

Chapter 10

Absence and desertion

Index	Page
	1-10-1
Introduction	1-10-3
Action on discovering unauthorised absence	1-10-3
Action when unauthorised absence is confirmed	1-10-4
Certificate of absence	1-10-4
Notification of civil police	1-10-5
Notification of next of kin/external contacts	1-10-6
Unauthorised absence of less than 48 hours	1-10-6
Arrest	1-10-6
Arrest of person reasonably suspected of committing or having committed a Service offence	1-10-6
Arrest of person reasonably suspected of being about to commit a Service offence	1-10-6
Application by CO for a warrant for arrest	1-10-6
Arrest by civilian police	1-10-7
Surrender to civilian police	1-10-7
Transfer to Service custody	1-10-7
Release subject to reporting restrictions	1-10-7
Proceedings before a civil court	1-10-8
Warrant for the arrest of persons released subject to reporting conditions	1-10-9
Termination of Absence	1-10-9
Termination	1-10-9
Reporting requirements	1-10-9
External reporting	1-10-9
Custody	1-10-10
Custody without charge	1-10-10
Custody after charge	1-10-10
Release from post charge custody with conditions imposed by a judge advocate.	1-10-10
Release from post charge custody with conditions imposed by a CO	1-10-11
The relevant time for custody	1-10-11
Dispensing with Service proceedings	1-10-11
Confession of desertion	1-10-11
Forfeiture of service following confession of desertion	1-10-11
Period of absence	1-10-12
Identifying a CO	1-10-12
Discharge	1-10-12
Forfeiture of service	1-10-12
Forfeiture of service following conviction for desertion	1-10-12
Restoration of forfeited service	1-10-13
Unauthorised absence due to civil custody (Custodial Absence)	1-10-13
Further action following the preferring of a charge	1-10-13
Custodial Absence	1-10-13
Action required following civil proceedings	1-10-13
If found guilty	1-10-13
Custodial sentences/fines	1-10-13
If found not guilty	1-10-13
Effect of suspending pay and stopping allowances	1-10-13

Administration 1-10-14

Annexes:

- A. Reserve Forces 1-10-A-1
- B. Initial absence report (T-SL-AD01) 1-10-B-1
- C. Certificate of absence (T-SL-AD02) 1-10-C-1
- D. Intentionally Blank
- E. Certificate of release subject to conditions (T-SL-AD04) 1-10-E-1
- F. Certificate of transfer to Service custody (T-SL-AD05) 1-10-F-1
- G. Stop Certificate of Absence (T-SL-AD06) 1-10-G-1
- H. Confession of desertion (T-SL-AD07) 1-10-H-1

Chapter 10

Absence and desertion

Introduction

1. This chapter draws together the legislative provisions under the Armed Forces Act 2006 (the Act) and tri-Service guidance contained elsewhere in the MSL, as well as single Service guidance, applicable to individuals subject to Service law (see [Chapter 3](#), Jurisdiction and time limits) who are absent without authorisation or have deserted. This should enable the commanding officer (CO) (see [Chapter 2](#), Meaning of commanding officer) to take appropriate action. This chapter does not contain, therefore, detail on all aspects of the law, policy and administrative procedures but indicates where that detail can be found.
2. The specific legislative provisions relating to absence and desertion are contained in parts 8 and 9 of the Act; guidance in respect of the specific offences in terms of charges, ingredients of the offences and defences is at [Chapter 7](#) (Non-criminal conduct offences). Single Service unit level guidance and procedures are contained in: RN QRRN Chapter 40, TI 35 and FLAGO Chapter 16; Army LANDSO 3200; and RAF AP3392 Volume 4. Joint procedures for absence without authority are contained in JSP 760, Chapter 11.
3. This chapter relates only to Service persons (those subject to Service law) although a person no longer subject to Service law may be charged with an offence committed when so subject. Members of the reserve forces are only subject to Service law under certain conditions (see Annex A).

Action on discovering suspected unauthorised absence

4. A reasonable amount of time must normally be allowed for a Service person to report for duty or to explain the absence before declaring the individual's absence to be unauthorised. However, if the individual fails to report or contact the unit, the following actions should be taken¹, usually within 4 hours² of the absence being detected:
 - a. An internal absentee report, see Annex B (initial absence report) may be raised by the relevant unit/sub-unit, if appropriate, and passed to the unit HQ for the CO, J1 and relevant unit level welfare staff. The report should include a brief statement from the person who discovered the potential absence.
 - b. Determined efforts³ are to be instituted to contact the Service person in order to establish:
 - (1) The reason for the unauthorised absence,
 - (2) The absentee's location and intentions.
 - (3) Whether circumstances indicate that the absentee is at high risk of harm.

¹ In addition to any other actions specified in RN QRRN Chapter 40 and TI 35, Army LANDSO 3200 and RAF AP3392 Volume 4.

