

**2009 No. 1922**

**DEFENCE**

**The Police and Criminal Evidence Act 1984  
(Armed Forces) Order 2009**

<i>Made</i> - - - -	<i>16th July 2009</i>
<i>Laid before Parliament</i>	<i>20th July 2009</i>
<i>Coming into force</i> - -	<i>31st October 2009</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 113(1) of the Police and Criminal Evidence Act 1984(a):

**Citation and commencement**

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 and shall come into force on 31st October 2009.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Armed Forces Act 2006(b);

“the 1984 Act” means the Police and Criminal Evidence Act 1984;

“analysis”, in relation to a skin impression, includes comparison and matching;

“applicable 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 offence specified in regulation 3 of the National Police Records (Recordable Offences) Regulations 2000(c);
- (b) an offence listed in the second column of Schedule 1, subject to any restriction stated in relation to the offence in the third column of the Schedule; or
- (c) an offence within any of paragraphs 1 to 11 of Schedule 2 to the Act;

“appropriate consent” means—

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

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(a) 1984 c. 60, as amended by paragraph 105, Schedule 16 to the Armed Forces Act 2006, including by paragraph 105(10) the addition of a power to make transitional provision.  
(b) 2006 c. 52.  
(c) S.I. 2000/1139, amended by S.I. 2003/2823, 2005/3106, 2007/2121.

“authorising service policeman” shall be construed in accordance with article 3;

“conviction” includes a finding under the Act by a commanding officer or by the Summary Appeal Court that a charge has been proved;

“custody” has the same meaning as service custody for the purposes of the Act;

“extradition arrest power” means any of the following—

- (a) a Part 1 warrant (within the meaning given by the Extradition Act 2003)<sup>(a)</sup> in respect of which a certificate under section 2 of that Act has been issued;
- (b) section 5 of that Act;
- (c) a warrant issued under section 71 of that Act;
- (d) a provisional warrant (within the meaning given by that Act);

“fingerprints”, in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of—

- (a) any of that person’s fingers; or
- (b) either of his palms;

“intimate sample” means—

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from any part of a person’s genitals (including pubic hair) or from a person’s body orifice other than the mouth;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“legal adviser” means—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(b)</sup>,
- (b) an advocate or a solicitor in Scotland,
- (c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland, or
- (d) a person having 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 subject to punishment or disability for breach of professional rules,

and, until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005<sup>(c)</sup> comes into force, the reference in (c) of this definition to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland;

“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
- (d) saliva;

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(a) 2003 c. 41.

(b) 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).

(c) 2005 c. 4.

(e) a skin impression;

“the 2006 Order” means the Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 2006(a);

“recordable 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 offence specified in regulation 3 of the National Police Records (Recordable Offences) Regulations 2000; or

(b) an offence listed in the second column of Schedule 1 subject to any restriction stated in relation to the offence in the third column of that Schedule;

“registered dentist” has the same meaning as in the Dentists Act 1984(b);

“registered health care professional” has the same meaning as in Part 5 of the 1984 Act(c);

“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(d);

(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 subparagraph (c),(d) or (e);

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

“service discipline Acts” means the Army Act 1955(e), the Air Force Act 1955(f) and the Naval Discipline Act 1957(g);

“service medical authority” means the Royal Naval Medical Branch, the Royal Naval Dental Branch, Queen Alexandra’s Royal Naval Nursing Service, the Royal Army Medical Corps, the Royal Army Dental Corps, Queen Alexandra’s Royal Army Nursing Corps, the Royal Air Force Medical Service, the Royal Air Force Dental Branch and Princess Mary’s Royal Air Force Nursing Service;

“service offence” has the same meaning as in the Act;

“service police establishment” means any building or part of the 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;

“service policeman” means a member of—

(a) the Royal Navy Police;

(b) the Royal Military Police; or

(c) the Royal Air Force Police;

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(a) S.I. 2006/2015.

(b) 1984 c. 24.

(c) See section 65(1) of the 1984 Act.

(d) The service offences which may be dealt with at a summary hearing by a commanding officer are prescribed in section 53 of the Act.

(e) 1955 c. 18.

(f) 1955 c. 19.

(g) 1957 c. 53.

“skin impression”, in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his foot or of any other part of his body;

“speculative search”, in relation to a person’s fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in article 14(1);

“sufficient” and “insufficient”, in relation to a sample, means (subject to paragraph (3) below) sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.

(2) A health care profession is any profession mentioned in section 60(2) of the Health Act 1999(a) other than the profession of practising medicine and the profession of nursing.

(3) References in this Order to a sample proving insufficient include references to where, as a consequence of—

- (a) the loss, destruction or contamination of the whole or any part of the sample,
- (b) any damage to the whole or a part of the sample, or
- (c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

#### **Authorising service policeman**

3.—(1) Subject to paragraph (3), no person shall act as an authorising service policeman for the purpose of article 9 unless he is a service policeman of or above the rank of lieutenant commander, military or marine major or squadron leader.

(2) Subject to paragraph (3), no person shall act as an authorising service policeman for the purposes of this Order (except for the purpose of article 9) unless he is a service policeman of or above the rank of naval lieutenant, military or marine captain or flight lieutenant.

(3) In any case where it is not practicable to comply with paragraph (1) or (2), any service policeman may act as an authorising service policeman if he is senior in rank to the service policeman seeking authorisation.

#### **Searches of detained persons**

4.—(1) A service policeman shall ascertain everything which a person has with him when he is—

- (a) brought to a service police establishment under arrest or after being committed to custody on the order of a judge advocate; or
- (b) arrested at a service police establishment.

(2) The service policeman may record or cause to be recorded in writing all or any of the things which he ascertains under paragraph (1).

(3) In the case of an arrested person, any such record may be made as part of his custody record.

(4) Subject to paragraph (5), a service policeman may seize and retain any such thing or cause any such thing to be seized and retained.

(5) Clothes and personal effects may only be seized if a service policeman believes that the person from whom they are seized may use them—

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

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(a) 1999 c. 8.

- (b) to damage property,
- (c) to interfere with evidence, or
- (d) to assist him to escape,

or he has reasonable grounds for believing that they may be evidence related to an offence.

(6) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

(7) Subject to paragraph (10), a person may be searched if the service policeman considers it necessary to enable him to carry out his duty under paragraph (1) and to the extent that the service policeman considers necessary for that purpose.

(8) A person who is in custody at a service police establishment may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in paragraph (5)(a).

(9) Subject to paragraph (10), a service policeman may seize and retain, or cause to be seized and retained, anything found on such a search.

(10) A service policeman may only seize clothes and personal effects in the circumstances specified in paragraph (5).

(11) An intimate search may not be conducted under this article.

(12) Subject to paragraph (13), a search under this article shall be carried out by a service policeman.

(13) The service policeman carrying out a search shall be of the same sex as the person searched but where a service policeman of the same sex is not readily available a search may be carried out by an officer, warrant officer, non-commissioned officer or leading rate who is of the same sex as the person searched and is acting under the direction of a service policeman.

