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# WEST MIDLANDS POLICE

## Force Policy Document

**POLICY TITLE:**

**ARMED & RESERVE FORCES ABSENTEES AND  
DESERTERS CUSTODY PROCEDURES & POLICY**

**POLICY REFERENCE NO:**

**CJ/01**

### Executive Summary.

This document sets out procedures to be adopted by West Midlands Police in dealing with offences of desertion, absent without leave (AWOL) and other offences committed by members of the Armed Forces (Regular and Reserve).

*\*\*Any enquiries in relation to this policy should be made directly with the policy contact / department shown below.*

### Intended Policy Audience.

This policy is aimed at all West Midlands Police Officers and Police Staff who are likely to be involved in arresting, supervising, and monitoring of Armed & Reserve Forces Absentees.

|  |                                       |                   |
|--|---------------------------------------|-------------------|
| <b>Current Version And Effective Date.</b>               | <b>Version 1.2</b>                    | <b>24/03/2014</b> |
| <b>Business Area Owner</b>                               | <b>Central Justice Services (CJS)</b> |                   |
| <b>Department Responsible</b>                            | <b>Central Justice Services (CJS)</b> |                   |
| <b>Policy Contact</b>                                    | <b>Sgt Najrul Ahmed</b>               |                   |
| <b>Policy Author</b>                                     | <b>Sgt Najrul Ahmed</b>               |                   |
| <b>Approved By</b>                                       | <b>DCC Thompson</b>                   |                   |
| <b>Policy Initial Implementation Date</b>                | <b>11/02/2011</b>                     |                   |
| <b>Review Date</b>                                       | <b>23/04/2015</b>                     |                   |
| <b>Protective Marking</b>                                | <b>Not Protectively Marked</b>        |                   |
| <b>Suitable For Publication – Freedom Of Information</b> | <b>Yes (No restrictions)</b>          |                   |

**Supporting Documents**

- *The Armed Forces Act 2006*
- *Section 24 Reserved Forces Act 1996*
- *Safer Detention policy (S14)*

**Evidence Based Research**

Full supporting documentation and evidence of consultation in relation to this policy including that of any version changes for implementation and review, are held with the Force Policy Co-ordinator including that of the authorised original Command Team papers.

**Please Note.**

**PRINTED VERSIONS SHOULD NOT BE RELIED UPON. THE MOST UPTO DATE VERSION OF ANY POLICY OR DIRECTIVE CAN BE FOUND ON THE EQUIP DATABASE ON THE INTRANET.**

**Force Diversity Vision Statement and Values**

“Eliminate unlawful discrimination, harassment and victimisation. Advance equality of opportunity and foster good relations by embedding a culture of equality and respect that puts all of our communities, officers and staff at the heart of everything we do. Working together as one we will strive to make a difference to our service delivery by mainstreaming our organisational values”

“All members of the public and communities we serve, all police officers, special constables and police staff members shall receive equal and fair treatment regardless of, age, disability, sex, race, gender reassignment, religion/belief, sexual orientation, marriage/civil partnership and pregnancy/maternity. If you consider this policy could be improved for any of these groups please raise with the author of the policy without delay.”

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## 1. INTRODUCTION.

The purpose of the policy is to set out the procedures to be adopted by West Midlands Police in dealing with offences of desertion, absent without leave (AWOL) and other offences committed by members of the Armed Forces (Regular and Reserve).

The Armed Forces Act 2006 or AFA 2006 (the 2006 Act) replaces and consolidates the three Service Discipline Acts; (Royal Navy, Army and Royal Air Force) with a single, harmonised system governing all members of the armed forces.

When serving in the United Kingdom, service personnel are dealt with under civilian law like any other British citizen if they commit an offence.

All offences under UK criminal law are also offences under service law. In addition, there are some offences under service law that are not offences under English civilian law, such as absence without leave and desertion. Within the UK, service personnel are subject to both the civilian and the service systems of justice. Protocols between the civil police and the service police deal with the conduct of investigations.

## 2. OFFENCES OF DESERTION AND ABSENCE WITHOUT LEAVE.

### Regular Members of the Armed Forces

For full details of offences of desertion and absence without leave committed by members of the Armed Forces [see Appendix 'A'](#).

