Draft Order laid before Parliament under section 373(3) of the Armed Forces Act 2006 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

DEFENCE

The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009

Made - - - -	***
Coming into force - -	*31st October 2009*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 74, 81, 84(2)(b), 85, 86, 89(2), 92, 93, 323 and 380 of the Armed Forces Act 2006(**a**):

In accordance with section 373(3) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

Citation and commencement

1. This Order may be cited as the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 and shall come into force on the 31st October 2009.

Interpretation

2. In this Order—

"the Act" means the Armed Forces Act 2006;

"the appropriate person" means—

(a) the person to be searched; or

(b) the person in charge of a vehicle that it is proposed to search;

"authorising service policeman" means a service policeman of or above the rank of naval lieutenant, military or marine captain or flight lieutenant;

"documents" includes information recorded in any form;

"excluded material" has the meaning given in section 11 of PACE;

"items subject to legal privilege" has the meaning given in section 10 of PACE, and "legal privilege" shall be construed accordingly;

"premises" has the meaning given to it in section 96(3) of the Act;

"relevant offence" has the meaning given in section 84(2) of the Act read with article 33 and Schedule 3;

"relevant residential premises" has the meaning given to it in section 86(3) of the Act;

(**a**) 2006 c. 52.

"seized property", in relation to any exercise of a power of seizure, means anything seized in exercise of that power;

"serious service offence" means—

(a) an offence under section 42 of the Act for which the corresponding offence under the law of England and Wales is an indictable offence;

(b) any other service offence which may not be dealt with at a summary hearing by a commanding officer;

(c) an offence under section 11(1) of the Act (using violence against a superior officer);

(d) an offence under section 18(3) or (4) of the Act (offences in relation to official documents and records with intent to deceive);

(e) an offence under section 24(1) of the Act (intentional or reckless damage to or loss of public or service property);

(f) an offence under section 39 of the Act of attempting to commit an offence within (c), (d) or (e);

(g) an offence under section 40 of the Act of encouraging or assisting the commission of an offence within (c), (d) or (e);

"service proceedings" means—

(h) a summary hearing under the Act by a commanding officer; or

(i) proceedings before the Summary Appeal Court, the Court Martial or the Service Civilian Court;

"special procedure material" has the meaning given in section 14 of PACE; and

"unit" includes a naval ship or establishment and an air force station.

PART 1

Searches

Stop and search by a service policeman

3.—(1) A service policeman who detains a person or vehicle in exercise of the power conferred by section 75 of the Act need not conduct a search if it appears to him subsequently 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 75, it shall be his duty 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, rank or rate, 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) The 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 referred to in article 4(1).

(5) On completing a search of an unattended vehicle or anything in or on such a vehicle in exercise of the power conferred by section 75 a service policeman shall leave a notice—

(a) stating that he has searched it;

(b) giving his name, rank or rate, and the name, address and telephone number 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, in which case he shall attach the notice to the outside of the vehicle.

(7) Section 75 shall not give a service policeman who is not in uniform a power to stop a vehicle.

Record of search by service policeman

4.—(1) Where a service policeman has carried out a search in the exercise of the power conferred by section 75 of the Act, 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 the 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.

Searches under section 76 of the Act

5.—(1) This article applies where under section 76(1) of the Act an officer gives a person (referred to below in this article as "the relevant person") an order or an authorisation.

(2) If the relevant person is ordered or authorised to conduct a search, other than a search of an unattended vehicle, it shall be his duty to take reasonable steps before he commences the search—

(a) to notify the appropriate person of—

(i) his name, rank or rate and the name of his unit;

(ii) his authority for conducting the search;

(iii) the object of the proposed search; and

(iv) the effect of paragraphs (11) and (12); and

(b) to show his service identity card to the appropriate person.

(3) The relevant person need not bring the effect of paragraphs (11) and (12) to the attention of the appropriate person if it appears to the relevant person that it will not be practicable to make the record referred to in paragraph (6).

(4) On completing a search of an unattended vehicle or anything in or on such a vehicle, the relevant person shall leave a notice—

(a) stating that he has searched it;

(b) giving his name, rank or rate and the name, address and telephone number of his unit; and

(c) stating that the appropriate person is entitled to a copy of the record of search to which paragraph (10) refers.

(5) The relevant person shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle, in which case he shall attach the notice to the outside of the vehicle.

(6) Where the relevant person has carried out a search pursuant to the order or authorisation under section 76 of the Act, he shall make a record of it in writing unless it is not practicable to do so.

(7) If—

(a) the relevant person is required by paragraph (6) 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.

(8) The record of a search of a person shall include—

(a) a note of his name if the relevant person knows it; or

(b) if the relevant person does not know the name of the person whom he has searched, the record of the search shall include a note otherwise describing that person.

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

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

(a) shall state—

(i) the object of the search;

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

(iii) the place where it was made;

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

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

(b) shall identify the relevant person making it.

(11) If the relevant person 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 (13).

(12) 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 (12), and

(b) the relevant person who conducted the search made a record of it,

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

(13) The period mentioned in paragraphs (11) and (12) is the period of 12 months beginning with the date on which the search was made.

Access to excluded and special procedure material

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

Application for warrants or orders by live links

7. A service policeman may make—

(a) an application under Schedule 1, or

(b) an application for a warrant under section 83 of the Act (warrant authorising entry and search),

using live television or telephone links or 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 83 of the Act or under Schedule 1 of warrants to enter and search premises.

(2) An entry on or search of premises under a warrant is unlawful unless it complies with this article and articles 9 and 10.

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

(a) to state—

(i) the ground on which he makes the application;

(ii) the enactment under which the warrant would be issued; and

(iii) if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he applies for such a warrant, and whether he seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;

(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.

(4) The duty under paragraph (3)(b) is a duty to specify each set of premises which it is desired to enter and search.

(5) 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 or rate and unit of the person who applies for it; and

(b) set out the information referred to in paragraph (3)(a) to (c).

(6) Subject to article 11, the service policeman shall answer on oath any question that the judge advocate hearing the application asks him.

(7) A warrant shall authorise an entry on one occasion only unless it specifies that it authorises multiple entries.

(8) If a warrant specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

(9) A warrant—

(a) shall specify—

(i) the name, rank or rate 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) each set of premises to be searched; and

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

(10) Two copies shall be made of a warrant which does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.

(11) The copies shall be clearly certified as copies by the judge advocate who issues the warrant.

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) A person so authorised has the same powers as the service policeman whom he accompanies in respect of—

(a) the execution of the warrant, and

(b) the seizure of anything to which the warrant relates,

but he may exercise those powers only in the company, and under the supervision, of a service policeman.

(4) Entry and search under a warrant must be within three months from the date of its issue.

(5) No premises may be entered or searched for the second or any subsequent time under a warrant which provides for multiple entries unless an authorising service policeman has in writing authorised that entry to those premises.

(6) 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.

(7) 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.

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

(9) 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.

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

(11) 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.

(12) A warrant shall be returned to the Judge Advocate General—

(a) when, within the period prescribed in paragraph (4), it has been executed; or

(b) when the period prescribed in paragraph (4) has expired, if the warrant is not executed within that period.

(13) A warrant which is returned under paragraph (12) shall be retained by the Judge Advocate General for at least 2 years from its return.

(14) If during the period for which a warrant is to be retained the occupier of 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 or telephone links or similar arrangements for a warrant to enter and search premises, or

(b) paragraph (1)(a) does not apply, but the service policeman who is to execute 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) in addition to the requirements of article 8(9), the warrant shall specify that the application for the warrant was made by live television or telephone links or similar arrangements;

(b) the judge advocate shall transmit a copy of the warrant by fax or other means of electronic communication to the service policeman who made the application;

(c) the judge advocate shall retain the warrant;

(d) the certified copies of the warrant made in accordance with article 8(10) and (11) 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 practicable means the information contained in the warrant to the service policeman who is to execute the warrant.

(4) Where paragraph (1)(a) applies—

(a) the requirements of article 9(7)(b) and (c) shall be satisfied if the service policeman executing the warrant—

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

(ii) supplies another copy of the 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 service policeman executing the warrant shall make the endorsement mentioned in article 9(11) on the copy referred to in sub-paragraph (a)(i);

(d) if the warrant has not been executed within the time authorised for its execution, a service policeman shall make an endorsement on the copy referred to in sub-paragraph (a)(i), stating that it has not been executed;

(e) the requirements of article 9(12) shall not be satisfied unless the copy referred to in sub-paragraph (a)(i) is sent to the Judge Advocate General;

(f) article 9(13) and (14) shall also apply to the copy sent in accordance with sub-paragraph (e).