### **Searches and examination to ascertain identity**

**5.—**(1) If an authorising service policeman authorises it, a person who is in custody at a service police establishment may be searched or examined, or both—

- (a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or
- (b) for the purpose of facilitating the ascertainment of his identity.

(2) An authorising service policeman may only give an authorisation under paragraph (1) for the purpose mentioned in sub-paragraph (a) of that paragraph if—

- (a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or
- (b) it is not practicable to obtain such consent.

(3) An authorising service policeman may only give an authorisation under paragraph (1) in a case in which paragraph (2) does not apply if—

- (a) the person in question has refused to identify himself; or
- (b) the authorising service policeman has reasonable grounds for suspecting that that person is not who he claims to be.

(4) An authorising service policeman may give an authorisation under paragraph (1) orally or in writing, but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Any identifying mark found on a search or examination under this article may be photographed—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(6) Where a search or examination may be carried out under this article, or a photograph may be taken under this article, the only persons entitled to carry out the search or examination, or to take the photograph, are service policemen.

(7) A person may not under this article carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

(8) An intimate search may not be carried out under this article.

(9) A photograph taken under this article may be used by, or disclosed to, any person for any purpose related to—

- (a) the investigation of a service offence,
- (b) the prevention or detection of crime, or
- (c) the conduct of a prosecution,

and after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(10) In this article—

- (a) references to ascertaining a person's identity include references to showing that he is not a particular person; and
- (b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.

(11) In this article "mark" includes features and injuries; and a mark is an identifying mark for the purposes of this article if its existence in any person's case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.

(12) Nothing in this article applies to a person arrested under an extradition arrest power.

### **Intimate searches**

**6.—**(1) Subject to the following provisions of this article, if an authorising service policeman has reasonable grounds for believing—

- (a) that a person who has been arrested and is in custody may have concealed on him anything which—
  - (i) he could use to cause physical injury to himself or others, and
  - (ii) he might so use while he is in custody, or
- (b) that such a person—
  - (i) may have a Class A drug concealed on him, and
  - (ii) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise an intimate search of that person.

(2) An authorising service policeman may not authorise an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(3) An authorising service policeman may give an authorisation under paragraph (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) A drug offence search shall not be carried out unless the appropriate consent has been given in writing.

(5) Where it is proposed that a drug offence search be carried out, a service policeman shall inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it; and
- (b) of the grounds for giving the authorisation.

(6) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(7) Except as provided by paragraph (6), an intimate search shall be by way of examination by a suitably qualified person unless an authorising service policeman considers that this is not practicable.

(8) An intimate search which is not carried out as mentioned in paragraph (7) shall be carried out by a service policeman.

(9) A service policeman may not carry out an intimate search of a person of the opposite sex.

(10) No intimate search may be carried out except—

- (a) at a service police establishment;
- (b) at a hospital;
- (c) at a registered medical practitioner's surgery; or
- (d) at some other place used for medical purposes.

(11) An intimate search which is only a drug offence search may not be carried out at a service police establishment.

(12) If an intimate search of a person is carried out a record shall be made in writing by a service policeman stating—

- (a) which parts of his body were searched; and
- (b) why they were searched.

(13) If the intimate search is a drug offence search, a record shall be made in writing by a service policeman stating—

- (a) the authorisation by virtue of which the search was carried out;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given.

(14) The information required to be recorded by paragraphs (12) and (13) shall be recorded as soon as practicable after the completion of the search.

(15) A service policeman may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained if he believes that the person from whom it is seized may use it—

- (a) to cause physical injury to himself or any other person,
- (b) to damage property,
- (c) to interfere with evidence, or
- (d) to assist him to escape,

or if he has reasonable grounds for believing that it may be evidence relating to an offence.

(16) Where anything is seized under this article, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

(17) Where the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether there is a case to answer, and
- (b) the court, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(18) In this article—

“appropriate criminal intent” means an intent to commit an offence under section 42 of the Act consisting of an offence under section 5(3) of the Misuse of Drugs Act 1971<sup>(a)</sup> (possession of controlled drug with intent to supply to another);

“Class A drug” has the meaning assigned to it by section 2(1)(b) of the Misuse of Drugs Act 1971;

“court” shall include the Summary Appeal Court, the Court Martial and the Service Civilian Court established under the Act and the Court Martial Appeal Court provided for in Part 1 of the Court Martial Appeals Act 1968<sup>(b)</sup>;

“drug offence search” means an intimate search for a Class A drug which an authorising service policeman has authorised by virtue of article 6(1)(b); and

“suitably qualified person” means—

- (a) a registered medical practitioner; or
- (b) a registered nurse; or
- (c) a member of the Royal Naval Medical Branch.

### **X-rays and ultrasound scans**

7.—(1) If an authorising service policeman has reasonable grounds for believing that a person who has been arrested for an offence and is in custody—

- (a) may have swallowed a Class A drug, and
- (b) was in possession of it with the appropriate criminal intent before his arrest,

the authorising service policeman may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).

(2) An x-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.

(3) If it is proposed that an x-ray is taken or an ultrasound scan is carried out, a service policeman must inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it, and
- (b) of the grounds for giving the authorisation.

(4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—

- (a) a hospital,
- (b) a registered medical practitioner’s surgery, or
- (c) some other place used for medical purposes.

(5) A record shall be made in writing by a service policeman stating—

- (a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out,
- (b) the grounds for giving the authorisation, and
- (c) the fact that the appropriate consent was given.

(6) The information required to be recorded by paragraph (5) must be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out (as the case may be).

(7) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether there is a case to answer, and
- (b) the court, in determining whether that person is guilty of the offence charged,

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(a) 1971 c. 38.

(b) 1968 c. 20. The name of the 1968 Act is as changed by paragraph 53 of Schedule 8 to the Act.



may draw such inferences from the refusal as appear proper.

(8) In this article, “the appropriate criminal intent”, “Class A drug” and “suitably qualified person” have the same meanings as in article 6.

### **Right to have someone informed when arrested**

**8.**—(1) Where a person has been arrested and is being held in custody in a service police establishment or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this article, that he has been arrested and is being detained there.

(2) Delay is only permitted—

- (a) in the case of a person who is in custody for a serious service offence; and
- (b) if an authorising service policeman authorises it.

(3) In any case the person in custody must be permitted to exercise the right conferred by paragraph (1) within 36 hours from the time of his arrest.

(4) An authorising service policeman may give an authorisation under paragraph (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) An authorising service policeman may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest—

- (a) will lead to interference with or harm to evidence connected with a serious service offence or an indictable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed a serious service offence or an indictable offence, but not yet been arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of a serious service offence or an indictable offence.

(6) If a delay is authorised—

- (a) the person in custody shall be told the reason for it; and
- (b) the reason shall be recorded in writing by a service policeman.

