

**CHAPTER 18 - ARMED FORCES****CRIMINAL OFFENCES COMMITTED BY MEMBERS OF THE ARMED FORCES (INCLUDING VISITING FORCES) AND DEATHS OF SERVICE PERSONNEL****18.01 – 18.03 ARMY ACT 1955 AND AIR FORCE ACT 1955 (as amended by ARMED FORCES ACT 1996 SCHEDULE 1 PART III)**

Section 70 of the Army Act 1955 and Section 70 of the Air Force Act 1955 provide that, subject to certain exceptions, every person who whilst subject to Military or Air Force law commits a criminal offence contrary to the law of England, is deemed to be guilty of an offence against Military or Air Force law and may be tried by Court Martial. The excepted offences which cannot be so tried (if committed in the United Kingdom) are treason, murder, culpable homicide, treason-felony, rape, genocide or an offence under section 1 of the Biological Weapons Act 1974. Apart from the excepted offences, civil courts and service tribunals have concurrent jurisdiction to deal with any offences against the criminal law of England which may have been committed by persons subject to Military or Air Force law. In the case of an offence against the criminal law of Scotland which is not also an offence against the criminal law of England service tribunals do not therefore have jurisdiction.

**18.02**

As a result of consultations between the Lord Advocate, the Secretary of State, the Army and the Air Force, certain principles have been settled which should be followed in deciding whether a member of the Army or the Air Force who is alleged to have committed a criminal offence which is also triable by a service tribunal should be tried by a civil court or by a service tribunal. These general principles, with the

exception of the provisions contained in paragraph 18.09 relating to the recovery of fines, apply to officers of both Services in the same way as they apply to other ranks and are as follows:-

- (a) Before a decision is reached on this question the Commanding Officer of the Unit, or in the case of the Royal Air Force, the Officer commanding the station, to which the alleged offender belongs, will, wherever practicable, be consulted and his views on the question obtained. It will, however, be for Crown Counsel after such consultation to decide whether the case will proceed in the civil courts, or whether it would be more appropriate for the alleged offence to be dealt with by a service tribunal.
- (b) In making this decision Crown Counsel will normally act on the general principle that offences committed by soldiers or airmen which affect the person or property of civilian members of the public should be dealt with by a civil court and that offences which do not affect the person or property of a civilian member of the public should (unless it is an offence specifically excluded from the jurisdiction of Courts Martial) be dealt with by a service tribunal.

**18.03**

Where, therefore, the offence has affected the person or property of civilians, there is a presumption that the offence should be dealt with by a civil court, but this general principle is subject to certain qualifications, viz:

- (a) It is generally desirable to avoid, if possible, steps which will prevent soldiers and airmen who are about to be sent overseas from travelling with their units, particularly in cases where there is reason to think that the offence may have been committed with a view to escaping service overseas. Unless, therefore, the alleged offence is of a serious character or there are exceptional circumstances, the normal practice should be that in cases where a soldier or airman is alleged to have committed an offence (other than one of the excepted offences) and it has been ascertained that he is a member of a force about to proceed overseas, proceedings will not be instituted against him before a civil court, but the alleged offender will be handed over to the service authorities with a view to his being dealt with by a service tribunal.
- (b) Service tribunals are, of course, empowered to deal only with offences committed by persons who are subject to Military or Air Force law. Where a civilian and a soldier or airman are associated in an offence, and the identity of the civilian is known, proceedings against both parties should be taken in a civil court. But where the identity of the civilian is not known, the accused, subject to the determination of Crown Counsel, may be dealt with by the appropriate service authority. Where the civilian is later identified, the fact that the service man has already been dealt with by the service authorities, will not prejudice the institution of proceedings against the civilian in a civil court.
- (c) It has been arranged that the service authorities will in all cases

inform the Chief Constable concerned of the result of any proceedings taken by a service tribunal against any soldier or airman who has been handed over to the service authorities for disposal.

## **DECISION ON WHETHER TO TAKE CRIMINAL PROCEEDINGS**

### **18.04 SUMMARY CUSTODY CASES**

In the event of a soldier or airman being apprehended and brought before the Sheriff Court, and the charge against him being of minor character, ie suitable for summary proceedings, the Procurator Fiscal is required to consider whether the accused should be dealt with by the civil or military authorities in light of the principles above stated. If the case is, according to the above principles, suitable for the civil court, proceedings should be taken against the accused by way of summary complaint without reference to Crown Counsel, but before bringing the accused before the Court contact should be made with his Commanding Officer informing him (i) of the fact that the accused is in custody at the procurator fiscal's instance, (ii) the nature of the charge and (iii) the procurator fiscal's intention to dispose of the case before the Sheriff Court on a particular date.

