

Chapter 3

Jurisdiction and time limits

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Chapter 3

Jurisdiction and time limits

Introduction

1. This chapter sets out who may be subject to Service jurisdiction and who may exercise it. Although the avoidance of unnecessary delay is a key driver for all involved in the administration of discipline in the Services, the Armed Forces Act 2006 (the Act) does not generally contain formal time limits on the charging of persons as long as they remain subject to Service law or subject to Service discipline. Time limits are a concern, however, in relation to reservists, those who have left the regular or reserve forces and civilians who have ceased to be subject to Service discipline.

Persons subject to Service law or Service discipline

2. The Act applies to two categories of persons; persons subject to Service law (both Service personnel¹ and ex-Service personnel) and civilians subject to Service discipline (relevant civilians). Members of the regular forces² are persons subject to Service law at all times and anywhere in the world. Reservists are subject to Service law only in the circumstances set out and explained in paragraphs 10 to 13 below. Forces of the British overseas territories are only subject to Service law when they are serving with Her Majesty's forces. Persons will become civilians subject to Service discipline only in certain limited circumstances; see paragraphs 17 to 27 below.

3. Persons who fall into either of the two categories above who are alleged to have committed a Service offence³ may be investigated. If charged, a person subject to Service law may be brought before their commanding officer (CO) at summary hearing (for certain offences) or before the Court Martial (CM). A CO cannot hear a charge against a civilian subject to Service discipline; relevant civilians may only be brought before the Service Civilian Court (SCC) or be tried before the CM.

4. Any person subject to Service law or Service discipline may be tried before the CM. This may be because the charge faced is serious enough to justify or require it, or because the facts or the law in the case are so complex. Even if none of these factors is present, any person subject to Service law (who would otherwise be tried at a summary hearing) or a civilian subject to Service discipline (who would otherwise be tried before the SCC) may elect CM trial.

Concurrent jurisdiction

5. In many cases there may be concurrent jurisdiction; this means that cases could be investigated or prosecuted by Service, UK civilian or foreign authorities. Decisions on who exercises jurisdiction will have to take into account the principles contained in relevant protocols, in Status of Forces Agreements (SOFA) or in memoranda of understanding (MOU); decisions involving foreign authorities will require prior consultation with the appropriate Service authorities⁴. Before an allegation or offence can be investigated the Service Police will need to consider jurisdiction. In some cases they may (if the necessary requirements are

¹ See Glossary for definition of a Service person.

² See definition at section 374 of the Act.

³ Service offences are those which appear in Sections 1 to 39 and Section 42 of the Act and include both Service disciplinary offences and criminal conduct offences which are charged under section 42 of the Act.

⁴ Higher authority (HA) should be consulted and the Director of Service Prosecutions (DSP) for more serious cases.

met) exercise some of their powers, such as the power of arrest before jurisdiction is confirmed. For information on arrest see [Chapter 4](#) (Arrest and search, stop and search, entry, search and seizure, and retention) and for charging see [Chapter 6](#) (investigation, charging and mode of trial).

6. This chapter is divided into six parts, as follows:

- a. Part 1 - Jurisdiction as to person.
- b. Part 2 - Jurisdiction of Service courts.
- c. Part 3 - Choice of jurisdiction.
- d. Part 4 - Jurisdiction as to time.
- e. Part 5 - Double jeopardy.
- f. Part 6 – Transitional guidance.

Part 1 – Jurisdiction as to person

Introduction

7. Part 1 deals with circumstances when the Services have jurisdiction. This does not mean it will always be appropriate to exercise that jurisdiction. There is often an alternative civilian or even alternative Service jurisdiction and such circumstances are described in each part of the chapter. In cases of doubt or where established procedures do not exist, staff legal advice should be sought.

Persons subject to Service law

8. **The regular forces**⁵. Every member of the regular forces is subject to Service law at all times. This means that whether on duty or off duty within the UK or abroad, or transiting between countries, every member of the RN, the RM, the regular Army and the RAF is subject to Service law.

9. **Officers**. Any officer who is on the active list⁶, or who has been recalled into permanent Service, is subject to Service law as a member of the regular forces. An officer who has retired from Service nevertheless retains their commission for life. That said, upon retirement they is no longer regarded as a member of the regular forces and will therefore not be subject to Service law⁷. They will only become subject to Service law if they are recalled into permanent Service⁸.

10. **The reserve forces**⁹. The reserve forces are defined as¹⁰ the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve and the Royal Auxiliary Air Force. These are broken down into:

- a. 'Volunteer reserve forces' namely the Royal Naval Reserve, the Royal Marines Reserve, the Territorial Army and the Royal Auxiliary Air Force.
- b. 'Ex-regular reserve forces' namely the Royal Fleet Reserve, the Army Reserve and the Royal Air Force Reserve. These are ex-regular personnel who have a call-out liability arising from their regular Service but also include certain categories of individuals who volunteer their Services.

11. Members of the reserve forces become subject to Service law when they are carrying out the following activities:

- a. During permanent Service on call-out (either by virtue of the statutory requirement under the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or any other call-out obligation of an officer).
- b. During home defence Service on call-out¹¹.
- c. When engaged in a full-time Service commitment¹².

⁵ See section 367(1) of the Act.

⁶ See section 368(3) of the Act. The active list for each Service is defined by single-Service provisions. RN – Navy List, Army Pay Warrant 1964 Article 11, RAF Order made under section 2(1) of the Air Force (Constitution) Act 1917.

⁷ Unless proceedings are taken against them as an ex-Service person in accordance with sections 55, 57 or 61(2) of the Act.

⁸ This would not, however, prevent the Services from taking administrative action against the Service person who is no longer subject to Service law.

⁹ See section 367(2) of the Act.

¹⁰ See section 374 of the Act.

¹¹ See section 22 of the Reserve Forces Act 1980.

- d. When undertaking any duty or training (whether or not in pursuance of an obligation). This includes any additional duties commitment undertaken.
- e. When serving on the permanent staff of a reserve force.

In addition, members of the reserve forces may be tried for certain offences under Part X of the Reserve Forces Act 1996 even though not subject to Service law at the time.

12. A reservist undertaking service under any of paragraph 11a – c and e above will be subject to Service law during the whole period of that service whether they is travelling, physically working, resting or off duty. This is different in respect of duties undertaken under paragraph 11d above (this is likely to be most relevant to members of volunteer reserve forces attending short periods of training or duty). Broadly speaking, such a person will be subject to Service law while they are with their reserve force. So, for example, where they attends an 8 hour training period on a Saturday they will be subject to Service law during the time of the training period only and not when they is driving to the period or returning home from it. Staff legal advice should be obtained if there is any doubt as to whether a reservist was subject to Service law at the time they committed the alleged offence.

13. **Recall.** Any person who is recalled for service under the authority of a recall order made under the Reserve Forces Act 1996, or under an officer recall obligation, is for the purposes of the Act, regarded as being a member of the regular forces from the time that they is accepted into permanent service following their recall until they is discharged or released from that service.¹³ Accordingly, such persons will be subject to Service law at all times during this period of recall in the same way that Service law applies to the regular forces as described above. In addition, they may be tried by the CM for certain offences under Part X of the Reserve Forces Act 1996 even though not accepted into service at the time of the alleged offence.

14. **British overseas territories' forces**¹⁴. When any member of a British overseas territory force, i.e. any of Her Majesty's forces raised under the law of a British overseas territory, is undertaking any duty or training with United Kingdom regular or reserve forces, they becomes subject to Service law¹⁵ for the duration of the training or duty. They are treated for the purposes of the Act as having an equivalent rank or rate to a relative member of the force with which they is serving. To this extent, any member of a British overseas territory force who is serving with Her Majesty's forces also has like powers of command over the United Kingdom forces with which they is serving¹⁶.

