



# UK Borders Act 2007

## 2007 CHAPTER 30

### *Information*

#### **40 Supply of Revenue and Customs information**

- (1) Her Majesty's Revenue and Customs (HMRC) and [<sup>F1</sup> the Crown Prosecution Service (the CPS) ] may each supply the Secretary of State with information for use for the purpose of—
- (a) administering immigration control under the Immigration Acts;
  - (b) preventing, detecting, investigating or prosecuting offences under those Acts;
  - (c) determining whether to impose, or imposing, penalties or charges under Part 2 of the Immigration and Asylum Act 1999 (c. 33) (carriers' liability);
  - (d) determining whether to impose, or imposing, penalties under section 15 of the Immigration, Asylum and Nationality Act 2006 (c. 13) (restrictions on employment);
  - (e) providing facilities, or arranging for the provision of facilities, for the accommodation of persons under section 4 of the Immigration and Asylum Act 1999;
  - (f) providing support for asylum-seekers and their dependants under Part 6 of that Act;
  - (g) determining whether an applicant for naturalisation under the British Nationality Act 1981 (c. 61) is of good character;
  - [<sup>F2</sup>(h) determining whether, for the purposes of an application referred to in section 41A of the British Nationality Act 1981, the person for whose registration the application is made is of good character;
  - (ha) determining whether, for the purposes of an application under section 1 of the Hong Kong (War Wives and Widows) Act 1996, the woman for whose registration the application is made is of good character;
  - (hb) determining whether, for the purposes of an application under section 1 of the British Nationality (Hong Kong) Act 1997 for the registration of an adult or young person within the meaning of subsection (5A) of that section, the person is of good character;]

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*Changes to legislation:* There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Information. (See end of Document for details)

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- (i) determining whether to make an order in respect of a person under section 40 of the British Nationality Act 1981 (deprivation of citizenship);
  - (j) doing anything else in connection with the exercise of immigration and nationality functions.
- (2) This section applies to a document or article which comes into the possession of, or is discovered by, HMRC or [<sup>F3</sup> the CPS ], or a person acting on behalf of HMRC or [<sup>F3</sup> the CPS ], as it applies to information.
- (3) The Secretary of State—
- (a) may retain for a purpose within subsection (1) a document or article supplied by virtue of subsection (2);
  - (b) may dispose of a document or article supplied by virtue of subsection (2).
- (4) In subsection (1) “immigration and nationality functions” means functions exercisable by virtue of—
- (a) the Immigration Acts,
  - (b) the British Nationality Act 1981 (c. 61),
  - (c) the Hong Kong Act 1985 (c. 15),
  - (d) the Hong Kong (War Wives and Widows) Act 1996 (c. 41), or
  - (e) the British Nationality (Hong Kong) Act 1997 (c. 20).
- [<sup>F4</sup>(4A) Subsections (1) and (2) are subject to subsection (4B).
- (4B) In relation to the CPS, this section applies to—
- (a) information held by the CPS in connection with a Revenue and Customs function of the Director of Public Prosecutions;
  - (b) a document or article which comes into the possession of, or is discovered by, the CPS, or a person acting on behalf of the CPS, in the exercise of a Revenue and Customs function of the Director of Public Prosecutions.
- (4C) In subsection (4B) “Revenue and Customs function of the Director of Public Prosecutions” means—
- (a) a function of the Director of Public Prosecutions under section 3(2)(ab), (bb) or (ee) of the Prosecution of Offences Act 1985, or
  - (b) a function of the Director of Public Prosecutions under the Proceeds of Crime Act 2002 that relates to a function of the Commissioners for Her Majesty’s Revenue and Customs or an officer of Revenue and Customs.]
- (5) A power conferred by this section on HMRC or [<sup>F5</sup> the CPS ] may be exercised on behalf of HMRC or [<sup>F5</sup> the CPS ] by a person who is authorised (generally or specifically) for the purpose.
- [<sup>F6</sup>(5A) Nothing in this section affects any power to supply information apart from this section.]
- (6) The following provisions (which relate to the supply of information to the Secretary of State) shall cease to have effect—
- (a) section 20(1)(d) of the Immigration and Asylum Act 1999 (c. 33),
  - (b) section 130 of the Nationality, Immigration and Asylum Act 2002 (c. 41), and
  - (c) paragraphs 17 and 20 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (c. 11).

