

SCHEDULE 3

PART I

POWERS OF OFFICERS

Power to assist French authorities

1.—(1) Where—

- (a) an officer belonging to the French Republic has in a control zone in the United Kingdom arrested or detained a person as permitted by Article 10(1) of the international articles, and
- (b) such an officer so requests,

a constable or an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979⁽¹⁾ (in this Schedule referred to as a “customs officer”) may make arrangements for the person to be taken into temporary custody.

(2) A person taken into temporary custody under sub-paragraph (1)—

- (a) shall be treated for all purposes as being in lawful custody, and
- (b) may be taken to a police station or such other place as may be appropriate in the circumstances, and shall in that case be treated as being a person in whose case sections 36(7) and (8), 54 to 56 and 58 of the Police and Criminal Evidence Act 1984⁽²⁾ (in this Schedule referred to as “the 1984 Act”), and in the case of a child or young person section 34(2) to (7), (8) and (9) of the Children and Young Persons Act 1933⁽³⁾, apply, and
- (c) must be returned, before the end of the period for which he could in the circumstances be detained in the United Kingdom under Article 10 of the international articles, to a place where detention under that Article could be resumed.

Powers of arrest outside United Kingdom

2.—(1) A constable may in a control zone in France—

- (a) exercise any power of arrest conferred by a frontier control enactment or conferred by the 1984 Act in respect of an offence under such an enactment,
- (b) make any arrest authorised by a warrant issued by a court in the United Kingdom, and
- (c) arrest any person whose name or description or both, together with particulars of an arrestable offence (within the meaning of section 24 of the 1984 Act) of which there are reasonable grounds for suspecting him to be guilty, have been made available by a chief officer of police to other such officers.

(2) For the purposes of sub-paragraph (1)(a) the reference in sub-paragraph (1) to a constable shall be construed—

- (a) in relation to the powers of arrest conferred by section 25(3) of and paragraph 17(1) of Schedule 2 to the Immigration Act 1971⁽⁴⁾, as including a reference both—
 - (i) to an immigration officer appointed for the purposes of that Act under paragraph 1 of that Schedule, and

(1) 1979 c. 2.

(2) 1984 c. 60, applied to Customs and Excise with modifications by S.I. 1985/1800, 1987/439.

(3) 1933 c. 12; section 34(2) to (7) and (8) to (11) were substituted by the Police and Criminal Evidence Act 1984, section 57; section 34(7) and (8) were amended, and section 34(7A) inserted, by the Children Act 1989 (c. 41), section 108(5) and (7), Schedule 13 paragraph 6, and Schedule 15.

(4) 1971 c. 77.

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- (ii) to an officer of customs and excise who is the subject of arrangements for the employment of such officers as immigration officers made under that paragraph by the Secretary of State,
- (b) in relation to the power of arrest conferred by paragraph 6(4) of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989⁽⁵⁾, as including a reference to any person who by virtue of paragraph 1(1) of that Schedule is an examining officer for the purposes of that Act, and
- (c) in relation to any arrest that may be made by a customs officer by virtue of section 138 of the Customs and Excise Management Act 1979 and an arrest for a drug trafficking offence as defined in section 38(1) of the Drug Trafficking Offences Act 1986⁽⁶⁾, as including a reference to a customs officer.

(3) A customs officer may in a control zone in France arrest any person whose name or description or both, together with particulars of an arrestable offence (within the meaning of section 24 of the 1984 Act) which is an offence in relation to an assigned matter as defined in section 1(1) of the Customs and Excise Management Act 1979 and of which there are reasonable grounds for suspecting him to be guilty, have been made available to customs officers generally under the authority of the Commissioners of Customs and Excise.

(4) For the purpose of enabling constables to make arrests in France in the cases described in Article 40 of the international articles sections 24 and 25 of the 1984 Act shall extend to France.

(5) Where—

- (a) an arrest has been made for an offence of the kind mentioned in Article 39 of the international articles, and
- (b) it falls to the competent authorities in France to determine the exercise of jurisdiction in accordance with Article 38,

the person arrested shall be treated as continuing to be under arrest while in France until he is presented to those authorities as required by Article 41(a).

