

Chapter 16

Financial penalty enforcement orders

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Chapter 16

Financial penalty enforcement orders

Introduction

1. Financial penalty enforcement orders (FPEOs) enable unpaid (or partially unpaid) fines and other financial penalties to be enforced by certain civilian courts¹. FPEOs are made where Service enforcement procedures² cannot be used to recover the amount outstanding under a financial penalty because the person against whom the financial penalty was awarded is neither a Service person (and is therefore not subject to Service law)³ nor a relevant civilian (a civilian subject to Service discipline). FPEOs are usually made when Service personnel leave the Services without having paid all of a financial penalty which has been awarded against them, or when a relevant civilian, against whom a financial penalty has been awarded, returns to the UK. Special arrangements apply where the person against whom the financial penalty was awarded is a reservist. [Annex A](#) provides specific guidance on making FPEOs against members of the Reserve Forces. The relevant legislative provisions relating to FPEOs are section 322 of the Armed Forces Act 2006 (the Act) and the Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009 (the Regulations).

Making the FPEO

2. **Who can make the FPEO.** An FPEO may be made by the Defence Council or any person authorised by the Defence Council (an authorised person). The FPEO must include a certificate providing specified information about the financial penalty (see paragraph 10 of this chapter for the matters which must be set out in the certificate). The person authorised by the Defence Council to make an FPEO and its accompanying certificate for all three services is AD Mil SVCS, SPVA.

3. A form 'Order made by a person authorised by the Defence Council in respect of an FPEO' (T-SL-FP01) is shown at [Annex B](#). The FPEO should be sent to the relevant court (see paragraph 10 below) and should be marked for the attention of the Court Manager.

4. It is likely FPEOs will need to be made in the following circumstances;

a. Where a member of the regular forces has left the Service and it becomes apparent that he or she has an unpaid or un-recovered financial penalty⁴, or

b. A member of the regular forces is about to leave the Service⁵ and it appears that the person has an unpaid or un-recovered financial penalty and it will not be possible to obtain the sum owed by way of Service enforcement procedures, or

c. A relevant civilian, such as a dependant in Germany, is about to return to the UK⁶, or has returned to the UK, and has an unpaid or unrecovered financial penalty.

¹ The civilian court must be a 'relevant court' see paragraph 11 of this chapter.

² The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 2(1) – i.e. any procedure provided for in sections 341 and 342 of the Act.

³ Unless the person who has not paid the financial penalty is a special member of a reserve force with the meaning of the Reserve Forces Act 1996 (see paragraph 6 of this chapter).

⁴ See paragraph 7 of this chapter.

⁵ Although consideration should be given to making an FPEO in such cases, the FPEO cannot be made until the individual in question has either left the Service, or is no longer a relevant civilian (and is therefore not subject to Service discipline): see paragraph 5(c).

⁶ See footnote 5 above.

In these circumstances, the individual's commanding officer (CO) should notify Head of Debt Management (Recoveries and Write-Off), SPVA, Glasgow of the matter. All related documentation should be forwarded to him at Mail Point 600, Kentigern House, 65 Brown Street, Glasgow, G2 8EX. Further action should then be taken in accordance with paragraphs 10 - 12 below.

5. **Circumstances when an FPEO may be made.** The Defence Council (or AD Mil SVCS, SPVA) may only make an FPEO when each of the following conditions is met:⁷

- a. A financial penalty (see paragraph 6) has been awarded against a person⁸; and
- b. There is no appeal outstanding against the award and any time limit for giving notice of an appeal has expired⁹; and
- c. The whole, or any part, of the penalty awarded remains unpaid or unrecovered¹⁰; and
- d. either:
 - (1) At the time the FPEO is made, the person is not a member of the Services nor a relevant civilian¹¹; or,
 - (2) The person is subject to Service law only because he or she is a *special member of a reserve force*¹² within the meaning of the Reserve Forces Act 1996¹³.

