



Arrest and Police Custody: Detainees' Rights Report

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FRANCE

ARREST AND POLICE CUSTODY: DETAINEES' RIGHTS

Executive Summary

Criminal suspects ordinarily may be held in police custody for up to twenty-four hours, a period that may be extended to forty-eight hours by the public prosecutor. Immediately upon detention, suspects must be informed of their rights in a language they understand. They must be notified of the nature of the offense in connection with which they are detained. They may inform a relative, partner, or employer that they are in custody and may ask to be examined by a doctor. They have access to an attorney from the first hour of custody but only for a conversation of up to thirty minutes. Finally, police officers are not required to inform suspects of their right to silence.

In the case of offenses pertaining to terrorism or organized crime, police officers may keep a terrorist suspect in custody up to a total of four days with the authorization of a judge. Access to an attorney is only permitted after forty-eight or seventy-two hours. This four-day period may be extended to six days if it appears that there is a serious risk of an imminent terrorist attack in France or abroad, or that international cooperation imperatively requires it. In such a case the suspect may request to see an attorney at the expiration of the fourth and fifth days.

Breaches of the above rights may result in the exclusion of evidence if the breach substantially undermines the interests of the suspect.

I. General Regime

As a general rule, police officers cannot detain for more than twenty-four hours “a person against whom there are one or several plausible reasons to suspect that he/she has committed or attempted to commit a criminal offense.”¹ The initial decision to detain a suspect is made by a police officer, who must inform the public prosecutor at the outset.² This detention, referred to in French as *garde à vue*, may be extended for another twenty-four hours by the public prosecutor either in writing or after the suspect appears before him.³

¹ CODE DE PROCÉDURE PÉNALE [C. PR. PÉN.] arts. 63, 77 (Daloz 2010) (translation by the author).

² *Id.*

³ *Id.*

Immediately upon detention, suspects must be informed of their rights in a language they understand.⁴ A detainee's rights are as follows:

- To be informed of the “nature of the offense, in connection with which he is detained;”⁵
- To inform, within the first three hours of custody, a relative, partner or employer that he is being held in custody, unless the police officer feels that this notification could jeopardize the investigation. The officer, however, must notify the public prosecutor who may decide otherwise;⁶
- To request to be examined by a doctor appointed by the prosecutor or the police officer. If the detainee himself does not request to be examined by a physician, a member of his family may request the medical examination. If the detention is prolonged, the detainee may ask to be examined a second time;⁷ and
- To have access to his attorney or to an attorney appointed by the head of the local bar from the first hour of custody. However, the meeting between the attorney and the detainee cannot exceed thirty minutes. The police must provide the attorney with information about the date and nature of the offense but the attorney is not permitted access to the file containing the evidence or to be present during the interrogations of his client. If the period of custody is extended, the detainee may again ask to have access to an attorney from the first hour of the extended period.⁸

Police officers presently are not required to inform a suspect of his right to silence. This right was introduced for the first time in a reform passed in June 2000.⁹ The 2000 provision provided that the suspect be told that “he has the choice to make a statement, to respond to questions put to him, or to be silent.”¹⁰ The provision was repealed in March 2003¹¹ following a reform of internal security laws proposed by President Nicolas Sarkozy who, at that time, was the Minister of Interior.

⁴ *Id.* art. 63-1.

⁵ *Id.* (translation by the author).

⁶ *Id.* art. 63-2.

⁷ *Id.* art. 63-3.

⁸ *Id.* art. 63-4.

⁹ Loi 2000-516 du 15 juin 2000 renforçant la présomption d'innocence et les droits des victimes [Law 2000-516 of June 16, 2000, reinforcing the protection of the presumption of innocence and the victims rights] art. 8, JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], June 16, 2000, p. 9038.

¹⁰ *Id.* (translation by the author).

