



# Immigration and Asylum Act 1999

## 1999 CHAPTER 33

### PART VII

#### POWER TO ARREST, SEARCH AND FINGERPRINT

##### *Power to arrest*

#### **128 Arrest without warrant.**

In the 1971 Act, after section 28, insert—

##### **“28A Arrest without warrant.**

- (1) A constable or immigration officer may arrest without warrant a person—
  - (a) who has committed or attempted to commit an offence under section 24 or 24A; or
  - (b) whom he has reasonable grounds for suspecting has committed or attempted to commit such an offence.
- (2) But subsection (1) does not apply in relation to an offence under section 24(1)(d).
- (3) An immigration officer may arrest without warrant a person—
  - (a) who has committed an offence under section 25(1); or
  - (b) whom he has reasonable grounds for suspecting has committed that offence.
- (4) An immigration officer may arrest without warrant a person—
  - (a) who has committed or attempted to commit an offence under section 25(2); or
  - (b) whom he has reasonable grounds for suspecting has committed or attempted to commit that offence.

*Status: Point in time view as at 14/12/2001.*

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- (5) An immigration officer may arrest without warrant a person (“the suspect”) who, or whom he has reasonable grounds for suspecting—
  - (a) has committed or attempted to commit an offence under section 26(1)(g); or
  - (b) is committing or attempting to commit that offence.
- (6) The power conferred by subsection (5) is exercisable only if either the first or the second condition is satisfied.
- (7) The first condition is that it appears to the officer that service of a summons (or, in Scotland, a copy complaint) is impracticable or inappropriate because—
  - (a) he does not know, and cannot readily discover, the suspect’s name;
  - (b) he has reasonable grounds for doubting whether a name given by the suspect as his name is his real name;
  - (c) the suspect has failed to give him a satisfactory address for service; or
  - (d) he has reasonable grounds for doubting whether an address given by the suspect is a satisfactory address for service.
- (8) The second condition is that the officer has reasonable grounds for believing that arrest is necessary to prevent the suspect—
  - (a) causing physical injury to himself or another person;
  - (b) suffering physical injury; or
  - (c) causing loss of or damage to property.
- (9) For the purposes of subsection (7), an address is a satisfactory address for service if it appears to the officer—
  - (a) that the suspect will be at that address for a sufficiently long period for it to be possible to serve him with a summons (or copy complaint); or
  - (b) that some other person specified by the suspect will accept service of a summons (or copy complaint) for the suspect at that address.
- (10) In relation to the exercise of the powers conferred by subsections (3)(b), (4)(b) and (5), it is immaterial that no offence has been committed.
- (11) In Scotland the powers conferred by subsections (3), (4) and (5) may also be exercised by a constable.”

*Power to search and arrest*

**129 Search and arrest by warrant.**

In the 1971 Act, after section 28A, insert—

**“28B Search and arrest by warrant.**

- (1) Subsection (2) applies if a justice of the peace is, by written information on oath, satisfied that there are reasonable grounds for suspecting that a person (“the suspect”) who is liable to be arrested for a relevant offence is to be found on any premises.

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- (2) The justice may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting the suspect.
- (3) Subsection (4) applies if in Scotland the sheriff or a justice of the peace is by evidence on oath satisfied as mentioned in subsection (1).
- (4) The sheriff or justice may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting the suspect.
- (5) “Relevant offence” means an offence under section 24(1)(a), (b), (c), (d), (e) or (f), section 24A or section 25(2).”

### 130 Search and arrest without warrant.

In the 1971 Act, after section 28B, insert—

#### “28C Search and arrest without warrant.

- (1) An immigration officer may enter and search any premises for the purpose of arresting a person for an offence under section 25(1).
- (2) The power may be exercised—
  - (a) only to the extent that it is reasonably required for that purpose; and
  - (b) only if the officer has reasonable grounds for believing that the person whom he is seeking is on the premises.
- (3) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—
  - (a) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any such other dwelling; and
  - (b) any such dwelling in which the officer has reasonable grounds for believing that the person whom he is seeking may be.
- (4) The power may be exercised only if the officer produces identification showing that he is an immigration officer (whether or not he is asked to do so).”