If the Commanding Officer represents that the Service Authorities wish to deal with the accused then the case, together with the representation of the Commanding Officer, must be reported to Crown Office for instructions. Where these cannot be obtained immediately for any reason, the accused should, in the interim, either be liberated or the case continued without plea with the accused held in custody as appears appropriate in the circumstances. If Crown Counsel instruct that the case is one which should be dealt with by the

Service Authorities, a communication should be sent to the Commanding Officer to that effect, and he should be asked whether he is prepared to take over and deal with the accused. If he is prepared to do so, immediate arrangements should be made to hand over the accused, if he is in custody, to the Service Authorities, who should be furnished with a copy of the police information and any productions relevant to the case.

If the Procurator Fiscal considers that the Service Authorities should deal with the case and they refuse to do so, proceedings will be taken or continued subject to the usual considerations.

#### **18.05 PETITION CASES**

Where an accused is charged with a serious offence and proceedings have been commenced by way of Petition, an immediate communication (if need be by telephone) should be sent to his Commanding Officer informing him of the fact that the accused is in custody and of the nature of the charge. Any representations which he may make as to whether the accused should be tried by a civil court or by the service authorities should be noted. Thereafter, a summary of the case, together with the views of the service authorities, will be reported forthwith to Crown Counsel. Upon receipt of Crown Counsel's instructions, Procurators Fiscal will deal with the accused as directed above in relation to minor offences.

#### **18.06 NAVY AND MARINE CORPS**

Under the provisions of Sections 42 and 48(2) of the Naval Discipline Act 1957, Naval Courts Martial have jurisdiction to try civil offences by persons subject to the Act. The provisions in this Act are similar to those contained in Section 70 of the Army and Air Force Acts 1955 and the principles

set out in paragraph 18.03 are to be applied to members of the Royal Navy. The Naval Discipline Act 1957 applies to Royal Marines when they are borne on the books of any of Her Majesty's ships or naval establishments (Section 112), otherwise members of the Royal Marine Corps are subject to the provisions of the Army Act 1955, Section 210.

#### **18.07 MEMBERS OF THE WOMEN'S SERVICES**

Members of the Women's Royal Army Corps and the Queen Alexandra's Royal Army Nursing Corps are incorporated in the Army. Members of the Women's Royal Air Force and the Princess Mary's Royal Air Force Nursing Service are incorporated in the Royal Air Force. Members of the Women's Royal Naval Service and the Queen Alexandra Royal Naval Nursing Service are incorporated in the Royal Navy. The principles set out in the foregoing paragraphs are to be applied to all such personnel.

#### **18.08 CITED CASES**

When a member of the Armed Forces is reported for prosecution in respect of an offence for which he is not in custody, and in respect of which he would normally be dealt with by citation, the Procurator Fiscal will consult the accused's Commanding Officer and thereafter if the Procurator Fiscal decides to proceed with the case, the accused will be cited in the normal way. When deciding whether the case is to be dealt with by the Civil Court or by a Military Tribunal, the principles set out in paragraph 18.03 will be applied. Consideration must also be given to any special factors which apply, eg whether the offence is such as to involve potential danger to the public; whether disqualification is likely to be imposed if the case is dealt with in a civil court. In any case of doubt or difficulty the matter should be referred to Crown Office

for instructions.

In the period between the commission of an offence and the reporting of the case to the Procurator Fiscal, a Commanding Officer may become aware that a member of his unit is being investigated by the police. If the Commanding Officer considers that the matter may be suitable for military jurisdiction and, for operational or other reasons, it is important that an early decision be taken, he may seek the views of the Procurator Fiscal. If he does so, the Procurator Fiscal should call for an interim report from the police to enable him to respond promptly to the Commanding Officer.

#### **18.09 ATTENDANCE OF OFFICERS AT COURT**

When a member of the armed forces is charged with a criminal offence and is in custody a Service Officer will normally attend the Court to give information concerning the accused. Liability for service in the armed forces continues whether or not a member has been sentenced to imprisonment by a civil court. It is desirable that there should be information available to the Court concerning the arrangements which can be made for the payment, by a member of the armed forces, of any fine which may be imposed. Arrangements have been made whereby a Commanding Officer upon receipt of notification that a fine has been imposed on a serviceman within the amount which may be recovered from the offenders ordinary pay, and that a fine has not been paid by the offender, or inform the paymaster who will recover the amount of the fine from the offender's ordinary pay as quickly as possible and, thereafter, send it direct to the Court. In cited cases Form F20 or DC26 (Means Form) will be available.

