
STATUTORY INSTRUMENTS

2009 No. 2056

**The Armed Forces (Powers of Stop and Search,
Search, Seizure and Retention) Order 2009**

PART 2

Searches

Stop and search by a service policeman

3.—(1) A service policeman who detains a person or vehicle in exercise of the power conferred by section 75 of the Act need not conduct a search if it appears to him subsequently that a search is impracticable.

(2) If a service policeman contemplates a search, other than a search of an unattended vehicle, in the exercise of the power conferred by section 75, it shall be his duty to take reasonable steps before he commences the search to bring to the attention of the appropriate person—

- (a) if the service policeman is not in uniform, documentary evidence that he is a service policeman, and
- (b) whether he is in uniform or not, the matters specified in paragraph (3),

and the service policeman shall not commence the search until he has performed that duty.

(3) The matters referred to in paragraph (2)(b) are—

- (a) the service policeman's name, rank or rate, and the name of his unit;
- (b) the object of the proposed search;
- (c) the service policeman's grounds for proposing to make it; and
- (d) the effect of article 4(7) or (8), as may be appropriate.

(4) The service policeman need not bring the effect of article 4(7) or (8) to the attention of the appropriate person if it appears to the service policeman that it will not be practicable to make the record referred to in article 4(1).

(5) On completing a search of an unattended vehicle or anything in or on such a vehicle in exercise of the power conferred by section 75 a service policeman shall leave a notice—

- (a) stating that he has searched it;
- (b) giving his name, rank or rate, and the name, address and telephone number of his unit;
- (c) stating that an application for compensation for any damage caused by the search may be made to that unit; and
- (d) stating the effect of article 4(8).

(6) The service policeman shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle, in which case he shall attach the notice to the outside of the vehicle.

(7) Section 75 shall not give a service policeman who is not in uniform a power to stop a vehicle.

Record of search by service policeman

4.—(1) Where a service policeman has carried out a search in the exercise of the power conferred by section 75 of the Act, he shall make a record of it in writing unless it is not practicable to do so.

(2) If—

- (a) a service policeman is required by paragraph (1) to make a record of a search, but
- (b) it is not practicable to make the record on the spot,

he shall make it as soon as it is practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the service policeman knows it.

(4) If a service policeman does not know the name of a person whom he has searched, the record of the search shall include a note otherwise describing that person.

(5) The record of the search of a vehicle shall include a note describing the vehicle.

(6) The record of a search of a person or a vehicle—

(a) shall state—

- (i) the object of the search;
- (ii) the grounds for making it;
- (iii) the date and time when it was made;
- (iv) the place where it was made;
- (v) whether anything, and if so what, was found;
- (vi) whether any, and if so what, injury to a person or damage to property appears to the service policeman to have resulted from the search; and

(b) shall identify the service policeman making it.

(7) If a service policeman who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in paragraph (9).

(8) If—

- (a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in paragraph (9), and
- (b) the service policeman who conducted the search made a record of it,

the person who made the request shall be entitled to a copy.

(9) The period mentioned in paragraphs (7) and (8) is the period of 12 months beginning with the date on which the search was made.

Searches under section 76 of the Act

5.—(1) This article applies where under section 76(1) of the Act an officer gives a person (referred to below in this article as “the relevant person”) an order or an authorisation.

(2) If the relevant person is ordered or authorised to conduct a search, other than a search of an unattended vehicle, it shall be his duty to take reasonable steps before he commences the search—

(a) to notify the appropriate person of—

- (i) his name, rank or rate and the name of his unit;
- (ii) his authority for conducting the search;

