

JSP 832



GUIDE TO SERVICE INQUIRIES

MINISTRY OF DEFENCE

Directorate Service Personnel Policy

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INTRODUCTION TO THE ARMED FORCES (SERVICE INQUIRIES) REGULATIONS

JSP 832 – Guide to Services Inquiries, reflects the Armed Forces (Service Inquiries) Regulations 2008, which are set out in Statutory Instrument 2008/1651. The Regulations are introduced by virtue of the Armed Forces Act 2006 and came into effect on 1 Oct 08. A copy of the Regulations is enclosed at the back of the JSP.

Changes to the Regulations will be made by the laying before Parliament of Statutory Instruments containing details of the change.

When reading this JSP it is important to note that the word '**must**' is used to denote requirements mandated by law, the word '**should**' is used to reflect requirements mandated by policy and the word '**may**' provides discretion for the interpretation of policy.

Throughout this document the male gender is used to describe both male and female personnel.

FOREWORD

JSP 832 interprets the regulations and provides single, tri-Service policy on the conduct of Service Inquiries. JSP 832 sets the standard for Service Inquiries. It incorporates best practice developed through experience of Boards of Inquiry (BOI) and lessons learned from those inquiries which should have been handled better.



This symbol is used throughout the JSP to identify those parts of the inquiry process which, experience shows that, if not done well, can lead to significant additional work and unnecessary delay to the publication of the report.

Equality and Diversity Statement

Policy for Service Inquiries has been equality and diversity impact assessed in accordance with Departmental policy. This resulted in a Part 1 screening only completed (the policy is a reflection of statutory requirements and has been cleared by a Legal Advisor).

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DEFINITIONS

Adjourn	To halt an inquiry on a temporary basis.
Affected Person	A person who in the opinion of the president of the inquiry may be affected in relation to his character or professional reputation, by the findings of a service inquiry.
Convening Authority	An officer normally in the chain of command of the ship/unit/establishment or the personnel involved in the matter to be investigated, who convenes the inquiry.
Deferral	Deferral of the convening of an inquiry until matters relating thereto have been resolved.
Exhibit	Any document or thing (item) produced to the panel for use as evidence.
Final Report	The provisional report declared to be final by the convening authority once it is content that the service inquiry has met its terms of reference.
High Profile Inquiry	An inquiry which may be the subject of significant or sustained media, public and Parliamentary interest that requires special handling arrangements.
Next of Kin	Nominated relative (JSP 751, Chapter 1, Annex A refers).
Legal Advisor	A legal officer appointed to the inquiry to assist and advise the panel as required.
Observers	Anyone the president permits (with the convening authority's consent) to attend an inquiry who is not an advisor, a witness or an affected person.
President	The most senior officer appointed as a panel member, designated by the convening authority, with responsibility for directing the procedures of the panel and ensuring the inquiry complies with its terms of reference and that it addresses all the questions set out therein.
Provisional Report	The report prepared by the panel and submitted to the convening authority, which includes the findings and recommendations.
Record of Proceedings	The record of the proceedings of the panel, which includes the convening order, the TORs, transcripts of oral evidence given to the panel, copies of written

	evidence and any other document that the president decides should form part of the record.
Redaction	The separation of disclosable from non-disclosable information by blocking out individual words, sentences or paragraphs or the removal of whole pages or sections prior to the release of the document.
Relevant Civilians	Civilians who are subject to Service discipline e.g. dependant and contractors overseas.
Serviceman	A member of the Regular Forces or a member of the Reserve Forces when subject to Service law.
Service Inquiry Panel	The president and at least 2 other members appointed by the convening authority to inquiry into a matter.
Single-Service Inquiry Co-ordinator	An officer of 1* rank who is appointed as the focal point principally for service inquiries into deaths and serious injury for his Service.
Specialist Member	A member appointed to the panel because of his specific professional qualifications or skills/technical knowledge.
Terms of Reference	The direction from the convening authority to the inquiry panel, articulating the purpose and requirements of the inquiry.
Witness Notice	A legal notice issued by a Judge Advocate to compel a witness to attend an inquiry or produce or provide a document or thing (item).
Termination	To discontinue the inquiry from a specific date.

LIST OF ABBREVIATIONS

AAIB	Air Accidents Investigation Branch
AD Air Sys-TESD	Assistant Director Air Systems – Test and Evaluation Support Division
AIEFSO	Army Accident Investigation and Engineering Flight Safety Officer
AFA 06	Armed Forces Act 2006
ATO	Air Traffic Occurrence
BOI	Board of Inquiry
CAO	Court Administration Officer
CESO(RN)	Chief Environment and Safety Officer (Royal Navy)
CINC	Commander in Chief
CO	Commanding Officer
CPR	Civil Procedure Rules
DARS	Directorate of Aviation Regulation and Safety
DAS	Directorate of Air Staff
DCA	Defence Cryptosecurity Authority
DE&S	Defence Equipment and Support
DGMC	Director General Media & Communication
DPA 98	Data Protection Act 1998
DS&C	Directorate of Safety and Claims
DIU	Defence Inquest Unit
EA	Environment Agency
FAI	Fatal Accident Inquiry
FOI	Freedom of Information
HDPF	Home Department Police Force

HSE	Health and Safety Executive
ICAO	International Civil Aviation Organization
JQR	Joint Queen's Regulation
JSP	Joint Service Publication
LAIT	Land Accident Investigation Team
LA	Learning Account
MAFTR	MOD Airworthiness and Flight Test Regulator
MAIB	Maritime Accident Investigation Branch
MARSB	MOD Aviation Regulation and Safety Board
MCA	Maritime and Coastguard Agency
MDP	Ministry of Defence Police
MOD	Ministry of Defence
MOU	Memorandum of Understanding
NOK	Next of Kin
PDR	MOD's Policy & Defence Relations Directorate
PIDAT	Post Incident Drug and Alcohol Testing
PM(A)	Provost Marshal (Army)
PPO	Principal Personnel Officer
RAF	Royal Air Force
RFA	Royal Fleet Auxiliary
RM	Royal Marines
RN	Royal Navy
RNFSAIC	Royal Navy Flight Safety and Accident Investigation Centre
RTC	Road Traffic Collision

SIO	Senior Investigating Officer
SOFA	Status of Forces Agreement
SofS	Secretary of State
SSIC	Single-Service Inquiry Co-ordinator
SME	Subject Matter Expert
TORs	Terms of Reference
TTP	Tactics Techniques and Procedures
UOR	Urgent Operational Requirement
STANAG	NATO Standardization Agreement
VTC	Video Teleconferencing
RTSA	Railway and Transport Safety Act 2003
SOP	Standard Operating Procedure
TLB	Top Level Budget Holder
WMS	Written Ministerial Statement

CHAPTER 1


GENERAL PROVISIONS

Scope of JSP 832


1.1. This JSP provides policy and guidance on the procedures to be followed when convening and conducting service inquiries, and for their subsequent staffing and disclosure. It reflects the statutory basis of section 343 of the Armed Forces Act 2006 (AFA 06), which makes provision for the Services to hold service inquiries in prescribed circumstances in relation to matters connected with any of Her Majesty's Forces. The Act also empowers the Secretary of State (SofS) to make regulations in respect of such inquiries, and the guidance provided in this JSP therefore also reflects the Armed Forces (Service Inquiries) Regulations 2008, which among other things prescribe the matters about which inquiries must or may be held, and the membership and functions of a service inquiry panel.

1.2. The guidance reflects both policy on the conduct of service inquiries and best practice drawn from each of the 3 Services' experience of holding Boards of Inquiry (BOI), particularly those convened to examine the circumstances surrounding the death or serious injury of Service personnel. These policies underpin the utility of service inquiries by ensuring that they are convened expeditiously and conducted thoroughly. The guidance is intended to facilitate a considered examination of the matters under investigation in order that logical conclusions may be drawn, which are supported by the available evidence. Appropriate recommendations, including actions necessary to prevent a recurrence, should then follow.

Purpose

1.3.  Subject to its particular terms of reference (TOR), the purpose of a service inquiry is to establish the facts of a particular matter¹ and to make recommendations in order to prevent recurrence. It is an internal fact-finding investigation primarily to assist in maintaining operational effectiveness. However, its findings will be used for other purposes, particularly where deaths occur, which include assisting the MOD in fulfilling its legal obligations, for example under the Management of Health and Safety at Work Regulations 1999, advising the Next of Kin (NOK) and others of how the incident happened and informing a Coroner's Inquest.

¹ This term encompasses accidents, incidents, occurrences or events which may require investigation.

1.4.  A service inquiry is not to explicitly attribute blame². This policy, avoids criticism that deceased or seriously injured personnel, in particular who are unable to account for their actions, are blamed. It also protects the interests of individuals alleged to be involved and maintains the necessary separation between service inquiries on one hand, and disciplinary or criminal investigations on the other. Service inquiries have no power to attribute legal liability therefore they are to avoid language which appears to be a direct expression of opinion on civil or criminal liability. Nonetheless, an inquiry is not to be prevented from its purpose by any risk that blame or liability may be inferred.

Transitional Arrangements

1.5. Army and RAF BOIs and unit/regimental inquiries that have been convened before 1 Oct 08 are to continue to operate in accordance with the provisions of the respective single Service Acts and the related single Service rules. RN BOIs and ship's investigations that have been convened before 1 Oct 08 under prerogative powers will continue in accordance with RN regulations and guidance extant prior to 1 Oct 08. From 1 Oct 08 a service inquiry must be convened in accordance with the provisions of The Armed Forces (Service Inquiries) Regulations 2008 (and should be conducted in line with the arrangements contained in this JSP) irrespective of whether the matter under investigation took place before or after 1 Oct 08. In the Army and RAF there will be no statutory power to convene BOIs or unit/regimental inquiries under the respective single Service Acts after 1 Oct 08. For the RN, after 1 Oct 08, the prerogative-based BOI system will be replaced by statutory service inquiries whereas ship's investigations will continue to be convened under prerogative powers. Where any doubt exists as to how transitional arrangements are to be interpreted legal advice should be sought.

Additional Guidance

1.6. In addition to this JSP, policy and guidance on related matters is available in the following publications:

- a. JSP 375 - MOD Health and Safety Handbook
- b. JSP 400 - Disclosure of Information
- c. JSP 418 - MOD Sustainable Development and Environment Manual
- d. JSP 440 - Defence Manual of Security
- e. JSP 462 - Financial Management Policy Manual
- f. JSP 482 - MOD Explosives Regulations
- g. JSP 551 Volume 1- Military flight Safety Regulations
- h. JSP 751 - Joint Casualty and Compassionate Policy and Procedures
- i. JSP 815 - Defence Environment and Safety Management
- j. STANAG 1179 – Combined Investigation of Maritime Incidents.

² See Annex B to Chapter 5.

- k. STANAG 3531 – Safety Investigation and Reporting of Accident/Incidents Involving Military Aircraft, Missiles and/or UAVs.
- l. BMD/0001/0001 – Defence Crypto Security Operating Instructions.
- m. 2006DIN02-030 - Introduction of Post Incident Testing from Alcohol and Drugs into the Armed Forces
- n. 2008DIN02-003 - Release of Information During Legal Proceedings
- o. 2008DIN02-008 - Defensive Monitoring Governance

External Influences

1.7. The work of a service inquiry has its foundation in statute, and is governed by the principles of administrative law. Administrative law is that body of law dealing with, amongst other things, the functions of public authorities, and provides in particular for judicial review of decisions of such authorities. Further to this, the implementation of the Freedom of Information (FOI) Act in Jan 05 established legal duties on public authorities in relation to making information available to the public on request. This has led to changes in the MOD's disclosure policy including the proactive publication of information about high profile³ inquiries on the MOD Publication Scheme via the MOD website, which in turn has placed internal inquiries in the public domain.

1.8. The reality is therefore that the work of a service inquiry always has the potential to be subjected to external scrutiny. Indeed, in recent years the BOI system and the outcome of individual reports have become the subject of intense media, public and Parliamentary interest. A number of high profile incidents have brought the interests of the NOK to the fore and the relationship between BOIs and coroners' inquests has been subject to cross-government departmental scrutiny.

1.9. Against this background it is therefore critical that the procedures contained within this JSP are adhered to by those involved in the process to ensure that the service inquiry can be seen to have been open, honest, thorough and rigorous in its conduct, analysis and conclusions while avoiding the explicit attribution of blame or expressing views about legal (civil or criminal) liability⁴.

Inquiries

1.10. Commanders may investigate any matter which occurs within their area of responsibility, in order to ensure that accidents and incidents are properly investigated, that appropriate lessons are learned, that all appropriate steps are taken to prevent recurrence and military activities are conducted on as safe a basis as is consistent with the accomplishment of the military purpose.

1.11. Subject to the mandatory requirement to convene a service inquiry in specified circumstances (see paragraphs 1.14 and 1.15 below), matters that are considered insufficiently serious to justify a service inquiry may be investigated by a

³ See para 1.18.

⁴ See Chapter 5 Annex B.


non-statutory inquiry in accordance with single-service guidance⁵. Such inquiries are not subject to statutory regulation and those conducting them have no statutory powers eg in relation to compelling witnesses to attend or taking evidence on oath. If however, it becomes apparent that the matter is more serious than first envisaged or falls within those matters listed at paragraphs 1.14 and 1.15 it will be necessary to consider holding a service inquiry.

Statutory Inquiries – Service Inquiries

1.12. AFA 06 introduces a harmonised inquiry system, known as a service inquiry. It provides for a single form of statutory inquiry to deal with occurrences that would have previously been the subject of a BOI under the relevant single-Service procedures. Accordingly, service inquiries should be reserved for serious matters, which are often by their nature high profile (see paragraph 1.18), and therefore by their nature call for the safeguards and formalities required by statutory obligations, powers and rights. These include:

- a. The power⁶ to require evidence to be given on oath (see Chapter 4).
- b. The power to compel the attendance of witnesses⁷ through the issue of a witness notice⁸ by a Judge Advocate (see Chapter 3).
- c. The entitlement of a potentially affected person⁹ to be present at the proceedings of a service inquiry panel¹⁰ (see Chapter 4).
- d. The restrictions on admissibility¹¹ of evidence given to a service inquiry at summary hearings or in proceedings before a civilian¹² or Service Court¹³ (see Chapter 4).

Key Features of a Successful Service Inquiry

1.13.  The following are key features of a successful inquiry:

- a. A timely decision on whether to hold an inquiry.

⁵ For the Royal Navy, QRRN Chapter 57 and the Yellow Guide (Guide to Ship's Investigations), for the Army, LF Standing Order 3207 and for the RAF, see P1 Policy letter 04/08.

⁶ It is for the President to determine whether evidence will be given on oath.

⁷ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 13.

⁸ Summons.

⁹ A person who in the opinion of the president may be affected in relation to his character or professional reputation, by the findings of the inquiry panel.

¹⁰ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 18.

¹¹ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 12.

¹² A court of ordinary criminal jurisdiction.

¹³ Summary Appeal Court, Court Martial, Service Civilian Court and Court Martial Appeal Court and their equivalents under the pre-AFA 06 legislation.

- b. Appropriate liaison with other potentially interested authorities (Service and civil police, HSE etc).
- c. Precise and focused TORs¹⁴.
- d. The establishment of the facts in a timely, accurate and thorough manner.
- e. Observations, opinions and findings that are supported by the evidence.
- f. Clear and specific recommendations intended to reduce the risk of recurrence and/or to improve procedures.
- g. Identification of appropriate authorities responsible for taking forward recommendations and reporting that actions are complete within a reasonable time.
- h. Answers to the legitimate and relevant concerns of interested parties (e.g. the Department, NOK and third parties).
- i. Ensures that those whose character or reputation may be affected by the findings of an inquiry are afforded the opportunity to be represented and heard, subject to any necessary limitations.
- j. Avoids the explicit attribution of blame or legal (civil or criminal) liability¹⁵.

Matters For Investigation Under Statute

Mandated by Statute

1.14. The Armed Forces (Service Inquiries) Regulations 2008¹⁶ require that a convening authority¹⁷ must cause a service inquiry to be held in the event of the death of a Serviceman¹⁸, if he considers that anything of consequence to any of the regular or reserve forces which was not in his opinion apparent from the death, may be learned by any of those forces by means of such an inquiry. The regulations subsequently state that this shall not apply if a police force¹⁹ is conducting, has conducted or informs the convening authority that it will conduct an investigation into the events that caused the death. However, as all unnatural deaths of Servicemen are usually investigated by the police, it is Service policy that such deaths are to be

¹⁴ Assisted by timely consultation with key stakeholders.

¹⁵ See Chapter 5 Annex B.

¹⁶ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 4(1) (b).

¹⁷ See Chapter 2.

¹⁸ A member of the Regular Forces or a member of the Reserve Forces when subject to Service law – AFA 06 s367.

¹⁹ Service, UK, British overseas territory or overseas police force - The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 4(2).

the subject of a service inquiry if anything of consequence may be learned, a decision which will be informed by all other reports available.

Mandated as a matter of Policy

1.15. In addition to the circumstances covered in paragraph 1.14 above a service inquiry may be held in relation to any matter connected with any of HM forces²⁰. As a matter of policy a service inquiry should be held in the circumstances outlined in sub paragraphs a to c below, where the convening authority considers that anything of consequence may be learned, which is not readily apparent and which has not been or is unlikely to be identified by any other report into the matter.

a. **Deaths of Civilians.** The death of a civilian (whether or not subject to Service discipline) if:

- (i) The death occurs on or in a MOD unit/ship/establishment²¹ and is either;
- (ii) Work related (for example where a contractor is electrocuted while fixing a galley dishwasher onboard a Destroyer); or
- (iii) The death occurs during Service organised activity, which includes for example the provision of welfare and education Services overseas.

b. **Serious Injuries.** The serious injury of a Serviceman or any civilian where the injury takes place in a Service unit/ship/establishment or may be work related or may be the result of service organised activity. Serious injury is not defined in this guidance and it is therefore for the convening authority to decide whether an inquiry is required, taking the circumstances of the matter as a whole including the level of seriousness, whether there are any lessons to be learned, and the need to establish the facts and prevent recurrence.

c. **Aviation Occurrences** Any aviation occurrence that requires formal investigation as defined by the Chairman of the MOD Aviation and Regulation Safety Board (MARSB). Further guidance in respect of aviation occurrences is contained in JSP 551 Volume 1 Section 205.

Discretionary Inquiries

1.16. A service inquiry may be held into any matter. As a matter of policy the matters listed below should be considered for such an inquiry where the convening authority determines that anything of consequence may be learned, which is not readily apparent or which have not been or are unlikely to be identified by any other report into the matter. The convening authority should liaise with subject matter experts (SMEs) in making this decision. Matters for consideration include the following:

²⁰ See The Armed Forces (Service Inquiries) Regulations 2008 Regulation 4(4).

²¹ Unit/Ship/establishments are defined in single-Service QRs.

- a. **Ordnance, Munitions and Explosive Accidents (JSP 520)**
Accidents involving ordnance, munitions and explosives, other than negligent discharges. It is to be noted that such an inquiry may not be necessary if the report of a specialist investigation, such as one conducted on behalf of the Inspector of Explosives, recommends to the authority that a service inquiry is unnecessary or if the convening authority considers the report sufficient and believes nothing of consequence would be learned.
- b. **Maritime Accidents** Any accident that causes entire or partial disablement of a ship for service, e.g. serious fires, or when any serious defect is discovered in the hull, armament, machinery or boilers, the cause of which is not clear.
- c. **Navigational Incidents (QRRN Ch 45, FLAGO Ch 16)** Any incident involving collision (not berthing/unberthing), grounding, serious damage.
- d. **Readiness for Sea Accidents and Defects** All accidents or defects affecting the readiness for sea of any of the ships or vessels under the orders of the Commander in Chief (CINC).
- e. **Loss or Serious Damage to Property.** Loss or damage to military property and equipment and to civilian property and equipment lost or damaged as the result of Service organised activity.
- f. **Near misses.** Any ground or maritime²² accident or incident during which death or serious injury has been avoided for example ammunition incidents, and incorrect range procedures
- g. **Financial Losses (JSP 462).** Cash losses are most likely to be the subject of an investigation by the Defence Fraud Analysis Unit or the police and therefore a service inquiry may not be required. However a loss resulting from errors in accounting procedures rather than any dishonest intent should be considered for investigation by a service inquiry. The need to consider write-off and the level at which this is appropriate may influence how a matter is to be investigated.
- h. **Harassment and Bullying (JSP 763).** Cases of harassment or bullying where an investigation either by the Service police or through the redress process has indicated failures that need to be investigated further
- i. **Health and Safety (JSP 375).** There is a requirement to inquire into certain health and safety matters; the need for a service inquiry may depend upon the severity of the accident or incident (see JSP 375, Volume 2, Leaflets 5 and 14).

²² Near misses relating to air occurrences will be covered under para 1.15c.

- j. **Environment** (JSP 418). There is a requirement to inquire into certain environmental matters and the need for a service inquiry may depend upon the severity of the accident or incident.
- k. **Security** (JSP 440). There is a requirement to inquire into certain security matters and advice should be sought from the relevant Area Security Team. In the case of losses of cryptographic material advice should be taken from Head of the Defence Cryptosecurity Authority (DCA).

Convening Considerations

1.17. When deciding whether a service inquiry is required for those matters not mandated by law or policy, the convening authority should consider the following factors in reaching a decision:


- a. Whether the matter is of sufficient seriousness to warrant a service inquiry.
- b. Whether any other investigations have been initiated and if so, whether a service inquiry would be able to add anything to the outcome of these investigations. It should be borne in mind that other inquiries may not address the wider issues relating to the cause of the incident, so as to prevent recurrence, and that such inquiries may not be reported to an appropriate administrative authority in order that preventative action against future recurrences be taken²³. Wider issues and trends will also be a factor for consideration. (See paragraph 1.20).
- c. The complexity of the issue and whether an inquiry would improve operational effectiveness or restore external or internal confidence in a particular piece of equipment or procedures.
- d. Whether the matter is of a joint nature and may have wider implications for the Service or Defence.
- e. Additional considerations may include:
 - (i) **Ministerial Interest.** Matters that attract Ministerial interest are likely to be those involving death and serious injury; however, there will be other matters which on the face of it appear to be less serious but may be of interest to Ministers and so may need to be analysed in detail.
 - (ii) **Media or Public Interest.** An event that attracts public or media attention may need to have a detailed, and public, explanation.

²³ For example a police investigation may conclude that an offence has been committed but may not focus on, for instance, failure in administrative procedures, which may have allowed the offence to be perpetrated.

However media interest on its own should not be sufficient reason to hold a service inquiry.

(iii) **Potential Litigation.** Consideration should be given to the potential of an incident for litigation in terms of how the incident is viewed by the enforcement authority²⁴, failures in duty of care and the risk of individuals claiming compensation²⁵, including NOK. A detailed inquiry report will be helpful in this respect. Advice should be sought from MoD Director Safety and Claims (DS&C).

Identifying the Profile of an Inquiry

1.18  It is for the Single-Service Inquiry Co-ordinator (SSIC)²⁶ (see Annex A), in liaison with the relevant Secretariat²⁷ to decide, taking legal advice if necessary, whether an inquiry is or is likely to be high profile and will therefore require special handling²⁸. The profile of an inquiry will be influenced by many factors and an inquiry may be judged to be so at any time during the inquiry process. As a general rule high profile inquiries include those inquiries involving operational or training fatalities, serious injuries and major equipment loss or damage, which have attracted, or are likely to attract, considerable media and/or Parliamentary interest. The reaction of the NOK may also be an influencing factor.

Relationship Between Service Inquiries And Other Investigations

Police Investigations

1.19. It is likely that the police will usually be the first authority at the scene of any accident or incident involving a death²⁹ or serious injury. The police will investigate potential criminal activity, the focus of their investigation being the gathering of evidence regarding the possible commission of a crime which either indicates or helps to explain the circumstances that contribute to or cause a death, with a view to assessing whether there should be a criminal prosecution. A service inquiry on the other hand is to establish the facts of the matter and to make recommendations in order to prevent recurrence.

²⁴ Such authorities include HSE, MCA and EA.

²⁵ The Armed Forces Compensation scheme makes payments for a wide variety of injuries from minor injuries to permanent and enduring disability. The decision to convene an Inquiry solely on the basis of a potential claim must therefore be approached pragmatically and with legal advice.

²⁶ Each Service has an officer of 1* rank or above who is the focal point for service inquiries for his Service.

²⁷ Reference to the Secretariat includes the relevant single-Service Secretariat or the Secretariat of other agencies, eg DE&S Pol/Sec.

²⁸ The decision to regard an inquiry as 'high profile' does not affect the way such an inquiry is conducted, only the way it is handled by the convening authority staffs, SSIC and the Secretariat..

²⁹ Where a death has occurred, the police are responsible for the recovery and subsequent identification of human remains.

1.20. The conduct of a police investigation is not a bar to a service inquiry, which may run in parallel as long as the president (and the SSIC if required) and police liaise closely to avoid any risk of prejudicing or otherwise interfering with the police investigation. The following points should be noted:

- a. **Overseas.** Foreign civil police and/or Service police will sometimes investigate if the death occurs overseas; arrangements will vary from country to country and specific Memorandum of Understandings (MOUs) or other agreements would normally govern jurisdiction. Where a death occurs on a warship or auxiliary at sea, investigations will fall to the Service police and/or (within UK Territorial Waters) Ministry of Defence Police (MDP) until such time as it can be reasonably established that no criminal act by a person within the Services' jurisdiction has taken place.
- b. **Operational Theatres.** In operational theatres, the Service police will usually investigate the cause of death for all unnatural deaths under the lead of Provost Marshal (Army) (PM (A)). The Service interest mandates that safety and operational considerations are of paramount importance and notwithstanding the importance of criminal acts being properly investigated, it is vital that parallel safety and criminal investigations are able to take place in cooperation with one another. In practice, such cooperation should be effected by liaison between the Senior Investigating Officer (SIO) and the president/convening officer. Such liaison will recognise the balance between identifying safety and operational lessons as quickly as possible with the need, in appropriate cases, to secure and preserve evidence which takes account of the evidential requirements of law. For air occurrences this will be effected by using principles developed in an internal protocol between the respective PM's and Directorate of Aviation Regulation and Safety (DARS).
- c. **UK.** In England and Wales primacy for the investigation of all unnatural deaths rests with the Chief Officer of the Home Department Police Force (HDPF) under whose jurisdiction the death occurs. The Procurator Fiscal (PF) and the Director of Public Prosecutions (DPP) have jurisdiction for this function in Scotland and Northern Ireland respectively. There is a formal protocol between SofS and the Association of Chief Police Officers in respect of England, Wales and Northern Ireland³⁰ and Scotland and their respective territorial waters.

1.21. Where there is a HDPF, PF or DPP investigation the view of the lead police force, the PF or DPP will generally prevail in determining whether or not a service inquiry should continue concurrently. However, in practice they will liaise with the convening authority, the SSIC and where appropriate the single-Service legal advisors. Where it is decided that a service inquiry would be likely to impede the police investigation and/or taint any potential evidence, it may be necessary for the convening authority to amend the service inquiry's TORs to remove the difficulty. Where this is not possible the inquiry may have to be suspended. If the suspension is likely to be prolonged (and particularly where it is high profile) the SSIC should liaise with the SIO, informing the convening authority and relevant Secretariat, to

³⁰ Dated 12 Sep 05.

ensure that reasons for suspension continue to apply (see Chapter 2 paragraph 2.49).

Enforcement Authority Investigations

1.22. Enforcement authorities with statutory powers such as the Health and Safety Executive (HSE), the Maritime and Coastguard Agency (MCA) and the Environment Agency (EA) may decide to investigate accidents that fall within their areas of responsibility. These authorities have extensive powers which can impact on the conduct of a service inquiry. Guidance on the interfaces between these authorities and the MOD are detailed as follows:

- a. Procedures for HSE investigation of MOD accidents are contained in the General Agreement between MOD and the HSE (JSP 815 - Defence Environment and Safety Management³¹ refers).
- b. Authority of the MCA is described in a MOU between the MOD, MCA and Maritime Accident Investigation Branch (MAIB), which is maintained by the Ship Safety Management Office on behalf of the Ship Safety Board. The MOU is available on the defence net.
- c. EA interfaces are detailed in a MOU between the MOD and EA (JSP 815 refers).

1.23 Convening authorities should be aware of possible enforcement authority interest and powers, and seek guidance from their CESO if necessary.

Specialist Investigations

1.24. Specialist investigations may run in parallel with an inquiry (and ultimately form part of it) and a police investigation (where death and/or serious injury has occurred). Such investigations may find that immediate remedial action is required and therefore action on such matters should not be delayed pending the completion of an inquiry. The following are examples of specialist investigations:

- a. The Land Accident Investigation Team (LAIT) will investigate for the Army (and other ground forces at the request of the relevant Service), any accidents (except air accidents) involving servicemen³² or relevant civilians³³. It does not however investigate undetermined deaths.
- b. Service inquiries for aviation occurrences are supported by specialist investigations conducted by RNFSAIC for RN aircraft and in-theatre RAF aircraft, AIEFSO for Army aircraft and the AAIB for MAFTR and out-of-theatre RAF aircraft.

³¹ Policy to be included in JSP 815 in late 2008.

³² Members of the Regular Forces and Members of the Reserve Forces when subject to Service law.

³³ Persons subject to Service discipline.

c. Other investigations may be initiated in the UK depending on the type of incident and respective legislation. The MAIB may investigate incidents involving Royal Fleet Auxiliary (RFA) vessels, accidents involving rigid raiders and other small boats, and incidents involving HM Ships and civilian vessels³⁴. The MAIB are not restricted to UK territorial waters and can investigate accidents involving UK registered shipping anywhere in the world.

d. Navy Command HQ maintains a maritime accident investigation capability providing SME advice, support and investigation teams under the direction of 2* authority and managed by CESO(RN). This capability is available in support of the RN, RM and RFA.

