

VISITING FORCES POLICY
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VISITING FORCES

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VISITING FORCES POLICY

Official

Index

1. Introduction	3
2. Statement of Policy	3
3. Applicability	3
4. Jurisdiction	3
5. Procedure	4
Primary Right of Jurisdiction with the Visiting Force	4
Waiver of Jurisdiction by Police and CPS in favour of the Service Court	5
Waiver of Jurisdiction by Service Authority in favour of UK	5
Offences Subject to foreign Military Law	6
6. Roles and Responsibilities	7
Appendix A: Countries Specified in Section 1(1)(a) of the Visiting Forces Act 1952	8
Appendix B: Part II Countries Designated Under Section 1 (2) of the Visiting Forces Act 1952	9

Legal Basis

Legislation specific to the subject of this policy document:

- Visiting Forces Act (1952)
- International Headquarters (Application of Law) Order 1999

Other relevant legislation which you must check this document against (required by law)

- Human Rights Act 1998 (in particular A.14 – Prohibition of discrimination)
- Equality Act 2010
- Crime and Disorder Act 1998
- Health and Safety at Work etc. Act 1974 and associated Regulations
- General Data Protection Regulation (GDPR) and Data Protection Act 2018
- Freedom of Information Act 2000
- The Civil Contingencies Act 2004

Other documentation which you must check this document against:

- College of Policing – Code of Ethics
- Norfolk and Suffolk Constabularies' Standards of Professional Behaviour
- College of Policing – Authorised Professional Practice
- NATO Status of Forces Agreement

Official

Version Number: 2.2

Page 2 of 9

VISITING FORCES POLICY

Official

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 Although Section 3 of the Act places restrictions on offences which may be prosecuted by UK authorities, the Act nonetheless retains jurisdiction to prosecute visiting forces by UK authorities. 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. Statement of Policy

- 2.1 This policy has been formally agreed via the approved policy development/review process. It will be maintained by the Specialist Operations Command in conjunction with the Central Policy Unit.
- 2.2 The policy is intended to promote equality, eliminate unlawful discrimination and actively promote good relations regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, economic or family status.
- 2.3 Managers have a responsibility to ensure this policy is applied fairly, and unless otherwise stated, all policies and procedures are non-contractual.

3. Applicability

- 3.1 Unless otherwise stated, this policy applies to all police officers (including officers of the Special Constabulary) and all members of police staff (including police support volunteers).

4. Jurisdiction

- 4.1 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 and B.
- 4.2 The largest concentration of visiting forces in the United Kingdom are United States forces based in West Suffolk at RAF Mildenhall and RAF Lakenheath.
- 4.3 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 only apply where a member of their visiting force is alleged to have committed an offence against the person (as defined in the Schedule to the

Official

Version Number: 2.2

Page 3 of 9

VISITING FORCES POLICY

Official

Act), 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.

- 4.4 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.
- 4.5 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.
- 4.6 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.

5. Procedure

- 5.1 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

- 5.2 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 the Criminal Justice CJ Support Team email: CJ-Support@norfolk.police.uk . The supervisor should raise a task on Athena for CJS CJ Support. Subject to the escalation procedure at 5.6 for either way or indictable only offences, or cases of concern, if the CJ Support reviewing member of staff is satisfied that the visiting force does have a primary right to jurisdiction, the visiting force should be permitted to investigate and deal with the suspect. Evidence in the case should be provided to the visiting force authority on request and in accordance with data protection legislation, the Status of Forces Agreements and the Overseas Security and Justice Assistance Assessment. Case Material must be redacted of personal and sensitive personal data. Material must only be sent to secure email addresses or via a police owned cloud platform such as Egress. USAF e-mail addresses are not considered secure.
- 5.3 Effective liaison with the visiting force should be maintained and for USAF bases in Suffolk and Norfolk this is also a wider responsibility for Western Area Command (Suffolk). 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.

Official

Version Number: 2.2

Page 4 of 9

VISITING FORCES POLICY

Official

- 5.2 Any approaches from the visiting force asserting primary jurisdiction or requests for a handover of jurisdiction or a waiver should be directed to Criminal Justice Support Team at CJ-Support@norfolk.police.uk . The supervisor should raise a task on Athena for CJS CJ Support during office hours or the Custody Bronze/Duty PACE Inspector out of hours if a suspect in custody has a relevant association.
- 5.3 Cases which involve summary only offences can be decided by the CJ Support Team, but where there are cases of concern, or either way or indictable only offences are alleged, the case must be escalated to the CJ Operations Manager for consideration.
- 5.4 Usually, the service authorities for the service member alleged to have committed and offence and the UK authorities will be able to agree which jurisdiction is appropriate. In cases where there is disagreement between the police and the service authority the case will be referred to CPS.
- 5.5 Record keeping is important with a decision-making log to be maintained by the CJ Support Team and the rationale for each decision documented and passed to the OIC for inclusion on the case file.

Waiver of Jurisdiction by Police and CPS in favour of the Service Court

- 5.6 UK jurisdiction may be waived in favour of the service court for a number of reasons, including :
- Drug offences committed on the base;
 - Minor drug offences committed off the base not involving any United Kingdom citizen; 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 citizen.
- 5.7 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 citizen;
 - 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).

Waiver of Jurisdiction by Service Authority in favour of UK

- 5.8 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;

Official

Version Number: 2.2

Page 5 of 9

VISITING FORCES POLICY

Official

- Where a serious offence against the person or property of a British subject has been committed; and
- Where the offence involves mandatory disqualification.

5.9 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. CPS decisions will be made at Deputy Chief Crown Prosecutor level.

5.10 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.

Offences Subject to foreign Military Law

5.11 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.

VISITING FORCES POLICY

Official

6. Roles and Responsibilities

Role	Responsibilities
Officer in the Case	• Identify cases involving members of a visiting force. • Refer cases involving members of a visiting force to a supervisor.
Supervisor	• Review the crime to establish whether there is likely to be jurisdictional issue in accordance with the Visiting Forces Act. • Refer the Case to Criminal Justice Support.
Criminal Justice Support Team	• Carry out a review of the case and decide whether the visiting force has primary right of jurisdiction. • Escalate to CJ Ops Manager for either way or indictable only offences or cases of concern • Respond to requests for waivers. • Refer disputed cases to CPS. • Refer charged cases to CPS where a waiver is being requested or primary right of jurisdiction is being asserted by the visiting forces authority. • Maintain effective liaison with Base Legal Offices or Judge Advocates Departments. • Respond to requests for transfer of evidence in service courts cases • Maintain a log of decisions and record rationale for each case to OIC
CJ Operations Manager	• Consider cases referred by CJ Support specifically either way or indictable only or cases of concern • Refer disputed cases to CPS
Custody Bronze / PACE inspector	• Out of hours where a suspect is in custody and is a member of a visiting force. Carry out a review of the case and decide whether the visiting force has primary right of jurisdiction. • Consult with Duty Superintendent • Refer disputed custody cases to CPS

Official

Version Number: 2.2

Page 7 of 9

VISITING FORCES POLICY

Official

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				

Official

Version Number: 2.2

Page 8 of 9

VISITING FORCES POLICY

Official

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 His 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 His 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, His Majesty may by Order in Council designate that country for the purposes of the provisions in question

Official

Version Number: 2.2

Page 9 of 9