



Home Office

Draft Transit Codes of Practice

October 2015

Non-UK Extradition Transit Provisions Code of Practice.

Code of Practice concerning the powers under sections 189A to 189C of the Extradition Act 2003 to escort, take into custody and search a person who is being extradited from one territory to another (where neither territory is the UK); and the retention, use and return of anything seized during a search.

1. General

1.1 This Code of Practice ("Code") is issued by the Secretary of State for the Home Department under section 189D of the Extradition Act 2003 ("the 2003 Act") in connection with powers in sections 189A to 189C of the 2003 Act. These powers apply to non-UK extradition cases when a person is being extradited from one territory to another (neither territory being the UK) and is in transit through the UK (arriving in, being in, and departing from the UK, whether or not the person travels within the UK between arrival and departure).

1.2 The provisions of this Code apply to such persons whilst they are in transit through any part of the UK. During this period, for the purposes of this Code they are treated as being "in transit" and the powers in sections 189A to 189C of the 2003 Act and provisions of this Code govern the escorting, taking into custody and searching of such persons and the retention, use and return of anything seized in a search.

1.3 The provisions of this Code include the Annexes.

1.4 In this Code:

'Relevant UK authority' means either the National Crime Agency or the Secretary of State for the Home Department.

'Custody officer' means a constable of at least the rank of sergeant, appointed for the purposes of section 36 of the Police and Criminal Evidence Act 1984.

'Consular representative' means an official representative of the government of one [state](#) in the territory of another, normally acting to assist and protect the [citizens](#) of the consul's own country, and to facilitate trade and friendship between the peoples of the two countries.

'Issuing State' means the territory responsible for issuing the extradition request or arrest warrant.

'Executing State' means the territory responsible for executing the extradition request or arrest warrant.

1.5 The powers and functions in this Code may only be performed by a constable.

- 1.6 This Code does not cover the issuing of transit certificates. A transit certificate may only be issued by a relevant UK authority.
- 1.7 This Code must be readily available for consultation at each port and other location where a person in transit happens to be (in custody or under escort) by constables and by persons whilst they are in transit.
- 1.8 If this Code requires a person in transit to be given certain information, they do not have to be given information 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. The person must be given the information as soon as practicable, whilst they are in transit, thereafter.
- 1.9 Nothing under this Code permits a constable to question a person unless to obtain information which that constable may be required to obtain in accordance with this Code.
- 1.10 If the person in transit claims that they are a refugee or have applied or intend to apply for asylum, a constable or custody officer must ensure that the relevant immigration authorities are informed as soon as practicable of the claim. The immigration authority may then inform the constable or custody officer of any action that he or she may take.

2. Escorting

- 2.1 Where a person is in transit and the relevant UK authority has issued a transit certificate under Section 189A of the 2003 Act, a constable may escort that person to or from any means of transport used for the purposes of the extradition.
- 2.2 In doing so, the constable may escort the person in transit to a secure room or to other appropriate accommodation for a reasonable period whilst awaiting onward transit. Constables have the power to use reasonable force when necessary.
- 2.3 Should the escorting of a person in transit to a secure room or to other appropriate accommodation require entry clearance into the UK, the constable should make the necessary arrangements (for example seeking the temporary admission of the person) with the relevant immigration authorities.
- 2.4 In escorting the person whilst in transit, the constable may search the person or any item in their possession, for anything which the person might use to cause physical injury to themselves or to any other person.
- 2.5 In conducting a search of a person in transit, the constable may not require the person to remove any clothing other than an outer coat, jacket, headgear or gloves. This does not however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of

collars, socks and shoes if necessary to search for any item. In doing so, officers can use reasonable force when necessary.

