

ARMED FORCES ACT 2001

EXPLANATORY NOTES

THE ACT - COMMENTARY ON SECTIONS

Part 2 – Powers of Entry, Search and Seizure

Section 7: Power of commanding officer to authorise entry and search of certain premises

33. **Section 7** gives commanding officers a limited power to authorise the search, without a warrant, of the living accommodation of persons under his command. The powers of search under this section may only be exercised where the conditions for obtaining a warrant under section 5 exist, but the commanding officer reasonably believes that it is likely that the time needed to obtain a warrant would result in the purpose of the search being frustrated or seriously prejudiced. The section also allows the person conducting the search to seize and retain any articles for which the search was authorised.
34. The section requires such a search to be carried out by a Service policeman, unless none is available and it is likely that the time necessary to obtain the assistance of a Service policeman would result in the purpose of the search being frustrated or seriously prejudiced. In cases where a commanding officer authorises someone other than a Service policeman to conduct a search, the section restricts the range of premises that may be searched. The sort of premises which a commanding officer may need to have searched when Service police are not available is likely to be shared, temporary accommodation which Service personnel use on operation or on exercise, whether in tents, buildings or on board ship. Search by Service personnel who are not Service police is specifically ruled out in the case of accommodation provided for the exclusive use of a person subject to the SDAs, or for such a person and his or her family, although they are unlikely, in any case, to be in places where Service police are unavailable. It is thought appropriate that such accommodation, which is closer to a private home, should only be subject to search by a Service policeman.