In cases of doubt and where the offender is believed to be a special member of a reserve force, legal advice from a staff lawyer should be sought before an FPEO is made. (See also paragraph 7 of this chapter).

6. **Financial penalties.** A financial penalty can be any of the following:

- a. Fines and Service compensation orders (SCO) imposed under the Act. These include:
 - (1) Any fine or SCO imposed on an offender by his CO in a summary hearing, or by the Summary Appeal Court (SAC), Court Martial (CM) or Service Civilian Court (SCC);
 - (2) Any fine which the Service parent/guardian¹⁴ is ordered to pay under section 233(2)(b) of the Act. (A fine will be imposed where a Service parent/guardian of an offender unreasonably refuses to give an undertaking (known as a recognizance) to the CM or SCC to pay a specified sum if the offender re-offends within a specified period); and

⁷ See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulations 3(1) and 3(2).

⁸ See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(1)(a). This includes a sum adjudged to be paid under section 236(3) of the Act (forfeiture of recognizance): see regulation 2(2).

⁹ The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(1)(b).

¹⁰ See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(1)(c).

¹¹ See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(2)(a).

¹² See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(2)(b).

¹³ See Part V of that Act (sections 38 to 49).

¹⁴ i.e. A person who is, themselves, subject to Service law or Service discipline see section 268(8) of the Act.

(3) Any fine or SCO which a Service parent/guardian is ordered by the CM or SCC, under section 268 of the Act¹⁵, to pay instead of the offender.

b. Any sum which is adjudged to be paid as a result of a declaration by the CM or SCC under section 236(3) of the Act¹⁶. This applies where a Service parent/guardian of an offender gives an undertaking to the court to pay a specified sum if the offender commits an offence within a specified period (a recognizance) and the offender commits another offence which results in the court requiring that parent/guardian to pay the specified sum (or part of the specified sum). Once the court imposes this requirement, the sum to be paid (the recognizance) becomes a financial penalty.

c. Any order as to the payment of costs made under regulations under section 26 or 27¹⁷ of the Armed Forces Act 2001. The former provision concerns circumstances where a court¹⁸ is satisfied that one party to the proceedings has incurred costs because of some unnecessary or improper conduct by the other party and, accordingly, makes an order as to payment of those costs. Section 27 is concerned with costs against legal representatives¹⁹.

7. **Service personnel and relevant civilians.** As a rule, an FPEO cannot be made whilst a person is a member of the Services (and is therefore subject to Service law). The only exception is where the person is a special member of a Reserve Force²⁰. This is because the payment of a financial penalty (imposed by a CO or a Service court) may usually be secured by deducting it from an offender's pay, bounty or allowance²¹. The pay of a special member of a reserve force cannot be deducted in this way because such persons are not, in all cases, paid by the MOD. For further guidance, see [Chapter 20](#) (Forfeitures and deductions).

8. An FPEO cannot be made where the person against whom the financial penalty was awarded is a relevant civilian²². In contrast with Service personnel, there are no Service enforcement procedures available in respect of relevant civilians. In many cases, a relevant civilian will be a dependant spouse or child of a member of the armed forces. Where, for example, the person is a relevant civilian because he or she resides in Germany with his or her spouse, the FPEO cannot be made until the Service person is posted to an area where his or her spouse ceases to be a relevant civilian. In the example given, an FPEO may be made when the spouse of the Service person returns to the UK.

Information to be provided to the relevant court

9. All FPEOs must contain a certificate issued on behalf of the Defence Council or AD Mil SVCS, SPVA which certifies the following matters²³:

a. A financial penalty has been awarded against the person named in the order.

¹⁵ More information on the sentencing powers of Service Courts can be found in [Chapter 31](#) (Sentencing principles, powers and effect).

¹⁶ Section 322(4)(b) of the Act.

¹⁷ Section 342(4)(c) of the Act.