(6) Where—

- (a) an arrest falling within sub-paragraph (4) or (5) above has been made, and
- (b) the competent authorities in France determine under Article 41 of the international articles that jurisdiction is to be exercised by the United Kingdom,

the person arrested shall be treated as having continued to be under arrest throughout, even if he was for some period in the custody of those authorities, and sections 30 and 41 of the 1984 Act shall apply accordingly.

(7) Any power conferred by an enactment to search an arrested person may be exercised following an arrest authorised by this paragraph as if the person had been arrested in the United Kingdom.

Arrested persons held in France

3.—(1) Where—

- (a) an arrest of any kind authorised by paragraph 2 above has been made in a control zone in France, or
- (b) an arrest of any such kind has been made in the United Kingdom and the person arrested enters such a control zone while under arrest,

⁽⁵⁾ 1989 c. 4.

⁽⁶⁾ 1986 c. 32; the definition was amended by the Criminal Justice (International Co—operation) Act 1990 (c. 5), section 31(1) and Schedule 4 paragraph 4(4).

the person arrested may be held in France for a period of not more than 24 hours and, if there are exceptional circumstances and an officer belonging to the French Republic is notified of the extension, for a further such period.

(2) Subject to sub-paragraphs (3) and (4), the person arrested shall be treated as if the place where he is held were for the purposes of the provisions mentioned in paragraph 1(2)(b) above and those of sections 61 to 63 of the 1984 Act a police station, or where the arrest was made by a customs officer, a customs office, in England, not being a police station or customs office designated under section 35 of the 1984 Act.

(3) Where—

- (a) an arrest falling within paragraph 2(1)(a) or (3) above has been made by a customs officer, and
- (b) the person arrested is held in France in a place within the tunnel system which would if it were in England be a customs office within the meaning of the 1984 Act,

sections 34(1) to (5), 36, 37, 39 to 42, 50, 54, 55, 56(1) to (9), 58 (1) to (11), 62, 63 and 64(1) to (6) of the 1984 Act and in the case of a child or young person section 34(2) to (7), (8) and (9) of the Children and Young Persons Act 1933, shall apply as if the place where he is held were a customs office in England designated under section 35 of the 1984 Act.

(4) Where the power of arrest mentioned in paragraph 2(2)(b) has been exercised any detention in France of the person arrested shall be treated for all purposes as being detention under paragraph 6(1) of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989, and section 16(2) of that Act, sections 51(b), 56 and 58 of the 1984 Act and section 34 of the Children and Young Persons Act 1933 as applying accordingly.

Persons arrested by French officers

4.—(1) Where—

- (a) an officer belonging to the French Republic has made an arrest falling within Article 39 or 40 of the international articles, and
- (b) he and the person arrested enter the United Kingdom,

the person arrested shall be taken to a police station.

(2) The custody officer at the police station to which the person is taken shall determine—

- (a) whether the offence is one over which the United Kingdom has jurisdiction by virtue of Article 38(1), and
- (b) if he determines that it is not, whether it is one over which the United Kingdom may exercise jurisdiction by virtue of Article 38(2) and if so whether jurisdiction is to be exercised,

and may for the purpose of determining those questions detain the person at the police station for not longer than the permitted period.

(3) The permitted period is the period of 48 hours beginning at the time at which the person arrives at the police station.

(4) Subject to sub-paragraph (6), the person shall be treated—

- (a) as not being detained at the police station for the purposes of section 37 of the 1984 Act, and
- (b) as not being in police detention for the purposes of sections 40 to 43 of the 1984 Act.

(5) Where the custody officer determines that the United Kingdom does not have jurisdiction by virtue of Article 38(1) and—

- (a) that jurisdiction is not exercisable by virtue of Article 38(2), or

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(b) that jurisdiction is exercisable by virtue of Article 38(2) but is not to be exercised, he shall immediately inform the competent French authorities of his determination and shall arrange for the person to be transferred to France within the permitted period.

(6) Where the custody officer determines that the United Kingdom has jurisdiction by virtue of Article 38(1) or that jurisdiction is exercisable by virtue of Article 38(2) and is to be exercised—

- (a) he shall immediately inform the person of his determination,
- (b) the person shall be treated as being in police detention for all purposes of Part IV of the 1984 Act, and
- (c) that Part shall have effect in relation to him as if the relevant time mentioned in section 41(1) were the time at which he is informed of the determination.

