TITLE	Armed Forces Act 2006 - introduction
PNLD REF NO	D20277
NARRATIVE	The Armed Forces Act 2006 replaces and consolidates the three Service Discipline Acts; (Royal Navy, Army and Royal Air Force) with a single, harmonised system governing all members of the armed forces. When serving in the United Kingdom, service personnel are dealt with under civilian law like any other British citizen if they commit an offence. Overseas they cannot be dealt with under domestic law so the military justice system ensures that they are dealt with consistently wherever they are serving in the world. Some categories of civilians can be investigated, tried and punished for any regular criminal offence wherever in the world it is committed but are also subject to special discipline offences (for example insubordination and disobedience). All offences under UK criminal law are also offences under service law. In addition, there are some offences under service law that are not offences under English civilian law, such as absence without leave. Within the UK, service personnel are subject to both the civilian and the service systems of justice. Protocols between the civil police and the service police deal with the conduct of investigations. Because of pressures from the right to a fair trial under article 6 of the European Convention, there are several changes. Charges in relation to more serious offences, such as assisting the enemy or mutiny, and criminal conduct offences, such as murder, rape, manslaughter, or treason, cannot be dealt with by COs, and the CO has a duty to make Service police aware of allegations of these more serious offences so that they can be investigated and cases in which there is sufficient evidence to bring charges will be referred directly to the Director of Service Prosecutions (DSP). The Act creates offences and provides for the investigation of alleged offences, the arrest, holding in custody and charging of individuals accused of committing an offence, for them to be dealt with summarily by their commanding officer or tried by a court martial. The Act provides for a standing court martial, called the Court Martial, instead of - as before the Act - a court martial being set up to deal with particular cases. Rather like the Crown Court, the court may sit in more than one place at the same time, and different judge advocates and service personnel will make up the court for different trials. More serious cases must be notified to the service police and passed direct to the independent DSP for a decision on whether to prosecute. In other cases the CO will consider whether to deal with the matter summarily (if it is within his jurisdiction) or to refer the case to the DSP with a view to proceeding to a trial by the Court Martial. In all cases which it is intended should be tried by the Court Martial, it will be the DSP who takes the decision to prosecute and determines the charge or charges. Those facing charges with which the CO intends to deal summarily have a right to elect trial by the Court Martial or, if they agree to be dealt with summarily and the charge is found proved, to appeal to the Summary Appeal Court. A person convicted by the Court Martial will be able to

appeal to the Court Martial Appeal Court.

Service personnel and civilians have the right of appeal to the Summary Appeal Court (against summary decisions of the CO), the Court Martial Appeal Court or the Service Civilian Court. Convictions are also reviewed by a Reviewing Authority.

The Act replaces certain offices and organisations which used to be single-service by a tri-service equivalent. The aim is to enhance efficiency and to support consistency in the application of the Act. These are -

- the appointment of the Director of Service Prosecutions to replace the existing three single-service prosecuting authorities;
- a standing court, called the Court Martial, to replace the current courts-martial which are set up for each case;
- a tri-Service Summary Appeal Court ("SAC") to replace the existing single-service Summary Appeal Courts;
- the Service Civilian Court ("SCC"), to replace the existing Standing Civilian Courts;
- the merger of the two offices of Judge Advocate General and Judge Advocate of the Fleet; and
- a single court administration officer for the Court Martial, the SAC and the SCC.

The legislation is subject to re-enactment after five years (but not annual renewal as under the previous regime).

Overview of the Act

Part 1 (sections 1 - 49) sets out most of the service offences, some are in other parts of the Act *(for a list of offences see the index)* and in other Acts.

Part 2 (sections 50 - 66) deals with the jurisdiction of commanding officers, the Court Martial and the Service Civilian Court; and provides time limits for bringing charges. There are also provisions for the effect of proceedings under service law on further service or civilian proceedings and the effect of civilian proceedings on further service proceedings.

Part 3 (sections 67 - 97) defines powers of arrest in relation to service offences, powers to search arrested persons, to stop and search persons and vehicles, and to enter premises for the purpose of search and seizure. For the most part, these powers are to be exercised by the service police. *(for a list of powers refer to the index)*

Part 4 (sections 98 - 112) sets out the regime governing the holding in custody (before or after charge) of a person arrested under the Act.

Part 5 (sections 113 - 128) deals with investigation, charging and mode of trial. It sets out the duties of the commanding officer when investigating service offences and the involvement of the service police.

Part 6 (sections 129 - 153) sets out the procedure for summary hearings

	and appeals and review. Part 7 (sections 154 - 172) establishes the Court Martial and provides for its constitution, proceedings and powers in respect of finding and sentence. Part 8 (sections 173 - 236) makes detailed provision for the sentencing powers. And part 9 (sections 237 - 271) sets out the sentencing principles and procedures. Part 10 (sections 272 - 276) provides for appeals and the review of Court Martial decisions. Part 11 (sections 277 - 288) establishes the Service Civilian Court (SCC). Part 12 (sections 289 - 304) makes provision for the commencement of sentences and the effect of them on offenders in various respects, such as rank. Part 13 (sections 305 - 327) contains a number of miscellaneous provisions relating to discipline, such as testing for alcohol and drugs, contempt of court, arrest and detention by civil authorities and the powers of the Criminal Cases Review Commission. The second group of parts (parts 14 - 17, sections 328 - 359) deals with various miscellaneous matters, such as enlistment, terms of service, redress of individual grievances, forfeiture and deductions, service inquiries. It also includes offences relating to service matters which are punishable by civilian courts. The third group of parts (parts 18 and 19, sections 360 - 377) sets out the functions of the commanding officer and other persons under the Act, the application of the Act and contains definitions that apply to the whole of the Act. See also the index to the Act.
SOURCE	Armed Forces Act 2006
ALL RELATED MATERIAL	Introduction
NATIONAL REGION	UK

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TITLE	**Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 - short summary**
PNLD REF NO	D24723
NARRATIVE	The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (SI 2009/1059) is a comprehensive document that makes transitional provision in connection with the coming into force of the Armed Forces Act 2006 and the proposed repeal (currently set for 8th November 2010) of the Army Act 1955, the Air Force Act 1955, the naval Discipline Act 1957 and other related legislation. The order has 21 parts detailed over 107 pages and not all is relevant to information that you will find on PNLD. Of the Armed forces Act 2006, parts 1 to 5 inclusive, part 13 and some sections in part 17, 18 and 19 have been written into PNLD documents as the most relevant for the armed forces police. The Armed Forces Act 2006 commenced on the 31st October 2009 and initially the other service discipline Acts mentioned above will continue in force for a further twelve months until 8th November 2010 (SI 2009/1752); Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009). The transitional provisions allow all the Acts to operate together. In general this means that any action taken in accordance with the new 2006 Act will often be reflected in sections within the old Acts and vice versa. Any action being taken under the 1955 or 1957 Acts may continue and be dealt with under the provisions of the 2006 Act. The main parts of the order to note are: Part 2 - Liability for Service Discipline Act (SDA) offences - Liability for SDA offences Punishment may not be more severe than maximum court-martial punishment Civilian offenders Part 4 - Jurisdiction Jurisdiction of the Court Martial Jurisdiction of the Service Civilian Court Charges capable of being heard summarily Offences that may be dealt with at a summary hearing Charges in respect of SDA offences that may be heard summarily only with permission or by senior officer Part 7 - Arrest, search and entry - Powers of arrest Search on arrest Stop and search Powers of entry, search and seizure

Part 8 - Custody without charge and custody after charge -

Limitations on custody without charge of person arrested before commencement
Authorisation by Commanding Officer (CO) of custody without charge
Extension by judge advocate of custody without charge
Persons arrested while in custody
Custody without charge: other cases

