

## Chapter 20

### Forfeitures and deductions

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## Chapter 20

### Forfeitures and deductions

#### Introduction

1. **General.** Any Service person<sup>1</sup> may be liable to have his pay<sup>2</sup> forfeited or have deductions made from his pay in certain specified circumstances in consequence of the provisions of The Armed Forces (Forfeitures and Deductions) Regulations 2009 ('the Regulations') made under the Armed Forces Act 2006 (the Act)<sup>3</sup>. Pay may be forfeit, that is a person may lose his right to pay, for any period of absence from duty specified in the Regulations. Pay may be deducted, or reduced in amount, to meet any specific sums, including outstanding fines and Service compensation orders (SCO). Deductions from pay may also be authorised in respect of prescribed maintenance orders, assessments or calculations or in satisfaction of judgement debts.
2. **Authorised forfeitures and deductions.** Further guidance and policy on implementing, effecting and enforcing forfeitures and deductions is contained in JSP 754 (Tri-Service regulations for pay and charges<sup>4</sup>), where such forfeitures and deductions are made in accordance with the Regulations. In addition, JSP 754 may authorise certain deductions which are outside the scope of the Regulations<sup>5</sup>. However, it is important to note that JSP 754 does not and must not authorise the forfeiture of pay<sup>6</sup> nor does it authorise any deduction from Service pay that is within the scope of the Regulations. JSP 754 should always be consulted where consideration is being given to making an order for forfeiture or deductions of pay under the Regulations.
3. **Limitations.** A Service person must always remain in receipt of a minimum rate of pay, notwithstanding any order for deductions<sup>7</sup> to which they may be subject. This minimum rate is prescribed by the Armed Forces (Forfeiture and Deductions) (Minimum Rate of Pay) Regulations 2009 and further guidance is contained at JSP 754 (Tri-Service regulations for pay and charges).

#### Forfeiture: Absence from duty

4. Under the Regulations, the Defence Council, or authorised officer<sup>8</sup>, can make orders authorising the forfeiture of the pay of a Service person in respect of certain periods of absence from duty set out at paragraphs 5 to 10 below.
5. **Absence amounting to an offence.** A Service person may have his pay forfeit in respect of the following:
  - a. Any day during which they were absent from duty and in respect of which the Defence Council, or authorised officer, is satisfied that the conduct of the Service person amounts to an offence of desertion or absence without leave<sup>9</sup>; or

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<sup>1</sup> See glossary for definition of a Service person and [Chapter 3](#) (Jurisdiction and time limits).

<sup>2</sup> Any amount authorised to be deducted from the pay of a person subject to Service law may also be deducted from any bounty, allowance or grant which may be due to him – section 341(6).

<sup>3</sup> Sections 341 and 342 of the Act.

<sup>4</sup> Schedule to the Royal Warrant made under section 333 of the Act.

<sup>5</sup> Sections 333(3) and (4) of the Act.

<sup>6</sup> Section 333(5) of the Act.

<sup>7</sup> Section 341(4) of the Act. The Service person may agree to further deductions, but in any event there will be – if the deductions are insufficient to meet the liability in question (e.g. a civil court judgment) – an accrual of arrears in respect of that liability, which will be enforceable until the liability is absolved.

<sup>8</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 3(1). Authorised officers are listed in MSL Vol 3.

b. Any day during which they were absent from duty and in respect of which the Defence Council, or authorised officer, is satisfied that the conduct of the Service person amounts to an offence under section 97(1)(a) of the Reserve Forces Act 1996 of failing to attend, in the case of a full-time service commitment, to begin the period of full-time service contemplated by the commitment<sup>10</sup>.

6. Where the Service person has been found guilty of an offence of desertion or absence without leave, reference to the memorandum of conviction or record of summary hearing should be sufficient for the Defence Council, or authorised officer, to be satisfied that the conduct of the Service person amounts to an offence of desertion or absence without leave. However, care must be taken in those cases where there has been no finding of guilt in respect of a charge of desertion or absence without leave. These cases are likely to arise where a decision has been made that it is not in the public, including Service, interest to prosecute the Service person or where they are still a deserter or absent. Further guidance as to when it may be appropriate to dispense with Service proceedings following desertion is contained at [Chapter 10](#) (Absence and desertion).