#### Information regarding absentees and deserters to be authenticated

Where information is received from a source other than the appropriate Armed Force Authority, that a person is an absentee or deserter from one of HM Armed Forces and giving their whereabouts, enquires in the first instance, must be made of the **Service Police Crime Bureau** ([see 7.3 below](#)) to confirm that the person concerned is an Absentee or Deserter. The Service Authority will later confirm their information by fax. A central index of deserters is maintained on the Police National Computer. Entry onto the PNC will generate a PNC ID Wanted/Missing reference.

### Members of the Reserve Forces

Offences in relation to members of the **reserve** forces who fail to report for mobilisation is governed by the Reserve Forces Act 1996 (the 1996 Act) are somewhat different to that of members of the regular forces.

Section 58 of the 1996 Act makes provision for the call-out of members of a reserve force under section 54 and lays down the procedures to be followed. There are two initial steps:

- First, the reservist presents themselves at the appointed time and place (subs. (1) (a)).
- Second, they remain there, pending selection for service and, if selected, awaits processing (subs. (1)(b)).

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Section 96 of the 1996 Act (as amended by s.358 Sch. 14 of the Armed Forces Act 2006 or AFA) creates offences of desertion and absence without leave. Consequently, an offence is made out when having received their call-out notice, a person fails to present themselves for service at the time and place specified; or fails to remain there pending acceptance or non-acceptance into service; or, failing which, fails to present themselves to a specified person or authorised officer; or, having presented themselves there, fails to remain there till acceptance or non-acceptance.

The offences of desertion and absence without leave are separate offences. The distinction is the need (in the more serious allegation of desertion) to prove an intention to absent themselves permanently (to avoid Active Service). It is envisaged that the offence of absence without leave would usually be the more appropriate charge to use

Absence without leave must be culpable. If it is proved the reservist was absent and that they had not been granted leave the court may, in the absence of any reasonable excuse, infer that their absence was culpable. The absence is culpable if it is due to the deliberate intention of the reservist or if it is caused by circumstances that were within their control and if it may fairly be said that it was their own fault that they are absent. Only one continuous period of culpable absence without leave should be comprised in any one charge

Time limits for preferring the charge under section 96 in relation to members of the Reserve Forces are outlined in Appendix 'B' (s62 AFA 2006). In these cases, time will begin to run from the moment the suspect has been arrested by the police

### **3. CIVIL POLICE – POWERS OF ARREST AND DETENTION.**

#### **Overview**

Section 106 and Schedule 2 of the Reserve Forces Act 1996 was repealed by the Armed Forces Act 2006 and the provisions in that Act cover "persons subject to service law" who, in section 367(2) are defined (in relation to members of Reserve forces) as:

(2) Every member of the Reserve forces is subject to service law while-

- (a) In permanent service on call-out under any provision of the Reserve Forces Act 1980 (c. 9) or the Reserve Forces Act 1996 (c. 14) or under any other call-out obligation of an officer;
- (b) In home defence service on call-out under section 22 of the Reserve Forces Act 1980;
- (c) In full-time service under a commitment entered into under section 24 of the Reserve Forces Act 1996
- (d) Undertaking any training or duty (whether or not in pursuance of an obligation);

Or

- (e) Serving on the permanent staff of a reserve force.

This means that the Provisions in s.313-320 of the 2006 Act of Arrest, Detention, Entry and Search by civil authorities will apply to members of the Reserve forces as well as members of the Regular Armed forces

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For details of with Civil Police powers of Arrest and Detention see Appendix 'C'

For Civil Police Powers of Entry and Search see Appendix 'D'

**Power to use reasonable force**

Section 320 of the Armed Forces Act 2006 provides that reasonable force may be used where a power of arrest exists under this Act.

**4. CUSTODY PROCEDURES FOLLOWING ARREST.**

**Scenario A**

Where a person has been brought into custody after arrest for an offence under:

- AFA 2006, section 8 (desertion – reasonably suspected of being a person subject to service law who has deserted); or
- AFA 2006, section 9 (AWOL – reasonably suspected of being a person reasonably suspected of being a person subject to service law who is absent without leave)

The person must be brought before a court of summary jurisdiction as soon as practicable (AFA 2006, s.314(4)).

