

2012 No. 2919

DEFENCE

The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) (Amendment) Order 2012

<i>Made</i>	- - - -	<i>16th November 2012</i>
<i>Laid before Parliament</i>		<i>23rd November 2012</i>
<i>Coming into force</i>	- -	<i>14th December 2012</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 85, 86, 323 and 380(1) of the Armed Forces Act 2006(a).

Citation and commencement

1. This Order may be cited as the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) (Amendment) Order 2012, and shall come into force on 14th December 2012.

Interpretation

2. In this Order “the 2009 Order” means the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009(b).

Search warrants and orders relating to unspecified premises

3. In article 2 of the 2009 Order (interpretation)—

- (a) at the end of the definition of “special procedure material”, omit “and”;
- (b) before the full stop at the end, insert—

“; and

“unspecified premises warrant” means a warrant authorising a service policeman to enter and search all relevant residential premises occupied or controlled by a person specified in the application for the warrant, including such sets of premises as are so specified”.

4.—(1) Article 8 of the 2009 Order (search warrants: safeguards) is amended as follows.

(2) For paragraph (3)(b) substitute—

- “(b) if the application relates to one or more sets of premises specified in the application, to specify each set of premises which it is desired to enter and search;
- (ba) if the application is for an unspecified premises warrant, to specify—

(a) 2006 c. 52. Section 86 is amended by section 8 of the Armed Forces Act 2011 (c. 18).
(b) S.I. 2009/2056.

- (i) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;
- (ii) the person who is in occupation or control of those premises and any others which it is desired to enter and search;
- (iii) why it is necessary to search more premises than those specified under sub-paragraph (i); and
- (iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search; and”.

(3) Omit paragraph (4).

(4) For paragraph (9)(a)(iv) substitute—

“(iv)each set of premises to be searched, or (in the case of an unspecified premises warrant) the person who is in occupation or control of premises to be searched, together with any premises under that person’s occupation or control which can be specified and which are to be searched; and”.

(5) In paragraph (10), after “which” insert “specifies only one set of premises and”.

5.—(1) Article 9 of the 2009 Order (execution of warrants) is amended as follows.

(2) After paragraph (4) insert—

“(4A) If the warrant is an unspecified premises warrant, no premises which are not specified in it may be entered or searched unless an authorising service policeman has in writing authorised them to be entered.”

(3) After paragraph (11) insert—

“(11A) If the warrant specifies more than one set of premises or is an unspecified premises warrant, a service policeman executing it shall—

- (a) make a separate endorsement under paragraph (11) in respect of each set of premises entered and searched; and
- (b) specify in each such endorsement the premises to which it relates.”

6. In article 10(4)(c) of the 2009 Order (safeguards and execution of warrants—further provisions) for “the endorsement mentioned in” substitute “an endorsement under”.

7.—(1) Schedule 1 to the 2009 Order (excluded and special procedure material) is amended as follows.

(2) In paragraph 2(a)(ii), after “specified in the application” insert “, or occupied or controlled by a person so specified (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify),”.

(3) In paragraph 3—

(a) for sub-paragraph (a) substitute—

“(a) there are reasonable grounds for believing that on relevant residential premises specified in the application, or occupied or controlled by a person so specified (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify), there is material which consists of or includes excluded material or special procedure material;”;

(b) in sub-paragraph (b), for “the premises” substitute “such premises”;

(c) in sub-paragraph (b)(i), omit “specified”.

(4) In paragraph 12—

(a) in sub-paragraph (a)(ii), for “are also fulfilled” substitute “is also fulfilled in relation to each set of premises specified in the application”;

- (b) before the full stop at the end, insert “, or (as the case may be) all relevant residential premises occupied or controlled by the person referred to in paragraph 2(a)(ii) or 3(a), including such sets of premises as are specified in the application”.

(5) After paragraph 12 insert—

“**12A.** The judge advocate may not issue a warrant under paragraph 12 to enter and search all relevant residential premises occupied or controlled by a person unless satisfied—

- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and
- (b) that it is not reasonably practicable to specify all the premises which the person occupies or controls and which might need to be searched.”

Production orders

8. For article 6 of the 2009 Order (access to excluded and special procedure material) substitute—

“Access to excluded and special procedure material, and material on premises other than relevant residential premises

6. For the purposes of an investigation of a relevant offence, a service policeman may obtain access—

- (a) to excluded material or special procedure material on relevant residential premises, or
- (b) to material (other than items subject to legal privilege) on premises other than relevant residential premises,

by making an application under Schedule 1 and in accordance with that Schedule.”

9.—(1) Schedule 1 to the 2009 Order (excluded and special procedure material) is further amended as follows.

(2) For the heading substitute “Access to excluded and special procedure material, and material on premises other than relevant residential premises”.

(3) In paragraph 1, omit “or other”.

(4) In paragraph 2(a)(iv), for “is likely to be relevant evidence” substitute “would be likely to be admissible in evidence at a trial for the offence”.

