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31. Enforcement visits

All enforcement visits constitute immigration work of the most sensitive kind. An undertaking has been given to Parliament that IOs will not carry out speculative immigration visits, ("fishing" expeditions). It is essential that before any enforcement visit is made, the name of the possible offender is known (but see chapter 31.8 for visits to places of employment) and all checks have been made (see chapter 31.3). In particular the detention of persons who are not immigration offenders must be avoided.

31.1. Immigration and Asylum Act 1999: implementation of Part VII – powers of designated arrest trained officers.

Part VII of the Immigration and Asylum Act 1999 amended the Immigration Act 1971 to provide extended powers to IOs allowing them, in certain circumstances, to search persons and premises, to enter premises for the purposes of searching and for arresting persons and to seize and retain relevant material. The provision of these powers to IOs is necessary to allow the IS to make use of existing powers of arrest and to operate, in appropriate circumstances, without accompanying police when conducting operational visits.

However, allowing IOs to carry out arrests in the community is a significant and radical departure from previous practice, which is why the implementation of these powers is strictly controlled.

Ministers have given an undertaking to Parliament that no IO will exercise the powers unless he has been properly trained to do so and has been designated by the Director.

The use of the powers of entry, search, seizure and arrest was initially restricted to those officers operating in the Pilot Scheme at Becket House and the newly created Crime Investigation Section. Arrest team officers now operate nationally. **Staff designated to use the powers** are provided with separate operational instructions. All other officers should continue to operate under existing guidance as set out in this manual. For the sake of clarity non-designated IOs should not:

- ◆ carry out arrests
- ◆ execute warrants;
- ◆ conduct searches of persons or property unless by consent;
- ◆ carry or use restraints;
- ◆ Transport offenders in official vehicles. (Note: Non-designated IO's may drive official vehicles (but not escort detained persons) subject to a designated IO being present and vehicle insurance).

A warrant must only be **served** by a Police Officer or designated arrest trained officer of Immigration Officer (IO) rank or above. This person maintains responsibility for the 'execution' of the search and the power used under the warrant.

The warrant can be obtained by any warranted officer i.e. Assistant Immigration (AIO) or above (or a Police Officer where they are named in the Act). It does not have to be an arrest trained officer who obtains the warrant but the warrant must specify what other officers will be present when the warrant is executed. For example *"such Immigration and Police Officers as are necessary for the safe and effective conduct of the visit"*

A non-arrest trained officer may assist on a visit where a warrant has been obtained (not execute) so long as the warrant specifies this as mentioned above. They may enter a premise in order to question any persons on the premise to identify them and to ascertain their immigration status after the premises has been secured. They cannot enter and search the premise to locate the person named on the warrant, search a person after an arrest or search any areas of a premise for evidence relating to the offence. All such searches must be conducted by an arrest trained officer or a police officer under the appropriate power.

The police may expect **all** IOs to use their powers of arrest, entry, search and seizure when on joint operational visits. **In such circumstances it should be explained that these powers are only available to a limited number of officers i.e. those who are arrest trained.** The implementation programme has been agreed by the Home Secretary, senior officials within IND and the police.

31.2. Keeping local records of visits

Visits to home addresses, places of employment etc constitute a most sensitive area of immigration work and one cause of complaint is alleged harassment by officers who have paid repeated visits to the same address.

To demonstrate that officers have acted in accordance with the guidelines, offices must keep a local index of all addresses visited. See section 31.3.

Records must show the date of each visit, the name of the officers who made the visit and the name of the CIO/Inspector who authorised the visit.

Records should be kept for at least 12 months.

Where more than one visit is made to an address, each must be fully justified and must not constitute unreasonable inconvenience to the occupiers.

31.3. Pre-visit procedures

When a decision has been made to conduct an enforcement visit, you must ensure that you have exhausted all avenues for resolving a person's immigration status in the UK*. In addition, you

Enforcement Instructions and Guidance should, as far as is reasonably practicable, eliminate any other person from your enquiries that may be present at the address that is not of an immigration interest. Enquiries are to be undertaken as close as possible to the timing of the visit, preferably within 7 days.

***A final status check must be conducted within 24 hours of the intended visit.**

Once all the avenues for resolving a person's immigration status have been resolved the following basic checks **must** be conducted before you undertake any visit:

- ◆ **Home Office** – CID, Warehouse, Home Office File & Port File (if one is in existence), Landing Cards.