NATO Combined Investigation of Maritime Incidents and Aviation Incidents

1.25. STANAGs 1179 and 3531 lay down procedures which may be followed in the event of maritime or aviation incidents respectively, involving units or personnel of 2 or more NATO nations. Such an investigation may be in the form of a Combined Board of Inquiry/Safety Investigation Committee, a national inquiry attended by witnesses/observers from other nations (see Chapter 2 paragraphs 18 and 26a), or a number of coordinated independent national inquiries. Their purpose is to ascertain the facts, reach conclusions as to the cause of the event and, if needed, to make recommendations to prevent a recurrence. An investigation conducted under STANAGs 1179 or 3531 does not preclude the conduct of any other investigation or inquiry under national procedures.

Disciplinary or Criminal Proceedings

1.26. If disciplinary or criminal proceedings have been initiated in connection with the matter under investigation it may still be possible to continue with the inquiry; however, it is essential that close liaison is maintained between the convening authority or SSIC and any prosecuting authority (civilian or Service), including where applicable the CO who brings the charge. In these circumstances the prosecuting authority has primacy; an inquiry should not continue without the prosecutor's agreement.

Coroners' Inquests

1.27. Service inquiries should proceed independently of a coroner's inquest and will often clarify any complex Service issues in connection with a death, and assist the coroner in deciding who should give evidence as a witness at an inquest. Inquests are conducted in England, Wales and Northern Ireland by a coroner, who is an independent judicial officer. An Inquest is an inquiry to determine who the deceased was and the circumstances of how he died. It does not identify the cause of an accident, although the coroner can bring to the attention of appropriate authorities any issues, which if, in his opinion, are not corrected, might lead to further deaths. Inquests are also conducted into the death of a serviceman that occurred overseas

³⁴ The Department for transport owns the MAIB, a civilian investigative body who may be involved in issues subject to Inquiry.

and whose body is repatriated to England, Wales or Northern Ireland. There is no provision for inquests in Scotland; a PF may investigate a death if it is work-related through a Fatal Accident Inquiry (FAI) but as the law stands there is no provision for a FAI to be held into any death occurring outside Scotland³⁵.

Dispensing With Or Deferring An Inquiry

Authority to Dispense with an Inquiry Mandated by Law or Policy

1.28. Where a convening authority considers that a service inquiry, which is mandated by law or policy (see paragraphs 1.14 and 1.15 above), is not required he should liaise closely with the SSIC and the Secretariat and consult with the appropriate SME and other stakeholders, taking legal advice as necessary. The SSIC is to maintain a record of all dispensations approved for mandated service inquiries. See Annex B for further guidance.

Deferral of a Service Inquiry

1.29. A convening authority may defer the convening of a service inquiry into any matter³⁶. When considering deferring an inquiry, which is mandated by law or policy (see paragraphs 1.14 and 1.15 above) the convening authority should liaise closely with the SSIC and the Secretariat³⁷ and consult with the appropriate SMEs and stakeholders, taking legal advice as necessary. Such deferrals must only be for such a period as the convening authority considers is necessary to allow for:

- a. The carrying out of any investigation (such as a police or HSE investigation), whether in the UK or abroad, concerning any matters to which the service inquiry would relate,
- b. The determination of any:
 - (i) Proceedings for any criminal offence in any court whether in the UK or abroad;
 - (ii) Proceedings in a Service court, which includes the Court Martial, the Service Civilian Court, the Court Martial Appeal Court, the Summary Appeal Court and their equivalents under the pre-2006 Act legislation;
 - (iii) Summary hearing; or
 - (iv) Civil proceedings whether in the UK or abroad;

³⁵ For deaths overseas, the Scottish Executive Justice Department provides advice to the Procurator Fiscal.

³⁶ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 8(1).

³⁷ Reference to the Secretariat includes the relevant single-Service Secretariat or the Secretariat of other agencies, eg DE&S Pol/Sec.

1.30. Having decided to defer the convening of an inquiry the convening authority should record his reasons for the deferral, and its likely duration if known.

Notification of Decisions

1.31. Where an inquiry is one that the SSIC considers to be high profile, or where a decision is taken to dispense with or defer an inquiry mandated by law³⁸ or policy, the decision and the reasons should be recorded³⁹ and notified to the SSIC and the Secretariat⁴⁰. The Secretariat may judge it appropriate to advise Ministers of such cases in liaison with the SSIC and PPO/CINC.

1.32. Such notices may be released to the Defence Inquest Unit (DIU) (for deaths only), the Service police, DGMC and the NOK on request. Where appropriate consideration should also be given to informing relevant parties without such a request (see Chapter 7 on disclosure).

³⁸ On the basis provided for in para 1.14 and 1.1.5 and The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 4(1(b) or 4(2).

³⁹ For the Army by the SSIC.

⁴⁰ Also includes DE&S Secretariat as appropriate.

ANNEX A - SINGLE SERVICE INQUIRY CO-ORDINATOR (SSIC)

1. Each of the Services has a 1* Single Service Inquiry Co-ordinator (SSIC)¹ who has explicit authority to monitor and co-ordinate the progress of inquiries, particularly into those involving death and serious injury and to take any action necessary to ensure that all elements of the inquiry process work together to reduce delay. SSICs provide the focus for the effectiveness of such inquiries and policy development particularly those with a high profile nature (see paragraph 1.18, Chapter 1). The SSIC for each Service is²:

RN - DNPers – Navy Command HQ
Army - DPS(A) – HQ Land Forces
RAF - ACOS A1 - Air Cmd

2. The role of the SSIC is to:

- a. Ensure the application of consistent and best practice across all convening authorities;
- b. Provide the convening authority with advice when it is seeking to dispense with, defer, suspend or terminate a service inquiry.
- c. Ensure full consultation between the convening authority and relevant SMEs/stakeholders, including the Secretariat, during preparation of the TORs;
- d. Determine the profile of a case, in consultation with the Secretariat to ensure special handling as required and to enable Ministers and DGMC to be alerted to the wider issues;
- e. Oversee ongoing service inquiries and potential inquiries;
- f. Ensure the DIU is kept informed of the progress of inquiries into deaths of Servicemen to enable it to highlight high profile cases to Ministers and provide central assurance over the effectiveness of the system for inquiries into such deaths;
- g. Ensure arrangements are made for the nominated NOK to be given a copy of the TOR, with an opportunity to raise any questions of their own and to receive accurate and timely briefings on progress of the inquiry, as outlined at Appendix 1;

¹ The SSIC equivalent for DE&S is Dir HR Ops.

² For RAF and MAFTR regulation aviation occurrences the co-ordination function will primarily be undertaken by Inquiry Advisors within the Flight Safety system, with oversight provided by Directorate of Air Staffs (DAS).

- h. Oversee key areas of concern to bereaved families and families of the seriously injured³) and where necessary attempt to resolve those issues in consultation with the president or relevant convening authority;
 - i. Ensure that the Secretariat is kept informed of the progress of the inquiry and of associated briefings to families and that it receives a copy of the service inquiry report as it is declared final to ensure that policy and presentational issues are detected early and managed correctly;
 - j. Ensure that arrangements for the release of reports to families are made in consultation with the Secretariat to enable suitable briefings and a handling plan to be prepared and for Ministers and DGMC to be involved in arrangements for high profile cases; and
 - k. Provide the single-Service focus for the effectiveness of inquiries and policy development.
3. The SSIC has unfettered access to convening authorities to resolve matters that are considered to be the cause of delay in relation to any matter under investigation in order to gain resolution.

³ Cases where the injury or circumstances are such that it would preclude the individual acting for themselves (keeping their family informed), for example where the individual is hospitalised overseas or injuries are severe, eg. persistent brain damage

APPENDIX 1 - BRIEFING NOK



1. For inquiries involving death and serious injury, the NOK should be offered a briefing to help their understanding of the process and purpose of the inquiry. The NOK should also be given an opportunity to comment on the TOR of the inquiry and be kept informed of progress. An appropriate officer¹ referred to as the briefing officer will assume responsibility for briefing the NOK. Specific briefing officers will be appointed depending on the nature of the material to be imparted to the NOK eg. for routine briefings the Visiting Officer (VO) may undertake the role but it is likely that for more detailed technical briefings a specialist will be appointed to undertake the task. The NOK should be briefed² as follows:

a. **Initial Contact.** The NOK should be offered a meeting as soon as reasonably practicable at the start of an inquiry if such a meeting has not already taken place. The briefing officer should explain the purpose of the inquiry including what it will not do; the inquiry process and the panel's responsibilities. The briefing officer should also give the NOK an indication of the timelines for the inquiry and explain when they should expect to receive progress reports.

b. **TOR.** The NOK should be given a copy of the TOR and an opportunity to discuss any issues or raise any questions which they wish the inquiry to address on their behalf. Any issues raised by the NOK should be referred to the convening authority (see Chapter 2 paragraph 39).

c. **Progress Reports.** Regular reports on the progress of the inquiry should be given in person by the briefing officer where possible or by letter. The NOK may be updated using the information contained in progress reports (see Chapter 2, Appendix 2 to Annex G) provided by the president through the convening officer/SSIC, which have been cleared by the inquiry's legal advisor; however, the report itself is not to be disclosed to the NOK. Care should also be taken to ensure that briefings do not contain unconfirmed information about the incident. Best practice is for updates to be provided monthly and at all significant points in the inquiry to keep the NOK informed of progress and advised of the reasons for delay, if applicable, until the inquiry process is complete.

d. **Interim Findings.** The NOK may also receive a suitably caveated briefing on the inquiry's interim findings. If an inquiry is to be suspended or terminated at any point, the NOK should be informed as soon as practicable and given the reasons for such action.

2. Following any briefing of the NOK, the briefing officer is to inform the convening authority, SSIC and the president of the outcome of the briefing and any

¹ For RN inquiries this role is usually undertaken by the Visiting Officer, for the Army by the PS4(A) Aftercare Cell and for the RAF by the Visiting Officer.

² Service Inquiries and Coroners' Inquests – Information for Bereaved Families - booklet

issues raised by the NOK. Matters of significance particularly with high profile inquiries should be notified to the relevant Secretariat.

3. The final report will be disclosed personally to the NOK by the briefing officer who may address any straightforward points such as clarification of terminology that the NOK may make. It may however, be appropriate in some cases for such disclosure to be undertaken by the president or an SME, as determined by the convening officer or the SSIC. For high profile inquiries special arrangements will be made. For more detailed guidance on the disclosure of the findings of the inquiry see Chapter 7.

ANNEX B - DISPENSING WITH A MANDATORY INQUIRY

1. The decision whether to dispense with an inquiry that would otherwise be mandated either by law or policy (see paragraphs 1.14 and 1.15) is a matter for the convening authority. When making such a decision the convening authority should liaise closely with the SSIC and the Secretariat and consult with the appropriate SME and other stakeholders, taking legal advice as necessary. The rationale for dispensation is to avoid convening inquiries where little of consequence would be learned. However, what might appear to be a death by natural causes may require investigation into welfare or medical issues, and what may at first be described as a simple Road Traffic Collision (RTC) in a privately owned vehicle, may have occurred due to post-operational stress, or fatigue due to excessive working hours etc. It must therefore be assumed that in all cases an inquiry will be required unless the convening authority is of the opinion that there may not be anything of consequence to learn for any of the Services because of other investigations. However, careful consideration will be required to ascertain whether any other such inquiries will meet the full remit of a service inquiry (see Chapter 1 paragraphs 1.19 to 1.21).

Operational Incidents

2. All ground related operational deaths and serious injuries are subjected to in-theatre post incident analysis, supported by Weapon Intelligence Section reports, Shooting Incident reports, and Air Traffic Occurrence (ATO) reports as required. The product of this analysis will inform either the Urgent Operational Requirement (UOR) process for new requirements, or the chain of command of any recommendations to Tactics, Techniques and Procedures (TTP) in order to prevent a recurrence and implementation will be balanced against the risk and the current mission. In these circumstances, it is unlikely that an inquiry would discover any new lessons, and dispensation from holding one is normally sought. On occasions, however, there are wider issues or trends to consider regarding basic procedural or equipment failure, or sometimes to expose the detail of the circumstances in the face of adverse criticism from the media or NOK, and these high profile incidents will inevitably justify an inquiry. To identify the requirement for an inquiry, or to seek dispensation, a thorough and comprehensive initial report or Learning Account (LA) must be produced by the unit within the first 5 days and forwarded through the chain of command to the relevant SSIC. Input from the higher HQ¹ is essential in order to put the LA into the context of any other reports and to make a recommendation to the relevant convening authority regarding the need for an inquiry or dispensation.

Undetermined Deaths

3. Deaths whose causes are undetermined are unlikely to attract dispensation, and a service inquiry should only be deferred until the police confirm that their investigation is not considering criminal charges. Guidance on inquiries into undetermined and self inflicted deaths is at Chapter 4, Annex D.

¹ Army only.

CHAPTER 2

CONVENING AN INQUIRY

Convening

Convening Authorities

2.1. The Defence Council may cause a service inquiry to be held in relation to any matter connected with any of HM forces¹, and for that purpose may carry out, or appoint a person to carry out the functions of a convening authority².

2.2. A convening authority may be appointed by the Defence Council or by an officer authorised by the Defence Council, to investigate any matter or any category of such matters as stated in the terms of his appointment. A convening authority³ must be an officer of or above the rank of Captain RN, Colonel or Group Captain⁴.

2.3. The following⁵ are appointed as convening authorities for all matters:

- a. RN: Those RN and RM officers listed in QRRN Article 5701.
- b. Army: Any full Col or above in command (listed in Land Forces Standing Order 3207).
- c. RAF: Any Gp Capt or above in command (listed in RAF QR 1258).
- d. The MOD Airworthiness and Flight Test Regulator (MAFTR) - The Assistant Director Air Systems – Test and Evaluation Support Division (AD Air Sys-TESD)⁶.

2.4. The convening authority will normally be in the chain of command of the ship/unit/establishment or the personnel involved in the matter to be investigated⁷. If however a ship, unit, sub unit, or personnel are attached to another unit or formation the decision whether to convene a service inquiry is to be taken by a convening authority from the chain of command to which they are attached⁸ before the TORs are finalised.

¹ Regular or reserve forces.

² See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 3(1)

³ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 3(2).

⁴ Subject to Service law.

⁵ This is not an exhaustive list.

⁶ AD Air Sys – TESD is only authorised to convene inquiries into air domain occurrences regulated by him.

⁷ Within DE&S the MAFTR convening authority is AD Air Sys – TESD who is the regulator of the aviation activity being undertaken and the personnel involved.

⁸ If necessary after consultation with the SSIC, who will liaise with the appropriate operational, administrative or disciplinary chains of command. For MAFTR inquiries, the convening authority will

2.5. In the event that the matter for inquiry concerns personnel from more than one chain of command the decision as to which officer is to act as convening authority is to be reached by agreement. In the event that agreement cannot be promptly achieved the matter is to be referred to the respective higher authorities for a decision as the case may be.


2.6. The chain of command of a joint unit/establishment which has a matter to be investigated is to decide the most appropriate convening authority, if necessary after consulting the SSIC.

2.7. Where the matter for inquiry concerns Service personnel from other Services⁹, the convening authority of the ship/unit/establishment/personnel involved shall similarly consult with the relevant Service authorities¹⁰.

Timelines

2.8 The time taken to decide whether to hold a service inquiry will be affected by a range of factors, including the nature of the matter under consideration and the environment in which it occurred. The decision as to whether a service inquiry is to be convened should be made as soon reasonably practicable¹¹; however, to reflect the differing operational environments the following guidelines will apply:

- a. RN. The decision to convene an inquiry will be made within 5 days of either the incident itself or, where applicable, receipt of the reports of other investigative agencies.
- b. Army. The decision to convene an inquiry will be made within 5 days of the receipt of relevant reports¹², which would normally be available within 4 to 6 weeks of an incident.
- c. RAF. The decision to convene an inquiry will be made within 48 hours of an incident; however, for ground operational incidents that involve death or serious injury, the decision will be made with 48 hours of receipt of the relevant report from theatre.

2.9.  Once the convening authority decides to convene a service inquiry¹³ it is to be convened as soon as reasonably practicable and normally within 48 hours¹⁴ of the decision. Once a service inquiry has been convened, wherever possible those involved in the end to end inquiry process should make every effort to adhere to the timelines at Annex A. Such timelines are subject to variation

also consult with the relevant air platform IPT(s) and the MOD contracted civilian organisation concerned.

⁹ Or other MOD authorities eg DE&S.

¹⁰ For example: SSIC, LAIT, DARS, IPTs and possibly the Front Line Commands.

¹¹ All service inquiries into air occurrences are to be convened within 48 hrs of the occurrence, irrespective of the single-Service timelines in para 2.8 a to c.

¹² The Learning Account, LAIT Reports, RMP SIB Reports etc.

¹³ Subject to the power to defer.

¹⁴ For the Army, within 5 days.

particularly where the matter under investigation is of a highly complex nature¹⁵ or requires further work to be undertaken following submission of the provisional report (see Chapter 5).

Convening Order

2.10. Where the convening authority decides to convene a service inquiry it is for that authority to take the necessary action to establish the service inquiry by means of a convening order¹⁶. The convening order must specify the following:

- a. That a service inquiry is to be held (and should include the nature of the incident to be investigated);
- b. The names of the president and the other members of the panel;
- c. The date on which, and the time and place at which, the panel is to first assemble¹⁷;

2.11. The convening order should also:

- a. Nominate a legal advisor to assist the inquiry;
- b. Specify reporting requirements;
- c. Outline any specific policy requirements, for example the non-explicit attribution of blame or legal liability;
- d. Include the names of any identified witnesses and any advisors or observers who may attend the inquiry and details of attendance including any conditions imposed; and
- e. Outline any administrative orders for the inquiry, including the TORs where practicable.

2.12. An example of a convening order is at Annex B, which sets the minimum requirement. A convening authority may add other direction and instructions as he considers appropriate.

Composition Of A Service Inquiry Panel

¹⁵ For example aircraft occurrences.

¹⁶ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 5.

¹⁷ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 5.

Composition

2.13. A service inquiry panel must consist of a president and at least 2 other members¹⁸; however for complex inquiries, as determined by the convening authority, it may be appropriate to appoint additional or specialist members. If for whatever reason the membership of a service inquiry panel falls below the minimum requirement, the convening authority must as soon as practicable appoint new members necessary to meet the minimum requirement. If in the opinion of the convening authority¹⁹ the president of an inquiry is unable to continue as president the convening authority must as soon as practicable appoint an existing member, or appoint a new member to replace him, as president²⁰. Subject to the duty to maintain the minimum membership and for there to be a president, if it is considered that any other member is unable to continue as a member, the convening authority may appoint a replacement.

Composition where Inquiry is of a Joint Nature

2.14. In the event a service inquiry is to be held which involves personnel from different Services the president should be drawn from the Service of the chain of command that convenes the inquiry and consideration should be given to seeking the appointment of a panel member from whichever other Service(s) may be involved²¹.

The President

2.15. A Serviceman is eligible to assume the role of president of a service inquiry if he is an officer of or above the rank of lieutenant commander, major or squadron leader. It is for the convening authority to decide the appropriate rank of the president, depending on the nature and seriousness of the incident and the profile of the inquiry. However, where it is apparent before the inquiry is convened that there is the possibility that the character or professional reputation of an officer may be affected by the findings of the inquiry, an officer more senior in rank or seniority to that person should be appointed in order to ensure appropriate handling (see Chapter 4, Annex B).

2.16. Army only. The Army has a number of permanent presidents who are based at their Regional Force HQs (2,4 and 5 Divs, UKSC(G) and HQ NI) and HQ 1 (UK) Armd Div). Such presidents will on the whole fulfil the same functions as non-permanent presidents but will assume additional responsibilities associated with the permanent nature of their responsibilities (see LFSO 3207).

Panel Members

¹⁸ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 6.

¹⁹ In such an event the convening authority is to amend the convening order to reflect the change.

²⁰ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 6(2).

²¹ Where other MOD authorities (eg DE&S) are involved consideration should be given to seeking the appointment of a panel member from that organisation.

2.17. A person may be appointed as a member of a service inquiry if they are an officer, warrant officer or SNCO in any of HM Forces or Crown servants of equivalent rank/grade.

2.18. A person who is a member of an armed force other than any of HM forces may be appointed a member of a service inquiry panel if he is of equivalent rank to that of SNCO or above and in the opinion of the convening authority the matter to be investigated, in accordance with the inquiry TORs, is likely to be connected to that force as well as any of HM forces.

2.19. Panel members do not have to be experts in any particular discipline²² although it will often be more helpful if they have professional knowledge or experience of the environment or equipment involved. However, members should not have been involved or been a witness to the matter under investigation.

Specialist Members

2.20. When an investigation requires professional or technical knowledge or skill in order to be able to understand the evidence and put appropriate questions, a specialist member having the appropriate qualifications may be detailed by the convening authority to serve as a member of the panel. Such members may be in addition to, or as part of, the minimum members required. But specialist members should not be appointed instead of receiving expert evidence. A specialist member should be appointed in the following instances:

- a. Where the inquiry requires knowledge of a specific type of ship/vehicle/ aircraft or other equipment.
- b. Where a specialist is to be examined by the inquiry (save as an expert witness) consideration should be given to including an officer of that discipline as an inquiry member.
- c. Where the inquiry concerns diving fatalities or injuries, the panel should include an officer with a current diving qualification and a medical officer qualified in diving medicine.
- d. For inquiries into accidents involving ammunition, an Ammunition Technical Officer or Ammunition Technician not below the rank of warrant officer should be appointed to be a member of the panel.
- e. Where an aviation inquiry is convened to examine the circumstances surrounding any air occurrence involving development test flying, a qualified and current Service test pilot should be appointed as a member of the panel.

²² Save for specific requirements mentioned in para 20 below.

Persons Who May Be Permitted To Attend

General

2.21. The president may permit a person to attend an inquiry other than as a witness²³ but must first obtain the consent of the convening authority²⁴. As a general rule the following may be given access to an inquiry:

- a. **Advisors.** The role of an advisor is to assist the inquiry in the conduct of its investigation. Advisors may provide a particular professional knowledge of the inquiry process²⁵ over and above that of the panel members and may be able to assist the panel in putting appropriate questions; they do not replace the need for expert witnesses.
- b. **Observers.** An observer fulfils no role in relation to the conduct of the inquiry. An observer may attend an inquiry in a professional capacity in order to hear what is said, with a view in due course to safeguarding their national interest or their employer's interest. They may include officers from another country, staff officers or contractors. NOK of the deceased or seriously injured²⁶ who will have a personal interest in an inquiry may also be observers.

2.22 Members of the public, including press, interest groups and relatives of individuals involved in the inquiry other than the NOK are not permitted to attend an inquiry (but see Annex C paragraph 3f).

2.23. Where consent is given by the convening authority and the president permits a person to be present at the proceedings of the panel that permission will:

- a. Apply only to such part, or the whole, of those proceedings as the convening authority has agreed before the permission is given; and;
- b. Be subject to such conditions²⁷ as the convening authority may reasonably impose when he gives his consent.

2.24. Guidance for the attendance of advisors and observers is outlined below with specific detailed guidance on attendance of the NOK as observers at Annex C.

Advisors

²³ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 18.

²⁴ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 17.

²⁵ Such individuals may provide advice to the inquiry on the conduct of the investigation which should be contrasted with informing the inquiry of facts germane to the matters being investigated, the latter function requiring that the individual concerned becomes a witness.

²⁶ Cases where the injury or circumstances are such that it would preclude the individual acting for themselves, for example where the individual is hospitalised overseas or their injuries are severe for example - persistent brain damage.

²⁷ See para 14 for examples.

2.25. The level of attendance of advisors will depend upon the specific role they are required to undertake. If advice is needed on a specific procedural matter then attendance may be limited to sittings of the panel where the relevant evidence is to be recorded or considered. The decision on the level of attendance will be for the convening authority to decide on a case-by-case basis²⁸; however, for permanently appointed advisors such as those appointed as legal advisors and aviation advisors, a standing agreement as to the scope of their attendance may be made by the convening authority. Advisors to an inquiry will include:

- a. **Legal Advisors.** Legal Advisors appointed to all service inquiries who will attend an inquiry as necessary to provide advice to the president in accordance with their role and responsibilities (see paragraph 2.30).
- b. **Service Inquiry Advisors.** For aviation occurrences, the following advisors are available to support relevant single-Service, JHC and MAFTR-convened inquiries: for the RN, Royal Navy Flight Safety Accident Investigation Officers; for the Army, Army Accident Investigation and Engineering Flight Safety Officers (AIEFSO); and for the RAF and MAFTR, Directorate of Air Staff (DAS) Service Inquiry Advisors.
- c. **Mental Health Professionals**²⁹. Such professionals may be invited to attend an inquiry into a suspected suicide or undetermined death to provide advice to the panel on any clinical or organisational matters relating to the matter under investigation.
- d. **Contractors.** When a service inquiry is necessary to investigate occurrences involving a particular contractor (including where a contractor operates or maintains the MOD equipment concerned) it may be necessary for a representative usually the company's specialist accident advisor to be invited to attend the proceedings of the panel to provide specialist advice as required.

Observers

2.26. Observers to an inquiry will usually fall within the categories listed below:

- a. **International Observers.** The procedures to be adopted when the equipment, facilities and/or personnel of 2 or more NATO nations are involved in a maritime incident or aviation occurrence are laid down in STANAG 1179 and STANAG 3531 respectively. More generally, when a service inquiry is necessary to investigate maritime incidents or aviation occurrences in which personnel belonging to the military forces of another country are involved, or when facilities provided by that country may be brought into question, the military forces of that country may be represented by an observer attending the proceedings of the panel.

²⁸ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 17(2)(a).

²⁹ Includes Psychiatrists, Psychologists, Mental Health Nurses or Mental Health Social Workers.

b. **Contractors.** When a service inquiry is necessary to investigate matters involving a particular contractor (including where a contractor operates or maintains the MOD equipment concerned) it may be appropriate for a representative from the company involved to be invited to attend the proceedings of the panel.

2.27. The consent of the convening authority to the attendance of an observer is to be given in consultation with the SSIC, as appropriate who should co-ordinate questions of protocol, security, and sensitivity with the appropriate MOD staffs.

2.28. Where limitations or conditions are to be imposed on the attendance of an observer, the president should ensure they are understood before the observer starts to attend. As a general rule the following minimum specific limitations relating to observers should be imposed:

a. The observer should not be permitted to attend where the president considers that the evidence may disclose information prejudicial to the national security.

b. The observer is to take no part in proceedings. He may not question witnesses but may be permitted by the president to ask questions of him to clarify specific points of evidence or procedure.

c. The observer should be subject to the specific terms of confidentiality required by the convening authority such that his presence is based on the agreement that information obtained during the proceedings of the inquiry is not disclosed in the public domain. However, it should be accepted that observers should be free to report to their own authorities to ensure for example that where necessary timely remedial action may be taken.

d. The MOD accepts no legal responsibility for providing specific post-inquiry reports to the observer's higher authority or employer. However, it is customary to provide some form of final report, again as a courtesy. Convening officer staffs, in conjunction with the appropriate MOD staffs, will decide the form (which should not include copies of any evidence, exhibits or any part of the panel's proceedings) and timing of the report.

2.29. Despite the limitations above, it is important to understand that observers will often have a shared interest in the investigation. Their presence, particularly observers from other nations, may be necessary to ease tension and facilitate any remedial action necessary between interested parties. They should therefore be regarded as having a mutual interest in the satisfactory completion of the inquiry.

Legal Advice

Appointment of a Legal Advisor

2.30. A legal officer will be appointed to each service inquiry to assist and advise the inquiry. Such appointments should be made by name on the relevant convening

order. Those nominated should be appointed to the inquiry for its duration but may be replaced if circumstances require it. The role and responsibilities of the legal advisor are outlined at Annex D.

2.31. For some inquiries, particularly those of a complex nature where there may be potential legal or administrative arguments, consideration may be given to appointing a legal officer as an inquiry member. In this circumstance the panel member should not provide legal advice on the proceedings of the service inquiry, which is the responsibility of the legal advisor, but may be nominated as a member of the panel in accordance with paragraphs 2.17 to 2.19.

2.32. When the service inquiry's appointed legal advisor provides legal advice to the president and if appropriate, panel members, it is to be given in private (under legal privilege) and not recorded as part of the inquiry's record of proceedings. This does not preclude the president making a record of legal advice received if he wishes to do so. Legally-privileged advice is not to be disclosed without permission.

Functions Of A Service Inquiry Panel

Functions of a Service Inquiry Panel

2.33. The function of a service inquiry panel is to investigate and report on the facts relating to the matters specified in its TORs and otherwise to comply with those TORs (see paragraph 2.36)³⁰.

2.34. Whenever the panel takes evidence, deliberates on its findings or carries out any duty imposed on it by the service inquiry regulations the president and members should act together (but see paragraph 5.23 for submission of reports³¹). However, in exceptional circumstances it may be appropriate for a president to decide that a specific function may be undertaken by one or more members of the panel. When doing so an appropriate record of that activity should be made. Such action may be necessary in the following circumstances:

- a. The concurrent interviewing of witnesses in an operational theatre where time is of the essence.
- b. To facilitate the taking of a witness statement of a hospitalised witness where limited visitors are permitted by medical staffs³².

2.35. The president should seek legal advice before taking such action³³.

³⁰ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 7(1).

³¹ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 19.

³² See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 6 (8).

³³ There may be exceptional circumstances where legal advice cannot be obtained prior to taking such action in which case legal advice should be sought at the earliest opportunity.

Terms of Reference

General

2.36. TORs give specific direction to the inquiry and must be provided to the president on or before the date on which the panel is to assemble³⁴. The TORs provided are to be as clear as possible, whilst still providing sufficient flexibility to allow the inquiry to investigate the matter appropriately. The TORs are to specify³⁵ the matters which the panel is to investigate and report upon and any matter about which the panel is required to make recommendations or on which it is required to express an opinion. TORs can also give specific direction on matters of policy, for example the non-attribution of blame, or the requirement to ensure that any third party and/or classified material provided to the inquiry is handled in accordance with MOD security guidance³⁶. The completeness and effectiveness of an inquiry will depend on the care taken to draft and comply with the TORs. They should be co-ordinated with SMEs to ensure they take account of any on-going work and should be developed in conjunction with legal advice.