7. In those cases where there has been no finding of guilt, the Defence Council, or authorised officer, should adopt a similar approach to the evidence as they would at a summary hearing of the matter. They should be satisfied that all the elements of the offence are established by reference to the evidence and should consult the guidance contained at [Chapter 7](#) (Non-Criminal Conduct (Disciplinary) Offences), and [Chapter 10](#) (Summary Hearing, Dealing with Evidence). Similarly, care should be taken where the Defence Council, or authorised officer, exercise their powers outlined at paragraph 5b above, authorising forfeiture of pay. Again, they should be satisfied that all the elements of the offence are established by reference to the evidence<sup>11</sup>.

8. **Time spent in detention or imprisonment.** A Service person may have his pay forfeited in respect of the following:

a. Any day of imprisonment or detention awarded under the Act and served by them<sup>12</sup>. This embraces all custodial sentences and hospital orders which may be imposed by the Court Martial (CM), along with all sentences of detention which may be imposed by the CM or at summary hearing<sup>13</sup>. It should be noted, however, that where a Service person is held in either pre-charge or post-charge custody, they will remain in receipt of his pay as normal<sup>14</sup> on the basis of the legal presumption of innocence until proven guilty. Pay may only be forfeit for a period in post-charge custody where there is a subsequent finding of guilt and the CM or officer directs that the time in post-charge custody will count as time served towards any sentence of detention or detention imposed<sup>15</sup>; or

b. Any day of absence from duty by reason of imprisonment or detention to which they are liable in consequence of an order or sentence of a civilian court anywhere<sup>16</sup>. It should be noted that where a Service person is held remanded in custody before or during trial, they will remain in receipt of his pay as normal<sup>17</sup> on the

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<sup>9</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 3(1)(a) and 3(3).

<sup>10</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(1)(a) and 3(3).

<sup>11</sup> In cases where there has been a finding of guilt reference to the memorandum of conviction or record of summary hearing should suffice.

<sup>12</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(1)(b) and (c).

<sup>13</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(2).

<sup>14</sup> JSP 754 (Tri-Service regulations for pay and charges).

<sup>15</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(1)(b).

<sup>16</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(1)(c), (d) and (e). This provision embraces ECHR and non-ECHR countries. Legal advice should always be sought where forfeiture of pay is being considered in respect of periods of detention or imprisonment overseas.

<sup>17</sup> JSP 754 (Tri-Service regulations for pay and allowances).

basis of the legal presumption of innocent until proven guilty. Pay may only be forfeit for this period where the Service person is subsequently convicted of an offence and the court directs that the period spent remanded in custody will count as time served towards any sentence of imprisonment or detention imposed.

9. **Time spent captured by the enemy.** Any Service person who is absent from duty in consequence of having been captured by the enemy will continue to receive his pay. However, the Service person's pay may be forfeited where his capture by the enemy or continued absence was caused by an intentional breach of duty, a failure to escape or where they have been assisting the enemy, as outlined below:

a. **Intentional breach of duty<sup>18</sup>.** In these cases the Defence Council, or authorised officer, must firstly be satisfied that the Service person has been found guilty of an offence under Part 1 of the Act. This may be established by reference to the memorandum of conviction or record of summary hearing. Secondly, the Defence Council, or authorised officer, must be satisfied that the Service person was captured by the enemy as an immediate consequence of the conduct forming the subject matter of that offence and his intentional breach of duty. Clear evidence, including witness, documentary and real evidence, will be required to establish these facts and legal advice should be sought in this regard; or

b. **Failure to escape<sup>19</sup>.** In these cases the Defence Council, or authorised officer, must firstly be satisfied that the Service person has been convicted of the offence of failure to escape under section 5(2) of the Act. This may be established by reference to the memorandum of conviction. Secondly, the Defence Council, or authorised officer, must be satisfied that the Service person was absent in consequence of that failure to escape. Clear evidence, including witness, documentary and real evidence, will be required to establish these facts and legal advice should be sought in this regard; or

c. **Assisting an enemy<sup>20</sup>.** In these cases the Defence Council, or authorised officer, must be satisfied that the Service person has been convicted of an offence of assisting the enemy under section 1(2) of the Act over the period of absence in question. This may be established by reference to the memorandum of conviction.

10. **Sickness or injury resulting from an offence of which found guilty.** The general principle is that where a Service person is absent from duty due to sickness or injury they will continue to be paid for the duration of his absence. However, the Service person's pay may be forfeited where the Defence Council, or authorised officer, is satisfied of each of the following<sup>21</sup>:

a. There was a period of absence due to sickness or injury<sup>22</sup>; and

b. That sickness or injury was contributed to or caused by the Service person's own conduct<sup>23</sup>; and

c. The Service person has been found guilty of an offence under the Act in respect of that conduct<sup>24</sup>.