(7) The duties imposed by paragraph (6) shall be performed as soon as is practicable.

(8) The rights conferred by this article on a person held in custody at a service police establishment or other premises are exercisable whenever he is transferred from one place to another; and this article applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(9) There may be no further delay in permitting the exercise of the right conferred by paragraph (1) once the reason for authorising delay ceases to subsist.

### **Access to legal advice**

**9.**—(1) A person arrested and held in custody in a service police establishment or other premises shall be entitled, if he so requests, to consult a legal adviser privately at any time.

(2) A request under paragraph (1) and the time at which it was made shall be recorded in writing by a service policeman.

(3) If a person makes such a request, he must be permitted to consult a legal adviser as soon as is practicable except to the extent that delay is permitted by this article.

(4) In any case he must be permitted to consult a legal adviser within 36 hours from the time of his arrest.

(5) Delay in compliance with a request is only permitted—

- (a) in the case of a person who is in custody for a serious service offence; and

(b) if an authorising service policeman authorises it.

(6) An authorising service policeman may give an authorisation under paragraph (5) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(7) An authorising service policeman may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by paragraph (1) at the time when the person in custody desires to exercise it—

- (a) will lead to interference with or harm to evidence connected with a serious service offence or an indictable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed a serious service offence or an indictable offence, but not yet been arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of a serious service or an indictable offence.

(8) If delay is authorised—

- (a) the person in custody shall be told the reason for it; and
- (b) the reason shall be recorded in writing by a service policeman.

(9) The duties imposed by paragraph (8) shall be performed as soon as is practicable.

(10) There may be no further delay in permitting the exercise of the right conferred by paragraph (1) once the reason for authorising delay ceases to subsist.

## **Fingerprinting**

**10.—**(1) Except as provided by this article no person's fingerprints may be taken without the appropriate consent.

(2) Consent to the taking of a person's fingerprints must be in writing if it is given at a time when he is at a service police establishment.

(3) The fingerprints of a person in custody at a service police establishment may be taken without the appropriate consent if—

- (a) he is in custody in consequence of his arrest for an applicable service offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by a service policeman.

(4) Where a person mentioned in sub-paragraph (a) of paragraph (3) or (5) has already had his fingerprints taken in the course of the investigation of the offence by a service policeman, that fact shall be disregarded for the purposes of that paragraph if—

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) The fingerprints of a person in custody at a service police establishment may be taken without the appropriate consent if—

- (a) he has been charged with an applicable service offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by a service policeman.

(6) Any person's fingerprints may be taken without the appropriate consent if he has been convicted of a recordable service offence.

(7) In a case where by virtue of paragraph (3), (5) or (6) a person's fingerprints are taken without the appropriate consent—

- (a) he shall be told the reason before his fingerprints are taken; and

(b) the reason shall be recorded in writing by a service policeman as soon as is practicable after the fingerprints are taken.

(8) If a person's fingerprints are taken at a service police establishment whether with or without the appropriate consent—

(a) before the fingerprints are taken, a service policeman shall inform him that they may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded in writing by a service policeman as soon as is practicable after the fingerprints have been taken.

(9) If he is in custody at a service police establishment when the fingerprints are taken, the reason for taking them and, in the case falling within paragraph (8), the fact referred to in sub-paragraph (b) of that paragraph shall be recorded in writing by a service policeman.

(10) The power to take the fingerprints of a person in custody at a service police establishment without the appropriate consent shall be exercisable by any service policeman.

(11) Nothing in this article applies to a person arrested under an extradition arrest power.

### **Impressions of footwear**

**11.**—(1) Except as provided by this article, no impression of a person's footwear may be taken without the appropriate consent.

(2) Consent to the taking of an impression of a person's footwear must be in writing if it is given at a time when he is at a service police establishment.

(3) Where a person is in custody at a service police establishment, an impression of his footwear may be taken without the appropriate consent if—

(a) he is in custody in consequence of his arrest for an applicable service offence, or has been charged with an applicable service offence; and

(b) he has not had an impression taken of his footwear in the course of the investigation of the offence by a service policeman.

(4) Where a person mentioned in sub-paragraph (a) of paragraph (3) has already had an impression taken of his footwear in the course of the investigation of the offence by a service policeman, that fact shall be disregarded for the purposes of that paragraph if the impression of his footwear taken previously is—

(a) incomplete; or

(b) is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) If an impression of a person's footwear is taken at a service police establishment, whether with or without the appropriate consent—

(a) before it is taken, a service policeman shall inform him that it may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded in writing by a service policeman as soon as is practicable after the impression has been taken.

(6) In a case where, by virtue of paragraph (3), an impression of a person's footwear is taken without the appropriate consent—

(a) he shall be told the reason before it is taken; and

(b) the reason shall be recorded in writing by a service policeman as soon as is practicable after the impression is taken.

(7) The power to take an impression of the footwear of a person in custody at a service police establishment without the appropriate consent shall be exercisable by any service policeman.

(8) Nothing in this article applies to any person arrested under an extradition arrest power.

## Intimate samples

12.—(1) An intimate sample may be taken from a person in custody at a service police establishment only—

- (a) if an authorising service policeman authorises it to be taken; and
- (b) if the appropriate consent is given.

(2) An intimate sample may be taken from a person who is not in custody at a service police establishment but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient—

- (a) if an authorising service policeman authorises it to be taken; and
- (b) if the appropriate consent is given.

(3) An authorising service policeman may only give an authorisation under paragraph (1) or (2) if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in an applicable service offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(4) An authorising service policeman may give an authorisation under paragraph (1) or (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) The appropriate consent must be given in writing.

(6) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation,

a service policeman shall inform the person from whom the sample is to be taken of the giving of the authorisation and of the grounds for giving it.

(7) The duty imposed by paragraph (6) to inform a person of the grounds for giving the authorisation includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If an intimate sample is taken from a person—

- (a) the authorisation by virtue of which it was taken,
- (b) the grounds for giving the authorisation, and
- (c) the fact that the appropriate consent was given,

shall be recorded in writing by a service policeman as soon as is practicable after the sample is taken.

(9) If an intimate sample is taken from a person at a service police establishment—

- (a) before the sample is taken, a service policeman shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded in writing by a service policeman as soon as practicable after the sample has been taken.

(10) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by a registered dentist.

(11) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by—

- (a) a registered medical practitioner;
- (b) a member of a service medical authority; or
- (c) a registered health care professional.

(12) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—

(a) the court in determining whether there is a case to answer, and  
(b) the court in determining whether that person is guilty of the offence charged,  
may draw such inferences from the refusal as appear proper, and “court” shall have the same meaning as applied by this Order in relation to article 6(18).

(13) Nothing in this article applies to the taking of a specimen for the purposes of any of the provisions of sections 5 to 10 of the Road Traffic Act 1988(a), as applied to persons subject to service law and civilians subject to service discipline by section 184 of that Act, to the provision of a sample for drug testing or to the provision of a sample under section 306 of the Act.

