



# Armed Forces Act 2006

## 2006 CHAPTER 52

### PART 3

#### POWERS OF ARREST, SEARCH AND ENTRY

#### CHAPTER 1

#### ARREST ETC

#### *Powers of arrest*

#### **67 Power of arrest for service offence**

- (1) A person who is reasonably suspected of being engaged in committing, or of having committed, a service offence may be arrested in accordance with subsection (2), (3), (4) or (5) by a person subject to service law.
- (2) An officer may be arrested under subsection (1)—
  - (a) by an officer of superior rank or, if engaged in a mutiny, quarrel or disorder, by an officer of any rank;
  - (b) by a service policeman; or
  - (c) on the order of another officer, by a person who is lawfully exercising authority on behalf of a provost officer.
- (3) A person of or below the rank or rate of warrant officer may be arrested under subsection (1)—
  - (a) by an officer;
  - (b) by a warrant officer or non-commissioned officer of superior rank or rate;
  - (c) by a service policeman;
  - (d) by a person who is lawfully exercising authority on behalf of a provost officer; or

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- (e) if a member of a ship's company or an embarked force, by a person exercising authority as a member of the staff of the officer of the day.
- (4) A civilian subject to service discipline may be arrested under subsection (1)—
  - (a) by an officer;
  - (b) by a service policeman; or
  - (c) by a person who is lawfully exercising authority on behalf of a provost officer.
- (5) Where none of subsections (2) to (4) applies in relation to the person to be arrested, that person may be arrested under subsection (1) by a service policeman.
- (6) The power of arrest conferred on any person by this section may be exercised—
  - (a) personally;
  - (b) by giving orders for the arrest of the person who is to be arrested; or
  - (c) where that person is subject to service law, by ordering him into arrest.

**Modifications etc. (not altering text)**

- C1** S. 67 modified (31.10.2009) by [The Armed Forces \(Naval Chaplains\) Regulations 2009 \(S.I. 2009/826\)](#), regs. 1, **4(3)** (with reg. 2(c))

**Commencement Information**

- I1** S. 67 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), **art. 3(a)(b)** (with transitional provisions in [S.I. 2009/1059](#))
- I2** S. 67 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), **art. 4**

**68 Section 67: supplementary**

- (1) In section 67(2)(a) the reference to being engaged in a mutiny is a reference to committing an offence under section 6.
- (2) For the purposes of section 67(3), a person who—
  - (a) is suspected of having committed a service offence while a member of Her Majesty's forces, and
  - (b) is not a member of Her Majesty's forces or a civilian subject to service discipline,
 is to be treated in relation to the offence as being of the rank or rate which he held when he was last a member of Her Majesty's forces.
- (3) For the purposes of section 67(4), a person who—
  - (a) is suspected of having committed a service offence while a civilian subject to service discipline, and
  - (b) is not a member of Her Majesty's forces or a civilian subject to service discipline,
 is to be treated in relation to the offence as if he were a civilian subject to service discipline.
- (4) Where a person may be charged (within the meaning of section 61(1)) with an offence only with the consent of the Attorney General (see section 61(2)), section 67(1) has effect in relation to the offence as if for the words from “in accordance with” to the

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end there were substituted “ by a service policeman ” (and as if section 67(2) to (5) were omitted).

#### Commencement Information

- I3** S. 68 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I4** S. 68 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 69 Power of arrest in anticipation of commission of service offence

- (1) A service policeman may arrest a person whom he reasonably suspects of being about to commit a service offence.
- (2) Subsection (6) of section 67 applies in relation to the power of arrest conferred by this section as it applies in relation to the power of arrest conferred by that section.
- (3) Where a person is arrested under this section—
  - (a) the arrest must be reported as soon as practicable to his commanding officer; and
  - (b) he may be kept in service custody until such time as a service policeman is satisfied that the risk of his committing the service offence concerned has passed.

#### Commencement Information

- I5** S. 69 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I6** S. 69 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### *Search on arrest*

### 70 Search by service policeman upon arrest

- (1) A service policeman may search an arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (2) A service policeman may search an arrested person for anything that is subject to search if he has reasonable grounds for believing that the arrested person may have any such thing concealed on him.
- (3) For the purposes of this section a thing is “subject to search” if—
  - (a) the arrested person might use it to assist him to escape from service custody; or
  - (b) in the case of an arrest under section 67 or 69, it might be evidence relating to a service offence.
- (4) References in this section to an arrested person are to a person arrested under section 67, 69, 110, 111 or 303.

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#### **Commencement Information**

- I7** S. 70 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I8** S. 70 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **71 Search by other persons upon arrest**

- (1) A person (other than a service policeman) who is exercising a power of arrest may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (2) Subsection (4) (power to search arrested person for things subject to search) applies where—
  - (a) a person (“the arrested person”) is to be or has been arrested by a person other than a service policeman; and
  - (b) the commanding officer of the arrested person has reasonable grounds for believing that it is likely that that person would—
    - (i) escape from service custody, or
    - (ii) conceal, damage, alter or destroy evidence,
 if a search for things subject to search could not be carried out before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (3).
- (3) That assistance is—
  - (a) the assistance of a service policeman; or
  - (b) in a case where corresponding powers conferred by section 32(2)(a) of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force who is capable of exercising those corresponding powers.
- (4) Where this subsection applies, the commanding officer of the arrested person may order or authorise the person exercising the power of arrest to search the arrested person, on or after exercising the power, for anything that is subject to search.
- (5) A commanding officer may give an order under subsection (4) only if he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search.
- (6) A person authorised under subsection (4) may exercise the power of search conferred by that subsection only if he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search.
- (7) Section 70(3) (meaning of things “subject to search”) applies for the purposes of this section.
- (8) References in this section to arrest are to arrest under section 67, 110 or 111, and related expressions in this section are to be read accordingly.
- (9) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

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#### Commencement Information

- I9** S. 71 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I10** S. 71 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 72 Sections 70 and 71: supplementary

- (1) A person exercising the power conferred by section 70(2), or ordered or authorised under section 71(4), may search the arrested person only to the extent that is reasonably required for the purpose of discovering anything that is subject to search (within the meaning of those sections).
- (2) Nothing in section 70 or 71 authorises anyone to require an arrested person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves.
- (3) The reference in subsection (2) to headgear does not include headgear worn for religious reasons.
- (4) Any power of search conferred by section 70 or 71 authorises the search of the arrested person's mouth.