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<sup>18</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(1)(g).

<sup>19</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(1)(h).

<sup>20</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(1)(i).

<sup>21</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009, regulation 3(1)(f).

<sup>22</sup> This should be established by clear evidence, including witness, documentary and real evidence.

<sup>23</sup> This should be established by clear evidence, including witness, documentary and real evidence.

<sup>24</sup> This may be established by reference to the memorandum of conviction or record of summary hearing.

11. The offences to which this guidance is most applicable are those of malingering under section 16(1) of the Act<sup>25</sup>. However, any other offence which results in injury to the offender (such as injuries received during an assault on another person, whilst causing criminal damage or as a result of dangerous driving) may also result in the forfeiture of pay.

## Remittance of forfeitures

12. Under the Act, the Defence Council, or authorised officer, have a statutory power enabling them to remit any forfeiture imposed as a result of absence from duty (see paragraphs 4 to 10 above)<sup>26</sup>. The Defence Council, or authorised officer, should exercise their power to remit any forfeiture whenever an order for forfeiture of pay should not have been made. This will be the case where an order forfeiting pay was made on the basis of a finding of guilt under the Act which was subsequently overturned on appeal. The requirement to remit an order for forfeiture may also arise where new evidence comes to light casting doubt on an earlier decision to order the forfeiture of pay. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

## Forfeiture: Service supervision and punishment order (SSPO)

13. Whilst the forfeiture of pay in paragraphs 5 to 11 above results from a Service person's absence from duty, receiving the punishment of a SSPO<sup>27</sup> will also result in pay being forfeit. An SSPO is designed to punish and reform offenders without the need for detention and accordingly, during a period of an SSPO, a Service person will not be absent from duty.

14. The forfeiture of pay pursuant to an SSPO is mandatory, pursuant to section 173 of the Act and provides that the offender shall forfeit one-sixth of his gross pay<sup>28</sup> for the duration<sup>29</sup> of the SSPO. See also [Chapter 13](#) paragraph 84 for further detail (Summary hearing sentencing and punishments).

## Deductions: Payment of civilian (criminal) penalties

15. **Orders by civilian courts.** Where a relevant person (a Service person other than a member of the reserve forces undertaking any training or duty)<sup>30</sup> has been ordered by a civilian<sup>31</sup> (criminal) court anywhere to pay an amount of money (e.g. by way of fine, penalty, damages, compensation or costs), then the Defence Council or authorised officer may order deductions from that person's pay in satisfaction of that amount (or part thereof).

16. **Limitations.** Deductions may only be authorised in respect of orders made by civilian (criminal) courts where the amount (or part thereof) required by the court order has been paid by or on behalf of a Service authority<sup>32</sup>. A Service authority should only make payment of an amount (or part thereof) due under an order of a civilian (criminal court) where the order is recognised as legitimate and where non-payment of such an amount is likely to result in enforcement action which will render the relevant person unavailable for Service

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<sup>25</sup> That is to say, by any act or omission, caused, aggravated or prolonged any injury they had, or caused another person to injure him. See [Chapter 7](#) (Non-criminal conduct (disciplinary) offences) for full details of the ingredients of the offence).

<sup>26</sup> Section 342(3) of the Act.

<sup>27</sup> Sections 173 and 174 of the Act and [Chapter 13](#) (Summary Hearing Punishments).

<sup>28</sup> i.e. full pay (excluding allowances) before deduction of income tax and earnings related National Insurance contributions.

<sup>29</sup> An SSPO can be imposed for 30, 60 or 90 days – see section 173(2) of the Act and [Chapter 12](#) (Defences, mitigation and criminal responsibility).

<sup>30</sup> Section 342(4) of the Act - a person subject to service law by reason of section 367(1) or 367(2)(a), (b), (c) and (e) - viz. persons under section 367(2)(d) (reserve force members undertaking any training or duty) are *excluded*.

<sup>31</sup> Reference to a civilian court is to a court of ordinary criminal jurisdiction – Section 374 of the Act.

<sup>32</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 4(1).

when they are required to be so available see JSP 754 for further guidance (Tri-Service regulations for pay and charges).

