



Ministry
of Defence



MINISTRY OF DEFENCE STATEMENT OF CIVILIAN PERSONNEL POLICY

CHANGE OF WORK LOCATION: CONDUCT, MISCONDUCT AND REGISTRATIONS OVERSEAS

Version: 1.0: 2014

Effective date: 28 April 2014

EDRM file reference: 20140428-Conduct
Misconduct and Registrations Overseas v1-U

Contact: DBS Contact Centre
- 93345 7772 (Mil)
- 0800 345 7772 (STD)
- +44 1225 747772 (Overseas)

CONDUCT, MISCONDUCT AND REGISTRATIONS OVERSEAS

Conduct and Misconduct

While overseas the normal MOD Conduct and Misconduct regulations apply but in addition you, and where applicable, dependent members of your family may also be subject to Chapter 3 of the Manual of Service Law.

Conduct

All employees based overseas will ultimately be under the authority of the Head of Post at the Mission in which they serve. The department reserves the right to withdraw any employee if it has reasonable grounds for considering that the employee and/or any member of their family assigned with them is putting the security, efficiency or reputation of the Post at risk. Consequently If you live in a Service community you are expected to conform to the standards which prevail therein and in certain circumstances misconduct may result in proceedings under the Armed Forces Act 2006. You, and where applicable, your dependants should remember that whilst you are serving overseas you will appear in the eyes of the host community as representatives of the UK and should behave accordingly. Behaviour in private life which in the UK would not concern MOD could discredit the UK or MOD if practised overseas. Such behaviour would then be of concern to the Department. If you or a dependant are involved in a case of misconduct abroad it may be decided that repatriation of your family to UK is necessary, and financial penalties may be imposed. Before deciding on repatriation, heads of establishments, through the Civil/Command Secretary should consult DBS. Clearly any decision to repatriate will not be taken lightly and would only be seen as a last resort taking into account the seriousness of the misconduct and/or impact on the establishment and/or community.

Before taking any administrative/misconduct action locally, heads of establishments should consult the Civil/Command Secretary. In all departmental misconduct cases you have the right of appeal against the penalty imposed.

IMPORTANT:

If debts are incurred, care should be taken to settle them promptly. Particular care should be taken to settle any outstanding local debt prior to returning to UK, as failure to do so can bring the UK into disrepute.

Local Jurisdiction

You and, where applicable, your dependants will normally be subject to the criminal law of the country or territory in which you are serving. However, in countries where UK has a Status of Forces Treaty or Agreement you and your dependants may be given the protection of being dealt with by UK Service Courts for some offences. This is normally effected by the Treaty or

Agreement containing provisions which allow the UK Service authorities to try a MOD UK based civil servant or dependant for offences solely against the property of another member of the force/civilian component/dependant and for criminal offences arising from any act or omission done in the course of duty. Where local interests are involved, the local legal authorities may in certain circumstances insist on their right to try the case.

So that you and your dependants may be included in these arrangements to the fullest possible extent it may be necessary in some areas for certain breaches of local law, which may not be offences under English law, to be included in Service standing orders. You should ensure that you and your dependants are aware of all standing orders relating to local laws, and the offence is not one over which they claim exclusive jurisdiction, it can be tried by the Service authorities.

Where your overseas service falls within the scope of the Vienna Convention on Diplomatic Relations, you and any accompanying dependants may enjoy certain privileges and immunities. Such posts are normally located with British Embassies and High Commissions.

Application of Armed Forces Act 2006

There are a number of categories of civilians who are subject to Service discipline and are subject to the provisions of the Armed Forces Act (2006) (AFA 06). These categories include MOD civil servants, working in support of the Armed Forces, and their dependants.

A civilian subject to Service discipline is only subject to Service jurisdiction for criminal conduct offences (e.g. theft, assault) and a limited range of disciplinary offences (e.g. looting, contravention of standing orders). Where a civilian is subject to Service Discipline, a Commanding Officer (CO) will be assigned. A CO cannot personally decide to charge a civilian, nor can civilians have a charge against them heard summarily by the CO. Such jurisdiction is exercised primarily by the Service Civilian Court (SCC), but may also be exercised in certain circumstances by the Court Martial. The exercise of jurisdiction by the Service Courts over civilians subject to Service discipline is intended to safeguard those who would otherwise be subject to local jurisdiction without the safeguards that exist in the United Kingdom. If you are arrested or charged under the AFA 2006 you must report it as soon as possible in accordance with **Handling Arrests, Charges, Police Cautions and Criminal Convictions - MOD Main**.

