STATUTORY INSTRUMENTS

2003 No. 2273

DEFENCE

The Armed Forces (Entry, Search and Seizure) Order 2003

Made - - - -	*4th September 2003*
Laid before Parliament	*9th September 2003*
Coming into force - -	*30th September 2003*

The Secretary of State, in exercise of the powers conferred upon him by sections 3(3) and (5), 5(10), 6, 10(13), 11(1) and (2), and 35(1) of the Armed Forces Act 2001(**a**) hereby makes the following Order:

Citation and Commencement

1. This Order may be cited as the Armed Forces (Entry, Search and Seizure) Order 2003 and shall come into force on 30th September 2003.

Interpretation

2.—(1) In this Order—

"the Act" means the Armed Forces Act 2001;

"custody" in relation to a person means military, air-force or naval custody;

"Part 2" means Part 2 of the Act;

"service disciplinary proceedings" means—

(a) dealing summarily with a charge under section 76B of either of the 1955 Acts(**b**);

(b) summary trial of a charge under section 52D of the 1957 Act(**b**);

(c) proceedings before any of the summary appeal courts;

(d) proceedings before a court-martial constituted under either of the 1955 Acts or the 1957 Act;

(e) proceedings before the Courts-Martial Appeal Court;

(f) proceedings before a Standing Civilian Court;

"the summary appeal courts" means the court established by section 83ZA of each of the 1955 Acts and the court established by section 52FF of the 1957 Act;

"unit" includes a ship or naval establishment.

(2) For the purposes of this Order, the occupier of premises which are service living accommodation is—

(**a**) 2001 c. 19.

(**b**) Under section 37, "the 1955 Acts" means the Army Act 1955 (c. 18) and the Air Force Act 1955 (c. 19) and "the 1957 Act" means the Naval Discipline Act 1957 (c. 53).

(a) if the premises are any building or part of a building within section 15(1)(a), any person for whose exclusive use as living accommodation or as a garage that building or part of a building is provided;

(b) if the premises are any room, structure or area within section 15(1)(b), any person for whose use as sleeping accommodation that room, structure or area is provided;

(c) if the premises are any locker within section 15(1)(c), the person for whose personal use in connection with his sleeping accommodation that locker is provided.

(3) A reference in this Order to a numbered section is a reference, unless the contrary intention appears, to that section of the Act.

Provisions relating to search under section 2

3.—(1) A service policeman(**a**) who detains a person or vehicle in exercise of the power conferred by section 2 need not conduct a search if it appears to him subsequently—

(a) that no search is required; or

(b) that a search is impracticable.

(2) If a service policeman contemplates a search, other than a search of an unattended vehicle, in the exercise of the power conferred by section 2, it shall be his duty, subject to paragraph (4), to take reasonable steps before he commences the search to bring to the attention of the appropriate person—

(a) if the service policeman is not in uniform, documentary evidence that he is a service policeman; and

(b) whether he is in uniform or not, the matters specified in paragraph (3);

and the service policeman shall not commence the search until he has performed that duty.

(3) The matters referred to in paragraph (2)(b) are—

(a) the service policeman's name and the name of his unit;

(b) the object of the proposed search;

(c) the service policeman's grounds for proposing to make it; and

(d) the effect of article 4(7) or (8), as may be appropriate.

(4) A service policeman need not bring the effect of article 4(7) or (8) to the attention of the appropriate person if it appears to the service policeman that it will not be practicable to make the record in article 4(1).

(5) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of the power conferred by section 2 a service policeman shall leave a notice—

(a) stating that he has searched it;

(b) giving the name of his unit;

(c) stating that an application for compensation for any damage caused by the search may be made to that unit; and

(d) stating the effect of article 4(8).

(6) The service policeman shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(7) Section 2 shall not give a service policeman who is not in uniform a power to stop a vehicle.

(8) This article applies to vessels, aircraft and hovercraft as it applies to vehicles.

