

Dear Patrick

You wanted to know whether you are obliged to:

1. Allow the Home Office/ICE entry to the building
2. Share information with them about your clients
3. Let them know who is currently in the building
4. Comply with a 'request' to pass on information to them

We have done a little research around these. This is not a comprehensive guide but I hope that it will set out most of the basis on which the Home Office/ICE can request to enter and search premises and to request information and the ways in which you may respond.

A brief summary is below; a more detailed summary is at pages 8 to 10.

1. There is no general obligation to let immigration officers or the police into premises.
2. Immigration officers or the police should usually obtain a warrant before entering and searching premises. In the cases where no warrant is needed for an entry and search, written authority by a senior officer is needed.
3. I could not find anything that would oblige you to share information with the Home Office about your clients.
4. There is no legal obligation to answer 'exploratory questions' from IOs – for both the general public and those who have irregular status.
5. I could not find anything that would oblige you to let the Home Office know who is in the building. If they ask you for a specific person and show you either a warrant or a written authorisation, then you should answer the question but there is no obligation to do so otherwise.
6. I do not know of anything that would oblige you to pass information on to your clients if requested to do so by the Home Office. You may wish to do so if it benefits

your clients but there is no obligation to confirm to the Home Office that you have done so.

## **Entry and search**

In most cases, the Home Office needs to obtain a warrant in order to enter and search premises.

There are three powers that can be exercised without a warrant:

- To enter and arrest at business premises (an authorisation is required)
- To seize documents where the person was arrested
- Search for nationality documents following an arrest for a criminal offence

I explain the main powers below.

Criminal powers can only be exercised where *“there is genuine intention to prosecute an individual for immigration related criminal offences... [Criminal powers] are not about establishing immigration status”*<sup>1</sup> (Home Office Coercive Powers guidance).

Administrative powers can only be exercised where *“your intention is to pursue removal from the UK rather than investigate a criminal offence with a view to prosecution”*<sup>2</sup>

### *Entry, arrest and search with a warrant*

Immigration officers can apply for a warrant to a justice of the peace under s28D Immigration Act 1971 (“IA”), under Para 17(2) Sch.2 IA 1971 or under s. 45 UK Borders Act 2007 (“UKBA 2007”).<sup>3</sup> A warrant obtained under Schedule 2 can be

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1 Home Office Coercive Powers guidance

2 Home Office Coercive Powers guidance

3 The power under s. 45 UKBA 2007 applies in relation to **premises not controlled by the individual** and not the premises at which they were arrested where a person has been arrested on suspicion of the commission of an offence and has not been released without being charged with it.

used in relation of a notice to intention to deport of deportation order within one month from the date of issue and at a reasonable hour.

A Justice of the Peace (or sheriff, in Scotland) may issue a warrant where he is satisfied that there are reasonable grounds for believing that:

- the suspect is not a British citizen;
- nationality documents may be located on the premises;<sup>4</sup>
- the documents would not be subject to legal privilege (and thus exempt from seizure under s.46(2) UK BA 2007); and
- any of the following conditions are met:
  - o it is not practicable to communicate with a person who could allow entry to the premises;
  - o it is practical to communicate with such a person but it is not practicable to communicate with any person entitled to grant access to the nationality documents;
  - o entry to the premises will not be granted unless a warrant is produced; or
  - o the purpose of the search may be frustrated or seriously prejudiced if an IO could not gain immediate entry (ss.45(2) & (3)).

### Entry and search without a warrant

There are three powers to entry and search without a warrant:

1. An immigration officer may enter and search without warrant, and seize relevant documents <sup>5</sup>but not items subject to legal privilege, at the premises

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<sup>4</sup> a nationality documents is document showing: the individual's identity, nationality or citizenship, the place from which the individual travelled to the United Kingdom, or a place to which the individual is proposing to go from the United Kingdom – s. 44 (5) UKBA 2007

<sup>5</sup> defined as any documents which might establish identity, nationality, citizenship, or the place from which the arrested person has travelled to the UK or to which he is proposing to go para.25A(9)

**where the person was arrested; or was immediately before arrest.**<sup>6</sup>This power may only be exercised if the IO has reasonable grounds for believing there are relevant documents on the premises; and to the extent that it is reasonably required for the purpose of discovering relevant documents.<sup>7</sup>

If an IO is going to conduct a search after the arrested person has been taken to a place of detention, **a senior officer must give written authority for the search in advance,**<sup>8</sup> there is an exception where the IO may conduct the search before taking the arrested person to a place of detention if the person's presence is necessary to conduct an effective search.<sup>9</sup> IOs can require a document stored in electronic form that he has reasonable grounds to believe is a relevant document (and does not have reasonable grounds for believing is subject to legal privilege) to be produced in a form in which it can be taken away.<sup>10</sup>

Documents seized under para.25A can be retained while the IO has reasonable grounds to believe that the arrested person may be liable to removal from the UK and that retaining the document may facilitate the removal.<sup>11</sup>

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6 para.25A Sch.2 IA 1971

7 paras.25A(3)(a)&(b)

8 para.25A(3)(c)

9 para.25A(4). In this case, the IO does not require authority to conduct the search, but he must inform a CIO or above about the search as soon as it is practical (para.25A(5)). In both cases, the CIO or above must make a written record of the grounds of the search and the nature of the documents that were sought (para.25A(6)).