- 2.6 A constable carrying out a search under paragraphs 2.4 – 2.5 may seize any item found if the officer has reasonable grounds for believing that the person searched might use the item to cause physical injury to themselves or to any other person. The power to seize items under this paragraph includes a power to use reasonable force, when necessary.
- 2.7 A constable must retain items seized under a relevant search power whilst the person is in transit through the UK. At the point of departure from the UK, the constable must return any items seized either to the person in transit or, where the constable considers it appropriate to do so, to those officials from the relevant foreign territory who are to accompany the person on his or her onward journey.
- 2.8 Where a person in transit is being escorted and it becomes necessary for a constable to apply and maintain the use of force to prevent that person from absconding, that person shall be treated as having been taken into custody for the purposes of facilitating transit..

3. Taking a person in transit into custody *elsewhere* than at a police station

- 3.1 Where the relevant UK authority has issued a transit certificate in respect of a person, a constable has the power to take that person into custody to facilitate transit for the purpose of the extradition, including custody elsewhere than at a police station. The person may be taken into custody to a secure room or other appropriate accommodation, at or near to the point of arrival or intended departure, which is not a police station.
- 3.2 Should the taking of a person into custody elsewhere than at a police station require entry clearance into the UK, the constable should make the necessary arrangements (for example, temporary admission) with the relevant immigration authorities.
- 3.3 If the person is taken into custody elsewhere than at a police station the person must be treated as continuing to be in custody for the purposes of this Code until:
- i. The constable decides that it is no longer necessary for the person to be kept in custody; or
 - ii. the person is arrested:
 - a. by a constable, under any statutory or common law power of arrest or under a warrant; or
 - b. by a person other than a constable, under any statutory or common law power of arrest.
- 3.4 If the person is taken into custody elsewhere than at a police station the constable must satisfy themselves that any risks identified on any transit

certificate, and any other risks identified from other sources, are appropriately managed. In doing so, the constable must have regard to the parts of **Annex A** of this Code that may apply in respect of any assessment of risk.

- 3.5 In taking a person into custody elsewhere than at a police station, a constable may use reasonable force when necessary.
- 3.6 Where a person is taken into custody elsewhere than at a police station, the constable may search that person and any item in his or her possession for any item which the person might use:
 - i. to cause physical injury either to themselves or to another person; or
 - ii. to escape from custody.
- 3.7 When carrying out a search under paragraph 3.6 above, the constable may not require the person to remove any clothing other than an outer coat, jacket, headgear or gloves. This does not, however, prevent the constable from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if necessary to search for any item.
- 3.8 In carrying out a search under paragraph 3.6 the constable can use reasonable force when necessary.
- 3.9 Upon search, the constable may seize and retain any item found if there are reasonable grounds for believing that:
 - i. the person may use the item to cause physical injury to themselves or any other person; or
 - ii. the person may use the item to escape from custody elsewhere than at a police station.
- 3.10 In seizing and retaining any item under paragraph 3.9 the constable can use reasonable force, when necessary.
- 3.11 At the point of departure from the UK, the constable must return any items seized either to the person in transit or, where the constable considers it appropriate to do so, to those officials from the relevant foreign territory who are to accompany the person on his or her onward journey.

4. Taking a Person in Transit into Custody at a Police Station

- 4.1 A constable may take a person in transit into custody at a police station if necessary, to facilitate their transit through the UK. It shall be for the constable to determine whether it is necessary for the person in transit to be taken into custody at a police station. The circumstances in which a constable may consider it necessary for the person to be kept in custody at a police station include (but are not limited to):
 - i. where a secure room or other form of accommodation at or near the point of arrival or intended departure is not suitable;