### **Other samples**

**13.—**(1) Except as provided by this article, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample must be given in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if—

(a) the person is in custody at a service police establishment in consequence of his arrest for an applicable service offence; and

(b) either—

(i) he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by a service policeman:  
or

(ii) he has had such a sample taken but it proved insufficient.

(4) A non-intimate sample may be taken from a person without the appropriate consent if—

(a) he is being held in custody on the order of a judge advocate; and

(b) an authorising service policeman authorises it to be taken without the appropriate consent.

(5) A non-intimate sample may be taken from a person (whether or not he is in custody at a service police establishment after arrest or held in custody during Court Martial proceedings) without the appropriate consent if—

(a) he has been charged with an applicable service offence; and

(b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by a service policeman or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(6) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of a recordable service offence.

(7) A non-intimate sample may also be taken from a person without the appropriate consent if he is a person to whom section 169 of the Act applies and he has been made the subject of a hospital order.

(8) An authorising service policeman may only give an authorisation under paragraph (4) if he has reasonable grounds—

(a) for suspecting the involvement of the person from whom the sample is to be taken in an applicable service offence; and

(b) for believing that the sample will tend to confirm or disprove his involvement.

(9) An authorising service policeman may give an authorisation under paragraph (4) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(10) An authorising service policeman shall not give an authorisation under paragraph (4) for the taking from any person of a non-intimate sample consisting of a skin impression if—

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(a) 1988 c. 52; section 184 is amended by paragraph 117 of Schedule 16 to the Act.

- (a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and
- (b) the impression previously taken is not one that has proved insufficient.

(11) Where—

- (a) an authorisation has been given, and
- (b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,

a service policeman shall inform the person from whom the sample is to be taken of the giving of the authorisation and of the grounds for giving it.

(12) The duty imposed by paragraph (11) to inform a person of the grounds for giving the authorisation includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(13) If a non-intimate sample is taken from a person by virtue of paragraph (4)—

- (a) the authorisation by virtue of which it was taken; and
- (b) the grounds for giving the authorisation,

shall be recorded in writing by a service policeman as soon as is practicable after the sample is taken.

(14) In a case where by virtue of paragraph (3), (5), (6) or (7) a sample is taken from a person without the appropriate consent—

- (a) he shall be told the reason before the sample is taken; and
- (b) the reason shall be recorded in writing by a service policeman as soon as practicable after the sample is taken.

(15) If a non-intimate sample is taken from a person at a service police establishment whether with or without the appropriate consent—

- (a) before the sample is taken, a service policeman shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded in writing by a service policeman as soon as practicable after the sample has been taken.

(16) The power to take a non-intimate sample from a person without the appropriate consent shall be exercisable by any service policeman.

(17) Nothing in this article applies to a person arrested under an extradition arrest power.

### **Fingerprints and samples: supplementary provisions**

**14.**—(1) Where a person has been arrested on suspicion of being involved in an applicable service offence or has been charged with such an offence, fingerprints, impressions of footwear or samples or the information derived from samples taken under any power conferred by this Order from the person may be checked against—

- (a) other fingerprints, impressions of footwear or samples to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence;
- (b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a).

(2) In paragraph (1) “relevant law-enforcement authority” means—

- (a) a police force;
- (b) the Serious Organised Crime Agency;

- (c) a public authority (not falling within sub-paragraph (a) or (b)) with functions in any part of the British Islands which consist of or include the investigation of crimes or the charging of offenders;
  - (d) any person with functions in any country or territory outside the United Kingdom which—
    - (i) correspond to those of a police force; or
    - (ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;
  - (e) any person with functions under any international agreement which consist of or include the investigation of conduct which is—
    - (i) unlawful under the law of one or more places,
    - (ii) prohibited by such an agreement, or
    - (iii) contrary to international law, or the apprehension of persons guilty of such conduct.
- (3) The reference in paragraph (2)(a) to a police force is a reference to any of the following—
- (a) any police force maintained under section 2 of the Police Act 1996<sup>(a)</sup> (police forces in England and Wales outside London);
  - (b) the Metropolitan police force;
  - (c) the City of London police force;
  - (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967<sup>(b)</sup>;
  - (e) the Police Service of Northern Ireland;
  - (f) the Police Service of Northern Ireland Reserve;
  - (g) the Ministry of Defence Police;
  - (h) the Royal Navy Police;
  - (i) the Royal Military Police;
  - (j) the Royal Air Force Police;
  - (k) the British Transport Police;
  - (l) the States of Jersey Police Force;
  - (m) the salaried police force of the Island of Guernsey;
  - (n) the Isle of Man Constabulary.
- (4) Where—
- (a) fingerprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which paragraph (1) applies, and
  - (b) that person has given his consent in writing to the use in a speculative search of the fingerprints, of the impressions of footwear or of the samples and of the information derived from them,
- the fingerprints or impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, impressions of footwear, samples or information mentioned in sub-paragraph (a) or (b) of that paragraph.
- (5) A consent given for the purposes of paragraph (4) shall not be capable of being withdrawn.

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(a) 1996 c. 16.  
 (b) 1967 c. 77.

(6) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(7) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison or other institution to which the Prison Act 1952(a) applies or in other places used for the accommodation of persons held in custody.

(8) Any service policeman may, within the allowed period, require a person who is subject to service law or a civilian who is subject to service discipline and who is neither in custody at a service police establishment nor held in custody during court proceedings to attend a service police establishment while so subject in order to have a sample taken where—

- (a) the person has been charged with an applicable service offence and either he has not had a sample taken from him in the course of the investigation of the offence by a service policeman or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or
- (b) the person has been convicted of a recordable service offence and either he has not had a sample taken from him since the conviction or he has had a sample taken from him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(9) The period allowed for requiring a person to attend a service police establishment for the purpose specified in paragraph (8) is—

- (a) in the case of a person falling within its sub-paragraph (a), one month beginning with the date of the charge or of his being informed as mentioned in that sub-paragraph or one month beginning with the date on which a service policeman is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;
- (b) in the case of a person falling within its sub-paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which a service policeman is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(10) A requirement under paragraph (8)—

- (a) shall give the person at least 7 days within which he must so attend; and
- (b) may direct him to attend at a specified time of day or between specified times of day.

(11) Any service policeman may arrest without a warrant a person who has failed to comply with a requirement under paragraph (8).

### **Destruction of fingerprints and samples**

15.—(1) Where—

- (a) fingerprints, impressions of footwear or samples are taken from a person in connection with the investigation of a service offence, and
- (b) paragraph (3) does not require them to be destroyed,

the fingerprints, impressions of footwear or samples may be retained, subject to paragraphs (11) and (12), after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the investigation of a service offence, the prevention or detection of crime, the conduct of a prosecution or the identification of a deceased person or of the person from whom a body part came.

(2) In paragraph (1)—

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(a) 1952 c. 52.