17. It should be noted that no order for deductions may authorise a deduction to be made before the date that payment of the amount (or part thereof) is required by the court<sup>33</sup>. Accordingly, where a civilian (criminal) court makes an order for payment of an amount by instalments, deductions may not be authorised in excess of or in advance of the court ordered instalments. Further, where a civilian (criminal) court allows time for payment of a sum due under a court order, deductions may not be authorised before the time for payment has expired.

## **Deductions: Loss or damage to public or Service property**

18. The Regulations specifically provide that an order for deductions in respect of loss or damage to public or Service property may not be made in any of the circumstances set out in subparagraphs a and b below<sup>34</sup>.

a. Where a court or officer has sentenced the relevant person for a Service offence and on passing sentence had power to make a SCO in respect of that damage to or that loss of property, whether or not a compensation order was made.

b. Where, in circumstances involving a finding that the relevant person was not guilty of intentionally, recklessly or negligently causing that damage to or that loss of property, they have been found not guilty of a Service offence. This applies where at trial, summary hearing or appeal to the SAC, the relevant person is found not guilty of an offence under section 24 of the Act in relation to the damage or loss of property in question. It also applies where at trial, summary hearing or appeal to the SAC, the relevant person is found not guilty of any other Service offence and it follows, from that finding, that they are also not guilty of an offence under section 24 of the Act in relation to the damage or loss of property in question.

19. In circumstances other than those at paragraphs 18a and b above, the Defence Council, or authorised officer, may make an order for deductions from the pay of a relevant person<sup>35</sup> in respect of any loss or damage incurred to public or Service property. However, the Defence Council, or authorised officer, may only make such an order for deductions where it is satisfied that the relevant person's conduct that caused the damage amounted to an offence under section 24 of the Act.

20. In order to be satisfied that the relevant person's conduct amounted to an offence under section 24 of the Act, the Defence Council, or authorised officer, should investigate the matter and may wish to adopt a similar formal approach to the evidence as they would at a summary hearing. However, this is not a disciplinary investigation and charges should not be brought. They should be satisfied that the person was responsible for the loss or damage in a way that would have amounted to an offence under section 24, i.e. was deliberate, reckless or negligent (see [Chapter 7, Section 24](#)). In satisfying themselves as to the relevant person's conduct, the Defence Council or authorised officer do not need to be sure beyond reasonable doubt, i.e. not to the standard required had the individual been formally charged and was being dealt with by a summary hearing. . Before an order is made, the relevant person should be given an opportunity to make representations, and these may be done orally or in writing. After an order is made the relevant person should be informed of his right to make a service complaint.

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<sup>33</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 4(2).

<sup>34</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 5(2).

<sup>35</sup> A service person other than a member of the reserve forces undertaking any training or duty - Section 342(4) of the Act.



21. It should be noted that the total sum authorised to be deducted from the pay of the relevant person in respect of the damage to or loss of property must not exceed £1000<sup>36</sup>.

22. **Variation/revocation.** Subject to the requirements set out at paragraphs 19 - 21 above, the Defence Council, or authorised officer, may, by further order, vary any order for deductions made in respect of compensation for loss or damage<sup>37</sup>. The Defence Council or authorised officer may also, by further order, revoke an order for deductions made in respect of compensation for loss or damage<sup>38</sup>. The Defence Council, or authorised officer, should exercise their power to vary or revoke an order for deductions whenever an order for deductions is inappropriate or should not have been made. This may arise where new evidence or information comes to light casting doubt on an earlier decision to make an order for deductions. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

### **Deductions: Satisfaction of financial penalty**

23. Where a Service person is required to make payment in respect of a financial penalty which has been imposed against them, the Defence Council, or authorised officer, may make an order authorising deductions from pay in or towards satisfaction of that financial penalty<sup>39</sup>. No such order should be made before the end of the relevant appeal period or whilst an appeal is pending against that financial penalty.

