

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

EXPLANATORY NOTES

INFORMATION

Section 40: Searches: contracting out

93. Subsection (1) permits an authorised person to search a ship, aircraft, vehicle or other thing for the purpose of identifying individuals who an immigration officer may wish to examine. The reference to "other thing" reflects the search of things on board ships or aircraft in paragraph 1(5) of Schedule 2.
94. Subsection (2) defines an authorised person and makes it clear that a ship, aircraft, vehicle or other thing can only be searched if an Immigration Officer would have power to search it under paragraph 1(5) of Schedule 2 to the Immigration Act 1971.
95. Subsection (3) & (4) states that the Secretary of State may authorise a specified class of constable for the purposes of this section or with the consent of the Commissioners for Her Majesty's Revenue and Customs, authorise an officer or a specified class of officer of Revenue and Customs for the purpose of this section.
96. Subsection (5) provides that before authorising a person (other than a constable or officer of Revenue and Customs) for the purposes of this section, the Secretary of State must be satisfied that the person is fit and proper for the purpose and properly trained.
97. Subsection (6) sets out the arrangements which the Secretary of State may make for the exercise by authorised persons of the powers conferred by this section (which include the power to enter into contracts with private contractors for the provision of authorised persons other than constables and officers of Revenue and Customs).
98. Subsection (7)(a) gives the authorised person ancillary powers of search and detention in relation to any individual who the authorised person discovers while exercising the power to search. It provides for power to search for items that may be used for self-harm, cause harm to others, or to assist in escape from detention. Furthermore powers are provided to search for items establishing information concerning identity, nationality, citizenship or information about the individual's journey.
99. Subsection (7)(b) gives the power to retain items found during the course of a section (7)(a) search and to deliver them to an Immigration Officer.
100. Subsection (7)(c)(d) & (e) allows an authorised person to detain an individual for a period of up to three hours, pending the arrival of an Immigration Officer or to deliver the individual to an Immigration Officer as soon as is reasonably practicable. Subsection (e) provides for the authorised person to use reasonable force pursuant to carrying out his duties under paragraphs (a) to (d).
101. Subsection (8)(a) stipulates that searches may not include the removal of clothing other than an outer coat, jacket or glove, but the individual being searched may be required to open his mouth.

These notes refer to the Immigration, Asylum and Nationality Act 2006 (c.13) which received Royal Assent on 30 March 2006

102. Subsection (8)(b) excludes items subject to legal privilege from the powers of seizure. Legal privilege is as defined in:

- [Police and Criminal Evidence Act 1984 \(c.60\)](#) (England and Wales)
- [Proceeds of Crime Act 2002 \(c.29\)](#) (Scotland)
- [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(SI.1989/1341 \(N.I 12 \)\)](#)