Custody after charge
Arrest after charge

Part 9 - Investigation, charging and mode of trial -

Duties and powers of commanding officers in relation to allegations etc
Charges preferred by prosecuting authority: allocation for Court Martial trial
Effect of time limits for court-martial trial
Charges reported to commanding officer: allocation for summary hearing
Exceptions to allocation for summary hearing
Effect of time limits for trial in relation to summary hearing
Charges allocated for summary hearing: restriction on CO's powers in certain cases
Deemed referrals under section 116(3) of the Armed Forces Act 2006
Part of a case referred back under SDAs: power of CO to charge etc
Charges directed to be tried by a Standing Civilian Court (SCC)
Effect of time limits for court-martial trial in relation to SCC

Part 18 - Discipline - Miscellaneous

Findings and sentences passed by reviewing authority
Testing for alcohol and drugs
Offences in relation to service courts
Witness anonymity orders
Arrest by civilian police under warrant
Arrest by civilian police of deserters etc
Remand by civil court
Arrest of persons unlawfully at large
The Criminal Cases Review Commission
Financial penalty enforcement orders
Evidential burden as respects excuses
Local probation boards
Judge advocates

Note
The full order can be viewed on line at the Office of Public Sector Information.

SOURCE	Armed Forces Act 2006 (Transitional Provisions etc) Order 2009
ALL RELATED MATERIAL	Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 - short summary
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TITLE	Armed Forces Act 2006 - Schedule 1 - criminal conduct offences that may be dealt with at a summary hearing
PNLD REF NO	D24705
NARRATIVE	Schedule 1 to the Armed Forces Act 2006 relates to criminal conduct offences that may be dealt with at summary hearing.

Sections 53, 54

SCHEDULE 1

Criminal conduct offences that may be dealt with at a summary hearing

Part 1
Offences that may be dealt with without permission

1 An offence under section 1 of the Theft Act 1968 (theft).

2 An offence under section 12 of that Act (taking vehicle etc without consent).

3 An offence under section 5(2) of the Misuse of Drugs Act 1971 (possession of controlled drug).

4 An offence under section 1(1) of the Criminal Damage Act 1971 (criminal damage).

5 An offence under section 3 of the Theft Act 1978 (making off without payment) where the payment required or expected did not exceed £100.

6 An offence under section 9 of the Criminal Attempts Act 1981 (interference with vehicles).

7 An offence under section 39 of the Criminal Justice Act 1988 (assault and battery).

8 An offence under section 3 of the Road Traffic Act 1988 (careless driving etc).

9 An offence under section 5 of that Act (driving a vehicle where driver has consumed excessive amount of alcohol etc).

10 An offence under section 25 of that Act (tampering with vehicles etc) where the vehicle was on a road.

11 An offence under section 28 of that Act (dangerous cycling).

12 An offence under section 29 of that Act (careless cycling etc).

Part 2
Offences that may be dealt with only with permission

13 An offence under section 47 of the Offences against the Person Act

	1861 (assault occasioning actual bodily harm). 14 An offence under section 1 of the Prevention of Crime Act 1953 (possession in public place of offensive weapon). 15 An offence under section 13 of the Theft Act 1968 (abstracting of electricity). 16 An offence under section 139 of the Criminal Justice Act 1988 (possession in public place of point or blade). 17 An offence under section 125 of the Communications Act 2003 (dishonestly obtaining electronic communications services). 18 An offence under section 126 of that Act (possession or supply of apparatus etc for contravening s.125 of that Act). 19 An offence under section 1 of the Fraud Act 2006 (fraud). 20 An offence under section 11 of that Act (dishonestly obtaining services).
SOURCE	Armed Forces Act 2006
ALL RELATED MATERIAL	Schedule 1 Criminal conduct offences that may be dealt with at a summary hearing
NATIONAL REGION	UK

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TITLE	Armed Forces Act 2006 - Schedule 2 - "Schedule 2 offences"
PNLD REF NO	D24706
NARRATIVE	Schedule 2 to the Armed Forces Act 2006 refers to service offences. SCHEDULE 2 "Schedule 2 offences" 1 An offence under section 1 (assisting an enemy). 2 An offence under section 2(1) (misconduct on operations). 3 An offence under section 3 (obstructing operations) which relates to an action or operation against an enemy. 4 An offence under section 4(1) or (2) (looting). 5 An offence under section 6 (mutiny). 6 An offence under section 7 (failure to suppress mutiny). 7 An offence under section 8 (desertion) where the accused intended to avoid a period of active service (within the meaning of that section). 8 An offence under section 31(1) (hazarding of ship). 9 An offence under section 33(1) (dangerous flying etc). 10 An offence under section 39 of attempting to commit an offence within any of paragraphs 1 to 9. 11 An offence under section 40 of inciting another person to commit an offence within any of paragraphs 1 to 9. 12 An offence under section 42 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is - (a) murder; (b) manslaughter; (c) kidnapping; (d) high treason; (e) piracy; (f) cheating the public revenue; (g) an offence under section 2 of the Treason Act 1842 (attempt to injure or alarm the Sovereign); (h) an offence under section 3 of the Treason Felony Act 1848 (compassing the deposition of the Sovereign etc); (i) an offence under section 4, 18, 22, 23, 28 or 29 of the Offences against the Person Act 1861 (soliciting murder, wounding with intent, using chloroform etc to commit indictable offence, administering poison, causing injury by explosives, using explosives etc with intent);

(j) an offence under section 20 of that Act of inflicting grievous bodily harm;
(k) an offence under section 2 or 3 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property etc);
(l) *repealed*
(m) *repealed*
(n) an offence under section 1 or 2 of the Perjury Act 1911 (perjury or false statements on oath);
(o) an offence under section 1 or 7 of the Official Secrets Act 1911 (spying or harbouring spies);
(p) an offence under section 1 of the Infant Life (Preservation) Act 1929 (child destruction);
(q) an offence under section 1 of the Children and Young Persons Act 1933 (cruelty to children);
(r) an offence under section 1 of the Infanticide Act 1938 (infanticide);
(ra) an offence under section 1A of the Prevention of Crime Act 1953 (threatening with offensive weapon in public);
(s) an offence under section 33 or 33A of the Sexual Offences Act 1956 (keeping a brothel etc);
(t) an offence under section 1 of the Geneva Conventions Act 1957 (grave breaches of conventions);
(u) an offence under section 2 of the Suicide Act 1961 (assisting suicide etc);
(v) an offence under section 5, 16, 16A, 17, 18 or 20 of the Firearms Act 1968 (unlawful possession or use of firearm etc);
(w) an offence under section 8, 10 or 21 of the Theft Act 1968 (robbery, aggravated burglary, blackmail);
(x) an offence under section 12A of that Act (aggravated vehicle taking) involving an accident which caused the death of any person;

