***Draft Legislation:*** *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 ISBN 978-0-11-148002-1*

*Draft Order laid before Parliament under section 373(3) of the Armed Forces Act 2006 for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2009 No. 0000

# DEFENCE

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

| | |
|---|---|
| *Made - - - -* | *** |
| *Coming into force - -* | *31st October 2009* |

The Secretary of State makes the following Order in exercise of the powers conferred by sections 74, 81, 84(2)(b), 85, 86, 89(2), 92, 93, 323 and 380 of the Armed Forces Act 2006(**1**):

In accordance with section 373(3) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

## Citation and commencement

**1.** This Order may be cited as the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 and shall come into force on the 31st October 2009.

## Interpretation

**2.** In this Order—

"the Act" means the Armed Forces Act 2006;

"the appropriate person" means—

(a) the person to be searched; or

(b) the person in charge of a vehicle that it is proposed to search;

"authorising service policeman" means a service policeman of or above the rank of naval lieutenant, military or marine captain or flight lieutenant;

"documents" includes information recorded in any form;

"excluded material" has the meaning given in section 11 of PACE;

"items subject to legal privilege" has the meaning given in section 10 of PACE, and "legal privilege" shall be construed accordingly;

(**1**) 2006 c. 52.

"premises" has the meaning given to it in section 96(3) of the Act;

"relevant offence" has the meaning given in section 84(2) of the Act read with article 33 and Schedule 3;

"relevant residential premises" has the meaning given to it in section 86(3) of the Act;

"seized property", in relation to any exercise of a power of seizure, means anything seized in exercise of that power;

"serious service offence" means—

(a) an offence under section 42 of the Act for which the corresponding offence under the law of England and Wales is an indictable offence;

(b) any other service offence which may not be dealt with at a summary hearing by a commanding officer;

(c) an offence under section 11(1) of the Act (using violence against a superior officer);

(d) an offence under section 18(3) or (4) of the Act (offences in relation to official documents and records with intent to deceive);

(e) an offence under section 24(1) of the Act (intentional or reckless damage to or loss of public or service property);

(f) an offence under section 39 of the Act of attempting to commit an offence within (c), (d) or (e);

(g) an offence under section 40 of the Act of encouraging or assisting the commission of an offence within (c), (d) or (e);

"service proceedings" means—

(h) a summary hearing under the Act by a commanding officer; or

(i) proceedings before the Summary Appeal Court, the Court Martial or the Service Civilian Court;

"special procedure material" has the meaning given in section 14 of PACE; and

"unit" includes a naval ship or establishment and an air force station.

# PART 1

## Searches

**Stop and search by a service policeman**

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

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

(a) if the service policeman is not in uniform, documentary evidence that he is a service policeman, and

(b) whether he is in uniform or not, the matters specified in paragraph (3),

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

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

(a) the service policeman's name, rank or rate, and the name of his unit;

(b) the object of the proposed search;

(c) the service policeman's grounds for proposing to make it; and

(d) the effect of article 4(7) or (8), as may be appropriate.

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

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

(a) stating that he has searched it;

(b) giving his name, rank or rate, and the name, address and telephone number of his unit;

(c) stating that an application for compensation for any damage caused by the search may be made to that unit; and

(d) stating the effect of article 4(8).

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

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

**Record of search by service policeman**

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

(2) If—

(a) a service policeman is required by paragraph (1) to make a record of a search, but

(b) it is not practicable to make the record on the spot,

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

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

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

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

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

(a) shall state—

(i) the object of the search;

(ii) the grounds for making it;

(iii) the date and time when it was made;

(iv) the place where it was made;

(v) whether anything, and if so what, was found;

(vi) whether any, and if so what, injury to a person or damage to property appears to the service policeman to have resulted from the search; and

(b) shall identify the service policeman making it.

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

(8) If—

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

(b) the service policeman who conducted the search made a record of it,

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

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

**Searches under section 76 of the Act**

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

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

(a) to notify the appropriate person of—

(i) his name, rank or rate and the name of his unit;

(ii) his authority for conducting the search;

(iii) the object of the proposed search; and

(iv) the effect of paragraphs (11) and (12); and

(b) to show his service identity card to the appropriate person.

(3) The relevant person need not bring the effect of paragraphs (11) and (12) to the attention of the appropriate person if it appears to the relevant person that it will not be practicable to make the record referred to in paragraph (6).

(4) On completing a search of an unattended vehicle or anything in or on such a vehicle, the relevant person shall leave a notice—

(a) stating that he has searched it;

(b) giving his name, rank or rate and the name, address and telephone number of his unit; and

(c) stating that the appropriate person is entitled to a copy of the record of search to which paragraph (10) refers.

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

(6) Where the relevant person has carried out a search pursuant to the order or authorisation under section 76 of the Act, he shall make a record of it in writing unless it is not practicable to do so.

(7) If—

(a) the relevant person is required by paragraph (6) to make a record of a search, but

(b) it is not practicable to make the record on the spot,

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

(8) The record of a search of a person shall include—

(a) a note of his name if the relevant person knows it; or

(b) if the relevant person does not know the name of the person whom he has searched, the record of the search shall include a note otherwise describing that person.

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

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

(a) shall state—

(i) the object of the search;

(ii) the date and time when it was made;

(iii) the place where it was made;

(iv) whether anything, and if so what, was found;

(v) whether any, and if so what, injury to a person or damage to property appears to have resulted from the search; and

(b) shall identify the relevant person making it.

(11) If the relevant person who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in paragraph (13).

(12) If—

(a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in paragraph (12), and

(b) the relevant person who conducted the search made a record of it,

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

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

**Access to excluded and special procedure material**

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

**Application for warrants or orders by live links**

**7.** A service policeman may make—

(a) an application under Schedule 1, or

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

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

**Search warrants – safeguards**

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

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

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