

Subsidiary Legislation made under s. 101(2)(a).

Notification of Publication of Draft Codes of Practice

LN.2019/011

Commencement **24.1.2019**

1. In exercise of the powers conferred upon me by section 101(2)(a) of the Extradition Act 2018, the draft codes of practice annexed to this notice are hereby published.

2. Written representations on the draft codes will be accepted until the 21st February 2019 at the Office of the Minister for Justice Zone 1, Level 7, St Bernard's Hospital, Harbour Views Road, Gibraltar.

Annex

Issued by the Commissioner of Police under section 101(1).

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GLOSSARY

EXTRADITION ACT 2018: CODES OF PRACTICE

- (a) **Introduction**

- 1.1 These Codes of Practice (these Codes) govern the exercise of police powers in Part 4 of the Extradition Act 2018 (“the Act”). They are issued by the Minister for Justice under Section 101 of the Act. These Codes provide guidance on the operation of police powers and those of customs officers in extradition cases in Gibraltar. Part 4 of the Act sets down in statute the police powers which apply to extradition cases.

(b) Status of the Codes of Practice

- 1.2 These Codes set out the police powers which may be relied upon in extradition cases, additional to the police’s common law powers. The powers in the Act are modelled on those contained in the Notice of Publication of Codes of Practice issued under the Criminal Procedure and Evidence Act 2011 which came into force on 23 November 2012 (“CPEA Codes”), but where necessary and appropriate, they supplement domestic provisions to enable police officers to respond to extradition requests effectively.
- 1.3 Where these Codes are silent, police officers should have regard to the relevant domestic provisions set out in the most up to date editions of the CPEA Codes. Where procedures in extradition cases are the same as those in domestic cases, these Codes refer police officers to the relevant section in the CPEA Codes.
- 1.4 Under section 101(6) of the Act, failure by an officer to comply with any provision of these Codes does not in itself make him liable to criminal or civil proceedings. Under section 101(7) of the Act these Codes are admissible in evidence in proceedings under the Act and must be taken into account by a judge or court in determining any question to which they appear to the judge or court to be relevant. The provisions of these Codes do not include the Annexes.

(c) Availability

- 1.5 These Codes of Practice must be readily available at all police stations and ports for consultation by police officers, detained persons and members of the public.
- 1.6 The Glossary to the Codes of Practice contains an explanation of terms used in these Codes.

(d) Persons covered by the Codes

- 1.7 These Codes apply to police officers and customs officers in Gibraltar.

(e) Summary of police powers available under the Extradition Act

- 1.8 The police powers conferred by the Act and reflected in the Codes of Practice are-

- (i) The power of arrest (sections 7 and 9);
 - (ii) The power to apply for and execute a warrant or a production order for material relating to the extradition offence (sections 87 and 88).
 - (iii) The power to apply for and execute a warrant to search premises for special procedure or excluded material relating to the extradition offence (section 91);
 - (iv) The power to seize and retain material relating to any offence committed abroad when searching premises for the purpose of arrest (section 92 of on arrest) (section 93) or after arrest (section 95);
 - (v) The power to seize and retain material relating to the identity of the fugitive when searching premises or persons on arrest (sections 93 and 94) or after arrest (section 95);
 - (vi) The power, after arrest, to conduct an immediate search of premises without the prior authorisation of a senior police officer (section 95);
 - (vii) The power to search the person on arrest and to seize and retain material relating to the identity of the person and any offence committed abroad (section 94);
 - (viii) The power to take fingerprints and samples from a person arrested under an extradition arrest power (section 96);
 - (ix) The power to search and examine a person arrested under an extradition arrest power, for the purposes of ascertaining his identity (section 97);
 - (x) The power to photograph a person arrested under an extradition arrest power (section 98);
 - (xi) The power to retain and deliver seized material to the requesting State (section 100).
- 1.9 These Codes of Practice are modelled on the CPEA Codes of Practice and follow the same format and structure. Under the Extradition Act 2018 there are no powers to stop and search or conduct interviews. Therefore these codes do not contain equivalents to CPEA Codes A and E.

Code B- Code of Practice for searches of premises by police officers and the seizure, retention, use and delivery of property found by police officers on persons or premises

1 Introduction

- 1.1 This Code of Practice deals with police powers in extradition cases to:
- (a) search premises;
 - (b) seize and retain property found on premises and persons;
 - (c) deliver seized material to the authority or State requesting extradition.
- 1.2 These powers may be used to find-
- (a) persons requested for extradition;
 - (b) evidence of a requested person's identity; and
 - (c) property and material relating to the extradition offence(s) for which a person is sought.
- 1.3 Searches conducted under powers in the Extradition Act 2018 (the Act) may only be undertaken for the purpose of obtaining evidence of the extradition offence for use in the prosecution of the person accused of the extradition offence. Officers may not investigate crimes on behalf of the requesting State, other than to speak to persons for the purpose of assisting establishing ownership or connection to the property. Items relating to a person's identity and offences other than the extradition offence may, if found, be seized in accordance with the provisions of the Act and this Code. Police powers in respect of offences committed in Gibraltar are not limited by this paragraph.
- 1.4 The right to privacy and respect for personal property are key principles of the Gibraltar Constitution Order 2006. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with an individual's privacy. Officers should consider whether the necessary objectives can be met by less intrusive means.
- 1.5 In all cases police officers should-
- (a) exercise their powers courteously and with respect for persons and property; and
 - (b) only use reasonable force when this is considered necessary and proportionate to the circumstances.

2 General

- 2.1 This Code must be readily available at all police stations for consultation by-
- (a) police officers;
 - (b) detained persons;
 - (c) members of the public.
- 2.2 Any police officer may apply to a justice of the peace for a search warrant under the Act.
- 2.3. Nothing under the Act entitles police officers to seize and sift material which is subject to legal privilege. The principle of legal privilege applies equally to material that has originated or been sent from abroad.
- 2.4 For the purposes of this Code, ‘premises’, includes any place, vehicle, vessel, aircraft, hovercraft, tent or movable structure and any offshore installation.
- 2.5 When this Code requires the prior authority or agreement of an officer of at least inspector, that authority may be given by a chief inspector authorised to perform the function of the higher rank under section 693 of the Criminal Procedure and Evidence Act 2011. For customs officers the authority may be given by the Collector of Customs or the Assistant Collector of Customs.
- 2.6 This Code does not apply to the exercise of a statutory power to enter premises or to inspect goods, equipment or procedures if the exercise of that power is not dependent on the existence of grounds for suspecting that an offence may have been committed and the person exercising the power has no reasonable grounds for such suspicion.
- 2.7 Where written records of searches are required they shall be made in the search record, or if this is not practicable, in the recording officer’s pocket book or on forms provided for this purpose.
- 2.8 For the purposes of this Code, the identity of officers (or anyone accompanying them during a search) need not be recorded or disclosed if officers reasonably believe recording or disclosing their names might put them in danger. In these cases, officers should use warrant or their identification numbers.

3 Search warrants and production orders

(a) Before making an application

Search and seizure warrants and production orders

- 3.1 When information provided by the requesting State appears to justify an application, the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly.
- 3.2 The officer shall ascertain as specifically as possible the nature of the articles concerned and their location and make reasonable enquiries to establish any relevant information.
- 3.3 An application may be made by any officer to-
- (a) a justice of the peace for a search warrant (section 87);
 - (b) a magistrate for a production order (section 88); or
 - (c) a magistrate for a warrant to search for special procedure material or excluded material (section 91).
- 3.4 Applications must be supported by a signed written authority from an officer of inspector rank or above. If the case is urgent and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.
- 3.5 In all cases, before making an application under sections 87, 88 or 91 of the Act, officers should refer to CPEA Code B 3.2 and 3.3.
- 3.6 Except in a case of urgency, if there is reason to believe a search might have an adverse effect on relations between the police executing the warrant and the local community, the officer shall consult the Force Intelligence Unit.
- (a) before the search; or
 - (b) in urgent cases, as soon as practicable after the search.