#### *Power to enter and search premises*

### 131 Entry and search of premises.

In the 1971 Act, after section 28C, insert—

#### “28D Entry and search of premises.

- (1) If, on an application made by an immigration officer, a justice of the peace is satisfied that there are reasonable grounds for believing that—
  - (a) a relevant offence has been committed,

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- (b) there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
  - (c) the material is likely to be relevant evidence,
  - (d) the material does not consist of or include items subject to legal privilege, excluded material or special procedure material, and
  - (e) any of the conditions specified in subsection (2) applies,
- he may issue a warrant authorising an immigration officer to enter and search the premises.
- (2) The conditions are that—
- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) 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 evidence;
  - (c) entry to the premises will not be granted unless a warrant is produced;
  - (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry to them.
- (3) An immigration officer may seize and retain anything for which a search has been authorised under subsection (1).
- (4) “Relevant offence” means an offence under section 24(1)(a), (b), (c), (d), (e) or (f), section 24A or section 25.
- (5) In relation to England and Wales, expressions which are given a meaning by the <sup>M1</sup>Police and Criminal Evidence Act 1984 have the same meaning when used in this section.
- (6) In relation to Northern Ireland, expressions which are given a meaning by the <sup>M2</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 have the same meaning when used in this section.
- (7) In the application of subsection (1) to Scotland—
- (a) read the reference to a justice of the peace as a reference to the sheriff or a justice of the peace; and
  - (b) in paragraph (d), omit the reference to excluded material and special procedure material.”

**Marginal Citations**

**M1** 1984 c. 60.

**M2** S.I. 1989/1341 (N.I. 12).

**132 Entry and search of premises following arrest.**

- (1) In the 1971 Act, after section 28D, insert—

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### **“28E Entry and search of premises following arrest.**

- (1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.
  - (2) An immigration officer may enter and search any premises—
    - (a) in which the person was when arrested, or
    - (b) in which he was immediately before he was arrested,for evidence relating to the offence for which the arrest was made (“relevant evidence”).
  - (3) The power may be exercised—
    - (a) only if the officer has reasonable grounds for believing that there is relevant evidence on the premises; and
    - (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence.
  - (4) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—
    - (a) any dwelling in which the arrest took place or in which the arrested person was immediately before his arrest; and
    - (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.
  - (5) An officer searching premises under subsection (2) may seize and retain anything he finds which he has reasonable grounds for believing is relevant evidence.
  - (6) Subsection (5) does not apply to items which the officer has reasonable grounds for believing are items subject to legal privilege.”
- (2) In the 1971 Act, in Schedule 2 after paragraph 25, insert—

### **Entry and search of premises**

- “25A (1) This paragraph applies if—
- (a) a person is arrested under this Schedule; or
  - (b) a person who was arrested by a constable (other than under this Schedule) is detained by an immigration officer under this Schedule.
- (2) An immigration officer may enter and search any premises—
- (a) occupied or controlled by the arrested person, or
  - (b) in which that person was when he was arrested, or immediately before he was arrested,
- for relevant documents.
- (3) The power may be exercised—
- (a) only if the officer has reasonable grounds for believing that there are relevant documents on the premises;

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- (b) only to the extent that it is reasonably required for the purpose of discovering relevant documents; and
  - (c) subject to sub-paragraph (4), only if a senior officer has authorised its exercise in writing.
- (4) An immigration officer may conduct a search under sub-paragraph (2)—
- (a) before taking the arrested person to a place where he is to be detained; and
  - (b) without obtaining an authorisation under sub-paragraph (3)(c), if the presence of that person at a place other than one where he is to be detained is necessary to make an effective search for any relevant documents.
- (5) An officer who has conducted a search under sub-paragraph (4) must inform a senior officer as soon as is practicable.
- (6) The officer authorising a search, or who is informed of one under sub-paragraph (5), must make a record in writing of—
- (a) the grounds for the search; and
  - (b) the nature of the documents that were sought.
- (7) An officer searching premises under sub-paragraph (2)—
- (a) may seize and retain any documents he finds which he has reasonable grounds for believing are relevant documents; but
  - (b) may not retain any such document for longer than is necessary in view of the purpose for which the person was arrested.
- (8) But sub-paragraph (7)(a) does not apply to documents which the officer has reasonable grounds for believing are items subject to legal privilege.
- (9) “Relevant documents” means any documents which might—
- (a) establish the arrested person’s identity, nationality or citizenship; or
  - (b) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.
- (10) “Senior officer” means an immigration officer not below the rank of chief immigration officer.”

