

# IMMIGRATION AND ASYLUM ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part VII: Power to arrest, search and fingerprint

##### *Section 128: Arrest without warrant*

362. This section inserts a new section (section 28A) into the 1971 Act. Subsections (1), (2) and (3) reproduce the existing powers of arrest without warrant which are currently contained in sections 24(2) and 25(3) of the 1971 Act. Subsections (1) and (2) allow a constable or immigration officer to arrest someone who has committed or has attempted to commit various immigration offences contained in Part III of that Act or where there are reasonable grounds for suspecting that they have committed or attempted to commit such an offence. The offences in question include entering the country illegally; overstaying; failing to observe a condition of leave; and the new extended offence of deception created by section 28.
363. Subsections (4) and (5) allow an immigration officer to arrest without warrant someone who commits or attempts to commit certain other offences contained in part III of the 1971 Act. The offences in question include: harbouring an illegal entrant or an overstayer or someone who fails to observe a condition of their leave, and obstructing an immigration officer in the execution of his duty. Subsection (6) limits the power of arrest for obstructing an immigration officer to cases where the option of serving a summons appears impracticable or where the immigration officer has reasonable grounds for believing the arrest is necessary to prevent the suspect either causing physical injury to himself or another person or suffering physical injury or causing loss of, or damage, to property. (Constables in England, Wales and Northern Ireland already have powers to arrest for the offences referred to in subsection (3), (4) and (5) under PACE and its equivalent in Northern Ireland. Constables in Scotland have no such statutory power, so the powers of arrest in subsection (3), (4) and (5) extend to them.)
364. The existing power of arrest does not apply to offences under section 24(1)(d) of the 1971 Act (failure to comply with a requirement to report to a medical officer of health or to be examined by such an officer) and this exception is retained.

##### **Sections 129, 137, 138 and 140: search and arrest by warrant, search warrant safeguards, execution of warrants and detention of persons liable to examination or removal**

365. *Section 129* inserts a new section 28B into the 1971 Act which will enable a justice of the peace who is satisfied that there are reasonable grounds for suspecting a person who is liable to be arrested for a relevant offence is to be found on any premises to grant a warrant authorising any constable or immigration officer to enter those premises, by force if necessary, for the purposes of searching for and arresting the suspect. In Scotland, warrants for this purpose will be granted by either the sheriff or a justice of the peace who has jurisdiction in a place where the premises are situated (subsections (3) and (4) of new section 28B).

*These notes refer to the Immigration and Asylum Act 1999  
(c.33) which received Royal Assent on 11 November 1999*

366. **Section 137** inserts a new section 28J into the 1971 Act which sets out the requirements to be satisfied when an immigration officer applies for a search warrant. These are very similar to those which apply to the police under PACE. They include a requirement to state the ground of the application, the premises to be searched and, as far as possible, the persons or articles to be sought. An application for a warrant must be supported by information in writing and the officer making the application must answer on oath any questions that the person considering the application asks him. A warrant is limited to authorising entry on one occasion only.
367. **Section 138** inserts a new section 28K into the 1971 Act which sets certain conditions which have to be complied with when executing warrants which again reflect conditions which apply to the police under PACE. For example, an entry and search must be within one month of the date of issue of the warrant and at a reasonable hour (unless it appears to the officer executing it that the purpose of the search might be frustrated if the latter condition is observed). If the occupier of the premises is present at the time, the immigration officer must identify himself to the occupier, produce identification showing he is an immigration officer, show the occupier the warrant and supply him with a copy of it. If the occupier is not present, but someone else who appears to be in charge of the premises is there, the same requirements apply in respect of that person. If it appears that nobody present is in charge of the premises, a copy of the warrant must be left in a prominent place on the premises.
368. A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued. An officer executing a warrant must endorse it, stating whether the persons or articles sought were found and whether any articles other than the articles which were sought were seized.
369. Subsection (2) of section 140 amends Schedule 2 to the 1971 Act to provide for the issuing to immigration officers, as well as constables, of warrants to enter premises in order to search for and arrest someone who is liable to detention.