¹⁸ 'Court' in this context means the Court Martial, the Summary Appeal Court, the Court Martial Appeal Court and the Service Civilian Court (see section 26(1) of the Act).

¹⁹ The Armed Forces Proceedings (Costs) Regulations 2005 (as amended by Schedule 16, paragraphs 192 and 193 of the Act).

²⁰ See Part V of that Act (sections 38 to 49).

²¹ See sections 341 and 342 of the Act and the Armed Forces (Forfeitures and Deductions) Regulations 2009/1109.

²² There are a variety of circumstances when a civilian will be a relevant civilian (subject to service discipline). If there is any doubt, legal advice should be obtained from a staff legal adviser before an FPEO is made.

²³ The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(3).

- b. No appeal is outstanding and any time limit for giving notice of an appeal has expired.
- c. The whole or any part of the penalty remains unpaid or unrecovered.
- d. The person against whom the award was made is a person to whom the Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009 apply.
- e. The nature and amount of the penalty awarded.
- f. The date on which the penalty was awarded and the Service offence(s) in respect of which it was awarded.
- g. If the penalty was awarded against the person named in the order because that person is the parent or guardian of offender, the fact that it was so awarded and the name of the offender²⁴.
- h. Sufficient particulars of the case in respect of which the financial penalty was awarded (including particulars of any offences “taken into consideration” at the trial).
- i. The date of any payment or recovery of a sum relating to the penalty in question.
- j. The amount of the penalty which is still outstanding.
- k. The person to whom any SCO²⁵ or costs included in the awarded penalty will, upon recovery, fall to be remitted (see paragraph 12 below).

Where an FPEO is made a copy of the form at [Annex A](#) should be completed and sent to the relevant court (see paragraph 11 below). Only one FPEO (including one certificate) should be made where more than one financial penalty has been awarded against an individual.

Sending the FPEO to the relevant court

10. **Relevant Court.** An FPEO may only be enforced by a relevant court. Relevant courts are²⁶:

- a. The magistrates’ court in England or Wales;
- b. The sheriff court in Scotland;
- c. The court of summary jurisdiction in Northern Ireland; and
- d. A court of summary jurisdiction in the Isle of Man

within whose jurisdiction the person against whom an FPEO is made appears to the Defence Council (or AD Mil SVCS, SPVA) to reside or to be likely to reside.

²⁴ This relates to situations where a service parent or guardian has been ordered to pay a fine or Service compensation order under section 268 of the Armed Forces Act 2006, on behalf of the offender. It also covers situations where any sum is ordered to be paid as a result of a declaration by the court-martial or service civilian court that a recognizance is to be forfeited under section 236 of the Act. See [Chapter 20](#) (Forfeitures and deductions) for full details.

²⁵ Defined in section 175 of the Act. The stipulation under sub-paragraph 7 is important since the regulations specifically provide that any compensation recovered shall be remitted to the authority at the address as specified in that sub-paragraph.

²⁶ The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 2(1).

11. Enquiries will need to be carried out before an FPEO is made to ascertain where the individual in question intends to reside. It should not be assumed they will be residing at their last known address in the UK. If no information can be obtained as to where the individual in question intends to reside, those authorised to make an FPEO must satisfy themselves that there are reasonable grounds to believe that the individual does or is likely to reside at an address in the UK: this might be their last known address or the address of a spouse or relative. It should be noted that if a person who has failed to pay a financial penalty emigrates or is residing on a permanent basis outside the UK, an FPEO cannot be enforced. For example, an FPEO cannot be enforced against a civilian who decides to reside in Germany after their spouse has left the Service.