- (a) the reference to using a fingerprint or an impression of footwear includes a reference to allowing any check to be made against it under article 14(1) or (4) and to disclosing it to any person;
- (b) the reference to using a sample includes a reference to allowing any check to be made under article 14(1) or (4) against it or against information derived from it and to disclosing it or any such information to any person ;
- (c) the reference to crime includes a reference to any conduct which—
  - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
  - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;

and

- (d) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.

(3) If—

- (a) fingerprints, impressions of footwear or samples are taken from a person in connection with the investigation of a service offence, and
- (b) that person is not suspected of having committed the service offence,

they must, except as provided in the following provisions of this article, be destroyed as soon as they have fulfilled the purpose for which they were taken.

(4) Samples, fingerprints and impressions of footwear are not required to be destroyed under paragraph (3) if—

- (a) they were taken for the purposes of the investigation of a service offence of which a person has been convicted; and
- (b) a sample, fingerprint or, as the case may be, an impression of footwear was also taken from the convicted person for the purposes of that investigation.

(5) Subject to paragraph (6) below, where a person is entitled under paragraph (3) to the destruction of any fingerprint, impression of footwear or sample taken from him (or would be but for paragraph (4)), neither the fingerprint, nor the impression of footwear, nor the sample, nor any information derived from the sample, shall be used—

- (a) in evidence against the person who is or would be entitled to the destruction of that fingerprint, impression of footwear or sample, or
- (b) for the purposes of the investigation of any offence,

and paragraph (2) applies for the purposes of this paragraph as it applies for the purposes of paragraph (1).

(6) Where a person from whom a fingerprint, impression of footwear or sample has been taken consents in writing to its retention—

- (a) that impression of footwear or sample need not be destroyed under paragraph (3),
- (b) paragraph (5) shall not restrict the use that may be made of the fingerprint, impression of footwear or sample or, in the case of a sample, any information derived from it, and
- (c) that consent shall be treated as comprising a consent for the purposes of article 14(4),

and a consent given for the purpose of this paragraph shall not be capable of being withdrawn.

(7) For the purposes of paragraph (6) it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint, impression of footwear or sample arises.

(8) If fingerprints or impressions of footwear are destroyed—

- (a) any copies of the fingerprints or impressions of footwear shall also be destroyed; and

- (b) any service policeman controlling access to computer data relating to the fingerprints or impressions of footwear shall make access to the data impossible, as soon as it is practicable to do so.

(9) A person who asks to be allowed to witness the destruction of his fingerprints or impressions of footwear or copies of them shall have a right to witness it.

(10) If—

- (a) paragraph (8)(b) falls to be complied with, and
- (b) the person to whose fingerprints or impressions of footwear the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him, not later than the end of the period of three months beginning with the day on which he asks for it, by a service policeman not below the rank of naval lieutenant, military or marine captain or flight lieutenant answerable for the maintenance of that computerised fingerprint record or a person authorised by him or on his behalf for the purposes of this article.

(11) Where a fingerprint, impression of footwear or sample is taken from a person in connection with the investigation of a service offence, it must be destroyed no later than the relevant date, unless before that date the person is convicted of the service offence.

(12) For the purposes of paragraph (11) the relevant date is 2 years after the date on which the fingerprint, impression of footwear or sample (as the case may be) was taken.

### **Photographing of suspects**

**16.**—(1) A person who is in custody at a service police establishment may be photographed—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(2) A person who has been arrested by a service policeman for an offence may, on the occasion of the arrest, be photographed elsewhere than at a service police establishment—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(3) A person proposing to take a photograph of any person under this article—

- (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
- (b) if the requirement is not complied with, may remove the item or substance himself.

(4) Where a photograph may be taken under this article, the only persons entitled to take the photograph are service policemen.

(5) A photograph taken under this article may be used by, or disclosed to, any person for any purpose related to—

- (a) the investigation of a service offence,
- (b) the prevention or detection of crime,
- (c) the conduct of a prosecution, or
- (d) the enforcement of a sentence,

and after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(6) References in this article to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

(7) In this article a “photograph” includes a moving image, and corresponding expressions shall be construed accordingly.

(8) Nothing in this article applies to a person arrested under an extradition arrest power.

### **Power of service policeman to use reasonable force**

17. Where any provision of this Order—

- (a) confers a power on a service policeman, and
- (b) does not provide that the power may only be exercised with the consent of some person, other than a service policeman,

the service policeman may use reasonable force, if necessary, in the exercise of the power.

### **Revocation**

18. The 2006 Order is revoked.

### **Transitional provisions**

19. Schedule 2 shall have effect.

16th July 2009

*Kevan Jones*  
Parliamentary Under Secretary of State  
Ministry of Defence

## SCHEDULE 1

Article 2

### Applicable and Recordable Service Offences

<i>Section of the Act</i>	<i>Offence</i>	<i>Restriction</i>
s. 11(1)	Misconduct towards a superior officer	
s. 14	Using force against a sentry etc	
s. 24(1)	Damage to or loss of public or service property	
s. 27	Obstructing or failing to assist a service policeman	
s. 28	Resistance to arrest etc	In the case of an offence under section 28(1), only where the conviction is for conduct within section 28(1)(b) or (c)
s. 29	Offences in relation to service custody	
s. 30	Allowing escape, or unlawful release of prisoners, etc	Only where the conviction is for conduct within section 30(4)(a)
s. 39	Attempts to commit any offence specified above in this Schedule	
s. 40	Encouraging or assisting the commission of any offence specified above in this Schedule (apart from an attempt)	

## Transitional provisions

## 1. In this Schedule—

“the 1984 Act” means, except in relation to its section 113 and where otherwise specified, the 1984 Act as applied with modifications immediately before commencement by article 2(1) of the 2006 Order, and any reference to a specified provision of the 1984 Act shall be construed accordingly;

“commencement” means the date of coming into force of this Order;

“service discipline Acts offence” means any of the following—

- (a) an offence under Part 2 of either of the Army Act 1955 or the Air Force Act 1955;
- (b) an offence under Part 1 of the Naval Discipline Act 1957;
- (c) an offence under section 47K of that Act;
- (d) an offence under section 18 or 20 of the Armed Forces Act 1991(a) committed before commencement;
- (e) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996(b) committed before commencement.

## 2. In this Order—

- (a) “appropriate criminal intent” includes an intent to commit an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 consisting of an offence under section 5(3) of the Misuse of Drugs Act 1971 (possession of a controlled drug with intent to supply another);
- (b) “custody” includes custody under any of the service discipline Acts;
- (c) “judge advocate” includes a judicial officer appointed under section 75L of the Army Act 1955, section 75L of the Air Force Act 1955 or section 47M of the Naval Discipline Act 1957.

