



Immigration Act 1971

1971 CHAPTER 77

PART III

CRIMINAL PROCEEDINGS

[^{F1}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).
- (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.

Status: Point in time view as at 20/07/2023.

Changes to legislation: Immigration Act 1971, Section 28H is up to date with all changes known to be in force on or before 12 October 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)

- (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
 - [^{F2}(b) he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it,]
- 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.]

Textual Amendments

- F1** S. 28H inserted (14.2.2000) by 1999 c. 33, s. 135(1); S.I. 2000/168, art. 2, Sch. (which amending provision is extended (with modifications) to Jersey (5.6.2003) by S.I. 2003/1252, art. 2, Sch.)
- F2** S. 28H(13)(b) substituted (S.) (25.1.2018) by The Criminal Justice (Scotland) Act 2016 (Consequential and Supplementary Modifications) Regulations 2017 (S.S.I. 2017/452), reg. 1, sch. para. 7 (with reg. 2(2))

Modifications etc. (not altering text)

- C1** Pt. 3 modified by Immigration Act 2014 (c. 22), s. 33C(6) (as inserted (1.11.2016 for specified purposes, 1.12.2016 in so far as not already in force) by Immigration Act 2016 (c. 19), ss. 39(2), 94(1); S.I. 2016/1037, regs. 2(a), 5(c))

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- C2** S. 28H modified (1.5.2004) by The Accession (Immigration and Worker Registration) Regulations 2004 (S.I. 2004/1219), **reg. 9(11)(b)**
- C3** S. 28H modified (22.9.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 2(11)(b)**, 48(1)
- C4** S. 28H applied (1.12.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **s. 14(3)(c)**; S.I. 2004/2999, **art. 2**, Sch.
- C5** S. 28H modified (1.1.2007) by The Accession (Immigration and Worker Authorisation) Regulations 2006 (S.I. 2006/3317), **reg. 15(b)**
- C6** S. 28H modified (29.2.2008) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 21(3)(b)**, 62; S.I. 2008/310, **art. 2(1)** (subject to art. 5)
- C7** S. 28H modified by Immigration and Asylum Act 1999 (c. 33), s. 109B(1)(b) (as inserted (31.1.2008) by UK Borders Act 2007 (c. 30), **ss. 18**, 59; S.I. 2008/99, **art. 2**
S. 28H modified (31.1.2008) by UK Borders Act 2007 (c. 30), **ss. 23(2)(b)**, 59; S.I. 2008/99, **art. 2**
- C8** S. 28H modified (1.7.2013) by The Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (S.I. 2013/1460), regs. 1(1), **15(3)(b)**, 18(b) (with reg. 11(8))
- C9** S. 28H modified (1.7.2013) by The Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (S.I. 2013/1460), regs. 1(1), **18(b)** (with reg. 11(8))
- C10** Ss. 24-29: amendment to earlier affecting S.I. 1993/1797, Sch. 1 Pt. 1 (11.10.2017 coming into force in accordance with art. 1) by The Immigration (Jersey) (Amendment) Order 2017 (S.I. 2017/981), **Sch. Pt. 1 para. 1** (with art. 6)

Marginal Citations

- M1** 1984 c. 60.
- M2** S.I. 1989/1341 (N.I. 12).

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