

Changes to legislation: Reserve Forces Act 1980, SCHEDULE 5 is up to date with all changes known to be in force on or before 18 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

^{F1}SCHEDULE 5

Textual Amendments

F1 Sch. 5 repealed (1.4.1997) by 1996 c. 14, s. 131(2), **Sch. 11** (with s. 72(5)); S.I. 1997/305, **art. 2**

Arrest of deserters and absentees without leave

- 1 (1) A constable may arrest any person whom he has reasonable cause to suspect of being an officer or man of the reserve forces (that is, in this Schedule, an officer or man of the [^{F2}Regular Reserve], Air Force Reserve, [^{F3}Army Reserve] and Royal Auxiliary Air Force) who has deserted or is absent without leave.
- (2) Where no constable is available, any officer, warrant officer, non-commissioned officer or soldier of the regular forces, or airman of the regular air force, or any other person, may arrest any person whom he has reasonable cause to suspect of having deserted or being absent without leave as mentioned in sub-paragraph (1) above.
- (3) Any person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or man of the reserve forces who has deserted or is absent without leave or is reasonably suspected of having deserted or being absent without leave, may issue a warrant authorising his arrest.
- (4) Any person in custody in pursuance of this paragraph shall as soon as practicable be brought before a magistrates' court.
- (5) This paragraph shall have effect in the United Kingdom and in any colony.

Textual Amendments

- F2** Words in Act substituted (1.10.2014) by Defence Reform Act 2014 (c. 20), **s. 44(3)(a)(4)50(1)** (with s. 49(3)(5)); S.I. 2014/2370, **art. 4(a)**
- F3** Words in Act substituted (1.10.2014) by Defence Reform Act 2014 (c. 20), **s. 44(3)(b)(4)50(1)** (with s. 49(3)(5)); S.I. 2014/2370, **art. 4(a)**

Proceedings before a civil court where persons suspected of illegal absence

- 2 (1) Where a person who is brought before a magistrates' court is alleged to be an officer or man of the reserve forces who has deserted or is absent without leave, the following provisions shall have effect.

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- (2) If he admits that he is illegally absent from the reserve forces and the court is satisfied of the truth of the admission, then—

(a) unless he is in custody for some other cause the court shall, and

(b) notwithstanding that he is in custody for some other cause, the court may, forthwith either cause him to be delivered into military or air-force custody, as the case may be, in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered into military or air-force custody, as the case may be) or until sooner delivered into such custody.

Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

- (3) If he does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to military law or air-force law, as the case may be, and if of opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave then, unless he is in custody for some other cause, the court shall cause him to be delivered into military or air-force custody, as the case may be, or commit him as aforesaid, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this sub-paragraph.

- (4) The following provisions of the Magistrates' Courts Act 1980 or any corresponding enactment in force as respects the court in question, that is to say the provisions relating to the constitution and procedure of magistrates' courts acting as examining justices and conferring powers of adjournment and remand on such courts so acting, and the provisions as to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to any proceedings under this paragraph.

- (5) This paragraph shall have effect in the United Kingdom and in any colony.

Deserters and absentees without leave surrendering to police

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- 3 (1) Where in the United Kingdom or any colony a person surrenders himself to a constable as being illegally absent from the reserve forces, the constable shall (unless he surrenders himself at a police station) bring him to a police station.
- (2) The officer of police in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case and if it appears to that officer that the said person is illegally absent as aforesaid he may cause him to be delivered into military or air-force custody, as the case may be, without bringing him before a magistrates' court or may bring him before such a court.

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Certificates of arrest or surrender of deserters and absentees

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- 4 (1) Where a magistrates' court in pursuance of paragraph 2 above deals with a person as illegally absent, then when that person is delivered into military or air-force custody, as the case may be, there shall be handed over with him a certificate in the prescribed form, signed by a justice of the peace, containing the prescribed particulars as to his arrest or surrender and the proceedings before the court; and for any such certificate there shall be payable to the clerk of the court, by such person as the Defence Council may direct, such fee (if any) as may be prescribed.
- (2) Where under sub-paragraph (1) above, a person is delivered into military or air-force custody without being brought before a court, there shall be handed over with him a certificate in the prescribed form, signed by the officer of police who causes him to be delivered into custody, containing the prescribed particulars relating to his surrender.
- (3) In any proceedings for an offence under section 73(1) above or section 106(1) above—
- (a) a document purporting to be a certificate under either sub-paragraph (1) or (2) above and to be signed as thereby required, shall be evidence of the matters stated in the document;
 - (b) where the proceedings are against a person who has been taken into military, naval or air-force custody on arrest or surrender, a certificate purporting to be signed by a provost officer, or any corresponding officer of a Commonwealth force or a force raised under the law of a colony, or by any other officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.
- (4) In this paragraph the expression "prescribed" means prescribed by regulations made by the Secretary of State by statutory instrument under section 189 of the Army Act 1955 or section 189 of the Air Force Act 1955, as the case may be.

Duties of governors of prisons and others to receive deserters and absentees

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- 5 (1) It shall be the duty of the governor of a civil prison in the United Kingdom or the superintendent or other person in charge of a civil prison in a colony to receive any person duly committed to that prison by a magistrates' court as illegally absent from the reserve forces and to detain him until in accordance with the directions of the court he is delivered into military or air-force custody, as the case may be.
- (2) Sub-paragraph (1) above shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, whether in the United Kingdom or in a colony, as it applies to the governor or superintendent of a prison.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act excluded (prosp.) by [1996 c. 14 s. 129\(2\)](#)
- Act modified (prosp.) by [1996 c. 14 s. 128Sch. 8 para. 4\(5\)](#)
- Act repealed (except s.048, 55, 130-138,140,151,156,157, 158) (prosp.) by [1996 c. 14 s. 131\(2\)Sch. 11](#)