

Power of Arrest

(5) A Service policeman, or any person legally exercising authority on behalf of a provost officer, may arrest personnel of any rank and also civilians subject to Service discipline. Otherwise in general terms a higher rank may arrest a lower rank. The exception to this principle is where an officer is engaged in mutiny, quarrel or disorder, he may be arrested by another officer of any rank.

Arrest by Civilian Policeman

(6) An officer of a UK or Isle of Man police force or British overseas territory police force may arrest, without warrant, a person whom he reasonably suspects of being a Service person who has deserted or is absent without leave or is unlawfully at large when having been ordered in to detention. Such police officers may arrest a Service person for any civilian offence under the same conditions as would apply to the arrest of a civilian.

Arrest after Charge or during Proceedings

(7) Arrest after Charge or During Proceedings by order of the CO.

(8) The CO of an accused who has been charged with, or is awaiting sentence for, a Service offence and is not in Service custody may order his arrest if he has reasonable grounds to believe that, if the accused were not in custody, he would:

- (a) Fail to attend a hearing in the proceedings against him.
- (b) Commit an offence.
- (c) Interfere with witnesses or otherwise obstruct the course of justice.

(9) Ordering an accused into custody could also be justified if:

- (a) The accused has failed to attend any hearing in the proceedings against him.
- (b) There are reasonable grounds for believing that he should be taken into Service custody:
 - (1) For his own protection.
 - (2) For his own welfare or in his own interests where the accused is under the age of 17.
 - (3) He has failed to comply with any requirements imposed on him by a judge advocate.

(10) An accused who is arrested and kept in custody in accordance with the foregoing clauses, must be brought before a judge advocate as soon as practicable in order for a review to be undertaken to decide whether he should remain in Service custody. (See the Manual of Service Law Volume 1, Chapter 5 for further guidance).

Arrest during proceedings at the direction of a court

(11) A judge advocate may direct the arrest of the accused at any time after he has been arraigned at a court martial or a Service Civilian Court should he consider custody is justified. Reviews of the arrest will be in accordance with the procedures for reviewing custody after charge. (See Regulation 1042).

The Issue of a Warrant for Arrest

(12) In some circumstances application may be made to a judge advocate for a warrant for arrest. Examples of such circumstances are when a person fails to adhere to the conditions of release following arrest for desertion or being absent without leave. Such applications may be made by COs, or persons acting on their behalf, a Service policeman and members of the Service Prosecuting Authority. Procedural guidance on the issues of warrants of arrest is in the MSL Chapter 4.

J1035A. (Omitted)

1036. (Omitted)

1037. Custody of Detainees Not Under Sentence.*Sponsor: Policy Staffs, HQ RAFP*

(1) Where a person is arrested and placed into custody they are only to be confined in a licensed custody facility in accordance with the provisions of JSP 837 (Service Code of Practice for the Management of Personnel in Service Custody and Committal to Service Custody Premises and Civil Prisons). The arrest and any grounds on which they are being kept in Service custody without being charged should be reported as soon as practicable to their CO. Until that report is made the person may be kept in Service custody without being charged if the person who arrested them has reasonable grounds for believing that this is necessary to secure or preserve evidence relating to the offence for which they were arrested or to obtain such evidence by questioning them. If a person is arrested within their own unit, their CO should be informed as a matter of routine. If, however, the individual was arrested by a member of another unit, and the individual is held in a place away from their own unit, the unit holding them should, as soon as practicable, inform the person's parent unit CO. The CO of the parent unit should then decide whether they wish to deal with the arrested person by having them returned to unit, or whether it would be more appropriate for the CO of the unit holding the person to be made their CO for the purposes of the Armed Forces Act 2006.

(2) If, after six hours, the individual's parent unit CO cannot be contacted that individual will be attached to the unit in which they are in Service custody. Further guidance can be found in MSL, Volume 1, Chapter 2.

(3) The authority to hold a DNUS in pre-trial custody will cease:

- (a) Because grounds no longer exist to retain in Service custody without charge; or
- (b) Because grounds no longer exist to retain in service custody after charge; or
- (c) Following sentencing at summary hearing, service civilian court or the Court Martial.

Handover Documentation

(4) A DNUS taken into custody is to be accompanied by the correctly completed forms as follows:

- (a) T-SL-CUS 03 – Record of arrest and custody decision/review.
- (b) Where applicable, copies of all custody without charge and custody after charge paperwork see MSL, Volume 1, Chapter 5.

Information Concerning Rights on Being Placed in Service Custody

(5) The rights detailed in MSL Ch 5 para 11 are to be applied in full. In addition, the CO is to ensure a DNUS receives a copy of 'Your rights if you are accused of an offence under the Service Justice System'

(6) The CO is also to ensure that the DNUS understands the procedure for submitting a Service complaint.

(7) The CO shall for the purposes of preparing their case, permit a DNUS to:

- (a) Be provided with reasonable quantities of writing materials, at public expense.
- (b) Write and receive letters, in addition to those letters allowed.
- (c) Prepare and hand personally or send by post to their legal adviser confidential written communications as instructions in connection with the case.

Search

(8) All arrested personnel and their belongings are to be searched upon arrest and prior to custody. Where circumstances dictate, reasonable force may be used; however, this must be the minimum force

necessary to enable the search to be carried out. Two personnel must be present during the search; however the searcher must be the same sex as the arrested person. The only time a member of the opposite sex may be present at an intimate search is if that person is a MO. One person is to carry out the search while the other records the event and any findings in the Detention Register. Searchers should wear protective gloves. Searches are to be conducted in such a manner as not to cause damage to personal property. Religious artefacts are to be handled with respect.

Medical

(9) Anyone placed in pre-trial custody is to be invited to say whether they consider themselves fit or whether they wish to see a doctor. If a person in pre-trial custody is found to be unconscious they are to be seen by a doctor. In addition, a doctor should be called in circumstances where there is any doubt as to the mental or physical fitness of the person in pre-trial custody. Such occasions may occur in such diverse circumstances as, for example, when the person complains of feeling ill, or the custody staff considers that they are behaving oddly or showing signs of physical abuse. Any body piercing accessories are to be removed by the DNUS or the MO and placed with the store of DNUS personal property. A record of the actions taken is to be made in the Detention Register.

Notification of Arrest/Retention in Service Custody

(10) A person arrested and placed in Service custody may, if they require, have one person, reasonably named by them, informed of their arrest and of the place where they are being held. It would for instance, be reasonable to name a spouse or relative. In cases of custody where the person is under 18 years, their parent or guardian is to be informed.

(11) The exception to this is where the Service police have stated that the person is to be held incommunicado in accordance with the Service Police Codes of Practice (JSP 397). In this instance the Service police will obtain explicit written authority from a senior Service police officer (Sqn Ldr equivalent) and the CO informed accordingly.

Release from Service Custody

(12) Upon release from custody after charge (or custody without charge), a Service person is to be provided with all his/her personal belongings and returned to his/her unit/ship/establishment.

1038. *(Omitted)*

1039. Report of Arrest of an Officer.

Sponsor: ACOS Pers Pol (RAF)

When an officer has been arrested, whether later released or not, the CO is to report the case, including a brief outline of the circumstances leading to the arrest and subsequent custody, immediately by electronic means to Air Command for the attention of Air Personnel Casework. Informing other interested parties such as the CINC, AOC, DLS and RAF Media and Communications is the responsibility of Air Personnel Casework.

1040. Identification of Offenders

Sponsor: Policy Staffs, HQ RAFP

Except as provided in para 1093, where circumstances render it necessary to hold a parade for the purpose of identifying an alleged offender, the parade should be carried out under the directions of a Service Police Identification Parade Supervisor the minimum rank of whom must be a Flight Sergeant. The procedure to be followed is laid down in JSP 397 (Service Police Codes of Practice).

1041. Codes of Practice for Custody.

Sponsor: Policy Staffs, HQ RAFP

(1) Rules for Service persons in custody (SIC) are contained within JSP 837 (Code of Practice for the Management of Personnel In Service Custody and Committal to Service Custody Premises and Civil Prisons).

(2) Under the terms of JSP 837, PM(RAF) has responsibility for the inspection and licensing of

RAF Custody Facilities. This responsibility will be discharged through the HQ RAFP Professional Standards Dept.

1042. Custody.

Sponsor: ACOS Pers Pol (RAF)

Definition, Types of Custody and the Accused's Rights

(1) Custody is the physical deprivation of a person's liberty and therefore should only be authorised when it is deemed essential after the consideration of any sensible and practical alternatives. Further, custody is to be for the minimum period necessary and must not exceed the time limits. Custody may occur without charge or after charge. In order to ensure that the accused is informed of his rights in a timely fashion, the CO is to ensure that the individual is issued with the booklet 'Rights of an Accused' when the individual is placed in custody.

Legal Advice

(2) COs may seek legal advice on all matters relating to custody from DLS(RAF). Such advice should be sought in a timely manner whenever they are considering custody for an individual.

Custody without Charge

(3) A person who has been arrested on reasonable suspicion of being engaged in committing or having committed a Service offence may be held in custody without charge. However, it is necessary for the person who made the arrest to believe that keeping the person in custody is necessary:

- (a) To secure or preserve evidence relating to a Service offence for which the individual is under arrest.
- (b) To obtain such evidence by questioning the individual.

The CO of the suspect must also be satisfied that the ensuing investigation is being conducted diligently and expeditiously.

Maximum Period of Custody and Continual Review of Custody

(4) In broad terms, a CO may authorise custody without charge up to a maximum of 48 hours subject to a regime of periodic reviews at a maximum of 12 hourly intervals. A CO may apply to a judge advocate to extend the overall period of 48 hours to a maximum of 96 hours. Custody reviews are a crucial part of the overall custody regime. COs are to adhere closely to the timetable for periodic review ensuring that any representation made by the individual in custody are given due consideration. To accommodate the exigencies of Service, a review may be postponed at the expiry of an authorised period of custody (usually 12 hours). Reasons for postponement may include the impracticality of conducting a review at a particular time or that the review would prejudice the investigation. Clearly, COs will be expected to justify any such postponement.

Release from Custody when Grounds Cease to Exist

(5) If at any time the CO of a person in custody without charge becomes aware that the grounds for keeping that person in such custody have ceased to exist and is not aware of any other grounds for continuing to keep that person in custody without charge, he is to release the individual immediately.

Notifications and Rights

(6) COs are to be aware that a person placed in arrest without charge has a number of legal rights in regard to the information and assistance that he is to receive. Comprehensive guidance on these rights is contained in the Manual of Service Law (MSL), Volume 1, Chapter 5 and COs are advised to consult the manual whenever they are considering placing an individual in custody. Briefly, the person being placed in custody is to be notified of the following matters in writing and must sign and date the documents:

- (a) The offence for which he was arrested and the date time and location of the arrest.
- (b) That he is to be kept in custody together with the grounds for custody and the period of custody authorised by the CO.

- (c) That he may nominate a person of or above the rank of sgt as an Assisting Officer to advise him. Further, if nobody of his choice is available, the person may ask the CO to provide the names of 2 people who are available to be nominated.
- (d) That he may make representations requesting his release giving the grounds for his request.

Delegation

- (7) A CO may delegate his functions in relation to custody without charge but there are limits to such delegation. The delegation must be in writing and to an officer not below the rank of flight lieutenant (or equivalent) who is under the CO's command. The delegation can also be made to a Service policeman who is not the arresting officer. See the MSL, Volume 1 Chapter 5 for further guidance on this subject.

Custody after Charge

- (8) After charge, only a judge advocate may authorise custody and this is also subject to strict periodic review. Custody after charge would only be authorised if there were substantial grounds for believing that if the accused were released from custody he would:

- (a) Fail to attend any hearing in the proceedings against him.
- (b) Commit a further offence.
- (c) Interfere with witnesses or otherwise obstruct the course of justice.

An accused may also be kept in custody after charge if a Judge Advocate is satisfied that the person should be taken into custody:

- (d) For his own protection or
- (e) If he is under the age of 17, for his own welfare or in his own interests.
- (f) An accused may also be kept in custody after charge where a Judge Advocate is satisfied that, due to lack of time since the accused was charged, it has not been practicable to obtain sufficient information to decide whether any of the conditions (a) to (e) above are met.

- (9) Legal advice should always be sought if, having read these regulations and the guidance contained in the Manual of Service Law, Volume 1, Chapter 5, a CO is in any doubt as to what action to take in respect of Service custody.

- (10) The Director of Service Prosecutions will manage/ handle all cases of custody after charge during proceedings of Court Martial or Service Civilian Court.

1043. Service Personnel and Civilians taken into Custody or Charged with an Offence Overseas.

Sponsor: ACOS Pers Pol (RAF)

In the event that a serviceman or a civilian, subject to Service discipline, is arrested and/or placed in custody by Service or civil authorities overseas for an alleged offence falling under the jurisdiction of the host nation, COs are to inform Air Personnel Casework at Air Command expeditiously by electronic means. Air Personnel Casework will thereafter assume the responsibility of informing, as they deem necessary, the appropriate commanders and interested agencies such as DLS(RAF), RAF Media and Communications, and RAF Personnel Secretariat at HQ Air Command.

1044. Treatment in Cases of Drunkenness.

Sponsor: Policy Staffs, HQ RAFP

- (1) A Serviceman suspected of being drunk owing to the influence of alcohol or impaired through the presence of any drug is not to be put through any drill or tested for the purpose of ascertaining his condition. Persons suspected of impaired driving through the effects of alcohol or drugs may be subjected to breath or saliva tests in accordance with designated policy and procedures.
- (2) No person who is unfit through drink or drugs should be charged with an offence, interviewed by the Police, or brought before an officer for investigation of any charge, until that person is capable of understanding what is said to him.

(3) A Serviceman who has been arrested and placed in custody and who is drunk is to be placed in a cell alone, if possible. The Serviceman is to be examined by an MO as soon as possible and he is to advise on the nature and frequency of any physical checks of the individual concerned. If the MO orders that the Serviceman is to be treated in a medical facility, an escort is to be provided for him. Should any symptoms of illness or injury become apparent during the duration of custody, the immediate attendance of the MO is to be requested.

1045. *(Omitted).*

1045A. Visits by Members of Parliament to Servicemen in Custody.

