

# EXTRADITION ACT 2003

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## EXPLANATORY NOTES

### TERRITORIAL APPLICATION: WALES

#### Part 4

#### Police Powers

##### *Section 156: Search and seizure warrants*

439. This section sets out the procedure for the application for and issue of a search and seizure warrant in an extradition case.
440. *Subsection (1)* gives a justice of the peace power to issue such a warrant, on the application of a police constable, if he is satisfied that the necessary conditions are met. These conditions are described below.
441. Under *subsection (2)* the application for a search and seizure warrant is required to state that the warrant is sought in connection with the extradition of a person under this Act. It must also specify the premises (see section 174(5) below), the material for which the warrant is sought and that the specified material is believed to be on the premises. In addition, the application must state that the person is accused of a specified extradition offence in a specified category 1 or category 2 territory (*subsections (3) and (4)*).
442. *Subsections (5) to (7)* explain what is meant by a search and seizure warrant. The warrant authorises a constable to enter and search the specified premises in question and to confiscate any relevant material that is found there. Material is relevant if it could be used as evidence in a trial in the United Kingdom for the specified offence in question. However, the material must not include anything that is subject to legal privilege, excluded material or special procedure material. These terms are defined in section 174 below.
443. For a search and seizure warrant to be issued there must be reasonable grounds to believe (*subsection (8)*) that:
- the offence in question has been committed by the person named;
  - that person is in or on his way to the United Kingdom;
  - the offence in question is an extradition offence, in accordance with the definition given in section 64 (for Part 1) or section 137 (for Part 2); and
  - there is relevant material on the premises.
444. In addition, there must be reasonable grounds for believing that one of the conditions laid down in *subsection (9)* applies. The conditions are:
- that it is not practicable to communicate with someone who is entitled to allow entry to the premises;

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- that it is not practicable to communicate with a person entitled to give access to the material in question;
- that permission to enter the premises will not be given without a warrant; or
- that the purpose of a search may be jeopardised unless immediate entry to the premises can be assured.

445. *Subsection (10)* sets out the necessary adaptations for this section to apply in Scotland.

### ***Section 157: Production orders***

446. This section outlines the procedure for applying for a production order in an extradition case.

447. *Subsection (1)* gives a judge (see *subsection (8)*) the power to make such an order, on the application of a police constable, if he is satisfied that the necessary conditions are met. These conditions are described below.

448. Under *subsection (2)* the application is required to state that the production order is sought in connection with the extradition of a person under this Act. It must also specify the premises and the material for which the order is sought. It must state that this is special procedure material or excluded material. It must also state that the person specified in the application appears to have control of the material in question. In addition, the application must state that the person is accused of a specified extradition offence in a specified category 1 or category 2 territory (*subsections (3) and (4)*).

449. *Subsections (5) and (6)* define a production order as an order requiring the person named in the application to hand over the material for a police constable to take away, or requiring him to allow the constable access to the material, within a specified period. This is required to be 7 days unless the judge making the order considers that a longer period is appropriate.

450. *Subsection (7)* provides that production orders have effect as court orders. *Subsection (8)* explains that, for the purposes of this section, "judge" refers to a circuit judge in England and Wales and a Crown Court judge in Northern Ireland.

### ***Section 158: Requirements for making of production order***

451. This section specifies the conditions to be met for a production order to be made.

452. For a production order to be made there must be reasonable grounds to believe (*subsection (2)*) that:

- the offence in question has been committed by the person named;
- that person is in or on his way to the United Kingdom;
- the offence in question is an extradition offence, in accordance with the definition given in section 64 (for Part 1) or section 137 (for Part 2);
- there is material which is special procedure material or excluded material on the premises involved; and
- the material could be used as evidence in a trial in the United Kingdom for the specified offence in question.

453. In addition, it must appear to the judge (*subsection (4)*) that:

- other ways of obtaining the material have already failed; or
- other ways of obtaining the material have not been tried because they would have failed.

454. Finally, (*subsection (5)*) it must be in the public interest for the material to be produced or for access to it to be given.

