

## Chapter 34 – Warrants

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## 34 Warrants

### Obtaining warrants

A warrant is a document issued by a justice of the peace (or a justice of the peace or sheriff in Scotland), authorising officers to arrest a specified person, enter specified premises for the purpose of arresting a specified person or enter specified premises for the purpose of searching for evidence. It is important to ensure that the correct type of warrant is obtained for the purpose intended, for example, a warrant obtained to enter premises to search for evidence of a suspected offence (under section 28D of the 1971 Act) cannot be used to obtain relevant documents for a removal under schedule 2 to the 1971 Act.

A warrant can be applied for under the following provisions of the 1971 Act:

- section 28AA (to arrest a person for an offence listed in that section)
- section 28B (to enter and search premises for the purpose of arresting a person for an offence listed in that section)

- section 28D (to enter premises for the purpose of searching for evidence relevant to the investigation of an offence listed in that section)
- section 28FB (to enter premises for the purpose of searching for personnel records where an employer has provided inaccurate or incomplete information under section 134 of the Nationality, Immigration and Asylum Act 2002)
- paragraph 17(2) of schedule 2 (to enter premises for the purpose of searching for and arresting a person under paragraph 17(1) of that schedule)
- paragraph 25A (6A) of schedule 2, as amended (to enter and search any premises for relevant documents in respect of a person arrested or detained under that schedule or any other power).

The entry and search of premises under a warrant is unlawful unless it complies with sections 28J and 28K of the 1971 Act. The **Police and Criminal Evidence (PACE) Act 1984** Code of Practice B is also relevant.

Warrants issued under immigration legislation can be obtained by Home Office staff but, in certain circumstances, can be executed by either an IO or a police constable. Under sections 28AA and 28D of the 1971 Act only an IO can apply for and execute a warrant. However, under section 28B of the 1971 Act and paragraph 17(2) of schedule 2 to the 1971 Act either an IO or a police constable can be authorised to enter and search premises for the purpose of arresting the person.

An application for a warrant to enter premises for the purpose of searching for and arresting a person can include the names of more than one person. It is, therefore, not necessary to apply for and obtain a separate warrant in respect of each individual suspected of living at the same address. However, it is recommended that when applying for a warrant involving a family, **all** family members are listed on the warrant. This allows the other family members to be arrested/detained in the event that one or more of the family members are absent at the time of the visit.

Section 45 of the UK Borders Act 2007 provides for entry and search with a warrant where an individual has been arrested on suspicion of the commission of a criminal offence **and** has not been released without being charged with an offence and it is believed that nationality documents may be found on premises other than those:

- occupied or controlled by the individual
- on which the individual was arrested, or
- on which the individual was, immediately before being arrested.

Full details and guidance concerning arrest without warrant can be found at Chapter 16 (Powers of an immigration officer) of the EIG.

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### **34.1 Entry, search and arrest with warrant under section 28B of the 1971 Act**

Section 28B of the 1971 Act allows a justice of the peace (JP) or sheriff, if he is satisfied that there are reasonable grounds for suspecting that a person who is liable to be arrested for a 'relevant offence' is to be found on any premises, to issue a warrant authorising a police constable or an IO to enter specified premises, by force if necessary, to search for and arrest the person. Relevant offences for the purposes of section 28B are covered in section 28B(5).

Note: if you are obtaining a warrant for a specific room/flat within multi-occupancy premises then that is the address which needs to be shown on the warrant i.e. Flat 4, 12 Green Street etc. There is no reason why you could not specify on the reverse of the 'Information' that you also require access through the front door, then into the specific room/flat and any communal areas. However, district judges in different parts of the country may not be of the same opinion. The chief clerk of the particular court will be able to provide further guidance.

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## 34.2 Entry and search for evidence with warrant

Under section 28D of the 1971 Act a JP or sheriff may issue a warrant authorising an IO to enter and search premises. The section is akin to section 8 of PACE and contains similar safeguards.