#### Commencement Information

- I11** S. 72 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I12** S. 72 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 73 Seizure and retention after search upon arrest

- (1) A person exercising the power conferred by section 70(1) or 71(1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.
- (2) A person exercising the power conferred by section 70(2), or ordered or authorised under section 71(4), may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing—
  - (a) that the person searched might use it to assist him to escape from service custody; or
  - (b) in the case of an arrest under section 67 or 69, that it is evidence of a service offence or has been obtained in consequence of the commission of a service offence.
- (3) In subsection (2) “item subject to legal privilege” has the meaning given by section 10 of PACE.

#### Commencement Information

- I13** S. 73 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I14** S. 73 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## 74 **Power to make provision conferring power to search premises at which person arrested**

The Secretary of State may by order make provision, in relation to premises in which a person was when or immediately before he was arrested under section 67, which is equivalent to that made by any of the provisions of section 32 of PACE which relate to the power to enter and search premises, subject to such modifications as the Secretary of State considers appropriate.

### **Commencement Information**

- I15** S. 74 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I16** S. 74 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 2

### STOP AND SEARCH

## 75 **Power of service policeman to stop and search persons, vehicles etc**

- (1) A service policeman may, in the circumstances mentioned in subsection (2) and in a place permitted by section 78, search any of the following for stolen or prohibited articles, controlled drugs or Her Majesty's stores—
- (a) any person who is, or whom the service policeman has reasonable grounds for believing to be, a person subject to service law or a civilian subject to service discipline;
  - (b) a service vehicle which is in the charge of any person;
  - (c) any vehicle which is, or which the service policeman has reasonable grounds for believing to be, in the charge of a person subject to service law or a civilian subject to service discipline;
  - (d) anything which is in or on a service vehicle or a vehicle within paragraph (c).
- (2) The circumstances are that the service policeman has reasonable grounds for suspecting—
- (a) that the search will reveal stolen or prohibited articles;
  - (b) that the search will reveal Her Majesty's stores that have been unlawfully obtained;
  - (c) in the case of the search of a person, that the person is in possession of a controlled drug in circumstances in which he commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Misuse of Drugs Act 1971 (c. 38); or
  - (d) in the case of the search of a vehicle, that the search will reveal a controlled drug that is in a person's possession in such circumstances.
- (3) A service policeman may detain for the purposes of a search under subsection (1)—
- (a) any person who is, or whom the service policeman has reasonable grounds for believing to be, a person subject to service law or a civilian subject to service discipline;

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- (b) any person in charge of a service vehicle;
  - (c) any service vehicle; and
  - (d) any vehicle within subsection (1)(c).
- (4) A service policeman may seize any article that he discovers in the course of a search under subsection (1) and that he has reasonable grounds for suspecting to be—
- (a) a stolen or prohibited article;
  - (b) evidence of an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under the Misuse of Drugs Act 1971; or
  - (c) any of Her Majesty's stores that have been unlawfully obtained.

#### Commencement Information

- I17** S. 75 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I18** S. 75 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 76 Stop and search by persons other than service policemen

- (1) An officer may order or authorise a person subject to service law (other than a service policeman)—
- (a) to search, in a place permitted by section 78—
    - (i) a person within subsection (2),
    - (ii) a vehicle in the charge of such a person, or
    - (iii) anything which is in or on such a vehicle,for stolen or prohibited articles, controlled drugs or Her Majesty's stores;
  - (b) to detain such a person or vehicle for the purposes of such a search; and
  - (c) to seize any article that he discovers in the course of such a search and that he has reasonable grounds for suspecting to be an article within section 75(4)(a) to (c);
- but this is subject to subsections (3) to (7).
- (2) A person is within this subsection if he is—
- (a) a person subject to service law whose commanding officer is the officer mentioned in subsection (1);
  - (b) a civilian subject to service discipline whose commanding officer is that officer;
  - (c) a person whom—
    - (i) that officer (in the case of an order under subsection (1)), or
    - (ii) the authorised person (in the case of an authorisation under that subsection),has reasonable grounds for believing to be a person within paragraph (a) or (b).
- (3) An order under subsection (1) may be given only in relation to a particular person or vehicle.
- (4) An officer may give an order under subsection (1) only in the circumstances mentioned in section 75(2) (references to the service policeman being read as references to the officer).

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- (5) A person authorised under subsection (1) may exercise the power of search conferred by virtue of that subsection only in the circumstances mentioned in section 75(2) (references to the service policeman being read as references to the authorised person).
- (6) An officer may give an order or authorisation under subsection (1) only if he has reasonable grounds for believing that it is likely that—
  - (a) an offence under section 42 would be committed, or
  - (b) a person who has committed such an offence would avoid apprehension,
 if the powers conferred by this section could not be exercised before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (7).
- (7) That assistance is—
  - (a) the assistance of a service policeman; or
  - (b) in a case where corresponding powers conferred by section 1 of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force who is capable of exercising those corresponding powers.