***Section 159: Computer information***

455. This section applies if material specified in an application for a production order is held in electronic form. In such circumstances the material must be produced (or a constable given access to it) in a form in which it can be seen and read.

***Section 160: Warrants: special procedure material and excluded material***

456. This section sets out the procedure for the application for and issue of a search and seizure warrant relating to special procedure material or excluded material in an extradition case.
457. *Subsection (1)* gives a judge (see *subsection (9)*) the power to issue such a warrant, on the application of a police constable, if he is satisfied that the conditions for issuing a production order and the necessary additional conditions are met. These additional conditions are described below.
458. Under *subsection (2)* the application is required to state that the warrant is sought in connection with the extradition of a person under this Act. It must also specify the premises and the special procedure material or excluded material for which the warrant is sought. In addition, the application must state that the person is accused of a specified extradition offence in a specified category 1 or category 2 territory (*subsections (3)* and *(4)*).
459. *Subsection (5)* states that a warrant under this section authorises a constable to enter and search the specified premises in question. He may seize and retain any relevant special procedure material and/or excluded material if the application states that the warrant is sought in relation to such material. Material is relevant if it could be used as evidence in a trial in the United Kingdom for the specified offence in question (*subsections (6)* and *(7)*).
460. In addition, one of the conditions in *subsection (8)* must apply. These are:
- that it is not practicable to communicate with someone who is entitled to allow entry to the premises;
  - that it is not practicable to communicate with a person entitled to give access to the material in question; or
  - that the material includes information classified as restricted or secret by statute and that it is likely to be disclosed in breach of that classification.
461. *Subsection (9)* explains that, for the purposes of this section, "judge" refers to a circuit judge in England and Wales and a Crown Court judge in Northern Ireland.

***Section 161: Entry and search of premises for purposes of arrest***

462. This section gives a police constable power to enter and search premises, with a view to arresting a person under an extradition arrest power. The term "extradition arrest power" is defined for the purposes of this Part in section 174 below.
463. If a police constable has the power to arrest a person in connection with an extradition matter (*subsection (1)*), he may enter and search any premises to exercise this power, subject to certain conditions. He must have reasonable grounds for believing that the person in question is on the premises (*subsection (2)*). The power to search is allowed only insofar as it is reasonably necessary to effect arrest (*subsection (3)*).
464. Under *subsection (4)* a police constable may then seize and retain anything which is on the premises where he has reasonable grounds to believe:

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- that it has been obtained as the result of an offence or is evidence of an offence (including offences committed outside the United Kingdom); and
  - that it is necessary to seize it to avoid the evidence being lost or interfered with in any way.
465. *Subsection (6)* covers the situation where the premises in question include multiple dwellings (for example, a block of flats). A police constable is allowed, in this situation, to enter and search only the communal areas of the premises and any dwelling where he has reasonable grounds to believe the person in question might be.

### ***Section 162: Entry and search of premises on arrest***

466. This section gives a police constable power to enter and search premises where a person is arrested under an extradition arrest power, unless arrest takes place at a police station (*subsection (1)*).
467. *Subsection (2)* provides for a police constable to enter and search premises where the person is arrested, or in which he was immediately before arrest. This power applies where there are reasonable grounds to believe that there is evidence on the premises of the relevant offence (in accusation cases) or of the person's identity (in all cases). "Evidence" in this context does not include items subject to legal privilege. The relevant offence (*subsection (3)*) is one on the basis of which a Part 1 warrant has been or will be issued (Part 1), or on the basis of which extradition has been or will be formally requested (Part 2).
468. A police constable may search premises only for evidence (which does not include items subject to legal privilege) relating to the relevant offence and the person's identity, as appropriate, and only so far as is reasonably necessary to find such evidence (*subsections (4)* and *(5)*). *Subsection (6)* allows a police constable to seize and retain anything discovered in exercise of this power.
469. In addition to the powers described above a police constable may (*subsection (7)*), having entered premises in exercise of this power, confiscate anything he finds there where he has reasonable grounds to believe:
- that it has been obtained as the result of an offence or is evidence of an offence (including offences committed outside the United Kingdom); and
  - that it is necessary to seize it to avoid the evidence being lost or interfered with in any way.
470. *Subsection (9)* covers the situation where the premises in question include multiple dwellings. A police constable is allowed, in this situation, to enter and search only the communal areas of the premises and any dwelling where the arrest took place, or in which the person was immediately before arrest.