15. **Members of foreign forces.** Members of foreign forces apart from those from Commonwealth forces will not be subject to Service law. Members of any foreign force may, however, in certain circumstances be civilians subject to Service discipline. This would be the case if, for example, such persons were on board any of Her Majesty's ships afloat or aircraft in flight or in Service custody¹⁷. Members of foreign forces are not permitted to exercise any disciplinary functions under the Act.

¹² See section 24 of the Reserve Forces Act 1996.

¹³ See section 368(2) of the Act.

¹⁴ See section 369 of the Act. For a list of these countries see section 2 of the UK Forces (Jurisdiction of Colonial Courts) Order 1965 (as amended) – SI No 1203 of 1965.

¹⁵ See section 369(1) of the Act.

¹⁶ Under section 369(3) of the Act the Secretary of State has power to modify any provisions of the Act in relation to such persons. To date no such modifications have been made.

¹⁷ Section 370 (provides the Services with the power to make persons including members of the armed forces (when they are not subject to Service law) civilians subject to Service discipline) and paragraphs 1-3 of Schedule 15 of the Act.

16. **Members of Commonwealth forces.** Service personnel from Commonwealth countries in a Service exchange or loan Service position in the UK are, for jurisdictional purposes, to be treated as any UK Service person subject to Service law¹⁸. Similarly, a Commonwealth officer on exchange is permitted to exercise any disciplinary functions under the Act in the same way as a UK officer of equivalent rank¹⁹. Commonwealth personnel attached to UK forces on operations overseas will usually be subject to their own chain of command. If members of Commonwealth forces are not subject to Service law they will be (in the same way as members of foreign forces, see paragraph 15 above) civilians subject to Service discipline (like any other person who is not at the time subject to Service law) while on board any of Her Majesty's ships afloat or aircraft in flight or in Service custody²⁰.

Civilians subject to Service discipline

17. **Introduction.** Persons will be civilians subject to Service discipline only if they are not subject to Service law and they fall into one of the categories set out in Schedule 15 to the Act. It should be noted that although the Act uses the expression 'civilian subject to Service discipline' this can cover members of the armed forces in certain circumstances, for example, a member of a foreign force or a member of the reserve forces who is not for the time being subject to Service law. Therefore, a member of the Territorial Army who is also an MOD Crown servant would be, when working abroad in support of the armed forces in their civilian capacity²¹, a civilian subject to Service discipline.

18. Where a civilian is subject to Service discipline, a CO must be allocated to them, see [Chapter 2](#) (Meaning of commanding officer). A CO should know the civilians, subject to Service discipline for whom they have responsibility. A civilian subject to Service discipline is only subject to Service jurisdiction for a limited range of offences i.e. section 42 (criminal conduct) offences, those non-criminal conduct (disciplinary) offences at paragraphs 41a - e below and other offences at paragraphs 41f - j below. A CO cannot personally decide to charge a civilian²² nor can civilians have a charge against them heard summarily by the CO. Where a CO has responsibility for any case against a civilian subject to Service discipline they have the power to refer it to the Director of Service Prosecutions (DSP), to take no action or to refer the matter to the civilian authorities see [Chapter 6](#) (Investigation, charging and mode of trial). If the DSP decides to charge, the case will be heard in either the SCC or the CM see [Chapter 6](#) (Investigation, charging and mode of trial).

19. **Categories of civilians subject to Service discipline.** Persons who can be civilians subject to Service discipline fall into a number of categories, which may be broadly described as:

- a. Civilians in Her Majesty's ships and aircraft, see paragraph 21 below.
- b. Persons in Service custody, see paragraph 22 below.
- c. Crown servants in a designated area²³ working in support of Her Majesty's forces, see paragraph 23 below.
- d. Members of specified military organisations, see paragraph 24 below.

¹⁸ Section 4(4) of the Visiting Forces (British Commonwealth) Act 1933.

¹⁹ Section 4(4) of the Visiting Forces (British Commonwealth) Act 1933.

²⁰ Section 370 and paragraphs 1-3 of Schedule 15 of the Act.

²¹ To see how and when Schedule 15 applies see both section 370 and the provisions of Schedule 15 of the Act.

²² See section 121(2) and section 52(3) and (4) of the Act.

²³ For a definition of a designated area see paragraph 20.

- e. Members of other specified organisations in a designated area²⁴, see paragraph 25 below.
- f. Persons residing or staying with certain people in a designated area²⁵, see paragraph 26 below.
- g. Persons designated by or on behalf of the Defence Council, see paragraph 27 below.

A person who falls into one of the categories c-g above will not be a civilian subject to Service discipline if that person is not a UK national and they is in a country of which they is a national or in which they is ordinarily resident.

20. Designated areas. Civilians falling into categories in paragraph 19 c, e and f above are only subject to Service discipline if they are in a designated area²⁶ (see [Annex A](#)). A designated area means an area which is outside the British Islands and has been designated as such by an order made by the Secretary of State²⁷. Some persons are only civilians subject to Service discipline while they are within a designated area and so can only commit a relevant Service offence while within a designated area. The fact that the civilian has ceased to be subject to Service discipline, for example by leaving the designated area, does not of itself, prevent the Service Police exercising their powers of arrest over that person, wherever they may be. For example, a civilian subject to Service discipline who committed an offence whilst in Germany could still be arrested by the Service Police upon their return to the UK.

21. Civilians in Her Majesty's ships and aircraft. A person who is not subject to Service law will be a civilian subject to Service discipline if they are in one of Her Majesty's ships afloat²⁸ or if they are in one of Her Majesty's aircraft in flight. Under the Act, the period that one of Her Majesty's aircraft is in flight includes the period from the moment when power is applied for the purpose of the aircraft taking off on a flight, until the moment when the landing run (if any) at the termination of that flight ends (chock to chock).

22. Persons in Service custody. A civilian in Service custody will be subject to Service discipline if their being in Service custody is lawful by virtue of any provision of or made under the Act²⁹. This includes where a person is arrested and held in Service custody in the mistaken belief that they was subject to Service discipline. Where such a mistake occurs, legal advice should be obtained as soon as practicable and if appropriate the person released from Service custody. A person will also be subject to Service discipline if they are in the course of being arrested or subject to an attempted arrest by a person who has a duty under Service law to apprehend them.

23. Crown servants. In most cases this will be an MOD civil servant, including a retired officer employed by the armed forces outside the UK. A Crown servant is within the category referred to at paragraph 19c above if:

- a. They are employed by or in the service of the Government of the United Kingdom;

²⁴ For a definition of a designated area see paragraph 20.

²⁵ For a definition of a designated area see paragraph 20.

²⁶ These designated areas are set out in the Armed Forces (Civilians Subject to Service Discipline) Order 2009/836.

²⁷ See paragraph 12 of Part 2 of Schedule 15 of the Act.

²⁸ Means not on shore. See Schedule 15 of the Act.

²⁹ For further detail see The Armed Forces (Custody Without Charge) Regulations 2009/1097 and The Armed Forces (Custody Proceedings) Rules 2009/1098.

- b. Their sole or main role is to work in support of any of Her Majesty's forces;
and
- c. They are in a designated area³⁰.

24. **Members of specified military organisations.** A person will be a civilian subject to Service discipline if they are employed by or in the service of a specified naval, military or air force organisation³¹. This only applies if they are so employed by reason of the UK's membership of that organisation and they are outside the British Islands. The only organisation so far in this category is NATO. There is no requirement in this category to be in a designated area.

25. **Members of other specified organisations.** A person will be within the category referred to at paragraph 19e above if they belong to or are employed by one of a number of other specified organisations and they are in a designated area. Certain organisations may be specified by order of the Secretary of State and fall outside paragraph 19e above. However, a person belonging to or employed by one of these organisations specified by order of the Secretary of State will be a civilian subject to Service discipline when in a designated area. These organisations are currently as follows:

- a. The Navy, Army and Air Force Institutes (NAAFI);
- b. Service Children's Education;
- c. The Services Sound and Vision Corporation (SSVC); and
- d. The Soldiers, Sailors, Airmen and Families Association (SSAFA) - Forces Help.

