

ARMED FORCES ACT 2001

EXPLANATORY NOTES

THE ACT - COMMENTARY ON SECTIONS

Part 2 – Powers of Entry, Search and Seizure

Section 10: Search upon arrest

42. This section allows a person who makes an arrest under the SDAs, or a Service policeman, to search the person arrested if he has reasonable grounds for believing that that person may be a danger to himself or others. The section corresponds to subsections 32(1) and 32(2)(a) of the Police and Criminal Evidence Act 1984.
43. The section also allows a Service policeman to search a person if he has reasonable grounds for believing that that person may be concealing something which may assist him to escape or something which may be evidence of an offence. Searches must not go beyond what is reasonably necessary, and the section does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves, but it does allow the search of a person's mouth. Anything found by a Service policeman during such a search may be seized and retained, other than an item subject to legal privilege, if the Service policeman has reasonable grounds for believing that it may be used by the person searched to assist him to escape, that it is evidence of an offence, or that it has been obtained as a result of committing an offence.
44. Where an arrest is made by a person other than a Service policeman, the commanding officer of the arrested person may order the person making the arrest to undertake a search. In that case the commanding officer must have reasonable grounds for believing that that person may be concealing something which may assist him to escape or something which may be evidence of an offence. A commanding officer may instead leave the decision to search to the discretion of the person making the arrest. Then, the person effecting the arrest may only undertake a search if he has reasonable grounds for believing that the person under arrest may be concealing anything which may assist him to escape or anything which may be evidence of an offence. These searches are subject to the same limitations that apply to searches carried out by Service policemen.
45. The commanding officer may only authorise the search of a person if he has reasonable grounds for believing that it is likely that the person arrested would escape, or would conceal or destroy evidence, before the assistance of a Service or civilian policeman could be obtained.
46. This section also provides for the making, by order, of provisions equivalent to the powers under section 32 of the Police and Criminal Evidence Act 1984 to enter and search premises. The section also allows the Defence Council to make regulations in relation to the delegation of the commanding officer's powers.