

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (POWERS OF STOP AND SEARCH, SEARCH, SEIZURE
AND RETENTION) (AMENDMENT) ORDER 2012

2012 No. 2919

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Judge advocates may grant search warrants in relation to “relevant residential premises”, which, broadly speaking, are premises occupied as a residence or accommodation by service personnel and other persons within service jurisdiction. The instrument extends provisions relating to the grant and carrying out of such warrants so that they can apply to relevant residential premises which are not directly specified in the warrant but are identified as premises occupied or controlled by a specified person. The instrument also enables a judge advocate to make an order for material on other premises to be produced to the service police (but not for the judge advocate to grant a search warrant for material on such premises).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 As explained in paragraphs 7.2 and 7.3 below, these new provisions do not create new grounds for entry but extend existing provisions relating to service police investigations in line with the wider powers of civilian police forces.

4. Legislative Context

4.1 Sections 15 and 16 of the Police and Criminal Evidence Act 1984 apply to civilian police forces and govern the issue and carrying-out of search warrants. Section 85 of the Armed Forces Act 2006 (“the 2006 Act”) permits the making of provision in relation to investigations by the service police equivalent to those in sections 15 and 16. Such provision is contained in the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 (the “2009 Order”), except that the 2009 Order does not apply to warrants to search premises which are not directly specified in the warrant. A new section 83 of the 2006 Act (substituted by section 7 of the Armed Forces Act 2011) enables warrants to be obtained to search such premises. This instrument, in line with sections 15 and 16 of PACE, extends the related provisions of the 2009 Order to warrants to search such premises.

4.2 This instrument also makes provision, equivalent to provisions in Schedule 1 to PACE, for enabling the service police to obtain access to any evidence (other than items subject to legal privilege) on any premises. However, in relation to premises other than relevant residential premises, this instrument only enables the service police to obtain a production order, but not a search warrant.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom and applies in relation to persons subject to service law wherever they are in the world. It also applies to

“civilians subject to service discipline”, which means persons who are not subject to service law but who satisfy the requirements of any paragraph of Part 1 of Schedule 15 to the 2006 Act. The instrument may be extended by Order in Council to the Channel Islands, the Isle of Man and any British overseas territory.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This instrument amends the 2009 Order. The 2009 Order makes provision relating to powers of entry search and of seizure of the service police under the 2006 Act. Articles 8 and 9 of the 2009 Order are broadly equivalent to sections 15 and 16 of PACE relating to powers of entry, search and seizure. Those articles relate to search warrants that a judge advocate can issue to the service police. This instrument amends articles 8 and 9 so as to apply them to warrants to search relevant residential premises which are not directly specified in the warrant but are identified as premises occupied or controlled by a specified person. Warrants for the search of such premises is provided for in section 83 of the 2006 Act, as substituted by section 7 of the Armed Forces Act 2011. This instrument also enables the service police to apply for such warrants in respect of excluded or special procedure material (which are defined in section 84(4) of the 2006 Act by reference to definitions in PACE and which include, for example, bank records or social workers’ files.

7.2 These new provisions reflect the powers of civilian police forces under PACE. However the power of the service police to obtain a search warrant will remain much narrower than that of the Home Office forces, because the service police power to obtain a search warrant remains available only in relation to “relevant residential premises”, which broadly speaking are premises occupied as a residence or accommodation by service personnel and other persons within service jurisdiction. Limiting the availability of the warrants in this way ensures compatibility with the Government’s policy that only such powers as are absolutely necessary should be retained.

7.3 Section 86 of the 2006 Act, as amended by the Armed Forces Act 2011, provides for the service police to obtain access to any evidence (other than items subject to legal privilege) on premises which fall outside the definition of relevant residential premises. Before this amendment the service police could only obtain access to material if it was held on relevant residential premises. In practice, such material was rarely held on such premises because of its nature. This instrument allows a judge advocate to order the production of such material (but not to issue a search warrant to enter and search for it). This instrument also enables failure to comply with a production order to be dealt as contempt of court if the person responsible is in the United Kingdom, is subject to service law or is a civilian subject to service discipline.

8. Consultation outcome

8.1 No public consultation has been undertaken in connection with the amendment order itself however the 2009 Order was the subject to rigorous consultation with the

Services and Service Police. The instrument has been the subject of further consultation with the Services and Service Police.

9. Guidance

9.1 The Service Police Codes of Practice, issued by the Secretary of State under section 113 (3) of PACE, and the Manual of Service Law provide guidance and supplementary information to Armed Forces personnel on the single system of service law established under the 2006 Act.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The main legislation governing the armed forces (currently the 2006 Act) requires renewal annually by Order in Council (with the consent of both Houses of Parliament) and renewal by Act of Parliament every five years. As a result the Armed Forces Act 2006 is subject to a full review every five years most recently during development of the Armed Forces Act 2011. It will be reviewed again as part of work to prepare for the next Armed Forces Bill, which will be required for an Act in 2016.

13. Contact

13.1 In the event of any inquiries about this instrument, please contact Humphrey Morrison of Central Legal Services of the Ministry of Defence, telephone number 020 7 807 8291; e-mail: humphrey.morrison577@mod.uk.