Sponsor: ACOS Pers Pol (RAF)

At the discretion of the CO, a Member of the United Kingdom Parliament may visit a serviceman who is held in custody. If in a particular instance the CO is in any doubt, or considers that the visit should not be permitted, or if the request to visit is made by a Member of any other legislature, the CO should consult RAF Personnel Secretariat at HQ Air Command under the procedure set out in **para J2449 (1)**.

1046 - 1050. *(Omitted)*

1051. Custody Hearings.

Sponsor: ACOS Pers Pol (RAF)

The Manual of Service Law Volume 1, Chapter 5, Part 5 has comprehensive guidance on custody hearings and this guidance should be followed should a custody hearing become necessary. Briefly, a custody hearing before a judge advocate is required:

- (a) On application of the CO for an extension of custody without charge.
- (b) On application for authorisation for custody after charge.
- (c) Where an accused has been arrested and taken into custody after charge.
- (d) On request by a CO for a review of custody after charge.
- (e) On an application by the accused or CO for variation of the 'release conditions'.

See MSL Chapter 5, Part 5 for the procedure to be followed to apply for a custody hearing.

1052. *(Omitted)*

SECTION 3 – INVESTIGATION, CHARGING AND MODE OF TRIAL

1053. The Rights of an Accused.

Sponsor: ACOS Pers Pol (RAF)

The pamphlet 'Rights of an Accused' provides advice and guidance to individuals under arrest; custody without and after charge; the summary and activation hearing processes; and appeals to the Summary Appeal Court. COs are to ensure that all personnel arrested or charged with an offence under the Armed Forces Act 2006 are issued expeditiously with the pamphlet a copy of which can be found at Annex F to Chapter 6 of Volume 1 of the Manual of Service Law.

1054. Summary Disposal of Offences – General.

Sponsor: ACOS Pers Pol (RAF)

This section contains regulations relating to the investigation of charges, determination of the mode of trial, the charging and summary hearing processes and other relevant matters. Its purpose is to provide a brief synopsis rather than comprehensive guidance, which can be found in the Manual of Service Law (MSL), Volume 1, Chapters 6 and 9; more detailed references are contained in the relevant Regulations. The summary discipline process has a firm basis in law to ensure that it is as compliant as it can be with the European Convention on Human Rights. Officers exercising summary powers are to adhere strictly to the legal and policy protocols detailed in the MSL seeking legal advice as necessary. Generally, summary disposal is normally only appropriate for the relatively less serious offences that are not of an overly complicated nature. It should be noted, however, that summary disposal is not usually suitable for offences associated with the deliberate disregard of authority.

1055. Investigation of Charges.*Sponsor: ACOS Pers Pol (RAF)*

(1) Where an allegation is made or an incident comes to light, a CO is to first consider whether he has a statutory duty to inform the Service Police of the matter (see clause (2)) or he has the power to investigate the allegation/incident himself. It should be noted that a person may be authorised to contact the Service Police on the CO's behalf for this purpose but the responsibility for ensuring the Service Police are aware remains with the CO. The purpose of investigating a charge is to establish the facts and gather all the available evidence in order to determine whether an individual has committed an offence. Investigations, which are to be conducted diligently and as expeditiously as possible, may be carried out by an officer under the command of the CO or by the Service Police. (See the Manual of Service Law, Volume 1, Chapter 6 Part 1 (General Principles) and Annex E for CO's investigations).

Responsibility to Investigate a Charge

(2) An investigation may be carried out by the Service Police or a CO depending on the seriousness and complexity of the alleged offence and whether it can be heard summarily or must be tried by a Service court. The categories of offence are detailed in Part 2 (Offences Overview) of Chapter 6 of the MSL. Briefly, there are 2 categories of offence that are beyond the COs powers to deal with and must be reported to the Service Police. The first category is detailed in Schedule 2 of the Armed Forces Act 2006 (AFA 06); referred to as 'Schedule 2 Offences'. Schedule 2 offences include serious criminal offences such as murder, rape and grievous bodily harm and Service offences such as mutiny, looting and dangerous flying. The second category includes those that have been committed in 'prescribed circumstances.' This is a complex concept but examples of offences committed in prescribed circumstances would include death in custody, bullying and abuse of position (see clause (3)). Consequently, should a CO become aware of a Schedule 2 offence or one that has been committed in 'prescribed circumstances', he must inform the Service Police as soon as is reasonably practicable. Once the Service Police have been notified in these circumstances the CO may take no further disciplinary action unless the case is referred back to him by the Service Police or the Director of Service Prosecutions. It should be borne in mind that the CO's responsibility in this respect can always be fulfilled by ensuring the Service Police are aware of any matter that could be deemed serious.

Prescribed Circumstances

(3) Certain offences have been categorised as those committed in 'Prescribed Circumstances' with 2 distinct aims. The first aim is to ensure that certain circumstances are investigated by the Service Police. The second is to ensure that where an offence is committed in certain situations the decision on whether to charge is the responsibility of the Director of Service Prosecutions. The types of offence that come under the heading of being committed in 'Prescribed Circumstances' are outlined in the Manual of Service Law Volume 1, Chapter 6, Annex D. However, COs are advised that such issues are complex. Consequently, the brief descriptors that follow of the type of conduct that may lead to committing an offence in prescribed circumstances are to be regarded as warnings and indicators rather than legal definitions. Thus, COs are advised to take legal advice should they suspect that 'Prescribed Circumstances' exist.

- (a) Circumstances that indicate a course of conduct by a person subject to service law on another person subject to service law, involving on at least two occasions an assault.
- (b) An allegation has been made or there are circumstances to indicate that a person subject to service law has or may have been the victim of an assault causing serious injury (eg fracture, deep cut, a deep laceration or damage to an internal organ) inflicted by a person of superior rank while the assailant was on duty.
- (c) The death of any person (eg Serviceman, civilian, PoW or detainee) or the serious injury of a 'relevant person' on Service premises including a Service vehicle, ship or aircraft. 'Relevant person' is defined as a person who is not a member of the regular or reserve forces or a person who is a member of the regular or reserve forces and who is:
 - (i) Under 18.
 - (ii) An enlisted person undergoing Phase 1 or 2 training.
 - (iii) An officer or officer cadet undergoing Phase 1 training.

(iv) In Service custody.

(d) The death has occurred on Service premises including a vehicle, ship or aircraft, of a person who at any time had been held in Service custody and there are reasonable grounds to believe that misconduct by a person subject to Service law or a civilian subject to Service discipline may have caused (directly or indirectly), or may have contributed, to the death.

Mode of Trial

(4) Where a CO has received an investigation report from the Service Police, or where a CO's investigation has been completed, or where a case has been referred to him by the DSP, the CO will need to satisfy himself that he has initial powers. Initial powers are to bring a charge summarily or refer it to the Director of Service Prosecutions (the Manual of Service Law, Volume 1, Chapter 6, Part 4 refers). Where the CO has initial powers he may dispose of the case in one of the following ways, he may:

- (a) Hear the case summarily.
- (b) Refer the case to the Director of Service Prosecutions for trial by court martial.
- (c) Take no disciplinary action.
- (d) Refer the case to the civilian authorities.

When considering whether he may hear a charge summarily a CO must take into account (see MSL Chapter 4 Part 4 for full list) :

- (a) The offence must be capable of summary disposal.
- (b) The accused must be of or below the rank of Wg Cdr.
- (c) The CO must be 2 ranks higher than the accused.
- (d) The adequacy of his powers of punishment (see Regulation 1067 for guidance on COs' powers of punishment).
- (e) The seriousness and complexity of the alleged offence.
- (f) Whether the alleged offence was committed during the operational period of a suspended sentence of Service detention. A CO cannot activate a suspended sentence imposed by the Court Martial.

(5) When the CO decides on summary disposal of the offence, he will complete the procedure to bring a charge and arrange a summary hearing (see Regulation 1055). It should be borne in mind that the mode of trial can be changed at any time, even during the summary hearing itself, up until a finding has been recorded. This allows a CO, should he decide during the hearing that his powers of punishment are insufficient or that the case is more complex than he first thought, to refer the charge to the Director of Service Prosecutions for his consideration.

Delegation of CO's Disciplinary Powers

(6) A CO is responsible for all charges brought within his area of responsibility. He may delegate some or all of his disciplinary functions to subordinate commanders and make conditions on such delegations as he considers appropriate. The delegation will continue until the CO revokes it; both delegation and revocation may be made orally or in writing. Wherever time permits, officers who have disciplinary functions delegated to them should be promulgated in orders. Only one officer in the chain of command of body of personnel (eg a wing) may hold the delegation to hear a particular charge at any one time.

(7) A subordinate commander is an officer under the command of the CO who is of at least the rank of flight lieutenant or equivalent. Charges are allocated to be heard by the appropriate subordinate commander depending on the seriousness of the alleged offence and, consequently, the potential severity of the sentence.

- (8) A CO may not delegate his powers for:
- (a) Offences that are above a specific level of seriousness. For example those offences that a CO would have to apply to Higher Authority to hear summarily – see MSL Chapter 9, Part 1 for a list of these offences).
 - (b) An offence alleged to have been committed during the operational period of a suspended sentence of Service detention.
 - (c) Charges against an individual above the rank of flight sergeant (and equivalents).
 - (d) Charges against an individual of the rank of sergeant (and equivalents), unless the subordinate commander is of the minimum rank of squadron leader.
- (9) A CO may revoke the delegation of his disciplinary powers in relation to a charge at any time before a decision is made by the officer hearing the charge as to whether the charge is proved. Where revocation is made after the accused has elected trial by court martial, the election stands. Similarly, if a revocation is made after the accused has been asked whether he admits or denies the charge, the accused's decision stands. (For further guidance on delegation and summary hearing procedure see the MSL Volume 1, Chapters 6 and 9).

1055A. (Omitted)

1056. Procedure Preparatory to the Summary Disposal of Charges.

Sponsor: ACOS Pers Pol (RAF)

- (1) Summary discipline enables the chain of command to exercise immediate and effective authority in all situations including on operations. Comprehensive guidance on the procedure for the bringing of a charge and for the holding of a summary hearing is to be found in the Manual of Service Law (MSL) Volume 1, Chapter 9. This regulation provides a synopsis of the key points of these procedures.
- (2) Once the CO has decided on the most appropriate charge he should take action formally to bring the charge. Form 252 is to be used for reporting a person with a view to bringing a charge against him. A charge is brought when the CO signs the charge sheet (Form T-SL-CS01; Annex H to MSL Volume 1 Chapter 6) and gives a copy to the accused. Apart from the personal details of the accused, the charge sheet contains a statement of the offence charged and its underpinning statutory provision. (Specimen charges are to be found in MSL Chapter 7 (Non criminal (disciplinary) offences) and Chapter 8 (Criminal Conduct Offences). Particulars of the conduct constituting the commission of the offence, which clarifies the allegation against the accused, also forms a part of the charge sheet.
- (3) As soon as practicable after the charge has been brought, the CO or a person authorised by him (generally OC P1) is to prepare a Case Summary (See MSL Chapter 9 for further guidance and Annex E to Chapter 9 for an example), inform the accused of his rights and provide him with case papers. In addition, the CO or a person authorised by him should inform the accused that he may consider seeking legal advice at his own expense and that this may be a matter that he discusses with his Accused's Assisting Officer (see 'Representation' at Clause 6 below). Where the CO considers that it is not necessary for him to apply to Higher Authority for permission to hear the charge or for extended powers of punishment, (see next clause), he should proceed to hear the charge.
- (4) As alluded to in clause (3), before arranging the summary hearing, the CO (if below the rank of air marshal) must consider whether he is required to apply to Higher Authority for permission to hear the charge that he has brought. Such applications, which can be made only by COs (ie not subordinate commanders), are required for certain more serious offences such as assault occasioning actual bodily harm (see the MSL Volume 1, Chapter 6 Annex B). At this stage, the CO only (ie not a subordinate commander) is also to apply to Higher Authority for extended powers of punishment if he considers they are needed in order to deal with the charge appropriately. It is important to note that an application for extended powers may not be made after the commencement of the summary hearing (ie after the accused has been given the option of trial by court martial).
- (5) When bringing the charge, the CO is also to check whether the accused is presently subject to a suspended sentence of Service detention. If so, the CO may have to apply for extended powers of punishment for the purposes of activating the suspended sentence should the current offence be proved. It is important to note here that, if the accused is subject to a suspended sentence of detention, the CO may not

delegate the hearing of the charge to a subordinate commander.

Representation

(6) Before any summary hearing the accused is entitled to appoint an Accused's Assisting Officer (AAO) to advise and represent him. The AAO may be present during the hearing itself. The AAO has an important role in providing valuable assistance to the accused, particularly those who are young and inexperienced. With the exception of personnel who have been involved with the case and lawyers, padres and medical officers, the accused may select any Serviceman of the minimum rank of sergeant (and equivalents) to act as an AAO. Should the accused have difficulty in finding a suitable individual, he may request the assistance of the CO. In these circumstances, the CO must provide a pool of at least 2 suitable nominees from which the accused may choose if he wishes. In this event, the CO is to allow the accused a minimum of 24 hours to prepare for the hearing. See the MSL Volume 1, Chapter 9, Annex F for further detailed guidance on AAOs.

1056A. Summary Disposal of Theft, Fraud and Drugs Offences.

Sponsor: ACOS Pers Pol (RAF)

(1) A CO may hear summarily a charge or charges of theft under Section 42 of the Armed Forces Act 2006 (AFA 06). Those cases of petty theft by young airmen under 18 years of age and by older airmen where it is considered that a summary punishment will effectively deter the accused from further offences may be disposed of without recourse to higher authority. However, in all cases involving JNCOs and above, or which involve sums in excess of £500, COs are to seek advice from Higher Authority and also obtain legal advice from DLS(RAF) as to their appropriate disposal method.

(2) COs are reminded that all cases that may involve fraud are to be reported to Higher Authority whose permission must be sought for summary disposal. Legal advice from DLS(RAF) will also invariably be necessary in such cases.

(3) While COs may dispose summarily with certain drugs offences under AFA 06, before doing so legal advice is to be sought from DLS(RAF) and Higher Authority are also to be consulted for guidance. JSP 835 (Alcohol and Substance Misuse and Testing), Chapter 4 also contains guidance and should be consulted in all such cases.