**133 Entry and search of premises following arrest under section 25(1) of the 1971 Act.**

In the 1971 Act, after section 28E, insert—

**“28F Entry and search of premises following arrest under section 25(1).**

- (1) An immigration officer may enter and search any premises occupied or controlled by a person arrested for an offence under section 25(1).
- (2) The power may be exercised—
  - (a) only if the officer has reasonable grounds for suspecting that there is relevant evidence on the premises;

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- (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence; and
  - (c) subject to subsection (3), only if a senior officer has authorised it in writing.
- (3) The power may be exercised—
- (a) before taking the arrested person to a place where he is to be detained; and
  - (b) without obtaining an authorisation under subsection (2)(c),
- if the presence of that person at a place other than one where he is to be detained is necessary for the effective investigation of the offence.
- (4) An officer who has relied on subsection (3) must inform a senior officer as soon as is practicable.
- (5) The officer authorising a search, or who is informed of one under subsection (4), must make a record in writing of—
- (a) the grounds for the search; and
  - (b) the nature of the evidence that was sought.
- (6) An officer searching premises under this section may seize and retain anything he finds which he has reasonable grounds for suspecting is relevant evidence.
- (7) “Relevant evidence” means evidence, other than items subject to legal privilege, that relates to the offence in question.
- (8) “Senior officer” means an immigration officer not below the rank of chief immigration officer.”

#### *Power to search persons*

### **134 Searching arrested persons.**

- (1) In the 1971 Act, after section 28F, insert—

#### **“28G Searching arrested persons.**

- (1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.
- (2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (3) The officer may search the arrested person for—
  - (a) anything which he might use to assist his escape from lawful custody; or
  - (b) anything which might be evidence relating to the offence for which he has been arrested.
- (4) The power conferred by subsection (3) may be exercised—

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- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that subsection; and
  - (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.
- (5) A power conferred by this section to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.
- (6) An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to cause physical injury to himself or to another person.
- (7) An officer searching a person under subsection (3) may seize and retain anything he finds, if he has reasonable grounds for believing—
- (a) that that person might use it to assist his escape from lawful custody; or
  - (b) that it is evidence which relates to the offence in question.
- (8) Subsection (7)(b) does not apply to an item subject to legal privilege.”
- (2) In the 1971 Act, in Schedule 2 after paragraph 25A, insert—

**Searching persons arrested by immigration officers**

- “25B (1) This paragraph applies if a person is arrested under this Schedule.
- (2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (3) The officer may search the arrested person for—
- (a) anything which he might use to assist his escape from lawful custody; or
  - (b) any document which might—
    - (i) establish his identity, nationality or citizenship; or
    - (ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.
- (4) The power conferred by sub-paragraph (3) may be exercised—
- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that sub-paragraph; and
  - (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.
- (5) A power conferred by this paragraph to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.



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- (6) An officer searching a person under sub-paragraph (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.
- (7) An officer searching a person under sub-paragraph (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.
- (8) An officer searching a person under sub-paragraph (3)(b) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that sub-paragraph.
- (9) Nothing seized under sub-paragraph (6) or (7) may be retained when the person from whom it was seized—
  - (a) is no longer in custody, or
  - (b) is in the custody of a court but has been released on bail.”

