



**Home Office**

## Extradition Bill 2003 Code of Practice

Consultation on Draft Code of Practice

9<sup>th</sup> June 2003

A consultation produced by the Home Office.  
This information is also available on the Home Office website  
[www.homeoffice.gov.uk/inside/consults/current/index.html](http://www.homeoffice.gov.uk/inside/consults/current/index.html)

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## Introduction

The purpose of this paper is to consult the police, extradition and criminal justice communities on a draft Code of Practice which provides guidance on the application and operation of police powers in extradition cases.

The consultation is aimed at police officers, extradition practitioners, the legal profession and representative organisations, magistrates, the court service, including the High Court and organisations with an interest in the operation of police powers in relation to extradition in England, Wales and Northern Ireland.

The objective of the consultation is to provide an opportunity for everyone with an interest to express their views and to ensure that the Code of Practice provides clear, unambiguous and helpful guidance for the police, detained persons and members of the public in the operation of police powers in extradition cases. The Government welcomes views on any aspect of the paper's content, but particularly on the issues raised in the 'Home Office Questions' section

The 'How to Respond' section gives the details we will require with your response. The Code of Practice is available as a printed document and can also be downloaded from [www.homeoffice.gov.uk/inside/consults/current/index.html](http://www.homeoffice.gov.uk/inside/consults/current/index.html) where you can find additional information and references, including copies of the Extradition Bill.

This consultation is being conducted in line with the Code of Practice on Written Consultation issued by the Cabinet Office and will run for 3 months. The Code criteria are set out on pages 14 and 15.

An initial impact assessment indicates that the proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector.

Our wish is to receive a representative sample of comments and views on the Code of Practice. Accordingly we are consulting a range of professional bodies, representative groups and government departments (a full list is on pages 14 and 15).

## Executive Summary

### **Background: Extradition Bill**

The Extradition Bill was introduced to Parliament in November 2002. It is hoped that it will receive Royal Assent before the end of this Parliamentary session.

The Extradition Bill changes UK extradition arrangements. It includes the provisions that could require local police forces to deal with incoming extradition requests where circumstances dictate. As such the Code of Practice will be an important document for police and practitioners generally.

### **Background: Police Powers in Extradition**

The recent extradition case, *Regina V Commissioner of Police for the Metropolis, Ex P Rottman*, cast doubt on whether the provisions contained in the Police and Criminal Evidence Act 1984 (“PACE”) and police common law powers extend to cases where the offence was committed abroad. The *Rottman* ruling initially held that the police had no power to search the premises for evidence.

Although the *Rottman* ruling was partially overturned on appeal, it was decided that the Extradition Bill should set down in law the police powers which are available to the police in extradition cases. These are found in Part 4 of the Bill.

### **Part 4**

The ‘Part 4’ police powers which may be relied upon in extradition cases are closely modelled on PACE, but where necessary and appropriate they supplement PACE provisions to enable officers to respond to extradition requests effectively on behalf of a Requesting State.

The specific provisions in Part 4 relate to:

- Powers of entry, search and seizure of evidential material;
- access to, and taking of photographs and copies, of material seized or produced;

- retention, use and delivery of seized material; and
- retention, use and disclosure of photographs, fingerprints and samples.

The other police powers conferred by the Extradition Bill and reflected in the code are:

- The power to apply for a warrant or a production order for material relating to an offence committed abroad (the 'extradition offence') (Clauses 155, 156, 159);
- The power to apply for a warrant to search premises, or to apply for a production order, if the fugitive is believed to be on their way to the UK (Clauses 155, 156, 159);
- The power to seize and retain material relating to any offence committed abroad when searching premises for the purpose of arrest (Clause 160), on arrest (Clause 161) or after arrest (Clause 163);
- The power to seize and retain material relating to the identity of the fugitive when searching premises on arrest (Clause 161) or after arrest (Clause 163);
- The power, on arrest to conduct an immediate search of premises without the prior authorisation of a senior police officer (Clause 161);
- The power to seize and retain material relating to the identity of the fugitive, when searching the person on arrest (Clause 162);
- Procedures regarding the use, retention and delivery of seized material to the Requesting State (Clause 171).

## **Consultation Process Required by the Bill**

Clause 172 of the Bill requires a Code of Practice to be issued in connection with the exercise of the powers conferred by Part 4. The Code must be published in draft and representations considered. Where appropriate the Secretary of State may modify the code in the light of such representations.

This consultation is designed to meet the requirements of Clause 172, to raise awareness of the new powers and to allow interested parties to make representations regarding the content, structure and format of the Code.

This consultation does not extend to inviting views on the content of the Bill and the extent of the powers contained in it. A consultation exercise on the Bill was undertaken in June 2002 – September 2002 when the Bill was published in draft and views regarding its content sought. The responses were published and changes to the Bill were made to reflect them prior to its introduction into the House of Commons in November 2002.

The Extradition Bill is still subject to scrutiny and approval by Parliament, and both the provisions in the Bill and section numbers may change during the consultation period as a result.

### **Application and Persons Covered by the Code**

The code applies to all police officers in England, Wales and Northern Ireland.

Clause 174 of the Bill provides for Part 4 to be applied with modifications to customs officers and persons arrested by customs officers through the enactment of secondary legislation.

Clause 175 of the Bill provides for Part 4 to be applied, with modifications, to service police officers and persons arrested by service police officers through the enactment of secondary legislation.

The code does not extend to Scotland.

## **Availability**

At least one copy of the code must be available at every police station, for consultation by the detained person, their solicitor and the public.

A copy of the Welsh translation of the code will be available in every police station in Wales.

## **Content of Code**

As well as setting out police powers under Part 4 of the Bill, the code also contains guidance on arrest and detention procedures in extradition cases, where these differ from domestic processes.

Where the procedure is the same as domestic circumstances, the Code refers the reader to the relevant Section in PACE or the revised PACE Codes of Practice (England and Wales).

## *Compliance with the Code*

Failure by an officer to comply with any provision of the code does not in itself make him or her liable to criminal or civil proceedings. However the code will be admissible in evidence in proceedings under the Extradition Act 2003, if it is enacted, and must be taken into account by a judge in determining any question to which the code appears to be relevant.

## Home Office Questions

The Code of Practice is designed to provide guidance for officers in the handling of extradition cases and the operation of police powers under the Extradition Bill. Bearing this in mind, the Home Office would welcome comment both general but specifically around the following areas:

### Clarity

The code will be available in every police station for consultation by police officers, the detained person, their solicitor and the public. We would therefore welcome comments on

- Passages that are confusing, ambiguous or lack clarity;
- Whether the distinction between 'investigation of the extradition offence' and 'obtaining evidence for the prosecution of the extradition offence' in chapter 2, paragraph 1.4, needs further explanation

### Structure and Format of Code

The code of practice is designed to enable officers not necessarily familiar with extradition cases to carry out an extradition arrest and/or search and seizure operation lawfully and with confidence. We would therefore welcome views on any of the following:

- Passages that are confusing, ambiguous or lack clarity;
- Chapter 1 and other passages which relate to provisions outside Part 4;
- The use of references to the Revised PACE Codes, particularly for practitioners in Northern Ireland;
- The content of the Annexes and Glossary

## Procedural Issues

We have consulted police officers in the extradition field and operational policing on the procedures involved in processing an extradition case. We welcome views on:

- the procedures set out in the code;
  - the extent to which these are practical and reasonable;
  - the wording of the caution in chapter 1, paragraph 3.1(a).
- 

## How to respond

We would welcome responses to the issues raised in the *Home Office Questions* section above together with any other relevant comment. Completed responses must be **returned by Monday 8<sup>th</sup> September 2003**.

**Please ensure your response is marked clearly if you wish your response or name to be kept confidential.** Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

In your response, please complete the following details:

Name:

Organisation/Company:

Address of Organisation/Company/Individual:

[*Telephone number*]

If you are a representative group please give details of the people and the organisation you represent.

Please send your response by Monday 8<sup>th</sup> September to:

### **Code of Practice Responses**

**Home Office**

**Extradition Bill Team**

**Room 1021**

**50 Queen Anne's Gate**

**London**

**SW1H 9AT**

**Tel: 020 7273 2569**

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**Email: [BillTeamEnq@homeoffice.gsi.gov.uk](mailto:BillTeamEnq@homeoffice.gsi.gov.uk)**

Additional copies of this paper are available through our website  
[www.homeoffice.gov.uk/inside/consults/current/index.html](http://www.homeoffice.gov.uk/inside/consults/current/index.html)

Individual contributions will not be acknowledged unless specifically requested.

The information you send us may need to be passed to colleagues within the Home Office and will be published in a summary of responses received in response to this consultation, along with a response from the Government on our website at [www.homeoffice.gov.uk/inside/consults/current/index.html](http://www.homeoffice.gov.uk/inside/consults/current/index.html). **We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.**

A summary of the findings will be available on the website or on request. Further copies of this consultation paper can also be obtained by sending an e-mail to [BillTeamEnq@homeoffice.gsi.gov.uk](mailto:BillTeamEnq@homeoffice.gsi.gov.uk) or by phoning **020 7273 2569**.

**Your opinions are important to us. Thank you for taking the time to read this document and respond. We look forward to receiving your comments.**

## What will happen next?

The Consultation will close on Monday 8<sup>th</sup> September and a report of the responses published in October.

On completion of the consultation and once the Extradition Bill has received Royal Assent, the code will be laid before Parliament for approval by a resolution of each House. It would then be brought into force by order of the Secretary of State.

## Publicising results

We will be making a summary of responses available on the Home Office website at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

## Consultation Co-ordinator

If you have any complaints or comments about the consultation process, you should contact the Home Office consultation co-ordinator, Geraldine Lilley by e-mail at [geraldine.lilley@homeoffice.gsi.gov.uk](mailto:geraldine.lilley@homeoffice.gsi.gov.uk). Alternatively, you may wish to write to the address below:

Geraldine Lilley  
Consultation Co-ordinator,  
Home Office  
7<sup>th</sup> Floor Orange Area  
Horseferry House  
Dean Ryle Street  
London SW1P 2AW

## The consultation criteria

The Code of Practice on Written Consultation issued by the Cabinet Office recommends the following criteria:

- A Timing of consultation should be built into the planning process for a policy or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
- B It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
- C A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
- D Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
- E Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
- F Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
- G Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

The full code of practice is available at: [www.cabinet-office.gov.uk/servicefirst/2000/consult/code/ConsultationCode.htm](http://www.cabinet-office.gov.uk/servicefirst/2000/consult/code/ConsultationCode.htm)

## List of Organisations/People Consulted

This consultation document has been circulated to all of the organisations/people listed below, and is also available on the Home Office website ([www.homeoffice.gov.uk/inside/consults/current/index.html](http://www.homeoffice.gov.uk/inside/consults/current/index.html)).