1057. Summary Hearing Procedure.

Sponsor: ACOS Pers Pol (RAF)

(1) A summary hearing is a military tribunal; it is not a court of law but it does have a number of statutory aspects, which safeguard its compliance with the European Convention on Human Rights. Unlike a civil court it does not have an adversarial approach. Rather, its nature is inquisitorial; an investigation into the facts of the case by the officer conducting the hearing. Just as importantly, it is the one of the most visible aspects of the Services' disciplinary system, which enables the chain of command to exercise immediate and effective authority in all situations including on operations. It is, therefore, crucial that summary discipline is exercised, and is seen to be exercised, fairly and expeditiously. Thus, for legal and Service reasons, it is important that COs (this Regulation applies equally to subordinate commanders unless specifically stated) adhere to the guidance contained in the Manual of Service Law (MSL) Volume 1, Chapter 9. This regulation is meant to highlight some of the statutory and other key aspects of the summary hearing procedure; the MSL is to be consulted for more detailed guidance.

Oaths

(2) Oral evidence given by witnesses and the accused at a summary hearing is to be given on oath (or one of the alternative methods of swearing). The form of oath is set out in Annex H to Chapter 9 of the MSL Volume 1.

Election for Trial by Court Martial

(3) Before commencing a summary hearing the CO is to satisfy himself that the accused understands the charge(s) and has had a reasonable amount of time to prepare – a minimum period of 24 hours is legally mandated for this purpose. The CO shall then afford the accused the opportunity of electing trial by court martial. In this context, it is important to remember when the accused is charged with more than one offence, that an election on one charge has the effect of an election on all charges. (See the guidance on 'Election for Court Martial Trial' in the MSL Volume 1, Chapter 9, Part 7). If the accused does not elect trial by court martial, the CO is to commence the hearing by reading the charge(s) to the accused and asking

him whether he admits or denies the charge(s). He will then continue to conduct the hearing in accordance with the accused's decision. MSL Volume 1, Chapter 9, Annex C provides a comprehensive guide to the procedure to be followed for summary hearings.

Withdrawal of Election of Trial by the Court Martial

(4) The accused may make a representation to the Director of Service Prosecutions (DSP) for permission to withdraw his election for trial by the court martial and refer the charge back to the CO. This will be a matter entirely for the discretion of the DSP. (See the Manual of Service Law Volume 1, Chapter 9, Part 7 for further guidance).

Charges - Dismissal, Discontinuance and Referral to Director of Service Prosecutions

(5) The CO may dismiss the charge at any stage during the summary hearing up until he determines that the charge has been proved. Similarly, the CO may discontinue a charge that has been allocated for summary hearing at any time up to the start of the summary hearing and during the course of the hearing itself up until the point at which a decision, as to whether or not the charge has been proved, has been made.

(6) Discontinuance is appropriate when it is no longer appropriate to take disciplinary action against the accused; a more appropriate charge has been added or substituted; the case is handed to the civil authorities; a fresh charge is to be brought in order to rectify an error in the conduct of the hearing; or a witness cannot be located for the time being. Discontinuing a charge has the effect that the matter remains unresolved; staff legal advice should invariably be taken when considering this course of action.

(7) A CO has the power to refer a charge to the DSP at any time up to the start of the summary hearing and during the course of the hearing itself up until the decision, as to whether or not the charge has been proved, has been made. This course of action may be necessary if the CO decides that his powers of punishment may not be sufficient should he find the charge proved or that he considers that the case is too complex for him to deal with.

Reasons for Sentence

(8) Section 252 of the Armed Forces Act 2006 provides that the CO explains in ordinary language and in general terms his reasons for deciding on the sentence that he has awarded. COs are to familiarise themselves with the MSL, Chapter 9, Part 5 to ensure that this legal prerequisite is understood and complied with. Further, COs should be aware of how important it may be to the individual that he clearly understands the seriousness of his offence in the context of the punishment awarded and also the effect of the punishment itself. (MSL Chapter 13 (Summary Hearing Punishments) and Chapter 14 (The Summary Hearing Sentencing Guide) constitute key reference material for these aspects of summary hearing procedure).

Right to Choose to Commence a Sentence of Detention

(9) Summary sentences of detention do not start for 14 days unless the offender opts to begin the sentence immediately (Section 290(2), AFA 06; see MSL, Chapter 9, Part 6 Post Hearing Action). The offender may subsequently change his decision, and be released from detention until the end of the 14-day appeal period, which starts on the date that the punishment is awarded. In this event, the remainder of the unserved sentence of detention is held in abeyance until the expiry of the appeal period (if no appeal is made) or (if made) the appeal is determined or abandoned.

The Record of Summary Hearing

(10) It is a legal requirement (under the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009) for the CO to complete a Record of Summary Hearing (the Record). Where the charge has been found proved, the CO is to provide the offender with a copy of the Record, usually within 24 hours of the summary hearing. The Record will be required should an appeal be made or an activation hearing become necessary; the latter is especially pertinent when a suspended sentence of Service detention has been awarded. In any event the Record provides an 'audit trail' should one be required and is to be kept for a minimum period of 2 years under local arrangements by the unit who held the summary hearing.

Activation of Suspended Sentences of Service Detention

(11) Under Section 190, AFA 06 a Service court or the CO may award a suspended period of detention for a period of between 3 and 12 months; the 'operational period' of the suspension. The CO (not a subordinate commander) may activate a suspended sentence of detention (awarded by the Summary Appeal Court or at a previous summary hearing but not by the court martial) where an individual commits a subsequent offence within the operational period of the suspended sentence.

(12) The subsequent offence may be another Service offence or a conviction in a civil court. In the former event, the routine summary hearing procedure has been restructured and extended in order for the CO to consider activation. Namely, to begin with the CO holds a routine summary hearing for the subsequent Service offence. Should the CO find the offence proved, he will continue the summary hearing and go on to consider whether to activate the suspended sentence of detention in full, in part or not at all. Where the subsequent offence is a civil conviction the CO will undertake a discrete activation hearing solely to consider whether to activate the suspended sentence in full, in part or not at all. Refer to MSL, Chapter 9, Parts 3 and 8 for further guidance.

1058 - 1060. *(Omitted)*

1060A. Personnel Attending Civil Courts - Dress.

Sponsor: ACOS Pers Pol (RAF)

Officers and airmen who are required to appear in civil courts are to be dressed in accordance with current dress regulations (AP1358, Chapter 10, Annex C) and instructions within AP3392 Vol 4 Leaflet 1302.

1061. Airman Charged in Civil Court.

Sponsor: ACOS Pers Pol (RAF)

(1) An airman who is charged with an offence before a civil court is to report the matter forthwith to his CO. This clause does not apply when the civil offence charged is a minor offence under the Road Traffic Acts and the airman was not on duty at the time at which it is alleged he committed the offence. However, where a charge may result in a driving disqualification reporting action is to be taken, notwithstanding that the charge preferred is a single charge of a minor offence under the Road Traffic Acts. (See AP 3392, Vol 4, Lft 1302). Charges following positive "breathalyser" tests are not to be regarded as minor offences under the Road Traffic Acts and are therefore always to be reported.

(2) When a CO receives information that an airman under his command is to be charged with an offence before a Crown Court, he is:

- (a) If the charge is to be heard near the station where the airman's unit is quartered, to detail an officer not below the rank of flt Lt (unless the consent of Higher Authority has been obtained) from the unit to attend and watch the proceedings: or
- (b) If prosecution is to take place at a distance, to arrange for an officer to be detailed from the airman's unit or from some other unit near the place of trial.

(3) When a CO receives information that an airman under his command is to be charged with an offence before a Court of Summary Jurisdiction, he is, in the following circumstances, to detail an officer not normally below the rank of flt Lt to attend the court:

- (a) If he considers such a course desirable.
- (b) If the accused has requested that an officer appear as a witness on his behalf.
- (c) If the court has asked for the attendance of an officer.

(4) The officer detailed to attend the court under clause (2) or (3) above may be a male or female officer, at the discretion of the CO, irrespective of the sex of the accused.

(5) The officer detailed to attend and watch proceedings should, whenever possible, have personal knowledge of the accused.

(6) The CO of the airman's unit is to provide for the officer detailed to attend (see AP 3392, Vol 4, Leaflets 1302 and 1305):

- (a) An informal character assessment if the officer detailed has no personal

knowledge of the accused.

(b) Particulars of the accused's service record, age, education and previous employment together with any available details of his domestic and family circumstances.

(c) A statement of the airman's current entitlement of pay and allowances and the amount of any compulsory deductions in force.

(d) A statement whether he intends, in the event of conviction, to recommend the airman's discharge or retention in the Service.

If the officer detailed to attend the proceedings is from a unit other than the airman's unit, the CO of the airman's unit is to forward to the CO of the officer's unit all necessary information and documents (eg Conduct records and Form 280 and the information detailed above) for the use of the officer attending the court.

(7) When, under clause (3) above, it is decided that an officer shall not attend the court, the CO is to furnish to the civil police, on request, all available details in regard to the airman's character and service record and pay, as specified in clause (6)(a), (b) and (c) above.

(8) *(Omitted)*

(9) The officer attending the court is, if required by the court, to make known to the court:

(a) The assessment of conduct recorded on the airman's record of service.

(b) The full particulars of any conviction of the airman, after trial either by court-martial or summarily, of an offence under Section 70, AFA 55. He is not to give information concerning minor offences of a purely disciplinary character.

(c) All the information with regard to the airman's general character or background which is within his personal knowledge or which has been provided by the accused's CO in accordance with clause (6). Unless specially ordered by the court to do so, he is not to take with him the airman's conduct records.

(10) To assist the court in determining its sentence, the officer must be prepared, if asked, to tell the court whether or not the airman's CO, having taken into account his service record and potential in the Service, proposes to recommend his discharge from the Service if he is convicted or found guilty. The officer should explain that it is sometimes necessary for the CO to modify his views in the light of the precise circumstances of the offence as brought out at the trial and that, in any event, the final decision whether any offender should be discharged rests with the MOD, who alone can authorise discharge in such circumstances.

(11) The officer attending the court is to be careful not to act as advocate in any way.

(12) When the magistrates impose a fine which the offender is unable to pay immediately from his own resources, the question of payment is to be dealt with as set out below.

(13) **Voluntary arrangements.** It is the personal responsibility of the offender to ensure that his fine is paid directly to the Court, and he must seek the agreement of the Court to any form of deferred payment and make his own arrangements accordingly. The attending officer is to be prepared to advise the Court of the current pay and allowances to which the offender is entitled, and of any compulsory stoppages and deductions which may be in force, but he is to make it clear that the RAF cannot accept responsibility for the enforcement of any voluntary arrangements which may be made. The attending officer should be prepared to advise the Court of the provisions of clause (14) below, but should point out that these special powers should be invoked only in exceptional cases when the normal direct arrangements between the offender and the Court have proved impracticable. Should the Court express a wish to recover the fine through RAF channels, the attending officer is to take no action except to ask the Court to refer the matter in writing to the CO of the offender.

(14) **Payment through Service Channels.** If the Court formally requests the RAF to assist with the recovery of a fine, the accountant officer is to calculate the maximum recoverable from the pay of the offender each week, having regard to the current regulations. This sum is then to be paid weekly to the

Court and recovered immediately from that week's pay until the fine is cleared. If the offender is posted before the fine has been cleared, the accountant officer is to advise the new unit of the details so that recovery may continue, copying his letter to the Court. If the offender is discharged from the Service before the fine is cleared, the accountant officer is to recover as much as is permissible from pay before finally clearing the offender's account, and in forwarding this sum to the Court, is to advise that the RAF cannot be responsible for the recovery of any balance which remains outstanding.

(15) **Payment from Public Funds.** Except as provided in (14) above, a fine is not to be paid, wholly or in part, from public funds unless all the following conditions are fulfilled:-

- (a) The CO is satisfied that unless payment is made, the Court will impose some restriction on the liberty or movement of the offender.
- (b) Loss or restriction of the offender's services will be seriously detrimental to the interests of the RAF.
- (c) The situation cannot be dealt with other than by a payment from public funds.
- (d) The proposed payment will not place the offender's pay account in debt beyond an amount which, having regard to all the circumstances and the likely future of the airman, can reasonably be expected to be recovered from pay within 3 months.

(16) Where damages, compensation or costs in respect of an offence are awarded against an airman, and the airman is not in a position to pay at once, arrangements may be made in suitable cases for recovery to be effected by deductions from his pay, but payment of sums to an aggrieved person in this respect is only to be made as and when recovered from the airman's pay. Owing to different systems of jurisdiction, courts outside the UK may, on occasion, award compensation which would have been awarded by a civil court in the UK. The DLS(RAF) (or his deputy abroad) should be consulted before any amount, other than in respect of a fine, is paid to a civil court outside the UK.

(17) If the court decides to place the airman under the care of a probation officer, the officer attending the court is to provide details of any outstanding serious Service offences.

(18) When an airman is placed under the supervision of a probation officer by order of the civil court, and disciplinary action in respect of an outstanding Service offence is contemplated, the CO is invariably to communicate with the Clerk of the Court concerned before taking any action likely to remove the airman from the care of the probation officer.

(19) If an airman is convicted or bound over, or otherwise dealt with by a civil court a certificate of conviction or certified copy of the Order of the Court is always to be obtained by the airman's CO (see JSP 501 as to payment of fee). If the airman is sentenced at the Central Criminal Court or a Crown Court after trial or indictment, application is to be made to the Clerk of the Court of trial for the unqualified certificate of conviction or certified copy of the Order of the Court 60 days after the sentence was imposed or in the case of a joint trial on indictment 60 days after the date on which the joint trial concluded. If the airman was not tried on indictment, application for the certificate of conviction or certified copy of the Order of the Court is to be made at once. (See AP 3392, Vol 2, Leaflet 1425 as to the disposal of the certificates.)

(20) A warrant officer, NCO or airman sentenced by a civil court in the UK to a custodial sentence, notwithstanding any appeal lodged against conviction, including awards for offences under the Road Traffic Act, will not, save in exceptional circumstances, be retained in the Service. For the purposes of this clause, a custodial sentence includes a sentence of imprisonment (including a suspended sentence), detention or youth custody. In all cases a report is to be raised in accordance with AP 3392, Vol 4, Leaflet 1304 by the CO of the unit to which the airman belongs or is attached at the time of the conviction and forwarded without delay to Higher Authority. In the event that a CO should decide not to recommend discharge, the report should state fully the exceptional circumstances of the case and specify the alternative form of disposal proposed. (See para 528 and 1027 for powers of discharge, reduction and compulsory remustering, and para 1027 for provisions and limitations governing administrative action). The same action is to be taken when an airman is sentenced abroad by a civil court to a punishment which, in the opinion of the Air or other OC, is the equivalent of a custodial sentence. However, the provisions of para 1118(2) will also apply.