In all cases consideration should be given to conducting a community impact assessment, where appropriate.

(b) Making an application**Search and seizure warrants**

- 3.7 An application for a search warrant must be supported in writing, specifying-

- (a) the section of the Act under which the application is made (section 87);
- (b) the premises to be searched;
- (c) the material, or description of material sought, which must be:
 - (i) material relating to the extradition offence; and
 - (ii) believed to be located on the premises named in the application;
- (d) the name of the person requested for extradition;
- (e) the name of requesting State;
- (f) the extradition offence of which the person is accused; and
- (g) if applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant.

3.8 Before granting an application, the justice of the peace must be satisfied that-

- (a) the offence specified in the application is an extradition offence and has been committed by the person requested for extradition;
- (b) the person is in Gibraltar or is on their way to Gibraltar;
- (c) the material would be likely to be admissible as evidence for the offence at a trial in Gibraltar;
- (d) it is not practical or possible to enter the premises or gain access to the material without a warrant;
- (e) the material sought does not consist of items subject to legal privilege, excluded material or special procedure material;
- (f) the material cannot be obtained by any other or less intrusive means;
- (g) it is not practicable to communicate with the person entitled to grant entry to the premises;
- (h) it is not practicable to communicate with the person entitled to grant access to the material sought, even though access to the premises may be gained;

- (i) that entry to the premises will not be granted unless a warrant is produced; and
- (j) that the search may be frustrated or seriously prejudiced unless an officer arriving at the premises can secure immediate entry to them.

Production orders

3.9 An application for a production order to the magistrate must be supported in writing and must specify:

- (a) the section of the Act under which the application is made (section 88);
- (b) the material, or a description of material, sought;
- (c) that the material is special procedure or excluded material;
- (d) the premises where the material is located;
- (e) the name of the person who appears to be in possession or control of the material;
- (f) the name of the person requested for extradition;
- (g) the name of the requesting State;
- (h) the extradition offence of which the person is accused; and
- (i) if applicable, a request for the order to authorise a person or persons to accompany the officer who executes the order.

3.10 Before granting an application, the magistrate must be satisfied that-

- (a) There are reasonable grounds for believing-
 - (i) the offence specified in the application is an extradition offence and has been committed by the person requested for extradition;
 - (ii) the person is in Gibraltar or is on their way to Gibraltar;
 - (iii) there is material which consists of or includes special procedure or excluded material on the premises specified in the application; and
 - (iv) the material would be likely to be admissible as evidence for the offence at a trial in Gibraltar;

- (b) it appears that other methods of obtaining the material have been tried without success, or have not been tried because they were bound to fail; and
- (c) it is in the public interest that the material is obtained (and that this outweighs the disadvantages to the person or institution against whom the order is made).

Search warrants: special procedure and excluded material

3.11 Applications to a magistrate for a search warrant for special procedure or excluded material must be supported in writing and should specify-

- (a) the section of the Act under which the application is made (section 91);
- (b) the material, or a description of material, sought;
- (c) that the material is special procedure or excluded material;
- (d) the premises to be searched;
- (e) the name of the person requested for extradition;
- (f) the name of the requesting State;
- (g) the extradition offence of which the person is accused; and
- (h) if applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant.

3.12 Before granting an application, the magistrate must be satisfied that-

- (a) the requirements for making a production order (in paragraph 3.10(a)-(c)) are fulfilled;

and additionally that-

- (b) it is not practicable to communicate with the person entitled to grant entry to the premises;
- (c) it is not practicable to communicate with the person entitled to grant access to the material sought, even though access to the premises may be gained;

- (d) the material contains information which is subject to a restriction on disclosure or an obligation of secrecy contained in an enactment (including one passed after the Act) and is likely to be disclosed in breach of the restriction or obligation if a warrant is not issued.
- 3.13 The search warrant or production order may authorise any suitably qualified or skilled person, including representatives from the requesting State, to accompany the officer who executes the warrant, if their presence is needed to assist, for example, locating or identifying the material sought.
- 3.14 The accompanying person(s) does not have any right to force entry or to search for or seize property, but it gives them the right to be on the premises during the search without the occupier's permission.
- 3.15 If an application for a search and seizure warrant or a production order is refused, no further application may be made at the request of the requesting State in relation to the same premises or material, unless supported by additional grounds.

4. Entry without warrant- particular powers

(a) Making an arrest (etc)

Entry and search of premises for purposes of arrest

- 4.1 Under section 92 of the Act, an officer may enter and search any premises for the purpose of exercising the power of arrest under sections 7 and 9, if the officer has reasonable grounds for believing that the person requested for extradition is on the premises.
- (b) Search of premises where the arrest takes place or where the arrested person was immediately before arrest**

Entry and search of premises on arrest

- 4.2 Under section 93 of the Act, if a person has been arrested under any of the powers under the Act anywhere other than a police station, a police officer may-
 - (a) enter and search any premises in which the person was-
 - (i) at the time of arrest; or
 - (ii) immediately before arrest

if the officer has reasonable grounds for believing that there is evidence on the premises relating to-

- (i) the extradition offence (if the person has not been convicted of the offence);
or
- (ii) the identity of the person.

Search of person on arrest

4.3 Under section 94 of the Act, if a person has been arrested under any of the powers under the Act, anywhere other than a police station, an officer may search the person if the officer has reasonable grounds for believing-

- (a) the person may present a danger to himself or others;
- (b) the person may have concealed on him anything which might be-
 - (i) used to assist escape from lawful custody;
 - (ii) evidence relating to an offence;
 - (iii) evidence relating to the identity of the person.

4.4 For the purposes of this paragraph, ‘an offence’ includes-

- (a) the extradition offence(s);
- (b) an offence(s) committed in Gibraltar;
- (c) an offence(s) committed abroad.

4.5 Before the search of the person takes place, the officer must take reasonable steps to give the person to be searched the following information-

- (a) that they are to be the subject of a non-intimate search;
- (b) the officer’s name and the name of the police station to which the officer is attached;
- (c) the legal search power which is being exercised (under section 94 of the Act);
- (d) a clear explanation of-

- (i) the purpose of the search in terms of the article(s) for which there is a power to search; and
- (ii) the grounds for the search.

- 4.6 If the person to be searched does not appear to understand what is being said, or there is any doubt about the person's ability to understand English, the officer must take reasonable steps to bring information regarding the person's rights and any relevant provisions of this Code to his attention. If the person is deaf or cannot understand English and is accompanied by someone, then the officer must try to establish whether that person can interpret or otherwise help the officer.
- 4.7 Police officers and Customs not in uniform must show their warrant cards.
- 4.8 Where practicable the search must be carried out at or near the place where the person was arrested.
- 4.9 Under section 94(5)(a) an officer may not require a person to remove any clothing in public, other than an outer coat, jacket or gloves.
- 4.10 Under section 94(5)(b) an officer is authorised to search a person's mouth.
- 4.11 Nothing in section 94 of the Act affects the power conferred by section 87 of the Terrorism Act (when commenced).

(c) Search of premises occupied or controlled by the arrested person

Entry and search of premises after arrest

- 4.12 Under section 95 of the Act, if a person has been arrested under any of the powers under the Act, an officer may enter and search any premises occupied or controlled by the person, if the officer has reasonable grounds for suspecting that there is on the premises evidence relating to-
- (a) the extradition offence (if the person has not been convicted of the offence);
 - (b) the identity of the person.
- 4.13 Before entering and searching the premises, the officer must obtain written authorisation from an officer of inspector rank or above. If the case is urgent and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.