24. **Meaning of financial penalty.** In the context of forfeitures and deductions, a financial penalty refers to any of the following:

a. Any fine or SCO imposed under the Act<sup>40</sup>. This includes any fine or SCO imposed on a Service person at summary hearing or court-martial. It also includes any fine or SCO which a Service parent or guardian<sup>41</sup> has been ordered to pay under section 268 of the Act (i.e. in relation to a relevant civilian aged under 18 who is convicted of an offence and where the punishment includes payment of a fine or compensation<sup>42</sup>); or

b. Any sum which is ordered to be paid as a result of a declaration by the court<sup>43</sup> that a recognizance is to be forfeited under section 236(3) of the Act<sup>44</sup>. In essence, this means that, having entered into an undertaking (a recognizance), to pay a specified sum if the offender commits another offence within a specified period the Service parent or guardian responsible for that offender is ordered to pay any sum up to the full amount of that recognizance, as a result of the offender being convicted of a new offence<sup>45</sup>; or

c. Any order as to payment of costs made by virtue of regulations under section 26 Armed Forces Act 2001, or by virtue of section 27 of that Act<sup>46</sup>. The former

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<sup>36</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulations 5(4).

<sup>37</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 5(5).

<sup>38</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 5(6).

<sup>39</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 6(1).

<sup>40</sup> Section 342(4)(a) of the Act.

<sup>41</sup> i.e. a person who is subject to Service law or Service discipline – see section 268(8) of the Act.

<sup>42</sup> See section 268 of the Act and [Chapter 13](#) (Summary hearing sentencing and punishment) and [Chapter 16](#) (Financial penalty enforcement orders).

<sup>43</sup> 'Court' in this context means the CM or the Service Civilian Court.

<sup>44</sup> Section 342(4)(b) of the Act.

<sup>45</sup> See sections 233 to 236 of the Act and [Chapter 16](#) (Financial penalty enforcement orders). As with fines and SCOs under paragraph 24a, the 'offender' refers to a relevant civilian aged under 18 who is convicted of an offence and the 'Service parent or guardian' means a person who is subject to Service law or Service discipline.

<sup>46</sup> Section 342(4)(c) of the Act.

provision concerns circumstances where the court<sup>47</sup> is satisfied that one party to the proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to those proceedings and, accordingly, makes an order as to payment of those costs. Section 27 is concerned with costs against legal representatives.

25. **Limitations.** No order for deductions in respect of a financial penalty may authorise a deduction to be made before the date that payment of the amount (or part thereof) is required by the court<sup>48</sup> or officer<sup>49</sup>. Under the Act, a court or officer may direct payment of a fine or SCO by instalments<sup>50</sup>. In that event, any deductions ordered to satisfy the fine or SCO should correspond with the number and amount of each instalment ordered by the court or officer. Deductions may not be authorised in excess of or in advance of the court ordered instalments. Further, where a court or officer allows time for payment of a fine or SCO, deductions from pay may not be authorised before the time for payment has expired.

26. **Variation/revocation.** Subject to the limitations set out at paragraph 25 above, the Defence Council, or authorised officer, may, by further order, vary or revoke any order for deductions made in respect of financial penalties<sup>51</sup>. The Defence Council, or authorised officer, should exercise their power to vary or revoke an order for deductions where the financial penalty has been varied or the Service person has subsequently been given time to pay or subsequently been allowed to pay by instalments. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

### **Deductions: Satisfaction of judgment or order enforceable by a UK court (other than maintenance orders – see paragraphs 31 – 44 below)**

27. The Defence Council, or authorised officer, may make an order authorising deductions to be made from pay and to be appropriated in or towards satisfaction of any amount that a relevant person<sup>52</sup> is required to pay by virtue of any judgment or order enforceable by a UK court<sup>53</sup>. This applies to judgments in civil<sup>54</sup> (non-criminal) cases of UK and non-UK courts, excluding maintenance orders, which are dealt with at paragraphs 31 - 44 below. Where the judgment or order has been made by a non-UK court, the power to authorise deductions should only be exercised where the judgment or order has been registered in a UK court. JSP 754 (Tri-Service regulations for pay and charges) should be consulted for further guidance.

28. **Limitations.** No order for deductions in respect of a civil judgement or order enforceable by a UK court may authorise a deduction to be made before the date that payment of the amount (or part thereof) is required by the court<sup>55</sup>. It follows that where a civil (non-criminal) court makes an order for payment of an amount by instalments, deductions may not be authorised in excess of or in advance of the court ordered instalments. Further, where a civil (non-criminal) court allows time for payment of a sum due under a court order, deductions may not be authorised before the time for payment has expired.

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<sup>47</sup> 'Court' in this context means the CM, the Summary Appeal Court, the CM Appeal Court and the Service Civilian Court (see Armed Forces Act 2001, section 26(1)).

<sup>48</sup> 'Court' in this context means the CM or the Service Civilian Court.

<sup>49</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 6(2).