2.37. TORs should be precise and focussed such that the panel does not consider matters unrelated to military activity or areas out with their competency.

2.38. TORs may be amended (in writing) by the convening authority at any time³⁷ (before he declares the report final, see Chapter 6). Where, having commenced an investigation, a president considers it necessary to investigate an issue outside his TORs he should seek to have his TORs amended by the convening authority accordingly. In the event an examination of wider issues is assessed to require amendment or addition to the service inquiry TORs this should not divert or delay the primary focus of the service inquiry. In some cases it may be necessary to convene a separate inquiry to consider any wider issues identified.

2.39. It should be borne in mind that for inquiries concerning death or serious injury the NOK should be given the opportunity to comment on the TORs and to ask questions (see Chapter 1, Appendix 1 to Annex A). Such action should be taken once the TORs have been issued to the panel by the convening authority; such action should not be allowed to impede the progress of the inquiry. It is the convening authority's decision, in conjunction with the president and the SSIC, whether the TORs are subsequently amended, or whether any specific issues are resolved during the course of the inquiry and the NOK briefed as appropriate³⁸.

³⁴ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 6(6).

³⁵ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 7(4).

³⁶ JSP 440.

³⁷ Until the convening authority has declared the provisional report as the final report – See The Armed Forces (Service Inquiries) Regulations 2008 - Regulations 7(3) and 19(4)(a).

³⁸ Through the Visiting Officer.


TOR Matrix

2.40. A TOR Matrix setting out TORs that may be considered for a particular matter is at Annex E. The Matrix is provided as a basic guide and therefore does not provide an exhaustive list of matters to be included when drawing up TORs for a specific incident.

Legal Advice and Clearance of TORs

2.41. The ability of an inquiry panel to produce an effective investigation depends to a large degree on the quality of the inquiry's TORs. Therefore all TORs should be agreed by the relevant legal staffs prior to being issued to the inquiry panel by the convening authority.

Notice to Ministers

2.42.  Some incidents are particularly complex and while an inquiry should concentrate on the specific circumstances close to the incident there is sometimes the need for the wider implications for Defence to be understood. For inquiries into death³⁹ or serious injury or where there is high public interest in the case, the convening authority should judge, in consultation with the Secretariat, whether Ministers should be informed. The gravity of the circumstances surrounding an incident will influence whether there are wider implications for Defence and where this is judged to be the case Ministers may be informed about the inquiry's TORs. Such judgements may be made immediately following the matter or where it later becomes apparent. Such notification should not delay the issue of the TORs or the proceedings of the inquiry panel.

Administration And Costs

2.43. The convening authority should nominate a unit/ship or headquarters to host the inquiry. This unit/ship/establishment will be responsible for all aspects of the inquiry's administration (see Annex F).



2.44. The costs associated with an inquiry will be met under single-Service arrangements. A UIN may be attributed to an inquiry or costs may lie where they fall. It is for the convening authority to ensure that the president is made aware of arrangements for a particular inquiry. The president may be asked to advise on issues that have potential for expenditure but he should not be required to submit estimates. An inquiry should not be constrained on the grounds of cost.

³⁹ This does not replace the requirement that all health and safety workplace deaths are to be reported to DS&C in accordance with JSP 375.

Convening

The Convening Meeting/Briefing

2.45. An inquiry panel will be briefed by the convening authority or a member of his staff as soon as practicable after the convening order is issued. This brief should cover the circumstances of the matter to be inquired into, the panel's TORs and the rules and instructions relating to the inquiry. Other areas of relevance may include:

- a. Whether any other investigations are in progress and how they might affect the inquiry (see Chapter 1).
- b. Advice that the president should use his discretion to alert the appropriate authority should the panel discover at any time during the proceedings something that may prove a continuing hazard, so that remedial actions may be initiated immediately.
- c. Any upward reporting requirements (see Appendix 2 to Annex G).
- d. The policy requirements in relation to non-explicit attribution of blame or legal liability (see Chapter 5, Annex C).
- e.  The requirements where a person's character or professional reputation may be affected by the findings of the inquiry (see Chapters 4 and 5).
- f. Whether Post Incident Drug and Alcohol Testing (PIDAT) has been initiated (Chapter 4, Annex A).
- g. The details of any known witnesses and any observers or advisors who the convening authority considers may attend the inquiry.
- h. Any relevant issues relating to the NOK for inquiries into deaths and serious injury and the panel's role in providing suitable updates⁴⁰ to ensure the NOK may be briefed as appropriate (See Chapter 1, Appendix 1 to Annex A).
- i.  The need to be alert to the profile of the incident and to wider issues, particularly those which might attract adverse publicity and if so any duty that the convening authority requires the president to undertake.

⁴⁰ Such information may be provided in the form of progress reports provided by the panel to the convening authority see Chapter 2, Annex G.

- j. The details of any media interest in the inquiry and any specific advice or assistance the president may need in this regard.
- k. The availability of staff and legal advice.



- l. The need to annotate all material accurately as to its origins and ownership paying particular attention to information provided by other nations (see Chapter 4).

Panel Assembly Procedures

2.46. Guidance on the issues to be considered by the inquiry panel members on assembly is at Annex G.

Contact with the Convening Authority

2.47. In the conduct of his duties the president of an inquiry is to report directly to the convening authority. It is therefore important that he is able to access the convening authority personally, as well as being able to draw on the expertise of his staff⁴¹. He should maintain contact throughout the inquiry; formally by the submission of progress reports (see Appendix 2 to Annex G to explain purpose of such reports) as directed by the convening authority; and informally as required.

Release from Duties

2.48. The president of an inquiry should be advised by the convening authority that the inquiry is the panel's primary duty and should take priority over all other duties until released by the convening authority. However, the panel members may be released from service inquiry duties temporarily when the inquiry has been suspended or an adjournment is necessary, for example when waiting for witnesses to be available or the receipt of a report.

Suspension And Termination Of A Service Inquiry

Suspension of a Service Inquiry

2.49. A convening authority may at any time after making a convening order⁴², suspend the proceedings of the panel by issuing a suspension notice⁴³. When considering such action the convening authority should liaise closely with the SSIC and the Secretariat and consult with the appropriate SME and other stakeholders,

⁴¹ This includes Fleet HQ staffs for the RN, HQ LF and Div/Bde G1 staffs for the Army, ACOS A1 staffs for the RAF and TESD staff for MAFTR inquiries.

⁴² Whether or not the investigation or proceedings have begun - The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 8(2).


⁴³ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 8.

taking legal advice as necessary. Such suspensions must only be for such a period as the convening authority considers it necessary to allow for:

- a. The carrying out of any investigation, whether in the UK or abroad, relating to any matters to which the service inquiry relates or would relate, such as a police or HSE investigation;
- b. The determination of any:
 - (i) Civil proceedings whether in the UK or abroad;
 - (ii) Proceedings for any criminal offence in any court whether in the UK or abroad;
 - (iii) Proceedings in a Service court, which includes the Court Martial, the Service Civilian Court, the Court Martial Appeal Court and the Summary Appeal Court; and their equivalents under pre-2006 Act legislation, or
 - (iv) Summary hearing

2.50. Where a convening authority considers it necessary to suspend a service inquiry he must issue a suspension notice (See Chapter 2, Annex H) to the president, which must specify his reasons for suspending the proceedings of the panel⁴⁴. Such a notice must specify when the suspension is to end. This may be done by a suspension until a specified date, until the outcome of a specific event (such as an event by which the conclusion of an investigation or proceedings can be clearly recognised) or until the president is notified by the convening authority that the suspension is lifted⁴⁵.

Termination of a Service Inquiry

2.51.  The convening authority may at any time terminate⁴⁶ a service inquiry by issuing a notice (see Chapter 2, Annex I) to the president, specifying the date from which the termination is to take effect. The date specified may be the date of issue of the notice or a later date. It will generally only be appropriate to terminate an inquiry where the convening authority considers the circumstances are such that the inquiry is no longer required or has served its purpose in order to identify lessons learned. The notice must state the convening authority's reasons for terminating the inquiry. When making such a decision the convening authority should liaise closely with the SSIC and the Secretariat and consult with the appropriate SME and other stakeholders, taking legal advice as necessary.

⁴⁴ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 8(4).

⁴⁵ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 8(3).

⁴⁶ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 9.

Notification of Decisions

2.52. Where the convening authority has decided to suspend or terminate an inquiry mandated by law⁴⁷ or policy or one that the SSIC considers is high profile, the decision is to be promulgated in accordance with the guidance at Chapter 1, paragraphs 1.31 and 1.32.

Inquiries into incidents overseas

2.53 Where there is to be an inquiry into an incident overseas and/or involving foreign nationals, the convening authority should determine the nature of the arrangements in place and protocols for contact with the country involved. In the first instance the convening authority⁴⁸ is to seek advice and guidance from the Policy for Defence Relations (PDR) Directorate. Arrangements with NATO and Partnership for Peace countries are covered by the NATO Status of Forces Agreement (NATO SOFA) while there are Exchanges of Notes and MOU providing appropriate arrangements for a number of other countries. Advice on these can be obtained from the Directorate of Defence Diplomacy (Def Dip-MoU&SOF, MOD ext. 70488).

⁴⁷ On the basis provided for in Chapter 1, para 1.14 and 1.15 and The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 4(1(b) or 4(2).

⁴⁸ For the Army this should be undertaken by the SSIC or PJHQ.

ANNEX A - GUIDE TO SERVICE INQUIRY TIMELINES

Serial	Milestone	Timelines
1	Decision taken to convene an inquiry.	Day 1
2	Inquiry convened.	1 + 2 Days (RN/RAF) 1 + 5 Days (Army)
3	Inquiry phase complete with provisional report sent to convening authority. ¹	1 + 22 weeks
4	Convening authority/reviewing authority ² comments on final report complete.	1 + 30 weeks
5	Report prepared by convening authority staffs and MOD for formal release to NOK.	1 + 32 weeks (8 months)
6	High profile inquiries to be released on the FOI Act Publication Scheme.	1 + 40 weeks(9.5 months)

¹ Timelines do not include periods where an inquiry is suspended by the convening authority.

² Not RN.

ANNEX B - EXAMPLE OF A CONVENING ORDER

CONVENING ORDER

1. A service inquiry is to be held under section 343 of AFA 06.
2. The purpose of this inquiry is to investigate the circumstances in which.....
3. Inquiry panel is to assemble at. ... (*place*) on (*date*) at..... (*time*)
4. The inquiry panel comprises:

President: (*by name, rank and ship/unit*)

Members: (*by name, rate/rank and ship/unit*)
5. The legal advisor to the inquiry is (name, rank and ship/unit/establishment).
6. The inquiry is to investigate and report on the facts relating to the matters specified in its Terms of Reference (TORs) and otherwise to comply with those TORs (attached at Annex A*). It is to record all evidence and express opinions as directed in the TORs.
7. The following advisors/observers may attend the inquiry¹ (in whole or in part (to be specified)) subject to the following conditions
.....
.....
.....
8. [CO/] (*ship/unit/establishment*) is to provide facilities, equipment and assistance suitable for the nature and duration of the inquiry.
9. Costs are to be met as follows: (insert UIN if appropriate or costs to lie where they fall).

(Signature Block)

* delete as applicable

¹ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 17.

ANNEX C - NOK ATTENDANCE AT A SERVICE INQUIRY

1. In very exceptional circumstances the president may permit NOK to be present at the proceedings of a panel as an observer. Before doing so the president must obtain the consent of the convening authority, who should liaise with the single-Service PPO and the SSIC before giving his consent. In making such decisions the Services' policy on attendance as outlined at Appendix 1 should be taken into account. Legal advice is to be taken and the Secretariat informed in all cases where such NOK attendance is considered.
2. Where consent is given and the president permits a person to be present at the proceedings of the panel that permission will:
 - a. Apply only to such part, or the whole, of those proceedings as the convening authority has agreed before the permission is given; and;
 - b. Be subject to such conditions¹ as the convening authority may reasonably impose when he gives his consent².
3. The president is to make the NOK aware of the limitations and/or conditions imposed by the convening authority on his attendance before he starts to attend. In applying limitations and conditions the convening authority should take account of the following policy:
 - a. Arrangements for the NOK to attend should not impede or dictate the arrangements (date, time, venue etc) or proceedings of the inquiry.
 - b. The president is to be able to adjourn proceedings in the event attendance has an adverse impact on proceedings and is to be able to withdraw the permission to attend at any point (in consultation with the convening authority).
 - c. Attendance is not normally to be permitted when evidence is being given. In the exceptional event that the NOK are permitted to attend the evidence gathering stage of an inquiry, they will not be permitted to play an active role in proceedings and may not pose questions³.
 - d. The NOK should be subject to the terms of confidentiality required by the convening authority such that their presence is based on the agreement that information is not disclosed to a third party to prevent the potential for jeopardising the outcome of the inquiry.
 - e. Attendance is not permitted when evidence is being evaluated or the report is being drafted.

¹ See para 3.

² See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 17(2).

³ The conditions may permit NOK to have discussions with the President but this will be subject to is discretion.

f. The NOK may be accompanied by a friend or family member but legal representation at an inquiry is not permitted.

4. Attendance should be at public expense (travel and subsistence).

APPENDIX 1 - SERVICE POLICY ON NOK ATTENDANCE AT A SERVICE INQUIRY

1. In deciding whether to consent to the attendance of the NOK at a service inquiry the convening authority should take account of the Services' policy on the issue which is outlined below.
 - a. The interests of the service inquiry or the NOK would not be best served by changing the nature of service inquiries to make them into a public hearing at which NOK (or others) have a right to be present.
 - b. An inquiry is an internal Service investigation, the sole purpose of which is to establish the facts of a particular incident and make recommendations in order to prevent it happening again. It does not replace a Coroner's Inquest and is not, and does not purport to be, a tribunal that is compliant with Article 2 of the European Convention on Human Rights. Service inquiries are not open to the public, press or family members unless they are called as a witness. The principal reason for this is that a public hearing, or a hearing at which family members have a right to be present, could serve to inhibit the provision of full and frank evidence from witnesses and so detract generally from the prime purpose of the service inquiry. There is also a practical consideration, in that a service inquiry could convene and adjourn several times over a number of months, potentially in different locations around the world and often in operational theatres.
 - c. Significant improvements have been made in recent years to procedures to ensure that NOK are more closely involved in the inquiry and investigation into the circumstances surrounding the death of their family member. NOK are invited to submit questions that they would like answered to the service inquiry, they may provide evidence to the inquiry in person if this is appropriate and they are kept fully informed of progress. They are provided with a copy of the inquiry's final report (redacted as necessary) and they are offered personal briefings at the conclusion of the inquiry.
 - d. However, there may be circumstances in which NOK attendance at a particular service inquiry would be acceptable, where it would not impede the inquiry. In these circumstances, discretion may be exercised.

ANNEX D - ROLE OF LEGAL ADVISOR

1. The service inquiry process is a statutory one and may involve the taking of evidence under oath, the reception and consideration of exhibits, the potential summoning of civilian witnesses by witness notice and the questioning of witnesses whose character or reputation may be affected by the findings of the inquiry. The entire proceedings in the event of a fatality are likely to be¹ subject to disclosure at a Coroner's Inquest, will be subject to public scrutiny and may attract media comment. Therefore, as a matter of policy, every service inquiry is to have a legal officer nominated to assist the panel. The legal advisor may be present at the proceedings of the panel as required by the convening authority.
2. The role and duties of the Legal Advisor include:
 - a. Advising on the draft TORs;
 - b. Advising the president on service inquiry procedures including:
 - (i) The taking of evidence, whether oral or written;
 - (ii) The evaluation of evidence;
 - (iii) The use and weight to be given to evidence taken other than that taken in the usual way or format.
 - (iv) The procedure for requesting the issue of witness notices.
 - c. Assisting the president in the exercise of his power to allow persons to be present at the proceedings of the panel.
 - d. Advising the president on who may be potentially affected persons within the meaning of the regulations and advising on the exercise of their entitlement to be present and to be represented and on related matters.
 - e. Assisting and advising the president in co-ordinating the inquiry with any other investigation and advising on the appropriateness of any suspension of the proceedings pending the outcome of that alternative investigation.
 - f. Advising and assisting the president generally on any matter of law, including those which may arise in the course of drafting of the findings and recommendations of the service inquiry.
 - g. Conducting a final check of the provisional report and record of proceedings before it is submitted to the convening authority. Such checks should include an examination of the provisional report to ensure that no

¹ Inquests are required where the deceased has been repatriated to England, Wales and Northern Ireland.

explicit attribution of blame or negligence or legal liability has been made by the panel.

3. In assisting the president of the inquiry panel the Legal Advisor may call upon the assistance of other legal officers but retains overall responsibility for legal advice to the inquiry unless released from his duties by the convening authority or nominating officer.

ANNEX E - TOR MATRIX

The TOR Matrix below is a basic guide as to matters that may be included in a set of TORs. It does not provide an exhaustive list of matters that should or should not be included when drawing up TORs for a specific matter.

Incident	Serial Numbers of TOR
1 Deaths and Serious Injuries	1,2,3,5,11,17, 18 and 19
2 Loss / Disablement of a ship	1,2,12,15 and 17
3 Aviation Occurrences	1,2,3,4,5,8,15,16,17, 18 and 19
4 Near Misses (Ground)	1,2,3,4,5,11,17,18 and 19
5 Administrative Loss (including classified material)	1,6,9,13,14,15 and 17
6 Damage to Civilian Property	1,2,3,11,12,15, (if appropriate) and 17
7 Road Traffic Collisions	1, 2,3,5,10,11,12,13,15 and 17
8 Loss / Damage to Stores (including equipment failure)	1,6,11,15 and 17
9 Fires	1,11, 12, 15 and 17
10 Ordnance, Munitions and Explosive related Accidents	1,3,5,11,15,17 and 19
11 Accidents / Incidents relating to Substances Hazardous to Health	1,3,5,11,15 and 17
12 Loss of Public Money	1,6,15 and 17
13 Damage (including acts of God)	1, 6,11,15 and 17
14 Losses affecting Messes or Institutes	1,6,9,15 and 17

TOR Serial Numbers

1. Determine cause of incident and examine contributory factors.

2. Investigate and comment on relevant fatigue implications of an individual's activities prior¹ to the matter under investigation.
3. Ascertain whether Service personnel involved were acting in the course of their duties.
4. Examine what orders and instructions were issued and whether they were complied with.
5. Determine state of serviceability of relevant equipment, vehicle etc.
6. Investigate arrangements in force to safeguard equipment etc.
7. Determine if Service kit was deficient or defective.
8. Establish the level of training, relevant competencies and qualifications of the individuals involved in the incident.
9. Obtain evidence as to entries in accounts and registers.
10. Investigate the authorisation and qualifications, with regard to the task, of the vehicle and the driver and establish the implications for insurance.
11. Assess Health and Safety at Work and Environmental Protection implications in line with JSP 375 and JSP 418.
12. Investigate specialist requirements under single-Service regulations – eg equipment maintenance.
13. Investigate specialist requirements under JSP 440 Volume 1 Chapter 2, paras 0236-0249.
14. Assess whether the security of personnel, equipment or information was compromised and if so to what degree.
15. Ascertain value of loss/damage to the Service and/or extent (and, if readily available, the value) of loss/damage to civilian property.
16. Ascertain if aircrew escape and survival facilities were fully utilised and functioned correctly.
17. Identify if the levels of planning and preparation met the activities' objectives.
18. Review the levels of authority and supervision covering a task during which the matter occurred.
19. Make appropriate recommendations.

¹ This may be for as short a period as the days just prior to the matter or for a prolonged period building up to the matter.

ANNEX F - HOSTING UNIT/SHIP/ESTABLISHMENT SUPPORT

1. The unit/ship/establishment nominated to host a service inquiry is to provide such support to the inquiry as required by the convening authority to facilitate the smooth running of the inquiry. The following is intended to outline the basic but not exhaustive list of support a host unit/ship/establishment can expect to provide.

- a. **Office Accommodation.** At least one large room, which should provide sufficient space for the members of the inquiry, a shorthand writer/stenographer, witnesses and observers. A separate waiting room for witnesses waiting to give evidence.
- b. **Administrative Support.** Administrative support for setting up the inquiry room, provision of facilities such as access to telephones and computers, photocopying, assistance with the meeting of witnesses and provision of runners as required.
- c. **Clerical Support.** Where a stenographer or shorthand writer has been made available to the inquiry, the hosting unit is to ensure he has access to computer facilities as required.
- d. **Access.** Arrangements for civilian access to the unit.
- e. **Travel Arrangements.** Transport for the panel members should be arranged as requested including if necessary overseas travel and accommodation.
- f. **Messing.** Suitable food and living accommodation for both the panel and witnesses during the progress of the inquiry. Normally the panel members are accommodated in the appropriate Mess but occasionally alternative accommodation may need to be arranged. The panel is likely to have to work anti-social hours, which do not fit within the normal unit/ship routine. Furthermore, if the incident involves affected persons, or is of a delicate nature, it may be more appropriate to accommodate the panel off base.

ANNEX G - PANEL ASSEMBLY

1. The following provides general guidance on matters the inquiry panel may consider in the initial period following assembly. It does not provide an exhaustive list.

Roles and Responsibilities

2. The president and panel members should acquaint themselves with their roles and responsibilities as directed by the convening authority, outlined at Appendix 1 and in amplifying guidance contained elsewhere in this JSP. Particular attention should be paid to those areas highlighted as relevant during the convening briefing.

Publications

3. The panel should obtain a fully amended copy of JSP 832 and acquaint themselves with the Armed Forces (Service Inquiries) Regulations 2008 together with any instructions and regulations relevant to the inquiry, which may or may not be outlined in the inquiry's TORs.

Administration

4. The president may consider:

a. Nominating a panel member to keep the diary of events (Army, RAF and MAFTR only see Chapter 5 paragraph 16); the record should start from the convening of the inquiry.

b. The inquiry's working hours bearing in mind the need to complete the inquiry in a short time may dictate the need for long working hours but this should not be at the expense of thoroughness. Members must receive adequate rest if their thinking is to remain clear and logical. Work schedules should be devised accordingly.

c. Directing that as a matter of routine written notes should be made by members of the panel as an aide-memoire as the inquiry may be long and complicated. Most inquiries use magi boards to plan ahead. On one side they will record their plan of action over the next few days, on the other a list of tasks to be performed and witnesses to be interviewed. This system ensures that a coherent plan of action is made, and that all members have a timetable to work to.

Plan of Action

5. The panel may now decide upon a plan of action based upon the following sequence as a guide:

a. General reporting responsibilities (see Appendix 2).

- b. Identifying witnesses, deciding whether and in what order they should attend or be required to produce a document or thing (item) (see Chapter 3).
- c. Formal taking of evidence (see Chapter 4).
- d. Recording of findings (see Chapter 5).
- e. Compiling the provisional report and the record of proceedings (see Chapter 5).

6. In following this sequence, the panel should anticipate factors likely to need priority consideration. In particular, the need for specialist assistance should be identified at an early stage if it has not been anticipated by the convening authority and included in the convening order. Likewise the need for a verbatim recorder should be considered, if one has not already been assigned to the inquiry.


Interaction with other Inquiries

7. Where the inquiry is to run in parallel to other investigations such as a police or HSE investigation the president should make early contact with the SIO and the SSIC to establish any parameters necessary to ensure that the service inquiry does not adversely affect or conflict with such other activities or investigations. See Chapter 1.

PIDAT

8. Where the president has been made aware that PIDAT has been initiated in respect of an incident to which the inquiry relates, he should make early contact with the CO who initiated testing to ascertain the circumstances which prompted such action, which may assist him in deciding later which samples to have tested. He should also acquaint himself with the guidance at Chapter 4 Annex A.

APPENDIX 1 - ROLE AND RESPONSIBILITIES OF THE PRESIDENT AND PANEL MEMBERS

1. The president and other members of the panel are to investigate and report on the facts relating to the matters specified in the inquiry's TORs. The president must ensure that a record of all evidence is made¹. The panel must in its report express opinions, drawing conclusions and making recommendations to prevent recurrence and improve procedures, as directed in its TORs and otherwise comply with those TORs.
2. Although service inquiries are internal mechanisms and are therefore not independent in the strict sense, the president and panel members should endeavour to conduct their inquiries with the appropriate degree of impartiality in order to establish the facts surrounding a matter. If at any stage the president or panel members experience what they consider to be an attempt to influence their investigation unduly (including any attempt to influence the inquiry's findings and/or recommendations), or feel that their loyalty to their Service, unit or trade could be seen as influencing their judgement, they should notify the convening authority or consult the inquiry's legal advisor, as appropriate.
3. The procedure of the panel is to be such as the president directs. He may direct the panel to sit when and where required and may adjourn the inquiry as necessary.
4. The president must ensure that a record of the proceedings of the panel is made and ensure that the convening order and TORs are entered in the record of proceedings on the date the panel first assembles.
5.  The president should:
 - a. Ensure the inquiry complies with its TORs and answers all the questions posed therein.
 - b. Ensure the inquiry complies with policy direction contained in this JSP.
 - c. Ensure as far as possible the panel meets the required timelines, and where this is unlikely to be achieved notifies the convening authority accordingly.
 - d. Decide to what use any test results from PIDAT should be put (see Chapter 4 Annex A).
 - e. Ensure those whose character or professional reputation he considers may be affected by the findings of the inquiry are given the appropriate rights and safeguards (See Chapter 4 Annex B).

¹ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 10(4).

- f. Apply for witness notices as required (See Chapter 3 paragraph 16).
 - g. Update the convening authority and the SSIC on the inquiry's progress and produce progress reports as required (See Chapter 2).
 - h. Provide sufficient material to ensure the NOK may receive appropriate updates. (See Chapter 2 Annex G, Appendix 2).
 - i. Notify the convening authority where he considers an offence may have been disclosed during the course of the inquiry.
 - j. Notify the convening authority where he considers his TORs should be amended.
 - k. Notify the convening authority if he considers there may be grounds on which the convening authority may consider the inquiry should be suspended or terminated.
 - l. Maintain close links with other agencies to ensure the inquiry's activities do not compromise other investigations eg police investigations.
 - m. Refer any requests from external sources for the disclosure of information, e.g. the coroner the relevant Secretariat through the convening authority for follow up action.
 - n. Ensure that any third party and/or classified material provided to the Inquiry is handled in accordance with MOD security guidance. This includes material which originates from the USA or any other foreign state (see also Chapter 4 Paragraphs 4.13 – 4.16 and Chapter 7 Annex A Paragraph 3).
 - o. Brief witnesses on how their evidence will be disclosed into the public domain. (see Chapter 4 paragraph 4.19)
6. The president should organise himself and the panel members to carry out the following tasks:
- a. Planning the inquiry.
 - b. Identifying witnesses to be called to attend the inquiry, particularly those potentially affected.
 - c. Calling, handling and questioning witnesses.
 - d. Determining the relevance of evidence offered.
 - e. Establishing the wider implications for Service regulations and procedures.
 - f. Obtaining appropriate reports.

- g. Keeping the diary of events (Army/RAF/MAFTR only) (see Chapter 5 paragraph 16).
- h. Administering exhibits and documentation (see Chapter 4 paragraph 36).
- i. Collating all material accurately as to its origins and ownership paying particular attention to information provided by other nations. (See Chapter 4 paragraph 13).
- j. Preparing a master schedule for the inquiry papers (see Chapter 5).
- k. Keeping a schedule of all material considered by the panel but not used. (see Chapter 5).
- l. Drafting and compiling the provisional report; checking it for accuracy and authorising² it as the provisional report.
- m. Compiling the record of proceedings (see Chapter 5).
- n. Administering travel, subsistence and loss of earnings claims for witnesses (see Chapter 3).

² Deciding that it is the provisional report.

APPENDIX 2 - REPORTING/BRIEFING RESPONSIBILITIES

General

1. Reporting requirements specific to a service inquiry will be determined by the convening authority and may be outlined in the convening order or inquiry's TORs. The following provides a summary of the circumstances when a report to the convening authority may be required, but does not provide an exhaustive list.


Immediate Reporting of Hazards

2. Should the panel discover at any time during the proceedings an unusual or special feature, which, in their opinion, might prove an immediate hazard to the safety of personnel or equipment the president should without delay, advise the convening authority.

Initial Report


3. An Initial report may be submitted to the convening authority, within the early stages of the inquiry being convened as the convening authority directs. Such reports should include any issues arising that it is deemed should be disseminated immediately (and where there are relevant important lessons to be learned in relation to prevention). A suggested format for such a report is at Appendix 3.

Progress Report

4.  Progress Reports should be provided to the convening authority and the SSIC at intervals directed by that authority; however, as a matter of routine the following may be considered. Progress reports submitted every 30 days after the inquiry is convened. Such reports may contain such information as the president considers useful to the convening authority which should include brief details of progress, reasons for any delay and brief details of any areas of concern. The report should not contain views as to the cause of the accident or incident nor should it contain non-urgent recommendations or observations. The report should not include substantive evidence nor is it binding on the eventual conclusions of the panel. The convening authority may decide to release progress reports, based on the president's submission, to all those that could learn valid lessons from the matter under investigation, and to the SSIC and the Secretariat for high profile inquiries. However, care must be taken to ensure that such action and use of such information does not prejudice the inquiry. Such reports may also be passed to those responsible for keeping the NOK informed of progress but are not to be disclosed to the NOK. A suggested format for such a report is at Appendix 4.

5. Where long delays in the completion of an inquiry are unavoidable (eg when complex costings or specialist reports are awaited) and the convening authority has not decided to suspend the inquiry, it may not be necessary to notify the convening authority of progress (or lack of it) provided that the convening authority has been informed of the reasons why there has been no progress.

Routine and ad hoc Briefing to Ministers – High Profile Inquiries

6.  For inquiries that are considered to be high profile, the president may be required to input into ad hoc briefings for Ministers through the convening authority, SSIC and the Secretariats when deemed appropriate at significant points in the inquiry such as the start of a period of suspension or where there is a significant change in the direction of the inquiry.