### **135 Searching persons in police custody.**

- (1) In the 1971 Act, after section 28G, insert—

#### **“28H Searching persons in police custody.**

- (1) This section applies if a person—
  - (a) has been arrested for an offence under this Part; and
  - (b) is in custody at a police station or in police detention at a place other than a police station.
- (2) An immigration officer may, at any time, search the arrested person in order to see whether he has with him anything—
  - (a) which he might use to—
    - (i) cause physical injury to himself or others;
    - (ii) damage property;
    - (iii) interfere with evidence; or
    - (iv) assist his escape; or
  - (b) which the officer has reasonable grounds for believing is evidence relating to the offence in question.
- (3) The power may be exercised only to the extent that the custody officer concerned considers it to be necessary for the purpose of discovering anything of a kind mentioned in subsection (2).
- (4) An officer searching a person under this section may seize anything he finds, if he has reasonable grounds for believing that—
  - (a) that person might use it for one or more of the purposes mentioned in subsection (2)(a); or
  - (b) it is evidence relating to the offence in question.
- (5) Anything seized under subsection (4)(a) may be retained by the police.

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- (6) Anything seized under subsection (4)(b) may be retained by an immigration officer.
- (7) The person from whom something is seized must be told the reason for the seizure unless he is—
  - (a) violent or appears likely to become violent; or
  - (b) incapable of understanding what is said to him.
- (8) An intimate search may not be conducted under this section.
- (9) The person carrying out a search under this section must be of the same sex as the person searched.
- (10) “Custody officer”—
  - (a) in relation to England and Wales, has the same meaning as in the <sup>M3</sup>Police and Criminal Evidence Act 1984;
  - (b) in relation to Scotland, means the officer in charge of a police station; and
  - (c) in relation to Northern Ireland, has the same meaning as in the <sup>M4</sup>Police and Criminal Evidence (Northern Ireland) Order 1989.
- (11) “Intimate search”—
  - (a) in relation to England and Wales, has the meaning given by section 65 of the Act of 1984;
  - (b) in relation to Scotland, means a search which consists of the physical examination of a person’s body orifices other than the mouth; and
  - (c) in relation to Northern Ireland, has the same meaning as in the 1989 Order.
- (12) “Police detention”—
  - (a) in relation to England and Wales, has the meaning given by section 118(2) of the 1984 Act; and
  - (b) in relation to Northern Ireland, has the meaning given by Article 2 of the 1989 Order.
- (13) In relation to Scotland, a person is in police detention if—
  - (a) he has been taken to a police station after being arrested for an offence; or
  - (b) he is arrested at a police station after attending voluntarily at the station, accompanying a constable to it or being detained under section 14 of the <sup>M5</sup>Criminal Procedure (Scotland) Act 1995, and is detained there or is detained elsewhere in the charge of a constable, but is not in police detention if he is in court after being charged.”
- (2) In the 1971 Act, in Schedule 2 after paragraph 25B, insert—

### **Searching persons in police custody**

- “25C (1) This paragraph applies if a person—
- (a) has been arrested under this Schedule; and
  - (b) is in custody at a police station.

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- (2) An immigration officer may, at any time, search the arrested person in order to ascertain whether he has with him—
  - (a) anything which he might use to—
    - (i) cause physical injury to himself or others;
    - (ii) damage property;
    - (iii) interfere with evidence; or
    - (iv) assist his escape; or
  - (b) any document which might—
    - (i) establish his identity, nationality or citizenship; or
    - (ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.
- (3) The power may be exercised only to the extent that the officer considers it to be necessary for the purpose of discovering anything of a kind mentioned in sub-paragraph (2).
- (4) An officer searching a person under this paragraph may seize and retain anything he finds, if he has reasonable grounds for believing that—
  - (a) that person might use it for one or more of the purposes mentioned in sub-paragraph (2)(a); or
  - (b) it might be a document falling within sub-paragraph (2)(b).
- (5) But the officer may not retain anything seized under sub-paragraph (2)
  - (a)—
    - (a) for longer than is necessary in view of the purpose for which the search was carried out; or
    - (b) when the person from whom it was seized is no longer in custody or is in the custody of a court but has been released on bail.
- (6) The person from whom something is seized must be told the reason for the seizure unless he is—
  - (a) violent or appears likely to become violent; or
  - (b) incapable of understanding what is said to him.
- (7) An intimate search may not be conducted under this paragraph.
- (8) The person carrying out a search under this paragraph must be of the same sex as the person searched.
- (9) “Intimate search” has the same meaning as in section 28H(11).”

