

Chapter 4

Arrest and search, stop and search, entry search and seizure, and retention

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Chapter 4

Arrest and search, stop and search, entry search and seizure, and retention

1. **General.** This chapter provides guidance on the rules and actions to be taken when a decision is made to conduct an arrest and search of persons, stop and search of persons or vehicles, entry, search and seizure of premises for the purpose of obtaining evidence and retention of items seized during a search under the Armed Forces Act 2006 (the Act). Accordingly, the guidance is divided into these five parts and is primarily targeted towards commanding officers (COs), the Service Police and other Service personnel who may be called upon to make decisions or perform any of the actions described in this chapter. Part 5 provides an overview of the transitional arrangements regarding powers of arrest, stop and search, seizure and retention applying to circumstances which occur wholly or partly before the commencement of the Regulations (ie before 31 October 2009).

Part 1 - Arrest and search

Introduction

2. Part 1 provides guidance on the rules governing arrest and search procedures under the Act. It lays out who can be arrested and by whom, in relation to a Service offence and who may authorise and carry out a search upon arrest providing guidance for the decision makers and for those involved in the process. If there is any doubt in relation to these matters, legal advice should be sought from the Director of Service Prosecutions (DSP) in the case of Service Police and from the relevant staff legal adviser for the CO.

3. The Act defines and limits the powers of arrest and search in relation to particular situations. The following guidance relates firstly to the decision to be made in relation to powers under the Act (to arrest or search) and then the manner of any such arrest or search

4. Arrests and searches under the Act are normally undertaken by the Service Police but if the Service Police are not available for any reason, others, in particular the CO, may have to play a vital role in determining when an arrest, search upon arrest or stop and search may be authorised.

5. **Decision makers.** The decision makers in this context include the Service Police and COs. In addition civilian courts and judge advocates have certain powers.

6. **Those who conduct arrest or search.** The guidance that follows should assist Service policemen and other individuals (who are not as familiar with the powers and the conduct of arrest and search). This guidance is supplemented by the Service Police Codes of Practice (see JSP 397) and should be read in conjunction with other relevant chapters of this publication as indicated in the following paragraphs.

Arrest

7. Arrest involves the restriction of a person's liberty and the powers outlined in this section must only be exercised when it is appropriate and there are grounds for doing so. Those grounds are where a person is reasonably suspected of being engaged in committing, or of having committed a Service offence¹ and where a person is reasonably suspected of being about to commit a Service offence². In rare circumstances, arrest for a Service offence may also be authorised by judicial warrant³ (see paragraphs 27 – 32).

8. **Arrest of person reasonably suspected of committing or having committed a Service offence (arrest under section 67).** The following guidance illustrates who may effect an arrest under section 67 of the Act of a person reasonably suspected of committing or having committed a Service offence. The power of arrest may be exercised personally or by giving an order to another person or where the person, who is to be arrested, is subject to Service law (Service person), by ordering that person into arrest. In the case of a person who is suspected of having committed a Service offence while in the armed forces, but who is no longer serving, they are to be dealt with as if they hold the rank they last held whilst still serving. Similarly, a civilian who was subject to Service discipline (relevant civilian) when they are alleged to have committed the offence but is no longer so subject, should be treated for these purposes as if they were a civilian still so subject. The powers to charge those who have ceased to be members of the regular or reserve forces are restricted by the time period for charging, see [Chapter 3](#) (Jurisdiction and time limits), but in general no more than six months can elapse before charging, beginning with the last day of being subject to Service

¹ Section 67(1) of the Act.

² Section 69(1) of the Act.

³ Section 313 of the Act.

law. This period may be exceeded only with the consent of the Attorney General but in such a case, arrest under section 67 of the Act may only be carried out by a Service policeman⁴.

Offender	Power of arrest under section 67
	Only persons who are subject to Service law at the relevant time ⁵ can make an arrest under section 67 of the Act.
Officer engaged in mutiny, quarrel or disorder. ⁶	<p>a. Service policeman⁷; or</p> <p>b. By a person who is lawfully exercising authority on behalf of a provost officer and is acting on the order of an officer⁸; or</p> <p>c. Any officer.</p>
Officer (in all other circumstances)	<p>a. Service policeman; or</p> <p>b. By a person who is lawfully exercising authority on behalf of a provost officer, and who is an officer, or is acting on the order of an officer; or</p> <p>c. An officer of superior rank (ie not an officer of the same rank, an officer who is of higher rank).</p>
Warrant officer and below.	<p>a. Service policeman; or</p> <p>b. Any person legally exercising authority on behalf of a provost officer; or</p> <p>c. Any officer; or</p> <p>d. Warrant officer or non-commissioned officer of higher rank or rate; or</p> <p>e. A member of the staff of the Officer of the Day⁹.</p>
Relevant civilian	<p>a. Service policeman; or</p> <p>b. Any person legally exercising authority on behalf of a provost officer; or</p> <p>c. Any officer.</p>

⁴ Section 68(4), Section 61(2) and section 55-58 of the Act.

⁵ Relevant time = time of arrest.

⁶ This includes any offence under section 6 of the Act.

⁷ Section 375 of the Act.

⁸ Section 374 of the Act

⁹ For ship's company or embarked force.

Deserters and absentees (without leave)	<p>a. Service policeman; or</p> <p>b. A Service person of a superior rank or rate who is at least a non-commissioned officer; or</p> <p>c. Civilian policeman.¹⁰</p>
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9. **Arrest of person reasonably suspected of being about to commit a Service offence (arrest under section 69).** Under the powers in section 69, a Service policeman may arrest a person whom they reasonably suspect of being about to commit a Service offence. The power of arrest may be exercised personally or by giving an order to another person or where the person to be arrested is a Service person, by ordering that person into arrest. Where a person is arrested under this section, the arrest must be reported to their CO as soon as practicable and they may be kept in Service custody until such time as a Service policeman is satisfied that the risk of their committing the Service offence concerned has passed.

10. Under the new power under section 69, it is envisaged that an offence will be prevented by the timely intervention of the Service Police and an arrest being made at a point before an offence is committed. Following an arrest under this section, the circumstances in which there is a need to detain the person in further custody will rarely arise, and if invoked must be proportionate and necessary. Unlike other custody provisions under the Act, responsibility, authority and conditions for custody under this section, lies with the Service Police. Procedure for authorising custody under section 69 requires various permissions and authority to be given, which are contained in the Service Police Technical Instructions. Basically, they require an arresting Service Police Officer who takes a person into custody to inform their supervisor of their decision; to keep that decision under review and record the reasons justifying the custody requirement and if that custody extends beyond 1 hour, authority must be obtained from an Authorising Service policeman (ASP) (see paragraph 81 for definition).

11. There will be circumstances where the procedure for authorising custody under section 69 cannot be followed due to operational circumstances or geographical isolation. In these circumstances the arresting Service policeman should seek authority from the highest ranking ASP available, or where this is not possible, self authorise, fully recording the reasons. When this procedure is adopted, the Service policeman should inform the CO of the actions they have taken and the reasons for keeping the person in custody.

Those who may effect an arrest

12. There are a number of categories of persons who can exercise the power of arrest as described above without specific authority. This section provides guidance as to who can make an arrest and in what circumstances.

13. **Service policeman.** A Service policeman may arrest any person¹¹ whom they reasonably suspect of one of the following:

- a. Committing a Service offence;
- b. Having committed a Service offence¹²;

¹⁰ This includes a member of any UK police force or a British overseas territory police force.

¹¹ A situation may arise whereby a person who (whilst subject to Service law or Service discipline) is suspected of having committed a Service offence but is no longer so subject (having left the Service or job) and therefore does not fall into sections 67(2), (3) or (4) of the Act, may need to be arrested. Sections 68(2), 68(3) and 68(4) of the Act covers these eventualities.

- c. Being about to commit a Service offence¹³; or
- d. Being unlawfully at large after a sentence of Service detention has been awarded.¹⁴

14. The arrest of a person under a – c above must be reported to their CO as soon as is practicable but under c, they may be kept in Service custody until a Service policeman is satisfied that the risk of committing a Service offence has passed. In circumstances where d applies, the person may be taken to the place in which they are required to be detained.

15. These powers may be exercised personally by giving an order for arrest to another person or, where the person is a Service person, by ordering that person into arrest. For further detail on the exercise of these powers see JSP 397 (Service Police Codes of Practice, Code G).

16. Unlike other Service personnel, a Service policeman has the additional power to arrest someone reasonably suspected of being about to commit a Service offence or having been sentenced to detention, being unlawfully at large.

17. **Other Service personnel.** The decision to arrest can be made if a person¹⁵ is reasonably suspected of:

- a. Committing a Service offence; or
- b. Having committed a Service offence.

This power may be exercised personally, by giving an order for arrest to another person or where the person is a Service person, by ordering that person into arrest.

18. **Civilian policeman.** An officer of a UK or Isle of Man police force or British overseas territory police force may arrest, without a warrant, a person who is reasonably suspected of being a Service person and of having deserted or of being absent without leave. This power also applies to a person who, having been sentenced to detention, is unlawfully at large¹⁶. A civilian policeman can also arrest any Service person committing any civilian offence as they would arrest a civilian.

The decision to arrest after charge or during proceedings

19. Apart from the categories above (paragraphs 13 – 18), there are other circumstances where the CO or a judge advocate may order or direct an arrest of a person¹⁷.

20. The CO of a person may give orders for their arrest¹⁸ if:

- a. That person has been charged with or is awaiting sentence for a Service offence;

¹² For powers of arrest see sections 67-68 of the Act. See section 50 of the Act and [Chapters 7](#) (Non-criminal conduct (disciplinary) offences) and [Chapter 8](#) (Criminal conduct offences) for guidance on Service offences, including desertion or absence without leave.

¹³ Section 69 of the Act.

¹⁴ Section 303 of the Act. This includes those cases where a person is temporarily released from Service detention and is unlawfully at large under section 301(4).

¹⁵ See table at page 5 above.

¹⁶ Sections 314 and 318 of the Act. This includes those cases where persons temporarily released from Service detention are unlawfully at large under section 301 of the Act.

¹⁷ Those authorised or directed to effect an arrest may be Service policemen or any person directed or ordered by the CO under their command.

¹⁸ Section 110 of the Act.

- b. That person is not in custody, and
- c. The CO is satisfied that taking that person into Service custody is justified (see paragraph 21 below).