(9) In this article "the appropriate person" means—

(a) if the service policeman proposes to search a person, that person; and

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(**a**) By virtue of section 16(1), "service policeman" means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police or the Royal Air Force Police.

(b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

Duty to make records concerning searches

4.—(1) Where a service policeman has carried out a search in the exercise of the power conferred by section 2, he shall make a record of it in writing unless it is not practicable to do so.

(2) If—

(a) a service policeman is required by paragraph (1) to make a record of a search; but

(b) it is not practicable to make the record on the spot,

he shall make it as soon as is practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the service policeman knows it.

(4) If a service policeman does not know the name of a person whom he has searched, the record of the search shall include a note otherwise describing that person.

(5) The record of a search of a vehicle shall include a note describing the vehicle.

(6) The record of a search of a person or a vehicle—

(a) shall state—

(i) the object of the search;

(ii) the grounds for making it;

(iii) the date and time when it was made;

(iv) the place where it was made;

(v) whether anything, and if so what, was found;

(vi) whether any, and if so what, injury to a person or damage to property appears to the service policeman to have resulted from the search; and

(b) shall identify the service policeman making it.

(7) If a service policeman who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in paragraph (9).

(8) If—

(a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in paragraph (9); and

(b) the service policeman who conducted the search made a record of it,

the person who made the request shall be entitled to a copy.

(9) The period mentioned in paragraphs (7) and (8) is the period of 12 months beginning with the date on which the search was made.

(10) The requirements imposed by this article with regard to records of searches of vehicles shall also apply to records of searches of vessels, aircraft and hovercraft.

Application to searches carried out by virtue of section 4

5. Articles 3 and 4 shall apply to the exercise by virtue of section 4 of the powers conferred by section 2—

(a) by that person's commanding officer(**a**), or

(**a**) For the purposes of Part 2, "commanding officer" is defined by section 16(5).

(b) by any member of Her Majesty's forces who is authorised by that person's commanding officer,

as they apply to the exercise of those powers by a service policeman.

Special provisions as to access

6. A service policeman may obtain access to excluded material or special procedure material(**a**) on relevant residential premises for the purposes of an investigation of an offence to which section 5 applies by making an application under Schedule 1 and in accordance with that Schedule.

Application for warrants or orders by live television links

7. A service policeman may make—

(a) any application for a warrant under section 5, or

(b) any application under Schedule 1,

through live television links or other similar arrangements if it is not reasonably practicable for him to make the application in person.

Search warrants – safeguards

8.—(1) This article and articles 9 and 10 have effect in relation to the issue to service policemen under section 5 or Schedule 1 of warrants to enter and search premises(**b**); and an entry on or search of premises under a warrant is unlawful unless it complies with this article and articles 9 and 10.

(2) Where a service policeman applies for any such warrant, it shall be his duty—

(a) to state the ground on which he makes the application;

(b) to specify the premises which it is desired to enter and search; and

(c) to identify, so far as is practicable, the articles to be sought.

(3) An application for such a warrant shall be made *ex parte* and supported by a statement in writing, which shall—

(a) specify the name, rank and unit of the person who applies for it;

(b) state the ground on which he makes the application;

(c) identify, so far as is practicable, the articles to be sought;

(d) specify the premises which it is desired to enter and search; and

(e) specify the enactment under which the warrant would be issued.

(4) The service policeman shall answer on oath any question that the judicial officer hearing the application asks him.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant—

(a) shall specify—

(i) the name, rank and unit of the person who applies for it;

(ii) the date on which it is issued;

(iii) the enactment under which it is issued; and

(iv) the premises to be searched; and

(b) shall identify, so far as is practicable, the articles to be sought.

(**a**) By virtue of section 16(1), "excluded material" and "special procedure material" have the same meanings as in the Police and Criminal Evidence Act 1984 (c. 60).

(**b**) By virtue of section 16(1), "premises" includes any place and, in particular, includes (a) any vehicle, vessel, aircraft or hovercraft, and (b) any tent or movable structure.

(7) Two copies shall be made of a warrant.