Effect of registration

12. On receipt of an FPEO, the relevant court will register²⁷ the order and proceed to enforce payment of the sum due as if it were a fine imposed by that court.²⁸ The court will then deal with the recovery and payment of outstanding sums into central funds without the involvement of the MOD. Where, however, the sum outstanding is owed under a Service compensation order (SCO) or an order as to the payment of costs, the sum will be remitted to the AD Mil SVCS, SPVA for onward transmission to the person to be compensated or to whom the payment of costs is due. As a rule, upon registration of an FPEO, and while it remains registered with a relevant court, service enforcement procedures cannot be used as a means of recovery of the sum which is certified as being outstanding²⁹. However, if the person against whom the order has been made rejoins the Services and the financial penalty (whether partly paid or not) is still outstanding, Service enforcement procedures *can* be used to recover the outstanding sum³⁰. In this instance, the Service authorities can recover the sum as if it were a fine imposed by a civil court³¹ see [Chapter 20](#) (Forfeitures and deductions) for further guidance.

13. If it appears from the FPEO that the penalty imposed is in respect of more than one offence, then for the purposes of enforcement it must be treated as a single penalty³².

14. A document purporting to be an FPEO which is signed on behalf of the Defence Council (or by an authorised person) is to be regarded as being a valid order, unless the contrary is proved³³. The relevant court may accept what is certified in such an Order without requiring any further evidence of the matters stated.

²⁷ See rule 47 of the Magistrates' Courts Rules 1981 for registration and notification of FPEO.

²⁸ See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(5)(b).

²⁹ See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(5)(a).

³⁰ See [Chapter 20](#) (Forfeitures and deductions).

³¹ See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(8). Once again this will enable the sum to be recovered by way of a deduction.

³² See The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(7).

³³ The Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009/1212, regulation 3(4).

FPEOs and reserve forces

1 Special arrangements are required in relation to members of the Reserve because of the varying nature of reserve service. This Annex sets out the arrangements where the financial penalty is imposed on a member of the Reserve Forces³⁴. It should be noted, however, that the Annex does not apply to individuals who are recalled to permanent service under section 68 Reserve Forces Act 1996 (RFA 96) or an equivalent power in the Reserve Forces Act 1980 (RFA 80); when recalled into permanent service, such individuals are treated in the same way as members of the regular forces.

Consideration as to whether an FPEO may be required

2. Paragraph 5 of this chapter provides general advice as to when an FPEO may be required. In the case of reservists, the nature and length of a reserve commitment varies according to the type of reserve service undertaken. Where the reservist is in Full Time Reserve Service (FTRS) under section 24 RFA 96 or is called out for permanent service, or is a member of the Non Regular Permanent Staff (NRPS) of the Territorial Army, consideration as to whether an FPEO will be required should be made when the reservist's FTRS commitment or period of permanent service or NRPS engagement is about to end. This is the most appropriate time because this is the time when the reservist will cease to be subject to Service law. At this time, the reservist's Commanding Officer should notify Head of Debt Management (Recoveries and Write-Off), SPVA, Glasgow of the matter.

3. In the case of special members of a reserve force, commonly known as the Sponsored Reserve, an FPEO may be made whilst they remain subject to Service law, see paragraph 6 of this chapter.

4. Where the person's reserve liability arises as a result of a requirement to attend for Manned Training Days (MTD)³⁵ or as a result of an Additional Duties Commitment (ADC), an FPEO may be required where the reservist has:

- a. Incurred a financial penalty whilst undertaking his MTD or ADC,
- b. Failed to pay the penalty in whole or in part during the period that he or she undertook his or her MTD or ADC, and
- c. An order authorising a deduction from his pay or bounty or allowance (equivalent to the amount of the financial penalty still outstanding) was not made during this period.

5. In such cases the reservist's CO should notify Head of Debt Management (Recoveries and Write-Off), SPVA, Glasgow as follows;

- a. In the case of a reservist who has attended for an MTD, as soon as reasonably practicable after the reservist has been discharged.

³⁴ See section 1(2) Reserve Forces Act 1996 for meaning of Reserve Forces

³⁵ Arising under sections 22 and 27 of the Reserve Forces Act 1996

- b. In the case of a reservist attending for an ADC, as soon as reasonably practicable after his commitment has ended.