NB. The offences of AWOL and Desertion are subject to Service Law and are NON PACE Arrests.

If the court determines that the person should be transferred to service custody and there is likely to be a delay in effecting the transfer, the court may commit the person to police custody pending transfer (AFA 2006, s.316(5)).

Documentation required:

- Certificate of transfer to service\_custody – provided by the court in this instance
- Certified copy of any custody records raised and maintained for the person whilst under arrest.

**Scenario B**

Where a person is brought into custody having been arrested for some other cause and is found to be AWOL or a deserter, the person must be brought before the court for that cause and the AWOL / desertion must be brought to the attention of the court (AFA 2006, s.316 (3)(b)).

If the person is not to be brought before the court for that cause (e.g., an offence has been committed but is being dealt with by way of out-of-court disposal) then the person should be arrested, where arrest is necessary, for the AWOL or desertion offence (AFA 2006, ss. 8 or 9) and brought before a court of summary jurisdiction as soon as practicable (AFA 2006, s.314(4)).

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If the court determines that the person should be transferred to service custody and there is likely to be a delay in effecting the transfer, the court may commit the person to police custody pending transfer (AFA 2006, s.316(5)).

Documentation required

- Certificate of transfer to service custody – provided by the court in this instance
- Certified copy of any custody records raised and maintained for the person whilst under arrest

### **5. CUSTODY PROCEDURES FOLLOWING SURRENDER.**

Where a person surrenders to a police officer as a person:

- subject to service law who has deserted; or
- who is absent without leave

He must be taken to a police station.

The person in charge of the police station (or a person authorised by the person in charge - generally the Custody Officer) 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) transferred into service custody,
- (b) brought before a court of summary jurisdiction as soon as practicable, or
- (c) Released with conditions as to his reporting at a future time and place so as to enable his being taken into service custody (equivalent to being granted police bail in England and Wales). (AFA 2006, s.315)

If, where the person is brought before the court, the court determines that the person should be transferred to service custody and there is likely to be a delay in effecting the transfer, the court may commit the person to police custody pending transfer (AFA 2006, s.316(5)).

Documentation required where the person is transferred into service custody:

- Certificate of transfer to service custody other than where completed by the court
- Certified copy of any custody records raised and maintained for the person whilst under arrest

Documentation required where the person is released with conditions:

- A certificate of release subject to conditions must be passed to the Service Police Crime Bureau as soon as practicable [Tel: 023 9228 5170; Fax: 023 9228 5179].

See Appendix 'E' for an Arrest / Surrender process flowchart.

6. GENERAL ISSUES FOLLOWING ARREST/SURRENDER.

**Welfare**

Enquires of a welfare or compassionate nature should be directed to the service persons Commanding Officer. In the event of this being impracticable, Welfare Officers are available to carry out the necessary enquires. Each enquiry of a welfare nature will be dealt with on its own merits, with the appropriate assistance afforded. There may be occasions whereby welfare issues such as family bereavement and/or illness may affect the release of the person subject to conditions on either the advice of the commanding officer or the Custody officer and would apply only to those persons not having committed criminal offences, who are subject to criminal/civil law and who are encompassed under the provisions of the Bail Act.

**Mental Vulnerability – Post Traumatic Stress Disorder**

Consideration should also be given to those persons who may be suffering from a mental disability and could therefore be considered to be mentally vulnerable or disordered relating to the effects of warfare (Post Traumatic Stress Disorder or PTSD).

This would include, but is in no way restricted to the following diagnosed disorders:

Depression, anxiety and other psychological problems, including both anger management and alcohol misuse and that may have been a contributory factor in the person's decision in going AWOL or Deserting.

Any person presenting or exhibiting such symptoms should be examined and reviewed by a Health Care Professional (Primecare Forensic Medical) whilst in Police detention to ensure that they are appropriately cared for, to minimise and prevent potential self harm and in order to formulate a care plan upon their release, to either the military Service custody Escort (Military Police) or subject to release on conditions. To prevent and minimise the risk of harm to the person/their immediate family and potentially members of the public. See Safer Detention Policy (S14) – Part 2 – Risk Assessment and Policy P05 – Medical Services Provision (Primecare).