### ***Section 163: Search of person on arrest***

471. This section gives a police constable power to search a person on arrest under an extradition arrest power, unless the arrest takes place at a police station (*subsection (1)*).
472. A police constable is allowed to search the person if he reasonably believes that the person could be a danger to himself or anyone else (*subsection (2)*). The constable may also seize and retain anything he finds as a result of this search, in accordance with *subsection (6)*, if he reasonably believes that the person might use it to cause physical harm to himself or another person.
473. A police constable, under *subsection (3)*, is also allowed to search the person if he reasonably believes that the person may have something concealed on him that:

- might be used to enable escape from custody; or
  - might be evidence of an offence or of the person's identity.
474. A police constable may use the power to search a person under subsection (3) only for anything described in that subsection and only so far as is reasonably necessary to find any such thing (*subsection 4*). The police constable has power under *subsection (7)* to seize and retain anything found during such a search. The constable must have reasonable grounds for believing the person might use the item to assist in an escape from custody, that the item is evidence of an offence or of the person's identity, or that it has been obtained as the result of an offence.
475. *Subsection (5)* sets out the limits of the search powers under subsections (2) and (3). The constable may not require a person to remove in public any clothes other than an outer coat, jacket or gloves. However, the constable is allowed to conduct a search of the person's mouth under these powers.
476. The provisions of this section do not affect the powers of a police constable to search a person suspected of terrorist offences under section 43 of the Terrorism Act 2000 (*subsection (9)*).

### ***Section 164: Entry and search of premises after arrest***

477. This section gives a police constable power to enter and search premises after a person has been arrested under an extradition arrest power (*subsection (1)*).
478. *Subsection (2)* provides for a police constable to enter and search premises occupied or controlled by the arrested person. This power applies where there are reasonable grounds to believe that there is evidence on the premises of the relevant offence (in accusation cases) or of the person's identity (in all cases). The relevant offence (*subsection (3)*) is one on the basis of which a Part 1 warrant has been or will be issued (Part 1), or on the basis of which extradition has been or will be formally requested (Part 2).
479. A police constable may use the power to search premises only for evidence relating to the relevant offence and the person's identity, as appropriate, and only so far as is reasonably necessary to find such evidence (*subsections (4) and (5)*). This evidence may not include any items subject to legal privilege. *Subsection (6)* allows a police constable to seize and retain anything relevant that is discovered in exercise of this power.
480. In addition to the powers described above a police constable may (*subsection (7)*), having entered premises in exercise of the power in subsection (2), seize and retain anything he finds there if he has reasonable grounds to believe:
- that it has been obtained as the result of an offence or is evidence of an offence; and
  - that it is necessary to confiscate it to avoid the evidence being lost or interfered with in any way.
481. Under *subsection (9)* the powers to search premises and seize and retain evidence given in this section may only be used with the written authorisation of a police officer of inspector level or higher. *Subsection (10)* gives the exception to this rule. The power to search in subsection (2) may be carried out without this authorisation before the arrested person is taken to a police station if the holding of the person somewhere other than a police station is necessary for an effective search to occur.
482. *Subsection (11)* states that subsections (9) and (10) do not apply to Scotland. This means that the powers in subsections (2) and (6), to enter and search premises and to retain any evidence found as a result, may be exercised in Scotland without written authority.

***Section 165: Additional seizure powers***

483. This section amends the Criminal Justice and Police Act 2001 so that the additional powers given in sections 50 and 51 of that Act will be available in extradition cases. These powers supplement other seizure powers in cases where it is not reasonably practicable to determine whether something found on premises or a person can be seized in exercise of the other power, or it is not reasonably practicable to separate something which a constable has power to seize from something which he does not have power to seize.

