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STATUTORY INSTRUMENTS

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**2006 No. 2015**

**DEFENCE**

**The Police and Criminal Evidence Act 1984  
(Application to the Armed Forces) Order 2006**

*Made* - - - - *24th July 2006*  
*Laid before Parliament* *27th July 2006*  
*Coming into force* - - *31st December 2006*

The Secretary of State makes the following Order in exercise of the powers conferred on him by section 113(1) of the Police and Criminal Evidence Act 1984 (“the Act”) (1) and section 31(3) of the Armed Forces Act 2001 (2).

**Citation, commencement and interpretation**

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 2006 and shall come into force on the 31st December 2006.

**Application**

2.—(1) The provisions of the Act which are specified in column 1 of Schedule 1 to this Order shall apply to investigations under the service discipline Acts of offences conducted by service policemen and to persons held in arrest in connection with such an investigation, subject to the modifications specified in column 2 of that Schedule.

(2) A service policeman means, for these purposes, a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police, the Royal Air Force Police or the staff of the Royal Air Force Provost Marshal.

(3) The service discipline Acts are the Army Act 1955(3), the Air Force Act 1955(4) and the Naval Discipline Act 1957(5).

(4) This Order applies wherever the investigation takes place.

3. For the purposes of this Order, Schedule 3 shall have effect.

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(1) 1984 c.60.  
(2) 2001 c.19.  
(3) 1955 c.18.  
(4) 1955 c.19.  
(5) 1957 c.53.

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## **Revocation**

**4.** The Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 1997(6) is revoked.

24th July 2006

*Tom Watson*  
Parliamentary Under Secretary of State  
Ministry of Defence

SCHEDULE 1

Article 2(1)

Application and Modification of the Police and Criminal Evidence Act 1984

<i>Column 1</i>	<i>Column 2</i>
<i>Provisions applied</i>	<i>Modifications</i>
In section 54—	
subsection (1)	(i) for “The custody officer at a police station” substitute “A service policeman”; (ii) for paragraph (a) substitute “brought to a service police establishment under arrest or after being committed to custody on the order of a judicial officer; or”; and (iii) for paragraph (b) substitute “arrested at a service police establishment.”;
subsection (2)	(i) for “custody officer” substitute “service policeman”; and (ii) after “recorded” insert “in writing”;
subsection (3)	for “custody officer” substitute “service policeman”;
subsection (4)	for “the custody officer” substitute “a service policeman”;
subsection (5)	
subsection (6)	for “custody officer” wherever it appears substitute “service policeman”;
subsection (6A)	for “police station or is in police detention otherwise than at a police station” substitute “service police establishment”;
subsections (6B) and (6C)	for “constable” wherever it appears substitute “service policeman”;
subsection (7)	
subsection (8)	(i) at the beginning of the subsection insert the words “Subject to subsection (9),”; and (ii) for “constable” substitute “service policeman”;
subsection (9)	(i) for “constable” substitute “service policeman”; and (ii) after “searched” insert “but where a service policeman of the same sex is not readily available a search may be carried out by an officer, warrant officer, non-commissioned officer or leading rate who is of the same sex as the person searched and is acting under the direction of a service policeman”.
In section 54A—	
subsection (1)	(i) for “officer of at least the rank of inspector” substitute “authorising service policeman”; and (ii) for “detained in a police station” substitute “in custody at a service police establishment”;
subsections (2), (3) and (4)	for “officer” wherever it occurs substitute “authorising service policeman”;
subsection (5)	
subsection (6)	for “constables” substitute “service policemen”;

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Column 1	Column 2
subsections (7) and (8)	
subsection (9)	in paragraph (a) for “the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution” substitute “the detection, investigation or prosecution of offences under the service discipline Acts”;
subsections (11), (12) and (13)	
In section 55—	
subsection (1)	<ul style="list-style-type: none"> <li>(i) for “officer of at least the rank of inspector” substitute “authorising service policeman”;</li> <li>(ii) in paragraph (a) for “police detention” where it first appears substitute “custody”; and</li> <li>(iii) in paragraph (a)(ii) for “police detention or in the custody of a court” substitute “custody”;</li> </ul>
subsections (2) and (3)	for “officer” wherever it occurs substitute “authorising service policeman”;
subsection (3A)	
subsection (3B)	for “an appropriate officer” substitute the words “a service policeman”;
subsection (4)	
subsection (5)	for “officer of at least the rank of inspector” substitute “authorising service policeman”;
subsections (6) and (7)	for “constable” wherever it occurs substitute “service policeman”;
subsections (8) and (9)	for “police station” wherever it appears substitute the words “service police establishment”;
subsection (10)	for “the custody record relating to him shall state” substitute “a record shall be made in writing by a service policeman stating”;
subsection (10A)	for “the custody record relating to that person shall also state” substitute “a record shall be made in writing by a service policeman stating”;
subsection (11)	
subsection (12)	for “The custody officer at a police station” substitute “A service policeman”
subsection (13)	
subsection (13A)	<ul style="list-style-type: none"> <li>(i) for paragraph (b) substitute “and”; and</li> <li>(ii) in paragraph (c) delete “or jury”;</li> </ul>
subsection (17)	<ul style="list-style-type: none"> <li>(i) in the definition of “the appropriate criminal intent” after the word “offence” insert “under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, consisting of a civil offence”, delete “(a)”, delete “or” and delete paragraph (b);</li> <li>(ii) delete the definition of “appropriate officer”;</li> </ul>

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<i>Column 1</i>	<i>Column 2</i>
	(iii) after the definition of “Class A drug” insert: “court” shall include a court-martial and summary appeal Court under any of the service discipline Acts, Standing Civilian Courts under section 6 of the Armed Forces Act 1976 <sup>(7)</sup> and the Courts-Martial Appeal Court under the Courts-Martial (Appeals) Act 1968 <sup>(8)</sup>
	(iv) for “officer” in the definition of “drug offence search” substitute “authorising service policeman”; and
	(v) after “nurse” in the definition of “suitably qualified person” insert “; or (c) a member of the Royal Naval Medical Branch.”.
In section 55A—	
subsection (1)	(i) for “officer of at least the rank of inspector” substitute “authorising service policeman”; (ii) for “police detention” substitute “custody”; and (iii) for “the officer” substitute “the authorising service policeman”;
subsection (2)	
subsection (3)	for “an appropriate officer” substitute “a service policeman”;
subsection (4)	
subsection (5)	for “The custody record of the person must also state” substitute “A record shall be made in writing by a service policeman stating”;
subsection (6)	
subsection (9)	(i) for paragraph (b) substitute “and”; and (ii) in paragraph (c) delete “or jury”;
subsection (10)	(i) delete “, “appropriate officer”“; and (ii) after “above” add “as amended by this Order”.
In section 56—	
subsection (1)	for “police station” substitute “service police establishment”;
subsection (2)	(i) in paragraph (a) for “police detention” substitute “custody”; (ii) in paragraph (a) for “an indictable offence” substitute “a serious service offence”; and (iii) in paragraph (b) for “officer of at least the rank of inspector” substitute “authorising service policeman”;
subsection (3)	for the words after “hours” substitute “from the time of his arrest”;
subsection (4)	for “officer” substitute “authorising service policeman”;
subsection (5)	(i) omit “Subject to subsection (5A) below,”; (ii) for “officer” substitute “authorising service policeman”; and (iii) in paragraph (a) for “an indictable offence” substitute “a serious service offence”;
subsection (6)	(i) in paragraph (a) for “detained person” substitute “person in custody”; and

<sup>(7)</sup> 1976 c.52.