10 paras.25A(7A)-(7B) & (8). If this is not complied with, an IO can seize the device on which the document is stored (paras.25A(7C)).

11 para.25A(8A).

Home Office Search and Seizure guidance deals with how IOs should conduct a premises search under this power.<sup>12</sup>

In particular, it requires the IO to act in line with PACE Code of Practice B, i.e. they must first:

- try to communicate with the occupier or any other person entitled to grant access to the premises;
- explain the authority under which entry is sought; and
- ask the occupier to allow entry, unless the premises are unoccupied; the occupier and any other person entitled to grant access are absent; there are reasonable grounds for believing that alerting the occupier or any other person entitled to grant access would frustrate the object of the search or endanger officers or other people (p.21); unless the IO alerts the occupier (or other person entitled to grant access) if the premises are occupied before the search begins, the officer must identify:
  - identify himself or herself, and state the purpose and grounds for the search;
  - introduce any person accompanying him on the search; and
  - briefly describe the accompanying person's role in the process (pp.21-22);
  - the IO must, unless it is impractical, give the occupier a copy of the notice of rights and entitlements (p.22). If the occupier is not present and no other person appears to be in charge, the IO must leave a copy of the notice in a prominent place. The time the notice was given to the occupier, or the reasonable grounds for not giving these documents must be recorded in the IO's notebook (p.23); and the premises search must be recorded in a notebook, either by the IO assuming the role of "loggist" or, if there is no "loggist", the IO making the find (p.25).

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12 . This can be found at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/578886/Search-and-seizure\\_v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/578886/Search-and-seizure_v3.pdf). This guidance relates to all of the following sections (up to questioning)

2. An IO may also enter and **search premises to look for nationality documents**<sup>13</sup> without warrant following arrest for any criminal offence.<sup>14</sup> **A written authority of a senior officer is required.** A “senior officer” means: (i) in relation to an immigration officer, an immigration officer of at least the rank of chief immigration officer, and (ii) in relation to a constable, a constable of at least the rank of inspector.<sup>15</sup> This power may not be exercised where the individual has been released without being charged with an offence.

This power to search applies to premises occupied or controlled by the individual; where the individual was arrested; and where the individual was immediately before their arrest.<sup>16</sup>

This power applies to people arrested on suspicion of the commission of an offence and where an IO suspects that the individual may not be a British citizen<sup>17</sup> and nationality documents may be found on the premises.<sup>18</sup>

### Business premises

3. Section 28CA of the Immigration Act 1971 (IA 1971) provides Home Office staff with the power to enter business premises and make arrests without the need to obtain a Magistrate’s search warrant. “Business premises” means

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13 defined as documents showing the individual’s identity, nationality or citizenship, or the place from which the individual has travelled to the UK or to which he is proposing to go -s.44(5)

14 S.44 UK BA 2007

15 S. 44 (3) UKBA 2007. The senior officer who gives authority must arrange for a written record to be made of the grounds for the suspicions in reliance on which the powers of search is to be exercised and the nature of the documents sought.

16 s.44(1)(b)

17 s.44(1)(a)

18 s.44(1)(b)

premises (or any part of premises) not used as a dwelling so it may include a day centre.<sup>19</sup>

Although a warrant is not needed, the authority of an Assistant Director or higher (in the case of an immigration officer) or a Chief Superintendent (in the case of a constable) is needed.<sup>20</sup> The authority of an AD is usually provided by an AD's letter.<sup>21</sup> The authority of an AD to exercise this power must expire at the end of the period of seven days beginning with the day on which it is given.<sup>22</sup>

In addition to requiring the authority of an AD, this power may only be exercised if:

- it is reasonably required in order to:
  - o criminally arrest a person for the offence of illegal entry (s.24 IA 1971), deception (s.24A IA 1971) or illegal working (s.24B IA 1971); or
  - o to administratively arrest a person on the basis that there are reasonable grounds to suspect that they are someone in respect of whom removal directions might be given (para.17 Sch.2 IA 1971);
- **the IO has reasonable grounds for believing the person whom they are seeking is on the premises;** and
- the IO produces identification showing his status (whether or not he is asked to; but only if the premises are occupied).<sup>23</sup>

In other words, this cannot be a phishing exercise. The immigration officer cannot simply ask to enter the premises to check who is there willy-nilly.