(8) The copies shall be clearly certified as copies.

Execution of warrants

9.—(1) A warrant to enter and search premises may be executed by any service policeman.

(2) Such a warrant may authorise persons to accompany any service policeman who is executing it.

(3) Entry and search under a warrant must be within one month from the date of its issue.

(4) Entry and search under a warrant must be at a reasonable hour unless it appears to the service policeman executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

(5) Where the occupier of premises which are to be entered and searched is present at the time when a service policeman seeks to execute a warrant to enter and search them, the service policeman—

(a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a service policeman;

(b) shall produce the warrant to him; and

(c) shall supply him with a copy of it.

(6) Where—

(a) the occupier of such premises is not present at the time when a service policeman seeks to execute such a warrant; but

(b) some other person who appears to the service policeman to be in charge of the premises is present,

paragraph (5) shall have effect as if any reference to the occupier were a reference to that other person.

(7) If there is no person present who appears to the service policeman to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

(8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(9) A service policeman executing a warrant shall make an endorsement on it stating—

(a) whether the articles sought were found; and

(b) whether any articles were seized, other than articles which were sought.

(10) A warrant which—

(a) has been executed, or

(b) has not been executed within the time authorised for its execution,

shall be returned to the judicial officer.

(11) A warrant which is returned under paragraph (10) shall be retained by the judicial officer for at least 2 years from its return.

(12) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, he shall be allowed to do so.

Safeguards and execution of warrants – further provisions

10.—(1) Where—

(a) a service policeman makes an application by live television link or other similar arrangement for a warrant to enter and search premises, or

(b) the service policeman executing such a warrant has reasonable grounds for believing that it is likely that, if no search is carried out before the earliest time by which it will be

practicable for him to have the warrant in his possession, the purpose of the search will be frustrated or seriously prejudiced,

articles 8 and 9 shall have effect subject to the following provisions of this article.

(2) Where paragraph (1)(a) applies—

(a) the warrant shall specify in addition to the requirements of article 8(6) that the application for the warrant was made by live television link or other similar arrangement;

(b) the judicial officer shall transmit a copy of the warrant by facsimile machine or other means of electronic communication to the service policeman who made the application;

(c) the judicial officer shall retain the warrant;

(d) the certified copies of the warrant made in accordance with article 8(7) and (8) shall be sent to the service policeman who made the application as soon as reasonably practicable after a copy has been transmitted in accordance with sub-paragraph (b).

(3) Where paragraph (1)(b) applies, the service policeman who applied for the warrant may transmit by any means practicable the information contained in the warrant to the service policeman who is to execute the warrant.

(4) Where either sub-paragraph (a) or (b) of paragraph (1) applies—

(a) the requirements of article 9(5)(b) and (c) shall be satisfied if the service policeman executing the warrant—

(i) produces a copy-warrant to the occupier; and

(ii) gives a copy of the copy-warrant to the occupier;

(b) the occupier of the premises entered and searched shall be supplied with a certified copy of the warrant as soon as is reasonably practicable after the search is concluded;

(c) the requirements of article 9(7) shall be satisfied if the service policeman executing the warrant leaves a copy of the copy-warrant in a prominent place on the premises;

(d) the service policeman executing the warrant shall make the endorsement mentioned in article 9(9) on the copy-warrant;

(e) if the warrant has not been executed within the time authorised for its execution, a service policeman shall make an endorsement on the copy-warrant stating that it has not been executed;

(f) the requirements of article 9(10) shall not be satisfied unless the copy-warrant is sent to the judicial officer;

(g) article 9(11) and (12) shall also apply to any copy-warrant returned in accordance with sub-paragraph (f).

(5) In this article, "copy-warrant" means—

(a) where paragraph (1)(a) applies but not paragraph (1)(b), the copy of the warrant transmitted in accordance with paragraph (2)(b) by the judicial officer to the service policeman who made the application; or

(b) where paragraph (1)(b) applies, or where both paragraph (1)(a) and (b) apply, a document containing the information contained in the warrant.