² This is not an absolute requirement and COs should apply judgement to determine the most appropriate time to commence action to locate the absentee.

³ This may include obtaining mobile telephone numbers from the absentee's associates and telephoning next of kin and external contacts.

- c. Where it is possible to contact the individual, and the circumstances are appropriate, the absence can be authorised and an agreed return to duty date confirmed.

Action when unauthorised absence is confirmed

5. **Certificate of absence.** On the eighth day of absence the CO⁴, if he has not already done so, is to raise a certificate of absence (see Annex C) and the individual's JPA absence record is to show the individual as a long term absentee⁵ from the first day of absence. The effect will be that pay is suspended retrospectively from the first day of unauthorised absence⁶. The certificate has 4 purposes:

- a. It aids recovery of the Service person by the appropriate single Service mechanisms⁷;
- b. It allows the details of the absent Service person to be entered on the Police National Computer (PNC);
- c. It is the authority to suspend the issue of pay during the period of absence beginning on the date on which the unauthorised absence began and ending on the date that the Service person is arrested or surrendered in respect of that absence, is discharged or is declared to no longer be absent from duty; and
- d. Where there are proceedings before a civilian court, it provides the court with evidence of a description prescribed by regulations made by the Secretary of State⁸.

6. The certificate of absence will remain in force until appropriate enquiries have taken place regarding the absence and the Defence Council or authorised officer has determined whether or not to authorise a forfeiture of pay in respect of the period of absence or until the certificate is cancelled⁹.

7. Copies of the certificate of absence should be sent to the following external addressees:

⁴ CO means the CO of the 'relevant person' or a person acting on behalf of or with the authority of the CO. The Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009/1108, regulation 2.

⁵ This category is used when a serviceperson is shown under Unauthorised Absence on JPA and there is no reasonable expectation that they will report for duty on the foreseeable future. The selection of this type of absence will ensure that correct career, pay, allowances and charges actions are taken. The category should not be used when another category is more appropriate, for example, medical, custodial or special unpaid leave.

⁶ For detail on suspension and forfeiture see paragraph 40.

⁷ RN QRRN Chapter 40, TI 35 and FLAGO Chapter 16; Army LANDSO 3200; and RAF AP3392 Volume 4.

⁸ Section 316(2)(b) of the Act.

⁹ A certificate will be cancelled where a Service person is found not to have been absent without leave during the relevant period.

RN	RM	Army	RAF
1. NPM(E) A & D for RNMPU 2. Area NPM 3. PSyA RN for SO2 CI 4. Service Police Crime Bureau 5. For Absentees on sailing, addressees listed in FLAGO 1614. 6. Theatre HQ for J1 staff (if overseas)	1. DRM 2. NPM(E) A & D for RNMPU 3. Area NPM 4. PSyA RN for SO2 CI 5. NCHQ for SO2 G1 RM Disc 6. Service Police Crime Bureau 7. Theatre HQ for J1 staff if overseas.	1. FLC/Theatre HQ (for J1 discipline staff and Service police) – officers only. 2. Formation HQ (for J1) 3. Service Police Crime Bureau. 4. Defence Vetting Agency - where absentee holds a sensitive post. 5. HQ Intelligence and Security for the Command (and Division if in UK).	1. PJOBS. Overseas Theatres: Formation HQ for J1 Staff/Service Police (for all ranks). 2. UK units: HQ AIR Command (Air Pers Cswrk). 3. Service Police Crime Bureau.

Where, in joint units, the missing person is of a different Service to the lead Service of that unit, the certificate should be despatched to the Service distribution list of that Service person.

8. Where there are grounds that suggest the absentee is unlikely to return before the eighth day¹⁰ or when the absentee is under investigation/wanted for trial, a certificate of absence is to be initiated and distributed on the first day of absence and he will be classed as a Long Term Absentee from that point. The individual's JPA absence record is to show the individual as long term absent from the first day of absence. The report should also specify¹¹ if the absentee falls within one of the following categories:

- a. Wanted for Court Martial trial.
- b. Wanted for summary hearing.
- c. Wanted for Summary Appeal Court case.
- d. Under Investigation.

9. **Notification to civil police.** The Service Police Crime Bureau (SPCB)¹²/Royal Navy Missing Persons Unit (RNMPU) will notify appropriate civil police forces of unauthorised absentees. This evidence of unauthorised absence¹³ should be in the form of the certificate of absence at Annex C.

¹⁰ For example, where the serviceperson has informed friends of his/her long term intentions or where he/she has removed sufficient possessions and equipment from their accommodation to suggest they are unlikely to return in the foreseeable future.

¹¹ Annex C, Paragraph 15 'Other Information'.