- ◆ **WICU** – Warnings Index.

- ◆ **Local** – National Operations Database.
- ◆ **Police** – Voters register, Police National Computer (PNC)

These checks are not exhaustive; IOs are expected to make common-sense use of all available sources of information to ensure operational efficiency and to reduce unnecessary risk to staff.

31.4. Joint Intelligence Units (JIUs)

Although their primary role is to support enforcement visits, Intelligence Units (IUs) are also the repository for all information about immigration abuse and will provide analysis and reports on a range of issues to aid and assist managers.

The principle, when conducting immigration enquiries, is that they should not be speculative and should be in line with the named offender policy. Conducting such enquiries in the community is regarded as a highly sensitive area of police work and the IS recognises that public reassurance and community safety are fundamental responsibilities of the police. In order to enhance this procedure, police officers have been seconded to the IS to assist in developing and working with IUs. They operate both IS and police intelligence systems thereby ensuring that visits and operations are conducted using the most recent and accurate intelligence. Furthermore IUs will, over time, contribute towards the IS aim of increasing in-house capability whilst reducing reliance on the police when conducting such enquiries.

JiUs were initially set up in the Metropolitan Police Area with a Memorandum of Understanding (MoU) between the Metropolitan Police Service (MPS) and the IS to reflect the needs of the capital. Although IUs now support all areas of Enforcement & Removals (E & R) procedures, they differ slightly between the MPS and other constabularies.

London. The visit request form is signed off by a CIO (subject to all Home Office checks (including WICU) having been completed) and then passed to the Tasking and Coordination Group (TCG) meeting for approval. The TCG will also consider visits/operations proposed by the JIU (against local and national priorities). After approval, the JIU will complete all local and police research. An intelligence summary (of the subject and address) is then produced highlighting potential officer safety and community issues (if any). The reconnaissance visit is then conducted and a risk assessment completed by the operational team and returned to the JIU where it is signed off by an Intelligence Manager and authorisation to conduct the visit is sought from the local police Inspector. The form and assessment is then returned to the originator to complete a final status check before conducting the visit. If it is not an Arrest Team visit police assistance should be sought before commencing the visit and in accordance with local procedures.

Regions. Suitable outside enforcement visit material from the IU is “scored” according to a scoring matrix. The “scoring matrix” gives an objective assessment of the value of a proposed enforcement visit, based on a combination of the target’s place within the Directorate’s priorities and the likelihood of detection, detention and removal. All immigration checks are conducted and it is then passed to the local TCG for approval. If approved by the TCG and entered on the “tasking matrix”, the file is then passed to an enforcement team who complete the VEN 1 (Visit Enforcement Notification) form. This contains a description of the proposed visit, the risk assessment, and the approval of the CIO for the visit. The EV reference on the national operations database may be obtained at this stage. However, no outside visit where an arrest is contemplated may be conducted without the national operations database being completed and an EV reference obtained. The VEN 1 form is then passed to the local police divisional commander for approval of the job, along with the VEN 2 (Community Impact Assessment) and the form is returned to the LEO (usually within 72 hours). On return the visit should be completed expeditiously and in line with the original tasking matrix from the TCG, and in any case within 14 days.

Some offices have adopted a system where files from case-workers (usually Barrier or RCT) are “scored” by them using the same matrix and presented directly to the TCG. If accepted the file is then passed to the IU for Intel checks and the EV reference, and the operational team then

proceeds with the VEN system as above. There are other variations on this theme, but the essence remains that Intel must have sight of all enforcement visits before they are conducted and the VEN system applies in all such cases.

Note: IUs function in different ways, from region to region and from office to office, depending upon local procedures and business priorities. The paragraphs above are intended to give a brief overview of IUs and how they function. However, in practice this may vary as they are always undergoing review, change and expansion to meet the demands of the service (see also chapter 33.1).

31.5. Levels of authority for visits

You must obtain authority for a visit in advance and in writing from a CIO, although higher authority is needed in some circumstances. A middle tier operation must be authorised by an Inspector. You need the authority of a Deputy Director for an upper tier operation. He will advise the Ministers of the forthcoming operation.

Don't visit private addresses either very late at night or very early in the morning. Obtain authority for any visit outside normal hours*. CIOs should bear in mind the sensitivity of immigration enquiries when authorising and agreeing times for visits.

* There is no definition of "normal / reasonable hour". Each case has to be decided on its own merits and it's for the officer to consider if the visit would be frustrated if carried out at a different time.

