

CHAPTER 11:01

COMMONWEALTH FORCES (JURISDICTION) ACT

S.I. 1979 No. 1653 (U.K), Ord. 3/1980, 22/2001 (s. 4)

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SCHEDULE

Supoena.

AN ACT to make provision in relation to Commonwealth forces stationed in Zimbabwe.

[Date of commencement: 12th December, 1979.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Commonwealth Forces (Jurisdiction) Act [*Chapter 11:01*].

2 Interpretation

In this Act—

- “appropriate service authorities” means those authorities, including courts martial, having jurisdiction over the members of a Commonwealth force under the relevant service discipline Act;
- “Commonwealth force” means any unit or part of the forces of any member of the Commonwealth which, in accordance with an arrangement made with the Government, is for the time being serving in Zimbabwe;
- “member”, in relation to a Commonwealth force, includes any member of the forces of such member of the Commonwealth who, in accordance with his duty, is in Zimbabwe, and any member of the civilian component of such force who is subject to the relevant service discipline Act;
- “service discipline Act”, in relation to a Commonwealth force, means the legislation of the relevant member of the Commonwealth which provides for the regulation and discipline of that force;
- “service proceeding” means any court martial, summary of evidence, summary disposal proceedings, board of inquiry or regimental inquiry of a Commonwealth force held in Zimbabwe in accordance with the service discipline Act.

PART II

JURISDICTION

3 Jurisdiction of service authorities

Notwithstanding any other enactment, the appropriate service authorities shall have and may exercise jurisdiction in Zimbabwe in respect of the members of the Commonwealth force concerned in accordance with the service discipline Act.

4 Exclusion of jurisdiction of Zimbabwean courts

(1) No criminal proceedings shall be prosecuted before any court against a member of a Commonwealth force.

(2) No civil proceedings shall be entertained by any court with respect to any act or omission of a member of a Commonwealth force.

5 Inquests

No inquest or inquiry shall be held in terms of the Inquests Act [*Chapter 7:07*] into the death of a member of a Commonwealth force.

PART III

MISCELLANEOUS

6 Powers of arrest etc.

(1) Nothing in this Act shall affect any power of arrest, search, seizure or custody exercisable under the law of Zimbabwe or otherwise with respect to offences committed or believed to have been committed against that law, or with respect to the arrest of a person under any of the provisions of a service discipline Act as a person suspected of being a deserter or absent without leave, but any person so arrested or held shall be handed over to the appropriate service authorities without delay.

(2) A police officer may, without any order or warrant, arrest and detain any person reasonably suspected of being a deserter or an absentee without leave from a Commonwealth force, and shall, without delay, hand over to the appropriate service authorities any person so arrested whom he reasonably believes to be a member of a Commonwealth force.

(3) Every person arrested and detained in terms of subsection (2) shall be deemed to be in lawful custody.

7 Non-service witnesses at service proceedings

(1) If, in relation to any service proceeding, it is considered that any person other than a member of a Commonwealth force may be able to give evidence or to produce any book, document or thing which is relevant to the matter under investigation, the appropriate service authority or a member thereof or a commanding officer may issue a subpoena to be served upon such person requiring such person to appear at the service proceeding at a time and place specified therein to give evidence or to produce any book, document or thing in his possession or custody or under his control.

(2) A subpoena for the attendance of a witness or for the production of any book, document or thing shall be in the form specified in the Schedule and signed by the person issuing it, and shall be served on the witness by a police officer, either personally or by leaving it with some person at his last or most usual place of abode.

(3) There shall be paid or tendered to a person subpoenaed in terms of subsection (1) from moneys provided by the appropriate service authority such sum to cover his expenses as is payable to a witness required to attend at a criminal trial in a magistrates court.

(4) An oath required to be taken for the purpose of any service proceeding by a person not subject to the service discipline Act may be administered by the person authorized in that behalf under the service discipline Act.

(5) Any person subpoenaed in terms of subsection (1) or giving evidence at a service proceeding shall be entitled to the same privileges and immunities as if he were subpoenaed to attend or were giving evidence at a trial in a magistrates court.

(6) Sections 295 and 296 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, at a service proceeding in respect of any person not subject to the service discipline Act.

8 Exemptions of Commonwealth forces from certain duties

No duty as defined in the Customs and Excise Act [*Chapter 23:02*] shall be payable on goods imported into Zimbabwe, or acquired from stocks in bond, for the use of a Commonwealth force and, where any goods are acquired from duty-paid stocks in Zimbabwe for the use of a Commonwealth force, any such duty paid on such goods shall be refunded to that force.

9 Evidence

A certificate under the hand of the President, or of any person appointed for the purpose by the President by notice in the *Gazette*, that any person is or was during a stated period a member of a force which is a Commonwealth force shall be conclusive evidence in any court of the facts stated therein.

10 Offences and penalties

(1) If any person subpoenaed in terms of section *seven* fails, without sufficient cause, to attend at the time and place specified in the subpoena or to remain in attendance until duly excused from attendance or refuses, without sufficient cause, to be sworn or to produce any book, document or thing in his possession or custody or under his control and specified or referred to in the subpoena served on him, he shall be guilty of an offence and liable to a

fine not exceeding level five or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(2) If any person subpoenaed in terms of section *seven* or giving evidence at any service proceeding, having been duly sworn, refuses, without sufficient cause, to answer any question lawfully put to him he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

Subsection as amended by section 4 of Act 22 of 2001]

(3) If any person subpoenaed in terms of section *seven* or giving evidence at any service proceeding, having been duly sworn, makes a false statement, knowing such statement to be false or not knowing or believing it to be true, he shall be guilty of an offence and liable to the same punishment as if he had been convicted of perjury.

SCHEDULE (Section 7 (2))

SUBPOENA

(issued in terms of section 7 of the Commonwealth Forces (Jurisdiction) Act [*Chapter 11:01*])

WHEREAS a
will be held at
on the
for the purpose of.....

.....
I hereby summon and require you to
attend as a witness at the above-mentioned place on the
..... at o'clock a.m./p.m.

(and to bring with you
.....)
and so to attend until you have been excused from attendance.

Failure to attend in accordance with this subpoena will constitute an offence punishable under the abovementioned Act.

.....

(Signed)

.....

(date)

(name, rank and appointment)