It is the duty of the Procurator Fiscal to ascertain whether an Officer will be in

attendance at the Court. In the exceptional case where an Officer does not attend the Procurator Fiscal should make himself aware of the information which will be required by the Court.

#### **18.10 INTIMATION BY POLICE TO COMMANDING OFFICER**

Procurators Fiscal will arrange that in all cases where a member of the Armed Forces is charged by the police with an offence, an immediate communication should be sent by the Police to his Commanding Officer, informing him of the nature of the charge and the diet at which the accused is expected to appear before the Court. Where it is decided to hand an alleged offender over to the Service Authorities to be dealt with by a Service Tribunal, the Procurator Fiscal will furnish full information concerning the offence to the Service Authorities.

#### **18.11 IMMUNITY FROM CIVIL PROSECUTION**

Where substantially the same offence has been disposed of or taken into account in sentence in accordance with military law, immunity from subsequent prosecution is provided by the Naval Discipline Act 1957, Section 129(1) (as amended by Section 35(1) of the Armed Forces Act 1961 and Section 55 of the Armed Forces Act 1971) and by Sections 133(1) and 134(1) of both the Army and the Air Forces Acts 1955 (both amended by Section 25 of the Armed Forces Act 1966).

As previously stated, service authorities are barred from dealing with charges corresponding to the English law charges of treason, murder, manslaughter, treason-felony or rape arising in the United Kingdom (Naval Discipline Act 1957, Section 48(2)). Commanding Officers of the three Services are instructed by Queen's Regulations that the decision

whether a serviceman accused of a civil offence in Scotland should be tried by Service Authority or Civil Court is one for the Procurator Fiscal. This instruction of course is ineffectual where the serviceman is dealt with under military law before he has been charged with the civil offence - eg if the offence is not first brought to the attention of the civil authorities.

### 18.12

Queen's Regulations direct Commanding Officers to report to the Procurator Fiscal allegations of treason, murder, manslaughter, treason-felony and rape; assaults which could give rise to charges of murder, manslaughter or rape; cases involving the property or person of civilians (unless the civilian wishes the Services to deal with the case); and offences against civil law appertaining to the use of public highways and road traffic.

These directions to report, where observed, should obviate the possibility of claims of immunity in the majority of cases in which the Procurator Fiscal is concerned. Any claim of immunity should be reported to Crown Office forthwith.

### 18.13 VISITING FORCES ACT 1952

This Act makes important provisions concerning naval, military and air forces and international organisations of the countries listed hereafter when visiting the United Kingdom.

A 'visiting force' is defined in Section 12 of the Act.

Section 2 of the Act gives to the Service Courts and Service Authorities of a country to which the Section applies, powers to deal with persons subject to their jurisdiction while in the United Kingdom or on board any British ship or aircraft in accordance with the law of their own

country. It should be noted that this Section does not debar the Procurator Fiscal from taking criminal proceedings against such persons who are alleged to have committed an offence against United Kingdom law. The Section simply creates a concurrent jurisdiction.

### 18.14

Section 3(1) of the Act exempts a member of a visiting force or a member of a civilian component of such a force (defined in Section 10) from liability to be tried by a United Kingdom Court in respect of an alleged offence against United Kingdom law when any of the following circumstances applies:-

- (a) if the alleged offence arose out of and in the course of his duty as a member of that force or component, as the case may be; or
- (b) if the alleged offence is an offence against the person (defined in the Schedule) and the person or persons in relation to whom it is alleged to have been committed had at the time thereof a relevant association either with the visiting force of which the accused was a member or with another visiting force of the same country; or
- (c) if the alleged offence is an offence against property (defined in the Schedule) and the whole of the property in relation to which it is alleged to have been committed (or in a case where different parts of that property were differently owner, each part of the property) was at the time thereof the property either of the sending country or of an authority of that country or of a person having such an association as aforesaid; or

- (d) if the alleged offence is the offence of hijacking; or
- (e) if the alleged offence is an offence under section 2 or 3 of the Aviation Security Act 1982.

A person having a 'relevant association' with a visiting force is defined by Section 12(2) as being either (a) a member of the visiting force or a member of a civilian component thereof or (b) a person not being a citizen of the United Kingdom, but being a dependant of a member of the visiting force or of a civilian component of that force. A 'dependant' is defined in Section 12(4).

Section 3(1) does not apply if, at the time of the alleged offence, the alleged offender was a person not subject to the jurisdiction of the Service Courts of the country in question in accordance with Section 2 of the Act and this fact will require to be ascertained by the Procurator Fiscal from the accused's Commanding Officer.