### Government Departments

Her Majesty's Treasury  
Her Majesty's Treasury Solicitors  
Her Majesty's Customs and Excise  
Inland Revenue  
Lord Chancellor's Department  
Crown Prosecution Service  
Ministry of Defence  
Wales Office  
Northern Ireland Office  
National Assembly for Wales  
Youth Justice Board

### Law Enforcement

All Police Forces in England and Wales  
Police Service of Northern Ireland  
National Criminal Intelligence Service  
National Crime Squad  
Serious Fraud Office  
Police Federation (England and Wales)

### Criminal Justice

The Court Service  
Northern Ireland Court Service  
Royal Court of Justice (England and Wales)  
Royal Courts of Justice (Northern Ireland)  
Administrative (High) Court  
Bow Street Magistrate's Court  
Magistrates Association  
The General Council of the Bar  
The General Council of the Bar of Northern Ireland  
The Justices' Clerks' Society  
Criminal Bar Association  
The Council of HM Circuit Judges  
Judicial Studies Board  
Legal Services Commission  
The Law Society of England and Wales  
The Law Society of Northern Ireland  
Greater London Magistrates' Court Authority  
Legal Secretariat to the Law Officers  
Institute of Legal Executives

**Law Enforcement cont...**

Police Federation of Northern Ireland

Police Superintendents' Association

Superintendents' Association of Northern Ireland

Association of Chief Police Officers

Association of Police Authorities

Police Complaints Authority

The Office of the Police Ombudsman for Northern Ireland

Port Police Chief Officers Association

National Black Police Association

Association of Police Lawyers

Royal Parks Constabulary

Port of Tilbury Police

Port of Dover Police

Port of Bristol Police

Port of Liverpool Police

Tees and Hartlepool Port Authority

Port of Felixstowe Dock and Railway Company

Royal Military Police

**Criminal Justice cont...**

Criminal Justice Consultative Council

Clive Nicholls QC, Gray's Inn

Leolin Price QC, Lincoln's Inn

**Interested Parties**

Independent Custody Visiting Association

Northern Ireland Association of Members of Boards of Visitors and Commission for Racial Equality

Equality Commission (Northern Ireland)

JUSTICE

LIBERTY

Amnesty International

Northern Ireland Human Rights Commission

Fair Trials Abroad

Her Majesty's Inspectorate of Constabulary

The Information Commissioner

Office of the Parliamentary Commissioner for Administration

**Academics**

Dr David Wall (Centre for Criminal Justice, University of Leeds)

David Dixon, Faculty of Law, University of New South Wales

Ed Cape, Centre for Criminal Justice, University of the West of

Professor Michael Zander

Professor Lee Bridges, School of Law, University of Warwick

Dr Jacqueline Hodgson, School of Law, University of Warwick

Professor Peter Duff, School of Law, University of Aberdeen

Professor Christopher Gane, School of Law, University of Aberdeen

# EXTRADITION CODE OF PRACTICE

Issued under Section 172 of the Extradition Act 2003

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## CODE OF PRACTICE ISSUED UNDER SECTION 172 OF THE EXTRADITION ACT 2003

### 1. Introduction

- 1.1 This code of practice governs the exercise of police powers in Part 4 of the Extradition Act 2003 ('the Act'). It is issued by the Home Secretary under Section 172 of the Act. The code provides guidance as to how police powers in respect of extradition cases are to be exercised in England, Wales and Northern Ireland.

#### *Background*

- 1.2 The extradition case, *Regina v Commissioner of Police for the Metropolis, Ex P Rottman*, cast doubt on whether the provisions contained in the 1984 Police and Criminal Evidence Act ("PACE") extend to police powers in cases where the offence was committed abroad. Part 4 of the Extradition Act puts the matter beyond doubt by setting down in law the police powers which apply in respect of extradition cases.
- 1.3 The Extradition Act makes changes to UK extradition arrangements. It includes provisions that could require local police forces to deal with incoming extradition requests where circumstances dictate.

#### *Application of the Code in Northern Ireland*

- 1.4 In Northern Ireland, references in the code to the 1984 Police and Criminal Evidence Act 1984 should be read as references to the Police and Criminal Evidence Act (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), and references to the PACE codes of practice or the revised PACE codes of practice should be read as references to the relevant parts of the PACE (NI) codes of practice. Where there are no direct equivalents to the England and Wales PACE codes of practice, police officers in Northern Ireland should act having regard to the revised PACE codes of practice. In this regard, attention is also drawn to previous guidance issued by the Northern Ireland Office in circular POB 5/2003.

#### *Status of the code*

- 1.5 The code sets out the police powers which may be relied upon in extradition cases, additional to the police's common law powers. The powers in the Extradition Act 2003 are modelled on those contained in PACE, but where necessary and appropriate, they supplement domestic provisions to enable officers to respond to extradition requests effectively on behalf of the Requesting State.
- 1.6 Where this code is silent, officers should have regard to relevant domestic provisions set out in the PACE codes. Where procedures in extradition cases are the same as those in domestic cases, this code refers officers to the relevant section in the PACE codes of practice.

- 1.7 Under Section 172 (6) of the Act, failure by an officer to comply with any provision of the code does not in itself make him or her liable to criminal or civil proceedings. Under Section 172 (7) of the Act, the code will be admissible in evidence in proceedings under the Act and must be taken into account by a judge in determining any question to which it appears to be relevant.
- 1.8 The annexes included are not provisions of this code but are guidance to police officers and others about its application and interpretation.

#### *Availability*

- 1.9 This code of practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.
- 1.10 Each police station in England, Wales and Northern Ireland will be provided with one hard copy of the document. A Welsh translation of the code will also be available in all police stations in Wales.
- 1.11 Annexes to the Code are:

**Annex A:** Checklist of duties for use by the custody officer on arrest of the person;

**Annex B:** Form of words for use by the custody officer to explain the extradition processes;

**Annex C:** Glossary.

#### *Persons covered by the code*

- 1.12 This code applies to police officers, customs officers and service police officers.
- 1.13 When this code requires the prior authority or agreement of an officer of at least inspector or superintendent rank, that authority may be given by a sergeant or chief inspector authorised to perform the functions of the higher rank under PACE, Section 107.
- 1.14 In this code a 'designated person' means a person other than a police officer designated under the Police Reform Act 2002, Part 4, who has specified powers and duties of police officers conferred or imposed on them. Any reference to a police officer includes a designated person acting in the exercise of performance of the powers and duties conferred or imposed on them by their designation. If a power conferred on a designated person:
- (a) allows reasonable force to be used when exercised by a police officer, a designated person exercising that power has the same entitlement to use force;

- (b) includes a power to use force to enter any premises, that power is not exercisable by that designated person except:
- i. in the company and under the supervision of a police officer; or
  - ii. for the purpose of:
    - saving life or limb; or
    - preventing serious damage to property.

1.16 Designated persons must have regard to any relevant provisions of this code of Practice.

## **2. *Principles governing operation of police powers in respect of extradition cases***

### *Human Rights*

2.1 Officers should be aware that the operation of the Act is subject to the 1998 Human Rights Act and should consider their use of search and seizure powers accordingly. The right to privacy and the respect for personal property are key principles of the Human Rights Act. Powers of entry, search and seizure should be fully and clearly justified before use, as they may significantly interfere with the individuals' privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

2.2 In all cases officers should exercise their powers courteously and with respect for persons and property and only use reasonable force when this is considered necessary and proportionate to the circumstances.

2.3 Any officer may apply for any warrant referred to in Part 4 of the Act.

### *Search and seizure powers*

2.4 Officers should bear in mind at all times that the exercise of search and seizure powers may only be for the purposes of gathering evidence:

- in relation to establishing the identity of a person arrested under Part 1 or Part 2 of the Act; or
- for use in the prosecution and trial of the person requested for extradition,

and must not constitute investigation of the extradition offence. This does not limit police powers in respect of offences committed in the UK.

### *Treatment of Detained Persons*

2.5 Officers should have regard, at all times, to the requirements in PACE to consider the needs of any persons who appear to be under the age of 17; mentally disordered or otherwise mentally vulnerable; blind, seriously visually

impaired, deaf, or unable to read or speak, in the absence of clear evidence to the contrary, and to take action accordingly.

### *Searching of Persons*

- 2.6 There are no powers under the Act to conduct an intimate search of a person or take intimate samples for the purpose of ascertaining the person's identity.

### *Legal Privilege*

- 2.7 Nothing under the Act entitles police officers to seize material that is subject to legal privilege. The principle of legal privilege applies equally to material that has originated or been sent from abroad.

## Chapter 1: Arrest and treatment of detained persons

- 1.1 This chapter sets out the procedures for the arrest and treatment of persons requested for extradition.
- 1.2 References to a custody officer include those performing the functions of a custody officer.

### 2. ***Type of Arrest***

- 2.1 An officer may make an arrest under one of the following powers in the Act:

(a) *Section 4: arrest under a certified Part 1 warrant*

This applies where an officer is in possession of a Part 1 warrant, certified by the designated central authority, which contains the following information:

- i. Particulars of the person's identity;
- ii. That the person has been accused or convicted of an offence in a Category 1 territory and a warrant issued for the purposes of their arrest and extradition;
- iii. The circumstances of the offence and the time and place at which it is alleged to have been committed;
- iv. The sentence which may be imposed by the Category 1 territory if the person is convicted of the offence;
- v. Any other warrant issued in a Category 1 territory for the person's arrest.

(b) *Section 5: Provisional arrest under Part 1*

This applies in urgent cases where an officer has reason to believe that:

- i. a Part 1 warrant has been or will be issued by a designated judicial authority in respect of a person wanted for extradition, but has not yet been certified by the designated central authority; and
- ii. that person is in the UK or on their way to the UK.

(c) *Section 70: arrest warrant under Part 2, following certification of a full order extradition request*

This applies when the Secretary of State has certified an extradition request from a Category 2 territory and a district judge has issued an arrest warrant in relation to the extradition request.

(d) *Section 72: Provisional arrest warrant under Part 2*

This applies in urgent cases where a person is requested for extradition by a category 2 territory, but full documentation has not yet been received. In this circumstance, an officer may apply to a justice of the peace for a provisional arrest warrant in respect of the person requested for extradition.

For a warrant to be issued, the officer must satisfy the justice of the peace in writing and on oath that:

- i. Either:
  - The person is accused in a category 2 territory of an offence; or
  - The person is alleged to be unlawfully at large from a category 2 territory;
- ii. The offence is an extradition offence;
- iii. The person is believed to be in the UK or on their way to the UK;
- iv. There is information or evidence that would justify the issue of a warrant for the arrest of a person accused of the offence or unlawfully at large, within the justice's jurisdiction.

**3. Execution of Arrest**

3.1 An officer arresting a person under sections 3, 5, 70 or 72 of the Act must ensure that the person is:

(a) Cautioned in the following terms:

*"You do not have to say anything. Anything you do say may be noted and presented at the extradition hearing."*

(b) Shown the warrant or a copy of the warrant, if the officer is in possession of one at the time of arrest.

3.2 The officer must take all reasonable steps to ensure that the person understands that they are being arrested and why they are being arrested. The need for an interpreter will be fully assessed by the custody officer on arrival at the police station, and if necessary the process of arrest can be repeated to ensure the person understands that they have been arrested and why.

- 3.3 A person arrested provisionally under Section 5 must be brought before a district judge within 48 hours of arrest. Where the person is not brought before a district judge within 48 hours of arrest, under section 6 (5) the person must be taken to be discharged.
- 3.4 If a certified Part 1 warrant is issued subsequent to the person's discharge, the person may be rearrested under Section 3 of the Act.
- 3.5 Where a person arrested under any power in the Act (Part 1 or Part 2) is also wanted by the police in connection with a UK offence, the person's alleged involvement in the UK offence may be investigated while extradition proceedings continue, until such time as the person is charged with the UK offence and the relevant judge informed of the charge.
- 3.6 Officers may request at the initial hearing of a person arrested under any provision of the Act and wanted in connection with a UK offence, that the person be remanded into police custody for up to 72 hours, under Section 128(7) of the 1980 Magistrates Court Act to facilitate further investigation of the UK offence, as required.

#### **4. *Detained Persons – Rights***

- 4.1 The person must be treated as continuing in legal custody during the time they are detained at the police station, until the initial hearing or discharge.
- 4.2 A checklist of the custody officer's duties under this chapter is contained in Annex A.
- 4.3 When a person is brought to a police station under arrest, the custody officer must make sure the person is told clearly about:
- (a) the stages of the extradition process including the right to consent (a form of words is set out in Annex B);
  - (b) the following continuing rights which may be exercised at any stage during the period in custody:
    - i. The right to have someone informed of his or her arrest (under Section 170 (3)(c) of the Act);
    - ii. The right to consult privately with a solicitor and that free independent legal advice is available (under Section 170 (3)(d) of the Act);
    - iii. The right to request to be shown a warrant or a copy of the warrant;
    - iv. The right to consult this code of practice and the PACE codes of practice.

