

ARMED FORCES ACT 2001

EXPLANATORY NOTES

THE ACT - COMMENTARY ON SECTIONS

Part 2 – Powers of Entry, Search and Seizure

Section 9: Entry for purposes of arrest etc.

37. **Section 9** provides that entry to and search of certain premises is permissible for the purposes and in the circumstances specified in the section. It is based on section 17 of the Police and Criminal Evidence Act 1984, but with a number of differences. An important one is that section 17 of the 1984 Act applies to a list of powers of arrest under various pieces of civilian legislation. Section 9 of this Act refers instead to the existing powers of arrest under the SDAs (which apply to any offence under those Acts).
38. The section authorises Service police to enter and search, without a warrant, premises used as living accommodation for Service purposes, and the homes of persons subject to the SDAs, to make arrests under any of the SDAs or to prevent death, serious injury or serious damage to property. If the purpose of the entry is to make an arrest, the Service policeman must have reasonable grounds for believing the person he wishes to arrest is on the premises. Service police may also enter and search, for the purposes of arrest, the residences of persons who are no longer in the Services but are still subject to Service law for the purposes of dealing with them for an offence committed whilst they were subject to Service law. The extent of any search under the section is restricted to searching for the person to be arrested. Thus the section does not, for example, give a power to look for evidence while effecting an arrest.
39. **Section 9** also allows a commanding officer to authorise a member of the forces, other than a Service policeman, to enter and search, without a warrant, the living accommodation (whether provided for Service purposes or otherwise) of a person under his command in order to arrest that person or to prevent death, serious injury or serious damage to property. (Powers of arrest are given by the SDAs to a wide range of Service personnel.) The commanding officer's authority to enter for the purposes of an arrest may only be given if the offence is one for which a search warrant could be issued under section 5 by a judicial officer. The commanding officer must have reasonable grounds for believing that waiting to obtain the assistance of a Service or civilian policeman might result in the person to be arrested evading capture, concealing or destroying evidence or being a danger to himself or others, or result in discipline being undermined.
40. The authority to enter for the purposes of saving life, preventing serious injury or preventing serious damage to property may only be given by the commanding officer if it is not practicable to obtain the assistance of a Service policeman in time to prevent the harm occurring.
41. The section also provides that regulations may be made by the Defence Council allowing commanding officers to delegate their powers. Such delegation could be used to allow a duty officer to authorise entry if, for example, an emergency arose in the commanding officer's absence.