The timing of visits to business premises may be approached with more flexibility. An early or late visit may be appropriate if that is when an offender is most likely to be located.

Where a visit of a sensitive nature, or to an area where there may be community or other local difficulties, is to be made, an Inspector may wish to impose a local requirement for his authority to be obtained.

31.6. Visits

- ◆ complete all pre-visit checks (see chapter 31.3);
- ◆ make appropriate arrangements in advance with the police (see chapters 31.7 and 33.1);

- ◆ ensure you have all official forms and other equipment, including a 'quick-check' fingerprint scanner and camera;
- ◆ obtain the appropriate level of authority for the visit (see chapter 31.5);
- ◆ enter the visit on the National Operations Database;
- ◆ where an arrest and/or detention is anticipated, or where there may be a breach of the peace, a police officer should always accompany an IO (except under the arrangements outlined in chapter 31.1);
- ◆ When a CIO agrees that a visit to premises does not require a police officer's presence, as in a home visit enquiry, an AIO may accompany an IO but at least 2 officers should be in attendance.
- ◆ never take a denunciatory letter into premises which are the subject of an investigation;
- ◆ do not carry any documents which could identify the source of any intelligence information unless prior approval for it has been obtained from the source;
- ◆ Only take case files into premises being investigated when absolutely necessary. If this is unavoidable, ensure that all papers and documents are securely attached;
- ◆ Ensure that Personal Protective Equipment (PPE) is worn at all times.

31.7. Visits to households

All visits to residential addresses are to be conducted with a police presence – unless subject to the provisions of chapter 31.1. Take special care when visiting members of the opposite sex and when visiting households where only women and young children are present. This is particularly important if the persons involved do not speak English and/or come from a culture where women traditionally have a background role. You should, where practicable, conduct residential visits in mixed sex teams.

31.8. Visits to places of employment

Before visiting places of work, try to establish the names of offenders and undertake pre-visit checks (see chapter 31.3). Try to enlist the co-operation of employers in identifying employees who may be immigration offenders, unless there is reason to believe that this would undermine the effectiveness of the operation. If unsuccessful, only undertake a visit where there is apparently reliable information that immigration offender's will be found. Take particular account of whether there is a history of the premises being used by offenders.

See also chapter 18, Prevention of Illegal Working.

31.9. Visits to prisons

You may be required to attend a prison for an interview with an offender, to conduct an asylum interview or to serve enforcement notices, e.g. a deportation order (DO).

Most prisons have strict times during which visits may be made and you may only visit during those times. In exceptional circumstances, e.g. where an extended visit is required for a lengthy interview, you must obtain the agreement of the governor. You will be expected to leave at the end of the allotted time so allow ample time for a read-through and signing of the interview record.

Before you visit a prison, contact the discipline office who will require the name and prison number of the detainee (if known), the nature of the visit, the names of those who will visit (including the detainee's representative), the proposed date and probable length of the visit. They will then advise when the visit may be made and may require a letter of introduction. Visits are not usually permitted at the weekend.

When you attend the prison, you will be subject to search. Mobile telephones are not usually permitted and may be left in lockers provided. Make references to senior officers from the public telephones or, if the prison officers allow it, from their offices.

If you are required to take photographs of a detainee, you must ensure that you have permission prior to your visit. Cameras are not permitted as a matter of course and you must obtain authority in writing from the security unit.

For your own safety, sit nearest to the door and note where the panic strip/alarm is situated.

A prisoner being interviewed by an IO in respect of an immigration offence is entitled to legal representation in the same circumstances as he would be if being interviewed at a police station (see chapter 37.5). Legal representation must, however, be arranged and financed where necessary by the prisoner. He should be advised of any interview in advance allowing plenty of time for him to contact his representative. Whilst there is no legal entitlement to representation in, for example, asylum interviews, it is prudent to allow a representative to be present and an interview should not normally proceed without a legal adviser if the detainee requires one.

31.10. Visits to registry offices

The rules regarding marriage in the UK changed on the 1st February 2005. From this date onwards those people who are subject to immigration control who wish to marry in the UK will need to hold the appropriate entry clearance, a Home Office certificate of approval or be a person with settled status in the UK. As a result of these changes any visits to registry offices should be rare. If planning to conduct such a visit ensure all pre-visit checks have been carried out (see chapter 31.3) and that the visit is conducted in accordance with local procedures.