4.4 The detainee must also be given:

(a) A written Extradition notice setting out:

- i. The above 4 rights;
- ii. The arrangements for obtaining legal advice;
- iii. The right to be shown a copy of the custody record;
- iv. The right to request to be shown the warrant or a copy of the warrant under which the person was arrested;
- v. The caution in the terms prescribed in 3.1(a) above;

(b) A copy of the form setting out the stages of the extradition process, including the right to consent to their extradition (Annex B);

(c) An additional written notice briefly setting out their entitlements while in custody (see PACE Code C, Notes for Guidance 3A and 3B).

4.5 A citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, must be informed as soon as practicable about the right to communicate with their High Commission, Embassy or Consulate, as set out in PACE Code C Section 7. The list of countries to which this applies (as at 1<sup>st</sup> April 2003) is set out in Annex F of PACE Code C.

#### *Discharge*

4.6 A person must be taken to be discharged<sup>1</sup> if any of the following applies:

- (a) The warrant or a copy of the warrant is not shown to the person as soon as practicable after it is requested (sections 4 (2), 71 (2), and 73 (2));
- (b) The person is not brought before the appropriate judge as soon as practicable following arrest under Part 1 (section 4 (3));
- (c) The person is not brought before the appropriate judge within 48 hours of a provisional arrest under Part 1 (section 6 (2)(a));
- (d) The person is not brought before the appropriate judge as soon as practicable following arrest under Part 2 (section 71 (3) and 73 (3)).

## **5. *Detained Persons – Custody Records & Documentation***

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<sup>1</sup> In cases where a person is 'taken to be discharged' they are unlawfully detained if discharge is not effected at the appropriate time.

- 5.1 In addition to the specific provisions set out in this chapter, the custody officer shall have regard to the guidance in PACE Code C sections 3.4 – 3.20 regarding maintaining the custody record, determining whether the detainee requires particular assistance (including an interpreter) and conducting a risk assessment.
- 5.2 In addition, the custody officer shall record the following information on the custody record:
- (a) The person's name (and aliases), age, gender and nationality;
  - (b) The person's address;
  - (c) A note of the person's self-defined ethnic background;
  - (d) The type of arrest (Part 1 warrant, Part 2 warrant, Part 2 provisional arrest warrant or provisional arrest under Part 1);
  - (e) The offence specified on the extradition request or communicated by the Requesting State;
  - (f) Where possible, the date and location where the offence took place;
  - (g) The territory (Category 1 or 2) where the warrant was issued or from where the warrant is due to be issued if the person was arrested provisionally under a Part 1;
  - (h) The date, time and place that the person was arrested;
  - (i) That the person has been given the rights and notices set out in sections 4.3 and 4.4 above;
  - (j) If the person required an interpreter and/or legal aid.

## **6. *Detained Persons – Searches***

### *Non-intimate Searches*

- 6.1 Under Section 170 (3)(a) of the Act, the custody officer shall search the detained person or authorise their being searched, to the extent they consider necessary, to ascertain what property the detained person:
- (a) has with them when they come to the police station on arrest;
  - (b) might have acquired for an unlawful or harmful purpose while in custody.
- 6.2 The custody officer may seize and retain any clothing or personal effects if there are reasonable grounds for believing that:

- (a) The person might use it to cause physical injury to themselves or another person;
  - (b) The person might use it to assist escape from lawful custody;
  - (c) It is evidence relating to an offence or the identity of the person.
- 6.3 An offence includes the extradition offence, an offence committed in the United Kingdom or abroad.
- 6.4 A search may only be carried out by an officer of the same sex as the detainee.

*Intimate & Strip Searches*

- 6.5 Under Section 170 (3)(b) of the Act, an intimate or strip search may be carried out only if authorised by an officer of inspector rank or above who has reasonable grounds for believing that:
- (a) The person may have concealed on themselves
    - i. Anything which they could and might use to cause physical injury to themselves or others at the station; or
    - ii. A Class A drug which they intend to supply to another or to export; and
  - (b) An intimate search is the only means of removing these items.
- 6.6 Officers should have regard to the provisions set out in PACE Code C, Annex A regarding the conduct and documentation of intimate and strip searches.

**7. Treatment of Persons - General**

- 7.1 Other provisions relating to the detention and treatment of persons wanted for extradition are governed by the following sections in PACE Code C:

- Section 2 – Custody Records
- Section 3 – Initial Action (including special groups)
- Section 4 – Detainee’s property
- Section 5 – Right not to be held incommunicado
- Section 6 – Right to legal advice
- Section 7 – Citizens of independent Commonwealth countries or foreign nationals
- Section 8 – Conditions of detention
- Section 9 – Treatment (standards).

## Chapter 2: Search & Seizure Warrants & Production Orders

This chapter sets out police powers under Sections 155, 156, 157, 158 and 159 of the Act regarding:

- *Search and seizure warrants*
- *Production orders*
- *Search and Seizure warrants: Special procedure and excluded material*

### 1. **Powers of Entry, Search and Seizure: General Considerations**

#### *Principles of operation*

- 1.1 Any police officer may apply for any of the warrants specified in the Act.
- 1.2 Officers should be aware that the operation of the Act is subject to the 1998 Human Rights Act and should consider their use of search and seizure powers accordingly. The right to privacy and respect for personal property are key principles of that Act. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the individuals' privacy. Officers should consider if the necessary objectives can be met by less intrusive means.
- 1.3 In all cases police should exercise their powers courteously and with respect for persons and property and only use reasonable force when this is considered necessary and proportionate to the circumstances.
- 1.4 Searches under warrant should only be conducted for the purposes of obtaining evidence for the prosecution of the extradition offence and officers may not conduct searches which in any way constitute investigation of that offence.
- 1.5 For the purposes of this code, 'premises' as defined in PACE Section 23, includes any place, vehicle, vessel, aircraft, hovercraft, tent or movable structure and any offshore installation as defined in the Mineral Workings (Offshore Installations) Act 1971, Section 1.
- 1.6 Where written records of searches are required they shall be made in the search record, or if this is not practicable, in the recording officer's pocket book or on forms provided for this purpose.
- 1.7 For the purposes of this code, the identity of officers (or anyone accompanying them during a search of premises) need not be recorded or disclosed if officers reasonably believe recording or disclosing their names might put them in danger. In these cases, officers should use warrant or other identification numbers and the name of their police station.

#### *Search with consent*

- 1.8 Where appropriate, searches should be conducted with the consent of a person entitled to grant entry and where practicable, consent should be given in writing

on the Notice of Powers and Rights before the search. It is unnecessary to seek consent if this would cause disproportionate inconvenience to the person concerned.

*Criminal Justice and Police Act 2001: Specific procedures for seize and sift powers*

- 1.9 The Criminal Justice and Police Act 2001, Part 2, gives officers limited powers to seize property from premises or persons so they can sift and examine it elsewhere. Officers must be careful they only exercise these powers when it is essential and they do not remove any more material than necessary. The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owners. Officers must carefully consider if removing copies or images of relevant material or data would be a satisfactory alternative to removing originals. When originals are taken, officers must be prepared to facilitate the provision of copies or images for the owners when reasonably practicable.
- 1.10 In execution of powers for seize and sift, officers should have regard to the provisions in PACE Code B, sections 7.7 – 7.13, in particular in:
- (a) Ensuring that property seized is kept securely and separately from material seized under any other powers;
  - (b) Accommodating an interested person's request to be present at the sift;
  - (c) Returning seized material, including legally privileged, special procedure or excluded material to the rightful owner; and
  - (d) Providing the occupier of the premises or the person from whom the property is being seized with a written notice.
- 1.11 When material seized under Sections 50 and 51 of the Criminal Justice and Police Act 2001 is being sifted, a suitably qualified or skilled person, including a police officer from the Requesting State, may also be present, providing that:
- (a) The warrant authorising entry to the premises, also authorises that person to accompany the officer executing the warrant; and
  - (b) The presence of the person is needed to help in the accurate identification of the material sought or to advise where certain forms of evidence are most likely to be found.

The accompanying person(s) may not take part in conducting the sift, but they may be present when it takes place.

*Legal Privilege*

- 1.12 Nothing under the Act entitles police officers to seize and sift material that is subject to legal privilege. The principle of legal privilege applies equally to material that has originated or been sent from abroad.

## **2. Search and Seizure Warrants**

### *Statutory Powers*

- 2.1 Under Section 155 of the Act, an officer may apply for a search and seizure warrant in order to enter specific premises to search for and seize material relating to the extradition offence, and to retain it.

### *Persons who may apply*

- 2.2 Under Section 155, an officer who is either:
- (a) in possession of a Part 1 warrant, a Part 2 warrant (full order request) or a Part 2 provisional arrest warrant; or
  - (b) about to undertake a provisional arrest under Part 1,

may apply to a justice of the peace for a search and seizure warrant for material relating to the extradition offence.

- 2.3 An application must be supported by a signed written authority from an officer of inspector rank or above. If the case is urgent and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.

### *Action to be taken before making an application*

- 2.4 Before making an application to a justice of the peace for a search and seizure warrant, the officer must

- (a) either
  - i. be in possession of a Part 1 warrant, a Part 2 warrant (full order request) or a Part 2 provisional arrest warrant; or
  - ii. be about to undertake a provisional arrest under Part 1; and
- (b) Ascertain as specifically as possible the nature of the articles concerned and their location.

- 2.5 The officer should also:

- (a) Make reasonable enquiries to establish if
  - i. Anything is known about the likely occupier of the premises and the nature of the premises themselves;
  - ii. The premises have been searched previously and how recently;
- (b) Obtain any other relevant information.

2.6. If there is reason to believe a search might have an adverse effect on relations between the police executing the warrant and the local community, except in a case of urgency, the officer shall consult the police/community liaison officer:

- (a) before the search; or
- (b) in urgent cases, as soon as practicable after the search.

*Making an Application*

2.7 A search warrant application must be supported in writing by an officer of the rank of inspector or above specifying:

- (a) The section of the Act under which the application is made (e.g. section 155);
- (b) The premises to be searched;
- (c) The object of the search, which must be material relating to the extradition offence;
- (d) The name of the person requested for extradition;
- (e) The name and Category (1 or 2) of the Requesting State;
- (f) That there are reasonable grounds for believing that:
  - i. The offence is an extradition offence and has been committed by the person requested for extradition;
  - ii. The person is in the UK or is on their way to the UK;
  - iii. Material is on the premises and would be likely to be admissible as evidence in a UK trial in the part of the UK where the justice of the peace exercises jurisdiction;
  - iv. It is not practical or possible to enter the premises or gain access to the material without a warrant;
  - v. The material to be sought does not consist of items subject to legal privilege, excluded material or special procedure material;
- (g) If applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant.

2.8 In the application the officer must satisfy the justice of the peace that:

- (a) The material cannot be obtained by any other or less intrusive means;

- (b) It is not practicable to communicate with the person entitled to grant entry to the premises;
- (c) It is not practicable to communicate with the person entitled to grant access to the material sought;
- (d) That entry to the premises will not be granted unless a warrant is produced;
- (e) That the search may be frustrated or seriously prejudiced unless an officer arriving at the premises can secure immediate entry to them.

2.9 Under section 16 (2) of PACE, a search warrant may authorise persons other than police officers to accompany the police officer who executes the warrant. This would include, for example, any suitably qualified or skilled person or a police officer from the Requesting State whose presence is needed to help in the accurate identification of the material sought or to advise where certain forms of evidence are most likely to be found and how they should be dealt with. It does not give the accompanying persons any right to force entry or to search for or seize property but it gives them the right to be on the premises during the search without the occupier's permission.