#### **Commencement Information**

- I19** S. 76 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I20** S. 76 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

#### **77 Sections 75 and 76: definitions**

- (1) Subsections (2) to (6) apply for the purposes of sections 75 and 76.
- (2) “Controlled drug” has the meaning given by section 2 of the Misuse of Drugs Act 1971 (c. 38).
- (3) “Her Majesty's stores” has the same meaning as in the Public Stores Act 1875 (c. 25).
- (4) “Prohibited article” means—
  - (a) an offensive weapon, other than one in the possession of a person who is permitted to have it in his possession for the purposes of any of Her Majesty's forces;
  - (b) an article made or adapted for use in the course of or in connection with an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence mentioned in subsection (8); or
  - (c) an article intended by the person having it with him for such use by him or by some other person.
- (5) “Service vehicle” means a vehicle which—
  - (a) belongs to any of Her Majesty's forces; or
  - (b) is in use for the purposes of any of those forces.
- (6) “Stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 (c. 60) in the provisions of that Act relating to goods which have been stolen.
- (7) In subsection (4)(a) “offensive weapon” means any article—



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- (a) made or adapted for use for causing injury to persons; or
  - (b) intended by the person having it with him for such use by him or by some other person.
- (8) The offences referred to in subsection (4)(b) are—
- (a) an offence under section 1 of the Theft Act 1968 (theft);
  - (b) an offence under section 9 of that Act (burglary);
  - (c) an offence under section 12 of that Act (taking vehicle etc without consent);
  - (d) an offence under section 1 of the Criminal Damage Act 1971 (c. 48) (destroying or damaging property);
  - (e) an offence under section 1 of the Fraud Act 2006 (fraud).
- (9) The reference in subsection (4)(b) to an offence under section 42 includes an act or omission which would constitute such an offence if done or made by a person subject to service law.

#### Commencement Information

- I21** S. 77 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I22** S. 77 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 78 Places in which powers under sections 75 and 76 may be exercised

The powers conferred by sections 75 and 76 may be exercised only in—

- (a) any place to which (at the time of exercise of the power) the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;
- (b) any other place to which people have ready access (at the time of exercise of the power) but which is not a dwelling or service living accommodation; and
- (c) any premises which (at the time of exercise of the power) are permanently or temporarily occupied or controlled for the purposes of any of Her Majesty's forces but are not service living accommodation.

#### Commencement Information

- I23** S. 78 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I24** S. 78 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 79 Sections 75 and 76: limitation on searching persons or vehicles in certain gardens etc

- (1) Subsection (2) applies if a person (“A”) is in a garden or yard, or on other land, occupied with and used for the purposes of—
- (a) a dwelling; or
  - (b) any service living accommodation within section 96(1)(a).
- (2) A person (“B”) may not by virtue of section 78(a) or (b) search A in the exercise of the power conferred by section 75 or 76 unless B has reasonable grounds for believing—

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- (a) that A does not reside in the dwelling or service living accommodation; and
  - (b) that A is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.
- (3) Subsection (4) applies if a vehicle is in a garden or yard, or on other land, occupied with and used for the purposes of—
- (a) a dwelling; or
  - (b) any service living accommodation within section 96(1)(a).
- (4) A person may not by virtue of section 78(a) or (b) search the vehicle or anything in or on it in the exercise of the power conferred by section 75 or 76 unless he has reasonable grounds for believing—
- (a) that the person in charge of the vehicle does not reside in the dwelling or service living accommodation; and
  - (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation.
- (5) In this section “dwelling” does not include any dwelling which is permanently or temporarily occupied or controlled for the purposes of any of Her Majesty's forces.

#### Commencement Information

- I25** S. 79 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I26** S. 79 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 80 Searches under sections 75 and 76: supplementary

- (1) The time for which a person or vehicle may be detained for the purposes of a search under section 75 or 76 is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.
- (2) Nothing in section 75 or 76 authorises anyone to require a person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves.
- (3) The reference in subsection (2) to headgear does not include headgear worn for religious purposes.
- (4) Nothing in this Chapter limits the powers exercisable on any premises if, or to the extent that, the premises are being used for keeping persons in service custody.

#### Commencement Information

- I27** S. 80 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I28** S. 80 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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## 81 Power to make further provision about searches under sections 75 and 76

The Secretary of State may by order make provision, in relation to the search of persons or vehicles under section 75 or 76, which is equivalent to that made by any provision of—

- (a) section 2(1) to (7) and (9)(b) of PACE (provisions relating to search under section 1 of that Act and other powers), and
  - (b) section 3 of PACE (duty to make records concerning searches),
- subject to such modifications as the Secretary of State considers appropriate.

### Commencement Information

- I29** S. 81 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I30** S. 81 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 82 Application of Chapter to ships and aircraft

This Chapter applies to ships and aircraft as it applies to vehicles.

### Commencement Information

- I31** S. 82 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I32** S. 82 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## CHAPTER 3

### POWERS OF ENTRY, SEARCH AND SEIZURE

*Entry for purposes of obtaining evidence etc*

## 83 Power of judge advocate to authorise entry and search

- (1) A judge advocate may issue a warrant authorising a service policeman to enter and search premises if—
- (a) an application for the warrant, specifying the premises, is made by a service policeman; and
  - (b) the judge advocate is satisfied that the premises are relevant residential premises and that there are reasonable grounds for believing—
    - (i) that a relevant offence has been committed;
    - (ii) that there is on the premises material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;
    - (iii) that the material would be likely to be admissible in evidence at a trial for the offence;
    - (iv) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

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(v) that any of the conditions mentioned in subsection (2) applies.