- (iii) the object of the proposed search; and
 - (iv) the effect of paragraphs (11) and (12); and
- (b) to show his service identity card to the appropriate person.
- (3) The relevant person need not bring the effect of paragraphs (11) and (12) to the attention of the appropriate person if it appears to the relevant person that it will not be practicable to make the record referred to in paragraph (6).
- (4) On completing a search of an unattended vehicle or anything in or on such a vehicle, the relevant person shall leave a notice—
 - (a) stating that he has searched it;
 - (b) giving his name, rank or rate and the name, address and telephone number of his unit; and
 - (c) stating that the appropriate person is entitled to a copy of the record of search to which paragraph (10) refers.
- (5) The relevant person shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle, in which case he shall attach the notice to the outside of the vehicle.
- (6) Where the relevant person has carried out a search pursuant to the order or authorisation under section 76 of the Act, he shall make a record of it in writing unless it is not practicable to do so.
- (7) If—
 - (a) the relevant person is required by paragraph (6) to make a record of a search, but
 - (b) it is not practicable to make the record on the spot,he shall make it as soon as is practicable after the completion of the search.
- (8) The record of a search of a person shall include—
 - (a) a note of his name if the relevant person knows it; or
 - (b) if the relevant person does not know the name of the person whom he has searched, the record of the search shall include a note otherwise describing that person.
- (9) The record of the search of a vehicle shall include a note describing the vehicle.
- (10) The record of a search of a person or a vehicle—
 - (a) shall state—
 - (i) the object of the search;
 - (ii) the date and time when it was made;
 - (iii) the place where it was made;
 - (iv) whether anything, and if so what, was found;
 - (v) whether any, and if so what, injury to a person or damage to property appears to the relevant person to have resulted from the search; and
 - (b) shall identify the relevant person making it.
- (11) If the relevant person who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in paragraph (13).
- (12) If—
 - (a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in paragraph (13), and
 - (b) the relevant person who conducted the search made a record of it,

the person who made the request shall be entitled to a copy.

(13) The period mentioned in paragraphs (11) and (12) is the period of 12 months beginning with the date on which the search was made.

Access to excluded and special procedure material

6. A service policeman may obtain access to excluded material or special procedure material on relevant residential premises for the purposes of an investigation of a relevant offence by making an application under Schedule 1 and in accordance with that Schedule.

Application for warrants or orders by live links

7. A service policeman may make—

- (a) an application under Schedule 1, or
- (b) an application for a warrant under section 83 of the Act (warrant authorising entry and search),

using live television or telephone links or similar arrangements if it is not reasonably practicable for him to make the application in person.

Search warrants – safeguards

8.—(1) This article, and articles 9 and 10, have effect in relation to the issue to service policemen under section 83 of the Act or under Schedule 1 of warrants to enter and search premises.

(2) An entry on or search of premises under a warrant is unlawful unless it complies with this article and articles 9 and 10.

(3) Where a service policeman applies for any such warrant, it shall be his duty—

- (a) to state—
 - (i) the ground on which he makes the application;
 - (ii) the enactment under which the warrant would be issued; and
 - (iii) if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he applies for such a warrant, and whether he seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;

(b) to specify the premises which it is desired to enter and search; and

(c) to identify, so far as is practicable, the articles to be sought.

(4) The duty under paragraph (3)(b) is a duty to specify each set of premises which it is desired to enter and search.

(5) An application for such a warrant shall be made *ex parte* and supported by a statement in writing, which shall—

- (a) specify the name, rank or rate and unit of the person who applies for it; and
- (b) set out the information referred to in paragraph (3)(a) to (c).

(6) Subject to article 11, the service policeman shall answer on oath any question that the judge advocate hearing the application asks him.

(7) A warrant shall authorise an entry on one occasion only unless it specifies that it authorises multiple entries.

(8) If a warrant specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

(9) A warrant—

(a) shall specify—

- (i) the name, rank or rate and unit of the person who applies for it;
- (ii) the date on which it is issued;
- (iii) the enactment under which it is issued; and
- (iv) each set of premises to be searched; and

(b) shall identify, so far as is practicable, the articles to be sought.

(10) Two copies shall be made of a warrant which does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.

(11) The copies shall be clearly certified as copies by the judge advocate who issues the warrant.

Execution of warrants

9.—(1) A warrant to enter and search premises may be executed by any service policeman.

(2) Such a warrant may authorise persons to accompany any service policeman who is executing it.

