

ARMED FORCES ACT 2006

EXPLANATORY NOTES

COMMENTARY

First Group of Parts – Discipline

Part 13 – Discipline: Miscellaneous and Supplementary

Chapter 3 – Arrest and Detention by Civil Authorities

Arrest for service offences

Section 313: Arrest by civilian police under warrant of judge advocate

622. This section permits judge advocates to issue warrants to the civilian police forces of the UK or any British overseas territory for the arrest of persons reasonably suspected of having committed service offences. There is an obligation on those making an arrest under such a warrant to transfer the arrested person into service custody as soon as practicable. Further rules as to the practice and procedure which are to apply when arrest warrants are issued under this section may be made by the Secretary of State by statutory instrument.

Arrest etc for desertion or absence without leave

Section 314: Arrest by civilian police of deserters and absentees without leave

623. This section permits the civilian police in the UK or a British overseas territory to arrest a suspected absentee without a warrant. It also provides authority for an “authorised person” in the UK, the Isle of Man or a British overseas territory to issue an arrest warrant in certain circumstances. An authorised person is a person who is empowered in the civilian system to issue arrest warrants, e.g. a Crown Court judge or magistrate in England and Wales. A person who is arrested pursuant to these provisions must be brought before a court of summary jurisdiction.

Section 315: Deserters and absentees without leave surrendering to civilian police

624. This section provides that a person who surrenders himself as being a deserter or absent without leave to a police officer of a UK or British overseas territory police force must be taken to a police station. The person in charge of the police station (or a person authorised by him) must consider the case and if it appears to him that the person who has surrendered is subject to service law and illegally absent, he may arrange for him to be (a) delivered into service custody, (b) brought before a court, or (c) released with conditions as to his reporting at a future time and place (this last course is equivalent to being granted police bail in England and Wales).

Section 316: Proceedings before civilian court where person suspected of illegal absence

625. This section details the duties of a summary court in the UK, the Isle of Man or a British overseas territory when a person admits to being illegally absent or where the court is in possession of evidence that he is illegally absent.
626. If the suspect is not in custody for some other cause (e.g. if he was arrested for assault and it then transpired that he was an illegally absent serviceman he might be in custody for the assault), and the required evidence exists, the court must either (a) arrange for the suspect to be delivered into service custody, or (b) release him subject to conditions in respect of his reappearance at a later time and place ((b) is equivalent to being bailed by a magistrates' court in England and Wales). If the court decides that he should be delivered into service custody it may hold a person in custody pending his transfer into service custody where it is likely that such transfer will be subject to delay.
627. Where the court does not have evidence that the person is illegally absent he must be released (unless he is in custody for some other cause). A person who has been released under this provision may nevertheless subsequently be arrested, either pursuant to a warrant for his arrest or under section 67 (powers of arrest where a person is reasonably suspected of committing or having committed a service offence).

Section 317: Warrant for the arrest of persons released under section 315(4)(c) or 316(3)(a)(ii)

628. When a suspect is released from custody subject to conditions under section 315(4)(c) or section 316(3)(a)(ii) and he fails to meet those conditions, a warrant may be issued for his arrest. Such warrants may be issued by a judge advocate, and if the release was authorised by a civilian court, by a person authorised to issue warrants by that court. A person arrested pursuant to these provisions must be transferred to service custody as soon as practicable. This section also provides that the Secretary of State may make rules by statutory instrument which set out the practice and procedure with respect to the issue of arrest warrants by judge advocates under this section.

Arrest of persons unlawfully at large

Section 318: Arrest by civilian police of persons unlawfully at large

629. This section provides that a person who has been sentenced to service detention and is "unlawfully at large" (as defined by section 301) may be arrested by a member of the civilian police in the UK or a British overseas territory without a warrant and may be taken to wherever he is required to be detained. For example, a person sentenced to service detention and unlawfully at large in the UK could be arrested without a warrant and taken to the MCTC, which is where he would be required to serve his period of detention.

Supplementary

Section 319: Certificates in connection with transfer to service custody etc

630. This section allows the Secretary of State to make a provision requiring a certificate in respect of a person who having been apprehended by the civil authorities is either delivered into service custody or released by them. The Secretary of State may make regulations by statutory instrument that set out matters such as the details the certificates should record. For example, a record of whether the person was wearing uniform may be useful evidence as to whether he was absent without leave or had actually deserted.

*These notes refer to the Armed Forces Act 2006 (c.52)
which received Royal Assent on 8 November 2006*

Section 320: Power to use reasonable force

631. When an arrest is effected by a police officer he may use such force as is reasonable to apprehend the suspect.