



Ministry
of Defence

Powers of Entry Review

Final Report



POWERS OF ENTRY REVIEW FINAL REPORT

Presented to Parliament pursuant to
Section 42(1)(c) of the Protection of Freedoms Act 2012

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INTRODUCTION

**By the Minister of State for Defence Personnel, Welfare and Veterans
Ms Anna Soubry MP**

The Protection of Freedoms Act 2012 requires each Government Department to review the powers of entry contained in its legislation. The MOD has eleven such powers. The first group enable the Service Police and Commanding Officers to exercise and fulfil their duties under the Armed Forces Act 2006 in respect of the investigation of Service Offences. The second group are essential to the continued management of the Defence estate in the United Kingdom.

Regular six-monthly progress reviews have taken place as required by the 2012 Act, thus enabling a continual and thorough review of the powers.

This report is the culmination of that review process. It sets out in detail what the existing powers do, the associated safeguards and the reasons why continued retention of the powers are required. I am pleased to present this report to Parliament as an account of the MOD's work to review and justify the relevant powers of entry and associated powers for which it is responsible and of the commitments we are making to look at further work in the future.

EXECUTIVE SUMMARY

1. The Ministry of Defence (MOD) has eleven powers of entry in scope of the review;¹ eight powers of entry are contained in MOD primary legislation, three powers are contained in secondary legislation. Following the coming into force of the Protection of Freedoms Act 2012, the MOD has conducted regular reviews of these powers.

2. The MOD powers of entry fall into two categories; powers of entry which are relevant to the duties of the Service police and Commanding Officers (COs) within the Service justice system; and powers of entry onto land by the MOD for training purposes and for the surveying of land in order to maintain defence capability. A full list of the relevant powers is at Table 1.

3. It is assessed that none of the relevant MOD powers can be repealed and all the powers are necessary, proportionate and subject to appropriate safeguards. The powers relating to the Service justice system have a unique and direct link to the operational effectiveness of the Armed Forces as well as in the maintenance of discipline and investigation of crime. Similarly, the land related powers are essential for the efficient and responsible safeguarding of defence capability and have safeguards integral to their provisions. It was however identified that one power² would benefit from an extension of the requirement to give notice in writing to the landowner with a warrant procedure as a back stop should entry be refused and a second power³ should now be subject to a warrant procedure in relation to domestic premises.

4. In considering the possible consolidation of the MOD powers, it was assessed that none of the powers could be reasonably consolidated without having an adverse effect on their use.

Table 1 – MOD Powers of Entry

Armed Forces Act 2006

1	s.83: Power of Judge Advocate to authorise a Service policeman to enter and search certain residential premises (as defined in s.84 AFA 06) for evidence, with powers to seize and retain.
2	s.87: Power of Commanding Officer to authorise entry and search of certain premises by a Service policeman, with powers to seize and retain.
3	s.88: Power of Commanding Officer to authorise entry and search of certain premises by other persons subject to Service law other than a Service policeman, with powers to seize and retain.
4	s.90: Entry by Service policeman for the purpose of arrest under s.67, 69, 110 or 111 of AFA 06, or for the purpose of saving life or limb or preventing serious damage to property.
5	s.91: Entry by a person subject to Service law other than a service policeman for purpose of arrest under s.67, 69, 110 or 111 of AFA 06, or for the purpose of saving life or limb or preventing serious damage to property.

¹ Twenty powers were initially identified however, following validation this was been reduced as they were either not in scope of the review or were reallocated to another Department.

² Section 21, Land Powers (Defence) Act 1958.

³ Section 16, Defence Act 1842.

The Armed Forces (Powers of Stop and Search, Search and Seizure and Retention) Order 2009 (SI 2009/2056)

6	Article 6 (and Schedule 1) provide for access to excluded and special procedure material. Article 8 provides for safeguards for search warrants. Article 9 provides for the execution of warrants. Article 10 makes further provision relating to safeguards and execution.
7	Article 12: Entry and search of premises where person arrested.
8	Article 13: Entry and search after arrest.