26. **Persons residing or staying.** A person will be within the category referred to at paragraph 19f above if they are residing or staying with one of the following persons:

- a. A person who is subject to Service law who is in a designated area;
- b. A person who is a Crown servant, see paragraph 23 above, who is in a designated area;
- c. A person belonging to or employed by other specified organisations, see paragraph 25 above, who is in a designated area; or
- d. A person referred to in paragraph 24 above, who is outside the UK.

Persons residing or staying with persons in paragraph 27 below would themselves need to be specifically designated.

Case Study

If a person is residing or staying with, for example, a Service person in a designated area, e.g. Germany, but travels e.g. on holiday to another designated area, e.g. Cyprus, although he may still be residing with a Service person in Germany, he will not be subject to Service discipline in Cyprus **unless** he stays with another Service person in Cyprus. The jurisdiction of the Services does not therefore follow the person around just because he travels to another designated area.

³⁰ For a definition of a designated area see paragraph 20.

³¹ See article 2 of the Armed Forces (Civilians Subject to Service Discipline) Order 2009 SI 2009/836.

27. **Persons designated by or on behalf of the Defence Council.** A person will be within the category referred to at paragraph 19g above if they is designated by or on behalf of the Defence Council or by an officer authorised by the Defence Council (the designating officer)³² and they is outside the British Islands³³ and within the terms of the designation³⁴. Such designations can specify the particular person or description of persons so designated. They can also specify the circumstances in which the designation applies, for example, by reference to presence within an area. In addition, they can specify a period for which the designation applies. Likely examples of persons who will be designated are contractors deployed on operations in support of UK forces sometimes referred to as Contractors on Deployed Operations (CONDO) and civilian visitors to operational areas. An officer who is to be the CO of a designated person will be appointed as such by an officer authorised to do so by the Defence Council. Without such specific appointment an officer does not become a CO of such a person see [Chapter 2](#) (Meaning of commanding officer).

Principles applying to the designation of civilians under paragraph 7 of Schedule 15 of the Act

28. The following principles apply to the designation of a civilian under paragraph 7 of Schedule 15 of the Act:

- a. The decision to designate a civilian as being subject to Service discipline is not one that should be made lightly and therefore the authority ought not normally to be delegated below a CO.
- b. If a civilian, either as an individual, or as part of a class of civilians is designated and therefore becomes subject to Service discipline they must be informed of this fact. They should also be informed of who their CO will be in the event of a problem occurring.
- c. The default level for designating civilians should be at MOD, Front Line Command (FLC) or PJHQ level and wherever possible the designation should be made clear to a civilian before they deploy. All designations made this way must be recorded and reviewed at regular intervals.
- d. In the event that MOD, FLC or PJHQ require to designate a civilian as being subject to Service discipline³⁵ the officer who makes the designation must have the appropriate authorisation from the Defence Council or single-Service Board acting on its behalf³⁶.
- e. In exceptional circumstances³⁷ where a civilian is not already designated any officer who has been authorised³⁸, may designate them. The officer who makes a designation in such circumstances does so on the basis that the need has arisen due to unforeseen circumstances and this should be reported up the chain of command.

³² See Volume 3 of the MSL for the detail of Defence Council authorisations.

³³ For definition of British Islands see Schedule 1 to section 5 of the Interpretation Act 1978. It means the UK, the Channel Islands and the Isle of Man.

³⁴ For advice relating to contractors contact Dir Def Log Pol (DE&S) and for those who are not contractors contact SPPol SC.

³⁵ It should be noted that not all persons who are visiting or working with the armed forces may require to be designated. The criteria for deciding whether a designation is required is set out in paragraphs 7(2) and (3) of Schedule 15 of the Act and at paragraphs 30 and 31.

³⁶ See Volume 3 of the MSL for the detail of Defence Council authorisations.

³⁷ For example if an aircraft carrying civilians was diverted from its planned route and had to land in a country where the Captain of the aircraft believed it was desirable to designate them in case an incident occurs.

³⁸ This will require the Defence Council or single-Service Boards to consider which people in which area they require to be authorised.

29. If a person is to be designated they should be informed that the designation makes them subject to Service discipline and that Service jurisdiction is limited to the full range of criminal conduct offences (the criminal law of England and Wales) and a small number of Service offences under the Act (such as standing order offences). In the event that such a civilian is alleged to have committed such an offence, they may be tried either before the SCC or the CM.

30. **Reasons for designation.** The intention is to avoid unnecessary designations, but at the same time the Act is very flexible. The basis for designation is that a designating officer considers that a designation is desirable for one of the following reasons:

- a. In the interests of the person,
- b. To protect other people (for example, civilians or members of UK armed forces), or
- c. To maintain good order and discipline.

31. **Factors to consider when deciding whether to designate.** In arriving at their decision, the designating officer must take into account the following:

- a. The characteristics of the justice system (if any) in any country or territory where the person is likely to go;
- b. The terms of any relevant treaty or arrangement (such as a memorandum of understanding) under which such jurisdiction could be exercised; and
- c. Whether the person is likely to be subject to the law of the armed forces of a foreign country.

32. The designating officer, in considering whether to designate an individual should consider whether the individual concerned will have sufficient contact with UK armed forces to make it desirable for them to be subject to Service discipline. This view will be strengthened if, for example, the local courts are inadequate or the local police would not be interested in investigating an alleged offence by the individual against members of the UK armed forces. They may also need in certain cases to determine whether jurisdiction can effectively be exercised. If there is any doubt then whenever possible Staff Legal advice should be sought. In designating, they will need to make it clear when and in some cases in which locations the designation will apply.

33. In the event that a civilian is to be designated by a designating officer the Form JPA T-SL-DES01 at [Annex B](#) should be used. If this form is not available then the designation may be made provided the information contained in the form is recorded and the necessary information briefed to the individual(s) (see below):

(Describe individuals(s) in sufficient detail to identify them; whether collectively by reference to the contract on which they are employed, by reference to their employer or on some other basis, or individually) is/are designated under paragraph 7 of Schedule 15 of the Armed Forces Act 2006 as subject to service discipline under Section 370 of that Act. (Describe any geographic or other limitation which is to apply to the designation. This designation can only apply outside the British Islands. If the geographic area in which it applies is to be restricted to a specific area this must be described in sufficient detail to make it clear where it applies. If there are any time limits to the operation of the designation these must be clearly identified).

The designation process

34. There are three different processes for the designation of persons under paragraph 7 of Schedule 15 of the Act. The processes at MOD / PJHQ / FLC level that are to be followed in order to ensure that a civilian is designated correctly are set out below:

a. **Contractors on deployed operations (CONDO³⁹).** Such persons will be designated according to the following process:

(1) Once the designating officer has made the necessary designation the contract sponsor will inform the contractor that their personnel⁴⁰ will be subject to Service discipline and whether this applies for a specified period or in specified circumstances.

(2) It is then the responsibility of the contractor to inform their employees of the circumstances in which they will be subject to Service discipline and to ensure they understand the effect of this designation. This should form part of their pre-deployment briefing.

(3) When the designated employee arrives in Theatre they will be informed by the contract sponsor of the identity of the officer appointed to be their CO. At the same time the contract sponsor will notify the relevant CO that they are to be the CO of that particular civilian or class of civilians. The contract sponsor will ensure that the employee is notified of any relevant standing orders. The contract sponsor will also act as an adviser to the CO in the event that any issues arise.

b. **Contractors in non-operational areas.** A very similar process to that in paragraph 34a above applies.

c. **Visits**

(1) **By Crown servants and members of other specified organisations to operational areas.** UK Crown servants, i.e. a person employed by or in the service of the Government of the United Kingdom, may wish to visit operational areas for various reasons. Similarly, employees of other specified organisations such as NAAFI or SSVC may wish to make such visits. Where such visits to the Armed Forces in an operational area are necessary, and the visitors are required to be subject to Service discipline⁴¹ then it is the responsibility of PJHQ to inform them that they are to be designated, to brief them on the implications of designation, and allocate them a CO while they are in that theatre of operations. PJHQ will, at the same time, notify the nominated CO of the relevant civilian who will be arriving in Theatre, to ensure that on their arrival they are made aware of relevant standing orders.