Suspected Offence

7. If at any stage of the inquiry, it appears that the matter under inquiry may have involved the commission of a criminal or service offence¹ the president should at once adjourn and seek legal advice from the legal advisor to the inquiry. The president should alert the convening authority who will decide whether it is necessary to notify the relevant police force and the individual's CO. If a police investigation is initiated the convening authority should consider whether to suspend or terminate the inquiry (see Chapter 2 paragraphs 2.49 to 2.51).

¹ An offence under the Service Discipline Acts or AFA 06 when it comes into force.

APPENDIX 3 - SPECIMEN INITIAL REPORT

(To be rendered as directed by the convening authority)

From: (*President of Service Inquiry*)

To: (*Convening Authority, with additional copies to be forwarded to the SSIC, the Cmd Sec, next superior headquarters (Army only), Ministry of Defence (branch concerned), when they will ultimately be required to take action.*)

Initial Report into (*insert matter under investigation*)

Date of occurrence

Brief description of occurrence

Brief details of initial assessment of matter under investigation and any matters which should be disseminated immediately

Date

Name
Rank
President

APPENDIX 4 - SPECIMEN PROGRESS REPORT

(To be rendered 30 days after the Convening of the Inquiry and at monthly intervals thereafter or as specified by the convening authority).

From: (*President of Service Inquiry*)

To: (*Convening Authority, with additional copies to be forwarded to the SSIC, the Cmd Sec, next superior headquarters (Army only), Ministry of Defence (branch concerned), when they will ultimately be required to take action.*)

Progress Report No

Date of occurrence

Brief description of occurrence

Brief details of progress since last report

Areas of concern and reasons for any delays

Forecast as to when provisional report is likely to be despatched to the convening authority

Date

*Name
Rank
President*

ANNEX H - SUSPENSION NOTICE

From: (*Convening Authority*)

To: (*President of Service Inquiry*)

1. The service inquiry convened under Section 343 of AFA 06 to investigate the circumstances in which.....

.....

is suspended in accordance with the Armed Forces (Service Inquiries) Regulations 2008 , Regulation 8, for the following reasons:

.....
.....
.....

2. The suspension of proceedings will be until (a specified date/the happening of a specified event)

.....

or when this authority notifies you that the suspension has come to an end.

Date

NAME
Rank
Convening Authority

ANNEX I - TERMINATION NOTICE

From: (*Convening Authority*)

To: (*President of Service Inquiry*)

1. The service inquiry convened under Section 343 of AFA 06 to investigate the circumstances in which.....

.....

is terminated in accordance with the Armed Forces (Service Inquiries) Regulations 2008 , Regulation 9, with effect from (*date to be specified*).....

for the following reason(s)

.....

.....

.....

Date

NAME
Rank
Convening Authority

CHAPTER 3

PROCEDURES FOR CALLING WITNESSES

General

Introduction

3.1. Anyone who is likely to be able to give or produce relevant evidence may be called as a witness. Witnesses may be required to provide evidence to an inquiry as witnesses to an accident or incident (witnesses to fact) orally or in writing, or to produce relevant evidence (a document or thing (item)) or to provide specialist opinion evidence (those with expert knowledge of a particular subject) orally or in writing.

3.2. Witnesses will normally be expected to travel to an inquiry (at public expense)¹. Although the attendance of a witness to give evidence in person is considered to be best practice there may be circumstances where the president judges it necessary to accept evidence by VTC or other means, eg by telephone or the submission of written evidence, provided that the necessary safeguards can be ensured to identify the witness.

3.3. In the event a witness is unwilling to provide oral or written evidence or to produce relevant evidence to an inquiry or produce relevant evidence they may, in certain circumstances, be compelled to do so. AFA 06² allows the making by regulations of provision for procuring the attendance of witnesses at a service inquiry and for the production of documents and other things (items). The Armed Forces (Service Inquiries) Regulations 2008³ empower a judge advocate to issue witness notices on application by the president of an inquiry. A witness notice may require a person to give evidence or produce a document or other thing (item) which he could be required to produce or provide if the inquiry proceedings were civil proceedings in a court in England and Wales⁴. They may only be made against a relevant civilian⁵ or a person in the UK, the Isle of Man or a British overseas territory. The regulations also provide penalties⁶ for the offences created by the regulations; for example, failure, without reasonable excuse, to comply with a witness notice (see paragraph 3.28).

Time constraints

¹ Provision should be made to allow the NOK to be interviewed in their home.

² s343 AFA 06.

³ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 13 and Schedule 2.

⁴ Evidence under CPR Part 31.

⁵ A person subject to service discipline.

⁶ For example, sanctions include a fine not exceeding £1,000.

3.4. In the majority of inquiries, time will be critical with respect to the collection of evidence. The inquiry panel should be aware that evidence may go stale and witness evidence can be contaminated by collaboration and media influence. Therefore the panel should make every effort to obtain evidence with the necessary degree of urgency. This in turn may influence the manner in which the president seeks to obtain evidence, which may influence the degree of weight given to such evidence by the panel.

Selection of Witnesses

3.5. The president shall decide the persons from whom written or oral evidence is to be requested and whether a person is to be requested to produce any document or other thing. He may do so at any time before or during the proceedings of the panel⁷. Where the president decides that a person is to be requested to provide written evidence or to produce any document or other thing (item) the panel must send a written request to the person⁸. In such a case the process at paragraph 3.10 is to be followed.

3.6. In deciding which witnesses are required, the panel will need to consider the information expected from each witness to meet the panel's responsibilities (as outlined in its TORs). Where the witness has already given a statement, whether to a non statutory inquiry or a police investigation and that statement has been disclosed to the inquiry panel, the task of establishing the likely scope of a witness's evidence will be greatly assisted.

Order of Witnesses

3.7. The president should decide whether it is better to take evidence from witnesses in a chronological order subject to paragraph 3.4 or whether to divide the taking of evidence into subject areas.

3.8. Guidance on making initial contact with certain categories of witnesses is below:

- a. **MOD Crown Servants.** The president is to seek the attendance of Crown Servants through their line management.
- b. **UK Contractors' Employees.** The president is to seek attendance of an employee of a UK civilian contractor through the local company management.
- c. **UK Civilian Police and Other UK Professional Bodies.** To secure the attendance of the civil police or other professional bodies the president should contact the Officer in Charge or senior manager of the relevant station or department.

⁷ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 11(1).

⁸ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 11(2).

d. **Foreign Servicemen and Civilians.** The president is to seek the attendance of foreign servicemen and civilians by contacting the Policy for Defence Relations Directorate at MOD in the first instance (see Chapter 4 Annex B).

3.9 Should the whereabouts of witnesses be unknown the assistance of the local police should be sought in liaison with the Service police in appropriate cases.

Calling Witnesses

Procedure for Calling Witnesses

3.10. The procedure for calling witnesses is outlined as follows:

a. **Service Witnesses.** The president is to secure the attendance of Service witnesses as he sees fit in the circumstances. This may be through the individual's CO⁹, with the assistance of the convening authority if necessary¹⁰ or by approaching the witness direct as appropriate. If the witness is required to provide written evidence or produce a document or thing (item) he must be notified in writing¹¹. In all other cases the president is not obliged to write to a Service witness but may chose to do so if he considers it appropriate. A suggested calling letter which may be sent via an individual's CO is at Annex A, which includes guidance on the inquiry process.

b. **Civilian Witnesses.** The procedure for securing the attendance of civilian witnesses (including dependants) will depend upon the status of the witness, their apparent willingness to co-operate with the inquiry and the circumstances of the matter under inquiry. If the witness is required to provide written evidence or produce a document or thing (item) he must be notified in writing¹². In all other cases the president is not obliged to write to a civilian witness but may choose to do so if he considers it appropriate. A suggested calling letter is at Annex B, which includes guidance on the inquiry process.

3.11. The suggested procedure for securing evidence from a civilian witness¹³ (to give evidence or produce a document or thing (item)) or provide (without attendance) a document or thing), which will be particularly relevant where the panel consider a witnesses may be unwilling to co-operate, is as follows:

a. The witness is to be requested to attend¹⁴/or provide a document or thing (item), in writing (see Annex B) supported by a telephone call if

⁹ Or civilian line manager.

¹⁰ This may be necessary where personnel are outside the Convening Authorities chain of command or from another Service.

¹¹ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 11(2).

¹² See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 11(2).

¹³ See para 3.16

¹⁴ It may be necessary to request attendance in a shorter timescale; however the Panel must be mindful of an individual's need to seek time off work, to make child care / travel arrangements etc.

appropriate and asked to acknowledge the request within 14 days¹⁵. The witness should also be offered the opportunity to discuss their attendance with the president of the inquiry or a representative of the convening authority.

b. If the witness indicates a willingness to cooperate with the inquiry but is unable to attend within the timescales required the president may decide to adjust his requirements accordingly, for the giving of oral evidence for example he may decide to travel to the witness, allow them to give evidence by video link or other means, postpone the date of attendance or allow the witness to make a written statement.

c. If the witness declines to attend or fails to respond after the 14-day period (or such lesser period specified by the president in the request to attend) has elapsed the president should consider whether the evidence of the witness is material to the inquiry or whether the anticipated evidence may be obtained from another source. Where the president concludes that the evidence of the witness is still required a second letter (sent by first class recorded delivery) should be issued that refers to the first request, the witnesses' response (or lack of response) and should contain the following warning:

'Should you *still be* */*be unwilling** to attend the inquiry you should be aware that, if it is considered that your evidence would be of value, an application will be made to a judge advocate for the issue of a witness notice to require you to attend. Please be aware that it is an offence to fail, without reasonable excuse, to comply with the requirements of a witness notice¹⁶.'

The witness should be given a further 7 days to respond. If, after this period has elapsed and no response is forthcoming, the president should consider whether it is necessary to compel the witness to attend through the issue of a witness notice in doing so he should seek legal advice (see paragraph 3.16 below).

Entitlement to Expenses

3.12. Attendance at an inquiry is a duty for Service witnesses and therefore personnel are entitled to travel and subsistence allowances in accordance with current regulations. Civilian witnesses are entitled to reasonable expenses for travel and loss of earnings as outlined in the Ministry of Justice (MoJ) Guide to allowances that is based on Part V of The Costs of Criminal Cases (General) Regulations 1986. MOD Form AFN9344 'Claim for Allowances - Civilians Required to Attend Courts Martial and Service Inquiries' is used for this purpose and is at Annex C with the relevant MoJ guidance at Appendix 1. The guidance includes rates for assessing allowances for civilian witnesses, and should be checked, where practicable using

¹⁵ A lesser period may be appropriate if for example the witness is considered likely to co-operate but the written request is only required because of the requirement to do so for providing written evidence or producing a document or thing (item).

¹⁶ This applies to relevant civilians (civilians subject to Service discipline) or the person is in the UK, the Isle of Man or a British Overseas Territory.

the relevant website¹⁷, which should also be consulted by those assessing/authorising claims.

Witness unable to Attend

3.13. Circumstances may arise where due to some circumstances outside his control a witness, although willing to attend an inquiry, is genuinely unable to do so. In these circumstances use of VTC¹⁸ or other means¹⁹ may be considered, or the inquiry may travel to meet the witness; if both of these prove impractical, the witness may give his evidence in writing as the president decides.

Hospitalised Witnesses

3.14. When witnesses are hospitalised, the panel will need to know when the witnesses will be available to give evidence and plan accordingly. The medical care of the witness must be the over-riding consideration in the timing of any interview and therefore the panel should consult with the witnesses' Unit Medical Officer/consultant in the first instance and also, the hospital to determine when questioning can take place.

Administration of Witnesses

3.15 Whilst the hosting unit can assist with the administration of witnesses, the ultimate responsibility lies with the inquiry.

Procedure Relating To Witness Notices

Witness Notices

3.16. Unlike Service witnesses, civilian witnesses cannot be ordered to attend an inquiry. It may be that having taken all reasonable steps (outlined at paragraph 3.11 above) to secure the co-operation of a civilian witness, it is considered likely that the witness will not attend to give or provide material evidence²⁰ or produce or provide any document or other thing (item) (as the witness indicates that he will not be willing to attend or does not respond to correspondence within the time period stipulated). The president may in such a case apply to a judge advocate for a witness notice, (if the civilian is one in relation to whom a witness order can be available see paragraph 3.16). If on application by the president, a judge advocate is satisfied that a person:

- a. Is likely to be able to give or provide material evidence, or to produce or provide any document or thing (item) likely to be material evidence, for the purposes of the service inquiry;

¹⁷ See www.dca.gov.uk/courts/allowguid.htm for further details.

¹⁸ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 11 (3).

¹⁹ Includes teleconferencing, email and texts.

²⁰ Important, essential or relevant.

- b. Will not voluntarily attend the inquiry or produce or provide the document or other thing (item), and
- c. Is either a relevant civilian or is in the UK, the Isle of Man or a British overseas territory.

he may issue a witness notice. A witness notice may require the person to whom it relates to attend the inquiry and give evidence or produce a document or other thing (item), or to provide the document or other thing (item) to the panel (without attending).

3.17. The witness notice will have effect in all parts of the UK, in the IOM and in British overseas territories. It also has effect in relation to any person in any of those places and to a person who for the time being is a relevant civilian²¹.

Application to the Judge Advocate

3.18. Where the president considers that the attendance of a witness is likely to be of material value to the inquiry and cannot be obtained from another source he may, taking legal advice as necessary, submit an application to a judge advocate²². He must serve the application on the Court Administration Officer (CAO) at the Military Court Service in the first instance and on such other persons as the judge advocate may direct. This may be, for example, the subject of the notice (the potential witness) or a person with an interest in a document or other thing (item) to which the application relates. An application may be made orally unless the judge advocate otherwise directs. Where an application must be made in writing and should follow the format outlined at Annex D. An application, whether oral or in writing, must:

- a. Identify the proposed witness (this will normally be by name and address (including a temporary military address where a relevant civilian is staying);
- b. State either the matters about which the proposed witness is likely to be able to give or provide evidence, or
- c. The document or other thing (item) which the proposed witness is likely to be able to produce or provide; and
- d. State why the evidence, document or thing (item) is likely to be material evidence for the purposes of the service inquiry.

3.19. If the application is in writing it must also state that the president believes that the facts stated in the application are true²³.

3.20. The application should also contain:

²¹ A civilian subject to Service discipline.

²² See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 13(3) and Schedule 2.

²³ See The Armed Forces (Service Inquiries) Regulations 2008 - Schedule 2 para 1.

- a. A short summary of the incident under inquiry.
- b. The steps taken to secure the attendance of the witness (evidence from any alternate source(s)). Copies of letters sent to the witness and any response received together with details of any other contact the president or convening authority may have had with the witness.
- c. Why the president believes that the proposed witness will not attend voluntarily (including any practical issues such as pressure from a reluctant employer to release the witness, state of health etc) or provide the document or other thing (item).
- d. Any other material the president considers relevant.

3.21. The judge advocate to whom the application is made may refuse to issue a notice if any of the requirements of paragraph 3.20 are not met.

Consideration of an Application

3.22. If the Judge Advocate decides to consider an application orally or wishes to hold a hearing to consider the application the president should, in consultation with the legal advisor to the inquiry, ensure he has prepared and is ready to present the grounds for the application outlined above. Applications may also be made by VTC with agreement from the Judge Advocate. All such hearings will be arranged by the CAO in liaison with the Office of the Judge Advocate General.

3.23. The Judge Advocate may issue a witness notice if he is satisfied that the proposed witness fulfils the criteria at sub paragraphs 16a to c. However, the judge advocate cannot order a person to produce or provide any evidence or document if that person could not be required to do so if the service inquiry proceedings were civil proceedings in a court in England and Wales²⁴.

3.24. A witness notice must require the witness to:

- a. Attend the proceedings of the panel at a time and place stated in the witness notice and give the evidence or produce the document or thing (item);
or
- b. Provide the document or thing (item) to the panel within a specified period²⁵.

The suggested format of the witness notice is at Annex E.

Service of Witness Notice

3.25. Where a Judge Advocate issues a witness notice, the CAO will be responsible for serving it on the witness in question by²⁶:

²⁴ Evidence under CPR Part 31.

²⁵ See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 13(2)

- a. Delivering it to him by hand;
- b. Leaving it at his usual or last known place of residence;
- c. Sending it by first class²⁷ post to that address; or
- d. Transmitting it to him by fax or other electronic means, but only if he has agreed to accept service by this method.

3.26. The CAO is to copy the witness notice to the president of the inquiry and complete the certificate of service at Annex F.

3.27. Where the witness notice prompts the co-operation of a witness the president should ensure that he is provided with the information at Appendices 1 - 4 of Annex B as necessary and that the travel arrangements and supporting documentation²⁸ are also provided. In the event a witness fails to attend the inquiry on the notified date, or does not produce the document or other thing (item) on that date, or if he fails to produce a document or thing (item) within the period prescribed, the president should report the matter immediately to the Service Police who are to liaise with the civilian police in the UK, the Isle of Man or a British overseas territory (in other cases the Service Police will take necessary action). The president should also notify the convening authority and the CAO.

Application for Witness Notice to Produce a Document, etc - Judge Advocate's Assessment of Objection

3.28 Where a person is served with an application for a witness notice by the president of the inquiry requiring him to produce in evidence a document or thing (item), he may object to its production on the grounds that:

- a. It is not likely to be material evidence; or
- b. Even if it is likely to be material evidence, it is evidence or a document that person could not be required to produce if the service inquiry proceedings were civil proceedings in a court in England and Wales.

3.29. If the witness wishes to object he should notify the judge advocate (through the CAO) who may require the proposed witness to make the document or thing (item) available for the objection to be assessed. The CAO is to notify the president of the inquiry. The judge advocate may invite:

- a. The proposed witness or any representative of the proposed witness;
- or

²⁶ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 14.

²⁷ It is the CAO's intention to send this by registered post.

²⁸ Includes rail warrants, flights and car hire etc.

- b. A person to whom the document or thing (item) relates or any representative of such a person, to help him assess the objection. The CAO should notify the witness and president of the judge advocate's decision.

Applications to vary or revoke Witness Notices

3.30. A person who has been issued with a witness notice may apply to have the notice varied or revoked²⁹. To do so he must apply in writing to the CAO setting out why he is unable to comply with the witness notice or why he considers that it is not reasonable in all the circumstances to require him to comply with it³⁰. A suggested form of application is at Appendix 1 to Annex E. The CAO must provide a copy of the application to the president who may make a representation to be considered by the Judge Advocate. The Judge Advocate may decide to hear such representations from both the president and the proposed witness at a hearing or where both agree he may consider their representations in writing.

3.31. Where the proposed witness seeks the variation or revocation of a witness order relating to a document or other thing (item), the Judge Advocate may require the proposed witness to make it available. Where the applicant seeks to satisfy the judge advocate it is not likely to be material evidence or even if it is likely to be material, it is evidence or documentation referred to at paragraph 3.24. To help the Judge Advocate assess the objection he may chose to invite:

- a. The proposed witness or any representative to attend; or
- b. A person to whom the document or thing (item) relates or any representative of such a person to attend.

3.32. Where the Judge Advocate is satisfied that the proposed witness is unable to comply with the witness notice or it is not reasonable in all the circumstances to require him to comply with the notice he must vary or revoke the notice. The Judge Advocate may also direct that the proposed witness be reimbursed by the relevant authority³¹ the whole or a specific part of the costs of his objection³². The CAO is to notify the proposed witness and the president of the Judge's decision.

Offences

3.33. It is an offence³³:

- a. If a person fails without reasonable excuse to do anything that he is required to do by a witness notice which has been served upon him³⁴.

²⁹ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 15.

³⁰ See The Armed Forces (Service Inquiries) Regulations 2008 - Para 3 of Schedule 2

³¹ As defined in The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 15(3).

³² See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 15(2).

³³ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 16.

³⁴ In accordance with The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 14.

- b. If a person, during a service inquiry, does anything that is intended to have the effect of:
 - (i). Distorting or otherwise altering any evidence, document or other thing (item) that is given, produced or provided to a service inquiry panel, or
 - (ii). Preventing any evidence, document or other thing (item) from being given, produced or provided to a service inquiry panel, or does anything that he knows or believes is likely to have such effect, or does anything that he knows or believes is likely to have such effect.
- c. If a person, during a service inquiry:
 - (i). Intentionally suppresses or conceals a document that is, and that he knows or believes to be, a relevant document, or
 - (ii). Intentionally alters or destroys any such document.

3.34 For the purposes of sub paragraph c, a document is a 'relevant document' if it is likely that the service inquiry panel would (if aware of its existence) wish to be provided with it.

3.35 A person does not commit an offence under the offences referred to in sub paras b and c by doing anything that he is authorised to do by the president³⁵, equally he does not commit an offence by failing to do anything that he could not be required to do in civil proceedings in a court in England and Wales.

3.36 The offences above are triable summarily by a civilian court in the United Kingdom, the Isle of Man or in a British overseas territory, and are punishable by a fine not exceeding £1,000 (level 3 on the standard scale).

Action by Panel

3.37 The panel should record all matters relating to the securing of witnesses in the record of proceedings (diary of events for Army/RAF only).

³⁵ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 13(5).

ANNEX A - LETTER TO SERVICE WITNESSES

From: President xxxx
Address and contact details

To: Name Rank/Rate Number of Service witnesses

Date

SERVICE INQUIRY TO INVESTIGATE

A Service Inquiry has been convened in order to investigate the

1. *It is considered that you could be in possession of *information /*documents /*things (items) that may be material to the investigation. You are therefore required to attend the inquiry at (place) on (date) at (time).

Please bring/take with you [list of documents or things (items)]

The Terms of Reference for the inquiry are at Enclosure 1

*Directions to (place) and reception arrangements are at Enclosure 2.

*Notes on service inquiry procedures and giving evidence at an inquiry are at Enclosure 3.

*Claims for travel and subsistence may be made in accordance with current regulations.

OR

2. *It is considered that you could be in possession of *documents/*things (items) that may be material to the investigation. You are therefore required to provide such *documents/*things (items) to the inquiry by (date) at (time). To effect this please contact the undersigned.

PRESIDENT
Rank

*Enclosures:

1. Terms of Reference.
2. Map/directions to the Inquiry and Reception Arrangements.
3. Notes on Service Inquiry Procedures and giving Evidence.

* delete as appropriate

Appendix:

1. Notes for Witnesses on Service Inquiry Procedures and giving Evidence.

APPENDIX 1 - NOTES FOR WITNESSES ON SERVICE INQUIRY PROCEDURES AND GIVING EVIDENCE

1. Service inquiries are held under the authority of the Armed Forces Act 2006 and the Armed Forces (Service Inquiries) Regulations 2008.
2. The function of a service inquiry is to discover, in accordance with its Terms of Reference, the facts of a matter and any circumstances leading to it, with a view to determining why the incident occurred and what should be done in future to prevent a recurrence. Such an inquiry does not seek to attribute blame or legal liability. It works from Terms of Reference set by the convening authority who is a senior officer with responsibility for the area or establishment where the matter under investigation occurred.
3. The inquiry is undertaken by a panel consisting of a president and 2 or more other members, generally servicemen; but civil servants (or foreign servicemen) are sometimes included. The panel is formed to investigate a specific matter. It carries out its investigation by taking evidence from people involved in or connected with the incident, and technical experts. To reach its findings it may need to review procedures and policies. Once the panel has gathered all the evidence it is required to produce a report in which it may express its findings (based on the evidence) about the matter investigated, and it may make recommendations, or express opinions in accordance with its Terms of Reference in respect of preventing recurrences.
4. The panel will assemble in a suitable place, normally an office, conference room, or classroom on a Service unit/ship/establishment, over a number of days or weeks to carry out its work. The place where the panel sits will depend on the incident being investigated. The panel is not confined to one place and may need to travel between two or more locations to complete its tasks.
5. A service inquiry is not a court; it is not open to the public; it is not adversarial; and it does not make legal rulings. It is important to draw a distinction between the work of a service inquiry and proceedings before a civil court, a Coroner's Inquest or a Fatal Accident Inquiry in Scotland. In a case involving a death, the service inquiry report will, however, be made available to the Coroner or Procurator Fiscal to assist him with his proceedings, if the inquest/inquiry into a death has not already been concluded.

Giving Evidence

6. Usually witnesses will travel to the place where the service inquiry is sitting in order to give evidence, which the president may require to be given on oath or solemn affirmation. You may be recalled as required. It may be possible for the panel to travel to you or for you to give evidence by video teleconferencing or by other means, if the president of the service inquiry considers this appropriate or necessary.
7. When you are called to attend the inquiry the following procedure should be adopted:

- a. The president will introduce you to the other panel members, advisors, observers and any support staff and ask whether there is anything in this note you do not understand.
- b. You will be advised that evidence given to the inquiry panel is not admissible before any Service disciplinary proceedings* or civil criminal proceedings except if those proceedings are for perjury. Such a provision does not, however, extend to internal administrative or employment procedures. The bar on evidence being used in disciplinary or criminal proceedings is in order to encourage everyone to be as frank as possible to establish the facts of the matter under investigation in order to prevent recurrence.
- c. The president will then ascertain from you, in general terms, your knowledge of or involvement in the matter so that he can decide what evidence you have that is relevant to the inquiry.
- d. You may be asked to swear an oath or make a solemn affirmation and your evidence will be taken (it will either be written as you give it or taken by a stenographer or transcribed later from a tape recording).
- e. You will be asked to speak slowly and clearly so that your words may be written down in shorthand or be intelligible to a stenographer or when played back from a recording tape.
- f. Depending on how the evidence is recorded you may be asked to sign the transcript of your evidence on the day you give it or later (after it has been typed). You will have an opportunity at this point to add or correct anything that may have been recorded incompletely or incorrectly.
- g. Your statement, along with those of other witnesses will be included in the record of proceedings which accompanies the report, which will be sent to the convening authority and other agencies within the MOD so that recommendations can be acted upon.

Potentially Affected Persons

8. If the president of the inquiry considers that the findings of the inquiry may affect your character or professional reputation, he will regard you as a potentially affected person. If that happens, you will be afforded certain rights to safeguard your interests as considered necessary by the president such as being present at the proceedings of the inquiry panel¹ during which you may question or call witnesses on matters as to which the president considers your character or professional reputation may be affected by the panel's findings. You may also be represented by a suitably qualified lawyer or other representative with the consent of the president; however,

¹ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 18.

the exact arrangements will be confirmed to you by the president in consultation with the convening authority².

Disclosure of Inquiry Reports

9. Under the Freedom of Information Act the MOD is required to release³, upon request, certain official information; thus some information that is assessed to be of public interest will be published through the MOD Publication Scheme. It may be that a request for more information is made through the provisions of Freedom of Information Act. If witness evidence is released it will be in an edited form with all personal information, and as far as practicable any identifying information removed. However it cannot be guaranteed that a witness's identity will be protected. Personal information will not be edited from witness statements that are used in the context of a coroner's inquest or Fatal Accident Inquiry in Scotland and witnesses may also have to appear as a witness to any subsequent inquest or Fatal Accident Inquiry.

10. In addition to the information placed on the publication Scheme, it is MOD policy that the reports of service inquiries are made available to the NOK in cases of death and serious injury (where the serious injury is such that an individual cannot act for themselves). This makes no difference to a witness's position at the inquiry, and witnesses should continue to be as forthcoming as possible and give their evidence in a full and frank way. Regulations that prevent the use of service inquiry evidence in Service disciplinary proceedings* or civil criminal proceedings remain in force.

* delete where witness is a civilian⁴.

² See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 18(2).

³ Once the inquiry process is complete.

⁴ Not subject to Service discipline.

ANNEX B - SUGGESTED LETTER TO REQUEST ATTENDANCE OF CIVILIAN WITNESSES

From: President of the Service Inquiry
Address and contact Number

To: Name/address of Witnesses Date

SERVICE INQUIRY TO INVESTIGATE.....

A Service Inquiry has been convened in order to investigate the.....

1. *It is considered that you could be in possession of *information /*documents /*things (items), that may be essential to the investigation. You are therefore requested to attend the Inquiry at (*place*) on (*date*) at (*time*).

* bring with you* [list of documents or things (items)]

*If you are unable to attend on the date specified please contact the undersigned so that a mutually acceptable time and date can be found.

*The Terms of Reference for the Inquiry are at Enclosure 1

Directions to (*place*) and reception arrangements are at Enclosure 2.

*Notes on Service Inquiry procedures and giving evidence at an Inquiry are Enclosure 3. *(I enclose a rail warrant that will allow you to travel to....(*place*) free of charge by presentation at the ticket office). Payment of any expenses¹ incurred by you in connection with your attendance will be made to the extent authorised in the Ministry of Justice guide to allowances that is based on Part V of The Costs of Criminal Cases (General) Regulations 1986.

**In order that we may plan the evidence sessions please complete and return the attached proforma by (*date*). A stamped self addressed envelope is provided for these purposes.

OR

2. *It is considered that you could be in possession of *documents/*things (items) that may be material to the investigation. You are therefore requested to provide such *documents/*things (items) to the inquiry by (*date*) at (*time*). To effect this please contact the undersigned to make the necessary arrangements.

PRESIDENT
Rank

¹ Travel, subsistence and loss of earnings.

*Enclosures:

1. Terms of Reference.
2. Map/directions to the Inquiry and Reception Arrangements etc.
3. Notes for Witness on Service Inquiry Procedures and giving Evidence.
4. Witness Proforma Appendix 1 to Annex B.

*delete/insert as appropriate.

APPENDIX 1 - CERTIFICATE OF ACKNOWLEDGEMENT OF REQUEST TO ATTEND A SERVICE INQUIRY

To (Name and *Address of the President*)

Certificate of Acknowledgement of Request to attend a Service Inquiry

I..... (full name of witness in BLOCK CAPITALS)

acknowledge receipt and accept*/do not accept the request to attend the Service Inquiry (and or produce or provide the following.....)

at.....(place) on(date)

Signature.....Date.....

* Please provide any comments you wish to make to the president below as applicable.