- 4.14 The authority should only be given when the authorising officer is satisfied the necessary grounds (in paragraph 4.12 above) exist. If possible, the authorising officer should record the authority on the Notice of Powers and Rights and sign the Notice. The grounds for the search and the nature of the evidence sought should be made in-
- (a) the custody record, if there is one; otherwise
 - (b) the officer's pocket book; or
 - (c) the search record.
- 4.15 Authorisation is not required before the search if-
- (a) the search is conducted before the arrested person is taken to a police station; and
 - (b) the presence of the arrested person at a place other than a police station is necessary for the effective exercise of the power to search.
- 4.16 If authorisation has not been obtained for the reasons in paragraph 4.14 above, an officer of the rank of inspector or above must be informed that a search has been made, as soon as practicable after it has been conducted.

5 Search with consent

- 5.1 Officers should follow CPEA Code B5 and the corresponding Notes for Guidance.

6 Searching premises- general considerations

(a) Time of searches

- 6.1 Officers should follow the guidance in CPEA Code B 6.1 – 6.3.

(b) Entry other than with consent

- 6.2 Officers should follow the guidance in CPEA Code B 6.4.

(c) Notice of Powers and Rights

- 6.3 If an officer conducts a search of premises to which this Code applies, the officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice-

- (a) specifying that the search is made under warrant, with consent or in the exercise of powers described in paragraphs 4.1, 4.2, 4-12-4.15. Note: the Notice format shall provide for authority to be indicated, see paragraph 4.14.
- (b) summarising the extent of the powers of search and seizure conferred by the Extradition Act 2018;
- (c) explaining the rights of the occupier and the owner of the property seized;
- (d) explaining that compensation may be payable in appropriate cases for damage caused by entering and searching premises, and giving the address to send a compensation application;
- (e) stating that this Code is available at any police station.

(d) Conduct of searches

- 6.4 Premises may be searched only to the extent that is reasonably necessary to discover the material or person sought, in respect of which the power is available.
- 6.5 If the detained person's presence is required to facilitate a search after that person has been arrested and detained at a police station, the person or his legal representative may attend at the search.
- 6.6 Should the premises being searched contain two or more separate dwellings an officer may only enter and search dwellings in which, for example, the arrest took place or in which the person was immediately prior to arrest, or any communal area of the premises.
- 6.7 Officers may only question persons where it is necessary to establish identity or ownership of property, in furtherance of proper and effective conduct of a search, or to seek verification of a written record.
- 6.8 In all other respects, officers should follow the guidance in CPEA Code B 6.9 - 6.12 in conducting a search.

(e) Leaving premises

- 6.9 Police officers should follow the guidance in CPEA Code B 6.13.

7 Seizure and retention

(a) Seizure

- 7.1 An officer searching a person or premises under the Act may seize and retain anything:
- (a) covered by a warrant;
 - (b) that the officer has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of a Gibraltar offence, but only if seizure is necessary to prevent the items being concealed, lost, damaged, altered or destroyed;
 - (c) covered by the powers in the Criminal Procedure and Evidence Act 2011.
- 7.2 Officers searching persons or premises under sections 92, 93, 94 and 95 may seize and retain anything which the officer has reasonable grounds for believing is evidence of or has been obtained in consequence of the commission of the extradition offence or an offence committed outside Gibraltar, but only if seizure is necessary to prevent the items being concealed, lost, damaged, altered or destroyed.
- 7.3 Officers searching a person or premises on or after arrest under sections 93, 94 or 95 may seize and retain material relating to the identity of the person but only if seizure is necessary to prevent the items being concealed, lost, damaged, altered or destroyed.
- 7.4 Additionally, an officer searching a person on arrest may seize and retain any item, if there are reasonable grounds for believing that-
- (a) the person might use it to cause physical injury to himself or any other person;
 - (b) the person might use it to assist escape from lawful custody.
- 7.5 No item may be seized which an officer has reasonable grounds for believing to be subject to legal privilege as defined by section 14 of the Criminal Procedure and Evidence Act 2011.
- 7.6 Officers may decide that it is not appropriate to seize property or may wish to photograph, image or copy any document or article they have the power to seize, in which case the provisions in CPEA Code B 7.4 – 7.6 apply.
- 7.7 An officer must have regard to his statutory obligation to retain an original document or other article only when a photograph or copy would not be sufficient. (Criminal Procedure and Evidence Act 2011 section 28(4)).

Computer information.

- 7.8 Under section 90 of the Act, if the material specified in a production order consists of information stored in any electronic form, the material must be produced either in a form-
- (a) which can be taken away or to which access can be given, and which is visible and legible; or
 - (b) from which it can readily be produced in a visible and legible form (for example a computer printout or a removable computer disk).
- (b) Criminal Procedure and Evidence Act 2011: Specific procedures for seize and sift powers**
- 7.9 Powers to seize property from premises or persons to be sifted or examined elsewhere extend to searches conducted under the Act. Police officers should adhere to CPEA Code B 7.7 – 7.13 when exercising or considering the exercise of these powers.
- 7.10 Any suitably qualified or skilled person, including appropriate representatives from the requesting State, may be present at the search and sift, providing that-
- (a) (if the search is conducted under warrant) the warrant authorising entry to the premises also authorises that person to accompany the officer executing the warrant; and
 - (b) the presence of the person is needed to help in the accurate identification of the material sought or to advise where certain forms of evidence are most likely to be found.
- 7.11 The accompanying person(s) may not take part in conducting the sift, but they may be present when it takes place.
- 7.12 An appropriate representative may include the person's legal representative.
- (c) Retention**
- 7.13 Material seized or produced under sections 87, 88, 91, 92, 93, 94 or 95 of the Act may be retained-
- (a) to assist in establishing the identity of the person arrested;
 - (b) for use as evidence where the person's extradition is sought for the purposes of their trial and prosecution for the extradition offence;

- (c) to facilitate the use in any proceedings of anything to which the material is inextricably linked;
 - (d) for forensic examination or other investigation in connection with an offence, committed in Gibraltar or abroad (including the extradition offence);
 - (e) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.
- 7.14 Perishable items seized should be photographed and a copy of the photograph retained as evidence.
- 7.15 Property shall not be retained under paragraph 7.13 (a), (b), (c) or (d) if a copy or image would be sufficient.
- 7.16 Material seized in relation to the extradition offence shall be retained only until:
- (a) the person's extradition is ordered and the extradition proceedings are completed; or
 - (b) the person is discharged; or
 - (c) the extradition request is refused or withdrawn; or
 - (d) it is determined that the material is no longer required for the prosecution of the extradition offence.
- 7.17 If paragraph 7.16 (b), (c) or (d) apply, where possible the seized material must be returned to its lawful owner.

Evidence of a Gibraltar offence.

- 7.18 The retention and use of property seized in relation to a Gibraltar offence is governed by the provisions in CPEA Code B, 7.14 – 7.17.
- (d) Rights of Owners**
- 7.19 If property is retained under the Act, a list or description of the property must, on request, be provided to the person who had custody or control of it immediately before seizure, within a reasonable time.
- 7.20 CPEA Code B 7.17 applies to all property seized under the Act.

