Home Office

Immigration and Nationality Directorate

July 2003

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 SECTION 129: DISCLOSURE OF INFORMATION BY LOCAL AUTHORITIES TO THE HOME OFFICE IMMIGRATION AND NATIONALITY DIRECTORATE ABOUT SUSPECTED IMMIGRATION OFFENDERS

GUIDANCE TO LOCAL AUTHORITIES AND HOUSING AUTHORITIES

Issued by the Home Office

Introduction

1. This guidance is issued by the Home Office to assist local authorities and, in the case of Northern Ireland, the Northern Ireland Housing Executive, to deal with requests made by the Immigration and Nationality Directorate (IND) for information under section 129 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), which comes into force 30th July 2003. The text of the section is reproduced in full at Annex A. The guidance sets out the steps the Government expects local authorities to take in order to discharge their new legal obligation under section 129. It also emphasises the importance of co-ordinated action and close liaison between IND and local authorities in relation to immigration offenders in the interests of effective enforcement of immigration legislation, and in safeguarding local authority resources from potential misuse. The new power is intended to provide helpful legal clarity to local authorities when they are approached for assistance by IND, so that it is easier for local authority staff to understand what information is required of them and in what circumstances it should be disclosed. Section 129 does not require local authorities to do anything they cannot lawfully do now on a voluntary basis by relying on relevant exemptions in Data Protection

legislation. The purpose of section 129 is to achieve consistency of practice throughout the United Kingdom.

Background

2. Section 129 of the 2002 Act places an obligation on a local authority to comply with a request for information from the Home Office in relation to and solely for the purpose of locating, a specified individual or individuals who IND reasonably suspects:

   - have committed an immigration offence, and
   - are, or have been, resident in that local authority area where that request is made.

3. This may include persons supported by local authorities under the transitional arrangements preceding the introduction of the national asylum support scheme, and persons who have in the past requested and/or received other forms of local authority support but whose immigration status is unknown to the local authority in question.

4. Section 129 imposes a different obligation on local authorities to that at schedule 3 to the 2002 Act which came into force on 8 January 2003 with associated guidance issued the same day. Schedule 3 imposes a positive obligation on local authorities to inform the Home Office when a suspected relevant ineligible person applies for support or assistance under various statutory provisions. A relevant ineligible person is someone who is present in the United Kingdom in breach of the immigration laws or is someone who was previously but is no longer an asylum seeker and who has failed to co-operate with directions for their removal from the country. <u>The legal obligation in section 129 only applies when a request for information is made in an individual case in respect of a specified individual</u>. It is predicated on reasonable suspicion on behalf of IND that the individual is an immigration offender, not on any assessment or knowledge of the person's immigration status by the local authority. It is simply an investigative tool designed to yield home address or workplace address information.

5. IND may make a request for information if it has a reasonable suspicion that a person resident or previously resident in a local authority's area has committed an

offence under section 24(1) (a), (b), (c), (e) or (f), 24A(1), or 26(1)(c) or (d) of the Immigration Act 1971 (as amended). These offences include entering the United Kingdom without leave or in breach of a deportation order (illegal entry), overstaying, or failing to comply with restrictions of conditions imposed by an immigration officer (e.g. working in breach or absconding from temporary admission). Persons subject to control (i.e. non-European Economic Area nationals) committing these offences are liable to removal from the United Kingdom, subject of course to the exercise of any available appeal rights.

6. Prior to the creation of this power there was a degree of ambiguity in the interpretation of legal powers, including the extent to which the Data Protection Act, Human Rights Act and the common-law duty of confidentiality inhibited disclosure. This new power clarifies the basis on which information should be disclosed to the Secretary of State by local authorities by making it a legal requirement to do so within tightly defined criteria. The power brings disclosures by local authorities within the exemption at section 35 of the Data Protection Act 1998, which provides: that "*personal data are exempt from the non-disclosure provisions [of the Act] where the disclosure is required by or under any enactment".*

7. As the disclosures will be necessary for the apprehension of offenders, section 29 of the Data Protection Act (crime and taxation exemption) will obviate any need for the local authority to notify the individual in question that their data has been disclosed to IND. To do so would defeat the objective behind the new power by giving the individual advance notification of possible enforcement action and an opportunity to evade the immigration authorities.