All related documentation should be forwarded to Head of Debt Management (Recoveries and Write-Off), SPVA at Mail Point 600, Kentigern House, 65 Brown Street, Glasgow, G2 8EX. Where necessary, AD Mil SVCS, SPVA will make an FPEO as outlined at paragraphs 6 and 10 of this chapter.

Transitional arrangements regarding financial penalty enforcement orders

1. The previous parts of this chapter have described the arrangements that are to be followed to make an FPEO where:
 - a. A financial penalty within the meaning of section 322(4) of the Act (see paragraph 6 of this chapter) has been imposed; and
 - b. That financial penalty was imposed following a conviction for a Service offence or offences.
2. This Annex explains the other circumstances when a FPEO might be made. It should be read in conjunction with the flow chart at Appendix 1.
3. For the purposes of this Annex and the flow chart, a financial penalty within the meaning of section 322(4) of the Act will be described as an 'AFA 06 financial penalty'. For the purpose of this Annex and the flowchart a 'SDA Financial Penalty' means:
 - a. A fine awarded under the Army Act 1955 (AA 55), including a fine imposed by virtue of paragraph 13 of schedule 5A of AA 55;
 - b. A fine awarded under the Air Force Act 1955 (AFA 55), including a fine imposed by virtue of paragraph 13 of schedule 5A of AFA55;
 - c. A fine awarded under the Naval Discipline Act 1957 (NDA 57), including a fine imposed by virtue of paragraph 13 of schedule 4A of NDA 57;
 - d. Stoppages awarded under AA55, AFA55 and NDA 57³⁶;
 - e. A compensation order imposed by virtue of paragraph 11 or 13 of schedule 5A of AA 55;
 - f. A compensation order awarded by virtue of paragraph 11 or 13 of schedule 5A of AFA 55; and
 - g. A compensation order awarded by virtue of paragraph 11 or 13 of schedule 4A of NDA 57.

Additionally, for the purposes of this Annex and the flow chart, a 'SDA offence' means an offence that was committed under NDA 57, AA 55 or AFA 55.

4. The other circumstances when a FPEO can be made are where:
 - a. An AFA 06 financial penalty has been awarded in respect of a SDA offence³⁷. For example, where a Service court or a CO convicts an offender of an offence under the AA 1955 on or after the 31 October 2009 and awards an AFA 06 financial penalty.

³⁶ This however does not include stoppages imposed under section 128C of NDA 57, section 147 or 148 of AA 55 or section 147 or 148 of AFA 55.

³⁷ This will not include an offence under the Armed Forces Act 1991 or the Reserve Forces Act 1996.

b. On or after 31 October 2009 either:

(1) A CO (in a summary dealing or summary trial) imposes a SDA financial penalty³⁸; or