<sup>(8)</sup> 1968 c.20.

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Column 1	Column 2
	(ii) in paragraph (b) for “noted on his custody record” substitute “recorded in writing by a service policeman”;
subsection (7)	
subsection (8)	for “detained at a police station” substitute “held in custody at a service police establishment”;
subsection (9)	
In section 58—	
subsection (1)	(i) for “police station” substitute “service police establishment”; and (ii) for “solicitor” substitute “legal adviser”;
subsection (2)	(i) omit “Subject to subsection (3) below,”; and (ii) for “the custody record” substitute “writing by a service policeman”;
subsection (4)	for “solicitor” substitute “legal adviser”;
subsection (5)	(i) for “solicitor” substitute “legal adviser”; and (ii) for the words after “hours” substitute “from the time of his arrest”;
subsection (6)	(i) in paragraph (a) for “police detention” substitute “custody”; (ii) in paragraph (a) for “an indictable offence” substitute “a serious service offence”; and (iii) in paragraph (b) for “officer of at least the rank of superintendent” substitute “authorising service policeman”;
subsection (7)	for “officer” substitute “authorising service policeman”;
subsection (8)	(i) omit “Subject to subsection (8A) below,”; (ii) for “officer” substitute “authorising service policeman”; (iii) for “detained” substitute “in custody”; and (iv) in paragraph (a) for “an indictable offence” substitute “a serious service offence”;
subsection (9)	(i) in paragraph (a) for “detained person” substitute “person in custody”; and (ii) in paragraph (b) for “noted on his custody record” substitute “recorded in writing by a service policeman”;
subsections (10) and (11)	
In section 61—	
subsection (1)	
subsection (2)	for “police station” substitute “service police establishment”;
subsection (3)	(i) for “detained” wherever it appears substitute “in custody”; (ii) for “police station” substitute “service police establishment”; (iii) in paragraph (a) for “recordable offence” substitute “recordable service offence”; and (iv) in paragraph (b) for “the police” substitute “a service policeman”;
subsection (3A)	for “the police” substitute “a service policeman”;
subsection (4)	(i) for “detained” substitute “in custody”; (ii) for “police station” substitute “service police establishment”;

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Column 1	Column 2
	(iii) in paragraph (a) for “recordable offence” substitute “recordable service offence”; and (iv) in paragraph (b) for “the police” substitute “ a service policeman”;
subsection (6)	(i) omit “(a)” and for the words after “convicted” substitute “or found guilty of a recordable service offence”; and (ii) omit paragraphs (b) and (c);
subsection (7)	in paragraph (b) after “recorded” insert “in writing by a service policeman”;
subsection (7A)	(i) for “police station” substitute “service police establishment”; (ii) in paragraph (a) for “an officer” substitute “a service policeman”; and (iii) in paragraph (b) after “recorded” insert “in writing by a service policeman”;
subsection (8)	(i) for “detained at a police station” substitute “in custody at a service police establishment”; and (ii) after “recorded” substitute “in writing by a service policeman”;
subsection (8B)	(i) for “detained at a police station” substitute “in custody at a service police establishment”; and (ii) for “constable” substitute “service policeman”;
subsection (10)	
In section 61A—	
subsection (1)	
subsection (2)	for “at a police station” substitute “at a service police establishment”;
subsection (3)	(i) for “detained at a police station” substitute “in custody at a service police establishment”; (ii) in paragraph (a) for “detained” substitute “in custody”; (iii) in paragraph (a) for “recordable offence” wherever it appears substitute “recordable service offence”; and (iv) in paragraph (b) for “the police” substitute “a service policeman”;
subsection (4)	for “the police” substitute “a service policeman”;
subsection (5)	(i) for “police station” substitute “service police establishment”; (ii) in paragraph (a) for “an officer” substitute “a service policeman”; (iii) in paragraph (b) after “recorded” insert “in writing by a service policeman”; and (iv) in paragraph (b) delete the words after “been taken”;
subsection (6)	in paragraph (b) for “on his custody record” substitute “in writing by a service policeman”;
subsection (7)	(i) for “detained at a police station” substitute “in custody at a service police establishment”; and (ii) for “constable” substitute “service policeman”;
subsection (8)	omit “(a) arrested or detained under the terrorism provisions; (b)”.
In section 62—	
subsection (1)	(i) omit “Subject to section 63B below.”;

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<i>Column 1</i>	<i>Column 2</i>
	(ii) for “in police detention” substitute “in custody at a service police establishment”; and
	(iii) in paragraph (a) for “a police officer of at least the rank of inspector” substitute “an authorising service policeman”;
subsection (1A)	(i) for “in police detention” substitute “in custody at a service police establishment”; and
	(ii) in paragraph (a) for “a police officer of at least the rank of inspector” substitute “an authorising service policeman”;
subsection (2)	(i) for “officer” substitute “authorising service policeman”; and
	(ii) in paragraph (a) for “recordable offence” substitute “recordable service offence”;
subsection (3)	for “officer” substitute “authorising service policeman”;
subsection (4)	
subsection (5)	for “an officer” substitute “a service policeman”;
subsection (6)	
subsection (7)	after “recorded” insert “in writing by a service policeman”;
subsection (7A)	(i) for “police station” substitute “service police establishment”;
	(ii) in paragraph (a) for “an officer” substitute “a service policeman”;
	and
	(iii) in paragraph (b) after “recorded” insert “in writing by a service policeman”;
subsection (9)	
subsection (9A)	after “medical practitioner;” insert “(aa) a member of a service medical authority;”;
subsection (10)	(i) omit “(i) whether to commit that person for trial; or (ii)”;
	(ii) omit paragraph (aa);
	(iii) delete “or jury”; and
	(iv) after “proper” add “and “court” shall have the same meaning as applied by this order in relation to section 55(17).”;
subsection (11)	for the words after “provisions of” substitute “sections 5 to 10 of the Road Traffic Act 1988 <sup>(9)</sup> as applied to persons subject to the service discipline Acts by section 184 of that Act, to the provision of a sample for drug testing nor to the provision of a sample under section 32 of the Armed Forces Act 2001 <sup>(10)</sup> ”.
In section 63—	
subsections (1), (2) and (2A)	
subsection (2B)	(i) for “in police detention” substitute “in custody at a service police establishment”; and
	(ii) for “recordable offence” substitute “recordable service offence”;
subsection (2C)	in paragraph (a) for “the police” substitute “a service policeman”;

<sup>(9)</sup> 1988 c.52.

<sup>(10)</sup> 2001 c.19.