¹² SPCB Ops Room is contactable by telephone on 0239228 (GTN 93835) 5170/5180 and by fax on 02392285179, e-mail: SPCB-CCRIO-OPS-Group Mailbox.

¹³ Section 316(2)(b) of the Act.

10. **Notification to the next of kin and external contacts.** If not already contacted (see paragraph 4b) the unit should notify the next of kin (NOK) and/or any known external contacts (if considered appropriate by the CO) as follows:

a. **Service persons under 18 years of age.** To be notified by the CO¹⁴, as soon as absence is confirmed and advised that they will be informed once the absentee is located.

b. **Other absentees.** To be notified by CO not later than the twenty first clear day of absence unless an individual is categorised as Missing¹⁵ and the relevant casualty procedures have been initiated or it is known that the NOK is already aware of the absence. The notification is to:

(1) Include a statement that the individual has been declared a Long Term Absentee from their unit from the date found absent.

(2) Advise the NOK that they will be notified when the absentee returns to the unit.

(3) Advise dependents that the absentee's pay has been suspended.

11. **Unauthorised absence of less than 48 hours.** Unauthorised absence of less than 48 hours may be dealt with under minor administrative action (see JSP 833 (Minor administrative action)). Administrative action would not be appropriate in any circumstances where absence was aggravated; for example, if the individual was absent without proper authorisation when required for a major exercise, an operational deployment, a unit move, or any other significant undertaking. In such circumstances where the person is intentionally or negligently absent, disciplinary action should be taken.

Arrest

12. **Arrest by Service Police on suspicion of having committed a Service offence or reasonably suspected of being about to commit a Service offence (arrest under section 67 or section 69 of the Act).** Service Police may effect an arrest under section 67 of the Act of a person reasonably suspected of committing or having committed the offence of absence or desertion. The power of arrest may be exercised personally, by giving an order to another person or by ordering that person into arrest. Service Police may also effect an arrest under section 69 of the Act of a person reasonably suspected of being about to commit the offence of absence or desertion. See [Chapter 4](#) (Arrest and search, stop and search, entry search and seizure and retention), Part 1.

13. **Application for a warrant for arrest.** If, for example, a Service person has been absent in excess of 24 hours, there is reasonable information as to the whereabouts of the Service person and no contact has been made with the parent or duty unit, an application for a warrant of arrest may be made to a judge advocate. A warrant in this context is effectively a specific authorisation by and on behalf of the State for the arrest of that person¹⁶, see [Chapter 4](#) (Arrest and search, stop and search, entry search and seizure and retention), Part 1. Such a warrant has the advantage of authorising police to enter premises and arrest absentees or deserters. This course of action should be considered when other options for recovering the Service person have failed. Application may be made by: the individual's CO or a person acting on their authority, the Service Police or the prosecutor.

¹⁴ CO here includes subordinate commanders.

¹⁵ The absence type of Missing refers to when a serviceperson has not reported for duty in an operational environment. See JSP 760, Chapter 11, paragraphs 11.010 -11.012.

¹⁶ The Armed Forces (Warrants of Arrest for Service Offences) Rules 2009/1110, rule 2.

14. **Arrest by civilian police under a warrant for arrest.** When a person is arrested by civilian police under a warrant for arrest issued by a judge advocate he is to be transferred to Service custody as soon as possible¹⁷. The civil police are required to hand over a certificate containing specified information at the same time, along with a certified copy of any custody records raised and maintained for the person whilst he was under arrest¹⁸(see paragraph 17).

15. **Arrest by civilian police without a warrant.** An officer of a UK¹⁹ or British overseas territory²⁰ police force may arrest without a warrant a person who is reasonably suspected of being a person subject to Service law who has deserted or is absent without leave²¹. Where a person is arrested in these circumstances, he must be brought before a court of summary jurisdiction in the territory in which he was arrested²². In England and Wales, this is the magistrates' court. The court may either release the suspect, or arrange for them to be transferred to service custody, or release them subject to a condition that he reports to such place or person as may be specified for the purpose of enabling them to be taken into service custody²³ – see paragraphs 19 to 25 below.

16. **Surrender to civilian police.** When a person who is an absentee or deserter surrenders to civilian police, he must be taken to a police station²⁴. The person in charge of the station will decide whether to (a) arrange for them to be transferred to service custody (see paragraph 17); or (b) arrange for them to be brought before a court of summary jurisdiction (see paragraphs 19 to 25); or (c) release them subject to a condition that he reports to such place or person as may be specified for the purpose of enabling them to be taken into service custody (see paragraph 18)²⁵; or transferred directly into Service custody.

17. **Transfer to Service custody.** Where the civilian police transfer an absentee or deserter to service custody, a certificate containing specified information, along with a certified copy of any custody records raised and maintained for the person whilst he was under arrest, is to be handed over to the person receiving the absentee into service custody at the same time²⁶. Whilst it is the duty of the civil police to provide this certificate, a template is provided at Annex F. A Copy of the certificate should be sent to the Service Police Crime Bureau.

