

SCHEDULE 4

Article 8

Application of Part 1 of 2016 Act in relation to service offences etc.

General

1.—(1) Section 58 of the 2016 Act (disapplication of Part 1 in relation to service offences) is subject to this Schedule.

(2) In this Schedule, “constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012, subject to sub-paragraph (3).

(3) In this Schedule and any provision of Part 1 of the 2016 Act as applied by this Schedule, references to a constable include references to a member of the Ministry of Defence Police.

(4) Subject to sub-paragraph (6), a provision of that Part that is not applied by a paragraph of this Schedule, and that would otherwise apply in the case to which the paragraph relates, does not apply in that case.

(5) For the purposes of provisions of that Part applied by this Schedule, section 64 of the 2016 Act (meaning of police custody) applies—

- (a) as if in subsection (1) the reference to the person’s arrest by a constable included a reference to the person’s surrender to a constable as being a person subject to service law who has deserted or is absent without leave;
- (b) with the substitution for subsection (2)(b), (c), (ca) and (cb) of—
 - “(b) the person is transferred to service custody,
 - (c) the person is brought before a court in accordance with section 314(4) or 315(4) (b) of the Armed Forces Act 2006,
 - (ca) the person is taken to a place in accordance with section 318(1)(b) of that Act (place in which person sentenced to service detention is required in accordance with law to be detained),”.

(6) Section 58(2) of the 2016 Act does not limit the effect of an amendment or repeal made by schedule 2 to that Act.

Arrest under warrant of judge advocate

2.—(1) The following provisions of Part 1 of the 2016 Act apply where a person is arrested by a constable under a warrant under section 313 of the Armed Forces Act 2006 (warrant of judge advocate for arrest for service offence).

(2) Section 3 (information to be given on arrest) applies with the following modifications—

- (a) in paragraph (d) omit “other than to give the information specified in section 34(4),”;
- (b) after paragraph (d) add—
 - “(da) of the person’s right to have intimation sent under section 38;”;
- (c) omit paragraph (e)(ii).

(3) Section 5 (information to be given at police station) applies with the following modifications—

- (a) in subsection (1)(b) omit “in accordance with section 4”;
- (b) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”;
- (c) in subsection (2)(b) omit “and to have access” and sub-paragraphs (ii) and (iv).

(4) In section 6 (information to be recorded by police)—

- (a) subsection (1) applies;
- (b) subsection (2) applies, but omitting paragraphs (a) and (c).
- (5) Section 38 (right to have intimation sent to other person) applies.
- (6) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—
 - (a) omit subsections (2), (3) and (4)(b);
 - (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end, and at the end of paragraph (b) add—
 - “, or
 - (c) the person is transferred to service custody.”.
- (7) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—
 - (a) in subsection (4) omit “and 40”;
 - (b) in subsection (7) for “to 40” substitute “and 39”.
- (8) Section 42 (support for vulnerable persons) applies.
- (9) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).
- (10) Section 45 (use of reasonable force) applies.
- (11) Section 46 (common law power of entry) applies.
- (12) Section 50 (duty not to detain unnecessarily) applies.
- (13) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (14) Section 52 (duties in relation to children in custody) applies.

Arrest of deserters and absentees without leave

- 3.—**(1) The following provisions of Part 1 of the 2016 Act apply where—
- (a) a person is arrested by a constable under section 314 of the Armed Forces Act 2006 (arrest by constable of deserters and absentees without leave); or
 - (b) a person is arrested by a constable under a warrant under subsection (2) of that section.
- (2) Section 3 (information to be given on arrest) applies with the omission in paragraph (d) of “other than to give the information specified in section 34(4),”.
- (3) Section 4 (arrested person to be taken to police station) applies, omitting subsection (3).
- (4) Section 5 (information to be given at police station) applies with the omission in subsection (2) (a) of “other than to give the information specified in section 34(4),”.
- (5) In section 6 (information to be recorded by police)—
- (a) subsection (1) applies;
 - (b) subsection (2) applies, but omitting paragraph (c).
- (6) Section 22 (under 18s to be kept in place of safety prior to court) applies with the following modifications—
- (a) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 314(4) of the Armed Forces Act 2006;
 - (b) in subsection (1)(b) omit sub-paragraph (i);