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Column 1	Column 2
subsection (3)	(i) in paragraph (a) for “by the police on the authority of a court” substitute “on the order of a judicial officer”; and (ii) in paragraph (b) for “officer of at least the rank of inspector” substitute “authorising service policeman”;
subsection (3A)	(i) for “in police detention or held in custody by the police on the authority of a court” substitute “in custody at a service police establishment after arrest or held in custody during court martial proceedings”; (ii) in paragraph (a) for “recordable offence” substitute “recordable service offence”; and (iii) for “the police” substitute “a service policeman”;
subsection (3B)	for “recordable offence” substitute “recordable service offence”;
subsection (3C)	for the words after “whom” substitute “section 116A of the Army Act 1955(11), section 116A of the Air Force Act 1955(12) or section 63A of the Naval Discipline Act 1957(13) applies and he has been made the subject of a hospital order.”;
subsection (4)	(i) for “officer” substitute “authorising service policeman”; and (ii) in paragraph (a) for “recordable offence” substitute “recordable service offence”;
subsections (5) and (5A)	for “officer” wherever it appears substitute “authorising service policeman”;
subsection (6)	for “an officer” substitute “a service policeman”;
subsection (7)	
subsections (8) and (8A)	after “recorded” wherever it appears insert “in writing by a service policeman”;
subsection (8B)	(i) for “police station” substitute “service police establishment”; (ii) in paragraph (a) for “an officer” substitute “a service policeman”; and (iii) in paragraph (b) after “recorded” insert “in writing by a service policeman”;
subsection (9ZA)	for “constable” substitute “service policeman”;
subsection (11)	
In section 63A—	
subsection (1)	for “recordable offence” substitute “recordable service offence”;
subsections (1A), (1B), (1C), (1D) and (2)	
subsection (3)	after “applies” add “or in other places used for the accommodation of persons held in service custody”;
subsection (4)	(i) for “constable” substitute “service policeman”;

(11) 1955 c.18.

(12) 1955 c.19.

(13) 1957 c.53.

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Column 1	Column 2
	<ul style="list-style-type: none"> <li>(ii) after “require a person” insert “who is subject to a service discipline Act and”;</li> <li>(iii) for “in police detention nor held in custody by the police on the authority of a court” substitute “in custody at a service police establishment nor held in custody during court-martial proceedings”;</li> <li>(iv) for “police station” substitute “service police establishment while so subject”;</li> <li>(v) for “recordable offence” wherever it appears substitute “recordable service offence”;</li> <li>(vi) in paragraph (a) for “the police” substitute “a service policeman”;</li> <li>(vii) in paragraph (b) after “been convicted” insert “or found guilty”; and</li> <li>(viii) in paragraph (b) after “conviction” wherever it appears insert “or finding of guilt”;</li> </ul>
subsection (5)	<ul style="list-style-type: none"> <li>(i) for “police station” substitute “service police establishment”;</li> <li>(ii) for “the appropriate officer” wherever it appears substitute “a service policeman”; and</li> <li>(iii) in paragraph (b) after “conviction” insert “or finding of guilt”;</li> </ul>
subsection (6)	
subsection (7)	for “constable” substitute “service policeman”.
In section 64—	
subsection (1A)	for the words after “related to” substitute “the detection, investigation or prosecution of offences under the service discipline Acts.”;
subsection (1B)	<ul style="list-style-type: none"> <li>(i) in paragraphs (a) and (b), after “person” add “for purposes related to the detection, investigation or prosecution of offences under the service discipline Acts”; and</li> <li>(ii) omit paragraphs (c) and (d);</li> </ul>
subsection (3)	
subsection (3AA)	in paragraph (a) after “convicted” add “or found guilty”;
subsection (3AB)	<ul style="list-style-type: none"> <li>(i) delete “Subject to subsection (3AC) below,”; and</li> <li>(ii) after “from the sample” substitute “shall, subject to subsection (1B), be used for a purpose related to an investigation or prosecution of an offence conducted under any of the service discipline Acts”;</li> </ul>
subsection (3AC)	for paragraph (b) substitute “and”;
subsection (3AD)	
subsection (5)	in paragraph (b) for “chief officer of police” substitute “service policeman”;
subsection (6)	
subsection (6A)	for “the responsible chief officer of police” substitute “a service policeman not below the rank of Lieutenant (Royal Navy), Captain (Army) or Flight Lieutenant (Royal Air Force) answerable for the maintenance of that computerised fingerprint record”.
In section 64A—	
subsection (1)	for “detained at a police station” substitute “in custody at a service police establishment”;

<i>Column 1</i>	<i>Column 2</i>
subsection (1A)	(i) for “falling within subsection (1B) below” substitute “who has been arrested by a service policeman for an offence”; (ii) for “the relevant event referred to in subsection (1B)” substitute “the arrest”; and (iii) for “police station” substitute “service police establishment”;
subsection (2)	
subsection (3)	for “constables” substitute “service policemen”;
subsection (4)	in paragraph (a) for “the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution or to the enforcement of a sentence” substitute “the detection, investigation or prosecution of offences under the service discipline Acts”;
subsections (6), (6A) and (7)	
In section 65—	
subsection (1)	(a) insert the following definitions— (i) after the definition of “appropriate consent” insert: ““authorising service policeman” shall be construed in accordance with subsections (2A) and (3); “custody” means custody under any of the service discipline Acts” (ii) after the definition of “intimate search” insert: ““legal adviser” means— (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 <sup>(14)</sup> ; (b) an advocate or Solicitor in Scotland; (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or (d) a person having in any Commonwealth country or territory outside the United Kingdom rights and duties similar to those of a barrister or solicitor in England and subject to punishment or disability for a breach of professional rules;”; (iii) after the definition of “non-intimate sample” insert: ““recordable service offence” means an offence contrary to section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 for which the corresponding civil offence is a recordable offence <sup>(15)</sup> and the offences listed in Schedule 2;”; (iv) after the definition of “registered health care professional” insert: ““serious service offence” means:

<sup>(14)</sup> 1990 c.41.

<sup>(15)</sup> See Police and Criminal Evidence Act 1984 (1984 c.60), section 27, and the National Police Records (Recordable Offences) Regulations 2000 (S.I. 2000/1139, amended by S.I 2003/2823).

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Column 1	Column 2
	<p>(a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 for which the corresponding civil offence is triable on indictment; and</p> <p>(b) an offence under any other provision of the service discipline Acts which, if preferred under the Army Act 1955, could not be dealt with summarily under that enactment<sup>(16)</sup>;</p> <p>“service discipline Acts” means the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957;</p> <p>“service medical authority” means the Royal Naval Medical Branch, the Royal Naval Dental Branch, Queen Alexandra’s Royal Naval Nursing Service, the Royal Army Medical Corps, the Royal Army Dental Corps, Queen Alexandra’s Royal Army Nursing Corps, the Royal Air Force Medical Branch, the Royal Air Force Dental Branch and Princess Mary’s Royal Air Force Nursing Service;</p> <p>“service police establishment” means a building, office, tent, cabin or other facility used by a service policeman in connection with the performance of his duties;</p> <p>“service policeman” means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police, the Royal Air Force Police or the staff of the Royal Air Force Provost Marshal;”;</p> <p>(b) delete the definitions of “the terrorism provisions” and “terrorism”;</p>
subsection (1A)	
subsection (2)	
	after subsection (2) add—
	<p>“(2A) Subject to subsection (3), no person shall act as an authorising service policeman unless he is a service policeman of or above the rank of Lieutenant (Royal Navy), Captain (Army) or Flight Lieutenant (Royal Air Force).”</p>
	<p>“(3) In any case where it is not practicable to comply with the provisions of subsection (2A) above, any service policeman may act as an authorising service policeman so long as he is senior in rank to the service policeman seeking authorisation.”.</p>
In section 117—	for “constable”, “police officer” or “officer” wherever they appear substitute “service policeman”.

<sup>(16)</sup> The offences capable of summary disposal under the Army Act 1955 are listed in regulation 9 of the Custody and Summary Dealing (Army) Regulations 2000 printed in Part 1B of the Manual of Military Law, 1972 Edition (The Stationery Office) at page 667.

