

Ordinance 05 of 2017

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**OFFENDERS REMOVAL AND DETENTION
(AMENDMENT) ORDINANCE 2017**

An Ordinance to amend the Offenders Removal and Detention Ordinance 2016 by making provisions in relation to powers of the police to search persons and places on arrest; to provide for delegation of functions by the Attorney General and Legal Adviser; and for connected purposes.

James Illingworth
ADMINISTRATOR

27 July 2017

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title

1. This Ordinance may be cited as the Offenders Removal and Detention (Amendment) Ordinance 2017.

Commencement

2. This Ordinance comes into force on 31 July 2017.

Amendment of the Offenders Removal and Detention Ordinance 2016

3. The Offenders Removal and Detention Ordinance 2016(a) is amended as follows.

Amendment of section 3

4. In section 3 (interpretation) at the appropriate place in alphabetical order insert—

““intimate search” means a search which consists of the physical examination of any of a person’s body orifices other than the mouth;

“items subject to legal privilege” has the meaning given in section 4 of the Criminal Procedure Ordinance 2016(b);”.

Amendment of section 6

5.—(1) Section 6 (arrest under certified warrant) is amended as follows.

(2) At the end of the section insert—

“(4) The following sections of the Criminal Procedure Ordinance 2016 have effect in relation to an arrest, or to the power of arrest, under this section—

(a) section 16 (arrest);

(b) section 18 (intimate search of arrested person) has effect as if any reference to an offence included reference to an offence committed outside the Areas; and

(c) section 20 (power to break out of building, etc).”.

Amendment of section 8

6.—(1) Section 8 (arrest without certified warrant) is amended as follows.

(2) Number the existing text as subsection (1).

(3) In subsection (1) (as numbered by subsection (2) above), in paragraph (a) omit “, that on receipt of a copy of that warrant,”.

(4) In subsection (1) (as numbered by subsection (2) above), in paragraph (b) omit “, that on receipt of a copy of that warrant,”.

(5) At the end of the section insert—

“(2) The following sections of the Criminal Procedure Ordinance 2016 have effect in relation to an arrest, or to the power of arrest, under this section—

(a) section 16 (arrest);

(b) section 18 (intimate search of arrested person) has effect as if any reference to an offence included reference to an offence committed outside the Areas; and

(c) section 20 (power to break out of building, etc).”.

New sections 8A and 8B

7. After section 8 (arrest without certified warrant) insert—

“Search of person on arrest

8A.—(1) This section applies where a person is arrested under sections 6 or 8.

(2) A police officer may, using no more force than is reasonable in the circumstances, search the arrested person and seize any of the following—

(a) Ordinance 19/2016.

(b) Ordinance 9/2016.

- (a) any item that the officer has reasonable grounds for suspecting to be evidence relating to an offence;
- (b) any item that might be used to cause physical injury; or
- (c) any item that might be used to assist an escape from lawful custody, to hinder the investigation of an offence or to interfere with evidence.

(3) An offence includes an offence committed outside the Areas.

(4) Sections 17(3) and 17(4) of the Criminal Procedure Ordinance 2016 have effect in relation to a search under subsection (2).

(5) Subsection (2) does not authorise any person to carry out an intimate search.

Entry and search of places on arrest

8B.—(1) This section applies where a police officer has the power to arrest, or has arrested, a person (P) under sections 6 or 8.

(2) A police officer may enter and search any place for the purpose of exercising the power of arrest under sections 6 or 8 if the officer has reasonable grounds for believing that P may be found there.

(3) A police officer may enter and search any place, in which P was immediately before the arrest, if the officer has reasonable grounds for believing evidence relating to the removal offence may be found there.

(4) In this section “place” includes—

- (a) a dwelling or part of a dwelling;
- (b) any tent or movable structure; and
- (c) any vehicle (whether motorised or not), vessel, aircraft or hovercraft.

(5) A police officer searching a place in the exercise of the power conferred by subsections (2) or (3) may seize and retain any item that the officer has reasonable grounds for suspecting to be evidence relating to the removal offence.

(6) Nothing in this section authorises the seizure of items subject to legal privilege.”.

New section 19A

8. After section 19 (powers of the Resident Judge’s Court) insert—

“Items seized under sections 8A and 8B

19A.—(1) Section 46 (disposal of seized items) of the Criminal Procedure Ordinance 2016 has effect in relation to items seized under sections 8A and 8B.

(2) Where an item is seized under sections 8A or 8B, it must be brought before the court to be disposed of in accordance with section 46 of the Criminal Procedure Ordinance 2016.

(3) Where an item is brought before the court in accordance with subsection (2), the court may order that the item is delivered to a police officer of the Republic.”.

New section 33A

9. After section 33 (transit by air or sea) insert—

“Attorney General and Legal Adviser may delegate exercise of functions

33A. The Attorney General and Legal Adviser may in writing or by notice in the Gazette delegate to a Crown Counsel the exercise of a function conferred on the Attorney General and Legal Adviser by or under this Ordinance.”.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Offenders Removal and Detention (Amendment) Ordinance 2017 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Ordinance amends the Offenders Removal and Detention Ordinance 2016 (“the principal Ordinance”).

3. Sections 5 and 6 make sections 16 (arrest), 18 (intimate search of arrested person) and 20 (power to break out of building, etc) of the Criminal Procedure Ordinance 2016 applicable to arrests under sections 6 (arrest under certified warrant) and 8 (arrest without certified warrant) of the principal Ordinance.

4. Section 6 also makes minor amendments to section 8 (arrest without certified warrant) of the principal Ordinance to clarify powers of arrest under that section. The amendment makes clear that a police officer may arrest a person in circumstances where a warrant, issued by a court in the Republic, has been received but has not been certified by an authorised officer.

5. Section 7 amends the principal Ordinance by inserting new sections 8A and 8B.

6. Provisions of the new section 8A give a police officer the power to search a person arrested in the exercise of powers under the principal Ordinance. A police officer may seize items found during the search if the items relate to an offence or might cause physical injury, assist an escape or hinder the investigation of an offence. For the purposes of this section “an offence” means any offence, regardless of whether it is committed within or outside the Areas. It includes offences under any enactments of the Areas or the Republic of Cyprus.

7. New section 8B enables a police officer to enter and search places without a search warrant before or after the time of arrest. An officer may seize items found during the search if the officer has reasonable grounds for suspecting such items are evidence relating to the removal offence. If the items found relate to an offence other than the removal offence, then provisions of sections 34 (search of places without warrant), 35 (search of vehicles without warrant) and 36 (seizure of items found during search without warrant) of the Criminal Procedure Ordinance 2016 may be relied on to seize those items.

8. Section 8 of the Ordinance inserts new section 19A into the principal Ordinance. New section 19A makes provision for the disposal of items seized during searches under new sections 8A and 8B.

9. Section 9 amends the principal Ordinance by inserting new section 33A. New section 33A enables the Attorney General and Legal Adviser to delegate functions, conferred on the Attorney General and Legal Adviser by or under the principal Ordinance, to a Crown Counsel either in writing or by notice in the Gazette.

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