

1985 No. 1882
DEFENCE
**The Police and Criminal Evidence Act 1984
(Application to Armed Forces) Order 1985**

Made - - - - - 2nd December 1985
Laid before Parliament 6th December 1985
Coming into Operation 1st January 1986

The Secretary of State, in exercise of the powers conferred upon him by section 113(1) of the Police and Criminal Evidence Act 1984(a), and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Application to Armed Forces) Order 1985 and shall come into operation on 1st January 1986.

Interpretation

2. In this Order, unless the context otherwise requires—

“the Act” means the Police and Criminal Evidence Act 1984;

“legal adviser” means every person who is qualified as a barrister-at-law or solicitor according to the law of England or Northern Ireland or who is qualified as an advocate or as a solicitor according to the law of Scotland, or any person having in any Commonwealth country or territory outside the United Kingdom rights and duties similar to those of a barrister-at-law or a solicitor in England and is subject to punishment or disability for a breach of professional rules;

“serious service offence” means an offence under any of the service discipline Acts which cannot be dealt with summarily or which appears to a service policeman to be serious;

“service discipline Acts” means the Army Act 1955(b), the Air Force Act 1955(c) or the Naval Discipline Act 1957(d);

“service policeman” means a member of the Corps of Royal Military Police or Women’s Royal Army Corps Provost, a Provost Officer of the Royal Air Force or a member of the Royal Air Force Police, or a member of the Royal Naval Special Investigation Branch or a member of the Royal Marines Police.

(a) 1984 c. 60.
(c) 1955 c. 19.

(b) 1955 c. 18.
(d) 1957 c. 53.

Application of the Act

3. The following provisions of the Act shall apply to the investigation of offences under any of the service discipline Acts conducted by service policemen or to persons held in arrest thereunder, subject to the modifications specified below.

Access to legal advice

4. Section 58 of the Act (which provides for persons arrested and held in custody in a police station or other premises to be entitled to consult a solicitor) shall have effect as if—

- (a) for subsection (1) there were substituted the following subsection—
“(1) A person arrested under any of the service discipline Acts and being interviewed in connection with a serious service offence shall be entitled, if he so requests, to consult a legal adviser privately at any time.”;
- (b) for subsection (2) there were substituted the following subsection—
“(2) A request under subsection (1) above and the time at which it was made shall be recorded in writing by a service policeman.”;
- (c) subsections (3), (5) to (7) and (12) to (18) were omitted;
- (d) in subsection (4) for the word “solicitor” there were substituted the words “legal adviser” and for the words “is practicable” there were substituted the words “it appears to the interviewing service policeman to be practicable”;
- (e) in subsection (8) for the words “An officer may only authorise delay” there were substituted the words “A service policeman may authorise delay but he may only do so” and for the words “serious arrestable offence” there were substituted the words “any serious service offence”;
- (f) in subsection (9) for the word “detained” there were substituted the word “arrested” and for the words “noted on his custody record” there were substituted the words “recorded in writing by the service policeman”.

Legal Aid

5. Section 59 of the Act (which amends section 1 of the Legal Aid Act 1982^(a)) so as to extend its provisions concerning advice and representation by duty solicitors at magistrates’ courts to persons attending at a police station voluntarily or who are entitled to consult a solicitor under section 58(1) of the Act) shall have effect as if—

- (a) in paragraph (a) for the word “and” contained at the end of the words inserted by that paragraph as an additional paragraph (aa) following section 1(1)(a) of the Legal Aid Act 1982, there were substituted the following words—
“or
(iii) being interviewed in connection with a serious service offence;
and”;

(a) 1982 c. 44.

- (b) in paragraph (c) at end of subsection (1A) to be inserted after section 1 of the Legal Aid Act 1982 there were added the words “(including persons arrested and held in custody under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957).”

Finger printing

6. Section 61 of the Act (which provides that no finger prints may be taken from a person without the appropriate consent except under the procedures set out in that section) shall have effect as if—

- (a) in subsection (2) the words “if it is given at a time when he is at a police station” were omitted;
- (b) for subsections (3) and (4) there were substituted the following subsection—
- “(3) The fingerprints of a person arrested under any of the service discipline Acts may be taken without the appropriate consent—
- (a) if he has been charged with or reported for an offence under any of those Acts and his case has not then been disposed of; or
- (b) if, before he has been charged with or reported for such an offence a service policeman has reasonable grounds to believe that his fingerprints will tend to confirm or disprove his involvement in such an offence; or
- (c) he has been convicted or found guilty of such an offence and his fingerprints are not already on record under paragraphs (a) or (b) above.”;
- (c) subsections (5) and (6) were omitted;
- (d) in subsection (7) the words “or (6)” were omitted;
- (e) in subsection (8) the words “If he is detained at a police station” and “on his custody record” were omitted;
- (f) subsection (9) were omitted.