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## SCHEDULE 2

Schedule 1

## List of service offences which are also recordable service offences

The offences under the service discipline Acts listed in column 1 below, contrary to the sections listed in columns 2 to 4, shall be recordable service offences under the definition of that term in Schedule 1.

<i>Offence</i>	<i>Army 1955</i>	<i>Act</i>	<i>Air Force Act 1955</i>	<i>Naval Discipline Act 1957</i>
misconduct in action	section 24		section 24	section 2
assisting the enemy	section 25		section 25	section 3
obstructing operations, giving false air signals etc	section 26		section 26	section 4
looting	section 30		section 30	section 5
mutiny	section 31		section 31	section 9
failure to suppress mutiny	section 32		section 32	section 10
insubordinate behaviour	section 33		section 33	section 11
desertion	section 37		section 37	section 16
dangerous flying	section 49		section 49	section 20
damage to, and loss of, public or service property etc	section 44		section 44	section 29
damage to, and loss of, Her Majesty's aircraft or aircraft material	section 44A		section 44A	section 29A
making of false documents	section 62		section 62	section 35
ill-treatment of a subordinate	section 65		section 65	section 36A
disgraceful conduct	section 66		section 66	section 37
Conduct to prejudice of discipline	section 69		section 69	section 39
attempts to commit any of the above offences	section 68		section 68	section 40
aiding and abetting, etc and inciting any of the above offences other than attempts	section 68A		section 68A	section 41

## SCHEDULE 3

Article 3

Part V of Police and Criminal Evidence Act 1984 as modified by the Police and Criminal Evidence Act (Application to the Armed Forces) Order 2006

## Searches of detained persons

“54.—(1) A service policeman shall ascertain everything which a person has with him when he is—

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- (a) brought to a service police establishment under arrest or after being committed to custody on the order of a judicial officer; or
  - (b) arrested at a service police establishment.
- (2) The service policeman may record or cause to be recorded in writing all or any of the things which he ascertains under subsection (1).
- (3) Subject to subsection (4) below, a service policeman may seize and retain any such thing or cause any such thing to be seized and retained.
- (4) Clothes and personal effects may only be seized if a service policeman—
- (a) believes that the person from whom they are seized may use them—
    - (i) to cause physical injury to himself or any other person;
    - (ii) to damage property;
    - (iii) to interfere with evidence; or
    - (iv) to assist him to escape; or
  - (b) has reasonable grounds for believing that they may be evidence related to an offence.
- (5) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is—
- (a) violent or likely to become violent; or
  - (b) incapable of understanding what is said to him.
- (6) Subject to subsection (7) below, a person may be searched if the service policeman considers it necessary to enable him to carry out his duty under subsection (1) above and to the extent that the service policeman considers necessary for that purpose.
- (6A) A person who is in custody at a service police establishment may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in subsection (4)(a) above.
- (6B) Subject to subsection (6C) below, a service policeman may seize and retain, or cause to be seized and retained, anything found on such a search.
- (6C) A service policeman may only seize clothes and personal effects in the circumstances specified in subsection (4) above.
- (7) An intimate search may not be conducted under this section.
- (8) Subject to subsection (9), a search under this section shall be carried out by a service policeman.
- (9) The service policeman carrying out a search shall be of the same sex as the person searched but where a service policeman of the same sex is not readily available a search may be carried out by an officer, warrant officer, non-commissioned officer or leading rate who is of the same sex as the person searched and is acting under the direction of a service policeman.

#### **Searches and examination to ascertain identity**

- 54A.**—(1) If an authorising service policeman authorises it, a person who is in custody at a service police establishment may be searched or examined, or both—
- (a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or
  - (b) for the purpose of facilitating the ascertainment of his identity.
- (2) An authorising service policeman may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if—

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- (a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or
  - (b) it is not practicable to obtain such consent.
- (3) An authorising service policeman may only give an authorisation under subsection (1) in a case in which subsection (2) does not apply if—
- (a) the person in question has refused to identify himself; or
  - (b) the authorising service policeman has reasonable grounds for suspecting that that person is not who he claims to be.
- (4) An authorising service policeman may give an authorisation under subsection (1) orally or in writing, but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (5) Any identifying mark found on a search or examination under this section may be photographed—
- (a) with the appropriate consent; or
  - (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.
- (6) Where a search or examination may be carried out under this section, or a photograph may be taken under this section, the only persons entitled to carry out the search or examination, or to take the photograph, are service policemen.
- (7) A person may not under this section carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.
- (8) An intimate search may not be carried out under this section.
- (9) A photograph taken under this section—
- (a) may be used by, or disclosed to, any person for any purpose related to the detection, investigation or prosecution of offences under the service discipline Acts; and
  - (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.
- (11) In this section—
- (a) references to ascertaining a person’s identity include references to showing that he is not a particular person; and
  - (b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.
- (12) In this section “mark” includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any person’s case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.
- (13) Nothing in this section applies to a person arrested under an extradition arrest power.

### **Intimate searches**

**55.**—(1) Subject to the following provisions of this section, if an authorising service policeman has reasonable grounds for believing—

- (a) that a person who has been arrested and is in custody may have concealed on him anything which—
  - (i) he could use to cause physical injury to himself or others; and
  - (ii) he might so use while he is in custody; or
- (b) that such a person—

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- (i) may have a Class A drug concealed on him; and
- (ii) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise an intimate search of that person.

(2) An authorising service policeman may not authorise an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(3) An authorising service policeman may give an authorisation under subsection (1) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(3A) A drug offence search shall not be carried out unless the appropriate consent has been given in writing.

(3B) Where it is proposed that a drug offence search be carried out, a service policeman shall inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it; and
- (b) of the grounds for giving the authorisation.

(4) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(5) Except as provided by subsection (4) above, an intimate search shall be by way of examination by a suitably qualified person unless an authorising service policeman considers that this is not practicable.

(6) An intimate search which is not carried out as mentioned in subsection (5) above shall be carried out by a service policeman.

(7) A service policeman may not carry out an intimate search of a person of the opposite sex.

(8) No intimate search may be carried out except—

- (a) at a service police establishment;
- (b) at a hospital;
- (c) at a registered medical practitioner's surgery; or
- (d) at some other place used for medical purposes.

(9) An intimate search which is only a drug offence search may not be carried out at a service police establishment.

(10) If an intimate search of a person is carried out a record shall be made in writing by a service policeman stating—

- (a) which parts of his body were searched; and
- (b) why they were searched.

(10A) If the intimate search is a drug offence search, a record shall be made in writing by a service policeman stating—

- (a) the authorisation by virtue of which the search was carried out;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given.

(11) The information required to be recorded by subsections (10) and (10A) above shall be recorded as soon as practicable after the completion of the search.

(12) A service policeman may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained—



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- (a) if he believes that the person from whom it is seized may use it—
  - (i) to cause physical injury to himself or any other person;
  - (ii) to damage property;
  - (iii) to interfere with evidence; or
  - (iv) to assist him to escape; or
- (b) if he has reasonable grounds for believing that it may be evidence relating to an offence.