8 Delivery

- 8.1 Under section 100, an officer may deliver anything lawfully seized or produced under Part 4 of the Act to a person who is, or who is acting on behalf of, an authority of the requesting State, which has functions making it appropriate for the material to be delivered to him.
- 8.2 It is the responsibility of the officer in charge of the search to ensure the secure storage and integrity of any material seized until such time as it is delivered to the requesting State or returned to its lawful owner.
- 8.3 Officers may not deliver-
- (a) material, including copies or photographs of the material, seized in relation to the extradition offence; or
 - (b) anything that may be used as evidence in the prosecution of the person for the extradition offence,
- to the requesting State until the order to extradite has been made and all legal proceedings relating to the extradition have been completed. The proceedings are not deemed to have been completed if the extradition case is adjourned.
- 8.4 Requests from appropriate representatives of the requesting State to view the property when visiting Gibraltar are permitted.

Process of Delivery

- 8.5 After the order to extradite has been made, and the extradition proceedings have been completed, an officer must deliver seized material to representatives from the requesting State, as soon as is practicable-
- (a) in person at the time and place the person is surrendered to representatives of the requesting State;
 - (b) in person by the officer who has assumed responsibility for retention of the property, at a location agreed with representatives of the requesting State; or
 - (c) by alternative means, with the consent of the requesting State.
- 8.6 Officers must be satisfied that the person to whom the material is being delivered is, or is acting on behalf of, an authority of the requesting State, which has functions making it appropriate for the material to be delivered to him.

- 8.7 If it is not practical for material to be delivered in person at the time of surrender, the officer who has assumed responsibility for the material should arrange for the collection of the material by representatives from the requesting State.
- 8.8 Material may be delivered to the requesting State before the person has been handed over to the appropriate authorities from the requesting State, once extradition proceedings have been completed.
- 8.9 If material is delivered to the requesting State and it later transpires it is not needed, Gibraltar police are not required to assist in its return, but this does not preclude them providing assistance, where possible.
- 8.10 Material seized in response to a request from a State may be delivered to the requesting State if the person requested for extradition dies or escapes.

Material required in other prosecutions

- 8.11 Material seized under the Act which is also required for use in other proceedings abroad can only be delivered to the State requesting it, if a mutual legal assistance (MLA) request has been made and approved. Any such requests will be considered in accordance with the Mutual Legal Assistance (International) Act 2005.
- 8.12 Where material is seized under the Act, which is-
- (a) evidence relating to an offence(s) committed abroad, other than the extradition offence; or
 - (b) required for the prosecution abroad of persons in connection with an offence(s) other than the extradition offence; or
 - (c) required in the prosecution abroad of co-defendants of the person whose extradition is sought,
- the material may only be delivered to the relevant State if an MLA request for that material has been received and approved.
- 8.13 Delivery of the material for use in proceedings abroad (other than prosecution of the extradition offence) may take place before the extradition proceedings are completed, following approval of an MLA request.

- 8.14 Seized material also required for the prosecution of an offence committed in Gibraltar, should be retained in Gibraltar until proceedings on the Gibraltar offence have been completed.

9 Action after searches and search registers

- 9.1 If premises are searched under the powers contained in the Act, officers should follow the guidance in CPEA Code B, paragraphs 8 and 9 regarding the action to be taken after a search and maintaining a search register.
- 9.2 Additionally, it is the responsibility of the officer in charge of the case to maintain a register of duplicate copies of the entries in the search register.

Code C

Code of practice for the arrest, detention and treatment of persons detained under the Extradition Act 2018

1 General

- 1.1 This Code concerns the procedures for the arrest, detention and treatment of persons wanted for extradition. These supplement the guidance in CPEA Code C.
- 1.2 The annexes are not provisions of this Code.
- 1.3 A custody officer must perform the functions in this Code as soon as practicable. A custody officer will not be in breach of this Code if delay is justifiable and reasonable steps are taken to prevent unnecessary delay. The custody record shall show when a delay has occurred and the reason.
- 1.4 This Code of Practice must be readily available at all police stations for consultation by-
- (a) police officers;
 - (b) detained persons;
 - (c) members of the public.
- 1.5 In the operation of procedures under this Code, officers should have regard to the provisions of CPEA Code C 1.4 – 1.6, 3.12 – 3.20, 10.12 and Annex E in respect of persons believed to be-

- (a) mentally disordered or otherwise mentally vulnerable;
 - (b) under the age of 18;
 - (c) blind, seriously visually impaired, deaf, unable to read or speak, or has difficulty orally because of a speech impediment.
- 1.6 If this Code 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.
- 1.7 References to a custody officer include those performing the functions of custody officer.
- 1.8 When this Code requires the prior authority or agreement of an officer of at least inspector, that authority may be given by a chief inspector authorised to perform the functions of the higher rank under section 693 of the Criminal Procedure and Evidence Act 2011.
- 1.9 This Code applies to people in custody in police stations in Gibraltar who have been arrested under the Extradition Act 2018.
- 1.10 Nothing under this Code permits an officer to interview a person arrested under the Act.

2 Arrest

- 2.1 An officer arresting a person wanted for extradition under one of the following powers in the Act (see Annex A)-
- (a) section 7: arrest warrant under Part 2, following certification of an extradition request;
 - (b) section 9: provisional arrest warrant under Part 2;
- shall-
- (i) Caution the person in the following terms-

“You do not have to say anything, but anything you do say may be given in evidence.”
 - (ii) Give the person a copy of the warrant as soon as practicable after arrest.

- 2.2 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved.
- 2.3 A person arrested under section 7 of the Act, must be served with copies of the following documentation-
- (a) the papers containing the extradition request;
 - (b) the certificate issued by the Central Authority;
 - (c) a copy of any relevant Order.
- 2.4 If it is not practicable (e.g. due to the large volume of papers contained in the request) to serve the request on the person on arrest, officers may give copies of the documentation to the person's legal adviser before or after arrest, as appropriate.
- 2.5 The officer 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 by the custody officer on arrival at the police station and if necessary, the process of arrest can be repeated to ensure the person understands that they have been arrested and why.

3 Custody records

- 3.1 A separate custody record must be opened as soon as practicable for each person brought to a police station arrested under the Act.
- 3.2 CPEA Code C paragraphs 2.2-2.7 apply.
- 3.3 In addition to the specific provisions set out in CPEA Code C, the custody officer shall record the following information on the custody record-
- (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 2 extradition request;

- (f) where possible, the date and location where the offence took place;
 - (g) the date, time and place that the person was arrested;
 - (h) whether the person has been given the rights and notices set out in paragraphs 4.3 and 4.4 of this Code;
 - (i) if the person required an interpreter and/or legal aid;
 - (j) if known, whether the person is claiming asylum in Gibraltar.
- 3.4 All information recorded under this Code must be recorded as soon as practicable in the custody record unless otherwise specified.
- 4 Custody Officers – responsibilities**
- (a) Initial action: detained persons**
- 4.1 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 magistrate; or
 - (b) discharged (see paragraphs 4.9 (a) – (c) of this Code).
- 4.2 A checklist of the custody officer's duties under this Code is contained in Annex B.
- 4.3 When a person is brought to a police station under arrest, the custody officer must-
- (a) assess the person's understanding of English and the need for an interpreter;
 - (b) give the person a copy of the arrest warrant, if the person has not already been given a copy of the warrant by the arresting officer (see paragraph 2.1 (ii));
 - (c) caution the person using the caution in the terms in paragraph 2.1(i) of this Code;
 - (d) inform the person that he will not be interviewed about the extradition offence;
 - (e) and make sure the person is told clearly about-
 - (i) the stages of the extradition process including the right to consent to extradition (a form of words is set out in Annex C);

- (ii) 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 arrest (under section 99(3)(c) of the Act);
 - (ii) the right to consult privately with a solicitor and that free independent legal advice is available (under Section 99 (3)(d) of the Act);
 - (iii) the right to consult these Codes of Practice and the CPEA Codes of Practice.

