



# Immigration Act 2016

## 2016 CHAPTER 19

### PART 2

#### ACCESS TO SERVICES

##### *Driving*

#### **43 Powers to carry out searches relating to driving licences**

- (1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control of entry etc) is amended in accordance with subsections (2) and (3).
- (2) After paragraph 25C insert—

##### *“Entry of premises to search for driving licence*

- 25CA (1) An authorised officer may exercise the powers in this section if the officer has reasonable grounds for believing that a person—
- (a) is in possession of a driving licence, and
  - (b) is not lawfully resident in the United Kingdom.
- (2) The authorised officer may enter and search any premises—
- (a) occupied or controlled by the person, or
  - (b) in which the person was when the person was encountered by the officer,
- for the driving licence.
- (3) The power conferred by sub-paragraph (2) may be exercised—
- (a) only if the authorised officer has reasonable grounds for believing that the driving licence is on the premises,
  - (b) only to the extent that it is reasonably required for the purpose of discovering the driving licence, and

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- (c) unless the authorised officer is a constable, only if a senior officer has authorised its exercise in writing.
- (4) Sub-paragraph (3)(c) does not apply where it is not reasonably practicable for the authorised officer to obtain the authorisation of a senior officer before exercising the power.
- (5) An authorised officer who has conducted a search in reliance on sub-paragraph (4) must inform a senior officer as soon as is practicable.
- (6) The senior officer authorising a search, or who is informed of one under sub-paragraph (5), must make a record in writing of the grounds for the search.
- (7) In this paragraph and paragraphs 25CB and 25CC—
  - “authorised officer” means—
    - (a) an immigration officer,
    - (b) a constable, or
    - (c) a person of a kind authorised for the purposes of this paragraph and paragraphs 25CB and 25CC by the Secretary of State;
  - “driving licence”—
    - (a) means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988 or Part II of the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154 (NI 1)), and
    - (b) includes a licence of that kind which has been revoked;
  - “senior officer” means—
    - (a) in relation to an authorised officer who is an immigration officer, an immigration officer not below the rank of chief immigration officer;
    - (b) in relation to an authorised officer other than an immigration officer, a person of a kind designated by the Secretary of State for the purposes of this paragraph in relation to an authorised officer of that kind.
- (8) For the purposes of this paragraph and paragraphs 25CB and 25CC a person is not lawfully resident in the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.

#### *Searching persons for driving licences*

- 25CB (1) An authorised officer may exercise the powers in this section if the officer has reasonable grounds for believing that a person—
- (a) is in possession of a driving licence, and
  - (b) is not lawfully resident in the United Kingdom.
- (2) The authorised officer may search the person for the driving licence.
- (3) The power conferred by sub-paragraph (2) may be exercised—
- (a) only if the authorised officer has reasonable grounds for believing that the driving licence may be concealed on the person, and

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- (b) only to the extent that it is reasonably required for the purpose of discovering the driving licence.
- (4) An intimate search may not be carried out under sub-paragraph (2).
- (5) In sub-paragraph (4) “intimate search” has the same meaning as in section 28H(11).

#### *Seizure and retention of driving licence*

- 25CC (1) If an authorised officer who is exercising a power to search a person or premises finds a driving licence to which this sub-paragraph applies in the course of the search, the officer may seize and retain the licence.
- (2) Sub-paragraph (1) applies to a driving licence if—
- (a) the authorised officer finds the licence in the possession of a person who the authorised officer has reasonable grounds for believing is not lawfully resident in the United Kingdom, or
  - (b) the authorised officer has reasonable grounds for believing that the holder of the licence is not lawfully resident in the United Kingdom.
- (3) A driving licence seized under sub-paragraph (1) must, as soon as practicable, be given to—
- (a) the Secretary of State, in the case of a licence granted by the Secretary of State, or
  - (b) the Department for Infrastructure for Northern Ireland, in the case of a licence granted by the Department.
- (4) A person who is in possession of a driving licence by virtue of sub-paragraph (3) must retain it if—
- (a) it has not been revoked,
  - (b) it has been revoked but the time limit for an appeal against revocation of the licence has not expired, or
  - (c) it has been revoked, such an appeal has been brought but the appeal has not been determined.
- (5) A driving licence which is required to be retained under sub-paragraph (4) must be retained—
- (a) until a decision is taken not to revoke it, or
  - (b) if it has been or is subsequently revoked—
    - (i) until the time limit for an appeal against revocation of the licence expires without an appeal being brought, or
    - (ii) until such an appeal is determined.
- (6) A driving licence which is in the possession of a person by virtue of sub-paragraph (3) but which is not required to be retained under sub-paragraphs (4) and (5) must be returned to the holder if—
- (a) a decision is taken not to revoke the licence, or
  - (b) an appeal against revocation of the licence is determined in favour of the holder.

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- (7) Otherwise the driving licence may be dealt with in such manner as that person thinks fit.
  - (8) Neither the Secretary of State nor the Department for Infrastructure for Northern Ireland is obliged to re-issue a licence which has been seized and retained under this paragraph.
  - (9) References in this paragraph to an appeal against the revocation of a licence are to—
    - (a) an appeal under section 100 of the Road Traffic Act 1988, in the case of a licence granted by the Secretary of State, or
    - (b) an appeal under Article 16 of the Road Traffic (Northern Ireland) Order 1981 ([SI 1981/154 \(NI 1\)](#)), in the case of a licence granted by the Department for Infrastructure for Northern Ireland.
  - (10) References in this paragraph to the holder of a driving licence, in relation to a licence that has been revoked, include the person who was the holder of the licence before it was revoked.”
- (3) In paragraph 25D(8) (access and copying: meaning of seized material) at the end insert “other than a driving licence seized under paragraph 25CC.”
- (4) In section 146(2) of the Immigration and Asylum Act 1999 (use of reasonable force) after paragraph (a) insert—
- “(aa) paragraph 25CA, 25CB or 25CC of Schedule 2 to the 1971 Act (powers to search for and seize driving licences),”.
- (5) In the period (if any) between the coming into force of subsection (2) and the coming into force of the Departments Act (Northern Ireland) 2016, references to the Department for Infrastructure for Northern Ireland in paragraph 25CC(3)(b), (8) and (9)(b) of Schedule 2 to the Immigration Act 1971 (as inserted by subsection (2)) are to be read as references to the Department of the Environment for Northern Ireland.