*Changes to legislation:* There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Information. (See end of Document for details)

#### Textual Amendments

- F1** Words in s. 40(1) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 2 para. 55\(2\)](#)
- F2** S. 40(1)(h)-(hb) substituted for s. 40(1)(h) (13.1.2010) by [Borders, Citizenship and Immigration Act 2009 \(c. 11\)](#), [ss. 47\(5\)](#), 58(2); S.I. 2009/2731, art. 4(f)
- F3** Words in s. 40(2) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 2 para. 55\(3\)](#)
- F4** S. 40(4A)-(4C) inserted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 2 para. 55\(4\)](#)
- F5** Words in s. 40(5) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 2 para. 55\(5\)](#)
- F6** S. 40(5A) inserted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 2 para. 55\(6\)](#)

#### Commencement Information

- I1** S. 40 in force at 31.1.2008 by [S.I. 2008/99](#), [art. 2\(m\)](#)

## 41 Confidentiality

- (1) A person to whom relevant information is supplied (whether before or after the commencement of this section) may not disclose that information.
- (2) Information is relevant information if it is supplied by or on behalf of HMRC or <sup>[F7]</sup> the CPS ] under—
- section 20 of the Immigration and Asylum Act 1999,
  - section 130 of the Nationality, Immigration and Asylum Act 2002,
  - section 36 of the Immigration, Asylum and Nationality Act 2006 (c. 13) (except in so far as that section relates to information supplied to a chief officer of police), or
  - section 40 of this Act.
- (3) But subsection (1) does not apply to a disclosure—
- which is made for a purpose within section 40(1),
  - which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to an immigration or nationality matter,
  - which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to an immigration or nationality matter,
  - which is made in pursuance of an order of a court,
  - which is made with the consent (which may be general or specific) of HMRC or <sup>[F8]</sup> the CPS ], depending on by whom or on whose behalf the information was supplied, or
  - which is made with the consent of each person to whom the information relates.

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- (4) Subsection (1) is subject to any other enactment permitting disclosure.
- (5) The reference in subsection (1) to a person to whom relevant information is supplied includes a reference to a person who is or was acting on behalf of that person.
- (6) The reference in subsection (2) to information supplied under section 40 of this Act includes a reference to documents or articles supplied by virtue of subsection (2) of that section.
- (7) In subsection (3) “immigration or nationality matter” means a matter in respect of which the Secretary of State has immigration and nationality functions (within the meaning given in section 40(4)).
- (8) In subsection (4) “enactment” does not include—
  - (a) an Act of the Scottish Parliament,
  - (b) an Act of the Northern Ireland Assembly, or
  - (c) an instrument made under an Act within paragraph (a) or (b).

#### Textual Amendments

- F7** Words in s. 41(2) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 2 para. 56](#)
- F8** Words in s. 41(3)(e) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), [Sch. 2 para. 56](#)

#### Commencement Information

- I2** S. 41 in force at 31.1.2008 by [S.I. 2008/99](#), [art. 2\(m\)](#)

### [<sup>F9</sup>41A Supply of information to UK Border Agency

- (1) HMRC and [<sup>F10</sup> the CPS ] may each supply a person to whom this section applies with information for use for the purpose of the customs functions exercisable by that person.
- (2) This section applies to—
  - (a) a designated customs official,
  - (b) the Secretary of State by whom general customs functions are exercisable,
  - (c) the Director of Border Revenue, and
  - (d) a person acting on behalf of a person mentioned in paragraphs (a) to (c).
- (3) This section applies to a document or article which comes into the possession of, or is discovered by, HMRC or [<sup>F11</sup> the CPS ], or a person acting on behalf of HMRC or [<sup>F11</sup> the CPS ], as it applies to information.
- (4) A person to whom this section applies—
  - (a) may retain for a purpose within subsection (1) a document or article supplied by virtue of subsection (3);
  - (b) may dispose of a document or article supplied by virtue of subsection (3).