Oaths and affirmations

11.—(1) Before a judicial officer asks any question which a service policeman would be required under article 8(4) to answer on oath, an oath shall be administered to the service policeman.

(2) If—

(a) a service policeman required by virtue of this article to take an oath objects to being sworn, or

(b) it is not reasonably practicable without inconvenience or delay to administer an oath to a service policeman in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation instead of taking an oath.

(3) A person who may be permitted under this article to make his solemn affirmation may also be required to do so.

(4) Any oath or affirmation shall be administered in the form set out in Schedule 2 by the judicial officer or, where the judicial officer so directs, by any other person acting on his behalf.

Search upon arrest

12.—(1) This article shall apply when a person is arrested under any of the services Acts(**a**).

(2) Subject to the following provisions of this article, a service policeman shall have power where this article applies—

(a) to enter and search—

(i) any relevant residential premises other than a locker falling within section 15(1)(c), or

(ii) any vehicle, vessel, aircraft or hovercraft,

in which the arrested person was when arrested or immediately before he was arrested; or

(b) to open and search any locker falling within section 15(1)(c) which the arrested person had open when or immediately before he was arrested;

for evidence relating to the offence for which he has been arrested.

(3) The power to search premises conferred by paragraph (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such evidence.

(4) A service policeman may not search premises in the exercise of the power conferred by paragraph (2) unless he has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph on the premises.

(5) In so far as the power to search conferred by paragraph (2) relates to premises consisting of two or more separate dwellings, it is limited to a power to search—

(a) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and

(b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(6) In this article, "relevant residential premises" means—

(a) service living accommodation(**b**), or

(b) other premises occupied as a residence (alone or with other persons) by—

(i) a person who is subject to service law, or

(ii) a person in relation to whom the power of arrest under any of the services Acts is exercisable only by virtue of section 131 of either of the 1955 Acts or section 51 of the 1957 Act.

Entry and search after arrest

13.—(1) Subject to the following provisions of this article, a service policeman may enter and search any premises occupied or controlled by a person who has been arrested under any of the services Acts and is being held in custody without being charged(**c**), if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates—

(a) to the offence for which the arrested person has been arrested; or

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(**a**) By virtue of section 16(1), "the services Acts" means the 1955 Acts and the 1957 Act.
(**b**) The meaning of "service living accommodation" is set out in section 15.
(**c**) By virtue of section 11(3), "charged" in relation to a person held in custody is to be construed in accordance with section 75(4) of each of the 1955 Acts and section 47A(4) of the 1957 Act.

(b) to some other offence against any provision of the services Acts which is connected with or similar to that offence.

(2) A service policeman may seize and retain anything for which he may search under paragraph (1).

(3) The power to search conferred by paragraph (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to paragraph (5), the powers conferred by this article may not be exercised unless an authorising officer has authorised them in writing.

(5) A service policeman may conduct a search under paragraph (1) without obtaining an authorisation under paragraph (4) if it is likely that, if no search could be carried out before the earliest time by which it would be practicable for him to obtain such an authorisation, the purpose of the search would be frustrated or seriously prejudiced.

(6) If a service policeman conducts a search by virtue of paragraph (5), he shall inform an authorising officer that he has made the search as soon as practicable after he has made it.

(7) An authorising officer who authorises a search, or is informed of a search under paragraph (6), shall make a record in writing—

(a) of the grounds for the search; and

(b) of the nature of the evidence that was sought.

(8) In this article, "authorising officer" means—

(a) a member of the Royal Naval Regulating Branch of the rank of lieutenant or above;

(b) a member of the Royal Marines Police or the Royal Military Police of the rank of captain or above; or

(c) a member of the Royal Air Force Police of the rank of flight lieutenant or above.

General power of seizure

14.—(1) The powers conferred by paragraphs (2), (3) and (4) are exercisable by an authorised person on searchable premises.

