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IMMIGRATION ACT 2016: POWERS OF IMMIGRATION OFFICERS

The Immigration Act 2016 grants extensive new powers to immigration officers, many of which are already in force. This information sheet gives an overview of the new powers and explains which of these have come into force.

Powers of search when lawfully on any premises

The Immigration Act 2016 grants a range of new powers of search to immigration officers which they can exercise if they have already lawfully entered a property. An immigration officer may be lawfully present at a premises, for example, if they have been invited inside or if they are checking an organisation's compliance with sponsorship requirements to bring skilled workers to the UK under the Points-Based system.

From 12 July 2016, an immigration officer who has already lawfully entered any premises has additional powers to search the premises for:

- Evidence that a person's leave to enter or remain should be curtailed (cancelled), for example because the immigration officer has reason to believe the person has not complied with a condition of their leave or has used deception to obtain their leave.
- Documents to confirm that a person is liable for a fine for employing an illegal worker or for renting to a disqualified person (see ILPA's information sheets on [illegal working](#) and restrictions on the [right to rent](#) accommodation under the Immigration Act 2016) where the immigration officer has reason to believe these documents are on the premises. This type of search would previously have required a warrant.

In each case, immigration officers may seize and retain documents or evidence they find, although they cannot take documents subject to legal privilege, which protects confidential information between a legal adviser and their client. If information is stored electronically and cannot be printed out, the computer or electronic device may be seized also.

New powers are also granted to immigration officers lawfully present on any premises to enable them to seize evidence that they have reason to believe has been obtained as a result of a criminal offence or provides evidence of an offence having been committed. Previously immigration officers were required to be trained criminal investigators to seize evidence relating to a non-immigration offence.

Powers of search in detention

Detainee custody officers are now given powers to conduct strip searches in prisons, immigration removal centres, short-term holding facilities and young offender institutions to

search for and seize nationality documents. The definition of a nationality document includes documents that indicate a place from which a person has travelled or proposes to travel as well as a document that establishes their identity or nationality, so this could include a ticket as well as a passport. There is also a new criminal offence of obstructing an officer in the exercise of this power. Previously, search powers were limited to searches for evidence of nationality in cases where a person was arrested for an offence and to searches in detention for reasons related to detention centre safety.

Changes to search powers requiring a warrant

There are changes to powers of search requiring a warrant which come into force on 01 December 2016. These will allow courts to issue a single warrant for the search of several premises and for an unlimited number of entries to those premises over a specified period of time. The powers may only be used if they are authorised in writing by a chief immigration officer. They will not extend to Scotland where such 'multi-entry' warrants are not permitted.

Even wider search powers?

The Act introduces powers to allow immigration officers to search people on ships for nationality documents and for items that might be used to cause physical injury or damage to property. There is a risk that these powers of search may be applied more widely as they are described as applying 'on the ship or elsewhere'. The Home Office already use powers to examine people 'who arrive in the UK' beyond border control to justify stop and search operations in bus and tube stations. The relevant provisions are not yet in force.

Information sharing

From 12 July 2016, the Immigration Act 2016 allows public authorities (with some exceptions such as HM Revenue and Customs) to disclose information to the Home Office for immigration purposes if the public authority chooses to share this. In further measures that came into force on the same date, a wide range of public bodies, including schools, local authorities, the NHS and marriage registrars are placed under a duty to provide the Home Office with a person's nationality documents held by them if they are directed to do so by the Home Office because it will assist with the person's removal.

Power to cancel 3C leave

Immigration officers will be given new powers to curtail (cancel) '3C leave'. This is leave automatically extended under section 3C of the Immigration Act 1971 if it would otherwise expire while an application for further leave or to switch to a different category of leave is pending before the Home Office or is being appealed. The power to curtail 3C leave may be used where a person has failed to comply with a condition of their leave or has used deception. The relevant provisions come into force on 01 December 2016.

There is a risk that a person's leave may be cancelled under this provision before the Home Office makes its decision on the person's immigration case. As there is no right of appeal or administrative review of a decision to curtail leave, there is a risk that an applicant could be left with no leave whilst the Home Office made a decision on their case that they could challenge. There is a process by which the Home Office may be asked to review its curtailment decision but a person's leave would not continue in the meantime. The individual risks becoming an overstayer, at risk of removal and experiencing all the difficulties of the measures that create a hostile environment for people without leave to enter or remain. Judicial review would be their only remedy in these circumstances.