¹¹ Loi 2003-239 du 18 mars 2003 pour la sécurité intérieure [Law 2003-239 of March 18, 2003, on Internal Security], J.O., Mar. 19, 2003, p. 4761.

Police officers must keep custody records for each suspect, detailing interrogation times, rest periods, meal times, and the duration of the custody. The prosecutor is responsible for the supervision of the detention of suspects held in police custody.¹²

At the close of the detention period, the prosecutor has discretion to decide whether or not to prosecute the case. He has at his disposal several procedures. In serious and complex criminal cases, the prosecutor may initiate a formal judicial investigation headed by an independent investigating judge and the offender may be remanded.¹³ In relatively simple cases, the offender may be brought immediately to court¹⁴ or be summoned to appear in court at a later date.¹⁵ The prosecutor may also reach an agreement on punishment with the offender.¹⁶

Breaches of the above rights of a suspect may result in the exclusion of evidence if the breach severely undermines the interests of the suspect.¹⁷ Any unjustified delay in notifying the suspect of his rights, for example, has been held to substantially prejudice his interests.¹⁸

II. Special Custody Regime for Terrorism and Organized Crime

In the case of offenses pertaining to terrorism or organized crime,¹⁹ police custody may exceptionally be extended up to a total of four days (generally, two additional extensions of twenty-four hours each, but occasionally a forty-eight hour extension) and even up to six days if it appears during the investigation or police custody that there is a serious risk of an imminent terrorist attack in France or abroad, or that international cooperation imperatively requires it.²⁰

These extensions must be requested by the Prosecutor and authorized by a specialized judge, the judge of liberties and detention, or by an investigating judge. In general, the individual detained must be presented to the authority that decides on the extension; however, at the extension of detention from three to four days, this requirement may be waived by the judge on the grounds that a presentation of the detainee would be detrimental to the investigation. In the case where extensions are authorized, a medical examination is mandatory at the beginning of each extension.²¹

¹² C. PR. PÉN. art. 41.

¹³ *Id.* art. 80.

¹⁴ *Id.* arts. 388, 395.

¹⁵ *Id.* arts. 388, 551.

¹⁶ *Id.* art. 495-7.

¹⁷ *Id.* art. 802.

¹⁸ Cass. Crim., Apr. 30, 1996, No. 95-82.217, Procureur General pres la Cour d' Appel de Versailles, Lexbase A9154ABN (commercial database).

¹⁹ C. PR. PÉN. art. 706-73.

²⁰ *Id.* art. 706-88.

²¹ *Id.*

In addition, access to an attorney may be permitted only after forty-eight hours, or if an extension is granted, only after seventy-two hours, and then only for an initial thirty-minute session. The attorney is not provided with the case file prior to the meeting. Where the custody is extended beyond three days, the suspect may request to see an attorney at the expiration of the fourth and fifth days, but again only for thirty minutes and without access to the case file.²²

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²² *Id.*

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ENGLAND AND WALES*

ARREST AND POLICE CUSTODY: DETAINEES' RIGHTS

Executive Summary

There is no language prescribed by statute as to how a person arrested in England and Wales should be notified of their rights or “cautioned.” A code issued under the various criminal and terrorist laws provides the basis of language in the form of a caution that should be given at any time that a person may say something that could be used as evidence against them. A person that is arrested should be informed that he or she is under arrest either at the time of arrest or as soon as is practicable afterwards. The laws governing the detention in police custody of criminal suspects allow them to be detained for up to twenty-four hours prior to charges being brought and terrorist suspects may be held for an initial period of forty-eight hours, but this may be extended for up to twenty-eight days by judicial authority, if necessary.

I. Introduction

There is no definition of the term “arrest” in English legislation.¹ A person is considered to be under arrest in accordance with the ordinary English language when they are deprived of their liberty to go where they please.² There are different procedures for the arrest and detention of terrorist suspects and criminal suspects in England and Wales. The first part of this report addresses criminal arrest and the second part addresses the arrest and detention of terrorist suspects.