- ii. where the period between arrival and the time of intended departure is unreasonably long;
 - iii. where following any identification of risks whilst undertaking an assessment according to paragraph 4.21 of this Code, the appropriate action can only be to take the person in transit to a police station (for example, where a medical examination needs to take place).
- 4.2 Should the taking of a person into custody at a police station require entry clearance into the UK, the constable should make the necessary arrangements (for example, temporary admission) with the relevant immigration authorities.
- 4.3 If the person is taken into custody at a police station, the person must be treated as continuing in custody under this Code until:
- i. The constable decides that it is no longer necessary for the person to be kept in custody; or
 - ii. the person is arrested:
 - a. by a constable, under any statutory or common law power of arrest or under a warrant; or
 - b. by a person other than a constable, under any statutory or common law power of arrest.
- 4.4 In taking a person into custody at a police station reasonable force can be used by a constable or custody officer, when necessary.
- 4.5 When the person is taken into custody at a police station, the custody officer must open a custody record as soon as practicable. In doing so, the custody officer must observe the following in relation to the creation, maintenance and inspection of custody records:
- i. the name and rank of any officer of a specified rank required to provide their authority for any action (including the name and, where applicable, rank of the officer who has decided that the person should be kept in custody for the purposes of transit);
 - ii. the time and reason for any transfer to another police station;
 - iii. the time a person is released from custody;
 - iv. the person held must be allowed to inspect the original custody record after they have left custody provided they give reasonable notice of their request;
 - v. all entries in the custody record must be timed and signed by the maker. Records entered on computer shall be timed and contain the operator's identification; and,
 - vi. officers or other police staff are not required to record or disclose their identity if they reasonably believe that doing so might put them in danger. In these cases they shall use their warrant or other identification number and the name of their police station.

- 4.6 In addition the custody officer shall record the following information on the custody record:
- i. the person's name (and aliases), date of birth, gender and nationality;
 - ii. the person's address in their country of origin;
 - iii. a note of the person's self-defined ethnic background;
 - iv. the date, time and place that the person was taken into police custody;
 - v. the section of the 2003 Act the person was taken into custody under (either s.189A(2)(b), in cases where a transit certificate has been issued and section 189B(2)(a), in unscheduled arrival cases);
 - vi. where the person has been taken into custody under section 189B(2)(a),
 - vii. the date of issue and issuing authority of any transit certificate, where a transit certificate has been issued (a copy of which should be retained with the custody record); and,
 - viii. the name of the territory from which the person is being extradited and the name of the territory the person is being extradited to.
- 4.7 When a person is taken into police custody at a police station the custody officer must also:
- i. assess the person's understanding of English and the need for an interpreter and arrange for an interpreter to be provided, if deemed necessary;
 - ii. inform the person that he or she will not be interviewed; and,
 - iii. provide a written notice setting out their continued entitlements while in the police station, which may be exercised at any stage to:
 - (a) consult this Code;
 - (b) reasonable standards of physical comfort;
 - (c) adequate food and drink;
 - (d) access to toilets and washing facilities, clothing, medical attention and exercise, when practicable;
 - (e) the right of intimation (see Paragraph 4.18); and
 - (f) the right to consult the relevant consulate, High Commission or Embassy (see paragraph 4.19).
- 4.8 Where a person is taken into custody at a police station, a custody officer or constable may search that person and any item in his or her possession for any item which the person might use:
- iii. to cause physical injury either to themselves or to another person; or
 - iv. to escape from custody.
- 4.9 When carrying out a search under paragraph 4.8 above, the custody officer or other constable may not require the person to remove any clothing other than an outer coat, jacket, headgear or gloves. This does not, however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if necessary to search for any item.