Consideration should also be given to the referral of the person to outside agencies with regards to specialist help and long term assistance (Housing, Education, Financial) with regards to PTSD and associated disorders. Such agencies should include the following referrals:

- The Royal British Legion - 0800 169 2277/[WWW.veterans-uk.info](http://www.veterans-uk.info)
- SSAFA Forces Help - 020 7403 8783/[www.ssafa.org.uk](http://www.ssafa.org.uk)
- Combat Stress(Mental Welfare Society)-0800 169 2277  
[www.combatstress.org.uk](http://www.combatstress.org.uk)
- Service personnel & veterans Agency - 0800 169 2277 [www.veterans-uk.info](http://www.veterans-uk.info)
- See also Pre-Release Referral, Contacts & Useful Information Leaflets on the CJS Website.



## Foreign Forces

Absentees and Deserters from Canadian and the United States forces will be dealt with in the same manner as service personnel from the British Home Forces.

In the case of Australia, New Zealand, Ghana, India, Sri Lanka, France, Belgium, Norway and The Netherlands, no action will be taken on request for the arrest of an absentee or deserter from the Forces of these countries without first consulting the Service Police Crime Bureau who will give guidance as to how they are to be dealt with and relevant contact details provided.

## 7. ADMINISTRATION AND DOCUMENTATION.

### Certificate of Transfer to Service Custody

Where a relevant person is transferred to service custody, a certificate containing certain required information is to be handed over with the relevant person to the person receiving the relevant person into service custody. The required information is:

- (a) the name and position of the authorised person (i.e., either 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 a person authorised by the person in charge of that police station to act on his behalf - **The Custody Officer**);
- (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.

A copy of the Certificate of Transfer to Service Custody is available on the CJS website

### Certificate of Release Subject to Reporting Conditions

Where a person is released from police custody subject to a condition that he reports at a future time and place, then a certificate containing the required information must be passed as soon as practicable to the Service Police Crime Bureau (see Para 7.3 below) by fax [**Fax: 023 9228 5179**], and a copy 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.

The required information is:

- (a) the name and position of the authorised person (i.e., either 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 a person authorised by the person in charge of that police station to act on his behalf);
- (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; AND
- (h) Details of the recording conditions specified

Note: AWOL / Deserter? Every deserter is also AWOL. A deserter is someone who is absent without leave and also a deserter by (1) time or (2) intent.

A copy of the Certificate of Release Subject to Reporting Conditions is available on the CJS Website

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### Service Police Crime Bureau

It is very important that custody officers inform the Service Police Crime Bureau that they have an AWOL in custody and **ignore contacts in local units** – this is because the local unit will not have access to the relevant recording system to update it: if the Service Police Crime Bureau is **NOT** informed, the AWOL will **not be cancelled**.

Furthermore, where an arrest warrant has been executed for an offence which is not a service offence and the suspect turns out to be AWOL then it is still important for the Service Police Crime Bureau to be informed so that records can be updated at the earliest opportunity.

Any notification to the Service Police Crime Bureau should include if there are any matters outstanding.

Contact Details:

Service Police Crime Bureau  
Building 143  
Southwick Park  
Fareham  
Hampshire  
P017 6EJ.  
Tel:02392 285170  
Fax:02392 285179

### PNC Entries and Updates

#### PNC Entries- Wanted/Missing

Entries onto PNC Phoenix in respect of absentees and deserters will be initiated by the relevant service authority and entered onto the system by the Metropolitan Police, New Scotland Yard, with whom the service authority will liaise prior to contacting the Force in whose area the absentee/deserter is believed to be.

#### Update of PNC – Police

Where, on arrest of an absentee or deserter, the person is brought into police custody, it is the responsibility of the custody officer to ensure that the PNC Wanted/Missing entry is updated by way of a detained report and is Sent to the PNC Bureau.

The offences of AWOL and Desertion, although subject to Service law and not criminal law, **are Recordable on PNC. However, WMP will NOT record Service law offences on PNC as ownership AND Registration of these offences sits with the Service Police Crime Bureau.** A photograph will be obtained via ICIS but NO OTHER ACTION is required (e.g. no Samples/Offence/208 to be created). The custody record will be closed using the ICIS disposal code '**Military Matter**'

(For Information ONLY the PNLN codes are **D20489** and **D20491**).

