



# Immigration and Asylum Act 1999

## 1999 CHAPTER 33

### PART VII

#### POWER TO ARREST, SEARCH AND FINGERPRINT

##### *Power to search persons*

#### 134 Searching arrested persons.

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

##### **“28G Searching arrested persons.**

- (1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.
- (2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (3) The officer may search the arrested person for—
  - (a) anything which he might use to assist his escape from lawful custody; or
  - (b) anything which might be evidence relating to the offence for which he has been arrested.
- (4) The power conferred by subsection (3) may be exercised—
  - (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that subsection; and
  - (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

*Status: Point in time view as at 28/06/2022.*

*Changes to legislation: Immigration and Asylum Act 1999, Cross Heading: Power to search persons is up to date with all changes known to be in force on or before 08 July 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)*

- (5) A power conferred by this section to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.
  - (6) An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to cause physical injury to himself or to another person.
  - (7) An officer searching a person under subsection (3) may seize and retain anything he finds, if he has reasonable grounds for believing—
    - (a) that that person might use it to assist his escape from lawful custody; or
    - (b) that it is evidence which relates to the offence in question.
  - (8) Subsection (7)(b) does not apply to an item subject to legal privilege.”
- (2) In the 1971 Act, in Schedule 2 after paragraph 25A, insert—

**Searching persons arrested by immigration officers**

- “25B (1) This paragraph applies if a person is arrested under this Schedule.
- (2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
  - (3) The officer may search the arrested person for—
    - (a) anything which he might use to assist his escape from lawful custody; 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.
  - (4) The power conferred by sub-paragraph (3) may be exercised—
    - (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that sub-paragraph; and
    - (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.
  - (5) A power conferred by this paragraph to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.
  - (6) An officer searching a person under sub-paragraph (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.

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- (7) An officer searching a person under sub-paragraph (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.
- (8) An officer searching a person under sub-paragraph (3)(b) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that sub-paragraph.
- (9) Nothing seized under sub-paragraph (6) or (7) may be retained when the person from whom it was seized—
  - (a) is no longer in custody, or
  - (b) is in the custody of a court but has been released on bail.”

### **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).
- (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—

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- (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 <sup>M1</sup>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 <sup>M2</sup>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 <sup>M3</sup>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—

### **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;

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- (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).
- M3** 1995 c. 43.

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