

Crime and Courts Bill

Fact Sheet: Powers of Immigration Officers

Background

1. The UK Border Agency (UKBA) has evolved significantly as an independent law enforcement agency in recent years and plays an increasingly important role in countering serious and organised crime. However, as it has developed and expanded its remit so a number of areas have emerged where a change in the law is needed to equalise the powers available to immigration officers working within its dedicated crime teams.
2. These additional powers are necessary to enable cohesive investigations into serious and/or organised immigration related crime or customs crime and importantly to be able to do so across the whole of the United Kingdom.
3. There needs to be the ability to act independently when necessary and not be reliant on other law enforcement agencies to provide assistance simply because a particular individual lacks the relevant powers.
4. Clause 36 of, and Schedule 17 to, the Bill makes four changes to certain immigration officers' powers. These are in relation to:
 - The Regulation of Investigatory Powers Act 2000 (RIPA) and Part 3 of the Police Act 1997 – extending powers covering the use of covert investigative techniques and property interference to immigration officers investigating serious crime;
 - The Proceeds of Crime Act 2002 (POCA) – extending coverage of this legislation to immigration officers, thereby putting them on a par with their customs colleagues;
 - Criminal investigation and detention powers in Scotland – bringing the powers and legal responsibilities of immigration officers into line with those of police officers and customs officials in Scotland and clarifying the legal position in respect of the detention and arrest of suspects by immigration officers; and
 - Cross-border powers of arrest – making cross-border powers contained in the Criminal Justice and Public Order Act 1994 that already apply to police officers and customs officials available to immigration officers. This will enable them to deal independently with suspects wanted for offences in different jurisdictions across the United Kingdom.

Extension of RIPA and Police Act 1997 powers to immigration investigators

5. Clause 36 extends the power to use intrusive surveillance under RIPA and property interference under Part 3 of the Police Act 1997 to those responsible for the investigation of immigration crime within the Home Office, namely immigration officers.
6. Investigations into immigration crime will continue to be conducted by immigration officers in the Criminal and Financial Investigation (CFI) teams within the UK Border Agency – approximately 700 staff, roughly half of whom are former HM Revenue and Customs (HMRC) officers (now designated customs officials and appointed immigration officers) – with the remainder being immigration officers and police officers on attachment to UKBA. However, approximately 240 of these (predominantly ex-Customs staff) will transfer to the Border Policing Command within the National Crime Agency (NCA) during 2013 to continue the drugs and firearms work.
7. Under existing legislation, the less intrusive investigate techniques under RIPA can be authorised to assist in the investigation of immigration crime. However, only designated customs officials are currently able to apply for intrusive surveillance under RIPA and property interference powers under Part 3 of the Police Act 1997, and only then for the investigation of customs offences.
8. As a result, UKBA is currently required to get agreement from other agencies such as the Serious Organised Crime Agency (SOCA) and local Police forces to own jointly immigration investigations, and for those agencies to apply for and authorise the more intrusive techniques. The outsourcing of work to other law enforcement agencies such as the police and NCA will not always be possible for a variety of reasons and the practice does not ensure the appropriate ownership and management of risk. Looking ahead, the NCA will have a legitimate expectation that those tasked to lead on organised immigration crime investigations will do so effectively and promptly.
9. The overall aim of these provisions is to ensure that immigration officers can deploy a full range of investigative techniques to deal effectively with all immigration crime and are not restricted by virtue of their legacy designation within UKBA.

Extended Proceeds of Crime Act 2002 (POCA) powers

10. The amendments to POCA will enable immigration criminal investigators across the UK to:

- exercise freestanding money laundering, confiscation and cash detention investigations;
- seize, detain and seek the forfeiture of cash just as customs officials can currently; and
- secure the benefit of provisions to be inserted into by Part 5 of the Policing and Crime Act 2009 (which strengthen the powers to seize and confiscate the proceeds of crime in anticipation of a confiscation order) once these provisions are brought into force.

11. Financial investigation and associated powers with regard to the proceeds of crime are a critical part of any investigation into serious and/or organised crime and are essential for UKBA if it is to be able to tackle the full range of criminality for which it has responsibility. Without the additional powers there is a risk that the Agency may on occasion be required to leave suspect cash 'unseized'.

12. Currently, to avail themselves of the POCA cash seizure powers, an immigration officer must be exercising an immigration function. Further, there must be reasonable grounds to suspect that the seized cash relates to an immigration function. In an operational context where suspects can potentially be involved in a range of criminal activity it is not always immediately possible to identify that cash directly relates to an immigration crime; the provisions in clause 36 address this situation. When exercising these powers immigration officers will be investigating immigration related criminality, however, subsequent investigations may show that seized cash relates to other criminal activity and the amendments will ensure that evidence relating to POCA/Money Laundering cases that subsequently are found not to be directly linked to an immigration crime may be retained. If it is clear at the outset of the investigation that the cash is not related to immigration criminality then the seizure of that cash would be referred to the relevant law enforcement agency to take the case forward.

Criminal investigation/detention powers Scotland

13. Judicial processes related to the investigation of crime differ in a number of regards as between England and Wales, and Scotland, particularly in respect of powers of arrest where police and customs officers in Scotland have the power initially to detain suspects for interview and arrest at a later point when sufficient evidence has been gathered. This power to detain is not available to immigration officers who, under the various Immigration Acts, only have a

power of arrest. Although questioning post-arrest and pre-charge is permissible in Scotland, it is unusual.

14. The absence of any power for immigration officers in Scotland to detain suspects renders joint working there between UKBA and other law enforcement bodies complex. Accordingly, a change in the law is required to enable immigration officers to investigate crime effectively in the context of the Scottish criminal justice system and to facilitate lawful and efficient joint working between the relevant law enforcement agencies that operate within it.
15. The provisions in the Bill will also align the rights of access to a solicitor for those detained by immigration officers on suspicion of immigration crime, and their ability to obtain legal aid in respect of such access, with the equivalent rights enjoyed already by police or customs suspects in Scotland.
16. In completing the alignment of immigration officers' powers in Scotland with police and customs counterparts, the Bill also grants immigration officers equivalent powers to obtain common law search warrants.

Cross Border Powers of Arrest:

17. Finally, clause 36 will make the cross-border powers of enforcement for police officers and customs officials, contained within the Criminal Justice and Public Order Act 1994, available to immigration officers. Notwithstanding the formation of the Border Policing Command of the National Crime Agency, serious immigration crime will continue to be investigated by officers of UKBA and the necessity for these powers remains paramount to their ability to function to ensure that they can deal independently with suspects wanted for offences in different jurisdictions across the United Kingdom, without over reliance on other law enforcement agencies.
18. This will help secure more joined-up working practices, for example when cross-border investigations are transferred from one law enforcement agency to another, and save on resources currently spent on costly cross-border investigations.
19. Immigration officers will only exercise these powers in relation to immigration criminality including, for example, offences under the Immigration Acts such as facilitation and associated offences such as fraud, where the fraud relates to an immigration function or matter.
20. This clause will bring immigration officers in UKBA into line with law enforcement counterparts and ensure that UKBA staff can tackle the full range of threats for which it is responsible across jurisdictions without reliance on other enforcement partners.