II. The Arrest of Criminal Suspects

A. Time Limits for Suspect to be Informed of Arrest

When a person is arrested in England and Wales they must be informed that they are under arrest “as soon as is practicable after the arrest.”³ The person arrested must also be

* The United Kingdom is comprised of four jurisdictions—England, Wales, Scotland, and Northern Ireland. Scotland and Northern Ireland have a distinct criminal law system from that of England and Wales. This report focuses solely on the laws of England and Wales.

¹ BLACKSTONE’S CRIMINAL PRACTICE ¶ D1.9 (Rt. Hon. Hooper LJ et al. eds., 2009) (citing *Lewis v. Chief Constable of the South Wales Constabulary* [1991] 1 All E.R. 206). The leading legislation regarding Police procedure in criminal cases is the Police and Criminal Evidence Act 1984, c. 60 § 28(1).

² BLACKSTONE’S CRIMINAL PRACTICE ¶ D1.9, *supra* note 1.

³ Police and Criminal Evidence Act 1984, c. 60, § 28(1).

informed of the grounds for arrest either at the time of the arrest or “as soon as is practicable after the arrest.”⁴ If these requirements are not met, then the arrest is unlawful. Once the arrested person arrives at the police station the custody officer at the police station typically informs the person of their right to obtain legal advice and the arrested person is typically brought before the custody officer “as soon as practicable after their arrival at the station.”⁵

B. Language Used to Inform Suspect of Arrest

While there is no specific statutory language that must be used in order to inform a person that they are under arrest, there is a test that the language used must be sufficient. This test is: “having regard to all the circumstances of the case, the person arrested was told, in simple, non-technical language that he could understand, the essential legal and factual grounds for his arrest.”⁶

An arrested person must receive a caution, and this can either occur prior to or after the arrest, but must always occur:

before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect’s answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution.⁷

Pursuant to the Code, this information must be presented in the following language:

You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.⁸

If there are no restrictions on drawing an adverse inference from silence, the caution is as follows:

You do not have to say anything, but anything you do say may be given in evidence.⁹

Minor deviations in the wording of both of these cautions will not breach the Code as long as the “sense of the relevant caution is preserved.”¹⁰

⁴ *Id.* c. 60, § 28(3).

⁵ *Id.* Code C, Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, 2008, ¶ 2.1A, http://webarchive.nationalarchives.gov.uk/20100413151426/http://police.homeoffice.gov.uk/publications/operational-policing/2008_PACE_Code_C_%28final%292835.pdf?view=Binary.

⁶ BLACKSTONE’S CRIMINAL PRACTICE ¶ D1.9, *supra* note 1 (citing Taylor v. Chief Constable for Thames Valley Police [2004] 1 WLR 3155).

⁷ Police and Criminal Evidence Act 1984, Code C, Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, 2008, ¶ 10, <http://www.homeoffice.gov.uk/publications/police/790604/pace-codes/pace-code-c?view=Binary>.

⁸ *Id.* Code C, ¶ 10.5.

⁹ *Id.* Code C, annex C.

C. Information to be Given to a Criminal Suspect Under Arrest at a Police Station

Once arrested, the person is taken to a police station as soon as is reasonably practicable.¹¹ When a person is either brought to a police station under arrest or arrested at a police station, they must be informed of several rights. A Code issued under the leading legislation regarding police procedure in criminal cases, the Police and Criminal Evidence Act 1984 (PACE), specifies these rights and requires that the custody officer clearly inform the arrested person of:

- the right to have someone informed of their arrest;
- the right to consult privately with a solicitor and that free independent legal advice is available;
- the right to consult these Codes of Practice.¹²

The arrested person must also be given written notice of these rights and information on how to obtain legal advice. The custody officer then asks the person whether they wish to have someone informed of their detention or would like legal advice and records this information in the custody record, which the arrested person also signs.¹³

D. Time Limits of Detention

A person may be detained for up to twenty-four hours prior to being charged with a criminal offense.¹⁴ These twenty-four hours commence upon either the arrest of the person or the time the person entered the police station, whichever is earlier. Once the time expires, the person must either be charged or released on or without bail.¹⁵

III. The Arrest of Terrorist Suspects

The current counterterrorism laws of the UK allow the police, in certain specified circumstances, to arrest individuals without a warrant who they reasonably suspect to be a terrorist.¹⁶

¹⁰ *Id.* Code C, ¶ 10.7.