(5) Where paragraph (1)(b) applies—

(a) the requirements of article 9(7)(b) and (c) shall be satisfied if the service policeman executing the warrant—

(i) produces to the occupier a document stating the information contained in the warrant; and

(ii) supplies another copy of the document 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(9) shall be satisfied if the service policeman executing the warrant leaves a copy of the document referred to in sub-paragraph (a)(i) in a prominent place on the premises;

(d) the service policeman executing the warrant shall make the endorsement mentioned in article 9(11) on the document referred to in sub-paragraph (a)(i);

(e) if the warrant has not been executed within the time authorised for its execution, a service policeman shall make an endorsement on the document referred to in sub-paragraph (a)(i), stating that it has not been executed;

(f) the requirements of article 9(12) shall not be satisfied unless the document referred to in sub-paragraph (a)(i) is sent to the Judge Advocate General;

(g) article 9(13) and (14) shall also apply to the document sent in accordance with sub-paragraph (f).

Oaths and affirmations

11.—(1) Before a judge advocate asks any question which a service policeman would be required under article 8(6) to answer on oath, an oath shall be administered to the service policeman.

(2) If—

(a) a service policeman required under article 8(6) to answer on 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 required to make a solemn affirmation instead of taking an oath.

(3) An oath or affirmation required to be administered under this Order shall be administered in the form and manner set out in Schedule 2 by the judge advocate or by another person acting on his behalf.

Search of premises where person arrested

12.—(1) This article shall apply in any case where a person is arrested under section 67 of the Act for a serious service offence.

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

(a) to enter and search—

(i) any relevant residential premises, or

(ii) any vehicle,

in which the arrested person was when arrested or immediately before he was arrested, and

(b) to open and search any locker falling within section 96(1)(c) of the Act 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 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 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.

Entry and search after arrest

13.—(1) This article applies to any premises occupied or controlled by a person who has been arrested under section 67 of the Act for a serious service offence and is being held in service custody without being charged**.**

(2) A service policeman may, subject to the following provisions of this article, enter and search premises to which this article applies if he has reasonable grounds for suspecting that there is on the premises relevant evidence.

(3) Evidence is relevant for the purposes of this article, if it is not subject to legal privilege and—

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

(b) it relates to some other serious service offence which is connected with or similar to that offence.

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

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

(6) Subject to paragraph (7), the powers conferred by this article may not be exercised unless an authorising service policeman has authorised them in writing.

(7) A service policeman may conduct a search under paragraph (2) without obtaining a written authorisation under paragraph (6) if—

(a) he has reasonable grounds for believing that 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; and

(b) he informs an authorising service policeman that he has made the search as soon as practicable after he has made it.

(8) An authorising service policeman who—

(a) authorises a search, or

(b) under paragraph (7)(b) is informed of a search,

shall make a written record of the grounds of the search and the nature of the evidence that was sought.

PART 2

Seizure, copying and retention

General power of seizure

14.—(1) The powers conferred by paragraphs (2), (3) and (4) are exercisable by a service policeman who, in connection with the investigation of a service offence, is lawfully on premises which are searchable by virtue of Part 3 of the Act.

(2) The service policeman 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 a service offence; and

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

(3) The service policeman 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 service offence; and

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

(4) The service policeman 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 service offence; or

(ii) it has been obtained in consequence of the commission of a service offence; 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) Subject to article 19(5) and 20(5), nothing in this Order is to be taken to authorise the seizure of an item which the service policeman has reasonable grounds for believing is subject to legal privilege.

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 a person who has entered premises in the exercise of a power conferred by or under Part 3 of the Act 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 to—

(a) sections 83(3), 87(4) and 88(4) of the Act;

(b) article 13(4); and

(c) paragraph 13 of Schedule 1.

Access and copying

16.—(1) A person who seizes anything in the exercise of a power conferred by or under Part 3 of the Act (an "authorised person") shall, if so requested 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 a service offence,

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 person authorised for that purpose by the investigator.

(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 person authorised for that purpose by the investigator; 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 exercise of a power conferred by or under Part 3 of the Act, 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 article to grant access to, or to supply a photograph or copy of, anything if the person in charge of the investigation for the purposes of which the thing was seized has reasonable grounds for believing that to do so would prejudice—

(a) that investigation;

(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 proceedings which may be brought as a result of any investigation within sub-paragraph (a) or (b);

(9) In paragraph (3) "the investigator" means the person in charge of the investigation.

Retention

17.—(1) Subject to paragraph (4), anything which has been seized by a person exercising a power of seizure conferred by or under Part 3 of the Act or taken away by a person following a requirement made by virtue of article 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 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 a service offence.

(3) This paragraph relates to the powers of seizure under—

(a) provision equivalent, subject to modifications, section 54(4)(a) of PACE as applied to persons under arrest or in custody under the Act by virtue of an Order made under section 113(1) of PACE; or

(b) section 73 of the Act.

(4) Nothing seized under a power of seizure to which paragraph (3) relates on the grounds that the person searched may use it—

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

(b) to assist him to escape from service custody,

may be retained when the person from whom it was seized is no longer in service custody.

(5) 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.

(6) The reference in paragraph (1) to anything seized by a person includes anything seized by a person authorised under article 9(2) to accompany a service policeman executing a warrant.

PART 3

Additional powers of seizure

Interpretation

18.—(1) In this Part—

(a) in relation to a relevant time, references to something for which the person making the seizure had power to search shall be construed in accordance with paragraphs (2) to (5);

(b) "relevant time" means a time when seized property is in any person's possession in consequence of a seizure; and

(c) "return", in relation to seized property, shall be construed in accordance with article 27, and cognate expressions shall be construed accordingly.

(2) Where the seizure was made on the occasion of a search carried out on the authority of a warrant, a reference mentioned in paragraph (1)(a) shall be construed as including anything of the description of things the presence or suspected presence of which provided grounds for the issue of the warrant.

(3) Where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which on that occasion was believed by him to be, or appeared to him to be, of a particular description, a reference mentioned in paragraph (1)(a) shall be construed as including—

(a) anything which at a relevant time is believed by the person in possession of the seized property, or, as the case may be, appears to him, to be of that description; and

(b) anything which is in fact of that description.

(4) Where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which there were on that occasion reasonable grounds for believing was of a particular description, a reference mentioned in paragraph (1)(a) shall be construed as including—

(a) anything which there is at a relevant time reasonable grounds for believing is of that description; and

(b) anything which is in fact of that description.

(5) Where the property was seized in the course of a search to which neither paragraph (3) nor paragraph (4) applies, a reference mentioned in paragraph (1)(a) shall be construed as including anything which is of a description of things which, on the occasion of the search, it would have been lawful for the person carrying it out to seize otherwise than under articles 19 and 20.

(6) References in this Part to any item or material being comprised in other property include references to its being mixed with that other property.

(7) For the purposes of this Part and subject to regulation 27(5), the occupier of premises which are service living accommodation is—

(a) if the premises are a building or part of a building within section 96(1)(a) of the Act, the person subject to service law for whose use (whether alone or with members of his family) as living accommodation or as a garage the building or part of a building is provided;

(b) if the premises are a room, structure or area within section 96(1)(b) of the Act, any person subject to service law for whom the premises are used to provide sleeping accommodation; and

(c) if the premises are a locker within section 96(1)(c) of the Act, the person subject to service law for whose personal use the locker is provided.

Additional powers of seizure from premises

19.—(1) This paragraph applies where—

(a) a person is lawfully on any premises other than by virtue of an authorisation under section 87 or 88 of the Act and finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises;

(b) a power of seizure to which this article applies or the power conferred by paragraph (3) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and

(c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises—

(i) whether what he has found is something that he is entitled to seize; or

(ii) the extent to which what he has found contains something that he is entitled to seize.

(2) Where paragraph (1) applies, the person's powers of seizure shall include power under this article to seize so much of what he has found as it is necessary to remove from the premises to enable it to be determined—

(a) whether what he has found is something that he is entitled to seize; or

(b) the extent to which what he has found contains something that he is entitled to seize.

(3) Where—

(a) a person who is lawfully on any premises other than by virtue of an authorisation under section 87 or 88 of the Act finds anything on those premises ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this paragraph) no power to seize,

(b) the power under which that person would have power to seize the seizable property is a power to which this article applies, and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person's powers of seizure shall include power under this article to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(4) The factors to be taken into account in considering, for the purposes of this article, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, shall be confined to the following—

(a) how long it would take to carry out the determination or separation on those premises;

(b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;

(c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation, whether the separation—

(i) would be likely, or

(ii) if carried out by the only means that are reasonably practicable on those premises, would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(5) Article 14(6) shall not apply to the power of seizure conferred by paragraph (3).

