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

2008 No. ***

DEFENCE

The Armed Forces (Alignment of Service Discipline Acts) Order 2008

Made - - - -	***
Coming into force - -	***

The Secretary of State makes the following Order in exercise of the powers conferred by section 381(1) 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 a resolution of, each House of Parliament.

Citation and commencement

1. This Order may be cited as the Armed Forces (Alignment of Service Discipline Acts) Order 2008 and shall come into force twenty one days after the day on which it is made.

Interpretation

2. In this Order—

"the 1955 Acts" means the Army Act 1955(**2**) and the Air Force Act 1955(**3**);

"the 1957 Act" means the Naval Discipline Act 1957(**4**); and

"commencement" means the date on which this Order comes into force.

Powers of arrest

3. For section 74 of the Army Act 1955(**5**) (power to arrest offenders) substitute—

(**1**) 2006 c. 52.
(**2**) 1955 c. 18.
(**3**) 1955 c. 19.
(**4**) 1957 c. 53.
(**5**) Section 74 of the Army Act 1955 was amended by the 1957 Act, Schedule 5.

"**Power to arrest offenders**

74.—(1) A person who is reasonably suspected of being engaged in committing, or of having committed, an offence against any provision of this Act may be arrested in accordance with subsection (2), (3), (4) or (5) by a person subject to military or air-force law or to the Naval Discipline Act 1957 (c. 53).

(2) An officer may be arrested under subsection (1)—

(a) by an officer of superior rank or, if engaged in a mutiny, quarrel or disorder, by an officer of any rank;

(b) by a service policeman; or

(c) on the order of another officer, by a person who is lawfully exercising authority on behalf of a provost officer.

(3) A person of or below the rank of warrant officer may be arrested under subsection (1)—

(a) by an officer;

(b) by a warrant officer or non-commissioned officer of superior rank or rate;

(c) by a service policeman;

(d) by a person who is lawfully exercising authority on behalf of a provost officer; or

(e) if a member of a ship's company or an embarked force, by a person exercising authority as a member of the staff of the officer of the day.

(4) A person to whom any provisions of Part 2 of this Act apply by virtue of section 208A or 209 of this Act (application of Act to passengers in HM ships and aircraft and to civilians) may be arrested under subsection (1)—

(a) by an officer;

(b) by a service policeman; or

(c) by a person who is lawfully exercising authority on behalf of a provost officer.

(5) Where none of subsections (2) to (4) applies in relation to the person to be arrested, that person may be arrested under subsection (1) by a service policeman.

(6) The power of arrest conferred on any person by this section may be exercised—

(a) personally;

(b) by giving orders for the arrest of the person who is to be arrested; or

(c) where that person is subject to military or air-force law or to the Naval Discipline Act 1957, by ordering him into arrest.

Power of arrest in anticipation of commission of offence

74A.—(1) A service policeman may arrest a person whom he reasonably suspects of being about to commit an offence against any provision of this Act.

(2) Subsection (6) of section 74 of this Act applies in relation to the power of arrest conferred by this section as it applies in relation to the power of arrest conferred by that section.

(3) Where a person is arrested under this section—

(a) the arrest must be reported as soon as practicable to his commanding officer; and

(b) he may be kept in military, air-force or naval custody until such time as a service policeman is satisfied that the risk of his committing the offence concerned has passed."

4. For section 74 of the Air Force Act 1955(**6**) (power to arrest offenders) substitute—

"**Power to arrest offenders**

74.—(1) A person who is reasonably suspected of being engaged in committing, or of having committed, an offence against any provision of this Act may be arrested in accordance with subsection (2), (3), (4) or (5) by a person subject to air-force or military law or to the Naval Discipline Act 1957 (c. 53).

(2) An officer may be arrested under subsection (1)—

(a) by an officer of superior rank or, if engaged in a mutiny, quarrel or disorder, by an officer of any rank;

(b) by a service policeman; or

(c) on the order of another officer, by a person who is lawfully exercising authority on behalf of a provost officer.

(3) A person of or below the rank of warrant officer may be arrested under subsection (1)—

(a) by an officer;

(b) by a warrant officer or non-commissioned officer of superior rank or rate;

(c) by a service policeman;

(d) by a person who is lawfully exercising authority on behalf of a provost officer; or

(e) if a member of a ship's company or an embarked force, by a person exercising authority as a member of the staff of the officer of the day.

(4) A person to whom any provisions of Part 2 of this Act apply by virtue of section 208A or 209 of this Act (application of Act to passengers in HM ships and aircraft and to civilians) may be arrested under subsection (1)—

(a) by an officer;

(b) by a service policeman; or

(c) by a person who is lawfully exercising authority on behalf of a provost officer.

(5) Where none of subsections (2) to (4) applies in relation to the person to be arrested, that person may be arrested under subsection (1) by a service policeman.

(6) The power of arrest conferred on any person by this section may be exercised—

(a) personally;

(b) by giving orders for the arrest of the person who is to be arrested; or

(c) where that person is subject to air-force or military law or to the Naval Discipline Act 1957, by ordering him into arrest.

Power of arrest in anticipation of commission of offence

74A.—(1) A service policeman may arrest a person whom he reasonably suspects of being about to commit an offence against any provision of this Act.