8. Section 129 of the 2002 Act is reproduced at Annex A.

- Subsection (1) defines the circumstances in which the Secretary of State may require information. Subsection 1(a) defines the offences the individual sought would be reasonably suspected of having committed before information was required from the local authority. Subsection 1(b) confines the power to individuals whom the Secretary of State reasonably suspects are or have been resident in the local authority area in question.

- Subsection (2) clarifies that it is a legal requirement for local authorities to comply with a request for information made on behalf on the Secretary of State as long as criteria at subsection 1(a) and (b) are satisfied.

- Subsections (3), (4) and (5) define what is meant by the term “local authority” and includes England, Wales, Scotland and Northern Ireland. (In Northern Ireland, “local “authority” is defined as the Northern Ireland Housing Executive, and the relevant local authority area is the entire province.

Guidance on receipt of a request under section 129

9. There is already extensive contact between IND and local authorities in respect of immigration offenders and supported asylum applicants. The IND Central Point of Contact on asylum applicants supported under the pre-NASS arrangements is in frequent touch with asylum teams based in relevant local authorities. Immigration Service local enforcement offices (LEOs) frequently have contact with local authority housing benefit fraud offices on individuals of mutual concern. It is proposed that LEOs direct any requests for information under section 129 to the head of the relevant local authority fraud unit, unless the requesting LEO makes alternative arrangements with particular authorities.

10. All requests for information by IND will be made in writing (including verifiable fax and where possible secure e-mail), and a record retained by IND that a request has been made and any response received. The data will be handled by IND in accordance with the requirements of the Data Protection Act 1998.

11. Although there are no statutory time limits for responding to a request for information under section 129, on receipt of a Home Office request for information the local authority will be expected to respond within the time limit specified on the request, or advise the requesting officer if an extension of that time limit is required. In normal circumstances, the Home Office would expect a local authority to respond to a request for information no later than 14 calendar days from the making of the request. The responding local authority is asked not to take any independent action against the named individual or individuals on receipt of a request for information without consulting the requesting officer. The Home Office anticipates acting on the information received within three weeks of receipt in normal circumstances, but on some occasions the careful preparations required for the

mounting of larger scale enforcement operations may mean it takes longer for IND to act on the information. If no further action is planned against the individual concerned by the Home Office, the local authority will be informed to allow them to commence their own investigation if appropriate in relation to the person's entitlement to receive local services. The guiding principle is that there should be effective liaison between the relevant LEO and local authority for the duration of the investigation.

12. Chief Executives are encouraged to ensure that relevant staff in their authorities are made aware of the provisions of section 129. They are also encouraged to put in place suitable arrangements within their authorities for records and databases maintained by different local authority departments to be searched for relevant information and for required information to be provided to IND, preferably via a single point of contact within the authority.

13. During the passage of the 2002 Act through Parliament, the Government made clear that the power would be limited to the disclosure of non-sensitive information, i.e. information about a specified individual's home or normal workplace address if known. On receipt of a request, the Home Office would expect a local authority to check for any trace of the specified individual in records relating to the collection of council tax, the payment of housing or other benefit, and the provision of housing and other similar services, including where appropriate services provided to known asylum seekers. The Home Office would not expect a local authority to check its education department records, unless in rare cases the offender was suspected of being employed in some capacity in the education system, or the detailed contents of child protection or sensitive social services records. Nor would it expect the local authority electoral and civil registration departments to check their records because separate arrangements exist for the provision of information to IND from marriage registrars, and for access to the electoral roll. Wherever possible, IND will try to narrow down the field of search by suggesting particular service areas of interest.