#### 18.15

Section 3(2) states that in relation to the trial of a person who was a member of a civilian component of a visiting force at the time of the alleged offence, the provisions of Section 3(1) shall not have effect unless it is shown that the case can be dealt with under the law of the sending country. Again this will require to be ascertained by the Procurator Fiscal from the Commanding Officer of the visiting force concerned. A Certificate is required (Section 11(3)).

#### 18.16

Section 3(3) states *inter alia* that nothing in Section 3(1) shall prevent a person from being tried by a Scottish Court in a case where the Lord Advocate certifies that the appropriate authority of the sending country has notified him that it is not proposed to

deal with the case under the law of that country.

#### 18.17

When an offence is alleged to have been committed by a member of any visiting force or of a civilian component, and there is a difference of opinion as to whether section 3(1) of the Act applies, Procurators Fiscal will immediately report the matter fully to Crown Office for instructions providing all the known circumstances of the case and the view taken by the authorities of the visiting force.

#### 18.18

Section 4 provides *inter alia* that where a person has been tried by a Service Court under the powers given by Section 2, he cannot then be tried for the same crime by a United Kingdom Court. In any case where dual jurisdiction applies, it is important therefore that wherever possible, a decision is quickly reached as to which Court (Service or Civil) shall proceed. Any request received from the Service Authorities for a waiver of civil jurisdiction must be referred to Crown Office for instructions.

#### 18.19

Where there is concurrent jurisdiction in respect of an offence the Procurator Fiscal should consult the accused's Commanding Officer before deciding whether to take proceedings. Thereafter the Procurator Fiscal should apply the same procedure as that for dealing with offences by members of the United Kingdom armed forces (see paragraphs 18.02 and 18.03).

Should the authorities of the visiting force desire in any case to waive their right of jurisdiction, they will notify the Lord Advocate accordingly and the Procurator Fiscal will report the whole circumstances

of the case to Crown Office. If any case arises in which the Procurator Fiscal considers that the authorities of the visiting force should be asked to waive their primary right to exercise jurisdiction, the matter should be fully reported for the instructions of Crown Counsel. No request for a waiver must be made without prior reference to Crown Office.

### **18.20 DEATHS OF MEMBERS OF VISITING FORCES**

No Public Inquiry will be held into a sudden death or fatal accident in connection with the death of a member of a visiting force or civilian component. The police will, however, report such deaths to Procurators Fiscal in the ordinary way. Procurators Fiscal should then make the usual enquiries and proceed in the normal manner, thereafter passing to the authorities of the visiting force any information touching on the death which they may desire to have.

### **18.21 VISITING FORCES AND INTERNATIONAL HEADQUARTERS (APPLICATION OF LAW) ORDER 1965**

It should be noted by Procurators Fiscal that this Order, which was made under the powers conferred by section 8 of the Visiting Forces Act 1952 applies certain provisions of the law relating to our home forces, to the forces of the undernoted countries and to members of the undernoted organisations while they are in the United Kingdom exempting them in certain circumstances from statutory provisions concerning road traffic etc. Procurators Fiscal must ensure when marking a case against a member of such a visiting force or organisation for prosecution that he is not exempted from prosecution by the provisions of this Order.

### **COUNTRIES TO WHICH THE VISITING FORCES AND INTERNATIONAL**

### **HEADQUARTERS (APPLICATION OF LAW) ORDER 1965 APPLIES:-**

Australia	Malawi
Belgium	Malaysia
Canada	Malta
Ceylon	Netherlands
Cyprus	New Zealand
Denmark	Nigeria
France	Norway
Gambia	Pakistan
Germany (Federal Republic)	Portugal
Ghana	Sierra Leone
Greece	Tanganyika
India	Trinidad and Tobago
Italy	Turkey
Jamaica	Uganda
Kenya	USA
Luxembourg	Zambia
	Zanzibar

### **and the following Organisations/ Headquarters:-**

Chancomtee	Commairchan
Cinceastlant	Saclant
Comsubeastlant	Shape
Commaireastlant	

HQ Cincefnorthwest  
 HQ Comnavnorthwest  
 HQ Comairnorthwest  
 NATO Airborne Early Warning Force  
 Headquarters  
 NATO-E-3A Component

### **18.22 ARMED FORCES ACT 1996: MENTALLY DISORDERED OFFENDERS**

Procurators Fiscal should refer to Chapter 15 at 15.23 with regard to the provisions of the Armed Forces Act 1996 as it relates to mentally disordered servicemen and women who have committed offences.