18. **Release subject to a reporting condition.** Where the civilian police release an absentee or deserter subject to reporting conditions, a certificate containing the specified information, details of the conditions specified, and certified copies of any custody records raised and maintained while the person was under arrest must be passed as soon as practicable to the Service Police Crime Bureau²⁷, Although it is the duty of the civil police to provide this certificate, a template is provided at Annex E. A copy of the certificate is to be

¹⁷ Section 313(4) of the Act.

¹⁸ Section 319(1) of the Act and The Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009/1108 Regulation 4]

¹⁹ References to the UK include England and Wales, Scotland, Northern Ireland and the Isle of Man.

²⁰ The British Overseas Territories are fourteen territories that are under the sovereignty of the United Kingdom, but which do not form part of the United Kingdom itself: British Antarctic Territory, South Georgia and the South Sandwich Islands, British Indian Ocean Territory, Sovereign Base areas of Akrotiri and Dhekelia, Pitcairn Islands, Falkland Islands, Saint Helena (including Ascension and Tristan da Cunha), Anguilla, British Virgin Islands, Montserrat, Gibraltar, Bermuda, Turks and Caicos Islands, Cayman Islands.

²¹ Section 314 of the Act.

²² Section 314(4) of the Act.

²³ Section 316(3) of the Act.

²⁴ Section 315(1) of the Act.

²⁵ Section 315(4) of the Act.

²⁶ The Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009/1108.

²⁷ The Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009/1108.

provided to the absentee or deserter, with the instruction that it be handed to the commanding officer at the place of report²⁸).

Proceedings before a civilian court

19. Where an absentee or deserter is brought before a court of summary jurisdiction following arrest without a warrant on the grounds of being a person reasonably suspected of being subject to Service law and absent or a deserter the court must release them unless:

- a. He admits to the court to being a person subject to Service law who has deserted or is absent without leave.
- b. The court has in its possession evidence of illegal absence as follows:
 - (1) A certificate of absence (Annex C), stating that the person is subject to Service law and is illegally absent (see paragraph 5).
 - (2) In relation to members of the Army, any signalled declaration of absence.
 - (3) A print or other document appearing to be the results of any search of the Police National Computer which shows that the person is wanted for being illegally absent.
- c. He is in civil custody for some other cause.

20. Where an absentee or deserter admits to the court that he is a person subject to Service law who has deserted, is absent without leave or the court has in its possession evidence of illegal absence (Annex C), the court must either:

- a. arrange for them to be transferred to Service custody; or
- b. release them subject to a condition that he reports, at or by such time as may be specified in the condition, to such place or person as may be so specified for the purpose of enabling them to be taken into Service custody²⁹.

21. Where the absentee or deserter is in civil custody for some other reason, the court may arrange for them to be transferred to Service custody³⁰.

22. **Transfer to Service Custody.** Where an absentee or deserter is transferred to service custody, the court is to provide a certificate containing the required information³¹. Whilst it is the duty of the court to provide this certificate, a template is provided at Annex F. If there is likely to be a delay before a person can be transferred into service custody the court may commit the absentee or deserter to be held in civil custody, pending their transfer, in a prison, police station or in any other place provided for the confinement of persons in custody³².

23. **Release subject to a reporting condition.** When an absentee or deserter is released subject to reporting conditions, the court is required to provide a certificate containing specified information, details of the conditions specified, and certified copies of any custody

²⁸ The Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009/1108 Regulation 5.

²⁹ Section 316(3) of the Act.

³⁰ Section 316(3) of the Act.

³¹ The Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009/1108.

³² Section 316(5) of the Act.

records raised and maintained while the person was under arrest³³. The certificate must be passed as soon as practicable to the Service Police Crime Bureau. Although it is the duty of the court to provide this certificate, a template is provided at Annex E. A copy of the certificate is to be provided to the absentee or deserter, with the instruction that it be handed to the commanding officer at the place of report.

24. **Warrant for the arrest of persons released subject to reporting conditions.** As explained above a person may be released subject to reporting conditions where:

- a. he has surrendered to a civilian policeman as being a person subject to Service law who has deserted or is absent without leave; or
- b. he appears before a court and admits that he is a person subject to Service law who has deserted or is absent without leave **or** the court has in its possession evidence of illegal absence (Annex C).

25. A warrant for the arrest of an absentee or deserter may be issued should the absentee, released subject to reporting conditions, fail to comply with a condition of their release³⁴. Such a warrant may be issued by a judge advocate and, where the failure is to comply with reporting conditions imposed by a court, by the court which imposed the conditions. Further guidance in this regard is contained at Part 1 of [Chapter 4](#) (Arrest and search) and The Armed Forces (Warrants of Arrest for Service Offences) Rules 2009.

