

SCHEDULE 4

Article 35

TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“the 1955 Acts” means the Army Act 1955(1) and the Air Force Act 1955(2);

“the 1957 Act” means the Naval Discipline Act 1957(3);

“the 2001 Act” means the Armed Forces Act 2001(4);

“the 2003 Order” means the Armed Forces (Entry, Search and Seizure) Order 2003(5);

“the 2006 Order” means the Armed Forces (Entry, Search and Seizure) Order 2006(6);

“commencement” means the date on which this Order comes into force;

“the corresponding civil offence”, in relation to an SDA civil offence, means—

- (a) the act or omission constituting the SDA civil offence; or
- (b) if that act or omission is not punishable by the law of England and Wales, the equivalent act done or omission made in England or Wales;

“pre-commencement warrant” means a warrant to enter and search premises, issued under section 5 of the 2001 Act or Schedule 1 to the 2003 Order;

“SDA civil offence” means an offence under section 70 of either of the 1955 Acts or section 42 of the 1957 Act;

“SDA offence” means any of the following—

- (a) an offence under Part 2 of either of the 1955 Acts;
- (b) an offence under Part 1 of the 1957 Act;
- (c) an offence under section 47K of that Act;
- (d) an offence under section 18 or 20 of the Armed Forces Act 1991(7) committed before commencement;
- (e) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996(8) committed before commencement.

“serious SDA offence” means—

- (a) an SDA civil offence as respects which the corresponding civil offence is an indictable offence; or
- (b) an SDA offence other than—
 - (i) an SDA civil offence;
 - (ii) an offence which (by virtue of modifications of section 52 of the Act made by an order under section 380 of the Act) may be dealt with at a summary hearing;
- (c) an offence under section 33(1)(a) of either of the 1955 Acts or section 11(a) of the 1957 Act (using violence against a superior officer);

(1) 1955 c. 18.

(2) 1955 c. 19.

(3) 1957 c. 53.

(4) 2001 c. 19.

(5) S.I. 2003/2273 amended by S.I. 2006/3244, 2008/1698.

(6) S.I. 2006/3243 amended by S.I. 2008/1698.

(7) 1991 c. 62.

(8) 1996 c. 14.

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- (d) an offence under section 44(1) of either of the 1955 Acts or section 29(1) of the 1957 Act (damage to, and loss of, public or service property);
- (e) an offence under section 62(1) of either of the 1955 Acts or section 35(1) of the 1957 Act (making of false documents);
- (f) an offence under section 68 of either of the 1955 Acts or section 40 of the 1957 Act of attempting to commit an offence within paragraph (c), (d) or (e);
- (g) an offence under section 68A of either of the 1955 Acts or section 41 of the 1957 Act of aiding and abetting or inciting the commission of an offence within paragraph (c), (d) or (e).

Stop and search by a service policeman

2.—(1) Article 3 is modified as follows.

(2) For the purposes of article 3(1) a service policeman is to be treated as having detained a person or vehicle in exercise of the power conferred by section 75 of the Act if he has detained the person or the vehicle in exercise of the power conferred by section 2 of the 2001 Act.

(3) For the purposes of article 3(5) a service policeman is to be treated as having completed a search of an unattended vehicle or anything in or on such a vehicle in exercise of the power conferred by section 75 if—

- (a) he has completed a search of the vehicle or thing in exercise of the power conferred by section 2 of the 2001 Act; and
- (b) he has not left a notice in accordance with article 3(5) of the 2003 Order.

Record of search by service policeman

3.—(1) Article 4 is modified as follows.

(2) For the purposes of article 4(1) a service policeman is to be treated as having carried out a search in the exercise of the power conferred by section 75 of the Act if—

- (a) he has carried out a search in the exercise of the power conferred by section 2 of the 2001 Act; and
- (b) he has not made a record of the search in accordance with article 4 of the 2003 Order.

