
STATUTORY INSTRUMENTS

2009 No. 2056

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

PART 4

Additional powers of seizure

Interpretation

18.—(1) In this Part—

- (a) in relation to a relevant time, references to something for which the person making the seizure had power to search shall be construed in accordance with paragraphs (2) to (5);
- (b) “relevant time” means a time when seized property is in any person’s possession in consequence of a seizure; and
- (c) “return”, in relation to seized property, shall be construed in accordance with article 27, and cognate expressions shall be construed accordingly.

(2) Where the seizure was made on the occasion of a search carried out on the authority of a warrant, a reference mentioned in paragraph (1)(a) shall be construed as including anything of the description of things the presence or suspected presence of which provided grounds for the issue of the warrant.

(3) Where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which on that occasion was believed by him to be, or appeared to him to be, of a particular description, a reference mentioned in paragraph (1)(a) shall be construed as including—

- (a) anything which at a relevant time is believed by the person in possession of the seized property, or, as the case may be, appears to him, to be of that description; and
- (b) anything which is in fact of that description.

(4) Where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which there were on that occasion reasonable grounds for believing was of a particular description, a reference mentioned in paragraph (1)(a) shall be construed as including—

- (a) anything which there are at a relevant time reasonable grounds for believing is of that description; and
- (b) anything which is in fact of that description.

(5) Where the property was seized in the course of a search to which neither paragraph (3) nor paragraph (4) applies, a reference mentioned in paragraph (1)(a) shall be construed as including anything which is of a description of things which, on the occasion of the search, it would have been lawful for the person carrying it out to seize otherwise than under articles 19 and 20.

(6) References in this Part to any item or material being comprised in other property include references to its being mixed with that other property.

(7) For the purposes of this Part and subject to article 27(5), the occupier of premises which are service living accommodation is—

- (a) if the premises are a building or part of a building within section 96(1)(a) of the Act, the person subject to service law for whose use (whether alone or with members of his family) as living accommodation or as a garage the building or part of a building is provided;
- (b) if the premises are a room, structure or area within section 96(1)(b) of the Act, any person subject to service law for whom the premises are used to provide sleeping accommodation; and
- (c) if the premises are a locker within section 96(1)(c) of the Act, the person subject to service law for whose personal use the locker is provided.

Additional powers of seizure from premises

19.—(1) This paragraph applies where—

- (a) a person is lawfully on any premises other than by virtue of an authorisation under section 87 or 88 of the Act and finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises;
- (b) a power of seizure to which this article applies or the power conferred by paragraph (3) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and
- (c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises—
 - (i) whether what he has found is something that he is entitled to seize; or
 - (ii) the extent to which what he has found contains something that he is entitled to seize.

(2) Where paragraph (1) applies, the person’s powers of seizure shall include power under this article to seize so much of what he has found as it is necessary to remove from the premises to enable it to be determined—

- (a) whether what he has found is something that he is entitled to seize; or
- (b) the extent to which what he has found contains something that he is entitled to seize.

(3) Where—

- (a) a person who is lawfully on any premises other than by virtue of an authorisation under section 87 or 88 of the Act finds anything on those premises (“the seizable property”) which he would be entitled to seize but for its being comprised in something else that he has (apart from this paragraph) no power to seize,
- (b) the power under which that person would have power to seize the seizable property is a power to which this article applies, and
- (c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person’s powers of seizure shall include power under this article to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(4) The factors to be taken into account in considering, for the purposes of this article, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, shall be confined to the following—

- (a) how long it would take to carry out the determination or separation on those premises;
- (b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;

- (c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;
 - (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
 - (e) in the case of separation, whether the separation—
 - (i) would be likely, or
 - (ii) if carried out by the only means that are reasonably practicable on those premises, would be likely,to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.
- (5) Article 14(6) shall not apply to the power of seizure conferred by paragraph (3).
- (6) This article applies to each of the powers of seizure conferred by or under Chapter 1 or 3 of Part 3 of the Act, except sections 87 and 88 of the Act.