(2) **By journalists, politicians and others to operational areas.**

(a) All correspondents on operational media assignments with UK forces will require accreditation under the provisions of the MOD's Green Book. Correspondents accompanying UK forces during an international armed conflict will need to be accredited to the armed

³⁹ For further detail on CONDO see JSP 567 and DEFCON 697.

⁴⁰ Except for Host Nation Nationals and residents of that country.

⁴¹ Using the criteria in paragraphs 30 and 31.

forces if they are to attain the special status provided for them by Article 4A(4) of the Third Geneva Convention. This will mean that they will be accredited as 'War Correspondents'. Further details on all aspects of correspondent accreditation can be found in the MOD Green Book (Practical Arrangements for Enabling Correspondents to Report on Operations).

(b) Politicians and other official visitors to operational areas; such visits are authorised by PJHQ, who will consider whether designation is appropriate, and put any designation in place. It is very unlikely, but possible, that theatre commanders may be uncertain whether such a visitor has been designated or whether such a visitor who has not been designated ought to be. Any such question should be referred to J3 at PJHQ and not to officers in theatre with powers to designate.

(3) **To non-operational areas.** If persons such as MOD Crown servants, members of other specified organisations or other individuals or groups⁴² who are not already designated⁴³ wish to visit the armed forces in a non-Operational area⁴⁴, and they are required to be subject to Service discipline⁴⁵, then it is the responsibility of the unit that they intend to visit to inform their higher authority (HA) of the visit. It is then the responsibility of the HA to inform the relevant FLC of the visit. If the decision is made that the visitors should be subject to Service discipline then the FLC should arrange for:

- (1) The designation to be made by an officer authorised by the Defence Council (a designating officer).
- (2) The visitors to be informed they are to be designated.
- (3) The visitors to be briefed on what the designation means.
- (4) The visitors to be allocated a CO during their visit.
- (5) The CO who is nominated to be responsible for them to be informed so that they can ensure that they are aware of any relevant standing orders.

35. **Designation in exceptional circumstances.** There may be cases where FLCs or PJHQ believe that they may need to be able to designate civilians as being subject to Service discipline and they cannot ensure that the normal authorising process will be flexible enough to be used. Such circumstances might be when designation has not been done in advance but an unexpected event/diversion may mean that civilians need to be designated in their own interest. They might involve a civilian arriving in a location where for some reason they have slipped through the authorising process without being designated by mistake. Officers such as aircraft captains may be appointed as designating officers in the event such designation may be necessary. The FLCs or PJHQ will need to ensure that an authorisation for individuals in a particular area is made, and that the selected officers are informed, so that they can act.⁴⁶ The following procedure is to be followed where there is a requirement to designate civilians in exceptional circumstances.

⁴² For example politicians.

⁴³ Under the Armed Forces (Civilians Subject to Service Discipline) Order 2009/836.

⁴⁴ For example Belize.

⁴⁵ Using the criteria in paragraphs 30 and 31.

⁴⁶ For example the RN might decide to authorise all their ships' Captains, the Army might give authorisation to all COs in a particular area and the RAF might authorise the Captains of passenger planes.

- a. In the event that a designating officer requires to designate a civilian they should fill in the Form T-SL-DES01 at [Annex B](#)⁴⁷ and ensure that the civilian is informed that they have been designated. They should also inform the civilian what the designation means and for how long and where it is to apply.
- b. If the designating officer has not already obtained staff legal advice they should do so as soon as is practicably possible.
- c. The designating officer should inform HA of their actions as soon as is practicable.
- d. The designating officer should keep the designation under review and if circumstances change such that their reasons for the designation no longer apply, they should terminate the designation and inform the civilian of their actions.

⁴⁷ If this is not available then he should ensure that the information is recorded and signed.

Part 2 - Jurisdiction of Service courts

Introduction

36. Not all Service offences⁴⁸ can be committed by a person subject to Service law and by a civilian subject to Service discipline. Each section of the Act that creates an offence states to whom it is applicable and whether it can be committed by a person subject to Service law or a civilian subject to Service discipline or both.

37. Section 42 (together with the supplementary provisions contained at sections 42 to 48 of the Act) is a very important section of the Act, extending the application of the criminal law of England and Wales to offences committed anywhere. It sometimes raises complex questions (upon which there is case law) as to whether conduct outside the UK is to be treated in criminal terms in the same way as it would if that conduct had occurred in the UK. This approach cannot always be interpreted literally. For example, national speed limits in Germany are different to those in the UK. A person subject to Service jurisdiction does not commit an offence under section 42 if they drive in Germany at a speed permitted in that country even if that would be illegal in the UK. Staff legal advice should be sought where issues arise concerning section 42.

38. In addition, there are certain offences created in sections 344 to 346 of the Act (aiding and abetting desertion, absence or malingering and obstructing persons subject to service law in the course of duty) which can be committed by any person and are triable by the civilian courts.

39. **Regular forces.** Regular forces personnel can commit any Service offence, except those created under the Reserve Forces Act 1996.

40. **Reserve forces.** When subject to Service law, members of the reserve forces can commit any Service offence which applies to persons subject to Service law. They can also commit certain offences created by the Reserve Forces Act 1996 when they are not subject to Service law.

41. **Civilians subject to Service discipline.** Relevant civilians can commit Service offences under section 42 of the Act. These are offences equivalent to crimes under the law of England and Wales and are referred to in this chapter as 'criminal conduct offences', see [Chapter 8](#) (Criminal conduct offences). In addition, such persons can commit non-criminal conduct (disciplinary) offences under some of sections 1 to 41 of the Act, see [Chapter 7](#) (Non-criminal conduct (disciplinary) offences), as well as certain other applicable offences created by armed forces legislation⁴⁹. The non-criminal conduct (disciplinary) offences that can be committed by relevant civilians are as follows:

- a. Looting under section 4 of the Act.
- b. Contravention of standing orders under section 13 of the Act.
- c. Obstructing or failing to assist a Service policeman under section 27 of the Act.
- d. Resistance to arrest under section 28(2) of the Act.
- e. An offence in relation to Service custody under section 29 of the Act.

⁴⁸ For Service offences see paragraph 41.

⁴⁹ See section 50(2)(b)-(g) of the Act, excluding under (e) offences contrary to section 305 of the Act, and under (f) excluding offences contrary to section 328 of the Act.

The other main offences created by armed forces legislation that can be committed by civilians subject to Service discipline are as follows:

- f. Failure to attend custody hearing under section 107 of the Act.
- g. Failure to provide a sample for testing for alcohol and drugs after a serious incident under section 306 of the Act.
- h. An offence under section 18 or 20 of the Armed Forces Act 1991 (orders for the protection of children).
- i. An offence under section 40 of the Act (encouraging and assisting) in relation to an offence mentioned at paragraph a - d (inclusive) above and f – h (inclusive) above.
- j. An attempt under section 39 of the Act to commit any of the disciplinary or other applicable offences above.

For the procedures applying to the investigation and charging of civilians see [Chapter 6](#) (Investigation, charging and mode of trial).

The Court Martial (CM)

42. The CM has jurisdiction to try any Service offence. For the purposes of the Act a Service offence⁵⁰ is:

- a. An offence that is a disciplinary offence, such as absence without leave⁵¹ or failure to attend for or perform a duty⁵², under Part 1 of the Act, other than an offence under section 42. Such an offence only exists in Service law and has no exact equivalent offence under the criminal law of England and Wales.
- b. Any criminal conduct offence under section 42 of the Act, which covers two main types of conduct. First, it covers conduct which is punishable under the criminal law of England and Wales (this generally covers conduct taking place in England or Wales). Secondly, it covers conduct outside the UK, which broadly speaking would be punishable under the criminal law of England and Wales had it been committed in England or Wales (but see paragraph 36 above).
- c. An offence (not within a or b above) that is specifically created in the Act, namely:
 - (1) Breach of requirement imposed on release from custody⁵³.
 - (2) Breach of Service restraining order⁵⁴.
 - (3) Failure to comply with a financial statement order⁵⁵.
 - (4) An offence in relation to testing for alcohol or drugs⁵⁶.