31.11. Religious premises operations

When planning such an operation, you must ensure and provide evidence that all other avenues of investigation have been exhausted. Scheduling a religious premises operation should be the last resort.

This sensitive type of operation will involve large numbers of police officers, IOs and in some instances offenders. Consequently this will generate a substantial amount of local and national media interest.

Religious premises operations must be authorised at Deputy Director level, Special Operations and the Minister must be informed. Such sensitive cases may require the Home Secretary to be informed.

The set up of this kind of operation may take a considerable amount of time.

No indication should be given to the police that the intended operation is to go ahead until approval in principle has been obtained from the Deputy Director, Special Operations.

Meetings will have to take place with senior police officials and senior IS management.

Full consideration should also be given to whether the following should be involved:

- ◆ Local MPs.
- ◆ Local councillors.
- ◆ Local police authorities.
- ◆ Religious community leaders.
- ◆ Community safety officer.

This is not an exhaustive list.

Some communities, as well as faith communities, may be unwilling to assist police/immigration in carrying out operations. Reasonable steps must be taken to seek advice from the communities concerned. Steps that have been taken to seek advice and address community concerns must be recorded at all times.

The Officer in Charge (OIC) must take into account what impact this kind of operation will have on members of staff, particularly followers of the faith concerned.

Community Impact Assessment

Following the completion of the operation the OIC should consider with police:

- ◆ Holding public meetings to explain immigration /police action.
- ◆ Provision of alternative prayer facilities.
- ◆ Security of premises.

31.12. Visits accompanied by police officers

Assisting immigration enquiries in the community is a highly sensitive area of police work and should be conducted with due regard for the subject(s) of the enquiry and the concerns of the community groups, while being consistent with Ministerial commitment to a firm, effective and fair immigration control. To take account of changes contained within the Joint Protocol for the Removal of Immigration Offenders (2nd Edition, dated 14 June 2002), new VEN Police Assistance

Request arrangements were introduced nationally, **except in the Metropolitan Region**, at the beginning of 2003. These include written assessment by the Police Borough Commander of the potential Community Impact (VEN 2).

(For full guidance on the use of these arrangements, see also: Requesting police assistance chapter 30)

Except for the arrangements set out in chapter 31.1 above, the police should carry out any initial arrest in the community. Advise them of the name of the offender who is to be arrested and of the offence that he has committed or it is suspected he has committed (see chapter 49.3). If you are unfamiliar with the layout of the premises where an arrest is to be made, try to obtain details prior to any visit. In all cases you will conduct a 'drive-by' of the premises to assess any potential risk factors (see chapter 32.8, RIPA). Brief the police officers to secure the premises and that if anyone tries to leave, then they are responsible for assessing whether to restrain or pursue (see chapter 31.14).

On occasion police officers are also called upon to assist the IS in arresting and detaining individuals living in the community who are to be removed from the UK and whose history suggests that determined or violent resistance is likely (see also chapter 58). These are particularly difficult and sensitive operations which require careful planning in the form of a meeting with all those agencies likely to be involved, e.g. IS representatives, local police officers, the escorts and perhaps Social Services and/or Community Liaison Officers, depending on the circumstances. Where such a meeting is necessary, the IS will supply a case summary and complete a VEN 1, or, in the Metropolitan Region, a request pro-forma.

See also: chapter 33.

31.13. Persons encountered during a visit other than the named offender

During visits to private addresses and places of employment, people should be "invited to answer questions" about their immigration status only if there are reasonable grounds to suspect that they are immigration offenders (Singh v Hammond).

If the purpose of the visit is to locate a named offender, you should usually only question people on the premises to eliminate them from enquiries. In some instances, questioning will be unnecessary where it is obvious he is not the named offender, e.g. by his age, appearance or gender.

The following are instances where it is justifiable to invite a person other than the named offender to answer questions:

- ◆ Where a person gives reasonable cause for suspicion that he is an immigration offender, for example:
 - ◆ by his behaviour (e.g. an attempt to conceal himself or leave hurriedly); or
 - ◆ from his answers to questions about the whereabouts of the named offender; or
- ◆ By any documentation which he may present to identify himself and/or his immigration status in the UK.
- ◆ If a named offender is located at a place of employment and there is reason to believe that other employees are offenders where the employer has a history of engaging immigration offenders;
- ◆ At private addresses, where there is reason to believe that the status of a person, e.g. a spouse or child, may be dependent on the status of the offender;
- ◆ If there is reason to believe that another occupant of the premises may have harboured the offender;
- ◆ Where it is known that communal premises have been used to accommodate offenders in the past - but there must be good reason to suspect the presence of other offenders, e.g. from their behaviour or unwillingness to co-operate in any enquiries.