Manoeuvres Act 1958

9	s.2: Power to enter onto specified land and carry out certain activities for a specified time set out in an order under the Act.
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Land Powers (Defence) Act 1958

10	s.21: Power to enter and survey land in connection with any duty or power under the Act.
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Defence Act 1842

11	s.16: Power to enter any land, building or other hereditament or easement for the service of HM Ordnance for the defence of the realm or to stop up or divert any public or private footpaths or bridle-roads.
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ANALYSIS OF THE REVIEW INTO MOD POWERS OF ENTRY

5. This section sets out in more detail the MOD's final decision in relation to repeal, consolidation and safeguards against each of its powers listed below. They are organised under the two main legislative subject headings; namely those powers relating to the Service justice system (exercised by the Service police and COs) and those under MOD land legislation relating to powers of entry onto land.

Powers of Entry Relating to the Service Justice System

Section 83, Armed Forces Act 2006

6. The purpose of this section of is to allow entry and search of certain premises by the Service police during the course of an investigation. The power of entry is given by a Judge Advocate's warrant to authorise a Service policeman to enter and search certain premises. This section is based on section 8 of the Police and Criminal Evidence Act 1984. It is limited to Relevant Residential Premises and does not apply to other premises occupied by the services because COs and the service police need no statutory power to enter those other areas. A statutory power is only necessary where the occupier would otherwise be entitled to refuse admission. Associated powers of seizure and retention are included in the provision.⁴ Provisions relating to safeguards and the execution of warrants are contained in Articles 8 to 10 of the Armed Forces (Powers of Stop and Search, Search and Seizure and Retention) Order 2009.

Section 87, Armed Forces Act 2006

7. This section gives COs a limited power to authorise a service policeman to search Relevant Residential Premises⁵ without a Judge Advocate's warrant. The power may only be exercised where the conditions for obtaining a warrant under section 83 exist but the CO has reasonable grounds for believing that it is likely that the time needed to get a warrant would result in the search being frustrated or seriously prejudiced. Associated powers of seizure and retention are included in this section.

⁴ Powers of seizure and retention applicable to the Armed Forces Act 2006 Part 3 powers of entry are also containing in Articles 14, 15, 17 and 19 of the Armed Forces (Powers of Stop and Search, Search and Seizure and Retention) Order 2009.

⁵ AFA 06 uses the term Relevant Residential Premises (RRP). RRP means Service Living Accommodation (SLA) or premises which are occupied as a residence by a person subject to service law (PSSL), a civilian subject to service discipline (CSSD), or a person who is suspected of having committed an offence in relation to which the warrant is sought.

Section 88, Armed Forces Act 2006

8. This section gives the CO a similar power to that in section 87 but allows him to authorise a member of HM Forces who is not a service policeman to conduct the search under specific circumstances. This power can only be used to search Service Living Accommodation.⁶ Such accommodation might include shared temporary accommodation on operations overseas or on exercise. The power can only be used if the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the assistance of a Service policeman could be obtained or a member of a UK police force could obtain and execute a search warrant. Associated powers of seizure and retention are included in the provision.

Section 90, Armed Forces Act 2006

9. This section sets out the circumstances in which a service policeman can, without a warrant, enter and search service living accommodation or other premises occupied by persons subject to service law or civilians subject to service discipline (or reasonably believed to be such persons) to arrest a person he reasonably believes to be there at the time or for the purpose of saving life or limb or preventing serious damage to property. The powers of entry and search extend to communal areas of premises in multiple occupation, such as barrack accommodation or blocks of flats.

Section 91, Armed Forces Act 2006

10. This section enables a CO to authorise a person subject to service law (other than a service policeman) to exercise the powers of entry for the purposes of arrest conferred by section 90 on a service policeman. The CO must only give such authority if he has reasonable grounds for believing that waiting to get 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 or morale being undermined. This section also enables a CO to authorise a person subject to service law (other than a service policeman) to exercise the powers of entry for the purpose of saving life or limb or preventing serious damage to property conferred by section 90, but only in relation to certain premises and only if it is not practicable to get the assistance of a service policeman in time to prevent the harm occurring.