Termination of absence

26. **Termination.** Long term absence is deemed to have terminated when the absentee:

- a. Rejoins their unit or authorised absence is determined;
- b. Is apprehended by, or surrenders to, the Service or civilian authorities; or
- c. Is discharged.

27. **Reporting Requirements.** The return to duty of a long term absentee is to be reported immediately to ensure:

- a. The correct and timely adjustment of the individual's pay account, including maintenance payments to any dependants.
- b. The civil and Service Police cease their search.
- c. Next of kin are informed where appropriate.

28. **External Reporting.** Immediately absence ceases the unit is to:

- a. Record the event on the individual's JPA absence record.
- b. Despatch the Stop AWOL form (Annex G) referring to the original certificate of absence. The form should be distributed to the same addressees as the certificate of absence. SPCB/RNMPU will notify the civil police and PNC.

³³ Section 319(1) of the Act and The Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009/1108.

³⁴ Section 317 of the Act.

Custody

29. **Custody without charge.** Once an offender arrested for absence or desertion is transferred into Service custody, the guidance at [Chapter 5](#) (Custody), which addresses both custody without charge (pre-charge custody) and custody after charge (post-charge custody), should be followed. However, in most cases of absence without leave the custody without charge provisions are unlikely to be applicable because a person may be kept in custody without charge only if the person who made the arrest has reasonable grounds for believing that such custody is necessary to:

- a. Secure or preserve evidence relating to a Service offence for which the suspect is under arrest.
- b. Obtain evidence relating to a Service offence for which the suspect is under arrest, by questioning the suspect³⁵.

In most straightforward cases of absence without leave, the evidence to prove the case already exists at the point of arrest and a police interview under caution may not be necessary. In cases of doubt, staff legal advice should always be sought.

30. **Custody after charge.** Once charged, it may be appropriate for the Service person to be held in custody if a judge advocate considers any of the following criteria apply³⁶:

- a. There are substantial grounds for believing that the accused, if released from Service custody, would:
 - (1) Fail to attend any hearing in the proceedings against them; or
 - (2) Commit an offence while released; or
 - (3) Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or
- b. The accused should be kept in Service custody for their own protection or, if he is under 17 years of age, for their own welfare or in their own interests; or
- c. Because of lack of time since the accused was charged, it has not been practicable to obtain sufficient information for the purpose of deciding whether condition a. or b. above is met.

Pay will not be suspended for Service persons retained in custody after charge; however following conviction pay may be forfeit for the relevant period spent in custody. (See paragraph 44 below).

31. **Release from custody after charge with conditions imposed by a judge advocate.** A judge advocate has the power to release an accused from custody subject to their compliance with certain conditions. A CO should therefore consider what conditions he would wish to be applied to the accused's release in the event the judge advocate is minded not to authorise custody after charge (see [Chapter 5](#) (Custody) paragraph 55). Significantly, if the CO considers there is a substantial risk of a person charged with AWOL offences failing

³⁵ Section 99 of the Act.

³⁶ Section 106 of the Act.

to attend future hearings he may wish to invite the judge advocate to impose a requirement that the accused does not leave their ship, unit or establishment.

32. **Release from post charge custody with conditions imposed by a CO.** If a person is to be released from custody there is nothing to prevent the CO imposing conditions on an administrative basis by ordering that the accused complies with certain requirements or refrains from particular activities (see [Chapter 5](#) (Custody) paragraph 56).

33. **The relevant time for custody.** Note that the 'relevant time' means; in relation to a person arrested under section 67 (the general powers of arrest) of the Act or arrested by an officer of a UK or British overseas territory police force, the time of arrest; and in relation to a person delivered into custody following surrender under section 315 of the Act (deserter or absentee without leave surrendering to civilian police) of the Act, the time of surrender. For full details on custody see [Chapter 5](#).

Dispensing with Service proceedings

34. Whilst desertion remains a serious offence there are circumstances in which it would be of no benefit to try someone for this offence see [Chapter 18](#) (Terms and conditions of enlistment and service). The main provisions are outlined at paragraphs 35 to 37 below.

35. **Confession of desertion.** If a Service person makes a confession of desertion³⁷, the CO may decide, with or without the consent of the Director of Service Prosecutions, to dispense with Service proceedings, having taken into account the circumstances of the case and of the person who made the confession³⁸.

36. **Forfeiture of service following confession of desertion.** If a Service person makes a confession of desertion and the CO decides to dispense with Service proceedings, service is forfeited according to the following rules:

- a. The date of enlistment will be deemed to have been the date which precedes the date of the CO's decision by the period of service that has not been forfeited.
- b. The Service person who confessed will be liable to serve for an additional period equal to the period admitted as desertion.
- c. The date of entitlement to discharge from the regular forces, to end service with the regular forces or to be transferred to a reserve force, will be postponed by an equal period.
- d. The CO may decide that the person who confessed is not required to serve for an additional period under sub-paragraph 36.b above³⁹.