## Update of PNC – Service Authority

Where an absentee or deserter is arrested by the service authority or surrenders directly to the service authority and does not come into police custody, it is the responsibility of the service authority to update the PNC with the relevant detained report via New Scotland Yard.

## 8. EVIDENTIAL ISSUES

S.108 of the Reserve Forces Act 1996 Act and s.17 (Formerly Schedule 3 of the 1996 Act) of the AFA 2006 make general provision for the admission of evidence.

Broadly, s.17 provides that letters or documents purporting to be issued by or on behalf of the Defence Council or as prescribed in Queen's Regulations are to be evidence of various matters relating to the service of any person in the armed forces, whether regular or reserve. This includes documents relating to illegal absences. A record of absence showing absences of not less than 14 days is admissible in evidence (section 102 (2) of the 1996 Act). In addition, a record made in any service book or document prescribed by the Queen's regulations that purports to be signed by the CO or by any person whose duty it is to make the record, shall be evidence of the facts stated therein (paragraph 3 of schedule 3 of the 1996 Act).

The evidence required proving an offence under section 96 of the 1996 Act may include:

A statement that the suspect has a reserve liability (that there are no orders or exemptions preventing the call-out of the person) including details of the call-out notice, or exhibiting a copy of the call-out notice;

- Proof of posting the call-out notice to the suspect as required under section 58 (7) and (8) of the 1996 Act
- A statement that the person failed to report for duty as instructed in the call-out notice or at any subsequent time, or where appropriate, a certified copy of any illegal absence made in the prescribed manner under section 102 (3) of the 1996 Act
- Evidence that the suspect arrested is the same person that is named in the call-out notice, such as admissions made on arrest or in interview; and
- If available, any other evidence (by interview or otherwise) that shows the suspect to be absent without leave without a reasonable excuse.

It is a defence under section 96 for the reservist to be granted leave lawfully or if he has a reasonable excuse for not complying with the call-out notice. The MoD has informed us that none of the reservists have been granted leave. In considering the defence of reasonable excuse, prosecutors are reminded that the 1996 Act provides procedures (set out in The Reserve Forces (Call-Out and Recall) (Exemptions Etc) Regulations 1997) for reservists to be exempt from call-out.

Essentially, the Regulations relate to family circumstances such as sole parental responsibilities or primary responsibility for a disabled person, or disruption to vocational education, serious harm to a family business, or where a person has been offered, but not commenced employment. This list is not inclusive and applications may be made for other compassionate reasons.

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A reservist who claims to have developed a genuine conscientious objection to service is required to report to the appropriate mobilisation centre listed in the call-out notice. He can then apply to the CO of the centre to be released on grounds of conscience. If an application is turned down, the reservist may appeal to an independent body known as the Advisory Committee on Conscientious Objectors.

Reservists who are served with call-out notices are also given information packs, which include guidance on how to seek exemption from, deferral of, call-out and how to claim financial assistance.

A reservist who advances any of the reasons above for failing to comply with their call-out notice and who has failed to follow any of the procedures outlined above is unlikely to have a reasonable excuse under section 96 of the 1996 Act.

### 9. EQUALITY IMPACT ASSESSMENT (EQIA).

The policy has been reviewed and drafted against all protected characteristics in accordance with the Public Sector Equality Duty embodied in the Equality Act 2010. The policy has therefore been Equality Impact Assessed to show how WMP has evidenced 'due regard' to the need to:

- Eliminate discrimination, harassment, and victimisation.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

*Supporting documentation in the form of an EQIA has been completed and is available for viewing in conjunction with this policy.*

### 10. HUMAN RIGHTS.

This policy has been implemented and reviewed in accordance with the European Convention and principles provided by the Human Rights Act 1998. The application of this policy has no differential impact on any of the articles within the Act. However, failure as to its implementation would impact on the core duties and values of WMP (and its partners), to uphold the law and serve/protect all members of its community (and beyond) from harm.