(13) Where anything is seized under this section, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

(13A) Where the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether there is a case to answer; and
- (c) the court in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(17) In this section—

“the appropriate criminal intent” means an intent to commit an offence under section 70 of the Army Act 1955(17), section 70 of the Air Force Act 1955(18) or section 42 of the Naval Discipline Act 1957(19) consisting of a civil offence under section 5(3) of the Misuse of Drugs Act 1971 (possession of controlled drug with intent to supply to another);

“Class A drug” has the meaning assigned to it by section 2(1)(b) of the Misuse of Drugs Act 1971;

“court” shall include a court-martial and summary appeal Court under any of the service discipline Acts, Standing Civilian Courts under section 6 of the Armed Forces Act 1976(20) and the Courts-Martial Appeal Court under the Courts-Martial (Appeals) Act 1968(21);

“drug offence search” means an intimate search for a Class A drug which an authorising service policeman has authorised by virtue of subsection (1)(b) above; and

“suitably qualified person” means—

- (a) a registered medical practitioner; or
- (b) a registered nurse; or
- (c) a member of the Royal Naval Medical Branch.

### **X-rays and ultrasound scans**

**55A.**—(1) If an authorising service policeman has reasonable grounds for believing that a person who has been arrested for an offence and is in custody—

- (a) may have swallowed a Class A drug, and

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(17) 1955 c.18.

(18) 1955 c.19.

(19) 1957 c.53.

(20) 1976 c.52.

(21) 1968 c.20.

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(b) was in possession of it with the appropriate criminal intent before his arrest, the authorising service policeman may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).

(2) An x-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.

(3) If it is proposed that an x-ray is taken or an ultrasound scan is carried out, a service policeman must inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it, and
- (b) of the grounds for giving the authorisation.

(4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—

- (a) a hospital,
- (b) a registered medical practitioner's surgery, or
- (c) some other place used for medical purposes.

(5) A record shall be made in writing by a service policeman stating—

- (a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out,
- (b) the grounds for giving the authorisation, and
- (c) the fact that the appropriate consent was given.

(6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out (as the case may be).

(9) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether there is a case to answer, and
- (c) the court, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(10) In this section, “the appropriate criminal intent”, “Class A drug” and “suitably qualified person” have the same meanings as in section 55 above as amended by this Order.

### **Right to have someone informed when arrested**

**56.**—(1) Where a person has been arrested and is being held in custody in a service police establishment or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

(2) Delay is only permitted—

- (a) in the case of a person who is in custody for a serious service offence; and
- (b) if an authorising service policeman authorises it.

(3) In any case the person in custody must be permitted to exercise the right conferred by subsection (1) above within 36 hours from the time of his arrest.

(4) An authorising service policeman may give an authorisation under subsection (2) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

- (5) An authorising service policeman may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest—
- (a) will lead to interference with or harm to evidence connected with a serious service offence or interference with or physical injury to other persons; or
  - (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
  - (c) will hinder the recovery of any property obtained as a result of such an offence.
- (6) If a delay is authorised—
- (a) the person in custody shall be told the reason for it; and
  - (b) the reason shall be recorded in writing by a service policeman.
- (7) The duties imposed by subsection (6) above shall be performed as soon as is practicable.
- (8) The rights conferred by this section on a person held in custody at a service police establishment or other premises are exercisable whenever he is transferred from one place to another; and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.
- (9) There may be no further delay in permitting the exercise of the right conferred by subsection (1) above once the reason for authorising delay ceases to subsist.

#### **Access to legal advice**

**58.**—(1) A person arrested and held in custody in a service police establishment or other premises shall be entitled, if he so requests, to consult a legal adviser privately at any time.

(2) A request under subsection (1) above and the time at which it was made shall be recorded in writing by a service policeman.

(4) If a person makes such a request, he must be permitted to consult a legal adviser as soon as is practicable except to the extent that delay is permitted by this section.

(5) In any case he must be permitted to consult a legal adviser within 36 hours from the time of his arrest.

(6) Delay in compliance with a request is only permitted—

- (a) in the case of a person who is in custody for a serious service offence; and
- (b) if an authorising service policeman authorises it.

(7) An authorising service policeman may give an authorisation under subsection (6) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) An authorising service policeman may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by subsection (1) above at the time when the person in custody desires to exercise it—

- (a) will lead to interference with or harm to evidence connected with a serious service offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(9) If delay is authorised—

- (a) the person in custody shall be told the reason for it; and
- (b) the reason shall be recorded in writing by a service policeman.

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(10) The duties imposed by subsection (9) above shall be performed as soon as is practicable.

(11) There may be no further delay in permitting the exercise of the right conferred by subsection (1) above once the reason for authorising delay ceases to subsist.

### **Fingerprinting**

**61.**—(1) Except as provided by this section no person's fingerprints may be taken without the appropriate consent.

(2) Consent to the taking of a person's fingerprints must be in writing if it is given at a time when he is at a service police establishment.

(3) The fingerprints of a person in custody at a service police establishment may be taken without the appropriate consent if—

- (a) he is in custody in consequence of his arrest for a recordable service offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by a service policeman.

(3A) Where a person mentioned in paragraph (a) of subsection (3) or (4) has already had his fingerprints taken in the course of the investigation of the offence by a service policeman, that fact shall be disregarded for the purposes of that subsection if—

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(4) The fingerprints of a person in custody at a service police establishment may be taken without the appropriate consent if—

- (a) he has been charged with a recordable service offence or informed that he will be reported for such an offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by a service policeman.

(6) Any person's fingerprints may be taken without the appropriate consent if he has been convicted or found guilty of a recordable service offence.

(7) In a case where by virtue of subsection (3), (4) or (6) above a person's fingerprints are taken without the appropriate consent—

- (a) he shall be told the reason before his fingerprints are taken; and
- (b) the reason shall be recorded in writing by a service policeman as soon as is practicable after the fingerprints are taken.

(7A) If a person's fingerprints are taken at a service police establishment whether with or without the appropriate consent—

- (a) before the fingerprints are taken, a service policeman shall inform him that they may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded in writing by a service policeman as soon as is practicable after the fingerprints have been taken.

(8) If he is in custody at a service police establishment when the fingerprints are taken, the reason for taking them and, in the case falling within subsection (7A) above, the fact referred to in paragraph (b) of that subsection shall be recorded in writing by a service policeman.

(8B) The power to take the fingerprints of a person in custody at a service police establishment without the appropriate consent shall be exercisable by any service policeman.

(10) Nothing in this section applies to a person arrested under an extradition arrest power.

### **Impressions of footwear**

**61A.**—(1) Except as provided by this section, no impression of a person's footwear may be taken without the appropriate consent.

(2) Consent to the taking of an impression of a person's footwear must be in writing if it is given at a time when he is at a service police establishment.

(3) Where a person is in custody at a service police establishment, an impression of his footwear may be taken without the appropriate consent if—

- (a) he is in custody in consequence of his arrest for a recordable service offence, or has been charged with a recordable service offence, or informed that he will be reported for a recordable service offence; and
- (b) he has not had an impression taken of his footwear in the course of the investigation of the offence by a service policeman.

(4) Where a person mentioned in paragraph (a) of subsection (3) above has already had an impression taken of his footwear in the course of the investigation of the offence by a service policeman, that fact shall be disregarded for the purposes of that subsection if the impression of his footwear taken previously is—

- (a) incomplete; or
- (b) is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) If an impression of a person's footwear is taken at a service police establishment, whether with or without the appropriate consent—

- (a) before it is taken, a service policeman shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded in writing by a service policeman as soon as is practicable after the impression has been taken.