If you encounter someone other than the named offender at the premises and you do not have cause to arrest them, you must complete the National Operations Diary (see chapter 31.3).

31.14. Pursuit of Offenders

The duties and responsibilities of an IO on an operational enforcement visit vary from those of a police officer who has wider responsibilities, for example, to prevent a breach of the peace or to prevent a crime.

When visiting premises, it is not unusual for persons present to attempt to leave the building. Unless an appropriate warrant has been obtained (see chapter 34) an IO has no power to stop any persons leaving the premises unless they are under arrest.

If an offender succeeds in leaving the premises and unless he can be easily and quickly apprehended without putting any persons at risk, no attempt should be made to pursue him. To do so would place the officer in an uncontrolled situation and at risk of isolation. This applies irrespective of whether a police officer is present or not.

Immigration officers should only render assistance if requested to do so by the police and if they feel it is safe and reasonable to do so. The decision as to whether or not to assist lies with the IO who should conduct their own dynamic risk assessment of the situation.

Should an IO decide to assist the police officer, he should make sure that his colleagues are aware of what is happening. Communication via radio/mobile phone should be maintained between all parties at all times.

The IS policy of not pursuing suspected immigration offenders should be included in the briefing to police colleagues before the commencement of the visits.

31.15. Same Day Removals

Only rarely will it be proposed to detain and remove offenders from the UK on the same day. Where it is considered that the circumstances of a particular case dictate a same day removal reference must be made, in writing, to an Assistant Director or above (see chapter 55 and 45.8.1).

Note: A same day removal would be within a 24hour period from the time the person was arrested, taking all factors into account i.e. transportation time from place of arrest to place of detention, the length of time for the booking in procedure at the place of detention, adequate time to use telephone facilities at the place of detention etc. This is not an exhaustive list of factors that would require consideration.

31.16. The tier system of investigation and operations

The tier system provides for the maintaining of appropriate levels of authority in all enforcement operations. The tier of operation is dictated by the number of offenders being sought*, the number of addresses to be visited simultaneously, the levels of manpower (both police and IS) to be used and the overall sensitivity and profile of the proposed visit or operation.

*The numbers of offenders being sought differed between the regions and the London Command as a result of varying agreements and Memorandum of Understandings (MOUs) between the IS and police forces around the country. In September 2005 this changed. Regional operations now mirror the London Command in respect of operational tier numbers.

31.17. Lower tier

The lower tier visit will typically cover the "one-off" enquiry into an individual suspect's status and will cover visits where there is a realistic expectation of finding up to a maximum of 3 targeted (i.e. named) offenders.

The staffing level for such a visit is unlikely to exceed 2 IOs and up to 3 police officers, unless there are a large number of exits from the premises that need to be secured by the accompanying police officers.

The level of authority for lower tier visits is usually that of CIO.

Some lower tier visits will be carried out without police assistance by officers designated to participate in the arrangements outlined in chapter 31.1. Such visits will only be considered in certain circumstances and on completion of a risk assessment. In all other circumstances, IOs must always be accompanied by one or more police officers.

31.17.1. Middle tier

More than 3 but not more than 20 suspected offenders are likely to be found.

The middle tier also encompasses operations where a small number of likely offenders (up to a maximum of 3) have been identified in advance, but circumstances suggest that other offenders might be present, such as at multi-occupancy premises or places of work where it may only be possible to identify those sought by asking others for evidence of identity and immigration status. Such legitimate enquiries must not be extended so as to constitute random checks. But where initial related enquiries indicate that offenders, other than those identified in advance are present, these may be pursued.

Middle tier operations must have the prior authority of an Inspector. The Inspector must ensure that the Deputy Director is aware in advance that a middle tier operation is taking place and that he is

advised as soon as possible of the outcome of the operation, particularly where media interest is likely. This will be of particular importance where offenders have been apprehended other than those identified in advance.

31.17.2. Upper tier/major operations

These usually involve large numbers of immigration/police officers and offenders and are likely to generate considerable media interest.

The number of persons involved will dictate the need for an upper tier operation but it may be that the high profile and sensitivity of one individual offender will render his apprehension an upper tier operation.