⁵⁰ See section 50 of the Act.

⁵¹ See section 9 of the Act.

⁵² See section 15 of the Act.

⁵³ See section 107 of the Act.

⁵⁴ See section 229 of the Act.

⁵⁵ See section 266 of the Act.

⁵⁶ See Chapter 1 of Part 13 of the Act.

- (5) An offence under regulations in relation to giving false answers during enlistment which is specified in the regulations to be a Service offence⁵⁷.
- d. An offence created by armed forces legislation other than the Act:
 - (1) An offence under section 18 or 20 of the Armed Forces Act 1991 (orders for the protection of children).
 - (2) An offence under any of the sections 95 – 97 of the Reserve Forces Act 1996 (reserve forces offences).
 - (3) An offence under paragraph 5(1) of Schedule 1 to the Reserve Forces Act 1996 (false answer during enlistment in a reserve force) committed by a person within paragraph 5(3) of that Schedule.

The Service Civilian Court (SCC)

43. The Service Civilian Court may sit in any place, whether within or outside the United Kingdom and has jurisdiction (where it is not a matter to be tried by the CM) to try any Service offence committed outside the British Islands by a civilian subject to Service discipline with the exception of the following:

- a. An indictable-only offence under section 42 of the Act for which the corresponding offence under the criminal law of England and Wales could only be tried before the civilian Crown Court. Therefore, an adult may not be tried in the SCC for an indictable-only offence under section 42. However, an accused aged under 18 may be tried by the SCC for any such offence, except:
 - (1) Murder.
 - (2) Manslaughter.
 - (3) Causing or allowing the death of a child⁵⁸.
 - (4) A firearms offence⁵⁹. If convicted at a CM trial for this offence, certain requirements as to the minimum sentences for firearms offences would apply.
- b. An offence under section 266 (Financial Statement Order) committed in respect of a financial statement order made by a court other than the SCC.
- c. Any Service offence under regulations made under section 328 (Enlistment) or section 343 (Service Inquiries) of the Act.
- d. An offence within section 50(2)(h) or (i) (Reserve Forces Act 1996 offences)⁶⁰.
- e. Any offence if the accused is a member of the regular or reserve forces or liable to recall⁶¹.

⁵⁷ See regulation 12 of the Armed Forces (Enlistment) Regulations 2009.

⁵⁸ See section 5 of the Domestic Violence, Crime and Victims Act 2004 (c.28)

⁵⁹ See section 227 of the Act.

⁶⁰ See section 51(3)(d) of the Act.

⁶¹ For definition of 'liable for recall' see section 51(7) of the Act.

Summary hearing

44. Only persons subject to Service law may be dealt with at a summary hearing. Offences can be heard by either the CO or an empowered subordinate commander. The offences that a CO or subordinate commander can hear depend on whether the matter is one capable of being dealt with summarily, the rank/rate of the accused, their powers of punishment as set out in [Chapter 13](#) (Summary hearing sentencing and punishments), [Chapter 2](#) (Meaning of commanding officer) and [Chapter 6](#) (Investigation, charging and mode of trial).

45. **Commanding officer.** A CO may hear a charge against a person subject to Service law if⁶²:

- a. The offence is one that may be dealt with at a summary hearing see [Chapter 6](#) (Investigation, charging and mode of trial);
- b. The accused is of the appropriate rank/rate, i.e. an officer of or below the rank of commander, lieutenant colonel or wing commander, or a person of or below the rank or rate of warrant officer;
- c. The accused is a person who (depending on paragraphs 10 -13 above and 67 to 71 below⁶³):
 - (1) From the time the offence was committed to the end of the summary hearing of the charge is subject to Service law;
 - (2) From the time the offence was committed to the end of the summary hearing of the charge is a member of a volunteer force; or
 - (3) Is a member of an ex-regular reserve force (see paragraph 10b) who is subject to an additional duties commitment. A CO has no power to hear a charge summarily once the accused has been discharged as a member of the regular or reserve forces or if they is an ex-regular reservist, once they have completed their recall Service or any additional duties commitment; and
- d. The CO is a minimum of two ranks higher than any commissioned officer who appears before them for summary hearing⁶⁴.

46. **Subordinate commander.** The same principles apply for a subordinate commander as to a CO when powers of punishment have been delegated with respect to hearing a charge summarily. A subordinate commander will have to consider their powers of punishment as they will differ from those held by the CO, see paragraph 44 above. They should determine whether they have sufficient power to hear the charge.

47. **Offences that may be heard summarily without permission.** In order for an offence to be capable of being heard by a CO it must be one of the offences specified in section 53 and Part 1 of Schedule 1 of the Act⁶⁵. This list is exhaustive and an offence not

⁶² See section 52 of the Act.

⁶³ See also section 52(5) and (6) of the Act. Subsection (5) provides that if the offence is under section 96(1) Reserve Forces Act 1996 where the offender is subject to Service law, it is enough if he is 'liable to recall' or 'a member of the regular forces' during the period. Under subsection (6) if there is any other offence under the Reserve Forces Act 1996 he must be a member of a reserve force during this period.

⁶⁴ See [Chapter 2](#) (Meaning of commanding officer).

⁶⁵ See also Annex A to [Chapter 6](#) (Investigation, charging and mode of trial).

within that section is not capable of being heard summarily by the CO, however minor it may appear to be.

48. **Offences requiring the permission of HA for summary hearing.** A CO can deal summarily with certain criminal conduct offences within section 53 and Schedule 1 of the Act⁶⁶ only after having obtained permission from HA⁶⁷. These offences are listed in Part 2 of Schedule 1 of the Act and in Annex B of [Chapter 6](#) (Investigation, charging and mode of trial). Where permission is required, it must be obtained **before** the case can be dealt with summarily. However, if the officer who will hear the charge summarily is of, or above, the rank of rear admiral, major general or air vice-marshal, they can deal with these offences without permission. For the procedure on how to apply for permission, see [Chapter 6](#) (Investigation, charging and mode of trial).

Appellate courts

49. There are three appellate courts:

- a. **The Court Martial Appeal Court (CMAC).** For appeals see [Chapter 31](#) (Court Martial appeal).
- b. **The Summary Appeal Court (SAC).** The SAC has the jurisdiction to hear an appeal (this is by way of a re-hearing) from a summary hearing. See [Chapter 15](#) (Summary hearing review and appeal) for further details on appeals to the SAC.
- c. **The Court Martial (CM).** The CM has jurisdiction to hear appeals made from the SCC. See [Chapter 32](#) (Service Civilian Court).

⁶⁶ See section 54(1)(b) of the Act.

⁶⁷ For single-Services this will be their own HA and for joint units this will be their assigned HA.

Part 3 - Choice of jurisdiction

Jurisdiction inside the United Kingdom

50. Within the UK, in respect of offences committed by persons subject to Service law, jurisdiction may lie with the Service authorities under the Act or with both the Service authorities and the civilian authorities under the ordinary law of the relevant part of the UK. In the latter circumstance, there are a number of established procedures and protocols that determine the exercise of jurisdiction⁶⁸ and COs should liaise with the Service Police and seek staff legal advice on jurisdiction.

51. The Act has removed the bar that previously existed which prevented the Service authorities from having jurisdiction to prosecute certain offences (principally murder, manslaughter and rape) alleged to have occurred within the UK. Where such offences are committed in the UK by persons subject to Service law (or who were so subject at the time of the offence) the Service courts can now have jurisdiction. However, the civilian police will normally investigate and the civilian authorities with jurisdiction will normally prosecute such cases. The removal of the statutory bar provides certainty that the Service Police can conduct initial investigations.

