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ANNEX A TO
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OP TELIC: POLICY FOR THE REPORTING, RECORDING, REVIEW AND INVESTIGATION OF SHOOTING INCIDENTS THAT HAVE, OR MAY HAVE, RESULTED IN DEATH OR INJURY

INTRODUCTION

1. The need to investigate matters where it is alleged that the law, and therefore our standards of conduct, may have been breached is fundamental but it should not detract from the ability of UK personnel to open fire within the relevant law and applicable ROE. It is the responsibility of commanders at all levels to ensure that the use of force is proportionate, reasonable and necessary and that any shooting incidents¹ are accurately reported, recorded and reviewed.

REPORTING OF SHOOTING INCIDENTS

2. All shooting incidents must be reported to the chain of command at the earliest opportunity using the serious incident report (SINCREP) format and outlining the immediate facts as understood at that time. SINCREPs are to be passed immediately to formation Legal and Service Police staffs by Operations personnel².

RECORDING OF SHOOTING INCIDENTS

3. All shooting incidents must be formally recorded. Initially this will involve the collation of all documentary evidence in relation to the incident, including unit logs, ledgers and reports (see Appendix 1). In the case of IDF and Air delivered weapons post mission reports, fire planning and targeting information is to be recorded in the same way. The aim is to secure authenticated copies of original documents and retain references to the originals (which are to be preserved) for evidential purposes. The record will demonstrate the transparency of the process and may provide a source of further information if required.

REVIEW - CO'S SHOOTING INCIDENT REVIEW (SIR)

4. Once a shooting incident has occurred the CO must ensure that all documentary evidence has been collated and direct that a Shooting Incident Review (SIR) is carried out on his behalf by an officer not below the rank of Captain (OF2). The aim of the SIR is to assist the CO in forming a view as to the further action required. A SIR should commence at the earliest opportunity and be completed within 48 hours or otherwise as soon as is practicable³. Guidance on the content and completion of a SIR is at Appendices 1 & 2.

1 For the purpose of this policy a "Shooting Incident" is defined as "an incident where shots are fired by UK Forces resulting in the death or injury of any person or where death or injury is believed to have occurred". This includes all types of munitions, be they land based or air delivered, and direct or indirect.

2 The transmission of a SINCREP does not absolve the CO of his responsibility to report the incident directly to the Service Police without delay in accordance with single Service instructions if there are grounds to suspect that a criminal act has or might have been committed by Service personnel and /or if the ROE have been breached.

3 COs must be prepared to justify a delay beyond 48 hours in the completion of any SIR.

5. Issues to be addressed in a SIR are at Appendix 2. The following points are to be noted:
- a. The advice of Service Police and Legal staffs is to be sought wherever possible by the conducting officer prior to commencing the SIR. However, commencement of the SIR should not be delayed if the Service Police and Legal staffs are not available.
 - b. Where a Service Police investigation is not immediately initiated, nothing is to be done which may amount to dismissal or stay of a charge or condemnation of conduct or otherwise prejudice a future Service Police investigation or disciplinary action, for example if additional evidence is unexpectedly forthcoming. This caveat is to be explicit in the wording of the published decision.
6. If at any time during the SIR it becomes clear that there are grounds to suspect that a criminal act might have been committed and/or ROE breached, the officer conducting the review shall recommend to the CO that matter be immediately referred to the Service Police. If the CO agrees, he shall halt the SIR process and follow that recommendation, recording the action on the SIR. If the CO does not agree, he shall require the officer conducting the review to complete the SIR. On completion of the SIR, the CO will have a number of possible courses of action.
7. The courses of action available to COs⁴ following a SIR are:
- a. Where a CO believes that a Service Police investigation is not required (because there are no grounds to suspect that a criminal act has or might have been committed by Service personnel and if the ROE have not been breached) he may propose to Higher Authority (HA) that no Service Police investigation is initiated⁵.
 - b. Propose to Higher Authority (HA) that, due to exceptional operational circumstances⁶, a Service Police investigation be delayed.
 - c. Initiate an immediate Service Police investigation.

SERVICE POLICE INVESTIGATION NOT REQUIRED

8. When a CO is satisfied, from the facts presented by the SIR, that there are no grounds to suspect that a criminal act has or might have been committed and that ROE have not been breached and that there is no other requirement for a Service Police investigation, he is to forward the SIR to the HA setting out his proposal not to initiate a Service Police investigation within 48 hours of the incident, or as soon as practicable thereafter. The CO is not to publish his findings or proposals until they are authorised by HA. Guidance on the information to be included in the SIR is provided at Appendix 2. On receipt of any proposal not to initiate an investigation the HA must consult his Legal and Service Police staff before determining whether to authorise the proposed course of action. If the HA does not concur with the proposal, he will direct that a Service Police investigation be initiated immediately. If the HA concurs with the COs proposal not to initiate a Service Police investigation, this and

⁴ This does not preclude the staffing of any Lessons Identified following single service procedures.

⁵ A CO may of course instigate a Board of Inquiry or other administrative steps he considers appropriate to deal with wider Service issues.

⁶ See para 10.

the reasons behind the decision are to be recorded formally on the SIR and held by the unit as an operational record. In all cases COs are to ensure that all relevant information gathered in the SIR, including, wherever practicable, exhibits, are retained and secured. Should new information on the incident become available at a later stage that indicates a Service Police investigation is necessary it is to be initiated without delay. If at any stage the Service Police witness or have reported to them that an offence has, or may have, occurred they may initiate an investigation under QRs, Chapter 6, Part III.