Intimate samples

7. Section 62 of the Act (which provides that no intimate sample may be taken from a person except under the procedures set out in that section) shall have effect as if—

- (a) in subsection (1) for the words “in police detention” there were substituted the words “arrested under any of the service discipline Acts” and for the words “police officer of at least the rank of superintendent” there were substituted the words “service policeman”;
- (b) in subsection (2) for the words “An officer” there were substituted the words “A service policeman” and for the words “serious arrestable offence” there were substituted the words “any serious service offence”;
- (c) in subsection (3) for the words “An officer” there were substituted the words “A service policeman”;

- (d) in subsection (5) for the words “an officer” there were substituted the words “a service policeman”;
- (e) subsection (8) were omitted;
- (f) in subsection (9) after the words “registered medical practitioner” there were inserted the words “or by or on behalf of a service medical authority”;
- (g) in subsection (10) for the word “charged,” at the end of paragraph (b) there were substituted the words—
 - “charged, or
 - (c) the court or officer exercising jurisdiction under any of the service discipline Acts.”.

Other samples

8. Section 63 of the Act (which provides that non-intimate samples may not be taken from a person without the appropriate consent except under the procedures set out in that section) shall have effect as if—

- (a) for subsections (3) and (4) there were substituted the following subsection—
 - “(3) A non-intimate sample may be taken from a person without the appropriate consent if he is in arrest under any of the service discipline Acts and its taking is authorised by a service policeman having reasonable grounds for believing that the sample will tend to confirm or disprove his involvement in any serious service offence.”;
- (b) subsection (5) were omitted;
- (c) in subsection (6) for the words “an officer” there were substituted the words “a service policeman”;
- (d) subsection (9) were omitted.

Destruction of fingerprints and samples

9. Section 64 of the Act (which provides for the destruction of fingerprints and samples) shall have effect as if—

- (a) in subsections (1) and (3) for the words “the investigation of an offence” there were substituted the words “investigations under any of the service discipline Acts of an offence”;
- (b) in subsection (2) there were substituted for paragraph (b) the following paragraph—
 - “(b) it is decided that no disciplinary proceedings under any of the service discipline Acts or any other proceedings are to be taken against him in respect of that offence.”;
- (c) subsection (7) were omitted.

Definitions

10. Sections 65 and 118 of the Act (which provide for the definition of expressions) shall have effect to the extent necessary for defining such of those

expressions as are contained in the sections of the Act which are applied under the foregoing Articles of this Order.

Use of force

11. Section 117 of the Act (which confers power on a constable to use reasonable force for the purpose of exercising any power conferred on him under the Act) shall have effect as if for the expressions "constable", "police officer", or "officer", wherever they appear, there were substituted the expression "service policeman".

12.—(1) This Order, except Article 5, shall extend to any place to which the service discipline Acts extend.

(2) Article 5 shall extend to England and Wales only.

Michael Heseltine,

One of Her Majesty's Principal Secretaries of State.

2nd December 1985.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order applies with appropriate modifications certain provisions contained in Part V of the Police and Criminal Evidence Act 1984, concerning the questioning and treatment of persons by the police, to investigations of offences conducted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 and to persons under arrest under any of those Acts.

By Article 4, section 58 of the Act is applied and modified so that persons held in custody under those service discipline Acts, if they so request, are entitled to consult a legal adviser without delay unless delay is authorised for certain limited purposes specified in subsection (8) as applied by the Article such as preventing interference to evidence. By Article 5 provisions of the Legal Aid Act 1982 (as to duty solicitors) are applied to that consultation with solicitors provided for by the application so effected by Article 4.

Article 6 applies section 61 of the Act with modifications so that fingerprints may be taken from a person in service custody without his consent providing this has been duly authorised on the ground that the person so authorised has reasonable grounds for believing that the fingerprints will confirm or disprove the individual's involvement in an offence under one of the service discipline Acts.

Article 7 applies section 62 with modifications so that intimate samples (as defined) may be taken from a person in service custody providing he consents; with provision for inferences to be capable of being drawn, from his refusal to consent, by any court or a service tribunal determining any case brought against that person.

Article 8 applies section 63 with modifications so that non-intimate samples may be taken from a person in service custody without his consent providing this has been duly authorised as under Article 7 in the case of fingerprinting.

Article 9 applies section 64 with modifications and provides for the destruction of fingerprints and samples. Article 10 applies the definitions (such as "intimate samples") contained in sections 65 and 118 of the 1984 Act. Article 11 applies the provision in section 117 as to use of reasonable force by a constable when taking fingerprints and samples under the relevant provisions of the Act to service policemen when exercising similar powers as applied by this Order. Article 12 extends the provisions of the Order to any place where the service discipline Acts extend except Article 5 (legal aid) which extends only to England and Wales.

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