(6) In a case where, by virtue of subsection (3) above, an impression of a person's footwear is taken without the appropriate consent—

- (a) he shall be told the reason before it is taken; and
- (b) the reason shall be recorded in writing by a service policeman as soon as is practicable after the impression is taken.

(7) The power to take an impression of the footwear of a person in custody at a service police establishment without the appropriate consent shall be exercisable by any service policeman.

(8) Nothing in this section applies to any person arrested under an extradition arrest power.

### **Intimate samples**

**62.**—(1) An intimate sample may be taken from a person in custody at a service police establishment only—

- (a) if an authorising service policeman authorises it to be taken; and
- (b) if the appropriate consent is given.

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(1A) An intimate sample may be taken from a person who is not in custody at a service police establishment but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient—

- (a) if an authorising service policeman authorises it to be taken; and
- (b) if the appropriate consent is given.

(2) An authorising service policeman may only give an authorisation under subsection (1) or (1A) above if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a recordable service offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(3) An authorising service policeman may give an authorisation under subsection (1) or (1A) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) The appropriate consent must be given in writing.

(5) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation,

a service policeman shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(6) The duty imposed by subsection (5)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(7) If an intimate sample is taken from a person—

- (a) the authorisation by virtue of which it was taken;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given,

shall be recorded in writing by a service policeman as soon as is practicable after the sample is taken.

(7A) If an intimate sample is taken from a person at a service police establishment—

- (a) before the sample is taken, a service policeman shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded in writing by a service policeman as soon as practicable after the sample has been taken.

(9) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by a registered dentist.

(9A) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by—

- (a) a registered medical practitioner;
- (aa) a member of a service medical authority; or
- (b) a registered health care professional.

(10) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court in determining whether there is a case to answer; and
- (b) the court in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper and “court” shall have the same meaning as applied by this Order in relation to section 55(17).

(11) Nothing in this section applies to the taking of a specimen for the purposes of any of the provisions of sections 5 to 10 of the Road Traffic Act 1988<sup>(22)</sup> as applied to persons subject to the service discipline Acts by section 184 of that Act, to the provision of a sample for drug testing nor to the provision of a sample under section 32 of the Armed Forces Act 2001<sup>(23)</sup>.

### Other samples

**63.**—(1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample must be given in writing.

(2A) A non-intimate sample may be taken from a person without the appropriate consent if two conditions are satisfied.

(2B) The first is that the person is in custody at a service police establishment in consequence of his arrest for a recordable service offence.

(2C) The second is that—

- (a) he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by a service policeman, or
- (b) he has had such a sample taken but it proved insufficient.

(3) A non-intimate sample may be taken from a person without the appropriate consent if—

- (a) he is being held in custody on the order of a judicial officer; and
- (b) an authorising service policeman authorises it to be taken without the appropriate consent.

(3A) A non-intimate sample may be taken from a person (whether or not he is in custody at a service police establishment after arrest or held in custody during court-martial proceedings) without the appropriate consent if—

- (a) he has been charged with a recordable service offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by a service policeman or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(3B) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of a recordable service offence.

(3C) A non-intimate sample may also be taken from a person without the appropriate consent if he is a person to whom section 116A of the Army Act 1955<sup>(24)</sup>, section 116A of the Air Force Act 1955<sup>(25)</sup> or section 63A of the Naval Discipline Act 1957<sup>(26)</sup> applies and he has been made the subject of a hospital order.

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(22) 1988 c.52.

(23) 2001 c.19.

(24) 1955 c.18.

(25) 1955 c.19.

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(4) An authorising service policeman may only give an authorisation under subsection (3) above if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a recordable service offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(5) An authorising service policeman may give an authorisation under subsection (3) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5A) An authorising service policeman shall not give an authorisation under subsection (3) above for the taking from any person of a non-intimate sample consisting of a skin impression if—

- (a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and
- (b) the impression previously taken is not one that has proved insufficient.

(6) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,

a service policeman shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(7) The duty imposed by subsection (6)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If a non-intimate sample is taken from a person by virtue of subsection (3) above—

- (a) the authorisation by virtue of which it was taken; and
- (b) the grounds for giving the authorisation,

shall be recorded in writing by a service policeman as soon as is practicable after the sample is taken.

(8A) In a case where by virtue of subsection (2A), (3A), (3B) or (3C) above a sample is taken from a person without the appropriate consent—

- (a) he shall be told the reason before the sample is taken; and
- (b) the reason shall be recorded in writing by a service policeman as soon as practicable after the sample is taken.

(8B) If a non-intimate sample is taken from a person at a service police establishment whether with or without the appropriate consent—

- (a) before the sample is taken, a service policeman shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded in writing by a service policeman as soon as practicable after the sample has been taken.

(9ZA) The power to take a non-intimate sample from a person without the appropriate consent shall be exercisable by any service policeman.

(11) Nothing in this section applies to a person arrested under an extradition arrest power.



### **Fingerprints and samples: supplementary provisions**

**63A.**—(1) Where a person has been arrested on suspicion of being involved in a recordable service offence or has been charged with such an offence or has been informed that he will be reported for such an offence, fingerprints, impressions of footwear or samples or the information derived from samples taken under any power conferred by this Part of this Act from the person may be checked against—

- (a) other fingerprints, impressions of footwear or samples to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence;
- (b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a) above.

(1A) In subsection (1) above “relevant law-enforcement authority” means—

- (a) a police force;
- (b) the Serious Organised Crime Agency;
- (d) a public authority (not falling within paragraphs (a) to (c)) with functions in any part of the British Islands which consist of or include the investigation of crimes or the charging of offenders;
- (e) any person with functions in any country or territory outside the United Kingdom which—
  - (i) correspond to those of a police force; or
  - (ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;
- (f) any person with functions under any international agreement which consist of or include the investigation of conduct which is—
  - (i) unlawful under the law of one or more places,
  - (ii) prohibited by such an agreement, or
  - (iii) contrary to international law,or the apprehension of persons guilty of such conduct.

(1B) The reference in subsection (1A) above to a police force is a reference to any of the following—

- (a) any police force maintained under section 2 of the Police Act 1996<sup>(27)</sup> (police forces in England and Wales outside London);
- (b) the Metropolitan police force;
- (c) the City of London police force;
- (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967<sup>(28)</sup>;
- (e) the Police Service of Northern Ireland;
- (f) the Police Service of Northern Ireland Reserve;
- (g) the Ministry of Defence Police;

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<sup>(27)</sup> 1996 c.16.

<sup>(28)</sup> 1967 c.77.

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- (h) the Royal Navy Regulating Branch;
- (i) the Royal Military Police;
- (j) the Royal Air Force Police;
- (k) the Royal Marines Police;
- (l) the British Transport Police;
- (m) the States of Jersey Police Force;
- (n) the salaried police force of the Island of Guernsey;
- (o) the Isle of Man Constabulary.

(1C) Where—

- (a) fingerprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which subsection (1) above applies, and
- (b) that person has given his consent in writing to the use in a speculative search of the fingerprints, of the impressions of footwear or of the samples and of the information derived from them,

the fingerprints or impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, impressions of footwear, samples or information mentioned in paragraph (a) or (b) of that subsection.

(1D) A consent given for the purposes of subsection (1C) above shall not be capable of being withdrawn.