(21) Whenever a warrant officer, NCO or airman is found guilty by the civil power of any offence, except a minor offence under the Road Traffic Acts, but is not sentenced to a custodial sentence, a report (see AP 3392, Vol 2, Leaflet 1425) is to be made to Higher Authority, by the CO of the unit to which the airman belongs, or is attached, at the time of conviction. The report is to state the COs proposal to take no further action, or to issue a formal warning, or to recommend reduction in rank (warrant officers or NCOs only), remustering, or discharge. If the CO proposes to recommend reduction in rank, remustering or discharge, action is to be taken in accordance with AP 3392 Vol 5 Leaflet 130, in which circumstances the report is to accompany the recommendation. If a Community Service Order is awarded, see AP 3392, Vol 4 Leaflet 1305. (See para 528 and 1027 for provisions and limitations governing administrative action).

1062. Officer Charged in Civil Court.

Sponsor: ACOS Pers Pol (RAF)

(1) An officer who is charged with an offence before a civil court is to report the matter forthwith to his CO. This clause does not apply when the civil offence charged is a minor offence under the Road Traffic Act, and the officer was not on duty at the time at which it is alleged he committed the offence. Charges following positive "breathalyser" tests are not to be regarded as minor offences under the Road Traffic Acts and are therefore always to be reported. See also para **1009** as to an officer's duty when his character is impugned.

(2) When a CO receives information that an officer under his command is charged with an offence before a civil court, he is to report the matter to the AOC or other OC giving such details of the circumstances as may be available. He is to state, at the same time, whether the officer has been suspended from duty under para **1009**.

(3) On receiving a report under clause (2), the AOC or other OC, if he considers it desirable, is to detail an officer not below the rank of sqn ldr (unless the consent of Higher Authority has been obtained) to attend the trial; such an officer is always to be detailed to attend the trial if it is to be held before the Central Criminal Court or Crown Court or before any court of comparable jurisdiction at home or abroad. The officer detailed to attend the court may be a male or female officer, at the discretion of the CO, irrespective of the sex of the accused officer. An officer detailed to attend a trial will take no part in the proceedings. If the AOC or other OC is of the opinion that the charge reflects, or would reflect if there was a verdict or finding of guilty, on the officer's character or conduct as an officer, he is to report the circumstances to RAF PMA through the normal channels at once without awaiting the results of the proceedings. (As to legal aid when an officer is the subject of legal proceedings before a civil court, see para J980).

(4) If an officer is convicted or bound over, or otherwise dealt with by a civil court, a certificate of conviction or certified copy of the order of the court is always to be obtained under Section 199, AFA 55, by the officer's CO (see JSP 501 as to the payment of fees). If the officer is sentenced at the Central Criminal Court or a Crown Court after trial on indictment, application is to be made to the Clerk of the Court of trial for the unqualified certificate of conviction or certified copy of the Order of the Court 60 days after the sentence was imposed or in the case of a joint trial on indictment, 60 days after the date on which the joint trial concluded. If the officer was not tried on indictment, application for the certificate of conviction or certified copy of the Order of the Court is to be made at once. The CO is to forward the certificate or certified copy of the order to the AOC or other OC.

(5) When an officer is convicted or bound over, or otherwise dealt with by a civil court, the AOC or other OC is to require the officer to submit a written explanation as to the circumstances. This explanation, together with a certificate of conviction or certified copy of an Order of the Court, is to be forwarded to SPC (AC) through normal channels with the AOCs recommendation as to the action (if any) the Defence Council should take in the matter. The procedure set out in AP 3392, Vol 5, Leaflet 130 for the submission of a special report upon an officer is to be followed. Unless the AOC or other OC consider it desirable, action need not be taken under this clause if the offence was a minor offence under the Road Traffic Act and Service MT was not involved.

(6) When an officer is sentenced by a civil court in the UK to a custodial sentence, notwithstanding any appeal lodged against conviction (see para 2387, clause (2)), including awards for offences under the Road Traffic Act, will not, save in exceptional circumstances, be retained in the Service. For the purposes of this clause, a custodial sentence includes a sentence of imprisonment (including a suspended sentence), detention or youth custody. In all cases a report is to be raised in accordance with AP 3392 Vol 4, Leaflet 1304 by the CO of the unit to which the officer belongs or is attached at the time of the conviction and forwarded without delay to Higher Authority. In the event that a CO should decide not to recommend

termination of service, the report should state fully the exceptional circumstances of the case and specify the alternative form of disposal proposed.

(7) Whenever an officer is found guilty by the civil power of any offence, except a minor offence under the Road Traffic act, where Service MT was not involved, but is not sentenced to a custodial sentence, a report (see AP 3392, Vol 2, Leaflet 1425) is to be made to Higher Authority by the CO of the unit to which the officer belongs, or is attached, at the time of conviction. The report is to state the CO's proposal to take no further action, issue a formal warning, or to recommend re-branching, or termination of service. If the CO proposes to recommend re-branching or termination of service action is to be taken in accordance with AP 3392 Vol 5, Leaflet 130, in which circumstances the report is to accompany the recommendation. If a Community Service Order is awarded see AP 3392, Vol 4, Leaflet 1305.

1062A. Civil Police Cautions.

Sponsor: ACOS Pers Pol (RAF)

(1) An officer or airman who receives a formal caution from the civil police of England, Wales or Northern Ireland for a civil offence is to submit a written explanation of the circumstances forthwith to his CO. This clause does not apply when the caution is for a minor offence under the Road Traffic Act and the officer or airman was not on duty at the time of the offence.

(2) Administrative action on receipt of such a report is to be taken in accordance with AP 3392, Vol 4, Leaflet 1304.

1062B. Fixed Penalty Notice, Fixed Penalty (Scotland) and Anti-Social Behaviour Order.

Sponsor: ACOS Pers Pol (RAF)

(1) An officer or airman who receives a Fixed Penalty Notice, Fixed Penalty (Scotland)¹ or Anti-Social Behaviour Order from the civil police of England, Scotland, Wales or Northern Ireland is to submit a written explanation of the circumstances forthwith to his CO. This clause does not apply when the notice is for a minor offence under the Road Traffic Act and the officer or airman was not on duty at the time of the offence.

(2) Administrative action on receipt of such a report is to be taken in accordance with AP 3392, Vol 4, Leaflet 1304.

1063. Termination of Service following trial by Court Martial or Civil Court. *Sponsor: ACOS Pers Pol (RAF)*

(1) The circumstances leading to the conviction of an officer or airman by court martial or civil court may also throw into doubt his suitability for retention in the Service, even though the sentence of the court did not include dismissal. If the officer or airman is considered to be no longer suitable for retention, administrative action will be taken to terminate his service, and the fact that a court has already awarded a punishment for an offence in connection with the same set of circumstances is in no way to act as a bar to this action.

(2) If, on receiving confirmation of a court martial sentence or the report of a civil conviction or a civil police caution, a CO considers that termination of service should be recommended, he is to make that recommendation to Higher Authority under paras 1061(21), 1061(22), 1062(5) or 1062A(2) as appropriate, and is to inform the officer or airman concerned that he is doing so. However, the absence of any such recommendation will not preclude a Higher Authority, when considering the facts in the light of the officer's or airman's whole Service background, from deciding that termination of service is necessary.

(3) Even though trial by court martial or by civil court has resulted in an acquittal it may still be considered impractical to retain the officer or airman in the Service. In these circumstances the CO should report his views to Higher Authority.

1064. Effect of Quashing of Civil Conviction.

Sponsor: ACOS Pers Pol (RAF)

Should an officer or airman's service be terminated following action in accordance with para 1063(2), but the conviction on any charge on which that officer or airman was found guilty is quashed on appeal, he is, so far as possible, to be relieved from the consequences of that conviction.

¹ The Fixed Penalty (Scotland) will be issued by the Procurator Fiscal.

1065-1066. (Omitted)

SECTION 4 - SUMMARY AND MINOR PUNISHMENT

1067. Power of CO to Award Summary Punishments. *Sponsor: ACOS Pers Pol (RAF)*

(1) A CO (see Regulation 56 for the definition of a CO) has the power to award the summary punishments outlined in the Manual of Service Law (MSL) Volume 1, Chapter 13, Annexes A and B. The CO's power to deal summarily with personnel and award particular summary punishments depends on the relative ranks of the CO and the alleged offender. This Regulation provides initial guidance on CO's sentencing powers at summary hearings; COs are to refer to the MSL for more comprehensive guidance. See Regulation 1072 for a brief description of summary punishments.

Officers

(2) Officers up to the rank of Wg Cdr (Cdr and Lt Col) may only be dealt with by COs at the summary level. In order to deal summarily with an officer, the CO must be at least 2 ranks higher. The punishments available to officers at summary hearing are: forfeiture of seniority; fines up to a maximum of 14 days' pay or up to a maximum of 28 days' when the CO has been granted extended powers of punishment (see below); severe reprimand and reprimand; Service Compensation Order up to a maximum of £1000; and admonition.

Warrant Officers

(3) Warrant Officers may be dealt with at the summary level only by COs. The punishments available to them at summary hearing are: reduction in rank by one substantive or acting rank (when the CO has been granted extended powers of punishment (see below); a fine of up to a maximum of 14 days' pay or up to a maximum of 28 days' when the CO has been granted extended powers of punishment; severe reprimand and reprimand; Service Compensation Order up to a maximum of £1000; and admonition.

Senior Non-Commissioned Officers

(4) COs may award SNCOs the same punishments as WOs (see clause 3 above) with the exception that a fine of 28 days' pay will be available to a CO within his ordinary powers and the punishment of Stoppage of Leave is also available (see Regulation 1072).

Junior Non-Commissioned Officers

(5) COs may award JNCOs the same punishments as SNCOs with one exception. The lowest JNCOs rank in the 3 Services may be awarded detention of up to a maximum of 90 days when the CO has been granted extended powers of punishment (see below). It is important to note here that RAF LCpls may be awarded detention as the lowest JNCO rank in the RAF as can the equivalent rank in the RN of leading rate. However, as the lowest JNCO rank in the Army is L Cpl/L Bombardier it is only this JNCO rank in the Army that may be awarded detention. Thus, an Army Cpl may not be awarded detention.

Airmen

(6) With the exceptions of forfeiture of seniority, severe reprimand, reprimand and reduction in rank, COs may award airmen the full range of available punishments. Furthermore, certain punishments are exclusively available to airmen. They are the Service Supervision and Punishment Order and Restrictions of Privileges (see Regulation 1072).

Extended Powers

(7) If the CO is of or above the rank of air vice-marshal he may award any punishment up to the summary maximum. Other COs must apply to their Higher Authority for permission to use extended powers to award punishments beyond a certain limit; see MSL Volume 1, Chapter 9 for the procedure for making applications. Only COs may apply for extended powers. Briefly, extended powers are needed as follows to award: detention between 28 and 90 days to airmen; to award any period of detention to a Cpl up to a limit of 90 days; forfeiture of seniority to an officer; reduction in rank (unless the offender is a Lance Cpl); and fines of between 15 and 28 days' pay to officers and WOs. See MSL Volume 1, Chapter 13, Annexes A and

B for further guidance.

1068. *(Omitted)*

1069. Power of Subordinate Commanders to Award Summary Punishments. *Sponsor: ACOS Pers Pol (RAF)*

(1) COs may appoint subordinate commanders at 3 levels: Wg Cdr (and above where CO is of sufficient rank), Sqn Ldr and Flt Lt and equivalents in the other two Services but with the proviso that only one subordinate commander in any chain of command may hold the delegated powers at any time. COs may delegate their summary disciplinary powers to subordinate commanders in full or in part; see Regulation 1055 and the Manual of Service Law Volume 1, Chapter 9, Part 1 for more comprehensive guidance. However, the extent of subordinate commanders' powers is dependent on their rank. See the MSL Chapter 13, Annex A for full details; a brief synopsis follows.

(2) Certain summary punishments are not within the purview of subordinate commanders regardless of their rank. They are: detention, reduction in rank, severe reprimand and the Service Supervision and Punishment Order. Further, a subordinate commander may not deal summarily with an officer or WO.

(3) Some powers of punishment of subordinate commanders are gradated in accordance with the 3 levels of subordinate commanders' ranks. They are: Fines, Stoppage of Leave, Restriction of Privileges (RoPs) and the Service Compensation Orders. Subordinate commanders at all 3 levels may award a reprimand. The maximum punishments that the 3 levels of subordinate commander may award, up to the rank of flight sergeant (and equivalents) unless stated otherwise, are as follows:

- (a) Wg Cdr:
 - (i) Fine: 14 days' pay.
 - (ii) Reprimand.
 - (iii) Stoppage of Leave: 14 days.
 - (iv) RoP: 14 days.
 - (v) Service Compensation Order: £1000.
- (b) Sqn Ldr:
 - (i) Fine: 10 days' pay.
 - (ii) Reprimand.
 - (iii) Stoppage of Leave: 10 days.
 - (iv) RoP: 10 days.
 - (v) Service Compensation Order: £750.
- (c) Flt Lt:
 - (i) Fine: up to the rank of cpl: 7 days' pay.
 - (ii) Reprimand: cpl and lcpl only.
 - (iii) Stoppage of leave: 7 days.
 - (iv) RoP: 7 days.
 - (v) Service Compensation Order: £500.

1070. Combined Punishments.

Sponsor: ACOS Pers Pol (RAF)

Punishments may be awarded individually or they may be combined with other punishments. However, care is needed when combining punishments as only certain combinations are legal under Section 138 of the Armed Forces Act 2006. For example the only punishment that may be combined with the sentence of detention is a Service Compensation Order; this is also true for a sentence of admonition. The full list of

legally permissible combined sentences is to be found in the Manual of Service Law Volume 1, Chapter 13, Annex A.