As a general guide, upper tier procedures are to be applied where enquiries indicate that:

- ◆ more than 20 suspected offenders are likely to be found;
- ◆ it is not possible to obtain, for advance checks, the names of those people whom it is proposed should form the basis of the enquiry, but there is repeated evidence of the use of a particular address or place of employment by offenders; or
- ◆ there is evidence of individuals or groups being engaged in organising illegal entry, entry with forged documents etc.; or
- ◆ the apprehension of one or more individual offenders is likely to generate abnormally high media or parliamentary interest; or
- ◆ There is a need for a long-term investigation into a specific area of abuse of immigration control.

Upper tier operations must be authorised personally by the relevant Deputy Director and Ministers will be informed. The authority of senior police officers is also required.

Such operations place the work of the police and the IS under the closest scrutiny and meticulous planning is essential to ensure that the objective of detaining only those persons who are immigration offenders is achieved.

Particular attention needs to be paid to the timing of the operation, the number of officers involved, the need for search warrants (and undertakings have been given by Ministers that these will normally be obtained), interpreters, transport, escort and detention arrangements and many other details. There is a pro-forma for the operational Inspector to submit to the Assistant Director.

An Inspector proposing an upper tier/major operation should at the earliest possible stage contact the Assistant Director to discuss the feasibility of the proposal from an overall policy perspective and procedures to be followed.

No indication should be given to the police that an upper tier operation will go ahead until approval in principle has been obtained from the Deputy Director.

31.18. Operations led by the police or other agencies

Where the police or another agency suggests a joint operation, follow the procedures set out in the tier system of operations.

The police or another agency may request your assistance in an operation where other offences are primarily being investigated, but where there may be a need for advice, such as on the status of a person or the validity of identity documents. If immigration offenders are detected, you should act in an advisory capacity up to the point at which you take action under the 1971 Act.

In immigration matters, the police are bound by the same guidelines as the IS and you should point out to the police any sensitive issues which might attract criticism.

In some police operations it may be more appropriate for you to attend the police station instead of participating in the operation, especially with regard to personal safety.

Powers under the 1971 Act must not be used as a device to enable the police to detain persons for the purpose of investigating other, non-immigration, matters.

The participation of IS staff in police-led operations must be authorised by an officer of at least CIO level. In any case which is not straightforward, e.g. if details of possible offenders are not available, an Inspector's advice should be sought. Such operations will be dealt with under the tier system as in chapter 31.16, 31.17, 31.17.1/2.

Any situation likely to attract media attention should be brought to the attention of the Assistant Director.

31.19 Crime Reduction Operations and Street Operations

Crime Reduction Operations (CROPs) are intelligence-led operations organised by the police and are predominantly undertaken at transport stations, targeting criminals and criminal activity e.g. fare evasion, pick pocketing, bag snatching etc. Equally however, they could also be undertaken at other public areas or crime 'hotspots' such as market places and/or busy high streets. The police will always be in attendance on a CROP and Immigration Officers (IO) are invited to attend where an immigration element is expected.

Street Operations (StOps) are immigration-led operations where intelligence has shown that immigration offenders are gathered at specific locations at certain times e.g. travelling on public transport systems, waiting to be collected for work etc. StOps have developed from the support IOs have provided to the police on CROPs but the emphasis is different; CROPs are targeting criminals and low-level criminality and StOps are targeting immigration offenders gathered at specific locations. Police officers may also be in attendance on StOps but this will depend upon their availability, authorisations, risk assessments etc.

However, whether IOs are assisting on a CROP or leading on a StOp the points made below (legal considerations, race relations, case-law and reasonable suspicions of immigration offences being committed) remain the same.

31.19.1 Legal Considerations

IOs do not have the same powers as the police to stop and search individuals in public places. As regards the powers of IOs to question individuals "in-country" (as distinct from immigration control points at ports of entry), IOs are entitled to examine people in order to determine their immigration status **in certain circumstances**. The authority for this stems from paragraph 2 of Schedule 2 to

the Immigration Act 1971 (the '71 Act) as interpreted by the long standing judgement *Singh v Hammond*.