(2) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(3) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison or other institution to which the Prison Act 1952 applies or in other places used for the accommodation of persons held in service custody.

(4) Any service policeman may, within the allowed period, require a person who is subject to a service discipline Act and who is neither in custody at a service police establishment nor held in custody during court-martial proceedings to attend a service police establishment while so subject in order to have a sample taken where—

- (a) the person has been charged with a recordable service offence or informed that he will be reported for such an offence and either he has not had a sample taken from him in the course of the investigation of the offence by a service policeman or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or
- (b) the person has been convicted or found guilty of a recordable service offence and either he has not had a sample taken from him since the conviction or finding of guilt or he has had a sample taken from him (before or after his conviction or finding of guilt) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(5) The period allowed for requiring a person to attend a service police establishment for the purpose specified in subsection (4) above is—

- (a) in the case of a person falling within paragraph (a), one month beginning with the date of the charge or of his being informed as mentioned in that paragraph or one month beginning with the date on which a service policeman is informed of the

fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;

- (b) in the case of a person falling within paragraph (b), one month beginning with the date of the conviction or finding of guilt or one month beginning with the date on which a service policeman is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(6) A requirement under subsection (4) above—

- (a) shall give the person at least 7 days within which he must so attend; and
- (b) may direct him to attend at a specified time of day or between specified times of day.

(7) Any service policeman may arrest without a warrant a person who has failed to comply with a requirement under subsection (4) above.

### **Destruction of fingerprints and samples**

#### **64**

(1A) Where—

- (a) fingerprints, impressions of footwear or samples are taken from a person in connection with the investigation of an offence, and
- (b) subsection (3) below does not require them to be destroyed,

the fingerprints, impressions of footwear or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the detection, investigation or prosecution of offences under the service discipline Acts.

(1B) In subsection (1A) above—

- (a) the reference to using a fingerprint or an impression of footwear includes a reference to allowing any check to be made against it under section 63A(1) or (1C) above and to disclosing it to any person for purposes related to the detection, investigation or prosecution of offences under the service discipline Acts;
- (b) the reference to using a sample includes a reference to allowing any check to be made under section 63A(1) or (1C) above against it or against information derived from it and to disclosing it or any such information to any person for purposes related to the detection, investigation or prosecution of offences under the service discipline Acts.

(3) If—

- (a) fingerprints, impressions of footwear or samples are taken from a person in connection with the investigation of an offence; and
- (b) that person is not suspected of having committed the offence,

they must, except as provided in the following provisions of this section, be destroyed as soon as they have fulfilled the purpose for which they were taken.

(3AA) Samples, fingerprints and impressions of footwear are not required to be destroyed under subsection (3) above if—

- (a) they were taken for the purposes of the investigation of an offence of which a person has been convicted or found guilty; and
- (b) a sample, fingerprint or, as the case may be, an impression of footwear was also taken from the convicted person for the purposes of that investigation.

(3AB) Where a person is entitled under subsection (3) above to the destruction of any fingerprint, impression of footwear or sample taken from him (or would be but for

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subsection (3AA) above), neither the fingerprint, nor the impression of footwear, nor the sample, nor any information derived from the sample shall, subject to subsection (1B), be used for a purpose related to an investigation or prosecution of an offence conducted under any of the service discipline Acts.

(3AC) Where a person from whom a fingerprint, impression of footwear or sample has been taken consents in writing to its retention—

- (a) that impression of footwear or sample need not be destroyed under subsection (3) above; and
- (c) that consent shall be treated as comprising a consent for the purposes of section 63A(1C) above;

and a consent given for the purpose of this subsection shall not be capable of being withdrawn.

(3AD) For the purposes of subsection (3AC) above it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint, impression of footwear or sample arises.

(5) If fingerprints or impressions of footwear are destroyed—

- (a) any copies of the fingerprints or impressions of footwear shall also be destroyed; and
- (b) any service policeman controlling access to computer data relating to the fingerprints or impressions of footwear shall make access to the data impossible, as soon as it is practicable to do so.

(6) A person who asks to be allowed to witness the destruction of his fingerprints or impressions of footwear or copies of them shall have a right to witness it.

(6A) If—

- (a) subsection (5)(b) above falls to be complied with; and
- (b) the person to whose fingerprints or impressions of footwear the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him, not later than the end of the period of three months beginning with the day on which he asks for it, by a service policeman not below the rank of Lieutenant (Royal Navy), Captain (Army) or Flight Lieutenant (Royal Air Force) answerable for the maintenance of that computerised fingerprint record or a person authorised by him or on his behalf for the purposes of this section.

### **Photographing of suspects**

**64A.—**(1) A person who is in custody at a service police establishment may be photographed—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(1A) A person who has been arrested by a service policeman for an offence may, on the occasion of the arrest, be photographed elsewhere than at a service police establishment—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(2) A person proposing to take a photograph of any person under this section—

- (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
- (b) if the requirement is not complied with, may remove the item or substance himself.

(3) Where a photograph may be taken under this section, the only persons entitled to take the photograph are service policemen.

(4) A photograph taken under this section—

- (a) may be used by, or disclosed to, any person for any purpose related to the detection, investigation or prosecution of offences under the service discipline Acts; and
- (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(6) References in this section to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

(6A) In this section a “photograph” includes a moving image, and corresponding expressions shall be construed accordingly.

(7) Nothing in this section applies to a person arrested under an extradition arrest power.

#### **Part V – supplementary**

**65.**—(1) In this Part of this Act—

“analysis”, in relation to a skin impression, includes comparison and matching;

“appropriate consent” means—

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

“authorising service policeman” shall be construed in accordance with subsections (2A) and (3);

“custody” means custody under any of the service discipline Acts;

“extradition arrest power” means any of the following—

- (a) a Part 1 warrant (within the meaning given by the Extradition Act 2003) in respect of which a certificate under section 2 of that Act has been issued;
- (b) section 5 of that Act;
- (c) a warrant issued under section 71 of that Act;
- (d) a provisional warrant (within the meaning given by that Act);

“fingerprints”, in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of—

- (a) any of that person’s fingers; or
- (b) either of his palms;

“intimate sample” means—

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from any part of a person’s genitals (including pubic hair) or from a person’s body orifice other than the mouth;

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“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“legal adviser” means—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(29)</sup>;
- (b) an advocate or solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or
- (d) a person having in any Commonwealth country or territory outside the United Kingdom rights and duties similar to those of a barrister or solicitor in England and subject to punishment or disability for a breach of professional rules;

“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
- (d) saliva;
- (e) a skin impression;

“recordable service offence” means an offence contrary to section 70 of the Army Act 1955<sup>(30)</sup>, section 70 of the Air Force Act 1955<sup>(31)</sup> or section 42 of the Naval Discipline Act 1957<sup>(32)</sup> for which the corresponding civil offence is a recordable offence<sup>(33)</sup> and the offences listed in Schedule 2;

“registered dentist” has the same meaning as in the Dentists Act 1984<sup>(34)</sup>;

“registered health care professional” means a person (other than a medical practitioner) who is—

- (a) a registered nurse; or
- (b) a registered member of a health care profession which is designated for the purposes of this paragraph by an order made by the Secretary of State;

“serious service offence” means:

- (a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 for which the corresponding civil offence is triable on indictment; and
- (b) an offence under any other provision of the service discipline Acts which, if preferred under the Army Act 1955, could not be dealt with summarily under that enactment<sup>(35)</sup>;

“service discipline Acts” means the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957;

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<sup>(29)</sup> 1990 c.41.

