
EXPLANATORY NOTE

(This note is not part of the Order)

Section 83 of the Armed Forces Act 2006 (c. 52) enables a judge advocate to issue a warrant authorising the entry and search by a service policeman of “relevant residential premises” (defined by section 84(3)). A new section 83 is substituted by section 7 of the Armed Forces Act 2011 (c. 18). It provides for the issue of a warrant (referred to in this Order as an “unspecified premises warrant”) to enter and search relevant residential premises which are not specified in the application for the warrant but are occupied or controlled by a person so specified. Section 85 of the 2006 Act permits the making of provision, in relation to warrants issued under section 83 or to entry and search under such a warrant, equivalent to that made by sections 15 and 16 of the Police and Criminal Evidence Act 1984 (c. 60) (“PACE”) in relation to search warrants issued to constables. Articles 8 and 9 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 (S.I. 2009/2056) make provision broadly equivalent to sections 15 and 16 of PACE respectively, but do not provide for unspecified premises warrants (referred to in PACE as “all premises warrants”). Articles 4 to 6 of this Order amend articles 8 to 10 of the 2009 Order so as to make such provision, and article 3 inserts a definition of “unspecified premises warrant”.

Section 86 of the 2006 Act permits the making of provision enabling a service policeman to obtain access to excluded material or special procedure material (both defined by section 84(4)) on relevant residential premises. Such provision is made by article 6 of, and Schedule 1 to, the 2009 Order. Article 7 of this Order amends that Schedule so as to provide for access to such material on unspecified relevant residential premises occupied or controlled by a specified person.

Section 8 of the 2011 Act amends section 86 of the 2006 Act so as to permit, in addition, the making of provision enabling a service policeman to obtain access to material on premises other than relevant residential premises. Article 8 of this Order substitutes a new article 6 in the 2009 Order, and article 9 amends Schedule 1 to that Order, so that a judge advocate can make a production order (but not issue a warrant) in relation to such material.

Article 9(6) inserts a new paragraph 11A into Schedule 1 to the 2009 Order. This enables failure to comply with a production order (whether or not in relation to relevant residential premises) to be dealt with as contempt of court if the person responsible is in the United Kingdom, or is subject to service law or a civilian subject to service discipline. But article 11 confines this power to a failure which occurs or continues after this Order comes into force.

Article 10 amends article 18(7) of the 2009 Order, which for the purposes of Part 4 of that Order (additional powers of seizure) defines the occupier of premises which are service living accommodation. The amendment is consequential on an amendment by paragraph 4 of Schedule 3 to the 2011 Act of the definition of service living accommodation in section 96 of the 2006 Act.