(y) an offence under section 4, 5(3) or 8 of the Misuse of Drugs Act 1971 (production and supply of controlled drugs, possession of such drugs with intent to supply, permitting production of such drugs);
(z) an offence under section 1(2) of the Criminal Damage Act 1971 (destroying or damaging property with intent to endanger life);
(aa) an offence under section 1 of the Biological Weapons Act 1974 (developing biological agents etc);
(ab) an offence under section 51 of the Criminal Law Act 1977 (bomb hoaxes);
(ac) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children);
(ad) an offence under section 170 of the Customs and Excise Management Act 1979 (fraudulent evasion of duty etc);
(ae) an offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking);
(af) an offence under any of sections 1 to 4 of the Aviation Security Act 1982 (hijacking, destroying, damaging or endangering safety of aircraft etc);
(ag) an offence under section 1 or 2 of the Child Abduction Act 1984 (abduction of child);
(ah) an offence under any of sections 1 and 18 to 23 of the Public Order Act 1986 (riot, stirring up racial or religious hatred,

possession of inflammatory material);
(ai) an offence under section 134, 139AA or 160 of the Criminal Justice Act 1988 (torture, threatening with article with blade or point or offensive weapon, possession of indecent photograph of child);
(aj) an offence under section 1, 1A, 3A or 22A of the Road Traffic Act 1988 (causing death by dangerous driving, casuing serious injury by dangerous driving, causing death by careless driving when under the influence of drink or drugs, causing danger to road-users);
(ak) an offence under any of sections 1 to 6 or 8(6) of the Official Secrets Act 1989 (disclosure of information relating to security, intelligence, defence, international relations etc);
(al) an offence under any of sections 1 or 9 to 13 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes, offences against the safety of ships and fixed platforms);
(am) an offence under section 72 of the Value Added Tax Act 1994 (evasion of VAT);
(an) an offence under part II *(articles 4 - 9)* of the Channel Tunnel (Security) Order 1994 (offences relating to Channel Tunnel trains and the tunnel system);
(ao) an offence under section 2 of the Chemical Weapons Act 1996 (use etc of chemical weapons);
(ap) an offence under section 11, 12, 15, 16, 17, 18, 38B, 39, 54, 56, or 58 of the Terrorism Act 2000;
(aq) an offence under section 51 or 52 of the International Criminal Court Act 2001 (genocide, crimes against humanity, war crimes etc);
(ar) an offence under section 47, 79, 80, 113 or 114 of the Anti-terrorism, Crime and Security Act 2001;
(as) an offence under section 1 of the Dealing in Cultural Objects (Offences) Act 2003 (dealing in tainted cultural objects);
(at) any offence under part 1 *(sections 1 - 79)* of the Sexual Offences Act 2003 except one under section 3, 66, 67 or 71;
(au) an offence under any of sections 1, 2, 5, 6 or 8 to 11 of the Terrorism Act 2006.
(av) an offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children).
(aw) an offence under section 1, 2 or 6 of the Bribery Act 2010."

13 An offence under section 42 as respects which the corresponding offence under the law of England and Wales is -

(a) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit an offence within a sub-paragraph of paragraph 12;
(b) an offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit such an offence;
(c) an offence of incitement to commit such an offence.

SOURCE	Armed Forces Act 2006
ALL RELATED MATERIAL	Schedule 2 "Schedule 2 offences"

NATIONAL REGION	UK

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Website Link

TITLE	**Armed forces - offences that may be dealt with at a summary hearing**
PNLD REF NO	D20330
NARRATIVE	Section 53 of the Armed Forces Act 2006 sets out which offences may be dealt with at a summary hearing by a Commanding Officer. 53(1) The following service offences may be dealt with at a summary hearing - (a) an offence under section 4(3); (b) an offence under any of sections 9 to 15; (c) an offence under section 16(1)(a), or an offence under section 16(1)(c) committed by omission; (d) an offence under any of sections 17 to 29; (e) an offence under section 30(1) of negligently doing an act that results in a person's escape, or an offence under section 30(2); (f) an offence under any of sections 34 to 36; (g) an offence under section 42 (criminal conduct) within subsection (3); (ga) an offence under section 93A, 93E or 93G (testing for alcohol or drugs on suspicion); (h) an offence under section 107; (i) an offence under section 305 (random drug testing); (j) any service offence under regulations under section 328 or 343; (k) an offence under section 96 or 97 of the Reserve Forces Act 1996 of absence without leave. 53(2) Any reference in a paragraph of subsection (1), except paragraph (g), to an offence includes an offence under section 39 of attempting to commit that offence. 53(3) An offence under section 42 is within this subsection if the corresponding offence under the law of England and Wales is - (a) an offence listed in either part of Schedule 1 (criminal conduct offences that may be dealt with at a summary hearing); or (b) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit an (indictable) offence so listed. 53(4) The Secretary of State may by order amend Schedule 1. **Notes** *(i) Section 53(2) makes it clear that where a criminal conduct offence may be heard summarily an offence of attempting to commit the substantive offence may also be dealt with at a summary hearing.* *(ii) With regard to criminal conduct offences, this section makes it clear that only those offences that are listed in Schedule 1 may be dealt with at a summary hearing. The Secretary of State is given the power to amend Schedule 1 by order made by statutory instrument (subject to the "affirmative resolution" procedure which requires the order to be laid in draft before both Houses of Parliament and be approved by resolution of each House).*

	Index
SOURCE	Armed Forces Act 2006
ALL RELATED MATERIAL	53 Offences that may be dealt with at a summary hearing
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Prepared for OPEN publication in relation to the Independent Inquiry Relating to Afghanistan

OFFENCES UNDER AFA 06

17 AUG 11

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This version dated 17 Aug 11
For the most up to date version see the AFA page on the Provost Portal

Go to the **AFA 06 TRANSITIONAL OFFENCES FLOWCHART** to determine offence type, who to refer to and where to get legal advice from

NO

START HERE
Was the offence committed on or after 31 Oct 09?

YES

You should consider this chart at the earliest point of an investigation when you have an idea of what offence(s) have been committed as a guide to where legal advice during the investigation should be sought from. NB – if the suspect is a civilian or of a high rank see the boxes below

MULTIPLE OFFENCES AND MULTIPLE OFFENDERS
NB – You must follow this process for EACH SEPARATE OFFENCE and EACH SEPARATE SUSPECT and refer each one appropriately (the format of the Service Police Case Referral (SPCR) and covering letter will assist this)
If it appears that one offence of a series and/or one suspect of a multiple suspect enquiry will be referred to the DSP then legal advice for the SP during the investigation should come from SPA.

These blue boxes contain the wording which must be used to describe each individual charge in the 'Service Police Case Referral' (SPCR) document. This wording is standardised and will be recognised by all those reading the SPCR.

PRESCRIBED CIRCUMSTANCES

IS THE OFFENCE ONE COMMITTED IN THE FOLLOWING PRESCRIBED CIRCUMSTANCES?

a) That a PSOL has been the victim of

(i) a course of conduct by a PSOL, involving on at least 2 occasions an assault in which that individual participated as a principal offender or as a secondary party; or

(ii) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is the offence under section 4 of the Protection from Harassment Act 1997, committed by a PSOL; [that is: *a course of conduct by a PSOL on a PSOL which on at least 2 occasions, caused fear of violence and which he should have known would cause fear of violence on each occasion – check the Protection from Harassment Act for more details*]

b) That an assault causing serious injury was inflicted on a PSOL by a person of superior rank or rate while the assailant was carrying out his duties;

c) That—

(i) a person ("A") participated (as a principal offender or as a secondary party) in the inflicting of serious injury on a relevant person in a relevant place, or

(ii) that A was under a duty to safeguard a relevant person ("B") while B was in a relevant place and that A failed to prevent an assault inflicting serious injury on B in that place, or

(iii) that A was under a duty to safeguard a person ("B") while B was in a relevant place
and that A failed to prevent B's death being caused while B was in that place;

c) That the death of a person was caused (directly or indirectly), or contributed to, by the misconduct of a PSOL or a CSOL and that the misconduct occurred while the deceased was being held in a relevant place while in service custody within the meaning of the Act.

Relevant person
(a) a person who is not a member of the regular or reserve forces; or

(b) a person who is a member of the regular or reserve forces and—

(i) is under 18 years old,
(ii) has enlisted in the regular or reserve forces and has not completed Phase 1 and Phase 2 Training;
(iii) is an officer or officer cadet and has not completed Phase 1 Training; or
(iv) is in service custody within the meaning of the Act.

Relevant place
(a) any premises or other place which at the time of the death or serious injury or suspected misconduct was permanently or temporarily occupied or controlled for the purposes of Her Majesty's forces; and
(b) any vehicle, ship or aircraft which at the time of the death or serious injury or suspected misconduct was in use for the purposes of Her Majesty's forces.