52. **Consultation with relevant civilian authority.** Where jurisdictional issues arise in the UK, they will be handled by the Service Police or Ministry of Defence Police (MDP) (who are themselves a civilian authority) and by the Director of Service Prosecutions (DSP), where appropriate. COs should therefore liaise in the first instance with the Service Police in these cases.

a. COs should be aware that in some of these cases consultation needs to take place with the civilian authorities. Where this is not done by the Service Police or the MDP, staff legal advice should be obtained. The relevant civilian authority will be the Crown Prosecution Service. For the position in respect of Scotland and Northern Ireland see below at paragraphs 53 and 54 respectively.

b. When a CO reports a matter to the relevant civilian authority, they should request that written confirmation is provided as to whether or not the matter will be disposed of by the civilian authority. The CO, as well as notifying their HA, should also notify the Service Police of their actions at the earliest possible opportunity. Any written confirmation from the civilian authorities should then be retained with the other records held in respect of the case.

c. In any case where a civilian authority has consented to allow the Service authorities to deal with a case, the CO of the suspect or accused should notify the civilian authorities of the result of the case.

53. **Scotland.** In respect of criminal conduct offences committed by a person subject to Service law in Scotland, the following points should be noted:

a. It is the Procurator Fiscal for the relevant area, under the direction of the Lord Advocate, who prosecutes cases (rather than the Crown Prosecution Service (CPS) who do so in England and Wales). Therefore, in relation to offences in Scotland, 'Procurator Fiscal' should be substituted for the words "Crown Prosecution Service" and "chief officer of Home Office Police" wherever they occur in this chapter. The Procurator Fiscal will usually be the point of contact for consultation.

⁶⁸ Advice can be obtained from DDefSy-Def Policing at MOD on protocols and generally, from the staff legal adviser.

- b. The Procurator Fiscal is responsible for deciding how an alleged offender should be tried.

54. **Northern Ireland.** In Northern Ireland, allegations in relation to criminal conduct offences committed by a person subject to Service law are referred by the civilian police to the Director of Public Prosecutions and it is they and not the Chief Officer of police, who considers questions of jurisdiction.

55. **Staff legal advice.** If a CO is in any doubt as to whether an alleged offence should be reported to a relevant civilian authority under paragraph 52 above or if there is any doubt as to whether the Services have jurisdiction to deal with the case, they should seek staff legal advice.

Jurisdiction outside the United Kingdom

56. **Introduction.** The proper exercise of Service jurisdiction in a foreign country (for example, the arrest of persons subject to Service law or a civilian subject to Service discipline by Service Police) is often regulated by a treaty, MOU or ad hoc agreement⁶⁹. Without such an agreement, while the arrest or other action is still valid under UK domestic, Service and international law, the country in question may complain that its sovereignty has been infringed and may request that jurisdiction be returned (in such circumstances, advice should be sought from HA). Where the British armed forces are in belligerent occupation of the territory of any other State, Service authorities will normally have exclusive jurisdiction in that territory in respect of the investigation and prosecution of offences by persons subject to Service law or attached civilians subject to Service discipline.

57. In countries where no treaty, MOU or ad hoc agreement exists and the circumstances in paragraph 56 above do not apply, COs should be sensitive to the issue, and may need to liaise with the UK's representatives or in their absence, the local authorities, before exercising Service jurisdiction.

58. **Countries other than NATO countries.**

- a. Where a treaty, Status of Forces Agreement or MOU is in place in non-NATO countries, sometimes the UK Service authorities will be able to exercise jurisdiction to deal with all offences committed by persons subject to Service law or civilians subject to Service discipline. However, in other countries, the Services will only be able to exercise jurisdiction to deal with offences committed whilst on duty and in other specified situations. Staff legal advice should be sought in the first instance if there is any doubt as to whether such an agreement may exist.

- b. Where UK persons subject to Service law are placed at the disposal of a Commonwealth force under Defence Council Orders, jurisdiction lies with the Commonwealth Service authorities⁷⁰.

59. **NATO and partnership for peace countries.** Jurisdiction in NATO countries and the other states participating in the Partnership for Peace (PfP)⁷¹ is dealt with in Article VII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty (Command 9363) signed in London on 19 June 1951 (the Agreement). The full text of the

⁶⁹ Whether or not such agreements exist, COs will also be issued with mission directives for exercises or operations and port visit guidance will be provided for ships, which will detail the jurisdictional issues which apply in a particular country.

⁷⁰ See section 4(2)(ii) of the Visiting Forces (British Commonwealth) Act 1933 (as amended).

⁷¹ See Partnership for Peace Framework Document dated 10 Jan 94

Agreement is in MSL, Volume 3, but some of the main jurisdictional aspects are set out below:

a. The UK has exclusive jurisdiction to deal with offences relating to the UK's security which are punishable under UK law but not by the law of the NATO/PfP country. These offences are:

- (1) Treason against the state;
- (2) Sabotage, espionage or official secrets related offences.

b. Where the right to exercise jurisdiction lies with both the Service authorities and the local judicial authorities (for example, where the offence is against both Service law and the law of the country in which it has allegedly occurred) jurisdiction is governed by paragraph 3 of Article VII of the Agreement. The general effect is that the UK Service authorities retain jurisdiction over non-criminal conduct (disciplinary) offences under the Act when UK forces are in a NATO/PfP country. The UK Service authorities have the primary right to exercise jurisdiction to deal with the following offences:

- (1) Any Service offence other than those which are charged under section 42 of the Act.
- (2) Offences under section 42 of the Act solely against UK security or property of the UK Government.
- (3) Offences under section 42 of the Act solely against another Service person or a member of the civilian component or their property.
- (4) Offence under section 42 of the Act arising out of any act or omission in the performance of an official duty.

c. Where either the receiving state or the visiting state has the primary right of jurisdiction, they have the power to waive it.

60. **Notification.** In cases where the right to exercise jurisdiction lies with both the Service authorities and the receiving state, the state that exercises jurisdiction in a particular case must notify the other of the results of the case⁷².

61. **Germany.** The status of UK forces stationed in Germany is governed by the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty (Command 9363) as modified by the Supplementary Agreement (Command 2191 of 1963 and Command 2479 of 1994). Broadly speaking the main effect of the Supplementary Agreement in relation to jurisdiction is that Germany has given a general waiver of its primary right to jurisdiction as regards UK forces. This general waiver may be recalled, however, in special circumstances in a specific case. Where this issue arises staff legal advice should be sought.

62. **British overseas territories**⁷³. In the British overseas territories listed in the UK Forces (Jurisdiction of Colonial Courts) Order 1965 (as amended) – SI No 1203 of 1965⁷⁴,

⁷² Article VII(6)(b) of the NATO SOFA refers.

⁷³ These include (but are not limited to): Anguilla, British Guiana, Cayman Islands, Falkland Islands, Fiji, Gibraltar, Seychelles, Virgin Islands. See section 2 of the UK Forces (Jurisdiction of Colonial Courts) Order 1965 (as amended) – SI No 1203 of 1965 for the full list of countries.

⁷⁴ See Volume 3 of the MSL.

the jurisdiction of the civil courts to try members of Her Majesty's forces (or the civilian component of those forces) in respect of offences against the law of the territory has been removed in certain circumstances. Where relevant, this Order will need to be referred to.

a. Broadly, jurisdiction in respect of offences committed arising out of and in the course of duties and in respect of certain offences committed while off duty, has been removed from the local authorities of those countries. The off-duty offences include offences against the person or property of another member of Her Majesty's forces (or of the civilian component) or against the property of a UK Government department or other UK authority or authorised Service organisation. The civilian courts may, however, proceed with a trial if the CO of Her Majesty's forces in the territory concerned, notifies the Governor that the Service authority does not propose to deal with the case.

b. Detailed instructions are issued separately and should be consulted in addition to seeking staff legal advice. The primary right of jurisdiction is not to be waived without full consultation with the appropriate HA.

c. In British overseas territories where UK forces are stationed and where the jurisdiction of the civil court has not been removed, the local legislation might also impose similar jurisdictional arrangements to those set out above, but advice should be sought from a staff legal adviser in all cases of doubt.

