentally disabled
- blind or seriously visually impaired
- deaf
- unable to read
- unable to speak or has difficulty speaking because of a speech impediment

### Arranging for an appropriate adult

Due to the sensitivity of taking a young or vulnerable person into custody, you must inform the appropriate Her Majesty's inspector (HMI) as soon as possible. Your HMI must make sure you follow all procedures correctly, particularly regarding appropriate adults.

Under paragraphs 1.4 to 1.7, of [code C of the Police and Criminal Evidence Act 1984](#) you must arrange for an appropriate adult to accompany anyone you suspect, or are told in good faith, is:

- vulnerable
- a child

An appropriate adult for a child is a:

- parent
- guardian
- person representing a local authority or voluntary organisation if the child is in care
- social worker of a local authority

If none of the above are available a responsible adult aged 18 or over who is not a police officer or employed by the police would be appropriate.

An appropriate adult for a vulnerable person is:

- a relative
- a guardian
- someone responsible for their care or custody
- someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police

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## Using force during an arrest

This page tells criminal investigators in Immigration Enforcement (IE) about when you can use reasonable force if you are arresting someone.

Using reasonable force will either exercise a power conferred under the [Police and Criminal Evidence Act 1984](#) (PACE), or in certain other circumstances.

### Reasonable force

When using force you must consider if the circumstances make it:

- necessary
- reasonable
- proportionate:
  - to the perceived threat

Neither 'necessary' or 'reasonable' are defined, so you must use your own common sense and good judgement when you make a decision as to whether and how much force you need to use.

In particular, you must consider any other ways to exercise the power without using force, including whether they are:

- possible
- desirable
- likely to succeed

If your decision is that force is necessary, you must:

- use no more force than you need to exercise the power
- reduce or increase the use of force as soon as the need for it changes

For more information and examples on using reasonable force, see:

- Using 'reasonable force'
- [Reasonable force](#) in the CPS guide on self-defence and the prevention of crime
- Reasonable force: the law and statutory powers

### Common law

The common law permits you to use reasonable force to defend yourself, property or a person you are responsible for, for example:

- your colleagues
- arrested people
- members of the public

For more information see: [CPS guidance on self-defence](#).



### Section 3 of the Criminal Law Act 1967

Under [section 3 of the Criminal Law Act 1967](#) you can use reasonable force to:

- prevent a crime being commissioned
- result in or assist the lawful arrest of:
  - an offender
  - a suspected offender
  - a person unlawfully at large

### Section 117 of the Police and Criminal Evidence Act 1984 (PACE)

[Section 117 of PACE](#) gives designated criminal investigators in Immigration Enforcement the power to use reasonable force if they are exercising a power allowed by the PACE order 2013 (for example, a power of arrest or search). You do not need the authority of someone else other than an immigration or police officer to exercise it.

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## Recording the arrest details

This section tells criminal investigators in Immigration Enforcement (IE) about what arrest details you must record.

You must provide a full and detailed account of the circumstances of the arrest, including anything you think is relevant. Your record of arrest must include:

- all relevant times including the day, date, time and place of:
  - the arrest
  - caution
  - arrival at the police station
  - when your notes were started and completed
- if the person's state or behaviour means the reason for arrest or caution could not be given at the time:
  - a full description of their state or behaviour
  - why it was impracticable to give the information or caution, if not obvious
  - when and where it was given
  - a full description of their state or behaviour at the point it was given
- the location where your account was written and any people present
- a brief case history
- any relevant case or file references
- details of the arrested person, including:
  - name
  - address
  - date of birth
  - nationality
  - occupation
  - gender
  - physical description
- if the arrested person is not the original target of your enquiries you must still make reference to the suspect you were searching for
- your legal power to:
  - make the arrest
  - search the person
  - search the premises
- the location of the arrest and a description of the scene
- details of all who were present
- a record of what was said at the scene and who said it
- any force used to:
  - enter the premises
  - arrest
  - search the offender
- the justification for using force
- the behaviour of the arrested person at the scene
- any injuries or illness, or the fact there were no injuries following use of force
- any relevant documents:
  - found
  - seized

- how you got them
- any damage caused and steps taken to repair and secure damaged property
- how the arrested person was taken to a police station
- the police custody record number

A useful way of describing a location in your notes is by using the term 'TOM'.

'TOM' is a term for outdoors which stands for:

- the place (for example the street, road or town)
- outside
- metres and direction from the nearest junction

'TWO' is a term for indoors which stands for:

- the place (for example the number, name or street)
- what kind of premises
- owned or occupied by

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## How to record the arrest

This page tells criminal investigators in Immigration Enforcement (IE) about how to record the arrest.

You must sign every entry you make in your arrest notes. Your notebook signature must have your:

- first name and surname
- grade
- warrant number

Your notes must be completed:

- in black ball point pen
- using the 24 hour clock
- using block letters when writing:
  - names
  - days
  - dates
  - times
  - places
  - addresses
  - compass points

You must follow the 'no **elbows**' notebook rule, which means no:

- erasures
- leaves torn out
- blank spaces
- overwriting
- writing between lines
- statements written in direct speech

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## Your responsibilities to the arrested person

This page tells criminal investigators in Immigration Enforcement (IE) about your responsibilities to the arrested person until they are booked into custody.

Arresting officer's responsibilities include:

- taking the arrested person to the nearest available custody suite as soon as practicable
- a duty of care to the arrested person until they are booked into custody
- your responsibility to make sure you are sensitive of their safety and wellbeing
- informing the custody officer as soon as possible if the person suffers from an illness or injury
- clearly explaining the reasons for arrest to the custody officer so they can authorise further detention

The custody officer's responsibilities include making sure the arrested person is told their rights to:

- have someone informed of their arrest
- free and independent legal advice
- consult privately with a solicitor
- consult a copy of the [Police and Criminal Evidence Act 1984](#) (PACE) codes of practice

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## Arresting for further offences

This page tells criminal investigators in Immigration Enforcement about what you must do if you have reasonable grounds to suspect an arrested person has committed further offences.

For example, you have arrested someone for possessing a forged identity document and when you search their address for further evidence, you find blank passports and Home Office stamps. You might then have reasonable grounds to suspect the person of possessing items for use in making false identity documents.

[Section 31 of the Police and Criminal Evidence Act 1984](#) (PACE) states you must further arrest (arrest someone again) if they:

- have been arrested for an offence
- are at a police station as a result of that arrest
- are released from that arrest and are liable to arrest for some other offence

Although this requirement applies to people who are already at a police station, it is good practice to further arrest and caution the person when the evidence comes to light. This makes sure you:

- do not forget to further arrest the person
- can note any reply to the caution for that offence including any significant statement
- can use any further power of search triggered by the further arrest

If you further arrest a person, the:

- relevant time is the same as the time of the original arrest
- maximum period of detention is not affected

For more information see: [Police and Criminal Evidence Act 1984 Detention-conditions and duration](#).

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