1071. (Omitted)

1072. Summary and Minor Punishments.

Sponsor: ACOS Pers Pol (RAF)

(1) The aim of this regulation is to outline the punishments that are available at summary hearing and to highlight the key factors in their use, application and execution. The Manual of Service Law (MSL) Volume 1, Chapter 13 contains comprehensive guidance on the full range of summary punishments and Chapter 14 covers sentencing at summary hearing; COs are advised to read these chapters in conjunction with this Regulation.

Detention

(2) Detention is the only custodial sentence available for offences heard summarily – it is only available to COs, who may award up to 28 days' detention using their basic powers of punishment or up to 90 days using extended powers (see Regulation 1067(7)). A CO may suspend a sentence of detention (see Regulation 1071). The sentence is available for RAF LCpls (RN leading seamen and, it should be noted, Army lance Cpls and below). An offender will be treated as an airman (or equivalent) for the duration of his sentence. A junior NCO, on release from a summary sentence of detention, is to be restored to his rank in accordance with the protocol outlined in QR 1199A and subject to any administrative action that the CO may consider appropriate under QR 1027.

(3) The consequences of a sentence of detention are the loss of reckonable service for the duration of the sentence, less any remission, and the forfeiture of pay. Those eligible offenders may receive a Family Maintenance Grant at the discretion of the CO. Credit may be given where an offender has been kept in any form of custody after charge. The CO is to direct that any time spent in custody will count as time served. (See MSL Volume 1, Chapter 5 for further guidance on calculating time spent in custody).

Suspended Sentence of Detention Awarded by CO

(4) A CO may award a suspended sentence of detention under the same conditions that he may award a sentence of detention that is not suspended. The circumstances under which a suspended sentence of detention may be appropriate and all other aspects of the sentence are outlined in the Manual of Service Law Volume 1, Chapter 12. Briefly, a suspended sentence may be appropriate where the offender is likely to reform without undergoing a period of corrective training; when the offender has shown genuine remorse; for the offender's welfare when he is under the age of 18. The type and gravity of the offence must also be taken into consideration as well as the offender's previous convictions and disciplinary record. Operational requirements may also be a factor but the convenience of the Service should not be a consideration.

(5) When a suspended sentence of detention is awarded the sentence does not have effect unless the offender commits a subsequent offence within the 'operational period' and a court martial or the CO activates the suspended sentence; see Regulation 1057(11) for guidance on the methods available to the CO for the consideration of whether to activate a suspended sentence of Service detention. The subsequent offence may be a charge proved at a summary hearing or a civil conviction.

(6) The operational period is determined by the CO when he awards the suspended sentence; it is a minimum of 3 months and a maximum of 12 months. In determining the length of the operational period, the CO is to consider the factors outlined in clause (1) of this regulation and take into account what he considers would be a reasonable time for the offender to prove that he will not re-offend and will perform his duties to the standard expected, i.e. that the offender will be rehabilitated through the imposition and impact of the punishment awarded and the supervision that he will be subject to.

The Service Supervision and Punishment Order (SSPO)

(7) The SSPO was designed to punish and reform offenders without the need for them to undergo a formal period of detention. Only a CO may award an SSPO and then only to airmen (and equivalent) ranks. It is a suitable punishment for minor recidivists but may also be awarded for an offence punishable by detention. It is particularly appropriate for offenders under the age of 18 as an alternative to detention; those still undergoing training would inevitably benefit from this alternative as they would be able to continue their training while undergoing the punishment. Units are to develop a framework for the execution of the

mandatory and discretionary elements of SSPOs that suit their operational requirements (see Clause 5).

- (8) An SSPO is divided into 2 periods; the initial (the more intense period) and the secondary period. The length of the initial period depends on the length of the SSPO awarded. The punishment has a number of mandatory and discretionary elements. The mandatory elements are the forfeiture of 1/6th gross pay for the period of the SSPO and the removal of the entitlement to any form of leave without the permission of the CO (see MSL Chapter 13 for further detail on this element). The discretionary elements include extra work, drill or training (up to a maximum of 5 ½ hours each day during the initial period and one hour each day during the secondary period) and restrictions on the movement of the offender; e.g. he may be prevented entering bars on the unit or leaving the unit without the permission of the CO.
- (9) The initial periods of SSPOs, which are awarded in blocks of 30, 60 and 90 days, are 14, 18 and 21 days respectively. A regime of reviews is an integral part of an SSPO (see MSL Chapter 13 for details). The reviews are conducted by the CO to determine whether the SSPO should continue in force by considering the offender's behaviour and compliance with the punishment thus far. There may also be compassionate or medical grounds for the CO to discontinue the SSPO or a meritorious act (e.g. gallantry) may persuade the CO to terminate the SSPO.
- (10) COs are to promulgate the regime that they intend to employ for SSPOs on their unit in order that personnel subject to this punishment will be aware of its implications.

Forfeiture of Seniority

- (11) Forfeiture of Seniority is a punishment that may only be awarded by COs when dealing with officers; it is not a punishment that is available to subordinate commanders. As for any summary hearing where the accused is an officer, the CO must be 2 ranks higher than the accused. Extended powers are required by the CO to award this punishment unless he is of the rank of air vice-marshal or other Service equivalents. Forfeiture may be for a specified term or as a whole. The effect of the forfeiture will be to reduce pay to a specified increment level with immediate effect. When applying for extended powers, COs are to take advice from Higher Authority on the full effects of the award of the punishment of forfeiture of seniority before awarding this sentence.

Reduction in Rank

- (12) Reduction in Rank may be awarded summarily to WOs and below and may only be awarded by a CO who has been granted extended powers to do so (see Regulation 1067(7)). Therefore, it is not a punishment that is available to subordinate commanders. The limit to reduction for this punishment is by one acting rank or if no acting rank is held by one substantive rank. This punishment does not affect local rank, which is governed by single-Service instructions.
- (13) Where a Cpl (LCpl in the RAF Regiment) is sentenced by his CO to reduction in rank he will revert to his highest qualified airman rank: i.e. junior technician or senior aircraftman. Note: A RAF Regiment Cpl may not be reduced in rank by his CO until AFA 06 is appropriately amended. For Air Traffic Controllers and Non-commissioned Aircrew the base rank is sergeant and for the trades of Nurse, Physical Training Instructor, RAF Police and Radiographer it is corporal. As explained in Clause (1), COs below the rank of AVM (and other Service equivalents) require the grant of extended powers by Higher Authority to use the power to reduce a WO or NCO at summary hearing. COs are to make Higher Authority aware should they seek such powers in respect to personnel in the trades detailed above, i.e. trades with base working ranks.
- (14) Reduction in Rank has a corresponding affect on pay; therefore, it is particularly important that this punishment is processed to JPA as expeditiously as possible to facilitate the making of the appropriate adjustments. (Refer to MSL Chapter 13 for more detailed guidance on the consequences of reduction in rank on pay and Regulation 1199A for guidance on restoration of rank).

Fines

- (15) The maximum fine that can be awarded to an officer or a WO is 14 days' gross pay (or 28 days' gross pay when the CO has been granted extra powers (see Regulation 1067(7))). All other ranks may be awarded a fine of 28 days' gross pay by the CO using his own powers. Subordinate Commanders' powers to award fines are limited in accordance with their rank (see Regulation 1069(3)). Subordinate commanders' powers to award fines are limited in accordance with his rank.

- (16) COs are to acquaint themselves with the offender's financial circumstances when considering the appropriateness of awarding a fine. The award of a fine is announced as a specified sum of money (usually in whole pounds) and not in terms of days' gross pay. Fines may be paid in full immediately or in instalments in accordance with 'minimum drawing rates' (see MSL, Volume 1 Chapter 13). Where the offender's financial circumstances change, he may apply to the officer who heard the charge to vary the payment. Where the offender ceases to be subject to Service law before recovery of the amount due, a Financial Penalty Enforcement Order may be made; refer to MSL chapter 16 for details on such orders.
- (17) Fines are not to be used to reimburse public funds for a loss; Service Compensation Orders are the appropriate vehicle here (see below).
- (18) Where the CO considers it appropriate, for example where the offender's financial circumstances are not conducive to awarding a fine, he may award a combination of minor punishments in place of a fine (see MSL, Volume I, Chapter 13 for suggested alternative punishments that the CO may wish to consider).

Severe Reprimand and Reprimand

- (19) COs may award a severe reprimand to officers (provided they are 2 ranks above the accused), WOs and NCOs; a subordinate commander may only award a reprimand to NCOs. Reprimands generally are a most applicable punishment for professional negligence where fitness to hold rank is not an issue or in cases where detention or reduction is not considered necessary.

Service Compensation Order (SCO)

- (20) A SCO requires an offender to pay a specified sum in compensation for personal injury (but see Clause 17), loss or damage caused by the offence that he committed. Evidence must be provided as to the value of the loss or cost of the repair. COs must take into consideration the financial circumstances of the offender in order to ascertain his ability to pay. A SCO may only be actioned once the CO is satisfied that, disregarding any power of the court to grant leave to appeal out of time, there is no further possibility of an appeal that could result in the order being varied or ceasing to have effect.
- (21) Only a CO may award a SCO for personal injury; he may not delegate this power. The maximum amount that a CO may award by means of a single SCO or 2 or more SCOs is £1000; subordinate commanders' powers in this respect are gradated according to rank (see Regulation 1069(3)). The offender may pay the SCO in full immediately or in instalments in accordance with 'minimum drawing rates'. However, the compensation is not paid to the victim until the appeal period has elapsed (this does not include any appeal that is made out of time). This is to avoid having to reclaim the sum awarded from the victim should the appeal be successful.
- (22) A SCO may not be awarded to compensate for the loss or damage to Service property caused by Service personnel involved in traffic accidents on Service property while driving their own vehicles. Further, a SCO may not be made in respect of bereavement, funeral expenses or a loss of any kind suffered by the dependants of a person in consequence of his death.
- (23) The offender has the right to appeal to the CO for a review of the SCO. The CO has the power to discharge (cancel) or reduce the amount of the SCO in certain circumstances (see MSL Chaps 9 and 13).
- (24) The methods of calculating the amount of a SCO where personal injury is involved are complex. The MSL Volume 1, Chapter 13 provides further guidance and COs are also advised to seek legal advice in such cases.

Minor Punishments

- (25) The regimes for undertaking the minor punishments of Restrictions of Privileges (RoPs) and Stoppage of Leave, which are outlined in this regulation, are to be observed by those personnel who are responsible for their programming and supervision. The introduction or adoption of any system of punishment that is at variance with these regulations is forbidden. However, it is entirely appropriate that each unit adapts the discretionary elements for RoPs outlined in this regulation to suit the needs of their operational commitments and establish their own frameworks for this punishment. The MSL Chapter 13 provides comprehensive guidance on the parameters for imposing and supervising minor punishments; COs should familiarise themselves with these frequently-used punishments, an overview of which follows.

Restriction of Privileges

- (26) The minor punishment of RoPs is targeted exclusively at the airmen ranks (and other Service equivalents) and is aimed at the rehabilitation of the offender through a regime of extra duties. A maximum of 5½ hours' extra duties are to take place on each day of the punishment and the duties may comprise additional professional work, training or any other Service duty. In addition to extra duties, the offender will be required to muster or parade a maximum of 6 times a day. A CO may delegate his functions on deciding which extra duties the offender must undertake to personnel of or above the rank of flight sergeant (and other Service equivalents) and each unit is to determine a regime for the execution of this punishment and to publish it in standing orders or other suitable place.
- (27) The maximum duration of RoPs is 14 days and the punishment is to start immediately and run continuously unless there are operational or compelling compassionate reasons to determine otherwise. In such circumstances the start of the punishment may be delayed by up to 28 days and the days on which the punishment is to apply will be specified within a further 28 days. When the punishment has to be delayed, the offender must be told, at the time of the award, the days on which it will take place.

Stoppage of Leave Order

- (28) The punishment of stoppage of leave imposes the requirement for the offender to remain on his unit, i.e. he is confined to camp; it has no effect on the offender's individual leave allowance, which he will be able to use in the normal way when he has served the sentence. The CO may also impose further administrative restrictions on the offender, e.g. access to unit bars may be denied. The offender may be required to muster or parade up to 6 times a day, at the discretion of the CO, to ensure that he has not left the unit. The punishment is applicable to those below the rank of warrant officer.
- (29) Stoppage of leave may be imposed for a maximum of 14 days and the punishment is to start immediately unless there are operational or compelling compassionate reasons not for it to do so. In these circumstances the CO may delay the commencement of the punishment for 28 days and the days on which the punishment is to apply must then be specified within a further 28 days. The CO may delegate the granting of special permission to leave to the unit to an officer of the minimum rank of flight lieutenant.

Admonition

- (30) An admonition may be awarded to officers, warrant officers and other ranks for offences that do not merit a more serious punishment. An admonition may also be appropriate where the evidence presented at a summary hearing tends to lessen significantly the seriousness of the offence or where the offender produces compelling mitigating evidence.

1073 - 1076. *(Omitted)*

1077. Review of Summary Punishments.

Sponsor: ACOS Pers Pol (RAF)

- (1) Detailed guidance on the procedural aspects of the review of summary punishments is to be found in the Manual of Service Law Volume 1, Chapter 15, Part 1. This Regulation is intended to highlight the key aspects of review and to provide an overview of the procedures involved.
- (2) ACOS A1 may conduct a review at any time (but see Clause 3) after a summary or activation hearing; see Regulation 1057(11) for guidance on activation hearings. The purpose of the review of summary punishments is to identify whether there may be a reason to refer the summary finding or punishment to the Summary Appeal Court (SAC) for its consideration. For example the Reviewing Officer (RO) may consider that incorrect procedures were followed during the hearing or that the punishment that was awarded was unreasonable. It is not the RO's function, however, to determine that errors of law have been made. The referral of a case to the SAC by the RO does not affect the offender's right to appeal. (See Regulation 1078 on appeal).
- (3) While there is no time limit within which a review is to be conducted, delay should be avoided. It is therefore suggested that a preliminary review is undertaken within 48 hours of the award of a punishment at a summary or activation hearing (see Clause 4). This is particularly the case where the accused has been sentenced to detention and decides to begin his sentence immediately – such cases should be reviewed as expeditiously as is possible. In order to achieve this timeline, units should ensure that they despatch the necessary documentation to Air Personnel Casework at HQ Air normally within 24 hours of the summary

hearing. The RO will notify the unit after he has completed his initial review as to whether there are possible grounds for an appeal and request.