#### Marginal Citations

**M3** 1984 c. 60.

**M4** S.I. 1989/1341 (N.I. 12).

**M5** 1995 c. 43.

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*Seized material: access and copying*

**136 Access and copying.**

(1) In the 1971 Act, after section 28H, insert—

**“28I Seized material: access and copying.**

- (1) If a person showing himself—
  - (a) to be the occupier of the premises on which seized material was seized, or
  - (b) to have had custody or control of the material immediately before it was seized,
 asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.
- (2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for him to have access to the material under the supervision—
  - (a) in the case of seized material within subsection (8)(a), of an immigration officer;
  - (b) in the case of seized material within subsection (8)(b), of a constable.
- (3) An immigration officer may photograph or copy, or have photographed or copied, seized material.
- (4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
  - (a) that person to have access to the material for the purpose of photographing or copying it under the supervision—
    - (i) in the case of seized material within subsection (8)(a), of an immigration officer;
    - (ii) in the case of seized material within subsection (8)(b), of a constable; or
  - (b) the material to be photographed or copied.
- (5) A photograph or copy made under subsection (4)(b) must be supplied within a reasonable time.
- (6) There is no duty under this section to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
  - (a) the exercise of any functions in connection with which the material was seized; or
  - (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.
- (7) “Relevant person” means—
  - (a) a person who had custody or control of seized material immediately before it was seized, or
  - (b) someone acting on behalf of such a person.

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- (8) “Seized material” means anything—
- (a) seized and retained by an immigration officer, or
  - (b) seized by an immigration officer and retained by the police, under this Part.”

- (2) In the 1971 Act, in Schedule 2 after paragraph 25C, insert—

### **Access and copying**

- “25D (1) If a person showing himself—
- (a) to be the occupier of the premises on which seized material was seized, or
  - (b) to have had custody or control of the material immediately before it was seized,
- asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.
- (2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for that person to have access to the material under the supervision of an immigration officer.
- (3) An immigration officer may photograph or copy, or have photographed or copied, seized material.
- (4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
- (a) that person to have access to the material under the supervision of an immigration officer for the purpose of photographing or copying it; or
  - (b) the material to be photographed or copied.
- (5) A photograph or copy made under sub-paragraph (4)(b) must be supplied within a reasonable time.
- (6) There is no duty under this paragraph to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
- (a) the exercise of any functions in connection with which the material was seized; or
  - (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.
- (7) “Relevant person” means—
- (a) a person who had custody or control of seized material immediately before it was seized, or
  - (b) someone acting on behalf of such a person.
- (8) “Seized material” means anything which has been seized and retained under this Schedule.”

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### *Search warrants*

#### **137 Search warrants: safeguards.**

In the 1971 Act, after section 28I, insert—

##### **“28J Search warrants: safeguards.**

- (1) The entry or search of premises under a warrant is unlawful unless it complies with this section and section 28K.
- (2) If an immigration officer applies for a warrant, he must—
  - (a) state the ground on which he makes the application and the provision of this Act under which the warrant would be issued;
  - (b) specify the premises which it is desired to enter and search; and
  - (c) identify, so far as is practicable, the persons or articles to be sought.
- (3) In Northern Ireland, an application for a warrant is to be supported by a complaint in writing and substantiated on oath.
- (4) Otherwise, an application for a warrant is to be made ex parte and supported by an information in writing or, in Scotland, evidence on oath.
- (5) The officer must answer on oath any question that the justice of the peace or sheriff hearing the application asks him.
- (6) A warrant shall authorise an entry on one occasion only.
- (7) A warrant must specify—
  - (a) the name of the person applying for it;
  - (b) the date on which it is issued;
  - (c) the premises to be searched; and
  - (d) the provision of this Act under which it is issued.
- (8) A warrant must identify, so far as is practicable, the persons or articles to be sought.
- (9) Two copies of a warrant must be made.
- (10) The copies must be clearly certified as copies.
- (11) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2.”

