
STATUTORY INSTRUMENTS

2009 No. 1108

DEFENCE

**The Armed Forces (Evidence of Illegal Absence
and Transfer to Service Custody) Regulations 2009**

<i>Made</i>	- - - -	<i>24th April 2009</i>
<i>Laid before Parliament</i>		<i>1st May 2009</i>
<i>Coming into force</i>	- -	<i>31st October 2009</i>

The Secretary of State, in exercise of the powers conferred by sections 316(2)(b) and 319 of the Armed Forces Act 2006(1), makes the following Regulations:

PART 1

PRELIMINARY

Citation, commencement and interpretation

1. These Regulations may be cited as the Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009 and come into force on 31st October 2009.

2.—(1) In these Regulations

“the Act” means the Armed Forces Act 2006;

“authorised person” shall be construed in accordance with regulation 7;

“civilian policeman” means a member of a UK police force or a British overseas territories police force;

“illegal absence” means absence without leave or desertion, and “illegally absent” shall be construed accordingly;

“relevant person” means—

(a) a person subject to service law who is suspected of being illegally absent or

(b) the person who is arrested under a warrant issued under section 317(1) of the Act;

“service custody” has the same meaning as in sections 313 to 319 of the Act; and

“unit” means—

- (a) a naval ship or establishment;
- (b) any body of members of Her Majesty’s forces formed under the command of a person appointed to be the commanding officer of the body;
- (c) an air force station.

PART 2

CERTIFICATES ISSUED BY COMMANDING OFFICERS OR SERVICE AUTHORITIES FOR ILLEGAL ABSENCE

Applicability of section 316

3.—(1) For the purposes of section 316(2)(b) of the Act, the following documents shall be evidence of the matters stated—

- (a) a certificate (or copy of such a certificate) signed by the relevant person’s commanding officer detailing the information required in paragraph (2) and containing a statement that the relevant person is suspected of being illegally absent;
 - (b) a copy of any signalled declaration of absence relating to the relevant person containing the information required in paragraph (2); or
 - (c) any document appearing to be the results of a search of the Police National Computer which shows that the relevant person is wanted for being illegally absent.
- (2) The information required is—
- (a) the name, rank or rate, service, unit, and service number of the relevant person;
 - (b) the relevant person’s date and place of birth;
 - (c) the address of the relevant person’s unit;
 - (d) the first know date of illegal absence;
 - (e) the relevant person’s home address;
 - (f) the relevant person’s last known location;
 - (g) a physical description of the relevant person.

PART 3

CERTIFICATES ISSUED BY CIVILIAN POLICE OR COURTS

Certificate of transfer to service custody

4.—(1) Where—

- (a) a civilian policeman has arrested a relevant person under a warrant of a judge advocate and, under section 313(4) of the Act, the relevant person is delivered into service custody, or
- (b) a relevant person has surrendered to a civilian policeman and under section 315(4)(a) of the Act, the relevant person is transferred to service custody without being brought before a court,

a certificate containing the required information is to be handed over with the relevant person to the person receiving the relevant person into service custody.

(2) Where a court arranges for the relevant person to be transferred to service custody under section 316(3)(a)(i) or (b) of the Act, it shall provide a certificate containing the required information and—

- (a) details of whether the relevant person admitted to the court that he was a person subject to service law who had deserted or was absent without leave; or
- (b) details of whether the court had in its possession evidence of the type provided for in regulation 3.

(3) Where they are available, a certified copy of any custody records raised and maintained for the relevant person whilst he was under arrest or after he had surrendered, shall be provided with the certificate issued under this regulation.

Certificate of release subject to conditions

5.—(1) Where the relevant person has been released under section 315(4)(c) or 316(3)(a)(ii) of the Act a certificate must be passed as soon as practicable to the Service Police Crime Bureau containing—

- (a) the required information; and
- (b) details of the conditions specified.

(2) A copy of that certificate is to be provided to the relevant person when he is released, with the instruction that it be handed to the commanding officer at the place of report.

(3) Where they are available, a certified copy of any custody records raised and maintained for the relevant person whilst he was under arrest or after he had surrendered, shall be provided with the certificate issued under this regulation.