Serious injury – means a fracture, a deep cut, a deep laceration, or an injury causing damage to an internal organ or the impairment of a bodily function

References: Annex E to Vol 1 Ch 6 MSL
Reg 5 Armed Forces (Part 5 of the AFA06) Regulations 2009

YES

OFFENCE TYPE "Prescribed Circumstances"

SP MUST REFER OFFENCE TO DSP (see NOTE 1)

SP SHOULD SEEK LEGAL ADVICE DURING THE INVESTIGATION FROM SPA (See NOTE 3)

Distribution:
Action:
SPA - All case papers
Info:
CO – SPCR
Div Legal – SPCR
See NOTE 4

CIVILIANS

If the accused is a CSOL or is an ex-PSOL or ex-CSOL then regardless of which box the case falls in, this case can only be heard at SCC or CM [YOU MUST READ s52 AFA 06] and therefore will be prosecuted by SPA. Follow the chart in terms of who to refer the case to and refer appropriately but bear in mind that **LEGAL ADVICE IN ALL CASES INVOLVING CIVILIANS SHOULD COME FROM SPA.**
NB Civilians can only commit or attempt to commit criminal conduct offences under s42 and the following non-criminal conduct offences: (See MSL Vol 1 Chap 7)
S4 Looting
S13 Standing orders
S27 Obstructing or Failing to assist Service Police
28(2) Resisting arrest
s29 Service custody offence

HIGH RANKING SUSPECTS

Only charges against a PSOL who is;

a) An officer of or below the rank of Lt Col, Col, or Wg Cdr, or
b) A person of or below the rank/rate of warrant officer;

are capable of being heard summarily. (s52 AFA 06)

Follow the chart in terms of who to refer cases to, but, regardless of the charge, if the suspect's high rank precludes summary hearing then **LEGAL ADVICE SHOULD BE OBTAINED FROM SPA** as it will end up at CM

SCHEDULE 2

IS THE CHARGE ONE OF THE FOLLOWING NON-CRIMINAL CONDUCT OFFENCES UNDER THE AFA 06?
S1 (assisting an enemy).
2(1) (misconduct on operations).
3 (obstructing operations) which relates to an action or operation against an enemy.
4(1) or (2) (looting).
6 (mutiny).
7 (failure to suppress mutiny).
8 (desertion) where the accused intended to avoid a period of active service. [NOTE s8(2)(b) desertion where the accused intended to remain AWOL is unlisted]
31(1) (hazarding of ship).
33(1) (dangerous flying etc)
39 of attempting to commit an offence listed above.
40 of encouraging or assisting the commission of an offence listed above.
[NOTE: Attempting, or E or A the commission of a non-criminal conduct offence not listed above is 'unlisted'] [NOTE: A person cannot conspire to commit a non-criminal conduct offence]

OR IS THE CHARGE ONE OF THE FOLLOWING CRIMINAL CONDUCT OFFENCES (S42 AFA 06)?
42 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is—
(a) murder;
(b) manslaughter;
(c) kidnapping;
(d) high treason;
(e) piracy;
(f) cheating the public revenue;
(g) an offence under section 2 of the Treason Act 1842 (c 51) (attempt to injure or alarm the Sovereign);
(h) an offence under section 3 of the Treason Felony Act 1848 (c 12) (compassing the deposition of the Sovereign etc);
(i) an offence under section 4, 16, 22, 23, 28 or 29 of the Offences against the Person Act 1861 (c 100) (soliciting murder, wounding with intent, [NOTE: This includes GBH with intent] using chloroform etc to commit indictable offence, administering poison, causing injury by explosives, using explosives etc with intent);
(j) an offence under section 20 of that Act of inflicting grievous bodily harm; [NOTE: This does not include s20 wounding which is unlisted]
(k) an offence under section 2 or 3 of the Explosive Substances Act 1883 (c 3) (causing explosion likely to endanger life or property etc);
(l) *Repealed by the Bribery Act 2010*
(m) *Repealed by the Bribery Act 2010*
(n) an offence under section 1 or 2 of the Perjury Act 1911 (c 6) (perjury or false statements on oath);
(o) an offence under section 1 or 7 of the Official Secrets Act 1911 (c 28) (spying or harbouring spies);
(p) an offence under section 1 of the Infant Life (Preservation) Act 1929 (c 34) (child destruction);
(q) an offence under section 1 of the Children and Young Persons Act 1933 (c 12) (cruelty to children);
(r) an offence under section 1 of the Infanticide Act 1938 (c 36) (infanticide);
(s) an offence under section 33 or 33A of the Sexual Offences Act 1956 (c 69) (keeping a brothel etc);
(t) an offence under section 1 of the Geneva Conventions Act 1957 (c 52) (grave breaches of conventions);
(u) an offence under section 2 of the Suicide Act 1961 (c 60) (assisting suicide etc);
(v) an offence under section 5, 16, 16A, 17, 18 or 20 of the Firearms Act 1968 (c 27) (unlawful possession or use of firearm etc);
(w) an offence under section 8, 10 or 21 of the Theft Act 1968 (c 60) (robbery, aggravated burglary, blackmail);
(x) an offence under section 12A of that Act (aggravated vehicle taking) involving an accident which caused the death of any person; [NOTE: Other s12A offences (where death is not caused) are unlisted]
(y) an offence under section 4, 5(3) or 6 of the Misuse of Drugs Act 1971 (c 38) (production and supply of controlled drugs, possession of such drugs with intent to supply, permitting production of such drugs);
(z) an offence under section 1(2) of the Criminal Damage Act 1971 (c 48) (destroying or damaging property with intent to endanger life);
(aa) an offence under section 1 of the Biological Weapons Act 1974 (c 6) (developing biological agents etc);
(ab) an offence under section 51 of the Criminal Law Act 1977 (c 45) (bomb hoaxes);
(ac) an offence under section 1 of the Protection of Children Act 1978 (c 37) (indecent photographs of children);
(ad) an offence under section 170 of the Customs and Excise Management Act 1979 (c 2) (fraudulent evasion of duty etc);
(ae) an offence under section 1 of the Taking of Hostages Act 1982 (c 28) (hostage taking);
(af) an offence under any of sections 1 to 4 of the Aviation Security Act 1982 (c 36) (hijacking, destroying, damaging or endangering safety of aircraft etc);
(ag) an offence under section 1 or 2 of the Child Abduction Act 1984 (c 37) (abduction of child);
(ah) an offence under any of sections 1, 15 to 23 and 29B to 29G of the Public Order Act 1986 (c 64) (riot, stirring up [hatred by reference to race etc], possession of inflammatory material);
(ai) an offence under section 134 or 160 of the Criminal Justice Act 1988 (c 33) (torture, possession of indecent photograph of child);
(aj) an offence under section 1, 3A or 22A of the Road Traffic Act 1988 (c 52) (causing death by dangerous driving, causing death by careless driving when under the influence of drink or drugs, causing danger to road-users);
(ak) an offence under any of sections 1 to 6 or 8(6) of the Official Secrets Act 1989 (c 6) [disclosure of information relating to security, intelligence, defence, international relations etc);
(al) an offence under any of sections 1 or 9 to 13 of the Aviation and Maritime Security Act 1990 (c 31) (endangering safety at aerodromes, offences against the safety of ships and fixed platforms);
(am) an offence under section 72 of the Value Added Tax Act 1994 (c 23) (evasion of VAT);
(an) an offence under Part II of the Channel Tunnel (Security) Order 1994 (SI 1994/570) (offences relating to Channel Tunnel trains and the tunnel system);
(ao) an offence under section 2 of the Chemical Weapons Act 1996 (c 6) (use etc of chemical weapons);
(ap) an offence under section 11, 12, 15, 16, 17, 18, 38B, 39, 54, 56, 57 or 58 of the Terrorism Act 2000 (c 11);
(aq) an offence under section 51 or 52 of the International Criminal Court Act 2001 (c 17) (genocide, crimes against humanity, war crimes etc);
(ar) an offence under section 47, 78, 80, 113 or 114 of the Anti-terrorism, Crime and Security Act 2001 (c 24);
(as) an offence under section 1 of the Dealing in Cultural Objects (Offences) Act 2003 (c 27) (dealing in tainted cultural objects);
(at) any offence under Part 1 of the Sexual Offences Act 2003 (c 42) except one under section 3, 66, 67 or 71;
(au) an offence under any of sections 1, 2, 5, 6 or 8 to 11 of the Terrorism Act 2006;
(av) an offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children
(aw) an offence under s1, 2 or 6 of the Bribery Act 2010