- (c) in subsection (2) omit the reference to release under section 25.
- (7) Section 23 (notice to parent that under 18 to be brought before court) applies with the following modifications—
 - (a) in subsection (1) omit “or under 16 years of age”;
 - (b) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 314(4) of the Armed Forces Act 2006;
 - (c) omit subsection (1)(b);
 - (d) omit subsection (2)(d).
- (8) Section 24 (notice to local authority that under 18 to be brought before court) applies with the following modifications—
 - (a) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 314(4) of the Armed Forces Act 2006;
 - (b) omit subsection (1)(b);
 - (c) omit subsection (2)(a);
 - (d) omit subsection (3)(c);
 - (e) in subsection (4)(a) omit “or (as the case may be) (b)”;
 - (f) omit subsection (4)(c).
- (9) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).
- (10) Section 39 (right to have intimation sent: under 18s) applies, omitting subsection (7)(a) except for the purposes of section 41(7).
- (11) Section 40 (right of under 18s to have access to other person) applies, omitting subsection (1) except for the purposes of section 41(7).
- (12) Section 41 (social work involvement in relation to under 18s) applies.
- (13) Section 42 (support for vulnerable persons) applies.
- (14) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(d).
- (15) Section 44 (right to consultation with solicitor) applies.
- (16) Section 45 (use of reasonable force) applies.
- (17) Section 46 (common law power of entry) applies.
- (18) Section 50 (duty not to detain unnecessarily) applies.
- (19) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (20) Section 52 (duties in relation to children in custody) applies.

Deserters and absentees without leave surrendering to constable

- 4. Where a person surrenders to a constable as being a person subject to service law who has deserted or is absent without leave, section 3 of the 2016 Act (information to be given on arrest) applies with the following modifications—
 - (a) for “When a constable arrests a person” substitute “When a person surrenders to a constable as being a person subject to service law who has deserted or is absent without leave”;
 - (b) for paragraphs (a) to (c) substitute—

- “(a) that the person has surrendered as being a person subject to service law who has deserted or (as the case may be) who is absent without leave, and”;
- (c) in paragraph (d) omit “other than to give the information specified in section 34(4),”;
- (d) omit paragraph (e).

Surrender of deserters and absentees: transfer to service custody

- 5.—(1) The following provisions of Part 1 of the 2016 Act apply where—
- (a) a person’s case is considered under subsection (3) of section 315 of the Armed Forces Act 2006 (deserters and absentees without leave surrendering to civilian police); and
 - (b) the person considering the case acts under subsection (4)(a) of that section (power to arrange for person to be transferred to service custody).
- (2) Section 5 (information to be given at police station) applies with the following modifications—
- (a) in subsection (1)(a) for “been arrested” substitute “surrendered”;
 - (b) in subsection (1)(b) for the reference to section 4 of the 2016 Act substitute a reference to section 315(1) of the Armed Forces Act 2006;
 - (c) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”;
 - (d) omit subsection (2)(b)(ii) and (iv).
- (3) In section 6 (information to be recorded by police)—
- (a) subsection (1) applies, substituting references to surrender, or surrender to a constable, for references to arrest, or arrest by a constable;
 - (b) subsection (2) applies, but—
 - (i) omitting paragraphs (a) and (c); and
 - (ii) substituting a reference to surrender to a constable for the reference to arrest by a constable;
- (4) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).
- (5) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—
- (a) omit subsections (2), (3) and (4)(b);
 - (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end, and at the end of paragraph (b) add—
 - “, or
 - (c) the person is transferred to service custody.”;
 - (c) in subsection (7) omit paragraph (a) except for the purposes of section 41(7).
- (6) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—
- (a) in subsection (4) omit “and 40”;
 - (b) in subsection (7) for “to 40” substitute “and 39”.
- (7) Section 42 (support for vulnerable persons) applies.
- (8) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).
- (9) Section 45 (use of reasonable force) applies.

- (10) Section 50 (duty not to detain unnecessarily) applies.
- (11) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (12) Section 52 (duties in relation to children in custody) applies.