21. Before taking the decision to place a person into custody, the CO must be sure that there are reasonable grounds for suspecting that, if not taken into custody, that person would:

- a. Fail to attend any hearing in the proceedings against them;
- b. Commit an offence; or
- c. Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

22. In addition, taking a person into custody may be justified if:

- a. That person has failed to attend any hearing in the proceedings against them;
- b. There are reasonable grounds for suspecting that they should be taken into custody for their own protection;
- c. If under the age of 17, there are reasonable grounds for suspecting that they should be taken into Service custody for their welfare or it is in their own interests; or
- d. There are reasonable grounds for suspecting that if not taken into Service custody they would fail to adhere to any conditions of their release from custody after charge or that they have already failed to adhere to such a condition.¹⁹

23. Whenever a person is arrested under the power referred to in paragraph 20 above, consideration must be given to the issue of whether, and if so for how long, that person may be held in custody. If held under this power, a person must be brought before a judge advocate for the purpose of reviewing such custody²⁰. Detailed guidance on custody is at [Chapter 5](#) (Custody).

The decision to arrest during proceedings at the direction of the court

24. Apart from the categories above (paragraphs 13 – 18), there are other circumstances where a judge advocate may order or direct an arrest of a person²¹.

25. A judge advocate may direct the arrest of a person²² if:

- a. That person has been arraigned before the Court Martial (CM) or Service Civilian Court (SCC);
- b. Proceedings before the court have not concluded; and
- c. The judge advocate is satisfied that taking them into Service custody is justified.

¹⁹ Section 107(3) of the Act.

²⁰ Section 110(4) of the Act.

²¹ Those authorised or directed to effect an arrest may be Service policemen or any person directed or ordered by the CO under their command.

²² Section 111 of the Act.

The direction to arrest can be exercised by any person with the power to arrest for a Service offence, see paragraph 12 above.

26. Directing that a person be taken into custody is justified when there are reasonable grounds for suspecting that, if not taken into custody, that person would come within one or more of the categories laid out in paragraphs 21 and 22 above. A person arrested and kept in custody²³ must be brought before a judge advocate as soon as practicable for a review of the continued requirement of that custody. Detailed guidance on custody is at [Chapter 5](#) (Custody).

The decision to issue a warrant for arrest

27. After all other avenues have been exhausted, application may be made to a judge advocate to issue a warrant for arrest. A warrant in this context is effectively a specific authorization issued by and on behalf of the State for the arrest of that person. The decision to issue a warrant for arrest may be taken by a judge advocate²⁴ or, in very limited circumstances, by a civilian court. An application for a warrant for arrest should only be made where alternative attempts to recover the offender have proved fruitless.

28. **Application to a judge advocate for a warrant.** Where a warrant is required, application may be made to a judge advocate. This includes warrants for arrest for individuals who fail to adhere to any conditions²⁵ of release following arrest for desertion or being absent without leave. Although there are similar powers for civilian courts to issue warrants in relation to absence and desertion, following the breach of a condition, the conduct of the hearing may be different. For guidance on the conduct of hearings at civilian courts reference should be made to the appropriate staff legal advisor.

29. An application for a warrant to arrest an individual may be made by:

- a. A Service policeman;
- b. The individual's CO;
- c. A person acting on the authority of the individual's CO; or
- d. The prosecutor.

The Form at Annex H should be used.

30. During normal working hours (0830 -1700 hrs, Mon – Thu and 0830 – 1630, Fri) and at weekends (weekends 07760 171159) contact should be made with the Military Court Service (MCS) (Tel: 01980 615786/615770) /Naval Courts Administration Office (NCAO) (Tel: 02392 727279) who will be in a position to identify the most suitable judge advocate to hear the application. During silent hours contact should be made with the Operations Room of the Service Police Crime Bureau (Tel: 02392 285170/285180) who will provide the necessary contact procedures for the duty judge advocate to arrange the application. Assistance from the appropriate staff legal adviser will always be available to assist in determining whether a hearing is necessary.

²³ Section 111(4) of the Act.

²⁴ Section 313 of the Act.

²⁵ Section 317(1) of the Act & Rule 23(1)(b)(ii) of the Armed Forces (Warrants of Service Arrest for Service Offences) Rules 2009.

31. An application for an arrest warrant (for breach of condition see paragraph 32 below) to a judge advocate must include the following information and this information must be provided to the judge advocate before the hearing:

- a. The name, rank or rate, appointment and signature of the applicant;
- b. The name, date of birth and last known location of the person who is the subject of the warrant;
- c. If applicable, the rank or rate, Service number and unit of the person who is the subject of the warrant;
- d. Any other known addresses where that person may reside;
- e. The Service offence that that person is reasonably suspected of having committed; and
- f. The circumstances which have caused the applicant to consider that there are reasonable grounds for the issue of the warrant.

32. When applying for an arrest warrant to a judge advocate for failing to comply with a condition²⁶, the following information is required:

- a. The name, rank or rate and appointment of the applicant;
- b. The name, date of birth and last known location of the person who is the subject of the warrant;
- c. If applicable, the rank or rate, Service number and unit of the person who is the subject of the warrant;
- d. Details of any alleged absence;
- e. Any other known addresses where that person may reside; and
- f. The details of the condition(s) imposed and how it/they is/are alleged to have been breached.

Form of the hearing

33. **Service court.** The form of the hearing for an arrest warrant application is the same as for one for breach of condition. An application to a judge advocate for a warrant should be made in person unless they otherwise direct. The judge advocate may give permission for the hearing to be conducted over live link. If the judge advocate is persuaded that it is reasonably necessary (due to reasons of urgency, speed or geographic dislocation, for example) an application may be made:

- a. Out of hours;²⁷
- b. By facsimile;
- c. By telephone; or

²⁶ Condition being a 'bail' condition or a condition under which a person was previously released from custody. See also [Chapter 5 \(Custody\)](#).

²⁷ 'Out of hours' means any day which is a Saturday, Sunday, Good Friday, Christmas or other Bank Holiday or any time outside of 0830-1700 Monday to Thursday and 0830-1630 on Friday.

d. By other electronic means, including email.

34. Any application made by facsimile or email is to be transmitted to the authorities detailed at paragraph 30 above.

35. **Civilian court.** Any person who has authority in the UK or a British overseas territory to issue a warrant for the arrest of a person may do so, if satisfied that the following conditions apply:

- a. That person is within their jurisdiction;
- b. Is a Service person; and
- c. Has deserted or is absent without leave.

36. In addition if a person has previously surrendered or been arrested and then released on a condition that they appear at a specified time and place²⁸ and then fails to comply with that condition, the court may issue a warrant for their arrest. For example, where a person has been released by the civilian police or a civilian court subject to a condition that he report at a time and place in order for him to be taken into Service custody.

Conduct of arrest or surrender

37. **Service policeman.** Limitations on custody apply²⁹ where a person is arrested by a Service policeman under section 67 (arrest of person reasonably suspected of committing or having committed a Service offence) and is kept in Service custody. Additionally, the conditions and review procedures at [Chapter 5](#) (Custody) must be followed³⁰ where custody is authorised without charge. Where a person is arrested under section 69, (arrest of person reasonably suspected of being about to commit a Service offence) guidance can be found within [Chapter 5](#) (Custody).

38. A person arrested under section 110 (arrest after charge or during proceedings by order of CO) or section 111 (arrest during proceedings at direction of court) of the Act is to be brought before a judge advocate as soon as is practicable for a review of whether they should continue to be kept in Service custody. For the conduct of this hearing see [Chapter 5](#) (Custody).

39. **Other Service personnel.** A person arrested by other Service personnel under section 110 or section 111 of the Act must be treated in the way described in paragraph 14 above.

40. **Civilian policeman.** Where a person is arrested or surrenders to a civilian policeman in the UK, the Isle of Man or British Overseas Territory as being a Service person, who has deserted or is absent without leave³¹, that person must be taken to a police station. In the case of an arrest under section 314 (Arrest by civilian police of deserters and absentees without leave) of the Act, the person arrested must be brought before a magistrates court or equivalent jurisdiction. The court has powers to transfer the person to Service custody or to release them³². Where a person surrenders under section 315 (deserters and absentees without leave surrendering to civilian police) of the Act, the person in charge of the police station (or someone authorised by them) may arrange for the person

²⁸ Section 316(3)(a)(ii) of the Act.

²⁹ Section 98(1) of the Act.

³⁰ Section 99-103 of the Act.

³¹ See [Chapter 10](#) (Absence and desertion).

³² Section 316 of the Act.

to be transferred to Service custody, brought before a court of summary jurisdiction or released. If the person is delivered back to Service custody, certificates either detailing their arrest, their appearance before a court of summary jurisdiction, a certificate of release subject to certain conditions of reporting³³ or a combination of all three will be provided to the Service person's unit. Detailed guidance concerning deserters and absentees is contained in [Chapter 10](#) (Absence and desertion).

41. The certificate(s) should be passed to the Service Police Crime Bureau whose contact details are at paragraph 30. The certificate(s) should also be passed on handover into Service custody. In addition the Service Police Crime Bureau should pass a copy of the certificate(s) to the individual's CO.

42. **Use of Force Upon Arrest.** Anyone exercising powers of arrest may, if necessary, use reasonable force to exercise that power.

Search upon arrest

43. Those who may search upon arrest are listed in paragraphs 44 – 46 below.

44. **Service policeman.** A Service policeman may search a person under arrest if they have reasonable grounds to believe that that person:

- a. May be a danger to himself or others;
- b. May be concealing something which may assist them to escape; or
- c. May be concealing something which may be evidence relating to a Service offence³⁴.

For further detail see JSP 397 (Service Police Codes of Practice - Code B). In the Act, and in the following paragraphs, things within b. or c. are referred to as things 'subject to search'.

45. **A person other than a Service policeman.** A person other than a Service policeman who is exercising the power of arrest over an individual may search them if they have reasonable grounds for believing that person may be a danger to himself or others³⁵.

46. **Authorised or ordered by a CO.** Although most searches on arrest will be conducted by a Service policeman, the CO of a person who is to be or has been arrested can order or authorise the person making the arrest to undertake a search where they have reasonable grounds for believing it is likely that the person would do one or both of the following before the assistance of a Service or UK civilian policeman could be obtained:

- a. Escape from custody; or
- b. Conceal, damage, alter or destroy evidence.

47. Moreover, if the CO orders a person to search, the CO must have reasonable grounds for believing that the person is concealing something that would assist with such an escape or be evidence relating to a Service offence. If the CO authorises a person to search, that person must also have reasonable grounds for believing that the person is concealing something that would assist with such an escape or be evidence relating to a

³³ Sections 315 and 316 of the Act.

³⁴ Note that paragraph 41c relates only to an arrest under section 67 and section 69 of the Act. See also section 70 of the Act and the details of seizure at paragraph 79 - 90.

³⁵ Section 71(1) of the Act.