An offence under s42 as respects which the corresponding offence under the law of England and Wales is-
a) an offence under s1 of the Criminal Attempts Act 1981 of attempting to commit an offence listed above; [*attempting to commit a Schedule 2 criminal offence*] [NOTE: Attempting to commit a non-Schedule 2 criminal offence should be interpreted as unlisted]
b) an offence under s1 of the Criminal Law Act 1977 of conspiracy to commit such an offence [NOTE: This should be interpreted as conspiracy to commit a Schedule 2 criminal offence] [NOTE: Conspiracy to commit a non-Schedule 2 criminal offence should be interpreted as unlisted]
c) an offence [under Part 2 of the Serious Crime Act 2007 of encouraging or assisting the commission of] such an offence. [NOTE: This should be interpreted as encouraging or assisting the commission of a Schedule 2 criminal offence] [NOTE: E or A the commission of a non-Schedule 2 criminal offence should be interpreted as unlisted]

Reference: Schedule 2 AFA 06

YES

OFFENCE TYPE "Schedule 2"

SP MUST REFER OFFENCE TO DSP (see NOTE 1)

Charge IS NOT capable of being heard summarily

SP SHOULD SEEK LEGAL ADVICE DURING THE INVESTIGATION FROM SPA (See NOTE 3)

Distribution:
Action:
SPA - All case papers
Info:
CO – SPCR
Div Legal – SPCR
See NOTE 4

PSOL = Person Subject to Service Law
CSOL = Civilian subject to Service Discipline
SP = Service Police
SPA = Service Prosecuting Authority
DSP = Director of Service Prosecutions
CM = Court Martial
SCC = Service Civilian Court
SPCR = Service Police Case Referral

S53 AFA 06

IS THE CHARGE ONE OF THE FOLLOWING NON-CRIMINAL CONDUCT OFFENCES UNDER THE AFA 06? (including attempts to commit one of these offences under s39 AFA 06?)

4(3). Looting
9. Absence without leave
10. Failure to cause apprehension of deserters or absentees
11. Misconduct towards a superior officer
12. Disobedience to lawful commands
13. Contravention of standing orders
14. Using force against a sentry.
15. Failure to attend for or perform duty etc
16(1)(a)&(c). Malingering
17. Disclosure of information useful to an enemy
18. Making false records etc
19. Conduct prejudicial to good order and discipline
20. Untimess or misconduct through alcohol or drugs
21. Fighting or threatening behaviour etc
22. Ill-treatment of subordinates
23. Disgraceful conduct of a cruel or indecent kind
24. Damage to or loss of public or service property
25. Misapplying or wasting public or service property
26. Sections 24 and 25: "public property" and "service property"
27. Obstructing or failing to assist a service policeman
28. Resistance to arrest etc
29. Offences in relation to service custody
30(1) & (2). Allowing escape, or unlawful release, of prisoners etc
34. Low flying
35. Annoyance by flying
36. Inaccurate certification
- An offence under s107. Failure to attend a hearing;
- An offence under Chapter 1 of Part 13 PIDAT & CDT
- Any Service offence under Regulations under s328 or 343 (this includes enlistment offences [NOTE: this includes False Attestation] and offences relating to Service Inquiries
- An offence under s96 or 97 of the Reserve Forces Act 1996 of absence without leave.

Reference: s53 AFA 06
Also see Annex B to Vol 1 Ch 6 MSL

YES

OFFENCE TYPE "S53 AFA 06"

ADDITIONAL INFORMATION

- **Chapter 7 MSL** contains points to prove and other information for non-criminal conduct (disciplinary offences) eg s21 AFA 06 – 'Fighting'.
- **Chapter 8 MSL** contains points to prove and other information for those criminal conduct offences contained within Schedule 1 (Parts 1 and 2), eg S1 Theft Act 1968.
- Chapters 7, 8 and 12 (Defences) of the MSL will be on PNLD after 31 Oct 09.
- If you are in doubt over what offence(s) to refer then go to the CPS charging standards (either on PNLD under 'Home Office Circulars Guidance etc) or via CPS Website. Seek legal advice if necessary.

SCHEDULE 1 PART 1

IS THE CHARGE ONE OF THE FOLLOWING CRIMINAL CONDUCT OFFENCES? (including an attempt to commit one of these (indictable) offences under s1 Criminal Attempts Act 1981)

1. S1 & 12 of the Theft Act 1968 (theft & taking vehicle etc without consent). NOTE: This does not include s12A Aggravated veh taking which is unlisted unless death is caused in which case it is Sched 2
2. S5(2) Misuse of Drugs Act 1971 (possession of controlled drug);
3. S1(1) Criminal Damage Act 1971 (criminal damage);
4. S3 Theft Act 1978 (c. 31) (making off without payment) where the payment required or expected did not exceed £100.
5. S9 Criminal Attempts Act 1981 (interference with vehicles).
6. S39 Criminal Justice Act 1988 (assault and battery).
7. S3, 5, 2E, 2F & 2G Road Traffic Act 1988 (careless, driving & driving a vehicle where driver has consumed excessive amount of alcohol, tampering with vehicles where the vehicle was on a road, dangerous cycling, careless cycling.

PLUS: An offence under s1 Criminal Attempts Act 1981 of attempting to commit an INDICTABLE offence listed above (see s53(3)(b))

Reference: Schedule 1 Part 1 AFA 06

YES

OFFENCE TYPE "Sched 1 Part 1"

SP MUST REFER OFFENCE TO CO (see NOTE 2)

Charge IS capable of being heard summarily by CO (unless suspect is CSSD or of high rank)

SP SHOULD SEEK LEGAL ADVICE DURING THE INVESTIGATION FROM STAFF LEGAL (See NOTE 3)

Distribution:
Action:
CO – All case papers
Info:
Div Legal – All case papers
SPA – nothing unless it is likely to go to Court Martial/ SCC in which case provide them with the SPCR
See NOTE 4

SCHEDULE 1 PART 2

IS THE CHARGE ONE OF THE FOLLOWING CRIMINAL CONDUCT OFFENCES? (including an attempt to commit one of these (indictable) offences under s1 Criminal Attempts Act 1981)

1. S47 Offences against the Person Act 1861 (c. 100) (assault occasioning actual bodily harm);
2. S1 Prevention of Crime Act 1953 (possession in public place of offensive weapon).
3. S13 Theft Act 1968 (abstracting of electricity).
4. S139 of the Criminal Justice Act 1988 (possession in public place of point or blade);
5. S125 & 126 Communications Act 2003 (dishonestly obtaining electronic communications services, possession or supply of apparatus etc for contravening s.125.
6. S1 & 11 Fraud Act 2006 (fraud, dishonestly obtaining services). (NOTE: s2, s3 and s4 Fraud Act 2006 are offences by virtue of s1 of that act and are therefore all Sched 1 Part 2 offences)

PLUS: An offence under s1 Criminal Attempts Act 1981 of attempting to commit an INDICTABLE offence listed above (see s53(3)(b))

Reference: Schedule 1 Part 2 AFA 06

YES

OFFENCE TYPE "Sched 1 Part 2"

SP MUST REFER OFFENCE TO CO (see NOTE 2)

Charge IS capable of being heard summarily by CO (unless suspect is CSSD or of high rank and provided CO gets permission from HA)

SP SHOULD SEEK LEGAL ADVICE DURING THE INVESTIGATION FROM STAFF LEGAL (See NOTE 3)

Distribution:
Action:
CO – All case papers
Info:
Div Legal – All case papers
SPA – nothing unless it is likely to go to Court Martial/ SCC in which case provide them with the SPCR
See NOTE 4

UNLISTED

IS THE OFFENCE ONE NOT ON ANY OF THE PREVIOUS LISTS?

