
EXPLANATORY NOTE

(This note is not part of the Order)

Powers of search and seizure of the service police and other individuals in relation to the investigation of service offences are set out in Part 2 of the Armed Forces Act 2001 and in subordinate legislation made under that Part.

Part 2 of the Criminal Justice and Police Act 2001 makes a number of provisions about powers of seizure of civilian police forces, and this Order makes related provision in relation to the Armed Forces' system of justice. The main provisions of this Order are as follows.

There are circumstances in which it is not reasonably practicable to establish at the time of a search of premises or of a person which material can and cannot be seized. For example, material that a service policeman conducting the search is entitled to seize may be contained within a larger collection of material some of which he may not be entitled to seize. Material held on computers may present particular difficulties in this respect.

Article 3 of this Order permits material to be removed from premises being searched where there are reasonable grounds for believing that the material is, or contains, material which a service policeman would be entitled to seize. It also permits the seizure of material which the service policeman would be entitled to seize, but it is not reasonably practicable for it to be separated on the premises from other material. The article does not apply to searches of premises being carried out under the authority of a Commanding Officer under section 7 of the Armed Forces Act 2001 (Other searches of premises require the authority of a judicial officer). The equivalent provision in the Criminal Justice and Police Act 2001 is section 50.

Article 4 makes broadly equivalent provision in relation to material found by a service policeman when lawfully searching an individual. The equivalent provision in the Criminal Justice and Police Act 2001 is section 51.

Under article 5, where material is seized in exercise of the power under article 3, a notice must generally be given to the occupier of the premises or (if the occupier is absent) to the person in charge of the premises. If no such person is present, a notice must be attached prominently to the premises. The notice must state what has been seized and other specified information. The equivalent provision in the Criminal Justice and Police Act 2001 is section 52.

Article 6 requires that where material is seized under article 3 or 4, it must be examined as soon as reasonably practicable and property whose retention is not authorised must be returned as soon as reasonably practicable. The equivalent provision in the Criminal Justice and Police Act 2001 is section 53.

Under article 7 seized property which is subject to legal privilege and (under article 8) seized property which consists of or includes excluded or special procedure material, must, subject to limited exceptions, be returned as soon as reasonably practicable. Article 11 provides for the person to whom property must be returned. This will be the person from whom the property was seized, unless the person obliged to return the property is satisfied that someone else has a better right to the property. The equivalent provisions under the Criminal Justice and Police Act 2001 are, respectively, sections 54, 55 and 58.

Article 9 provides for the retention of seized property where there are reasonable grounds for believing either that it is the proceeds of an offence or evidence of an offence and (in either case) it is necessary to retain it to prevent its being concealed, lost, damaged, altered or destroyed. The equivalent provision under the Criminal Justice and Police Act 2001 is section 56.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Article 12 permits a person with an interest in property seized under a power under Armed Forces legislation (including under article 3 or 4 of this Order) to apply to a judicial officer for its return. Article 12 does not apply seizures under section 7 of the Armed Forces Act 2001 (under section 8 of that Act such seizures are subject to automatic review by a judicial officer). The equivalent provision under the Criminal Justice and Police Act 2001 is section 59.

Where an application is made under article 12 stating that the property is, or contains, property subject to legal privilege, special procedure material or excluded material, a duty generally arises to secure the seized material from being examined, copied or used (articles 13 and 14). There are exceptions where the applicant consents or a judicial officer so directs. Under article 15 a similar exclusion of examination, copying and use applies (subject to the consent of the person from whom it was seized) to seized property which would have to be returned but for the fact that it is not reasonably practicable to separate it from property which can be retained. The equivalent provision to article 15 in the Criminal Justice and Police Act 2001 is section 62.