(3) In article 4(7) and (8) references to a record of a search include a record made under article 4 of the 2003 Order.

Searches under section 76 of the Act

4.—(1) Article 5 is modified as follows.

(2) For the purposes of article 5(1)—

- (a) an order given by an officer by virtue of section 4(1)(a) of the 2001 Act is to be treated as having been given under section 76(1) of the Act; and
- (b) an authorisation given by an officer by virtue of section 4(1)(b) of the 2001 Act is to be treated as an authorisation given under section 76(1) of the Act.

(3) Article 5(4) and (5) apply where—

- (a) the relevant person was ordered or authorised to conduct a search of an unattended vehicle or anything in or on such a vehicle;
- (b) he has completed the search; and
- (c) he has not left a notice in accordance with articles 3(5) and 5 of the 2003 Order.

(4) Article 5(6) applies where—

- (a) the relevant person has carried out a search pursuant to the order or authorisation; and
- (b) he has not made a record of the search in accordance with articles 4 and 5 of the 2003 Order.

(5) In article 5(11) and (12) references to a record of a search include a record made under articles 4 and 5 of the 2003 Order.

(6) In this paragraph the “relevant person” means the person given an order by virtue of section 4(1)(a) of the 2001 Act or an authorisation by virtue of section 4(1)(b) of that Act.

Search warrants – safeguards

5.—(1) Article 8 is modified as follows.

(2) For the purposes of article 8(2) an entry on or search of premises under a warrant complies with articles 8 to 10 if—

- (a) as regards anything done before commencement, it complies with articles 8 to 10 of the 2003 Order; and
- (b) as regards anything done on or after commencement, it complies with articles 8 to 10 of this Order.

(3) Article 8(6) applies in relation to a hearing of an application for a warrant which was made under section 5 of the 2001 Act or Schedule 1 to the 2003 Order.

(4) Article 8(10) applies in relation to a pre-commencement warrant of which the copies required by article 8(7) of the 2003 Order have not been made.

(5) In article 8(11)—

- (a) the reference to the copies of a warrant includes copies of a pre-commencement warrant which have been made under article 8(7) of the 2003 Order but have not been certified as copies in accordance with article 8(8) of that Order; and
- (b) the reference to the judge advocate who issues the warrant is to be read as a reference to the person who (as a judicial officer) issued the warrant.

Execution of warrants

6.—(1) Article 9 is modified in accordance with sub-paragraphs (2) to (4).

(2) Except in article 9(2) and (13), references to a warrant include a pre-commencement warrant.

(3) In article 9(3) the reference to a person authorised as mentioned in article 9(2) includes a person authorised by a pre-commencement warrant to accompany a service policeman executing the warrant.

(4) In article 9(11) the reference to a service policeman executing a warrant includes a service policeman who has executed a pre-commencement warrant and has not endorsed it in accordance with article 9(9) of the 2003 Order.

(5) A warrant returned to a judicial officer under article 9(10) of the 2003 Order shall—

- (a) be retained by him for at least 2 years from its return; or
- (b) be sent by him to the Judge Advocate General and retained by him for at least 2 years from its return to the judicial officer.

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Safeguards and execution of warrants – further provisions

7.—(1) This paragraph applies where a service policeman has made an application for a warrant to enter and search premises under section 5 of the 2001 Act or Schedule 1 to the 2003 Order by live television or telephone links or similar arrangements.

(2) Article 10(2) and (4) apply in relation to any warrant issued upon the application, subject to the following modifications.

(3) In article 10(2)(b) and (c) the references to the judge advocate include the person who (as a judicial officer) issued the warrant.

(4) In article 10(2)(d)—

- (a) the reference to the certified copies of the warrant made in accordance with article 8(10) and (11) includes certified copies made in accordance with article 8(7) and (8) of the 2003 Order; and
- (b) the reference to the transmission of a copy of the warrant in accordance with article 10(2)(b) includes the transmission of a copy of the warrant in accordance with article 10(2)(b) of the 2003 Order.