³⁷ The Armed Forces (Forfeiture of Service) (No.2) Regulations 2009/1090, regulation 3.

³⁸ In fact, the consent of the DSP is not required by the Armed Forces (Forfeiture of Service) (No.2) Regulations 2009/1090 unless: (a) the confession includes a statement that the Service person intended to avoid a period of active service; or (b) a reasonable person would think that he so intended (section 8(2)(b) AFA 2006 desertion). However, it is not MOD policy for a CO to determine that any desertion trial be dispensed with without the consent of the DSP.

³⁹ For example, when it is unlikely the serviceperson will be reintegrated into service life and it would not be in the exigency of the service to retain them for that period.

37. **Period of absence.** As a matter of policy, dispensation should not be sought where a Service person has been absent for less than 5 years.

38. **Identifying of a CO.** In the unusual circumstance that it is difficult to identify the correct CO, the Service person's CO for all purposes will be the officer in command of the last unit of which he was a member unless a bespoke appointment is made.

39. **Discharge.** Where discharge is recommended following dispensation and where the engagement of the deserter has not expired, the appropriate means of discharge would be services no longer required (SNLR).

Forfeiture of service

40. For full details on forfeiture of service, see [Chapter 18](#) (Terms and conditions of enlistment and service). The main provisions are outlined at paragraphs 41 and 42 below.

41. **Forfeiture of service following conviction for desertion.** If a Service person is convicted of desertion, the period of service for which he was convicted as a deserter will be forfeited. If service is forfeited, the following rules apply:

- a. The date of enlistment will be deemed to have been the date which precedes the date of conviction by the period of service that has not been forfeited.
- b. The Service person convicted will be liable to serve for an additional period that is equal to the period in respect of which convicted of desertion.
- c. The date on which the Service person convicted will be entitled to be discharged from the regular forces, to end service with the regular forces or to be transferred to a reserve force, will be postponed by an equal period.
- d. If the Service person convicted had previously extended the term of service so as to end at a specified time, the forfeiture will not have the effect of requiring the person to serve for any period after that time.

In effect, the Service person's date of enlistment and the date on which he is entitled to be discharged will be deemed to have been postponed by a period of additional service equal to the period.

42. **Restoration of forfeited service⁴⁰.** Where service has been forfeited for desertion, the Defence Council may restore the whole or part of the forfeited service if they consider it expedient to do so because of any circumstances which they consider to be relevant, for example, the person's distinguished, gallant or other conspicuous conduct during the period since the desertion ended. If the forfeited service is restored by the Defence Council, the following rules apply:

- a. The additional period of service equal to the period of desertion will be reduced by the period of restored service.

⁴⁰ [Chapter 18](#) (Terms and conditions of enlistment and service).

- b. The date of entitlement to discharge from the regular forces or transferred to the reserve will be adjusted accordingly.
- c. The date on which regular service ends or of transfer to the reserve force in accordance with the person's engagement will not be affected by the restoration of service.

Unauthorised absence due to civil custody (Custodial Absence)

43. In addition to the requirement to report incidents or matters of Parliamentary, media and public interest as laid down by single Service instructions⁴¹ the following absentee procedures apply when a Service person is placed in civil custody:

- a. **Further action following the preferring of a charge.** If charged with an offence, no further action is normally required until the completion of civil proceedings.
- b. **Further Action if placed in civil custody (custodial absence).** Custodial absence is dealt with by the appropriate authorised unit HR administration staff as part of the disciplinary process⁴². The individual is to remain on the strength of their parent unit throughout the proceedings.

44. **Action required following civil proceedings.** The following procedures apply when a Service person is absent due to proceedings in a civil court:

- a. **If found guilty.** If a Service person is found guilty by a civil court of the offence which led to the arrest and remand in civil custody, the CO is to consider whether administrative action should be taken. If the CO does not consider that the offence warrants administrative action, he must consider whether the offence warrants a discipline entry⁴³. The individual's JPA disciplinary history is to be updated accordingly. If the CO decides that the offence warrants neither administrative action nor a discipline entry, he is to raise a 'warnings and sanctions' case on JPA and close the case as 'no further action required'. This JPA action will allow the audit process to be maintained, but no entry will be recorded against the individual's discipline history. Additionally, if a sentence of imprisonment exceeds 4 calendar months and discharge is not authorised, the individual will be assigned non effective by the appropriate Service.
- b. **If found not guilty.** If a Service person is found not guilty by a civil court of the offence which led to the arrest and remand in civil custody, any period spent in civil custody pending trial cannot be regarded as absence without leave.

Effect of suspending pay and stopping allowances.