Surrender of deserters and absentees: bringing before court of summary jurisdiction

- 6.—(1) The following provisions of Part 1 of the 2016 Act apply where—
 - (a) a person’s case is considered under subsection (3) of section 315 of the Armed Forces Act 2006 (deserters and absentees without leave surrendering to civilian police); and
 - (b) the person considering the case acts under subsection (4)(b) of that section (power to arrange for person to be brought before court of summary jurisdiction).
- (2) Section 5 (information to be given at police station) applies with the following modifications—
 - (a) in subsection (1)(a) for “been arrested” substitute “surrendered”;
 - (b) in subsection (1)(b) for the reference to section 4 of the 2016 Act substitute a reference to section 315(1) of the Armed Forces Act 2006;
 - (c) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”.
- (3) In section 6 (information to be recorded by police)—
 - (a) subsection (1) applies, substituting references to surrender, or surrender to a constable, for references to arrest, or arrest by a constable;
 - (b) subsection (2) applies, but—
 - (i) omitting paragraphs (a) and (c); and
 - (ii) substituting a reference to surrender to a constable for the reference to arrest by a constable;
- (4) Section 22 (under 18s to be kept in place of safety prior to court) applies with the following modifications—
 - (a) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 315(4)(b) of the Armed Forces Act 2006;
 - (b) in subsection (1)(b) omit sub-paragraph (i);
 - (c) in subsection (2) omit the reference to release under section 25.
- (5) Section 23 (notice to parent that under 18 to be brought before court) applies with the following modifications—
 - (a) in subsection (1) omit “or under 16 years of age”;
 - (b) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 315(4)(b) of the Armed Forces Act 2006;
 - (c) omit subsection (1)(b);
 - (d) omit subsection (2)(d).
- (6) Section 24 (notice to local authority that under 18 to be brought before court) applies with the following modifications—
 - (a) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 315(4)(b) of the Armed Forces Act 2006;
 - (b) omit subsection (1)(b);
 - (c) omit subsection (2)(a);

- (d) omit subsection (3)(c);
 - (e) in subsection (4)(a) omit “or (as the case may be) (b)”;
 - (f) omit subsection (4)(c).
- (7) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).
- (8) Section 39 (right to have intimation sent: under 18s) applies, omitting subsection (7)(a) except for the purposes of section 41(7).
- (9) Section 40 (right of under 18s to have access to other person) applies, omitting subsection (5) (b).
- (10) Section 41 (social work involvement in relation to under 18s) applies.
- (11) Section 42 (support for vulnerable persons) applies.
- (12) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(d).
- (13) Section 44 (right to consultation with solicitor) applies.
- (14) Section 45 (use of reasonable force) applies.
- (15) Section 50 (duty not to detain unnecessarily) applies.
- (16) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (17) Section 52 (duties in relation to children in custody) applies.

Surrender of deserters and absentees: transfer to service custody

- 7.—(1) The following provisions of Part 1 of the 2016 Act apply where—
- (a) a person’s case is considered under subsection (3) of section 315 of the Armed Forces Act 2006 (deserters and absentees without leave surrendering to civilian police); and
 - (b) the person considering the case acts under subsection (4)(c) of that section (power to release person subject to condition to enable the person to be taken into service custody).
- (2) Section 5 (information to be given at police station) applies with the following modifications—
- (a) in subsection (1)(a) for “been arrested” substitute “surrendered”;
 - (b) in subsection (1)(b) for the reference to section 4 of the 2016 Act substitute a reference to section 315(1) of the Armed Forces Act 2006;
 - (c) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”;
 - (d) omit subsection (2)(b)(ii) and (iv).
- (3) In section 6 (information to be recorded by police)—
- (a) subsection (1) applies, substituting references to surrender, or surrender to a constable, for references to arrest, or arrest by a constable;
 - (b) subsection (2) applies, but—
 - (i) omitting paragraphs (a) and (c); and
 - (ii) substituting a reference to surrender to a constable for the reference to arrest by a constable;
 - (c) subsection (7) applies, substituting a reference to section 315(4)(c) of the Armed Forces Act 2006 for the reference to section 16 of the 2016 Act.
- (4) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).

