
STATUTORY INSTRUMENTS

2009 No. 2056

**The Armed Forces (Powers of Stop and Search,
Search, Seizure and Retention) Order 2009**

PART 3

Seizure, copying and retention

General power of seizure

14.—(1) The powers conferred by paragraphs (2), (3) and (4) are exercisable by a service policeman who, in connection with the investigation of a service offence, is lawfully on premises which are searchable by virtue of Part 3 of the Act.

(2) The service policeman may seize anything which is on the premises if he has reasonable grounds for believing—

- (a) that it has been obtained in consequence of the commission of a service offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The service policeman may seize anything which is on the premises if he has reasonable grounds for believing—

- (a) that it is evidence in relation to an offence which he is investigating or any other service offence; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The service policeman may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form if he has reasonable grounds for believing—

- (a) that—
 - (i) it is evidence in relation to an offence which he is investigating or any other service offence; or
 - (ii) it has been obtained in consequence of the commission of a service offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this article are in addition to any power otherwise conferred.

(6) Subject to articles 19(5) and 20(5), nothing in this Order is to be taken to authorise the seizure of an item which the service policeman has reasonable grounds for believing is subject to legal privilege.

Extension of powers of seizure to computerised information

15.—(1) Every power of seizure which is conferred by an enactment to which this article applies on a person who has entered premises in the exercise of a power conferred by or under Part 3 of the Act shall be construed as including a power to require any information stored in any electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(2) This article applies to—

- (a) sections 83(3), 87(4) and 88(4) of the Act;
- (b) article 13(4); and
- (c) paragraph 13 of Schedule 1.

Access and copying

16.—(1) A person who seizes anything in the exercise of a power conferred by or under Part 3 of the Act (an “authorised person”) shall, if so requested by a person showing himself—

- (a) to be the occupier of the premises on which it was seized, or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The authorised person shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to paragraph (8), if a request for permission to be granted access to anything which—

- (a) has been seized by an authorised person, and
- (b) is retained for the purpose of investigating a service offence,

is made to the investigator by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the investigator shall allow the person who made the request access to it under the supervision of a person authorised for that purpose by the investigator.

(4) Subject to paragraph (8), if a request for a photograph or copy of any such thing is made to the investigator by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the investigator shall—

- (a) allow the person who made the request access to it, under the supervision of a person authorised for that purpose by the investigator, for the purpose of photographing it or copying it; or
- (b) photograph or copy it, or cause it to be photographed or copied.

(5) A person may also photograph or copy, or have photographed or copied, anything which he has power to seize in exercise of a power conferred by or under Part 3 of the Act, without a request being made under paragraph (4).

(6) Where anything is photographed or copied under paragraph (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this article to grant access to, or to supply a photograph or copy of, anything if the person in charge of the investigation for the purposes of which the thing was seized has reasonable grounds for believing that to do so would prejudice—

- (a) that investigation;

- (b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or
 - (c) any criminal proceedings or any service proceedings which may be brought as a result of any investigation within sub-paragraph (a) or (b).
- (9) In paragraph (3) “the investigator” means the person in charge of the investigation.

Retention

17.—(1) Subject to paragraph (4), anything which has been seized by a person exercising a power of seizure conferred by or under Part 3 of the Act or taken away by a person following a requirement made by virtue of article 14 or 15 may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of paragraph (1)—

- (a) anything seized for the purposes of an investigation of an offence may be retained, except as provided by paragraph (4)—
 - (i) for use as evidence in service proceedings or at a trial for an offence; or
 - (ii) for forensic examination or for investigation in connection with an offence; and
- (b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of a service offence.

(3) This paragraph relates to the powers of seizure under—

- (a) provision equivalent, subject to modifications, section 54(4)(a) of PACE as applied to persons under arrest or in custody under the Act by virtue of an Order made under section 113(1) of PACE; or
- (b) section 73 of the Act.

(4) Nothing seized under a power of seizure to which paragraph (3) relates on the grounds that the person searched may use it—

- (a) to cause physical injury to himself or to any other person, or
- (b) to assist him to escape from service custody,

may be retained when the person from whom it was seized is no longer in service custody.

(5) Nothing may be retained for either of the purposes mentioned in paragraph (2)(a) if a photograph or copy would be sufficient for that purpose.

(6) The reference in paragraph (1) to anything seized by a person includes anything seized by a person authorised under article 9(2) to accompany a service policeman executing a warrant.