



An Overview of the Service Justice System and the Armed Forces Act

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Find out about the Armed Forces Act

What is the Service Justice System?

All Service personnel are subject to UK criminal law – this means that when they are serving in UK they have the same status as any other UK citizen in terms of how they are treated if they commit an offence under civilian law. However, the armed forces are expeditionary in nature and are routinely deployed overseas. In many cases, such deployments are to areas that are unstable, often hostile and sometimes where law and order is applied very differently to the UK system.

UK courts cannot generally try offences that are committed outside the UK. The Service system of law ensures that, as far as possible, Service personnel are dealt with by a familiar system if they commit an offence when serving overseas. They can expect a consistent and fair hearing wherever they find themselves. This is important given the frequency of overseas deployment. Without such a system, they would be dealt with under the law of the country in which they are serving or escape justice altogether. At a practical level this means that they are dealt with in a language they understand. They also are dealt with fairly by a system judged to be fully compliant with the European Convention on Human Rights (ECHR).

The Service Justice System provides the legal framework that recognises the unique environment in which the Armed Forces operate. It provides essential support to operational effectiveness. The Service Justice System reflects UK civilian law as closely as possible but it goes further still: high standards of behaviour are required by the Armed Forces at all times and wherever they serve. These are standards that are distinctive to the armed forces and that demand certain conduct that would not be tolerated in civilian employment such as absence without leave or disobeying a lawful command.

The impact on operational effectiveness of a separate system of Service law is significant; it allows the chain of command to exercise immediate and effective justice in a way that ensures the safety of personnel in whatever duty they are engaged. This applies equally through the full spectrum of operations – from warfighting to peacetime training activity.

The Service Justice System is constructed to provide a mechanism in which those accused of disciplinary offences are dealt with fairly, quickly and have the right to appeal against their sentence. It is important that those who are subject to Service law have confidence in the system and legal safeguards exist to ensure that this continues to be the case.

Commanders are best placed to understand the Service environment and the implications of breaches of standards by those under their command on operational effectiveness. As a result, they are vested with statutory powers that go beyond the provisions generally available to civilian employers. This is because the obligations of Service personnel are necessarily far more binding

than those of civilian employees. The process, which gives COs the powers to administer justice for certain offences, is the Summary Hearing process.

The Service Justice System helps ensure that justice is not unnecessarily delayed. The Summary Hearing powers provide commanding officers (COs) with immediate sanctions to enforce discipline in less serious cases, with the outcome being quickly and readily apparent to the offender, his peers and to any victim. This is essential in operational theatres, where operational effectiveness is vital. In such an environment, breaches of discipline that are not dealt with can be corrosive and undermine team working and morale. The Court Martial process, fully compliant with the ECHR, is able to dispense justice in the most serious and complex cases.

In addition to Service personnel, the Service Justice System also applies, to a limited extent, to the families of Service personnel and UK based civilian staffs who accompany the armed forces overseas.

The legislation for the Services' disciplinary and criminal justice systems was provided for in the three Service Discipline Acts; the Naval Discipline Act 1957, the Army Act 1955, and the Air Force Act 1955, collectively known as the Service Discipline Acts (SDAs). The SDAs have provided a comprehensive system of law for the Services since their introduction. They incorporated offences that reflect civilian criminal offences and establish offences that are unique to the Armed Forces, such as desertion.

However, the last time the SDAs were fully re-written was in the 1950s. Since then they have been reviewed every 5 years and amended piecemeal to reflect changes in civil law and the requirements of the Services. In 1996 and 2000 there were some significant changes to ensure that the requirements of the European Convention on Human Rights were met.

The 1998 Strategic Defence Review stated that there would be advantages to be gained from combining the three SDAs into a single Act. It went on to say that the differences that the Services needed to retain for operational reasons would be kept but reduced to an absolute minimum. It also recognised that this would be a substantial and complex undertaking as legislation would have to be completely rewritten. The harmonisation and modernisation of Service discipline powers and processes was agreed between the Services after extensive consultation. Parliament brought the Armed Forces Act into full effect on 31 October 2009.

The Armed Forces Act

The Armed Forces Act harmonises the disciplinary systems of the three Services. In doing so it removes command and procedural difficulties faced by those commanding joint units and organisations at home and abroad. It reinforces the link between discipline and command.

People from all three Services – who increasingly train and operate together – are now subject to the same system wherever they serve. The Armed Forces

Act delivers a more modern system of law that is much more coherent than the former SDAs. It also provides improvements in some key areas as summarised below.

