



Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

2004 CHAPTER 19

Immigration services

38 Immigration Services Commissioner: power of entry

- (1) After section 92 of the Immigration and Asylum Act 1999 (c. 33) (offences: enforcement) insert—

“92A Investigation of offence: power of entry

- (1) On an application made by the Commissioner a justice of the peace may issue a warrant authorising the Commissioner to enter and search premises.
- (2) A justice of the peace may issue a warrant in respect of premises only if satisfied that there are reasonable grounds for believing that—
- (a) an offence under section 91 has been committed,
 - (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and
 - (c) any of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are—
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises,
 - (b) that it is not practicable to communicate with a person entitled to grant access to the evidence,
 - (c) that entry to the premises will be prevented unless a warrant is produced, and
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless the Commissioner can secure immediate entry on arrival at the premises.

Changes to legislation: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Section 38 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) The Commissioner may seize and retain anything for which a search is authorised under this section.
- (5) A person commits an offence if without reasonable excuse he obstructs the Commissioner in the exercise of a power by virtue of this section.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to—
- (a) imprisonment for a term not exceeding six months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.
- (7) In this section—
- (a) a reference to the Commissioner includes a reference to a member of his staff authorised in writing by him,
 - (b) a reference to premises includes a reference to premises used wholly or partly as a dwelling, and
 - (c) a reference to material—
 - (i) includes material subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (c. 60),
 - (ii) does not include excluded material or special procedure material within the meaning of that Act, and
 - (iii) includes material whether or not it would be admissible in evidence at a trial.
- (8) In the application of this section to Scotland—
- (a) a reference to a justice of the peace shall be taken as a reference to the sheriff,
 - (b) for sub-paragraph (i) of subsection (7)(c) there is substituted—

“(i) includes material comprising items subject to legal privilege (as defined by section 412 of the Proceeds of Crime Act 2002 (c. 29)),”

and
 - (c) sub-paragraph (ii) of subsection (7)(c) shall be ignored.
- (9) In the application of this section to Northern Ireland the reference to the Police and Criminal Evidence Act 1984 shall be taken as a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).”
- (2) In paragraph 7 of Schedule 5 to the Immigration and Asylum Act 1999 (c. 33) (investigation of complaints, &c.: power of entry)—
- (a) in sub-paragraph (1)(b) after “(b)” insert “, (c)”,
 - (b) in sub-paragraph (1)(c) for “registered person.” substitute “ registered or exempt person. ”,
 - (c) in sub-paragraph (1A)(a) after “(b)” insert “, (c)”,
 - (d) in sub-paragraph (1A)(b) for “registered person.” substitute “ registered or exempt person. ”, and
 - (e) after sub-paragraph (8) insert—

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“(9) Sub-paragraphs (7) and (8) shall apply to an exempt person as they apply to a registered person, but with a reference to cancellation of registration being treated as a reference to withdrawal of exemption.

(10) In this paragraph “exempt person” means a person certified by the Commissioner as exempt under section 84(4)(a).”

Commencement Information

II S. 38 in force at 1.10.2004 by S.I. 2004/2523, art. 2, **Sch.**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 8(1A)(1B) inserted by [2022 c. 36 s. 19\(2\)](#)
- s. 8(3A)(3B) inserted by [2022 c. 36 s. 19\(3\)](#)
- s. 8(6A)(6B) inserted by [2022 c. 36 s. 19\(4\)](#)
- s. 8(9A)(a) word inserted by [2022 c. 36 Sch. 3 para. 7\(b\)](#)
- s. 8(9A)(b) and word inserted by [2022 c. 36 Sch. 3 para. 7\(c\)](#)
- s. 8(9B) inserted by [2022 c. 36 s. 19\(6\)](#)
- Sch. 3 para. 3(3) inserted by [2023 c. 37 s. 10\(9\)\(a\)](#)
- Sch. 3 para. 8(3) inserted by [2023 c. 37 s. 10\(9\)\(b\)](#)
- Sch. 3 para. 13(3) inserted by [2023 c. 37 s. 10\(9\)\(c\)](#)