(5) After paragraph 4 insert—

“**4A.** The third set of access conditions is fulfilled if—

- (a) there are reasonable grounds for believing—
 - (i) that a relevant offence has been committed;
 - (ii) that on premises (other than relevant residential premises) specified in the application, or occupied or controlled by a person so specified, there is material which does not include items subject to legal privilege;
 - (iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
 - (iv) that the material would be likely to be admissible in evidence at a trial for the offence;
- (b) other methods of obtaining the material—
 - (i) have been tried without success; or

- (ii) have not been tried because it appeared that they were bound to fail; and
- (c) it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.”

(6) After paragraph 11 insert—

“Failure to comply with orders

11A.—(1) This paragraph applies if a person within section 309(6) of the Act (offences of misbehaviour in court etc) fails to comply with an order under paragraph 5.

(2) The Court Martial may certify the failure—

- (a) if there are reasonable grounds for believing that the premises on which the material is held are located in a part of the United Kingdom, to any court of law in that part of the United Kingdom which has power to commit for contempt;
- (b) otherwise, to the High Court in England and Wales.

(3) The court to which the failure is certified may inquire into the matter, and after hearing—

- (a) any witness who may be produced against or on behalf of the person, and
- (b) any statement that may be offered in defence,

may deal with the person in any way in which it could deal with the person if the failure had been a failure to comply with an order of that court.”

(7) In paragraph 12(a)(i), for “either” substitute “the first or second”.

Additional powers of seizure: service living accommodation

10. In each of paragraphs (a), (b) and (c) of article 18(7) of the 2009 Order (definition of occupier of service living accommodation), for “subject to service law” substitute “within section 96(1A) of the Act”.

Transitional

11. Paragraph 11A of Schedule 1 to the 2009 Order (inserted by article 9(6) of this Order) has effect only in relation to a failure which occurs or continues after this Order comes into force.

Mark Francois
Minister of State
Ministry of Defence

16th November 2012

EXPLANATORY NOTE

(This note is not part of the Order)

Section 83 of the Armed Forces Act 2006 (c. 52) enables a judge advocate to issue a warrant authorising the entry and search by a service policeman of “relevant residential premises” (defined by section 84(3)). A new section 83 is substituted by section 7 of the Armed Forces Act 2011 (c. 18). It provides for the issue of a warrant (referred to in this Order as an “unspecified premises warrant”) to enter and search relevant residential premises which are not specified in the application for the warrant but are occupied or controlled by a person so specified. Section 85 of the 2006 Act permits the making of provision, in relation to warrants issued under section 83 or to entry and search under such a warrant, equivalent to that made by sections 15 and 16 of the Police

and Criminal Evidence Act 1984 (c. 60) (“PACE”) in relation to search warrants issued to constables. Articles 8 and 9 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 (S.I. 2009/2056) make provision broadly equivalent to sections 15 and 16 of PACE respectively, but do not provide for unspecified premises warrants (referred to in PACE as “all premises warrants”). Articles 4 to 6 of this Order amend articles 8 to 10 of the 2009 Order so as to make such provision, and article 3 inserts a definition of “unspecified premises warrant”.

Section 86 of the 2006 Act permits the making of provision enabling a service policeman to obtain access to excluded material or special procedure material (both defined by section 84(4)) on relevant residential premises. Such provision is made by article 6 of, and Schedule 1 to, the 2009 Order. Article 7 of this Order amends that Schedule so as to provide for access to such material on unspecified relevant residential premises occupied or controlled by a specified person.

Section 8 of the 2011 Act amends section 86 of the 2006 Act so as to permit, in addition, the making of provision enabling a service policeman to obtain access to material on premises other than relevant residential premises. Article 8 of this Order substitutes a new article 6 in the 2009 Order, and article 9 amends Schedule 1 to that Order, so that a judge advocate can make a production order (but not issue a warrant) in relation to such material.

Article 9(6) inserts a new paragraph 11A into Schedule 1 to the 2009 Order. This enables failure to comply with a production order (whether or not in relation to relevant residential premises) to be dealt with as contempt of court if the person responsible is in the United Kingdom, or is subject to service law or a civilian subject to service discipline. But article 11 confines this power to a failure which occurs or continues after this Order comes into force.

Article 10 amends article 18(7) of the 2009 Order, which for the purposes of Part 4 of that Order (additional powers of seizure) defines the occupier of premises which are service living accommodation. The amendment is consequential on an amendment by paragraph 4 of Schedule 3 to the 2011 Act of the definition of service living accommodation in section 96 of the 2006 Act.

© Crown copyright 2012

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2012 No. 2919

DEFENCE

The Armed Forces (Powers of Stop and Search, Search, Seizure
and Retention) (Amendment) Order 2012

£4.00

E5058 11/2012 125058T 19585

ISBN 978-0-11-153113-6



9 780111 531136