

Chapter 22

Powers of officers to take affidavits and declarations

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Chapter 22

Powers of officers to take affidavits and declarations

Introduction

1. The Armed Forces Act 2006¹ (the Act) authorises certain officers outside the British Islands to take affidavits or declarations from persons subject to Service law or civilians subject to Service discipline where an otherwise qualified person, for example, a solicitor may not be available. This enables people who are serving overseas to attend to such legal business as requires affidavits or declarations. The procedures to be followed by officers who are approached to take affidavits and declarations are set out below.

The administering officer

2. The administering officer is an officer authorised to take an affidavit or declaration if he is subject to Service law and is of, or above, the rank of naval lieutenant commander, military or marine major, or air force squadron leader. Additionally, legally qualified officers subject to Service law of the rank of naval lieutenant, military or marine captain or air force flight lieutenant may also take affidavits and declarations. Legally qualified officers are solicitors, barristers or advocates in the jurisdictions of England and Wales, Scotland or Northern Ireland, or similarly qualified lawyers in the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory, and are subject to punishment or disability for breach of professional rules². The administering officer attests to the validity of the affidavit or declaration.

Procedures where the affidavit or declaration is for use in England, Wales and Northern Ireland

3. The following procedure describes that for taking an affidavit for use in England, Wales and Northern Ireland. However, in some cases a deponent³ might object to being sworn or a statutory declaration may be required. In these circumstances the procedure set out below is subject to the relevant modifications set out at paragraph 8 below.

- a. Where practicable, the affidavit should be in the deponent's (i.e. the person who is to be sworn) own words.
- b. An affidavit must commence with the words "I [full name] of [full address] state on oath ...". It is essential to the validity of an affidavit that it commences with the statement that the deponent "states on oath".
- c. The affidavit should set out the deponent's occupation or if he has no occupation, his description.
- d. The affidavit should bear the deponent's signature at the end of the affidavit, opposite the jurat⁴ (see paragraph 6 below).

¹ Section 352 of the Act.

² Section 352(4)(b)(iv) and (5) of the Act.

³ The deponent is someone who signs an affidavit or testifies under oath.

⁴ The jurat of an affidavit is a statement set out at the end of the document which is signed by the person making the affidavit (the deponent).

e. Where the deponent is giving evidence in his professional capacity, the affidavit should also contain the address at which the deponent works, the employer's name and the position he holds.

f. If the deponent is giving evidence to proceedings in which he is a party, this should be stated within the affidavit.

4. It is not necessary for the officer administering the oath to review the contents of the affidavit in great detail or to seek to establish its veracity. However, the administering officer should review the wording of the affidavit and satisfy himself that any and all alterations have been initialled by himself and the deponent. Where erasures have been made and words or figures written on or over the erasures, the administering officer should write the words or figures again in the margin above his initials. In no circumstances should any alteration be made after the deponent has been sworn.

5. The person making the affidavit should sign his name in the presence of the administering officer, if he has not done so already. If he has already done so, the officer should ask him his name and if the signature is his. The administering officer should then administer the oath in the manner appropriate to the religious beliefs of the deponent. The form of oaths is set out at paragraphs 11 and 12 below. If the administering officer has any doubts about the procedure to be followed or is faced with an unusual situation (for example, a blind or illiterate deponent or someone who does not appear to know what is happening), staff legal advice should be sought.

6. The jurat must immediately follow the preceding text and not be placed on a separate page. The jurat should contain the rank and full name of the administering officer and the date and place where the affidavit was sworn, as in the following example:

Sworn at Wentworth Barracks, Herford, Germany this [-----] day of [-----] 2008	(signature of deponent)
Before me, Lieutenant Commander/Major/Squadron Leader Frederick John Bloggs, an officer authorised to take affidavits by virtue of Section 352(1) of the Armed Forces Act 2006	
	F J BLOGGS (signature and rank)

The administering officer should mark exhibits as follows:

This is the exhibit marked A referred to in the affidavit of (name of deponent) sworn before me this [-----] day of [-----] 2008
F J BLOGGS (signature and rank)

Procedures where the affidavit or declaration is for use in Scotland

7. Where an affidavit is for use in Scottish proceedings, it will take the form set out below. If the person objects to being sworn, the following is subject to the modifications set out at paragraph 8.

