
STATUTORY INSTRUMENTS

2009 No. 2056

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

PART 5

Relevant offences and reviews by judge advocates

Relevant offences

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

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

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

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

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

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

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

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

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

- (a) that the authorising officer did not have reasonable grounds for believing that a relevant offence had been committed;
- (b) in respect of material seized in exercise or purported exercise of the powers in sections 87(4) or 88(4) of the Act, that the material—
 - (i) is not, by itself or together with other material, of substantial value to the investigation in respect of which the search was authorised;
 - (ii) is not likely to be admissible in evidence at a trial for the offence; or
 - (iii) is, or includes, excluded material or special procedure material;
- (c) that at the time when the authorising officer authorised the search, none of the conditions specified in section 83(2) of the Act applied (in respect of property seized during a search under section 88 of the Act, the reference to a service policeman being read as a reference to a person authorised under section 88(1));

- (d) in respect of material seized in purported exercise of a power conferred by article 14, that the grounds for a valid exercise of that power did not exist;
 - (e) that there has been a breach of any applicable Code issued under section 113 of PACE;
 - (f) that the authorising officer did not request a judge advocate to undertake a review as soon as practicable.
- (8) The grounds referred to in paragraph (5) by reference to this paragraph are, in respect of property seized during a search under section 87 of the Act—
- (a) that the authorising officer did not have reasonable grounds for believing that the condition mentioned in section 87(1)(b) was satisfied;
 - (b) that the premises searched were not premises within section 87(3) of the Act.
- (9) The grounds referred to in paragraph (5) by reference to this paragraph are, in respect of property seized during a search under section 88 of the Act—
- (a) that the authorising officer did not have reasonable grounds for believing that the condition mentioned in section 88(1)(b) was satisfied;
 - (b) that the premises searched were not service living accommodation within section 88(3) of the Act.
- (10) Where the judge advocate orders the return or disposal of seized property in accordance with this article, he may give such directions as he sees fit in connection with the return or disposal of the property.
- (11) In this article—
- “affected person” means—
- (a) the authorising officer;
 - (b) any person who at the time of the seizure was an occupier of the premises from which the property was seized;
 - (c) any person claiming an interest in the seized property and that it is or includes items subject to legal privilege, excluded material or special procedure material; and
 - (d) the legal representative of any person referred to in paragraph (a), (b) or (c) of this definition;
- “authorising officer” means the officer who authorised the search under section 87 or 88 of the Act;
- “disposal” in relation to any seized property means return to a person entitled to possession, other than the occupier of the premises from which it was seized, or disposal in such other manner as the judge advocate directs;
- “legal representative” means—
- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990⁽¹⁾;
 - (b) an advocate or solicitor in Scotland;
 - (c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or

(1) 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).

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

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

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

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

- (a) if the premises are a building or part of a building within section 96(1)(a) of the Act, any person for whose use as living accommodation or as a garage that building or part of a building is provided;
- (b) if the premises are a room, structure or area within section 96(1)(b) of the Act, any person for whom the premises are used to provide sleeping accommodation;
- (c) if the premises are a locker within section 96(1)(c) of the Act, the person for whose personal use the locker is provided.