***Section 166: Fingerprints and samples***

484. This section applies if a person is arrested under an extradition arrest power and detained at a police station.
485. *Subsections (2) and (3)* give a police constable power to take fingerprints and non-intimate samples only if the person has given his written consent or if they have the appropriate authorisation. Under *subsection (4)* authorisation must come from a police officer of at least inspector level.

***Section 167: Searches and examination***

486. This section applies if a person is arrested under an extradition arrest power and detained at a police station. The person may be searched or examined for the purpose of ascertaining his identity with the authorisation of a police officer of the rank of inspector or above. Ascertaining his identity includes establishing that he is not a particular person. (*subsection (7)*).
487. If, during the course of a search or examination, an identifying mark is found, it may be photographed with the person's consent. It may still be photographed without that consent if consent is withheld or it is not practicable to obtain consent (*subsection (3)*). Under *subsection (4)* the only people allowed to conduct a search or examination or take a photograph under this section are police constables or persons given this responsibility by the appropriate police officer. The appropriate officer is the chief police officer in the area in question for England and Wales. In Northern Ireland it is the Chief Constable of the Police Service of Northern Ireland (*subsection (10)*).
488. *Subsections (5) and (6)* explain that no one is allowed to conduct a search or examination or photograph any part (except the face) of a person of the opposite sex. Furthermore, this section does not allow an intimate search to be conducted.

***Section 168: Photographs***

489. This section applies if a person is arrested under an extradition arrest power and detained at a police station. The person may be photographed with the appropriate consent; he may still be photographed without that consent if it is withheld or it is impractical to obtain consent, under *subsection (2)*.
490. A person proposing to take a photograph under this section can, under *subsection (3)*, require the person arrested to remove anything worn on the head or face. If the person arrested refuses, the person taking the photograph is allowed to remove such items from the head or face of the person arrested. Under *subsection (4)* the only people allowed to take a photograph under this section are police constables or persons given this responsibility by the appropriate police officer. The appropriate officer is the chief police officer in the area in question for England and Wales. In Northern Ireland it is the Chief Constable of the Police Service of Northern Ireland (*subsection (6)*).

***Section 169: Evidence of identity: England and Wales***

491. This section amends the Police and Criminal Evidence Act 1984 (PACE). The PACE provisions that cover the identity issues outlined in sections 166 to 168 above will

no longer apply to a person arrested under an "extradition arrest power" (as defined below in section 174) since in future the provisions in the Act will apply. This relates to England and Wales only.

### ***Section 170: Evidence of identity: Northern Ireland***

492. This section amends the Police and Criminal Evidence (Northern Ireland) Order 1989. The provisions in that Order that cover the identity issues outlined in sections 166 to 168 above will no longer apply to a person arrested under an "extradition arrest power" (as defined below in section 174) since in future the provisions of the Act will apply. This relates to Northern Ireland only.

### ***Section 171: Other treatment and rights***

493. This section applies if a person has been arrested at a police station, taken to a police station after arrest or detained after arrest in an extradition case. For such cases the Secretary of State can apply by order the four specified sections of PACE or, as appropriate, the corresponding Northern Ireland provisions (*subsection (2)*). These are listed in *subsections (3) and (4)* and determine the rights of an arrested person at a police station in relation to searches, the right to inform someone of the arrest and the right to have access to legal advice.

### ***Section 172: Delivery of seized property***

494. This section relates to the handing over of seized property to an authority of a category 1 or category 2 territory. This applies to anything seized or produced under this Part of the Act or anything seized under section 50 or 51 of the Criminal Justice and Police Act 2001 where a constable was relying on a power of seizure conferred by this Part of the Act (*subsection (1)*).
495. *Subsection (2)* allows a police constable to hand over any such items to a person acting on behalf of the relevant authority. A constable may do so if he has reasonable grounds to believe that the authority's functions make it appropriate to hand the items over to it.
496. Where anything has been seized under a warrant or order produced under this Part of the Act, the relevant territory is the one that is specified in the application for the warrant or order (*subsection (3)*). Where anything is seized without a specific search warrant (see sections 161 to 164), *subsections (4) to (6)* apply to determine the relevant territory. The relevant territory is the one in which the Part 1 warrant was issued, or in a provisional arrest case, the one in which a constable has reasonable grounds to believe such a warrant has been or will be issued. For category 2 the relevant territory is the one which has requested the person's extradition, or in a provisional arrest case, the one in which the person is accused or has been convicted of an offence.
497. *Subsections (7) to (9)* set out the necessary modifications in the application of this section to Scotland.