(2) The authorised person may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it has been obtained in consequence of the commission of an offence under any of the services Acts; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The authorised person may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it is evidence in relation to an offence which he is investigating or any other offence under any of the services Acts; and

(b) that is it necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The authorised person may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form if he has reasonable grounds for believing—

(a) that—

(i) it is evidence in relation to an offence which he is investigating or any other offence under any of the services Acts; or

(ii) it has been obtained in consequence of the commission of an offence under the services Acts; and

(b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this article are in addition to any power otherwise conferred.

(6) Nothing in this Order is to be taken to authorise the seizure of an item which an authorised person has reasonable grounds for believing to be subject to legal privilege.

(7) In this article—

"authorised person" means—

(a) a service policeman, or

(b) a person who may exercise any power of seizure conferred by or under Part 2;

"searchable premises" means any premises which may be searched in exercise of a power conferred by or under Part 2.

Extension of powers of seizure to computerised information

15.—(1) Every power of seizure which is conferred by an enactment to which this article applies on an authorised person shall be construed as including a power to require any information stored in any electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(2) This article applies—

(a) to section 5;

(b) to section 7;

(c) to article 13; and

(d) to paragraph 13 of Schedule 1.

(3) In this article, "authorised person" has the same meaning as in article 14.

Access and copying

16.—(1) A person who seizes anything in the exercise of a power conferred by or under Part 2 ("an authorised person") shall, if so required by a person showing himself—

(a) to be the occupier of the premises on which it was seized; or

(b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The authorised person shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to paragraph (8), if a request for permission to be granted access to anything which—

(a) has been seized by an authorised person; and

(b) is retained for the purpose of investigating an offence under any of the services Acts,

is made to the investigator by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the investigator shall allow the person who made the request access to it under the supervision of a supervisor.

(4) Subject to paragraph (8), if a request for a photograph or copy of any such thing is made to the investigator by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the investigator shall—

(a) allow the person who made the request access to it under the supervision of a supervisor for the purpose of photographing it or copying it; or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) A person may also photograph or copy, or have photographed or copied, anything which he has power to seize in the exercise of a power conferred by or under Part 2, without a request being made under paragraph (4).

(6) Where anything is photographed or copied under paragraph (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the investigator has reasonable grounds for believing that to do so would prejudice—

(a) the investigation for the purposes of which the thing was seized;

(b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or

(c) any criminal proceedings or any service disciplinary proceedings which may be brought as a result of any such investigation as mentioned in paragraphs (a) or (b).

(9) In this article—

"the investigator" means the person in charge of the investigation;

"a supervisor" means a person authorised by the investigator to supervise access under paragraphs (3) and (4).

Retention

17.—(1) Subject to paragraph (4), anything which has been seized by a person exercising any power of seizure conferred by or under Part 2, including anything taken away by a person following a requirement made by virtue of articles 14 or 15, may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of paragraph (1)—

(a) anything seized for the purposes of an investigation of an offence may be retained, except as provided by paragraph (4)—

(i) for use as evidence in service disciplinary proceedings or at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence under any of the services Acts.

(3) Nothing seized under—

(a) section 54(4)(a) of the 1984 Act(**a**) as applied to investigations of offences conducted under the services Acts or to persons under arrest under any of those Acts by the Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 1997(**b**); or

(b) section 10(10) or (11) on the grounds that the person searched may use it—

(i) to cause physical injury to himself or to any other person, or

(ii) to assist him to escape from lawful custody;

may be retained when the person from whom it was seized is no longer in custody or has been released from custody.

(4) Nothing may be retained for either of the purposes mentioned in paragraph (2)(a) if a photograph or copy would be sufficient for that purpose.

(**a**) By virtue of section 16(1), "the 1984 Act" means the Police and Criminal Evidence Act 1984 (c. 60).
(**b**) S.I. 1997/15.

Ivor Caplin
Parliamentary Under Secretary of State
Ministry of Defence

4th September 2003

SCHEDULE 1

Article 6

SPECIAL PROCEDURE

Making of Orders by Judicial Officers

1. If on an application made by a service policeman a judicial officer is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 5.

