
STATUTORY INSTRUMENTS

2013 No. 1852

The Armed Forces (Retrial for Serious Offences) Order 2013

PART 3

Investigation and arrest

Authorisation of investigations

4.—(1) This article applies to the investigation of the commission of a qualifying offence by a person acquitted of the qualifying offence in proceedings within article 3(1).

(2) A service policeman may not, for the purposes of investigating the acquitted person's alleged commission of the qualifying offence, and with or without that person's consent—

- (a) arrest or question him,
- (b) search him or premises owned or occupied by him,
- (c) search a vehicle owned by him or anything in or on such a vehicle,
- (d) seize anything in his possession, or
- (e) take his fingerprints or take a sample from him,

unless the Director has given his written consent to the investigation (whether before or after the start of the investigation).

(3) The Director may give such consent only on a written application by a service policeman of or above the rank of commander, lieutenant-colonel or wing-commander.

(4) A service policeman may make an application under paragraph (3) only if—

- (a) he is satisfied that new evidence has been obtained which would be relevant to an application under article 8(1) in respect of the qualifying offence; or
- (b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.

(5) The Director may give his consent only if satisfied that—

- (a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation; and
- (b) it is in the public interest for the investigation to proceed.

(6) In giving his consent, the Director may recommend that the investigation be conducted otherwise than by officers of a specified police force.

(7) This article is subject to article 5.

Urgent investigative steps

5.—(1) Article 4 does not prevent a service policeman from taking any action for the purposes of an investigation if—

- (a) the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced;
- (b) the requirements of paragraph (2) are met; and
- (c) either—
 - (i) the action is authorised under paragraph (3); or
 - (ii) the requirements of paragraph (5) are met.
- (2) The requirements of this paragraph are met if—
 - (a) there has been no undue delay in applying for consent under article 4(2);
 - (b) that consent has not been refused; and
 - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that consent before taking action.
- (3) A service policeman of or above the rank of lieutenant-commander, major or squadron leader may authorise the action if—
 - (a) he is satisfied that new evidence has been obtained which would be relevant to an application under article 8(1) in respect of the qualifying offence to which the investigation relates; or
 - (b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.
- (4) An authorisation under paragraph (3) must—
 - (a) if reasonably practicable, be given in writing;
 - (b) otherwise, be recorded in writing by the service policeman giving it as soon as is reasonably practicable.
- (5) The requirements of this paragraph are met if—
 - (a) there has been no undue delay in applying for authorisation under paragraph (3);
 - (b) that authorisation has not been refused; and
 - (c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorisation before taking the action.
- (6) Where the requirements of paragraph (5) are met, the action is nevertheless to be treated as having been unlawful unless, as soon as reasonably practicable after the action is taken, a service policeman of or above the rank of lieutenant-commander, major or squadron leader certifies in writing that he is satisfied that, when the action was taken—
 - (a) new evidence had been obtained which would be relevant to an application under article 8(1) in respect of the qualifying offence to which the investigation relates; or
 - (b) the service policeman who took the action had reasonable grounds for believing that such new evidence was likely to be obtained as a result of the investigation.

Arrest under warrant

6.—(1) Where article 4 applies to the investigation of the commission of a qualifying offence, the acquitted person may not be arrested for the qualifying offence except under a warrant issued in accordance with this article.

(2) Paragraph (1) does not affect article 21(3)(b), 23(3) or any other power to arrest a person, or to issue a warrant for the arrest of a person, otherwise than for a qualifying offence.

(3) A judge advocate may issue a warrant for the acquitted person's arrest on the application of a service policeman.

(4) The judge advocate may issue the warrant only if satisfied by written information that new evidence has been obtained which would be relevant to an application under article 8(1) in respect of the acquitted person's alleged commission of the qualifying offence.

(5) Where a warrant has been issued under this article, a service policeman may arrest the acquitted person.

(6) The power of arrest conferred on a service policeman by paragraph (5) may be exercised—

- (a) personally;
- (b) by giving orders for the arrest of the acquitted person; or
- (c) where that person is subject to service law, by ordering him into arrest.

(7) The following provisions apply in relation to an arrest under paragraph (5) as they apply in relation to an arrest under section 67 of the 2006 Act⁽¹⁾—

- (a) section 70 of that Act (search on arrest);
- (b) section 90 of that Act (entry for purpose of arrest);
- (c) sections 98 to 102 and 104(2) of that Act (custody without charge);
- (d) regulations for the time being in force under section 104(1)(a) or (b) of that Act or (in so far as the regulations relate to compliance with any requirement of sections 98 to 102 or of regulations under paragraph 104(1)(b) of that Act) under section 104(1)(c) of that Act.

⁽¹⁾ Section 67 was amended by paragraph 2 of Schedule 3 to the Armed Forces Act 2011 (c. 18).