Detailed guidance on the Act and how it applies to civilians is given in JSP 830: The Manual of Service Law. This is available on both the Intranet and Internet.

Where you and your dependents are subject to this, you are required to establish the identity of the commanding officer, for Misconduct matters on arrival in post.

A UK based civil servant serving abroad, whether subject to the AFA 2006 or not, may in certain circumstances be tried in England for an offence committed abroad.

Service Civilian Court (SCC)

The AFA 2006 provides for the establishment of the SCC which can try any case over which a Magistrates' Court would normally have jurisdiction if such a case were tried in England and Wales. The court consists of a Judge Advocate, who is an independent member of the judiciary, sitting alone, in much the same way as a District Judge would sit alone in the Magistrates' Court. The SCC may sit in any place, whether within or outside the UK. Any civilian subject to Service discipline who is to be tried by the SCC, may elect to be tried by the Court Martial instead.

Court Martial

The Court Martial is the equivalent to the Crown Court in England and Wales. It may sit in any place, whether within or outside the UK. It is presided over by a Judge Advocate who usually sits with between three and seven Service lay members (the equivalent of a jury in a Crown Court). When the Court Martial tries a civilian, the lay members may be all Service, all civilian or a mixture of both.

Conflicts of Jurisdiction

If you as a civilian subject to Service discipline are to be charged with an offence in a Commonwealth country (this does not include the Sovereign Base Areas in Cyprus) and it is unclear where jurisdiction lies you will be asked to state in writing under which jurisdiction you would prefer to be charged. The local authorities may then be asked to waive any rights of jurisdiction, but the decision as to which jurisdiction will be exercised may not always accord with your choice.

Special Position of the Sovereign Base Areas

The key jurisdiction in respect of offences committed within the Sovereign Base Areas will be that of the Sovereign Base Area courts. However jurisdiction may be ceded to the Service Courts where the crime has a significant service interest for example the case involves the person or property of another person subject to service law or discipline or Service property or the offence is committed in the course of official duty.

Offences committed within the Republic of Cyprus will normally be determined by the local Republic courts. If a MOD civil servant, dependant or other civilian subject to Service discipline is involved, and the offence is contrary to the local law, it is generally considered inappropriate for the offender to be tried by the Service Courts but if the Cypriot authorities decide not to proceed, the matter can be tried by the SCC or the Court Martial.

Legal Advice

You may obtain legal advice via your Union representative and obtain preliminary legal advice from a Service legal officer at the discretion of the

appropriate headquarters.

Legal Representation

In the SCC and Court Martial, defendants may be represented by a barrister or solicitor or a legal officer belonging to one of the Service legal directorates.. There is provision for defendants aged under 17 to be represented by a parent/guardian with the leave of the court. Before the Court Martial Appeal Court, only the appellant or a barrister or solicitor advocate may appear.

Representation before courts of host countries varies according to the domestic law of that country. Special arrangements may be made for you or your dependants facing criminal charges/civil actions in such courts arising out of acts committed in the course of employment.

Legal Aid

Legal aid is available for cases where it would be available in England if a corresponding case were to be tried in an English Criminal Court. Legal aid is available for trial by the SCC or Court Martial and in certain circumstances, in a overseas civilian court.

Legal aid is available to all defendants, but may be subject to contributions from income and/or equity as determined by a means test assessment. Applicants aged 17 or under at the time of application will automatically receive legal aid without contributions. Defendants are referred to **JSP 838 – The Armed Forces Legal Aid Scheme** for further advice.

Registration of Births, Deaths and Marriages

General

If you need to register a birth, death or marriage while overseas this can be carried out under UK law and processed by local Armed Forces Registering Officers (RO) in Germany (which also registers births, deaths and marriages occurring in other North West European countries), Cyprus and Nepal (which also registers births, deaths and marriages occurring in Brunei), Gibraltar or by the RO post at the Service Personnel and Veterans Agency - SPVA at Innsworth in the UK for all other overseas locations where there is Armed Forces presence which include: Australia; Canada; Falkland Islands; Kenya (for Africa); and the USA. Registrations may also be carried out by a British Consul or High Commissioner (for other overseas locations) where facilities exist.

What you need to do - the registration process – Armed Forces Registration Officers (ROs)

You can notify the RO in Cyprus, Germany and Nepal of any births, deaths and marriage/civil partnership in these areas by completing the relevant Overseas Registration Service (ORS) form (see below) or, where facilities allow, by either by a personal visit to their office.

