

Defence Instructions and Notices (Not to be communicated to anyone outside HM Service without authority)	
Title:	The statutory powers of arrest, and investigation of Service Offences by persons other than the Service police.
Audience:	Commanding Officers, personnel exercising statutory powers of arrest, and personnel conducting investigations on behalf of Commanding Officers.
Applies:	02 June 2014
Expires:	When rescinded or replaced
Replaces:	None
Reference:	2014DIN01-115
Status:	Current
Released:	29 May 2014
Channel:	01 - Personnel (Defence Council Instruction)
Content:	The exercise of statutory powers of arrest and the conduct of Commanding Officers investigations of Service Offences by persons other than the Service police.
Sponsor:	Defence Personnel Secretariat – Discipline Conduct and Legislation
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Keywords:	Arrest and custody; Formal investigations; Service offences; Commanding Officer; Armed Forces Act 2006; Manual of Service Law.
Local Keywords:	EU Directive 2012/13 on the right to information in criminal proceedings
Supplements: (Please click on the links to access >>>>)	Annex A: Notice of Rights to Suspects
Related Info:	N/A
Classification:	OFFICIAL

General

1. This DCI is concerned with the statutory powers of persons subject to Service law other than the Service Police to arrest persons suspected of involvement in a Service Offence and the conduct of Commanding Officers investigations under the Armed Forces Act 2006. This DCI does not apply to the Service Police. This DCI should be read in conjunction with Vol 1, Chp 4 & 6 of JSP 830 (Manual of Service Law).
2. The right to liberty is a key principle of the Human Rights Act 1998. The exercise of the power of arrest represents an obvious and significant interference with that right.
3. Therefore the use of that power must be fully justified and persons subject to Service law exercising the power should consider if the necessary objectives can be met by other, less intrusive means. Arrest must never be used simply because it can be used. Absence of justification for exercising the powers of arrest may lead to legal challenge. When a power of arrest is exercised it is essential that it is exercised in a non-discriminatory and proportionate manner.

4. Section 67 of the Armed Forces Act 2006 provides persons subject to Service law other than the Service Police with their statutory powers of arrest. Additional powers under Sections 110 and 111 allow a Commanding Officer and Judge Advocate respectively, to order or direct the arrest of a person in specified circumstances. If the provisions of the Acts and this DCI are not observed, both the arrest and the conduct of any subsequent investigation may be unlawful.

5. This DCI may be communicated to persons outside HM Service. It must be readily available at all Service custody facilities and is to be repeated in the Manual of Service Law for consultation by persons subject to Service law using these powers, suspected/ arrested persons, persons in Service custody and members of the public.

Notice of Rights

6. An arrested person is to be provided promptly with the *Notice of Rights to Suspects* at Annex A to this DCI. The *Notice of Rights to Suspects* provides information about the rights set out in EU Directive 2012/13 on the Right to Information in Criminal Proceedings.

7. The person in custody must be given the opportunity to read the *Notice of Rights to Suspects*. They are also to be provided promptly with:

a. The relevant custody form T-SL-CUS01, *Custody Information for a Person Held in Custody without Charge*, which contains information about the reasons for their arrest and detention, including the criminal act they are suspected or accused of having committed (see Notes A and B).

b. The booklet "*Your rights if you are accused of an offence under the Service Justice System*"¹.

8. The person in custody must be given the opportunity to read these documents and shall be asked to sign the relevant custody form (T-SL-CUS01) to acknowledge receipt of the booklet "*Your rights if you are accused of an offence under the Service Justice System*".

9. The Commanding Officer (or an officer delegated to fulfil his functions) of the arrested person must be informed as soon as practicable of the arrest and must without delay ensure that the requirements set out in paragraphs 6 to 8 above have been or are being complied with.

Commanding Officers' Investigations

10. **Rights of the Suspect** When a Commanding Officer's investigation is undertaken in relation to a suspect who is not arrested, the Commanding Officer of the suspect (or an officer delegated to fulfil his functions) is to ensure that the person directed to investigate the Service offence provides the suspect promptly with the *Notice of Rights to Suspect* at Annex A to this DCI, together with the booklet "*Your Rights if you are Accused of an offence under the Service Justice System*", in order to allow for those rights to be exercised effectively. The provision of these documents is to be noted in writing by the Investigating Personnel.

¹ Annex G to Vol 1, Ch 6, JSP 830 (Manual of Service Law)

11. In addition to providing a suspect not under arrest with the documents set out in paragraph 10, the Investigating Personnel must inform the suspect of the Service offence they are suspected or accused of having committed - they must be informed of the suspected offence's nature, and when and where it was committed. This must be done promptly and without prejudicing any ongoing investigation. If the Commanding Officer is concerned that informing the suspect may prejudice an ongoing investigation, then the investigation must be referred to the Service Police.

12. **Provision of Documents and Materials** Where a suspect is in Service custody, any available documents and materials which are essential to challenge effectively the lawfulness of the detainee's arrest and detention must be made available to the detainee or their legal adviser. Documents and materials will be "essential" for this purpose if they are capable of undermining the reasons and grounds which make the detainee's arrest and detention necessary. The decision about what needs to be disclosed for the purpose of this requirement rests with the Commanding Officer of the suspect (or an officer delegated to fulfil his functions) who should take legal advice, if required. A note should be made in writing of the fact that action has been taken under this paragraph and when.

13. A written record must be made of all information provided in accordance with paragraphs 6 to 12, any decision to exercise any rights and any action taken following that decision.

Further Actions on Arrest or Investigation of a Suspect

14. The Commanding Officer of the suspect or an officer delegated to fulfil his functions shall, without delay determine:

a. Whether a person in Service custody is, or might be, in need of medical treatment or attention.

b. Whether a person either in or not in Service custody requires or might require an appropriate adult², an interpreter or requires help to check documentation; if so the case must, without delay, be referred to the Service Police.

c. Whether the investigation requires the suspect to be interviewed; if so the case must, without delay, be referred to the Service Police.

15. A written record must be kept of the decision in respect of paragraph 14 above and any action taken following that decision.

Representations concerning the provisions of this DCI

16. The provisions of this DCI identify the information which must be given to suspects who have been cautioned in accordance with this DCI according to whether or not they have been arrested and detained. It includes information required by [EU Directive 2012/13](#) on the right to information in criminal proceedings. If a representation

² An appropriate adult is required where it appears that the suspect is under 18 years of age, or is a person who is mentally disordered or mentally vulnerable.

is made by or on behalf of such a suspect that the information and (as the case may be) access to records and documents has not been provided as required, the matter shall be reported to the suspect's Commanding Officer to consider.

Notes for Guidance

A. An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence's nature, when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided.

B. There must be some reasonable, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it.