



# Immigration Act 1971

## 1971 CHAPTER 77

### PART III

#### CRIMINAL PROCEEDINGS

#### <sup>F1</sup>**[28FA Search for personnel records: warrant unnecessary**

- (1) This section applies where—
  - (a) a person has been arrested for an offence under section 24(1) [<sup>F2</sup>, 24A(1) or 24B(1)] ,
  - (b) a person has been arrested under paragraph 17 of Schedule 2,
  - (c) a constable or immigration officer reasonably believes that a person is liable to arrest for an offence under section 24(1) or 24A(1), or
  - (d) a constable or immigration officer reasonably believes that a person is liable to arrest under paragraph 17 of Schedule 2.
- (2) A constable or immigration officer may search business premises where the arrest was made or where the person liable to arrest is if the constable or immigration officer reasonably believes—
  - (a) that a person has committed an immigration employment offence in relation to the person arrested or liable to arrest, and
  - (b) that employee records, other than items subject to legal privilege, will be found on the premises and will be of substantial value (whether on their own or together with other material) in the investigation of the immigration employment offence.
- (3) A constable or officer searching premises under subsection (2) may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of—
  - (a) an immigration employment offence, or
  - (b) an offence under section 105 or 106 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud).

*Status: Point in time view as at 12/07/2016. This version of this provision has been superseded.*

*Changes to legislation: Immigration Act 1971, Section 28FA is up to date with all changes known to be in force on or before 25 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The power under subsection (2) may be exercised only—
- (a) to the extent that it is reasonably required for the purpose of discovering employee records other than items subject to legal privilege,
  - (b) if the constable or immigration officer produces identification showing his status, and
  - (c) if the constable or immigration officer reasonably believes that at least one of the conditions in subsection (5) applies.
- (5) Those conditions are—
- (a) that it is not practicable to communicate with a person entitled to grant access to the records,
  - (b) that permission to search has been refused,
  - (c) that permission to search would be refused if requested, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced if it is not carried out in reliance on subsection (2).
- (6) Subsection (4)(b) applies—
- (a) whether or not a constable or immigration officer is asked to produce identification, but
  - (b) only where premises are occupied.
- (7) In this section “immigration employment offence” means [<sup>F3</sup>an offence under section 21 of the Immigration, Asylum and Nationality Act 2006](employment).]

#### Textual Amendments

- F1** S. 28FA inserted (8.1.2003) by [2002 c. 41, s. 154](#) (with s. 159); S.I. 2002/2811, art. 2, [Sch.](#)
- F2** Words in s. 28FA(1)(a) substituted (12.7.2016) by [Immigration Act 2016 \(c. 19\), ss. 34\(8\)](#), 94(1); S.I. 2016/603, [reg. 3\(e\)](#) (with transitional provision in S.I. 2016/712, art. 2)
- F3** Words in s. 28FA(7) substituted (29.2.2008) by [UK Borders Act 2007 \(c. 30\), ss. 28, 59](#); S.I. 2008/309, [art. 2](#) (subject to [art. 5](#))

#### Modifications etc. (not altering text)

- C1** Ss. 24-29 amendment to earlier affecting S.I. 1993/1797, Sch. 1 Pt. 1 (17.10.2012 coming into force in accordance with art. 1) by [The Immigration and Asylum \(Jersey\) Order 2012 \(S.I. 2012/2593\)](#), arts. 1, 2(2)
- C2** S. 28FA modified (1.7.2013) by [The Accession of Croatia \(Immigration and Worker Authorisation\) Regulations 2013 \(S.I. 2013/1460\)](#), regs. 1(1), [18\(c\)](#) (with [reg. 11\(8\)](#))
- C3** Ss. 28A, 28CA, 28FA modified (1.1.2007) by [The Accession \(Immigration and Worker Authorisation\) Regulations 2006 \(S.I. 2006/3317\)](#), [reg. 15\(c\)](#)

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