2.10 If an application for a search and seizure warrant is refused, no further application may be made at the request of the Requesting State in relation to the same premises or material, unless supported by additional grounds. This may involve seeking further information from the Requesting State.

*Action to be taken executing a search and seizure warrant*

2.11 Whenever a search of premises is undertaken, one officer must act as the officer in charge of the search. The 'officer in charge of the search' has particular duties and responsibilities under this code and can be of any rank.

2.12 Search of premises should be conducted in accordance with the provisions set out in Pace Code B section 6 in regard to:

- Time of searches: PACE Code B, section 6 (a);
- Entry other than with consent: PACE Code B, section 6 (b);
- Conduct of searches: PACE Code B, section 6 (d);
- Leaving the premises: PACE Code B, section 6 (e).

2.13 The officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice of Powers and Rights in a standard format:

- (a) Specifying that the search is made under warrant;

- (b) Summarising the extent of the powers of search and seizure conferred by the Extradition Act;
- (c) Explaining the rights of the occupier, and the owner of the property seized;
- (d) Explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application;
- (e) Stating this code is available at any police station.

### *Seizure and Retention of Property*

2.14 An officer searching premises under section 155 may seize and retain:

- (a) Anything covered by the warrant;
- (b) Anything the officer has reasonable grounds for believing is evidence of a UK offence or has been obtained in consequence of the commission of a UK offence, if seizure is necessary to prevent the items being concealed, lost, damaged, altered, or destroyed;
- (c) Anything covered by powers in the Criminal Justice and Police Act 2001, Part 2, allowing an officer to seize property from persons or premises and retain it for sifting or examination elsewhere.

2.15 Officers may decide that it is not appropriate to seize property or may wish to photograph, image or copy any document or article they have the power to seize, in which case the provisions in PACE Code B 7.4 – 7.6 apply. In particular, an officer must have regard to his or her statutory obligation to retain an original document or other article only when a photograph or copy would not be sufficient (PACE Section 22 (4)).

2.16 In respect of specific procedures for seize and sift powers under the Criminal Justice and Police Act 2001, officers should have regard to the provisions in PACE Code B 7.7 – 7.13.

2.17 Any suitably qualified or skilled person, including a police officer from the Requesting State, may be present at the sift of material seized under sections 50 and 51 of the Criminal Justice and Police Act 2001, if their presence is authorised in the search warrant.

2.18 In retaining material, officers should have regard to the rights of owners, set out in PACE Code B 7.16 – 7.17.

### *Action after Searches & Search Registers*

2.19 If premises are searched under a Section 155 warrant, officers should follow the guidance in PACE Code B, sections 8 and 9 regarding the action to be taken in recording the search and endorsing the warrant.

### **3. Production Orders**

#### *Statutory Powers*

- 3.1 Under Sections 156 and 157 of the Act, an officer may apply for a production order to require any person or institution that appears to be in possession or control of special procedure material or excluded material to produce or give access to the material to the officer within the period stated on the order to be taken away.
- 3.2 Production orders have effect as if they were orders of court and will attract contempt proceedings if they are not complied with.

#### *Persons who may apply*

- 3.3 Under section 156 of the Act, an officer who is either:
- (a) in possession of a Part 1 warrant, a Part 2 warrant (full order request) or a provisional arrest warrant under Part 2; or
  - (b) about to undertake a provisional arrest under Part 1,

may apply to a circuit judge for a production order if the Requesting State has specified information about special procedure or excluded material relating to the extradition offence.

- 3.4 The application must be supported by a signed written authority from an officer of inspector rank or above. If the case is urgent and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.

#### *Action to be taken before making an application*

- 3.5 Before making an application to a circuit judge for a production order the officer must:
- (a) Either:
    - i. Be in possession of a certified Part 1 warrant, a full order request under Part 2, a provisional arrest warrant under part 2 or;
    - ii. Be about to execute a provisional arrest under Part 1; and
  - (b) Be satisfied that the material cannot be obtained by any other or less intrusive means;
  - (c) Ascertain as specifically as possible the nature of the material concerned and its location;
  - (d) Make reasonable enquiries to establish if:

- i. Anything is known about the likely occupier of the premises where the material is believed to be located;
  - ii. Anything is known about the nature of the premises themselves;
- (e) Obtain any other information relevant to the application.

*Making an Application*

3.6 An application for a production order under sections 156 and 157 must be supported in writing, specifying:

- (a) The section of the Act under which the application is made (e.g. section 156);
- (b) There is material relating to the extradition offence which consists of or includes special procedure or excluded material;
- (c) The premises where the material is located;
- (d) The name of the person who appears to be in possession or control of the material;
- (e) The name of the person requested for extradition;
- (f) The name and category (1 or 2) of the Requesting State;
- (g) That there are reasonable grounds for believing that
  - i. The offence specified in the application is an extradition offence and has been committed by the person requested for extradition;
  - ii. The person is in the United Kingdom or on their way to the United Kingdom;
  - iii. The material would be likely to be admissible evidence at a trial in the relevant part of the United Kingdom where the circuit judge exercises jurisdiction for the offence specified in the application;
  - iv. It is in the public interest that the material is obtained (and that this outweighs the disadvantages to the person or institution against whom the order is being made);
- (h) If applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the production order.

3.7 If an application for a production order is refused, no further application may be made in relation to the same premises or material unless supported by additional grounds. This may involve seeking further information from the Requesting State.

### *Validity of Warrant*

- 3.8 Under section 156(6), the subject of the production order must comply within 7 days of the order being served, unless it appears to the judge that a longer period would be appropriate (for example, the nature or amount of the documentation required may not reasonably be produced within 7 days).

### *Applications ex parte*

- 3.9 Applications for a production order may be made either *inter partes*<sup>2</sup> or *ex parte*<sup>3</sup> to a circuit judge. It is best practice for an officer to apply for a production order *inter partes*, if it is considered that an order *inter partes* would benefit proceedings. For example, an officer may wish to contact the subject of the production order (e.g. a financial institution) before the application is made to discuss a reasonable time limit in which the material will be produced.
- 3.10 In deciding whether the application should be made *inter partes* or *ex parte* the officer should consider what benefits would be derived from not holding the proceedings *inter partes*. Most commonly, it is likely that an application *ex parte* would be desirable to prevent the persons connected to the extradition request being alerted and enabling the material to be moved or destroyed. However, in applications for production orders directed at financial institutions or similar, the institution should normally be notified of the intention to make an application.

### *Particular Action to be taken executing a production order*

- 3.11 As a general principle the officer in charge must ensure that the execution of an order is undertaken with the least disruption possible to the person or the business of the organisation affected.
- 3.12 When a production order is served on a person, business or institution under Section 156 of the Act the order (or a covering letter, if the information is not included in the order) must state the following, unless it is included in the Notice of Rights:
- (a) That the order was made under Section 156 of the Act;
  - (b) The material or class of material required;
  - (c) The period of time within which such documents must be produced;
  - (d) The name of the subject of the order or the name by which he or she is known;

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<sup>2</sup> *Inter partes* applications are those notified to the respondent of the contemplated order or warrant. The respondent is made aware of the application in advance and can be represented at the hearing.

<sup>3</sup> An *ex parte* application means that an officer can apply for an order or warrant without notifying the respondent that the application is being contemplated or made.

- (e) A warning in plain language that failure without reasonable excuse to comply with the requirement is an offence and could result in prosecution, imprisonment and/or a fine;
- (f) The name and category (1 or 2) of the Requesting State and the type of extradition request received (it is not necessary to specify the name of the person or nature of the extradition offence on the order, although this must be contained in the application);
- (g) That the subject of the order should seek legal advice or ask the appropriate officer about any doubts or concerns they may have or for guidance on complying with the order;
- (h) The duty not to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of relevant documents; and a warning that to do so is an offence punishable by up to five years' imprisonment and an unlimited fine;
- (i) The duty not to disclose to any other person information or any other matter which is likely to prejudice the production of the material;
- (j) The right to apply for a variation or discharge of the order (not applicable in search and seizure warrants for special procedure or excluded material – see section 4.6 below).

3.13 Officers should produce evidence of their authority to issue the notice of the production order, and should inform the respondent of their right to refuse to comply with any requirement imposed on him or her if the officer has not done so.

3.14 Where it appears to the officer that the recipient of an order has genuine difficulty in reading or understanding English, the officer should attempt to serve a copy of the order on a person known to the recipient who, in the opinion of the officer, is able to translate or explain what is happening. If this is not practicable, the officer should attempt to engage an interpreter or translator to effect service of the order.

#### *Handling of Documents*

3.15 When executing a production order, the officer in charge should ask the person named in the production order for the material specified in the order to be produced or to provide access to that material. This request may, if considered necessary, include a request to see the index of files held on the premises if there is one. The officer in charge may inspect any files which, according to the index appear to contain any of the material specified in the order or material falling within the class of material specified in the order.

3.16 The officer in charge may remove any material covered by the production order and any such material may be photographed or copied. If a copy of the material

is sufficient, it should be copied on site and the original returned. If this is not practical, the material should be copied and returned as soon as possible.

- 3.17 Under Section 158 of the Act, if the material specified in the order consists of information stored in any electronic form, the material must be produced either in a form
- (a) which can be taken away or to which access can be given, and which is visible and legible; or:
  - (b) in a form from which it can readily be produced in a visible and legible form (for example a computer printout or a removable computer disk).
- 3.18 Under Part 2 of the Criminal Justice and Police Act 2001, sections 50 and 51, officers executing a production order may seize property from premises or persons in order to sift or examine it elsewhere. In exercising these powers, officers should have regard to the provisions in PACE Code B 7.7 – 7.13 governing the specific procedures for seize and sift powers.
- 3.19 Any suitably qualified or skilled person, including a police officer from the Requesting State, may be present at the sift of material seized under sections 50 and 51 of the Criminal Justice and Police Act 2001, if their presence is authorised in the production order.

*Retention of documents*

- 3.20 Subject to the provisions in 3.18 above, only material stated in the order may be seized and retained.
- 3.21 The officer in charge should complete, unless it is impracticable to do so, a list of the articles or documents removed and give a copy of it and a receipt to the occupier and the subject of the order, if present, before leaving the premises. In any event, the officer must make, or have made a record of the articles removed and/or accessed in compliance with a production order. A copy of any such record shall be given to the subject of the order within 7 days of the removal or access of the material.

#### **4. Search and Seizure Warrant: Special Procedure and Excluded Material**

##### *Statutory Powers*

- 4.1 Under Section 159 of the Act an officer can apply for a search and seizure warrant to enter specific premises in order to search for and seize special procedure or excluded material relating to the extradition offence, and to retain it.
- 4.2 A warrant issued under Section 159 does not authorise the retention of items subject to legal privilege.

##### *Persons who may apply*

- 4.3 Under section 159 of the Act, an officer who is:
- (a) in possession of a certified Part 1 warrant, a Part 2 warrant (full order request) or provisional arrest warrant under Part 2; or
  - (b) about to undertake a provisional arrest under Part 1;

may apply to a circuit judge for a warrant to search and seize special procedure and/or excluded material believed to relate to the extradition offence.

- 4.4 The application must be supported by a signed written authority from an officer of inspector rank or above. If the case is urgent and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.

##### *Action to be taken before making an application*

- 4.4 Before making an application to a circuit judge for a warrant under Section 159, the officer must either:
- (a) be in possession of a certified Part 1 warrant, or a Part 2 warrant (full order request or provisional arrest warrant); or
  - (b) be about to undertake a provisional arrest under Part 1;
- 4.5 And must:
- (a) Fulfil the provisions set out in sections 3.5 (b) – (e) above, in applying for a production order; and
  - (b) Have reasonable grounds for believing that:
    - i. It is not practicable to communicate with the person entitled to grant entry to the premises;

- ii. It is not practicable to communicate with the person entitled to grant access to the material;
- iii. The material contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment (including one passed after the 2003 Extradition Act) and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued.