["Berlin], the [----] day of [-----] 2008; in the presence of [here must be set out the full name and qualifications of the officer who is to administer the oath] appeared [here follows the name of the person to be sworn] who being solemnly sworn (and interrogated) depones that [here is set out the evidence contained in the affidavit]. All of which is truth as the deponent shall answer to God".

The person to be sworn and the administering officer then sign their names. The oath is then administered in a manner appropriate to the religious beliefs of the person to be sworn. The form of oaths is set out below at paragraphs 11 and 12. Exhibits will be marked as explained in paragraph 6.

Procedure where the deponent objects to being sworn but wants to affirm

8. Where a deponent states that he objects to being sworn⁵, he may affirm, in which case the procedures set out in paragraphs 3 to 7 still applies but with the following exceptions:

- a. The declaration should commence "I [full name] of [full address] do solemnly and sincerely affirm ..." and accordingly instead of saying the words "I swear by almighty God", the deponent will say "I do solemnly and sincerely affirm".
- b. Where the word 'sworn' is used, it should be replaced by the word 'affirm'. 'Affirmation' should also replace the word 'affidavit'.

Statutory declarations

9. In circumstances where a person is to make a statutory declaration:

- a. The declarant signs the declaration in the presence of the administering officer. The administering officer and the person making the declaration should initial any alterations at this point.
- b. The administering officer then says to the person who wishes to make the declaration (whilst pointing to the declaration and the signature on it) "is that your name and handwriting?" On receiving an affirmative response, the declarant says or repeats after the administering officer the form of solemn affirmation set out in paragraph 13 below.
- c. The administering officer then completes the declaration showing the date and place at which the declaration was taken and his own full name and rank and then signs underneath as follows:

⁵ He may, for example, have no religious belief or state that the taking of an oath is contrary to his religious belief.

Declared at Wentworth Barracks,
Herford, Germany
this [-----] day of [-----] 2008

(signature of declarant)

Before me, Lieutenant Commander/Major/Squadron Leader Frederick John Bloggs, an officer authorised to take declarations by virtue of Section 352(1) of the Armed Forces Act 2006

F J BLOGGS (signature and rank)

The administering officer should mark exhibits as explained in paragraph 6 above, substituting for the word 'affidavit', the word 'declaration', then sign.

Manner of administering oaths and affirmations

10. Oaths and affirmations are administered in the following manner in accordance with the religious beliefs of the person to be sworn:
 - a. The person taking the oath shall hold the New Testament, or if a Jew the Old Testament, in his uplifted hand and shall say, or repeat after the administering officer, the appropriate oath set out in paragraph 11 below.
 - b. If any person to whom an oath is administered desires to swear in the form and manner in which an oath is usually administered in Scotland, he may do so with uplifted hand and saying or repeating after the administering officer, the Scottish oath set out in paragraph 12.
 - c. If none of the forms of oath provided is appropriate to the religious beliefs of the person taking the oath, an oath may be administered in such form and manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.
 - d. A person making a solemn affirmation instead of taking an oath shall say or repeat after the person administering it, the affirmation set out in paragraph 13 below.
11. **Form of oath.** "I swear by Almighty God that this (pointing to the signature) is my name and handwriting and that the contents of this my affidavit are true, and (if there is an exhibit), there is now shown to me marked (A) the (description of exhibit) referred to therein".
12. **Form of Scottish oath.** "I swear by Almighty God as I shall answer to God at the great day of Judgement that this is my name and handwriting and that the contents of this, my affidavit, are true, and (if there is an exhibit), there is now shown to me marked (A) the (description of exhibit) referred to therein".
13. **Form of solemn affirmation.** "I solemnly, sincerely and truly declare and affirm that the contents of this, my declaration, are true, and (if there is an exhibit), there is now shown to me marked (A) the (description of exhibit) referred to therein".

Transitional guidance

14. The relevant sections of the SDAs⁶ dealing with the taking of affidavits and declarations are repealed by the Act but this will not affect the validity of those documents completed pre-commencement (ie before 31 October 2009). Where an action or event occurs immediately before or after implementation, or spans the period immediately before and after implementation transitional provisions may apply and staff legal advice should be sought on the way ahead.

⁶ Section 204(2) of Army Act 1955 or Air Force Act 1955.