### 11. FREEDOM OF INFORMATION (FOI).

Public disclosure of this policy document is determined by the Force Policy Co-ordinator on agreement with its owner. Version 1.2 of this policy has been GPMS marked as Not protectively marked

Public disclosure does not automatically apply to supporting Force policies, directives and associated guidance documents, and in all cases the necessary advice should be sought prior to disclosure to any one of these associated documents.

| Which exemptions apply and to which section of the document? | Whole document | Section number |
|--|----------------|----------------|
| <b>None – This Policy is Suitable for public disclosure.</b> | Yes            |                |

**12. TRAINING.**

All training will be co-ordinated between Central Justice Services and Learning and Development Unit.

**13. PROMOTION / DISTRIBUTION & MARKETING.**

The following methods will be adopted to ensure full knowledge of the Policy:

- Policy document and associated documents on the Force Intranet
- Noticeboard message for the attention of all WMP officers and staff;

**14. REVIEW.**

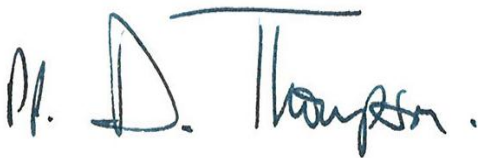
The policy business owner Central justice Services maintain outright ownership of the policy and any other associated documents and in-turn delegate responsibility to the department/unit responsible for its continued monitoring.

The policy should be considered a 'living document' and subject to regular review to reflect upon any Force, Home Office/ACPO, legislative changes, good practice (learning the lessons) both locally and nationally, etc.

A formal review of the policy document, including that of any other potential impacts i.e. EQIA, will be conducted by the date shown as indicated on the first page.

Any amendments to the policy will be conducted and evidenced through the Force Policy Co-ordinator and set out within the version control template.

Feedback is always welcomed by the author/owner and/or Force Policy Co-ordinator as to the content and layout of the policy document and any potential improvements.



**CHIEF CONSTABLE**

15. VERSION HISTORY.

| Version | Date       | Reason for Change   | Amended/Agreed by.                                  |
|---------|------------|---|---|
| 1.0     | 11/02/2011 | New Policy  | New Force policy approved by Deputy CC Mr Thompson. |
| 1.1     | 20/04/2012 | <p>Policy amended as follows with included:</p> <ul style="list-style-type: none"> <li>&gt; version control,</li> <li>&gt; Mr Thompson signature,</li> <li>&gt; policy reference, and</li> <li>&gt; removal of C. Pugh's (CJC) details</li> </ul> <p><b>N.B.</b> policy is currently subject to a full review and all enquiries should be conducted with the author/contact as indicated on the front page should further clarification be required as to the information held.</p> | Martin Keating – Force Policy Coordinator           |
| 1.2     | 24/03/2014 | Removal of Sgt Albutt (CJS) details and policy transferred onto corporate template  | Sgt Najrul Ahmed                                    |
|         |            |   |   |
|         |            |   |   |
|         |            |   |   |
|         |            |   |   |

## Armed Forces – Offence of Desertion

Section 8 of the Armed Forces Act 2006 provides that a person subject to service law commits the offence of desertion if he is absent without permission and either intends not to return at all or to avoid service.

8(1) A person [subject to service law](#) commits an offence if he deserts.

8(2) For the purposes of this Act a person **deserts** if he is absent without leave and -

- (a) He intends to remain permanently absent without leave; or
- (b) he intends to avoid a period of active service.

8(3) In this section **active service** means service in -

- (a) an action or operation against an [enemy](#);
- (b) an operation outside the British Islands for the protection of life or property; or
- (c) the military occupation of a foreign country or territory.

### Notes

(i) *It is an offence if the person has the necessary intention at the time of going absent or if he develops the intention at some point while he is absent. There is no express defence of 'reasonable excuse' - the Service member should seek leave to test their excuse.*

(ii) *See also the offences of absence without leave, [section 9](#).*

## Armed Forces – Absentees

Section 9 of the Armed Forces Act 2006 makes it an offence for a person subject to service law to be absent from duty without permission. The offence may be committed through negligence or recklessness as to whether the individual's conduct will result in such absence, or where he is intentionally absent without permission.

9(1) A person [subject to service law](#) commits an offence if subsection (2) or (3) applies to him.