### Questioning powers of IOs

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19 s28L(2) IA 1971

20 S.28CA IA 1971

21 Home Office Coercive Powers guidance

22 s.28CA(3)(b)

23 s.28CA(4) + s.28CA(2)

IOs have powers under Paragraph 2 and 2A of Schedule 2 of the Immigration Act 1971 to question for the purposes of determining whether someone is a British citizen or those who “*should not be in the country.*” However, these enquiries are to be made with the “*cooperation from the general public*”.<sup>24</sup>

There is no legal obligation to answer ‘exploratory questions’ from IOs – for both the general public and those who have irregular status. The refusal “*to answer questions or to provide proof of status does not, of itself, constitute a reasonable suspicion that the person is an immigration offender.*” IOs have no power to force individuals to comply with their questioning: there should be no implication that there exists any power to compel answers.<sup>25</sup>

Where the IOs are on premises based on intelligence, the IOs may ask questions to determine whether those present are those on which the intelligence is based or otherwise associated with the IOs enquiry. This will be the case where “*its object or eliminate people from the enquiry who you decide do not match known information.*” These questions are exploratory; there should be no compulsion to answer any questions.<sup>26</sup>

IOs “*have no power to stop a person if they attempt to leave before being questioned, or during exploratory questioning, unless there is already a sufficient basis to arrest or detain that individual*”.

However, where a person attempts to leave whilst an examination is ongoing (i.e. the suspicion threshold is already satisfied), they may be administratively arrested.<sup>27</sup>

### Summary and conclusion

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24 Home Office Guidance on Enforcement Interviews

25 Home Office Guidance on Enforcement Interviews

26 Home Office Guidance on Enforcement Interviews

27 paragraph 17(1) of Schedule 2 to the Immigration Act 1971. This is relevant only to those who are liable to detention under para 16(1) of Schedule 2.

1. There is no general obligation to let immigration officers or the police into premises.
2. Immigration officers or the police should usually obtain a warrant before entering and searching premises.
3. In the cases where no warrant is needed for an entry and search, written authority by a senior officer is needed.
4. No warrant is needed:
  - 4.1 following arrest (para 25 Schedule 2 IA 1971 and para 44 UKBA 2007)
  - 4.2 when searching business premises where there are reasonable grounds for believing that the person being searched for is on the premises. (s. 28CA IA 1971)

#### *Written authority*

5. The written authority of a senior officer is required under para 25 A schedule 2, unless the search takes place before taking the arrested person to a place where he is to be detained; and the presence of the arrested person is necessary to make an effective search for any relevant documents.
6. The written authority of a senior officer is also required in the case of s. 44 UKBA 2007.
7. The written authority of an AD or higher (or Chief Superintendent in the case of the police) is required in the case of business premises under s. 28 CA IA 1971.

#### **Information sharing**

8. I could not find anything that would oblige you to share information with the Home Office about your clients. As a data controller you are subject to the provisions of the Data Protection Act and should not therefore provide information to others about your clients unless they consent.
9. IOs (not policemen) **may ask exploratory questions of your clients.** There is no legal obligation to answer 'exploratory questions' from IOs – for both the general public and those who have irregular status. But where the suspicion threshold has been reached, a person liable to detention may be administratively arrested if trying to leave whilst being questioned.
10. I could not find anything that would oblige you to let the Home Office know who is in the building. If they ask you for a specific person and show you either a warrant or an authorisation from a senior officer, an AD or a Chief

Superintendent regarding a search of a specific person, then you should answer the question but there is no obligation to do so otherwise.

11. I do not know of anything that would oblige you to pass information on to your clients if requested to do so by the Home Office. Having said that, if the Home Office ask you to let your client know they want to talk to him/her it may be in your client's interest that you do so, as if they subsequently get (or do not get ) a letter it will not come as a surprise to them. If you pass the information on, you would not have to tell the Home Office that you have done so.

Other than as stated above, you have not obligation to grant entry or to provide information.

You should always ask to see a copy of the warrant/written authorisation under which access is being sought. If you are in doubt as to under which power an immigration officer or policeman is trying to enter and search your premises or to obtain information from you, you should ask them to clarify. If they are not requiring you to grant access under one of the above provisions, you do not have to grant it.

I hope the above is of assistance to you. If you or anybody you know have any queries about these powers, please send any queries to [advice@liberty-human-rights.org.uk](mailto:advice@liberty-human-rights.org.uk) or [AdviceInformation@liberty-human-rights.org.uk](mailto:AdviceInformation@liberty-human-rights.org.uk).

Regards

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Liberty