Key Principles

The key principles underlying the Armed Forces Act are broadly the same as those that existed under the SDAs but with the addition of a harmonised approach. They also build on the progressive reforms of the last 50 years in that the system of Service law should:

- Be fair and be seen to be fair
- Be conducive to the expeditious application of justice
- Be efficient and simple to use – it should not overburden Commanding Officers
- Reinforce the link between command and discipline
- Be ‘transportable’ anywhere in the world
- Be compliant with the ECHR
- Provide for consistency in treatment within single and joint Service environments
- Summary discipline by commanding officers
- Prosecutions
- Courts Martial
- Disciplinary Offences
- Redress of Complaint
- Boards of Inquiry and lower level inquiries will become Service Inquiries

Summary Discipline: The role of the CO is retained at the heart of Service discipline. He is responsible for the standards of behaviour of those people under this command and he must therefore have the power to enforce discipline. The summary hearing process provides him with such power. The main proposals include a range of harmonised powers to deal with some offences summarily.

This involves a theoretical reduction in the number of offences and sentencing powers currently available to Royal Navy (RN) COs, but does not compromise the operational effectiveness of the RN. There is a small increase in the offences and sentencing powers currently available to Army and Royal Air Force COs. The safeguards that existed in the SDAs, to ensure the proper use of the summary powers, remain. These include an unqualified right to elect trial by the Court Martial and an unqualified right to appeal to the Summary Appeal Court. There is also a requirement for a higher authority to authorise a CO's use, on a case by case basis, of greater powers to allow him to deal with more serious offences and to award certain punishments such as extended periods of detention ie beyond 28 days.

Commanding Officers' responsibilities: COs retain discretion on how the majority of cases are handled, except those that are inherently serious. These

offences are prescribed, and include murder, manslaughter and rape. Under the Act a CO has a duty to make the Service Police aware if he suspects such an offence has, or may be, committed. The Service Police refer the case to the Service Prosecuting Authority, who decides whether to direct trial by Court Martial and determine the correct charge.

Prosecutions: The Service Prosecuting Authority (SPA) has replaced the single Service Prosecuting Authorities. The SPA is independent of the chain of command and is staffed by lawyers from the three Services. The role of the SPA is to determine whether to prosecute an offender under Service law and direct that a trial at Court Martial should take place. It is also responsible for conducting the prosecuting case at most trials by Court Martial.

The Court Martial: The Court Martial remains the means of dealing with more serious offences. The Court Martial is a standing Court Martial but this does not mean that the panel always consists of the same members – it will operate on much the same basis as before. More than one Court Martial is able to operate at any time and the ability to convene a Court Martial anywhere in the world where the armed forces are operating will continue. There is no longer any distinction between the District Court Martial, General Court Martial or Field General Court Martial.

The Court Martial now comprises a civilian judge advocate and a panel of 3, 5 or 7 Service members depending on the seriousness of the offence charged. Service members will be predominantly of the Service of the accused. The Court Martial is a compliant court within the meaning of the ECHR and those convicted by it have a right of appeal to the Court Martial Appeal Court (CMAC).

Disciplinary Offences: Disciplinary offences are unique to Service law and they serve to enforce the discipline essential to maintain operational effectiveness. The Act has modernised the provisions and repealed some that are anachronistic or can be better dealt with by another charge.

Redress of Complaint: Service personnel will retain the statutory right to complain on any matter relating to their Service. There will be some limitation on matters that officers have the right to petition HM Queen. The proposals on redress are aimed at more speedy resolution of complaints through:

- Pro-active case management
- Cutting out duplication of effort
- Delegation of powers from the Defence Council to an empowered Service Complaints panel, independent of the chain of command and with the delegated powers of the Defence Council
- The majority of complaints are dealt with at the lowest level appropriate (CO or superior officer) and there is a maximum number of stages for a complaint – CO, superior officer and Defence Council

Additionally, to ensure transparency and to engender confidence in the redress system, complaints of bullying and other forms of unacceptable

behaviour that reach the Service Complaints Panel level are dealt with by a panel that contains an independent member who is not a member of the Armed Forces or Civil Service.

The enabling powers underpinning Service complaints can be found in Joint Service Publication (JSP) 831 (Redress of Individual Grievance – Service Complaints) included as a link on the front page of this website.

Service Complaints Commissioner: An independent figure has been appointed to receive allegations and complaints from Service personnel and members of the public. The commissioner has the power to refer allegations and complaints of unacceptable behaviour to the chain of command. The chain of command has a duty to establish if the complainant wishes to proceed and that they know how to go about it. The commissioner also reviews the effectiveness, fairness and efficiency of the whole process, and provides an annual report for the Secretary of State to lay before Parliament.

Service Inquiries: The Act has a harmonised Service Inquiry system that provides a single form of statutory inquiry, to replace the Board of Inquiry and lower level inquiries. The new provisions will give the services the power to investigate internally any matter to find out what happened and prevent it happening again.

The enabling powers underpinning Service Inquiries can be found in JSP 832 (Guide to Service Inquiries) included as a link on the front page of this website.

[How can I find out more about the Armed Forces Act?](#)

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