



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 7

#### OFFENCES

##### *Procedure*

#### 152 Arrest by immigration officer

The following shall be inserted after section 28A of the Immigration Act 1971 (c. 77) (arrest without warrant)—

##### **“28AA Arrest with warrant**

- (1) This section applies if on an application by an immigration officer a justice of the peace is satisfied that there are reasonable grounds for suspecting that a person has committed an offence under—
  - (a) section 24(1)(d), or
  - (b) section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment: offence).
- (2) The justice of the peace may grant a warrant authorising any immigration officer to arrest the person.
- (3) In the application of this section to Scotland a reference to a justice of the peace shall be treated as a reference to the sheriff or a justice of the peace.”

#### 153 Power of entry

- (1) The following shall be inserted after section 28C of the Immigration Act 1971 (search and arrest without warrant)—

**“28CA Business premises: entry to arrest**

- (1) A constable or immigration officer may enter and search any business premises for the purpose of arresting a person—
    - (a) for an offence under section 24,
    - (b) for an offence under section 24A, or
    - (c) under paragraph 17 of Schedule 2.
  - (2) The power under subsection (1) may be exercised only—
    - (a) to the extent that it is reasonably required for a purpose specified in subsection (1),
    - (b) if the constable or immigration officer has reasonable grounds for believing that the person whom he is seeking is on the premises,
    - (c) with the authority of the Secretary of State (in the case of an immigration officer) or a Chief Superintendent (in the case of a constable), and
    - (d) if the constable or immigration officer produces identification showing his status.
  - (3) Authority for the purposes of subsection (2)(c)—
    - (a) may be given on behalf of the Secretary of State only by a civil servant of the rank of at least Assistant Director, and
    - (b) shall expire at the end of the period of seven days beginning with the day on which it is given.
  - (4) Subsection (2)(d) applies—
    - (a) whether or not a constable or immigration officer is asked to produce identification, but
    - (b) only where premises are occupied.
  - (5) Subsection (6) applies where a constable or immigration officer—
    - (a) enters premises in reliance on this section, and
    - (b) detains a person on the premises.
  - (6) A detainee custody officer may enter the premises for the purpose of carrying out a search.
  - (7) In subsection (6)—
 

“detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and

“search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).”
- (2) The following shall be substituted for section 146(2) of the Immigration and Asylum Act 1999 (use of force)—
- “(2) A person exercising a power under any of the following may if necessary use reasonable force—
    - (a) section 28CA, 28FA or 28FB of the 1971 Act (business premises: entry to arrest or search),

- (b) section 141 or 142 of this Act, and
- (c) regulations under section 144 of this Act.”

## 154 Power to search for evidence

The following shall be inserted after section 28F of the Immigration Act 1971 (c. 77) (entry and search)—

### “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) or 24A(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).
- (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 an offence under section 8 of the Asylum and Immigration Act 1996 (c. 49) (employment).

### **28FB Search for personnel records: with warrant**

- (1) This section applies where on an application made by an immigration officer in respect of business premises a justice of the peace is satisfied that there are reasonable grounds for believing—
- (a) that an employer has provided inaccurate or incomplete information under section 134 of the Nationality, Immigration and Asylum Act 2002 (compulsory disclosure by employer),
  - (b) that employee records, other than items subject to legal privilege, will be found on the premises and will enable deduction of some or all of the information which the employer was required to provide, and
  - (c) that at least one of the conditions in subsection (2) is satisfied.
- (2) Those conditions are—
- (a) that it is not practicable to communicate with a person entitled to grant access to the premises,
  - (b) that it is not practicable to communicate with a person entitled to grant access to the records,
  - (c) that entry to the premises or access to the records will not be granted unless a warrant is produced, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry.
- (3) The justice of the peace may issue a warrant authorising an immigration officer to enter and search the premises.
- (4) Subsection (7)(a) of section 28D shall have effect for the purposes of this section as it has effect for the purposes of that section.
- (5) An immigration officer searching premises under a warrant issued under this section 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 offence under section 137 of the Nationality, Immigration and Asylum Act 2002 (disclosure of information: offences) in respect of a requirement under section 134 of that Act, or
  - (b) an offence under section 105 or 106 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: fraud).”

## **155 Sections 153 and 154: supplemental**

The following shall be added at the end of section 28L of the Immigration Act 1971 (c. 77) (interpretation) (which becomes subsection (1))—

- “(2) In this Part “business premises” means premises (or any part of premises) not used as a dwelling.
- (3) In this Part “employee records” means records which show an employee’s—
- (a) name,
  - (b) date of birth,
  - (c) address,
  - (d) length of service,
  - (e) rate of pay, or
  - (f) nationality or citizenship.
- (4) The Secretary of State may by order amend section 28CA(3)(a) to reflect a change in nomenclature.
- (5) An order under subsection (4)—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## **156 Time limit on prosecution**

- (1) In section 28(1) of the Immigration Act 1971 (c. 77) (extended time limit for prosecution) the words “, 24A, 25” shall cease to have effect.
- (2) Section 24A(4) of that Act (deception: application of extended time limit) shall cease to have effect.