Examples of these include:

CRIMINAL CONDUCT OFFENCES, eg
- burglary,
- s20 wounding,
- arson,

but also includes NON-CRIMINAL CONDUCT OFFENCES eg
- s16(1)(b) and (c) AFA 06 malingering (causing injury to self etc) or
- s8(2)(a) AFA 06 Desertion (where he intends remain permanently AWOL) etc.

YES

OFFENCE TYPE "Unlisted"

SP MUST REFER OFFENCE TO CO (see NOTE 2)

Charge IS NOT capable of being heard summarily by CO therefore CO may refer it on to DSP

LEGAL ADVICE DURING INVESTIGATION – SPA AND STAFF LEGAL
First call is SPA but Staff Legal must be made aware. **TREAT ON A CASE BY CASE BASIS** (See NOTE 3)

Distribution:
Action:
CO – All case papers
Info:
Div Legal – All case papers
SPA - SPCR
See NOTE 4

OFFENCES UNDER AFA 06 (COMMITTED AFTER COMMENCEMENT OF AFA06) – SERVICE POLICE AIDE MEMOIRE FOR DETERMINATION OF:

- WHERE LEGAL ADVICE DURING THE INVESTIGATION SHOULD COME FROM;
- WHERE CASES MUST BE REFERRED TO AT THE END OF THE INVESTIGATION (PROVIDED THERE IS SUFFICIENT EVIDENCE TO CHARGE THE OFFENCE UNDER CONSIDERATION), AND,
- DISTRIBUTION OF PAPERWORK.

OFFENCES UNDER AFA 06

NOTES

NOTE 1 - The SP must refer a case offence to the DSP if they consider there is sufficient evidence to charge a person with that offence under s116(2) and s116(5) AFA 06.

NOTE 2 - The SP must refer a case to the CO if they consider there is sufficient evidence to charge a person with that offence under s116(3) and s116(5) AFA 06.

NOTE 3 - The protocol with the SPA on obtaining legal advice means that SPA advice should be sought by the SP in any case likely to be referred to it. (Don't forget that as well as cases which the SP refer directly to the DSP, COs may decide to refer cases, originally referred to them by the SP, on to the DSP)

NOTE 4 - If you are referring cases to both the CO and DSP in a single SPCR you must ensure that all parties have the appropriate paperwork as per the Distribution guidance which can also be found in Chapter 99 (SPCR Link)

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TRANSITIONAL OFFENCES

11 OCT 11

AFA 06 TRANSITIONAL OFFENCES - PAGE 1 OF 2

If you have an investigation where some offences were committed prior to 31 Oct 09 and some were committed on or after that date then you should seek legal advice at the referral stage.

Similarly – if you have offences which are started prior to commencement and were completed after commencement of AFA06 you should also seek legal advice at the referral stage.

Offence will be one under the AFA 06 – follow the 'OFFENCES UNDER AFA 06' flow chart

NO

START HERE
Was the offence committed prior to 31 Oct 09?
See NOTE 1A

YES

MULTIPLE OFFENCES AND MULTIPLE OFFENDERS
NB – You must follow this process for EACH SEPARATE OFFENCE and EACH SEPARATE SUSPECT and refer each one appropriately (the format of the new final report called 'the Service Police Charge Referral' and covering letter will assist this).
If it appears that one offence of a series and/or one suspect of a multiple suspect enquiry will be referred to the DSP then legal advice for the SP during the investigation should come from SPA.

You should consider this chart at the earliest point of an investigation when you have an idea of what offence(s) have been committed as a guide to where legal advice during the investigation should be sought from.
NB – if the suspect is a civilian or of a high rank see the boxes below

PRESCRIBED CIRCUMSTANCES

IS THE OFFENCE ONE COMMITTED IN THE FOLLOWING PRESCRIBED CIRCUMSTANCES?

a) That a PSSL has been the victim of

(i) a course of conduct by a PSSL, involving on at least 2 occasions an assault in which that individual participated as a principal offender or as a secondary party, or

(ii) an offence under section 42 as respects which the corresponding offence under the law of England and Wales is the offence under section 4 of the Protection from Harassment Act 1997, committed by a PSSL; [that is: *a course of conduct by a PSSL on a PSSL which on at least 2 occasions caused fear of violence and which he should have known would cause fear of violence on each occasion – check the Protection from Harassment Act for more details*]

b) That an assault causing serious injury was inflicted on a PSSL by a person of superior rank or rate while the assailant was carrying out his duties;

c) That—

(i) a person ("A") participated (as a principal offender or as a secondary party) in the inflicting of serious injury on a relevant person in a relevant place; or

(ii) that A was under a duty to safeguard a relevant person ("B") while B was in a relevant place and that A failed to prevent an assault inflicting serious injury on B in that place; or

(iii) that A was under a duty to safeguard a person ("B") while B was in a relevant place
and that A failed to prevent B's death being caused while B was in that place;

c) That the death of a person was caused (directly or indirectly), or contributed to, by the misconduct of a PSSL or a CESD, and that the misconduct occurred while the deceased was being held in a relevant place while in service custody within the meaning of the Act.

Relevant person
(a) a person who is not a member of the regular or reserve forces; or

(b) a person who is a member of the regular or reserve forces and—

(i) is under 18 years old;
(ii) has enlisted in the regular or reserve forces and has not completed Phase 1 and Phase 2 Training;
(iii) is an officer or officer cadet and has not completed Phase 1 Training; or
(iv) is in service custody within the meaning of the Act.

Relevant place
(a) any premises or other place which at the time of the death or serious injury or suspected misconduct was permanently or temporarily occupied or controlled for the purposes of Her Majesty's forces; and
(b) any vehicle, ship or aircraft which at the time of the death or serious injury or suspected misconduct was in use for the purposes of Her Majesty's forces.

Serious injury – means a fracture, a deep cut, a deep laceration, or an injury causing damage to an internal organ or the impairment of a bodily function

References: Annex E to Vol 1 Ch 6 MSL
Reg 5 Armed Forces (Part 5 of the AFA06) Regulations 2009

NO

TRANSITIONAL SCHEDULE 2

IS THE CHARGE ONE OF THE FOLLOWING ARMY ACT 55, AIR FORCE ACT 55 OR NAVAL DISCIPLINE ACT 57 OFFENCES?