Service offence³⁶. An example of when this may happen is where the CO authorises before arrest and needs the person carrying out the arrest to consider, on the spot, whether a search is justified.

48. **The conduct of a search.** Any search must be conducted only in so far as is reasonably required for the purpose of discovering anything that is subject to search and must not go beyond what is reasonably necessary³⁷. An arrested person may not be required to remove any clothing in public other than an outer coat, jacket, headgear³⁸ or gloves. Additionally, if reasonably necessary for the purpose of discovering anything subject to search, an arrested person's mouth may be searched.

49. A person exercising a power of search referred to in paragraphs 44a or 45 may seize and retain anything they find if they have reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person³⁹. A person exercising a power of search referred to in paragraphs 44b or c or paragraph 46 may seize and retain anything found if they have reasonable grounds to believe that the item might be used to assist an escape or that the item is evidence of a Service offence or has been obtained as a result of the commission of a Service offence⁴⁰. Guidance on the handling of any item seized can be found in JSP 397 (Service Police Codes of Practice - Code A). If any item is found by persons other than a Service policeman, guidance from the Service Police should be sought as soon as practicable. The general principle to be applied is that the item should be secured in situ until the arrival of Service Police. If this is not practicable then the person recovering the item should retain it in their possession prior to handing it over to the Service Police.

³⁶ Section 71(6) of the Act.

³⁷ Section 72(1) of the Act.

³⁸ Section 72(3) of the Act, except headgear worn for religious reasons.

³⁹ Section 73(1) of the Act.

⁴⁰ Section 73(2) of the Act. Any item subject to legal privilege may not be retained - section 73(2) of the Act.

Part 2 - Stop and search

The decision to stop and search a person or vehicle

50. **Service Police.** A Service policeman has the power to stop and search the following, if they have reasonable grounds to suspect that they will find stolen or prohibited articles⁴¹ or unlawfully obtained stores or controlled drugs⁴². These provisions apply to ships and aircraft in the same way as to vehicles⁴³:

- a. A person who is, or whom they reasonably believe to be a Service person or relevant civilian;
- b. Any vehicle in the charge of ('in the charge of' is not restricted to being 'driven by') a person who is, or whom they reasonably believe to be a Service person or relevant civilian; or
- c. Any Service vehicle⁴⁴ in the charge of any person (whether a Service person/relevant civilian or not)⁴⁵.

51. However, these powers may only be exercised:

- a. In a place⁴⁶ to which the public or section of the public has access to, on payment, as of right or implied permission;
- b. In any other place to which people have ready access but is not a dwelling or Service living accommodation;⁴⁷ or
- c. In any premises which are permanently or temporarily occupied or controlled by Her Majesty's forces, but are not Service living accommodation.

For further detail see JSP 397 (Service Police Code of Practice - Code A).

52. **CO.** The power under this section is to be used only in exceptional circumstances (see paragraph 64). Where a CO gives such an order or authorisation, they must have reasonable grounds for believing that it is likely that an offence under section 42 of the Act (criminal conduct offences) will be committed or that, having committed such an offence, the offender will avoid apprehension if the power to search cannot be exercised *before* the earliest time by which it would be practicable to obtain the assistance of a Service policeman or member of a UK civilian police force. Items discovered following such a search may be seized and retained. (See part 4).

53. COs may order or authorise a Service person, other than a Service policeman, to stop and search an individual or vehicle⁴⁸. A CO is able to use the power to stop and search only if they have reasonable grounds to believe that they will find stolen or prohibited items, unlawfully obtained stores or controlled drugs⁴⁹. Such an order can be given only in relation to a particular person or vehicle⁵⁰. If they authorise a person to stop and search, that person

⁴¹ See section 77(4) of the Act for definition of a 'prohibited article'. This includes offensive weapons or articles made, adapted or intended for use in connection with an offence (e.g. theft, burglary, criminal damage or fraud).

⁴² Constituting an offence of possession under section 42 of the Act.

⁴³ Section 82 of the Act.

⁴⁴ Section 77(5) of the Act for the definition of 'Service vehicle'. This means any vehicle owned by Her Majesty's forces or in use for the purposes of those forces. This includes hire cars being used for those purposes.

⁴⁵ Section 75 of the Act - Power for stop and search by Service policeman.

⁴⁶ 'Place' means any place.

⁴⁷ 'Place' means any place.

⁴⁸ See section 76 of the Act. This includes detaining a person for the purposes of a search of that person or a vehicle.

⁴⁹ Section 76(4) of the Act.

⁵⁰ Section 76(3) of the Act.

may exercise the power only if they have reasonable grounds to believe that they will find such items, stores or drugs. This power of stop and search may be used only in relation to:

- a. A person under the CO's command⁵¹ or whom the CO has reasonable grounds to believe is under their command;
- b. A person who, a person ordered or authorised to stop and search has reasonable grounds to believe, is under the CO's command; and
- c. A vehicle in the charge of a person within a or b⁵².

The conduct of a stop and search

54. **Service policeman.** When contemplating a search of a vehicle (other than an unattended vehicle) a Service policeman must take reasonable steps before they commence the search to inform the person in charge of the vehicle of their name, rank or rate. If not in uniform, they must also take reasonable steps to provide the person with evidence that they are a Service policeman⁵³. Any other Service policeman who is not in uniform and is assisting with the search of the vehicle is not required to do so. JSP 397 (Service Police Code of Practice – Code A) provides the blueprint for the conduct of a Stop and Search.

55. The power to exercise the stop and search of persons or vehicles may be undertaken in a number of places⁵⁴ and broadly speaking are those places listed at paragraph 51. Any search is subject to the restriction that a person searched cannot be required to remove in public, clothing other than an outer coat, jacket, headgear or gloves⁵⁵. The search may also be carried out near the place where the person or vehicle was first detained⁵⁶ and the person or vehicle may be detained for such time as is reasonably needed for this.

56. There are restrictions on the powers above where a person is in a garden, yard or on other land occupied with a dwelling or with Service living accommodation used exclusively for a member of the armed forces (or such person and their family). If the land comes within a place to which the public has access, or to other places to which people have ready access (other than a dwelling or Service living accommodation), the person found on the land may only be stopped and searched if the person with the power of search has reasonable grounds to believe that the person does not live in the dwelling/accommodation and does not have the resident's express or implied permission to be there⁵⁷.

57. Similarly, if a vehicle is on land that comes within the parameters outlined in paragraph 56, the vehicle may only be searched if the person with the power of search has reasonable grounds to believe that the person in charge of the vehicle does not live in the dwelling/accommodation and does not have the resident's permission to be there⁵⁸.

58. A Service policeman is entitled to detain an individual or vehicle in order to carry out the search and should they discover any articles during any search which they have reasonable grounds to suspect are stolen or prohibited, unlawfully obtained stores or controlled drugs, they may seize and retain them⁵⁹. A person or vehicle may only be detained for the purposes of a search for such time as is reasonably necessary to undertake

⁵¹ Including a civilian subject to Service discipline who is under that CO's command. Section 76(2)(b) of the Act.

⁵² Section 76(2) of the Act.

⁵³ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 3(2) and (3).

⁵⁴ Section 78 of the Act.

⁵⁵ Section 80(2) of the Act. Except headgear worn for religious reasons section 80(3) of the Act.

⁵⁶ Section 80(1) of the Act.

⁵⁷ Section 79(1) of the Act.

⁵⁸ Section 79(3) and (4) of the Act.

⁵⁹ Section 75 of the Act.

the search. The search is limited in the same way as search upon arrest (see paragraph 44 above).

59. When contemplating a search of a vehicle (other than an unattended vehicle) a Service policeman must take reasonable steps before they commence the search to inform the person in charge of the vehicle of their name, rank or rate and unit, the object of the search, the grounds for the search and that, upon application within 12 months, the owner or person in charge of the vehicle at the time is entitled to a copy of any record made of the search. If not in uniform, they must also take reasonable steps to provide the person with evidence that they are a Service policeman⁶⁰.

60. On completing a search of an unattended vehicle, a Service policeman must leave a notice⁶¹ stating that they have searched the vehicle, their name, rank or rate, the name, address and telephone number of their unit and that an application for compensation for any damage caused to the vehicle by the search may be made to that unit. Unless it appears to the Service policeman that it will not be practicable to make a record at that time, the notice must also state that, upon application within 12 months, the owner or person in charge of the vehicle at the time is entitled to a copy of any record made of the search.

61. The notice should be left inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle. If this is the case, then the notice should be attached to the outside of the vehicle⁶².

62. A Service policeman who has carried out a search under section 75 of the Act (power of Service policeman to stop and search persons, vehicles etc) must immediately, or as soon thereafter as is practicable, make a record of the search. This record will consist of the elements described in JSP 397 (Service Police Codes of Practice - Code A) and in the regulations made under the Act⁶³.

63. A Service policeman who detains a person or vehicle need not conduct a search if it appears subsequently that a search is impracticable. For further detail see JSP 397 (Service Police Codes of Practice - Code A).

64. **Other Service personnel.** An officer may order or authorise a Service person (other than a Service policeman) to conduct a stop and search under section 76 of the Act (stop and search by persons other than Service policemen) with certain provisions⁶⁴, broadly in line with paragraphs 65 – 70 below. Provisions equivalent to those summarised in paragraph 56 above also apply to stop and search by Service personnel under these powers⁶⁵.

65. As is the case for the Service Police, a person or vehicle may only be detained by other Service personnel for the purpose of a search for such time as is reasonably necessary to undertake the search.

66. When ordered or authorised to search a person or vehicle (other than an unattended vehicle) the person undertaking the search must take reasonable steps beforehand to inform the person to be searched of their name, rank or rate and unit, their authority for making the search, the object of the search, the grounds for the search and that, upon application within 12 months, the owner or person in charge of the vehicle at the time is entitled to a copy of any record made of the search, see paragraph 70 below.

⁶⁰ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 3(2) and (3).

⁶¹ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 3(5).

⁶² The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 3(5).

⁶³ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 4.

⁶⁴ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 5.

⁶⁵ Section 78 and section 79 of the Act for where stop and search powers may be exercised.

67. On completion of the search of an unattended vehicle, the person ordered or authorised must leave a notice specifying that they have searched the vehicle, their name, rank or rate, name address and telephone number of their unit and that upon application within 12 months, the owner or person in charge of the vehicle at the time is entitled to any record made of the search.

68. The notice should be left inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle. If this is the case, then the notice should be attached to the outside of the vehicle.