9(2) This subsection applies to a person if he is intentionally or negligently absent without leave.

9(3) This subsection applies to a person if -

- (a) he does an act, being reckless as to whether it will cause him to be absent without leave; and
- (b) it causes him to be absent without leave.

9(4) In subsection (3) **act** includes an omission and the reference to the doing of an act is to be read accordingly.

### Notes

(i) *The offence differs from desertion under [section 8](#) with respect to the mens rea (only intention is relevant under section 8) for the absence and the degree of absence.*

(ii) *See also the offences of desertion, [section 8](#).*



**Time Limits for Prosecution (as Amended by S62 AFA 2006)**

- 1) A person may not be charged with a Reserve Forces Act offence after the end of whichever of the following periods ends last:
  - a) six months beginning with the date of commission of the offence;
  - b) two months beginning with the date the offence becomes known to the person's commanding officer;
  - c) two months beginning with the date the person is apprehended ;(Arrested by Civilian Police)
  - d) if the offence was committed when the person was a relevant reservist, six months beginning with the date he ceases to be a relevant reservist.
- 2) If:
  - a) the offence was committed when the person was a relevant reservist, and
  - b) he ceases to be a relevant reservist after committing it,

The period in subsection (1) (d) is not extended by his (again) becoming a relevant reservist within the six months beginning with the date he so ceased.

- 3) In this section;
  - a) the reference in subsection (1) to charging is to charging under section 120 or 122;
  - b) "Reserve Forces Act offence" means an offence within section 50(2)(h) or (i);
  - c) "relevant reservist" means:
    - i) a member of a volunteer reserve force; or
    - ii) a member of an ex-regular reserve force who is in full-time service or subject to an additional duties commitment;
  - d) "in full-time service" means in such service under a commitment entered into under section 24 of the Reserve Forces Act 1996 (c. 14).
- 4) Where subsection (1) prohibits the charging (as defined by subsection (3)(a)) of a person with an offence, the power under section 123(2)(c) or 125(2)(c) may not be exercised so as to charge that person with that offence.

## Police Powers of Arrest and Detention: Armed Forces Deserters and Absentees

**NB: This Act applies to Members of both the Regular Armed Forces and to Members of the Reserve Armed Forces**

The Armed Forces Act 2006 (AFA 2006), Part 13, Chapter 3, came into force on 31 October 2009. Part 13, Chapter 3 brings in new requirements in relation to arrest and detention by the **civilian police** of persons reasonably suspected to be subject to service law who have deserted or are absent without leave (AWOL).

Further requirements were brought into effect at the same time by the Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009 (AFE&T Regs 2009).

### General Powers to Issue Arrest Warrants and Powers of Arrest and Detention

Section 314 of the Armed Forces Act 2006 permits the **civilian police** in the **United Kingdom** or a British overseas territory to arrest a suspected absentee without a warrant. It also provides authority for warrants to be issued by 'authorised persons' in the civilian system.

314(1) An officer of a UK police force or British overseas territory police force may arrest without a warrant a person (**a relevant suspect**) who is **reasonably suspected** of being a person subject to service law who has deserted or is absent without leave.

314(2) If an authorised person is satisfied by evidence given under oath or affirmation that a relevant suspect is or is reasonably suspected of being within his jurisdiction, he may issue a warrant for the arrest of the relevant suspect.

314(3) In subsection (2) **authorised person** means a person who has authority in a relevant territory to issue a warrant for the arrest of a person suspected of an offence.

314(4) A person arrested under this section must **as soon as practicable** be brought before a court of summary jurisdiction in the relevant territory in which he was arrested.

### Where the person has been arrested

#### Arrest under warrant

#### Warrant of judge advocate for arrest of person suspected of Armed Forces Act offences

Warrants may be issued to civilian police forces by judge advocates for the arrest of persons reasonably suspected of having committed service offences (AFA, 2006, s.313(1)). Reasonable force may be used, if necessary, in the exercise of the power of arrest (AFA 2006, s.320).

#### Custody action

Where a person has been brought into custody having been arrested under warrant of a judge advocate on suspicion of committing a service offence, that person must as soon as practicable be transferred into service custody (AFA, 2006, s.313(4)).