(6) This article applies to each of the powers of seizure conferred by or under Chapter 1 or 3 of Part 3 of the Act, except sections 87 and 88 of the Act.

Additional powers of seizure from the person

20.—(1) This paragraph applies where—

(a) a service policeman carrying out a lawful search of any person finds something that he has reasonable grounds for believing may be or may contain something for which he is authorised to search;

(b) a power of seizure conferred by section 73 of the Act or paragraph (3) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and

(c) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search—

(i) whether what he has found is something that he is entitled to seize; or

(ii) the extent to which what he has found contains something that he is entitled to seize.

(2) Where paragraph (1) applies, the service policeman's powers of seizure shall include power under this article to seize so much of what he has found as it is necessary to remove from that place to enable it to be determined—

(a) whether what he has found is something that he is entitled to seize; or

(b) the extent to which what he has found contains something that he is entitled to seize.

(3) Where—

(a) a service policeman carrying out a lawful search of any person finds something ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this paragraph) no power to seize,

(b) the power under which that service policeman would have power to seize the seizable property is a power under section 73 of the Act, and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,

that service policeman's powers of seizure shall include power under this article to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(4) The factors to be taken into account in considering, for the purposes of this article, whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, shall be confined to the following—

(a) how long it would take to carry out the determination or separation at that time and place;

(b) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;

(c) whether the determination or separation would (or would if carried out at that time or place) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation, whether the separation—

(i) would be likely, or

(ii) if carried out by the only means that are reasonably practicable at that time and place, would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(5) Article 14(6) shall not apply to the power of seizure conferred by paragraph (3).

Notice of exercise of power under article 19 or 20

21.—(1) Where a person exercises a power of seizure conferred by article 19, it shall (subject to paragraphs (2) and (3)) be his duty, on doing so, to give to the occupier of the premises a written notice—

(a) specifying what has been seized in reliance on the powers conferred by that article;

(b) specifying the grounds on which those powers have been exercised;

(c) setting out the effect of articles 28 to 30;

(d) specifying the name and address of the person to whom notice of an application under article 28(2) for the return of any of the seized property must be given; and

(e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of article 22(2).

(2) Where it appears to the person exercising on any premises a power of seizure conferred by article 19—

(a) that the occupier of the premises is not present at the time of the exercise of the power, but

(b) that there is some other person present who is in charge of the premises,

paragraph (1) shall have effect as if it required the notice under that paragraph to be given to that other person.

(3) Where it appears to the person exercising a power of seizure conferred by article 19 that there is no one present to whom he may give a notice for the purposes of complying with paragraph (1), he shall, before leaving the premises, instead of complying with that paragraph, attach a notice such as is mentioned in that paragraph in a prominent place to the premises.

(4) Where a person exercises a power of seizure conferred by article 20 it shall be his duty, on doing so, to give a written notice to the person from whom the seizure is made—

(a) specifying what has been seized in reliance on the powers conferred by that article;

(b) specifying the grounds on which those powers have been exercised;

(c) setting out the effect of articles 28 to 30;

(d) specifying the name and address of the person to whom notice of an application under article 28(2) for the return of any of the seized property must be given; and

(e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of article 22(2).

Examination and return of property seized under article 19 or 20

22.—(1) This article applies where anything has been seized under a power conferred by article 19 or 20.

(2) It shall be the duty of the person for the time being in possession of the seized property in consequence of the exercise of that power to secure that there are arrangements in force which, subject to article 30, ensure—

(a) that an initial examination of the property is carried out by a service policeman as soon as reasonably practicable after the seizure;

(b) that that examination is confined to whatever is necessary for determining how much of the property falls within paragraph (3);

(c) that anything which is found, on that examination, not to fall within paragraph (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed; and

(d) that, until the initial examination of all the seized property has been completed and anything which does not fall within paragraph (3) has been returned, the seized property is kept separate from anything seized under any other power.

(3) The seized property falls within this paragraph to the extent only—

(a) that it is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by article 23;

(b) that it is property the retention of which is authorised by article 25; or

(c) that it is something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within sub-paragraph (a) or (b).

(4) In determining for the purposes of this article the earliest practicable time for the carrying out of an initial examination of the seized property, due regard shall be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if he chooses) of being represented at the examination.

(5) In this article, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful.

Obligation to return items subject to legal privilege

23.—(1) This paragraph applies where, at any time after a seizure of anything has been made in exercise of a power of seizure to which this article applies, it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—

(a) is an item subject to legal privilege; or

(b) has such an item comprised in it.

(2) Where paragraph (1) applies, it shall be the duty of the person for the time being having possession of the seized property to secure that the item is returned as soon as reasonably practicable after the seizure, unless the item—

(a) was seized in exercise of a power other than the power under section 76(1)(c), section 87(4) or section 88(4); and

(b) is comprised in property which—

(i) has been lawfully seized; and

(ii) is property falling within paragraph (3).

(3) Property in which an item subject to legal privilege is comprised falls within this paragraph if—

(a) the whole or a part of the rest of the property is property falling within paragraph (4) or property the retention of which is authorised by article 25; and

(b) in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful.

(4) Property falls within this paragraph to the extent that it is property for which the person seizing it had power to search when he made the seizure, but is not property which is required to be returned under this article or article 24.

(5) This article applies to each of the powers of seizure conferred by Part 3 of the Act or by this Order.

Obligation to return excluded and special procedure material

24.—(1) This paragraph applies where, at any time after a seizure of anything has been made pursuant to a warrant granted under section 83 of the Act—

(a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—

(i) is excluded material or special procedure material; or

(ii) has any excluded material or special procedure material comprised in it;

(b) its retention is not authorised by article 25; and

(c) in a case where the material is comprised in something else which has been lawfully seized, it is not comprised in property falling within paragraph (3) or (4).

(2) Where paragraph (1) applies, it shall be the duty of the person for the time being having possession of the seized property to secure that the item is returned as soon as reasonably practicable after the seizure.

(3) Property in which any excluded material or special procedure material is comprised falls within this paragraph if—

(a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by this article or article 23; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(4) Property in which any excluded material or special procedure material is comprised falls within this paragraph if—

(a) the whole or a part of the rest of the property is property the retention of which is authorised by article 25; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

Authorised retention of property

25.—(1) For the purpose of articles 22 to 24, the retention of property seized is authorised by this article if the property falls within paragraph (2) or (3).

(2) Property falls within this paragraph to the extent that there are reasonable grounds for believing—

(a) that it is property obtained in consequence of the commission of a service offence; and

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

(3) Property falls within this paragraph to the extent that there are reasonable grounds for believing—

(a) that it is evidence in relation to any service offence; and

(b) that it is necessary for it to be retained in order to prevent its being concealed, lost, altered or destroyed.

(4) Nothing in this article authorises the retention (except in pursuance of article 23(3)) of anything at any time when its return is required by article 23.

Application of article 17 to property seized under this Part

26.—(1) Article 17 shall apply in relation to any property seized in exercise of a power conferred by article 19 or 20 as if the property had been seized under the power of seizure by reference to which the power under article 19 or 20 was exercised in relation to that property.

(2) Nothing in any of articles 22 to 25 authorises the retention of any property at any time when its retention would not (apart from the provisions of this Part) be authorised by article 17.

(3) Nothing in article 17 authorises the retention of anything after an obligation to return it has arisen under this Part.

Person to whom seized property is to be returned

27.—(1) Where—

(a) anything has been seized in exercise of any power of seizure conferred by Part 3 of the Act or under this Order, and

(b) there is an obligation under this Part for the whole or any part of the seized property to be returned,

the obligation to return it shall (subject to the following provisions of this article) be an obligation to return it to the person from whom it was seized.

(2) Where—

(a) any person is obliged under this Part to return anything that has been seized to the person from whom it was seized, and

(b) the person under that obligation is satisfied that some other person has a better right to that thing than the person from whom it was seized,

his duty to return it shall, instead, be a duty to return it to that other person or, as the case may be, to the person appearing to him to have the best right to the thing in question.

(3) Where different persons claim to be entitled to the return of anything that is required to be returned under this Part, that thing may be retained for as long as is reasonably necessary for the determination in accordance with paragraph (2) of the person to whom it must be returned.

(4) References in this Part to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing's having been found on any premises, are references to the occupier of the premises at the time of the seizure.

(5) References in this article to the occupier of any premises at the time of a seizure, in relation to a case in which—

(a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises, and

(b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,

are references to that person.

