

Chapter 1

Introduction

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Chapter 1

Introduction

Background

1. Military tasks and the associated training and administration are increasingly conducted in a joint environment. In recognition of this fact the Armed Forces Act 2006¹ (the Act) completely overhauled the Service Justice System (SJS) for the first time in fifty years, bringing together and harmonising the single-Service Discipline Acts² and modernising elements of the system of Service law.

The Act

- 2.
- a. The system of discipline that will operate under the Act should be fair and consistent in order to support operational effectiveness.
 - b. Commanding officers (COs) of units are at the very heart of the Service Justice System with appropriate disciplinary and administrative powers over all personnel under their command.
 - c. COs should deal with one higher authority³ in the handling of disciplinary cases and therefore each unit should have a higher authority assigned to it.
 - d. All those responsible for administering the SJS should strive at all times to avoid unnecessary delay and, where such delay is unavoidable, take steps to mitigate its effects.
3. The Act is subject to annual renewal which requires the approval of both Houses of Parliament. In addition, the Act is reviewed every five years by an Act of Parliament. This provides the opportunity for Parliament to make any adjustments to the legislation deemed appropriate in order to ensure that the Service Justice System continues to achieve its fundamental aims.

Governance

4. A system of governance for the Service Justice System was established in December 2007. Its purpose is to bring together the various agencies in the Service Justice System to determine policy issues and standards, to set direction and objectives, to provide oversight and to facilitate joint working and cooperation.
5. This work is undertaken by a Service Justice Board and a supporting Service Justice Executive Group. The Board is chaired by the Armed Forces Minister and has Ministers from the Attorney General's Office and the Ministry of Justice as members, along with the Principal Personnel Officers, the Director of Service Prosecutions and the Judge Advocate General. The Board sets the strategic direction, with objectives and targets, for the Service Justice System.

¹ Full implementation of the Act took place on 31 Oct 09.

² The Naval Discipline Act 1957, Army Act 1955 and the Air Force Act 1955.

³ This higher authority performs the statutory role within the meaning of the Act as required and at all other times provides the necessary administrative and specialist support to a CO.

6. The Service Justice Executive Group is responsible to the Board for monitoring performance and improving joint working and cooperation across the Service Justice System. It is also responsible to the Board for standards, both of fairness to the individual and in delivering consistency in the Service Justice System, so as to support the operational effectiveness of the armed forces and maintain public confidence.

Purpose of MSL

7. The MSL is a guide to the Service Justice System to which all Service personnel can refer. While it will be of particular interest to the chain of command, the explanation and interpretation of the new legislation will be essential for all who are involved with Service discipline, in whatever capacity, in providing the knowledge and understanding necessary to carry out their duties effectively. It will also be an essential point of reference for those with a more general interest in the subject. As any adjustments are made to the Service Justice System the MSL will be amended so that at any particular time it represents a reliable and up to date reference. It should be noted that while Volume 1 and 2 contain policy and guidance on the law it is not an authoritative document in the strict legal sense.

Structure of MSL

8. The MSL has been divided into three volumes:

- a. **Volume 1.** This volume covers the Service disciplinary system generally and includes a wide range of matters such as jurisdiction, arrest, custody, investigation, charging and mode of trial, summary hearing, review and appeal. This volume is intended to provide guidance for those involved in decision making and the administration of discipline at unit level. There are other matters provided for in the Act that are closely associated with but not wholly contained within the Service disciplinary system. Areas such as redress of individual grievance, Service inquiries, alcohol and substance misuse and testing, management of personnel within Service custody and the protection of children are therefore provided for in separate Joint Service Publications (JSPs), which provide comprehensive guidance. The main provisions relating to these matters are summarised in the MSL volume 1 with signposts to the relevant JSP.
- b. **Volume 2.** This volume covers matters pertaining to the Service courts including the Court Martial, the Service Civilian Court and the Summary Appeal Court. It is intended to provide guidance for the staff of the Military Court Service who administer proceedings before these Courts and for legal advisers.
- c. **Volume 3.** This volume contains the Act and the underpinning secondary legislation, as well as other allied legislation and source material, which will be useful to legal professionals.

Service law

9. Within the United Kingdom members of Her Majesty's forces are subject to civil law and to Service law and have a duty to uphold both. In respect of criminal law of England and Wales, Service personnel are no different from other citizens. In addition, the civil criminal offences created by the law of England and Wales are incorporated into Service law. Two special requirements of the armed forces have led to the development of the distinct code of Service law:

- a. In order that the Armed Forces can operate effectively a necessary reliance is placed on the maintenance of both personal and imposed discipline. Although the Act includes offences under the criminal law of England and Wales, Service law creates additional offences that are exclusively of a Service nature. Service disciplinary offences, such as failing to attend for duty and ill-treatment of subordinates, are subject to the same

procedures and the same sort of penalties as criminal offences. This reflects the unique circumstances and ethos that exist in the Services.

b. Recognising the needs of our expeditionary forces, the Act ensures parity in dealing with Service persons, under a familiar system of law, wherever they may be serving. The Services' disciplinary system will operate effectively anywhere in the world and applies to conduct both within and outside the United Kingdom.

Armed forces and employment law

10. Members of the armed forces do not have contracts of employment and much of the law which governs civilian employment does not apply to Service personnel. The Act does, however, deal with a number of areas which are broadly similar to those that would be covered in a contract of employment; for example enlistment, discharge, terms and conditions of service, forfeitures and deductions from pay and the making of complaints. All of these matters form part of Service law and are therefore addressed in MSL volume 1.