



Immigration and Asylum Act 1999

1999 CHAPTER 33

PART VII

POWER TO ARREST, SEARCH AND FINGERPRINT

Power to search persons

135 Searching persons in police custody.

(1) In the 1971 Act, after section 28G, insert—

“28H Searching persons in police custody.

- (1) This section applies if a person—
 - (a) has been arrested for an offence under this Part; and
 - (b) is in custody at a police station or in police detention at a place other than a police station.
- (2) An immigration officer may, at any time, search the arrested person in order to see whether he has with him anything—
 - (a) which he might use to—
 - (i) cause physical injury to himself or others;
 - (ii) damage property;
 - (iii) interfere with evidence; or
 - (iv) assist his escape; or
 - (b) which the officer has reasonable grounds for believing is evidence relating to the offence in question.
- (3) The power may be exercised only to the extent that the custody officer concerned considers it to be necessary for the purpose of discovering anything of a kind mentioned in subsection (2).

Changes to legislation: *Immigration and Asylum Act 1999, Section 135 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (4) An officer searching a person under this section may seize anything he finds, if he has reasonable grounds for believing that—
- (a) that person might use it for one or more of the purposes mentioned in subsection (2)(a); or
 - (b) it is evidence relating to the offence in question.
- (5) Anything seized under subsection (4)(a) may be retained by the police.
- (6) Anything seized under subsection (4)(b) may be retained by an immigration officer.
- (7) The person from whom something is seized must be told the reason for the seizure unless he is—
- (a) violent or appears likely to become violent; or
 - (b) incapable of understanding what is said to him.
- (8) An intimate search may not be conducted under this section.
- (9) The person carrying out a search under this section must be of the same sex as the person searched.
- (10) “Custody officer”—
- (a) in relation to England and Wales, has the same meaning as in the ^{M1}Police and Criminal Evidence Act 1984;
 - (b) in relation to Scotland, means the officer in charge of a police station; and
 - (c) in relation to Northern Ireland, has the same meaning as in the ^{M2}Police and Criminal Evidence (Northern Ireland) Order 1989.
- (11) “Intimate search”—
- (a) in relation to England and Wales, has the meaning given by section 65 of the Act of 1984;
 - (b) in relation to Scotland, means a search which consists of the physical examination of a person’s body orifices other than the mouth; and
 - (c) in relation to Northern Ireland, has the same meaning as in the 1989 Order.
- (12) “Police detention”—
- (a) in relation to England and Wales, has the meaning given by section 118(2) of the 1984 Act; and
 - (b) in relation to Northern Ireland, has the meaning given by Article 2 of the 1989 Order.
- (13) In relation to Scotland, a person is in police detention if—
- (a) he has been taken to a police station after being arrested for an offence; or
 - (b) he is arrested at a police station after attending voluntarily at the station, accompanying a constable to it or being detained under section 14 of the ^{M3}Criminal Procedure (Scotland) Act 1995,
- and is detained there or is detained elsewhere in the charge of a constable, but is not in police detention if he is in court after being charged.”
- (2) In the 1971 Act, in Schedule 2 after paragraph 25B, insert—

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Searching persons in police custody