Application to a judge advocate

28.—(1) This article applies where anything has been seized in exercise, or purported exercise, of a relevant power of seizure.

(2) Any person with a relevant interest in the seized property may apply to a judge advocate, on one or more of the grounds mentioned in paragraph (3), for the return of the whole or a part of the seized property.

(3) Those grounds are—

(a) that there was no power to make the seizure;

(b) that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within article 23(3);

(c) that the seized property is or contains any excluded material or special procedure material which—

(i) has been seized under a power to which article 24 applies;

(ii) is not comprised in property falling within article 24(3) or (4); and

(iii) is not property the retention of which is authorised by article 25; and

(d) that the seized property is or contains something seized under article 19 or 20 which does not fall within article 22(3).

(4) Subject to paragraph (6), the judge advocate, on an application under paragraph (2), shall—

(a) if satisfied as to any of the matters mentioned in paragraph (3), order the return of so much of the seized property as is the property in relation to which the judge advocate is so satisfied; and

(b) to the extent that the judge advocate is not so satisfied, dismiss the application.

(5) The judge advocate—

(a) on an application under paragraph (2),

(b) on an application made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure, or

(c) on an application made—

(i) by a person with a relevant interest in anything seized under articles 19 or 20, and

(ii) on the grounds that the requirements of article 22(2) have not been or are not being complied with,

may give such directions as the judge advocate thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.

(6) On any application under this article, the judge advocate may authorise the retention of any property which—

(a) has been seized in exercise, or purported exercise, of a relevant power of seizure, and

(b) would otherwise fall to be returned,

if the judge advocate is satisfied that the retention of the property is justified on grounds falling within paragraph (7).

(7) Those grounds are that (if the property were returned) it would immediately become appropriate—

(a) to issue, on the application of the person who is in possession of the property at the time of the application under this article, a warrant in pursuance of which, or of the exercise of which, it would be lawful to seize the property; or

(b) to make an order under paragraph 5 of Schedule 1 under which the property would fall to be produced to the person mentioned in sub-paragraph (a).

(8) This paragraph applies where any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts ("part A" and "part B") comprised in it such that—

(a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in paragraph (7) in relation to part A;

(b) it would (or would but for the facts mentioned in sub-paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B; and

(c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question.

(9) If paragraph (8) applies, the facts mentioned in paragraph (8)(a) shall not be taken into account by the judge advocate in deciding whether the retention of the property is justified on grounds falling within paragraph (7).

(10) The relevant powers of seizure for the purposes of this article are the powers of seizure conferred by Part 3 of the Act or by this Order, except the powers conferred by section 87(4) and 88(4) of the Act.

(11) References in this article to a person with a relevant interest in seized property are references to—

(a) the person from whom it was seized;

(b) any person with an interest in the property; or

(c) any person, not falling within sub-paragraph (a) or (b), who had custody or control of the property immediately before the seizure.

(12) For the purposes of paragraph (11)(b), the persons who have an interest in seized property shall, in the case of property which is or contains an item subject to legal privilege, be taken to include the person in whose favour that privilege is conferred.

Cases where duty to secure arises

29.—(1) Where property has been seized in exercise, or purported exercise, of any power of seizure conferred by article 19 or 20, a duty to secure arises under article 30 in relation to the seized property if—

(a) a person entitled to do so makes an application under article 28 for the return of the property;

(b) at least one of the conditions set out in paragraphs (2) and (3) is satisfied; and

(c) notice of the application is given to a suitable person.

(2) The first condition is that the application is made on the grounds that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within article 23(3).

(3) The second condition is that—

(a) the seized property was seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers specified in paragraph (4); and

(b) the application—

(i) is made on the ground that the seized property is or contains something which does not fall within article 22(3); and

(ii) states that the seized property is or contains special procedure material or excluded material.

(4) The powers mentioned in paragraph (3) are—

(a) the powers of seizure under sections 73 and 83 of the Act;

(b) the powers of seizure conferred by Parts 1 and 2 of this Order except the power under article 15 in so far as it relates to sections 87 and 88 of the Act.

(5) In this article "a suitable person" means any one of the following—

(a) the person who made the seizure;

(b) the person for the time being having possession, in consequence of the seizure, of the seized property; or

(c) the person named for the purposes of paragraph (1)(d) or (4)(d) of article 21 in any notice given under that article with respect to the seizure.

The duty to secure

30.—(1) The duty to secure that arises under this article is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to secure that arrangements are in force that ensure that the seized property (without being returned) is not, at any time after the giving of the notice of the application under article 29(1), either—

(a) examined or copied, or

(b) put to any use to which its seizure would, apart from this paragraph, entitle it to be put,

except with the consent of the applicant or in accordance with the directions of the judge advocate.

(2) Paragraph (1) shall not have effect in relation to any time after the withdrawal of the application to which the notice relates.

(3) Nothing in any arrangements for the purposes of this article shall be taken to prevent the giving of a notice under section 49 of the Regulation of Investigatory Powers Act 2000(**a**) (notices for the disclosure of material protected by encryption etc) in respect of any information contained in the seized material; but paragraph (1) shall apply to anything disclosed for the purpose of complying with such a notice as it applies to the seized material in which the information in question is contained.

Use of inextricably linked property

31.—(1) This article applies to inextricably linked property, other than property which is for the time being required to be secured in pursuance of article 30, if it has been seized under any power of seizure conferred by or under Chapter 1 or 3 of the Act, except sections 87 and 88 of the Act.

(2) Subject to paragraph (3), it shall be the duty of the person for the time being having possession, in consequence of the seizure, of the inextricably linked property to ensure that arrangements are in force which secure that that property (without being returned) is not at any time, except with the consent of the person from whom it was seized, either—

(a) examined or copied; or

(b) put to any other use.

(3) Paragraph (2) does not require that arrangements under that paragraph should prevent inextricably linked property from being put to any use falling within paragraph (4).

(4) A use falls within this paragraph to the extent that it is use which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.

(5) Property is inextricably linked property for the purposes of this article if it falls within any of paragraphs (6) to (8).

(6) Property falls within this paragraph if—

(a) it has been seized under a power conferred by article 19 or 20; and

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(**a**) 2000 c. 23.

(b) but for paragraph (3)(c) of article 22, arrangements under paragraph (2) of that article in relation to the property would be required to ensure the return of the property as mentioned in paragraph (2)(c) of that article.

(7) Property falls within this paragraph if—

(a) it has been seized under a power to which article 23 applies; and

(b) but for sub-paragraph (b) of paragraph (2) of that article, the person for the time being having possession of the property would be under a duty to secure its return as mentioned in that paragraph.

(8) Property falls within this paragraph if—

(a) it has been seized pursuant to a warrant under section 83 of the Act; and

(b) but for article 24(1)(c), the person for the time being having possession of the property would be under a duty to secure its return as mentioned in article 24(2).

Copies

32.—(1) Subject to paragraph (2)—

(a) in this Part, "seize" includes "take a copy of", and cognate expressions shall be construed accordingly;

(b) this Part shall apply as if any copy taken under any power to which any provision of this Part applies were the original of that of which it is a copy; and

(c) for the purposes of this Part, except articles 19 and 20, the powers mentioned in paragraph (2) (which are powers to obtain hard copies etc of information which is stored in electronic form) shall be treated as powers of seizure, and references to seizure and to seized property shall be construed accordingly.

(2) The powers mentioned in paragraph (1)(c) are the powers conferred by articles 14(4) and 15.

(3) Paragraph (1) does not apply to article 26.

PART 4

Relevant offences and reviews by judge advocates

Relevant offences

33. For the purposes of section 84(2) of the Act, the service offences listed in Schedule 3 shall be relevant offences.

Review by a judge advocate of searches and seizures under section 87 or 88 of the Act

34.—(1) This article applies to a review by a judge advocate under section 89 of the Act.

(2) The judge advocate shall adopt such procedures at the review as he sees fit.

(3) The judge advocate shall, if representations are made by an affected person, take those representations into account.

(4) If the judge advocate is satisfied that any part of, or the whole of, the seized property is subject to legal privilege, he shall order the return or disposal of that part or the whole of it (as the case may be).

(5) If the judge advocate is satisfied as to any of the grounds mentioned in paragraph (7), (8) or (9) in relation to any part of, or to the whole of, the seized property, he shall order the return or disposal of that part, or of the whole, of the seized property (as the case may be).

(6) Paragraph (5) does not apply where the judge advocate is satisfied that it would be in the interests of justice to permit retention of that part or the whole of the property.