#### **138 Execution of warrants.**

In the 1971 Act, after section 28J, insert—

##### **“28K Execution of warrants.**

- (1) A warrant may be executed by any immigration officer.
- (2) A warrant may authorise persons to accompany the officer executing it.
- (3) Entry and search under a warrant must be—

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- (a) within one month from the date of its issue; and
  - (b) at a reasonable hour, unless it appears to the officer executing it that the purpose of a search might be frustrated.
- (4) If the occupier of premises which are to be entered and searched is present at the time when an immigration officer seeks to execute a warrant, the officer must—
- (a) identify himself to the occupier and produce identification showing that he is an immigration officer;
  - (b) show the occupier the warrant; and
  - (c) supply him with a copy of it.
- (5) If—
- (a) the occupier is not present, but
  - (b) some other person who appears to the officer to be in charge of the premises is present,
- subsection (4) has effect as if each reference to the occupier were a reference to that other person.
- (6) If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.
- (7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.
- (8) An officer executing a warrant must make an endorsement on it stating—
- (a) whether the persons or articles sought were found; and
  - (b) whether any articles, other than articles which were sought, were seized.
- (9) A warrant which has been executed, or has not been executed within the time authorised for its execution, must be returned—
- (a) if issued by a justice of the peace in England and Wales, to the justices' chief executive appointed by the magistrates' court committee whose area includes the petty sessions area for which the justice acts;
  - (b) if issued by a justice of the peace in Northern Ireland, to the clerk of petty sessions for the petty sessions district in which the premises are situated;
  - (c) if issued by a justice of the peace in Scotland, to the clerk of the district court for the commission area for which the justice of the peace was appointed;
  - (d) if issued by the sheriff, to the sheriff clerk.
- (10) A warrant returned under subsection (9)(a) must be retained for 12 months by the justices' chief executive.
- (11) A warrant issued under subsection (9)(b) or (c) must be retained for 12 months by the clerk.
- (12) A warrant returned under subsection (9)(d) must be retained for 12 months by the sheriff clerk.
- (13) If during that 12 month period the occupier of the premises to which it relates asks to inspect it, he must be allowed to do so.

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(14) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2.”

### 139 Interpretation.

(1) In the 1971 Act, after section 28K, insert—

#### “28L Interpretation of Part III.

In this Part, “premises” and “items subject to legal privilege” have the same meaning—

- (a) in relation to England and Wales, as in the <sup>M6</sup>Police and Criminal Evidence Act 1984;
- (b) in relation to Northern Ireland, as in the <sup>M7</sup>Police and Criminal Evidence (Northern Ireland) Order 1989; and
- (c) in relation to Scotland, as in section 33 of the <sup>M8</sup>Criminal Law (Consolidation) (Scotland) Act 1995.”

(2) In the 1971 Act, in Schedule 2, after paragraph 25D insert—

“25E Section 28L applies for the purposes of this Schedule as it applies for the purposes of Part III.”

#### Marginal Citations

- M6** 1984 c. 60.  
**M7** S.I. 1989/1341 (N.I. 12).  
**M8** 1995 c. 39.

### *Detention*

### 140 Detention of persons liable to examination or removal.

(1) In paragraph 16 of Schedule 2 to the 1971 Act, for sub-paragraph (2) substitute—

“(2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 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.”

(2) In paragraph 17(2) of that Schedule (power to grant constable a warrant to search and arrest), for the words from “authorising any constable” to “if need be” substitute “authorising any immigration officer or constable to enter, if need be”.