(2) Those conditions 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 evidence;
- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) in the case of service living accommodation within section 96(1)(b) or (c)—
  - (i) that it is not practicable to communicate with the person or (as the case may be) any of the persons for whom the accommodation is provided; or
  - (ii) that there is no such person with whom it is practicable to communicate who will agree to grant access to the accommodation without the production of a warrant;
- (e) that the purpose of a search may be frustrated or seriously prejudiced unless a service policeman arriving at the premises can secure immediate entry to them.

(3) A service policeman may seize and retain anything for which a search has been authorised under subsection (1).

#### **Commencement Information**

- I33** S. 83 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I34** S. 83 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **84 Section 83: definitions**

(1) Subsections (2) to (4) apply for the purposes of section 83.

(2) “Relevant offence” means any of the following—

- (a) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an indictable offence;
- (b) a service offence specified for the purposes of this subsection in an order made by the Secretary of State;
- (c) a service offence whose commission has led to, or is intended or is likely to lead to, any of the consequences mentioned in subsection (5).

(3) “Relevant residential premises” means—

- (a) service living accommodation; or
- (b) premises occupied as a residence (alone or with other persons) by—
  - (i) a person subject to service law;
  - (ii) a civilian subject to service discipline; or
  - (iii) a person who is suspected of having committed an offence in relation to which the warrant is sought.

*Status: Point in time view as at 08/03/2012.*

*Changes to legislation: Armed Forces Act 2006, Part 3 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) “Items subject to legal privilege”, “excluded material” and “special procedure material” have the meanings given (respectively) by sections 10, 11 and 14 of PACE, but as if in section 11(2)(b) of PACE “enactment” included any provision of—
- (a) an Act of the Scottish Parliament or Northern Ireland legislation; or
  - (b) an instrument made under such an Act or under Northern Ireland legislation.
- (5) The consequences referred to in subsection (2)(c) are—
- (a) serious harm to the security of the State or to public order;
  - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
  - (c) the death of any person;
  - (d) serious injury to any person;
  - (e) substantial financial gain to any person;
  - (f) serious financial loss to any person;
  - (g) the undermining of discipline or morale among members of any of Her Majesty's forces.
- (6) In subsection (5)(d) “injury” includes any disease and any impairment of a person's physical or mental condition.
- (7) For the purposes of subsection (5)(f), loss is serious if (having regard to all the circumstances) it is serious for the person who suffers it.

#### Commencement Information

- I35** S. 84 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I36** S. 84 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 85 Section 83: power to make supplementary provision

The Secretary of State may by order—

- (a) make provision authorising the use, in connection with applications under section 83 to judge advocates, of live television or telephone links or similar arrangements;
- (b) make provision, in relation to warrants issued under that section or entry and search under such a warrant, which is equivalent to that made by any provision of sections 15 and 16 of PACE (which relate to the issue to constables of warrants to enter and search premises), subject to such modifications as the Secretary of State considers appropriate.

#### Commencement Information

- I37** S. 85 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I38** S. 85 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

*Status: Point in time view as at 08/03/2012.*

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## 86 Power to make provision as to access to excluded material etc

- [<sup>F1</sup>(1) The Secretary of State may by order make provision that enables a service policeman, for the purposes of an investigation of a relevant offence and by making an application to a judge advocate in accordance with the order—
- (a) to obtain access to excluded material or special procedure material on relevant residential premises; or
  - (b) to obtain access to material (other than items subject to legal privilege) on premises other than relevant residential premises.
- (2) An order under this section (an “enabling order”) may in particular—
- (a) so far as it relates to obtaining access to material on relevant residential premises, make provision equivalent to any provision of Schedule 1 to PACE (special procedure for obtaining production orders and warrants);
  - (b) so far as it relates to obtaining access to material on premises other than relevant residential premises, make provision equivalent to any provision of paragraphs 1 to 11 of that Schedule (special procedure for obtaining production orders);
  - (c) make provision equivalent to section 311(2) and (3) of this Act (certification to civil court of offences akin to contempt) in relation to a failure by a person within section 309(6) to comply with an order made by a judge advocate under the enabling order;
  - (d) authorise the use, in connection with any application made by virtue of the enabling order, of live television or telephone links or similar arrangements.
- (2A) Any power under subsection (2) to make provision which is equivalent to another provision includes power to make provision which is equivalent subject to such modifications as the Secretary of State considers appropriate.]
- (3) In this section “relevant residential premises” means—
- (a) service living accommodation; or
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law;
    - (ii) a civilian subject to service discipline; or
    - (iii) a person who is suspected of having committed the relevant offence concerned.
- [<sup>F2</sup>(4) In this section the following expressions have the meanings given by section 84—
- “excluded material”;
- “items subject to legal privilege”;
- “relevant offence”;
- “special procedure material”.]

### Textual Amendments

- F1** S. 86(1)-(2A) substituted for s. 86(1)(2) (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 8(2)**, 32(3); S.I. 2012/669, art. 3(a)
- F2** S. 86(4) substituted (8.3.2012) by [Armed Forces Act 2011 \(c. 18\)](#), **ss. 8(3)**, 32(3); S.I. 2012/669, art. 3(a)

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#### Commencement Information

- I39** S. 86 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I40** S. 86 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 87 Power of CO to authorise entry and search by service policeman

- (1) An officer may authorise a service policeman to enter and search premises within subsection (3) if the officer has reasonable grounds for believing—
- (a) that the conditions mentioned in section 83(1)(b)(i) to (v) are satisfied in relation to the premises; and
  - (b) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).
- (2) That time is the earliest time by which it would be practicable—
- (a) for a service policeman to obtain and execute a warrant under section 83 authorising the entry and search of the premises; or
  - (b) in a case where a member of a UK police force could obtain a warrant under section 8 of PACE or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain and execute such a warrant.
- (3) The premises referred to in subsection (1) are—
- (a) service living accommodation of a person whose commanding officer is the officer mentioned in that subsection;
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law whose commanding officer is that officer; or
    - (ii) a civilian subject to service discipline whose commanding officer is that officer;
  - (c) premises which that officer has reasonable grounds for believing to be within paragraph (b).
- (4) A person authorised under subsection (1) may seize and retain anything for which the search under that subsection was authorised; but this is subject to section 89.