<sup>50</sup> Section 251 of the Act. See also [Chapters 9, 12](#) and [13](#), all of which have parts explaining instalments.

<sup>51</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulations 6(3) and 6(4).

<sup>52</sup> I.e. a person subject to service law by virtue only of sections 367(1) or 367(2) (a), (b), (c) or (e) of the Act.

<sup>53</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 11(1). The reference to a judgment or order enforceable by a court in the UK includes a judgment enforceable by the Enforcement of Judgments Office (*i.e.* in Northern Ireland) – see section 342(5)).

<sup>54</sup> For criminal cases see the Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 4 and paragraphs 15 and 17 of this chapter.

<sup>55</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 11(3).



29. **Variation/revocation.** Subject to the limitations set out at paragraph 28 above, the Defence Council, or authorised officer, may, by further order, vary or revoke any order for deductions made in respect of a judgement or order enforceable by a UK court<sup>56</sup>. The Defence Council, or authorised officer, should exercise their power to vary or revoke an order for deductions where the civil judgement or order has been varied or the Service person has subsequently been given time to pay or subsequently been allowed to pay by instalments. Further, consideration may be given to varying or revoking an order for deductions whenever an order for deductions is inappropriate or should not have been made. This may arise where new evidence or information comes to light casting doubt on an earlier decision to make an order for deductions. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

30. **Suspension.** Where pay is suspended, the Defence Council or authorised officer may treat any extant order for deductions from pay in respect of a judgement or order enforceable by UK courts as being in suspense<sup>57</sup>. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

### **Deductions: Maintenance payments**

31. Service pay is not subject to the provisions that exist to enforce the maintenance liabilities of those in civilian employment<sup>58</sup>. However, under the Act and the Regulations, there is an equivalent regime in place for Service personnel in relation to enforcement of maintenance liabilities.

32. **Maintenance orders.** The Regulations enable the Defence Council, or authorised officer, to make orders for deductions from the pay of a relevant person<sup>59</sup> in order to satisfy the terms of a maintenance order made by both UK and non-UK courts. A maintenance order falls within the terms of the Regulations if it requires a relevant person to make payment in respect of<sup>60</sup>:

- a. The maintenance of his spouse or civil partner; or
- b. The maintenance of any child of his, his spouse<sup>61</sup> or his civil partner<sup>62</sup>; or
- c. The maintenance of any other child who has been treated by them and his spouse or them and his civil partner as a child of their family; or
- d. Any costs incurred in obtaining an order as described at sub-paragraphs a, b and c; or
- e. Any costs incurred in proceedings on appeal against, or for the variation, revocation or revival of an order as described at sub-paragraphs a, b and c.

33. **Maintenance order of a court in the UK or Sovereign base areas of Akrotiri and Dhekelia.** In respect of those maintenance orders made by a UK court or court in the

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<sup>56</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulations 11(4) and 11(5).

<sup>57</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 11(6).

<sup>58</sup> For example, Attachment of Earnings Orders under the Attachment of Earnings Act 1971 – which provides for orders to be made enabling deductions from earnings in order to secure maintenance payments.

<sup>59</sup> A Service person other than a member of the reserve forces undertaking any training or duty – section 342(4) of the Act.

<sup>60</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 9(1).

<sup>61</sup> References to a spouse include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to the person who would have been the spouse of the relevant person if the marriage had subsisted - The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 9(3).

<sup>62</sup> References to a civil partner include, in relation to an order made in proceedings in connection with the dissolution or annulment of a civil partnership, references to the person who would have been the civil partner of the relevant person if the civil partnership had subsisted - The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 9(4).

Sovereign Base Areas of Akrotiri and Dhekelia, the criteria to be applied before an order for deductions is made is relatively straightforward; where a maintenance order falling within the terms of the Regulations (paragraphs 32a – e) has been made, the Defence Council, or authorised officer, may make an order for deductions. However, such an order for deductions may only authorise deductions in or towards satisfaction of a payment which the relevant person is required to make under the maintenance order<sup>63</sup>. Further, such an order for deductions must not authorise a deduction to be made before the date that payment of the amount is required by the court<sup>64</sup>.

