

Defence Instructions and Notices (Not to be communicated to anyone outside HM Service without authority)	
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Content:	The procedures for arrest, detention and treatment of persons detained under the Extradition Act 2003
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Supplements: (Please click on the links to access >>>>)	Annex B: Checklist of duties for arresting Service policeman in extradition cases. Annex C: Summary of the UK Extradition process. Annex D: Extradition: Written Notice to detained persons including fair processing notice.
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General

1. This Instruction is concerned with the procedures for the arrest, detention and treatment of persons wanted for extradition. The Service Police powers conferred by the Extradition Act 2003 and reflected in this Instruction are the powers of arrest of persons subject to Service law and civilians subject to Service discipline (sections 3, 5, 71 and 73 Extradition Act 2003).
2. An arresting Service Policeman must perform the functions in this Instruction as soon as practicable. Although they will not be in breach of this Instruction if delay is justifiable and reasonable steps are taken to prevent unnecessary delay. An entry shall be made in the arresting Service policeman's MOD F145B to show when a delay has occurred and the reason.
3. This Instruction must be readily available at all Service police stations for consultation by: the Service police; detained persons and members of the public. It shall be repeated in JSP 830, the Manual of Service Law and may be communicated to persons outside HM Service.

4. In the operation of the procedures set out in this Instruction, Service Policemen should have regard to the provisions of the Service Police Codes of Practice (SPCOP, JSP 397) Code C 1.5 to 1.8, 2.7, 2.12A, 7.14 to 7.14B, 10.1 to 10.1C, 10.9 to 10.11, and Annexes E and K in respect of persons believed to be:

- a. mentally disordered or otherwise mentally vulnerable;
- b. under the age of 18;
- c. under the age of 17;
- d. blind, seriously visually impaired, or unable to read.
- e. someone who does not speak or understand English or who has a hearing or speech impediment.

5. If this Instruction requires a person to be given certain information, they do not have to be given it if at the time they are incapable of understanding what is said, are violent or may become violent or are in urgent need of medical attention. But they must be given it as soon as practicable thereafter.

6. These procedures apply to persons subject to Service law and persons subject to Service discipline in legal custody, who have been arrested under the Extradition Act 2003 (the Act).

7. Nothing under this Instruction permits a Service Policeman to interview a person arrested under the Act.

Arrest under the Extradition Act 2003

8. A Service Policeman arresting a person subject to Service law and civilians subject to Service discipline wanted for extradition under one of the following powers in the Act (see Annex A):

- Section 3: arrest under a certified Part 1 warrant;
- Section 5: provisional arrest under Part 1;
- Section 71: arrest warrant under Part 2, following certification of an extradition request;
- Section 73: provisional arrest warrant under Part 2;

shall:

- a. Caution the person in the following terms:

“You do not have to say anything, but anything you do say may be given in evidence.”; and

- b. Give the person a copy of the warrant as soon as practicable after arrest.

9. Minor deviations from the words of any caution given in accordance with these procedures do not constitute a breach of this Instruction, provided the sense of the relevant caution is preserved.

10. The arresting Service Policeman need not be in possession of the Part 1 warrant or arrest warrant at the time of arrest.

11. A person arrested under Section 71 of the Act, must also be served with copies of the following documentation:

- a. the papers containing the extradition request;
- b. the certificate issued by the Secretary of State; and
- c. a copy of any relevant Order.

12. If it is not practicable (e.g. due to the large volume of papers contained in the request) to serve the extradition request on the person on arrest, the Service Police may give copies of the documentation to the person or the person's legal adviser before or after arrest, as appropriate.

13. The arresting Service Policeman must take all reasonable steps to ensure that the person understands that they are being arrested and why they are being arrested. The need for an interpreter will be fully assessed on arrival at the Service Police Establishment in accordance with SPCOP Code C 2.7, 10.1 to 10.1C, 10.9 to 10.11 and Annex K, and, if necessary, the process of arrest can be repeated to ensure the person understands that they have been arrested and why.