45. The effect of a certificate of absence, *i.e.*, suspension of pay, is separate from forfeiture of pay⁴⁴, see [Chapter 20](#) (Forfeitures and deductions). Suspension means that payments of pay are suspended during the period of absence, but not that entitlement to pay for that period is lost. The certificate of absence is a mechanism by which the issue of pay can be suspended when a member of the regular forces is absent and that absence is unauthorised. When the Service person returns from absence by either arrest or surrender, the suspended pay must either be restored to them (whether or not the Service person is

⁴¹ QRRN Chapter 39, Army LFSO 3200 and RAF QR J2459C.

⁴² See JSP 760, Chapter 12 (Custodial Absence)

⁴³ RN FLAGO Ch 16, Army QRs 6.178, 6.179 and Annex H to QR Chapter 5, RAF QR 1027.

⁴⁴ See the Armed Forces (Forfeitures and Deductions) Regulations 2009/1109.

taken into custody on return) or, if he was absent from duty within the meaning of the forfeitures and deductions regulations, it may be forfeited, see [Chapter 20](#) (Forfeitures and deductions). Allowances and charges will be stopped as appropriate for the period of absence.

Administration

46. For details on matters of administration (including assignment, despatch of documents held by units, denial of JPA Employee Self Service access, termination of long term absence, movement of absentees and updating of records), see single Service guidance⁴⁵ and JSPs 760 and 754.

⁴⁵ RN QRRN Chapter 40 and TI 35, Army PAM Part 3 and LANDSO 3200 and RAF AP3392 Volume 4..

Members of the reserve forces and individuals liable to recall – liability to Service law

Liability to Service law

1. **Members of the reserve forces.** Members of the reserve forces⁴⁶ are subject to Service law under the Armed Forces Act 2006 (the Act) when⁴⁷:
 - a. In permanent service on call-out under any provision of the Reserve Forces Act 1980 (RFA 80) or the Reserve Forces Act 1996 (RFA 96) or under any other call-out obligation of an officer.
 - b. In home defence service on call-out under section 22 of RFA 80.
 - c. In full-time reserve service under a commitment entered into under section 24 of RFA 96.
 - d. Undertaking any form of training or duty (whether or not in pursuance of an obligation).
 - e. Serving on the permanent staff of a reserve force⁴⁸.
2. **Recall.** A person who is recalled⁴⁹ into service under any provision of RFA 80 or RFA 96 or any other recall obligation of an officer is regarded as being a member of the regular forces from the time of acceptance into service⁵⁰ to release or discharge⁵¹.

Offences under the Armed Forces Act 2006

3. A member of a reserve force or a person subject to recall who, whilst subject to Service law, commits an offence under the Act may be dealt with summarily by their commanding officer (CO) or by Court Martial (CM) trial. If he ceases to be subject to Service law, he can be brought back for the purpose of disciplinary action and is treated as continuing to be subject to Service law.
4. **Time limits.** There are time limits⁵² imposed on the commencement of such proceedings. These limits apply where the offence is other than one under RFA 96 and are:
 - a. Where a person ceases to be a member of a regular or reserve force, that person cannot be charged with a Service offence committed whilst a member of a force after the end of six months from the date he ceased to be a member of that force⁵³.

⁴⁶ Section 1(2) RFA96.

⁴⁷ Section 367(2) of the Act.

⁴⁸ Permanent member of a reserve force, see RFA 1996, section 6; this is a reference to the Non Regular Permanent Staff of the TA.

⁴⁹ Liable to recall, see section 51 (7) of the Act; Persons liable to recall are from: the Recall Reserve (Naval and Marine); the Army Long Term Reserve; Army Pensioners (Other Ranks); RAF Retired Officers; RAF (Airmen) Pensioners.

⁵⁰ Acceptance into service, see RFA 1996 section 71

⁵¹ Section 368(2) of the Act.

⁵² See [Chapter 3](#) (Jurisdiction and time limits).

⁵³ Section 55 of the Act.

b. A member of an ex-regular reserve force⁵⁴ who has ceased to be subject to an additional duties commitment⁵⁵ may not be charged with a Service offence after the end of six months from the date he ceased to be subject to the commitment⁵⁶.

c. A person who ceases to be subject to Service law and was neither a member of a volunteer reserve force nor a member of an ex-regular reserve force subject to an additional duties commitment when the offence was committed, may not be charged after the end of six months from the date of ceasing to be subject to Service law even if that person becomes subject to Service law again⁵⁷.

Offences under RFA 96

5. **Offences against good order and discipline.** RFA 96, section 95 makes provision for a number of offences against orders and regulations made under section 4. The offences include: failure without reasonable excuse to comply with orders or regulations made under section 4; failure to attend without reasonable excuse when required to do so in pursuance of orders or regulations under section 4⁵⁸.