(7) The grounds referred to in paragraph (5) by reference to this paragraph are—

(a) that the authorising officer did not have reasonable grounds for believing that a relevant offence had been committed;

(b) in respect of material seized in exercise or purported exercise of the powers in sections 87(4) or 88(4) of the Act, that the material—

(i) is not, by itself or together with other material, of substantial value to the investigation in respect of which the search was authorised;

(ii) is not likely to be admissible in evidence at a trial for the offence; or

(iii) is, or includes, excluded material or special procedure material;

(c) that at the time when the authorising officer authorised the search, none of the conditions specified in section 83(2) of the Act applied (in respect of property seized during a search under section 88 of the Act, the reference to a service policeman being read as a reference to a person authorised under section 88(1));

(d) in respect of material seized in purported exercise of a power conferred by article 14, that the grounds for a valid exercise of that power did not exist;

(e) that there has been a breach of any applicable Code issued under section 113 of PACE;

(f) that the authorising officer did not request a judge advocate to undertake a review as soon as practicable.

(8) The grounds referred to in paragraph (5) by reference to this paragraph are, in respect of property seized during a search under section 87 of the Act—

(a) that the authorising officer did not have reasonable grounds for believing that the condition mentioned in section 87(1)(b) was satisfied;

(b) that the premises searched were not premises within section 87(3) of the Act.

(9) The grounds referred to in paragraph (5) by reference to this paragraph are, in respect of property seized during a search under section 88 of the Act—

(a) that the authorising officer did not have reasonable grounds for believing that the condition mentioned in section 88(1)(b) was satisfied;

(b) that the premises searched were not service living accommodation within section 88(3) of the Act.

(10) Where the judge advocate orders the return or disposal of seized property in accordance with this article, he may give such directions as he sees fit in connection with the return or disposal of the property.

(11) In this article—

"affected person" means—

(a) the authorising officer;

(b) any person who at the time of the seizure was an occupier of the premises from which the property was seized;

(c) any person claiming an interest in the seized property and that it is or includes items subject to legal privilege, excluded material or special procedure material; and

(d) the legal representative of any person referred to in (a), (b) or (c) of this definition;

"authorising officer" means the officer who authorised the search under section 87 or 88 of the Act;

"disposal" in relation to any seized property means return to a person entitled to possession, other than the occupier of the premises from which it was seized, or disposal in such other manner as the judge advocate directs;

"legal representative" means—

(e) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(**a**);

(f) an advocate or solicitor in Scotland;

(g) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or

(h) a person who has in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales and is subject to punishment or disability for a breach of professional rules;

"retention" means retention by the person who was authorised under section 87 or 88 of the Act to conduct the search which is the subject of the review; and

"return" in relation to seized property means, except in the definition of "disposal", return to the occupier of the premises from which it was seized.

(12) In this article, an occupier of premises which are service living accommodation is—

(a) if the premises are a building or part of a building within section 96(1)(a) of the Act, any person for whose use as living accommodation or as a garage that building or part of a building is provided;

(b) if the premises are a room, structure or area within section 96(1)(b) of the Act, any person for whom the premises are used to provide sleeping accommodation;

(c) if the premises are a locker within section 96(1)(c) of the Act, the person for whose personal use the locker is provided.

PART 5

Transitional and transitory provisions

Transitional provisions

35. Schedule 4 shall have effect.

Reference to the Court of Judicature of Northern Ireland

36. Until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005(**b**) comes into force, the reference in article 34(11) to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland.

Parliamentary Under Secretary of State
Ministry of Defence

Date

(**a**) 1990 c. 41. Subsection (6) of section 71 of the Courts and Legal Services Act 1990 was substituted by the Access to Justice Act 1999 (c. 22), section 43, Schedule 6, paragraphs 4 and 9. Subsections (7) and (8) of section 71 of the 1990 Act were repealed by section 106, Schedule 15, Part 2, of the 1999 Act. Prospective amendments to section 71 of the 1990 Act are made to subsections (1) and (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1), (3). Prospective amendments are made to subsections (4) and (6) and a new subsection (6A) is inserted into section 71 of the 1990 Act by the Legal Services Act 2007 (c. 29), section 208(1), Schedule 21, paragraphs 83 and 94(a), (b) and (c).

(**b**) 2005 c. 4.

SCHEDULE 1

Article 6

EXCLUDED AND SPECIAL PROCEDURE MATERIAL

Making of orders by judge advocates

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

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

(a) there are reasonable grounds for believing—

(i) that a relevant offence has been committed;

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

(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

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

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

(v) 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.

39. 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 relevant residential premises specified in the application;

(b) but for section 9(2) of PACE 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.

40. 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**).

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

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

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(**a**) 1911 c. 28.
(**b**) 1968 c. 60.
(**c**) 1974 c. 6.

(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.

42. Where the material consists of information stored in any electronic form—

(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 or from which it can readily be produced in a visible and legible form; 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.

43. 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

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

45.—(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 paragraph (1), the reference to a person's proper address shall be to such address determined in accordance with paragraph 10.

46.—(1) Subject to sub-paragraph (2), the proper address of a person subject to service law is the address of the unit to which he belongs.

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

(3) The proper address of a person who is not subject to service law is his usual or last known place of residence.

47. 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 material to which the application relates except—

(a) with the leave of a judge advocate, or

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

until the application is dismissed or abandoned or he has complied with an order under paragraph 5 made in respect of the application.

Issue of warrants by judge advocate

48. If on an application made by a service policeman a judge advocate—

(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 are also fulfilled, or

(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.

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

50. 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;

(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 PACE; 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

51. 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.

52. 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.

53. If neither of the forms of oath provided in this Schedule is 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 taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

54. 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.

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

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

56. 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".

57. The form of affirmation shall be the same as the form of oath set out in paragraph 5 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".

SCHEDULE 3

Article 33

LIST OF SERVICE OFFENCES THAT ARE RELEVANT OFFENCES

Offence	*Section of the Act*
assisting an enemy	1
misconduct on operations	2(1)
obstructing operations	3

looting	4(1) or (2)
mutiny	6
failure to suppress mutiny	7
desertion, with the intention of avoiding a period of active service within the meaning of section 8 of the Act.	8
hazarding a ship	31(1)
dangerous flying	33(1)
an attempt to commit any of the above offences	39
encouraging or assisting the commission of any of the above offences other than an attempt	40

SCHEDULE 4

Article 35

TRANSITIONAL PROVISIONS

Interpretation

58. In this Schedule—

"the 1955 Acts" means the Army Act 1955(**a**) and the Air Force Act 1955(**b**);

"the 1957 Act" means the Naval Discipline Act 1957(**c**);

"the 2001 Act" means the Armed Forces Act 2001(**d**);

"the 2003 Order" means the Armed Forces (Entry, Search and Seizure) Order 2003(**e**);

"the 2006 Order" means the Armed Forces (Entry, Search and Seizure) Order 2006(**f**);

"commencement" means the date on which this Order comes into force;

"the corresponding civil offence", in relation to an SDA civil offence, means—

(a) the act or omission constituting the SDA civil offence; or

(b) if that act or omission is not punishable by the law of England and Wales, the equivalent act done or omission made in England or Wales;

"pre-commencement warrant" means a warrant to enter and search premises, issued under section 5 of the 2001 Act or Schedule 1 to the 2003 Order;

"SDA civil offence" means an offence under section 70 of either of the 1955 Acts or section 42 of the 1957 Act;

"SDA offence" means any of the following—

(c) an offence under Part 2 of either of the 1955 Acts;

(d) an offence under Part 1 of the 1957 Act;

(e) an offence under section 47K of that Act;

(**a**) 1955 c. 18.
(**b**) 1955 c. 19.
(**c**) 1957 c. 53.
(**d**) 2001 c. 19.
(**e**) S.I. 2003/2273 amended by S.I. 2006/3244, 2008/1698.
(**f**) S.I. 2006/3243 amended by S.I. 2008/1698.

(f) an offence under section 18 or 20 of the Armed Forces Act 1991(**a**) committed before commencement;

(g) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996(**b**) committed before commencement.

"serious SDA offence" means—

(h) an SDA civil offence as respects which the corresponding civil offence is an indictable offence; or

(i) an SDA offence other than—

(i) an SDA civil offence;

(ii) an offence which (by virtue of modifications of section 52 of the Act made by an order under section 380 of the Act) may be dealt with at a summary hearing;

(j) an offence under section 33(1)(a) of either of the 1955 Acts or section 11(a) of the 1957 Act (using violence against a superior officer);

(k) an offence under section 44(1) of either of the 1955 Acts or section 29(1) of the 1957 Act (damage to, and loss of, public or service property);

(l) an offence under section 62(1) of either of the 1955 Acts or section 35(1) of the 1957 Act (making of false documents);

(m) an offence under section 68 of either of the 1955 Acts or section 40 of the 1957 Act of attempting to commit an offence within sub-paragraph (c), (d) or (e);

(n) an offence under section 68A of either of the 1955 Acts or section 41 of the 1957 Act of aiding and abetting or inciting the commission of an offence within sub-paragraph (c), (d) or (e).

