

ARMED FORCES ACT 2001

EXPLANATORY NOTES

THE ACT - COMMENTARY ON SECTIONS

Part 2 – Powers of Entry, Search and Seizure

Sections 2 to 16

The previous position and the new arrangements in outline

15. Prior to this Act, the SDAs did not set out the powers, which might need to be exercised during the investigation of offences allegedly committed by members of the armed forces or other persons who are subject to the SDAs. Instead, those powers were exercised on the authority of the commanding officer under his inherent powers. The principal powers were those to stop and search members of the armed forces or of other persons subject to the SDAs, and those to enter and search their living accommodation. However, it has been recognised for some time that the scope of those powers was unclear and that it was desirable they should be clarified and put on a statutory footing. The aim was to ensure that both those who exercise those powers and those who are subject to them were clear about the limits of the powers and the safeguards which apply to the exercise of those powers.
16. The Act replaces those powers. Instead, the Service police are given statutory powers based on those available to the civilian police, although they will be modified to suit the needs of the Services. Each of the armed forces has a force of Service police, i.e. the Royal Navy Regulating Branch, the Royal Military Police, the Royal Air Force Police and the Royal Marines Police. They have many of the functions of civilian police but are members of the armed forces with no constabulary powers. This means Service police cannot exercise statutory powers conferred on constables; any powers they require must be specifically applied to them. Commanding officers are given, by Part 2, more limited versions of the powers of investigation given to the Service police.
17. One of the main provisions is about searching for evidence of suspected serious offences. The Service police will be able to apply for a warrant to search the living accommodation of persons subject to the SDAs for evidence of such offences. Judicial officers are to have the necessary powers to grant warrants. (Judicial officers are legally qualified persons appointed under the SDAs to deal with a range of matters arising under those Acts). This brings the Services broadly into line with the position in civilian life, where members of Home Department police forces have to obtain a warrant to search from a magistrate. It also provides greater certainty and, by providing that extra certainty and independent legal supervision of applications for permission to search, is intended to avoid the risk of a challenge to those searches succeeding under the European Convention on Human Rights.
18. A commanding officer retains a residual power to authorise searches of living accommodation of persons subject to the SDAs in exceptional circumstances, where, broadly speaking, he reasonably considers that a warrant cannot be obtained by a Service policeman or (in the United Kingdom) by a member of a Home Department

*These notes refer to the Armed Forces Act 2001
(c.19) which received Royal Assent on 11 May 2001*

police force in time for the search to be effective. An example of where this power may be necessary is during operational deployments overseas. However, the exercise of this power will be subject to retrospective review by a judicial officer. There is more detail about these powers of search in paragraphs 33 and 34 below.

19. The Police and Criminal Evidence Act 1984 allows the Secretary of State to use subordinate legislation to apply a number of the civilian powers of investigation to the investigation of offences under the SDAs with appropriate modifications. Some of the changes outlined above fell outside this order-making power and, to that extent, primary legislation was required to provide a coherent system of investigation.