Additional powers of seizure from the person

- 20.**—(1) This paragraph applies where—
- (a) a service policeman carrying out a lawful search of any person finds something that he has reasonable grounds for believing may be or may contain something for which he is authorised to search;
 - (b) a power of seizure conferred by section 73 of the Act or paragraph (3) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and
 - (c) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search—
 - (i) whether what he has found is something that he is entitled to seize; or
 - (ii) the extent to which what he has found contains something that he is entitled to seize.
- (2) Where paragraph (1) applies, the service policeman’s powers of seizure shall include power under this article to seize so much of what he has found as it is necessary to remove from that place to enable it to be determined—
- (a) whether what he has found is something that he is entitled to seize; or
 - (b) the extent to which what he has found contains something that he is entitled to seize.
- (3) Where—
- (a) a service policeman carrying out a lawful search of any person finds something (“the seizable property”) which he would be entitled to seize but for its being comprised in something else that he has (apart from this paragraph) no power to seize,
 - (b) the power under which that service policeman would have power to seize the seizable property is a power under section 73 of the Act, and
 - (c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,
- that service policeman’s powers of seizure shall include power under this article to seize both the seizable property and that from which it is not reasonably practicable to separate it.
- (4) The factors to be taken into account in considering, for the purposes of this article, whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, shall be confined to the following—
- (a) how long it would take to carry out the determination or separation at that time and place;

- (b) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;
 - (c) whether the determination or separation would (or would if carried out at that time or place) involve damage to property;
 - (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
 - (e) in the case of separation, whether the separation—
 - (i) would be likely, or
 - (ii) if carried out by the only means that are reasonably practicable at that time and place, would be likely,
 to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.
- (5) Article 14(6) shall not apply to the power of seizure conferred by paragraph (3).

Notice of exercise of power under article 19 or 20

21.—(1) Where a person exercises a power of seizure conferred by article 19, it shall (subject to paragraphs (2) and (3)) be his duty, on doing so, to give to the occupier of the premises a written notice—

- (a) specifying what has been seized in reliance on the powers conferred by that article;
- (b) specifying the grounds on which those powers have been exercised;
- (c) setting out the effect of articles 28 to 30;
- (d) specifying the name and address of the person to whom notice of an application under article 28(2) for the return of any of the seized property must be given; and
- (e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of article 22(2).

(2) Where it appears to the person exercising on any premises a power of seizure conferred by article 19—

- (a) that the occupier of the premises is not present at the time of the exercise of the power, but
- (b) that there is some other person present who is in charge of the premises,

paragraph (1) shall have effect as if it required the notice under that paragraph to be given to that other person.

(3) Where it appears to the person exercising a power of seizure conferred by article 19 that there is no one present to whom he may give a notice for the purposes of complying with paragraph (1), he shall, before leaving the premises, instead of complying with that paragraph, attach a notice such as is mentioned in that paragraph in a prominent place on the premises.

(4) Where a person exercises a power of seizure conferred by article 20 it shall be his duty, on doing so, to give a written notice to the person from whom the seizure is made—

- (a) specifying what has been seized in reliance on the powers conferred by that article;
- (b) specifying the grounds on which those powers have been exercised;
- (c) setting out the effect of articles 28 to 30;
- (d) specifying the name and address of the person to whom notice of an application under article 28(2) for the return of any of the seized property must be given; and

- (e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of article 22(2).

Examination and return of property seized under article 19 or 20

22.—(1) This article applies where anything has been seized under a power conferred by article 19 or 20.

(2) It shall be the duty of the person for the time being in possession of the seized property in consequence of the exercise of that power to secure that there are arrangements in force which, subject to article 30, ensure—

- (a) that an initial examination of the property is carried out by a service policeman as soon as reasonably practicable after the seizure;
 - (b) that that examination is confined to whatever is necessary for determining how much of the property falls within paragraph (3);
 - (c) that anything which is found, on that examination, not to fall within paragraph (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed; and
 - (d) that, until the initial examination of all the seized property has been completed and anything which does not fall within paragraph (3) has been returned, the seized property is kept separate from anything seized under any other power.
- (3) The seized property falls within this paragraph to the extent only—
- (a) that it is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by article 23;
 - (b) that it is property the retention of which is authorised by article 25; or
 - (c) that it is something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within sub-paragraph (a) or (b).