¹¹ *Id.* c. 60, § 30(1)(A).

¹² *Id.* Code C..

¹³ *Id.* Code C, ¶ 3.5, <http://www.homeoffice.gov.uk/publications/police/790604/pace-codes/pace-code-c?view=Binary>.

¹⁴ *Id.* c. 60 §§ 37, 41(1).

¹⁵ *Id.* c. 60 § 41(7).

¹⁶ Terrorism Act 2000 c. 11, § 41.

A. Time Limits for Suspect to be Informed of Arrest

There is no language in the Terrorism Act 2000 that indicates when a terrorist suspect should be informed that her or she is under arrest. A Code issued under the Terrorism Act that serves as guidance notes provides that a person must be informed that they are under arrest at the time of arrest, or as soon as is practicable after their arrest, and informed of the grounds for their arrest.¹⁷

B. Language Used to Inform Suspect of Arrest

Again, as with the time limits to inform a suspect of the arrest, there is no specific statutory language required to inform a terrorist suspect of his or her arrest. However, as in the case of criminal suspects, a system of cautions operates:

A person whom there are grounds to suspect of an offence ... must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect’s answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution.¹⁸

The terms of the caution are provided for in the Code and are as follows:

You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.¹⁹

If the person who has been cautioned appears to not understand what this means, the arresting officer must explain it to him or her.²⁰ As in the case of criminal suspects, if there are no restrictions on drawing an adverse inference from silence, the caution is as follows:

You do not have to say anything, but anything you do say may be given in evidence.²¹

Minor deviations in the wording of both of these cautions will not breach the Code as long as the “sense of the relevant caution is preserved.”²²

¹⁷ Police and Criminal Evidence Act 1984, Code H, Code of Practice In Connection With The Detention, Treatment and Questioning by Police Officers of Persons Under Section 41 of, and Schedule 8 to, the Terrorism Act 2000, 2006, ¶ 10.2, <http://www.homeoffice.gov.uk/publications/police/790604/pace-codes/pace-code-h?view=Binary>.

¹⁸ *Id.* Code H, ¶ 10.1.

¹⁹ *Id.* Code H, ¶ 10.4.

²⁰ *Id.* Code H, ¶ 10B.

²¹ *Id.* Code H, Annex C.

²² *Id.* Code H, ¶ 10.6.

C. Information to be Given to a Suspect Under Arrest at a Police Station

Once arrested, the terrorist suspect is taken to a police station as soon as is reasonably practicable.²³ When a person is either brought to a police station under arrest or arrested at a police station he or she must be informed of several rights. A Code of Practice issued under the Police and Criminal Evidence Act 1984 (PACE) specifies these rights and requires that the custody officer inform the arrested person clearly of:

- the right to have someone informed of their arrest;
- the right to consult privately with a solicitor and that free independent legal advice is available; [and]
- the right to consult these Codes of Practice.²⁴

The terrorist suspect must also be given written notice of these rights and information on how to obtain legal advice. The custody officer then asks the terrorist suspect whether they wish to have someone informed of their detention or would like legal advice, and records this information in the custody record, which the terrorist suspect also signs.²⁵

In certain cases, access to legal advice or allowing the terrorist suspect to inform another person of the arrest may be delayed for up to forty-eight hours if a high-ranking police officer believes this would result in:

- (a) interference with or harm to evidence of a serious arrestable offence,
- (b) interference with or physical injury to any person,
- (c) the alerting of persons who are suspected of having committed a serious arrestable offence but who have not been arrested for it,
- (d) the hindering of the recovery of property obtained as a result of a serious arrestable offence or in respect of which a forfeiture order could be made under section 23,
- (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism,
- (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism, and

²³ BLACKSTONE’S CRIMINAL PRACTICE, *supra* note 1, ¶ B10.219.