(4) The review of summary hearing findings and punishment includes the review of any order that is made at a summary hearing to activate a suspended sentence of Service detention or where the CO has held a separate hearing to consider such activation. This would occur where the accused has been convicted in a civil court while subject to a suspended sentence of Service detention.

(5) When the RO refers a matter to the SAC, it is treated as if it were an appeal brought by the offender. The offender has the right to abandon the appeal at any time prior to the appeal's determination by the SAC.

(6) Although there is no time limit as to when a review might be undertaken (see Clause 3), the powers of the RO vary depending on whether the offender has brought an appeal to the SAC and whether the appeal has been completed. Briefly, the RO may bring matters to the attention of the SAC prior to the hearing of any appeal, during the appeal itself or even after the SAC has completed the hearing.

(7) There are some cases where the errors are so serious that the law regards the proceedings as not having taken place, ie a nullity. An example would be where an officer purports to hear a case that was not in his powers to consider. In such circumstances, the RO is to consult the Office of the Judge Advocate General immediately.

SECTION 5 - SUMMARY APPEALS

1078. Administration and Appointment.

Sponsor: ACOS Pers Pol (RAF)

(1) Section 140, Armed Forces Act 2006 (AFA 06) makes provision for a Summary Appeal Court (SAC) that may sit in any place whether within or outside the United Kingdom.

Court Administration Officer (CAO)

(2) In accordance with Section 142(4), AFA 06 the lay members of the court are to be specified by or on behalf of the CAO. The CAO is to be completely impartial and independent in the random selection of lay court members in order to ensure a fair and impartial lay membership of the court (see Regulation 1082 for guidance on the eligibility of lay court members).

(3) The CAO, or his staff, are not to be subjected to any external influence or pressure prior to, during or after the performance of their duties. It is an offence under the criminal law and, therefore, under Service law to do anything to pervert the course of justice. This includes, among other things, any interference with or attempt to influence any member of, or witness in, the SAC.

(4) The CAO is to be totally impartial and independent in the selection of court members in order to ensure a fair and impartial membership of the court. Selection of members is to be random. Once appointed, members must not be withdrawn from court duty unless there are pressing operational or compassionate reasons. The grounds for any withdrawal must be certified by the member's air officer commanding or other Service equivalent. See Regulation 1082 for further guidance on the selection of court members.

Judge Advocate General

(5) Section 142(3), AFA 06 makes provision for the Judge Advocate General to appoint a judge advocate for an appeal; further it allows a judge advocate to be appointed on the Judge Advocate General's behalf. The CAO is to inform the Judge Advocate General when a judge advocate is required for the SAC.

Summary Appeal Court Members

(6) Officers and warrant officers who are required to perform the duty of a lay member of the SAC are to do so independently and impartially in accordance with the evidence and the law. SAC members are not to be subjected to any external influences or pressure prior to, during or after the hearing. It is an offence under the criminal law and accordingly under Service law to do anything to pervert the course of justice. This includes, among other things, any interference with or attempt to influence any member of, or witness in, the SAC. Any such attempt prior to commencement or after the conclusion of the hearing should be

reported to the Service Police and the Director of Service Prosecutions; if this occurs during the hearing, it should be reported to the CAO or the judge advocate presiding. A Court Guide is sent to lay members approximately 2 weeks before the hearing detailing the conduct and procedures of the court. Members are to satisfy themselves that they understand their duties and responsibilities; they will be required to sign a certificate to that effect and submit it to the CAO.

(7) For the duration of the hearing, members are not to engage in any other duties until such time as they are released by the judge advocate. The performance of a court member shall not be considered or evaluated in the preparation of any personal report, appraisal or other document used in whole or in part for the purpose of determining whether a member is qualified to be promoted, or is qualified or suited for particular appointments or training.

Respondent

(8) For the purposes of the SAC, the Director of Service Prosecutions will be the respondent.

1079. Appeals to the Summary Appeal Court.

Sponsor: ACOS Pers Pol (RAF)

(1) Personnel who have been dealt with at a summary or activation hearing (see Regulation 1057(11)) have an automatic right of appeal to the Summary Appeal Court (SAC), which is a compliant court in terms of the European Convention on Human Rights (ECHR). This automatic right of appeal in turn assists in making the overall summary process compliant with the ECHR.

(2) Appeals may be made to the SAC against findings recorded and punishments awarded by a CO or a subordinate commander on dealing summarily with a charge or by a CO on dealing with an activation hearing; see Regulation 1057(11) for further guidance on the activation of suspended sentences of Service detention and the Manual of Service Law Volume 1, Chapter 15, Part 2 for comprehensive guidance on appeals made from summary and activation hearings. An appeal must be brought within 14 days from the date on which the punishment was awarded, subject to clause (4).

Bringing an Appeal

(3) A person is considered to have made an appeal when he serves on his CO a 'Notice of Appeal' (Form T-SL-SAC01). He is to submit the Notice of Appeal within 14 days (the initial period) from the date on which:

- (a) The finding and punishment were awarded.
- (b) The activation order was made, where a suspended sentence of detention has been activated by an order.

Applications to Extend Initial Appeal Period and for Appeals out of Time

(4) A potential appellant, who before the expiry of the 14-day initial appeal period, considers this period is insufficient to decide whether to appeal, may apply to the SAC (through his CO) for an extension to the initial period. Similarly, where the initial 14-day appeal period has expired and a person decides that he wishes to appeal, he may apply to the SAC (through his CO) for permission to do so; see the Manual of Service Law Volume 1, Chapter 15, Part 2 for procedural guidance.

Abandonment of Appeals

(5) An appellant may abandon an appeal, whether wholly or in part, at any time prior to its determination. Appellants are, however, advised not to take the decision to abandon an appeal without the benefit of advice from their legal representative and assisting officer (see Regulation 1080 for guidance on legal representation and the appellant's assisting officer), and in any event not before the Director of Service Prosecutions (DSP) has announced his decision as to whether he intends to contest the case.

(6) An appellant may be deemed to have wholly abandoned an appeal where, after having received notice of a hearing at which the DSP has indicated he will contest the appeal, he fails to attend such hearing and the Judge Advocate considers that there is no reasonable explanation for the failure to appear.

Application for Leave to Refer a Case to the SAC by a Reviewing Officer (RO)

(7) A RO may apply to the SAC to refer a finding or a punishment of a summary hearing or activation

hearing to the SAC for it to be considered as an appeal even when the person to whom the review relates has not brought an appeal. This must occur within the 14-day initial appeal period (or any extension to that period that has been authorised). The procedure for such an application are outlined in the Manual of Service Law Volume 1, Chapter 15, Part 2; see also Regulation 1077.

1080. Procedure on the Bringing of an Appeal.

Sponsor: ACOS Pers Pol (RAF)

Notice of Intentions of Respondent

(1) The respondent to the appeal (the Director of Service Prosecutions) will decide whether or not to contest an appeal. He will inform the Court Administration Officer (CAO) of his decision within 28 days. Where the respondent decides to contest an appeal against finding, he is to give notice to the CAO and serve on the CAO and the appellant's CO the 'respondent's papers'; see the Manual of Service Law (MSL) Volume 1, Chapter 15, Part 2 for detailed procedural guidance.

(2) The respondent may at any time prior to the hearing of the appeal give notice that he no longer intends to contest it. In this circumstance, the respondent will inform the CAO and the appellant's CO to ensure that the appellant is notified and that the record of the appellant's conviction is removed from his record as appropriate.

Uncontested Appeals

(3) Where the respondent gives notice that he does not intend to contest an appeal, the SAC will quash the decision against which the appeal is brought. Where the appeal is uncontested the powers of the SAC are exercised by a judge advocate sitting alone. The CAO is responsible for informing the appellant, the appellant's CO and the DSP of the outcome.

Contested Appeals

(4) A contested appeal against finding or punishment, where the DSP opposes the appeal, takes the form of a rehearing of the charge. The SAC has the power to confirm a finding, quash it or substitute it with a finding that another charge has been proved. Where the SAC quashes a finding, it must also quash any accompanying punishment. After rehearing the evidence in respect of punishment, the SAC may confirm the punishment or quash it and substitute another punishment. The SAC cannot substitute a punishment, however, unless the substituted punishment was capable of being awarded by the hearing officer, who awarded the original punishment at the summary hearing. Further, the substituted punishment must be one that the SAC considers no more severe than the original punishment.

Preliminary Hearings

(5) A judge advocate may direct the CAO to convene a preliminary hearing prior to the commencement of the hearing of an appeal for his own reasons or on the application of the respondent or appellant. Such applications are to be made to the CAO who will be responsible for arranging the hearing and ensuring all parties are informed of the appointed place, date and time of the hearing. The matters capable of being dealt with at a preliminary hearing are wide ranging. They include issues such as: a challenge to the judge advocate; any question as to the admissibility of evidence; and other more technical legal issues. The Armed Forces (Summary Appeal Court) Rules 2009 (SACR 09) is to be consulted. The judge advocate may direct that the following persons may participate in a preliminary hearing through a live link: the appellant and his legal representative, any witness required for the preliminary hearing; an interpreter; and the CAO. Unless the judge advocate directs otherwise, the respondent may give evidence through a live link subject to giving notice to the CAO not less than 48 hours in advance of the hearing.

Representation of the Appellant at the Summary Appeal Court

(6) An appellant has the right to be legally represented at a hearing before the SAC (including a preliminary hearing and an appeal brought following a referral by a Reviewing Officer). The appellant's CO is to ensure that the appellant is afforded reasonable opportunity to prepare his case with the assistance of his legal representative.

(7) The legal representative is required to provide his name and address to the CAO along with the Service number, rank, name and unit address of the person for whom he is acting. The appellant is to notify the details of his legal representative to his CO and the proceedings before the SAC in connection with

which has been instructed. (The MSL Volume 1, Chapter 15, Part 2 provides further detail).

Legal Aid

(8) Legal aid may be available for the hearing of an appeal before the SAC. The appellant may apply for legal aid at the same time as he brings the appeal and he should be encouraged to do so in order to avoid any potential delay. The Appellant's Assisting Officer (AppAO) should play an active role here in advising and helping with any application (see Clause 9).

The Appellant's Assisting Officer

(9) The appellant may nominate an AppAO to assist him with the preparations for the appeal hearing. Assistance with an application for legal aid and advising the appellant in the event that he may be considering abandoning his appeal are just two areas where the AppAO may play an important role. A further responsibility of the AppAO is liaison with the appellant's legal representative to ensure that he understands the Service environment.

(10) The appellant may nominate any Serviceman of the minimum rank of sergeant to be his AppAO but the nominee must agree to be nominated. If the appellant cannot find a suitable person he may ask the assistance of his CO in finding a nominee. In these circumstances, the CO is to provide a list of at least two suitable Servicemen who are available to act. The appellant is free to choose a person from the list or try and find another to assist him.

1081. Procedure of the Summary Appeal Court.

Sponsor: ACOS Pers Pol (RAF)

(1) The Manual of Service Law Volume 2, Chapter 27, Part 4 outlines the procedure for the hearing of an appeal in the SAC. This regulation provides an overview of key points.

Sittings of the Court

(2) Generally the SAC must sit in open court unless the judge advocate directs the court to sit behind closed doors (in camera) where it is necessary or in the interests of justice to do so. The court will sit only on 'business days' (any day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a bank holiday in England or Wales) unless the judge advocate deems otherwise. The Court shall sit at such time and for such periods each day as the judge advocate may direct.

Challenges by the Appellant

(3) The appellant may at any time before the opening of the respondent's case object, on reasonable grounds, to any lay member (including the waiting member) or any interpreter. The judge advocate will decide on the objection making his decision in open court. When an objection is allowed the lay member or interpreter is replaced.

Oaths and Affirmations

(4) An oath or affirmation shall be administered by the judge advocate, or any other member of the court, to any person attending the hearing of the SAC as a member of the court, a witness or an interpreter. The manner of administering oaths and affirmations is to be in accordance with Schedule 1 to the Armed Forces (Summary Appeal Court) Rules 2009 (SACR 09).

Evidence at Appeal through Live Link

(5) Any party to the appeal (appellant or respondent) may apply for leave for evidence to be given through a live link by a witness who is not in the place where the court is sitting. Applications for this purpose are to be made to the CAO not less than 28 days before the hearing or alternatively in person before the Court. The CAO will be responsible for notifying all parties of the decision of the judge advocate on the application.

Witnesses and Summonses

(6) The CAO is responsible for notifying any person who is required to give evidence in any proceedings before the court. The appellant may request that the CAO notifies a witness on his behalf by providing him with sufficient time and information for him to do so.

(7) The judge advocate may issue a witness summons where he is satisfied that a person is likely to be able to give evidence (including the production of any document or thing) that is material to the case and it is in the interests of justice to secure his attendance.

Deliberation on Finding

(8) After the close of the case for the appellant, the court is closed to deliberate on its decision in relation to the finding(s). During its deliberation the court will not usually separate unless the judge advocate decides it is in the interests of justice to do so. The vote of each member of the court is given orally in reverse order of seniority; the judge advocate votes last. The decision is made on the majority of the votes.

(9) The judge advocate will announce in open court the decision of the court on each finding and the reasons for it. The decision and the reasons for it are recorded in writing, dated and signed by the members of the court.

Powers of the Court

(10) The court has the power to acquit the appellant of the charge that appears on the charge sheet; however, it also has the power to substitute another charge and convict on that offence. If the court exercises the power to substitute a finding, it will specify the charge that has been proved.

Deliberation on Punishment

(11) If the appeal is against finding and punishment, the court will consider the finding first and then go on to consider the punishment. If the finding is not guilty the punishment is quashed. The vote of each member of the court is given orally in reverse order of seniority; the judge advocate votes last. The decision is determined on the majority of the votes. The decision of the court is announced in open court along with the reasons for it.

1082. Constitution of the Summary Appeal Court.

Sponsor: ACOS Pers Pol (RAF)

(1) The constitution of the Summary Appeal Court for the purpose of hearing an appeal under Section 141, AFA 06 is a judge advocate and 2 appropriately qualified (see Clause 3) officers or one officer and one substantive warrant officer as members of the court. Officers must have held a commission for at least 3 years and be of the minimum rank of flying officer or have been a substantive warrant officer immediately before obtaining a commission. Only one warrant officer may sit as a member of a particular SAC hearing, and then only if he is of equivalent rank to the appellant. (See the Manual of Service Law Volume 2, Chapter 27 for further detail).