#### Commencement Information

- I41** S. 87 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I42** S. 87 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

### 88 Power of CO to authorise entry and search by other persons

- (1) An officer may authorise a person subject to service law (other than a service policeman) to enter and search service living accommodation within subsection (3) if the officer has reasonable grounds for believing—
- (a) that the conditions mentioned in section 83(1)(b)(i) to (v) are satisfied in relation to the premises (the reference in section 83(2)(e) to a service

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- policeman being read as a reference to a person authorised under this subsection); and
- (b) that it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (2).
- (2) That time is the earliest time by which it would be practicable—
- (a) to obtain the assistance of a service policeman; or
- (b) in a case where a member of a UK police force could obtain a warrant under section 8 of PACE or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain and execute such a warrant.
- (3) Service living accommodation is within this subsection if it is—
- (a) service living accommodation of a person whose commanding officer is the officer mentioned in subsection (1); and
- (b) within section 96(1)(b) or (c).
- (4) A person authorised under subsection (1) may seize and retain anything for which the search under that subsection was authorised; but this is subject to section 89.

#### Commencement Information

- I43** S. 88 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I44** S. 88 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 89 Review by judge advocate of certain searches under section 87 or 88

- (1) Where any property has been seized and retained during a search under section 87 or 88, the officer who authorised the search must as soon as practicable request a judge advocate to undertake a review of the search and of the seizure and retention of anything seized and retained during it.
- (2) The Secretary of State may by order make provision—
- (a) with respect to the practice and procedure which is to apply in connection with reviews under this section;
- (b) conferring functions on judge advocates in relation to such reviews.

#### Commencement Information

- I45** S. 89 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I46** S. 89 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)



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### *Entry for purposes of arrest etc*

## **90 Entry for purpose of arrest etc by a service policeman**

- (1) A service policeman may for the purpose of arresting a person enter and search premises within subsection (2), but only if he has reasonable grounds for believing that the person is on the premises.
- (2) The premises referred to in subsection (1) are—
  - (a) service living accommodation;
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law;
    - (ii) a civilian subject to service discipline; or
    - (iii) the person to be arrested;
  - (c) premises which the service policeman has reasonable grounds for believing to be within paragraph (b).
- (3) In relation to premises containing two or more separate dwellings, the powers conferred by subsection (1) are powers to enter and search—
  - (a) any parts of the premises which the occupiers of any dwelling contained in the premises use in common with the occupiers of any other such dwelling; and
  - (b) any such dwelling that the service policeman has reasonable grounds for believing the person to be arrested to be in.
- (4) A service policeman may, for the purpose of saving life or limb or preventing serious damage to property, enter and search any—
  - (a) service living accommodation;
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law; or
    - (ii) a civilian subject to service discipline; or
  - (c) premises which the service policeman has reasonable grounds for believing to be within paragraph (b).
- (5) Any power of search conferred by this section is a power to search only to the extent that is reasonably required for the purpose for which the power of entry is exercised.
- (6) References in this section to arrest are to arrest under section 67, 69, 110 or 111, and related expressions in this section are to be read accordingly.

#### **Commencement Information**

- I47** S. 90 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I48** S. 90 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **91 Entry for purpose of arrest etc by other persons**

- (1) An officer may authorise a person subject to service law (other than a service policeman) to exercise, in relation to premises within subsection (2), the powers conferred by section 90(1) on a service policeman; but this is subject to subsection (3).

*Status: Point in time view as at 08/03/2012.*

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- (2) The premises are—
- (a) service living accommodation of a person whose commanding officer is the officer mentioned in subsection (1);
  - (b) premises occupied as a residence (alone or with other persons) by—
    - (i) a person subject to service law whose commanding officer is that officer; or
    - (ii) a civilian subject to service discipline whose commanding officer is that officer;
  - (c) premises which that officer has reasonable grounds for believing to be within paragraph (b).
- (3) An officer may give an authorisation under subsection (1) only if—
- (a) the arrest is to be made under section 67;
  - (b) the offence in respect of which the arrest is to be made is a relevant offence (as defined by section 84); and
  - (c) the officer has reasonable grounds for believing that, if the arrest could not be made before the earliest time by which it would be practicable to obtain the assistance mentioned in subsection (4)—
    - (i) the person to be arrested might evade arrest, conceal, damage, alter or destroy evidence, or present a danger to himself or others; or
    - (ii) discipline or morale among members of any of Her Majesty's forces might be undermined.
- (4) That assistance is—
- (a) the assistance of a service policeman, or
  - (b) in a case where corresponding powers conferred by section 17(1)(b) or (c) of PACE or any other enactment are exercisable by a member of a UK police force, the assistance of a member of such a force capable of exercising those corresponding powers.
- (5) An officer may authorise a person subject to service law (other than a service policeman) to exercise, in relation to premises within subsection (2), the powers conferred by section 90(4) on a service policeman; but this is subject to subsection (6).
- (6) An officer may give an authorisation under subsection (5) in relation to premises within section 90(4)(b) or (c) only if it is not practicable to obtain the assistance of a service policeman in time to take the necessary action to save life or limb or prevent serious damage to property.
- (7) The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under this section.