(2) Subsection (6) of section 74 of this Act applies in relation to the power of arrest conferred by this section as it applies in relation to the power of arrest conferred by that section.

(3) Where a person is arrested under this section—

(**6**) Section 74 of the Air Force Act 1955 was amended by the 1957 Act, Schedule 5.

(a) the arrest must be reported as soon as practicable to his commanding officer; and

(b) he may be kept in air-force, military or naval custody until such time as a service policeman is satisfied that the risk of his committing the offence concerned has passed."

5. In section 131(1) of each of the 1955 Acts (trial and punishment of persons no longer subject to military or air-force law), omit "arrest,".

6. In section 132(4) of each of the 1955 Acts (arrest and custody of person who has ceased to be triable), after "arrested" insert "under section 74 of this Act".

7.—(1) Section 209 of each of the 1955 Acts (application of Act to civilians) is amended as follows.

(2) In each of subsections (1) and (2), after "Subject to the modifications hereinafter specified" insert "and to section 74(4) of this Act".

(3) Omit subsection (3)(c).

8. For subsections (2) and (3) of section 45 of the 1957 Act(**7**) (power to arrest offenders) substitute—

"(2) A person who is reasonably suspected of being engaged in committing, or of having committed, any such offence may be arrested in accordance with subsection (3), (4), (5) or (6) by a person subject to this Act or to military or air-force law.

(3) An officer may be arrested under subsection (2)—

(a) by an officer of superior rank or, if engaged in a mutiny, quarrel or disorder, by an officer of any rank;

(b) by a service policeman; or

(c) on the order of another officer, by a person who is lawfully exercising authority on behalf of a provost officer.

(4) A person of or below the rate of warrant officer may be arrested under subsection (2)—

(a) by an officer;

(b) by a warrant officer or non-commissioned officer of superior rank or rate;

(c) by a service policeman;

(d) by a person who is lawfully exercising authority on behalf of a provost officer; or

(e) if a member of a ship's company or an embarked force, by a person exercising authority as a member of the staff of the officer of the day.

(5) A person to whom any provisions of Parts 1 and 2 of this Act apply by virtue of section 117 or 118 of this Act (application of Act to passengers in HM ships and aircraft and to civilians) may be arrested under subsection (2)—

(a) by an officer;

(b) by a service policeman; or

(c) by a person who is lawfully exercising authority on behalf of a provost officer.

(6) Where none of subsections (3) to (5) applies in relation to the person to be arrested, that person may be arrested under subsection (2) by a service policeman.

(7) The power of arrest conferred on any person by this section may be exercised—

(**7**) Section 45 of the 1957 Act was amended by the Armed Forces Act 1971 (c. 33), Schedule 3, paragraph 5(1).

(a) personally;

(b) by giving orders for the arrest of the person who is to be arrested; or

(c) where that person is subject to this Act or to military or air-force law, by ordering him into arrest."

9. After section 45 of the 1957 Act insert—

"**Power of arrest in anticipation of commission of offence**

45A.—(1) A service policeman may arrest a person whom he reasonably suspects of being about to commit an offence under any provision of Part 1 of this Act.

(2) Subsection (7) of section 45 of this Act applies in relation to the power of arrest conferred by this section as it applies in relation to the power of arrest conferred by that section.

(3) Where a person is arrested under this section—

(a) the arrest must be reported as soon as practicable to his commanding officer; and

(b) he may be kept in naval, military or air-force custody until such time as a service policeman is satisfied that the risk of his committing the offence concerned has passed."

10. In section 51(1) of the 1957 Act (jurisdiction to try persons no longer subject to the Act), for "may for that purpose be arrested and kept in custody" substitute "if arrested under section 45 of this Act may for that purpose be kept in naval, military or air-force custody".

11.—(1) Section 118 of the 1957 Act (application of Act to civilians) is amended as follows.

(2) In subsection (1), after "Subject to the provisions of this section" insert "and to section 45(5) of this Act,".

(3) In subsection (2), after "subject to the provisions of this section" insert "and to section 45(5) of this Act".

12. Omit paragraph 3 of Schedule 4 to the 1957 Act (power of arrest in respect of civilians).

13.—(1) Section 225(1) of the Army Act 1955, section 223(1) of the Air Force Act 1955 and section 135(1) of the 1957 Act (general interpretation) are amended as follows.

(2) For the definition of "provost officer", substitute—

""provost officer" means an officer (of any of Her Majesty's forces) who is a service policeman;".

(3) Insert in the appropriate place—

""service policeman" means anyone who is, or by reason of section 375(5) of the Armed Forces Act 2006 (c. 52) is to be treated as, a service policeman for the purposes of that Act;".(**8**)

14.—(1) Section 9 of the Armed Forces Act 2001(**9**) (entry for purpose of arrest etc) is amended as follows.

(2) For subsection (4) substitute—

"(4) Subsection (3) applies to a person who is reasonably suspected of having committed the offence in respect of which the arrest is to be made while subject to service law, but has ceased to be so subject."

(**8**) "Service policeman" is defined by section 375(1) of the Armed Forces Act 2006, and the definition is extended by section 375(5) of that Act. Section 375(1) and (5) were brought into force on 1st January 2008 by the Armed Forces Act 2006 (Commencement No. 2) Order 2007 (S.I. 2007/2913 (C. 115)), article 3.

(**9**) 2001 c. 19.