Stop and search by a service policeman

59.—(1) Article 3 is modified as follows.

(2) For the purposes of article 3(1) a service policeman is to be treated as having detained a person or vehicle in exercise of the power conferred by section 75 of the Act if he has detained the person or the vehicle in exercise of the power conferred by section 2 of the 2001 Act.

(3) For the purposes of article 3(5) a service policeman is to be treated as having completed a search of an unattended vehicle or anything in or on such a vehicle in exercise of the power conferred by section 75 if—

(a) he has completed a search of the vehicle or thing in exercise of the power conferred by section 2 of the 2001 Act; and

(b) he has not left a notice in accordance with article 3(5) of the 2003 Order.

Record of search by service policeman

60.—(1) Article 4 is modified as follows.

(2) For the purposes of article 4(1) a service policeman is to be treated as having carried out a search in the exercise of the power conferred by section 75 of the Act if—

(a) he has carried out a search in the exercise of the power conferred by section 2 of the 2001 Act; and

(b) he has not made a record of the search in accordance with article 4 of the 2003 Order.

(3) In article 4(7) and (8) references to a record of a search include a record made under article 4 of the 2003 Order.

(**a**) 1991 c. 62.
(**b**) 1996 c. 14.

Searches under section 76 of the Act

61.—(1) Article 5 is modified as follows.

(2) For the purposes of article 5(1)—

(a) an order given by an officer by virtue of section 4(1)(a) of the 2001 Act is to be treated as having been given under section 76(1) of the Act; and

(b) an authorisation given by an officer by virtue of section 4(1)(b) of the 2001 Act is to be treated as an authorisation given under section 76(1) of the Act.

(3) Article 5(4) and (5) apply where—

(a) the relevant person was ordered or authorised to conduct a search of an unattended vehicle or anything in or on such a vehicle;

(b) he has completed the search; and

(c) he has not left a notice in accordance with articles 3(5) and 5 of the 2003 Order.

(4) Article 5(6) applies where—

(a) the relevant person has carried out a search pursuant to the order or authorisation; and

(b) he has not made a record of the search in accordance with articles 4 and 5 of the 2003 Order.

(5) In article 5(11) and (12) references to a record of a search include a record made under articles 4 and 5 of the 2003 Order.

(6) In this paragraph the "relevant person" means the person given an order by virtue of section 4(1)(a) of the 2001 Act or an authorisation by virtue of section 4(1)(b) of that Act.

Search warrants – safeguards

62.—(1) Article 8 is modified as follows.

(2) For the purposes of article 8(2) an entry on or search of premises under a warrant complies with articles 8 to 10 if—

(a) as regards anything done before commencement, it complies with articles 8 to 10 of the 2003 Order; and

(b) as regards anything done on or after commencement, it complies with articles 8 to 10 of this Order.

(3) Article 8(6) applies in relation to a hearing of an application for a warrant which was made under section 5 of the 2001 Act or Schedule 1 to the 2003 Order.

(4) Article 8(10) applies in relation to a pre-commencement warrant of which the copies required by article 8(7) of the 2003 Order have not been made.

(5) In article 8(11)—

(a) the reference to the copies of a warrant includes copies of a pre-commencement warrant which have been made under article 8(7) of the 2003 Order but have not been certified as copies in accordance with article 8(8) of that Order; and

(b) the reference to the judge advocate who issues the warrant is to be read as a reference to the person who (as a judicial officer) issued the warrant.

Execution of warrants

63.—(1) Article 9 is modified in accordance with sub-paragraphs (2) to (4).

(2) Except in article 9(2) and (13), references to a warrant include a pre-commencement warrant.

(3) In article 9(3) the reference to a person authorised as mentioned in article 9(2) includes a person authorised by a pre-commencement warrant to accompany a service policeman executing the warrant.

(4) In article 9(11) the reference to a service policeman executing a warrant includes a service policeman who has executed a pre-commencement warrant and has not endorsed it in accordance with article 9(9) of the 2003 Order.

(5) A warrant returned to a judicial officer under article 9(10) of the 2003 Order shall—

(a) be retained by him for at least 2 years from its return; or

(b) be sent by him to the Judge Advocate General and retained by him for at least 2 years from its return to the judicial officer.

Safeguards and execution of warrants – further provisions

64.—(1) This paragraph applies where a service policeman has made an application for a warrant to enter and search premises under section 5 of the 2001 Act or Schedule 1 to the 2003 Order by live television or telephone links or similar arrangements.

(2) Article 10(2) and (4) apply in relation to any warrant issued upon the application, subject to the following modifications.

(3) In article 10(2)(b) and (c) the references to the judge advocate include the person who (as a judicial officer) issued the warrant.

(4) In article 10(2)(d)—

(a) the reference to the certified copies of the warrant made in accordance with article 8(10) and (11) includes certified copies made in accordance with article 8(7) and (8) of the 2003 Order; and

(b) the reference to the transmission of a copy of the warrant in accordance with article 10(2)(b) includes the transmission of a copy of the warrant in accordance with article 10(2)(b) of the 2003 Order.

Search of premises after arrest

65.—(1) In articles 12 and 13—

(a) references to an arrest under section 67 of the Act include an arrest under section 74 of either of the 1955 Acts or section 45 of the 1957 Act;

(b) references to a serious service offence include a serious SDA offence.

(2) Article 13(6) does not prohibit a service policeman—

(a) from entering and searching any premises which an authorising officer (within the meaning of article 13 of the 2003 Order) has authorised him in writing under paragraph (4) of that article to enter and search, or

(b) from seizing and retaining anything for which he may search any such premises, and

the reference in article 13(7) to a service policeman conducting a search without obtaining a written authorisation under paragraph (6) of that article is to be read as a reference to his conducting a search without obtaining such an authorisation and without having obtained an authorisation under article 13(4) of the 2003 Order.

(3) Where a service policeman has conducted a search by virtue of article 13(5) of the 2003 Order but has not informed an authorising officer in accordance with article 13(6) of that Order that he has made the search, he shall as soon as is practicable inform an authorising service policeman that he has made the search.

(4) In article 13(8)—

(a) the reference to an authorising service policeman who authorises a search includes a person who (as an authorising officer within the meaning of article 13 of the 2003 Order) authorised a search under paragraph (4) of that article and has not made a record in accordance with paragraph (7) of that article; and

(b) the reference to an authorising service policeman who is informed of a search under article 13(7) includes—

(i) a person who (as an authorising officer within the meaning of article 13 of the 2003 Order) was informed of a search under paragraph (6) of that article and has not made a record in accordance with paragraph (7) of that article; and

(ii) an authorising service policeman who is informed of a search under sub-paragraph (3).

Seizure, copying and retention

66. In articles 14, 16, 17 and 25 references to a service offence include an SDA offence.

67.—(1) Article 16 is modified as follows.

(2) Where a person has seized anything in the exercise of a power conferred by or under Part 2 of the 2001 Act, and has been requested (whether before or after commencement) to provide any person with a record of what he seized but has not provided that person with such a record, article 16(1) and (2) apply as if the thing had been seized in the exercise of a power conferred by or under Part 3 of the Act.

(3) In article 16(3) and (4)—

(a) references to anything seized by an authorised person include anything seized in the exercise of a power conferred by or under Part 2 of the 2001 Act; and

(b) references to a request for permission to be granted access to a thing, or for a photograph or copy of it, include a request made before commencement.

(4) In article 16(5) the reference to a thing which a person has power to seize in exercise of a power conferred by or under Part 3 of the Act includes a thing which he had power to seize in exercise of a power conferred by or under Part 2 of the 2001 Act.

(5) In article 16(6) the reference to a thing photographed or copied under paragraph (4)(b) includes a thing photographed or copied under article 16(4)(b) of the 2003 Order.

(6) Where a thing has been photographed or copied under article 16(4)(b) of the 2003 Order, article 16(7) applies in relation to the photograph or copy.

68.—(1) Article 17 is modified as follows.

(2) In paragraph (1)—

(a) the reference to a power of seizure conferred by or under Part 3 of the Act includes a power of seizure conferred by or under Part 2 of the 2001 Act; and

(b) the reference to a requirement made by virtue of article 14 or 15 includes a requirement made by virtue of article 14 or 15 of the 2003 Order.