- “25C (1) This paragraph applies if a person—
- (a) has been arrested under this Schedule; and
 - (b) is in custody at a police station.
- (2) An immigration officer may, at any time, search the arrested person in order to ascertain whether he has with him—
- (a) anything which he might use to—
 - (i) cause physical injury to himself or others;
 - (ii) damage property;
 - (iii) interfere with evidence; or
 - (iv) assist his escape; or
 - (b) any document which might—
 - (i) establish his identity, nationality or citizenship; or
 - (ii) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go.
- (3) The power may be exercised only to the extent that the officer considers it to be necessary for the purpose of discovering anything of a kind mentioned in sub-paragraph (2).
- (4) An officer searching a person under this paragraph may seize and retain anything he finds, if he has reasonable grounds for believing that—
- (a) that person might use it for one or more of the purposes mentioned in sub-paragraph (2)(a); or
 - (b) it might be a document falling within sub-paragraph (2)(b).
- (5) But the officer may not retain anything seized under sub-paragraph (2)
- (a)—
 - (a) for longer than is necessary in view of the purpose for which the search was carried out; or
 - (b) when the person from whom it was seized is no longer in custody or is in the custody of a court but has been released on bail.
- (6) The person from whom something is seized must be told the reason for the seizure unless he is—
- (a) violent or appears likely to become violent; or
 - (b) incapable of understanding what is said to him.
- (7) An intimate search may not be conducted under this paragraph.
- (8) The person carrying out a search under this paragraph must be of the same sex as the person searched.
- (9) “Intimate search” has the same meaning as in section 28H(11).”

Marginal Citations

M1 1984 c. 60.

M2 S.I. 1989/1341 (N.I. 12).

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M3 1995 c. 43.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10(12) inserted by [2023 c. 37 s. 10\(6\)](#)
- s. 40(1)-(1C) substituted for s. 40(1) by [2022 c. 36 s. 76\(2\)](#)
- s. 40(4A)(4B) inserted by [2022 c. 36 s. 76\(5\)](#)
- s. 72(10) repealed by [2004 c. 19 Sch. 4](#)
- s. 94(2A)-(2C) inserted by [2016 c. 19 Sch. 11 para. 3\(3\)](#)
- s. 94(2D) inserted by [2016 c. 19 Sch. 11 para. 7\(4\)](#)
- s. 94(3)(3A) substituted for s. 94(3) by [2002 c. 41 s. 44\(4\)](#) (This amendment is repealed (prosp.) by [2016 c. 19, Sch. 11 para. 41](#))
- s. 94(3A)-(3D) inserted by [2016 c. 19 Sch. 11 para. 3\(5\)](#)
- s. 95A inserted by [2016 c. 19 Sch. 11 para. 9](#)
- s. 96(1A) inserted by [2016 c. 19 Sch. 11 para. 10\(3\)](#)
- s. 97(3A)(b)(iv) inserted by [2022 c. 36 s. 13\(2\)\(c\)\(ii\)](#)
- s. 97(8)(9) inserted by [2016 c. 19 Sch. 11 para. 11\(4\)](#)
- s. 98A inserted by [2016 c. 19 Sch. 11 para. 13](#)
- s. 98A(5) inserted by [2022 c. 36 s. 13\(4\)](#)
- s. 103(4)(a) words substituted by [2004 c. 19 s. 10\(4\)\(b\)](#)
- s. 103(5)(b) word substituted by [S.I. 2008/2833 Sch. 3 para. 183\(ii\)](#)
- s. 103A(1) words substituted by [2004 c. 19 s. 10\(5\)](#)
- s. 103A(1) heading words substituted by [2004 c. 19 s. 10\(5\)](#)
- s. 103A(1) words substituted by [S.I. 2008/2833 Sch. 3 para. 184](#)
- s. 125(2)(ba) inserted by [2016 c. 19 Sch. 11 para. 22\(3\)\(b\)](#)
- s. 146(2)(za) inserted by [2016 c. 19 s. 44\(9\)](#)
- s. 166(5)(ca) substituted for word in s. 166(5)(c) by [2016 c. 19 Sch. 11 para. 24\(2\)](#)
- s. 166(5A)(5B) inserted by [2016 c. 19 Sch. 11 para. 24\(3\)](#)
- s. 166(6)(aa) substituted for word in s. 166(6)(a) by [2016 c. 19 Sch. 11 para. 24\(4\)](#)
- Sch. 2 para. 21 modified by [2002 c. 41 s. 23\(2\)\(a\)](#)
- Sch. 3 para. 2(5) modified by [2002 c. 41 s. 23\(2\)\(b\)](#)