**In all circumstances outside of arrest teams, officers must continue to rely on the police obtaining and executing a warrant under PACE in order to enter and search for evidence.**

The purpose of this section is **not**, however, to provide Home Office staff and the police with the opportunity to organise speculative visits to homes and businesses. Ministers have stated publicly that the Home Office will act only where there is sound evidence to suggest that the appropriate evidence may lead to the apprehension of an immigration offender.

Investigation of an offence involves the process of examining whether the offence has been committed and by whom. The usual purpose of investigation in the criminal context is prosecution. Obtaining information for the purpose of removal action (e.g. by searching for evidence of identity in order to document the offender to effect removal), in no way satisfies these criteria and constitutes an abuse of power. Searching on behalf of other agencies is, similarly, an abuse of power.

Before issuing a warrant under section 28D of the 1971 Act, a JP or sheriff has to be satisfied that there are reasonable grounds for the granting of that warrant:

- a relevant offence has been committed as defined in section 28D(4)
- there is material on the premises to be searched which is likely to be of substantial value (either by itself or together with other material) to the investigation of the offence
- that the material sought is likely to be relevant evidence
- that the material does not consist of or include items subject to legal privilege, excluded material or special procedure material (definitions of these terms can be found in PACE sections 10,11 and 14)
- one of the conditions specified in section 28D(2) applies:

- that it is not practicable to communicate with any person entitled to grant entry to the premises
- that 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 evidence
- that entry to the premises will not be granted unless a warrant is produced
- that the purpose of the search may be frustrated or seriously prejudiced unless an IO arriving at the premises can secure immediate entry to them.

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### **34.3 Entry and search of business premises with warrant**

Section 134 of the 2002 Act allows the Home Office to require an employer to supply information about an employee in order to establish:

- where the employee is
- the employee's earnings and employment history.

If there are reasonable grounds for believing that the employer has provided inaccurate or incomplete information, you can consider applying for a warrant under section 28FB of the 1971 Act.

Under section 28FB of the 1971 Act a JP or sheriff may issue a warrant authorising an IO to enter and search business premises for personnel records. The warrant will only be issued provided that there are reasonable grounds for believing:

- that an employer has provided inaccurate or incomplete information under section 134 of the 2002 Act
- that employee records, other than items subject to legal privilege, will be found on the premises and will enable deduction of some, or all, of the information which the employer was required to provide; and

- that one of the conditions in section 28FB (2) are met.

Section 28FB must be read before applying for the warrant to ensure the limitations and/or conditions are met.

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### **34.4 Entry and search of third party premises for relevant documents with warrant**

Under paragraph 25A (6A) of schedule 2 to the IA71, as amended, a JP or sheriff may issue a warrant authorising an IO to enter and search a specified premises other than:

- a premises occupied or controlled by an arrested person; or
- in which the person was when arrested, or immediately before being arrested

for relevant documents, which paragraph 25A (9) defines as documents which might establish a person's identity, nationality or citizenship or a travel ticket.

Before issuing a warrant under paragraph 25A (6A), a JP or sheriff must be satisfied that there are reasonable grounds for believing that relevant documents may be found at the specified premises and that:

- it is not practicable to communicate with any person entitled to grant entry to the premises or
- it is practicable to communicate with a person entitled to grant access, but it is not practicable to communicate with any person entitled to grant access to the relevant documents or
- entry to the premises will not be granted unless a warrant is produced or
- the search may be frustrated or seriously prejudiced unless an IO can secure immediate entry to the premises on arrival.

An IO may retain a document seized during this search while the IO has reasonable grounds for believing that the arrested person may be liable to removal and that retention of the document

may facilitate the person's removal. This does not apply to documents which the officer has reasonable grounds for believing are subject to legal privilege.

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### **34.5 Entry and search for evidence of nationality or identity with warrant under section 45 of the UK Borders Act 2007**

Sections 44 - 47 of the UK Borders Act 2007 enables searches for evidence of nationality where the individual has been arrested on suspicion of the commission of a criminal offence **and** has not been released without being charged with an offence.