Search of premises after arrest

8.—(1) In articles 12 and 13—

- (a) references to an arrest under section 67 of the Act include an arrest under section 74 of either of the 1955 Acts or section 45 of the 1957 Act;
- (b) references to a serious service offence include a serious SDA offence.

(2) Article 13(6) does not prohibit a service policeman—

- (a) from entering and searching any premises which an authorising officer (within the meaning of article 13 of the 2003 Order) has authorised him in writing under paragraph (4) of that article to enter and search, or
- (b) from seizing and retaining anything for which he may search any such premises, and

the reference in article 13(7) to a service policeman conducting a search without obtaining a written authorisation under paragraph (6) of that article is to be read as a reference to his conducting a search without obtaining such an authorisation and without having obtained an authorisation under article 13(4) of the 2003 Order.

(3) Where a service policeman has conducted a search by virtue of article 13(5) of the 2003 Order but has not informed an authorising officer in accordance with article 13(6) of that Order that he has made the search, he shall as soon as is practicable inform an authorising service policeman that he has made the search.

(4) In article 13(8)—

- (a) the reference to an authorising service policeman who authorises a search includes a person who (as an authorising officer within the meaning of article 13 of the 2003 Order) authorised a search under paragraph (4) of that article and has not made a record in accordance with paragraph (7) of that article; and
- (b) the reference to an authorising service policeman who is informed of a search under article 13(7) includes—
 - (i) a person who (as an authorising officer within the meaning of article 13 of the 2003 Order) was informed of a search under paragraph (6) of that article and has not made a record in accordance with paragraph (7) of that article; and
 - (ii) an authorising service policeman who is informed of a search under subparagraph (3).

Seizure, copying and retention

9. In articles 14, 16, 17 and 25 references to a service offence include an SDA offence.

10.—(1) Article 16 is modified as follows.

(2) Where a person has seized anything in the exercise of a power conferred by or under Part 2 of the 2001 Act, and has been requested (whether before or after commencement) to provide any person with a record of what he seized but has not provided that person with such a record, article 16(1) and (2) apply as if the thing had been seized in the exercise of a power conferred by or under Part 3 of the Act.

(3) In article 16(3) and (4)—

- (a) references to anything seized by an authorised person include anything seized in the exercise of a power conferred by or under Part 2 of the 2001 Act; and
- (b) references to a request for permission to be granted access to a thing, or for a photograph or copy of it, include a request made before commencement.

(4) In article 16(5) the reference to a thing which a person has power to seize in exercise of a power conferred by or under Part 3 of the Act includes a thing which he had power to seize in exercise of a power conferred by or under Part 2 of the 2001 Act.

(5) In article 16(6) the reference to a thing photographed or copied under paragraph (4)(b) includes a thing photographed or copied under article 16(4)(b) of the 2003 Order.

(6) Where a thing has been photographed or copied under article 16(4)(b) of the 2003 Order, article 16(7) applies in relation to the photograph or copy.

11.—(1) Article 17 is modified as follows.

(2) In paragraph (1)—

- (a) the reference to a power of seizure conferred by or under Part 3 of the Act includes a power of seizure conferred by or under Part 2 of the 2001 Act; and
- (b) the reference to a requirement made by virtue of article 14 or 15 includes a requirement made by virtue of article 14 or 15 of the 2003 Order.

(3) The powers of seizure to which article 17(3) relates include—

- (a) those conferred by section 54(4)(a) of PACE as applied to investigations of offences conducted under either of the 1955 Acts or the 1957 Act, or to persons under arrest or in custody under any of those Acts, by virtue of an Order made under section 113(1) of PACE; and
- (b) those conferred by section 10(10) or (11) of the 2001 Act.

(4) In article 17(4)—

- (a) the reference to a thing seized on the grounds that the person searched may use it to assist him to escape from service custody includes a thing seized on the grounds that that person might use it to assist him to escape from military, air-force or naval custody; and
- (b) the reference to a person who is no longer in service custody includes a person who was released from military, air-force or naval custody before commencement.

