



Home Office Circular

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This circular is about	SECTIONS 1-4, 18, 22-23, and 29-31 OF THE UK BORDERS ACT 2007 COMMENCEMENT ON 31st January 2008
From	Border and Immigration Agency (BIA) Border and Immigration Agency
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Broad Subject	Immigration and Nationality
Sub Category	Immigration legislation

The sections listed below contained in the UK Borders Act 2007 (the 2007 Act) come into force on 31 January 2008.

Sections 1-4: Detention at Ports

These new provisions will enable the Border and Immigration Agency to support the police at the border to tackle criminality by allowing the Secretary of State to designate immigration officers at ports in England, Wales and Northern Ireland for the purpose of exercising powers to search and detain (not arrest) for up to 3 hours, a person who may be liable to arrest or is subject to an arrest warrant, pending the attendance of a police constable. These sections do not apply in Scotland.

Where an individual is detained under these powers, a designated immigration officer may search the person for, and retain, anything that might be used to assist escape or to cause physical injury to the individual or another person. The immigration officer must also retain anything found on a search which he or she thinks may be evidence of an offence.

For the purposes of these powers, "Port" includes an airport and a hoverport and a place shall be treated as a port in relation to an individual if a designated immigration officer believes that the individual has gone there for the purpose of embarking on a ship or aircraft, or has arrived there on disembarking from a ship or aircraft.

Designated immigration officers

For the purpose of exercising these powers, the Secretary of State may designate only immigration officers who the Secretary of State thinks are fit and proper for the purpose, and suitably trained. A designation may be permanent or for a specified period, and may (in either case) be revoked.

Detention

A designated immigration officer at a port in England, Wales or Northern Ireland may detain an individual if the immigration officer thinks that the individual may be liable to arrest by a constable under section 24(1), (2) or (3) of the Police and Criminal Evidence Act 1984 (c. 60) or Article 26(1), (2) or (3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. [1989/1341](#) (N.I. 12)), or is subject to a warrant for arrest.

A designated immigration officer who detains an individual—

- (a) must arrange for a constable to attend as soon as is reasonably practicable,
- (b) may search the individual for, and retain, anything that might be used to assist escape

or to cause physical injury to the individual or another person,

(c) must retain anything found on a search which the immigration officer thinks may be evidence of the commission of an offence, and

(d) must, when the constable arrives, deliver to the constable the individual and anything retained on a search.

An individual may not be detained under this section for longer than three hours.

A designated immigration officer may use reasonable force for the purpose of exercising a power under this section.

Where an individual whom a designated immigration officer has detained or attempted to detain under this section leaves the port, a designated immigration officer may pursue the individual, and return the individual to the port.

Detention under this section shall be treated as detention under the Immigration Act 1971 (c. 77) for the purposes of Part 8 of the Immigration and Asylum Act [1999 \(c. 33\)](#) (detained persons).

Enforcement

The provisions also introduce new offences where a person absconds from such detention or assaults or obstructs a designated immigration officer in the exercise of these powers.

A person guilty of absconding from such detention or assaulting an immigration officer exercising such a power shall be liable on summary conviction to imprisonment for a term not exceeding 51 weeks, a fine not exceeding level 5 on the standard scale, or both. In the application of this section to Northern Ireland the reference to 51 weeks shall be treated as a reference to six months,

A person guilty of obstructing an immigration officer in the exercise of such a power shall be liable on summary conviction to imprisonment for a term not exceeding 51 weeks, a fine not exceeding level 3 on the standard scale, or both. In the application of this section to Northern Ireland the reference to 51 weeks shall be treated as a reference to one month.

In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act [2003 \(c. 44\)](#) (51 week maximum term of sentences) the reference to 51 weeks for the absconding and assault offences shall be treated as a reference to six months, and the reference to 51 weeks for the obstruction offence shall be treated as a reference to one month.

Section 18: Support for asylum seekers: enforcement

Section 18 inserts new sections 109A and 109B into the Immigration and Asylum Act 1999 (the 1999 Act) and applies existing immigration officer powers of arrest, entry, search and seizure in the Immigration Act 1971 (the 1971 Act) to the offences of dishonestly obtaining asylum support. These new sections do not affect police powers of arrest for these offences.

New section 109A (arrest) gives an immigration officer the power to arrest a person, without warrant, where he has reasonable grounds for suspecting a person has committed an offence under section 105 or section 106 of the 1999 Act (making false or dishonest representations in order to obtain support for asylum-seekers, respectively).

New section 109B (entry, search and seizure) similarly extends the relevant powers of entry, search and seizure under sections 28B, 28D, 28E and 28G to 28L of the 1971 Act to section 105 and 106 offences.

New section 109B also provides that section 28(4) applies to criminal proceedings in respect of a section 105 or 106 offence. This means that any powers under the 1971 Act (such as the power to detain or remove a person) may be exercised notwithstanding the fact that proceedings for one of these offences have been taken against him.

This section applies in England and Wales, Scotland and Northern Ireland.