*Making an application*

- 4.6 Officers should follow the procedures for applying for a production order in paragraph 4.5(b) above.
- 4.7 The application should also contain information that will satisfy the circuit judge of the conditions for applying for a search and seizure warrant to obtain special procedure and/or excluded material (set out in paragraph 4.6 (b) above).
- 4.8 If applicable, the application may contain a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant, including a police officer from the Requesting State (PACE Section 16(2)).
- 4.9 If an application for a search and seizure warrant in respect of special procedure and/or excluded material is refused, no further application may be made in relation to the same premises or material unless supported by additional grounds. This may involve seeking additional information from the Requesting State.

*Action to be taken executing a search and seizure warrant*

- 4.10 In executing a search and seizure warrant under section 159 of the Act, officers should have regard to the provisions in chapter 2, paragraphs 2.11 - 2.13 of this code.
- 4.11 Officers should conduct the search under section 159 in accordance with the guidance in PACE Code B, section 6 with regard to:
  - Time of searches: PACE Code B, section 6 (a);
  - Entry other than with consent: PACE Code B, section 6 (b);
  - Conduct of searches: PACE Code B, section 6 (d);
  - Leaving the premises: PACE Code B, section 6 (e).
- 4.12 The officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice of Powers and Rights in a standard format:
  - (a) Specifying if the search is made under warrant or with consent;

- (b) Summarising the extent of the powers of search and seizure conferred by the 2003 Extradition Act;
- (c) Explaining the rights of the occupier, and the owner of the property seized;
- (d) Explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application;
- (e) Stating this code is available at any police station.

*Seizure and retention of property*

4.13 An officer searching premises under section 159 of the Act may seize and retain:

- (a) Anything covered by the warrant;
- (b) Anything the officer has reasonable grounds for believing is evidence of a UK offence or has been obtained in consequence of the commission of a UK offence, if seizure is necessary to prevent the items being concealed, lost, damaged, altered, or destroyed;
- (c) Anything covered by powers in the Criminal Justice and Police Act 2001, Part 2, allowing an officer to seize property from persons or premises and retain it for sifting or examination elsewhere (provisions in PACE B 7.2 – 7.13 apply with the exception of any items subject to legal privilege).

4.14 Where a search is being executed under Section 159 of the Act for special procedure or excluded material, officers may, by virtue of Part 2 of the Criminal Justice and Police Act 2001, seize legally privileged material if it is not reasonably practicable for them to determine on the premises whether the material includes legally privileged material.

4.15 In circumstances in which an officer may decide it is not appropriate to seize property or may wish to photograph, image or copy any document or article they have the power to seize, the provisions in PACE Code B 7.4 – 7.6 apply. In particular, an officer must have regard to his or her statutory obligation to retain an original document or other article only when a photograph or copy would not be sufficient (PACE Section 22 (4)).

4.16 In respect of specific procedures for seize and sift powers under the Criminal Justice and Police Act 2001, officers should have regard to the provisions in PACE Code B 7.7 – 7.13.

4.17 Any suitably qualified or skilled person, including a police officer from the Requesting State, may be present at the sift of material seized under sections 50 and 51 of the Criminal Justice and Police Act 2001, if their presence is authorised in the search warrant.

- 4.18 In retaining material, officers should have regard to the rights of owners, set out in PACE Code B 7.16 – 7.17.

*Action after searches and search register*

- 4.19 If premises are searched under a Section 159 warrant, officers should follow the guidance in PACE Code B, sections 8 and 9 regarding the action to be taken in recording the search and endorsing the warrant.

## Chapter 3: Entry, Search and Seizure without a warrant

This chapter sets out police powers with regard to:

- *Search with consent*
- *Entry and search of premises for the purposes of arrest*
- *Entry and search of premises on arrest*
- *Entry and search of premises after arrest*

### **1. Search with consent**

- 1.1 Subject to paragraph 1.4 below, if it is proposed to search premises with the consent of a person entitled to grant entry, the officer must make any necessary enquiries to be satisfied the person is in a position to give such consent.
- 1.2 Before seeking consent the officer in charge of the search shall state the purpose of the proposed search and its extent. This information must be as specific as possible, particularly regarding the articles or persons being sought and the parts of the premises to be searched. The person concerned must be clearly informed they are not obliged to consent and anything seized may be produced in evidence.
- 1.3 An officer cannot enter and search or continue to search premises if consent is given under duress or withdrawn before the search is completed.
- 1.4 It is unnecessary to seek consent if this would cause disproportionate inconvenience to the person concerned.
- 1.5 The officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice of Powers and Rights in a standard format:
  - (a) Specifying if the search is made with consent or the powers in the Act under which the search is made. Note: the notice format shall provide for authority or consent to be indicated;
  - (b) Summarising the extent of the powers of search and seizure conferred by the Extradition Act;
  - (c) Explaining the rights of the occupier, and the owner of the property seized;
  - (d) Explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application;
  - (e) Stating this code is available at any police station.

## **2. *Entry and search of premises for purposes of arrest***

### *Statutory Powers*

- 2.1 Under Section 160 of the Act, an officer may enter and search any premises for the purpose of exercising the power of arrest, on condition that the officer:
- (a) is in possession of a Part 1 warrant, Part 2 warrant, a Part 2 provisional arrest warrant or has reason to believe that a provisional arrest under Part 1 is necessary; and
  - (b) has reasonable grounds for believing that the person requested for extradition is on the premises.
- 2.2 During the search, the officer may seize and retain any item which the officer has reasonable grounds for believing is evidence of, or has been obtained in consequence of the commission of:
- (a) the extradition offence; or
  - (b) any offence committed in the United Kingdom or abroad.

### *Conduct of search*

- 2.3 Searching of the premises may be undertaken only insofar as it is reasonable to exercise the power of arrest and only if the officer has reasonable grounds for believing the person is on the premises.
- 2.4 Should the premises being searched contain 2 or more separate dwellings, an officer may only enter and search dwellings in which he has reasonable grounds for believing the person is in, or any communal area of the premises.
- 2.5 Reasonable and proportionate force may be used if necessary to enter the premises if:
- (a) The occupier or any other person entitled to grant access has refused entry or is absent;
  - (b) It is impossible to communicate with the occupier or any other person entitled to grant access;
  - (c) The premises are unoccupied; or
  - (d) There are reasonable grounds for believing 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.
- 2.6 In conducting the search, officers should have regard to the provisions in PACE Code B 6.9 – 6.11.

2.7 The officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice of Powers and Rights in a standard format:

- (a) Specifying that the search is made for the purpose of arrest;
- (b) Summarising the extent of the powers of search and seizure conferred by the Extradition Act;
- (c) Explaining the rights of the occupier, and the owner of the property seized;
- (d) Explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application;
- (e) Stating this code is available at any police station.

#### *Seizure and Retention of Property*

2.8 An officer who has entered premises for the purpose of arrest may seize and retain anything which is on the premises which he has reasonable grounds for believing:

- (a) has been obtained as a consequence of the commission of an offence; or
- (b) is evidence in relation to the extradition offence or any offence committed in the UK or abroad,

if seizure is necessary to prevent the items being concealed, lost, damaged, altered or destroyed.

2.9 Under Section 160, officers may not seize or retain:

- special procedure material;
- excluded material;
- items subject to legal privilege;
- material relating to the identity of the person.

#### *Leaving the Premises*

2.10 Officers should follow the guidance in PACE Code B 6.13.

#### *Action after Searches*

2.11 A record of the grounds for entry and search under Section 160, and the nature of the material seized should be made in:

- The custody record if there is one; otherwise
- The officer's pocket book; or
- The search record.

2.12 In addition, officers should follow the guidance in PACE Code B sections 8 and 9 with regard to 'action after searches' and 'search registers'.

### **3. *Entry and Search of Premises on Arrest***

#### *Statutory Powers*

3.1 Under Section 161 of the Act, if a person has been arrested under any of the powers under the Act, anywhere other than a police station, an officer may enter and search premises in which the person was at the time of arrest or immediately before arrest, providing there are reasonable grounds for believing that there is evidence on the premises relating to:

- (a) the extradition offence; or
- (b) the identity of the person.

#### *Conduct of the search*

3.2 The premises may be searched only to the extent that is reasonably necessary to discover evidence relating to the extradition offence or the identity of the person.

3.3 Should the premises being searched contain 2 or more separate dwellings an officer may only enter and search dwellings in which the arrest took place or in which the person was immediately prior to arrest, or any communal area of the premises.

3.4 Reasonable and proportionate force may be used if necessary to enter the premises if:

- (a) The occupier or any other person entitled to grant access has refused entry or is absent;
- (b) It is impossible to communicate with the occupier or any other person entitled to grant access;
- (c) The premises are unoccupied; or
- (d) There are reasonable grounds for believing 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.

3.5 In conducting the search, officers should have regard to the provisions in PACE Code B 6.9 - 6.11.

3.6 The officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice of Powers and Rights in a standard format:

- (a) Specifying that the search is made on arrest;
- (b) Summarising the extent of the powers of search and seizure conferred by the Extradition Act;

- (c) Explaining the rights of the occupier, and the owner of the property seized;
- (d) Explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application;
- (e) Stating this code is available at any police station.

*Seizure and Retention of property*

3.7 An officer who is searching premises under Section 161 may seize and retain:

- (a) Evidence relating to the extradition offence;
- (b) Material relating to the identity of the person; or
- (c) Anything which the officer has reasonable grounds for believing:
  - i. Is evidence of the extradition offence or any offence committed in the UK or abroad; or
  - ii. Has been obtained as a consequence of the commission of an offence in the UK or abroad,

if seizure is necessary to prevent the items being concealed, lost, damaged, altered or destroyed.

3.8 Items subject to legal privilege may not be seized under Section 161.

*Leaving the premises*

3.9 Officers should follow the guidance in PACE Code B 6.13.

*Action after searches*

3.10 A record of the grounds for entry and search under Section 161, and the nature of the material seized should be made in:

- The custody record if there is one; otherwise
- The officer's pocket book; or
- The search record.

3.11 In addition, officers should follow the guidance in PACE Code B sections 8 and 9 with regard to 'action after searches' and 'search registers'.

#### **4. *Entry and search of premises after arrest***

##### *Statutory Powers*

4.1 Under Section 163 of the Act, if a person has been arrested under any of the powers under the Act, an officer may enter and search any premises occupied or controlled by the person, if there are reasonable grounds for believing that there is on the premises:

- (a) evidence relating to the extradition offence; or
- (b) material relating to the identity of the person.

##### *Authorisation required before entry and search*

4.2 Before entering and searching the premises, the officer must obtain written authorisation from an officer of inspector rank or above. The authority should only be given when the authorising officer is satisfied the necessary grounds (in paragraph 4.1 above) exist. If possible, the authorising officer should record the authority on the Notice of Powers and Rights and sign the Notice.

4.3 Authorisation is not required before the search if:

- (a) the search is conducted before the person arrested is taken to a police station; and
- (b) the presence of the arrested person at a place other than a police station is necessary for the effective exercise of the power to search.

4.4 If authorisation has not been obtained for the reasons in section 4.3 above, an officer of the rank of inspector or above must be informed that a search has been made, as soon as practicable after it has been conducted.

##### *Conduct of Search*

4.5 Premises should be searched only to the extent that is reasonably required to discover the evidence or material sought.

4.6 If the detained person's presence is required to facilitate the search, the person or their legal representative may attend.