ANNEX C – CIVILIANS’ CLAIM FOR ALLOWANCES

Claim for Allowances – Civilians Required to Attend Courts Martial and Service Inquiries

AF N 9344
(Introduced
10/99)
PPQ = 100

Notes on completion of this form:

1. Assessment of the rates of allowances will be laid down by MOD.
2. Payment in respect of loss of earnings must be supported by a certificate attached to this payment form.
3. Payment will be made by the Imprest Holder (or officer representing him) who will submit this form as a voucher through the Imprest account.
4. All sections of the form will be completed by the unit representative/panel member, signatures of claimant and President of the Court or Service Inquiry being obtained at Parts 1 and/or 3. Guidance on the allowances payable is at Appendix 1.

Part 1 – The Claim

a. Full Name of Claimant:

b. I certify that I was required to attend a Courts Martial/Service Inquiry at:

and that the total time spent thereat was:

<input style="width: 100px; height: 20px;" type="text"/>	hours on (date):	<input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/>
<input style="width: 100px; height: 20px;" type="text"/>	hours on (date):	<input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/>
<input style="width: 100px; height: 20px;" type="text"/>	hours on (date):	<input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/>

c. I also submit a claim for loss of earnings of £ and attach a certificate to this effect from my employer.

d. Travel expenses for the journey from: to:

were incurred by me as follows:

e. My home address is:

Signature of Claimant	<input style="width: 200px; height: 20px;" type="text"/>	Signature of President of Court or Service Inquiry	<input style="width: 200px; height: 20px;" type="text"/>
Date	<input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/>	Date	<input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/>

Part 2 – The Assessment

I assess that there is an entitlement to:

	£	p			
Subsistence	<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>	Signature of Convening Authority Staffs/Appropriate officer	<input style="width: 220px; height: 20px;" type="text"/>	
Earnings	<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>	Date	<input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/> <input style="width: 15px; height: 20px;" type="text"/>	
Travel	<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>			
Total	<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>			

Part 3 – Payment

I certify that payment of the amount shown at Part 2 has been received by me.

Claimant's Signature of Receipt

Date

Part 4 – For Imprest Holder

The sum of £ has been paid from Imprest BASA on

Articulation data:

UIN	IAC	Amount

APPENDIX 1 - GUIDANCE TO ALLOWANCES

1. The information contained below is taken from the MoJ Guide to allowances, which is based on Part V of the Costs in Criminal Cases (General) Regulations 1986. The maximum amounts and allowances shown are those in force at the time of publication and should be adhered to.

2. The rates¹ for financial loss allowances payable to ordinary witnesses and other persons are as follows.

Period of absence	Maximum amount with effect from 1.6.2005
Not exceeding 4 hours	£33.50
Exceeding 4 hours	£67.00

3. The rates for subsistence allowance payable to ordinary witnesses and other persons are as follows:

Period of absence	Maximum amount with effect from 1.8.01
Not exceeding 5 hours	£2.25
Exceeding 5 hours but not exceeding 10 hours	£4.50
Over 10 hours	£9.75
Hotel - London, Birmingham, Manchester, Leeds, Liverpool or Newcastle Upon Tyne city centres	£95.00 * Plus £21.00 Night Subsistence Allowance and £5.00 Personal Incidental Allowance with effect from 1.6.05
Overnight (elsewhere)	£65.00 * Plus £21.00 Night Subsistence Allowance and £5.00 Personal Incidental Allowance with effect from 1.6.05 £25.00 only if with family or friends with effect from 1.6.05

4. The rates² for financial loss allowances payable to professional witnesses are as follows:

(a) Professional witness allowance where locum fees are not claimed.

Period of absence	Maximum amount with effect from
-------------------	---------------------------------

¹ Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulation 18.

² Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulation 19.

	1.8.01
Not exceeding 2 hours	£83.50
Exceeding 2 hours but not exceeding 4 hours	£117.00
Exceeding 4 hours but not exceeding 6 hours	£174.00
Exceeding 6 hours	£234.00

(b) Professional witness allowance where locum fees are claimed.

Period of absence	Maximum amount with effect from 6.5.03
Not exceeding 2 hours	£89.00
Exceeding 2 hours but not exceeding 4 hours	£125.00
Exceeding 4 hours	£250.00

5. The rates³ for allowances payable to expert witnesses and interpreters⁴ etc and overnight allowances⁵ for expert and professional witness and interpreters are as follows:

Period of absence	Maximum amount with effect from 1.8.01
Overnight Hotel - London, Birmingham, Manchester, Leeds, Liverpool or Newcastle Upon Tyne city centres	£85.25 * Plus £21.00 Night Subsistence Allowance and £5.00 Personal Incidental Allowance with effect from 1.6.05
	£55.25
Overnight (elsewhere)	* Plus £21.00 Night Subsistence Allowance and £5.00 Personal Incidental Allowance if at a Hotel with effect from 1.6.05 £25.00 only if with family or friends with effect from 1.6.05

6. The rates⁶ for allowances payable to civilian Seaman are as follows:

³ Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulation 18.

⁴ Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulation 20.

⁵ Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulations 20 and 21.

Period of absence	Maximum amount with effect from 23.5.88
Loss allowance	£29.70
Maintenance allowance	At the discretion of the court, but not exceeding the sum actually and reasonably incurred

7. The rates⁷ for traveling allowances are as follows:

(a) Public Transport Rate – <u>See Guide to Allowances for more details</u>	Rate per mile with effect from 1.8.01
Motor-cycles	25p
Motor cars	25p
(b) Standard Rate – <u>See Guide to Allowances for more details</u>	Rate per mile with effect from 1.8.01
Motor-cycles	45p
Motor cars	45p
(c) Passenger Supplement	
First passenger	2p
Each additional passenger	1p
(d) Parking Fees - fees actually and reasonably incurred	
(e) Pedal-cycle	20p with effect from 1.6.05

8. The amount payable for written medical reports⁸ is as follows:

	Maximum amount with effect from 6.5.03
a) Report in pursuance of a request to which section 32(2) of the Criminal Justice Act 1967 applies	
Consultant	£74.80
Other registered medical practitioner	£52.80
(b) Higher fees (where more than 2 hours work necessarily undertaken)	Daily maximum
Consultant	£298.25
Other registered medical practitioner	£211.00
c) Examination and report to determine fitness for detention centre training	
All registered medical practitioners	£35.20

9. The rates⁹ for motor mileage allowance for registered medical practitioners are as follows:

⁶ Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulation 22.

⁷ Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulation 18.

⁸ Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulation 25.

⁹ Part V of the Costs in Criminal Cases (General) Regulations 1986 - Regulation 18.

Maximum amount with effect from 1.8.2001

Motor-cycles 45p

Motor cars 45p

Guidance for Assessing Expert Witness and other Allowances

10. As there are no prescribed scales for the allowance for the remuneration of expert witnesses and certain other persons the guidance below is intended to assist the president by providing a point of reference on quantum for use when exercising their discretion in determining such claims. It will also be of use to those making claims in determining their entitlements.

11. The rate bands shown cover a wide field of skill and, in some cases, a number of different kinds of skills. They provide neither a minimum nor maximum limit, merely a guide to the levels of allowances in normal circumstances. It may be appropriate, having regard to the particular circumstances of the case, to depart from the guidance scales shown. Such occasions will, however, arise exceptionally.

12. In exercising discretion, presidents are to bear in mind that each case should be considered individually. They are to take into account all the relevant circumstances surrounding the claim including such things as the work done, the status or experience of the person doing the work, and the availability of such persons in the area of the country concerned. In cases of difficulty, the president should seek advice from the convening authority or their budget holder.

	Allowance from 6 May 03
Expert witness	
1. Consultant medical practitioner, psychiatrist, pathologist	
Preparation (examination/report)	£70-£100per hour
Attendance at proceedings (full day)	£346-£500
2. Fire (assessor) and/or explosives expert	
Preparation	£50-£75 per hour
Attendance at proceedings (full day)	£255-£365
3. Forensic scientist (including questioned document examiner), surveyor, accountant, engineer, medical practitioner, architect, veterinary surgeon, meteorologist	
Preparation	£47-£100 per hour
Attendance at proceedings (full day)	£226-£490
4. Fingerprint	
Preparation	£32-£52 per hour
Attendance at proceedings (full day)	£153-£256
	From Feb 07
5. Interpreter	See <u>Terms and conditions</u> on Home Office website

ANNEX D - APPLICATION FOR A WITNESS NOTICE IN RESPECT OF A SERVICE INQUIRY

To: Court Administration Officer, Military Court Service, Upavon (or Portsmouth for RN)

From: Name Rank Number of President

**SERVICE INQUIRY INTO.....
APPLICATION FOR WITNESS NOTICE IN REGARD TO**

Name and Address of required witness and whether subject to Service discipline

Reference:

A. Convening Order (attached)

Part 1 Summary of the Incident under Inquiry.

Part 2 Explain the evidence the proposed witness is likely to be able to give or provide and why it is believed the witness is likely to be able to give this evidence.

Part 3 Grounds for considering the evidence or document or thing (item) is likely to be material evidence for the purposes of the service inquiry.

Part 4 Details of the steps taken to secure attendance of witness and witnesses response (attach copies of correspondence with witness)

Part 5 Reasons for believing the witness will not attend voluntarily (if known).

Part 6 Any other relevant information.

I state that to the best of my belief that the facts stated in the application are true.

Name
Rank.....
Date

ANNEX E - SUGGESTED FORM OF WITNESS NOTICE IN RESPECT OF SERVICE INQUIRY

To *(full name)*

IDENTIFY THE INQUIRY

I am satisfied that you will not voluntarily attend the inquiry proceedings or produce the document or things (items).

Under my powers under regulation 13 of the Armed Forces (Service Inquiries) Regulations 2008 (SI. 2008/1651), require you to:

*attend the above mentioned Service Inquiry [to give evidence].

at*(place)* at*(time)* on the*(date)* day of*(month and year)*

(* and to bring the said documents or other things (items) with you)

And so to attend from day to day until you shall no longer be required as directed by the president of the inquiry.

* provide the document or things (listed in the attached Schedule) by
(insert date) to (name and address).....

It is an offence without reasonable excuse to fail to comply with this notice. Such offences are triable summarily by a civilian court in the United Kingdom, the Isle of Man or in a British overseas territory, and are punishable by a fine not exceeding £1,000 (level 3 on the standard scale).

You are requested to sign and return the receipt slip below.

It is possible to apply to a judge advocate on certain grounds for the variation or revocation of this notice. If you wish to do so, your application must be made in accordance with regulation 15 and with paragraph 3 of Schedule 2 to the Armed Forces (Service Inquiries) Regulations 2008 to the Court Administration Officer [address]. A form of application which may be useful to you in making an application is attached to this notice.

(signed)

Judge Advocate

(date)

Copy to: (President)

*delete as appropriate

To CAO, Military Court Service, Upavon (or Portsmouth for RN)

Acknowledgement of Receipt of Witness Notice

I.....(full name of witness in BLOCK CAPITALS)

acknowledge receipt of the witness notice dated (DATE) :

Signature.....Date.....

Enclosure:

1. Application to vary or revoke witness notice – Appendix 1.

APPENDIX 1 - APPLICATION TO VARY OR REVOKE WITNESS NOTICE

To:

The Court Administration Officer, Military Court Service, Upavon (or Portsmouth for RN)

APPLICATION TO VARY OR REVOKE WITNESS NOTICE

I.....(full name of witness in BLOCK CAPITALS)

acknowledge receipt of the witness notice dated insert date) for me to *attend (bring with me

at.....(place) on(date)

* provide the document or things (listed in the attached Schedule) by (insert date).

Signature.....Date.....

I wish to apply to vary or revoke the above witness notice for the following reasons:

owing reasons¹: *(continue on additional sheets of paper if required)*

¹ State why you are unable to comply with the witness notice or why you consider that it is not reasonable in all the circumstances to require you to comply with it.

**ANNEX F - CERTIFICATES OF SERVICE OF WITNESS NOTICE IN
RESPECT OF SERVICE INQUIRY**

CERTIFICATE OF SERVICE

To the Court Administration Officer
and Name and Rank of President

I, *(name)*, of *(organisation)*, certify that on the.... day of..... 20..., I served *(name)*,
of *(address)*, with the witness notice, of which a true copy is attached,
by delivering the notice to him/her personally*
by leaving the notice for him/her with *(name)* at *(address)* being *(name)*'s usual or
last known place of residence*

Dated the..... day of....., 20....

Signed

*Delete as appropriate

CERTIFICATE OF SERVICE BY POST

To CAO
And Name and Rank of President

I, *(name)*, of *(organisation)*, certify that I served *(name)* with the witness notice, of
which a true copy is attached by sending it by *(first class/registered etc)* post in a
prepaid letter posted by me at *(the name of the public post office (within the meaning
of the Postal Services Act 2000))* situated at *(place)* at *(time)* on the *(day)* of *(month)* ,
20.., and addressed to *(name)* at *(address)* being his/her usual or last known place
of residence

Dated the..... day of....., 20....

Signed

CHAPTER 4

EVIDENCE - GENERAL CONSIDERATIONS AND TAKING EVIDENCE

General Considerations

Admissible Evidence

4.1. A service inquiry is not a court of law and therefore is not bound by the formal rules of evidence which apply the courts. The panel may receive any evidence that it considers relevant to the matter which it is investigating, whether oral or written, taken on oath or not and whether or not such facts would be admissible in a Service or civilian court. But in deciding what weight is to be given to evidence, there may a number of factors to consider, eg evidence of an incident given some time afterwards may be more compelling if based on notes taken at the time of the incident. Where the president has concerns as to whether certain evidence should be admitted or as to the weight that should be given to a particular piece of evidence he should seek the advice of his legal advisor.

The Panel - Responsibility to Act Together


4.2. Whenever the panel takes formal evidence, or carries out any duty imposed on it by the service inquiry regulations the president and members should normally act together. However, in exceptional circumstances a president may decide that a specific function may be undertaken by one or more members of the panel (but see Chapter 5 paragraph 5.16), for example:

- a. The concurrent interviewing of witnesses in an operational theatre where time is of the essence.
- b. To facilitate the taking of a witness statement of a hospitalised witness where limited visitors are permitted by medical staffs.

4.3. Where this is the case appropriate record is to be kept and statements or exhibits are to be suitably marked. The president should seek legal advice before taking such action¹.

Relevance of Evidence

¹ There may be exceptional circumstances where legal advice cannot be obtained prior to taking such action in which case legal advice should be sought at the earliest opportunity.

4.4.  The panel should confine the evidence of witnesses to the facts relevant to the inquiry's TORs and should examine the witnesses until it is certain no further material evidence can be produced. All irrelevant evidence is to be excluded.

4.5. On occasion an inquiry may uncover evidence of other matters that are not germane to the inquiry but which nevertheless the president feels should be drawn to the attention of the convening authority. In this instance the president should advise the convening authority separately of the issues that have been discovered. In such circumstances it may be necessary to amend the inquiry's TORs or address the issues through a separate inquiry or investigation.

Evidence of Fact or Opinion

4.6. An inquiry may consider evidence of opinion based on facts, where the person providing that opinion is appropriately qualified to give an opinion. Most witnesses should simply confine their evidence to the facts, e.g. what they saw, or what the procedure was in a particular circumstance.

4.7. Opinions should also be distinguished from mere conjecture². Conjecture may be plausible but is rarely of value as in essence it is a mere guess. A finding or an inference³ is to be a deduction from the evidence, and there can be no inference unless there are objective facts from which to draw it.

Inaccurate or Conflicting Evidence

4.8. If there are variations or inconsistencies in the evidence of witnesses, the witnesses should be questioned closely and if necessary recalled and re-examined to obtain clarification. It may also call for independent evidence or expert opinion to assist in this regard. The panel's findings should explain and comment on important inconsistencies and make it clear which evidence it accepts. Times, dates, numbers, distances, etc, are often very important factors and, where they are, witnesses should be carefully examined on these points. Similar considerations apply in the event of internal inaccuracies in an individual witness's evidence.


Specialised Evidence

4.9. When taking evidence, the panel should be particularly careful not to assume that the convening authority and others who may be interested in the report will possess local or specialised Service knowledge such as they themselves may have. Although it may not seem necessary to record certain facts well known to them, they should do so if they are likely to assist anyone interested in the report to understand it. This is extremely important where technical knowledge and the use of specialised terms or abbreviations are concerned.

² An opinion or conclusion based on incomplete information.

³ A conclusion reached on the basis of evidence and reasoning.

Admissions of Legal Liability

- 4.10.  The panel should not make any oral or written statement to any person or in the inquiry report, which amounts to or implicitly involves an admission of legal liability (criminal or civil) or otherwise concerning any matter being investigated.

Handling Witnesses in Special Circumstances

4.11. The following categories of witnesses may require special handling and legal advice may be required.

- a. **PIDAT** Where the president is aware that drug and alcohol testing was undertaken post incident and an individual has tested positive he is to follow the guidance at Annex A.
- b. **Potentially Affected Persons.** Where the panel considers that the character or professional reputation may be affected by the findings of the inquiry the guidance at Annex B is to be followed.
- c. **Hospitalised Witnesses.** For guidance on handling hospitalised witnesses (see Chapter 2 paragraph 2.34).
- d. **NOK.** In cases where the panel considers it necessary to receive evidence from the NOK particular care should be taken to ensure they are dealt with compassionately. Initial arrangements for the NOK to attend an inquiry should be made through the relevant VO. This will ensure that the particular circumstances of the NOK are taken into account. Where it is apparent at the outset of the inquiry that the NOK will be required to attend as a witness it might be helpful to broach this matter with them early at their initial briefing on the inquiry. The panel should consider the most appropriate way for the NOK to give evidence such as the inquiry travelling to the NOK or asking them to give evidence in writing. The NOK may find it difficult and potentially distressing to give evidence and when hearing oral evidence it will be necessary for the panel to exercise tact and sympathy when asking questions. The panel should allow sufficient time for the NOK to take breaks and compose themselves as necessary. It should also make provision for the NOK to be accompanied by their VO and/or a friend or other family member.


Use of Reports

4.12. Reports from other investigations may be used during a service inquiry; however, Service police reports or statements taken by the Service police should not be taken into evidence as a matter of routine⁴. In the event a president is given access to a Service police report or witness statements (practice varies between the individual Service police forces) they may be used as an aid to identifying potential

⁴ This avoids police reports being released as part of the inquiry report when normally they might not be releasable under FOI. If necessary the Inquiry may call a member of the service police as a witness to give evidence about, and be questioned on, the outcome of the police investigation.

witnesses and lines of inquiry. Where it is impractical (for operational reasons for example) for the witnesses to appear before the inquiry to give evidence in person, police witness statements may be used and included in the report but only with the agreement of the witness, or where the Service police have obtained a signed witness consent form. Further guidance is at Annex C.

Handling of Information from other Nations

4.13.  Particular care is to be taken to ensure the confidentiality of any material received from other nations for the purpose of informing inquiries.

4.14. Where the US has an involvement with a death of a UK Service person, such as in friendly fire incidents or a crash in a US aircraft, it is usual practice for the US to make available information, reports and other material to allow the MOD to undertake its own investigation of the circumstances surrounding a death. Information exchange between the US and the UK is based upon the 1961 UK/US Security Agreement and the 2003 MOD/DOD Security Implementing Arrangement. In many cases, this material will be classified. This potentially extends to witness statements made by foreign nationals, and UK intelligence documents which are sourced from intelligence provided by other nations. Such information is not always easily recognisable as non-UK in origin.

4.15. The president is to ensure that any material provided to the panel by the US or any other foreign state is properly identified as such, and is marked and handled in accordance with MOD security guidance. This material continues to belong to those nations throughout the inquiry process. The president is not to make a judgement on the origin of classified material. If he is unable to identify the source of origin of the material, he must contact Info-Access DPAD, or for intelligence material, DIS (DI CSD-Sec). In addition, the relevant Policy and Defence Relations Directorate (PDR) should be informed early when dealing with US or other foreign state material, and should be engaged in the process where any doubts exist. The president should also refer to guidance issued by DDefSy in 2008DIN02-008 in respect of protectively marked material.

4.16. No material is to be released to coroners or a procurator fiscal (or families) without the relevant Command Secretary certifying that no US originated material is being disclosed. US or any other foreign state's material is not to be disclosed without consultation having first taken place with the US or that other State.

Offences

4.17. In dealing with witnesses the panel are to be aware of the offences listed in Chapter 3 paragraph 3.33 which relate to the conduct of witnesses to an inquiry. They should also be aware that while evidence gathered during an inquiry is not admissible in summary hearing or proceedings before a civilian criminal court or service court, evidence may however, be admissible in proceedings where that

person is being tried on charges involving perjury. If the president⁵ is of the opinion that such an offence has been committed he is to notify the convening authority.

4.18 In addition, if at any stage of the inquiry, it appears that the matter under inquiry may have involved the commission of a service offence⁶ the president should at once adjourn and seek legal advice from the legal advisor to the inquiry. The president should alert the convening authority who will decide whether it is necessary to notify the relevant Service police force and the suspected person's CO. If a police investigation is initiated the convening authority should consider whether to suspend or terminate the inquiry. In making this decision the convening authority should consider the seriousness of the suspected offence, the importance of the inquiry, the potential affect on the police investigation of the continuance of the inquiry and any other relevant factors. In making such a decision he should liaise with the SSIC and the relevant police force and take legal advice.

Use of Witnesses' Evidence

4.19. The panel should be aware of the following in relation to the use of witness evidence other than for the purposes of a service inquiry:

a. **Liability to Criminal Prosecution.** Evidence given by a witness at a service inquiry is not admissible at a summary hearing⁷ or proceedings before a civilian court or service court⁸. Such a provision does not, however, extend to internal administrative or employment procedures. This rule has been made in order to encourage everyone to give as much information as possible to a service inquiry in order to prevent a recurrence of an accident or incident.

b. **Liability to Civil Action.** On completion of the inquiry, witness statements may be disclosed, subject to paragraph c below. In the event of litigation relating to events being investigated by the inquiry, the MOD (not the individual members of the Service concerned) would deal with the civil legal consequences. The MOD is liable under the doctrine of vicarious liability⁹ for the acts or omissions of servicemen and civilian staff committed in the course of their employment¹⁰. If in any doubt legal advice should be obtained in the first instance from the inquiry's nominated legal advisor who will normally consult with MOD's Directorate of Safety and Claims (DS&C). Matters outside the course of Service personnel's employment would not normally be matters for a service inquiry.

⁵ Where a panel member is acting without the president of the panel he should notify the president.

⁶ Offences under the Service Discipline Acts.

⁷ S131 AFA 06.

⁸ The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 12.

⁹ Vicarious liability is the legal responsibility imposed on an employer, although he is himself free from blame, for a wrongful act or omission committed by his employee in the course of his or her employment.

¹⁰ Civilian witnesses who are not employed by the MOD clearly are not covered by the MOD's vicarious liability.

c. **Disclosure.** The FOI Act dictates that information held by public authorities should be made available to members of the public on request unless there is a relevant exemption. Some exemptions are subject to an additional test as to whether or not it is in the public interest for information to be released. As a matter of routine, a redacted copy of the inquiry report and the convening officer's and reviewing officer's comments¹¹ are to be offered to the NOK of personnel killed or seriously injured (those seriously injured such that they are unable to act for themselves). For high profile¹² inquiries this information is also published on the MOD Publication Scheme within 2 months of the completion of the inquiry. However, such release or publication will not be facilitated until the report has been appropriately redacted. If the NOK ask for a copy of the record of proceedings (which includes witness statements), a redacted version will be provided; however, names contained within the various documents may not necessarily be withheld. In all other cases the record will only be disclosed in accordance with the FOI Act. Detailed guidance on the disclosure of inquiry reports is at Chapter 7.

d. HM Coroner (or Procurator Fiscal in Scotland) are to be provided with the full unredacted¹³ copy of the report, the record of proceedings and the convening officer's and reviewing officer's comments¹⁴ to assist the Coroner with his understanding of the incident and to identify those personnel who may be required during the inquest (or FAI in Scotland) as a witness.

Taking Evidence

Knowledge of Procedures

4.20. In order to fully meet its responsibilities when taking evidence, it is essential that the panel are familiar with the procedures that apply and therefore they should familiarise themselves with the content of this chapter.

Responsibilities of the Panel

4.21. In complying with its TORs the completeness and effectiveness of an inquiry will depend to a large degree on the support provided to its findings by the recorded evidence. Consequently the panel should:

- a. Elicit all such facts as are necessary to ascertain the circumstances of the incident.
- b. If facts are disputed, endeavour to obtain independent evidence in order to discover where the truth lies.

¹¹ Not for RN inquiries.

¹² As decided by the SSIC and may include those inquiries involving operational or training fatalities, serious injuries and major equipment loss or damage, which have attracted, or are likely to attract, considerable family involvement and media and/or Parliamentary interest.

¹³ CT and UK Ops must be consulted on all matters which relate to SF activity.

¹⁴ Not for RN inquiries.

- c. Examine meticulously any material available.
- d. Not express an opinion unless it is based on their conclusions as to the facts.
- e. Avoid conjecture in the sense explained in paragraph 4.7 above.

Preparation of Witnesses

4.22. Potential witnesses who have received a written request to give evidence should also have received guidance as to the procedures of inquiries (Appendix 1 to Annex A to Chapter 3). However, when a witness first appears before the inquiry the president should brief them, covering the following points appropriately. He may:

Introduce himself and the members of the inquiry as well as any support staff (shorthand writers, interpreters, legal advisors etc).

Explain the purpose of the inquiry and clarify anything contained in the calling letter (if appropriate) that the witness does not understand. He should also outline the procedures applicable to a service inquiry including whether he wishes evidence to be given on oath.

- c. Advise witnesses that evidence given to the inquiry panel is not admissible before any Service disciplinary proceedings¹⁵ or civil criminal proceedings except if those proceedings are for perjury. Such a provision does not, however, extend to internal administrative or employment procedures. They should be advised that the bar on evidence being used at disciplinary or criminal proceedings has been made in order to encourage everyone to be as frank as possible to a service inquiry in order to prevent a recurrence.
- d. Advise the witness that he will seek to ascertain from him, in general terms, his knowledge of or involvement in the matter so that the panel can decide what evidence he has that is relevant to the inquiry.
- e. Advise the witness that he may be recalled as necessary, to clarify or amplify his evidence.
- f. Ask the witness to speak frankly and also slowly and clearly so that his evidence may be written down in shorthand or be intelligible to the stenographer or when played back from a recording tape, as appropriate.
- g. Advise the witness if any statements previously made by him to the police or other agency (for example, HSE) have been seen by the inquiry, or indeed will be included in the inquiry report (see paragraph 4.12).
- h. Advise the witness that the service inquiry report and record of proceedings (which includes witness statements) may be released, or

¹⁵ Applies only to Service personnel or civilians subject to Service discipline.

published, as required under the FOI Act, and the MoD cannot guarantee that his identity will be protected. In circumstances where the report and record of proceedings is submitted as evidence at an inquest, personal information is not redacted and they may have to appear as a witness to an inquest.

Oaths

4.23. Any witness who gives oral evidence before an inquiry may be required by the president to give evidence on oath¹⁶ or affirmation to serve as a reminder to people of the importance of telling the truth and to provide legal sanctions should a witness be found to have lied to an inquiry. However, the president has the flexibility to decide under which circumstances it may not be practicable or appropriate to require a witness to give evidence on oath, e.g. where eye witness accounts are given in the immediate aftermath of an incident and the administration of an oath is therefore impractical. Guidance on the procedure to be taken for administering oaths is at Annex D.

Taking evidence

4.24. Taking evidence is best effected by allowing the witness to relate his story. The witness should not have words put in his mouth. Some witnesses will only have vague recollections of an occurrence and some will be easily swayed in what they imagine happened. Generally, a panel is concerned to hear from a witness what he actually saw or heard and not what he supposes or had been told occurred. However, there is no rule against hearsay¹⁷ evidence; therefore witnesses may relate something that someone else said to them. The weight given to such evidence is likely to be less. The panel should remember to keep matters simple and should explain things and put questions in laymen's terms. Witnesses require tactful handling when the accident or incident has occasioned them loss (see paragraph 4.11).

4.25 Where a Service witness is reluctant or refuses to answer any question(s), the president, where he considers it necessary and appropriate, is to question him as to why he thinks he may be adversely affected by his answer. The president is then to consult (in private if necessary) the other members of the panel to determine whether they consider the person should or should not answer the question(s) bearing in mind, if the objection is based on self-incrimination that evidence given by a person to a service inquiry panel is not admissible against a person at a summary hearing or in proceedings before a civilian criminal or a service court. If the president considers that questions should be answered or if in doubt he should take legal advice particularly if he believes there are issues of national interest or public safety involved.

4.26 Advice should also be taken in the event a civilian witness is reluctant or refuses to answer a question particularly for those who have been compelled to attend the inquiry by virtue of the issue of a witness notice.

¹⁶ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulations 11(7) and (8).

¹⁷ What one is told someone else said.

Recording of Evidence

4.27. The evidence should be recorded in a manner that will enable those considering the record of proceedings to make an intelligent appreciation of the matter being investigated. Where a stenographer, shorthand recorder or VRC is appointed they will be responsible for recording the evidence. Alternatively evidence may be recorded (taped) and transcribed later. If neither of these options is available, the evidence should be taken down in narrative form by one of the panel, recording as accurately as possible the words used. If necessary in the opinion of the panel any particular question and answer may be recorded verbatim.

Making a Written Record of Witness Evidence

4.28 The statement of a witness should be prefaced by a description of the witness by rank/rate, number and trade/branch and full name and employment. It is to continue with a statement of the date and circumstances in which the witness became associated with the matter under investigation.

4.29 The preamble to the evidence may be presented in the following format:

**(First Witness): Rank/Rate or Title.....forenames (in full)
surname (in capitals).....
Service number and trade or branch, Unit or address) having been duly
sworn/affirmed, states: "I am an engineer at Joint Helicopter Command,
Odiham. While going to my living accommodation on 1 Oct 08 at about 1900
hrs I saw"**

(The place where an eye witness was should always be identified, e.g. in relation to the nearest town/building or other point and recorded).

