

**EXPLANATORY MEMORANDUM TO**  
**THE ARMED FORCES (ENTRY, SEARCH AND SEIZURE) ORDER 2006**  
**2006 No. 3243**

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 This Order makes provision in relation to investigations by service policemen under the service discipline Acts which is equivalent to that made by Part 2 of the Criminal Justice and Police Act 2001. Where, during certain searches by service policemen, evidence is found which it is not practicable to separate there and then from things which he is not entitled to seize, such as material protected from seizure, this Order permits the whole to be removed for examination elsewhere. The Order requires that the property be examined as soon as practicable after seizure and that items of no evidential relevance be returned. The Order contains specific safeguards where seized property is found to include items subject to legal privilege and to excluded and special procedure material. Under these provisions the owner's consent or a judicial order is required before it can be examined, copied or put to any other use. The Order will allow for persons with an interest in seized property to appeal to a judicial officer for its return.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Background**

4.1 The statutory power for service policemen and, exceptionally, other members of Her Majesty's Forces to carry out searches and seizures was introduced by the Armed Forces Act 2001, with additional provision in the Armed Forces (Entry, Search and Seizure) Order 2003. The purpose of the Armed Forces (Entry, Search and Seizure) Order 2006 is to make supplementary provision in relation to searches conducted by service policemen that is equivalent to that contained in Part 2 of the Criminal Justice and Police Act 2001.

5. **Extent**

5.1 This instrument applies to service police investigations anywhere in the world.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 This Order ensures that, so far as compatible with armed forces requirements, service police powers and responsibilities in relation to seizure of property during searches reflect those applying to civilian policemen in England and Wales.

7.2 Consultation on the policy and content of the Order took place externally with the Office of the Judge Advocate General and internally with the three Service Legal Directorates, the service police and policy staff seeking comment. No substantive comment was received. As this Order is concerned exclusively with the powers of the service police, it was not considered necessary to consult more widely.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

**Mrs S J McIntosh** at the Ministry of Defence Tel: 0202 7218 0564 can answer any queries regarding the instrument.