#### Documentation required

- Certificate of transfer to service custody (see 3 below)

**NOT PROTECTIVELY MARKED**

- Certified copy of any custody records raised and maintained for the person whilst under arrest

**Warrant of Crown Court judges, magistrates, etc., for arrest of person suspected of AWOL or desertion**

Crown Court Judges and magistrates (and other judges with the relevant authority) are empowered to issue a warrant for the arrest of a person who is reasonably suspected of being a person subject to service law who has deserted or is absent without leave (AFA 2006, s.314(2)). Reasonable force may be used, if necessary, in the exercise of the power of arrest (AFA 2006, s.320).

**Custody action**

Where a person has been brought into custody having been arrested under judicial warrant for desertion or absence without leave they must be brought before a court of summary jurisdiction as soon as practicable.

**Warrant of judge advocate or Crown Court judges, magistrates, etc., for arrest of person who has failed to comply with release conditions**

Judge advocates, Crown Court Judges, magistrates (and other judges with the relevant authority) are empowered to issue warrants for the arrest of persons who have failed to comply with conditions subject to which they were earlier released from custody or by the court having been suspected of illegal absence or being a deserter or absentee who has surrendered to the police (AFA, 2006, s.317(1)). Reasonable force may be used, if necessary, in the exercise of the power of arrest (AFA 2006, s.320).

**Custody action**

Where a person has been brought into custody having been arrested under warrant for failure to comply with conditions subject to which he was earlier released from custody or by the court having been suspected of illegal absence or being a deserter or absentee who has surrendered to the police, that person must as soon as practicable be transferred into service custody (AFA, 2006, s.317(4)).

**Arrest WITHOUT warrant**

A person who is reasonably suspected of desertion or absence without leave may be arrested by a police officer without warrant (AFA 2006, s.314 (1)). Reasonable force may be used, if necessary, in the exercise of the power of arrest (AFA 2006, s.320). There will be no need to arrest the person where they are willing to be brought before the court.

**There is a new section 100A of the Reserve Forces Act 1996 - Arrest by civilian police of deserters and absentees without leave:**

- (1) An officer of a UK police force may arrest without warrant a person who is reasonably suspected of being a member of a reserve force, or a person liable to recall, who has deserted or is absent without leave.
- (2) If an authorised person is satisfied by evidence given under oath or affirmation that a relevant suspect is or is reasonably suspected of being within his jurisdiction, he may issue a warrant for the arrest of the relevant suspect.

**NOT PROTECTIVELY MARKED**

(3) In subsection (2)—

- “authorised person” means a person who has authority in England and Wales, Scotland or Northern Ireland to issue a warrant for the arrest of a person suspected of an offence;
- “relevant suspect” means a person reasonably suspected of being a member of a reserve force, or a person liable to recall, who has deserted, is absent without leave or has committed an offence under section 95.

(4) In this section “UK police force” has the meaning given by section 375 of the Armed Forces Act 2006.”

## Police Powers of Entry & Search: Armed Forces Deserters and Absentees

### Civilian Police Powers to Enter and Search

- Civilian police **cannot** enter and search premises in order to arrest a person for AWOL without a warrant (because AWOL is not an indictable offence) (PACE Act 1984, s.17).
- Civilian police **can** enter and search any premises to execute a warrant of arrest therefore in order to enter premises to arrest for AWOL they need an arrest warrant.
- Civilian police **can** enter and search any premises without a warrant in order to recapture any person who is unlawfully at large from prison (PACE Act 1984, s.17).
- Civilian police **cannot** enter and search any premises without a warrant in order to recapture any person who is unlawfully at large from detention (PACE Act 1984, s.17).

***THIS IS IMPORTANT:*** A soldier who gets detention goes to a Military Corrective Training Centre (MCTC). A soldier who gets imprisonment goes to prison. MCTC is not prison. Civilian police therefore need a warrant to enter premises and search for a soldier who is unlawfully at large from MCTC.

APPENDIX E

POLICE POWERS OF ARREST AND DETENTION: ARMED FORCES DESERTERS AND ABSENTEES

Requirements under: The Armed Forces Act 2006 (AFA), Part 13, Chapter 3; and The Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009 (AFE&T Regs 2009)