4.30 If the evidence is taped-recorded or transcribed. the transcriber will certify the evidence as a true record, and the president should countersign the transcript. If however the statements are taken by less specialist arrangements, or if the recording arrangements are not perfectly reliable, or if for any reasons such as language, accent or enunciation the words are difficult to interpret, the signature of the witness should be obtained.

4.31 Where a witness is required to sign their statement they should be requested to read over the record of their evidence and be given the opportunity to alter or add anything to the written record. However, any alterations or additions should be made before the whole panel or, where exceptionally the evidence was given to a single panel member or otherwise not before the full panel (e.g. at a hospital) before that panel member or those members taking the evidence. Any alternation is to be recorded at the foot of his evidence as follows:

"On reading over his evidence the witness wishes to make the following alterations"

4.32 The evidence is then to be signed and dated by the witness. One signature is required and it is not necessary for each page of the evidence to be signed. If

questions and answers have been recorded at the end of the witness's evidence it is to be signed and added at the end of the questions and answers; the panel need not sign the witness's evidence.

4.33 A witness who is recalled will retain his original witness number. His fresh evidence should be prefaced with his particulars and words to the effect that he has been recalled eg:


Third Witness: Rank/Rate or Titleforenames (in full).....
(recalled) surname (in capitals).....
Service No (if any)..... recalled on his
former oath, states

4.34 The witness is to be reminded that he is on his former oath, if applicable.

Access to Evidence

4.35. A witness may be given a copy of his own evidence, but any formal request to see the proceedings should be referred to the convening authority.

Exhibits

4.36.  Any document or other thing (item) produced or provided to the panel by a witness for use as evidence must be made an exhibit and must be attached to or kept with the record of proceedings unless the president decides that it is not practicable or convenient to do so¹⁸. Where an exhibit is not attached to or kept with the record of the proceedings, the president must ensure that the necessary steps are taken to ensure its safekeeping until the convening authority has decided that the inquiry has come to an end. A copy of a document or other thing (item) produced or provided to the panel may be included in the record as an exhibit. It should however, be certified as a true copy of an original document or thing (item) having been verified by an appropriate person or the panel. Particular care must be taken to ensure that any exhibit originating from the US or any other foreign state is properly identified as such, and is marked and handled in accordance with MOD security guidance. Such exhibits continue to belong to those nations throughout the inquiry process.

- 4.37. Every exhibit should:
- a. Be marked with a letter or uniquely marked.
 - b. Be formally produced by a witness as part of their evidence.
 - c. Be recorded by the inquiry and signed by the president or have a label affixed to it bearing a letter and the signature of the president.

¹⁸ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulations 11.

ANNEX A - POST INCIDENT DRUG AND ALCOHOL TESTING (PIDAT)

Introduction

1. Section 32 of the Armed Forces Act 2001 and Defence Council Regulations under that section and AFA 06¹ require a serviceman or relevant civilian, to provide a sample for alcohol or drugs testing where, broadly-speaking, there has been a serious incident and where, in the opinion of the person exercising the power, the person to be tested may have caused or contributed to it. This power enables evidence of drug or alcohol consumption to be obtained in order to assist a service inquiry to determine whether such consumption or use might have been a factor in the incident. Testing may be used to facilitate investigation of serious incidents such as maritime, air, range and training accidents which have resulted in death, serious injury or serious damage to property and the risk thereof (this includes near misses). The results of such tests are not admissible as evidence in proceedings for a Service offence, but clearly may be significant to a service inquiry to assist in determining the cause of the incident or factors that may have contributed to the incident.

Service Policy on the Misuse of Drugs

2. The misuse of illegal drugs is incompatible with the demands of Service life and poses a significant threat to operational effectiveness. Drugs impair judgement and reliability, reduce fitness, damage health, degrade performance, and harm team cohesion and Service ethos, as well as being harmful personally, to family relationships and to society generally.

Service Policy on the Misuse of Alcohol

3. Social drinking has long been recognised within the Armed Forces as playing a part in group bonding, although it is also recognised that those misusing alcohol or suffering from alcohol dependency are a potential hazard to themselves, their families and their colleagues. The nature of the Services' role demands the highest standards from its personnel, who are required to perform exacting duties which often directly affect the lives of their colleagues. Personnel are liable to be called for duty at any time. Therefore, the excessive consumption of alcohol and, in some situations, any alcoholic consumption, adversely affects their capability to perform their duties safely and accurately. Misbehaviour, unfitness for duty due to alcohol and drinking and driving offences may be dealt with as offences under the SDAs².

Procedures for Testing

4. The procedures for testing may be found in 2006DIN02-30.

Use of Samples/test Results in Service Inquiries

¹ S 306 AFA 06 when it comes into force.

² Under AFA 06 post implementation.

5. It is for the authorising officer (henceforth referred to as the CO) concerned with a particular accident or incident to call for PIDAT in relation to persons within his command. The CO will decide who he believes should be tested; this may include personnel directly involved in the incident, e.g. the driver of the vehicle; and those with more remote involvement, e.g. the mechanics responsible for the vehicle's maintenance.

6. The samples³ are tested by the Laboratories of the Government Chemist (LGC). All results are forwarded to PS2 (Army) for the 3 Services where they will be retained until the president of an inquiry subsequently calls for them.

Actions by the President

7. The president should be advised by the convening authority or his staff as part of the convening briefing whether PIDAT was called for the matter under inquiry. Where this is the case the president should make early contact with the CO who initiated testing to ascertain his reasons for believing those tested may have caused or contributed to the incident in order to inform his decision making as to which samples should be tested.

8. It is for the president to determine which individuals' test results are required in consultation, if necessary, with the convening authority and it is these results only that will be released to the Inquiry. The president should be aware that test results can only be used in connection with matters relating to the incident.

9. Where test results are to be used by the inquiry, the president is to notify the convening authority and DNLS for the RN, PS2 (A) for Army personnel and ACOS A1 staffs for RAF personnel, where results are positive. Where test results are positive for drugs the president is to also refer the matter to his single-Service CDT Team in order that the affected person's CO is made aware of the result of the test and can take action accordingly.

Test Results Positive for Drugs

10. Positive results which reflect the presence of drugs will render the individual liable for discharge by administrative means, unless there are considered to be exceptional grounds to retain the individual. Such decisions are to be made by the chain of command of the individual concerned; this is not a matter that should concern the president. It is however for the panel to judge to what degree the individual's performance of his duty may have been impaired through the presence of drugs and whether and (if so) how this may have been a contributing factor to the incident, taking specialist advice as appropriate.

Consideration of Positive Test Results

³ Breath for Alcohol and Urine for Drugs.

11. No prescribed limits have been set for drugs and alcohol in the PIDAT regime. Therefore it is for the panel to judge to what degree an individual's performance of his duty may have been impaired through the presence of drugs or alcohol and how this may have been a contributing factor to the incident. In so doing the panel may consider the limits set for alcohol under the Railway and Transport Safety Act 2003 (RTSA) and the Road Traffic Act 1988. However, these may only be used as comparators to provide evidential value to the PIDAT results given that RTSA does not apply to the Armed Forces. The RTSA limits for maritime and aviation engineers are 35 microgrammes⁴ of alcohol in 100 millilitres (RTA drink drive limit), for aviation (aircrew) 9 microgrammes of alcohol in 100 millilitres (1/4 RTA drink Drive limit). The panel should also consider the nature of the individual's role and to what degree it was critical to the safety of the activity under investigation. The panel should also consider any other rules or regulations which such individuals are required to abide by; e.g. "Bottle to Throttles" Rules in JSP 550.

Toxicology Report

12. Presidents can obtain specialist advice from the contracted company (currently LGC) in the form of a Toxicology report. Such reports generally indicate the level consumed, the level of intoxication and whether the defence put forward by the individual concerned is credible or not (e.g. spiking – does the specific drug dissolve in alcohol? Would the presence of the drug in a drink be noticeable?). Toxicology reports are rarely able to state definitively that something has or has not been caused by the level of intoxication, but rather give a balance of probabilities. The key will be the choice of questions to be posed and the provision of any necessary background information, for which the president can obtain legal advice. If necessary, representatives from the contracted company could be called forward to give evidence.

Decision not to use Test Results

13. Where the president makes a decision not to use test results, they will be destroyed on his written authorisation. The president should inform the CO of those persons affected of the decision not to use their test results and of the destruction of their test results requesting that the individual concerned be notified.

Calling and Handling Witnesses who have Tested Positive for Drugs or Alcohol or have Refused to provide a Sample

14. For the purpose of the service inquiry individuals who have tested positive for drugs or alcohol or have refused to provide a sample when required by a testing officer should be treated as potentially affected persons and should be notified of this prior to their attendance at the inquiry proceedings in order that arrangements may be made in advance for representation etc. As outlined above Servicemen found positive for drugs will be liable to administrative action⁵ (i.e. discharge in all but exceptional cases) and personnel who refuse to provide a sample will be subject to disciplinary action as their case requires.

⁴ Of breath.

⁵ See single-Service guidance on administrative action.

Recording Action

15. Test results and any toxicology reports are to be included in the record of proceedings.

ANNEX B - ACTION WHEN CHARACTER OR PROFESSIONAL REPUTATION MAY BE AFFECTED

General



1. If the panel is to conduct a thorough investigation it should be able to take detailed evidence from all witnesses, even those whose character or professional reputation may be adversely affected by the findings of the inquiry. For this reason, and out of general considerations of fairness, it is important that, if the president considers it likely that a person's character or professional reputation may be in question in relation to any matter the inquiry is considering, he is able to hear evidence which might go to that question, and given the possibility of responding to that evidence (see further paragraph 3 below). The likelihood that a person's character or reputation may be affected by the findings of the inquiry may be apparent before the start of the inquiry, or it may become apparent subsequently.

2. A potentially affected person is entitled to be present at the proceedings of a service inquiry panel¹. However, the president may, after consulting with the convening authority, impose such conditions and exclusions on his attendance as are reasonable. Such exclusions may include exclusion from being present at any part of the proceedings and may be imposed before or at any time during the proceedings of the panel².

3. While the Armed Forces (Service Inquiries) Regulations 2008 provides a specific safeguard for the individual, the general requirements of fairness, backed by the requirements of administrative law, means that, if the reputation of a OGD, company, firm etc is also likely to be in question, they should be treated similarly. They should be allowed to hear or read evidence relevant to their conduct and should be allowed to be represented and to give evidence about those issues. If the reputation of a company may be affected by the findings of the inquiry legal advice is to be sought.

The Test to be Applied

4. It is important for presidents to understand clearly the test that is to be applied. The president does not have to decide that it is likely that the person's character or reputation will be affected. The test is whether it is likely that he may be affected. In other words (as put in paragraph 1 above, the test is really whether the person's reputation or character is likely to be in question (whatever the likely outcome). If it is likely to be in question, the intention behind the legislation is that the person should be able to hear the evidence relating to the issue (whether or not the evidence is subsequently found to be favourable to him) and to respond to that evidence.

Action to be taken by the President

¹ See The Armed Forces (Service Inquiries) Regulations 2008 Regulation 18.

² See The Armed Forces (Service Inquiries) Regulations 2008 - Regulations 18(1).

5. As early as possible after the assembly of the panel the president should consider who if anyone known to him at the time, may be affected by the findings of the panel and should notify that person as soon as practicable. He is to ensure that such a person has notice of the proceedings and fully understands that subject to any conditions or exclusions imposed³:

a. He has the right to be present at any part of the proceedings of the panel. For these purposes proceedings means the periods during which the panel sits to take evidence.

b. He may be represented at the proceedings by a legal representative⁴, at his own expense or, with the consent of the president he may be represented by a person other than a legal representative⁵.

c. He may give evidence, question witnesses or produce any witness to give evidence, in relation to any matter which, in the opinion of the president, may affect him;

d. Where he is represented, his representative may question witnesses and may, with the permission of the president, address the panel.

e. The president will provide him with a copy of any part of the record of the proceedings of the panel, if the president considers it appropriate to do so.

6. The potentially affected person may decide whether to be present throughout those sittings of the panel which he is permitted to attend.

7. The issue may arise at any time during the inquiry in which case the president may adjourn to ensure that such a person has notice of the proceedings and fully understands the safeguards which may be afforded to him as outlined above.

Privilege

8. The president is to advise any person whose character or professional reputation may be affected by the finding of the inquiry and any legal or other representative who may be present that the proceedings of the panel may not be disclosed to any third party⁶. To do so may result in exclusion from being present at such parts of the proceedings as the president decides (after consulting with the convening authority).

Recording Actions

³ See para 2 above.

⁴ As defined in The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 2.

⁵ The representative role is the same irrespective of whether or not he is a legal representative.

⁶ Except where the potentially affected person changes his legal representative.

9. The actions and decisions taken in respect of potentially affected persons should be recorded in the record of proceedings. The suggested forms of words to be used are as follows:

a. **Before proceedings.** ‘The panel considered that the character or professional reputation of ⁷..... might be affected by its findings and he has been informed of his entitlements under the Armed Forces (Service Inquires) Regulations 2008, Regulation 18 and the conditions/exclusions imposed. He has been advised that the proceedings are not to be disclosed to third parties. He has elected (*not) to be present at the inquiry*. He has elected (*not) to be represented. He has elected to give (evidence and to call witnesses to give evidence on the matters which may affected him)*’.

b. **During and after proceedings.** ‘The panel considered that the character or professional reputation of ⁸..... might be affected by its findings and he has been informed of his entitlements under the Armed Forces (Service Inquires) Regulations 2008, Regulation 18 and of the conditions/exclusions imposed. He has been advised that the proceedings are not to be disclosed to third parties. He has elected (*not) to be represented. The evidence of the ⁹..... Witness(es) was accordingly given over to him: he declined to cross-examine elected to recall the following witness(es) for cross examination*¹⁰ elected (not) to be present at the remainder of the inquiry*. elected to give (further evidence and to call witnesses to give evidence on the matters which may affected him)*’.

Upward Reporting

10. The president is to notify the convening authority, as soon as reasonably practicable, as to the circumstances which led him to judge that a person’s character or professional reputation may be affected by the findings of the inquiry. The convening authority should review the employability of the individual, in consultation with that individual’s CO. This is particularly important where such an individual fulfils a safety critical function.

Persons Unable to be Present

11. If a potentially affected person is unable to be present at proceedings of the panel, the president should consider whether any evidence has been given to the panel which neither the person potentially affected nor a representative of his has been present to hear¹¹. If there is such evidence the panel should inform him by letter (or otherwise as may be found convenient) of that evidence and consider whether any steps are appropriate, in the interests of fairness, in relation to that

⁷ Insert name/rank of affected person.

⁸ Insert name/rank of affected person.

⁹ Insert the witness numbers (ie First, second third ... etc).

¹⁰ Delete as applicable.

¹¹ A representative may act for the potentially affected person in his absence – see para 5 above.

evidence; for example, whether he should be given the opportunity to give evidence in response. Such statements are to be recorded and form part of the record of proceedings.

Foreign and Commonwealth Officers attached to the UK Armed Forces

12. There is a distinction in legal status between officers of Commonwealth and non-Commonwealth nations attached to the UK Armed Forces.

a. **Commonwealth Officers.** By virtue of the Visiting Forces (British Commonwealth) Act 1933 and relevant secondary legislation attached Commonwealth officers are subject to the SDAs¹² and may therefore be afforded exactly the same rights and responsibilities as UK Service personnel.

b. **Non-Commonwealth Officers.** Officers from non-Commonwealth nations are subject to their own national jurisdiction, but subject to the provisions of a MOU with the MOD. It is likely that this will oblige the exchange officer to co-operate with a service inquiry and they would therefore be a witness in the proceedings. As with other witnesses a non-Commonwealth exchange officer has a right to be represented, if it is likely that his character or professional reputation may be affected. Each such MOU differs in its terms and it is therefore recommended that legal advice be sought when dealing with such personnel

Consideration of Findings by the Convening Authority

13. If, for whatever reason, a person is not given the rights of a potentially affected person, and the provisional findings of the inquiry are adverse to his character or professional reputation, the convening authority should consider, what steps, if any, are appropriate in the interests of fairness and of ensuring that the findings are justified.

14. Where it is concluded¹³ that the character or professional reputation of an individual previously considered to be potentially affected, has not in fact been affected by the findings, the convening authority is to advise the individual's CO (through the chain of command if necessary). The CO is to arrange for him to be interviewed and informed that no further action will be taken against him in respect of the inquiry. This action should be followed up in writing.

Recording Action

15. When action is taken in accordance with paragraph 14 above, as appropriate, it is essential that details are recorded immediately in the record of proceedings and the diary of events (Army/RAF/MAFTR only). The latter need not give full details of the circumstances but should include the date and time of each action.

16. When action is taken by the convening or reviewing authority (if appropriate) a

¹² AFA 06 following implementation.

¹³ When the provisional report is declared final.

similar record is to be made in their comments.

ANNEX C - REPORTS

1. Fatal Incident Reports:

a. **Pathologist Reports.** In the case of aviation occurrences a consultant aviation pathologist will have been alerted and will normally attend to carry out the post mortem and give evidence to the panel. The panel is to inform the pathologist if there appears to be a specific medical problem or if any special medical investigations are considered necessary. The unit medical officer or, if overseas, the senior local pathologist, may deputise for the aviation pathologist if he is unable to attend.

b. **Reports to Coroners.** The DIU has been established as the Departmental focus for all Coroners' inquests. The Coroner will normally be provided with a copy of the full inquiry report in confidence to assist him in the preparation of his own inquiry. The DIU will make the necessary arrangements for this to happen. During the investigation into a fatal incident any approach to the inquiry for information by the Coroner or his officers should be referred immediately to the DIU (Upavon (94344) (BT 01980 61) ext.5982, 5555, 5553 or 5505).

ANNEX D - INQUIRIES INTO UNDETERMINED OR SELF-INFLICTED DEATHS

Introduction

1. The following provides context and general guidance to panels inquiring into undetermined deaths or self-inflicted deaths.
2. Undetermined deaths or self-inflicted death occur rarely in the civilian population, there are in the order of 4000 to 5000 in UK each year, which equates to 9-11 per 100,000 population. Of those 50% of the deceased will have history of presenting to a GP in previous 3 months and only 25% will have been in contact with mental health services in previous 12 months. Over the last few decades the rate of such deaths has increased amongst young males, but there has been a reduction over the last 5 years.
3. Within the military population undetermined death or self-inflicted deaths are less common and in the order of 5-9 per 100,000 in the Services as a whole but rates vary between the Services. The lower rates in the Services are unsurprising given that generally the military population is healthier than civilian population and the prevalence of serious mental illness is much lower than civilian population due to our selection processes and medical retirement. Prevalence of less serious mental illness (mild to moderate depression, anxiety disorders etc) is probably more equivalent to civilian population.

Inquiries into Undetermined deaths or self-inflicted deaths

4. In cases of undetermined or self-inflicted death, the panel should construct a 'Psychological Autopsy (PA)¹' (RN only) or 'An Organisational Analysis (OA)' (Army/RAF) of the deceased in order to systematically collect and analyse relevant data. This data will provide a greater understanding of how events happened, whether or not more could have been done to prevent the death and therefore make recommendations on future prevention. Details and an example of a PA/OA can be obtained from the SSICs,
5. In outline the PA/OA consists of:
 - a. Response to some 21 generic questions covering:
 - (i) individual factors (recruitment, performance at work, relationships at work, attitude to colleagues and job, work over-load, health etc);

¹ Useful reference: Hawton K, Appleby L, Platt S, Foster T, Cooper J, Malmber A, Simkin S. (1998) The psychological Autopsy approach to studying suicide. A review of methodological issues. Journal of Affective Disorders Vol 50 pp 269-76.

(ii) unit factors (training and awareness, background, attitude of chain of command, attitude of peers, identification of issues by welfare agencies or friends and family etc).

- b. Awareness and Identification of Risk Factors by the Chain of Command.
- c. Awareness and Identification of Risk Factors by Peers.
- d. Awareness and Identification of Risk Factors by Friends and Family.
- e. Awareness and Identification of Risk Factors by Welfare and Medical Agencies.

Medical Input



6. Expert input should be sought for cases of undetermined and self-inflicted deaths, as a minimum to assist in the interpretation of medical records. The level of specialist experience required and their role in the inquiry will depend to some extent on the level of medical input which occurred prior to the death. The advice of a psychiatrist would be necessary if the deceased had been receiving specialist mental health care prior to the death. A medical specialist member could also be useful to assist with the formulation of appropriate questions for interviewing witnesses and in assisting with the completion and analysis of the PA or OA. The medical expert should be independent. If due to the small numbers of Service psychiatrists, there is a difficulty in achieving independence; consideration may be given to using one of the 3 civilian consultant advisors in psychiatry to each of the Services.

ANNEX E - TAKING OATHS

Oaths and Affirmations

1. Any witness who gives oral evidence before an Inquiry may be required by the president to give evidence on oath¹ or affirmation subject to the following:

- a. A child aged under 14 years who does not in the president's opinion understand the nature of an oath or affirmation:
 - (i) may give evidence without being sworn, if in the president's opinion he understands that he should tell the truth when giving evidence to the panel;
 - (ii) cannot give evidence to the panel on oath or having affirmed².
- b. If the president would otherwise require a person to give evidence on oath, he must instead require the person to affirm if:
 - (i) the person objects to taking an oath or
 - (ii) it is not reasonably practicable³, without inconvenience to, or delay to the proceedings of, the panel to administer an oath in accordance with their religious beliefs.

2. An affirmation has the same effect and consequence⁴ as swearing an oath and the evidence given following an affirmation should be considered in the same way and given the same weight, as if it had been given on oath.

Administering the Oath or Affirmation

3. The oath or affirmation can be administered to the witness by any member of the panel or other person on their behalf. In the case of an oath by a Christian the witness simply removes his hat⁵ (if any), holds a copy of the New Testament in his uplifted hand and says, or repeats the form of words after the person administering:

4. The forms of oaths and affirmations are as follows:

- a. **Witness's Oaths.**
 - (i) **Christian Oath (if over 18)**
(New Testament to be held in uplifted hand)

¹ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulations 11(7) and (8).

² See The Armed Forces (Service Inquiries) Regulations 2008 – Regulation 11(8)

³ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 11 (8)(b).

⁴ In terms of a potential charge of perjury.

⁵ Does not apply to female Service personnel.

"I swear by Almighty God that the evidence that I shall give shall be the truth, the whole truth and nothing but the truth."

(ii) **Oath – Scottish Form (if over 18)**

New Testament to be held in uplifted hand

"I swear by Almighty God and as I shall answer to God at the Great Day of Judgement, that the evidence which I shall give shall be the truth, the whole truth and nothing but the truth".

(iii) **Children, young persons under 18 - Christian Oath – Witness**

(New Testament to be held in uplifted hand)

"I promise before Almighty God that the evidence which I shall give shall be the truth, the whole truth and nothing but the truth".

(iv) **Children, young persons under 18 – Scottish Form**

"I promise before Almighty God and as I shall answer to God at the Great Day of Judgement, that the evidence which I shall give shall be the truth, the whole truth and nothing but the truth".

5. If none of the forms of oath above is appropriate to the religious beliefs of the person taking the oath, an oath may be administered in such form and manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs. Other such forms of oath include:

a. **Jewish Oath**

(Old Testament to be held in uplifted hand)

"I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth".

b. **Sikh Oath**

(Taken on the Adi Granth). Witness to be allowed to follow own custom.

"I swear by Guru Nanak that the evidence I shall give shall be the truth, the whole truth and nothing but the truth".

c. **Muslim/Follower of Islam Oath**

(Taken on the Koran). Witness to be allowed to follow own custom.

"I swear by Allah that the evidence I shall give shall be the truth, the whole truth and nothing but the truth".

d. **Hindu Oath – Witness**

(Taken on the Gita). Witness to be allowed to follow own custom.

"I swear by the Gita that the evidence I shall give shall be the truth, the whole truth and nothing but the truth".

The Form of Affirmation

6. The person making an affirmation instead of an oath shall say, or repeat after the person administering the affirmation:

"I solemnly, sincerely and truly declare and affirm that the evidence which I shall give shall be the truth, the whole truth and nothing but the truth".

CHAPTER 5

PREPARING THE PROVISIONAL REPORT AND COMPILING THE RECORD OF PROCEEDINGS

Introduction

5.1 When the president considers that the panel has fulfilled its TORs he must ensure that a provisional report is prepared, that the report is signed by all the members of the panel and that the report is provided to the convening authority, as soon as practicable¹.

5.2 The provisional report may contain anything that the president considers to be relevant to the terms of reference, including any recommendations or expressions of any opinion which the president considers appropriate to make whether or not required to do so by the TORs².

The Provisional Report

Content

5.3 The provisional report³ should be under cover of a copy of the convening order and TORs and should contain:

- a. A narrative of events; and must contain
- b. The panel's findings (including findings of fact and expressions of opinion); and
- c. The panel's recommendations.

5.4 Notes on style and format of the provisional report are at Annex A.

Narrative of Events

5.5 The narrative of events should serve as an introduction to the report. It should summarise the events prior to the incident; the incident itself and the outcome of the incident. It should be based on the evidence and correctly cross-referred to that evidence. The account should be intelligible to a person not acquainted with either the subject or local conditions and the panel should therefore make full use of simple guides and/or maps to illustrate the points being made.

¹ See The Armed Forces (Service Inquiries) Regulations 2008 Regulation 19(1).

² See The Armed Forces (Service Inquiries) Regulations 2008 Regulation 19(2).

³ For format for submission see para 5.24.


Findings

5.6 The findings should be presented in a chronological order and represent the outcome of analysis of the events and reflect the findings of the panel as to what happened and why it happened, based on the evidence. These findings are to be cross referred to the evidence and cover all the points upon which the panel is required to report either by the TORs or by any regulations. The president should note any particular point on which the panel is unable to record a complete finding, together with the reasons for this. If there is conflicting evidence, the panel should state the basis on which it arrived at its finding and why it rejected the evidence with which it disagrees.

Causal/Contributory Factors

5.7 The panel should determine those factors which may have caused or contributed to causing the matter under investigation. Causal factors may be those that, in the opinion of the panel, if removed would have stopped the accident from occurring. Contributory factors may be those that, in the opinion of the panel, if removed would not have prevented the accident from happening but may have affected its outcome. Such factors will inform the inquiry's recommendations.

Non-Attribution of Blame or Legal liability

5.8  When recording its findings a panel should be aware that service inquiries are not to explicitly attribute blame or legal (criminal or civil) liability. However, any findings of the panel may result in further scrutiny of a person's conduct through administrative procedures external to the inquiry. Further guidance on the non-attribution of blame and legal liability may be found at Annex B.

Recommendations

5.9 The panel should make any appropriate recommendations that it considers will prevent recurrence of such an accident or incident in the future. The recommendations should be based on and cross referred to the findings and must relate to the TORs of the inquiry.

5.10 The standard format for the presentation of recommendations should feature:

- a. A list of the causal factors that led to the incident occurring.
- b. Against each causal factor mentioned in a. above, any measures that, in the opinion of the inquiry, should be taken to prevent this arising in future.
- c. A list of the contributory factors that contributed to the outcome of the incident.
- d. Against each contributory factor, any measures that, in the opinion of the inquiry, could be taken to mitigate the risk of that factor arising in future.

- e. Any other recommendations for improvement in procedures, which may not have contributed directly to the matter under investigation but have been identified by the panel during the course of the inquiry.

5.11 Recommendations are not to be made in respect of administrative action and/or disciplinary action in terms of personal failings, the determination of which is the responsibility of the chain of command.

Record Of Proceedings

Content

5.12 During the gathering of evidence, upon which the panel's provisional report is based, the president must ensure that a record of the proceedings of the panel is made⁴. The inquiry's convening order and TORs must be entered into the record of proceedings on the date the inquiry first met and when completed the record must contain⁵:

- a. Transcripts of oral evidence given to the panel;
- b. A copy of any written evidence given to the panel; and
- c. A copy of any other document which the president decides should form part of the record.

5.13. To fulfil this requirement the president is to ensure that the following are assembled:

- a. All witness statements (including those of potentially affected persons), which are to be covered by a list of witnesses⁶ for reference purposes and copies of any witness notices that have been issued;
- b. Exhibits, which are to be covered by a list of exhibits for reference purposes annotated to reflect the location of exhibits, which are not to be attached (see Chapter 4, paragraph 4.36).
- c. Annexes (any document or thing (item) which is produced by the panel, such a maps, diagrams), which are to be covered by a list of annexes for reference.

5.14 Notes on style and format of the record of proceedings are at Annex A.

⁴ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 10(4).

⁵ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 10(6).

⁶ Those who have been regarded as affected persons are to be annotated accordingly and the name of their representative recorded.

Specialist Reports

5.15 Where the inquiry awaits the receipt of a specialist report, the president will determine whether the provisional report should nonetheless be forwarded to the convening authority. It will then be for the convening authority to judge whether the inquiry has met its TORs despite the absence of the specialist report and take whatever action it deems appropriate in the circumstances.

Diary of Events (Army/RAF/MAFTR only)

5.16 The diary of events (see Annex C) is to be produced and included in the record of proceedings as an annex. The president is to decide those matters that are to be recorded in the diary of events such that it amounts to an audit trail of the inquiry and may be used to explain any delays in completing the inquiry⁷. The diary should start with the date that the convening order was issued and should record every subsequent decision, action, or event including but not exclusive to:

- a. Sittings of the panel (including who was present (in addition to the panel such as affected persons and/or their representatives) and witnesses who attended).
- b. Any actions taken in relation to affected persons.
- c. Actions relating to witness notices.
- d. Submission of progress reports to the convening authority.
- e. Actions in relation to remedial action required.
- f. The issue of suspension notices and notices withdrawing such suspensions.
- g. The receipt of a termination notice.
- h. Any changes to TORs made by the convening authority.
- i. Any changes to the panel membership/constitution by the convening authority.
- j. Any periods of adjournment for example to await receipt of a report or to deliberate on and record findings and recommendations.
- k. The receipt of legal advice.
- l. The submission of the provisional report, record of proceedings and supporting paperwork to the convening authority.