(a) an offence under section 24 of AA 1955 or AFA 1955 or section 2 of NDA 1957 (misconduct in action);
(b) an offence under subsection (1)(a), (b), (c), (d) or (f) of section 25 of AA 1955 or AFA 1955 or of section 3 of NDA 1957 (assisting the enemy);
(c) an offence under section 26(1) of AA 1955 or AFA 1955 or section 4(1) of NDA 1957 (obstructing operations);
(d) an offence under section 30, 31 or 32 of AA 1955 or AFA 1955 or section 5, 9 or 10 of NDA 1957 (mutiny, failure to suppress mutiny);
(e) an offence under section 27 of AA 1955 or AFA 1955 or section 16 of NDA 1957 (desertion) where the accused intends to avoid a period of active service within the meaning of section 8 of AFA 2006; (NOTE THAT DESERTION WHERE THE ACCUSED DID NOT INTEND TO AVOID A PERIOD OF ACTIVE SERVICE BUT INTENDED TO REMAIN AWOL IS A TRANSITIONAL UNLISTED OFFENCE)
(f) an offence under section 44A(1)(f) of AA 1955 or AFA 1955 or section 29A(1)(f) of NDA 1957 (causing sequestration etc of aircraft) where the offender acts wilfully or with wilful neglect;
(g) an offence under section 46A of AA 1955 or AFA 1955 or section 15 of NDA 1957 (loss or hazarding of ship);
(h) an offence under section 49 of AA 1955 or AFA 1955 or section 20 of NDA 1957 (dangerous flying etc) where the offender acts wilfully or with wilful neglect;
(i) an offence under section 66 of AA 1955 or AFA 1955 or section 40 of NDA 1957 of attempting to commit an offence within any of sub-paragraphs (a) to (h) above;
(j) an SDA civil offence as respects which the corresponding civil offence is an offence mentioned below.

OR IS THE CHARGE ONE OF THE FOLLOWING CRIMINAL CONDUCT OFFENCES?

(a) an offence within any sub-paragraph of para 12 of Schedule 2 AFA 06 (see *contents of next box*)
(b) an offence under any of sections 1 to 7, 9 to 11, 16, 17, 19 to 24, 26 to 29 and 32 of the Sexual Offences Act 1956;
(c) an offence under section 128 of the Mental Health Act 1959;
(d) an offence under section 1 of the Indecency with Children Act 1960;
(e) an offence under section 4 or 5 of the Sexual Offences Act 1967;
(f) an offence under section 1 of the Criminal Attempts Act 1981, or at common law, of attempting to commit an offence within any of sub-paragraphs (a) to (e) above;
(g) an offence under section 1 of the Criminal Law Act 1977, or at common law, of conspiracy to commit an offence within any of sub-paragraphs (a) to (e) above;
(h) an offence at common law of incitement to commit an offence within any of sub-paragraphs (a) to (e) above;
(i) an offence under Part 2 of the Serious Crime Act 2007 where the offence (or one of the offences) which the offender intended or believed would be committed is an offence within sub-paragraph (b) above.

References: Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, Article 42(2) and Schedule 2 AFA 06

NO

TRANSITIONAL SCHEDULE 2 (cont)

IS THE CHARGE ONE OF THE FOLLOWING CRIMINAL CONDUCT OFFENCES (S42 AFA 06)?

S42 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is—
(a) murder;
(b) manslaughter;
(c) kidnapping;
(d) high treason;
(e) piracy;
(f) cheating the public revenue;
(g) S2 of the Treason Act 1842 (attempt to injure or alarm the Sovereign);
(h) S3 of the Treason Felony Act 1848 (c. 12) (compassing the deposition of the Sovereign etc);
(i) S4, 16, 22, 23, 24 or 28 of the Offences against the Person Act 1861 (soliciting murder, wounding with intent, using chloroform etc to commit indictable offence, administering poison, causing injury by explosives, using explosives etc with intent);
(j) S20 of that Act (inflicting grievous bodily harm);
(k) S2 or 3 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property etc);
(l) S1 of the Public Bodies Corrupt Practices Act 1889 (corruption in office);
(m) S1 of the Prevention of Corruption Act 1906 (corrupt transactions with agents), other than an offence falling within that section by virtue only of the third paragraph of subsection (1) of that section;
(n) S1 or S2 of the Perjury Act 1911 (perjury or false statements on oath);
(o) S1 or S7 of the Official Secrets Act 1911 (spying or harbouring spies);
(p) S1 of the Infant Life (Preservation) Act 1929 (child destruction);
(q) S1 of the Children and Young Persons Act 1933 (cruelty to children);
(r) S1 of the Infanticide Act 1938 (infanticide);
(s) S33 or S34 of the Sexual Offences Act 1956 (keeping a brothel etc);
(t) S1 of the Geneva Conventions Act 1957 (grave breaches of conventions);
(u) S2 of the Suicide Act 1961 (c. 60) (assisting suicide etc);
(v) S5, 16, 16A, 17, 18 or 20 of the Firearms Act 1968 (unlawful possession or use of firearm etc);
(w) S8, 10 or 21 of the Theft Act 1968 (robbery, aggravated burglary, blackmail);
(x) S12A of that Act (aggravated vehicle taking) involving an accident which caused the death of any person;
(y) S4, 5(3) or 8 of the Misuse of Drugs Act 1971 (production and supply of controlled drugs, possession of such drugs with intent to supply, permitting production of such drugs);
(z) S1(2) of the Criminal Damage Act 1971 (destroying or damaging property with intent to endanger life);
(aa) S1 of the Biological Weapons Act 1974 (developing biological agents etc);
(ab) S.51 of the Criminal Law Act 1977 (bomb hoaxes);
(ac) S1 of the Protection of Children Act 1978 (indecent photographs of children);
(ad) an offence under section 170 of the Customs and Excise Management Act 1979 (fraudulent evasion of duty etc);
(ae) S1 of the Taking of Hostages Act 1982 (hostage-taking);
(af) an offence under any of sections 1 to 4 of the Aviation Security Act 1982 (c. 36) (hijacking, destroying, damaging or endangering safety of aircraft etc);
(ag) S1 or 2 of the Child Abduction Act 1984 (abduction of child);
(ah) S1 and 18 to 23 of the Public Order Act 1986 (riot, stirring up racial or religious hatred, possession of inflammatory material);
(ai) S134 or 160 of the Criminal Justice Act 1988 (torture, possession of indecent photograph of child);
(aj) S1, 3A or 22A of the Road Traffic Act 1988 (causing death by dangerous driving, causing death by careless driving when under the influence of drink or drugs, causing danger to road-users);
(ak) S1 to 6 or 8(6) of the Official Secrets Act 1989 (disclosure of information relating to security, intelligence, defence, international relations etc);
(al) S1 or 9 to 13 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes, offences against the safety of ships and fixed platforms);
(am) S 72 of the Value Added Tax Act 1994 (evasion of VAT);
(an) Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system);
(ao) section 2 of the Chemical Weapons Act 1996 (use etc of chemical weapons);
(ap) S11, 12, 15, 16, 17, 18, 38B, 39, 54, 56, 57 or 58 of the Terrorism Act 2000 ;
(aq) S51 or 52 of the International Criminal Court Act 2001 (genocide, crimes against humanity, war crimes etc);
(ar) S47, 79, 80, 113 or 114 of the Anti-terrorism, Crime and Security Act 2001;
(as) S1 of the Dealing in Cultural Objects (Offences) Act 2003 (dealing in tainted cultural objects);
(at) Part 1 of the Sexual Offences Act 2003 (c. 42) except one under section 3, 66, 67 or 71;
(au) S1, 2, 5, 6 or 9 to 11 of the Terrorism Act 2006.