4.4 The custody officer must give the detainee-

- (a) a written Extradition notice (Annex D) setting out:
 - (i) the rights in paragraph 4.3(e);
 - (ii) the arrangements for obtaining legal advice;
 - (iii) the caution in the terms prescribed in 2.1(i) above;
 - (iv) 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);
- (c) a written notice briefly setting out their entitlements while in custody (see CPEA Code C, Notes for Guidance 3A and 3B).

4.5 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 CPEA Code C paragraph 7.

(b) Initial action: detained persons – special groups

4.6 CPEA Code C paragraphs 3.12 – 3.20 apply in the operation of this Code.

(c) Documentation

4.7 The grounds for a person's detention shall be recorded in the person's presence, if practicable.

4.8 Action taken under paragraph 4.6 of this Code shall be recorded.

(d) Time limits for detention and discharge of person

4.9 Custody officers 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 issued under Part 2 must be given to the person as soon as practicable after arrest (sections 8(2) and 10(2));

Note: if this provision is not adhered to, the magistrate may order the person's discharge;

- (b) A person arrested under section 7 of the Act must be served copies of the extradition request, the certificate and any relevant Order before the extradition hearing (see paragraph 2.3 of this Code);

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

- (c) A person arrested under section 7 or 9 must be brought before the magistrate as soon as practicable (sections 8(3) and 10(3));

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

5 Detainee's property

(a) Action

5.1 The custody officer is responsible for-

- (a) ascertaining what property a detainee-
- (i) has with them when they come to the police station on arrest;
 - (ii) might have acquired for an unlawful or harmful purpose while in custody.
- (b) the safekeeping of any property taken from a detainee which remains at the police station.

- 5.2 The custody officer may search the detainee or authorise their being searched to the extent they consider necessary. Intimate searches and strip searches are allowed under section 99(3)(b) of the Act, provided they are carried out in accordance with CPEA Code C, Annex A.
- 5.3 The custody officer may seize and retain any clothing or personal effects if there are reasonable grounds for believing that-
- (a) the person might use it to cause physical injury to themselves or another person;
 - (b) the person might use it to assist escape from lawful custody;
 - (c) it is evidence relating to the extradition offence or an offence committed in Gibraltar or abroad; or
 - (d) it is material relating to the identity of the person.
- 5.4 For the purposes of this section, ‘an offence’ includes-
- (a) the extradition offence;
 - (b) an offence committed in Gibraltar;
 - (c) an offence committed abroad.
- 5.5 An intimate or strip search under section 99 may not be authorised for the purposes of ascertaining the person’s identity.
- 5.6 CPEA Code C, paragraphs 4.2 and 4.3 also apply in the operation of this Code.
- (b) Documentation**
- 5.7 CPEA Code C paragraphs 4.4 and 4.5 apply.
- 6 Person wanted for Gibraltar offence**
- 6.1 If, following arrest of a person under the Act, it becomes apparent that there is evidence or information connecting the person to a Gibraltar offence, it should be investigated in accordance with normal domestic procedures.
- 6.2 If the person is charged with the Gibraltar offence, the investigating police must inform the magistrate of the Gibraltar charges as soon as practicable. Under section 15(2) the magistrate must adjourn the extradition proceedings.

7 Right not to be held incommunicado

7.1 CPEA Code C, paragraph 5 and Annex B apply.

8 Right to legal advice

8.1 CPEA Code C, paragraphs 6.1 – 6.5, 6.12 – 6.16 and Annex B apply.

9 Citizens of independent Commonwealth countries or foreign nationals

9.1 CPEA Code C, paragraph 7 and paragraph 4.5 of this Code apply.

10 Conditions of detention

10.1 CPEA Code C, paragraph 8 applies.

11 Care and treatment of detained persons

11.1 CPEA Code C, paragraph 9 applies.

ANNEX A – ARREST UNDER THE EXTRADITION ACT 2018

1.1 An officer may make an arrest under one of the following powers in the Act-

(a) **section 7: arrest under Part 2, following certification of an extradition request**

This applies when the Central Authority has certified an extradition request from a State and a magistrate has issued an arrest warrant in relation to the person whose extradition is sought.

(b) **section 9: Provisional arrest warrant under Part 2**

This applies in urgent cases where a person is requested for extradition by a State, but full documentation has not yet been received. In this circumstance, an officer may apply 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 officer must satisfy the justice of the peace in writing and on oath that-

(i) either-

the person is accused in a State of an offence; or

the person is alleged to be unlawfully at large following conviction or sentence by a court in a State;

(ii) the offence is an extradition offence;

(iii) the person is believed to be in Gibraltar or on their way to Gibraltar;

(iv) 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.

1.2 The arresting officer need not be in possession of the warrant at the time of arrest.

ANNEX B - CHECKLIST OF DUTIES FOR CUSTODY OFFICERS IN EXTRADITION CASES

1.	Assess the need for an interpreter	☐
2.	Ensure the person understands that they have been arrested and why they have been arrested	☐
3.	Caution person in the following terms: “You do not have to say anything, but anything you say may be given in evidence” and inform the person that he will not be interviewed or questioned about the extradition offence	☐
4.	Give person a copy of the arrest warrant. For a person arrested under Part 2 of the Act, check the papers in Code C paragraph 2.3 have been served on the person	☐
5.	Inform the person of extradition process, including the right to consent to extradition (see form of words, Annex C to Extradition Code of Practice, Code C)	☐
6.	Inform the person of their rights while in custody- (a) Right to have someone informed of the arrest and detention (b) Right to consult privately with a solicitor and that free, independence legal advice is available (c) Right to consult the Extradition Codes of Practice and the CPEA Codes of Practice	☐
7.	Serve the person with the following forms- (a) The written extradition notice (Annex D to Extradition Code of Practice, Code C) setting out- • The person’s rights while in custody • The arrangements for obtaining legal advice • The extradition caution • The fair processing notice regarding the use retention and disclosure of personal data taken (b) A written notice setting out the person’s usual entitlements while in custody	☐

	(c) A written copy of the form explaining the stages of the extradition process. and mark the custody record as appropriate	
8.	Inform person of the right to communicate their High Commission, Embassy or Consulate and mark the custody record as appropriate	☐
9.	Ask the detainee (a) whether they- • Would like legal advice • Want someone informed of their detention (b) to sign the custody record to confirm their decisions in respect of these	☐
10.	Conduct a risk assessment and determine whether the detainee- (a) is, or might be in need of medical treatment or attention (b) requires the presence of an appropriate adult (in accordance with paragraph 1.5 of this Code) or other special assistance and mark the custody record as appropriate	☐
11.	Search the person to ascertain what property the detained person has with them and document this. Record the reasons for retaining any items of property, and mark the custody record as appropriate	☐
12.	Ensure the following information is contained on the custody record and forward this information to the Central Authority- (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 offence(s) specified on the Part 2 extradition request (f) Where possible, the date and location where the offence took place	☐

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Notification of Publication of Draft Codes of Practice

	(g) The name of the State requesting extradition (h) The date, time and place that the person was arrested (i) That the person has been given the required rights and notices (j) If the person required an interpreter and/or legal aid (k) If known, whether the person has claimed asylum in Gibraltar	
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ANNEX C- SUMMARY OF THE GIBRALTAR EXTRADITION PROCESS**Persons Arrested under section 7 of the Extradition Act 2018**

Note: this form is not an exhaustive account of the extradition process, and is not a statement of the law, but is designed to help you to understand why you have been arrested and the main stages of the extradition process.

If you require a more detailed explanation of the process or have further questions, you should seek advice from your legal adviser.