(2) The judge advocate is appointed by or on behalf of the Judge Advocate General; the members of the court are appointed by or on behalf of the Court Administration Officer (CAO).

Officers and Warrant Officers not Qualified for Membership of the Court

(3) In accordance with Section 143, Armed Forces Act 2006 an officer or warrant officer is not qualified for membership of the SAC if:

- (a) He is a member of the Military Court Service.
- (b) He is a member of or on the staff of the Service Prosecuting Authority.
- (c) He is or has served as a Provost officer or Service policeman within the preceding 5 years.
- (d) He is a member of the Royal Army Chaplains' Department or the RAF Chaplains' Branch.
- (e) He has a general legal qualification within the meaning of section 71 of the Courts and Legal Services Act 1990; he is an advocate or solicitor in Scotland; he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or he has relevant territory rights and duties similar to a barrister or solicitor in England or Wales. (See Section 143(4) for further details).

Officers and Warrant Officers Ineligible to hear Particular Appeals

(4) An officer or warrant officer is ineligible for membership of the SAC for the hearing of a particular appeal if:

- (a) He was the CO of the appellant at any time from the commission of the offence until the start of the appeal hearing.
- (b) He took part in investigating the offence leading to the present appeal or he conducted an inquiry into the subject matter of any finding against the appellant.
- (c) He is a Higher Authority who has been involved with the summary hearing leading to the appeal.
- (d) He serves in the same group or equivalent formation as the appellant or is assigned to the appellant's group (or equivalent formation) before the date of the hearing.
- (e) He serves under the officer who conducted the summary hearing.
- (f) He is a member of the Air Personnel Casework Staff.
- (g) He is or will be, on the date of the hearing, formally seconded on full-time duties outwith the MOD or assigned to a MOD agency.
- (h) He is or will be, on the date of the hearing, serving overseas (to the venue of the hearing).
- (i) He knows well or is related to the appellant.

Additional ACOS Manning Sanctioned Exclusions from Court Membership

(5) In addition to the exclusions listed at sub-paras (3) and (4) above an officer or warrant officer may be excluded from court membership on the authority of HQ Air Command (Air Personnel Casework) if one of the circumstances listed in AP 3392 Vol 4 Leaflet 801 cause him to be unsuitable for the duty.

1083. Powers of Summary Appeal Court.

Sponsor: ACOS Pers Pol (RAF)

- (1) When considering an appeal against finding, the Summary Appeal Court (the Court):
 - (a) May confirm or quash the finding.
 - (b) In a case where the hearing officer could validly have recorded a finding that another charge has been proved, may substitute for the finding a finding that the other charge has been proved; see also Regulation 1080(4).
- (2) Where the Court quashes a finding:
 - (a) It may quash any punishment that relates to that finding (or to that and one or more other findings that are also quashed).
 - (b) It may vary any punishment that relates both to that and one or more other findings so as to award any punishment that:
 - (i) Would have been within the powers of the officer hearing the charge.
 - (ii) In the opinion of the Court, is no more severe than the punishment originally awarded.
- (3) Where, on appeal against finding, the Court confirms the finding or substitutes for it a finding that another charge has been proved, the Court may vary the punishment awarded by the officer who heard the charge so as to award a punishment that:
 - (a) It would have been within the powers of the officer who heard the charge to award.
 - (b) In the opinion of the Court, is no more severe than that originally awarded.
- (4) On an appeal against punishment the Court may:

- (a) Confirm the punishment originally awarded.
- (b) Substitute any other punishment that:
 - (i) It would have been within the powers of the officer hearing the charge to award.
 - (ii) In the opinion of the Court, is no more severe than that originally awarded.

1084. Effect of Appeal on Summary Punishments.

Sponsor: ACOS Pers Pol (RAF)

(1) The Manual of Service Law (MSL) Volume 1, Chapter 15, Part 2 provides comprehensive guidance on: the effect of appeal on summary punishments; the offender's choice as to when to start a sentence of detention; and the activation of suspended sentences. A summary of the key points relating to these issues follows.

Detention

(2) Most punishments awarded at summary hearing take effect immediately, the exceptions to this rule are Stoppage of Leave and Restrictions of Privileges, which can be deferred by the hearing officer (see MSL, Volume 1 Chapter 13 for further detail). However, the offender decides whether to start a sentence of detention immediately. If he does not opt to do so, his sentence of detention will start:

- (a) After the initial appeal period of 14 days.
- (b) If the offender appeals within the initial period or any other extended period, on the day the appeal is either abandoned or determined (ie not in favour of the offender).
- (c) If the offender is granted leave to appeal out of time having already commenced his sentence of detention, he will be released from detention until such time as the appeal is either abandoned or determined (ie not in favour of the offender).

Activation of Suspended Detention and Appeals

(3) Following a subsequent Conviction for a Service Offence. A sentence of detention that is suspended by the CO will not take effect unless and until an order made to activate the suspended sentence is made. Where the CO makes an order to activate a suspended sentence of detention, after finding a subsequent or 'trigger' charge (committed during the operational period of the suspended sentence) proved at a summary hearing, the sentence will not commence immediately unless the offender, chooses this option. However, the offender has several options when the CO makes an order to activate a suspended sentence; he may:

- (a) Bring an appeal against the finding and punishment of the 'trigger' offence; this will be automatically treated by the SAC as appeal against the order.
- (b) Bring an appeal against the order; this will be automatically treated by the SAC as appeal against the 'trigger' offence.

If the CO decided not to make an order (and therefore did not activate the suspended sentence) the offender may still bring an appeal against the finding and or punishment of the 'trigger' offence. It should be noted here that should the SAC confirm the original finding, it will have the power to activate the suspended sentence (subject to the punishment as a whole being no more severe than that originally awarded).

(4) Following a subsequent Civil Conviction. Should an offender be convicted of a civil offence during the operational period of a suspended sentence of detention, the CO will be required to conduct an activation hearing (see MSL Volume 1, Chapter 9). Where the CO makes an activation order at an activation hearing, the offender will be able to bring an appeal. In such cases the activation order will be treated as a punishment awarded for the offence for which the suspended sentence was originally awarded.

Action where Sentence of Detention is Confirmed or Awarded

(5) Where the SAC confirms or varies an original award of detention (including the activation of a suspended sentence of detention) the sentence will take effect immediately. Units are to be prepared for this contingency and ensure the appellant is also briefed to this effect.

Service Compensation Orders (SCO) and Appeals

(6) Where an appeal, brought within the 14-day initial appeal period, relates to a punishment that includes an SCO, the CO is to await the outcome of the appeal before putting the punishment into effect. Thus, where the SAC confirms or varies the award, the punishment can then be effected. The CO does not have to take into account the possibility of an appeal out of time before effecting the punishment. However, when an appeal out of time is made (and the sentence has already been effected) and the SCO is varied, quashed or substituted, action must be taken to recover the SCO as appropriate.

Post Appeal Action Unit Staff

(7) The outcome of an appeal will be notified to unit staffs by means of a Result Notification. Where the SAC has decided to, in effect, alter the outcome of a summary hearing by upholding an appeal in whole or in part, action must be taken expeditiously by unit staff to reflect such changes on the appellant's records and pay account. A copy of the Result Notification should be retained with the unit copy of the Record of Summary Hearing to which the appeal relates.

1084A. Appeals from Decisions of the Summary Appeal Court.

Sponsor: ACOS Pers Pol (RAF)

(1) The appellant may question the judgement of the Summary Appeal Court by means of an application to the Court under section 149(2), Armed Forces Act 2006 to have a case stated for the opinion of the High Court. The application is to be made in writing and served on the appellant's CO within 21 days of the decision in respect of which the application was made; see the MSL Volume 2, Chapter 27 for further guidance.

SECTION 6 - PROCEDURE IN CASES OF ABSENCE, DESERTION AND OFFENCES AGAINST ENLISTMENT

1085. Absentees and Missing Persons.

Sponsor: Policy Staffs, HQ RAFF

(1) At the earliest opportunity after it is determined that an officer, NCO or an airman is absent, the CO is to examine whether the absentee is in fact a missing person. Age, ability and happiness at work, family problems and financial problems are examples of factors that could be considered in determining on a balance whether a Serviceman is a missing person or has absented himself. Where it is believed that the individual is a missing person, RAF SIB via the local RAF Police Flt and Air Personnel Casework should be informed.

(2) The procedures to be followed for absentees are laid out within the Manual of Service Law, Volume 1, Chapter 10 and AP 3392 Vol 4, Leaflet 1907.

1086 - 1096. (Omitted)

1097. Dispensation from Trial for Desertion. Sponsor: ACOS Pers Pol (RAF)

Whilst desertion remains a serious offence, there are circumstances in which it would be of no benefit to try someone for this offence. See Chapter 10, Volume 1, MSL.

1098. False Attestation and Improper Enlistment. Sponsor: ACOS Pers Pol (RAF)

(1) When a serviceman is found to be improperly enlisted in the RAF before being discharged from an engagement with another of HM Armed Forces, a number of offences may have taken place. For example, the offence of making of a false answer on enlistment in the RAF, contrary to Section 328, Armed Forces Act 2006 (AFA 06) and Regulation 12 of The Armed Forces (Enlistment) Regulations 2009. However, the serviceman may also have committed the more serious offence of desertion from the other Service, who may wish to deal with that offence. Consequently, the CO is advised to seek staff legal advice prior to taking any action and to inform ACOS Pers Cswrk at Air Command.

(2) Subject to clause (3) below, where a serviceman has given a false answer on enlistment in

circumstances other than those referred to in clause (1), the CO is to take normal disciplinary action to deal with the offence that may have been committed contrary to Section 328, AFA 06 and Regulation 12 of The Armed Forces (Enlistment) Regulations 2009. He is also to consider whether administrative action in the form of discharge from the Service is justified.

(3) In view of the provisions of the Rehabilitation of Offenders Act 1974, charges contrary to Section 328, AFA 06 and Regulation 12 of The Armed Forces (Enlistment) Regulations 2009, arising from non-disclosure of previous convictions on enlistment in the RAF should not be preferred until staff legal advice has been sought.

1099 - 1101. *(Omitted)*

SECTION 7 - DISPOSAL OF PERSONS SENTENCED TO IMPRISONMENT OR DETENTION

1102. Rules in Regard to Committals.

Sponsor: ACOS Pers Pol (RAF)

- (1) The rules to be observed in regard to the committal of persons sentenced under AFA 06 to imprisonment at civil prisons or service detention at military establishments are contained within Chapters 8 & 10 of JSP 837 - Service Code of Practice for the Management of Personnel in Service Custody and Committal to Service Custody Premises and Civil Prisons.
- (2) Form T-SL-CUS05 (see JSP 830 MSL, Vol 1, Chap 9, Annex K) is to be used for committal. Guidance on committals can be found within Chapters 8 and 10 of JSP 837.
- (3) The forms to be used for the committal, transfer, removal or release of persons under sentence are specified in the First Schedule to the Imprisonment and Detention Rules as Forms 1 to 15. These forms are reproduced in Appendix 18. Forms 1 to 9, 13 and 14 are available as RAF printed forms; they are referred to in this Section by the RAF Form No. given in Appendix 18. They may be prepared in typescript should the need arise.
- (4) Appendix 18 also contains Forms 16 and 17 which may be used for the temporary reception in civil custody, and return to Air Force custody, of persons charged with or to be charged with offences under Part II of AFA (see para 1035(8)). These forms do not form part of the Imprisonment and Detention Rules.

1103. Committal to Imprisonment.

Sponsor: ACOS Pers Pol (RAF)

Sentences of imprisonment imposed by a Service court will be served in a civil prison in the United Kingdom. Committal to civil prison in the UK is to be via the Military Corrective Training Centre (MCTC) Colchester. Unit COs are responsible for arranging committal to the MCTC, and Comdt MCTC is responsible for arranging onward committal into custody of the civil prison authorities. Any subsequent moves are the responsibility of the Prison Service (see JSP 837, Chapter 10).

1104. Committal to Detention.

Sponsor: ACOS Pers Pol (RAF)

- (1) A sentence of Service detention imposed by a Service court or summary hearing is to be served at the Military Corrective Training Centre (MCTC) or exceptionally in Service Custody Facilities (SCF). Units are to take steps to ensure that those sentenced to detention are transferred to the MCTC as soon as disciplinary proceedings are completed (see JSP 837, Chapter 8).
- (2) Form T-SL-CUS 05 (see JSP 830, MSL, Vol 1, Ch 9, Annex K) is to be used for the committal of an airman in the UK to the MCTC after an award by the CO or Court Martial.
- (3) The MCTC will accept Detainees Under Sentence (DUS) who have at least 14 days of their sentence still to serve (14 days is the minimum period for any training benefit at MCTC), and may accept those with shorter sentences in extenuating circumstances or who return to complete a sentence after an unsuccessful appeal to the Summary Appeal Court or after an appeal is abandoned (see JSP 837 Chap 8).
- (4) A person sentenced to Service detention overseas for up to 60 days may exceptionally serve that in an SCF in that location with the consent of AMP or officer authorised by him (see JSP 837, Chapter 8).

1105. (Omitted)**1106. Notification prior to Committal.***Sponsor: ACOS Pers Pol (RAF)*

A person sentenced to imprisonment or detention is not to be sent to any prison or corrective training centre, as the case may be, until it has been ascertained that he can be received. The approval of the Ministry of Home Affairs, Northern Ireland, is necessary before a person can be received in a civil prison in Northern Ireland.

1107. Medical Examinations Prior to Committal Transfer.*Sponsor: ACOS Pers Pol (RAF)*

Before an airman is committed to a prison or corrective training centre, he is to be examined by a MO who is to furnish a certificate on the committal Form T-SL-CUS 05 (see MSL, Vol 1, Chap 9, Annex K) as to his state of health and report any disability likely to interfere with the carrying out of the punishment awarded. Where it is not possible for the MO to certify the airman as fit to undergo rigorous corrective training, the unit MO concerned is to contact the MO at the MCTC and give the following information:

- (1) Length of sentence and whether the airman is to be discharged from the Service at the end of his sentence.
- (2) Relevant medical history and how this limits the airman's ability to undergo training, and whether he will require specialist consultation or hospital treatment during his sentence. For units in the UK the information should be given by telephone; for units overseas the information and the airman's medical documents should be sent to the MO at MCTC by the fastest possible means. An airman is also to be medically examined on being transferred from one military or Air Force establishment to another.