[ Subsections (1) and (3) are subject to subsection (4B).  
<sup>F12</sup>(4A)

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- (4B) In relation to the CPS, this section applies to—
- (a) information held by the CPS in connection with a Revenue and Customs function of the Director of Public Prosecutions;
  - (b) a document or article which comes into the possession of, or is discovered by, the CPS, or a person acting on behalf of the CPS, in the exercise of a Revenue and Customs function of the Director of Public Prosecutions.
- (4C) In this section “Revenue and Customs function of the Director of Public Prosecutions” has the meaning given by section 40(4C).]
- (5) A power conferred by this section on HMRC or [<sup>F13</sup> the CPS ] may be exercised on behalf of HMRC or [<sup>F13</sup> the CPS ] by a person who is authorised (generally or specifically) for the purpose.
- (6) In this section and section 41B “customs function” and “general customs function” have the meanings given by Part 1 of the Borders, Citizenship and Immigration Act 2009.
- [ Nothing in this section affects any power to supply information apart from this <sup>F14</sup>(7) section.]

#### Textual Amendments

- F9** Ss. 41A, 41B inserted (21.7.2009) by [Borders, Citizenship and Immigration Act 2009 \(c. 11\)](#), **ss. 20(1), 58(1)** (with [s. 36\(4\)](#))
- F10** Words in s. 41A(1) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), **Sch. 2 para. 57(2)**
- F11** Words in s. 41A(3) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), **Sch. 2 para. 57(3)**
- F12** Ss. 41A(4A)-(4C) inserted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), **Sch. 2 para. 57(4)**
- F13** Words in s. 41A(5) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), **Sch. 2 para. 57(5)**
- F14** S. 41A(7) inserted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), **Sch. 2 para. 57(6)**

#### 41B UK Border Agency: onward disclosure

- (1) A person to whom information is supplied under section 41A may not disclose that information.
- (2) But subsection (1) does not apply to a disclosure—
  - (a) which is made for the purpose of a customs function, where the disclosure does not contravene any restriction imposed by the Commissioners for Her Majesty's Revenue and Customs;
  - (b) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a customs function;

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- (c) which is made for the purpose of a criminal investigation or criminal proceedings (whether or not within the United Kingdom);
  - (d) which is made in pursuance of an order of a court;
  - (e) which is made with the consent (which may be general or specific) of HMRC or <sup>F15</sup> the CPS ], depending on by whom or on whose behalf the information was supplied;
  - (f) which is made with the consent of each person to whom the information relates.
- (3) Subsection (1) is subject to any other enactment permitting disclosure.
- (4) The reference in subsection (1) to information supplied under section 41A includes a reference to documents or articles supplied by virtue of subsection (3) of that section.
- (5) The reference in that subsection to a person to whom information is supplied includes a reference to a person who is or was acting on behalf of that person.
- (6) In subsection (3) “enactment” does not include—
- (a) an Act of the Scottish Parliament,
  - (b) an Act of the Northern Ireland Assembly, or
  - (c) an instrument made under an Act within paragraph (a) or (b).]

#### Textual Amendments

- F9** Ss. 41A, 41B inserted (21.7.2009) by [Borders, Citizenship and Immigration Act 2009 \(c. 11\)](#), **ss. 20(1), 58(1)** (with [s. 36\(4\)](#))
- F15** Words in s. 41B(2)(e) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), **Sch. 2 para. 58**

## 42 Wrongful disclosure

- (1) An offence is committed by a person who contravenes section 41 <sup>F16</sup>or 41B] by disclosing information relating to a person whose identity—
- (a) is specified in the disclosure, or
  - (b) can be deduced from it.
- (2) Subsection (1) does not apply to the disclosure of information about internal administrative arrangements of HMRC or <sup>F17</sup> the CPS ] (whether relating to Commissioners, officers, members of <sup>F17</sup> the CPS] or others).
- (3) It is a defence for a person (P) charged with an offence under this section of disclosing information to prove that P reasonably believed—
- (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (4) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or

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- (b) on summary conviction, to imprisonment for a term not exceeding [<sup>F18</sup>12 months][<sup>F18</sup>the general limit in a magistrates' court], to a fine not exceeding the statutory maximum or to both.
- (5) The reference in subsection (4)(b) to [<sup>F19</sup>12 months][<sup>F19</sup>the general limit in a magistrates' court] shall be treated as a reference to six months—
- (a) in the application of this section to Northern Ireland;
  - (b) in the application of this section to England and Wales, in relation to an offence under this section committed before [<sup>F20</sup>2 May 2022];
  - (c) in the application of this section to Scotland, until the commencement of section 45(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (corresponding provision in Scotland).
- (6) A prosecution for an offence under this section may be instituted—
- (a) in England and Wales, only with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, only with the consent of the Director of Public Prosecutions for Northern Ireland.

