



### Visiting Forces

Policy Owner	Head of Joint Justice Command
Policy Holder	Head of Criminal Justice Services
Author	Case Management Team Leader

Policy No.	70
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### Approved by

Legal Services	Not required
Policy Owner	5 September 2017
JJNCC	14 June 2016

**Note:** By signing the above you are authorising the policy for publication and are accepting responsibility for the policy on behalf of the Chief Constables.

Publication date	15 June 2016
Review date	15 June 2019
APP Checked	4 January 2016

**Note:** Please send the original Policy with both signatures on it to the Norfolk CPU for the audit trail.

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## Legal Basis

*(Please list below the relevant legislation which is the legal basis for this policy). You must update this list with changes in legislation that are relevant to this policy and hyperlink directly to the legislation.*

### **Legislation/Law specific to the subject of this policy document**

<b>Act (title and year)</b>
Visiting Forces Act 1952

### **Other legislation/law which you must check this document against (required by law)**

<b>Act (title and year)</b>
Human Rights Act 1998 (in particular A.14 – Prohibition of discrimination)
Equality Act 2010
Crime and Disorder Act 1998
H&S legislation
Data Protection Act 1998
Freedom Of Information Act 2000

## Other Related Documents

- Status Of Forces Agreements

## 1. Introduction

- 1.1 The Visiting Forces Act 1952 ("the Act") together with the Visiting Forces and International Headquarters (Application of Law) Order 1999 make provision for dealing with offences committed by members of visiting naval, military and air forces from certain listed countries by their own service authorities and service courts rather than by United Kingdom authorities and courts.
- 1.2 As a result the potential exists for conflict between the United Kingdom authorities including police forces, CPS and courts and the service authorities and courts of the visiting forces country ("the service court") as to which jurisdiction should deal with offences committed in the United Kingdom by members of that country's visiting force or by other personnel who are subject to the service court's jurisdiction.

## 2. Jurisdiction

- 2.1 The countries which are within the scheme set up by the Act are set out in Section 1 Visiting Forces Act 1952 and in Part II of Schedule I to the Visiting Forces and International Headquarters (Application of Law) Order 1999. A list of those countries is at appendix A.
- 2.2 The largest concentration of visiting forces in the United Kingdom are United States forces based in West Suffolk at RAF Mildenhall and RAF Lakenheath.
- 2.3 Section 3 of the Act sets out in detail when the service court will have the primary right to exercise jurisdiction to deal with a case involving visiting forces personnel. Essentially this will apply where a member of their visiting force is alleged to have committed an offence against the person or property of a victim who has a relevant association with the visiting force. It is immaterial where the offence occurs so long as it occurs within the UK.
- 2.4 Relevant association is defined in section 12(2) Visiting Forces Act 1952. This includes spouses and children of visiting forces personnel but not where the spouse or child holds British nationality.
- 2.5 In addition the United Kingdom court does not have primary jurisdiction where the offence arose out of and in the course of the service person's duties as a member of the visiting force - see section 3(1) Visiting Forces Act 1952.
- 2.6 The appropriate authority of the visiting force in respect of such offences is able to issue a certificate as to the service person having been on duty at the time of the alleged offence and that the offence arose out of and in the course of that duty. The certificate constitutes sufficient evidence of that fact unless the contrary is proved - see section 11(4) Visiting Forces Act 1952.

- 2.7 On duty may include circumstances where service personnel are on their way to work.

### 3. Procedure

- 3.1 Investigating Officers must consider at an early stage of an enquiry whether the matter will be dealt with at a British criminal court or by a Service Court. If it is likely to be dealt with by service courts the visiting force's authorities must be consulted with a view to one of their investigators being involved in the enquiry. Any arrest of a member of a visiting force should be subject of notification to that country's Embassy or High Commission.

#### Primary Right of Jurisdiction with the Visiting Force

- 3.2 At the earliest opportunity investigating officers must refer cases involving visiting forces personnel to a supervisor who should consider whether the visiting force has a primary right of jurisdiction. All such cases should then be referred to Team Leader CJS Case Management Team (Suffolk) (TLCMS) at [CaseManagementTeam@suffolk.pnn.police.uk](mailto:CaseManagementTeam@suffolk.pnn.police.uk) The supervisor should raise a task within an action plan on Athena and send to the Case Management Team Suffolk work-tray. If the TLCMS is satisfied that the visiting force does have a primary right to jurisdiction the visiting force should be permitted to investigate and deal with suspect. Evidence in the case should be provided to the visiting force authority on request and in accordance with data protection legislation. Effective liaison with the visiting force should be maintained.
- 3.3 Primary right of jurisdiction by the visiting force, where established, means that a United Kingdom Court has no right to try a member of that visiting force. The arrest and detention of suspects who are members of a visiting force will need careful consideration if there is no prospect of a prosecution in the UK criminal courts. Custody officers will have to be satisfied that there are continuing grounds for detention in such cases.
- 3.4 Any approaches from the visiting force asserting primary jurisdiction or requests for a handover of jurisdiction or a waiver should be directed to Team Leader Case Management (Suffolk) at [CaseManagementTeam@suffolk.pnn.police.uk](mailto:CaseManagementTeam@suffolk.pnn.police.uk) and raise an task within an action plan on Athena and send to Case management Team Suffolk work tray during office hours or the Custody Bronze/Duty PACE Inspector out of hours if a suspect in custody has a relevant association.