(4) In determining for the purposes of this article the earliest practicable time for the carrying out of an initial examination of the seized property, due regard shall be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if he chooses) of being represented at the examination.

(5) In this article, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful.

Obligation to return items subject to legal privilege

23.—(1) This paragraph applies where, at any time after a seizure of anything has been made in exercise of a power of seizure to which this article applies, it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—

- (a) is an item subject to legal privilege; or
- (b) has such an item comprised in it.

(2) Where paragraph (1) applies, it shall be the duty of the person for the time being having possession of the seized property to secure that the item is returned as soon as reasonably practicable after the seizure, unless the item—

- (a) was seized in exercise of a power other than the power under section 76(1)(c), section 87(4) or section 88(4) of the Act; and
 - (b) is comprised in property which—
 - (i) has been lawfully seized; and
 - (ii) is property falling within paragraph (3).
- (3) Property in which an item subject to legal privilege is comprised falls within this paragraph if—
- (a) the whole or a part of the rest of the property is property falling within paragraph (4) or property the retention of which is authorised by article 25; and
 - (b) in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful.
- (4) Property falls within this paragraph to the extent that it is property for which the person seizing it had power to search when he made the seizure, but is not property which is required to be returned under this article or article 24.
- (5) This article applies to each of the powers of seizure conferred by Part 3 of the Act or by this Order.

Obligation to return excluded and special procedure material

24.—(1) This paragraph applies where, at any time after a seizure of anything has been made pursuant to a warrant granted under section 83 of the Act—

- (a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—
 - (i) is excluded material or special procedure material; or
 - (ii) has any excluded material or special procedure material comprised in it;
 - (b) its retention is not authorised by article 25; and
 - (c) in a case where the material is comprised in something else which has been lawfully seized, it is not comprised in property falling within paragraph (3) or (4).
- (2) Where paragraph (1) applies, it shall be the duty of the person for the time being having possession of the seized property to secure that the item is returned as soon as reasonably practicable after the seizure.
- (3) Property in which any excluded material or special procedure material is comprised falls within this paragraph if—
- (a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by this article or article 23; and
 - (b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.
- (4) Property in which any excluded material or special procedure material is comprised falls within this paragraph if—
- (a) the whole or a part of the rest of the property is property the retention of which is authorised by article 25; and

- (b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

Authorised retention of property

25.—(1) For the purpose of articles 22 to 24, the retention of property seized is authorised by this article if the property falls within paragraph (2) or (3).

(2) Property falls within this paragraph to the extent that there are reasonable grounds for believing—

- (a) that it is property obtained in consequence of the commission of a service offence; and
- (b) that it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed.

(3) Property falls within this paragraph to the extent that there are reasonable grounds for believing—

- (a) that it is evidence in relation to any service offence; and
- (b) that it is necessary for it to be retained in order to prevent its being concealed, lost, altered or destroyed.

(4) Nothing in this article authorises the retention (except in pursuance of article 23(3)) of anything at any time when its return is required by article 23.

Application of article 17 to property seized under this Part

26.—(1) Article 17 shall apply in relation to any property seized in exercise of a power conferred by article 19 or 20 as if the property had been seized under the power of seizure by reference to which the power under article 19 or 20 was exercised in relation to that property.

(2) Nothing in any of articles 22 to 25 authorises the retention of any property at any time when its retention would not (apart from the provisions of this Part) be authorised by article 17.

(3) Nothing in article 17 authorises the retention of anything after an obligation to return it has arisen under this Part.

Person to whom seized property is to be returned

27.—(1) Where—

- (a) anything has been seized in exercise of any power of seizure conferred by Part 3 of the Act or under this Order, and
- (b) there is an obligation under this Part for the whole or any part of the seized property to be returned,

the obligation to return it shall (subject to the following provisions of this article) be an obligation to return it to the person from whom it was seized.

(2) Where—

- (a) any person is obliged under this Part to return anything that has been seized to the person from whom it was seized, and
- (b) the person under that obligation is satisfied that some other person has a better right to that thing than the person from whom it was seized,

his duty to return it shall, instead, be a duty to return it to that other person or, as the case may be, to the person appearing to him to have the best right to the thing in question.