⁷ For example periods of suspension for other inquiries or delay due to the illness of an essential witness.

- m. Further work undertaken at the direction of the convening authority after submission of the provisional report.

Notices

5.17 The panel should include copies of all notices received from the convening authority including for example suspension and deferral notices and confirmation of the convening authority's consent to the attendance of advisors and observers. Such notices are to accompany the record of proceedings as Annexes.

List of Advisors and Observers

5.18 The panel should record a list of individuals who attended the inquiry including all advisors and observers. The list is to accompany the record of proceedings as an Annex.

Master Schedule

5.19. To ensure information can be easily identified and extracted for disclosure the panel is to produce a master schedule as a convenient summary of everything that the inquiry is based on and contains. The schedule is to accompany the record of proceedings as an Annex.

Schedule of Matters not Germane to the Inquiry


5.20. A separate schedule of exhibits considered by the panel but considered not to be relevant to the investigation, and therefore not referred to in the report or included in the record of proceedings should also be prepared in order to demonstrate the full range of information dealt with by the panel. The schedule is to accompany the record of proceedings as an Annex.

Final Preparation And Submission

Final Checks

5.21. Once the provisional report and the record of proceedings have been prepared they are to be thoroughly checked to ensure completeness and correctness; the check list at Appendix 1 to Annex A should be used to avoid common errors. The president should then reaffirm whether he considers his TORs have been met.

Legal Advice

5.22.  The president should consult with his legal advisor with regard to the wording and content of the report and the record of proceedings, by providing him with copies. The president should take whatever remedial action is considered

necessary by the legal advisor and may consult the convening authority as necessary. Once the legal advisor is satisfied that everything is in order he is to advise the president in writing, a copy of which is to be attached to the provisional report

Completion of Provisional Report

5.23. Once the president has the necessary legal sign-off he must sign the report and ensure that it is signed by the other members of the inquiry panel⁸. However, if there are any points of disagreement between the panel members the president is to ensure that the report reflects such points before the report is signed⁹.

Submission of the Provisional Report and the Record of Proceedings

5.24. The president is to submit the provisional report and the record of proceedings to the convening authority, as soon as practicable. The example covering note at Annex D should be used and the information presented as shown.

⁸ See The Armed Forces (Service Inquiries) Regulations - Regulation 19(1).

⁹ See The Armed Forces (Service Inquiries) Regulations - Regulation 19(2)

ANNEX A - NOTES ON REPORT WRITING AND PREPARATION AND THE RECORD OF PROCEEDINGS

1. The following provide guidance on the format and preparation of the inquiry report and the record of proceedings (also see Annex D).

Writing Conventions

2. Defence writing conventions should be used in the preparation of the record and the report. Where continuation sheets are necessary eg for witness statements and the taking of evidence, plain A4 paper (with appropriate margins annotated) should be used.

Witness statements

3. The evidence of each witness is to be numbered and recorded by hand or typewritten on ordinary A4 sheets. Only one side of the paper is to be used with a left hand margin of 1 1/2INCHES. Single spacing is to be used if the evidence is recorded in longhand but double spacing is allowed if the evidence is typed.

Typing

4. When typing the proceedings from a manuscript original the text should continue to the bottom of the page irrespective of the arrangements of the manuscript. To facilitate reference to the original, the manuscript page numbers are to be inserted in the typescript at the appropriate points of the text.


Page Numbering

5. The pages of each part of the report/record of proceedings should be numbered consecutively as in Service writing (2-1, 2-2 etc).

Protective Marking

6. The panel should determine the appropriate protective marking for the inquiry papers and annotate them accordingly. Where their content does not justify a security classification, the papers are to be given the protective marking of 'Protect - Staff'. In certain circumstances it may be appropriate for the convening authority to increase the security grading to provide a greater degree of confidentiality; however, the proceedings would normally be downgraded to 'Protect - Staff' once staffing action is complete and NOK informed (if appropriate).

APPENDIX 1 - COMMON ERRORS AND OMISSIONS

1.  The following constitute common errors and omissions found in inquiry reports and records of proceedings. They highlight the need for exceptionally careful checking of all aspects of the report and record before they are submitted:

Failure to comply with the Convening Order/TORs

Explicitly attributing blame

Failure to take action with regards to potentially affected persons.

Failure to call material witnesses

Leading of witnesses while questioning

Failure to record occasions when the president and members have not acted together when taking evidence.

Incomplete forms and documentation

Individual's details incomplete, particularly deceased personnel

Witness details & involvement/qualification not listed

Inclusion of whole documents (SOP's, Regulations etc) rather than relevant extracts

Exhibits not listed or not exhibited in accordance with procedures

Lack of stores valuation for write-off purposes

Copies of evidence not certified

Reliance on documents not properly introduced by a witness

Witness statements not signed by witnesses (where appropriate)

Failure to point out conflicting evidence

Serviceability of equipment not identified

Opinions or findings not based on evidence or exhibits

Failure to cross reference evidence to conclusions

Failure to cross reference recommendations to findings

Over reliance on the findings of other reports

Failure to record actions taken

ANNEX B - GUIDANCE ON NON-ATTRIBUTION OF BLAME AND LEGAL LIABILITY



1. When considering human factors and the degree to which they may have contributed to an incident, it may be relevant to consider whether appropriate orders were issued or enforced and whether the actions of personnel involved, either directly or indirectly, were contributory factors.
2. Following a tri-Service review in 1997 of BOI procedures following unnatural deaths and serious accidents, Ministers accepted its recommendation that BOIs following such events “were no longer explicitly to attribute “blame” or “negligence”¹. The aim was to:
 - a. Avoid criticism that persons unable to defend themselves, in particular deceased personnel but sometimes also those seriously injured, may be unfairly blamed for incidents;
 - b. Mitigate grief for the bereaved;
 - c. Remove potential difficulties with coroners; and
 - d. Further separate the inquiry process from any necessary disciplinary investigations.

This policy applies to all service inquiries.

3. However it has never been intended to inhibit BOI or service inquiries in the fair and proper discharge of their terms of reference. In particular service inquiries (like BOI) must be able to state plainly what they conclude has happened. References in this JSP to non-attribution of blame should accordingly be understood in the light of the following guidance:
 - a. Service inquiries should not express a view on legal liability, whether criminal or civil. Inquiry panels have neither the expertise nor the authority to decide such matters, which are for the courts. Panel members should bear in mind that a number of words have particular legal connotations, and, if used, may suggest that a view on legal liability is being given. For this reason a panel should avoid the use of the words such as “negligent”, “reckless” and “dishonest”. If in doubt, a panel should consult the legal advisor.
 - b. The procedures and approach of inquiry panels must be fair. This principle requires particular care in reaching and stating findings of fact which are adverse to a person who is not able to reply. Accordingly, where a person is dead or seriously injured, particular care and sensitivity are needed both in

¹ Recorded in paragraph 2a of a minute of 17 July 1997 from PS/Min (AF) to APS/USofS, reference D/Min(AF)/JR/5/3/1.

making findings of fact which are adverse to that person and in choosing the words in which those findings are expressed.

c. At the same time, the fundamental purpose of an inquiry is to seek to establish the facts. It may still be possible to do so, despite the absence of particular witnesses. It may also be that the facts as found have clear and adverse implications for one or more persons. For example, it may be appropriate to find that a crash occurred because the driver was going more quickly than was safe for the prevailing weather conditions.

d. Where a finding can properly be reached, it is important that it is stated clearly, even if it does carry a clear implication of blame on someone's part.

e. Whether or not a person about whom an adverse finding is made is able to give evidence, a panel should, in stating the finding, avoid language which is emotive, or which is judgmental beyond what is necessary to establish the relevant events and their causes. To do otherwise is to go beyond the purposes for which the inquiry will have been set up. So, in the example given at c. above, it is unlikely to be necessary to add that "the driver's conduct fell far below expected standards" or that he "should obviously have foreseen what was going to happen".

**ANNEX D - FORMAT FOR COVERING NOTE FOR SUBMITTING THE
PROVISIONAL REPORT TO THE CONVENING AUTHORITY**

To: The Convening Authority

SERVICE INQUIRY INTO (INSERT BRIEF DETAILS)

1. The service inquiry panel assembled at
on the
by order of¹
for the purpose of²

has concluded its inquiries and submits the provisional report (including the record of proceedings and supporting paperwork) for the convening authority's consideration.

PRESIDENT³

Signed

MEMBERS

Signed

Signed

2. The following inquiry papers are enclosed:

Part 1 (The Report)

- a. Convening Order and TORs⁴ at
- b. Narrative of Events at
- c. Findings at
- d. Recommendations at

Part 2 (The Record of Proceedings)

- e. Diary of Events (as applicable) at
- f. The list of witnesses at
- g. The witness statements (including potentially affected persons)
at.....

¹ Insert here the authority, or the rank, name and appointment of the officer convening the inquiry.
² Set out the basic requirement placed upon the inquiry and a cross reference to the TORs as set out in the convening order.
³ The note should be signed by the president and each of the panel members.
⁴ To also include any changes to the TORs and composition of the panel.

- h. The list of attendees (advisors and observers)
at
- i. The list of exhibits at
- j. The exhibits at
- k. The list of annexes at
- l. Annexes at
- m. Schedule of Matters not Germane to the Inquiry
- n. Master Schedule
- o. An electronic copy of the report and record of proceedings as listed above.

CHAPTER 6


STAFFING OF SERVICE INQUIRIES

General

Submission of Provisional Report and Record of Proceedings

6.1. The staffing process, which follows the submission of the provisional report and the record of proceedings (see Chapter 5 paragraph 5.24) is to be co-ordinated by the convening authority. References made in this chapter to the inquiry report will include the provisional/final report and record of proceedings unless specific mention is made of the provisional report or the final report (their meaning is explained under Chapter 5 paragraph 5.2 and paragraph 6.8 below respectively). The staffing chain for reports will be different in each Service and for differing types of accident/incident and instructions on this (plus single-Service specific information) will be found in single-Service guidance¹.

Timelines

6.2.  The convening authority is to ensure that the staffing of the inquiry report is completed as thoroughly and expeditiously as possible. Only in exceptional circumstances should convening authorities allow additional time for the staffing process. Staff actions in response to recommendations or observations made by the panel should not delay convening or reviewing authority (as appropriate) comments. Any outstanding actions should be followed up during the subsequent staffing process.

Action By Convening Authority

Action by the Convening Authority

6.3. On receipt of a provisional report the convening authority may consult as he considers necessary in order to inform his decision as to whether the inquiry has met its TORs. Such action should be undertaken within the overall timelines for the staffing process, which are at Chapter 2, paragraph 2.8.

Convening Authority - Consideration of the Provisional Report

¹ For RN this will be QRRN Ch 57, for Army LFSO 3207 and RAF P1 Pol Letter 04/08.

6.4. The convening authority is to scrutinise the provisional report (including the record of proceedings) thoroughly and checks are to be made to ensure that the inquiry has been conducted properly and has complied with relevant regulations and reflects policy guidance.

6.5. After considering the provisional report the convening authority may require the panel to undertake such further work as he considers appropriate, having regard for the matters which the panel was to investigate under its TORs². Such further work may be required, for example because fresh evidence has come to light, some evidence available to the panel has been omitted, or some relevant aspect has not been covered adequately and therefore the inquiry has not met its TORs. Following completion of further work a revised provisional report must be submitted to the convening authority for consideration. This process may be undertaken as necessary to ensure the inquiry has met its TORs³ at which stage the provisional report will be declared the final report (see paragraph 6.8).

6.6. Where further work is required, specific instructions should be given in writing to the panel, and the TORs amended if necessary, copies should be sent to all original addressees. The report procedure, compilation and distribution should be as per the original provisional report, which is to be retained by the president of the panel for working reference until such time as the revised provisional report is submitted as a stand-alone document. For audit purposes a copy of all provisional reports is to be retained by the convening authority.

Action when Character or Professional Reputation Affected

6.7. In considering the inquiry report the convening authority is to decide whether or not he considers that the character or professional reputation of an individual may be affected adversely by the findings of the panel. In cases where character or professional reputation are adversely affected but the person was not given the safeguards due to a potentially affected person, the convening authority may require the panel to undertake such further work as he considers appropriate. This may involve (but is not exclusive to) giving the individual the opportunity to read the relevant parts of the record of proceedings⁴ (see Chapter 4, paragraph 4.11) and to make comment within time limits reasonable in the circumstances.

Inquiry has met its TORs

6.8. Where the convening authority considers that the inquiry has met its TORs and no further work is required, he should declare the provisional report as the final report⁵. The convening authority is to notify the president of the inquiry that the inquiry is now concluded and that he and the panel members are released from the duty.

² See The Armed Forces (Service Inquiries) Regulations 2008 Regulation 19(4)(b).

³ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 19(4)(b).

⁴ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 18(3)(d).

⁵ See The Armed Forces (Service Inquiries) Regulations 2008 - Regulation 19(4)(a).

Convening Authority Comments on Final Report

6.9 The convening authority is to make comment on the final report's findings and recommendations and preparing such comments may consult as he considers appropriate. He should comment on the following:

- a. His concurrence or variance with the findings of the inquiry.
- b. Whether he considers someone's character or reputation is affected by the findings of the panel.
- c. His concurrence with or variation of the recommendations, and any further recommendations.
- d. Remedial action taken or recommended.
- e. His recommendations for further inquiries if considered necessary.

Action on Recommendations

6.10. RN/RAF/MAFTR only. The convening authority, after he has consulted as necessary, is to action those recommendations and, where appropriate, matters arising from observations with which he agrees and which are within his power. Such action is to be recorded along with appropriate comment on those recommendations and observations with which it does not agree. If the convening authority agrees with any recommendation for which action is required outside its authority, letters inviting action are to be forwarded separately to the appropriate Service and or MOD branch.

6.11. Army only. The responsibility for taking forward recommendations from Army convened service inquiries lies with HQ Land Forces.

More than one Command Authority involved

6.12. If more than one command authority is involved (i.e. another Service or agency), the remarks of the appropriate commander are to be sought. These are to be forwarded to the convening authority for inclusion as part of the staffing process. A copy of the completed inquiry papers is to be provided to such interest parties (see paragraphs 6.18 to 6.20).

Action By Reviewing Authority

Action by the Reviewing Authority (Army/RAF/MAFTR only)

6.13. On receipt of the final report and the convening officer's comments on it, the reviewing authority is to review the inquiry report and make comment as he sees fit. He may also initiate formal action on recommendations, notwithstanding the

convening authority's role in acting on recommendations within his area of responsibility.

6.14. Once the reviewing authority's remarks have been provided, the inquiry report, and the convening and reviewing authority's (Army/RAF/MAFTR only) comments should be redacted and prepared for disclosure in accordance with paragraph 6.17 below.

Further Action on Recommendations

6.15. The convening authority staffs⁶ (but see paragraph 6.11 above for the Army) are to record the recommendations and observations arising from the inquiry which are to be taken forward. Actions completed and those in hand are also to be recorded and attributed to the authority within whose bailiwick it is to take the matter forward. Follow up action is to be taken to ensure that the necessary actions are acted upon. When all actions have been resolved to the satisfaction of the convening authority the record is to be placed with the original copy of the inquiry report and distributed as per the inquiry. The Secretariats are to be advised where recommendations have been completed for high profile inquiries.

Preparaton For Disclosure

Action Prior to Disclosure

6.16 The master schedule is to be added to by the convening authority staffs to ensure that the convening authority/reviewing authority (as appropriate) comments are also listed. The schedule is to be retained with the original copy of the inquiry report.

The Inquiry Papers

6.17 The inquiry papers are to be assembled in preparation of disclosure as follows:

- a. Part 1 Papers (The Report plus Convening and Reviewing Authority Comments)
 - (i) Covering Note (see Chapter 5 Annex D)
 - (ii) Convening Order and TORs (including changes to panel composition and TORs)
 - (iii) Narrative of Events
 - (iv) Findings
 - (v) Recommendations
 - (vi) Convening and Reviewing (as appropriate) Authority comments

⁶ For RAF aircraft occurrences this is undertaken by RAF Avn Safety Gp in Air Cmd.

- b. Part 2 Papers (The Record of Proceedings)
 - (i). Diary of Events (as applicable)
 - (ii) The list of witnesses
 - (iii) The witness statements (including potentially affected persons).
 - (iv) The list of attendees (advisors and observers)
 - (v) The list of exhibits
 - (vi) The exhibits
 - (vii) The list of annexes
 - (viii) Annexes
 - (ix) Schedule of Matters not Germane to the Inquiry
 - (x) Master Schedule

6.18 Part 1 and 2 of the service inquiry papers will usually include information which it would be inappropriate to disclose to the general public. As there will be a statutory commitment to publish the inquiry it will be particularly important to review the constituent elements to ensure that all exempt information is removed. This may be done⁷ either by carefully structuring elements of the report so that they contain no information, or, if that is not practicable, by physically redacting information that should not be publicly disclosed. Where this is done, it will be necessary to record which FOI Act exemption(s) applies to the information that has been excised. This information should be noted in the Publication Scheme and a record included with the full inquiry report unless this explanation would itself require the disclosure of exempt information and the provision in section 17(4) of the FOI Act is therefore deemed to be relevant.

Distribution

6.19 The convening authority staffs, on behalf of the convening authority are to reproduce and distribute the report. Copies should be lodged with DS&C, DGLS Sec and Corporate Memory.

Disclosure

6.20 Detailed guidance on release of inquiries and disclosure is at Chapter 7.

⁷ For the RN by Navy Cmd HQ Dep Cmd Sec NCE, for the Army by the Army Aftercare Cell, for the RAF by Cmd Sec, HQ Air and for MAFTR inquiries by DE&S Secretariat.

CHAPTER 7

DISCLOSURE - SERVICE INQUIRIES

General

Introduction

7.1. Although a service inquiry is an internal fact finding investigation convened to establish the facts concerning an accident or incident and to make recommendations to prevent recurrence – the findings and recommendations of an inquiry may be of value to external authorities such as the HM Coroner (or PF) and to the NOK where the matter involves death or serious injury (where the serious injury is such that the individual cannot act for themselves). Matters which are of a high profile nature (see Chapter 1 para 1.18) may also be of general public interest.

7.2. The need to satisfy such external interest may often conflict with the desire to ensure that those involved in the inquiry process have confidence in the system such that their interests can be protected thereby ensuring they feel able to give frank and open evidence.

Background

7.3. For many years it was MOD policy that BOI reports should not be released outside the department unless there was a legal obligation to do so. Summaries of reports were provided on request to those involved in the incident and, in the case of fatal accidents or serious injury, copies of reports were made available to the NOK on request, subject only to the redaction of security information and/or third party personal data. Additionally, a duty to assist other investigative bodies (eg the HSE, HM Coroners or PF) resulted in appropriately redacted BOI reports being released on a confidential basis.

7.4. Following full implementation of the FOI Act on 1 Jan 05 the MOD policy changed to reflect the underlying principle of the Act, which is that information held by public authorities should be made available to members of the public on request unless it can be withheld under an exemption. The exemptions from disclosure under the FOI Act are complex and often involve carrying out a public interest balancing test as to whether or not information that is potentially exempt should still be released.

7.5. Therefore this guidance provides general advice on how completed service inquiry reports should be handled to fulfil the requirements of the FOI Act, to protect personal data and to keep time-consuming redaction to a minimum.

Routine Disclosure

7.6. In order to meet significant public interest in high profile service inquiries the details of such inquiries (see Chapter 5) are to be published on the MOD Publication Scheme¹ and thus made available to the general public via the MOD website. Exceptionally, in cases where it is judged that all the information within the report is exempt from disclosure under the terms of the FOI Act publication on the scheme will not be appropriate.

Timelines

7.7. Part 1 papers (see Chapter 6 paragraph 6.17) should be hosted on an appropriate internet site within 2 months of the service inquiry process being completed² except where a briefing to the families is co-ordinated with a Ministerial Submission. In this event a formal media plan will be necessary for release into the public domain, for which separate arrangements apply (see paragraphs 7.18 and 7.19).

7.8. In order to link the information to the Publication Scheme itself, it is necessary for the relevant URL(s)³ to be provided at the same time to the central administrator in DG Info (Info-Access Ops 2). Further advice and assistance can be obtained from Info-Access Ops 2 (MB 9621 Ext 89287).

Disclosure in Response to FOI Requests

7.9. Although it is intended that only service inquiries dealing with high profile cases should be published on the MOD Publication Scheme, it is possible that requests for information relating to any service inquiry could be received. Such requests should be dealt with individually in accordance with the terms of the FOI Act. If information about a “non-high profile” report is made public it should be made available via the Publication Scheme alongside the high profile reports published as a matter of routine.

7.10. Where disclosure of information in addition to the Part 1 papers is sought the matter will require detailed review and again such requests should be dealt with individually in accordance with the terms of the FOI Act.

7.11. Information that should be considered for non-disclosure includes:

¹ Under the terms of the FOI Act, every public authority must “adopt and maintain” a Publication Scheme setting out the classes of information it already publishes or intends to publish proactively. Publication Schemes must be kept under review and in deciding what to publish the Act requires authorities to “have regard to the public interest” in the information they hold. Every Publication Scheme must be approved by the Information Commissioner, and the addition of new classes of information is therefore notified to the Commissioner’s office to confirm the commitment.

² The service inquiry process, for disclosure purposes, is considered to be complete when the convening authority and reviewing authority comments (if appropriate) are completed.

³ URL (Uniform Resource Locator) is a website address.

- a. Personal data of those involved in the incident under investigation and witnesses.
- b. Information that would cause distress to the NOK or other persons if released
- c. Operational and security sensitive information.
- d. Information which could prejudice the outcome of another investigation or legal proceedings.
- e. Information which could endanger the mental or physical wellbeing of any individual.
- f. Information provided in confidence.
- g. Information provided by another nation.

See Annex A for further guidance.

Other relevant legislation

7.12. The FOI Act is not the only legislation⁴ that governs the disclosure of information. Guidance should be sought before publication and before disclosing anything related to the inquiry report.

Advice

7.13. Advice and information on the disclosure of information can be obtained from:

- a. Convening authority staffs⁵.
- b. MOD Intranet – guidance on the DPA 98 and the FOI Act and how to deal with requests for information.
- c. TLB/Agency and Unit Data Protection Officers – advice and guidance on the application of DPA 98 and information relating to the deceased.
- d. FOI Focal Points - advice and guidance on the application of the FOI Act.
- e. Info-Access DPAD and Info-Access Pol,7&8. Info Access is the lead branch for MOD policy advice on disclosure of personal and official

⁴ Consideration also needs to be given to: Data Protection Act 1998, Human Rights Act 1998, Access to Health Records Act 1990 (in respect of the deceased), Common Law duty of Confidentiality, Security and operational sensitivities, ECHR Article 6 – *right to a fair trial* and Article 8 – *right to respect for private and family life*. This list is not exhaustive.

⁵ RN/RAF only.

information in accordance with relevant legislation, litigation, compliance and implementation of DPA and disclosure of information relating to the deceased.


- f. Info-Access Pol1 – policy advice on disclosure of information in accordance with the FOI Act.
- g. Info-Access Ops2 – management of the MOD Publication Scheme.

Release Of Details Of A Service Inquiry

MOD

7.14. Part 1 and 2 papers can be circulated to the appropriate authorities within MOD.

Next of Kin

7.15.  Where there is an inquest, and the NOK is an interested party, they should receive both Part 1 and Part 2 of the inquiry papers. Redactions should only be made on grounds of Public Interest Immunity (PII) – where the public interest in disclosure at inquest is outweighed by the public interest in not disclosing information that would be damaging to national security or international relations. Identities of Special Forces (SF), foreign state information, identities of persons at specific risk of reprisal (e.g. interpreters still in theatre) are examples of information usually subject of a claim for PII. Further details are at Annex A.

7.16. Part 1 and Part 2 should be supplied to the NOK under copy of a covering letter that makes it clear that the disclosure is for the purposes of participation in the inquest and should not be disclosed further⁶. Where the NOK are legally represented, an appropriate undertaking should be obtained from their legal representatives.

7.17 Where there is no inquest held, the NOK is only provided, in the first instance under voluntary disclosure, the convening order, terms of reference, report and the convening authority's comments. This will avoid the risk of all supporting information being disclosed further, with the MOD having no control over what happens to it subsequently.

7.18 Later requests by the NOK for information from the Part 2 papers should be handled in accordance with FOI and will require detailed review and appropriate redaction to remove security sensitive and other information.


7.19 Where the inquiry relates to an incident involving multiple casualties, the papers must be redacted to ensure that sensitive personal information relating to

⁶ This function is undertaken for the RN by Dep Cmd Sec NCE, the Army by the Aftercare Cell, the RAF by xx and for DE&S by the DE&S Secretariat.

individuals other than the relative of the NOK for whom the papers are intended is removed. Particular care should be taken in this regard. Where no inquest is in prospect, or in other circumstances (e.g. where no death is involved) voluntary disclosure may be made; however advice on the extent and nature of redaction should be sought from Info-Access before disclosure.

7.20. Sensitive personal data relating to the deceased should be handled carefully and may be removed if considered likely to distress NOK. It may be provided, if requested, but with the suggestion that another family member should be present or that the information should be disclosed by the visiting officer or appointed officer as nominated by the SSIC⁷.

Special Arrangements for Release of High Profile Inquiries to the NOK

7.21.  On completion of a high profile inquiry the relevant SSIC should arrange through the Secretariat, the release of the papers to families with suitable briefings and a handling plan, in consultation with DGMC and the Ministers' office. A Ministerial Submission outlining the key conclusions of the inquiry and proposing a handling strategy for its disclosure is to be prepared. This may include the requirement for a Written Ministerial Submission (WMS), in which case the timing of the WMS should be coordinated with release of the inquiry to the NOK and its publication through the MOD Publication Scheme.

7.22. Where the inquiry briefing to families is co-ordinated with a Ministerial brief and formal media plan⁸ for release into the public domain, the following procedure should be adopted:

- a. Families should be informed that the inquiry will be placed in the MOD Publication Scheme at least seven days in advance of the publication date of Part 1 of the report.
- b. Part 1 of the inquiry papers is to be prepared for publication as a PDF image file.
- c. Once prepared for publication, Part 1 of the papers should be sent to DGMC–D News Director for a co-ordinated release of the report to the internet and a press statement for the media.
- d. Once assembled, members of the family should be given a copy of Part 1 and the opportunity to read it, prior to a briefing on the detail of the inquiry. Such briefing may be conducted by for example, the president of the inquiry or appropriate SMEs. This should be followed by a Q&A session. It may also be necessary for the briefing team to offer the family a further Q&A

⁷ For Army this is the Aftercare Cell


⁸ For the RN/RM this is carried out through the Navy Cmd HQ Cmd Sec, for the Army the Aftercare Cell and the SSIC in consultation with the Cmd Sec, for the RAF by the SSIC in consultation with the Cmd Sec and for DE&S by DE&S Pol/Sec.

session to enable the family to take in the contents of the inquiry in slower time.

e. At a set time, to coincide with the end of the presentation, Part 1 of the service inquiry papers should be placed on the internet. This might also coincide with a formal press statement, and media interviews with family members if they so wish.

Release Of Inquiries To External Authorities

HM Coroner (or Procurator Fiscal in Scotland)

7.23.  HM Coroner (or PF in Scotland) are to be provided with the full unredacted⁹ copy of the inquiry (Parts 1 and 2) on the understanding that the report contains only information over which the UK has ownership (see para 7.21), or has been cleared for release by the relevant authorities in the country of origin if it originates from the US or any other foreign state (See Annex A, para 3), and that the report is disclosed in confidence and not to be quoted from or admitted into evidence without further reference to the MOD. This is to assist the Coroner with his understanding of the incident and to identify those personnel who may be required during the inquest (or FIA in Scotland) as a witness. The DIU is the Departmental focus for all coroners' inquests into the deaths of Service and MOD civilian personnel. The DIU will oversee the preparation of the report, including redactions, for its release to the coroner.

Other Authorities

7.24 Other authorities with statutory investigative powers (Police, Health and Safety Executive) which have an interest in the incident may request a copy of the inquiry. They should be offered, in the first instance, Part 1 and a copy of the Master Schedule (see Chapter 5) to allow targeted requests for further information. A full copy of the inquiry, with operational and security sensitive information¹⁰ redacted as appropriate, may be provided if requested on the understanding that it is disclosed in confidence and not to be quoted from or admitted into evidence without further reference to the MOD. This must be confirmed in writing before the material is disclosed. **PJHQ must be consulted on inquiries related to incidents during Operations. CT and UKOps must be consulted on all matters which relate to SF activity.** Any such disclosure should be regarded as 'normal business' rather than as a precedent for the information that would be released in reply to a FOI request. In providing the information, the body concerned should be required to confirm in writing that they will consult the MOD if they receive a FOI request for such information, so that appropriate redaction can take place.

⁹ CT and UK Ops must be consulted on all matters which relate to SF activity.

¹⁰ Security standards are defined in the Defence Manual of Security, JSP 440.

Third Party Requests for Disclosure

7.25 Third parties who have no connection with the incident under investigation (e.g. journalists, Parliamentarians, members of the public) should be referred to the Publication Scheme where Part 1 of the inquiry papers may be found. Follow-up requests for further information will be dealt with on an individual basis. Rather than taking action to redact the whole of the inquiry at the outset, a copy of the Master Schedule may be provided to the applicant with an invitation to refine the request.

7.26 A request for Part 2 papers should be considered in accordance with the FOI Act, DPA98 and any other applicable legislation. Where an historical BOI report (suitably redacted to take account of the Department's obligations mentioned in this guidance) is released in response to an FOI request the NOK should, where practicable, be informed and a copy of the redacted report provided.