69. Where the person ordered or authorised under section 76 of the Act carries out a search, they must make a record of the search. Where it is not practicable to make a record immediately, they must do so as soon thereafter as is practicable.⁶⁶ A record of a search must contain the following:

- a. The person's name to whom the search relates (if known to the ordered or authorised person) or (if their name is not known to the person ordered or authorised) a description of them;
- b. In the case of a search of a vehicle, a description of the vehicle;
- c. In the case of a search of a person or a vehicle, the object of the search;
- d. The date and time when the search was conducted;
- e. The place where the search was conducted;
- f. Whether anything was found during the search, and if so, what, was found;
- g. Whether any injury to a person or damage to property appears to have resulted from the search⁶⁷; and
- h. The name of the person ordered or authorised to make the search.

70. It will be apparent that searches conducted by those other than Service policemen follow very similar requirements regarding notification and records of searches to those by Service policemen (this also applies to unattended vehicles). The person who conducts the search should if possible and at the earliest opportunity, seek to provide to the CO a record, including the details listed at paragraph 69 above.

⁶⁶ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 6 and 7.

⁶⁷ The Armed Forces (powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 5.

Part 3 - Entry, search and seizure

Introduction

71. Part 3 provides guidance on circumstances when premises may be entered and searched and when property may be seized. It also deals with entry for certain other purposes, in particular for purposes of arrest⁶⁸. The area is a technical one and important because it affects the human rights of individuals. It will generally be important to ensure that legal advice is sought from the relevant staff legal advisor before any action is taken under the powers referred to below.

72. **Decision makers.** The decision makers in terms of entry, search and seizure are COs, judge advocates and the Service Police. The following is guidance on the decisions they must make.

Powers of entry, search and seizure

73. **Service Police.** The Service Police have a number of different search powers as follows:

- a. When investigating a Service offence a Service policeman has an inherent power to order or conduct the entry and search of Service premises which are not Service living accommodation without a warrant⁶⁹;
- b. Entry to premises for the purpose of arrest (paragraph 74 below);
- c. Entry to premises to save life or prevent serious damage to property (paragraph 77 below);
- d. Entry, search and seizure where a person is arrested (paragraph 79 below);
- e. Entry search and seizure after arrest (paragraph 80 below);
- f. Entry and search by a Service policeman with a warrant (paragraph 96 below); or
- g. With the authorisation of the CO (paragraphs 91 – 103 below).

74. **Entry to premises for the purposes of arrest.** A UK civilian policeman has statutory authority to enter any premises to carry out certain arrests. A Service policeman does not have such wide powers. However, they do not need any specific legal powers to enter non-residential Service premises for this purpose. In addition a Service policeman has the power to enter and search certain premises for the purposes of arresting a person if they have reasonable grounds to believe that person is on the premises⁷⁰. The premises they may enter and search under this power are slightly wider than 'relevant residential premises' (RRP)⁷¹ as it also covers premises which the Service policeman has reasonable grounds to believe are RRP. If premises contain two or more separate dwellings then the power of entry is to that person's part of the premises and to any common areas or any other dwelling (within the premises) that the Service policeman reasonably believes that person to be in.

⁶⁸ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009. See also Chapter 3 of Part 3 of the Act.

⁶⁹ Section 95 of the Act.

⁷⁰ Section 90 of the Act.

⁷¹ Section 90(2) of the Act.

75. **Relevant residential premises (RRP).** RRP⁷² means Service living accommodation and premises which are the residence of any Service person, or relevant civilian. It does not matter if the residence is shared with other people including civilians not subject to Service law.

76. Any search undertaken is limited to that which is reasonably required to achieve the purpose. For further guidance on this see JSP 397 (Service Police Codes of Practice - Code B).

77. **Entry to premises to save life or prevent serious damage to property.** A Service policeman is entitled to enter and search certain premises for the purposes of saving life or limb or to prevent serious damage to property. The premises are Service living accommodation and premises which are or which the Service policeman has reasonable grounds to believe are, the residence of any Service person or relevant civilian. As with the power of entry to arrest, it does not matter if the residence is shared with other people⁷³.

78. Any search undertaken is limited to that which is reasonably required to achieve the purpose. For further guidance see JSP 397 (Service Police Codes of Practice - Code B).

79. **Powers of entry search and seizure where person arrested.** The following powers apply⁷⁴ where a person has been arrested under section 67 of the Act for a serious Service offence. A serious Service offence is:

- a. Any section 42 offence corresponding to an indictable criminal offence;
- b. Any disciplinary offence which is triable at CM only;
- c. Violence towards a superior officer (section 11(1) of the Act);
- d. Making a false record with intent to deceive (section 18(3) or (4) of the Act); or
- e. Causing damage to or loss of Service property (section 24(1) of the Act) (intentionally or recklessly).

In such cases a Service policeman has the power to enter and search any relevant residential premises⁷⁵ or vehicle in which the arrested person was when arrested or immediately before their arrest. The Service Police also have the power to open and search any locker within section 96(1)(c) of the Act if the locker was open at the time or immediately before arrest. The power of search is limited to seeking evidence of the offence for which the person was arrested, and the search itself must be limited to what is reasonably necessary for the purpose of discovering such evidence. Before any of these powers is exercised, the Service policeman must have reasonable grounds for believing that there is on the premises evidence which relates to the offence for which a person was arrested. If premises to which the power applies contain two or more dwellings then the power of entry applies to any common areas and to any dwelling that the Service policeman has reasonable grounds for believing that the person to be arrested is in.

80. **Powers of entry search and seizure after arrest.** Where a person has been arrested under section 67 of the Act for a serious Service offence (see paragraph 79 above) and is being held in Service custody without being charged, a Service policeman also has powers of entry, search and seizure in relation to premises occupied or controlled by that

⁷² Section 84(3) of the Act.

⁷³ Section 90(4) of the Act.

⁷⁴ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 12.

⁷⁵ Service living accommodation or premises occupied as a residence by a Service person or a relevant civilian or a person who is suspected of having committed a relevant offence.

person⁷⁶. The Service policeman must have reasonable grounds for suspecting that there is, on the premises, relevant evidence. Relevant evidence here means evidence which is not subject to legal privilege see [Chapter 11](#) (Summary hearing – dealing with evidence) and which relates to the offence for which the person has been arrested or to another connected or similar serious Service offence. The search itself must be limited to what is reasonably necessary for the purpose of discovering such evidence. The Service policeman may seize any evidence for which they have power to search. An important restriction on these powers is that the Service policeman who conducts the search must have the authority of an authorising Service policeman (paragraph 81 below), but they may conduct a search without obtaining this permission if:

- a. They have reasonable grounds to believe that it is likely that, if no search could be carried out before the earliest time authorisation can be obtained, the purpose of the search will be frustrated or seriously prejudiced; and
- b. As soon as practicable after making the search, they inform an authorising Service policeman that they have done so⁷⁷.

The written authority of the authorising Service policeman must be obtained if not before the search, then as soon as practicable afterwards. A full record of the search must be made including the address of the premises searched, the date, time and duration of the search, the authority (statutory power or that obtained under a warrant) and names of the Service policemen who conducted the search, the names of people in the premises, a list of seized material and details of any damage caused or force required to effect entry. Further detail is contained in JSP 397 (Service Police Codes of Practice - Code B).

81. Authorisation by a Service policeman. An authorising Service policeman referred to in paragraph 80 means a Service policeman who is of at least the rank of naval lieutenant, military or marine captain or flight lieutenant. The authorising Service policeman should only give an authorisation if they consider that there are reasonable grounds for believing that on the premises there is evidence, which is not subject to legal privilege and which relates to:

- a. The serious Service offence (see paragraphs 79 and 80 above) for which a person has been arrested; or
- b. Some other (connected or similar) serious Service offence and which is not subject to legal privilege, see JSP 397 (Service Police Codes of Practice – Code B).

82. General powers of seizure. If a Service policeman in connection with the investigation of a Service offence is lawfully on premises searchable under paragraph 73a-g, they have the power to seize anything⁷⁸ on the premises which they have reasonable grounds to believe:

- a. Has been obtained in consequence of the commission of a Service offence and it is necessary to seize it in order to prevent it being concealed, lost, damaged altered or destroyed; or
- b. It is evidence in relation to an offence which they are investigating or any other Service offence and it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

83. A Service policeman may require that any information or evidence stored in electronic form and accessible from the premises be produced in a form in which it can be taken away

⁷⁶ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 13.

⁷⁷ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 13.

⁷⁸ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 14.

and in which it is in a visible or legible form (printed) or in a form whereby it can easily be produced in a visible or legible form (stored on a disk or data storage device)⁷⁹. This power arises if a Service policeman has reasonable grounds to believe either that it is evidence in relation to an offence or other Service offence which they are investigating, or that it has been obtained as a result of the commission of a Service offence and (in either case) that it is necessary to do so in order to prevent it from being lost, tampered with or destroyed.

84. Generally there is no power to seize an item if a Service policeman has reasonable grounds to believe that an item is subject to legal privilege⁸⁰. However, there are exceptions (see paragraphs 86 and 89).

85. **Additional powers of seizure from premises.** There are two additional situations in which a power to seize may arise⁸¹. First, a Service policeman who is lawfully searching premises (except on authorisation from a CO) may find something they have reasonable grounds to believe may be or may contain something they could search for but it is not reasonably practicable on the premises to determine whether what they have found contains something they are entitled to seize (see footnote 76 Art 19(1)). For example, data contained within a computer. The key element here is that it is not clear whether the Service policeman would be able to seize any of what they have found. In this situation, the Service policeman may remove from the premises as much of what they have found to allow it to be determined whether and how far material may be seized.

86. Second, such a Service policeman may find something on the premises which they would be entitled to seize but for the fact that it is contained in something else which they have no power to seize, and it is not reasonably practicable on the premises to separate it from the non-seizable. The key point here is that it is clear that the Service policeman would not be able to seize part of what they have found. In this situation, the Service policeman may seize both the seizable property and the thing in which it is contained. Moreover, in this second situation, the restriction on seizure related to legal privilege and referred to in paragraph 84 above does not apply⁸².

87. It may be necessary, in exceptional circumstances, to seize items during the conduct of initial investigations in those cases where normally the Service Police should carry out the seizure. An exceptional circumstance may be that, for operational reasons, no Service Police are available to attend the scene and effect seizure. If this situation arises, the CO should be aware that they have departed from the normal procedure and should order that the item(s) be seized and secured, but that its content may not be examined. The item should be retained and passed to a Service policeman as soon as is reasonably practicable.

88. Where paragraph 86 applies, in deciding whether it would be reasonably practicable to determine or separate something on the premises, one or more of the following factors may be taken into account:

- a. How long it would take to determine whether an article is seizable or separable;
- b. The number of people required to conduct the determination or separate the articles within a reasonable period;
- c. Whether the determination or separation would involve damage to the property;

⁷⁹ Such copies (or printouts) should be, for the purposes of seizure and retention, dealt with as if they were originals.

