
EXPLANATORY NOTE

(This note is not part of the Order)

This Order deals primarily with the powers of search and of seizure granted to the service police under Part 3 of the Armed Forces Act 2006 (“the Act”). The main provisions in Parts 2 and 3 of the Order are, subject to modifications, equivalent to certain provisions of the Police and Criminal Evidence Act 1984 (“PACE”) relating to powers of entry, search and seizure.

Articles 3 and 4 make provision which, subject to modifications, is equivalent to sections 2 and 3 of PACE. Article 3 makes provision as to the information that a service policeman must give to the person whom he proposes to search under section 75 of the Act. Article 3 also provides for the information that a service policeman must leave in an unattended vehicle which he has searched under section 75 of the Act. Article 4 concerns the records that must be made after a search under section 75 of the Act has been carried out.

Under article 5, articles 3 and 4 are applied to searches carried out by persons authorised to do so under section 76 of the Act as they apply to such searches carried out by service policemen under section 75 of the Act.

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

Article 7 enables a service policeman who is making an application to a judge advocate for a search warrant under section 83 of the Act or under Schedule 1 to this Order, or for an order under Schedule 1, to do so by live television or telephone links or similar arrangements.

Articles 8 and 9 make provision which, subject to modifications, is equivalent to sections 15 and 16 of PACE. There are further modifications in article 10. Those articles relate to the application for and execution of search warrants issued under section 83 of the Act or Schedule 1 to this Order.

Article 11 and Schedule 2 make provision as to the oath or affirmation to be administered to a service policeman when he is required under article 8(6) to answer questions on oath.

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

Articles 14 to 17 make provision which, subject to modifications, is equivalent to sections 19 to 21 and 22(1) to (4) of PACE. Those articles relate to the general power of seizure from searched premises, the powers of seizure in respect of computerised information, and access to, copying and retention of anything seized under the provisions of this Order or Part 3 of the Act.

Part 2 of the Criminal Justice and Police Act 2001 (c.16) makes provision as to civilian police powers of search and seizure, and Part 4 of this Order makes related provision in relation to the armed forces’ system of justice. The provisions relate to circumstances in which it is not reasonably practicable to establish at the time of a search of premises or of a person which material can and cannot be seized. For example, material that a service policeman conducting the search is entitled to seize may be contained within a larger collection of material some of which he may not be entitled to seize. Material held on computers may present particular difficulties in this respect. The main provisions of Part 4 are as follows.

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

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

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

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

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

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

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

Where an application is made under article 28 stating that the property is, or contains, property subject to legal privilege, special procedure material or excluded material, a duty generally arises to secure the seized material from being examined, copied or used (articles 29 and 30). There are exceptions where the applicant consents or a judge advocate so directs. Under article 31 a similar exclusion of examination, copying and use applies (subject to the consent of the person from whom it was seized) to seized property which would have to be returned but for the fact that it is not reasonably practicable to separate it from property which can be retained. Section 62 of the Criminal Justice and Police Act 2001 is equivalent to article 31.

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

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

made by certain people, including the officer who authorised the search any the occupier of the premises which were searched.

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

Article 35 and Schedule 4 make transitional provisions.