(3) The powers of seizure to which article 17(3) relates include—

(a) those conferred by section 54(4)(a) of PACE as applied to investigations of offences conducted under either of the 1955 Acts or the 1957 Act, or to persons under arrest or in custody under any of those Acts, by virtue of an Order made under section 113(1) of PACE; and

(b) those conferred by section 10(10) or (11) of the 2001 Act.

(4) In article 17(4)—

(a) the reference to a thing seized on the grounds that the person searched may use it to assist him to escape from service custody includes a thing seized on the grounds that that person might use it to assist him to escape from military, air-force or naval custody; and

(b) the reference to a person who is no longer in service custody includes a person who was released from military, air-force or naval custody before commencement.

(5) In article 17(6) the reference to a person authorised under article 9(2) includes a person authorised under article 9(2) of the 2003 Order.

Additional powers of seizure

69.—(1) Article 19 is modified as follows.

(2) In article 19(1)(a) and article 19(3)(a)—

(a) the reference to an authorisation under section 87 or 88 of the Act is to include an authorisation given under section 7 of the 2001 Act; and

(b) the reference to a person finding anything includes a reference to a person having found anything before commencement.

(3) In article 19(6) the reference to the powers of seizure conferred by or under Chapter 1 or 3 of Part 3 of the Act shall include a reference to the powers of seizure conferred by or under Part 2 of the 2001 Act, except sections 2, 4 and 7 of that Act.

Notice of exercise of power under article 19 or 20

70.—(1) Article 21 is modified as follows.

(2) For the purposes of article 21 a person is to be treated as exercising a power of seizure conferred by article 19 if he—

(a) has exercised a power of seizure conferred by article 3 of the 2006 Order; and

(b) has not complied with article 5(1), (2) or (3) of that Order with respect to the seizure.

(3) For the purposes of article 21 a person is to be treated as exercising a power of seizure conferred by article 20 if he—

(a) has exercised a power of seizure conferred by article 4 of the 2006 Order; and

(b) has not complied with article 5(4) of that Order with respect to the seizure.

Examination and return of property seized under article 19 or 20

71.—(1) Article 22 is modified as follows.

(2) For the purposes of article 22 a thing is to be treated as seized under a power conferred by article 19 or 20 if—

(a) it has been seized under a power conferred by article 3 or 4 of the 2006 Order; and

(b) either the initial examination referred to in article 6(2) of that Order or the return of anything required under article 6(2) of that Order has not been completed before commencement.

(3) Article 22(2) shall apply to ensure that its sub-paragraphs (a) to (d) are complied with in relation to the seized property, in so far as—

(a) an initial examination under article 6(2) of the 2006 Order, or

(b) the return of anything required under article 6(2) of that Order,

has not been completed before commencement.

Obligation to return items subject to legal privilege

72.—(1) Article 23 is modified as follows.

(2) In article 23(2)(a) the reference to the power under section 76(1)(c), section 87(4) or section 88(4) of the Act includes a reference to—

(a) the power under 2(7) of the 2001, exercised by virtue of section 4 of that Act by a person other than a service policeman; or

(b) the power under section 7(3) of the 2001 Act.

(3) The powers of seizure referred to in article 23(5) include—

(a) the powers of seizure conferred by articles 3 and 4 of the 2006 Order; and

(b) the powers of seizure conferred by Part 2 of the 2001 Act and by the 2003 Order.

Obligation to return excluded and special procedure material

73. In article 24(1) the reference to section 83 of the Act includes a reference to section 5 of the 2001 Act.

Authorised retention of property

74. In article 25 each of the references to a service offence includes a reference to an SDA offence.

Application of article 17 to property seized under Part 3

75. In article 26(1) the reference to article 19 or 20 includes a reference to article 3 or 4 of the 2006 Order.

Person to whom seized property is to be returned

76. In article 27(1)(a) the reference to any power of seizure conferred by Part 3 of the Act or under this Order includes a reference to—

(a) any power of seizure conferred by article 3 or 4 of the 2006 Order; and

(b) any power of seizure conferred by Part 2 of the 2001 Act or by the 2003 Order.

Application to a judge advocate

77.—(1) Article 28 is modified as follows.

(2) Any reference to the judge advocate shall include a reference to the judicial officer (within the meaning of Part 2 of the 2001 Act) to whom an application has been made before commencement.

(3) Where before commencement—

(a) a person has applied to a judicial officer under article 12(2) of the 2006 Order, and

(b) the judicial officer has neither ordered the return of any of the property to which the application relates nor dismissed the application,

the application shall be treated as an application under article 28(2) and any reference in article 28 to a judge advocate shall include a reference to the judicial officer.

(4) Where before commencement—

(a) a person has applied to a judicial officer under article 12(5)(b) or (c) of the 2006 Order, and

(b) the judicial officer has not decided whether to give directions under regulation 12(5) of that Order,

the application shall be treated as an application under article 28(5)(b) or (c) (as appropriate), and any reference in article 28 to a judge advocate shall include a reference to the judicial officer.

(5) In article 28(3)(d) and 28(5)(c)(i) the reference to article 19 or 20 includes a reference to article 3 or 4 of the 2006 Order.

(6) The relevant powers of seizure for the purposes of article 28 include—

(a) the powers of seizure conferred by articles 3 and 4 of the 2006 Order;

(b) the powers of seizure conferred by Part 2 of the 2001 Act, except the power in section 7 of that Act;

(c) the powers of seizure conferred by the 2003 Order, except the power under its article 15 in so far as it relates to section 7 of the 2001 Act.

Cases where duty to secure arises

78.—(1) Article 29 is modified as follows.

(2) Where property has been seized in exercise, or purported exercise, of any power conferred by article 3 or 4 of the 2006 Order, but no duty has arisen under article 14 of that Order, the following modifications apply—

(a) in article 29(1) the reference to article 19 or 20 includes a reference to article 3 or 4 of the 2006 Order;

(b) in article 29(3)(a) the reference to Part 3 includes a reference to the 2006 Order;

(c) the powers specified in article 29(4) include—

(i) the powers of seizure under sections 5 and 10 of the 2001 Act;

(ii) the powers of seizure conferred by the 2003 Order, except the power under its article 15 in so far as it relates to section 7 of the 2001 Order;

(iii) in article 29(5)(c) the reference to paragraph (1)(d) or (4)(d) of article 21 includes a reference to paragraph (1)(d) or (4)(d) of article 5 of the 2006 Order.

(3) Where immediately before commencement a duty to secure has effect under article 14 of the 2006 Order in relation to seized property, a duty to secure arises under article 30 in relation to that property.

The duty to secure

79.—(1) Article 30 is modified as follows.

(2) Where paragraph 21(3) applies—

(a) the reference in article 30(1) to the giving of the notice of the application under article 29(1) shall be treated as a reference to commencement; and

(b) article 30(2) shall read "Paragraph (1) shall not have effect in relation to any time after the withdrawal of the notice of application under paragraph 13 of the 2006 Order with respect to which a duty to secure arose under article 14 of that Order."

Use of inextricably linked property

80.—(1) Article 31 is modified as follows.

(2) The reference in article 31(1) to a power of seizure conferred by or under Chapter 1 or 3 of the Act, except sections 87 or 88 of the Act, includes a reference to a power of seizure conferred by—

(a) article 3 or 4 of the 2006 Order;

(b) Part 2 of the 2001 Act, except the power under section 7 of that Act; or

(c) the 2003 Order, except the power under its article 15 in so far as it relates to section 7 of the 2001 Act.

(3) In article 31(6)(a) the reference to article 19 or 20 includes a reference to article 3 or 4 of the 2006 Order.

(4) In article 31(8)(a) the reference to a warrant under section 83 of the Act includes a reference to a warrant under section 5 of the 2001 Act.