⁸⁰ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 14(6).

⁸¹ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 19(1), (2) and (3).

⁸² The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 19(5).

- d. The equipment necessary or appropriate to determine or separate; or
- e. Whether any determination or any separation carried out by the only means reasonably practicable on the premises would be likely to prejudice the use of some or all of the property.

89. **Additional powers to seize during a search of a person.** These powers align closely with those in paragraphs 85 and 86 but relate not to premises, but to a search of a person upon arrest. Firstly, they may find something which they have reasonable grounds to believe may be or may contain something they could search for, but it is not reasonably practicable at the time and place of search to determine whether what they have found is something they are entitled to seize or the extent to which what they have found contains something they are entitled to seize. In this situation, the Service policeman may seize so much of what they have found as is necessary to remove from the place of the search to allow it to be determined:

- a. Whether it is something that they are entitled to seize; or
- b. The extent to which what they have found contains something they are entitled to seize.

Secondly, such a Service policeman may find something which they would be entitled to seize but for the fact that it is contained in something else which they have no power to seize, and it is not reasonably practicable at the time and place of the search to separate the seizable item from the non-seizable. In this situation, the Service policeman may seize both the seizable property and the thing it is contained in. Moreover, in this second situation, the restriction on seizure related to legal privilege and explained in paragraph 84 above, does not apply⁸³.

90. In determining whether it would be reasonably practicable to determine or separate something at the time and place of search, only the following factors may be taken into account:

- a. How long it would take to determine whether an article is seizable or to separate articles;
- b. The number of people required to conduct the determination or separate the articles, within a reasonable period;
- c. Whether the determination or separation would involve damage to the property;
- d. The equipment necessary or appropriate to determine or separate; and
- e. Whether any separation would be likely to prejudice some or all of the property if carried out by the only means reasonably practicable on those premises.

Where a person exercises a power of seizure a notice shall be given to the occupier of the premises or the person being searched⁸⁴. For additional detail see JSP 397 (Service Police Codes of Practice - Code B).

COs' powers

⁸³ The Armed Forces (powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 20(5).

⁸⁴ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 21.

91. Nothing in the Act precludes a CO from entering and searching any buildings for which they are responsible, including office and living accommodation, to carry out inspections for the purposes of ensuring for example, security, health & safety and hygiene⁸⁵.

92. **Authorised entry to premises for the purpose of arrest.** A CO does not need any specific legal powers to enter, or to order entry, to non-residential Service premises for the purpose of arrest. As to residential Service accommodation, entry for the purposes of arrest by a Service policeman is dealt with in paragraph 74 above. Whilst such entry and search will almost always be carried out by a Service policeman, a CO may authorise a Service person (other than a Service policeman) to enter certain Service residential premises for the purpose of arrest, but only where certain conditions are satisfied⁸⁶.

93. The power relates to Service living accommodation of persons under the CO's command and premises which are, or which the CO has reasonable grounds to believe are, the residence (whether alone or with others) of a Service person or any relevant civilian of whom they are the CO⁸⁷.

94. Additional conditions include that the CO has reasonable grounds to believe that before the assistance of a Service policeman (or where applicable a civilian policeman) is available, the person to be arrested might evade arrest, conceal, damage, alter or destroy evidence, or present a danger to himself or others or that discipline or morale among members of any of Her Majesty's forces might be undermined. The CO must have reasonable grounds to suspect that a person has committed or is committing a Service offence⁸⁸, and that the offence is a relevant offence⁸⁹. A relevant offence is:

- a. Any section 42 offence corresponding to an indictable criminal offence;
- b. Any Schedule 2 offence listed within Schedule 3 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 see Annex A; or
- c. Any other Service offence if intended or likely to have the serious consequences expressed within section 84(5) of the Act, see Annex A.

95. A CO may also authorise a Service person (other than a Service policeman) to enter to save life or prevent serious damage to property⁹⁰. But in relation to premises which are, or which the CO has reasonable grounds to believe are the residence (whether alone or with others) of any Service person or relevant civilian, they may only do so if it is not practicable to obtain the assistance of a Service policeman in time to take the necessary action to save life or limb or prevent serious damage to property.

96. **Authorised entry for a Service policeman to search premises with a warrant.** In relation to relevant residential premises, a Service policeman will usually require a warrant from a judge advocate before searching premises unless their powers of search after arrest are applicable (see paragraph 80 above). On application by a service policeman a judge advocate may, if the relevant criteria are met, issue a warrant authorising a service policeman to enter and search one or more sets of premises specified in the application or any relevant residential premises occupied or controlled by a person specified in the application. A judge advocate may issue such a warrant if they are satisfied that certain criteria are met. These relate to relevant premises, relevant offences (see paragraph 94 above), valuable investigative material not subject to legal privilege or excluded material and

⁸⁵ Section 95 of the Act.

⁸⁶ Sections 91(1), (2) and (3) of the Act.

⁸⁷ Section 91(2) of the Act.

⁸⁸ Section 50 of the Act.

⁸⁹ Section 84(2) of the Act.

⁹⁰ Section 91(6) of the Act.

that other conditions relating to effecting physical entry to a premises⁹¹ are satisfied. In addition, if the application is for a warrant authorising entry and search of any relevant residential premises occupied and controlled by a specified person the judge advocate must also be satisfied that, because of the particulars of the offence and in order to find the material sought, it is necessary to search the premises occupied and controlled by the person in question and it is not reasonably practicable to specify in the application all premises that might need to be searched. It is via this route that the vast majority of entry and search procedures will be conducted.

97. Authorised entry for a Service policeman to search premises without a warrant.

In certain circumstances, a CO has powers to authorise a Service policeman to undertake entry, search and seizure. The power to do so only arises if the CO has reasonable grounds to believe that it is likely that the purpose of the search will be frustrated or seriously prejudiced unless the search takes place before the earliest time at which a Service policeman can obtain and execute a warrant from a judge advocate or, in a case which the UK civilian police can deal with, before the time they could obtain and carry out a search warrant.

98. When a CO authorises entry and search by a Service policeman in circumstances described in paragraph 97 above, they may only do so if they are satisfied that the following criteria have been met:

a. He must have reasonable grounds for believing that a relevant offence has been committed. A relevant offence is one of the following:

(1) An offence under section 42⁹² of the Act of which the corresponding offence under the law of England and Wales is an indictable offence⁹³;

(2) Certain Service offences specified in an order made by the Secretary of State⁹⁴, see Annex A; or

(3) A Service offence whose commission has led to, is intended to lead to, or is likely to lead to any of the following:

(a) Serious harm to the security of the State or to public order;

(b) Serious interference with the administration of justice or with the investigation of offences or a particular offence;

(c) The death of any person;

(d) Serious injury (including mental injury) to any person;

(e) Substantial financial gain to any person;

(f) Serious (for the person who suffers it) financial loss to any person;

(g) The undermining of discipline or morale among members of any of Her Majesty's forces;

⁹¹Section 83 and section 84 of the Act (for definitions).

⁹²Section 42 of the Act.

⁹³Indictable offences can be offences triable either way.

⁹⁴The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 Schedule 3.

b. There is material on the premises likely to be of substantial value to the investigation; and

(1) That material is likely to be admissible evidence in a trial for the offence; and

(2) That material does not consist of or include items subject to legal privilege, excluded material or special procedure material⁹⁵.

c. Then at least one of the following conditions applies:

(1) It is not practicable to communicate with any person entitled to grant access to the premises;

(2) Though practicable to communicate with a person able to grant access to the premises it is not practicable to communicate with a person entitled to give access to the evidence;

(3) Entry will not be granted without a warrant;

(4) In the case of Service living accommodation within section 96(1)(b) or (c) of the Act, either it is not practicable to communicate with anyone for whom the accommodation is provided or no-one with whom it is practicable to communicate will agree to grant access to the accommodation without a warrant; and

(5) That the purpose of the search may be frustrated or seriously prejudiced unless immediate entry can be secured.

99. Although a judge advocate may give a warrant to search “relevant residential accommodation”, there are limitations on a CO in authorising a Service policeman to search. The two main differences⁹⁶ are: first, a CO may only authorise a Service policeman to search premises occupied by persons under their command; second, the premises do not include those premises occupied as a residence by a person who is suspected of having committed an offence in relation to which a warrant is sought, for example the private residence of a suspect who is a reservist not for the time being subject to Service law, or of a person who was, but is no longer, a member of Her Majesty’s forces.

100. A Service policeman may seize and retain any articles for which the search was authorised by a CO⁹⁷, but any seizure is subject to review by a judge advocate⁹⁸.

101. **Authorised entry for a person other than a Service policeman to premises without a search warrant.** This power only applies if a CO has reasonable grounds to believe that it is likely that the purpose of a search would be frustrated or prejudiced⁹⁹. Where a CO decides that the purpose of the search would be frustrated or seriously prejudiced if the search does not take place before attendance of a Service policeman or civilian police officer can be obtained, they may authorise another Service person to conduct entry and search. The premises in this case are more limited than for a Service policeman. For example, they exclude Service families accommodation. Other considerations remain the same and are outlined in full at paragraphs 97 - 100 above.

102. The premises that a CO may authorise a person who is not a Service policeman to enter and search are as follows:

⁹⁵ See section 84(4) of the Act. For example communications between a professional legal advisor and their client, confidential business records or journalistic material. For full details see PACE 1984 section 10, section 11, and section 14 (which are applied by section 84(4) of the Act).

⁹⁶ Section 87(3) of the Act.

⁹⁷ But for items subject to legal privilege or excluded and special procedure items. See paragraphs 132 and 133 below.

⁹⁸ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009.

⁹⁹ Section 88(1)(b) of the Act.

- a. A room, structure or area (whether on land or ship) provided as sleeping accommodation for one or more Service persons under their command; and
- b. Any locker which is provided (in connection with sleeping accommodation) for the personal use of that person.

103. These powers do not permit the search of accommodation of relevant civilians of whom they are the CO and they do not cover exclusive Service families' accommodation. The authorised Service person may seize and retain any articles for which the search was authorised, but any seizure is subject to review by a judge advocate.

Judge advocate

104. **Review of entry and search authorised by CO.** Where a CO has authorised entry and search, undertaken either by a Service policeman or other Service person and this has resulted in anything being seized, they must as soon as practicable, request a judge advocate to undertake a review of the search and of the seizure and retention of anything seized and retained during the search¹⁰⁰. This review may be arranged through the MCS. The judge advocate has various powers and duties relating to the return or disposal of material seized. For example, they must order the return or disposal of anything which they are satisfied is legally privileged, and they must (unless they are satisfied that it would be in the interests of justice to permit retention) order the return or disposal, which they are satisfied is, or includes, excluded or special procedure material subject to them being satisfied that certain conditions¹⁰¹ are met. Material seized under CO's powers is subject to fewer exceptions with regard to retention than seizures made under other powers (see paragraph 105 below).