#### **Commencement Information**

**149** S. 91 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))

**150** S. 91 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

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### *Additional powers of entry, search and seizure*

## **92 Power to make provision conferring powers of entry and search after arrest**

The Secretary of State may by order make provision, in relation to premises occupied or controlled by a person who—

- (a) has been arrested under section 67, and
  - (b) is being held in service custody without being charged with a service offence,
- which is equivalent to that made by any provision of section 18 of PACE (entry and search after arrest), subject to such modifications as the Secretary of State considers appropriate.

#### **Commencement Information**

- I51** S. 92 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I52** S. 92 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **93 Power to make provision conferring power of seizure etc**

The Secretary of State may by order make provision, in relation to—

- (a) a service policeman who, in connection with the investigation of a service offence, is lawfully on premises which are searchable by virtue of this Part, or
- (b) any power of seizure or retention conferred by or under this Part,

which is equivalent to that made by any provision of sections 19 to 21 of PACE (which relate to seizure) or section 22(1) to (4) of that Act (power to retain property seized), subject to such modifications as the Secretary of State considers appropriate.

#### **Commencement Information**

- I53** S. 93 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I54** S. 93 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **[<sup>F3</sup>CHAPTER 3A**

### **TESTING FOR ALCOHOL AND DRUGS ON SUSPICION OF OFFENCE**

#### **Textual Amendments**

- F3** Pt. 3 Ch. 3A inserted (8.3.2012 for specified purposes, 1.11.2013 in so far as not already in force) by [Armed Forces Act 2011 \(c. 18\)](#), [ss. 11\(1\)](#), [32\(3\)](#); [S.I. 2012/669](#), [art. 3\(c\)](#); [S.I. 2013/2501](#), [art. 3\(b\)](#)

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### *Preliminary testing for alcohol and drugs*

#### **93A Commanding officer's power to require preliminary tests**

- (1) This section applies where the commanding officer of a person subject to service law has reasonable cause to believe that that person—
  - (a) is committing a relevant offence; or
  - (b) has committed a relevant offence and still has alcohol or a drug in the body or is still under the influence of a drug.
- (2) In this section “relevant offence” means—
  - (a) an offence under section 20A; or
  - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined by section 93I).
- (3) This section also applies where the commanding officer of a person who is a civilian subject to service discipline has reasonable cause to believe that that person—
  - (a) is committing an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003 (maritime and aviation offences); or
  - (b) has committed such an offence under section 42 and still has alcohol or a drug in the body or is still under the influence of a drug.
- (4) The commanding officer may require the person mentioned in subsection (1) or (3) (“the suspected person”) to co-operate with any one or more of—
  - (a) a preliminary breath test (see section 93B);
  - (b) a preliminary impairment test (see section 93C);
  - (c) a preliminary drug test (see section 93D).
- (5) The Defence Council may by regulations provide for the delegation by a commanding officer of the commanding officer's functions under this section.
- (6) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (4) commits an offence.
- (7) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.
- (8) For the purposes of this section, a person does not co-operate with a preliminary test unless the person's co-operation—
  - (a) is sufficient to enable the test to be carried out; and
  - (b) is provided in such a way as to enable the objective of the test to be satisfactorily achieved.

#### **93B Preliminary breath test**

- (1) A preliminary breath test is a procedure administered by a service policeman under which—
  - (a) the suspected person provides a specimen of breath; and
  - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication whether the proportion of alcohol in the person's breath

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or blood is likely to be such as is necessary for the commission of the suspected offence.

- (2) A preliminary breath test may be administered only—
- (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.
- (3) In this section “the suspected offence” means an offence mentioned in section 93A(2) or (3)(a) which the commanding officer has reasonable cause to believe has been committed.

### **93C Preliminary impairment test**

- (1) A preliminary impairment test is a procedure under which a service policeman—
- (a) observes the suspected person performing tasks specified by the service policeman; and
  - (b) makes such other observations of the suspected person's physical state as the service policeman thinks expedient.
- (2) A preliminary impairment test may be administered only—
- (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.
- (3) The Provost Marshals (acting jointly) must issue, and may from time to time revise, a code of practice about—
- (a) the kind of task that may be specified for the purposes of a preliminary impairment test;
  - (b) the kind of observation of physical state that may be made in the course of a preliminary impairment test;
  - (c) the way in which a preliminary impairment test should be administered; and
  - (d) the inferences that may be drawn by a service policeman from observations made in the course of a preliminary impairment test.
- (4) In subsection (3) “the Provost Marshals” means the Provost Marshals of each of the service police forces.
- (5) A service policeman administering a preliminary impairment test must have regard to the code of practice.
- (6) A service policeman may administer a preliminary impairment test only if the service policeman is approved for that purpose by a Provost Marshal of a service police force.
- (7) A code of practice under this section may include provision about—
- (a) the giving of approval under subsection (6); and
  - (b) in particular, the kind of training that a service policeman should have undergone, or the kind of qualification that a service policeman should possess, before being approved under that subsection.

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### **93D Preliminary drug test**

- (1) A preliminary drug test is a procedure administered by a service policeman under which—
  - (a) a specimen of sweat or saliva is obtained from the suspected person; and
  - (b) the specimen is used for the purpose of obtaining, by means of an approved device, an indication whether there is a drug in the person's body.
- (2) A preliminary drug test may be administered only—
  - (a) at or near the place where the requirement to co-operate with the test is imposed;
  - (b) at a service police establishment determined by the service policeman; or
  - (c) at a medical establishment.