Records of arrest under the Extradition Act 2003

14. In addition to the specific provisions set out in SPCOP Code G, paragraph 4.1, the arresting Service Policeman shall record the following information in his MOD F145B:

- a. the person's name and aliases, date of birth, gender and nationality;
- b. the person's address;
- c. a note of the person's self-defined ethnic background;
- d. the section of the Act the person was arrested under;
- e. the extradition offence(s) specified on the Part 1 warrant or a Part 2 extradition request (or, where known, the offence communicated by the requesting territory, if the person is arrested provisionally under Section 5);
- f. where possible, the date and location where the offence took place;
- g. the name of the country (e.g. Category 1 or 2) where the Part 1 warrant or extradition request issues from;
- h. the date, time and place that the person was arrested;
- i. whether the person has been given the rights and notices set out in paragraphs 18 and 19 of this Instruction;

- j. if the person required an interpreter and/or legal advice and/or legal aid;
- k. if known, whether the person is claiming asylum in the UK;
- l. the provision of a copy of the warrant and any other document required to be served on the arrested person.

15. Such a record should be made as soon as practicable following arrival at the Service Police Establishment.

Arresting Service Policemen - responsibilities

16. The person must be treated as continuing in legal custody from the point of arrest, until the person is either:

- a. First brought before the appropriate judge; or
- b. discharged (see paragraph 23 of this Instruction).

17. A checklist of the arresting Service Policeman's duties under this Instruction is contained in Annex B.

18. When a person is brought to a Service Police Establishment under arrest, the arresting service policeman must:

- a. Assess the need for an interpreter in accordance with paragraph 13 of this Instruction;
- b. give the person a copy of the arrest warrant (Part 1 warrant or domestic arrest warrant), if the person has not already been given a copy of the warrant on arrest (see paragraph 8);
- c. caution the person using the caution in the terms in paragraph 8.a of this Code;
- d. inform the person that he or she will not be interviewed about the extradition offence;
- e. make sure the person is told clearly about:
 - (1) The stages of the extradition process including the right to consent to extradition (a form of words is set out in Annex C);
 - (2) the following continuing rights which may be exercised at any stage during the period in custody:
 - (i) the right to have someone informed of his or her arrest;
 - (ii) the right to consult privately with a legal adviser and that free independent legal advice is available;
 - (iii) the right to consult this Instruction and the SPCOP.

19. The arresting Service Policeman must give the detainee:
- a. A written Extradition notice (Annex D) setting out:
 - (1) Their rights to:
 - (i) information about the arrest warrant;
 - (ii) consult privately with a legal adviser and that free independent legal advice is available;
 - (iii) interpretation and translation;
 - (iv) a hearing before a judge;
 - (v) consent to their extradition before the appropriate judge
 - (vi) have someone told of their arrest.
 - (2) The arrangements for obtaining legal advice;
 - (3) The caution in the terms prescribed in paragraph 8 above;
 - (4) a fair processing notice, setting out the person's rights in respect of the use, retention and disclosure of personal data taken under the Act.
 - b. A copy of the form setting out the stages of the extradition process, including the right to consent to extradition (Annex C);
20. A citizen of an independent Commonwealth country or a national of a foreign country must be informed as soon as practicable about the right to communicate with their High Commission, Embassy or Consulate, as set out in SPCOP, Code C, Section 5.
21. The grounds for a person's detention shall be recorded in the person's presence, if practicable.
22. Action taken under paragraph 4 of this Instruction shall be recorded in MOD F145B.
23. Arresting Service Policemen should note the specific obligations required under the Act in respect of persons arrested under an extradition arrest power.
- a. A copy of the arrest warrant (Part 1 warrant or domestic arrest warrant issued under Part 2) must be given to the person as soon as practicable after arrest (sections 4(2), 6(5), 72(2) and 74(2));
- Note: if this provision is not adhered to, the judge **may** order the person's discharge;*
- b. A person arrested under Section 71 of the Act must be served copies of the extradition request, the certificate and any relevant Order before the extradition hearing (see paragraph 11 of this Instruction);