(3) A person so authorised has the same powers as the service policeman whom he accompanies in respect of—

- (a) the execution of the warrant, and
- (b) the seizure of anything to which the warrant relates,

but he may exercise those powers only in the company, and under the supervision, of a service policeman.

(4) Entry and search under a warrant must be within three months from the date of its issue.

(5) No premises may be entered or searched for the second or any subsequent time under a warrant which provides for multiple entries unless an authorising service policeman has in writing authorised that entry to those premises.

(6) Entry and search under a warrant must be at a reasonable hour unless it appears to the service policeman executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

(7) Where the occupier of premises which are to be entered and searched is present at the time when a service policeman seeks to execute a warrant to enter and search them, the service policeman—

- (a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a service policeman;
- (b) shall produce the warrant to him; and
- (c) shall supply him with a copy of it.

(8) Where—

- (a) the occupier of such premises is not present at the time when a service policeman seeks to execute such a warrant, but
- (b) some other person who appears to the service policeman to be in charge of the premises is present,

paragraph (7) shall have effect as if any reference to the occupier were a reference to that other person.

(9) If there is no person present who appears to the service policeman to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

(10) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(11) A service policeman executing a warrant shall make an endorsement on it stating—

- (a) whether the articles sought were found; and
- (b) whether any articles were seized, other than articles which were sought.

(12) A warrant shall be returned to the Judge Advocate General—

- (a) when, within the period prescribed in paragraph (4), it has been executed; or
- (b) when the period prescribed in paragraph (4) has expired, if the warrant is not executed within that period.

(13) A warrant which is returned under paragraph (12) shall be retained by the Judge Advocate General for at least 2 years from its return.

(14) If during the period for which a warrant is to be retained the occupier of premises to which it relates asks to inspect it, he shall be allowed to do so.

Safeguards and execution of warrants – further provisions

10.—(1) Where—

- (a) a service policeman makes an application by live television or telephone links or similar arrangements for a warrant to enter and search premises, or
- (b) sub-paragraph (a) does not apply, but the service policeman who is to execute such a warrant has reasonable grounds for believing that it is likely that, if no search is carried out before the earliest time by which it will be practicable for him to have the warrant in his possession, the purpose of the search will be frustrated or seriously prejudiced,

articles 8 and 9 shall have effect subject to the following provisions of this article.

(2) Where paragraph (1)(a) applies—

- (a) in addition to the requirements of article 8(9), the warrant shall specify that the application for the warrant was made by live television or telephone links or similar arrangements;
- (b) the judge advocate shall transmit a copy of the warrant by fax or other means of electronic communication to the service policeman who made the application;
- (c) the judge advocate shall retain the warrant;
- (d) the certified copies of the warrant made in accordance with article 8(10) and (11) shall be sent to the service policeman who made the application as soon as reasonably practicable after a copy has been transmitted in accordance with sub-paragraph (b).

(3) Where paragraph (1)(b) applies, the service policeman who applied for the warrant may transmit by any practicable means the information contained in the warrant to the service policeman who is to execute the warrant.

(4) Where paragraph (1)(a) applies—

- (a) the requirements of article 9(7)(b) and (c) shall be satisfied if the service policeman executing the warrant—
 - (i) produces to the occupier a copy of the warrant; and
 - (ii) supplies another copy of the warrant to the occupier;
- (b) the occupier of the premises entered and searched shall be supplied with a certified copy of the warrant as soon as is reasonably practicable after the search is concluded;
- (c) the service policeman executing the warrant shall make the endorsement mentioned in article 9(11) on the copy referred to in sub-paragraph (a)(i);