(7) Where the police station to which the person is taken is not a police station designated under section 35 of the 1984 Act, references in this paragraph to the custody officer are to be construed as references to an officer not below the rank of sergeant.

Arrests of French officers

5.—(1) This paragraph applies where an officer belonging to the French Republic (“the officer”) is arrested for an act performed in the United Kingdom in the tunnel system or a control zone.

(2) If the officer enters France while under arrest—

- (a) he shall without delay be handed over for custody to the competent French authorities and shall be treated as continuing to be under arrest until he has been handed over, and
- (b) if after consultation with those authorities it is then determined that the act was not performed by the officer whilst in the exercise of his functions and he accordingly does not by virtue of Article 30(2) of the international articles come under French jurisdiction, he shall be treated as having continued to be under arrest until sub-paragraph (3) has been complied with.

(3) Where—

- (a) sub-paragraph (2)(b) applies, or
- (b) the officer does not enter France while under arrest,

he shall be taken to a police station designated under section 35 of the 1984 Act.

(4) Sub-paragraphs (5) to (9) apply in a case falling within sub-paragraph (3)(b).

(5) The custody officer at the police station to which the officer is taken shall after consultation with the competent French authorities determine whether the act was performed by the officer whilst in the exercise of his functions, and may for the purpose of determining that question detain the officer at the police station for not longer than the permitted period.

(6) The permitted period is the period of 48 hours beginning at the time at which the officer arrives at the police station.

(7) Subject to sub-paragraph (9), the officer shall be treated—

- (a) as not being detained at the police station for the purposes of section 37 of the 1984 Act, and
- (b) as not being in police detention for the purposes of sections 40 to 43 of the 1984 Act.

(8) Where the custody officer determines that the act was performed by the officer whilst in the exercise of his functions and the officer accordingly comes under French jurisdiction by virtue of Article 30(2), he shall immediately inform the competent French authorities and shall arrange for the officer to be transferred to France within the permitted period.

(9) In any other case—

- (a) the custody officer shall immediately inform the officer of his determination,
- (b) the officer shall be treated as being in police detention for all purposes of Part IV of the 1984 Act, and
- (c) that Part shall have effect in relation to him as if the relevant time mentioned in section 41(1) were the time at which he is informed of the determination.

Arrests of United Kingdom officers

6.—(1) This paragraph applies where an officer belonging to the United Kingdom (“the officer”) is arrested for an act performed in France in the tunnel system or a control zone.

(2) If—

- (a) the officer does not enter the United Kingdom while under arrest, and
- (b) the competent French authorities determine that the act was performed by the officer whilst in the exercise of his functions and he accordingly comes under United Kingdom jurisdiction by virtue of Article 30(2) of the international articles,

he shall on being handed over by those authorities to a constable be treated as having been arrested by the constable.

(3) Where—

- (a) sub—paragraph (2)(b) applies, or
- (b) the officer enters the United Kingdom while under the original arrest,

he shall be taken to a police station designated under section 35 of the 1984 Act.

(4) Sub—paragraphs (5) to (9) apply in a case falling within sub—paragraph (3)(b).

(5) The custody officer at the police station to which the officer is taken shall—

- (a) immediately invite the competent French authorities to determine whether the act was performed by the officer whilst in the exercise of his functions, and
- (b) afford those authorities any assistance they may require in determining that question,

and may for the purpose of enabling that question to be determined detain the officer at the police station for not longer than the permitted period.

(6) The permitted period is the period of 48 hours beginning at the time at which the officer arrives at the police station.

(7) Subject to sub—paragraph (9), the officer shall be treated—

- (a) as not being detained at the police station for the purposes of section 37 of the 1984 Act, and
- (b) as not being in police detention for the purposes of sections 40 to 43 of the 1984 Act.

(8) Where the competent French authorities determine that the act was not performed by the officer whilst in the exercise of his functions and the officer accordingly does not by virtue of Article 30(2) come under United Kingdom jurisdiction, the custody officer shall arrange for the officer to be transferred to France within the permitted period.

(9) In any other case—

- (a) the custody officer shall immediately inform the officer of the determination,
- (b) the officer shall be treated as being in police detention for all purposes of Part IV of the 1984 Act, and
- (c) that Part shall have effect in relation to him as if the relevant time mentioned in section 41(1) were the time at which he is informed of the determination.

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