6. **Failure to attend for service on call out or recall.** Members of the reserve forces and persons liable to recall who, without leave or reasonable excuse, fail to appear at the time or place specified by a call-out or recall notice may be charged under RFA 96, section 96 with the offence of desertion or absence without leave, according to the circumstances. These provisions apply, whether or not the accused is subsequently accepted into service⁵⁹.

7. **Failure to attend for duty or training.** A reservist who fails to appear at the time and place, at which he is required to attend to begin a full-time Service commitment,⁶⁰ or begin a period of service under an additional duties commitment,⁶¹ may be charged under RFA 96, section 97 with the offence of desertion or absence without leave, according to the circumstances. RFA 96, section 97, also provides for a reservist who is required to undergo a period of training under section 22 of RFA 96, or under a special agreement,⁶² or an employee agreement,⁶³ to be charged with being absent without leave if he fails, without leave lawfully granted or reasonable excuse, to appear at any time and place at which he is required to attend.

Disposal of RFA 96 offences

8. A person charged with an offence under RFA 96 sections 95, 96 and 97 may be tried by the CM or by a civilian court, but not both. Advice should be obtained from the staff legal adviser and Service personnel branches⁶⁴ (regardless of jurisdiction) regarding the appropriate jurisdiction for dealing with a case under section 96 where an individual has failed to attend for service on call out or recall⁶⁵.

⁵⁴ Ex-regular reserve force, see RFA 1996, section 2(2).

⁵⁵ Additional duties commitment, see RFA 1996, section 25.

⁵⁶ Section 56 of the Act.

⁵⁷ Section 57 of the Act.

⁵⁸ Regulations made under section 4, include: BR 60, BR 61, BR 63, BR 64, TA Regulations 1978, the Regular Reserve Regulations 1997, the Reserve Forces (Army) Regulations 1997, Regulations for the Reserve Air Forces (AP 3392, Vol 7).

⁵⁹ Accepted into service, see RFA 96 sections 33, 44, 59 and 71.

⁶⁰ Full-time service commitment, see RFA 96 section 24.

⁶¹ Additional duties commitment, see RFA 96 section 25.

⁶² Special Agreement, see RFA 96 section 28.

⁶³ Employee agreement, see RFA 96 section 39.

⁶⁴ NPT(Res), PS2(Army), ACOS Pers Pol(RAF).

⁶⁵ The policy for dealing with those who fail to report for mobilisation (rather than those who report a day or so late) is for the civil police to make the arrest and the CPS to make the prosecution in the Magistrates' courts (or equivalent in Scotland).

9. **The Court Martial and summary hearing.** An offence under RFA 96, sections 95 to 97 is classed as a Service offence under section 50 of AFA 06 and is therefore within the jurisdiction of the CM. An offence of absence without leave under section 96 or 97 of the RFA 96 may also be dealt with by the Services at a summary hearing⁶⁶ provided that the conditions set out in section 52 of the Act are met.

10. **Time limits.** The time limits for charging an RFA 96 offence which is to be dealt with summarily or by the CM are 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 CO.
- c. Two months beginning with the date the person is apprehended.
- d. Six months beginning with the date the person ceased to be:
 - (1) A member of a volunteer reserve force; or
 - (2) A member of an ex-regular reserve force in full-time reserve service⁶⁷ or subject to an additional duties commitment under RFA 96, section 25.

The periods above are not extended if a person charged ceases to be subject to Service law but becomes subject to Service law again within 6 months beginning the date he so ceased.

11. **Proceedings before a civilian court.** Proceedings for offences charged under RFA 96 in a civilian court must be instituted within two months after the time at which the offence becomes known to their CO or at the time the accused is apprehended, whichever is the later⁶⁸.

- a. Advice should be sought from the staff legal adviser and Service personnel branches⁶⁹ regarding notification to and liaison with the civilian police forces and the Crown Prosecution Service (CPS), offences under RFA 96, section 96 involving persons who fail to attend for service on call out or recall.
- b. Advice should also be obtained from staff legal advisers regarding evidential requirements for bringing proceedings before the civilian courts. Service records, Defence Council Instructions or Regulations and Defence Council Certificates may be admissible as evidence in a civilian court in respect of an offence under RFA 96, as provided for in the Reserve Forces (Evidence in Proceedings before Civil Courts) Regulations 2009. The regulations also provide for the admissibility of a certificate stating that a member of a reserve force who failed to attend for duty in accordance with a requirement under RFA 96 section 4, as evidence before a civilian court in respect of an offence under section 95 of the Act.

⁶⁶ Section 53 of the Act

⁶⁷ Full-time reserve service, see RFA 96, section 24

⁶⁸ RFA 96 section 107.

⁶⁹ NPT(Res), PS2(Army), ACOS Pers Pol(RAF)