#### Textual Amendments

- F16** Words in s. 42(1) inserted (21.7.2009) by [Borders, Citizenship and Immigration Act 2009 \(c. 11\)](#), **ss. 20(2), 58(1)** (with s. 36(4))
- F17** Words in s. 42(2) substituted (27.3.2014) by [The Public Bodies \(Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions\) Order 2014 \(S.I. 2014/834\)](#), art. 1(1), **Sch. 2 para. 59**
- F18** Words in s. 42(4)(b) substituted (E.W.) (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), **Sch. Pt. 1**
- F19** Words in s. 42(5) substituted (E.W.) (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), **Sch. Pt. 1**
- F20** Words in s. 42(5)(b) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), **Sch. Pt. 1**

#### Commencement Information

- I3** S. 42 in force at 31.1.2008 by [S.I. 2008/99](#), **art. 2(m)**

### 43 Supply of police information, etc.

In section 131 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (police, etc.), for the words from “determining” to the end substitute “—

- (a) determining whether an applicant for naturalisation under the British Nationality Act 1981 is of good character;
- (b) determining whether an applicant within subsection (1) of section 58 of the Immigration, Asylum and Nationality Act 2006 for registration under a provision listed in subsection (2) of that section is of good character;
- (c) determining whether to make an order in respect of a person under section 40 of the British Nationality Act 1981.”

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#### Commencement Information

**I4** S. 43 in force at 31.1.2008 by S.I. 2008/99, art. 2(m)

### [<sup>F21</sup> 43A Requirement to state nationality

- (1) An individual who is arrested for an offence must state his or her nationality if required to do so by an immigration officer or a constable in accordance with this section.
- (2) A requirement may be imposed on an individual under subsection (1) only if the immigration officer or constable suspects that the individual may not be a British citizen.
- (3) When imposing a requirement under subsection (1) the immigration officer or constable must inform the individual that an offence may be committed if the individual fails to comply with a requirement imposed under this section.
- (4) The immigration officer or constable must make a written record of the imposition of a requirement under subsection (1) as soon as practicable.
- (5) The written record is to be made in the presence of the individual where this is practicable.

#### Textual Amendments

**F21** Ss. 43A, 43B inserted (E.W.N.I.) (31.1.2017 for specified purposes) by [Policing and Crime Act 2017](#) (c. 3), ss. 159, 183(1)(5)(e)

### 43B Offence of not giving nationality

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed in accordance with section 43A, whether by providing false or incomplete information or by providing no information.
- (2) Information provided by a person in response to a requirement imposed in accordance with section 43A is not admissible in evidence in criminal proceedings against that person other than proceedings for an offence under this section.
- (3) A person who is guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction in England and Wales, to either or both of the following—
    - (i) imprisonment for a term not exceeding 51 weeks (or 6 months if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);
    - (ii) a fine;
  - (b) on summary conviction in Northern Ireland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 6 months;
    - (ii) a fine not exceeding level 5 on the standard scale.]



*Changes to legislation: There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Information. (See end of Document for details)*

#### Textual Amendments

**F21** Ss. 43A, 43B inserted (E.W.N.I.) (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 159, 183\(1\)\(5\)\(e\)](#)

#### 44 Search for evidence of nationality

- (1) This section applies where an individual has been arrested on suspicion of the commission of an offence and an immigration officer or a constable suspects—
  - (a) that the individual may not be a British citizen, and
  - (b) that nationality documents relating to the individual may be found on—
    - (i) premises occupied or controlled by the individual,
    - (ii) premises on which the individual was arrested, or
    - (iii) premises on which the individual was, immediately before being arrested.
- (2) The immigration officer or constable may enter and search the premises for the purpose of finding those documents.
- (3) The power of search may be exercised only with the written authority of a senior officer; and for that purpose—
  - (a) “senior officer” means—
    - (i) in relation to an immigration officer, an immigration officer of at least the rank of chief immigration officer, and
    - (ii) in relation to a constable, a constable of at least the rank of inspector, and
  - (b) a senior officer who gives authority must arrange for a written record to be made of—
    - (i) the grounds for the suspicions in reliance on which the power of search is to be exercised, and
    - (ii) the nature of the documents sought.
- (4) The power of search may not be exercised where the individual has been released without being charged with an offence.
- (5) In relation to an individual “nationality document” means a document showing—
  - (a) the individual's identity, nationality or citizenship,
  - (b) the place from which the individual travelled to the United Kingdom, or
  - (c) a place to which the individual is proposing to go from the United Kingdom.