9. Prejudicing of Future Investigations. COs and HAs are to ensure that the publication of any decisions not to instigate a Service Police investigation do not preclude the reopening of that investigation, or prejudice its conclusion, in the event that new evidence, which calls into question the basis of their decision, is forthcoming. This caveat is to be explicit in the wording of the published decision.

DELAYING A SERVICE POLICE INVESTIGATION

10. The operational situation, in which the incident and subsequent Service Police investigation occurs, may have an impact on when an investigation may proceed.

11. Delaying the Service Police Investigation. If the CO believes that a Service Police investigation is required he may, in **exceptional circumstances**, submit a formal proposal for the HA to delay an immediate Service Police investigation (In the format at App 2). Factors that might lead to such a conclusion might include but are not limited to:

- a. High tempo of operations.
- b. High intensity of operations (this could include high intensity but in a localised area).
- c. The local commander has insufficient forces to allocate force protection for the investigation, or to do so could otherwise hinder operations or the operational capability of the unit.
- d. Where an investigation could cause an already hostile situation to deteriorate further.

12. Reporting. Where a CO decides to propose that an investigation be delayed, his proposal is to be made as part of his SIR (and therefore within 48 hours of the incident). The completed review will form part of the audit trail. On receipt of any such application the HA will consult his Legal and Service Police staff before determining whether such delay should be authorised.

13. Recording of HA decision. If the HA does not agree with the CO's proposal to delay, he must direct that an immediate Service Police investigation be initiated. Where a HA concurs with the proposal of the CO and a Service Police investigation is delayed, the HA is formally to record the reasons for concurrence and this, with the CO's proposal, is to be passed to the Service Police and placed on record. This decision will be subject to weekly review by the HA in consultation with the CO or sooner if it is determined that exceptional circumstances no longer apply. A Service Police investigation will then commence. In cases where a CO proposes a delay however, the HA disagrees, the HA must direct that an immediate Service Police investigation be initiated.

INSTIGATION OF A SERVICE POLICE INVESTIGATION

14. A shooting incident must be referred to the Service Police for investigation immediately if there are any grounds to suspect that a criminal act has or might have been committed by Service personnel and /or if the ROE have been breached, or if, for any other reason, a CO believes that an investigation by the Service Police would be appropriate. It should be remembered that the purpose of a Service Police investigation is to ascertain and report the facts, and that these facts can often be used to protect the MOD and individuals from subsequent claims for compensation or judicial process. If this occurs during a SIR, then the SIR is to cease immediately and the evidence collated thus far be retained for the Service Police. In all cases COs are to ensure that all relevant information gathered in the SIR, including, wherever practicable, exhibits, are secured and retained.

PURPOSE OF A SERVICE POLICE INVESTIGATION

15. The purpose of a Service Police investigation is to ascertain the facts surrounding an incident and where necessary to provide a basis for any appropriate action by the CO and HA thereafter. This action might include:

- a. Reporting that, based upon all of the evidence available, there are no grounds to suspect that an offence has been committed and/or ROE breached, or that there is insufficient evidence to proceed, in which case the matter is at an end unless new evidence later becomes available. If this is the case, individuals involved in the incident should be so informed by the chain of command, using words to the effect that "the Service Police investigation has not disclosed sufficient evidence upon which to proceed. Should any new or additional evidence be identified it will be reviewed by the Service Police. You will be informed if this calls into question the conclusions of the current investigation, which may be formally reopened if required."
- b. Reporting an individual where there is evidence that an offence has been committed.

DISCIPLINARY ACTION

16. If on review of the findings of a Service Police investigation the Formation Legal Advisor (LEGAD), recommends that disciplinary or other action is appropriate, this will be taken forward under normal Service procedures.⁷

ARCHIVING

17. Archiving of Information. Where the HA agrees that a Service Police investigation is not required, all documentation is to be archived in line with normal operational record archiving policy. This will assist any subsequent investigation by Service Police or other agencies. Documents included are to be original where possible, or certified as true copies. Information from all sources should be included; examples of which are listed at Appendix 2.

⁷ If, after a CO has dismissed a charge, new information becomes available the Attorney General could in exceptional circumstances refer the case to the CPS for action to be taken in the criminal justice system. Affected personnel should be informed of this possibility by the chain of command.

CONCLUSION

18. The importance of correctly reporting, recording, reviewing and, where necessary, investigating shooting incidents where death or injury has, or may have occurred cannot be over emphasised. It is the responsibility of Commanders at all levels to ensure that the use of force is proportionate, reasonable and necessary and that such incidents are accurately reported, recorded and reviewed. Where there is evidence of criminality or if the ROE have been breached then the matter must be referred to the Service Police. It is the responsibility of the Service Police to conduct investigations impartially and without any undue hindrance or influence, reporting the findings to the Chain of Command. The role of COs in ensuring due process, for which they are accountable, remains the central tenet of this process.

Appendices:

1. Guidance on documentation to be collated by a Unit.
2. Guidance for Completion of CO's Shooting Incident Review and Proposal to Delay or Not to Initiate a Service Police Investigation.