105. **Power to grant access to excluded and certain other material.** As indicated in paragraph 98b above, a CO can never authorise a search for material which they consider will include material subject to legal privilege, excluded or special procedure material. The Service police may apply to a judge advocate for access to excluded material or special procedure material¹⁰² on relevant residential premises. The judge advocate may make an order for the production of the material if they are satisfied that the first or second set of access conditions laid down is fulfilled¹⁰³. In relation to these conditions it is particularly important to note that the judge advocate will have to be satisfied that there are reasonable grounds for believing that the premises to be searched are "relevant residential premises"¹⁰⁴ and that the suspected offence is a "relevant offence" (see paragraph 98a above). The service police may also apply to a judge advocate for access to material (other than items subject to legal privilege) on premises other than relevant residential premises. In this case the judge advocate may make an order for the production of the material if they are satisfied that the third set of conditions is fulfilled (refer to footnote 103).

106. If one of the three sets of conditions is fulfilled then a judge advocate may order that the person who appears to be in possession of the material either produces it to the Service policeman for them to take away or allows them access to it¹⁰⁵ within 7 days of the date of the order, or within such longer period as the order may specify¹⁰⁶.

¹⁰⁰ Section 89 of the Act. The full range of powers and procedures is laid out in The Armed Forces (Powers of Stop, Search, Seizure and Retention) Order 2009 article 34.

¹⁰¹ Section 87(3) of the Act.

¹⁰² Section 84(4) of the Act. E.g. Confidential business records or journalistic material. See PACE 1984 section 11, section 14.

¹⁰³ Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009.

¹⁰⁴ Section 86(3) of the Act.

¹⁰⁵ If the information is stored electronically, the data must be provided in a visible and legible form.

¹⁰⁶ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 Schedule 1, paragraph 5.

The conduct of entry, search, seizure and retention

107. **Application for a search warrant.** Where a search warrant is required, if it is not reasonably practicable for a Service policeman to make a search warrant application to a judge advocate in person, then it may be conducted over live link or by telephone¹⁰⁷.

108. Where a Service policeman applies for a warrant they must state in writing:

- a. The name, rank or rate and unit of the person applying;
- b. The grounds on which they make the application;
- c. If the application relates to one or more sets of premises to specify each set of premises which it is desired to enter and search;
- d. If the application is for unspecified premises the details of as many sets of premises as it is reasonably practicable to specify and name of the person who is in occupation and control of those premises and any others which it is desired to enter and search;
- e. The number of entries required and why;
- f. (As far as practicable) the articles to be sought;
- g. The legislation under which the warrant is requested; and
- h. The details of any person who is not a Service policeman accompanying the Service policeman when executing the warrant.

If the application is for a warrant to enter and search on more than one occasion they must also state in writing the ground on which they apply for such a warrant and whether they want a warrant for an unlimited number of entries or (if not) the maximum number of entries wanted.

109. **Access to excluded material etc.** As explained more fully in paragraph 105 above, a Service policeman may apply to a judge advocate for permission to obtain access to excluded material or special procedure material on relevant residential premises. Notice of an application must usually be served on the subject person who appears to be in possession of the material. If the service of a notice will seriously prejudice the investigation, in very limited circumstances an application may be made for a warrant without a notice being required¹⁰⁸. An application for a warrant cannot be made in relation to material on premises other than relevant residential premises.

110. Notice of an application for access to special or excluded material on relevant residential premises or material on other premises may be served by delivering it to the subject person or by sending it by registered or recorded delivery to their address. In the case of a Service person, their address is that of the unit to which they belong or (if they are on attachment) the unit to which they are attached¹⁰⁹. Where a notice has been served¹¹⁰, the person must not conceal, destroy, alter or dispose of the material without permission from a judge advocate or the written permission of a Service policeman until the application

¹⁰⁷ This includes normal section 83 search warrants and applications for access to excluded or special procedure materials under Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 7.

¹⁰⁸ The Armed Forces (Powers of Stop, Search, Seizure and Retention) Order 2009 Schedule 1 paragraphs 12(a) and 14.

¹⁰⁹ In cases of person's with no unit for any reason the proper address is the usual or last known place of residence.

¹¹⁰ Service on a person can be by delivering the notice of application to them, leaving it at their proper address or by sending it by post in a registered letter or by recorded delivery.

has been dismissed or abandoned or until they have complied with an order to produce or grant access to the material¹¹¹.

111. **Execution of warrants.** A warrant¹¹² may be executed by any Service policeman. A warrant may authorise the Service policeman to be accompanied by other persons and those persons, whilst in the company and under the supervision of a Service policeman, will have the same powers as the Service policeman in relation to the execution of the warrant and the seizure of any articles to which the warrant relates¹¹³.

112. Entry and search under a warrant must be executed within 3 months of its issue and the time of the entry must be at a reasonable hour unless the Service policeman executing the warrant believes that the search may be frustrated on entry at a reasonable hour. 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 (see paragraph 81) has in writing, authorised that entry to those premises¹¹⁴. If the warrant authorises entry and search of any relevant residential premises occupied or controlled by a specified person and the warrant does not specify the premises to be entered, no premises which are not specified in it may be entered or searched unless an authorising service policeman has in writing authorised them to be entered.

113. Where the occupier is present when the warrant is executed, upon entry to the premises a Service policeman must:

- a. Identify himself as a Service policeman and if not in uniform, produce documentary evidence that they are a Service policeman;
- b. Produce the warrant¹¹⁵; and
- c. Provide a copy of the warrant.

114. On completion of the entry and search, a Service policeman executing a warrant must endorse upon it whether the articles sought were found and whether any articles were seized, other than the articles sought. Following execution or (if not executed) upon expiry of 3 months from its issue, the warrant should be sent to the Judge Advocate General.

115. Where the occupier is not present then the actions above must be undertaken in relation to the person who appears to be in charge of the premises. If no person appears to be in charge of the premises then the Service policeman must leave a copy of the warrant at the premises in a prominent location. The scope of any search under a warrant is limited to what is required for the purpose of the warrant. For further detail see JSP 397 (Service Police Codes of Practice - Code B).

116. **Entry and search where person arrested.** As explained in paragraph 79 above, where a person has been arrested under section 67 of the Act for a serious Service offence a Service policeman has power to enter and search certain premises and vehicles¹¹⁶.

117. A search referred to in paragraph 116 above must be limited to the extent which is reasonably required for the purpose of discovering evidence relating to the offence for which the person was arrested. No search may be made unless the Service policeman has

¹¹¹ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 Schedule 1 paragraph 11.

¹¹² Under section 83 of the Act and Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009.

¹¹³ (see also Article 9 of Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009.

¹¹⁴ The Armed Forces (Stop and Search, Search, Seizure and Retention) Order 2009 article 9(5).

¹¹⁵ Unless the Service policeman has reasonable grounds for believing that the search would be frustrated if they waited to have physical possession of the warrant itself. In these circumstances a fax or emailed copy of the warrant should be used and a certified true copy provided as soon as is practicable.

¹¹⁶ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 12.

reasonable grounds for believing that there is such evidence where the search is to be made. Any search of premises which comprises two or more separate dwellings is limited to the dwelling in which the arrested person was immediately before their arrest, or common parts of the premises. For further detail see JSP 397 (Service Police Codes of Practice - Code B).

118. Entry and search after arrest. As explained in paragraphs 79 and 80 above, where a person has been arrested under section 67 for a serious Service offence and is being held in Service custody without being charged, a Service policeman also has, subject to authorisation where required, powers of entry, search and seizure in relation to premises occupied or controlled by that person¹¹⁷. The Service policeman must limit their search to the extent reasonably necessary to discover evidence of the sort described in paragraph 80 above. He may seize and retain any evidence for which they are empowered to search.

119. Authorising Service policeman. An authorising Service policeman who authorises a search or is informed of a search must make a written record of the grounds for the search and the nature of the evidence sought, see JSP 397 (Service Police Codes – Code B).

120. Actions after search of premises. After a search by the Service Police, the person conducting it should make the following record in accordance with JSP 397 (Service Police Codes of Practice – Code B):

- a. Address and location of the search;
- b. Object of the search;
- c. The date and time of the search;
- d. Whether anything, and if so what was found;
- e. Whether any injury to a person or damage to property has occurred as a result of the search; and
- f. Details of the officer conducting the search.

121. Where a CO authorises a search of premises by persons other than Service policemen, the Service Police codes will not apply. However, the person who conducts the search should if possible and at the earliest opportunity, seek to provide to the CO a record, including the details listed at paragraph 120 above.

122. If, on completion of a search of premises, a Service policeman has seized any article(s) under the powers referred to in paragraph 80, they must give the occupier of the premises (or person in charge of them at the time) a written notice¹¹⁸ detailing the following¹¹⁹:

- a. What has been seized;
- b. The grounds for seizure;
- c. Their right to apply to a judge advocate for return of the articles, the grounds for the application and the effects of such application¹²⁰;

¹¹⁷ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 13.

¹¹⁸ If there is no-one at the premises then the notice must be left in a prominent place.

¹¹⁹ The Armed Forces (Stop and Search, Search, Seizure and Retention) Order 2009 article 21.

¹²⁰ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 28 to 30.

d. The name and address of the person to whom a notice of intention to apply for return can be given; and

e. The name and address of the person to whom an application to attend the initial examination of the articles can be made.

123. **Action after search of a person.** If, on completion of a search under a power referred to in paragraph 89 above, a Service policeman has seized any article(s), they must give a written notice to the person detailing the same information as is referred to in paragraph 120 above.

124. In relation to anything seized under any power of seizure dealt with in this chapter, upon the request by the occupier of the premises or the person who is in charge of the premises immediately prior to the search, the person (not limited to searches by Service Police) conducting the search shall, within a reasonable time, provide a record of what was seized¹²¹.

125. **Access and copying.** A person who had custody or control of anything seized (or someone acting on their behalf), shall upon request to the person in charge of the investigation, be allowed supervised access to it or the opportunity to copy or photocopy it or be provided with a copy or photocopy of it¹²², unless that person has reasonable grounds to suspect that to do so would prejudice the investigation of any offence or prejudice any criminal or Service proceedings which may be brought as a result of the investigation¹²³.

¹²¹ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 28 to 30.

¹²² Copies or photocopies must be provided within a reasonable time.

