

28 Aug 03

GOC (through COS)

MND(SE) POLICY FOR APPREHENDING, HANDLING AND PROCESSING OF DETAINEES AND INTERNEES

Reference:

- A. HQ 1 (UK) Armd Div FRAGO 29 to OPO 005/03 DTG 261200DJUN03
- B. ALS/MND(SE)/L14 Policy for Apprehending, handling and processing of detainees and internees dated Aug 03
- C. HQ MND(SE) Policy for Review of continued internment or detention dated Aug 03
- D. D/PJHQ/5/8135/12/1 Joint Commander's Mission Directive dated 21 Aug 03

1. Reference A is the current guidance for the detention of persons suspected of committing criminal offences (detainees) and for the internment of persons where you consider it necessary for imperative reasons of security (internees). This guidance required significant amendment to incorporate all the obligations of the Hague Regulations and Geneva Conventions and to ensure respect for Iraqi law in accordance with our occupying power responsibilities.

2. Reference B is the proposed new policy for MND(SE) and is at enclosure 1. This is an extensive policy which ensures that the obligations under international, national and Iraqi law have been observed. This policy takes into account both the UK's obligations and also those of the other Troop Contributing Nations (TCNs) which comprise MND(SE). The policy has been checked by PJHQ and the LEGADs of the TCNs.

3. Reference B comprises a four page policy and a series of annexes. It provides clear guidance on the practical procedures which, if fully implemented, will ensure that the legal obligations have been complied with. The aim has been to provide a policy that it is easily understood and therefore implemented, rather than an extensive legal document.

4. There is also a requirement for a formal HQ MND(SE) policy for the review by yourself and COS of all detainee and internee cases to ensure compliance with Geneva Convention IV and ECHR obligations. Reference C is this policy and is at enclosure 2.

5. Reference D para 20 details your obligation to ensure that the processing of PWs, detainees and internees is in accordance with the Laws of Armed Conflict. It also advises that you have a legal liability to acquaint yourself with the relevant provisions of the Hague Regulations and Geneva Conventions and protocols; and that you are responsible for ensuring that forces under your command comply with them.

6. It is my advice that the full and correct application of the policies at References B and C will ensure significant compliance with these obligations. Other ongoing work, including the completion of a policy for the UK procedures at the Theatre Internment Facility (TIF) and efforts to improve the conditions at the TIF in the short term pending the completion of Basra Central Prison (BCP) will also help ensure as full compliance as possible.

7. You should note two outstanding issues. The TIF is not regarded by the ICRC as fully Geneva Convention compliant, a view which is accepted by the UK and hence the requirement to have an alternative as soon as possible. A separate internee wing in BCP is regarded as acceptable by the ICRC but we must ensure that this project continues to be progressed as quickly as possible. Secondly there is a requirement for a comprehensive and independent review mechanism to be established for any individuals who are to be detained or interned for a period in excess of 6 months. This will occur on 22 Nov 03 (although the 6 month date for the one remaining EPW is 30 Oct 03). This is an issue that is currently being staffed by PJHQ, MOD LA and other government lawyers and is being considered by SOS Defence and the Attorney General.

8. You should read both enclosures. It is my advice that they will ensure considerably enhanced compliance with our legal obligations and that they should be implemented as soon as possible to replace Reference A.

C M J BARNETT
Lt Col
Comd Legal HQ MND(SE)

Enclosures:

1. MND(SE) Policy for Apprehending, handling and processing of detainees and internees dated Aug 03
2. HQ MND(SE) Policy for Review of continued detention or internment dated Aug 03