- 4.10 In carrying out a search under paragraph 4.8 the custody officer or other constable can use reasonable force, when necessary.
- 4.11 Upon search, the custody officer or constable may seize and retain any item found if there are reasonable grounds for believing that:
- i. the person may use the item to cause physical injury to themselves or any other person; or
 - ii. the person may use the item to escape from custody.
- 4.12 In seizing and retaining any item under paragraph 4.11 the custody officer or other constable can use reasonable force, when necessary.
- 4.13 The custody officer is responsible for the safekeeping of any property surrendered voluntarily by a person in transit (such as a watch or jewellery) throughout the duration of the person's custody in that police station. Any such property must be returned to the person at the time of the person's release from custody. Such items should be passed to the constable responsible for escorting the person to the onward form of transport.
- 4.14 At the point of departure from the UK, the constable must return any items seized either to the person in transit or, where the constable considers it appropriate to do so, to those officials from the relevant foreign territory who are to accompany the person on his or her onward journey.
- 4.15 The custody officer must keep a record of any property surrendered voluntarily or items seized from a person in transit who is kept in custody at a police station. This includes items seized by a constable under this Code, and passed to the custody officer at the time of arrival of the person in transit at the police station. Any record is not required to be kept as part of the custody record but the custody record should be noted as to where such a record exists.
- 4.16 If a person in transit is not allowed to keep any article of clothing or personal effects whilst in police custody, the reason must be recorded. The only circumstances where a person in transit may be prevented from keeping an article of clothing or personal effect in their possession whilst in custody is where that article of clothing or personal effect has been seized in accordance with this Code. This does not prohibit the custody officer from taking receipt of other items of property for safekeeping, where the person in transit consents.
- 4.17 Whenever a record is made, the person in transit shall be allowed to check and sign the record of property as correct.
- 4.18 The person in transit who is taken into custody at a police station may, on request, have one person known to them, in any country of the world, informed at public expense of their whereabouts as soon as practicable. If they cannot be contacted, the custody officer has discretion to allow further attempts to be made until the information has been conveyed.

4.19 If the person in transit is a citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, they have the right, upon request, to communicate at any time with the appropriate High Commission, Embassy or Consulate. The person in transit must be informed as soon as practicable of this right and asked if they want to have their High Commission, Embassy or Consulate told of their whereabouts and the grounds for their being held in custody. Such a request should be acted upon as soon as practicable. Consular representatives may, if the person in transit agrees, visit one of their nationals in police custody to talk to them and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a constable or other constable.

4.20 A record shall be made:

- i. when a person in transit is informed of their rights under this section;
- ii. of any communications with a High Commission, Embassy or Consulate; and
- iii. of any communications with the immigration authorities about a detainee's claim to be a refugee or to be seeking asylum and the resulting action taken by police.

4.21 The following shall apply to persons in transit held in accordance with this Code in custody at a police station:

- 4.21.1 So far as it is practicable, the person in transit should not be kept in custody at a police station for more than 72 hours from the point at which the person is taken into custody. Where it is apparent to the custody officer that onward travel from the UK cannot take place within 72 hours, the custody officer should contact the relevant UK authority responsible for issuing the transit certificate so that alternative arrangements can be made.
- 4.21.2 So far as it is practicable, not more than one person in transit should be held in each cell.
- 4.21.3 The use of any restraints on a person in transit whilst in a cell, the reasons for it and, if appropriate, the arrangements for enhanced supervision of that person whilst so restrained, shall be recorded.
- 4.21.4 If a complaint is made by, or on behalf of, a person in transit about their treatment, or it comes to notice that a person in transit may have been treated improperly, a report must be made as soon as practicable to a constable of inspector rank or above. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force, an appropriate healthcare professional must also be called as soon as practicable.

- 4.22 The custody officer is responsible for initiating an assessment to consider whether the person in transit who has been taken into custody at a police station is likely to present specific risks to custody staff or themselves. In doing so, the custody officer must have regard to the assessment which must be undertaken, as set out in **Annex A** of this Code.