#### Commencement Information

**I5** S. 44 in force at 31.3.2008 by [S.I. 2008/309](#), [art. 3\(b\)](#)

#### 45 Search for evidence of nationality: other premises

- (1) This section applies where an individual—
  - (a) has been arrested on suspicion of the commission of an offence, and
  - (b) has not been released without being charged with an offence.

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*Changes to legislation:* There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Information. (See end of Document for details)

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- (2) If, on an application made by an immigration officer or a constable, a justice of the peace is satisfied that there are reasonable grounds for believing that—
- (a) the individual may not be a British citizen,
  - (b) nationality documents relating to the individual may be found on premises [<sup>F22</sup>mentioned in subsection (2A)] ,
  - (c) the documents would not be exempt from seizure under section 46(2), and
  - (d) any of the conditions in subsection (3) below applies [<sup>F23</sup>in relation to each set of premises specified in the application,]
- the justice of the peace may issue a warrant authorising an immigration officer or constable to enter and search the premises.
- [<sup>F24</sup>(2A) The premises referred to in subsection (2)(b) above are—
- (a) one or more sets of premises specified in the application, or
  - (b) subject to subsection (3A), 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”).
- (2B) 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 nationality documents, 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.
- (2C) Subject to subsection (3A), 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.
- (2D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.]
- (3) The conditions [<sup>F25</sup>mentioned in subsection (2)(d)] are that—
- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the nationality documents;
  - (c) entry to the premises will not be granted unless a warrant is produced;
  - (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer or constable arriving at the premises can secure immediate entry.
- [<sup>F26</sup>(3A) 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.]

(4) Sections 28J and 28K of the Immigration Act 1971 (c. 77) (warrants: application and execution) apply, with any necessary modifications, to warrants under this section.

*Changes to legislation:* There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Information. (See end of Document for details)

(5) In the application of this section to Scotland a reference to a justice of the peace shall be treated as a reference to the sheriff or a justice of the peace.

[<sup>F27</sup>(6) In the application of this section to Northern Ireland a reference to a justice of the peace is to be treated as a reference to a lay magistrate.]

#### Textual Amendments

- F22** Words in s. 45(2)(b) substituted (1.12.2016) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 8 para. 7\(2\)\(a\)](#); [S.I. 2016/1037, reg. 5\(k\)](#)
- F23** Words in s. 45(2)(d) inserted (1.12.2016) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 8 para. 7\(2\)\(b\)](#); [S.I. 2016/1037, reg. 5\(k\)](#)
- F24** S. 45(2A)-(2D) inserted (1.12.2016) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 8 para. 7\(3\)](#); [S.I. 2016/1037, reg. 5\(k\)](#)
- F25** Words in s. 45(3) inserted (1.12.2016) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 8 para. 7\(4\)](#); [S.I. 2016/1037, reg. 5\(k\)](#)
- F26** S. 45(3A) inserted (1.12.2016) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 8 para. 7\(5\)](#); [S.I. 2016/1037, reg. 5\(k\)](#)
- F27** S. 45(6) inserted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\), ss. 79\(3\), 87\(1\)](#); [S.I. 2022/590, regs. 1\(2\), 2, Sch. 1 para. 28](#)

#### Commencement Information

- I6** S. 45 in force at 31.3.2008 by [S.I. 2008/309, art. 3\(b\)](#)

## 46 Seizure of nationality documents

- (1) An immigration officer or constable searching premises under section 44 or 45 may seize a document which the officer or constable thinks is a nationality document in relation to the arrested individual.
- (2) Subsection (1) does not apply to a document which—
- in relation to England and Wales or Northern Ireland, is subject to legal professional privilege, or
  - in relation to Scotland, is an item subject to legal privilege within the meaning of section 412 of the Proceeds of Crime Act 2002 (c. 29).
- (3) An immigration officer or constable may retain a document seized under subsection (1) while the officer or constable suspects that—
- the individual to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
  - retention of the document may facilitate the individual's removal.
- (4) Section 28I of the Immigration Act 1971 (c. 77) (seized material: access and copying) shall have effect in relation to a document seized and retained by an immigration officer.
- (5) Section 21 of the Police and Criminal Evidence Act 1984 (c. 60) or Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (seized material: access and copying) shall have effect in relation to a document seized and retained by a constable in England and Wales or Northern Ireland.