- (d) if the warrant has not been executed within the time authorised for its execution, a service policeman shall make an endorsement on the copy referred to in sub-paragraph (a)(i), stating that it has not been executed;
 - (e) the requirements of article 9(12) shall not be satisfied unless the copy referred to in sub-paragraph (a)(i) is sent to the Judge Advocate General;
 - (f) article 9(13) and (14) shall also apply to the copy sent in accordance with sub-paragraph (e).
- (5) Where paragraph (1)(b) applies—
- (a) the requirements of article 9(7)(b) and (c) shall be satisfied if the service policeman executing the warrant—
 - (i) produces to the occupier a document stating the information contained in the warrant; and
 - (ii) supplies another copy of the document to the occupier;
 - (b) the occupier of the premises entered and searched shall be supplied with a certified copy of the warrant as soon as is reasonably practicable after the search is concluded;
 - (c) the requirements of article 9(9) shall be satisfied if the service policeman executing the warrant leaves a copy of the document referred to in sub-paragraph (a)(i) in a prominent place on the premises;
 - (d) the service policeman executing the warrant shall make the endorsement mentioned in article 9(11) on the document referred to in sub-paragraph (a)(i);
 - (e) if the warrant has not been executed within the time authorised for its execution, a service policeman shall make an endorsement on the document referred to in sub-paragraph (a)(i), stating that it has not been executed;
 - (f) the requirements of article 9(12) shall not be satisfied unless the document referred to in sub-paragraph (a)(i) is sent to the Judge Advocate General;
 - (g) article 9(13) and (14) shall also apply to the document sent in accordance with sub-paragraph (f).

Oaths and affirmations

11.—(1) Before a judge advocate asks any question which a service policeman would be required under article 8(6) to answer on oath, an oath shall be administered to the service policeman.

(2) If—

- (a) a service policeman required under article 8(6) to answer on oath objects to being sworn, or
- (b) it is not reasonably practicable without inconvenience or delay to administer an oath to a service policeman in the manner appropriate to his religious belief,

he shall be required to make a solemn affirmation instead of taking an oath.

(3) An oath or affirmation required to be administered under this Order shall be administered in the form and manner set out in Schedule 2 by the judge advocate or by another person acting on his behalf.

Search of premises where person arrested

12.—(1) This article shall apply in any case where a person is arrested under section 67 of the Act for a serious service offence.

(2) Subject to the following provisions of this article, a service policeman shall have power—

- (a) to enter and search—

- (i) any relevant residential premises, or
- (ii) any vehicle,

in which the arrested person was when arrested or immediately before he was arrested, and

- (b) to open and search any locker falling within section 96(1)(c) of the Act which the arrested person had open when or immediately before he was arrested,

for evidence relating to the offence for which he has been arrested.

(3) The power to search conferred by paragraph (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such evidence.

(4) A service policeman may not search in the exercise of the power conferred by paragraph (2) unless he has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph on the premises.

(5) In so far as the power to search conferred by paragraph (2) relates to premises consisting of two or more separate dwellings, it is limited to a power to search—

- (a) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and
- (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

Entry and search after arrest

13.—(1) This article applies to any premises occupied or controlled by a person who has been arrested under section 67 of the Act for a serious service offence and is being held in service custody without being charged.

(2) A service policeman may, subject to the following provisions of this article, enter and search premises to which this article applies if he has reasonable grounds for suspecting that there is on the premises relevant evidence.

(3) Evidence is relevant for the purposes of this article, if it is not subject to legal privilege and—

- (a) it relates to the offence for which the arrested person has been arrested; or
- (b) it relates to some other serious service offence which is connected with or similar to that offence.

(4) A service policeman may seize and retain anything for which he may search under paragraph (2).

(5) The power to search conferred by paragraph (2) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(6) Subject to paragraph (7), the powers conferred by this article may not be exercised unless an authorising service policeman has authorised them in writing.

(7) A service policeman may conduct a search under paragraph (2) without obtaining a written authorisation under paragraph (6) if—

- (a) he has reasonable grounds for believing that it is likely that, if no search could be carried out before the earliest time by which it would be practicable for him to obtain such an authorisation, the purpose of the search would be frustrated or seriously prejudiced; and
- (b) he informs an authorising service policeman that he has made the search as soon as practicable after he has made it.

(8) An authorising service policeman who—

- (a) authorises a search, or

(b) under paragraph (7)(b) is informed of a search,
shall make a written record of the grounds of the search and the nature of the evidence that was sought.