¹²³ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 16.

Part 4 – Retention

Dealing with seized items

126. **Examination and return of property.** This paragraph applies to articles seized by a Service policeman under a power of seizure referred to in paragraphs 85 to 87. The person in possession of the property shall ensure:

- a. That an initial examination of the property is undertaken by a Service policeman as soon as is reasonably practicable;
- b. That the examination is confined to whatever is necessary to determine how much of the property can be retained or is property which is not seizable, but which it is not reasonably practicable to separate from that which is;
- c. That anything found which may not be retained is returned as soon as is reasonably practicable after the examination of all the seized property has been completed; and
- d. That until the examination of all the property is complete and all of the seized property which cannot be retained has been returned, the seized property is kept separate from any property seized under any other power.

127. **Retention of seized items.** The powers relating to retention are contained within the relevant order¹²⁴. This relates to the retention of anything which has been seized or taken away by a person under the powers in or under Part 3 of the Act. Very broadly, these powers relate to powers under the Police and Criminal Evidence Act 1984. Retention may generally be for so long as is necessary in all the circumstances¹²⁵. Without prejudice to this, things seized for the investigation of an offence may generally be retained for use as evidence in Service proceedings or a trial or for forensic examination or for investigation in connection with the offence. Anything may be retained to establish its lawful owner, where there are reasonable grounds to believe that it has been obtained in consequence of the commission of a Service offence. However, where material is seized on the grounds that a person may have used it to cause injury or to assist in an escape from Service custody, it may be retained when the person from whom it was seized is no longer in Service custody¹²⁶.

128. These provisions are extended¹²⁷ to property seized under the powers¹²⁸ which permit retention of property to be taken away for the purpose of determining whether seizable property can be separated from the rest of the material seized (so-called search and sift provisions, as to which see paragraphs 85 - 87). It is important to note that none of the powers under article 19 of the order can apply to seizures ordered or authorised by a CO. Article 20 of the order relates to lawful searches of a person by a Service policeman.

129. The powers of search and sift relate to powers under the Criminal Justice and Police Act 2001. The interaction of the provisions based on this Act and those based on the Police and Criminal Evidence Act 1984 can require detailed analysis. If in any doubt as to powers of retention legal advice should be sought.

¹²⁴ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 17.

¹²⁵ Copies or photocopies must be provided within a reasonable time.

¹²⁶ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 17(3) and (4).

¹²⁷ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 26.

¹²⁸ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 19 and 20.

130. Provision is made for the retention of seized items in a number of special situations¹²⁹. These are:

- a. Article 22, governing the examination and return or retention of property seized under article 19 or 20;
- b. Article 23, which defines the extent of the obligation to return items subject to legal privilege where, at any time after seizure, it becomes apparent that the property seized is, or includes, such an item; or
- c. Article 24, which defines the extent of the obligation to return excluded and special procedure material where, at any time after seizure, it becomes apparent that the property seized is, or includes such material.

131. The effect of each of the articles in paragraph 130 above is referred to further at paragraphs 132 to 134 below. However, it should be noted that:

- a. Nothing in articles 22 to 25 authorise retention if retention would not be authorised under article 17; and
- b. Where anything in Part 3 of The Armed Forces (Stop and Search, Search, Seizure and Retention) Order 2009 requires something to be returned, article 17 does not permit retention¹³⁰.

132. **Application to a judge advocate for return of property.** Where material is seized under a relevant power certain people may make an application to a judge advocate¹³¹ for the return of the whole or part of the seized property. The relevant powers are those dealt with in Part 3 of this chapter, except the powers of seizure where a CO authorises the search of premises. That is because, where the search is authorised by the CO, there is instead a review of the seizure by a judge advocate as described in paragraph 104. Those who may apply for the return of items are the persons from whom the material was seized, anyone with an interest in what was seized and anyone else who had custody or control of the property immediately before it was seized. The following are, broadly speaking, the grounds upon which such an application may be made:

- a. There was no power to make the seizure;
- b. The property is or contains an item subject to legal privilege which can be separated from the whole without prejudicing the lawful use of the remainder of the property;
- c. That the seized property is or contains excluded or special procedure material which can be separated from the whole without prejudicing the lawful use of the remainder of the property; and
- d. That the seized property comprises excluded or special procedure material which was seized under the 'seize and sift' powers (paragraphs 128 and 129 above) and it is reasonably practicable to separate it from property for which there was a power to search or the retention of which is authorised.

133. If the judge advocate is satisfied as to any of the grounds stated above in relation to any of the property received, they must generally order its return. Otherwise they must dismiss the application. There are exceptions to the requirement to return, broadly speaking

¹²⁹ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 22, 23 and 24.

¹³⁰ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 17(2) and (3.)

¹³¹ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 28.

where, if the property were returned, it would immediately be appropriate to give a warrant allowing its seizure or an order requiring it to be produced¹³². Where an application referred to in paragraph 132 above is made, a judge advocate may also make such directions as they think fit as to the examination, retention, separation or return of the whole or any part of the property¹³³.

134. Obligation to return items subject to legal privilege. Where, after seizure, it appears to the person in possession that the property seized is or contains an item to which legal privilege extends,¹³⁴ the item must be returned as soon as reasonably practicable unless¹³⁵:

- a. The property was not seized under a power of a CO to authorise a seizure;
- b. The whole or part of the rest of the property can be retained; and
- c. In all the circumstances, it is not reasonably practicable to separate the item protected by legal privilege without prejudicing the use of the rest of the property.

135. Obligation to return excluded or special procedure material. Where a seizure has been made in execution of a search warrant and it appears to the person in possession of a seized item that it is or contains excluded or special procedure material then it must be returned¹³⁶ as soon as is reasonably practicable unless:

- a. It is not reasonably practicable to separate the excluded or special procedure parts from the whole without prejudicing the use of the property which may be retained;
- b. There are reasonable grounds for believing that the property has been obtained in consequence of the commission of a Service offence and its retention is necessary to prevent its being concealed, lost, damaged, altered or destroyed; and
- c. There are reasonable grounds for believing that the property is evidence in relation to a Service offence and its retention is necessary to prevent its being concealed, lost, damaged, altered or destroyed.

Again, it is important to note that material subject to legal privilege or excluded or special procedure material cannot be retained as a result of a search authorised by the CO.

136. Persons to whom seized property is returned. If an item has been seized and should not be retained there is an obligation to return it to the person from whom it was seized unless the person obliged to return it is satisfied that someone else has a better right to that property. Where different persons claim to be entitled to the return of the property, the property may be kept for as long as is reasonably necessary for a determination to be made as to who has a better, or best, right to the property¹³⁷.

137. Duty to secure items. This duty only arises where the power of seizure was made under Article 19 or 20 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009. Where items have been seized under these articles, and they are subject to an ongoing application to a judge advocate under the power referred to in paragraph 100 above (for example in relation to return as wrongly seized) a duty to secure that item arises. This power requires an application under articles 28 and 29 of the order;

¹³² The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 28(7).

¹³³ Art 28 (5) The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 28(7).

¹³⁴ Even if the item or information is only partly that to which legal privilege extends.

¹³⁵ The Armed Forces(Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 23.

¹³⁶ The Armed Forces(Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 24.

¹³⁷ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 27.

therefore, the duty to secure does not relate to property seized under a power of the CO to authorise a search of premises (which will be subject to review by a judge advocate referred to at paragraph 104 above). The duty only arises in certain circumstances which include requirements that the application is brought on grounds which include that property is or contains legally privileged, special procedure or excluded material¹³⁸. The duty to secure includes ensuring that, except with the permission of the judge advocate or the applicant:

- a. The item is not examined or copied; or
- b. The item is not put to any use which, as seized material, it could otherwise be put.

138. Use of inextricably linked property. Inextricably linked property is seized property which could not, under the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009, be retained but for the fact that it is not reasonably practicable to separate it from property which can be retained¹³⁹.

139. Inextricably linked property cannot be put to any use (including examination and copy) except where it is necessary for facilitating the use in any investigation or proceedings of property within which the inextricably linked property is comprised¹⁴⁰. However, property seized under section 87 or section 88 of the Act (COs powers to authorise search of premises) cannot comprise such property. Further, property seized under section 76(1)(c) of the Act (CO authorisation of stop and search) cannot be inextricably linked property.

¹³⁸ For full details of when the duty arises see articles 28 and 29 of The Armed Forces (Powers of Stop, Search, Seizure and Retention) Order 2009.

¹³⁹ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 31.

¹⁴⁰ The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 article 31.

Part 5 – Transitional arrangements

140. This part outlines the main transitional provisions related to Part 3 of the Act contained in the section 380 Order and the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention Order 2009 (the “Stop and Search etc Order”). The basic aim of the transitional arrangements for Part 3 is to allow continuity under the new provisions in respect of events occurring wholly or partly before commencement (ie before 31 October 2009).

141. Transitional provision under the section 380 Order

- a. Under the section 380 Order any reference in Part 3 of the Act to a “Service offence” includes an offence committed under any of the Service Discipline Acts (“SDAs”). So, for example, the power of arrest in section 67 of the Act also applies to offences committed before commencement under the SDAs.
- b. Similarly the section 380 Order extends relevant provisions of Part 3 of the Act which refer to things done under that Act, so that they also relate to things done under the related provisions of the SDAs.

Example: section 70 of the Act give a service policeman power to search “an arrested person” following their arrest. Under section 70 “an arrested person” means a person arrested under specified provisions of the Act. The section 380 Order extends this so that section 70 also applies to a person who has been arrested before commencement under the related provisions of the SDAs.

142. The transitional provisions in the Stop and Search etc Order

- a. Schedule 4 to the Stop and Search etc Order makes further provision (in line with the general aim mentioned in paragraph 1 above) as to the detailed operation of the provisions of that Order with respect to events occurring before commencement. In slightly more detail, the general effect of Schedule 4 is to enable those provisions:
 - (1) To operate after commencement with respect to events occurring before commencement, and
 - (2) To operate after commencement with respect to the incomplete exercise before commencement of the related powers and duties under the AFA01.

143. The transitional arrangements in Schedule 4 to the Stop and Search etc Order are summarised below¹⁴¹:

144. Part 2 – Stop and search. The conduct of a stop and search

- a. In paragraph 60 a search is deemed to have been completed when it is conducted under the 2003 Order if a notice has not been previously been left (see Schedule 4 paragraph 2(3)).
- b. In paragraph 62 a search is deemed to have been carried out when it is conducted under the 2003 Order if a record of the search has not previously been made (see Schedule. 4 paragraph 3(3)).