4.7 Reasonable and proportionate force may be used if necessary to enter the premises if:

- (a) The occupier or any other person entitled to grant access has refused entry or is absent;
- (b) It is impossible to communicate with the occupier or any other person entitled to grant access;

- (c) The premises are unoccupied; or
  - (d) There are reasonable grounds for believing 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.
- 4.8 In conducting the search, officers should have regard to the provisions in PACE Code B 6.9 - 6.11.
- 4.9 The officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice of Powers and Rights in a standard format:
- (a) Specifying that the search is made after arrest. Note: the notice format shall provide for authority to be indicated;
  - (b) Summarising the extent of the powers of search and seizure conferred by the Extradition Act;
  - (c) Explaining the rights of the occupier, and the owner of the property seized;
  - (d) Explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application;
  - (e) Stating this code is available at any police station.

*Seizure and retention of property*

- 4.10 An officer who is searching premises under Section 163 may seize and retain:
- (a) Evidence relating to the extradition offence;
  - (b) Material relating to the identity of the person; or
  - (c) Anything which the officer has reasonable grounds for believing:
    - i. is evidence of the extradition offence or any offence committed in the UK or abroad; or
    - ii. has been obtained as a consequence of the commission of an offence in the UK or abroad,

if seizure is necessary to prevent the items being concealed, lost, damaged, altered or destroyed.

- 4.11 Items subject to legal privilege may not be seized under Section 163.

*Leaving the premises*

4.12 Officers should follow the guidance in PACE Code B 6.13.

Action after searches

4.13 A record of the grounds for entry and search under Section 163, and the nature of the material seized should be made in:

- The custody record if there is one, otherwise
- The officer's pocket book, or
- The search record.

4.14 In addition, officers should follow the guidance in PACE Code B Sections 8 and 9 with regard to 'action after searches' and 'search registers'.

## Chapter 4: Search of a Person

### 1. Introduction

1.1 This chapter covers:

- ◆ *Search of person on arrest*
- ◆ *Treatment of person following arrest*
  - *Searches of detained persons (property)*
  - *Searches and examination of persons (identity)*
  - *Photographs*
  - *Fingerprints and samples*

#### *Principles of Operation*

- 1.2 All searches of persons arrested under Part 1 or Part 2 of the Act must be carried out with courtesy, consideration and respect for the person concerned. Every reasonable effort must be made to minimise the embarrassment that a person being searched may experience.
- 1.3 The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. Reasonable force may be used as a last resort if necessary to conduct a search, but only if it has been established that the person is unwilling to co-operate or resists.
- 1.4 Intimate searches may only be conducted and intimate samples may only be taken from a person under Section 170 of the Act, and not for the purposes of ascertaining identity.
- 1.5 In the treatment of persons after arrest, officers should have regard to the provisions in PACE Code C 1.4 – 1.6 and PACE Code D 2.12, 2.13 and 2.15 regarding persons who may be mentally disordered or otherwise mentally vulnerable, who appear to be under the age of 17, and who appear blind, seriously visually impaired, deaf, unable to read or speak or have difficulty orally because of a speech impediment.

## **2. Search of Person On Arrest**

### *Statutory Powers*

- 2.1 Under Section 162 of the Act, an officer may search a person arrested under Part 1 or Part 2 of the Act, where that person's arrest took place anywhere other than a police station.
- 2.2 An officer may search a person on arrest if there are reasonable grounds for believing that:
- (a) The person may be a danger to themselves or others;
  - (b) The person may have concealed anything which might be used to assist escape from lawful custody; or
  - (c) The person may have concealed anything which might be evidence relating to an offence or to the identity of the person.
- 2.3 Under Section 162, an offence includes the extradition offence, an offence committed in the United Kingdom or abroad.
- 2.4 An officer may exercise these powers only to the extent that it is reasonable to discover the items or material sought.
- 2.5 Under Section 162, an officer may seize and retain any item if there are reasonable grounds for believing that:
- (a) The person might use it to cause physical injury to himself or any other person;
  - (b) The person might use it to assist him to escape from lawful custody;
  - (c) It is evidence relating to an offence or the identity of the person.

### *Before the Search*

- 2.6 Before the search of the person takes place, the officer must take reasonable steps to give the person to be searched the following information:
- (a) That they are to be the subject of a non-intimate search;
  - (b) The officer's name and the name of the police station to which the officer is attached;
  - (c) The legal search power which is being exercised (i.e. under Section 162 of the Extradition Act 2003);
  - (d) A clear explanation of:

- i. The purpose of the search in terms of the article(s) for which there is a power to search; and
  - ii. The grounds for the search.
- 2.7 If the person to be searched does not appear to understand what is being said, or there is any doubt about the person's ability to understand English, the officer must take reasonable steps to bring information regarding the person's rights and any relevant provisions of this code to his or her attention. If the person is deaf or cannot understand English and is accompanied by someone, then the officer must try to establish whether that person can interpret or otherwise help the officer.
- 2.8 Officers not in uniform must show their warrant cards.

*Conduct of the Search*

- 2.9 Where practicable the search must be carried out at or near the place where the person was arrested.
- 2.10 An officer may exercise the power to search a person on arrest only to the extent that it is reasonable to discover the items or material sought.
- 2.11 Under Section 162 (5)(a) an officer may not require a person to remove any clothing in public, other than an outer coat, jacket or gloves.
- 2.12 Under Section 162 (5)(b) an officer is authorised to search a person's mouth.
- 2.13 Nothing in this section affects the power conferred by section 43 of the Terrorism Act 2000 (c 11).

### **3. Searches of detained persons (property)**

#### *Non-intimate searches*

- 3.1 Under Section 170 (3)(a) of the Act, the custody officer shall search the detained person or authorise their being searched, to the extent they consider necessary, to ascertain what property the detained person:
- (a) has with them when they come to the police station on arrest;
  - (b) might have acquired for an unlawful or harmful purpose while in custody.
- 3.2 The custody officer may seize and retain any clothing or personal effects if there are reasonable grounds for believing that:
- (a) The person might use it to cause physical injury to themselves or another person;
  - (b) The person might use it to assist escape from lawful custody;
  - (c) It is evidence relating to the extradition offence or an offence committed in the United Kingdom or abroad; or
  - (d) It is material relating to the identity of the person.
- 3.3 Under Section 170, a search may only be carried out by an officer of the same sex as the detainee.

#### *Intimate & Strip Searches*

- 3.4 Under Section 170 (3)(b) of the Act, an intimate or strip search may be carried out only if authorised by an officer of inspector rank or above who has reasonable grounds for believing that:
- (a) The person may have concealed on themselves
    - i. Anything which they could and might use to cause physical injury to themselves or others at the station; or
    - ii. A Class A drug which they intend to supply to another or to export; and
  - (b) An intimate search is the only means of removing these items.
- 3.5 Officers should have regard to the provisions set out in PACE Code C, Annex A regarding the conduct and documentation of intimate and strip searches.
- 3.6 Note: the powers in the Act do not authorise officers to carry out intimate searches for the purposes of ascertaining identity (see section 4.8 below).

#### **4. Searches and examination of detained persons (identity)**

##### *Statutory Powers*

- 4.1 Under Section 166 of the Act, an officer or a designated person may search or examine a person arrested under Part 1 or Part 2 of the Act and detained at a police station in order to establish:
- (a) their identity; or
  - (b) whether they have any marks, features or injuries (e.g. tattoos or scars) that would tend to identify them as a person involved in the commission of the extradition offence, and to photograph any identifying marks (see section 5 below on the taking and use of photographs).

##### *Authorisation and Consent*

- 4.2 Under Section 166 a search and/or examination to find marks may be carried out:
- (a) With the person's consent; or
  - (b) Without the person's consent:
    - i. if consent has been withheld; or
    - ii. it is not practicable to obtain it.
- 4.3 A search and examination without consent may only take place if authorised by an officer of the rank of inspector or above. Authorisation may be given orally or in writing. If given orally, the authorising officer must confirm it in writing as soon as is practicable.
- 4.4 Identifying marks may be photographed with the person's consent or without their consent if it is withheld or it is not practicable to obtain it. Authorisation by a senior officer is not required in the taking of photographs without consent, but proper documentation must be filed, according to paragraphs 4.10 – 4.11 below.

##### *Conduct of the search/examination*

- 4.5 The thoroughness and extent of any search or examination carried out in accordance with the powers in Section 166 must be no more than the officer considers necessary to achieve the required purpose.
- 4.12 Under Section 166, an officer or designated person may not:
- (a) carry out a search or examination of a person of the opposite sex;
  - (b) take a photograph of any part of the body (other than the face) of a person of the opposite sex.

4.13 If it is established a person is unwilling to co-operate sufficiently to enable a search and/or examination to take place or a suitable photograph to be taken, an officer may use reasonable force to:

- (a) Search and/or examine the person without their consent; and
- (b) Photograph any identifying marks without their consent.

4.8 An intimate search may not be carried out under Section 166 of the Act.

*Information to be given*

4.9 When a person is searched, examined or photographed, they must be informed of the:

- (a) Purpose of the search, examination or photograph;
- (b) Grounds on which the relevant authority, if applicable, has been given; and
- (c) Purposes for which a photograph of the identifying mark may be used, disclosed or retained.

*Documentation*

4.10 A record must be made when the person is searched, examined or a photograph of any identifying marks found on them is taken. The record must include the:

- (a) Identity of the officer carrying out the search, examination or taking the photograph;
- (b) Purpose of the search, examination or photograph and the outcome;
- (c) The person's consent to the search, examination or photograph, or the reason the person was searched, examined or photographed without consent;
- (d) Giving of any authority, the grounds for giving it and the authorising officer.

4.11 If force is used when searching, examining or taking a photograph in accordance with this section, a record shall be made of the circumstances and those present.

*Use of information and retention of photographs of identifying marks*

4.12 A photograph of identifying marks or a copy of the photograph taken under Section 166(3) of the Act may be sent to the relevant authority of the

Requesting State in advance of the person's extradition to assist in establishing the identity of the person arrested.

4.13 Photographs of identifying marks taken under Section 166 of the Act may be used or disclosed only for purposes related to:

- (a) the prevention and detection of crime;
- (b) the investigation of domestic offences; or
- (c) the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the United Kingdom.

4.14 After being so used or disclosed, the photograph may be retained but must not be used or disclosed except for these purposes.

## **5. Photographs**

### *Statutory Powers*

- 5.1 Under Section 167 of the Act an officer or a designated person may photograph a person arrested under Part 1 or Part of the Act and detained at a police station:
- (a) With their consent; or
  - (b) Without their consent if it is:
    - i. withheld; or
    - ii. not practicable to obtain their consent.

### *Conduct in taking the photograph*

- 5.2 The officer proposing to take a person's photograph may, for this purpose, require the person to remove any item or substance worn on, or over, all, or any part of their head or face. If they do not comply with such a requirement, the officer may remove the item or substance.
- 5.3 If it is established the person is unwilling to co-operate sufficiently to enable a suitable photograph to be taken and it is not reasonably practicable to take the photograph covertly, an officer may use reasonable force:
- (a) To take their photograph without their consent; and
  - (b) For the purpose of taking the photograph, remove any item or substance worn on, or over, all, or any part of the person's head or face which they have failed to remove when asked.
- 5.4 For the purposes of this code, a photograph may be obtained without the person's consent:
- (a) If taken covertly; or
  - (b) By making a copy of an image of them taken at any time on a camera system installed anywhere in the police station.

### *Information to be given*

- 5.5 When a person is photographed, they must be informed of the:
- (a) Purpose of taking the photograph; and
  - (b) The purpose for which the photograph may be used, disclosed or retained.

- 5.6 This information must be given before the photograph is taken, except if the photograph is:
- (a) Taken covertly;
  - (b) Obtained by making a copy of an image of the person taken at any time on a camera system installed anywhere in the police station.