(3) Where different persons claim to be entitled to the return of anything that is required to be returned under this Part, that thing may be retained for as long as is reasonably necessary for the determination in accordance with paragraph (2) of the person to whom it must be returned.

(4) References in this Part to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing's having been found on any premises, are references to the occupier of the premises at the time of the seizure.

(5) References in this article to the occupier of any premises at the time of a seizure, in relation to a case in which—

- (a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises, and
- (b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,

are references to that person.

Application to a judge advocate

28.—(1) This article applies where anything has been seized in exercise, or purported exercise, of a relevant power of seizure.

(2) Any person with a relevant interest in the seized property may apply to a judge advocate, on one or more of the grounds mentioned in paragraph (3), for the return of the whole or a part of the seized property.

(3) Those grounds are—

- (a) that there was no power to make the seizure;
- (b) that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within article 23(3);
- (c) that the seized property is or contains any excluded material or special procedure material which—
 - (i) has been seized under a power to which article 24 applies;
 - (ii) is not comprised in property falling within article 24(3) or (4); and
 - (iii) is not property the retention of which is authorised by article 25; and
- (d) that the seized property is or contains something seized under article 19 or 20 which does not fall within article 22(3).

(4) Subject to paragraph (6), the judge advocate, on an application under paragraph (2), shall—

- (a) if satisfied as to any of the matters mentioned in paragraph (3), order the return of so much of the seized property as is the property in relation to which the judge advocate is so satisfied; and
- (b) to the extent that the judge advocate is not so satisfied, dismiss the application.

(5) The judge advocate—

- (a) on an application under paragraph (2),
- (b) on an application made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure, or
- (c) on an application made—
 - (i) by a person with a relevant interest in anything seized under article 19 or 20, and

(ii) on the grounds that the requirements of article 22(2) have not been or are not being complied with,

may give such directions as the judge advocate thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.

(6) On any application under this article, the judge advocate may authorise the retention of any property which—

- (a) has been seized in exercise, or purported exercise, of a relevant power of seizure, and
- (b) would otherwise fall to be returned,

if the judge advocate is satisfied that the retention of the property is justified on grounds falling within paragraph (7).

(7) Those grounds are that (if the property were returned) it would immediately become appropriate—

- (a) to issue, on the application of the person who is in possession of the property at the time of the application under this article, a warrant in pursuance of which, or of the exercise of which, it would be lawful to seize the property; or
- (b) to make an order under paragraph 5 of Schedule 1 under which the property would fall to be produced to the person mentioned in sub-paragraph (a).

(8) This paragraph applies where any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts (“part A” and “part B”) comprised in it such that—

- (a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in paragraph (7) in relation to part A;
- (b) it would (or would but for the facts mentioned in sub-paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B; and
- (c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question.

(9) If paragraph (8) applies, the facts mentioned in paragraph (8)(a) shall not be taken into account by the judge advocate in deciding whether the retention of the property is justified on grounds falling within paragraph (7).

(10) The relevant powers of seizure for the purposes of this article are the powers of seizure conferred by Part 3 of the Act or by this Order, except the powers conferred by section 87(4) and 88(4) of the Act.

(11) References in this article to a person with a relevant interest in seized property are references to—

- (a) the person from whom it was seized;
- (b) any person with an interest in the property; or
- (c) any person, not falling within sub-paragraph (a) or (b), who had custody or control of the property immediately before the seizure.

(12) For the purposes of paragraph (11)(b), the persons who have an interest in seized property shall, in the case of property which is or contains an item subject to legal privilege, be taken to include the person in whose favour that privilege is conferred.

Cases where duty to secure arises

29.—(1) Where property has been seized in exercise, or purported exercise, of any power of seizure conferred by article 19 or 20, a duty to secure arises under article 30 in relation to the seized property if—

- (a) a person entitled to do so makes an application under article 28 for the return of the property;
- (b) at least one of the conditions set out in paragraphs (2) and (3) is satisfied; and
- (c) notice of the application is given to a suitable person.