Article 6 and Schedule 1, The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009

11. This article allows access to excluded and special procedure material, and material on premises other than Relevant Residential Premises. It allows the Service police access to excluded and special procedure material and material following application to a Judge Advocate, including the issue of a warrant by a Judge Advocate for entry and search of premises. Associated powers of seizure and retention are included in Schedule 1.⁷ Safeguards and provisions for the execution of the warrants are contained in Articles 8 to 10.

⁶ AFA 06 uses the term Service Living Accommodation (SLA). SLA means any building or part of a building which is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a PSSL, or of such a person and members of his family, as living accommodation or as a garage. It includes any other room, structure or area (whether on land or on a ship) which is occupied for the purposes of any of Her Majesty's forces and is used for the provision of sleeping accommodation for one or more PSSL. It also includes any locker which is provided by any of Her Majesty's forces for personal use by a PSSL in connection with his sleeping accommodation.

⁷ Provisions relating to seizure and retention are also contained in Articles 14, 15, 17 and 19 of the Armed Forces (Powers of Stop and Search, Search and Seizure and Retention) Order 2009.

Article 12, The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009

12. Article 12 allows entry and search of premises in which the person arrested for a Serious Service Offence was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested. Provisions relating to seizure and retention are contained in Articles 14, 15, 17 and 19.

Article 13, The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009

13. This article allows the Service Police to enter and search any premises occupied or controlled by a person who has been arrested for a serious service offence and who is being held in service custody without being charged, if the Service policeman has reasonable grounds for suspecting that there is relevant evidence on the premises. Associated powers of seizure and retention are contained in Article 13(4) and further provisions are contained in Articles 14, 15, 17 and 19.

Final Departmental Decision on Powers of Entry relating to the Service Justice System

14. All the above PoE which apply to the Service police and COs powers are necessary to ensure the maintenance of discipline by providing the Service police the appropriate powers to prevent, detect and investigate crime be it in the UK, overseas, on Operations or at sea. These powers concern the investigation of criminal and service offences; life saving; and the protection of property. The Armed Forces are required, always and wherever they serve, to act within the law as a disciplined force that is effective on operations. They often serve in locations where there are no local law enforcement agencies or where UK standards of justice do not apply. Self regulation is therefore a pre-requisite for military operations. The Service justice system (of which the Armed Forces Act 2006 is at the heart) is therefore necessarily separate to the civilian criminal justice system as the former must be universally deployable unlike the latter which need only be in respect of certain offences.

15. All Service police powers of entry broadly mirror the Police and Criminal Evidence Act 1984, adapted as necessary for the Service context. The distinct and unique scope of each of the Service police powers means that all are needed to provide a comprehensive and flexible toolkit of powers to those supporting the Service justice system and are limited in scope to persons subject to Armed Forces Act 2006. All powers exercised by the Service Police are felt to be necessary, proportionate and subject to sufficient safeguards. Where there is no requirement for a Judge Advocate's warrant, additional safeguards are present such as requiring the CO to authorise a Service policeman to undertake entry in limited circumstances, and where appropriate require the CO to subsequently request a Judge Advocate to undertake a review the search and of the seizure and retention of anything seized and retained during it.

16. In relation to the CO's powers, all are necessary to ensure that the CO has the appropriate authority to maintain discipline through the effective operation of the Service justice system and to work with the Service police in the prevention, detection and investigation of crime. COs powers of entry broadly mirror the Police and Criminal Evidence Act 1984, and are adapted for the Service context. COs powers do not make provision for the use of a warrant because of the time critical nature of the provisions but, additional safeguards are used in certain circumstances where the CO authorising entry and search must as soon as practicable request a Judge Advocate to undertake a review of the search and of the seizure and retention of anything seized and retained during it. Guidance specifying the legal basis, grounds and limits of a CO's powers to authorise entry and search is contained in the Manual of Service Law (Joint Service Publication 830). This guidance will be reviewed in the light of the forthcoming Home Office Powers of Entry Code of Practice. A review of the Service Police Codes of Practice will also take place in the light of the Home Office Code to clarify how persons subject to Service law (other than Service police) acting under a CO's authorisation are to execute powers of entry.

