

## **ARMED FORCES ACT 2006**

---

### **EXPLANATORY NOTES**

#### **COMMENTARY**

##### *First Group of Parts – Discipline*

#### **Part 3 – Powers of Arrest, Search and Entry**

##### *Chapter 1 – Arrest etc*

157. This chapter defines the power of arrest in relation to service offences and sets out who can be arrested, and who can arrest in relation to service offences. It also provides for a power to search upon arrest and makes further provision permitting the person exercising this power to seize and retain any items found during the search. For the most part, these powers are to be exercised by the service police.

#### **Powers of arrest**

##### *Section 67: Power of arrest for service offence*

158. This section sets out the powers of arrest when it is reasonably suspected that a service offence has been, or is being, committed. It describes who may be arrested and who can exercise the power of arrest. The person making the arrest, or who orders someone else to arrest on his behalf, must reasonably suspect the person to be arrested of being engaged in committing or having committed a service offence. A service policeman may arrest any persons subject to service law, irrespective of rank or rate, and civilians subject to service discipline.
159. Officers, warrant officers or NCOs who are not service policemen may arrest persons of inferior rank or rate who are subject to service law, and officers may arrest civilians subject to service discipline. Officers may also arrest other officers of any rank if they are engaged in a mutiny.
160. Persons who are not service policemen but who are lawfully exercising authority on behalf of a provost officer may arrest persons subject to service law and civilians subject to service discipline. In the maritime environment persons on the staff of the officer of the day (duty officer) may arrest members of a ship's company or embarked force.

##### *Section 68: Section 67: supplementary*

161. This section makes supplementary provisions relating to the powers of arrest. Subsection (2) ensures that section 67(3) will apply to former members of HM Forces. Such a person will be treated for the purposes of section 67(3) as being of the rank or rate which they held when last a member of the forces. Subsection (3) ensures that section 67(4) will apply to a person who is no longer a civilian subject to service discipline but who is suspected of having committed an offence while a civilian subject to service discipline. Subsection (4) ensures that it is a service policeman who must arrest a person in respect of an offence where the consent of the Attorney General is necessary under section 61 to charge the person with that offence.

***Section 69: Power of arrest in anticipation of commission of service offence***

162. This section provides a service policeman with the power to arrest a person he reasonably suspects of being about to commit a service offence.

**Search on arrest**

***Section 70: Search by service policeman upon arrest***

163. This section permits a service policeman to search an arrested person who he has reasonable grounds to believe may present a danger to himself or others or who may be concealing anything which might help him escape or (in the case of an arrest under section 67 or 69) which might be evidence relating to a service offence.

***Section 71: Search by other persons upon arrest***

164. This section allows a person (other than a service policeman) who is exercising a power of arrest to search an arrested person who he has reasonable grounds to believe may present a danger to himself or others.
165. It further allows a person other than a service policeman to search an arrested person for anything that the arrested person might use to help him escape or which might be evidence relating to an offence on the direction of the arrested person's CO. The CO can only direct such a search if the assistance of a service policeman or civilian policeman cannot be obtained, and the CO has reasonable grounds to believe that if the search is delayed the arrested person would escape or conceal or damage evidence.

***Section 72: Sections 70 and 71: supplementary***

166. This section provides that a person exercising a power to search under section 70(2) or 71(4) may search an arrested person only to the extent reasonably required to discover anything which might help him escape from custody or which might be evidence relating to a service offence. The search powers may not be used to require an arrested person to remove any clothing in public other than outer clothing, but the search of the person's mouth is allowed.

***Section 73: Seizure and retention after search upon arrest***

167. This section sets out when persons exercising a power of search may seize and retain things they find. Persons who search an arrested person on the grounds that he presents a danger to himself or others and retain things they reasonably believe the person searched may use to injure him or others.
168. Persons who exercise a power to search on the grounds that the arrested person may be concealing anything which might help him to escape or which might be evidence relating to an offence may seize and retain things they have reasonable grounds to believe might be used by the arrested person to escape from custody, or which are evidence of an offence or which have been obtained in consequence of the commission of an offence, unless those items are subject to legal privilege.

***Section 74: Power to make provision conferring power to search premises at which person arrested***

169. This section enables the Secretary of State to make by statutory instrument subject to annulment an order providing for the power to enter and search premises equivalent to the provision of section 32 of PACE.