The power may not be exercised once the suspect has been released without charge for the criminal offence. However if the individual has been identified as an immigration offender, any relevant documents which have been seized under section 46 may be passed to or retained by the Home Office in order to facilitate the person's removal from the UK.

Searches under these powers will only be necessary where:

- an individual fails to co-operate in establishing his or her identity; or
- the officer has **reasonable** grounds to believe that they are being deceptive over their identity (This must be recorded).

Section 45 provides for entry and search with a warrant on application from an IO (or constable) to a justice of the peace or sheriff.

Before issuing a warrant under section 45 of the Borders Act 2007, a JP or sheriff has to be satisfied that there are reasonable grounds to believe that the individual may not be a British citizen, that nationality documents which relate to the individual (and which are not exempt from seizure) may be found at the premises **and** that any of the following conditions apply:

- that it is not practicable to communicate with any person entitled to grant entry to the premises
- that 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 evidence

- that entry to the premises will not be granted unless a warrant is produced
- that the purpose of the search may be frustrated or seriously prejudiced unless an IO arriving at the premises can secure immediate entry to them.

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 (PACE) 1984 will apply.

Safeguards set out in section 28J and 28K of the 1971 Act apply to the execution of warrants by IOs (see [34.11](#) and [34.12](#) ).

For full guidance on sections 44-47 of the Borders Act 2007, see EIG Chapter 16.11.

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### **34.6 Arrest with warrant under section 28AA of the 1971 Act**

Section 28AA of the 1971 Act allows an IO to apply for a warrant to arrest a person for an offence under section 24(1)(d) of the 1971 Act or section 8 of the 1996 Act.

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### **34.7 Persons liable to be detained - entry, search and arrest with warrant**

Paragraph 17(2) of schedule 2 to the 1971 Act allows a JP or sheriff to issue a warrant authorising any IO or police constable to enter a named address to search for and arrest a person. However, he must be satisfied that there are reasonable grounds for suspecting that a person is liable to be arrested under paragraph 17(1) and is to be found on the premise named in the warrant.

Under paragraph 2 of schedule 3 of the 1971 Act (detention or control pending deportation), officers can apply their existing powers under schedule 2 to persons liable to be detained under paragraphs 2(2) and 2(3) of schedule 3. This relates to those who are subject of a notice of intention to deport or a deportation order. In Scotland the JP or sheriff may only issue a warrant if the premises are in a place within his jurisdiction. Section 53 of the 2006 Act refers.

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## 34.8 Obtaining warrants - safeguards set out in section 28J of the 1971 Act

### The entry or search of premises under a warrant is unlawful unless it complies with sections 28J and 28K of the 1971 Act

Section 28J of the 1971 Act sets out safeguards in relation to the application for, and issue, of warrants under Part III of the 1971 Act, schedule 2 to that Act and section 45 of the UK Borders Act 2007. It replicates the safeguards in section 15 of PACE and specifies the information which must be provided when applying for a warrant. Section 28J states that in Northern Ireland, an application for a warrant must be supported by a complaint in writing and substantiated on oath. Otherwise, an application for a warrant is to be made 'ex parte' i.e. in the absence of the suspect, his/her legal representative and/or the public and supported by information in writing or, in Scotland, evidence on oath. It also states that an officer must answer on oath any question that the justice of the peace or sheriff asks him. Section 28J states that a warrant shall authorise an entry **on one occasion only** and must:

- specify the name of the person applying for it
- specify the date on which it is issued
- specify the premises to be searched
- specify the provision of the Act under which it is issued and
- identify the person(s) or article(s) to be sought, so far as is practicable.

Two copies of a warrant must be made and these must be clearly certified as copies.

In the case of a warrant obtained by a police constable, section 16(2) of PACE authorises persons to accompany a police officer. The IO(s) expected to attend should be specified on the warrant by title, grade or name depending on local practice in the court area.