1. You have been arrested under section 7 of the Extradition Act 2018.
2. *Either* (where person is accused of offences in the Requesting State)-

Your extradition is sought by [State] in relation to [offence(s)] which took place on [date/time] at [location].

Or (where person has been convicted by the Requesting State and is alleged to be unlawfully at large)-

Your extradition is sought by [State] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence(s) specified on the warrant]
3. You will be held in police custody until you are brought before a magistrate. You will be brought before a magistrate as soon as practicable.
4. There are three main stages to the extradition proceedings.
5. At the first stage, you will be brought before a magistrate as soon as practicable after your arrest. The magistrate will either remand you in custody or grant you bail.
6. The second stage is the main extradition hearing. This will take place within two months of you being brought before the magistrate for the first time.
7. At the extradition hearing, the magistrate will decide whether there are any reasons why you should not be extradited. The magistrate will then either discharge you or send your case to the Central Authority for a decision as to whether you should be extradited.
8. If your case is sent to the Central Authority for a decision, you will have the right of appeal, but the appeal will not be heard until after the Central Authority has made his

decision. If your case is sent to the Central Authority, you will either be remanded in custody or granted bail.

9. If the Central Authority orders your extradition to [the State], you have the right to appeal to the Supreme Court against the decisions of the magistrate and the Central Authority within 14 days.
10. If you do not appeal, you will be returned to [the State] within 28 days of the order to extradite.
11. You have the right to consent to your extradition. If you wish to consent you should consult your legal advisor on the implications. You may only consent before the magistrate.

Provisional Arrest under section 9 of the Extradition Act 2018

Note: this form is not an exhaustive account of the extradition process, and is not a statement of the law, but is designed to help you to understand why you have been arrested and the main stages of the extradition process.

If you require a more detailed explanation of the process or have further questions, you should seek advice from your legal adviser.

1. You have been provisionally arrested under section 9 of the Extradition Act 2018.

Either (where person is accused of offences in the Requesting State)-

Your extradition is sought by [State] in relation to [offence(s)] which took place on [date/time] at [location].

Or (where person has been convicted by the Requesting State and is alleged to be unlawfully at large)-

Your extradition is sought by [State] for the purpose of [being sentenced] or [serving a sentence of imprisonment] in relation to [offence(s) specified on the warrant]

2. You will be held in police custody until you are brought before a magistrate. You will be brought before a magistrate as soon as practicable.
3. There are three main stages to the extradition proceedings

4. At the first stage, you will be brought before a magistrate as soon as practicable after your arrest. The magistrate will either remand you in custody or grant you bail.
5. Provided the magistrate has received all the necessary documentation relating to your case, within any applicable time limits, the magistrate will fix a date for the main extradition hearing. The main extradition hearing is the second stage of the proceedings.
6. The main extradition hearing will take place within 2 months of the magistrate receiving the necessary documentation.
7. At the extradition hearing the magistrate will decide whether there are any reasons why you should not be extradited. The magistrate will then either discharge you or send your case to the Central Authority for a decision as to whether you will be extradited.
8. If your case is sent to the Central Authority for a decision, you will have the right of appeal, but the appeal will not be heard until after the Central Authority has made his decision. If your case is sent to the Central Authority, you will either be remanded in custody or granted bail.
9. If the Central Authority orders your extradition to [the State], you have the right to appeal to the Supreme Court against the decisions of the magistrate and the Central Authority within 14 days.
10. If you do not appeal, you will be returned to [the State] within 28 days of the order to extradite.
11. You have the right to consent to your extradition. If you wish to consent you should consult your legal advisor on the implications. You may only give consent before the magistrate.

ANNEX D - EXTRADITION: WRITTEN NOTICE TO DETAINED PERSON INCLUDING FAIR PROCESSING NOTICE

The section in capital letters is to be read to the detained person by the Custody Officer before giving the notice to the detained person.

YOU HAVE THE RIGHT TO-

1. SPEAK TO AN INDEPENDENT SOLICITOR FREE OF CHARGE
2. HAVE SOMEONE TOLD THAT YOU HAVE BEEN ARRESTED
3. CONSULT THE CODES OF PRACTICE COVERING POLICE POWERS AND PROCEDURES
4. CONSULT THE CODES OF PRACTICE COVERING POLICE POWERS AND PROCEDURES FOR EXTRADITION

YOU MAY DO ANY OF THESE THINGS NOW, BUT IF YOU DO NOT, YOU MAY STILL DO SO AT ANY TIME WHILST DETAINED AT THE POLICE STATION

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

You will not be interviewed about the extradition offence.

More information is given below. The following 4 continuing rights may be exercised at any stage during the period in custody-

1. The right to consult privately with a solicitor. Free independent legal advice is available. (section 99(3)(d) of the Extradition Act 2018)

You can speak to a solicitor at the police station at any time, day or night. It will cost you nothing.

Access to legal advice can only be delayed in certain exceptional circumstances (see Annex B of CPEA Code of Practice C)

If you do not know a solicitor, or you cannot contact your own solicitor, ask for the duty solicitor. He is nothing to do with the police. Or you can ask to see a list of local solicitors.

You can talk to a solicitor in private on the telephone and the solicitor can come to see you at the police station.

In extradition cases, the police will not interview you about the extradition offence

If you want to see a solicitor, tell the custody officer at once. You can ask for legal advice at any time during your detention. Even if you do tell the police that you do not want a solicitor, you may change your mind at any time.

Your right to legal advice does not entitle you to delay procedures under the Traffic Act 2005 which require the provision of breath, blood or urine specimens.

2. The right to have someone informed of your arrest and detention under section 99(3)(c) of the Extradition Act 2018

You may on request have one person known to you or who is likely to take an interest in your welfare, informed at public expense as soon as practicable of your whereabouts. If this person cannot be contacted, you may choose up to 2 alternatives. If they too cannot be contacted, the Custody Officer has discretion on the number of further attempts required made to make contact.

The right can only be delayed in exceptional circumstances (Annex B CPEA Code of Practice C)

3. and 4. The Right to consult CPEA Codes of Practice and the Extradition Codes of Practice.

Either or both of the Codes of Practice will be made available to you on request. These Codes govern police procedures.

The right does not entitle you to unreasonably delay any necessary action.

The right does not entitle you to delay procedures under the Traffic Act 2005 which require the provision of breath, blood or urine specimens.

Custody Record

The Custody Officer will keep a record of your detention. On request, when you leave police detention or are taken before a court, you or your legal representative or the appropriate adult shall be supplied with a copy of the Custody Record as soon as practicable. This entitlement lasts for 12 months after your release from police detention.

Fair Processing Notice

Fair processing in respect of the use, retention and disclosure of personal data taken under the Data Protection Act 2004.

On written request, you shall be told as soon as is practicable-

- (a) of the identity of the data controller or have this made easily available to you (this may be an individual e.g. Chief Constable, or a registered body);
- (b) the purpose(s) for which the data will be processed and to whom it may be passed. Under extradition proceedings, the purpose will include establishing identity, maintaining the Custody Record, statistics and monitoring - refer to Extradition Codes C 3.3 and D 1.2. The information may be passed between law enforcement agencies, both here and abroad, and within Her Majesty's Government.

Your rights under use, disclosure and retention of photographs, fingerprints and samples are explained in the Extradition Codes of Practice, Code D 3.13 to 3.18 and 4.17 to 4.19.

Individuals who make a subject access request are entitled to a copy of the information held about them, however, this right does not entitle you to this information where exemptions apply under the Data Protection Act 2004 or other exemptions apply under Part 4 of that Act. E.g. access would be likely to prejudice the prevention or detection of crime or the apprehension or prosecution of offenders

The rights do not entitle you to unreasonably delay any necessary action in connection with your case.