*Documentation*

- 5.7 A record must be made when a person is photographed. The record must include the:
- (a) Identity of the officer taking the photograph;
  - (b) Purpose of taking the photograph and the outcome;
  - (c) The person's consent to the photograph, or the reason the person was photographed without consent.
- 5.8 If force is used when taking a photograph in accordance with this section, a record shall be made of the circumstances and those present.

*Use and retention of Photographs*

- 5.9 A photograph taken under Section 167 of the Act, or a copy of the photograph, may be sent to the relevant authority of the Requesting State before completion of the extradition proceedings, if it is required to assist in establishing the identity of the person arrested.
- 5.10 Photographs of a person taken under Section 167 of the Act (or under Section 166 of the Act, see paragraph 4.13 above) may be used or disclosed only for purposes related to:
- (a) the prevention and detection of crime;
  - (b) the investigation of domestic offences; or
  - (c) the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the United Kingdom.
- 5.11 After being so used or disclosed, the photograph may be retained but must not be used or disclosed except for these purposes.

## **6. Fingerprints and Samples**

### *Statutory Powers*

- 6.1 Under Section 165 of the Act fingerprints or a non-intimate sample may be taken from a person arrested under Part 1 or Part 2 and detained at a police station in order to:
- (a) Assist in establishing the person's identity (including showing that they are not a particular person);
  - (b) Assist in establishing the person's identity by cross-checking fingerprint data against records of current asylum claimants held by the Immigration Fingerprint Bureau;
  - (c) Assist in the investigation of outstanding or unsolved UK offences;
  - (d) Maintain police records of extradited persons.
- 6.2 Fingerprints and non-intimate samples may only be taken:
- (a) With the consent of the person in writing; or
  - (b) With the authorisation of a police officer of at least the rank of inspector, without that consent.
- 6.3 Reasonable force may be used, if necessary, to take a person's fingerprints or a non-intimate sample, without their consent.
- 6.4 A person's fingerprints may be taken electronically.
- 6.5 Intimate samples may not be taken under Section 165 of the Act.

### *Information to be given*

- 6.6 Before any fingerprints or a non-intimate sample are taken with, or without consent, the person must be informed:
- (a) Of the reason for taking their fingerprints or the sample;
  - (b) Of the grounds on which the relevant authority has been given;
  - (c) That their fingerprints and/or the information derived from the samples will be retained and may be the subject of a speculative search.

### *Conduct in taking fingerprints & non-intimate samples*

- 6.7 Officers should have regard to PACE Code D 6.9 in the procedures for taking non-intimate samples and the corresponding Notes for Guidance.

### *Documentation*

- 6.8 A record must be made as soon as possible, of:
- (a) The reason for taking a sample;
  - (b) The reason for taking a person's fingerprints without consent;
- 6.9 If force is used, a record shall be made of the circumstances and those present.
- 6.10 A record shall be made of the fact that a person has been informed that fingerprints and samples (and the information derived from it) may be the subject of a speculative search.

### *Use, Disclosure and Retention*

- 6.11 Fingerprints or samples (and the information derived from the samples) or copies of this information, may be sent to the Requesting State before completion of the extradition proceedings, to assist in establishing the person's identity.
- 6.12 Fingerprints or samples (and the information derived from the samples) taken from a person under Section 165 of the Act may be retained and may be the subject of a speculative search.
- 6.13 This means the fingerprints or samples (and the information derived from the samples) may be checked against other fingerprints and DNA records held by, or on behalf of, the police and other law enforcement authorities in or outside the United Kingdom, or held in connection with, or as a result of, an offence committed inside or outside the United Kingdom.
- 6.14 Where a speculative search of the UK database results in a 'hit' then the normal rules on retention, use, disclosure and destruction of the fingerprints or DNA sample, governed by PACE Section 64 will apply.

## Chapter 5: Retention, Use and Delivery of Seized Material

This chapter sets out provisions for the retention, use and delivery of material seized under Part 4 of the Act.

### 1. *Retention*

- 1.1 Material seized under sections 160 (4), 161 (5) or (6), 162 (6) or (7), or 163 (5) or (6), of the Act may be retained:
- (a) to assist in establishing the identity of the person arrested;
  - (b) for use as evidence where the person's extradition is sought for the purposes of their trial and prosecution for the extradition offence;
  - (c) to facilitate the use in any proceedings of anything to which it is inextricably linked;
  - (d) for forensic examination or other investigation in connection with an offence committed in the United Kingdom;
  - (e) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.
- 1.2 Perishable items seized should be photographed and a copy of the photograph retained as evidence.
- 1.3 Material seized in relation to the extradition offence shall be retained by the arresting police force only until:
- (a) The person's surrender is ordered and the extradition proceedings are completed;
  - (b) The extradition request is refused or withdrawn;
  - (c) It is determined that the material is no longer required for the prosecution of the extradition offence.
- 1.4 An officer must have regard to his or her statutory obligation to retain an original document or other article only when a photograph or copy would not be sufficient (PACE Section 22 (4)).
- 1.5 A list or description of the property retained in relation to the extradition offence or a UK offence must be provided to the person who had custody of it immediately prior to its seizure within a reasonable time.
- 1.6 Material no longer required for the prosecution of the extradition offence in the Requesting State or an offence in the UK must be returned to the person from

whom it was seized or to its lawful owner, at the expense of the Requesting State, if the material has been sent abroad.

*Evidence of a UK offence*

- 1.7 The retention and use of material seized in relation to a UK offence is governed by the provisions in PACE Code B, 7.14 – 7.17.

**2. Delivery**

- 2.1 Under Section 171, an officer may deliver anything lawfully seized or produced under Part 4 of the Act to a person who is, or who is acting on behalf of, an authority of the Requesting State, which has functions that make it appropriate for the material to be delivered to him or her.

- 2.2 It is the responsibility of the arresting police force to retain material and maintain the integrity of the material until such time as it is delivered to the Requesting State or returned to its lawful owner.

- 2.3 Officers may not deliver:

(a) Material or copies or photographs of it, seized in relation to the extradition offence; or

(b) anything that may be used in evidence in a trial for the extradition offence

to the Requesting State until the order to surrender has been given and the extradition proceedings have been completed, including suspension of the extradition hearing for the prosecution of a UK offence.

- 2.4 This does not preclude officers from describing the material and in any other way being helpful to the Requesting State.

*Process of Delivery*

- 2.5 After the order to surrender is given, and all avenues of appeal have been exhausted, material may be delivered, by an officer from the arresting force to the Requesting State, as soon as is practicable:

(a) In person at the time and location of surrender;

(b) In person at the police station of the arresting force; or

(c) By alternative means, with the consent of the Requesting State.

- 2.6 Officers must be satisfied that the person to whom the material is being delivered is, or is acting on behalf of, an authority of the Requesting State, which has functions that make it appropriate for the material to be delivered to him or her.

- 2.7 If it is not practical for material to be delivered in person at the time of surrender, the Requesting State should arrange with the arresting force to come and collect the evidence from them at the expense of the Requesting State.
- 2.8 Material may be delivered to the Requesting State before the person has been handed over to the appropriate authorities from the Requesting State.
- 2.9 If material is delivered to the Requesting State and it later transpires it is not needed, UK police are not required to assist in its return, but this does not preclude them providing assistance, where possible.
- 2.10 Material seized in response to a request from a Category 1 or Category 2 territory may be delivered to the Requesting State if the person requested for extradition dies or escapes.

*Material required in other prosecutions*

- 2.11 Material that is also required for the prosecution of an offence committed in the United Kingdom, may be delivered to the Requesting State, on condition that it is returned.
- 2.12 Where the extradition request is rejected or withdrawn, but material is required in the prosecution of co-defendants abroad, nothing in the Act requires its return.

**ANNEX A - CHECKLIST OF DUTIES FOR CUSTODY OFFICERS IN EXTRADITION CASES**

1.	Ensure the person understands that they have been arrested and why they have been arrested (including repeating the Extradition caution again if necessary).	<input type="checkbox"/>
2.	Inform the person of extradition process, including the right to consent (see form of words, Annex D of the code of practice)	<input type="checkbox"/>
3.	<p>Inform person of their rights while in custody:</p> <ul style="list-style-type: none"> <li>(a) Right to have someone informed of the arrest and detention</li> <li>(b) Right to consult privately with a solicitor and that free, independent legal advice is available</li> <li>(c) Right to consult the extradition code of practice and the PACE codes of practice</li> <li>(d) Right to request to be shown the warrant or a copy of the warrant</li> </ul> <p>(NB: if the person requests to see the warrant, it must be shown to him or her as soon as is practicable, or the person is taken to be discharged).</p>	<input type="checkbox"/>
4.	<p>Serve the person with the following forms:</p> <ul style="list-style-type: none"> <li>(a) The written extradition notice setting out: <ul style="list-style-type: none"> <li>• The person's rights while in custody</li> <li>• The arrangements for obtaining legal advice</li> <li>• The right to be shown a copy of the custody record</li> </ul> </li> <li>(b) A written notice setting out the person's usual entitlements while in custody</li> </ul> <p>and mark the custody record as appropriate.</p>	<input type="checkbox"/>
5.	Serve the person with a written copy of the form explaining the stages of the extradition process.	<input type="checkbox"/>
6.	Inform person of the right to communicate with their High commission, Embassy or Consulate (the list of countries to which this applies, as at 1 <sup>st</sup> April 2003, is set out in Annex F, PACE Code of Practice C) and mark the custody record as appropriate.	<input type="checkbox"/>
7.	<p>Ask the detainee</p> <ul style="list-style-type: none"> <li>(a) whether they: <ul style="list-style-type: none"> <li>• Would like legal advice</li> <li>• Want someone informed of their detention</li> </ul> </li> <li>(b) to sign the custody record to confirm their decisions in respect of these.</li> </ul>	<input type="checkbox"/>
8.	<p>Conduct a risk assessment and determine whether the detainee:</p> <ul style="list-style-type: none"> <li>(a) is, or might be in need of medical treatment or attention</li> <li>(b) requires an appropriate adult, help to check documentation</li> <li>(c) requires an interpreter</li> </ul> <p>and mark the custody record as appropriate.</p>	<input type="checkbox"/>

9.	<p><b>Search the person to ascertain what property the detained person has with them and document this. Record the reasons for retaining any items of property, and mark the custody record as appropriate</b></p>	<input type="checkbox"/>
10.	<p><b>Ensure the following information is contained on the custody record and forward this information to the Case Monitoring Unit:</b></p> <ul style="list-style-type: none"> <li><b>(a) The person’s name (and aliases), age, gender and nationality;</b></li> <li><b>(b) The person’s address;</b></li> <li><b>(c) A note of the person’s self-defined ethnic background;</b></li> <li><b>(d) The type of arrest under which the person has been detained (Part 1 warrant, provisional arrest under Part 1, Part 2 certified full order request, or Part 2 provisional arrest warrant);</b></li> <li><b>(e) The offence(s) specified on the warrant or communicated by the Requesting State in provisional arrests under Part 1;</b></li> <li><b>(f) Where possible, the date and location where the offence took place;</b></li> <li><b>(g) The Category 1 or Category 2 territory where the warrant was issued or from where the warrant is due to be issued if the person was arrested provisionally under Part 1;</b></li> <li><b>(h) The date, time and place that the person was arrested;</b></li> <li><b>(i) That the person has been given the required rights and notices;</b></li> <li><b>(j) If the person required an interpreter and/or legal aid.</b></li> </ul>	<input type="checkbox"/>

## ANNEX B - FORM OF WORDS FOR USE IN EXPLAINING THE EXTRADITION PROCESS

*Note: this form is not an exhaustive account of the extradition process, but is designed to assist the police in helping the person understand why they have been arrested and the main stages of the extradition process.*

*If the person requires a more detailed explanation of the process or has further questions, these should be directed at their legal advisor.*

### PART 1: Persons arrested under Section 3 of the Extradition Act 2003

- 1) You have been arrested under Section 3 of the Extradition Act 2003.
- 2) *Either (where person is accused of offences in the Requesting State):*
  - Your extradition is sought by [Category 1 territory] in relation to an [offence(s)] which took place on [date/time] at [location]

*Or (Where person has been convicted for offences and is alleged to be unlawfully at large):*

  - Your extradition is sought by [Category 1 territory] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence specified on the warrant].
- 3) (If warrant not shown:) You have the right to request to see a copy of the warrant.
- 4) You will be held in custody until the initial extradition hearing.
- 5) There are two main stages to the extradition process.
- 6) The first is an initial hearing before a district judge. This will take place as soon as practicable.
- 7) At the initial hearing the judge will either remand you in custody or grant you bail.
- 8) The second hearing is the main extradition hearing. This will take place before a district judge within 21 days of your arrest.
- 9) At the extradition hearing, the judge will decide whether there are any reasons why you should not be extradited and then either order your surrender to [the Category 1 territory] or discharge you.
- 10) You may appeal against the judge's decision, within 7 days. If you do not appeal, you will be returned to [the Category 1 territory] within 10 days of the extradition hearing.
- 11) You have the right to consent to your extradition. If you wish to consent, you should consult your legal advisor on the implications.