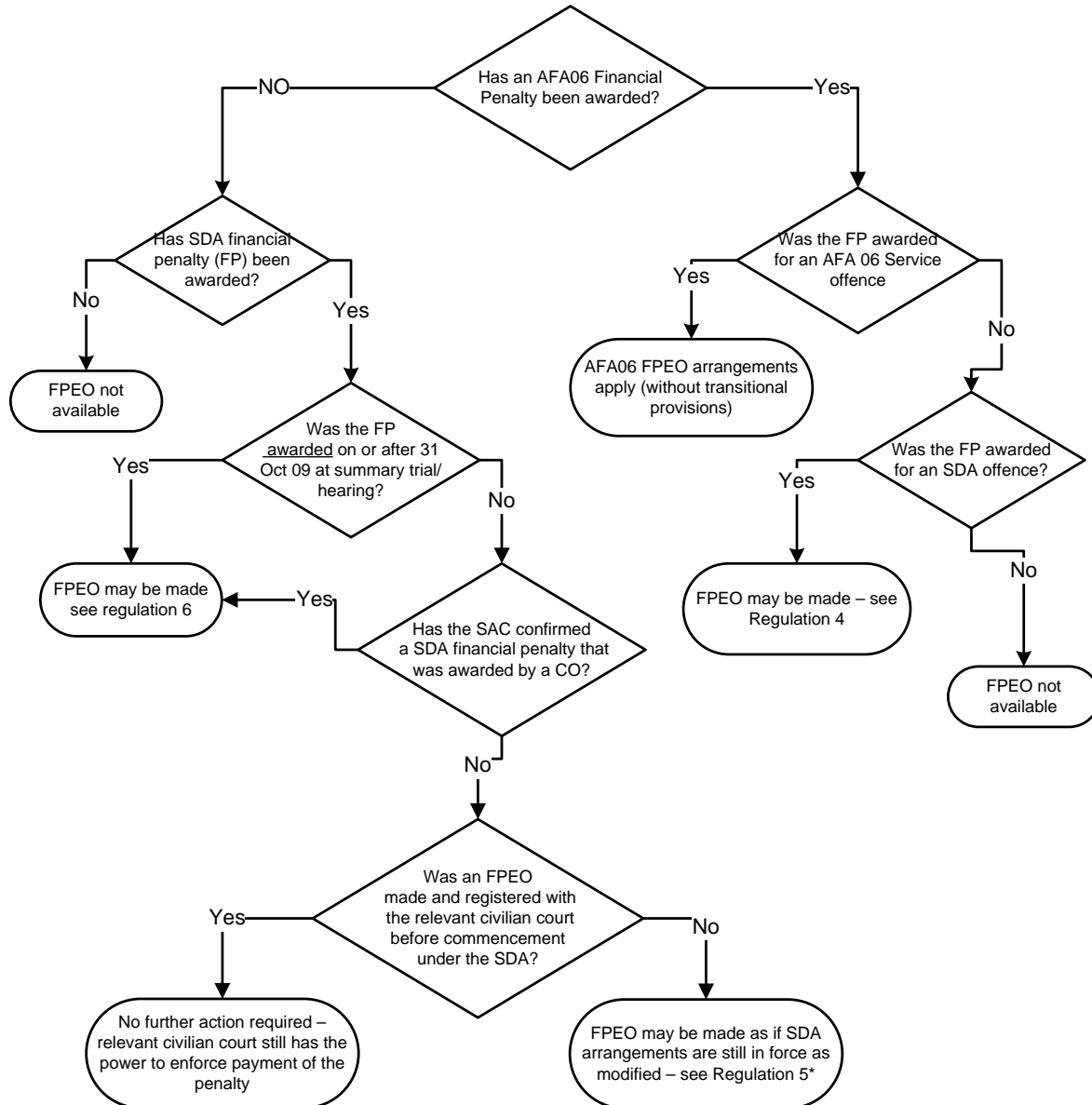
(2) The SAC confirms a SDA punishment that was awarded by a commanding officer and where that punishment, originally awarded by commanding officer, was a SDA financial penalty.

c. Prior to 31 October 2009, a SDA Financial Penalty has been awarded. This may have been awarded by a commanding officer in a summary dealing or summary trial. It might also have been imposed by a court-martial, standing civilian court or a summary appeal court.

5. Before an FPEO is made by the Defence Council or a person authorised by the Defence Council in any of the above cases (or in any cases which do not appear to be covered in the chapter) staff legal advice should be sought.

³⁸ The will only occur if the summary dealing (for Army and RAF) or summary trial (for the RN) began before 31 October 2009 but the CO hearing the case did not find the case proven until 31 October 2009 or a later date.

FPEO – Transitional arrangement flowchart



Note:

* Where regulation 5 applies – the FPEO is enforced as if the SDA were still in force. Therefore a FPEO may only be made if the FPEO was awarded for a ‘qualifying offence’ – this includes all SDA civil offences and a limited number of other ‘SDA offences’ – see AA55 section133A(3), AFA section 133A(3) and NDA section 128F(3).