(5) In article 17(6) the reference to a person authorised under article 9(2) includes a person authorised under article 9(2) of the 2003 Order.

Additional powers of seizure

12.—(1) Article 19 is modified as follows.

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(2) In article 19(1)(a) and article 19(3)(a)—

- (a) the reference to an authorisation under section 87 or 88 of the Act is to include an authorisation given under section 7 of the 2001 Act; and
- (b) the reference to a person finding anything includes a reference to a person having found anything before commencement.

(3) In article 19(6) the reference to the powers of seizure conferred by or under Chapter 1 or 3 of Part 3 of the Act shall include a reference to the powers of seizure conferred by or under Part 2 of the 2001 Act, except sections 2, 4 and 7 of that Act.

Notice of exercise of power under article 19 or 20

13.—(1) Article 21 is modified as follows.

(2) For the purposes of article 21 a person is to be treated as exercising a power of seizure conferred by article 19 if he—

- (a) has exercised a power of seizure conferred by article 3 of the 2006 Order; and
- (b) has not complied with article 5(1), (2) or (3) of that Order with respect to the seizure.

(3) For the purposes of article 21 a person is to be treated as exercising a power of seizure conferred by article 20 if he—

- (a) has exercised a power of seizure conferred by article 4 of the 2006 Order; and
- (b) has not complied with article 5(4) of that Order with respect to the seizure.

Examination and return of property seized under article 19 or 20

14.—(1) Article 22 is modified as follows.

(2) For the purposes of article 22 a thing is to be treated as seized under a power conferred by article 19 or 20 if—

- (a) it has been seized under a power conferred by article 3 or 4 of the 2006 Order; and
- (b) either the initial examination referred to in article 6(2) of that Order or the return of anything required under article 6(2) of that Order has not been completed before commencement.

(3) Article 22(2) shall apply to ensure that its sub-paragraphs (a) to (d) are complied with in relation to the seized property, in so far as—

- (a) an initial examination under article 6(2) of the 2006 Order, or
- (b) the return of anything required under article 6(2) of that Order,

has not been completed before commencement.

Obligation to return items subject to legal privilege

15.—(1) Article 23 is modified as follows.

(2) In article 23(2)(a) the reference to the power under section 76(1)(c), section 87(4) or section 88(4) of the Act includes a reference to—

- (a) the power under section 2(7) of the 2001 Act, exercised by virtue of section 4 of that Act by a person other than a service policeman; or
- (b) the power under section 7(3) of the 2001 Act.

(3) The powers of seizure referred to in article 23(5) include—

- (a) the powers of seizure conferred by articles 3 and 4 of the 2006 Order; and

- (b) the powers of seizure conferred by Part 2 of the 2001 Act and by the 2003 Order.

Obligation to return excluded and special procedure material

16. In article 24(1) the reference to section 83 of the Act includes a reference to section 5 of the 2001 Act.

Authorised retention of property

17. In article 25 each of the references to a service offence includes a reference to an SDA offence.

Application of article 17 to property seized under Part 3

18. In article 26(1) the reference to article 19 or 20 includes a reference to article 3 or 4 of the 2006 Order.

Person to whom seized property is to be returned

19. In article 27(1)(a) the reference to any power of seizure conferred by Part 3 of the Act or under this Order includes a reference to—

- (a) any power of seizure conferred by article 3 or 4 of the 2006 Order; and
- (b) any power of seizure conferred by Part 2 of the 2001 Act or by the 2003 Order.

Application to a judge advocate

20.—(1) Article 28 is modified as follows.

(2) Any reference to the judge advocate shall include a reference to the judicial officer (within the meaning of Part 2 of the 2001 Act) to whom an application has been made before commencement.