(2) The first condition is that the application is made on the grounds that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within article 23(3).

(3) The second condition is that—

- (a) the seized property was seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers specified in paragraph (4); and
- (b) the application—
 - (i) is made on the ground that the seized property is or contains something which does not fall within article 22(3); and
 - (ii) states that the seized property is or contains special procedure material or excluded material.

(4) The powers mentioned in paragraph (3) are—

- (a) the powers of seizure under sections 73 and 83 of the Act;
- (b) the powers of seizure conferred by Parts 2 and 3 of this Order except the power under article 15 in so far as it relates to sections 87 and 88 of the Act.

(5) In this article “a suitable person” means any one of the following—

- (a) the person who made the seizure;
- (b) the person for the time being having possession, in consequence of the seizure, of the seized property; or
- (c) the person named for the purposes of paragraph (1)(d) or (4)(d) of article 21 in any notice given under that article with respect to the seizure.

The duty to secure

30.—(1) The duty to secure that arises under this article is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to secure that arrangements are in force that ensure that the seized property (without being returned) is not, at any time after the giving of the notice of the application under article 29(1), either—

- (a) examined or copied, or
- (b) put to any use to which its seizure would, apart from this paragraph, entitle it to be put,

except with the consent of the applicant or in accordance with the directions of the judge advocate.

(2) Paragraph (1) shall not have effect in relation to any time after the withdrawal of the application to which the notice relates.

(3) Nothing in any arrangements for the purposes of this article shall be taken to prevent the giving of a notice under section 49 of the Regulation of Investigatory Powers Act 2000(1) (notices for the

disclosure of material protected by encryption etc) in respect of any information contained in the seized material; but paragraph (1) shall apply to anything disclosed for the purpose of complying with such a notice as it applies to the seized material in which the information in question is contained.

Use of inextricably linked property

31.—(1) This article applies to inextricably linked property, other than property which is for the time being required to be secured in pursuance of article 30, if it has been seized under any power of seizure conferred by or under Chapter 1 or 3 of Part 3 of the Act, except sections 87 and 88 of the Act.

(2) Subject to paragraph (3), it shall be the duty of the person for the time being having possession, in consequence of the seizure, of the inextricably linked property to ensure that arrangements are in force which secure that that property (without being returned) is not at any time, except with the consent of the person from whom it was seized, either—

- (a) examined or copied; or
- (b) put to any other use.

(3) Paragraph (2) does not require that arrangements under that paragraph should prevent inextricably linked property from being put to any use falling within paragraph (4).

(4) A use falls within this paragraph to the extent that it is use which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.

(5) Property is inextricably linked property for the purposes of this article if it falls within any of paragraphs (6) to (8).

(6) Property falls within this paragraph if—

- (a) it has been seized under a power conferred by article 19 or 20; and
- (b) but for paragraph (3)(c) of article 22, arrangements under paragraph (2) of that article in relation to the property would be required to ensure the return of the property as mentioned in paragraph (2)(c) of that article.

(7) Property falls within this paragraph if—

- (a) it has been seized under a power to which article 23 applies; and
- (b) but for sub-paragraph (b) of paragraph (2) of that article, the person for the time being having possession of the property would be under a duty to secure its return as mentioned in that paragraph.

(8) Property falls within this paragraph if—

- (a) it has been seized pursuant to a warrant under section 83 of the Act; and
- (b) but for article 24(1)(c), the person for the time being having possession of the property would be under a duty to secure its return as mentioned in article 24(2).

Copies

32.—(1) Subject to paragraph (3)—

- (a) in this Part, “seize” includes “take a copy of”, and cognate expressions shall be construed accordingly;
- (b) this Part shall apply as if any copy taken under any power to which any provision of this Part applies were the original of that of which it is a copy; and
- (c) for the purposes of this Part, except articles 19 and 20, the powers mentioned in paragraph (2) (which are powers to obtain hard copies etc of information which is stored

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in electronic form) shall be treated as powers of seizure, and references to seizure and to seized property shall be construed accordingly.

- (2) The powers mentioned in paragraph (1)(c) are the powers conferred by articles 14(4) and 15.
- (3) Paragraph (1) does not apply to article 26.