## 3. In this Order “applicable service offence” includes an offence contrary to—

- (a) section 24(1) of the Army Act 1955, section 24(1) of the Air Force Act 1955 or section 2(1) of the Naval Discipline Act 1957;
- (b) section 25 of the Army Act 1955, section 25 of the Air Force Act 1955 or section 3 of the Naval Discipline Act 1957;
- (c) section 26 of the Army Act 1955, section 26 of the Air Force Act 1955 or section 4 of the Naval Discipline Act 1957 which relates to an action or operation against an enemy;
- (d) section 29(b) or (c) of the Army Act 1955, section 29(b) or (c) of the Air Force Act 1955 or section 6(b) or (c) of the Naval Discipline Act 1957;
- (e) section 30(a) or (b) of the Army Act 1955, section 30(a) or (b) of the Air Force Act 1955 or section 5(a) or (b) of the Naval Discipline Act 1957;
- (f) section 31 of the Army Act 1955, section 31 of the Air Force Act 1955 or section 9 of the Naval Discipline Act 1957;
- (g) section 32 of the Army Act 1955, section 32 of the Air Force Act 1955 or section 10 of the Naval Discipline Act 1957;
- (h) section 33(1)(a) of the Army Act 1955, section 33(1)(a) of the Air Force Act 1955 or section 11(a) of the Naval Discipline Act 1957;

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

- (i) section 35 of the Army Act 1955, section 35 of the Air Force Act 1955 or section 14 of the Naval Discipline Act 1957;
- (j) section 37 of the Army Act 1955, section 37 of the Air Force Act 1955 or section 16 of the Naval Discipline Act 1957 where the accused intended to avoid serving at any place overseas, or to avoid service or any particular service when before the enemy;
- (k) section 44(1) of the Army Act 1955, section 44(1) of the Air Force Act 1955 or section 29(1) of the Naval Discipline Act 1957;
- (l) section 48A of the Army Act 1955, section 48A of the Air Force Act 1955 or section 19 of the Naval Discipline Act 1957;
- (m) section 49 of the Army Act 1955, section 49 of the Air Force Act 1955 or section 20 of the Naval Discipline Act 1957;
- (n) section 54 of the Army Act 1955, section 54 of the Air Force Act 1955 or section 33A of the Naval Discipline Act 1957;
- (o) section 55 of the Army Act 1955, section 55 of the Air Force Act 1955 or section 33B of the Naval Discipline Act 1957 unless the offence consists only of disobeying an order to go into arrest;
- (p) section 56 of the Army Act 1955, section 56 of the Air Force Act 1955 or section 33C of the Naval Discipline Act 1957;
- (q) section 68 of the Army Act 1955, section 68 of the Air Force Act 1955 or section 40 of the Naval Discipline Act 1957 of attempting to commit an offence within any of sub-paragraphs (a) to (p);
- (r) section 68A of the Army Act 1955, section 68A of the Air Force Act 1955 or section 41 of the Naval Discipline Act 1957 of aiding, abetting or inciting the commission of an offence within any of sub-paragraphs (a) to (p); or
- (s) section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 for which the corresponding civil offence is an offence specified in regulation 3 of the National Police Records (Recordable Offences) Regulations 2000.

**4. In this Order “recordable service offence” includes an offence contrary to—**

- (a) section 29(b) or (c) of the Army Act 1955, section 29(b) or (c) of the Air Force Act 1955 or section 6(b) or (c) of the Naval Discipline Act 1957 (offences in relation to sentries, persons on watch etc);
- (b) section 33(1)(a) of the Army Act 1955, section 33(1)(a) of the Air Force Act 1955 or section 11(a) of the Naval Discipline Act 1957 (insubordinate behaviour);
- (c) section 35 of the Army Act 1955, section 35 of the Air Force Act 1955 or section 14 of the Naval Discipline Act 1957 (obstruction of provost officers);
- (d) section 44(1) of the Army Act 1955, section 44(1) of the Air Force Act 1955 or section 29(1) of the Naval Discipline Act 1957 (damage to, and loss of, public or service property etc);
- (e) section 54 of the Army Act 1955, section 54 of the Air Force Act 1955 or section 33A of the Naval Discipline Act 1957 (permitting escape, and unlawful release of prisoners);
- (f) section 55 of the Army Act 1955, section 55 of the Air Force Act 1955 or section 33B of the Naval Discipline Act 1957 (resistance to arrest) unless the offence consists only of disobeying an order to go into arrest;
- (g) section 56 of the Army Act 1955, section 56 of the Air Force Act 1955 or section 33C of the Naval Discipline Act 1957 (escape from confinement);
- (h) section 68 of the Army Act 1955, section 68 of the Air Force Act 1955 or section 40 of the Naval Discipline Act 1957 of attempting to commit an offence within any of sub-paragraphs (a) to (g);

- (i) section 68A of the Army Act 1955, section 68A of the Air Force Act 1957 or section 41 of the Naval Discipline Act 1957 of aiding and abetting or inciting the commission of an offence within any of sub-paragraphs (a) to (g);
- (j) section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 for which the corresponding civil offence is an offence specified in regulation 3 of the National Police Records (Recordable Offences) Regulations 2000.

5. In this Order “serious service offence” includes an offence contrary to—

- (a) section 33(1)(a) of the Army Act 1955, section 33(1)(a) of the Air Force Act 1955, or section 11(a) of the Naval Discipline Act 1957 (insubordinate behaviour),
- (b) section 44(1) of the Army Act 1955, section 44(1) of the Air Force Act 1955, or section 29(1) of the Naval Discipline Act 1957 (damage to, and loss of, public or service property),
- (c) section 62(1) of the Army Act 1955, section 62(1) of the Air Force Act 1955, or section 35(1) of the Naval Discipline Act 1957 (making of false documents),
- (d) section 68 of the Army Act 1955, section 68 of the Air Force Act 1955, or section 40 of the Naval Discipline Act 1957 of attempting to commit an offence within any of sub-paragraphs (a), (b) and (c),
- (e) section 68A of the Army Act 1955, section 68A of the Air Force Act 1955, or section 41 of the Naval Discipline Act 1957 of aiding and abetting or inciting the commission of an offence within any of sub-paragraphs (a), (b) and (c),
- (f) section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 for which the corresponding civil offence is an indictable offence,

and any other service discipline Acts offence other than one which (by virtue of modifications made by an order under section 380 of the Act) may be dealt with at a summary hearing by a commanding officer.

6.—(1) Where immediately before commencement a person was within section 54(1)(a) or (b) of the 1984 Act—

- (a) he shall be treated as a person within article 4(1)(a) or (b), as appropriate, and
- (b) anything done with respect to him under a provision of section 54 of the 1984 Act shall be treated as if done under the equivalent provision of article 4.

(2) Article 4 shall apply to anything seized under section 54 of the 1984 Act if immediately before commencement it is being retained under that section.

7.—(1) Where an authorisation has been given by a service policeman under section 54A(1) of the 1984 Act—

- (a) it shall be treated as an authorisation given under article 5(1); and
- (b) anything done with respect to it under a provision of section 54A shall be treated as done under the equivalent provision of article 5.

