

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 3 – Powers of Arrest, Search and Entry

Chapter 3 – Powers of Entry, Search and Seizure

180. This chapter gives powers to judge advocates (and, in limited circumstances, to COs) to authorise the entry, normally by service police, into certain premises, the search of such premises and the seizure and retention of anything in relation to which the search was authorised. The provisions are based on powers in PACE and largely re-enact those in the Armed Forces Act 2001.

Entry for purposes of obtaining evidence etc

Section 83: Power of judge advocate to authorise entry and search

181. This section is based on section 8 of PACE. It is limited to relevant residential premises and does not apply to other premises occupied by the services. This is because COs and the service police need no statutory power to enter those other areas. A statutory power is only necessary where the occupier would otherwise be entitled to refuse admission.
182. Subsection (1) enables judge advocates, subject to being satisfied on certain matters, to issue warrants authorising the entry and search of relevant residential premises on the application of a service policeman. A warrant cannot be issued for items which are subject to legal privilege, excluded material or special procedure material (which are defined in section 84).
183. Subsection (2) sets out further conditions that must also be met for a warrant to be issued.
184. Subsection (3) authorises a service policeman to seize and retain anything for which the search was authorised.

Section 84: Section 83: definitions

185. This section defines relevant terms used in section 83.
186. The terms “items subject to legal privilege”, “excluded material” and “special procedure material” have the meanings given in PACE. Examples of excluded material include personal records (such as medical records and journalists’ materials), if held in confidence. An example of special procedure material is journalists’ material not held in confidence.

Section 85: Section 83: Power to make supplementary provision

187. This section enables the Secretary of State by order to make provision for the use of live television links (or similar arrangements) for hearing an application for a warrant, where for example a judge advocate might not be readily available as the applicant is overseas.
188. The Secretary of State may also make provisions equivalent to sections 15 and 16 of PACE. These sections include safeguards relating to the issue and execution of warrants; for example, searches under a warrant must usually be made at a reasonable hour and the policeman intending to search must identify himself to the occupier. The order may make modifications to PACE provisions to ensure that the provisions work effectively within the service system.

Section 86: Power to make provision as to access to excluded material etc

189. This section enables the Secretary of State by order to establish procedures to enable service policemen investigating a service offence to apply to a judge advocate for a warrant for access to excluded or special procedure material that is held in any relevant residential premises.

Section 87: Power of CO to authorise entry and search by service policeman

190. This section gives COs a limited power to authorise a service policeman to search relevant residential premises without a warrant. The power may only be exercised where the conditions for obtaining a warrant under section 83 exist and the CO has reasonable grounds for believing that it is likely that the time needed to get a warrant would result in the search being frustrated or seriously prejudiced.
191. Subsection (4) (as read with section 89) provides for the service policeman to seize and retain anything for which the search was authorised, subject to review by a judge advocate as soon as practicable.

Section 88: Power of CO to authorise entry and search by other persons

192. This section gives the CO a similar power to that in section 87, to authorise a member of HM Forces who is not a service policeman to conduct the search. This power can only be used to search service living accommodation. Such accommodation might include shared temporary accommodation on operations overseas or on exercise.

Section 89: Review by judge advocate of certain searches under section 87 or 88

193. This section requires that where any search authorised by a CO under section 87 or 88 has resulted in anything being seized and retained, a judge advocate must be asked to review the search, seizure and retention as soon as practicable.
194. The section enables the Secretary of State to make provision by order governing the powers of judge advocates in respect of these reviews.

Entry for purposes of arrest etc

Section 90: Entry for purpose of arrest etc by a service policeman

195. This section sets out the circumstances in which a service policeman can, without a warrant, enter and search service living accommodation or other premises occupied by persons subject to service law or civilians subject to service discipline (or reasonably believed to be such persons) to arrest a person he reasonably believes to be there at the time. The powers of entry and search extend to communal areas of premises in multiple occupation, such as barrack accommodation or blocks of flats.

*These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006*

196. Subsection (4) sets out additional powers for a service policeman to enter the same premises to save life or limb or prevent serious damage to property.
197. Subsection (5) limits the power of search to what is reasonably required for the purpose for which the power of entry is exercised.

Section 91: Entry for purpose of arrest etc by other persons

198. This section enables a CO to authorise a person subject to service law (other than a service policeman) to exercise the powers of entry for the purposes of arrest conferred by section 90 on a service policeman.
199. Subsection (3) provides that the CO must only give such authority if he has reasonable grounds for believing that waiting to get the assistance of a service or civilian policeman might result in the person to be arrested evading capture, concealing or destroying evidence or being a danger to himself or others, or result in discipline or morale being undermined.
200. This section also enables a CO to authorise a person subject to service law (other than a service policeman) to exercise the powers of entry mentioned at paragraph 196 above, but only in relation to certain premises and only if it is not practicable to get the assistance of a service policeman in time to prevent the harm occurring.
201. The functions of the CO under this section may be delegated by him in accordance with Regulations made by the Defence Council. This may, for example, allow a more junior officer to exercise the powers in an emergency in the absence of the CO.

Additional powers of entry, search and seizure

Section 92: Power to make provision conferring powers of entry and search after arrest

202. This section gives the Secretary of State power to make by order provision dealing with the entry and search of premises controlled by a person arrested under section 67 who is being held in service custody without being charged. The provision that may be made would be equivalent to that in section 18 of PACE, subject to such modifications as the Secretary of State thinks appropriate for the service context.

Section 93: Power to make provision conferring power of seizure etc

203. This section gives the Secretary of State power to make provision by order dealing with seizure and the power to retain property seized. The provision that may be made is equivalent to that set out in sections 19 to 21 of PACE or section 22(1) to (4) of that Act, subject to such modifications the Secretary of State thinks appropriate for the service context.