²⁴ Police and Criminal Evidence Act 1984, Code H, ¶ 3.1; *see also* Terrorism Act 2000, c. 11, sch. 8, pt. I (setting forth rights relative to arrest and advice of counsel).

²⁵ Police and Criminal Evidence Act 1984, Code H, ¶ 3.5.

- (g) the alerting of a person and thereby making it more difficult to secure a person’s apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.²⁶

If the above rights are delayed, the terrorist suspect must be informed of this as soon as is reasonably practicable and must be recorded in the custody logs.²⁷

D. Time Limits of Detention

Once arrested, terrorist suspects may be detained without charge for a maximum of twenty-eight days to obtain, preserve, analyze, or examine evidence for use in criminal proceedings. However, the maximum period is comprised of several shorter periods of detention with mandatory reviews.

A terrorist suspect who has been arrested by the police may be detained without charge for an initial period of forty-eight hours.²⁸ Additional periods of detention in seven-day increments may then be granted by Magistrates, up to a total of fourteen days.²⁹ Detention from fourteen to twenty-eight days is then granted by a High Court judge. Applications for the extensions of detention are made by the Crown Prosecution Services’ Counter Terrorism Division, rather than by the police.

While the main impetus of the arrest may “have a preventative or disruptive effect on a terrorist or network of terrorists, and while this may be the impetus for executing arrests at any point during an investigation, legislation does not allow continued detention on this basis.”³⁰ The detention may only be extended if a judicial authority is satisfied that the extension is necessary to:

- obtain or preserve relevant evidence;
- permit the completion of an examination or analysis of any relevant matter with a view to obtaining evidence; and
- the investigation connected with the detention is being conducted diligently and expeditiously.³¹

With regard to the first two requirements, the police or prosecutors must inform the court of the precise details of the inquiry, the expected date of completion, what the inquiry will achieve, and what difference any evidence from the inquiry will make to any charging decision.

²⁶ Terrorism Act 2000, c. 11, sch. 8, ¶ 8.4.

²⁷ *Id.* c. 11, sch. 8, ¶ 8.7.

²⁸ *Id.* c. 11, § 41.

²⁹ *Id.* c.11, sch. 8, pt. III.

³⁰ The Government Reply to the Nineteenth Report from the Joint Committee on Human Rights Session 2006-07 H.L. Paper 157, H.C. 394, Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning, 2007-08, Cm 7215, available at <http://www.official-documents.gov.uk/document/cm72/7215/7215.pdf>.

³¹ Terrorism Act 2000 c. 11, sch. 8, pt. III.

To be satisfied that the investigation is being conducted diligently and expeditiously the court must be shown that the investigation has been carried out as quickly as is reasonably possible.³² These issues can be proven both with open source material in the presence of the defense, and with sensitive material that is presented in the absence of the defense.

In 2009 there were 207 terrorist arrests, making a total of 1,817 terrorism arrests since September 11, 2001. No suspects in 2009 were held for longer than fourteen days and 43% were processed within forty-eight hours. Ninety-five people arrested under this legislation were later released without charge.³³

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³² *Id.*

³³ Home Office, Home Office Statistical Bulletin, Operation of Police Powers Under the Terrorism Act 2000 and Subsequent Legislation: Arrests, outcomes and Stops and Searches, Great Britain: Quarterly Update to December 2009 at 5 (June 10, 2010) (compiling data from England and Wales, and Scotland), <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1010.pdf>.