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### 34.9 Procedure to be followed before applying for a warrant

Where information is received which appears to justify an application for a warrant, reasonable steps must be taken to check that the information is accurate, recent and has not been provided maliciously or irresponsibly. An application for a warrant may not be made on the basis of information from an anonymous source where corroboration has not been sought.

Before applying for a warrant, an IO must:

- bear in mind that, except for arrest teams, all warrants must still be executed by police officers and not IOs
- ensure that when a police officer will be required to execute a warrant obtained by an IO they have the power to do so as police officers cannot execute a warrant obtained under section 28D of the 1971 Act
- if section 28D applies ascertain as specifically as is possible the nature of the articles concerned and their location
- make reasonable enquiries to establish what, if anything, is known about the likely occupier of the premises, the nature of the premises themselves, whether they have been previously searched and, if so how recently
- before attending court, check whether the court is willing to issue warrants to be executed outside of the court's area
- obtain the authority of a CIO to make the application. This must be recorded at section 10 of the application for a search warrant.

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### **34.10 Procedure to be followed when making an application for a warrant**

On 7 October 2013, the Criminal Procedures Rules 2013 introduced a new form for electronic submission to the magistrates court in order to apply for a search warrant. The form can be found at Application for search warrant. Send the completed application by secure email to the court. ICE leads will need to contact their local magistrates court to obtain the correct email address for submission and ensure that staff are available to attend the court once a hearing date is advised.

The main points to note when completing the new electronic template are:

- you must clearly state in section one of the form that an application is being sought under the relevant immigration act power and that the safeguards of S28J and S28K of the Immigration Act apply and differ from sections 15 & 16 of PACE
- section five does not apply as Immigration Act warrants do not permit the search of premises that cannot be specified
- you must specify on section six of the form that Immigration Act warrants permit entry to a premises once only and are valid for only one month which differs from sections 15 & 16 PACE warrants
- section 10 is the authorisation to make the application and is completed by the CIO. As it is sent electronically, instead of a signature, it may be authenticated electronically (that is, by sending it from an email address recognisable to the recipient). This replaces the written authority to make application for a search warrant template.

You should also read note 9 of the guidance notes and include information that might undermine the grounds for the application to allow the magistrate to make an objective decision on the application.

The remaining sections of the form are self explanatory and mean that there is now no requirement for an information sheet to accompany the warrant application.

By virtue of the safeguards under section 28J of the 1971 Act, when making an application for a warrant officers must also:

- specify the premises to be entered and searched
- identify, as far as is practicable, the person(s) or article(s) being sought
- be prepared to be tested by the justice of the peace or sheriff on the details of the case and on the legal basis for requesting a warrant
- ensure that the information provided is clear, accurate and up to date
- observe the standards of the court in respect of dress and behaviour and attend court in full HO Immigration Enforcement uniform
- for arrest trained IOs, be prepared to specify who will accompany the IO or to state 'any immigration officer or police officer required for the effective conduct of the visit'
- for IOs operating in all other circumstances, if required to specify who will accompany the police officer, state 'any immigration officer or police officer required for the effective conduct of the visit'
- anyone who is not an IO or police officer, who accompanies an arrest trained IO or an IO operating in all other circumstances, must be named separately on the warrant or by their company name, e.g. an observer from the Home Office; a HEO family engagement manager; a medic from Tascor. Their reasons for accompanying the visit must be provided to the court
- check that the warrant can be executed within one month of its issue.

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### 34.11 Executing warrants

Warrants can be executed by arrest-trained IOs or by the police on behalf of the Home Office. The police will often seek guidance from immigration staff particularly where the warrant has been issued on information provided by the Home Office. You must liaise with the police contingent, if applicable, so that both parties are fully aware of the circumstances likely to be encountered and in order to agree a proposed course of action. **Non-arrest trained IOs should not obtain a warrant that cannot be executed by a police officer i.e. warrants obtained under section 28D of the 1971 Act.**

The IOs and police will act in accordance with guidelines laid down in the revised PACE Codes of Practice.