2. The first set of access conditions is fulfilled if—

(a) there are reasonable grounds for believing—

(i) that an offence to which section 5 applies has been committed;

(ii) that there is material which consists of special procedure material or includes special procedure material and does not also include excluded material on premises specified in the application;

(iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and

(iv) that the material is likely to be relevant evidence;

(b) other methods of obtaining the material—

(i) have been tried without success; or

(ii) have not been tried because it appeared that they were bound to fail; and

(c) it is in the public interest, having regard—

(i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

3. The second set of access conditions is fulfilled if—

(a) there are reasonable grounds for believing that there is material which consists of or includes excluded material or special procedure material on premises specified in the application;

(b) but for section 9(2) of the 1984 Act a search of the premises for that material could have been authorised by the issue of a warrant to a constable under any of the enactments specified in paragraph 4 in a case in which—

(i) the specified premises were in England; and

(ii) the offence in respect of which the warrant was sought was committed in England; and

(c) the issue of such a warrant would have been appropriate.

4. The enactments referred to in paragraph 3(b) are—

(a) section 9 of the Official Secrets Act 1911(**a**);

(b) section 26 of the Theft Act 1968(**b**); and

(c) section 4 of the Biological Weapons Act 1974(**c**).

5. An order under this paragraph is an order that the person who appears to the judicial officer to be in possession of the material to which the application relates shall—

(**a**) 1 & 2 Geo. 5 c. 28.
(**b**) 1968 c. 60.
(**c**) 1974 c. 6.

(a) produce it to a service policeman for him to take away; or

(b) give a service policeman access to it,

not later than the end of the period of seven days from the date of the order or the end of such longer period as the order may specify.

6. Where the material consists of information contained in a computer—

(a) an order under paragraph 5(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) an order under paragraph 5(b) shall have effect as an order to give a service policeman access to the material in a form in which it is visible and legible.

7. For the purposes of articles 16 and 17 material produced in pursuance of an order under paragraph 5(a) shall be treated as if it were material seized by a service policeman.

Notices of applications for orders

8. An application for an order under paragraph 5 shall be made *inter partes*.

9.—(1) Notice of an application for such an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter or by the recorded delivery service.

(2) For the purposes of this Schedule, the reference to a person's proper address shall be to such address determined in accordance with paragraph 10.

10.—(1) Subject to the following provisions of this paragraph, a reference to a person's proper address is to the address of the unit to which he belongs.

(2) Where a person is on attachment to a unit, a reference to his proper address is to the address of the unit to which he is attached.

(3) In the case of a person who—

(a) is not subject to service law(**a**), or

(b) is subject to service law only by virtue of section 131 of either of the 1955 Acts or section 51 of the 1957 Act,

a reference to his proper address is to his usual or last known place of residence.

11. Where notice of an application for an order under paragraph 5 has been served on a person, he shall not conceal, destroy, alter or dispose of the materials to which the application relates except—

(a) with the leave of a judicial officer; or

(b) with the written permission of a service policeman,

until—

(i) the application is dismissed or abandoned; or

(ii) he has complied with an order under paragraph 5 made on the application.

Issue of warrants by judicial officer

12. If on an application made by a service policeman a judicial officer—

(a) is satisfied—

(i) that either set of access conditions is fulfilled; and

(ii) that any of the further conditions set out in paragraph 14 is also fulfilled; or

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(**a**) See section 16(2) for the interpretation for the purposes of Part 2 of references to persons "subject to service law".

(b) is satisfied—

(i) that the second set of access conditions is fulfilled; and

(ii) that an order under paragraph 5 relating to the material has not been complied with,

he may issue a warrant authorising a service policeman to enter and search the premises.

13. A service policeman may seize and retain anything for which a search has been authorised under paragraph 12.

14. The further conditions mentioned in paragraph 12(a)(ii) are—

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;

(c) that the material contains information which—

(i) is subject to a restriction or obligation such as is mentioned in section 11(2)(b) of the 1984 Act; and

(ii) is likely to be disclosed in breach of it if a warrant is not issued;

(d) that service of notice of an application for an order under paragraph 5 may seriously prejudice the investigation.