Reference: Schedule 2 AFA 06
Also see Annex D to Vol 1 Ch 6 MSL

NO

GO TO NEXT PAGE

YES

OFFENCE TYPE "Transitional Prescribed Circumstances"

SP MUST REFER OFFENCE TO DSP (see NOTE 1)

LEGAL ADVICE FOR SP DURING INVESTIGATION – SPA

Distribution:
Action:
SPA - All case papers
Info:
CO –SPCR
Div Legal – SPCR
See NOTE 4

YES

OFFENCE TYPE "Transitional Schedule 2"

SP MUST REFER OFFENCE TO DSP (see NOTE 1)

NOT capable of being heard summarily

LEGAL ADVICE FOR SP DURING INVESTIGATION – SPA

Distribution:
Action:
SPA - All case papers
Info:
CO –SPCR
Div Legal – SPCR
See NOTE 4

YES

CIVILIANS

If the accused is a CESD then regardless of which box the charge falls in, the case can only be heard at SCC or CM (s52 AFA 06) and therefore will be prosecuted by SPA. Follow the chart in terms of who to refer the case to and refer appropriately but bear in mind that **LEGAL ADVICE IN ALL CASES INVOLVING CIVILIANS SHOULD COME FROM SPA.**
NB Civilians can only commit or attempt to commit criminal conduct offences under s42 and the following non-criminal conduct offences: (See MSL Vol 1 Chap 7)
S4 Looting
S13 Standing orders
S27 Obstructing or Failing to assist Service Police
28(2) Resisting arrest
s29 Service custody offence

HIGH RANKING SUSPECTS

Only charges against a PSSL who is;
a) An officer of or below the rank of Lt Col, Cdr, or Wg Cdr, or
b) A person of or below the rank/rate of warrant officer,
are capable of being heard summarily. (s52 AFA 06)

Follow the chart in terms of who to refer cases to, but, regardless of the charge, if the suspect's high rank precludes summary hearing then **LEGAL ADVICE SHOULD BE OBTAINED FROM SPA** as it will end up at CM

NOTE 1A - TIME LIMITS: Art 17 Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 states:
(3) A person may not be charged with an offence (other than one within para 5 below) if-
a) the offence was committed at a time when the person was subject to military law, or was a civilian subject to the SDAs; AND
b) after that time, and more than 6 months before commencement (of AFA 06), the person ceased to be so subject or to be a civilian subject to the Service Discipline Acts (SDAs).

(4) Paragraph (3) (above) applies even if the person again became subject to military law or a civilian subject to the SDAs

(5) Paras (3) and (4) (above) do not apply in relation to the following offences:
a) s31 or s32 AA55 (Mutiny/failure to suppress mutiny),
b) desertion within the meaning of s132(3A) AA55,
d) an SDA civil offence (ie a criminal conduct offence) committed outside the UK where the AG has consented to the bringing of the charge.

The effect of the above is that if:
- it is alleged that an offence or offences were committed prior to commencement of AFA 06 and
- the suspect ceased to be subject to military law (or a civilian ceased to be subject to the SDAs), more than 6 months before commencement of AFA 06, and
- the alleged offence is a non-criminal conduct offence (other than mutiny or desertion) or is a criminal conduct offence allegedly committed in the UK,

then it may not be possible for the suspect to be charged. Prior to starting an investigation into the matter seek advice on the above provisions.

- Historical criminal conduct offences committed abroad (eg sexual abuse) may result in a charge under these provisions but bullying type of allegations which occur within the UK may not. Consider whether civpol might take these on, however this will be unlikely where there are predominantly non-criminal conduct offences or minor criminal conduct offences (eg assaults not more than battery).
- Seek legal advice if necessary and ensure that you have a definitive date for the suspect's discharge. Clearly you don't know what the offences are until you have done some investigation but if you have commenced an investigation then it may be appropriate to do an early referral.

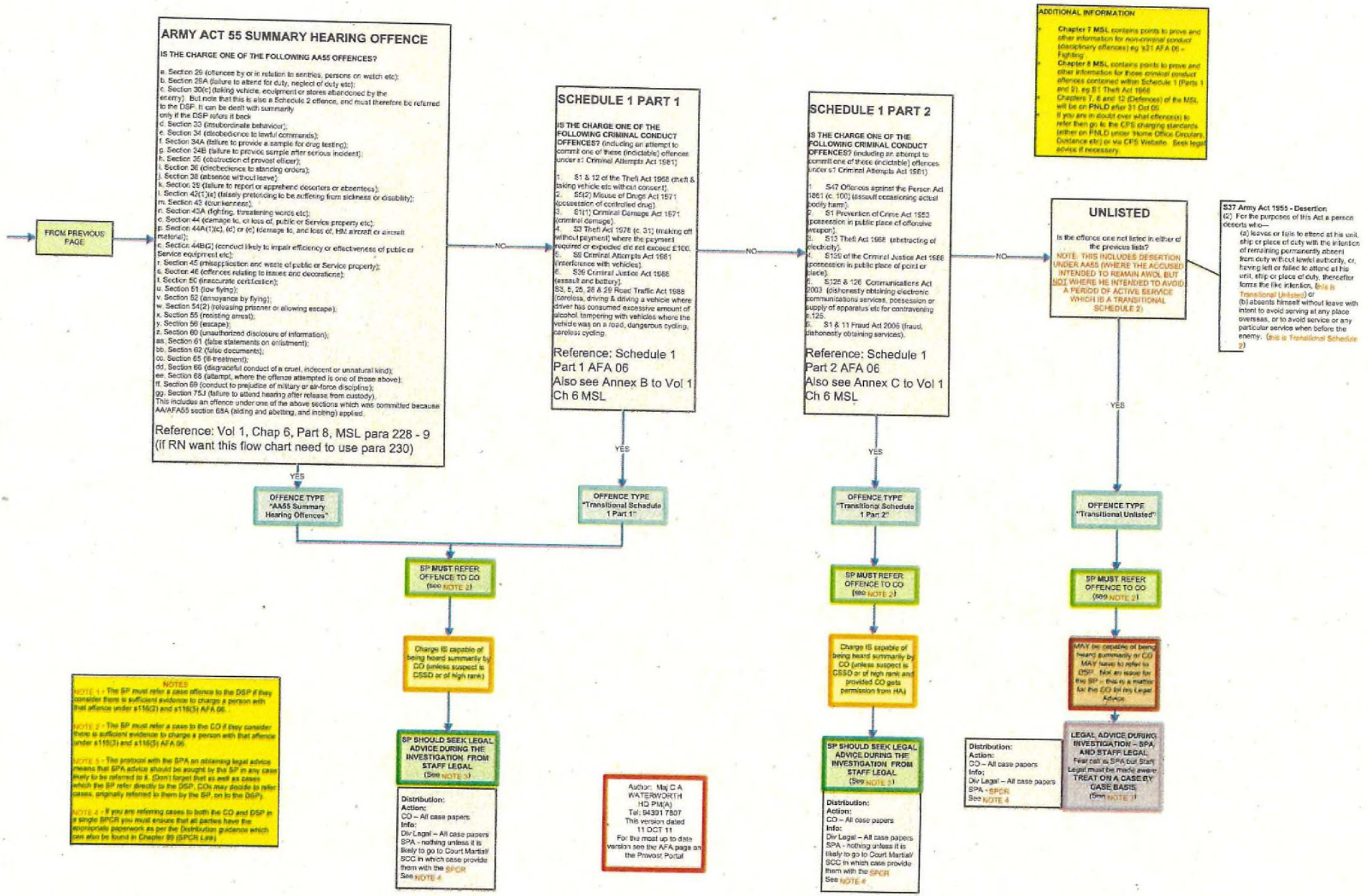
OFFENCES COMMITTED PRIOR TO 31 OCT 09 UNDER AA55 WHERE THE INVESTIGATION IS CONCLUDED AFTER COMMENCEMENT OF AFA 06 - SP AIDE MEMOIRE FOR DETERMINATION OF:

- WHERE LEGAL ADVICE DURING THE INVESTIGATION SHOULD COME FROM:
- WHERE CASES MUST BE REFERRED TO AT THE END OF THE INVESTIGATION (PROVIDED THERE IS SUFFICIENT EVIDENCE TO CHARGE THE OFFENCE UNDER CONSIDERATION), AND,
- DISTRIBUTION OF PAPERWORK.

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AFA 06 TRANSITIONAL OFFENCES - PAGE 2 OF 2



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