(3) Where before commencement—

- (a) a person has applied to a judicial officer under article 12(2) of the 2006 Order, and
- (b) the judicial officer has neither ordered the return of any of the property to which the application relates nor dismissed the application,

the application shall be treated as an application under article 28(2) and any reference in article 28 to a judge advocate shall include a reference to the judicial officer.

(4) Where before commencement—

- (a) a person has applied to a judicial officer under article 12(5)(b) or (c) of the 2006 Order, and
- (b) the judicial officer has not decided whether to give directions under article 12(5) of that Order,

the application shall be treated as an application under article 28(5)(b) or (c) (as appropriate), and any reference in article 28 to a judge advocate shall include a reference to the judicial officer.

(5) In article 28(3)(d) and 28(5)(c)(i) the reference to article 19 or 20 includes a reference to article 3 or 4 of the 2006 Order.

(6) The relevant powers of seizure for the purposes of article 28 include—

- (a) the powers of seizure conferred by articles 3 and 4 of the 2006 Order;
- (b) the powers of seizure conferred by Part 2 of the 2001 Act, except the power in section 7 of that Act;
- (c) the powers of seizure conferred by the 2003 Order, except the power under its article 15 in so far as it relates to section 7 of the 2001 Act.

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Cases where duty to secure arises

21.—(1) Article 29 is modified as follows.

(2) Where property has been seized in exercise, or purported exercise, of any power conferred by article 3 or 4 of the 2006 Order, but no duty has arisen under article 14 of that Order, the following modifications apply—

- (a) in article 29(1) the reference to article 19 or 20 includes a reference to article 3 or 4 of the 2006 Order;
- (b) in article 29(3)(a) the reference to Part 3 includes a reference to the 2006 Order;
- (c) the powers specified in article 29(4) include—
 - (i) the powers of seizure under sections 5 and 10 of the 2001 Act;
 - (ii) the powers of seizure conferred by the 2003 Order, except the power under its article 15 in so far as it relates to section 7 of the 2001 Order;
 - (iii) in article 29(5)(c) the reference to paragraph (1)(d) or (4)(d) of article 21 includes a reference to paragraph (1)(d) or (4)(d) of article 5 of the 2006 Order.

(3) Where immediately before commencement a duty to secure has effect under article 14 of the 2006 Order in relation to seized property, a duty to secure arises under article 30 in relation to that property.

The duty to secure

22.—(1) Article 30 is modified as follows.

(2) Where paragraph 21(3) applies—

- (a) the reference in article 30(1) to the giving of the notice of the application under article 29(1) shall be treated as a reference to commencement; and
- (b) article 30(2) shall read “Paragraph (1) shall not have effect in relation to any time after the withdrawal of the notice of application under paragraph 13 of the 2006 Order with respect to which a duty to secure arose under article 14 of that Order.”

Use of inextricably linked property

23.—(1) Article 31 is modified as follows.

(2) The reference in article 31(1) to a power of seizure conferred by or under Chapter 1 or 3 of Part 3 of the Act, except sections 87 or 88 of the Act, includes a reference to a power of seizure conferred by—

- (a) article 3 or 4 of the 2006 Order;
- (b) Part 2 of the 2001 Act, except the power under section 7 of that Act; or
- (c) the 2003 Order, except the power under its article 15 in so far as it relates to section 7 of the 2001 Act.

(3) In article 31(6)(a) the reference to article 19 or 20 includes a reference to article 3 or 4 of the 2006 Order.

(4) In article 31(8)(a) the reference to a warrant under section 83 of the Act includes a reference to a warrant under section 5 of the 2001 Act.