#### Waiver of Jurisdiction by Police and CPS

- 3.5 Police may decide to waive jurisdiction prior to charge. CPS is responsible for waiving jurisdiction after charge.

Examples of cases where jurisdiction is normally waived in favour of the service court include:

- Drug offences committed on the base;
- Minor drug offences committed off the base not involving any United Kingdom subject; and
- Cases where but for the involvement of service personnel a caution or diversion from prosecution would have been considered. In this case the appropriate service authority should be advised as to the likely disposal in the case of a United Kingdom subject.

Examples of cases where the United Kingdom would not usually waive jurisdiction in favour of the service court include:

- Damage has been caused to the person or property of a United Kingdom subject;
- There are a number of civilian witnesses;
- A child is a victim or an important witness; and
- There is a possibility of a special penalty being imposed by United Kingdom Law (e.g. disqualification from driving, restraining order).
- Cases involving Domestic Abuse.

3.6 Any approaches from the visiting force asserting primary jurisdiction or requests for a handover of jurisdiction or a waiver should be directed to Team Leader Case Management (Suffolk) at [CaseManagementTeam@suffolk.pnn.police.uk](mailto:CaseManagementTeam@suffolk.pnn.police.uk) and a task within an action plan should be raised on Athena and submitted to the Case Management Team Suffolk work-tray or the Custody Bronze/Duty PACE Inspector out of hours if a suspect in custody has a relevant association.

### **Waiver of Jurisdiction by Service Authority**

3.7 Occasionally the service authority will be asked to waive jurisdiction in favour of the United Kingdom court. Examples of such cases include:

- Where British subjects and service personnel are jointly involved in the commission of an offence;
- Where a serious offence against the person or property of a British subject has been committed; and
- Where the offence involves mandatory disqualification.

3.8 The decision as to whether to waive or retain jurisdiction is an ongoing responsibility. Where information comes to the attention of the CPS after proceedings have been commenced in the United Kingdom courts which affects the decision to retain jurisdiction (e.g. where the visiting forces member is due to imminently depart the United Kingdom for duty elsewhere) a further review should be conducted.

3.9 In appropriate cases where review decides that the case merits a change of venue from the United Kingdom court to the service court the United

Kingdom proceedings should be discontinued and a certificate of waiver issued to allow the service court to assume jurisdiction.

- 3.10 Usually, the service authorities for the visiting force member alleged to have committed an offence and the United Kingdom authorities will be able to agree which jurisdiction is appropriate to deal with the case. In cases where there is disagreement between the police and the service authority the case will be referred to CPS.

#### **Offences Subject to foreign Military Law**

- 3.11 The police may investigate alleged offences that result in no criminal offence disclosed. Investigating officers should be aware that such cases may provide sufficient evidence to prove offences against military law but not UK criminal law. Commonly occurring examples may involve drink drive investigations where analysis of blood samples shows levels below the legal limit but sufficient to prove "Driving under the influence" which may amount to an offence under military law. Evidence in these cases should be preserved and handed over to the visiting force if requested.



## 5. Appendix A: Countries Specified in Section 1(1)(a) of the Visiting Forces Act 1952

- Antigua and Barbuda.
- Australia.
- The Bahamas.
- Bangladesh.
- Barbados.
- Belize.
- Botswana.
- Brunei.
- Canada.
- The Republic of Cyprus.
- Dominica.
- Fiji.
- The Gambia.
- Ghana.
- Grenada.
- Guyana.
- India.
- Jamaica.
- Kenya.
- Kiribati.
- Lesotho.
- Malawi.
- Malaysia.
- Maldives.
- Malta.
- Mauritius.
- Namibia.

- Nauru.
- New Zealand.
- Nigeria.
- Pakistan.
- Papua New Guinea.
- Saint Christopher and Nevis.
- Saint Lucia.
- Saint Vincent and the Grenadines.
- Samoa.
- Seychelles.
- Sierra Leone.
- Singapore.
- Solomon Islands.
- South Africa.
- Sri Lanka.
- Swaziland.
- Tanzania.
- Tonga.
- Trinidad and Tobago.
- Tuvalu.
- Uganda.
- Vanuatu.
- Zambia.
- Zimbabwe.

## 6. Appendix B: Part II Countries Designated Under Section 1 (2) of the Visiting Forces Act 1952

- Albania.
- Armenia.
- Austria.
- Azerbaijan.
- Belarus.
- Belgium.
- Bulgaria.
- The Czech Republic.
- Denmark.
- Estonia.
- Finland.
- France.
- Georgia.
- Germany.
- Greece.
- Hungary.
- Italy.
- Latvia.
- Lithuania.
- Luxembourg.
- Kazakhstan.
- Kyrgyzstan.
- The Former Yugoslav Republic of Macedonia.
- Moldova.
- The Netherlands.
- Norway.
- Poland.

- Portugal.
- Romania.
- Russia.
- Slovakia.
- Slovenia.
- Spain.
- Sweden.
- Switzerland.
- Turkey.
- Turkmenistan.
- Ukraine.
- United States of America.
- Uzbekistan.

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1(2) Where it appears to Her Majesty, as respects any country not mentioned in paragraph (a) above, that having regard to

- (a) any arrangements for common defence; or
- (b) any other arrangements for defence co-operation,

to which Her Majesty's Government in the UK and the Government of that country are for the time being parties it is expedient that the following provisions of this Act, or any of those provisions, should have effect in relation to that country, Her Majesty may by Order in Council designate that country for the purposes of the provisions in question