

*Status: Point in time view as at 01/04/2001.*

*Changes to legislation: Reserve Forces Act 1996, SCHEDULE 2 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)*

## SCHEDULES

### SCHEDULE 2

Section 100.

#### DESERTERS AND ABSENTEES WITHOUT LEAVE

##### *Preliminary*

- 1 (1) This Schedule applies in relation to anyone who is, or is suspected of being, a deserter or absentee without leave from a reserve force.
- (2) In the application of this Schedule to Scotland and Northern Ireland, for references to a magistrates' court there shall be substituted—
  - (a) in Scotland, references to the sheriff sitting as a court of summary jurisdiction; and
  - (b) in Northern Ireland, references to a court of summary jurisdiction.

##### *Arrest*

- 2 (1) Where a constable has reasonable grounds for suspecting that a person is a member of a reserve force who has deserted or is absent without leave, he may arrest that person without a warrant.
- (2) Where no constable is available, any person may arrest a person he has reasonable grounds for suspecting is a member of a reserve force who has deserted or is absent without leave.
- (3) Any person having authority to issue a warrant for the arrest of a person charged with a criminal offence, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction a member of a reserve force who—
  - (a) has deserted or is absent without leave; or
  - (b) is reasonably suspected of having deserted or being absent without leave,may issue a warrant authorising his arrest.
- (4) Any person arrested as a deserter or absentee without leave from a reserve force shall as soon as practicable be brought before a magistrates' court.

##### *Proceedings before a civil court where persons suspected of illegal absence*

- 3 (1) Paragraphs 4 and 5 apply in the case of a person (“the accused”) who is brought before a magistrates' court and alleged to be a member of a reserve force who has deserted or is absent without leave.
- (2) The provisions of the <sup>M1</sup>Magistrates' Courts Act 1980—
  - (a) 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

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(b) as to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses,  
shall apply to proceedings to which paragraph 4 or 5 applies.

(3) In the application of this Schedule to Scotland and Northern Ireland, the reference in sub-paragraph (2) to provisions of the Magistrates' Courts Act 1980 shall be construed as a reference to any corresponding enactment in force as respects courts of summary jurisdiction.

#### Marginal Citations

M1 1980 c. 43.

- 4 (1) This paragraph applies where the accused admits that he is illegally absent from a reserve force and the court is satisfied of the truth of the admission.
- (2) If the accused is not in custody for some cause other than illegal absence from his reserve force, the court shall—
- (a) cause him to be delivered into military, air-force or naval custody (as the case may require) in such manner as the court may think fit; or
- [<sup>F1</sup>(b) where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into such custody.]
- (3) If the accused is in custody for some other cause, the court may act as mentioned in sub-paragraph (2).
- (4) Any period specified as mentioned in sub-paragraph (2)(b)—
- (a) shall not exceed such time as appears to the court reasonably necessary to enable the accused to be delivered into military, air-force or naval custody; and
- (b) may be extended by the court from time to time if it appears to the court reasonably necessary to do so for that purpose.

#### Textual Amendments

F1 Sch. 2 para. 4(2)(b) substituted (2.10.2000) by 2000 c. 4, s. 9(4)(a); S.I. 2000/2366, art. 2

- 5 (1) This paragraph applies where—
- (a) the accused does not admit that he is illegally absent from a reserve force; or
- (b) the court is not satisfied of the truth of any such admission.
- (2) The court shall consider the evidence with a view to determining whether there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave.
- (3) Where the court considers that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave, the court shall (unless he is in custody for some other cause) cause him to be delivered into military, air-force or naval custody (as the case may require) or [<sup>F2</sup>, where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into such custody].

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If the accused is in custody for some other cause, the court may act as mentioned in this paragraph.

- (4) If the court does not consider that there is sufficient evidence to justify the trial of the accused for an offence of desertion or absence without leave, he shall be discharged.

#### Textual Amendments

**F2** Words in Sch. 2 para. 5(3) substituted (2.10.2000) by 2000 c. 4, s. 9(4)(b); S.I. 2000/2366, art. 2

#### *Surrender to police*

- 6 (1) Where a person surrenders himself to a constable as being illegally absent from a reserve force—
- (a) the constable shall, unless the person concerned surrenders himself at a police station, bring him to a police station; and
  - (b) the police officer in charge of the police station to which that person is brought, or at which he surrendered himself, shall forthwith inquire into his case.
- (2) If it appears to that police officer that the person concerned is illegally absent from a reserve force, he may—
- (a) cause him to be delivered into military, air-force or naval custody (as the case may require) without bringing him before a magistrates' court; or
  - (b) bring him before a magistrates' court.

#### *Certificates of arrest or surrender*

- 7 (1) Where a person is delivered into military, air-force or naval custody under this Schedule, there shall be handed over with him a certificate in such form as may be prescribed signed by a justice of the peace.
- (2) The certificate shall contain such particulars as may be prescribed as to the arrest or surrender of the person concerned and the proceedings before the court.
- (3) For any such certificate there shall be payable to the [<sup>F3</sup>proper officer] of the court, by such person as the Defence Council may direct, such fee (if any) as may be prescribed.
- [<sup>F4</sup>(3A) In sub-paragraph (3) “proper officer” means—
- (a) in relation to a magistrates' court in England and Wales, the justices' chief executive for the court; and
  - (b) in relation to any other court, the clerk of the court.]
- (4) In this paragraph and paragraph 8, “prescribed” means prescribed by regulations made by the Secretary of State by statutory instrument under section 189 of the <sup>M2</sup>Army Act 1955 (for a person delivered into military custody), section 189 of the <sup>M3</sup>Air Force Act 1955 (for a person delivered into air-force custody) or section 110 of the <sup>M4</sup>Naval Discipline Act 1957 (for a person delivered into naval custody).

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#### Textual Amendments

- F3** Words in Sch. 2 para. 7(3) substituted (1.4.2001) by 1999 c. 22, s. 90, Sch. 13 paras. 176, 177(2) (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 2(a)(ii) (with Sch. 2 para. 2)
- F4** Sch. 2 para. 7(3A) inserted (1.4.2001) by 1999 c. 22, s. 90, Sch. 13 paras. 176, 177(3) (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 2(a)(ii) (with Sch. 2 para. 2)

#### Marginal Citations

- M2** 1955 c. 18.  
**M3** 1955 c. 19.  
**M4** 1957 c. 53.

- 8 (1) Where a person is delivered into military, air-force or naval custody under this Schedule without being brought before a court, there shall be handed over with him a certificate in such form as may be prescribed signed by the police officer who caused him to be delivered into custody.
- (2) The certificate shall contain such particulars as may be prescribed relating to the surrender of the person concerned.
- 9 (1) In proceedings for an offence under section 96 a document purporting to be a duly signed certificate under paragraph 7 or 8 shall be evidence of the matters stated in the document.
- (2) In proceedings for such an offence against a person who was taken into military, air-force or naval custody on arrest or surrender, a certificate—
- (a) purporting to be signed by a provost officer or by any other officer in charge of the guardroom or other place where that person was confined on being taken into custody; and
  - (b) stating the fact, date, time and place of arrest or surrender,
- shall be evidence of the matters stated in the certificate.

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

- 10 (1) It shall be the duty of the governor of a civil prison—
- (a) to receive any person duly committed to that prison by a magistrates' court as being illegally absent from a reserve force; and
  - (b) to detain him until (in accordance with the directions of the court) he is delivered into military, air-force or naval custody.
- (2) Sub-paragraph (1) 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 as it applies to the governor of a prison.

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