(2) If an identifying mark within the meaning of section 54A of the 1984 Act has been found on a search or examination under that section it shall be treated as found on a search or examination under article 5.

(3) In article 5(9)—

- (a) the reference to a photograph taken under article 5 includes a reference to a photograph taken under section 54A of the 1984 Act as applied with modifications by an order under section 113 of that Act; and
- (b) the reference in its sub-paragraph (a) to a service offence includes a reference to a service discipline Acts offence.

**8.**—(1) Where an authorisation has been given by a service policeman under section 55(1) of the 1984 Act—

- (a) it shall be treated as an authorisation given under article 6(1); and
- (b) anything done with respect to it under a provision of section 55 shall be treated as done under the equivalent provisions of article 6.

(2) When an intimate search has been carried out under section 55 of the 1984 Act—

- (a) it shall be treated as an intimate search under article 6;
- (b) anything seized under section 55(12) of the 1984 Act shall be treated as seized under article 6(15); and
- (c) anything done under a provision of section 55 with respect to the intimate search or with respect to anything seized in consequence of the search shall be treated as done under the equivalent provision of article 6.

(3) In article 6(17) a reference to a refusal to give the appropriate consent to a drug offence search of any person includes a reference to a refusal before commencement to give such consent under section 55 of the 1984 Act.

**9.**—(1) Where an authorisation has been given by a service policeman under section 55A(1) of the 1984 Act—

- (a) it shall be treated as an authorisation given under article 7(1); and
- (b) anything done with respect to it under a provision of section 55A of the 1984 Act shall be treated as done under the equivalent provision of article 7.

(2) Where an x-ray has been taken or an ultrasound scan carried out under section 55A of the 1984 Act—

- (a) it shall be treated as one carried out under article 7; and
- (b) anything done under a provision of section 55A with respect to it shall be treated as done under the equivalent provision of article 7.

(3) In article 7 a reference to a refusal to give the appropriate consent to an x-ray or ultrasound scan of any person includes a reference to a refusal to give such consent under section 55A(1) of the 1984 Act.

**10.** Where an authorisation has been given by a service policeman under section 56(2) of the 1984 Act—

- (a) it shall be treated as an authorisation given under article 8(2); and
- (b) anything done with respect to it under a provision of section 56 of the 1984 Act shall be treated as done under the equivalent provision of article 8.

**11.** Where an authorisation has been given by a service policeman under section 58(6) of the 1984 Act—

- (a) it shall be treated as an authorisation given under article 9(5); and
- (b) anything done with respect to it under a provision of section 58 shall be treated as done under the equivalent provision of article 9.

**12.**—(1) For the purposes of article 10(7)(b) any fingerprints taken under section 61(3), (4) or (6) of the 1984 Act without the appropriate consent shall be treated as having been taken under article 10(3), (5) or (6), as appropriate, unless with respect to the fingerprints section 61(7)(b) has been complied with before commencement.

(2) Article 10(8)(b) shall apply where before commencement a person's fingerprints have been taken at a service police establishment, unless the fact referred to in section 61(7A)(b) of the 1984 Act has been recorded in writing before commencement.

(3) Where before commencement a person was in custody when his fingerprints were taken, article 10(9) shall apply, unless section 61(8) of the 1984 Act has been complied with before commencement.

**13.**—(1) Article 11(5)(6) shall apply where before commencement an impression of a person's footwear has been taken at a service police establishment, unless section 61A(5)(6) of the 1984 Act was complied with before commencement.

(2) For the purposes of article 11(6)(b) where, by virtue of section 61A(3) of the 1984 Act, an impression of a person's footwear was taken before commencement without the appropriate consent, it shall be treated as having been taken by virtue of article 11(3), unless section 61A(6)(b) was complied with before commencement.

**14.**—(1) Where an authorisation has been given by a service policeman under section 62(1) or 62(1A) of the 1984 Act—

- (a) it shall be treated as an authorisation given under article 12(1) or 12(2) respectively; and
- (b) anything done with respect to it under a provision of section 62 of the 1984 Act shall be treated as done under the equivalent provision of article 12.

(2) A reference in article 12 to the appropriate consent being given includes a reference to the appropriate consent being given in writing before commencement.

(3) For the purposes of article 12(7) an intimate sample taken under section 62 of the 1984 Act shall be treated as an intimate sample taken under article 12.

(4) Article 12(9)(b) shall apply where before commencement an intimate sample has been taken from a person at a service police establishment, unless section 62(7A)(b) has been complied with before commencement.

(5) In article 12(12) the reference to a refusal to give the appropriate consent to the taking of an intimate sample includes a reference to a refusal to give such consent to the taking of an intimate sample under section 62 of the 1984 Act.

(6) In article 12(13) the reference to the provision of a sample under section 306 of the Act includes a reference to the provision of a sample under section 32 of the Armed Forces Act 2001(a).

**15.**—(1) Where an authorising service policeman (within the meaning of the 1984 Act) has authorised under section 63(3)(b) of the 1984 Act a non-intimate sample to be taken—

- (a) the reference in article 13(4)(b) to an authorising service policeman authorising the taking of such a sample includes a reference to the authorisation under section 63(3)(b);
- (b) the reference in article 13(9) to an authorisation under article 13(4) includes a reference to an authorisation under section 63(3)(b), unless the service policeman who gave that authorisation has confirmed it in writing under section 63(5) of the 1984 Act; and
- (c) the reference in article 13(11) to an authorisation includes a reference to an authorisation under section 63(3)(b), unless with respect to that authorisation a service policeman complied with section 63(6) and (7) of the 1984 Act.

(2) The reference in article 13(7) to a person to whom section 169 of the Act applies includes a reference to a person—

- (a) to whom section 116A of the Army Act 1955, section 116A of the Air Force Act 1955 or section 63A of the Naval Discipline Act 1957 applied immediately before commencement; and
- (b) from whom a non-intimate sample has not been taken under section 63(3C) of the 1984 Act.

(3) For the purposes of article 13(12), a non-intimate sample taken from a person by virtue of section 63(3) of the 1984 Act shall be treated as such a sample taken from a person by virtue of article 13(4), unless with respect to the sample a service policeman has complied with section 63(8) of the 1984 Act.

(4) Where by virtue of section 63(2A), (3A), (3B) or (3C) a sample was taken from a person without the appropriate consent, article 13(14)(b) shall apply as if it were a sample taken by virtue

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(a) 2001 c. 19.



by virtue of article 13(3), (5), (6) or (7), unless with respect to the sample section 63(8A)(b) has been complied with.

(5) Where a non-intimate sample was taken before commencement from a person at a service police establishment, article 13(15)(b) shall apply with respect to the sample, unless section 63(8B)(b) has been complied with.

16. In article 14(1) the reference to samples taken under any power conferred by this Order includes a reference to samples taken under any power conferred by the 1984 Act as applied by an order under section 113 of that Act.