17. In conclusion, repeal of the Service Police and CO's powers under Armed Forces Act 2006 would have a detrimental effect upon the military operational effectiveness of the Forces because the Service Police and COs would be hindered in their role in enabling them to fulfil their functions under AFA 06 and required by our obligations under international law. Each of the powers are felt to be necessary, proportionate and subject to sufficient safeguards and guidance.

Powers of Entry Relating to MOD Land Legislation

Section 2, Manoeuvres Act 1958

18. This section enables the MOD to specify large areas of land over which military training may take place. It is a power that is unlikely to be used unless there were to be a significant military threat to the UK and the defence of the realm was compromised. It relates solely to supporting defence capability and security relating to the use of land. This power can only be used by an Order in Council which has to be approved by both Houses of Parliament.

Section 21, Land Powers (Defence) Act 1958

19. Section 21 relates to the Defence Estate itself and the ability of the MOD to enter onto land for surveying purposes only. This power can be used if under any provision of the Act a Minister is to perform any duty or exercise any power; any person duly authorised by a Minister may, at any reasonable time, enter upon land other than land covered by buildings for the purposes of surveying that land in connection with or with proposals for the performance or exercise of that duty or power. There is an existing requirement to give at least 7 days' notice before the power can be exercised (or 28 days if the power is to be used to search and bore). Compensation is also payable where loss is suffered as a result of the exercise of the power of entry.

Section 16, Defence Act 1842

20. Section 16 enables the principal officers of HM Ordnance to acquire interests in land to further their functions generally and for the defence and security of the UK. The power of entry in section 16 (principal officers may authorize persons to survey and mark out lands, and treat with owners for purchase thereof) allows them to enter, survey and mark out (or cause to be surveyed or marked out) any land, building or other hereditament or easement for the service of HM Ordnance, for the defence of the realm or to stop up or divert any public or private footpaths or bridle-roads. There is also a power to enter agreements or apply to the court to purchase, possess or use such land for such time as is required. The following safeguards already exist: providing an alternative path or road for stopped-up footpaths, bridle-roads or restricted byways (section 15); restriction on taking land for the purpose of the defence of the realm (section 23) and a requirement to remove structures erected for the public service, and payment of compensation for any damage or loss caused (section 24).

Final Departmental Decision on Powers of Entry relating to the MOD Land Legislation

21. All the land legislation powers are necessary to ensure the maintenance and safeguarding of existing and future defence capability.

22. The MOD is aware that the use of the Manoeuvres Act 1958 powers would be rare and that these powers could be considered for repeal. However, following detailed consideration it was determined that they are unique powers which would only be used in a specific set of circumstances and that there are no similar powers held anywhere else. The review determined that they possess significant safeguards in that an Order in Council is required to authorise the manoeuvres and there are restrictions built into the Act itself that specifically exclude certain premises from this power. Taken together these are deemed to be robust safeguards and the power should be retained unchanged.

23. The Land Powers provisions do not require an Order but, during the review it has been determined that there is a sufficient safeguard in that this power only allows entry onto land that does not have buildings - and the purpose of the entry is limited to surveying the land. There is no power to remove items, make alterations or occupy. Consideration was given to requiring a warrant and the MOD believes that this should be included as a back stop should entry be refused. This is further reinforced by a proposal for an extension of the requirement to give notice in writing to the landowner in all cases to at least 28 days' notice. These powers are felt to be necessary, proportionate and, with the proposed changes, subject to sufficient safeguards.

24. The Defence Act 1842 provisions would only be used rarely when required to do so in defence of the realm. The MOD believes that although there are existing safeguards there should be the addition of a warrant procedure when this power is exercised in relation to domestic premises.

CONCLUSION AND NEXT STEPS

25. The MOD's powers of entry under the Armed Forces Act 2006 are so unique and interwoven with the specific aim of ensuring that the Service justice system and military discipline as a whole is maintained, that any repeal or consolidation of the powers would undermine their effect. The MOD's land related powers of entry similarly underpin essential defence estate requirements.

26. Existing guidance issued to COs will be reviewed in the light of the forthcoming Home Office Powers of Entry Code of Practice. It is our aim to develop an implementation plan by summer 2014 setting out more clearly a time table detailing when we will be able to begin making the proposed changes to PoE relating to MOD land legislation.