Meaning of “required information”

6. For the purposes of this Part, the “required information” means—

- (a) the name and position of the authorised person;
- (b) the name and, if known, the unit, service, rank or rate, and service number of the relevant person;
- (c) details of whether the relevant person was arrested, surrendered or appeared before a court of summary jurisdiction;
- (d) if the relevant person was arrested—
 - (i) the name, rank and number of the person making the arrest;
 - (ii) the date, time and place of arrest; and
 - (iii) if the arrest was in execution of a warrant, the number and date of the warrant;
- (e) if the relevant person surrendered himself—
 - (i) the name, rank and number of the person to whom the relevant person surrendered;
 - (ii) the date, time and place of surrender;
- (f) details of whether or not at the time of the arrest or surrender of the relevant person, he was wearing the uniform of any of Her Majesty’s forces; and
- (g) details of whether or not at the time of the arrest or surrender of the relevant person, he was in possession of an identity card issued by any of Her Majesty’s forces.

Certificates to be signed and authorised persons

7.—(1) A certificate made under this Part shall be signed by an authorised person.

(2) The following persons are authorised to sign certificates required to be issued by civilian police officers—

- (a) the person in charge of the police station to which the relevant person is brought after arrest or to where the relevant person surrendered; or
- (b) a person authorised by the person in charge of that police station to act on his behalf.

(3) The following persons are authorised to sign certificates required to be issued by a court of summary jurisdiction—

- (a) in England, Wales and the Isle of Man, a Justice of the Peace or the Clerk of the Court;
- (b) in Scotland, the Clerk of the Court;
- (c) in Northern Ireland, a resident Magistrate or the Clerk of Petty Sessions for the Petty Sessions district in which the court sat;
- (d) in Jersey and Guernsey, a Magistrate or a person for the time being authorised to act as a Magistrate;
- (e) in Alderney, the Chairman of the Court of Alderney or the person for the time being authorised to act as Chairman of that Court;
- (f) in Sark, the Seneschal or the Deputy Seneschal; and
- (g) in a British overseas territory, a Magistrate or the official (by whatever designation known) who exercises in the court, functions similar to those exercised in England by the clerk of a court of summary jurisdiction.

Fees

8. For any certificates provided under this Part, any necessary fees shall be paid to a person listed in regulation 7(2) or a person authorised by that person to receive such fees.

PART 4

TRANSITIONAL PROVISIONS

Transitional

9. The Schedule shall have effect.

24th April 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

SCHEDULE

Regulation 9

TRANSITIONAL PROVISIONS

Certificates issued before commencement

1. In circumstances where a person is suspected of having been illegally absent before commencement, a certificate issued under section 187(4A) of the Army Act 1955(2) or the Air Force Act 1955(3) or section 109(4) of the Naval Discipline Act 1957(4) shall have the same effect as a certificate made in accordance with regulation 3(1)(a).

Meaning of “commencement”

2. In this Schedule “commencement” means the date on which these Regulations come into force.

Documents signed by or on behalf of a person’s commanding officer

3. In relation to certificate purporting to have been signed before commencement, references in regulation 3 to a relevant person’s commanding officer are to be read as references to his commanding officer within the meaning of Part 2 of the Armed Forces Act 2001(5).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 316(3) of the Armed Forces Act 2006 (“the Act”) requires a civilian court to transfer to service custody, or to release with conditions, a person subject to service law who is believed to be illegally absent, provided that such a person either admits to being subject to service law and being illegally absent or the court has a certificate signed by such a person’s commanding officer detailing specified information about that person.

Part 2 of these Regulations specifies the information to be included in such a certificate issued by the commanding officer of the person subject to service law and who is believed to be illegally absent.

Section 319(1) of the Armed Forces Act 2006 the Act provides that the Secretary of State may require a certificate to be issued by a court of summary jurisdiction or a civilian policeman when a person subject to service law who is suspected of being illegally absent is transferred into service custody or is released under section 315(4)(c) or 316(3)(a)(ii) (condition to report to a specified place or person to be taken into service custody) of the Act.

Part 3 of these Regulations details the information that is to be contained in such certificates, who may sign such certificates, the form of such certificates and who may receive any fees for their production.

(2) 1955 c. 18.
(3) 1955 c. 19.
(4) 1957 c. 53.
(5) 2001 c. 19.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.