*Note: if this provision is not adhered to, the judge **must** order the person's discharge;*

c. A person arrested under Section 3, 71 or 73 must be brought before the appropriate judge as soon as practicable (sections 4(3), 72(3) and 74(3));

*Note: if this provision is not adhered to and the person applies to an appropriate judge to be discharged, the judge **must** order the person's discharge;*

d. A person arrested provisionally under section 5 of the Act must be brought before an appropriate judge **within 48 hours** of arrest;

*Note: if this provision is not adhered to and the person applies to an appropriate judge to be discharged, the judge **must** order the person's discharge.*

24. If a certified Part 1 warrant is issued subsequent to the person's discharge under Section 6(6), the person may be rearrested under section 3 of the Act.

Person wanted for an offence in the United Kingdom

25. If, following arrest of a person under the Act, it becomes apparent that there is evidence or information connecting the person to an offence in the United Kingdom, it should be investigated in accordance with normal domestic procedures.

26. If the person is charged with such an offence, the investigating police force must inform the appropriate judge of the charges for the an offence in the United Kingdom as soon as practicable. Under sections 22(2) and 88(2) the judge must adjourn the extradition proceedings.

Right not to be held incommunicado

27. SPCOP, Code C, Section 3 is to be applied.

Right to legal advice

28. SPCOP, Code C, Section 4 is to be applied.

Citizens of independent Commonwealth countries or foreign nationals

29. SPCOP, Code C, Section 5 is to be applied.

Care and treatment of suspected persons

30. SPCOP, Code C, Section 6 is to be applied.

Annex:

A. Arrest under the Extradition Act 2003.

ARREST UNDER THE EXTRADITION ACT 2003

1. A Service Policeman may make an arrest of a person subject to service law or a person subject to service discipline under one of the following powers in the Extradition Act 2003:

a. **Section 3, Extradition Act 2003: Arrest under a certified Part 1 warrant.** This applies where a Part 1 warrant has been received and certified by the UK designated authority, which contains the following information:

- (1) Particulars of the person's identity;
- (2) That the person has been accused or convicted of an offence in a Category 1 territory and the warrant issued for the purposes of the person's arrest and extradition;
- (3) The circumstances of the offence, the time and place at which it is alleged to have been committed and the particulars of the law in the Category 1 territory which is alleged to have been broken;
- (4) The sentence which may be imposed by the Category 1 territory if the person is convicted of the offence;
- (5) Details of any other warrant issued in a Category 1 territory for the person's arrest.

b. **Section 5, Extradition Act 2003: Provisional arrest under Part 1.** This applies where the UK designated authority has reason to believe that a Part 1 warrant has been or will be issued by a designated judicial authority in a Category 1 territory in respect of a person. The UK designated authority will not have certified the Part 1 warrant. Provisional arrest requests are usually made in urgent circumstances where the person is believed to be a flight risk or is expected to be in a particular location only fleetingly, and before there is time for a Part 1 warrant to be issued or received and certified.

c. **Section 71, Extradition Act 2003: Arrest under Part 2, following certification of an extradition request** This applies when the Secretary of State has certified an extradition request from a Category 2 territory and a district judge has issued an arrest warrant in relation to the person whose extradition is sought.

d. **Section 73, Extradition Act 2003: Provisional arrest warrant under Part 2.** This applies in urgent cases where a person is requested for extradition by a Category 2 territory, but full documentation has not yet been received. In this circumstance, an application may be made to a justice of the peace for a provisional arrest warrant in respect of the person whose extradition is sought. For a warrant to be issued, the justice of the peace must be satisfied on information in writing and on oath that:

- (1) Either:
 - (i) The person is accused in a Category 2 territory of an offence; or
 - (ii) The person is alleged to be unlawfully at large following conviction or sentence by a court in a Category 2 territory;
- (2) The offence is an extradition offence;
- (3) The person is believed to be in the UK or on their way to the UK;
- (4) There is written information or evidence that would justify the issue of a warrant for the arrest of a person accused of the offence or unlawfully at large, within the justice's jurisdiction.

2. The arresting Service Policeman need not be in possession of the warrant at the time of arrest.