Notification of births, deaths and marriages in Australia (also covering New

Zealand), Canada, Falkland Islands (also covering Ascension and South Georgia), Kenya (covering Africa – less Egypt) and USA (also covering Belize, Caribbean and South America) must be processed by the SPVA at Innsworth in the UK. ROs still exist in these locations but only process civil partnership registrations. ROs in these locations still keep a stock of ORS 1, 2 and 3 forms. However, once completed ORS forms should be sent direct to the SPVA for processing and registering at the following address:

Registering Officer Post
Service Personnel and Veterans Agency
Room G30/35
Joint Casualty and Compassionate Centre
Innsworth House, Imjin Barracks
Innsworth, Gloucester
GL3 1HW

Notification can be made via a report by a qualified individual (see the instructions on the back of forms ORS 1 for births, ORS2 for marriages and ORS3 in the case of death). Once the appropriate form has been completed it should be sent to:

- the RO/SPVA depending on location if the event took place within the last 12 months

or

- the Register General, Casework Section, Smedley Hydro, Trafalgar Road, Birkdale, Southport, PR8 2HH, if you are registering an event that took place more than 12 months ago. The form should be accompanied by the following supporting evidence:

For births - the child's birth certificate issued by the local authority or hospital. Your marriage certificate (if appropriate) if the child has been baptised a baptism certificate. If your child has not been baptised you should submit a statement to this effect.

For Marriage - a marriage certificate issued by the church authorities or local registrar.

For Death - a death certificate issued by the local registrar, a coroner's certificate or medical certificate of death.

Once registration has taken place you will receive a certificate free of charge.

IMPORTANT: It should be noted that the birth certificate issued upon registration in a Service Department Register does not itself constitute evidence that a child is a British citizen or British Dependent Territories citizen.

What you need to do - registration at a British Consulate or High Commission

If your overseas location is not covered by a RO or you wish to, you may

register the birth of a child with either the British Consulate or High Commission in the country in which it took place. Further information is available from the **Foreign and Commonwealth Office Website (www)**.

It should be noted that registration of births since 1 January 1983 is limited to those who acquire automatic British Citizenship or British Dependent Territories citizenship. The birth of a legitimate child born in either a foreign or Commonwealth country (except Australia, Canada, New Zealand, Zimbabwe and the Republic of Ireland) may be registered by a British Consulate or High Commission in your overseas area if either you or your spouse/partner is:

- a British citizen other than by descent;
- a British Dependent Territories citizen other than by descent;
- a British citizen or a British Dependent Territories citizen serving outside UK or the Dependent Territories in certain types of service, where recruitment has taken place in UK or in the case of a British Dependent Territories citizen, a Dependent Territory.

A consular or High Commission birth certificate issued after 1 January 1983 will be accepted for all normal purposes as evidence of the national status of the person to whom it relates at the time of registration. However, for passport purposes, additional evidence of the child's claim to citizenship may be required.

Electoral Registration

As a Crown Servant overseas you and your spouse or civil partner (if they accompany you) will be able to register as an overseas voter. This means that you can register to vote in an area in the UK where you would have been living were you not posted overseas, or at your last registered address in the UK. If you register as an overseas voter you will be able to vote in all elections. Information for crown servants to register as overseas voters can be found on **The Electoral Commission (www)**.

Options for voting

You can vote in one of 3 ways:

- **By post** – Your ballot paper will be sent to you. You should be aware that ballot papers may not be sent to you until 4 working days before election day so you need to consider whether there is enough time to receive your ballot paper, mark your vote, and return it before voting closes on election day. Ballot papers received after this time will not be counted. It may be better to appoint a proxy to vote on your behalf.
- **By proxy** – This is when you ask someone you know and trust to vote on your behalf. Your proxy can either vote for you at your polling station or by post. Your proxy must be aged 18 or over and must be eligible to vote (for example a British, Irish or qualifying Commonwealth citizen living in the UK). If you have appointed a proxy you can still vote in

person as long as your proxy has not already voted for you or applied to vote for you by post.

- **In person** – If you are in the UK on election day you can vote in person. You can only vote at the polling station where you are registered to vote in the UK. You cannot vote at your local embassy or consulate. You can not vote in person if you, or your proxy, have applied to vote by post. If you have appointed a proxy, you can still vote in person, provided your proxy has not already voted for you.

If you want to vote by post or proxy you need to fill in an application form that is available at **The Electoral Commission (www)**.