Relevant offences

81. For the purposes of section 84(2) of the Act, relevant offences shall include, in addition to the service offences listed in Schedule 3, an offence against any of—

(a) section 24(1) of either of the 1955 Acts or section 2(1) of the 1957 Act (misconduct on operations);

(b) section 25 of either of the 1955 Acts or section 3 of the 1957 Act (assisting an enemy);

(c) section 26 of either of the 1955 Acts or section 4 of the 1957 Act (obstructing operations) which relates to an action or operation against an enemy;

(d) section 30(a) or (b) of either of the 1955 Acts or section 5(a) or (b) of the 1957 Act (looting);

(e) section 31 of either of the 1955 Acts or section 9 of the 1957 Act (mutiny);

(f) section 32 of either of the 1955 Acts or section 10 of the 1957 Act (failure to suppress mutiny);

(g) section 37 of either of the 1955 Acts or section 16 of the 1957 Act (desertion) where the accused intended to avoid serving overseas or service or any particular service when before the enemy;

(h) section 48A of either of the 1955 Acts or section 19 of the 1957 Act (loss or hazarding a ship);

(i) section 49 of either of the 1955 Acts or section 20 of the 1957 Act (dangerous flying etc);

(j) section 68 of either of the 1955 Acts or section 40 of the 1957 Act of attempting to commit an offence within any of sub-paragraphs (a) to (i);

(k) section 68A of either of the 1955 Acts or section 41 of the 1957 Act of aiding, abetting or inciting the commission of an offence within any of sub-paragraphs (a) to (i).

Review by a judge advocate of searches and seizure

82.—(1) Article 34 is modified as follows.

(2) Where before commencement—

(a) an officer has requested a judicial officer to undertake a review under section 8 of the 2001 Act, and

(b) the judicial officer has not decided whether to make an order for the return or disposal of any of the property to which the review relates,

the review shall be treated as a review under section 89 of the Act and any reference in article 34 to a judge advocate shall include a reference to the judicial officer.

(3) With respect to a review under section 89 of the Act carried out in relation to property seized before commencement—

(a) in article 34(7)(b) the reference to section 87(4) or section 88(4) of the Act includes a reference to section 7(3) of the 2001 Act;

(b) there is inserted at the end of article 34(7)(c) "and none of the conditions specified in section 5(4) of the 2001 Act applied";

(c) in article 34(7)(d) the reference to a power conferred by article 14 includes a reference to a power conferred by article 14 of the 2003 Order;

(d) in article 34(7)(f) after "judge advocate" there is inserted "or a judicial officer within the meaning of Part 2 of the 2001 Act";

(e) in article 34(8)—

(i) the reference to property seized during a search under section 87 of the Act includes a reference to property seized during a search by a service policeman under section 7 of the 2001 Act;

(ii) in its sub-paragraph (a) after "in section 87(1)(b)" there is inserted "or section 7(1)(b) of the 2001 Act"; and

(iii) in its sub-paragraph (b) after "in section 87(3) of the Act" there is inserted "or mentioned in sub-paragraph (i) or (ii) of section 7(1)(a) of the 2001 Act;

(f) in article 34(9)—

(i) after "section 88 of the Act" there is inserted "or seized by a person other than a service policeman during a search under section 7 of the 2001 Act";

(ii) in its sub-paragraph (a) after "in section 88(1)(b)" there is inserted "or section 7(2)(b) of the 2001 Act"; and

(iii) in its sub-paragraph (b) after "in section 88(3) of the Act" there is inserted "or within section 7(2)(a) of the 2001 Act";

(g) in article 34(11) in the definitions of "authorising officer" and "retention" after "section 87 or 88 of the Act" there is inserted "or under section 7 of the 2001 Act";

(h) in article 34(12)—

(i) in its sub-paragraph (a) the reference to section 96(1)(a) of the Act includes a reference to section 15(1)(a) of the 2001 Act;

(ii) in its sub-paragraph (b) the reference to section 96(1)(b) of the Act includes a reference to section 15(1)(b) of the 2001 Act;

(iii) in its sub-paragraph (c) the reference to section 96(1)(c) of the Act includes a reference to section 15(1)(c) of the 2001 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order deals primarily with the powers of search and of seizure granted to the service police under Part 3 of the Armed Forces Act 2006 ("the Act"). The main provisions in Parts 1 and 2 of the Order 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 sections 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 under section 75 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 75 of the Act. Article 4 concerns the records that must be made after a search under section 75 of the Act has been carried out.

Under article 5, articles 3 and 4 are applied to searches carried out by persons authorised to do so under section 76 of the Act as they apply to such searches carried out by service policemen under section 75 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 policeman who is making an application to a judge advocate for a search warrant under section 83 of the Act or under Schedule 1 to this Order, or for an order under Schedule 1, to do so by live television or telephone links 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 83 of the Act or Schedule 1 to this Order.

Article 11 and Schedule 2 make provision as to the oath or affirmation to be administered to a service policeman when he is required under article 8(6) 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 and retention of anything seized under the provisions of this Order or Part 3 of the Act.

Part 2 of the Criminal Justice and Police Act 2001 (c.16) makes provision as to civilian police powers of search and seizure, and Part 3 of this Order makes related provision in relation to the armed forces' system of justice. The provisions relate to circumstances in which it is not reasonably practicable to establish at the time of a search of premises or of a person which material can and cannot be seized. For example, material that a service policeman conducting the search is entitled to seize may be contained within a larger collection of material some of which he may not be entitled to seize. Material held on computers may present particular difficulties in this respect. The main provisions of Part 3 are as follows.

Article 19 permits material to be removed from premises being searched where there are reasonable grounds for believing that the material is, or contains, material which a service policeman would be entitled to seize. It also permits the seizure of material which the service policeman would be entitled to seize, but it is not reasonably practicable for it to be separated on the premises from other material. The article does not apply to searches of premises being carried out under the authority of a commanding officer under section 87 or 88 of the Act (other searches of premises require the authority of a judge advocate). The equivalent provision in the Criminal Justice and Police Act 2001 is section 50.

Article 20 makes, in relation to material found by a service policeman when lawfully searching an individual, provision broadly equivalent to that in section 51 of the Criminal Justice and Police Act 2001.

Under article 21, where material is seized in exercise of the power under article 19, a notice must generally be given to the occupier of the premises or (if the occupier is absent) to the person in charge of the premises. If no such person is present, a notice must be attached prominently to the premises. The notice must state what has been seized and other specified information. The equivalent provision in the Criminal Justice and Police Act 2001 is section 52.

Article 22 requires that, where material is seized under article 19 or 20, it must be examined as soon as reasonably practicable and property whose retention is not authorised must be returned as soon as reasonably practicable. The equivalent provision in the Criminal Justice and Police Act 2001 is section 53.

Under article 23 seized property which is subject to legal privilege and (under article 24) seized property which consists of or includes excluded or special procedure material, must, subject to limited exceptions, be returned as soon as reasonably practicable. Article 27 provides for the person to whom property must be returned. This will be the person from whom the property was seized, unless the person obliged to return the property is satisfied that someone else has a better right to the property. The equivalent provisions under the Criminal Justice and Police Act 2001 are, respectively, sections 54, 55 and 58.

Article 25 provides for the retention of seized property where there are reasonable grounds for believing either that it is the proceeds of an offence or evidence of an offence and (in either case) that it is necessary to retain it to prevent its being concealed, lost, damaged, altered or destroyed. The equivalent provision under the Criminal Justice and Police Act 2001 is section 56.

Article 28 permits a person with an interest in property seized under a power under armed forces legislation (including under article 19 or 20 of this Order) to apply to a judge advocate for its return. Article 28 does not apply to seizures under sections 87 or 88 of the Act (under section 89 of the Act such seizures are subject to automatic review by a judge advocate). The equivalent provision under the Criminal Justice and Police Act 2001 is section 59.

Where an application is made under article 28 stating that the property is, or contains, property subject to legal privilege, special procedure material or excluded material, a duty generally arises to secure the seized material from being examined, copied or used (articles 29 and 30). There are exceptions where the applicant consents or a judge advocate so directs. Under article 31 a similar exclusion of examination, copying and use applies (subject to the consent of the person from

whom it was seized) to seized property which would have to be returned but for the fact that it is not reasonably practicable to separate it from property which can be retained. Section 62 of the Criminal Justice and Police Act 2001 is equivalent to article 31.

Article 33 specifies the service offences which are "relevant offences"; these are offences in respect of which a judge advocate may issue a search warrant under section 83 of the Act.

Article 34 prescribes the powers and duties of a judge advocate when conducting a review under section 89 of the Act of a search authorised by an officer under section 87 or 88 of the Act and of the seizure and retention of anything seized and retained during the search. The judge advocate shall adopt such procedures at the review as he sees fit, although he must take into account representations made by certain people, including the officer who authorised the search any the occupier of the premises which were searched.

Under article 34 the judge advocate must order the return or disposal of seized property if he is satisfied that it is subject to legal privilege. The judge advocate must also order the return or disposal of seized property if he is satisfied as to any of the grounds in article 34(7), unless he is satisfied that it would be in the interests of justice to permit retention of the property. The judge advocate may give such directions as he sees fit as to the return or disposal of the property.

Article 35 and Schedule 4 make transitional provisions.

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