17.—(1) In article 15 a reference to a service offence includes a reference to a service discipline Acts offence.

(2) In article 15(1)(a), and 15(3)(a) “are taken” includes “has before commencement been taken under the 1984 Act as applied by an order under section 113 of that Act”.

(3) In article 15(6) “consents in writing” includes “has consented in writing under the 1984 Act as applied by an order under section 113 of that Act”.

(4) Where immediately before commencement the issue of a certificate to a person is required under section 64(6A) of the 1984 Act, article 15(10) shall apply to require the issue of the certificate to him not later than the end of the period of three months beginning with the day on which he asked for a certificate under section 64(6A).

(5) Where before commencement a fingerprint, impression of footwear or sample has under the 1984 Act as applied by an order under section 113 of that Act been taken from a person in connection with the investigation of a service discipline Acts offence—

(a) for the purposes of article 15(11) the relevant date is 2 years after commencement; and

(b) in article 15(11) “is taken” includes “has before commencement been taken under the 1984 Act as applied by an order under section 113 of that Act”.

18. In article 16(5)—

(a) the reference to a photograph taken under article 16 includes a reference to a photograph taken under section 64A of the 1984 Act as applied, with modifications, by an order under section 113 of that Act;

(b) the reference in its sub-paragraph (a) to a service offence includes a reference to a service discipline Acts offence.

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision with respect to the Armed Forces equivalent, subject to modifications, to provisions of the Police and Criminal Evidence Act 1984 (“the 1984 Act”), and principally its Part 5.

Article 3 provides for who may act as an “authorising service policeman”, able to give authorisations under this Order.

Article 4 requires a service policeman to establish everything an arrested person has with him when under arrest or committed to service custody, and provides for the seizure and retention of things found. It specifies the grounds on which clothing and personal effects may be seized, provides for the search of persons in service custody and requires reasons for the search to be given except in prescribed circumstances.

Article 5 provides that in specified circumstances arrested persons may be examined for marks that would tend to identify them. Authorisation must have been given by an authorising service policeman and a photograph may be taken of any identifying mark found.

Article 6 permits an authorising service policeman to authorise intimate searches of persons who are in service custody, if he has reasonable grounds for believing that the person has anything with

him that he may use to cause injury, or a Class A drug concealed on him which he intended to supply. Article 6 includes procedural requirements as to the authorisation of searches, the giving of consent, the persons who may conduct the search, and the written records which must be made. Provision is also made for the seizure and retention of items found.

Article 7 permits an authorising service policeman to authorise the x-ray or ultrasound examination of a person in service custody who is reasonably believed to have swallowed a class A drug which he previously intended to supply. Consent is required, but a court may draw inferences if consent is refused without good cause.

Article 8 confers on a person in service custody the right, exercisable within a specified period, to have a friend, relative or other person informed as soon as practicable of his arrest and where he is being held in custody. Delay is only permitted when authorised by an authorising service policeman on specified grounds. Delay is no longer permissible when the ground for it ceases to apply. The right may be exercised whenever the person is transferred in service custody from one place to another.

Under article 9 a person who is held in service custody has the right to consult privately with a legal adviser at any time. This must be allowed unless an authorising service policeman authorises a delay on specified grounds. Access must, in any event, be granted within 36 hours of arrest. Delay is no longer permissible when the reason for it has ceased to exist.

Article 10 provides for the taking of fingerprints from a person by the service police with written consent from him or, as the case may be, from his parent or guardian. It also provides for the circumstances in which a service policeman may take fingerprints without consent from persons in service custody before or after charge. In the latter case the person must be given a reason for fingerprinting and must be told that his fingerprints may be used for a speculative search. A service policeman must make a written record of the fact that he has complied with this requirement.

Article 11 permits the taking of impressions of a person's footwear with, and in certain circumstances without, his consent. If the impression is taken at a service police establishment, whether with or without consent, it may be used for a speculative search and the person must be informed of this.

Article 12 requires a service policeman to obtain authorisation from an authorising service policeman and the consent of the individual before an intimate sample may be taken and specifies who may obtain the sample. It states the conditions that must be met before authorisation can be given and requires that the authorisation, the grounds on which it was given and the consent be recorded in writing. The suspect must be told that the sample may be used for a speculative search; a service policeman must record in writing that he has informed the suspect of this. If the suspect refuses to provide the sample without good reason, adverse inferences may if appropriate be drawn by a court.

Article 13 provides for the obtaining of non-intimate samples with written consent. Such samples may also, subject to certain conditions, be obtained without consent from persons under arrest for or charged with an applicable service offence, or when convicted of a recordable service offence. Where the person is in service custody before charge, the authority of an authorising service policeman is required. The grounds on which that authority may be given and how it is to be recorded are specified. The person required to give the sample must be told of the authorisation and the grounds for it. Such samples may also be obtained from persons who have been made the subject of a hospital order.

Article 14 permits the checking of fingerprints, samples and footwear impressions obtained from persons arrested for, or charged with, an applicable service offence, or information derived from such samples, against fingerprints, samples, footwear impressions or information held by other law enforcement authorities. If the person has not been arrested for or charged with such an offence, his fingerprints, sample, footwear impressions or associated information may only be checked in this way if he has given written consent which, once given, may not be withdrawn. Article 14 also gives a service policeman the power to require a person who is not in service

custody, but who has been charged with, or convicted of, certain service offences, to attend a service police establishment to provide a sample if certain conditions are met. The time for complying with the requirement is specified and a service policeman may arrest without warrant a person who fails to comply.

Article 15 requires the destruction of fingerprints, footwear impressions or samples as soon as they have fulfilled their purpose if the individual is not suspected of having committed the offence. Where he is so suspected, or where he has been convicted of the offence, fingerprints and samples can be retained but may only be used for limited purposes listed in the article. If the person is entitled to the destruction of the fingerprints, footwear impressions or sample, they may not be used in evidence or during investigations and the person can witness the destruction or receive a certificate confirming that destruction has taken place. A person may, however, consent to the retention by the service police of his fingerprints or sample. Where a person is not convicted of a service offence, a time limit applies under this article to the period for which fingerprints, footwear impressions or samples may be retained.

Under Article 16, a service policeman may photograph persons held in service custody with or without consent. Items worn on the head or face may be removed for this purpose. Such photographs may be used by or disclosed to any person for purposes related to the investigation or prosecution of offences under the Act.

Article 17 authorises a service policeman to use reasonable force, if necessary, in the exercise of any power unless the power is subject to the consent of some person other than the service policeman.

Article 18 provides for the revocation of the Order which previously applied provisions of the 1984 Act to the Armed Forces. Article 19 and Schedule 2 make transitional provision between the Order revoked and this Order.

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STATUTORY INSTRUMENTS

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**2009 No. 1922**

**DEFENCE**

The Police and Criminal Evidence Act 1984  
(Armed Forces) Order 2009

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