A second legal issue arises in relation to compliance with the Race Relations Act 1976 (as amended). Under this Act it is unlawful for IOs carrying out their duties to do any act which constitutes racial discrimination. "Discrimination" includes treating some people less favourably than others on racial grounds (which includes colour, nationality, ethnic or national origins). Therefore an IO may not stop an individual based upon their racial appearance and race or colour can never be the basis of the IOs "reasonable suspicion" that someone has committed an immigration offence (see below for further details).

31.19.2 The *Singh v Hammond* Judgement

Singh v Hammond held that:

"An examination [under paragraph 2 of Schedule 2 to the '71 Act] ... can properly be conducted by an immigration officer away from the place of entry and on a later date after the person has already entered ... if the immigration officer has some information in his possession which causes him to enquire whether the person being examined is a British citizen and, if not, ... whether he should be given leave and on what conditions."

On the basis of this authority, if an IO has a "reasonable suspicion" that an individual is an immigration offender he may lawfully seek to stop that person with a view to asking them questions. An IO's powers under Schedule 2 of the '71 Act would then apply in the same way as they do at a port of entry.

31.19.3 Referrals and Reasonable Suspicion

Other agencies present on the CROP may stop an individual under their own powers and refer them to an IO*. At this stage and based purely on the referral from the officer of that Agency, it is highly unlikely that the IO will have formed a reasonable suspicion that an immigration offence has been committed. It is also highly unlikely that the intelligence will be as specific as to state that Mr. X is an immigration offender and will be at a particular location on a particular date and at a particular time. Therefore, any questioning after a referral must be on a consensual basis. Only if

the individual consents to being questioned and the IO then forms the suspicion that an immigration offence has been committed could *Singh v Hammond* and Schedule 2 powers be relied upon.

Further information on the use of Schedule 2 powers e.g. caution +2 interviews can be found under the “Operational Enforcement Activity” heading of the Enforcement Manual.

Reasonable suspicion of an offence could arise in numerous ways but an example could be where an individual attempts to avoid passing through or near a group of IOs at a train or tube station who are clearly visible and identifiable as such. This behaviour could not be considered to be linked to evading payment of the train fare if IOs are wearing vests or other items of work wear which clearly show which Agency they belong to. In such circumstances the IO could legitimately stop the individual and ask questions under the authority of *Singh v Hammond*.

*If an IO stops an individual on a StOp and refers them to another IO for questioning (rather than a referral from another Agency), they will need to justify that stop under immigration legislation.

31.19.4 Race Relations

As mentioned previously, race or colour can never be the basis of the IOs “reasonable suspicion” that someone has committed an immigration offence.

There is an exception that allows discrimination on the basis of ethnic origin or nationality when undertaking immigration functions if it is authorised by a Minister. However, such an authorisation could not cover such operations because without speaking to a person or examining their documents it would be very difficult to provide guidance on who to stop which did not make reference to physical characteristics of race or colour. Only if such operations are conducted in a racially neutral way (stopping people on the basis of their behaviour rather than appearance) can any race relations concerns be dissipated. Discrimination on the basis of race or colour can never be authorised.

In order to comply with the RRA 1976, an IO **must not**:

- ◆ Stop and/or examine individuals by means of “profiling”;
- ◆ Point out individuals to officers of other Agencies and ask them to stop them under their powers and then refer them to an IO; and

- ◆ Engage a person on the basis of their appearance, race, colour, ethnic origin or nationality.

31.19.5 Basis to Stop Individuals

One example of when it could be possible to stop an individual was provided in an earlier section i.e. where a person attempts to avoid passing through or near a group of IOs at a train or tube station who are clearly visible and identifiable as such. This could be referred to as “having an adverse reaction to an immigration presence”. Although there is no definitive list of what constitutes an “adverse reaction” some other examples may include:

- ◆ Hanging back from the barriers. Where the individual moves in such a way as to allow others past his position for no apparent reason upon spotting the presence of IOs.
- ◆ Reversing direction or walking away. A sudden or unexplained change in direction and/or pace which is not running but generally quicker than they were walking. This could explain a desire to exit the area without drawing the same attention that running would.
- ◆ Avoiding eye contact with IOs. Seeking to limit interaction and/or confrontation with someone perceived to be a threat.

On the reverse of all the above examples however, there could also be a reasonable explanation for such actions e.g. they cannot find their ticket to pass through the barriers, they could be late for a connecting journey or there could be cultural or diversity issues for not making eye contact. The reasonable suspicion and/or the adverse reaction may not be the same for all individuals and officers must be able to fully justify their reasoning for stopping an individual that is not referred by another Agency.