63. **Sovereign Base Areas (SBAs) - Cyprus.** SBAs form a special category governed by the Treaty of Establishment 1960. Differing jurisdictional arrangements exist depending on whether the events giving rise to the charge occurred within the SBAs or in the Republic of Cyprus. In the light of such complications, where such issues arise staff legal advice should always be obtained.

Part 4 - Jurisdiction as to time

Introduction

64. Generally, a person may be charged with any Service offence which applies to them if they commit that offence when they are subject to Service law⁷⁵ or they are a civilian subject to Service discipline. For the most part, the question of any time limits only arises where the individual has **ceased** to be subject to Service law or a civilian subject to Service discipline at the time it is intended to charge them. This will be the case: where a regular Service person has left the Service; where a reservist has ceased to be a member of a reserve force; where a civilian is no longer subject to Service discipline because, for example, they are no longer present in an area that resulted in them becoming subject to Service discipline. However, in relation to a small category of offences there are time limits that apply, which are unrelated to whether or not the individual was or is subject to Service law, or to whether they were a civilian subject to Service discipline, see paragraph 72 below. For the application of Service discipline to civilians generally see [Chapter 6](#) (Investigation, charging and mode of trial).

65. **Summary jurisdiction.** Paragraph 45c above deals with the requirement that, broadly, for a charge to be heard summarily the accused must be a person subject to Service law from the time the offence was committed to the end of the summary hearing of the charge, or is a member of a volunteer force or a member of an ex-regular reserve force who is subject to an additional duties commitment.

66. **CM jurisdiction.** Once the time limits, see paragraphs 67 to 71, have expired, an individual cannot be charged with a Service offence; however, where it is intended that a person be tried by the CM there is an exception under section 61 of the Act which provides a power to seek the consent of the Attorney General to charge outside the time limit. This power does not apply to the small category of offences which are set out in paragraph 72 below.

Time limits in relation to categories of personnel

67. **General.** A person must be charged with an offence within the relevant time limit and this will mean proceedings have commenced. It is not necessary for the charge to have been heard within the time limit although the longer the delay (without reasonable and justifiable excuse), the more likely it is that there could be an argument for abandoning the case as being an abuse of process. The time limits laid down in the Act relate only to Service offences committed under the Act and do not affect any statutory time limits provided for in any other legislation in respect of dealing with civil offences. Where the offence is to be dealt with by a civilian court, the civilian time limits apply rather than those under the Act.

68. **Her Majesty's regular forces.** Except with the consent of the Attorney General, once an individual has left the regular forces they cannot be charged with a Service offence that they are alleged to have committed when they were a member, if more than six months have elapsed beginning on their discharge date. This is the case even if they rejoin one of the Services, either as a regular or reservist, within that six month period⁷⁶.

⁷⁵ For additional times in relation to Reserve Force Acts offences see section 107 RFA 96 and section 62 of the Act where these offences are prosecuted at the CM.

⁷⁶ See section 55 of the Act.

Case Study

A soldier who commits a Service offence on 1 Jan 10 but who subsequently leaves the Army on 31 Jan 10 could still be charged with that offence with a view to hearing it at a CM trial, provided that he is charged on or before 30 Jul 10. If he then went on to join the RAF on 1 Feb 10 he still could not be charged with any offence he may have committed on 1 Jan 10 as a soldier after 30 Jul 10. If, however, as an airman he commits another offence on 1 Mar 10, he could be charged with that Service offence as a member of the regular forces.

69. **Her Majesty's reserve forces.** The same rule as for regular forces applies to reserve forces. Once an individual has left the reserve forces, they cannot be charged with a Service offence that they are alleged to have committed when they were a member, if more than six months have expired from their discharge date. This is the case even if they rejoin one of the Services, either as a regular or reservist, within that six month period⁷⁷. A charge can only arise from an incident that occurred when the reservist was subject to Service law, see paragraphs 10 to 13 above. However, the six month time limit will run from when they cease to be a reservist. It will not run from the end of a period during which they were temporarily subject to Service law, unless that period also happens to end with their ceasing to be a member of the reserve force. The reservist may therefore have periods when they were not subject to Service law between the incident and the charge.

70. **Former regular and reserve forces.** Those personnel who are recalled into Service are to be treated as members of the regular forces and that includes in relation to time limits for charging⁷⁸. Such a person cannot be charged with a Service offence committed during the period of their recall, if more than six months has passed since the end of the period for which they were recalled⁷⁹. Where a person undertakes an additional duties commitment⁸⁰ as a member of an ex-regular reserve force and ceases to be subject to the commitment, they may be charged with an offence that is alleged to have occurred during that period if not more than six months have expired from the end of their additional duties commitment. This rule does not apply in the case of a member of the volunteer reserve forces who undertakes an additional duties commitment, because in their case, the six month time limit will only run from the date of their discharge from the reserve force as referred to above at paragraph 69 above.

71. **Civilians.** A civilian cannot be charged with a Service offence if six months have elapsed since the time they ceased to be a civilian subject to Service discipline. However, if they immediately become subject to Service law (for example, because they join one of the Services) then that six month time limit will not apply. A person can be a 'civilian subject to Service discipline' intermittently. Where a civilian has ceased to be subject to Service discipline, the six months' period will generally continue to run, even if they again become subject to Service discipline before the end of the six months. However, where a civilian subject to Service discipline temporarily leaves a designated area, but continues to reside or stay in that designated area, for example, they will remain subject to Service discipline in their temporary absence and the time period will not begin to run.

72. **Certain categories of offences.** Besides certain Reserve Forces Act 1996 offences, there are two other Service offences to which time limits apply:

⁷⁷ Except in relation to limited cases involving the Reserve Forces Act 1996 for which see footnote to paragraph 42e.

⁷⁸ See section 55 of the Act.

⁷⁹ See definition of ex-regular reserve force at section 374 of the Act.

⁸⁰ See section 25 of the Reserve Forces Act 1996.

a. **Failing to attend a hearing at which attendance is required.** This offence is contrary to section 107(5) of the Act and the time limit for charging a person with this offence is the later of:

- (1) Expiration of six months beginning with the date of commission of the offence; or
- (2) Expiration of two months beginning with the date that the offender is apprehended.

This offence can be committed by a person who is not subject to Service law. For example, if a member of a reserve force who is not for the time being subject to Service law, is released from custody but then fails to attend a hearing in the proceedings against them that they are required to attend, they may have committed the offence under section 107(5) of the Act. The time limits stated above will apply to bringing a charge for that offence⁸¹.

b. **Failing to comply with a financial statement order.** This offence is contrary to section 266 of the Act and the time limit for charging a person with such an offence⁸² is the earlier of:

- (1) Expiration of two years beginning with the date of commission of the offence; or
- (2) Director of Service Prosecutions or a prosecuting officer of their staff becomes aware of the offence.

As with the section 107 offence, the offences under section 266 can be committed by a person who is no longer subject to Service law or by a civilian who is no longer subject to Service discipline. For example, a member of the Territorial Army (whilst not on duty) may be subject to a financial statement order but fails to comply with its terms. This non-compliance is an offence under section 266 and therefore the time limit stated above will apply.

⁸¹ See section 59 of the Act.

⁸² See section 60 of the Act.

Part 5 - Double jeopardy

Introduction

73. The double jeopardy rules protect accused persons from repeated prosecutions for the same offence. Generally, if an accused has already been convicted or acquitted, they can enter a plea before any subsequent court and state that the earlier conviction or acquittal should totally bar any further proceedings⁸³. The area is a technical one, with considerable case law. Moreover, it forms part of a wider area of law, together with related common law on abuse of process. The following paragraphs should be seen as no more than an introduction to the particular provisions on double jeopardy in the Act on which staff legal advice should be sought.