The police are not obliged to contact the Data Protection Commissioner on your behalf.

Code D**Code of Practice for the identification of persons detained under the Extradition Act 2018****1 Introduction**

- 1.1 This Code of Practice concerns the principal methods available to the police to identify people wanted for extradition and the keeping of accurate and reliable records of extradition cases.
- 1.2 Identification of persons wanted for extradition may be made using the following methods-
 - (a) taking of fingerprints;

- (b) (non-intimate) body samples and impressions, including taking samples such as blood or hair to generate a DNA profile for comparison with material obtained from the requesting State;
 - (c) taking of photographs;
 - (d) searching and examining detained persons to find, e.g. marks such as tattoos or scars which may help establish their identity.
- 1.3 Under this Code, intimate samples may not be taken for the purposes of ascertaining identity.
- 2 General**
- 2.1 This Code must be readily available at all police stations for consultation by-
 - (a) police officers;
 - (b) detained persons;
 - (c) members of the public.
- 2.2 The provisions of CPEA Code D paragraphs 2.3 – 2.6 and 2.12, 2.13 and 2.15 (and the corresponding Notes for Guidance) apply to this Code in respect of persons who are believed to be-
 - (a) mentally disordered or otherwise mentally vulnerable;
 - (b) under the age of 18;
 - (c) blind, seriously visually impaired, deaf, unable to read or speak or have difficulty orally because of a speech impediment.
- 2.3 References to custody officers include those performing the functions of a custody officer.
- 2.4 When a record of any action requiring the authority of an officer of a specified rank is made under this Code, subject to paragraph 2.9, the officer's name and rank must be recorded.
- 2.5 When this Code requires the prior authority or agreement of an officer of at least inspector, that authority may be given by a chief inspector who has been authorised to

perform the functions of the higher rank under section 693 of the Criminal Procedure and Evidence Act 2011.

- 2.6 Subject to paragraph 2.10 all records must be timed and signed by the maker.
- 2.7 References to-
- (a) “taking a photograph”, include the use of any process to produce a single, still, visual image;
 - (b) “photographing a person”, should be construed accordingly;
 - (c) “photographs”, “films”, “negatives” and “copies” include relevant visual images recorded, stored or reproduced through any medium;
 - (d) “destruction” includes the deletion of computer data relating to such images or making access to that data impossible.
- 2.8 References to an ‘intimate sample’ mean a dental impression or sample of blood, semen or any other tissue fluid, urine or pubic hair, or a swab taken from a person’s body orifice other than the mouth.
- 2.9 Nothing in this Code requires the identity of officers to be recorded or disclosed if the officers reasonably believe recording or disclosing their names might put them in danger. In these cases, they shall use warrant or other identification numbers.

3 Identification by fingerprints and samples

(a) General

- 3.1 References to ‘fingerprints’ means any record, produced by any method, of the skin pattern and other physical characteristics or features of a person’s fingers or palms.
- 3.2 References to a ‘non-intimate sample’ mean a sample of hair, other than pubic, a sample taken from a nail or from under a nail, a swab taken from any part of a person’s body including the mouth but not any other body orifice, saliva, or a skin impression (other than a fingerprint).

(b) Action

- 3.3 Under section 96 of the Act fingerprints or a non-intimate sample may be taken from a person detained at a police station in connection with an extradition offence, in order to-

- (a) assist in establishing the person's identity;
 - (b) assist in establishing the person's identity by cross-checking fingerprint data against records of current asylum claimants;
 - (c) assist in the investigation of outstanding or unsolved Gibraltar offences;
 - (d) assist in the conduct of prosecutions by or on behalf of police or other law enforcement and prosecuting authorities inside and outside Gibraltar;
 - (e) maintain a police record of extradited persons.
- 3.4 A person's fingerprints or a non-intimate sample may only be taken-
- (a) with the consent of the person in writing; or
 - (b) with the authorisation of a police officer of at least the rank of inspector, without that consent.
- 3.5 A person's fingerprints may be taken electronically.
- 3.6 Reasonable force may be used, if necessary, to take a person's fingerprints or a non-intimate sample, without their consent.
- 3.7 Intimate samples may not be taken under section 96 of the Act.
- 3.8 Before any fingerprints or a non-intimate sample are taken, with or without consent, the person must be informed-
- (a) of the reason for taking their fingerprints or the sample;
 - (b) of the grounds on which the relevant authority has been given;
 - (c) that their fingerprints and/or the information derived from the samples will be retained and may be the subject of a speculative search.
- 3.9 Officers should have regard to CPEA Code D 6.9 and the corresponding Notes for Guidance in the procedures for taking non-intimate samples.
- (c) Documentation**
- 3.10 A record must be made as soon as possible, of-

- (a) the reason for taking a sample;
 - (b) the reason for taking a person's fingerprints without consent.
- 3.11 If force is used, a record shall be made of the circumstances and of those present.
- 3.12 A record shall be made of the fact that a person has been informed that fingerprints and samples (and the information derived from it) may be the subject of a speculative search.
- (d) Use, disclosure and retention of fingerprints and samples**
- 3.13 Fingerprints or samples (and the information derived from the samples) taken from a person under section 96 of the Act may be used or disclosed only for purposes related to-
 - (a) establishing the person's identity;
 - (b) the prevention and detection of crime;
 - (c) the investigation of domestic offences;
 - (d) the conduct of prosecutions by or on behalf of police or other law enforcement and prosecuting authorities inside and outside Gibraltar.
- 3.14 After being so used or disclosed the fingerprints and samples may be retained by the police in Gibraltar, but the information must not be used or disclosed except for the purposes in paragraph 3.13 and being the subject of a speculative search.
- 3.15 A speculative search means the fingerprints or samples (and the information derived from the samples) may be checked against other fingerprints and DNA records held by, or on behalf of, the police and other law enforcement authorities in or outside Gibraltar, or held in connection with, or as a result of, an offence committed inside or outside Gibraltar.
- 3.16 Fingerprints and samples (and the information derived from the samples) or copies of this information, may be sent to the requesting State before completion of the extradition proceedings, to assist in establishing the person's identity.
- (e) Destruction of fingerprints and samples**

- 3.17 When fingerprints and samples are taken from a person wanted for extradition and the person is discharged from the extradition proceedings, they must be destroyed as soon as they have fulfilled the purpose for which they were taken, unless paragraph 3.18 applies.
- 3.18 If the person gives their written consent for their fingerprints or sample to be retained and used after they have fulfilled the purpose for which they were taken, the fingerprints or samples do not have to be destroyed.
- 3.19 When a person's fingerprints or samples are to be destroyed, officers shall follow the guidance in CPEA Code D, Annex F, paragraph 3.
- 4 Examinations to establish identity and taking of photographs**
- (a) Searching or examination of detainees at police stations**
- 4.1 Section 97 of the Act allows an officer or a designated person to search or examine a person wanted for extradition and detained at a police station in order to establish-
- (a) whether they have any marks, features or injuries (e.g. tattoos or scars) that would tend to identify them as the person wanted in connection with the extradition offence, and to photograph any identifying marks (see paragraph below on the taking and use of photographs); or
 - (b) their identity.
- 4.2 Under section 97 a search and/or examination to find marks may be carried out-
- (a) with the person's consent; or
 - (b) without the person's consent, if it is not possible to obtain it and authorisation has been given in accordance with paragraph 4.4.
- 4.3 Identifying marks may be photographed with the person's consent or without their consent if it is withheld or it is not possible to obtain it. Authorisation by a senior officer is not required in the taking of photographs without consent, but proper documentation must be filed, according to paragraphs 4.15 – 4.16 below.
- 4.4 A search and/or examination without consent may only take place if authorised by an officer of the rank of inspector or above. Authorisation may be given orally or in writing. If given orally, the authorising officer must confirm it in writing as soon as practicable. A separate authority is required for each purpose which applies.

