



Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

PART 7

OFFENCES

Procedure

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

Status: This is the original version (as it was originally enacted).

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).”