ANNEX A - NON-DISCLOSURE CONSIDERATIONS

Personal Data

1. In responding to FOI requests it will be appropriate to withhold personal details of both the living and the deceased (e.g. details of personal life, professional abilities, medical records, post-mortem reports), where they are not directly relevant to the findings and recommendations of the inquiry (this includes names, which could be linked, indirectly or otherwise, to any criticism or adverse comment about those individuals elsewhere in the inquiry report) and where there is no public interest in release.

2. In cases where the NOK have asked not to see any aspect of the service inquiry, because of the distress it would cause, consideration will have to be given to keeping descriptive information in Part 1 of the papers to a necessary minimum, or even withholding it completely, if this can be justified after an analysis of the balance of public interest. NOK should be notified in advance where possible if any information they have not received is to be released to third parties.

Information from other Nations

3.  Material which originates from the US or any other foreign state should be cleared for release by the relevant authorities in the country of origin, as it remains their property throughout the inquiry process. The president is to ensure that any material provided to the panel by the United States or any other foreign state is properly identified as such, and is marked and handled in accordance with MOD security guidance. This material continues to belong to those nations throughout the inquiry process. Before the inquiry is released to any third party, including Coroners, authorisation should be sought from the relevant authorities in those nations to release, whether in full or redacted form, any of their material included in the inquiry. For intelligence material, this should be done through DIS (DI CSD-Sec). The president is not to make a judgement on the origin of classified material. If he is unable to identify the source of origin of the material, he should contact Info-AccessDPAD, or for intelligence material, DIS (DI CSD-Sec). In addition, the relevant PDR Directorate should be informed early when dealing with US or other foreign state material, and should be engaged in the process where any doubts exist.

Police Reports

4. As a matter of practice police reports should not form part of the service inquiry papers. Police investigations are conducted to identify whether a crime has been committed and to make recommendations as to criminal proceedings. It does not share the purpose of a service inquiry and therefore while it may establish certain facts it is unlikely to establish the cause or an incident and its contributory factors or consider lessons learned to prevent reoccurrence. Police reports are however a valuable tool in identifying potential witnesses to be examined by the inquiry panel.

5. In the event a police report is included as part of the inquiry papers, full disclosure of the police report is unlikely to be in the public interest. Police investigations are conducted with regard to the confidentiality and privacy of all those involved i.e. the injured, deceased, witnesses and suspects. Investigations may contain information relating to policing tactics or techniques that, if disclosed, would hinder the prevention and detection of crime. The release of information or reports when current investigations are underway may jeopardise any subsequent court proceedings. Evidence gathered during the course of a Service police investigation should not, therefore, be released while there is still the prospect of future court proceedings and, even when these have been completed, Police reports should not be released as a matter of routine. In the event of a request, the competing factors for and against disclosure should be considered in the light of the FOI Act and DPA 98.

6. There may be circumstances where the public interest in release of Police reports is should be sufficiently compelling (not merely casual interest) to override any issues of confidentiality or potential harm to individuals involved in the investigation. In rare cases, where sufficiently compelling reasons for disclosure are deemed to exist (usually in connection with legal proceedings), there should be consultation with the relevant police force. If it is concluded that a police report may be disclosed it should be without the overview and recommendations sections; after the conclusion of disciplinary or criminal proceedings; after the removal of sensitive or security issues and the deletion of all caveats and classification.

Witness Statements

7. Witness statements obtained by the police will not be released to the inquiry unless the witness has given permission. If such permission is withheld fresh statements may have to be taken for the purposes of the inquiry. The status of all witness statements given to the panel should be carefully considered and subject to FOI Act/DPA 98 considerations if their release is a possibility.

Subsidiary Reports

8. The purpose of LAIT and other investigation reports is usually to provide a rapid report of what happened in order to take immediate remedial action to prevent further accidents. Such reports usually form part of the inquiry and are not normally disclosed until its completion (although they may be used to brief families in the early stages of an investigation) because they are not stand-alone documents and their findings may be altered by the conclusions of the inquiry. If a subsidiary report is disclosed, any discrepancies between early findings and the final conclusions of the Inquiry will have to be explained. Premature disclosure of such subsidiary reports is therefore to be resisted.

9. The FOI Act exemption for *Information intended for future publication* (s.22) will apply if a commitment has already been given to publish the Initial report in due course. If this is not the case, s.31 – *Law enforcement*, or s.36 – *Prejudice to effective conduct of public affairs* – should be considered on the basis that disclosure would be likely to prejudice the conduct of the Inquiry. The general rule against

disclosure will not apply in the event that disclosure is requested by a body with statutory investigative powers (eg the HSE, HM Coroners or Procurators Fiscal).

STATUTORY INSTRUMENTS

2008 No. --- 1651

DEFENCE

The Armed Forces (Service Inquiries) Regulations 2008

Made - - - - - 25th June 2008
Laid before Parliament - - - - 27th June 2008
Coming into force - - - - - 1st October 2008

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 343 of the Armed Forces Act 2006 Act(a):

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Service Inquiries) Regulations 2008 and shall come into force on 1st October 2008.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Armed Forces Act 2006;

“convening authority” means a person appointed in accordance with regulation 3 as convening authority in relation to a matter or a category of matters;

“convening order” means an order given by the convening authority to convene a service inquiry panel;

“Crown servant” means a person employed by or in the service of the Government of the United Kingdom;

“document” includes information recorded in any form, and see paragraph (2);

“legal representative” means a person who—

(a) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;

(b) is an advocate or solicitor in Scotland;

(c) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or

(d) has in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules;

“live television link” means arrangement by which a person (when not in the place where the proceedings of a service inquiry panel are being conducted) is able to see and hear, and to be seen and be heard by, the panel (and for this purpose any impairment of eyesight or hearing is to be disregarded);

“president” means, in relation to a service inquiry panel, the president of the panel;

“senior non-commissioned officer” means a non-commissioned officer who is of or above the rate or rank of petty officer, sergeant or equivalent rank;

“service court” means, subject to regulation 20 and paragraph 4 of Schedule 3, any of the Summary Appeal Court, the Court Martial, the Service Civilian Court and the Court Martial Appeal Court;

“service inquiry” means an inquiry referred to in section 343 of the Act;

“service inquiry panel” has the same meaning as in section 343 of the Act, and “panel” shall be construed accordingly;

“summary hearing” means, subject to regulation 20 and paragraph 5 of Schedule 3, a summary hearing under section 131 of the Act;

“terms of reference” means, in relation to a service inquiry, its terms of reference, as provided for it under regulation 7(2) or as subsequently amended under regulation 7(3); and

“witness notice” means a witness notice issued under regulation 13(1).

(2) References in these Regulations to producing or providing a document, in relation to information recorded otherwise than in legible form, are to be read as producing or providing a copy of the information in a legible form.

The convening authority

3.—(1) Subject to paragraph (2), the convening authority in relation to any matter connected with any of Her Majesty’s forces, or any category of such matters stated in the terms of his appointment, shall be the person appointed as such by the Defence Council or by an officer authorised by the Defence Council.

(2) A convening authority must be an officer of or above the rank of naval captain, colonel or group captain subject to service law.

Matters for reference to a service inquiry panel

4.—(1) In the event of the death on or after 1st October 2008 of a person while subject to service law—

(a) a convening authority must have been appointed, or as soon as reasonably practicable be appointed, in relation to that event or to a category of matters which includes that event; and

(b) the convening authority must cause a service inquiry to be held, if he considers that anything of consequence to any of the regular or reserve forces which is not in his opinion apparent from the death may be learned by any of those forces by means of such an inquiry.

(2) Paragraph (1) shall not apply if a service, UK, British overseas territory or overseas police force is conducting, has conducted, or informs the convening authority that it will conduct, an investigation into the events which caused the death.

(3) Subject to paragraph (1)(b), where a convening authority is appointed in relation to a matter or a category of matters, he may cause a service inquiry to be held in relation to that matter or into any matter within that category.

(4) Notwithstanding anything in paragraphs (1) to (3), the Defence Council may cause a service inquiry to be held in relation to any matter connected with any of Her Majesty's forces, and for that purpose may carry out, or appoint a person to carry out, any of a convening authority's functions under these Regulations.

Convening of a service inquiry panel

5. In order to cause a service inquiry to be held in relation to any matter, the convening authority shall convene a service inquiry panel by order specifying—

- (a) that a service inquiry is to be held;
- (b) the president and the other members of the panel; and
- (c) the date on which, and the time and place at which, the panel shall first assemble.

Composition of a service inquiry panel

6.—(1) Subject to the following paragraphs of this Regulation, a service inquiry panel must consist of a president and at least two other members.

(2) If in the opinion of the convening authority the president is unable to continue as president the convening authority must as soon as practicable appoint an existing member or a new member to replace him as president.

(3) Subject to paragraphs (4), if in the opinion of the convening authority any other member is unable to continue as a member, the convening authority may appoint a replacement.

(4) If the membership of a service inquiry panel falls below the requirements of paragraph (1), the convening authority must as soon as practicable appoint one or more new members as necessary to meet those requirements.

(5) Subject to paragraph (6), a member of a service inquiry panel must be—

- (a) an officer, warrant officer or senior non-commissioned officer of any of Her Majesty's forces; or
- (b) a Crown servant.

(6) A person who is a member of an armed force other than any of Her Majesty's forces may be appointed a member of a service inquiry panel, if—

- (a) he is of a rank equivalent to that of a senior non-commissioned officer or above; and
- (b) in the opinion of the convening authority the terms of reference under regulation 7 will require the service inquiry panel to investigate a matter which is likely to be connected with that force as well as with any of Her Majesty's forces.

(7) The president must be an officer—

- (a) subject to service law; and
- (b) of or above the rank of lieutenant commander, major or squadron leader.

(8) Notwithstanding paragraph (1), but subject to any provision of these Regulations expressly requiring any action to be taken by all the members of a service inquiry panel, any function under these Regulations of a service inquiry panel may be performed by such one or more of the members of the panel as the president may decide.

Functions of a service inquiry panel

7.—(1) Subject to regulation 19, the functions of a service inquiry panel shall be to investigate and report on the facts relating to the matters specified in its terms of reference provided under paragraph (2) and otherwise to comply with those terms of reference.

(2) The convening authority must provide the panel with terms of reference on or before the date on which the panel is required to assemble.

(3) The convening authority may, by notice in writing to the president amend the terms of reference at any time until it has taken action under regulation 19(4)(a).

(4) The terms of reference of a service inquiry panel must specify—

- (a) the matters, the facts relating to which the panel is to investigate and report upon; and
- (b) any matter about which the panel is required to make recommendations or on which it is required to express an opinion; and may include such other terms as the convening authority considers appropriate.

Power to defer or suspend service inquiry

8.—(1) The convening authority in relation to a matter may at any time defer the convening of a service inquiry panel, or, at any time after making a convening order, issue a suspension notice to the president to suspend the proceedings of the panel. A deferment or suspension must only be for such period as the convening authority considers necessary to allow for—

- (a) the carrying out of any other investigation, whether in the United Kingdom or abroad, relating to any of the matters to which the service inquiry relates or would relate, or
- (b) the determination of any—
 - (i) civil proceedings whether in the United Kingdom or abroad;
 - (ii) proceedings for any criminal offence in any court whether in the United Kingdom or abroad;
 - (iii) proceedings in a service court; or
 - (iv) a summary hearing.

(2) The power conferred by paragraph (1) may be exercised whether or not the investigation or proceedings have begun.

(3) A suspension notice under paragraph (1) may suspend the proceedings of the service inquiry panel until a specified day, until the happening of a specified event or until the giving by the convening authority of a further notice to the president to end the suspension.

(4) A suspension notice under paragraph (1) must state the convening authority's reasons for suspending the proceedings of the service inquiry panel.

Termination of a service inquiry

9.—(1) The convening authority in relation to a service inquiry may at any time issue a notice to the president terminating the inquiry from such date as is specified in the notice. The date specified may be the date of issue of the notice or any later date.

(2) For the purposes of these Regulations a service inquiry comes to an end on—

- (a) the date on which, in accordance with regulation 19, the convening authority declares a provisional report to be the final report; or
- (b) any earlier date specified in a notice under paragraph (1) terminating the service inquiry.

(3) A notice given under paragraph (1) must state the convening authority's reasons for terminating the service inquiry.

(4) The termination of a service inquiry by a notice under paragraph (1) shall be—

- (a) subject to a duty to complete a service inquiry where there is a duty to hold a service inquiry under regulation 4(1); and
- (b) without prejudice to the power of the convening authority under regulation 4(3) and the power of the Defence Council under regulation 4(4) to cause a further service inquiry to be held in relation to the same matter.

Procedure and record of proceedings

- 10.**—(1) Subject to any other provision of these Regulations, the procedure of the panel is to be such as the president may direct.
- (2) The panel shall sit on such occasions and in such places as the president may direct.
 - (3) The president may adjourn the proceedings of the panel.
 - (4) The president must ensure that a record of the proceedings of the panel is made.
 - (5) The president must ensure that the convening order and the terms of reference are entered in the record of the proceedings on the date the panel first assembles.
 - (6) The record of the proceedings under paragraph (4) shall also include—
 - (a) a transcript of any oral evidence given to the panel;
 - (b) a copy of any written evidence given to the panel; and
 - (c) a copy of any other document which the president decides should form part of the record.

Evidence and witnesses

- 11.**—(1) The president shall decide—
- (a) subject to paragraph (9), the persons from whom written or oral evidence is to be requested; and
 - (b) whether a person is to be requested to produce any document or other thing, and the president may so decide at any time before or during the proceedings of the service inquiry panel.
- (2) Where the president makes a decision under paragraph (1) that a person be requested to provide written evidence or to produce any document or other thing, the panel must send a written request to the person—
 - (a) to provide written evidence; or
 - (b) to produce the document or other thing.
 - (3) The president may allow a witness to give evidence through a live television link or by other means.
 - (4) Any document or other thing produced to the panel by a witness for use as evidence shall be made an exhibit.
 - (5) Each exhibit must be attached to or kept with the record of the proceedings unless the president decides that it is not practicable or convenient to do so.
 - (6) If in accordance with paragraph (5) an exhibit is not attached to or kept with the record of the proceedings, the president shall ensure that such steps as he considers appropriate are taken for its safekeeping until the service inquiry has come to an end in accordance with regulation 9.
 - (7) Subject to paragraphs (8) and (9), every witness who gives oral evidence may be required by the president to do so on oath.
 - (8) Where the president would, apart from this paragraph, require a witness to give oral evidence on oath and—

- (a) the witness objects to taking an oath; or
- (b) it is not reasonably practicable without inconvenience to, or without delaying the proceedings of, the panel to administer an oath to a witness in the manner appropriate to his religious belief, he must be required to make a solemn affirmation instead of taking an oath.

(9) A witness under the age of fourteen who does not in the opinion of the president understand the nature of an oath or solemn affirmation—

- (a) may give evidence to the panel, if in the opinion of the president he understands that he should tell the truth when giving evidence to them; and
- (b) must not give evidence to the panel on oath or having solemnly affirmed.

(10) An oath must be administered, or a solemn affirmation made, before the panel and in the form and manner set out in Schedule 1.

Restrictions on admissibility of evidence

12.—(1) Subject to paragraph (2), evidence given by a person to a service inquiry panel shall not be admissible against a person at a summary hearing or in proceedings before a civilian court or a service court.

(2) Evidence given before a service inquiry panel may be admissible in proceedings referred to in paragraph (1) for—

- (a) an offence against section 42 of the Act where the corresponding offence under the law of England and Wales is an offence mentioned in sub-paragraph (b);
- (b) an offence under section 2 or 5 of the Perjury Act 1911(a).

Issue of witness notice on application to a judge advocate

13.—(1) Subject to paragraph (5), a judge advocate may issue a witness notice if he is satisfied that a person—

- (a) is likely to be able to give or provide material evidence, or to produce or provide any document or other thing likely to be material evidence, for the purpose of a service inquiry,
- (b) will not voluntarily attend the proceedings of the service inquiry panel or voluntarily produce or provide that document or other thing, and
- (c) is a civilian subject to service discipline, or a person in the United Kingdom, the Isle of Man or a British overseas territory.

(2) A witness notice must require the person referred to in paragraph (1) to—

- (a) attend the proceedings of the panel at a time and place stated in the witness notice, and give the evidence, or produce the document or other thing, or
- (b) provide the document or other thing to the panel within a specified period.

(3) A witness notice may only be issued on an application by the president in accordance with paragraph 1 of Schedule 2, and paragraph 2 of that Schedule shall apply to the consideration of such an application.

(4) The judge advocate who decides whether to issue a witness notice may refuse to issue the witness notice if any requirement of paragraph 1 of Schedule 2 relating to the application is not met.

(5) A person may not be required to produce or provide any evidence or document if he could not be required to do so if the proceedings of the service inquiry were civil proceedings in a court in England and Wales.

Service of witness notice

14. Where a judge advocate issues a witness notice, the court administration officer shall serve it on the person to whom it is addressed by—

- (a) delivering it to him;

- (b) leaving it at his usual or last known place of residence;
- (c) sending it by post to that address; or
- (d) transmitting it to him by fax or other electronic means, but only if he has agreed to accept service by that method.

Application to vary or revoke witness notice

15.—(1) If a witness notice has been issued, and the person to whom it is addressed applies in accordance with paragraph 3 of Schedule 2 and satisfies a judge advocate that—

- (a) he is unable to comply with the witness notice; or
- (b) it is not reasonable in all the circumstances to require him to comply with it, the judge advocate must vary or revoke the witness notice.

(2) Where the judge advocate varies or revokes a witness notice, the judge advocate may order that the person to whom the witness notice was addressed shall be paid by the relevant authority the whole or a specified part of his costs of the application under paragraph (1).

(3) In paragraph (2) the “relevant authority” means the convening authority or (where the Defence Council has caused an inquiry to be held under regulation 4(4) the Defence Council or a person appointed by the Defence Council to carry out any function of a convening authority.

Offences

16.—(1) A person is guilty of an offence if he fails without reasonable excuse to do anything that he is required to do by a witness notice served upon him in accordance with regulation 14.

(2) A person is guilty of an offence if, during a service inquiry, he does anything that is intended to have the effect of—

- (a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to a service inquiry panel, or
- (b) preventing any evidence, document or other thing from being given, produced or provided to a service inquiry panel, or does anything that he knows or believes is likely to have such effect.

(3) A person is guilty of an offence if, during a service inquiry —

- (a) he intentionally suppresses or conceals a document that is, and that he knows or believes to be, a relevant document, or
- (b) he intentionally alters or destroys any such document.

(4) For the purposes of paragraph (3) a document is a “relevant document” if it is likely that the service inquiry panel would (if aware of its existence) wish to be provided with it.

(5) A person does not commit an offence under paragraph (2) or (3) by doing anything that he is authorised to do by the president or by virtue of regulation 13(5).

(6) An offence under any of paragraphs (1) to (3) is triable summarily by a civilian court in the United Kingdom, the Isle of Man or in a British overseas territory, and shall be punishable by a fine not exceeding level 3 on the standard scale.

Persons who may be permitted to attend

17.—(1) Subject to regulation 18, the president must obtain the consent of the convening authority before permitting a person to be present at the proceedings of the panel, other than as a witness.

(2) Where the president permits a person to be present at the proceedings of the panel, that permission shall—

- (a) apply only to such part, or the whole, of those proceedings as the convening authority has agreed before the permission is given; and
- (b) be subject to such conditions as the convening authority may reasonably impose when he gives his consent under paragraph (1).

Persons entitled to attend

18.—(1) Subject to paragraph (2), a potentially affected person shall be entitled to be present at the proceedings of a service inquiry panel.

(2) A potentially affected person's entitlement under paragraph (1) shall be subject to such conditions and exclusions as the president, after consulting the convening authority, may reasonably impose from time to time. Such exclusions may—

- (a) include an exclusion from being present at such part of the proceedings of the panel as the president may specify; and
- (b) be imposed before or at any time during the proceedings of the panel.

(3) Where under paragraph (1) a potentially affected person is entitled to be present at any part of the proceedings of the panel—

- (a) he may be represented at that part by a legal representative or, with the consent of the president, he may be represented by a person other than a legal representative;
- (b) he may give evidence, question witnesses or produce any witness to give evidence, in each case as to any other matter as to which, in the opinion of the president, the potentially affected person may be affected in relation to his character or professional reputation by the findings of the panel;
- (c) where he is represented, his representative may question witnesses and may, with the permission of the president, address the panel; and
- (d) the president shall provide him with a copy of any part of the record of the proceedings of the panel, if the president considers it appropriate to do so.

(4) In this regulation “potentially affected person” means a person who in the opinion of the president may be affected in relation to his character or professional reputation by the findings of the panel.

Submission of reports

19.—(1) When the president considers that the panel has fulfilled the terms of reference, he shall ensure that a provisional report is prepared, that the report is signed by all the members of the panel and that the report is provided, as soon as practicable, to the convening authority.

(2) The provisional report may also contain anything that the president considers to be relevant to the terms of reference, including any recommendations or the expression of any opinion which the president considers it appropriate to make whether or not required to do so by the terms of reference.

(3) The president shall ensure that the provisional report reflects any points of disagreement between the members of the panel.

(4) After considering the provisional report, the convening authority may—

- (a) declare the provisional report as the final report; or
- (b) require the panel (whether by amending the terms of reference or otherwise) to undertake such further work as he considers appropriate, having regard to the matters which the panel was to investigate under the terms of reference.

(5) If the convening authority requires the panel to undertake further work in accordance with paragraph (4), the panel shall, on completing that work, submit a revised provisional report. Paragraphs (1) to (4) shall then apply to that provisional report.

Transitory provisions

20. Schedule 3 shall have effect for the purposes of these Regulations.

Derek Twigg
Parliamentary Under Secretary of State
25th June 2008 Ministry of Defence

OATHS AND AFFIRMATIONS

Manner of Administering Oaths and Affirmations

1. The person taking the oath shall hold the New Testament, or if a Jew the Old Testament, in his uplifted hand and shall say, or repeat after the person administering it, the oath provided in this Schedule for that category of person.
2. If any person to whom an oath is administered desires to swear in the form and manner in which an oath is usually administered in Scotland, he may do so with uplifted hand and saying, or repeating after the person administering it, the Scottish oath provided in this Schedule for that category of person.
3. If none of the forms of oath provided in this Schedule is appropriate to the religious beliefs of the person taking the oath, an oath may be administered in such form and manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.
4. A person making a solemn affirmation instead of taking an oath shall say, or repeat after the person administering it, the affirmation provided in this Schedule for that category of person.

Forms of Oath

Witness aged 18 years or over

5. I swear by Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

Witness under the age of 18 years

6. I promise before Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

Form of Scottish oaths

7. The form of Scottish oath shall in each case be the same as the form of oath set out in paragraph 5 or 6 (as appropriate to the age of the person taking the oath), except that:
 - (a) for the words "I swear by Almighty God" there shall be substituted the words "I swear by Almighty God and as I shall answer to God at the Great Day of Judgement"; and
 - (b) for the words "I promise before Almighty God" there shall be substituted the words "I promise before Almighty God and as I shall answer to God at the Great Day of Judgement".

Form of solemn affirmations

8. The form of solemn affirmation shall in each case be the same as the form of oath set out in paragraph 5 or 6 (as appropriate to the age of the person taking this oath), except that for the words "I swear by Almighty God" and "I promise before Almighty God" there shall be substituted the words "I solemnly, sincerely and truly declare and affirm".

FURTHER PROVISION ABOUT WITNESS NOTICES**Application for and issue of witness notice**

1.—(1) An application under regulation 13(3) for the issue of a witness notice must be made by the president, must identify the proposed witness, and must state—

- (a) (i) the matters about which the proposed witness is likely to be able to give or provide evidence, or
- (ii) the document or other thing which the proposed witness is likely to be able to (b) why the evidence, document or other thing is likely to be material evidence for the purpose of the service inquiry.

(2) The application may be made orally unless the judge advocate otherwise directs.

(3) An application in writing must contain a statement that the president believes that the facts stated in the application are true.

(4) The president must serve the application in every case on the court administration officer and on such other persons as the judge advocate may direct.

(5) The judge advocate may issue a witness notice with or without a hearing.

Application for witness notice to produce a document, etc: judge advocate's assessment of objection

2.—(1) This paragraph applies where a person served under paragraph 1(4) with an application for a witness notice requiring a person to produce in evidence a document or thing objects to its production on the grounds that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, it is evidence or a document referred to in regulation 13(5).

(2) The judge advocate may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The judge advocate may invite—

- (a) the proposed witness or any representative of the proposed witness; or
- (b) a person to whom the document or thing relates or any representative of such a person, to help the judge advocate assess the objection.

Application to vary or revoke witness notice

3.—(1) An application under regulation 15 (application to vary or revoke witness notice) must be made in writing to the court administration officer and must set out—

- (a) why the applicant is unable to comply with the witness notice; or
- (b) why the applicant considers that it is not reasonable in all the circumstances to require him to comply with the witness notice.

(2) On receiving the application, the court administration officer shall serve notice of the application on the president.

(3) A judge advocate shall neither grant nor refuse the application unless the applicant and the president have been given an opportunity of making representations, whether at a hearing or (where they agree to do so) in writing without a hearing.

(4) Paragraph 2 shall apply to an application under regulation 15 where the witness notice requires the applicant to produce in evidence a document or thing and the applicant seeks to satisfy the judge advocate that—

(a) it is not likely to be material evidence; or

(b) even if it is likely to be material evidence, it is evidence or a document referred to in regulation 13(5).

(5) The court administration officer shall notify the applicant and the president of the decision of the judge advocate in relation to the application.

TRANSITORY PROVISIONS

1. Before the definition of “civilian subject to service discipline” in section 370 of the Act comes in to force, that expression shall mean civilians to whom—

- (a) Part 2 of the Army Act 1955(**a**) is applied by section 209 of that Act, or
- (b) Part 2 of the Air Force 1955(**b**) is applied by section 209 of that Act, or
- (c) Parts 1 and 2 of the Naval Discipline Act 1957(**c**) are applied by section 118 of that Act.

2. Before the definition of “court administration officer” in section 374 of the Act comes into force “court administration officer”—

- (a) has the same meaning as in section 84A of the Army Act 1955 in relation to a service inquiry the president of which is a person subject to military law within the meaning of the Army Act 1955;
- b) has the same meaning as in section 84A of the Air Force 1955 in relation to a service inquiry the president of which is subject to air force law within the meaning of that Act; and
- (c) has the same meaning as in section 53A of the Naval Discipline Act 1957 in relation to a service inquiry the president of which is a person who, within the meaning of the Naval Discipline Act 1957, is subject to that Act.

3. Before the definition of “judge advocate” in section 362 of the Act comes into force, “judge advocate”—

- (a) in relation to a service inquiry the president of which is a person subject to military law within the meaning of the Army Act 1955, means a judicial officer appointed under section 75L of that Act;
- (b) in relation to a service inquiry the president of which is a person subject to air force law within the meaning of the Air Force 1955, means a judicial officer appointed under section 75L of that Act; and
- (c) in relation to a service inquiry the president of which is a person who, within the meaning of the Naval Discipline Act 1957, is subject to that Act, means a judicial officer appointed under section 47M of that Act.

4. “Service court” includes—

- a) a summary appeal court constituted under section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957;
- (b) a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957;
- (c) a Standing Civilian Court, established under section 6 of the Armed Forces Act 1976(**a**); and
- (d) the Courts-Martial Appeal Court.

5. “Summary hearing” includes summary dealing under section 76B of the Army Act 1955 or of the Air Force Act 1955 and summary trial under section 52D of the Naval Discipline Act 1957.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the holding of inquiries by the armed forces under the Armed Forces Act 2006. Regulation 3 provides for the appointment of convening authorities in relation to particular matters or categories of matter. Under regulation 4 the convening authority in relation to a matter may cause a service inquiry to be held into the matter. This is subject to a duty to hold a service inquiry into deaths of persons while subject to service law, if the convening authority considers that any lesson which is not apparent from the death may be learned by means of a service inquiry. Under regulation 4 the Defence Council may also cause a service inquiry to be held into any matter.

Regulation 5 provides for the convening of a service inquiry by order of the convening authority.

Regulations 6 and 7 deal with the membership of the panel conducting a service inquiry and with the provision of terms of reference by the convening authority to the service inquiry panel.

Under regulation 8 the convening authority may defer convening a service inquiry, or suspend such an inquiry to allow other investigations to be carried out or legal proceedings to be completed.

Regulation 9 provides for a service inquiry to end on the making of the final report or to be ended by the issue by the convening authority of a notice. Such a notice must give reasons for ending the inquiry. Regulation 9 also provides that termination by notice does not prevent the holding of another inquiry into the same matter.

Regulation 10 deals with procedure, adjournments and the recording of the proceedings and evidence.

Regulation 11 and Schedule 1 provides for the calling of witnesses, evidence by live television link and the giving of evidence under oath.

Regulation 12 deals with the exclusion of evidence given to a service inquiry from use as evidence in service disciplinary proceedings or in criminal proceedings before civilian courts.

Regulation 13, 14 and 15 and Schedule 2 provide for the application for, and the issue, service and revocation of, notices requiring witnesses to attend a service inquiry or to provide evidence.

Regulation 16 creates offences in relation to non-compliance with a witness notice and intentional interference with or suppression of evidence.

Regulation 17 requires the president of a service inquiry to obtain the convening authority's consent before allowing a person other than a witness to attend the proceedings. Under the regulation, such attendance may be subject to reasonable conditions, imposed by the convening authority when giving his consent.

Under regulation 18 persons who, in the president's opinion, may be affected as to their character or professional reputation by the inquiry's findings are entitled to attend the inquiry. Attendance is subject to such conditions as the president, after consulting the convening authority, may reasonably impose. Where a person is entitled to be present, he has under regulation 18 rights to be represented, to give evidence and to question witnesses.

Regulation 19 deals with the presentation by a service inquiry of a provisional report or reports and the declaration by the convening authority of the final report.

Regulation 20 and Schedule 3 make transitory provision so that references to certain terms and expressions in the Regulations which are defined in the Armed Forces Act 2006 are interpreted as references to equivalent provisions in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, until replaced by the relevant provisions of the Armed Forces Act 2006.