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### 34.12 Executing warrants - safeguards set out in section 28K of the 1971 Act and PACE codes of practice- code B

Section 28K of the 1971 Act lays down the procedures for the execution and subsequent disposal of warrants issued under part III of the 1971 Act and under schedule 2 to that Act. It provides for warrants to be executed by any IO and the attendant provisions are based on section 16 of PACE. It also allows for a warrant to authorise persons to accompany the officer executing it.

Section 28K sets out that entry and search under a warrant must be:

- within one month from the date of its issue; and
- at a reasonable hour, unless it appears to the officer executing it that the purpose of the search might be frustrated. If the search is to be conducted either early or late in the day, be prepared to justify the unsociable hour.

Before executing a warrant, take reasonable steps to ensure the premises are occupied. Where there is no initial indication that anyone is present, assess whether it is likely that persons are seeking to conceal their presence.

Officers must note that a search under warrant may only be a search to the extent required for the purpose for which the warrant was issued. For example, when a warrant is issued to search for an individual, it does not extend to the searching of drawers etc where it is clear the subject could not be concealed.

### **Occupier is present**

If the occupier of the premises to be entered and searched is present at the time an IO seeks to execute a warrant, under the PACE Codes of Practice Code B the officer must, before the search begins:

- identify him or herself, show their warrant card and state the purpose of and grounds for the search
- identify and introduce any persons accompanying the officer on the search and briefly describe their roles in the process
- when an officer conducts a search of premises under a warrant, a statutory power (including section 28CA [AD's letter]) or informed consent they must, if practicable before the search begins, show the occupier the warrant (if applicable) and the Notice of Powers and Rights (hereafter referred to as "the notice") and give them copies of the warrant and notice, unless the OIC reasonably believes this would frustrate the object of the search or endanger officers or other people.

There is no need to endorse the copy of the warrant when it is given to the occupier.

**Note: There may be implications concerning the validity of the entry and search if you do not show and serve the warrant and notice on entry, both by non-compliance with code B of PACE and under section 28K of the IA71.**

In order to facilitate rapid service of the copy of the warrant and the notice on the occupier, it is recommended that you:

- ensure that the officer responsible for completing the premises search book (which contains a copy of the notice) completes the left hand box of that form, except for the search start and end times, before arrival at the premises, with the following details:
  - address and type of premises and
  - power under which search is made or
  - statutory power under which search is made or
  - informed consent fully completed and signed by the person giving consent and
  - OIC name, office, address and date
- detach and serve the occupier's carbon copy and their copy of the warrant, immediately on arrival
- as it will not be possible to enter the start and finish time of the search, this can be added to the occupier's copy of the notice once those details are known, though failure to do so does not affect the legality of the search.

If the occupier is not present but some other person is who appears to be in charge of the premises, the IO must treat that person as if he were the occupier.

The fact that a copy of the warrant and the notice were given to the occupier before the search began, and the time they were given, must be recorded in the scene notes of the PSB. If they were not given before the search began because either the occupier, or some other person who appears to the officer to be in charge of the premises, was not present or the OIC had reasonable grounds to believe that alerting the occupier or any other person entitled to grant access would frustrate the object of the search or endanger officers or other people, this fact and those reasonable grounds must be recorded in the scene notes of the PSB.

Where reference is made to "impracticable" or "if practicable" with regard to service of forms, this relates to the situation the officers face or the reaction of occupants (for example, they refuse to accept them or are violent) and not the officer's own preferences. The situation and any justification must be recorded in the scene notes of the PSB.

### **Premises is unoccupied**

Where it is clear that the premises are unoccupied or that the subject of the warrant is not present, the warrant should not be executed unless the warrant is to search for evidence under section 28D and not a person.

### **When a warrant has been executed**

If a warrant is executed but no one is found at the address, it is your responsibility to secure the premises and leave a copy of the warrant in a prominent place on the premises, in addition to a copy of the Notice of Powers and Rights, taken either from the HO premises search book (PSB) or the police PSB (see also [34.13](#)).

