



# 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—

##### **25CA “Entry of premises to search for driving licence**

- (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    - (b) includes a licence of that kind which has been revoked;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.

## 25CB Searching persons for driving licences

- (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
  - (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).

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- (5) In sub-paragraph (4) “intimate search” has the same meaning as in section 28H(11).

### **25CC Seizure and retention of driving licence**

- (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.
- (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.

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- (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.

#### Commencement Information

**II** [S. 43](#) in force at 31.7.2017 for specified purposes by [S.I. 2017/799](#), [reg. 2](#)

PROSPECTIVE

#### 44 Offence of driving when unlawfully in the United Kingdom

- (1) The Immigration Act 1971 is amended in accordance with subsections (2) to (6).
- (2) Before section 25 insert—

##### “24C Driving when unlawfully in the United Kingdom

- (1) A person commits an offence if—
- (a) the person drives a motor vehicle on a road or other public place at a time when the person is not lawfully resident in the United Kingdom, and
  - (b) at that time the person knows or has reasonable cause to believe that the person is not lawfully resident in the United Kingdom.
- (2) A person who is guilty of an offence under subsection (1) is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine or to both;

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- (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.
- (3) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (2)(a) to 51 weeks is to be read as a reference to 6 months.
- (4) In this section “motor vehicle” and “road”—
  - (a) in relation to England and Wales and Scotland, have the same meanings as in the Road Traffic Act 1988;
  - (b) in relation to Northern Ireland, have the same meanings as in the Road Traffic (Northern Ireland) Order 1995 (SI 1995/2994 (NI 18)).
- (5) For the purposes of this section 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.

#### 24D Detention of motor vehicles

- (1) If a person (“P”) has been arrested for an offence under section 24C committed in England and Wales or Northern Ireland, a senior officer or a constable may detain a relevant vehicle.
- (2) Subject to regulations under subsection (8), a vehicle detained under subsection (1) must be released—
  - (a) when a decision is taken not to charge P with the offence, or
  - (b) if P is charged with the offence—
    - (i) when P is acquitted, the charge against P is dismissed or the proceedings are discontinued, or
    - (ii) if P is convicted, when the court decides not to order forfeiture of the vehicle.
- (3) If a person (“P”) has been arrested for an offence under section 24C committed in Scotland, a senior officer or a constable may detain a relevant vehicle.
- (4) Subject to regulations under subsection (8) a vehicle detained under subsection (3) must be released—
  - (a) when a decision is taken not to institute criminal proceedings against P for the offence, or
  - (b) if criminal proceedings are instituted against P for the offence—
    - (i) when P is acquitted or, under section 147 of the Criminal Procedure (Scotland) Act 1995, liberated or the trial diet is deserted simpliciter, or
    - (ii) if P is convicted, when the court decides not to order forfeiture of the vehicle.
- (5) For the purposes of subsection (4) criminal proceedings are instituted against a person (“P”) at whichever is the earliest of P's first appearance before the sheriff or the service on P of a complaint.

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- (6) A power in subsection (1) or (3) may be exercised by a senior officer or constable at any place at which the senior officer or constable is lawfully present.
- (7) A vehicle is a relevant vehicle in relation to P if the officer or constable concerned has reasonable grounds for believing it was used in the commission by P of an offence under section 24C.
- (8) The Secretary of State may by regulations make provision about the release of a vehicle detained under subsection (1) or (3).
- (9) Regulations under subsection (8) may in particular make provision—
  - (a) for the release of a vehicle before the time mentioned in subsection (2) or (4);
  - (b) about the procedure by which a person may seek to have a vehicle released before or after that time;
  - (c) about the persons to whom a vehicle may or must be released before or after that time;
  - (d) prescribing conditions to be met before a vehicle may be released before or after that time (including a condition requiring the payment of costs in relation to detention of the vehicle and any application for its release);
  - (e) as to the destination of payments made in compliance with such a condition;
  - (f) enabling a person specified in the regulations to waive compliance with such a condition;
  - (g) as to the disposal of a vehicle in a case where such a condition is not met;
  - (h) as to the destination of the proceeds arising from the disposal of a vehicle in such a case.
- (10) Regulations under subsection (8)—
  - (a) are to be made by statutory instrument;
  - (b) may make different provision for different cases;
  - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (11) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section “senior officer” means an immigration officer not below the rank of chief immigration officer.