### ***Section 173: Codes of practice***

498. This section requires the Secretary of State to issue codes of practice to cover the use of powers given in this Part of the Act. These codes of practice must cover the use of police powers under Part 4 of the Act, the use, return, access to and copying of anything seized during a search or produced under a production order, and the retention, use and destruction of any fingerprints, samples or photographs taken under this Part (*subsection (1)*).
499. *Subsections (2) and (3)* explain the process by which the Secretary of State issues a code of practice under this section. He is required to publish the code in draft form, consider any representations made on the draft and, if considered appropriate, amend

the code accordingly. The Secretary of State can then bring the code into effect by order (*subsection (4)*).

500. The Secretary of State may revise or replace any such code, using the same procedures as described above (*subsection (5)*). Failure by a police constable to adhere to any code issued under this section will not of itself make him liable under either criminal or civil law (*subsection (6)*). A code of practice made under this section can be admitted in court as evidence in an extradition case. Under *subsection (7)* a judge or court must take account of the code where it appears that it is relevant.
501. *Subsection (8)* provides for the publication of a draft code and the consultation process outlined above to be carried out before these provisions of the Act come into force. In these circumstances, the process is as valid as if it were conducted after the provisions have come into force. This subsection enabled the publication of a draft code and consultation process to take place before this Act received Royal Assent.

### **Section 174: Interpretation**

502. This section contains definitions of certain terms used in this Part of the Act. *Subsection (2)* explains that an "extradition arrest power" is the power of arrest or provisional arrest given in Parts 1 and 2 of this Act.
503. *Subsection (3)* gives "excluded material" the meaning given in section 11 of PACE in England and Wales, and the corresponding provisions in Northern Ireland. This covers material, records or substances that are held in confidence (for example, personal records, medical samples or journalistic material).
504. *Subsection (4)* gives "items subject to legal privilege" the meaning given by section 10 of PACE in England and Wales, and the corresponding provisions in Scotland and Northern Ireland. This covers any communication between a lawyer and his client (or a person representing either party) that is in whole or part concerned with legal advice or proceedings. However, anything held with the intention of furthering a criminal cause is not covered.
505. *Subsection (5)* gives "premises" the meaning given in section 23 of PACE in England and Wales, and the corresponding provisions in Scotland and Northern Ireland. This covers any place, including any vehicle, vessel, aircraft, hovercraft, offshore installation, tent or movable structure.
506. *Subsection (6)* gives "special procedure material" the meaning given in section 14 of PACE in England and Wales, and the corresponding provisions in Northern Ireland. This is material which is neither "excluded material" nor "items subject to legal privilege", but which is held in a professional or official capacity. The material must also be held subject to an implied or express undertaking to hold it in confidence or subject to an obligation of secrecy.
507. *Subsections (7) and (8)* give other terms used in Part 4 the meanings given by section 65 of PACE in England and Wales, and the corresponding provisions in Northern Ireland. "Appropriate consent" is:
- the person's own consent (if he has reached the age of 17 years);
  - the person's consent and his parent or guardian's consent (if he has reached 14 but is not yet 17);
  - the consent of the person's parent or guardian (if he is not yet 14).
508. The term "fingerprints" includes palm prints. An "intimate search" is a search consisting of the physical examination of a person's body orifices other than the mouth. A "non-intimate sample" means a sample of hair other than pubic hair, a sample taken from a nail or under a nail, a swab taken from the body (but not an orifice), a footprint or other such impression (but not of the hand).

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***Section 175: Customs officers***

509. This section allows the Treasury to make an order authorising customs officers to perform the functions of police officers given in this Part of the Act, with any necessary modifications specified in the order.

***Section 176: Service policemen***

510. This section allows the Secretary of State to make an order authorising members of the services' police forces to perform the functions of police officers given in this Part of the Act, with any necessary modifications specified in the order.