14. On receipt of the appropriate notice quoting the relevant legislation and completed in the correct manner, the local authority is requested to reply. There is no obligation on or reason for local authorities to enquire into or question the basis for IND's suspicions about any particular individual.

15. An example of the notice used to request the information can be found at Annex B.

Annex A

SECTION 129 OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

Section 129 Local Authority

(1) The Secretary of State may require a local authority to supply information for the purpose of establishing where a person is if the Secretary of State reasonably suspects that -

(a) the person has committed an offence under section 24(1)(a), (b), (c), (e) or (f), 24A(1)(c) or (d) of the Immigration Act 1971 (c.77) (illegal entry, deception, &c.), and

(b) the person is or has been resident in the local authority's area

(2) A local authority shall comply with a requirement under this section.

(3) In the application of this section to England and Wales "local authority" means –

(a) a county council,

(b) a county borough council,

(c) a district council,

(d) a London borough council,

(e) the Common Council of the City of London, and

(f) the Council of the Isles of Scilly.

(4) In the application of this section to Scotland "local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

(5) In the application of this section to Northern Ireland -

(a) a reference to a local authority shall be taken as a reference to the Northern Ireland Housing Executive, and

(b) the reference to a local authority's area shall be taken as a reference to Northern Ireland

Annex B

Home Office
BUILDING A SAFE, JUST AND TOLERANT SOCIETY

Immigration and Nationality Directorate

REQUEST FOR INFORMATION BY IND TO LOCAL AUTHORITIES: SECTION 129 OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

The purpose of the notice is to provide you with all the information you require to enable you to respond to the enquiry. It states exactly what information is required and for what purpose. It provides the legal basis for the request and specifies a time limit by which the information is required.

The notice requires local authorities to take reasonable steps to identify the information requested and requests that the authority respond to the requesting officer within the specified time. If the local authority is unable to respond within the specified time, please contact the requesting officer to arrange a possible extension to time period.

Treat this request in confidence:

There is no legal obligation for the local authority to inform the subject or subjects of the enquiry that their information is being disclosed to IND. Should the subject of the enquiry be notified of the disclosure it may compromise an ongoing investigation by alerting them to the Home Office's interest. You are requested to treat this request for information in confidence.

At this stage:

If the local authority holds the required information a response should be made to the Home Office within the required time scale. Similarly, if the local authority does not hold the information, the Home Office should be informed of a negative response as soon as possible.

Response date:

The response period is fourteen days (not working days) from receipt of the request.

To: ***Named local authority***

From: ***Named IND Officer***

Unit:
Unit Address:

Tel:
Fax:
E-mail:

Home Office ref no:

This enquiry is made under the Nationality, Immigration and Asylum Act 2002 Section 129

SUBJECT OF ENQUIRY

Full name:
(with alternative possible spellings):

Male/Female:

Date of birth:

Address or previous address (if known):

Any known alias:

Nationality:

Any other relevant identifiers:

I am currently making enquiries in relation to the above individual who the Immigration and Nationality Directorate reasonably suspects has committed a relevant offence under the Immigration Act 1971 (as amended) and is or has been previously resident in your local authority area. I request information on behalf of the Secretary of State for the Home Department for the purpose of locating the individual in question.
The information, which is required, is as detailed below.

Please confirm if the above named is or has ever been resident in your area and provide me with details of all known home addresses or work place addresses with dates of residence if possible. In particular, it would be helpful if you could check records relating to the local authority functions detailed below.

I can confirm that the information requested is required for the purposes of the prevention or detection of crime, or apprehension or prosecution of offenders, and also that the failure to provide this information would be likely to prejudice the investigation. The disclosure of the requested information is subject to section 29 (exempt processing necessary in relation to crime and taxation) and section 35 (disclosures required by law) of the Data Protection Act 1998.

Please respond within 14 days of receipt of this notice or advise if this date cannot be met. Anticipated reply date ***??/??/????***