- 4.5 A detainee may only be searched, examined and photographed under section 97 of the Act by a police officer of the same sex.
- 4.6 If it is established that a person is unwilling to co-operate to enable a search and/or examination to take place or a suitable photograph to be taken, an officer may use reasonable force to-
- (a) search and/or examine a detainee without their consent; and
 - (b) photograph any identifying marks without their consent.
- 4.7 The thoroughness and extent of any search or examination carried out in accordance with the powers in section 97 must be no more than the officer considers necessary to achieve the required purpose. Any search or examination which involves the removal of more than the person's outer clothing shall be conducted in accordance with CPEA Code C, Annex A, paragraph 11.
- 4.8 An intimate search may not be carried out under section 97 of the Act.
- (b) Photographing**
- 4.9 Section 98 of the Act allows an officer or a designated person to photograph a person wanted for extradition and detained at a police station-
- (a) with their consent; or
 - (b) without their consent, if it is not possible to obtain consent.
- 4.10 The officer proposing to take a person's photograph may, for this purpose, require the person to remove any item or substance worn on, or over, all or any part of the head or face. If the person does not comply with such a requirement, the officer may remove the item or substance.
- 4.11 If it is established that a person is unwilling to co-operate sufficiently to enable a suitable photograph to be taken and it is not reasonably practicable to take the photograph covertly, an officer may use reasonable force-
- (a) to take their photograph without their consent; and
 - (b) for the purpose of taking the photograph, remove any item or substance worn on, or over, all, or any part of the person's head or face which they have failed to remove when asked.

- 4.12 For the purposes of this Code, a photograph may be obtained without the person's consent by making a copy of an image of them taken at any time on a camera system installed anywhere in the police station.

(c) Information to be given

- 4.13 When a person is searched, examined or photographed, they must be informed of the-

(a) purpose of the search, examination or photograph;

(b) grounds on which the relevant authority, if applicable, has been given; and

(c) purposes for which a photograph may be used, disclosed or retained.

- 4.14 This information must be given before the photograph is taken, except if the photograph is-

(a) taken covertly;

(b) obtained as in paragraph 4.12 by making a copy of an image of the person taken at any time on a camera system installed anywhere in the police station.

(d) Documentation

- 4.15 A record must be made when the person is searched, examined or a photograph of the person or any identifying marks found on them is taken. The record must include the-

(a) identity of the officer carrying out the search, examination or taking the photograph;

(b) purpose of the search, examination or photograph and the outcome;

(c) person's consent to the search, examination or photograph, or the reason the person was searched, examined or photographed without consent;

(d) giving of any authority, the grounds for giving it and the authorising officer.

- 4.16 If, under paragraph 4.11, force is used when searching, examining or taking a photograph, a record shall be made of the circumstances and those present.

(e) Use, disclosure and retention of photographs of persons or identifying marks

- 4.17 Any photographs of persons or identifying marks taken under sections 97 and 98 of the Act may be used or disclosed only for purposes related to-
- (a) establishing the person's identity;
 - (b) the prevention and detection of crime;
 - (c) the investigation of domestic offences;
 - (d) the conduct of prosecutions by or on behalf of police or other law enforcement and prosecuting authorities inside and outside Gibraltar.
- 4.18 After being so used or disclosed, the photographs may be retained by the police and other law enforcement authorities in Gibraltar but they must not be used or disclosed except for the purposes in paragraph 4.17.
- 4.19 A photograph of the person or identifying marks (or a copy) taken under section 97 or 98 of the Act may be sent to the requesting State in advance of the person's extradition to assist in establishing the identity of the person arrested.

GLOSSARY

Central Authority	The designated Central Authority for Gibraltar under section 4 of the Act.
CPEA	Criminal Procedure and Evidence Act 2011.
Designated person	A person, other than a police officer, designated by the Commissioner of Police under sections 97 and 98 of the Extradition Act 2018.
Excluded material	Material, records or substances held in confidence (Criminal Procedure and Evidence Act section 15)
Extradition	The process whereby a person accused or convicted of a serious crime is, at the request of another country, returned by Gibraltar to that jurisdiction, or vice versa.
Extradition hearing	The main part of the extradition process where the magistrate considers the request for extradition of the person against criteria laid out in the Act.
Extradition offence	An offence over which another country has jurisdiction, for which the person has been requested to stand trial, be sentenced or serve a sentence abroad and for which Gibraltar will consider extradition. Alternatively, an offence for which Gibraltar seeks a person's extradition from another country.
Extradition request	The documentation transmitted on a Government to Government basis from a State which requests a person's arrest and extradition. To be valid, the extradition request must meet the criteria in section 5 of the Extradition Act 2018.
Fingerprints	Any record, produced by any method, of the skin pattern and other physical characteristics or features of a person's fingers or palms (Criminal Procedure and Evidence Act section 77)
Gibraltar offence	An offence committed in Gibraltar
Identifying Mark	A mark that assists in establishing a person's identity.
Inextricably linked material	Material which is not reasonably practicable to separate from other linked material without prejudicing the use of that other material in any investigation or proceedings (e.g. it may not be possible to separate items of data held on a computer disk without damaging their evidential integrity).
Intimate Sample	A dental impression or sample of blood, semen or any other tissue fluid, urine or pubic hair, or a swab taken from a person's body orifice other than the mouth.

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Intimate Search	A physical examination of a person's body orifices other than the mouth.
Items subject to legal privilege	Communications between a professional legal adviser and the client that is concerned with the proceedings. Anything held with the intention of furthering a criminal cause is not covered.
Justice of the peace	A lay magistrate- person appointed to administer judicial business in a Magistrates' Court.
Legal adviser	Barrister, solicitor or duty solicitor.
Legal privilege	See "items subject to legal privilege".
Mark	A feature or injury (e.g. body piercing, a tattoo, insignia or scar) which can assist in identifying their identity.
Non-intimate Sample	A sample of hair other than pubic, a sample taken from a nail or from under a nail, a swab taken from any part of a person's body including the mouth but not any other body orifice, saliva or a skin impression (other than a fingerprint).
Non-intimate search	Physical examination of a person's body including the mouth, but no other body orifices.
Officer in charge	An officer, of any rank, designated in charge of a search with particular duties and responsibilities in carrying out the search.
Order to extradite	Requirement that the person requested for extradition by a State be returned to that country to stand trial, be sentenced or serve a sentence in respect of the extradition offence(s).
Part 2	Part 2 of the Extradition Act 2018, relating to the procedures and safeguards that govern an extradition request.
Photograph	A process by means of which a visual image may be produced, including by making a copy of an image of the person taken at any time on a camera system installed anywhere in the police station.
Premises	Any place, vehicle, vessel, aircraft, hovercraft, tent or movable structure and any offshore installation.
Provisional Arrest	Arrest under Part 2 under a provisional arrest warrant issued by a magistrate, pending receipt of the necessary documents required under section 5 of the Extradition Act 2018.
Requesting State	The State which has made an extradition request under Part 2 of the Extradition Act 2018.
Special Procedure Material	Journalistic material or material held in confidence by someone in a professional or official capacity, other than

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	excluded material or items subject to legal privilege (see Criminal Procedure and Evidence Act section 18).
Speculative search	Checking of fingerprints, samples and the information derived from them against other fingerprint and DNA records held by, or on behalf of, the police and other law enforcement authorities in, as well as outside Gibraltar.
Surrender	The physical act of handing over a person, whose extradition has been ordered, to officials from the requesting State.