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## *Fingerprinting*

### **141 Fingerprinting.**

- (1) Fingerprints may be taken by an authorised person from a person to whom this section applies.
- (2) Fingerprints may be taken under this section only during the relevant period.
- (3) Fingerprints may not be taken under this section from a person under the age of sixteen (“the child”) except in the presence of a person of full age who is—
  - (a) the child’s parent or guardian; or
  - (b) a person who for the time being takes responsibility for the child.
- (4) The person mentioned in subsection (3)(b) may not be—
  - (a) an officer of the Secretary of State who is not an authorised person;
  - (b) an authorised person.
- (5) “Authorised person” means—
  - (a) a constable;
  - (b) an immigration officer;
  - (c) a prison officer;
  - (d) an officer of the Secretary of State authorised for the purpose; or
  - (e) a person who is employed by a contractor in connection with the discharge of the contractor’s duties under a detention centre contract.
- (6) In subsection (5)(e) “contractor” and “detention centre contract” have the same meaning as in Part VIII.
- (7) This section applies to—
  - (a) any person (“A”) who, on being required to do so by an immigration officer on his arrival in the United Kingdom, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship;
  - (b) any person (“B”) who has been refused leave to enter the United Kingdom but has been temporarily admitted under paragraph 21 of Schedule 2 to the 1971 Act if an immigration officer reasonably suspects that B might break any condition imposed on him relating to residence or as to reporting to the police or an immigration officer;
  - (c) any person (“C”) in respect of whom—
    - (i) an immigration officer has given directions under paragraph 9(1) of Schedule 2 to the 1971 Act or under section 10;
    - (ii) the Secretary of State has given directions under paragraph 10(1) of Schedule 2 to the 1971 Act (but only in a case where it appears to the Secretary of State that the person is a person in respect of whom directions under paragraph 9 of that Schedule might be given); or
    - (iii) the Secretary of State has given directions under paragraph 1(1) of Schedule 3 to that Act;
  - (d) any person (“D”) who has been arrested under paragraph 17 of Schedule 2 to the 1971 Act;
  - (e) any person (“E”) who has made a claim for asylum;
  - (f) any person (“F”) who is a dependant of any of those persons.

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- (8) “The relevant period” begins—
- (a) for A, on his failure to produce the passport or other document;
  - (b) for B, on the decision to admit him temporarily;
  - (c) for C, on the direction being given;
  - (d) for D, on his arrest;
  - (e) for E, on the making of his claim for asylum; and
  - (f) for F, at the same time as for the person whose dependant he is.
- (9) “The relevant period” ends on the earliest of the following—
- (a) the grant of leave to enter or remain in the United Kingdom;
  - (b) for A, B, C or D, his removal or deportation from the United Kingdom;
  - (c) for C, if a deportation order has been made against him, its revocation or otherwise ceasing to have effect;
  - (d) for D, his release if he is no longer liable to be detained under paragraph 16 of Schedule 2 to the 1971 Act;
  - (e) for E, the final determination or abandonment of his claim for asylum; and
  - (f) for F, at the same time as for the person whose dependant he is.
- (10) No fingerprints may be taken from A if the immigration officer considers that A has a reasonable excuse for the failure concerned.
- (11) No fingerprints may be taken from B unless the decision to take them has been confirmed by a chief immigration officer.
- (12) An authorised person may not take fingerprints from a person under the age of sixteen unless his decision to take them has been confirmed—
- (a) if he is a constable, by a person designated for the purpose by the chief constable of his police force;
  - (b) if he is a person mentioned in subsection (5)(b) or (e), by a chief immigration officer;
  - (c) if he is a prison officer, by a person designated for the purpose by the governor of the prison;
  - (d) if he is an officer of the Secretary of State, by a person designated for the purpose by the Secretary of State.
- (13) Neither subsection (3) nor subsection (12) prevents an authorised person from taking fingerprints if he reasonably believes that the person from whom they are to be taken is aged sixteen or over.
- (14) For the purposes of subsection (7)(f), a person is a dependant of another person if—
- (a) he is that person’s spouse or child under the age of eighteen; and
  - (b) he does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom.
- (15) “Claim for asylum” has the same meaning as in Part VI.

## **142 Attendance for fingerprinting.**

- (1) The Secretary of State may, by notice in writing, require a person to whom section 141 applies to attend at a specified place for fingerprinting.
- (2) The notice—

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- (a) must give the person concerned a period of at least seven days within which to attend, beginning not earlier than seven days after the date of the notice; and
  - (b) may require him to attend at a specified time of day or during specified hours.
- (3) A constable or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under this section (unless the requirement has ceased to have effect).
- (4) Before a person arrested under subsection (3) is released—
- (a) he may be removed to a place where his fingerprints may conveniently be taken; and
  - (b) his fingerprints may be taken (whether or not he is so removed).
- (5) A requirement imposed under subsection (1) ceases to have effect at the end of the relevant period (as defined by section 141).