#### *Provision of specimens for analysis*

### **93E Provision of specimens for analysis**

- (1) This section applies in relation to an investigation into whether a person has committed—
  - (a) an offence under section 20A;
  - (b) an offence under section 20(1)(a) in respect of a safety-critical duty (as defined by section 93I); or
  - (c) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003.
- (2) In the course of the investigation a service policeman may require the person—
  - (a) to provide two specimens of breath for analysis by means of an approved device;
  - (b) to provide a specimen of blood or urine for a laboratory test.
- (3) A requirement under this section may be imposed only at a service police establishment or a medical establishment.
- (4) For the purposes of this section and section 93F, a person does not provide a specimen of breath for analysis unless the specimen—
  - (a) is sufficient to enable the analysis to be carried out; and
  - (b) is provided in such a way as to enable the objective of the analysis to be satisfactorily achieved.
- (5) For the purposes of this section and section 93F, a person provides a specimen of blood if and only if—
  - (a) he consents to the taking of such a specimen from him;
  - (b) the specimen is taken from him by a registered medical practitioner or registered nurse; and
  - (c) the specimen is of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (6) For the purposes of this section and section 93F, a person provides a specimen of urine if and only if the specimen—

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- (a) is provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine; and
  - (b) is of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (7) Where the provision of a specimen may be required under this section, the question of whether it is to be breath, blood or urine, and in the case of blood the question of who is to be asked to take it, is to be decided by the service policeman imposing the requirement.
- (8) But where a service policeman decides for the purposes of subsection (7) to require the provision of a specimen of blood, there shall be no requirement to provide such a specimen if—
- (a) the registered medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, it cannot or should not be taken; or
  - (b) the registered nurse who is asked to take it is of that opinion and there is no contrary opinion from a registered medical practitioner;
- and where by virtue of this subsection there can be no requirement to provide a specimen of blood, the service policeman may require a specimen of urine instead.
- (9) A service policeman must, on requiring a person to provide a specimen in pursuance of this section, warn the person that a failure to provide it may render the person liable to proceedings for a service offence.
- (10) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence.
- (11) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.

### **93F Further provision about specimens under section 93E**

- (1) Where two specimens of breath are provided by a person in pursuance of section 93E, the one with the lower proportion of alcohol in the breath is to be used and the other is to be disregarded.
- (2) If the specimen with the lower proportion of alcohol contains no more than a prescribed proportion of alcohol, the person who provided it may claim that it should be replaced by such a specimen of blood or urine as may be required under section 93E.
- (3) If the person then provides such a specimen, neither specimen of breath is to be used.
- (4) In subsection (2) “prescribed” means prescribed by regulations made by the Defence Council for the purposes of this section; and the regulations may prescribe different proportions of alcohol in relation to different kinds of offence.
- (5) On a request made at the time a specimen of blood or urine is provided under section 93E, the person who provided the specimen must be given a part of the specimen sufficient for the purposes of analysis.

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### **93G Specimens of blood from persons incapable of consenting**

- (1) A service policeman may request a registered medical practitioner to take a specimen of blood from a person (“the person concerned”), irrespective of whether that person consents, if—
  - (a) the service policeman would (in the absence of any incapacity of the person concerned and of any objection under section 93H) be entitled under section 93E to require the person concerned to provide a specimen of blood for a laboratory test;
  - (b) it appears to the service policeman that the person concerned has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter;
  - (c) it appears to the service policeman that the person concerned is or may be incapable of giving a valid consent to the taking of a specimen of blood (whether or not consent has purportedly been given); and
  - (d) it appears to the service policeman that that person's incapacity is attributable to medical reasons.
- (2) It is lawful for a registered medical practitioner to whom a request is made under this section, if that practitioner thinks fit—
  - (a) to take a specimen of blood from the person concerned irrespective of whether that person consents; and
  - (b) to provide the specimen to a service policeman.
- (3) The specimen must be of sufficient quantity to enable it to be divided into two parts for the purposes of analysis.
- (4) If a specimen is taken in pursuance of a request under this section, it must not be subjected to a laboratory test unless the person concerned—
  - (a) has been informed that it was taken;
  - (b) has been required by a service policeman to give permission for a laboratory test of the specimen; and
  - (c) has given permission.
- (5) A service policeman, on requiring a person to give permission for the purposes of this section for a laboratory test of a specimen, must warn the person that a failure to give the permission may render the person liable to proceedings for a service offence.
- (6) On a request made at the time a person gives permission under this section for a laboratory test of a specimen, that person must be given a part of the specimen sufficient for the purposes of analysis.
- (7) A person who, without reasonable excuse, fails to give permission for a laboratory test of a specimen taken from the person under this section is guilty of an offence.
- (8) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.



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### *General provisions relating to testing*

#### **93H Patients in medical establishments**

- (1) This section applies in relation to a person who is at a medical establishment as a patient.
- (2) The person shall not be required to co-operate with a preliminary test or to provide a specimen under section 93E unless the responsible medical professional has been notified of the proposal to impose the requirement.
- (3) If the responsible medical professional objects on medical grounds the requirement must not be imposed.
- (4) If the responsible medical professional does not object on medical grounds and the requirement is imposed, the requirement must be for co-operation with a preliminary test administered, or for the provision of a specimen, at the medical establishment.
- (5) No specimen of blood may be taken from the person under section 93G, and the person may not be required to give permission for a laboratory test of a specimen taken under that section, unless the responsible medical professional—
  - (a) has been notified of the proposal that the specimen be taken or of the proposal to make the requirement; and
  - (b) has not objected on medical grounds.
- (6) In this section “the responsible medical professional” means—
  - (a) the registered medical practitioner in immediate charge of the person's case; or
  - (b) if there is no such registered medical practitioner, the registered nurse in immediate charge of the person's case.
- (7) In this section “medical grounds” means—
  - (a) in relation to a requirement to co-operate with a preliminary test or to provide a specimen under section 93E, the ground that the requirement, or compliance with it by the patient, or any warning required by section 93E(9), would be prejudicial to the proper care and treatment of the patient;
  - (b) in relation to the taking of a specimen under section 93G or a requirement to give permission for a laboratory test of a specimen taken under that section, the ground that the taking of the specimen, the requirement, or any warning required by section 93G(5), would be so prejudicial.