An officer executing a warrant must make an endorsement on it stating whether the persons or articles sought were found and whether any articles, other than those sought, were seized.

In addition to these procedures, when a warrant has been executed:

- check that along with a copy of the warrant, suitably endorsed, a contact number for the immigration office concerned is left with the occupier or the person who appears to be in charge of the premises
- take full notes including the names of all those involved and details of any incidents
- return the warrant to the court (see [34.17](#))
- minute the visit folder and update NOD to show the outcome of the visit.

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### **34.13 Endorsement of warrants**

HO Immigration Enforcement must abide by the PACE Codes of Practice Code B when endorsing warrants.

Where an officer has reasonable grounds to believe that recording or disclosing their name may put them in danger, they must use their warrant number and ICE team name when endorsing the warrant or completing the notice. The officer must record their reasonable grounds for believing this is necessary in the scene notes of the PSB.

### **Original warrants**

On each occasion when premises are searched under warrant, the warrant authorising the search on that occasion must be endorsed to show:

- if any of the articles specified in the warrant were found
- if any other articles were seized
- the date and time the warrant was executed and if present, the name of the occupier or, if the occupier is not present, the name of the person in charge of the premises when the warrant was executed
- the names of the officers who executed it and any authorised persons who accompanied them
- if a copy, together with a copy of the Notice of Powers and Rights, was:
  - handed to the occupier; or
  - endorsed as required, left on the premises and where it was left

### **Copy of warrant handed to the occupier**

There is no need to endorse this copy.

### **Copy of warrant left on premises**

When a copy of a warrant is left at a premises, it must be endorsed with the:

- name of the OIC
- date and time of the search.

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### 34.14 Disposal of warrants

A warrant is valid for one calendar month and is not renewable. It can be returned to the court personally or by post but the responsibility for doing so rests with the officer in charge of the case.

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### 34.15 Unused warrants

If action is not taken within one calendar month, or the warrant is no longer required, return it to the court (see [34.17](#) ). If another visit is planned, a new warrant must be obtained.

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### 34.16 Executed warrants

Once executed, a warrant cannot be used for follow up action at the same address. If another visit is planned, a new warrant must be obtained.

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### 34.17 Returning warrants to the court

A warrant which has been executed, or which has not been exercised within the time authorised for its execution, must be returned:

- if issued by a justice of the peace in England and Wales - to the justices' chief executive appointed by the magistrates' court committee whose area includes the petty sessions area for which the justice acts
- if issued by a justice of the peace in Northern Ireland - to the clerk of petty sessions for the petty sessions district in which the premises are situated
- if issued by a justice of the peace in Scotland - to the clerk of the district court for the commission area for which the justice of the peace was appointed

- if issued by the sheriff - to the sheriff clerk.

A warrant so returned will be retained for 12 months. During this time the occupier of the premises to which it relates may ask to see it, and if he does ask to see it he must be allowed to do so.

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### Revision History

Date change published	Officer/Unit	Specifics of change	Authorised by;	Version number after change (this chapter)
		OEM Revision		1
25/02/2009	OPPI Team 1D	Review of EIG Chapter 34 & 35	Steph Hutchison-Hudson	2
11.04.2010	CAT Enforcement	Addition of 34.10 Section 45, Borders Act 2007 Powers	Brendan Crean	3
27/11/13	Enforcement & Returns Operational Policy	Minor formatting changes; revision history included in external publication	Kristian Armstrong	4
28/07/14	Enforcement & Returns Operational Policy	IA14 amendment- para 25A (6A)Sch2 search power (34.4)  Addition of electronic application for warrants- 34.3; Update of written authority- 34.2;update of 34.10 persons named on warrant; Removal of 34.12-34.14 incl to be imported into Ch16.3- 16.5; addition of new section 34.17- endorsement of warrants.	Angela Perfect, Central Operations & Kristian Armstrong, IBPD	5