Section 22: Assaulting an immigration officer: offence

Section 22 creates an offence of assaulting an immigration officer. It also establishes penalties for anyone found guilty of committing such an offence. This section applies in England and Wales, Scotland and Northern Ireland.

A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a period not exceeding 51 weeks; a fine not exceeding level 5 on the standard scale; or both.

In the application of this section to Northern Ireland the reference to 51 weeks shall be treated as a reference to 6 months. In the application of this section to Scotland the reference to 51 weeks shall be treated as a reference to 12 months.

In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act [2003 \(c. 44\)](#) (51 week maximum term of sentences) the reference to 51 weeks shall be treated as a reference to 6 months.

Section 23: Assaulting an immigration officer: powers of arrest, etc

Section 23 creates a power of arrest for the offence of assaulting an immigration officer. It enables an immigration officer to arrest a person without warrant where he has reasonable grounds for suspecting that the person has assaulted or is about to assault an immigration officer. The section also applies existing immigration officer powers of entry, search and seizure in the Immigration Act 1971 to the offence of assaulting an immigration officer. This section applies in England and Wales, Scotland and Northern Ireland.

An offence under section 22 shall be treated as a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (c. 77) (search, entry and arrest) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.

The following provisions of the Immigration Act 1971 shall have effect in connection with an offence under section 22 of this Act as they have effect in connection with an offence under that Act— Sections 28I, 28J, 28K and 28L(1) (seized material and search warrants)

Police officers also have a power of arrest for an offence committed under Section 22. It is anticipated that individual circumstances (including location) will determine whether it is more appropriate for immigration or police officers to arrest for this offence.

It is expected that the police will continue to deal with other cases of assault (e.g. ABH, GBH etc in England and Wales, common law assault in Scotland) as immigration officers do not have a power of arrest for these types of offences.

Section 29: Facilitation: arrival and entry

Section 29 amends the existing offence in section 25A (1) (a) of the Immigration Act 1971 to provide that a person commits an offence if he knowingly and for gain facilitates the entry to the United Kingdom, or the arrival in the UK, of an individual that they know or reasonably believe to be an asylum-seeker. This amendment ensures that acts committed after an asylum seeker has arrived in the United Kingdom but before they have entered will be covered by the offence.

Section 30: Facilitation: territorial application

Section 30 amends section 25 of the Immigration Act 1971. Section 25 makes it an offence to assist unlawful immigration to a member State of the European Union. Presently, the

section applies to anything done in the UK, anything done outside the UK by a British national and to anything done outside the UK by a body incorporated in the UK. Section 30 removes these existing limitations on the territorial application of the offence to cover acts of facilitation committed inside or outside the UK, irrespective of the nationality of the person carrying out the act.

Sections 25A (helping an asylum seeker to enter the United Kingdom) and 25B (assisting entry to United Kingdom in breach of a deportation or exclusion order) of the Immigration Act 1971 are also amended to extend the territorial application of the offences under those sections in the same way as described above for section 25.

Section 31: People trafficking: arrival and entry

Section 31(1) amends section 4(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Trafficking people for exploitation) to provide that a person commits an offence if they facilitate the arrival in, or the entry into, the United Kingdom of a person that they intend to exploit or who they believe is likely to be exploited by another person.

Similarly to the above, the existing offence of trafficking for sexual exploitation contained in section 57(1) of the Sexual Offences Act 2003 is amended so that it is an offence for an individual to intentionally arrange the arrival in, or entry into, the United Kingdom of another person (A) with the intention of that individual or a third person then doing anything to or in respect of A that will involve the commission of a relevant offence (as defined at subsection (1) of section 60 of the 2003 Act).

These amendments will ensure that acts committed after a person has arrived in the UK but before they have entered the UK will be covered by the offences.

People trafficking: territorial application

The trafficking people for exploitation offences contained in Section 4 of the 2004 Act and Sections 57 to 59 of the Sexual Offences Act 2003 currently encompass anything done in the UK, anything done outside the UK by a British national and anything done outside the UK by a body incorporated in the UK to facilitate the arrival or entry into the UK of an individual for the purposes of exploitation. Section 31(2) amends sections 5(1) and (2) of the 2004 Act and Sections 31(3) and (4) amend sections 60(2) and (3) of the Sexual Offences 2003 Act by removing these limitations on the territorial application of the offences and thereby ensuring that facilitating the arrival or entry into the UK of a person for the purposes of exploitation, regardless of where the facilitation took place and irrespective of the nationality of the facilitator, are now caught by the offences.

Applications of the Facilitation and Trafficking Provisions to Scotland

Sections 29-30 (facilitation offences) apply to all of the UK.

The provisions of Section 31(1) - (4) do not extend to Scotland. Restrictions on the extent of Section 31 only apply to the application of the offence in Scots law. As such it will still be an offence in the law of England, Wales and Northern Ireland to facilitate the arrival or entry of an individual into Scotland, for the purpose of exploitation within the UK.

The UK Borders Act 2007 is available on the Office of Public Sector Information website.

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