5. Unscheduled Arrival in the UK

- 5.1 When a person in transit makes an unscheduled arrival in the UK (for example where a flight makes an emergency diversion to a UK airport) a transit certificate will not have been issued at the time of arrival. Section 189B of the 2003 Act applies in these circumstances and until a transit certificate can be issued by the relevant UK authority. Police officers should be aware that Section 189B does not provide for power of escort.
- 5.2 When a person in transit makes an unscheduled arrival in the UK, a constable may take the person into custody, at a police station or elsewhere, to facilitate that transit of the person through the UK. When a person in transit is taken into custody elsewhere than at a police station so, the constable must observe paragraphs 3.2-3.11 of this Code.
- 5.3 Custody at a police station may be necessary where:
- i. where a secure room or other form of accommodation at or near the point of arrival or intended departure is not suitable;
 - ii. where the period between arrival and the time of intended departure is unreasonably long;
 - iii. where following any identification of risks whilst undertaking an assessment according to paragraph 4.21 of this Code, the appropriate action can only be to take the person in transit to a police station (for example, where a medical examination needs to take place).
- 5.4 The constable or custody officer must record the time and date at which the person is first taken into custody,
- 5.5 The constable must inform the relevant UK authority as soon as practicable after he or she becomes aware that a person in transit has arrived in the UK on an unscheduled arrival so that enquiries can be made with the relevant foreign territories.
- 5.6 Once such enquires have been made the relevant UK authority may issue a transit certificate.
- 5.7 If a transit certificate is subsequently issued, the person in unscheduled transit who is being held in custody can no longer be held under the relevant power (s189B(4) of the 2003 Act) which enables such a person to be held for up to 72 hours. In such circumstances, once a transit certificate has been issued, the constable is deemed to have taken the person into custody under s189A(2).

- 5.8 The constable or custody officer must record the date and time that the person in custody ceases to be held in custody under s189B(4) and begins to be held under s189A(2).

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Annex A- Assessment of the person in transit when taken into custody

1. The constable or custody officer (at police stations) is responsible for initiating an assessment to consider whether the person in transit who has been taken into custody (either at a police station or elsewhere) is likely to present specific risks to any officer or themselves.
2. In doing so, the custody officer must have regard to any relevant information available on the Police National Computer.
3. The constable or custody officer (at police stations) are responsible for ensuring that arrangements for proper and effective risk assessments are implemented for those taken into custody. Constables and custody officers should brief those responsible for the custody of the person in transit and about the risks as set out in any transit certificate and also record where no risks have been identified.
4. There is no obligation to share the content of the risk assessment with the person in transit being held or any person acting on their behalf, unless by withholding the content would place the person acting on their behalf at risk.
5. The constable or custody officer (at police stations) is responsible for taking measures to reduce or mitigate against specific, identified risks, including:
 - a) reducing opportunities for self-harm or suicide;
 - b) calling an appropriate healthcare professional;
 - c) increasing levels of monitoring or observation; and,
 - d) reducing the risks for those who come into contact with the person in transit.
6. The risk assessment will be subject to review if circumstances change during the period of custody.
7. The constable or custody officer (at police stations) is also responsible for ensuring that whilst in custody the person in transit receives the appropriate clinical attention as soon as practicable if the person:
 - a) appears to be suffering from physical illness;
 - b) is injured;
 - c) appears to be suffering from a mental disorder; or
 - d) appears to need clinical attention.
8. In doing so, the constable or custody officer (at police stations) shall apply the following steps in respect of ensuring appropriate clinical attention and treatment is received by the person in transit, including the necessary documentation of such attention and treatment:

- a) Even if the person held makes no request for clinical attention and whether or not they have already received clinical attention elsewhere, if the need for attention appears urgent the nearest available healthcare professional or an ambulance must be called immediately.
 - b) The constable or custody officer must also consider the need for clinical attention in relation to those suffering the effects of alcohol or drugs.
 - c) If it appears to the constable or custody officer (in police stations), or they are told, that a person in transit may be suffering from an infectious disease or condition, the custody officer must take reasonable steps to safeguard the health of the person being held and others. In deciding what action to take, advice must be sought from an appropriate healthcare professional. The custody officer has discretion to isolate the person and their property until clinical directions have been obtained.
9. The following steps must only be applied where the person in transit is taken into police custody at a police station:
- a) If a person in transit requests a clinical examination in a police station, an appropriate healthcare professional must be called as soon as practicable to assess their clinical needs. If a safe and appropriate care plan cannot be provided, the appropriate healthcare professional's advice must be sought. The person in transit may also be examined by a medical practitioner of their choice at their expense.
 - b) When an assessment under the Mental Health Act 1983, Section 136 (or Mental Health (Northern Ireland) Order 1986, Article 130 in Northern Ireland) is to take place at a police station, the custody officer must consider whether an appropriate healthcare professional should be called to conduct an initial clinical check on the person being held. This applies particularly when there is likely to be any significant delay in the arrival of a suitably qualified medical practitioner.
 - c) If a person in transit is required to take or apply any medication in compliance with clinical directions prescribed before their entry into custody, the custody officer must consult the appropriate healthcare professional before the use of the medication. The custody officer is responsible for the safekeeping of any medication and for making sure the person in transit is given the opportunity to take or apply prescribed or approved medication. Any such consultation and its outcome shall be noted in the custody record.