1108-1109. (Omitted)**1110. Variation of Confinement.***Sponsor: ACOS Pers Pol (RAF)*

- (1) A person serving an air force sentence of imprisonment or detention in a prison or corrective training centre in the UK may be transferred to another prison or establishment in the UK as necessary. No such order for transfer is necessary when a person serving an air force sentence of imprisonment in a civil prison in the UK is transferred by the civil authorities to another civil prison in the UK.
- (2) An airman under sentence of detention is not to be committed or transferred to a prison to serve his sentence but he may, in accordance with The Service Custody and Service of Relevant Sentencing Rules 2009 (SCSRSR), be detained temporarily in a prison or in civil custody for a period not exceeding seven days.
- (3) Whenever it is necessary for a person serving an air force sentence of imprisonment or detention in a military or air force establishment to be removed temporarily to a place outside the establishment, the commandant must ensure that an adequate escort is provided and for this purpose he may approach any convenient air force station. The CO of the station is to comply with the request if it is practicable to do so.
- (4) A person serving an air force sentence of imprisonment or detention in the UK may not be removed out of the UK except in accordance with SCSRSR 2009.

1111. Sentences Mitigated.*Sponsor: ACOS Pers Pol (RAF)*

- (1) When a sentence of imprisonment is commuted on review to detention or a part thereof is remitted, or part of a sentence of detention is remitted, the officer signing the committal order is to ensure that such commutation or remission has been entered thereon.
- (2) When a part of a sentence of imprisonment or detention is remitted after it has been put into execution, the authority ordering the remission is to ensure that due notification is sent to the Governor, Commandant or other person responsible for the custody and release of the offender, and in the case of an airman also to his CO and HQ AIR.
- (3) When a sentence of imprisonment is commuted to detention after the airman has been committed to a prison, the authority ordering the commutation is to ensure that the necessary arrangements are made forthwith for his transfer to a corrective training centre.

1112. Control of Airmen Serving Sentences.*Sponsor: ACOS Pers Pol (RAF)*

- (1) After a person serving a court martial sentence of imprisonment has been received into a civil prison at home he will be dealt with under the orders of the Secretary of State for the Home Department.
- (2) If committed to a civil prison abroad, the prisoner will be dealt with under the orders of the civil authorities of the country or territory concerned.

1113. Time of Admission and Release.*Sponsor: ACOS Pers Pol (RAF)*

- (1) Detainees should be admitted to the MCTC between 0800-1700 hours Monday to Friday. If units must arrange admission outside these timings they are to inform Receptions MCTC to ensure a convenient time is arranged. Travel should be organised to ensure that detainees do not arrive at the MCTC on a Saturday, Sunday or public holiday (see JSP 837, Chapter 8, Annex A).
- (2) If the day of release falls on a Sunday or public holiday, the DUS shall be released on the previous week day to ensure that public transport is available. A detainee should be released early enough to allow him to use public transport to report to his destination that day (see JSP 837, Chapter 8, Annex A).

1114. (Omitted)**1115. Remission of Sentence.***Sponsor: ACOS Pers Pol (RAF)*

Regardless of any reasons for sentence given, a detainee who has been sentenced to 25 or more days of service detention shall be entitled to a period of remission. Rules 8 and 70 of SCSRSR 2009 sets out in detail how automatic remission of sentence is calculated. Additionally, to reward hard working detainees who continually strive for excellence during their sentence, earned remission may be awarded by Comdt MCTC (see JSP 837, Chapter 5).

1116. Release of Airmen from Imprisonment or Detention.*Sponsor: ACOS Pers Pol (RAF)*

- (1) An airman confined in a prison or corrective training centre will be released on completion of sentence without the need for any signed order. On such release he cannot be received into air force custody under the sentence he has been serving. No conducting NCO is to travel with him unless he is to be received into air force custody on some charge other than that in respect of which he has completed his sentence.
- (2) The commandant of a Service detention establishment is to ensure that an airman released on completion of sentence is instructed when, where and to whom to report and is provided with the necessary travel facilities.
- (3) When an airman is about to complete a sentence of imprisonment in a civil prison (whether such sentence was awarded by a civil court or by a court-martial) and has not been discharged from the Service, his CO having first ascertained from the governor the expected date of the airman's release, is to furnish to the governor detailed instructions in writing (in triplicate) as to the airman's journey and to whom he is to report on arrival at his destination, and is to request the governor to hand one copy to the airman and to return one copy endorsed with the airman's signature. The CO is also to forward to the governor a railway warrant to cover the journey.
- (4) When an order for release or removal is made before completion of sentence under SCSRSR 2009 the authority making the order is, whenever practicable, to give the governor or commandant 24 hours notice of the time of such release or removal.

1117. Temporary Release from Detention.*Sponsor: ACOS Pers Pol (RAF)*

- (1) An airman undergoing detention may be released temporarily by the commandant under SCSRSR 2009. A written authority in the following form is to be given to the airman before he leaves by the commandant of an air force establishment, a copy being retained in the establishment:

TEMPORARY RELEASE FROM AN AIR FORCE ESTABLISHMENT OF AN AIRMAN UNDER SENTENCE OF DETENTION

In pursuance of the SCSRSR 2009, I hereby grant temporary release to the airman under sentence named below, for the reason given and for the period stated.

No Rank & Name
 RAF Station Undergoing sentence of
 Awarded on Reason for temporary release
 From hrs on until hrs on
 With permission to proceed to

(The conditions under which temporary release is granted are attached.
 No extension will be granted without reference to the undersigned).

Address of Establishment:
 Telephone No:
 Date:

Commandant
 (Air Force Establishment).

CERTIFICATE TO BE SIGNED BY THE AIRMAN

I understand the conditions under which temporary release has been granted to me and I hereby undertake to return to (insert title and address of the air force establishment) on the expiration of the period stated above. I realise that if I fail to do so I am liable to be treated as an absentee without leave or as a deserter.

Signature of airman
 Signature of witness

A copy of SCSRSR 2009 is to be attached, together with a schedule setting out clearly the conditions laid down by the commandant governing the temporary release of the airman. If the airman fails to comply with any of the conditions subject to which he was released, or to return on the due date, he may be punished in accordance with SCSRSR 2009 or dealt with under the AFA 06 as an absentee or a deserter.

(2) The period during which an airman is granted temporary release and any advance pay issued is to be notified by the commandant to the airman's CO who is to make an appropriate entry in the airman's conduct records. The period will also be notified by the commandant to HQ AIR, who is to retain such notification with airman's original documents. During the time that an airman undergoing sentence of detention is granted temporary release on compassionate grounds, restriction of cash issues may be suspended up to a maximum of 28 days notwithstanding that his account bears a debit balance. Ration allowance is to be issued in full for the period of the leave.

(3) Should the airman fail to return on the expiration of the leave granted to him, the commandant will notify the airman's CO and HQ AIR, and action is to be taken by the CO concerned in accordance with para 1086. See para 1275(3), as to the convening of a Service Inquiry.

1118. Administrative Discharge of Personnel Sentenced to Imprisonment. *Sponsor: ACOS Pers Pol (RAF)*

(1) Personnel sentenced by court martial to imprisonment will also be sentenced, or will be deemed to have been sentenced, to dismissal with disgrace or to dismissal.

(2) Discharge will normally be authorised and effected before the expiration of the sentence. However, in the case of an airman sentenced to imprisonment abroad, discharge, if authorised, is not to be effected until the airman arrives in the UK, except when specifically permitted by Discip Pol (RAF) in the case of:

- (a) An airman sentenced to 2 years imprisonment or more by a civil court.
- (b) An airman sentenced to not less than one year and not more than 2 years imprisonment or detention by a court martial, who is directed under the provision of AFA 06 not to serve his

sentence in the UK.

1119. Airmen Sentenced to be Dismissed, with or without Disgrace, by a Court-Martial.

Sponsor: ACOS Pers Pol (RAF)

When the Sentence does not also include Imprisonment or Detention.

- (1) When an airman is sentenced to be dismissed by a court-martial in the UK or overseas, without also being sentenced to imprisonment or detention, the CO of the stn at which the trial was held is to advise Air Personnel Casework immediately. RAF PMA will issue discharge instructions
- (2) Discharge action, including administrative action in accordance with para 624, is to be initiated immediately after promulgation, and every effort is to be made to complete the discharge within the normal working day. An airman who has been discharged abroad in accordance with (1) above, and who is awaiting repatriation, is to be messed and accommodated at public expense under the most economical arrangements possible. Similar arrangements are to be made, if necessary, if his journey to the UK is broken at a staging post or port of transshipment. If he is destitute he may, as a concession and not as a right, be granted an allowance for a period not exceeding two months at the discretion of the CinC/AOC.
- (3) The discharged man may be granted a passage at public expense at the discretion of the CinC in accordance with para 2494(7); if he is accompanied by his family they may be similarly granted a passage in accordance with para 2566(2)(b)(iii).

When the Sentence includes Detention.

- (4) When the sentence of dismissal is coupled with a term of detention the procedure set out in (1) to (3) above is to be followed, except that the last day of service is to coincide with the date of release from detention assuming that maximum remission is earned. Administrative action should also be taken in accordance with the relevant provisions of para 624.

When the Sentence includes a Term of Imprisonment.

- (5) When the sentence of dismissal is coupled with a term of imprisonment the procedure set out in (1) to (3) above is to be followed, except that the last day of service is to be either the fourteenth day after promulgation or the date of the prisoner's arrival in the UK whichever is the later. Administrative action should also be taken in accordance with the relevant provisions of paras 624, 1106 and 1107.
- (6) An airman who is conveyed from abroad to the UK to undergo a sentence of imprisonment is to be conveyed as a Service prisoner.

1120 - 1123. (Omitted)

1124. Disposal of Effects of Airmen sent to Prison or a Corrective Training Centre.

Sponsor: ACOS Pers Pol (RAF)

- (1) An airman committed to prison or a corrective training centre is to take with him his kit as laid down in JSP 837.
- (2) If the airman is liable to forfeit any decoration or medal which he may possess, the CO is to take action as laid down in Appendix 28C, Section 3.
- (3) Any trinkets or other superfluous articles in possession of an airman who will return to regular air force service after the completion of his sentence are to be taken from him before he is sent to a corrective training centre, and restored to him on his return to duty. Any money taken from an airman is to be handed to the stn accountant officer, who is to give the airman a receipt for it. The stn accountant officer is to pay the amount into his public cash account and credit it to the airman's account in the pay ledger. The amount taken from an airman and credited to his account under this para, is payable in full on his release or discharge, without regard to the state of his account.
- (4) Before an airman is committed to a civil prison or military or air force establishment, all private and personal property, including civilian clothing in his possession, is to be handed into store for safe custody at the unit from which the airman is to be sent to prison or detention. Such property is to be listed

on Form 20, prepared in duplicate. Both copies of the Form 20 are to be given a serial number from the Private Property Register and are to be signed by the supply officer who is to retain one copy and pass the other copy to the airman concerned. When it is known where the sentence is to be carried out, the property which is to be transferred to the prison or establishment concerned (see [para 624\(4\)](#)), is to be listed on Form 604 prepared in triplicate, of which two copies are to be sent to the prison. One copy of the Form 604 should be receipted by a responsible officer of the prison or establishment and returned to the unit of origin where it is to be linked by the supply officer with the triplicate copy of the Form 604, and the relevant Form 20, and retained.

1125-1132A. *(Omitted)*

SECTION 8 – APPLICATION OF THE ARMED FORCES ACT 2006 TO CIVILIANS

1133. Civilians Subject to Service Discipline.

Sponsor: ACOS Pers Pol (RAF)

- (1) Civilians who are defined as those subject to Service discipline are those who are listed within Schedule 15 to the Armed Forces Act 2006 (AFA 06). This regulation summarises the main categories and provides references to other source material. This is a complex area of law and legal advice should be sought if in any doubt as to a civilian's status in relation to Service discipline.
- (2) Where a civilian is subject to Service discipline, a CO must be allocated to him; refer to the Manual of Service Law (MSL), Chapter 2 for further guidance. However, such civilians are only subject to Service discipline for a limited range of offences, ie section 42, AFA 06 (Criminal Conduct Offences – see Chapter 8 of the MSL) and those non-criminal (disciplinary) conduct offences outlined in Chapter 7. An example of the non-criminal offences would be 'Contravention of Standing Orders.'
- (3) A CO cannot personally decide to charge a civilian nor can civilians have a charge against them heard summarily by the CO. However, a CO can refer a case to the Director of Service Prosecutions (DSP) – see Chapter 6 of the MSL. If the DSP decides to charge, the case will be heard by either the Standing Civilian Court or the Court Martial.
- (4) Persons who can be civilians subject to Service discipline fall into the following broad categories:
 - (a) Civilians in Her Majesty's ships afloat and aircraft in flight.
 - (b) Persons in Service custody.
 - (c) Crown servants in designated areas (see clause (5)).
 - (d) Members of specified military Organisations (eg NATO).
 - (e) Members of other specified organisations in a designated area. For example NAAFI, Service Children's Education, SSVC, and SSAFA.
 - (f) Persons residing or staying with certain people in a designated area.
 - (g) Persons designated by or on behalf of the Defence Council, for example Contractors on deployed operations (CONDO).
- (5) A designated area means an area that is outside the British Islands that has been designated as such by an order made by the Secretary of State within which civilians may be subject to Service discipline. The intention is to avoid unnecessarily designating civilians as subject to Service discipline. Generally a designation is made: in the interest of the person; to protect other people (eg civilians or members of the UK armed forces; and to maintain good order and discipline. Refer to the MSL Chapter 3 for the designation process itself, which covers CONDO, contractors to non-operational areas; and various categories of visitor to operational and non-operational areas including: Crown servants; members of specified organisations such as NAAFI and SSVC; journalists; and politicians. It is most important that all civilians are informed of the designation and the effective period for which it will operate, preferably in advance of their deployment or visit. When such people arrive in theatre they are to be informed of their appointed CO.

1134 - 1138. *(Omitted)*