**143 Destruction of fingerprints.**

- (1) If they have not already been destroyed, fingerprints must be destroyed before the end of the specified period beginning with the day on which they were taken.
- (2) If a person from whom fingerprints were taken proves that he is—
- (a) a British citizen, or
  - (b) a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the 1971 Act,
- the fingerprints must be destroyed as soon as reasonably practicable.
- <sup>F1</sup>(3) .....
- <sup>F1</sup>(4) .....
- <sup>F1</sup>(5) .....
- <sup>F1</sup>(6) .....
- <sup>F1</sup>(7) .....
- <sup>F1</sup>(8) .....
- (9) Fingerprints taken from F [<sup>F2</sup>(within the meaning of section 141(7))] must be destroyed when fingerprints taken from the person whose dependant he is have to be destroyed.
- (10) The obligation to destroy fingerprints under this section applies also to copies of fingerprints.
- (11) The Secretary of State must take all reasonably practicable steps to secure—
- (a) that data which are held in electronic form and which relate to fingerprints which have to be destroyed as a result of this section are destroyed or erased; or
  - (b) that access to such data is blocked.
- (12) The person to whom the data relate is entitled, on request, to a certificate issued by the Secretary of State to the effect that he has taken the steps required by subsection (11).
- (13) A certificate under subsection (12) must be issued within three months of the date of the request for it.

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<sup>F3</sup>(14) .....

(15) “Specified period” means—

- (a) such period as the Secretary of State may specify by order;
- (b) if no period is so specified, ten years.

#### Textual Amendments

- F1** S. 143(3)-(8) repealed (14.12.2001) by 2001 c. 24, ss. 36(1)(a)(2), 125, **Sch. 8 Pt. 3**
- F2** Words in S. 143(9) inserted (14.12.2001) by 2001 c. 24, s. **36(1)(b)(2)**, 127(2)
- F3** S. 143(14) repealed (14.12.2001) by 2001 c. 24, ss. 36(1)(c)(2), 127(2), **Sch. 8 Pt. 3**

#### 144 Other methods of collecting data about physical characteristics.

The Secretary of State may make regulations containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting data about external physical characteristics as may be prescribed.

#### *Codes of practice*

#### 145 Codes of practice.

- (1) An immigration officer exercising any specified power to—
  - (a) arrest, question, search or take fingerprints from a person,
  - (b) enter and search premises, or
  - (c) seize property found on persons or premises,
 must have regard to such provisions of a code as may be specified.
- (2) Subsection (1) also applies to an authorised person exercising the power to take fingerprints conferred by section 141.
- (3) Any specified provision of a code may have effect for the purposes of this section subject to such modifications as may be specified.
- (4) “Specified” means specified in a direction given by the Secretary of State.
- (5) “Authorised person” has the same meaning as in section 141.
- (6) “Code” means—
  - (a) in relation to England and Wales, any code of practice for the time being in force under the <sup>M9</sup>Police and Criminal Evidence Act 1984;
  - (b) in relation to Northern Ireland, any code of practice for the time being in force under the <sup>M10</sup>Police and Criminal Evidence (Northern Ireland) Order 1989.
- (7) This section does not apply to any person exercising powers in Scotland.

#### Marginal Citations

- M9** 1984 c. 60.
- M10** S.I. 1989/1341 (N.I. 12).

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### *Use of force*

#### **146 Use of force.**

- (1) An immigration officer exercising any power conferred on him by the 1971 Act or this Act may, if necessary, use reasonable force.
- (2) Any person exercising a power conferred by section 141 or 142 or regulations under section 144 may, if necessary, use reasonable force.

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#### **Commencement Information**

**II** S. 146 partly in force; s. 146(1) in force at Royal Assent, see s. 170(3)(o)

**Status:**

Point in time view as at 14/12/2001.

**Changes to legislation:**

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