74. The Act provides for the barring of Service disciplinary proceedings owing to the outcome of Service or civilian criminal proceedings and the barring of civilian criminal proceedings owing to the outcome of Service disciplinary proceedings. The protection is particularly important in the Service context because persons subject to Service law (and civilians subject to Service discipline) may be dealt with in civilian courts for criminal offences, or in Service Courts for Service offences, which include both criminal offences (charged under section 42 of the Act) and Service discipline offences. As a general rule, section 63 of the Act protects a person convicted or acquitted of a Service offence from trial:

- a. For the same offence based on the same or substantially the same facts.
- b. For an offence all the elements of which were elements of the offence for which they was convicted or acquitted (for example, if convicted of robbery, they cannot be tried for theft in relation to the same events; if acquitted of theft, they cannot be tried for robbery in relation to the same events).
- c. Where they was convicted or acquitted by the CM or SCC for another offence for which they could have been tried as an alternative to that for which they was convicted or acquitted.

Statutory regime

75. Generally, the provisions of the Act relating to double jeopardy apply to offences which have been taken into consideration for the purposes of sentence as well as to offences for which a person has been convicted or acquitted.

- a. Sections 63 and 64 of the Act provide that acquittals and convictions of Service offences⁸⁴:
 - (1) Will bar further trial in any other Service court or a hearing by a CO in the circumstances summarised in paragraph 74 above (section 63 of the Act).
 - (2) In relation to criminal conduct offences under section 42 of the Act, will bar further trial in UK (or Isle of Man) civilian courts where trial in those courts would be barred following a conviction or acquittal by a civilian court in England or Wales of the corresponding civilian offence (section 64 of the Act).
- b. Section 66(1) of the Act, in relation to a conviction or an acquittal by a civilian court, provides that the common law rules which would bar further trial in a civilian

⁸³ These are known respectively as the principles of *autrefois convict* and *autrefois acquit*. Sections 63-66 of the Act.

⁸⁴ That is in the summary hearing as well as in the Service courts.

court in England or Wales apply to bar trial before the CM or the SCC or a hearing by a CO for a criminal conduct offence (under section 42 of the Act).

c. Section 66(2) of the Act provides a bar to trial by the CM or SCC, or a hearing by the CO for any other Service offence if any act forming an element of the Service offence amounts to an offence under the law of England and Wales, which could not be tried by a civilian court in England or Wales because of the common law rule of double jeopardy.

The barring of prosecutions

76. Under sections 121(5), 125(2)(g) and 126(2)(f) of the Act, the Director of Service Prosecutions (in relation to cases referred to them, charges allocated for trial by the CM or the Service Civilian Court) may make a direction under section 127 of the Act that a person is to be treated as acquitted of a specified Service offence. They may either make a direction for the purposes of barring further Service proceedings only (i.e. for the purposes of section 63 of the Act) or they may make such a direction to bar further Service proceedings and civilian proceedings (i.e. for the purposes of sections 63 and 64 of the Act).

Practical effect

77. **Service courts.** In the event of a double jeopardy issue arising before the CM or the SCC, the plea on behalf of the accused would be brought before the judge advocate who would deal with it either at a preliminary hearing or during a trial, in the absence of the lay members of the court.

78. **Summary hearing.** Whereas in a Service court it will be for an accused to prove that they have already been acquitted or convicted, the rule against double jeopardy is so fundamental that if at any stage of a summary hearing an accused suggests that they have already been dealt with in any of the ways provided for in the Act, the CO and the Service Police must seek staff legal advice (and the Service Police may if they think it appropriate seek advice from the DSP). Only if the CO is satisfied (having taken legal advice) that there is no bar should the hearing proceed. The greatest potential for double jeopardy is in relation to older incidents, incidents which occurred in another unit or those which occurred in a civilian environment.

The effect of administrative action

79. Quite separate from 'double jeopardy' is the issue of whether to prosecute where an accused has been or may be the subject of administrative action in respect of the same events. This goes to general questions of fairness and does not form part of the double jeopardy rule. For example, it may be unjust to prosecute a person for negligently performing a duty if administrative action has already been taken against them for the same failing. In such cases (which can be complex), staff legal advice should be sought.

Part 6 – Transitional guidance

Introduction

80. This Part provides a brief explanation of transitional arrangements concerning the jurisdiction of the Court Martial and the Service Civilian Court (SCC), the feature of time limits and the principle of double jeopardy. Staff legal advice should be sought when a transitional situation is identified.

Jurisdiction

81. **Jurisdiction as to person.** Jurisdiction as to person under the 2006 Act is dealt with in Part 1 of this chapter. A member of the regular forces subject to military law, air-force law or the NDA 1957 before commencement will become, on commencement, a person subject to Service law under the 2006 Act. The same transition is not necessarily the case for civilians subject to the SDAs before commencement. For example, the civilian spouse of a Service person who prior to commencement is residing with them outside the UK may or may not become, on commencement, a civilian subject to Service discipline, but this will depend on whether they is in a designated area or whether they have been specifically designated as subject to Service discipline.

82. **The Court Martial.** Jurisdiction of the CM under the 2006 Act is dealt with in Part 2 of this chapter. The CM has jurisdiction to try any SDA offence except an offence within section 70(4) of AA 1955 or AFA 1955 or section 48(2) of NDA 1957 (serious SDA civil offences committed in UK). The CM is not similarly limited in its jurisdiction to try Service offences committed post-commencement.

83. **The SCC.** Jurisdiction of the SCC under the 2006 Act is dealt with in Part 2 of this chapter. The SCC has jurisdiction to try any SDA offence committed outside the British Islands by a civilian subject to the SDAs, subject to similar exceptions that applied before commencement to the jurisdiction of Standing Civilian Courts.

84. **Jurisdiction as to time.** Time limits under the 2006 Act are dealt with in Part 4 of this chapter. The time limits are essentially the same as before commencement. SDA offences that are already time-barred before commencement will continue to be time-barred after commencement unless a situation exists in which the Attorney-General's consent to bring a charge may apply. There are different time-limits applicable to offences under the RFA 1996. Those provided for by the 2006 Act will apply, on transition, to SDA offences under the RFA 1996.

85. Time starts to run against the time limits from the moment a person who has committed an SDA offence ceases to be a member of a regular or reserve force except where at that time they transferred to another regular or reserve force. In relation to civilians formerly subject to the SDAs the six month time-limit explained in paragraph 71 of this chapter applies. Where a civilian formerly subject to the SDAs ceased to be subject to the SDAs by virtue of becoming subject to military law, air-force law or the NDA 1957 (pre-commencement), or by becoming a civilian subject to Service discipline on commencement there is no time-bar.

Double Jeopardy

86. Provisions in the 2006 Act protect an individual from double jeopardy in relation to Service offences and are dealt with in Part 5 of this chapter. Where, before commencement, provisions of the SDAs or CMAA68 prevented a person from being tried by a court-martial for

an SDA offence, the Court Martial, SCC or a CO at a summary hearing are similarly barred from trying the charge⁸⁵.

⁸⁵ See article 25 of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009/1059.

LIST OF DESIGNATED AREAS⁸⁶

1. The following are designated areas for the categories of civilians referred to in paragraphs 23, 25 and 26b and c of this chapter:

Brunei Darussalam

The Falkland Islands

The Federal Republic of Germany

Gibraltar

The Kingdom of Saudi Arabia

The Islamic Republic of Afghanistan

The Republic of Iraq

2. The following are designated areas for the category of civilian referred to in paragraph 26a of this chapter:

Belize

Brunei Darussalam

The Falkland Islands

The Federal Republic of Germany

Gibraltar

The Kingdom of Saudi Arabia

The Republic of Cyprus

The Republic of Turkey

The Sovereign Base Areas of Akrotiri and Dhekelia

The State of Kuwait

The Sultanate of Oman

⁸⁶ These designated areas are contained in the Armed Forces (Civilians Subject to Service Discipline) Order 2009/836.