## PART 1: Provisional Arrest under Section 5 of the Extradition Act 2003

*Note: this form is not an exhaustive account of the extradition process, but is designed to assist the police in helping the person understand why they have been arrested and the main stages of the extradition process.*

If the person requires a more detailed explanation of the process or has further questions, these should be directed at their legal advisor.

- 1) You have been provisionally arrested under Section 5 of the Extradition Act 2003.
- 2) *Either (where person is accused of offences in the Requesting State):*
  - Your extradition is sought by [Category 1 territory] in relation to an [offence(s)] which took place on [date/time] at [location]

*Or (where person has been convicted in the Requesting State is alleged to be unlawfully at large):*

  - Your extradition is sought by [Category 1 territory] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence(s)].
- 3) You will be held in custody for up to 48 hours, pending receipt of a certified Part 1 warrant for your arrest.
- 4) You have the right to request to see a copy of the warrant.
- 5) There are two main stages to the extradition process.
- 6) The first is an initial hearing before a district judge. This will take place within 48 hours of your arrest.
- 7) At the initial hearing the judge will either remand you in custody or grant you bail.
- 8) The second hearing is the main extradition hearing. This will take place before a district judge within 21 days of your arrest.
- 9) At the extradition hearing the judge will decide whether there are any reasons why you should not be extradited and then either order your surrender to [the Category 1 territory] or discharge you.
- 12) You may appeal against the judge's decision, within 7 days. If you do not appeal, you will be returned to [the Category 1 territory] within 10 days of the extradition hearing.
- 10) You have the right to consent to your extradition. If you wish to consent you should consult your legal advisor on the implications.

## PART 2: Persons Arrested under Section 70 of the Extradition Act 2003

*Note: this form is not an exhaustive account of the extradition process, but is designed to assist the police in helping the person understand why they have been arrested and the main stages of the extradition process.*

If the person requires a more detailed explanation of the process or has further questions, these should be directed at their legal advisor.

- 1) You have been arrested under Section 70 of the Extradition Act 2003.
- 2) *Either (where person is accused of offences in the Requesting State):*
  - Your extradition is sought by [Category 2 territory] in relation to [offence(s)] which took place on [date/time] at [location].

*Or (where person has been convicted by the Requesting State and is alleged to be unlawfully at large):*

  - Your extradition is sought by [Category 2 territory] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence(s) specified on the warrant]
- 3) (If warrant not shown:) You have the right to request to see a copy of the warrant.
- 4) You will be held in custody until you are brought before a judge. You will be brought before a judge as soon as practicable.
- 5) There are two main stages to the extradition proceedings
- 6) At the first stage, you will be brought before a judge as soon as practicable after your arrest. The judge will either remand you in custody or grant you bail.
- 7) The second stage is the main extradition hearing. This will take place within two months of you being brought before the judge for the first time.
- 8) At the extradition hearing, the judge will decide whether there are any reasons why you should not be extradited. The judge will then either discharge you or send your case to the Secretary of State for a decision.
- 9) If your case is sent to the Secretary of State for a decision, you will either be remanded in custody or granted bail.
- 10) If the Secretary of State orders your surrender to [the Category 2 territory], you have the right to appeal to the High Court against the decisions of the judge and the Secretary of State within 14 days.
- 11) If you do not appeal, you will be returned to [the Category 2 territory] within 28 days of the order to surrender.
- 12) You have the right to consent to your extradition. If you wish to consent you should consult your legal advisor on the implications.

## PART 2: Provisional Arrest under Section 72 of the Extradition Act 2003

*Note: this form is not an exhaustive account of the extradition process, but is designed to assist the police in helping the person understand why they have been arrested and the main stages of the extradition process.*

If the person requires a more detailed explanation of the process or has further questions, these should be directed at their legal advisor.

- 1) You have been provisionally arrested under Section 72 of the Extradition Act 2003.
- 2) *Either (where person is accused of offences in the Requesting State):*
  - Your extradition is sought by [Category 2 territory] in relation to [offence(s)] which took place on [date/time] at [location].

*Or (where person has been convicted by the Requesting State and is alleged to be unlawfully at large):*

  - Your extradition is sought by [Category 2 territory] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence(s) specified on the warrant]
- 3) You have the right to request to see a copy of the warrant.
- 4) You will be held in custody until you are brought before a judge. You will be brought before a judge as soon as practicable.
- 5) There are two main stages to the extradition proceedings
- 6) At the first stage, you will be brought before a judge as soon as practicable after your arrest. The judge will either remand you in custody or grant you bail.
- 7) When the judge has received all the necessary documentation relating to your case, the judge will fix a date for the main extradition hearing. The main extradition hearing is the second stage of the proceedings.
- 8) The main extradition hearing will take place within 2 months of the judge receiving the necessary documentation.
- 9) At the extradition hearing the judge will decide whether there are any reasons why you should not be extradited. The judge will then either discharge you or send your case to the Secretary of State for a decision.
- 10) If your case is sent to the Secretary of State for a decision, you will either be remanded in custody or on bail.
- 11) If the Secretary of State orders your surrender to [the Category 2 territory], you have the right to appeal to the High Court against the decisions of the judge and the Secretary of State within 14 days.
- 12) If you do not appeal, you will be returned to [the Category 2 territory] within 28 days of the order to surrender.
- 13) You have the right to consent to your extradition. If you wish to consent you should consult your legal advisor on the implications.

## ANNEX C - GLOSSARY

Application <i>Ex parte</i>	An application by an officer to apply for an order or warrant without notifying the respondent that the application is being contemplated or made
Application <i>Inter partes</i>	An application by a police officer for an order or warrant to which the respondent of the order is notified in advance of its being made.
Category 1 territory	A country designated by an order in council as a Part 1 country (e.g. EU Member States)
Category 2 territory	Country designated by an order in council as a Part 2 (e.g. a Commonwealth country)
Certified request	A request from a Category 1 or 2 territory which has been checked and certified by NCIS (Part 1) or the Secretary of State (Part 2)
Designated Persons	A person, other than a police officer, designated by the chief officer of police for the area in which the police station in question is situated, or in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland, who has specified powers and duties of police officers conferred and imposed on them
Designated Central Authority	The organisation designated by Statutory Instrument with the function of certifying Part 1 warrants received from Category 1 territories prior to the person's arrest. For England, Wales and Northern Ireland this will probably be the National Criminal Intelligence Service (NCIS)
Excluded material	Material, records or substances held in confidence (see PACE section 11)
Extradition	The process whereby a person accused or convicted of a serious crime is, at the request of another country, returned by the UK to that jurisdiction, or vice versa.
Extradition Hearing	The main part of the extradition process where a district judge considers the person's extradition against criteria laid out in the Act.
Extradition Offence	An offence committed abroad, for which the person has been requested to stand trial, be sentenced or serve a sentence abroad
Extradition Request	1) A European Arrest Warrant or other warrant which meets the criteria in section 2 of the Act (Part 1); 2) An urgent request from a Category 1 territory for the

	<p>provisional arrest of a person for whom a Part 1 warrant will be issued;</p> <p>3) A set of documentation which meets the criteria in section 69 of the Act (Part 2) and is certified by the Secretary of State (see also: full order request);</p> <p>4) An urgent request from a Category 2 territory for the provisional arrest of a person under Part 2.</p>
Fingerprints	Any record, produced by any method, of the skin pattern and other physical characteristics or features of a person's fingers or palms (PACE Section 65)
Full order request	Statements from a Category 2 territory requesting the extradition of a person which meet the criteria in Section 69 of the Act
Identifying Mark	A mark that assists in establishing a person's identity
Inextricably linked material	Material it is not reasonably practicable to separate from other linked material without prejudicing the use of that other material in any investigation or proceedings (e.g. it may not be possible to separate items of data held on a computer disk without damaging their evidential integrity).
Initial hearing	A stage in the extradition process where the person is brought before a district judge for the first time under Part 1.
Intimate Sample	A dental impression or sample of blood, semen or any other tissue fluid, urine or pubic hair, or a swab taken from a person's body orifice other than the mouth.
Intimate Search	A physical examination of a person's body orifices other than the mouth.
Items subject to legal privilege	Communications between a professional legal adviser and the client that is concerned with the proceedings. Anything held with the intention of furthering a criminal cause is not covered.
Manual	Guidance booklet for extradition practitioners, issued by the Home Office
Mark	A feature or injury (e.g. jewellery, a tattoo, insignia or scar) which can assist in establishing their identity
Non-intimate Sample	A sample of hair other than pubic, a sample taken from a nail or from under a nail, a swab taken from any part of a person's body including the mouth but not any other body orifice, saliva or a skin impression (other than a fingerprint)
Non-intimate search	Physical examination of a person's body, including the mouth, but no other body orifices
Officer in charge	An officer, of any rank, designated in charge of a search with

	particular duties and responsibilities in carrying out the search.
Order to surrender	Requirement that the person requested for extradition by a Category 1 or 2 territory be returned to that territory to stand trial, be sentenced or serve a sentence in respect of the extradition offence(s)
PACE	The 1984 Police and Criminal Evidence Act
Part 1	Part 1 of the Act, relating to the procedures and safeguards that govern an extradition request from a territory designated under Part 1 by an Order in Council.
Part 2	Part 2 of the Act, relating to the procedures and safeguards that govern an extradition request from a territory designated under Part 2 by an Order in Council.
Photograph	A process by means of which a visual image may be produced, including by making a copy of an image of the person taken at any time on a camera system installed anywhere in a police station
Premises	Any place, vehicle, vessel, aircraft, hovercraft, tent or movable structure and any offshore installation as defined in the Mineral Workings (Offshore Installations) Act 1971, section 1 (see PACE section 23).
Provisional Arrest	<ol style="list-style-type: none"> <li>1) Arrest under Part 1 pending receipt of a certified Part 1 warrant or certified European Arrest Warrant; or</li> <li>2) Arrest under Part 2 under a provisional arrest warrant issued by a UK magistrate, pending receipt of the necessary documents required under section 69 of the Act.</li> </ol>
Requesting state	The Category 1 or 2 territory issuing the extradition request
Special Procedure Material	Journalistic material or material held in confidence by someone in a professional or official capacity, other than excluded material or items subject to legal privilege (see PACE section 14)
Speculative search	Checking of fingerprints, samples and the information derived from them against other fingerprint and DNA records held by, or on behalf of, the police and other law enforcement authorities in, as well as outside, the UK.
UK offence	An arrestable offence, as defined in PACE Schedule 1A committed in the United Kingdom