

UK BORDERS ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Information

Sections 44-47: Entry and search for nationality documents and seizure and retention of nationality documents

130. Where a person has been arrested for a criminal offence, and an immigration officer or a police constable suspects that the individual might not be a British citizen and documents relating to his nationality might be found on certain premises, the immigration officer or constable may enter and search the premises without warrant for the purpose of finding those documents (under section 44).
131. A nationality document means a document showing the individual's identity, nationality or citizenship, the place from which he travelled to the United Kingdom, or the place to which he is proposing to go (*subsection (5)*). The premises which may be searched are premises occupied or controlled by the arrested person, or the premises in which he was when, or immediately before, he was arrested (*subsection (1)(b)*).
132. Under *subsection (3)* the power of entry and search may only be exercised with the written authority of a senior officer. In relation to an immigration officer, a senior officer is an immigration officer of at least the rank of chief immigration officer. In relation to a constable, a senior officer is a constable of at least the rank of inspector. The senior officer who authorises the search must arrange for a written record of the grounds for the suspicions in reliance on which the power was exercised and the nature of the documents sought (*subsection (3)(b)*).
133. Under *subsection (4)* the power of search may not be exercised where the arrested person has been released without charge.
134. Under section 45, where it is believed that nationality documents may be held at premises other than those set out in section 44, a warrant may be sought to enter and search those premises. This ensures judicial oversight for this wider search power, and *subsection (4)* provides additional safeguards for when a warrant may be sought. If a warrant is to be obtained by or executed by a police constable the safeguards in sections 15 and 16 of the Police and Criminal Evidence Act 1984 will apply.
135. Under section 46 an immigration officer or constable may seize a document which he thinks is a nationality document relating to the arrested person, provided it is not a document subject to legal privilege (*subsection (2)*). An immigration officer or a constable may retain the seized document while he suspects that the individual to whom the document relates may be liable to removal, and that retention of the document may facilitate removal.
136. *Subsection (4) and (5)* provide for the access to and copying of any documents seized.
137. *Section 47* inserts a new paragraph 18A to Part 2 of Schedule 4 to the Police Reform Act 2002 (powers exercisable by police civilians: investigating officers). This enables an

*These notes refer to the UK Borders Act 2007 (c.30)
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investigating officer to exercise the new powers of entry, search, seizure and retention, in the same way that a constable can, provided he is designated as having these particular powers.