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*Changes to legislation: There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Information. (See end of Document for details)*

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### Commencement Information

**I7** S. 46 in force at 31.3.2008 by [S.I. 2008/309](#), [art. 3\(b\)](#)

## [<sup>F28</sup> 46A Requirement to produce nationality document

- (1) This section applies where—
  - (a) an individual has been arrested on suspicion of the commission of an offence, and
  - (b) the individual is to be released after arrest (whether or not on bail)—
    - (i) before a decision is taken on whether the individual should be charged with an offence, or
    - (ii) after being charged with an offence.
- (2) Before the individual is released an immigration officer or a constable may give the individual a notice requiring the production of a nationality document not later than 72 hours after the individual is released.
- (3) A notice may be given under subsection (2) only if the immigration officer or constable giving it suspects that the individual may not be a British citizen.
- (4) A notice under subsection (2) must be given in writing.
- (5) The notice must include statements that—
  - (a) the individual to whom it is given must produce the nationality document not later than 72 hours after the individual is released, and
  - (b) an offence may be committed if an individual fails to comply with a notice given under this section.
- (6) The notice must also set out—
  - (a) the person to whom the document must be produced, and
  - (b) the means by which the document must be produced.
- (7) In this section, and in sections [46B](#) and [46C](#)—
 

“nationality document” means a passport relating to the individual or, if there is no passport relating to the individual, one or more documents that enable the individual’s nationality or citizenship to be established;

“passport” means—

  - (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
  - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or
  - (c) a document that can be used (in some or all circumstances) instead of a passport.

### Textual Amendments

**F28** Ss. 46A–46C inserted (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 160](#), [183\(1\)\(5\)\(e\)](#)

## 46B Retention of nationality document etc

- (1) An immigration officer or constable may retain a nationality document produced in response to a notice under section 46A(2) while the immigration officer or constable suspects that—
  - (a) the individual to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
  - (b) retention of the document may facilitate the individual's removal.
- (2) Section 28I of the Immigration Act 1971 (seized material: access and copying) has effect in relation to a nationality document produced by an individual in response to a notice under section 46A(2) and retained by an immigration officer as if the nationality document had been seized when the individual had custody or control of it.
- (3) Section 21 of the Police and Criminal Evidence Act 1984 or Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (seized material: access and copying) has effect in relation to a nationality document produced by an individual in response to a notice under section 46A(2) and retained by a constable in England and Wales or Northern Ireland as if the nationality document had been seized when the individual had custody or control of it.

### Textual Amendments

**F28** Ss. 46A-46C inserted (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), ss. 160, 183(1)(5)(e)

## 46C Offence of failing to produce nationality document

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a notice given in accordance with section 46A.
- (2) The fact that a person deliberately destroyed or disposed of a nationality document is not a reasonable excuse for the purposes of subsection (1) unless the destruction or disposal was—
  - (a) for a reasonable cause, or
  - (b) beyond the control of the person charged with the offence.
- (3) In subsection (2)(a) “reasonable cause” does not include the purpose of—
  - (a) delaying the handling or resolution of a claim or application or the taking of a decision,
  - (b) increasing the chances of success of a claim or application, or
  - (c) complying with instructions given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.
- (4) A person who is guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction in England and Wales, to either or both of the following—
    - (i) imprisonment for a term not exceeding 51 weeks (or 6 months if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);

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*Changes to legislation: There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Information. (See end of Document for details)*

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- (ii) a fine;
- (b) on summary conviction in Scotland, to either or both of the following—
  - (i) imprisonment for a term not exceeding 12 months;
  - (ii) a fine not exceeding level 5 on the standard scale;
- (c) on summary conviction in Northern Ireland, to either or both of the following—
  - (i) imprisonment for a term not exceeding 6 months;
  - (ii) a fine not exceeding level 5 on the standard scale.]

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**Textual Amendments**

**F28** Ss. 46A-46C inserted (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), **ss. 160, 183(1)(5)(e)**

**F29** **47 Police civilians**

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**Textual Amendments**

**F29** S. 47 omitted (31.1.2017 for specified purposes, 15.12.2017 in so far as not already in force) by virtue of [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), **Sch. 12 para. 23**; S.I. 2017/1139, reg. 2(k) (as amended by S.I. 2017/1162, reg. 2)

**Changes to legislation:**

There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Information.