<sup>(30)</sup> 1955 c.18.

<sup>(31)</sup> 1955 c.19.

<sup>(32)</sup> 1957 c.53.

<sup>(33)</sup> See Police and Criminal Evidence Act 1984 (1984 c.60), section 27, and the National Police Records (Recordable offences) Regulations 2000 (S.I. 2000/1139 amended by S.I.2003/2823).

<sup>(34)</sup> 1984 c.24.

<sup>(35)</sup> The offences capable of summary disposal under the Army Act 1955 are listed in regulation 9 of the Custody and Summary Dealing (Army) Regulations 2000 printed in Part 1B of the Manual of Military Law, 1972 Edition (The Stationery Office) at page 667.

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“service medical authority” means the Royal Naval Medical Branch, the Royal Naval Dental Branch, Queen Alexandra’s Royal Naval Nursing Service, the Royal Army Medical Corps, the Royal Army Dental Corps, Queen Alexandra’s Royal Army Nursing Corps, the Royal Air Force Medical Branch, the Royal Air Force Dental Branch and Princess Mary’s Royal Air Force Nursing Service;

“service police establishment” means a building, office, tent, cabin or other facility used by a service policeman in connection with the performance of his duties;

“service policeman” means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police, the Royal Air Force Police or the staff of the Royal Air Force Provost Marshal;

“skin impression”, in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his foot or of any other part of his body;

“speculative search”, in relation to a person’s fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in section 63A(1) above;

“sufficient” and “insufficient”, in relation to a sample, means (subject to subsection (2) below) sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample;

(1A) A health care profession is any profession mentioned in section 60(2) of the Health Act 1999<sup>(36)</sup> other than the profession of practising medicine and the profession of nursing.

(2) References in this Part of this Act to a sample’s proving insufficient include references to where, as a consequence of—

- (a) the loss, destruction or contamination of the whole or any part of the sample,
- (b) any damage to the whole or a part of the sample, or
- (c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

(2A) Subject to subsection (3), no person shall act as an authorising service policeman unless he is a service policeman of or above the rank of Lieutenant (Royal Navy), Captain (Army) or Flight Lieutenant (Royal Air Force).

(3) In any case where it is not practicable to comply with the provisions of subsection (2A) above, any service policeman may act as an authorising service policeman so long as he is senior in rank to the service policeman seeking authorisation.”

#### **“Power of service policeman to use reasonable force**

**117.** Where any provision of this Act—

- (a) confers a power on a service policeman; and
- (b) does not provide that the power may only be exercised with the consent of some person, other than a service policeman,

the service policeman may use reasonable force, if necessary, in the exercise of the power.”

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(36) 1999 c.8.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order applies Part V of the Police and Criminal Evidence Act 1984 (“the 1984 Act”), subject to the modifications shown in the Schedule, to investigations conducted by service policemen. Section 54 of the 1984 Act requires a service policeman to establish what an arrested person has with him and provides for seizure and retention of things found. It gives the grounds on which clothing and personal effects may be seized, provides for the search of persons in service custody and requires that reasons for the search will normally be given. Section 54A provides in specified circumstances for the examination of arrested persons for marks to establish identity. Authorisation must have been given by a service policeman of specified rank and a photograph may be taken of any mark found.

Section 55 permits a service policeman of specified rank to authorise intimate searches of persons under arrest. There must be reasonable grounds for believing that the person in arrest has something with him that he may use to cause injury or that he has a Class A drug which he intended to supply. The paragraph includes procedural requirements as to the authorisation of searches, the giving of consent, the persons who may conduct the search and as to the written records which must be made. It provides for the seizure and retention of items found. Section 55A permits a service policeman of specified rank to authorise the x-ray or ultrasound examination of a person in arrest who is reasonably believed to have swallowed a class A drug which he previously intended to supply to another. Consent is required but refusal of consent may give rise to the drawing of adverse inferences in subsequent proceedings if appropriate.

Section 56 gives a person in service custody the right, exercisable within a specified period, to have a friend, relative or someone else informed of the fact of his arrest and where he is being detained. It specifies limited grounds on which the exercise of the right can be delayed and stipulates who may authorise such delay. Delay is no longer permissible when the ground for it ceases to apply. The right recurs if the person in arrest is moved elsewhere. Section 58 grants persons being held in service custody the right to request access to legal advice. Such a request must be granted unless a service policeman of specified rank believes that a listed ground for delay exists. At any event, access must be granted within 36 hours of arrest. Delay is no longer permissible when the reason for it has ceased to exist.

Section 61 provides for the taking of fingerprints from a person by the service police with written consent from him or, as the case may be, from his parent or guardian. It also permits a service policeman to take fingerprints without consent from persons in custody before or after charge. In the latter case the person must be given a reason for fingerprinting and must be told that his prints may be used for a speculative search; a service policeman must put these details into a written record. Section 61A permits the taking of impressions of a person’s footwear with, and in certain circumstances without, his consent. If the impression is taken at a service police establishment, whether with or without consent, it may be used thereafter for a speculative search and the person must be informed of this.

Section 62 requires a service policeman to obtain authorisation from a service policeman of specified rank and the consent of the individual before an intimate sample may be taken and specifies who may obtain the sample. It stipulates the conditions that must be met before authorisation can be given and requires that the authorisation, the grounds on which it was given and the consent be recorded in writing. The suspect must be told that the sample may be used for a speculative search; a service policeman must record in writing that he has so informed the suspect. If the suspect refuses to provide the sample, adverse inferences may if appropriate be drawn.



Section 63 provides for the obtaining of non-intimate samples with written consent. Such samples may also, subject to certain conditions, be obtained without consent from persons under arrest for, charged with or convicted of a recordable service offence. Where the person is in arrest before charge, the authority of a service policeman of specified rank is required and the section states the grounds on which that authority may be given and how it is to be recorded. The person required to give the sample must be told of the authorisation and the grounds for it. Such samples may also be obtained from persons who have been made the subject of a hospital order.

Section 63A permits the checking of fingerprints, samples and footwear impressions obtained from persons arrested or reported for a recordable service offence, or information derived from such samples, against fingerprints, samples, footwear impressions or information held by other law enforcement authorities. If the person has not been arrested for or charged with such an offence, his fingerprints, sample, footwear impressions or associated information may only be checked in this way if he has given written consent which, once given, may not be withdrawn. The section also gives a service policeman the power to require a person charged with a recordable service offence who is not in service custody to attend a service police establishment to provide a sample if certain conditions are met. The time for complying with the requirement is specified and a service policeman may arrest without warrant a person who fails to comply.

Section 64 requires the destruction of fingerprints, footwear impressions or samples as soon as they have fulfilled their purpose if the individual is not suspected of having committed the offence. Where he is so suspected, or where he has been convicted of the offence, fingerprints and samples can be retained but may only be used for limited purposes listed in the section. If the person is entitled to the destruction of the fingerprints, footwear impressions or sample, they may not be used in evidence or during investigations and the person can witness the destruction or receive a certificate confirming that destruction has taken place. A person may, however, consent to the retention by the service police of his fingerprints or sample.

Under section 64A, a service policeman may photograph persons held in service custody with or without consent. Items worn on the head or face may be removed for this purpose. Such photographs may be used by or disclosed to any person for purposes related to the investigation of offences under the service discipline Acts.