- d) No custody officer or constable may administer or supervise the self-administration of medically prescribed controlled drugs of the types and forms listed in the Misuse of Drugs Regulations 2001, Schedule 2 or 3. A person in transit may only self-administer such drugs under the personal supervision of the registered medical practitioner authorising their use or other appropriate healthcare professional. The custody officer may supervise the self-administration of, or authorise other custody staff to supervise the self-administration of, drugs if the officer has consulted the appropriate healthcare professional authorising their use and both are satisfied self-administration will not expose the person in transit, constables or anyone else to the risk of harm or injury.
10. When appropriate healthcare professionals administer drugs or authorise the use of other medications, supervise their self-administration or consult with the custody officer about allowing self-administration of drugs, it must be within current medicines legislation and the scope of practice as determined by their relevant statutory regulatory body.
11. If a person in transit has in their possession, or claims to need, medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, the advice of the appropriate healthcare professional must be obtained.
12. Whenever the appropriate healthcare professional is called in accordance with this section to examine or treat a person in transit, the custody officer shall ask for their opinion about:
- a) any risks or problems which police need to take into account when making decisions about the continued custody of the person in transit;
 - b) the need for safeguards.
13. When clinical directions are given by the appropriate healthcare professional, whether orally or in writing, and the custody officer has any doubts or is in any way uncertain about any aspect of the directions, the custody officer shall ask for clarification. It is particularly important that directions concerning the frequency of visits are clear, precise and capable of being implemented.
14. A record must be made in the custody record of:
- a) the arrangements made for an examination by an appropriate healthcare professional and of any complaint reported together with any relevant remarks by the custody officer;
 - b) any request for a clinical examination and any arrangements made in response;

- c) the injury, ailment, condition or other reason which made it necessary to make the arrangements in (a) to (c);
- d) any clinical directions and advice, including any further clarifications, given to police by a healthcare professional concerning the care and treatment of the person in transit in connection with any of the arrangements made in (a) to (c);
- e) if applicable, the responses received when attempting to rouse a person; and
- f) if a healthcare professional does not record their clinical findings in the custody record, the record must show where they are recorded. However, information which is necessary to custody staff to ensure the effective ongoing care and well being of the person in transit must be recorded openly in the custody record.

15. The custody record shall include:

- a) a record of all medication a person in transit has in their possession on arrival at the police station; and
- b) a note of any such medication they claim to need but do not have with them.

16. A 'healthcare professional' means a clinically qualified person working within the scope of practice as determined by their relevant statutory regulatory body. Whether a healthcare professional is 'appropriate' depends on the circumstances of the duties they carry out at the time.

17. Whenever possible juveniles and mentally vulnerable individuals should be visited more frequently.

18. A person in transit who appears drunk or behaves abnormally may be suffering from illness, the effects of drugs or may have sustained injury, particularly a head injury which is not apparent. A person in transit needing or dependent on certain drugs, including alcohol, may experience harmful effects within a short time of being deprived of their supply. In these circumstances, when there is any doubt, the custody officer or constable should always act urgently to call an appropriate healthcare professional or an ambulance.

19. However, all minor ailments or injuries that do not require medical attention must be recorded in the custody record and any doubt must be resolved in favour of calling the appropriate healthcare professional.

20. In the case of the healthcare needs of a person who has swallowed drugs, the custody officer, subject to any clinical directions, should consider the necessity

for rousing every half hour. This does not negate the need for regular visiting of the person in transit in the cell.

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