#### **93I Definitions for purposes of Chapter 3A**

- (1) In this Chapter—
  - “approved”, in relation to a device, means approved by the Secretary of State;
  - “drug” includes any intoxicant other than alcohol;
  - “medical establishment” means any facility at which medical or surgical treatment for in- or out-patients is provided;
  - “preliminary test” means—
    - (a) a preliminary breath test within the meaning of section 93B;
    - (b) a preliminary impairment test within the meaning of section 93C; or
    - (c) a preliminary drug test within the meaning of section 93D;

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“safety-critical duty” means a duty which the commanding officer of the person mentioned in section 93A(1) or 93E(1) reasonably believes is such that performing the duty with ability impaired by alcohol or drugs would result in a risk of—

- (a) death;
- (b) serious injury to any person;
- (c) serious damage to property; or
- (d) serious environmental harm;

“service police establishment” means any building or part of a building, any structure, or any room (whether on land or on a ship) which is used by a service policeman for the performance of his duties.

- (2) In this Chapter any reference to a service policeman includes a Royal Navy coxswain.]

## CHAPTER 4

### SUPPLEMENTARY

#### 94 **Property in possession of service police or CO**

- (1) The Secretary of State may by regulations make provision with respect to the disposal of property which has come into the possession of a service policeman or a person's commanding officer in connection with the investigation of a service offence.
- (2) The regulations may in particular—
- (a) enable the Court Martial, the Service Civilian Court or a judge advocate to make an order for the delivery of the property to the person appearing to the court or judge advocate to be the owner of the property or, if the owner cannot be ascertained, to make such order with respect to the property as the court or judge advocate considers appropriate;
  - (b) enable the commanding officer of a person charged with a service offence—
    - (i) to determine that any property seized under this Part in connection with the investigation of a service offence should be delivered to the person appearing to the commanding officer to be the owner of the property; or
    - (ii) if the owner cannot be ascertained, to make such other determination with respect to the delivery of the property as the commanding officer considers appropriate;
  - (c) enable the commanding officer of a person—
    - (i) in whose possession the property was before it was seized under this Part, or
    - (ii) who claims to be the owner of the property,
 to determine that it should be delivered to that person;
  - (d) make provision as to appeals against orders made by virtue of paragraph (a) and determinations made by virtue of paragraph (b) or (c); and
  - (e) provide that, at the end of a specified period from the making of an order by virtue of paragraph (a), the right of any person to take proceedings for the recovery of the property is to cease.

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- (3) A determination made by virtue of subsection (2)(b) or (c) does not affect the right of any person to recover any property delivered in pursuance of the determination from the person to whom it is delivered.

#### Commencement Information

- I55** S. 94 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I56** S. 94 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 95 Saving provision

- (1) Nothing in this Part affects—
- (a) any power of a service policeman or commanding officer to enter and search, or order the entry and search of, premises which are occupied for the purposes of any of Her Majesty's forces, to the extent that the premises do not constitute service living accommodation;
  - (b) any power of a commanding officer, otherwise than in connection with the investigation of a service offence or the exercise of any power of arrest, to enter and search, or order the entry and search of, service living accommodation;
  - (c) any power of a commanding officer, otherwise than in connection with the investigation of a service offence or the exercise of any power of arrest, to search, or order the search of, a person or to stop and search, or order the stop and search of, a service vehicle; or
  - (d) any power of a service policeman or commanding officer to search, or order the search of, a service vehicle which is not in the charge of any person.
- (2) In subsection (1) “service vehicle” means a vehicle, ship or aircraft which—
- (a) belongs to any of Her Majesty's forces; or
  - (b) is in use for the purposes of any of those forces.

#### Commencement Information

- I57** S. 95 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I58** S. 95 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## 96 “Service living accommodation”, “premises” and other definitions

- (1) In this Part “service living accommodation” means (subject to subsection (2))—
- (a) any building or part of a building which is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his family, as living accommodation or as a garage;
  - (b) any other room, structure or area (whether on land or on a ship) which is occupied for the purposes of any of Her Majesty's forces and is used for the provision of sleeping accommodation for one or more persons subject to service law; or

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- (c) any locker which—
  - (i) is provided by any of Her Majesty's forces for personal use by a person subject to service law in connection with his sleeping accommodation, but
  - (ii) is not in a room, structure or area falling within paragraph (b).
- (2) Premises are not service living accommodation for the purposes of this Part if, or to the extent that, they are being used for keeping persons in service custody.
- (3) In this Part “premises” includes any place and, in particular, includes—
  - (a) any vehicle, ship or aircraft; and
  - (b) any tent or movable structure.
- (4) In this Part “enactment” includes any provision of—
  - (a) an Act of the Scottish Parliament or Northern Ireland legislation, or
  - (b) an instrument made under such an Act or under Northern Ireland legislation, and also includes any rule of law in Scotland.

#### **Commencement Information**

- I59** S. 96 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I60** S. 96 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

## **97 Power to use reasonable force**

Where a power is conferred on any person by or under this Part, he may use reasonable force, if necessary, in the exercise of the power.

#### **Commencement Information**

- I61** S. 97 in force at 28.3.2009 for specified purposes by [S.I. 2009/812](#), [art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#))
- I62** S. 97 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/1167](#), [art. 4](#)

**Status:**

Point in time view as at 08/03/2012.

**Changes to legislation:**

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