(5) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—

- (a) omit subsections (2), (3) and (4)(b);
- (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end;
- (c) in subsection (7) omit paragraph (a) except for the purposes of section 41(7).

(6) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—

- (a) in subsection (4) omit “and 40”;
- (b) in subsection (7) for “to 40” substitute “and 39”.

(7) Section 42 (support for vulnerable persons) applies.

(8) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).

(9) Section 45 (use of reasonable force) applies.

(10) Section 50 (duty not to detain unnecessarily) applies.

(11) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).

(12) Section 52 (duties in relation to children in custody) applies.

Arrest under warrant under section 317 of Armed Forces Act 2006

8.—(1) The following provisions of Part 1 of the 2016 Act apply where a person is arrested by a constable under a warrant under section 317 of the Armed Forces Act 2006 (failure to comply with condition to enable person to be taken into service custody).

(2) Section 3 (information to be given on arrest) applies with the following modifications—

- (a) omit paragraph (b);
- (b) in paragraph (d) omit “other than to give the information specified in section 34(4),”;
- (c) after paragraph (d) add—
 - “(da) of the person’s right to have intimation sent under section 38;”;
- (d) omit paragraph (e)(ii).

(3) Section 5 (information to be given at police station) applies with the following modifications—

- (a) in subsection (1)(b) omit “in accordance with section 4”;
- (b) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”;
- (c) omit subsection (2)(b)(ii) and (iv).

(4) In section 6 (information to be recorded by police)—

- (a) subsection (1) applies, omitting paragraph (b);
- (b) subsection (2) applies, omitting paragraphs (a) and (c).

(5) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).

(6) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—

- (a) omit subsections (2), (3) and (4)(b);

- (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end, and at the end of paragraph (b) add—
 - “, or
 - (c) the person is transferred to service custody.”;
 - (c) in subsection (7) omit paragraph (a) except for the purposes of section 41(7).
- (7) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—
- (a) in subsection (4) omit “and 40”;
 - (b) in subsection (7) for “to 40” substitute “and 39”.
- (8) Section 42 (support for vulnerable persons) applies.
- (9) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).
- (10) Section 45 (use of reasonable force) applies.
- (11) Section 46 (common law power of entry) applies.
- (12) Section 50 (duty not to detain unnecessarily) applies.
- (13) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (14) Section 52 (duties in relation to children in custody) applies.

Arrest of persons unlawfully at large

9.—(1) The following provisions of Part 1 of the 2016 Act apply where a person is arrested by a constable under section 318(1) of the Armed Forces Act 2006 (person sentenced to service detention and unlawfully at large).

- (2) Section 3 (information to be given on arrest) applies with the following modifications—
 - (a) omit paragraph (b);
 - (b) in paragraph (d) omit “other than to give the information specified in section 34(4),”;
 - (c) after paragraph (d) add—
 - “(da) of the person’s right to have intimation sent under section 38;”;
 - (d) omit paragraph (e)(ii).
- (3) Section 5(2) (information to be given as soon as reasonably practicable) applies when the person is in police custody, with the following modifications—
 - (a) in paragraph (a) omit “other than to give the information specified in section 34(4),”;
 - (b) omit paragraph (b)(i) and (iv).
- (4) In section 6 (information to be recorded by police)—
 - (a) subsection (1) applies;
 - (b) subsection (2) applies, omitting paragraphs (a), (b)(ii) and (c).
- (5) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).
- (6) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—
 - (a) omit subsections (2), (3) and (4)(b);

- (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end, and at the end of paragraph (b) add—
 - “, or
 - (c) the person is transferred to the place in which the person is required in accordance with law to be detained.”;
 - (c) in subsection (7) omit paragraph (a) except for the purposes of section 41(7).
- (7) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—
- (a) in subsection (4) omit “and 40”;
 - (b) in subsection (7) for “to 40” substitute “and 39”.
- (8) Section 42 (support for vulnerable persons) applies.
- (9) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).
- (10) Section 45 (use of reasonable force) applies.
- (11) Section 46 (common law power of entry) applies.
- (12) Section 50 (duty not to detain unnecessarily) applies.
- (13) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (14) Section 52 (duties in relation to children in custody) applies.