¹⁴¹ Paragraph 143 summarises some of the principal provisions but Schedule. 4 to the Stop and Search etc Order should be referred to for full details of the transitional arrangements.

c. In paragraph 64 an order given by an officer under section 4(1)(a) of the 2001 Act is deemed to have been given under section 76(1) of the Act (see Schedule 4 paragraph 4(2)).

d. In paragraph 67 a search carried out under articles 4 and 5 of the 2003 Order is deemed to have been carried out under section 76 of the Act if a notice has not previously been left (see Schedule 4 paragraph 4(3)).

e. In paragraph 69 a search carried out under section 4(1)(a) of the 2001 Act is deemed to have been carried out under section 76(1) of the Act if a record of the search has not previously been made (see Sch. 4 paragraph 4(4)).

145. **Part 3 – Entry, search and seizure**

a. **Entry to premises for the purposes of arrest.** In paragraph 74 an arrest made under section 74 of the 1955 Acts or section 45 of the 1957 Act is deemed to have been made under section 67 of the Act (see Schedule. 4 paragraph 8(1)(a)).

b. **Powers of entry search and seizure where person arrested.** In paragraph 79 a ‘serious service offence’ includes a serious SDA offence, and an arrest made under section 74 of the 1955 Acts or section 45 of the 1957 Act is deemed to have been made under section 67 of the Act (see Schedule. 4 paragraph 8(1)).

c. **Powers of entry search and seizure after arrest.** In paragraph 80 a ‘serious service offence’ includes a serious SDA offence, and an arrest made under section 74 of the 1955 Acts or section 45 of the 1957 Act is deemed to have been made under section 67 of the Act. An authorisation in writing given by an authorising officer under article 13 of the 2003 Order will be valid in order to enter and carry out a search under section 90(1) of the Act (see Schedule 4 paragraph 8(1) and (2)).

d. **General Powers of Seizure.** In paragraph 82 (and paragraphs 125 and 127) the references to a service offence include an SDA offence (see Schedule 4, paragraph 9)

e. **Additional powers of seizure from premises.** In paragraph 85 property seized from premises under article 19 of the 2009 Order includes property found on premises before commencement other than by someone authorised under section 7 of the 2001 Act, and the powers of seizure to which article 19 applies includes powers conferred by or under Part 2 of the 2001 Act, except section 2, 4 and 7 of that Act (see Schedule 4 paragraph 12(2)(3)).

f. In paragraph 90 a power of seizure includes a power of seizure conferred by article 4 of the 2006 Order if article 5(4) of that Order has not been complied with respect to the seizure (see Schedule 4 paragraph 13(3)).

g. **Review of entry and search authorised by CO.** In paragraph 104 a review by a judge advocate of searches and seizure includes a request made to a judicial officer to undertake a review under section 8 of the 2001 Act if the judicial officer has not yet determined whether to make an order for the return or disposal of any of the property to which the review relates (see Schedule. 4 paragraph 25(2)).

146. **The conduct of entry, search, seizure and retention**

a. **Execution of warrants.** In paragraph 111 a warrant which authorises a Service policeman to be accompanied by other persons includes a pre-commencement warrant which authorises a person to accompany a service policeman executing the warrant (see Schedule 4 paragraph 6(3)).

b. **Entry and search where person arrested.** In paragraph 116 a person arrested under section 67 of the Act for a serious Service offence includes a person arrested under section 74 of the 1955 Acts or section 45 of the 1957 Act for a serious SDA offence (see Schedule 4 paragraph 8(1)).

c. **Entry and search after arrest.** In paragraph 118 a Service policeman may conduct a search if an authorising officer within the meaning of article 13 of the 2003 Order has authorised them in writing to enter and search (see Schedule 4 paragraph 8(2)).

d. **Actions after search of premises.** In paragraph 122 the requirement to give the occupier a written notice also applies when a Service policeman has exercised a power of seizure under article 3 of the 2006 Order and has not complied with article 5(1),(2) or (3) of that Order with respect to the seizure (see Schedule 4 paragraph 13(2)).

e. **Access and copying.** In paragraph 125 the requirement to allow supervised access to anything seized, or the opportunity to copy or photocopy it, applies also to anything seized under Part 2 of the 2001 Act if a person entitled to supervised access has not, either before or after commencement, been provided with an opportunity to inspect the property or to copy or photocopy it (see Schedule 4 paragraph 10(2)(3)).

Retention of Seized items

147. Part 4 – Retention

a. In paragraph 127 anything seized under Part 3 of the Act includes anything seized under Part 2 of the 2001 Act, and the power to retain seized items under section 54(4)(a) of PACE, as applied by section 113(1) of that Act, includes items seized (a) under section 54(4)(a) as applied to the 1955 Acts or the 1957 Act, and (b) under section 10(10) or (11) of the 2001 Act (see Schedule 4 paragraph 11 (3)(4)).

b. In paragraph 128 the power to retain property seized from premises or persons includes property seized from premises or persons under article 3 or 4 of the 2006 Order (see Sch. 4 paragraph 18). An authorisation under section 87 or 88 of the Act includes an authorisation given under section 7 of the 2001 Act, and the additional powers of seizure apply to anything found before commencement. The powers of seizure under Chapter 1 or 3 of Part 3 of the Act include the powers of seizure conferred under Part 2 of the 2001 Act, except sections 2, 4 and 7 of that Act (see Schedule 4 paragraph 12(2)(3)).

c. In paragraph 130 property which is seized under the additional powers of seizure from premises or persons includes property seized under article 3 or 4 of the 2006 Order if either the initial examination of that property, or anything required to be returned under article 6(2) of the 2006 Order, has not been completed (see Schedule 4 paragraph 14(2)).

d. In paragraph 130 the obligation to return items subject to legal privilege does not apply to property seized under section 2(7) of the 2001 Act, exercised under section 4 of that Act by a person other than a service policeman. The powers of seizure in Part 3 of the Act include the powers of seizure in (a) articles 3 and 4 of the 2006 Order; (b) Part 2 of the 2001 Act, and (c) the 2003 Order (see Schedule 4 paragraph 15(2) (3)).

e. In paragraph 130 the obligation to return excluded and special procedure material which has been seized pursuant to a warrant granted under section 83 of the

Act includes material seized under section 5 of the 2001 Act (see Schedule 4 paragraph 16).

f. In paragraph 131 property which cannot be retained under article 17 includes property which has been seized under Part 2 of the 2001 Act (see Schedule 4 paragraph 11(2)).

148. Application to a judge advocate for return of property

a. In paragraph 132 an application to a judge advocate includes an application made to a judicial officer (as defined in Part 2 of the 2001 Act) before commencement (see Schedule 4 paragraph 20(2)).

b. In paragraph 133 a judge advocate may also make directions in relation to property seized under articles 3 or 4 of the 2006 Order, and the relevant powers of seizure include powers conferred under (a) articles 3 and 4 of the 2006 Order; (b) Part 2 of the 2001 Act (except the power in section 7 of that Act); and (c) the 2003 Order, except the power under its article 15 to the extent that it relates to section 7 of the 2001 Act (see Sch. 4 paragraph 20(5)(6)).

149. Obligation to return items subject to legal privilege

a. In paragraph 134 the obligation to return items subject to legal privilege includes property which has been seized under articles 3 and 4 of the 2006 Order or Part 2 of the 2001 Act (except property which has been seized under (a) section 2(7) of the 2001 Act by someone other than a service policeman acting under section 4 of that Act, or (b) section 7(3) of the 2001 Act (see Schedule 4 paragraph 15(2)(3)).

150. Obligation to return excluded or special procedure material

b. In paragraph 135 seized property includes property seized under a search warrant granted under section 5 of the 2001 Act (see Schedule 4 paragraph 16).

151. Property to whom seized property is returned

a. In paragraph 136 property which has been seized includes property seized under (a) article 3 or 4 of the 2006 Order; (b) Part 2 of the 2001 Act; or (c) the 2003 Order (see Schedule 4 paragraph 19).

152. Duty to secure items

a. In paragraph 137 the duty to secure items seized under article 19 of the 2009 Order does not apply to anything found on premises by someone authorised under section 7 of the 2001 Act but does include anything otherwise found before commencement. The powers of seizure conferred by or under Chapter 1 or 3 of Part 3 of the Act includes the powers of seizure conferred by or under Part 2 of the 2001 Act, except sections 2, 4 and 7 of that Act (see Schedule. 4 paragraph 12(2)(3)).

b. In paragraph 137 an application under article 28 includes an application made under article 12(2) of the 2006 Order (see Schedule 4 paragraph 20(3)(a)).

153. Use of inextricably linked property

a. In paragraph 138 property seized under the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 includes property seized under (a) article 3 or 4 of the 2006 Order; (b) Part 2 of the 2001 Act, except the power under section 7 of that Act; or (c) the 2003 Order, except the power under its article

15 in so far as it relates to section 7 of the 2001 Act (see Schedule 4 paragraph 23(2)).

b. In paragraph 139 inextricably linked property includes property seized under (a) article 3 or 4 of the 2006 Order, (b) Part 2 of the 2001 Act, except the power under its article 15 in so far as it relates to section 7 of the 2001 Act, or (c) the 2003 Order, except the power under its article 15 in so far as it relates to section 7 of the 2001 Act (see Schedule 4 paragraph 23(2)).

RELEVANT OFFENCES

1. Any section 42 offence corresponding to an indictable criminal offence¹⁴²
2. Schedule 2 offences which are listed as relevant offences (below):¹⁴³
 - a. Section 1 of the Act - assisting an enemy
 - b. Section 2(1) of the Act - misconduct on operations
 - c. Section 3(1) of the Act - obstructing operations
 - d. Section 4(1) or (2) of the Act - looting
 - e. Section 6 of the Act - mutiny
 - f. Section 7 of the Act - failure to suppress mutiny
 - g. Section 8 of the Act - desertion (with intention of avoiding a period of active service)
 - h. Section 31(1) of the Act - hazarding a ship
 - i. Section 33(1) of the Act - dangerous flying
 - j. Section 39 of the Act - attempts to commit any of the above offences
 - k. Section 40 of the Act - encouraging or assisting any of the above offences other than attempts
3. Any other Service offence if intended or likely to have serious consequences¹⁴⁴. The consequences referred to are:
 - a. Serious harm to the security of the State or to public order;
 - b. Serious interference with the administration of justice or with the investigation of offences or of a particular offence;
 - c. The death of any person
 - d. Serious injury to any person;
 - e. Substantial financial loss to any person;
 - f. Serious financial loss to any person; or
 - g. The undermining of discipline or moral among members of any of Her Majesty's forces.

¹⁴² Section 84(2)a of the Act

¹⁴³ Schedule 3 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009

¹⁴⁴ Section 84(5) of the Act.