#### **24E Powers to enter premises to detain motor vehicle**

- (1) A senior officer or a constable may enter and search any premises for the purposes of detaining a vehicle under section 24D.
- (2) The power in subsection (1) may be exercised—
  - (a) only to the extent that it is reasonably required for that purpose, and
  - (b) only if the senior officer or constable knows that a vehicle which may be detained under section 24D is to be found on the premises.

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- (3) The power in subsection (1) may be exercised—
  - (a) by a senior officer (“S”) only if S produces identification showing that S is an immigration officer (whether or not S is asked to do so);
  - (b) by a constable (“C”) only if C produces identification showing that C is a constable (whether or not C is asked to do so).
- (4) Subsection (5) applies if, on an application by a senior officer or constable, a justice of the peace is satisfied that there are reasonable grounds for suspecting that a vehicle which may be detained under section 24D may be found on premises mentioned in subsection (6).
- (5) The justice of the peace may issue a warrant authorising any senior officer or constable to enter, if need be by force, the premises for the purpose of searching for and detaining the vehicle.
- (6) The premises referred to in subsection (4) are—
  - (a) one or more sets of premises specified in the application, or
  - (b) subject to subsection (10), any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).
- (7) If the application is for an all premises warrant, the justice of the peace must also be satisfied—
  - (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the vehicle, and
  - (b) that it is not reasonably practicable to specify in the application all the premises which the person occupies or controls and which might need to be searched.
- (8) Subject to subsection (10), the warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the justice issues the warrant.
- (9) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.
- (10) A justice of the peace in Scotland may not issue—
  - (a) an all premises warrant under this section, or
  - (b) a warrant under this section authorising multiple entries.
- (11) In the application of this section to Scotland, references to a justice of the peace are to be read as references to the sheriff or a justice of the peace.
- (12) In this section “senior officer” means an immigration officer not below the rank of chief immigration officer.

#### 24F Orders following conviction of offence under section 24C

- (1) If a person is convicted of an offence under section 24C, the court may order the forfeiture of the vehicle used in the commission of the offence.

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- (2) Where a person who claims to have an interest in the vehicle applies to the court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle unless the person has been given an opportunity to make representations.
- (3) For the purposes of subsection (2) the persons who have an interest in a vehicle include—
  - (a) a person who owns it,
  - (b) the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994, and
  - (c) a person who is in possession of it under a hire purchase agreement (or, in the case of a detained vehicle, was in possession of it under a hire purchase agreement immediately before its detention).
- (4) The Secretary of State may by regulations make provision about—
  - (a) the disposal of a vehicle forfeited under this section;
  - (b) the destination of the proceeds arising from the disposal of such a vehicle.
- (5) Regulations under subsection (4)—
  - (a) are to be made by statutory instrument;
  - (b) may make different provision for different cases;
  - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (6) A statutory instrument containing regulations under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (3) In section 28A(3)(a) (arrest without warrant) before “25” insert “ 24C, ”.
- (4) In section 28B(5) (search and arrest by warrant: relevant offences) before “26A” insert “ 24C, ”.
- (5) In section 28CA(1) (business premises: entry to arrest) for the “or” at the end of paragraph (b) substitute—
  - “(bb) for an offence under section 24C, or”.
- (6) In section 28D(4) (entry and search of premises: relevant offences) before “25” insert “ 24C, ”.
- (7) In section 16(2A)(b) of the Police and Criminal Evidence Act 1984 (powers of persons accompanying constables in execution of warrants) after “seizure” insert “ or detention ”.
- (8) In Article 18(2A)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)) (powers of persons accompanying constables in execution of warrants) after “seizure” insert “ or detention ”.
- (9) In section 146(2) of the Immigration and Asylum Act 1999 (use of reasonable force) before paragraph (a) insert—
  - “(za) section 24E(1) (powers to enter premises to detain motor vehicle) of the 1971 Act,”.



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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2017/1241, Sch. by [S.I. 2018/31 reg. 2](#)