



Home Office

The Home Office response to the Independent Chief Inspector's report:

An inspection of the use of the power to enter business premises without a search warrant

October – November 2013

The Home Office thanks the Independent Chief Inspector (ICI) for his report.

Illegal working sustains and encourages illegal immigration. It undercuts legitimate business through illegal cost-cutting activity. It is often associated with other forms of exploitative behaviour, including harmful working conditions for employees and tax evasion and non-payment of the National Minimum Wage and statutory payments to employees.

It is right that people with no right to be in the UK should not be permitted to work and we are committed to tackling the issue of illegal working.

The civil penalty system is designed to encourage employers not to employ illegal migrants, without criminalising those who make unintentional errors in operating their recruitment and employment practices. It allows us to act more swiftly and effectively in routine cases of non-compliance and act as a deterrent to illegal migration.

Through the Immigration Bill and secondary legislation we will get tougher with rogue employers who exploit illegal working – by increasing the maximum financial penalties and making it easier to enforce payment in the civil courts. We are also making it easier for legitimate businesses to verify individuals' right to work. We will introduce more robust sanctions against employers who continue to use illegal labour. We will also make it easier for legitimate businesses to fulfil their duties by making right to work checks easier to conduct by including measures in the Immigration Bill to make these changes.

With the creation of the new Immigration Enforcement Directorate in the Home Office, we have also seen an increased operational focus on action against illegal working, with the delivery of the results we expect.

Importantly our enforcement operation is working closely with other government departments to increase our 'enforcement reach' and the range of sanctions that we can bring to bear against abusive behaviour by some employers. We are also working closely with various large employment sectors and community business groups to increase their awareness of the immigration rules and increase their ability to identify fraudulent documentation.

The Home Office recognises the criticisms made in this report relating to the use of an Assistant Director (AD) letter under Section 28CA of the 1971 Immigration Act. As noted in the report, initial investigative work had commenced internally prior to notification of the inspection into the use of all powers of entry, and evidence of the self-identification and of the actions taken to resolve and mitigate the issues was provided as part of the inspection. The Home Office recognises the inconsistencies amongst Immigration, Compliance & Enforcement (ICE) teams in the use of powers to enter business premises, and an action plan to redress the inconsistencies was initiated prior to notification of the inspection.

As a result, the Home Office has already addressed most of the concerns expressed in the ICI report. But we accept that there is more to do in order to ensure that this power of entry is exercised appropriately and consistently across all ICE teams to respond to the threat of illegal working.

The Home Office response to the 4 recommendations made in the report:

1. Updates guidance setting out what it defines as “urgent” when staff are considering using this power.

1.1 Accepted and already implemented.

1.2 Revised Home Office guidance has been implemented prior to publication of the report. As noted in the report, the review of guidance was underway but not completed at the time of the on-site phase of the inspection. The revised guidance sets the requirement that an Assistant Director must record and justify the time constraints that require an AD letter to be authorised, having considered the intelligence and research available. The Assistant Director must then record why this leads them to believe that there is an immigration offender on the premises, and specify why an application for a search warrant is not appropriate.

1.3 We recognise that despite the previous guidance explicitly stating that staff should set out in their application to use the power why a search warrant has not been applied for, this was only evidenced in 3 of the 59 cases sampled as part of the inspection. As noted in the report, we have commenced work on implementing a range of measures to improve the level of management oversight and control in respect of this power. We have rolled out a new training programme to all Assistant Directors, which includes a session on the criteria for exercising the power. In addition, we have introduced upward reporting of all cases where the authority has been used, enabling us to maintain a central record and conduct verification checks.

2. Updates guidance providing greater clarity on the thresholds for using this power.

2.1 Accepted and already implemented.

2.2 Before a member of an ICE team can apply for authorisation to enter business premises under section 28CA, they must have reasonable grounds to believe that someone is on the premises who is liable to criminal arrest for offences of illegal entry (section 24), deception (section 24A) or to administrative arrest 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).

2.3 Revised Home Office guidance has brought further clarification on the terms “belief” and “suspicion”, which are to be given their ordinary meaning (as defined by the dictionary definitions). To apply a common direction that is given to criminal juries on what the term ‘suspicion’ means, there must be a reasonable possibility that a person liable to arrest is on the premises.

2.4 Belief on the other hand is more equivalent to “knowing that a person may” be on the premises in question. Belief should therefore be clear and founded on specific intelligence.

3. Improves the quality of record keeping on the National Operations Database to provide better management oversight.

3.1 Accepted and being implemented.

3.2 We recognise there is more work to do to ensure consistency amongst Immigration Officers in ICE teams, and that they complete good quality debriefs on the National Operations Database (NOD). Further instructions have been sent to Assistant Directors to ensure that their Chief Immigration Officers routinely review entries on NOD post-enforcement visits. Additionally, as part of the central oversight, mentioned above, as well as reviewing the quality of AD letters and record logs completed by authorised Assistant Directors, NOD entries will also be reviewed to improve data quality.

4. Conducts a full evaluation within six months to ensure that Section 28CA powers are being used appropriately.

4.1 Accepted and being implemented.

4.2 As noted in the report, the Home Office has commenced work on implementing a range of measures to improve the level of management oversight and control in respect of this power, which includes the introduction of upward reporting of all cases where the authority has been used. This will enable us to maintain a central record, cross reference returns from ICE Assistant Directors with performance data, conduct verification checks and provide advice and guidance to staff.

4.3 Following the reorganisation of Local Immigration Teams (LITs) into ICE Teams, a programme of engagement work took place to ensure all ICE teams embed the assurance processes into their management systems. Revisions to the operational visit observation return were introduced in November 2013. The return will allow ICE teams to state the exact power used to enter any premises, whether the chosen entry to the premises was justified, was the chosen method in line with the enforcement instructions and guidance and whether this has been recorded correctly in Personal Notebooks. A copy of the proposed operational observation visit pro-forma was provided as evidence as part of the inspection.