

## Chapter 36 – Index

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### 36. Power to search arrested persons

**IOs should not exercise these powers except under the arrangements outlined in chapter 31.1.**

Section 14(3)(c) of the 2004 Act gives IOs the power to search an arrested person for specified offences. These powers of search must only be used by appropriately trained officers – see 16.4, 34.6, 36.1 and 36.3.

#### **36.1. Search of a person arrested under Part III of the 1971 Act at a place other than a police station**

Section 28G of the 1971 Act applies where a person has been arrested for an offence under part III of the 1971 Act at a place other than a police station.

Under subsection (2), an IO may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

Under subsection (3), an IO may search the arrested person for anything:

- which he might use to assist his escape
- which might be evidence relating to the offence for which he has been arrested

The subsection (3) power can only be used where the officer has reasonable grounds for believing that the arrested person may have concealed on him anything which could assist his escape/might be evidence. The search must go no further than is reasonably required for the purpose of discovering any such thing.

In searching a person under section 28G (2) or (3), the person's clothing cannot be removed in public (other than an outer coat, jacket or glove), but his mouth can be searched. An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person might use it to cause physical injury to himself or another person. An officer searching a person under subsection (3) may seize and retain anything he finds, if he has reasonable grounds for believing that the person may use it to assist his escape or that it is evidence relating to the offence in question, unless it is subject to legal privilege. The powers are modelled on those held by police under section 32 of PACE and contain similar safeguards.

### **36.2. Search of a person arrested under Schedule 2 of the 1971 Act at a place other than a police station**

**Paragraph 25B of Schedule 2 to the 1971 Act applies where a person is arrested under that Schedule.**

Under subparagraph (2), an IO may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

Under subparagraph (3), an IO may search the arrested person for:

- anything which he might use to assist his escape
- any document which might:
  - establish his identity, nationality or citizenship
  - indicate the place from which he has travelled to the UK or to which he is proposing to go

The subparagraph (3) power can only be used where the officer has reasonable grounds for believing that the arrested person may have concealed on him anything which could assist his escape or any document referred to above. The search must go no further than is reasonably required for the purpose of discovering any such thing.

In searching a person under paragraph 25B (2) or (3), the person's clothing cannot be removed in public (other than an outer coat, jacket or glove), but his mouth can be searched. An officer searching a person under subparagraph (2) may seize and retain anything he finds, if he has

reasonable grounds for believing that the person might use it to cause physical injury to himself or another person. An officer searching a person under subparagraph (3) may seize and retain anything he finds, if he has reasonable grounds for believing that the person may use it to assist his escape or that it is a document falling within that subparagraph (detailed above), unless it is subject to legal privilege.

Items seized on the basis that the arrested person might use them to (i) assist his escape; or (ii) cause physical injury to himself or another person, must not be retained if the arrested person is released from custody (or is released on bail).

### **36.3. Search of an arrested person under Part III of the 1971 Act in police custody**

Section 28H of the 1971 Act applies where a person has been arrested for an offence under Part III of the 1971 Act and is in police custody. It allows an IO (who must be of the same sex as the arrested person) to search the arrested person in order to see whether he is carrying anything:

- which he might use to cause injury to himself or others, damage property, interfere with evidence or assist his escape
- which the officer has reasonable grounds for believing is evidence relating to the offence in question

**An intimate search, as defined in section 28H (11), may not be conducted under section 28H.** The power may only be exercised to the extent that the custody officer considers it to be necessary for the purpose of discovering anything detailed above. "Custody officer" is defined in section 28H (10).

The section allows for the seizure of anything the officer finds, if he has reasonable grounds for believing that:

- the person might use it for one of the purposes detailed above (e.g. to cause injury to himself or another person)
- it is evidence relating to the offence in question

Evidence relating to the offence in question which is seized may be retained by an IO. Anything else seized may be retained by the police. The person from whom something is seized must be

told the reason for the seizure unless he is violent or appears likely to become violent or he is incapable of understanding what is said to him.

The section is based on section 54 of PACE and is designed to allow IOs to search those persons they have arrested and taken to a police station.

### **36.4. Search of a person arrested under Schedule 2 of the 1971 Act in police custody**

Paragraph 25C of Schedule 2 to the 1971 Act applies where a person has been arrested under that Schedule and is in custody at a police station. It allows an IO (who must be of the same sex as the arrested person) to search the arrested person in order to see whether he is carrying:

- anything which he might use to cause injury to himself or others, damage property, interfere with evidence or assist his escape
- any document which:
  - might establish his identity, nationality or citizenship
  - indicate the place from which he travelled to the UK or to which he is proposing to go

**An intimate search, as defined in section 28H (11), may not be conducted under paragraph 25C.** The power may only be exercised to the extent that the custody officer considers it to be necessary for the purpose of discovering anything detailed above. “Custody officer” is defined in section 28H (10).

Paragraph 25C allows for the seizure and retention of anything the officer finds, if he has reasonable grounds for believing that:

- the person might use it for one of the purposes detailed above (e.g. to cause injury to himself or another person)
- it might be a document of a kind detailed above (e.g. it might establish the person’s identity)

However, an IO may not retain anything that the person might use for one of the purposes detailed above for longer than is necessary or when the person is released from custody (or released on bail). The person from whom something is seized must be told the reason for the seizure unless he is violent or appears likely to become violent or he is incapable of understanding what is said to him.

### **36.5. Search of transsexual persons arrested under Part III or Schedule 2 of the 1971 Act**

A transsexual person, as defined by the Equality Act 2010, is a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex i.e. gender reassignment. The gender in which the transsexual person lives or proposes to live is known as that person's acquired gender.

Any arrested person who considers themselves transsexual, and who has undergone, is beginning to undergo, or wishes to begin gender reassignment, must be permitted to live and be treated with dignity in their acquired gender.

If there is no doubt about the gender of an arrested person, or there is no reason to suspect that that person is not the gender they appear to be, they should be dealt with as that gender. In other words, if a person presents as male, or there is no reason to suspect that he is not male, he should be dealt with as a male; and if a person presents as female, or there is no reason to suspect she is not female, she should be dealt with as a female.

If, however, an arrested person appears to be transsexual, they should be asked which gender they consider themselves to be and treated accordingly, if appropriate. Where the person expresses a preference to be treated as a particular gender, this should be recorded in the officer's pocket notebook or the premises search book and the person asked to sign the record. This record should be subsequently shown to the custody officer at a police station or on reception at the immigration removal centre (IRC), short-term holding facility (STHF) or holding room. Removal centre staff will enter into a voluntary written agreement with the person in respect of accommodation, dress code, facilities and searching.

If the person does not wish to sign the record in the officer's pocket notebook or the premises search book, they will have to be treated as their legal gender (that is, their gender at birth), as indicated in their passport, birth certificate or other legal identifying document.

Further information on the searching and management of transsexual persons can be found in the Detention Services Order 11/2012.