31.19.6 Recording of Information

It is important that the information gathered and recorded by IOs about those individuals spoken to in the course of a CROP or StOp is done so in a unified and consistent manner*. Consequently, whenever an IO engages a member of the public the following information **must** be obtained (where practicable):

- ◆ How the engagement was sought i.e. the referral or adverse reaction;

- ◆ The outcome; and
- ◆ The person's assessment of their ethnicity.

The following information is required (as a minimum) where the individual consents to answering questions:

- ◆ Personal details (name & date of birth);
- ◆ Nationality (or claimed nationality); and
- ◆ Their claimed immigration status.

* As a result of the Stephen Lawrence Inquiry Report, police officers now have to record all stops and searches conducted in a public place on a specified form. As the police have far wider powers it would not be appropriate for IOs to use the same form, however work is currently underway to design a form and guidance notes that will be appropriate for use by IOs. This will standardise the way in which information obtained on a CROP or StOp is gathered and recorded.

31.19.7 Summary

IOs have limited powers in respect of stopping and searching compared to the police and just because an immigration presence on a CROP/StOp is lawful it does not mean that IOs will automatically be able to legitimately stop and question individuals. There still needs to be a reasonable suspicion of an immigration offence being committed before initially stopping and questioning and where appropriate, subsequently arresting.

IOs may legitimately question individuals encountered in public places in order to determine their immigration status under 3 specific circumstances:

- ◆ The intelligence is so specific that the IO knows the immigration offender will be travelling on a specific date, time, location, train etc;
- ◆ The IO has formed a reasonable suspicion that the individual is an immigration offender e.g. from what is said by the person during the course of a prior interview with a police officer; or
- ◆ Where the individual displays an adverse reaction to a clearly identifiable immigration presence.

Where an individual is referred by another Agency and the IO has not formed a reasonable suspicion that the individual is an immigration offender, any questioning will be on a consensual basis and the individual must be informed of this.

Where an IO stops and/or questions an individual outside of the 3 points above, even if they identify themselves and explain it is voluntary, they must still be able to demonstrate why they stopped the individual in the first place in order to question them.

Only when an IO has formed a “reasonable suspicion” that an individual is an immigration offender may he lawfully seek to stop that person with a view to asking him questions. Where this is the case *Singh v Hammond* and an IO’s powers under Schedule 2 of the ’71 Act will apply.

An IO must not engage a person on the basis of their appearance, race, colour, ethnic origin or nationality. To do so would amount to unlawful discrimination under the RRAA legislation.

31.20. Ministerial authorisations under the Race Relations (Amendment) Act 2000

The Race Relation Act 1976 (RRA), as amended by the Race Relations (Amendment) Act 2000 (RR (A) Act), prohibits discrimination on racial grounds by public authorities in carrying out their functions. “Racial grounds” means colour, race, nationality or ethnic or national origins. The RRA (section 19D) contains a limited exemption, which allows IND **in carrying out immigration functions** to discriminate against people on the grounds of nationality or ethnic or national origin if it is required by legislation or has been authorised by Ministers (see chapter 21). Discrimination will not be unlawful on the grounds of nationality or ethnic or national origin if Ministers have personally authorised such discrimination, either in regard to a particular case or in specified areas of activity. Authorisations can be amended or added to at any time. The powers in sections 28A to 28K of the 1971 Act (i.e. the powers of arrest, entry, search and seizure) are excluded from the definition of “immigration functions” for section 19D purposes; hence these powers cannot be exercised in a discriminatory way. **Discrimination on the grounds of race or colour is not permitted under any circumstances.**

A general authorisation covers targeted removal programmes for certain nationalities based on statistical evidence or intelligence. Where any operation is planned, consideration will need to be given as to whether this is RRA compliant. Clearance should be sought from senior operational managers and a written response will be sent. Any such requests for authorisation should be

Enforcement Instructions and Guidance copied to the Social Policy Unit (SPU) who will also provide advice. Ad hoc Ministerial authorisations will be required for any enforcement operation which specifically targets nationality or ethnic or national origins. Operations which are targeted at workers in breach, for example, but which happen to pick up persons of a particular nationality would not need an authorisation.

Where an operation is considered by the senior manager to require Ministerial authority, full details of the statistical evidence or intelligence to support such an operation will be required in written submission form. The level of authority for middle/upper tier operations remains unchanged (see **IDIs Chapter 1, Section 11 for further information.**)