Relevant offences

24. For the purposes of section 84(2) of the Act, relevant offences shall include, in addition to the service offences listed in Schedule 3, an offence against any of—

- (a) section 24(1) of either of the 1955 Acts or section 2(1) of the 1957 Act (misconduct on operations);
- (b) section 25 of either of the 1955 Acts or section 3 of the 1957 Act (assisting an enemy);
- (c) section 26 of either of the 1955 Acts or section 4 of the 1957 Act (obstructing operations) which relates to an action or operation against an enemy;
- (d) section 30(a) or (b) of either of the 1955 Acts or section 5(a) or (b) of the 1957 Act (looting);
- (e) section 31 of either of the 1955 Acts or section 9 of the 1957 Act (mutiny);
- (f) section 32 of either of the 1955 Acts or section 10 of the 1957 Act (failure to suppress mutiny);
- (g) section 37 of either of the 1955 Acts or section 16 of the 1957 Act (desertion) where the accused intended to avoid serving overseas or service or any particular service when before the enemy;
- (h) section 48A of either of the 1955 Acts or section 19 of the 1957 Act (loss or hazarding a ship);
- (i) section 49 of either of the 1955 Acts or section 20 of the 1957 Act (dangerous flying etc);
- (j) section 68 of either of the 1955 Acts or section 40 of the 1957 Act of attempting to commit an offence within any of sub-paragraphs (a) to (i);
- (k) section 68A of either of the 1955 Acts or section 41 of the 1957 Act of aiding, abetting or inciting the commission of an offence within any of sub-paragraphs (a) to (i).

Review by a judge advocate of searches and seizure

25.—(1) Article 34 is modified as follows.

(2) Where before commencement—

- (a) an officer has requested a judicial officer to undertake a review under section 8 of the 2001 Act, and
- (b) the judicial officer has not decided whether to make an order for the return or disposal of any of the property to which the review relates,

the review shall be treated as a review under section 89 of the Act and any reference in article 34 to a judge advocate shall include a reference to the judicial officer.

(3) With respect to a review under section 89 of the Act carried out in relation to property seized before commencement—

- (a) in article 34(7)(b) the reference to section 87(4) or section 88(4) of the Act includes a reference to section 7(3) of the 2001 Act;
- (b) there is inserted at the end of article 34(7)(c) “and none of the conditions specified in section 5(4) of the 2001 Act applied”;
- (c) in article 34(7)(d) the reference to a power conferred by article 14 includes a reference to a power conferred by article 14 of the 2003 Order;
- (d) in article 34(7)(f) after “judge advocate” there is inserted “or a judicial officer within the meaning of Part 2 of the 2001 Act”;
- (e) in article 34(8)—
 - (i) the reference to property seized during a search under section 87 of the Act includes a reference to property seized during a search by a service policeman under section 7 of the 2001 Act;

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- (ii) in its sub-paragraph (a) after “in section 87(1)(b)” there is inserted “or section 7(1)(b) of the 2001 Act”; and
 - (iii) in its sub-paragraph (b) after “in section 87(3) of the Act” there is inserted “or mentioned in sub-paragraph (i) or (ii) of section 7(1)(a) of the 2001 Act”;
- (f) in article 34(9)—
- (i) after “section 88 of the Act” there is inserted “or seized by a person other than a service policeman during a search under section 7 of the 2001 Act”;
 - (ii) in its sub-paragraph (a) after “in section 88(1)(b)” there is inserted “or section 7(2)(b) of the 2001 Act”; and
 - (iii) in its sub-paragraph (b) after “in section 88(3) of the Act” there is inserted “or within section 7(2)(a) of the 2001 Act”;
- (g) in article 34(11) in the definitions of “authorising officer” and “retention” after “section 87 or 88 of the Act” there is inserted “or under section 7 of the 2001 Act”;
- (h) in article 34(12)—
- (i) in its sub-paragraph (a) the reference to section 96(1)(a) of the Act includes a reference to section 15(1)(a) of the 2001 Act;
 - (ii) in its sub-paragraph (b) the reference to section 96(1)(b) of the Act includes a reference to section 15(1)(b) of the 2001 Act;
 - (iii) in its sub-paragraph (c) the reference to section 96(1)(c) of the Act includes a reference to section 15(1)(c) of the 2001 Act.