

ARMED FORCES ACT 2001

EXPLANATORY NOTES

THE ACT - COMMENTARY ON SECTIONS

Part 2 – Powers of Entry, Search and Seizure

Section 5: Power of judicial officer to authorise entry and search of certain premises

27. This section gives judicial officers the power to issue warrants authorising the search of certain premises on application by a Service policeman investigating an offence under the SDAs. The powers are limited in that they can only be applied to premises used as living accommodation for Service purposes or to the homes of persons subject to the SDAs. The section also permits the Service police to seize and retain anything for which the search has been authorised. It is based on section 8 of the Police and Criminal Evidence Act 1984.
28. It may be noted that the provisions on powers of entry refer generally only to entry to accommodation. There is no reference to other areas under Service occupation. This is because commanding officers and Service police need no special statutory power to enter these other areas. They will only need the agreement of anyone who is entitled to refuse admission. This is expressly made clear in section 16(7).
29. The section sets out the requirements for the issue of a warrant. For example, there must be reasonable grounds for believing that a relevant offence has been committed and that certain conditions have been met, e.g. the purpose of the search would be seriously prejudiced if immediate entry cannot be secured upon arrival at the premises. The offences which are relevant are defined in section 5(2). They include the criminal offences for which a warrant may be obtained by civilian police, but also certain serious Service offences, such as assisting the enemy and looting. Evidence searched for must not include items subject to legal privilege, excluded material or special procedure material. Searches for excluded material and special procedure material are provided for in section 6.
30. The section allows the Secretary of State to make an order permitting the use of live television links (or similar arrangements) for hearing an application for a warrant. This is because of the possibility of the need for Service police to act in places where a judicial officer might not be on hand, most obviously in some places abroad. The section also provides for the making (by order) of provision equivalent to sections 15 and 16 of the Police and Criminal Evidence Act 1984. Those sections include safeguards relating to the issue and execution of warrants; for example, searches under a warrant must usually be made at a reasonable hour and the policeman intending to search must identify himself to the occupier.