
STATUTORY INSTRUMENTS

2006 No. 3243

The Armed Forces (Entry, Search and Seizure) Order 2006

Application to the judicial officer

12.—(1) This article applies where anything has been seized in exercise, or purported exercise, of a relevant power of seizure.

(2) Any person with a relevant interest in the seized property may apply to a judicial officer, on one or more of the grounds mentioned in paragraph (3), for the return of the whole or a part of the seized property.

(3) Those grounds are—

- (a) that there was no power to make the seizure;
- (b) that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within article 7(2);
- (c) that the seized property is or contains any excluded material or special procedure material which—
 - (i) has been seized under a power to which article 8 applies;
 - (ii) is not comprised in property falling within article 8(3) or (4); and
 - (iii) is not property the retention of which is authorised by article 9;
- (d) that the seized property is or contains something seized under article 3 or 4 which does not fall within article 6(3).

(4) Subject to paragraph (6), the judicial officer, on an application under paragraph (2), shall—

- (a) if satisfied as to any of the matters mentioned in paragraph (3), order the return of so much of the seized property as is property in relation to which the judicial officer is so satisfied; and
- (b) to the extent that the judicial officer is not so satisfied, dismiss the application.

(5) The judicial officer—

- (a) on an application under paragraph (2),
- (b) on an application made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure, or
- (c) on an application made—
 - (i) by a person with a relevant interest in anything seized under article 3 or 4, and
 - (ii) on the grounds that the requirements of article 6(2) have not been or are not being complied with,

may give such directions as the judicial officer thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.

(6) On any application under this article, the judicial officer may authorise the retention of any property which—

- (a) has been seized in exercise, or purported exercise, of a relevant power of seizure, and

(b) would otherwise fall to be returned,

if the judicial officer is satisfied that the retention of the property is justified on grounds falling within paragraph (7).

(7) Those grounds are that (if the property were returned) it would immediately become appropriate—

(a) to issue, on the application of the person who is in possession of the property at the time of the application under this article, a warrant in pursuance of which, or of the exercise of which, it would be lawful to seize the property; or

(b) to make an order under paragraph 5 of Schedule 1 to the 2003 Order under which the property would fall to be delivered up or produced to the person mentioned in subparagraph (a).

(8) This paragraph applies where any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts (“part A” and “part B”) comprised in it such that—

(a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in paragraph (7) in relation to part A,

(b) it would (or would but for the facts mentioned in sub-paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B, and

(c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question.

(9) If paragraph (8) applies, the facts mentioned in paragraph (8)(a) shall not be taken into account by the judicial officer in deciding whether the retention of the property is justified on grounds falling within paragraph (7).

(10) The relevant powers of seizure for the purposes of this article are—

(a) the powers of seizure conferred by articles 3 and 4;

(b) the powers of seizure conferred by Part 2 of the 2001 Act except the power in section 7 of that Act; and

(c) the powers of seizure conferred by the 2003 Order except the power under article 15 in so far as it relates to section 7 of the 2001 Act.

(11) References in this article to a person with a relevant interest in seized property are references to—

(a) the person from whom it was seized;

(b) any person with an interest in the property; or

(c) any person, not falling within sub-paragraph (a) or (b), who had custody or control of the property immediately before the seizure.

(12) For the purposes of paragraph (11)(b), the persons who have an interest in seized property shall, in the case of property which is or contains an item subject to legal privilege, be taken to include the person in whose favour that privilege is conferred.