SCHEDULE 2

Article 11

OATHS AND AFFIRMATIONS

1. The service policeman taking the oath shall hold the New Testament, or if a Jew the Old Testament, in his uplifted hand and shall say, or repeat, after the person administering it, the oath provided in paragraph 5 of this Schedule.

2. If the service policeman to whom an oath is administered desires to swear in the form and manner in which an oath is usually administered in Scotland, he may do so with uplifted hand and saying, or repeating, after the person administering it, the Scottish oath provided in paragraph 6 of this Schedule.

3. If the form of oath provided in this Schedule is not appropriate to the religious beliefs of the service policeman taking the oath, an oath may be administered in such form and manner as the service policeman declares to be binding on his conscience in accordance with his religious beliefs.

4. A service policeman making a solemn affirmation instead of taking an oath shall say, or repeat, after the person administering it, the affirmation provided in paragraph 7 of this Schedule.

5. The oath shall be sworn in the following form:

"I swear by Almighty God that I shall truthfully answer any questions I am asked."

6. The form of Scottish oath shall be the same as the form of oath set out above except that for the words "I swear by Almighty God" there shall be substituted the words "I swear by Almighty God and as I shall answer to God at the Great Day of Judgment".

7. The form of affirmation shall be the same as the form of oath set out above except that for the words "I swear by Almighty God" there shall be substituted the words "I *(state name)* solemnly, sincerely and truly declare and affirm".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order deals primarily with the powers of service police under Part 2 of the Armed Forces Act 2001 ("the Act") relating to persons subject to service law. The main provisions are, subject to modifications, equivalent to certain provisions of the Police and Criminal Evidence Act 1984 ("PACE") relating to powers of entry, search and seizure.

Articles 3 and 4 make provision which, subject to modifications, is equivalent to section 2 and 3 of PACE. Article 3 makes provision as to the information that a service policeman must give to the person whom he proposes to search, or the person in charge of the vehicle which he proposes to search, under section 2 of the Act. Article 3 also provides for the information that a service policeman must leave in an unattended vehicle which he has searched under section 2 of the Act. Article 4 concerns the records that must be made after a search under section 2 of the Act has been carried out.

Under article 5, articles 3 and 4 apply to searches carried out by persons authorised to do so under section 4 of the Act as they apply to such searches carried out by service policemen under section 2 of the Act.

Article 6 and Schedule 1 make provision which, subject to modifications, is equivalent to Schedule 1 to PACE. They deal with access to "excluded material" and "special procedure material" as defined in PACE.

Article 7 enables a service policemen who is making an application to a judicial officer for a search warrant under section 5 of the Act or under Schedule 1 to this Order, or for an order under Schedule 1, to do so by live television link or similar arrangements.

Articles 8 and 9 make provision which, subject to modifications, is equivalent to sections 15 and 16 of PACE. There are further modifications in article 10. Those articles relate to the application for and execution of search warrants issued under section 5 of the Act or Schedule 1 to this Order.

Article 11 and Schedule 2 make provision as to the oath to be administered to a service policeman when he is required under article 8(4) to answer questions on oath.

Article 12 makes provision which, subject to modifications, is equivalent to section 32 of PACE in so far as that section relates to the entry and search without a warrant of premises in which a person was when or immediately before he was arrested. Article 13 makes provision which, subject to modifications, is equivalent to section 18 of PACE. That article relates to the entry and search without a warrant of premises occupied by an arrested person.

Articles 14 to 17 make provision which, subject to modifications, is equivalent to sections 19 to 21 and 22(1) to (4) of PACE. Those articles relate to the general power of seizure from searched premises, the powers of seizure in respect of computerised information, and access to, copying of and retention of anything seized under the provisions of this Order or Part 2 of the Act.

STATUTORY INSTRUMENTS

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