**34. Variation/revocation of maintenance orders of a court in UK or Sovereign base areas of Akrotiri and Dhekelia.** Where a court in the UK or Sovereign Base Areas of Akrotiri and Dhekelia varies a maintenance order, the Defence Council, or authorised officer, will need to review any extant order for deductions. The Defence Council, or authorised officer, should vary an extant order for deductions where appropriate and must vary such an order where necessary to meet the requirements at paragraph 33 above<sup>65</sup>. So, for example, where a court in the UK or Sovereign Base Areas of Akrotiri and Dhekelia varies a maintenance order, thereby increasing the payments required, it is likely it will be appropriate for the Defence Council, or authorised officer, to vary any order for deductions accordingly. Where a court in the UK or Sovereign Base Areas of Akrotiri and Dhekelia varies a maintenance order, thereby reducing the payments required below those under an extant order for deductions, the Defence Council, or authorised officer, must vary the order for deductions in accordance with the requirement at paragraph 33 above (that is, no order for deductions may order deductions in excess or in advance of the payments required under a maintenance order).

**35.** If a UK court or court of the Sovereign Base Areas of Akrotiri and Dhekelia has revoked a maintenance order, the Defence Council, or authorised officer, must revoke any order for deductions previously made. This is because if a maintenance order has been revoked it can no longer require a person to make payments and therefore all deductions in respect of it must cease as they would no longer have authority.

**36.** Even where the UK court or court of the Sovereign Base Areas of Akrotiri and Dhekelia has not varied or revoked a maintenance order, subject to the requirements at paragraph 33, the Defence Council, or authorised officer, may still vary or revoke any order for deductions made in respect of a maintenance order<sup>66</sup>. The Defence Council, or authorised officer, should consider exercising their power to vary or revoke an order for deductions whenever an order for deductions is inappropriate or should not have been made. This may arise where new evidence or information comes to light casting doubt on an earlier decision to make an order for deductions. For further guidance, reference should be made to JSP 754(Tri-Service regulations for pay and charges).

**37. Suspension.** Where pay is suspended, the Defence Council, or authorised officer, may treat any extant order for deductions from pay in respect of a maintenance order of a court in the UK or Sovereign Base Areas of Akrotiri and Dhekelia as being in suspense<sup>67</sup>. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

**38. Maintenance order of a court outside the UK or Sovereign base areas of Akrotiri and Dhekelia (foreign court).** In respect of maintenance orders of a foreign court, the Defence Council or authorised officer may make an order for deductions where:

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<sup>63</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 7(1).

<sup>64</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 7(2).

<sup>65</sup> See JSP 754 for further guidance (Tri-Service regulations for pay and charges).

<sup>66</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulations 7(3) and 7(4).

<sup>67</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 7(5).

- a. A maintenance order falling within the terms of the Regulations (paragraphs 32a – e above) has been made and the maintenance order has been registered in or confirmed by a UK court<sup>68</sup>; or
- b. The Defence Council or authorised officer is satisfied that the maintenance order is capable of being registered in a United Kingdom court<sup>69</sup>; or
- c. Where the relevant person is serving outside the UK, the Defence Council, or authorised person, is satisfied that if the relevant person was resident in the UK the maintenance order would be capable of being registered in a United Kingdom court<sup>70</sup>.

39. A maintenance order is capable of being registered in a UK court if it is an order that can be registered under Part 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1972, Part 1 of the Civil Jurisdiction and Judgments Act 1982 or Council Regulations (EC) No. 44/2001<sup>71</sup>. Maintenance orders can also be registered in, or confirmed by, a UK court under the Maintenance Orders (Facilities for Enforcement) Act 1920. It should be noted that foreign maintenance orders may only generally be registered in a UK court where the person against whom the order is made is resident or has assets in the UK (hence the power to make an order for deductions under the criteria at paragraph 38c above).

40. The ability to make orders for deductions prior to the registration of a foreign maintenance order in a UK court mitigates the significant delays and welfare problems that may arise in the process of registering a foreign maintenance order in a UK court (which are often exacerbated when the Service person is serving overseas). However, where an order for deductions is made in these circumstances, the payee under a foreign maintenance order should be required to take reasonable steps to register that foreign maintenance order in a UK court. Accordingly, the Defence Council, or authorised officer, should exercise their powers under regulation 8(5) to impose conditions on the duration of orders for deductions made on the basis that the maintenance order is capable of being registered in the UK. The Defence Council, or authorised officer, may impose conditions authorising that deductions in respect of the unregistered order shall not continue beyond a specified date or after the expiry of a specified period. Further guidance is contained at JSP 754 (Tri-Service regulations for pay and charges).

41. Finally, it should be noted that orders for deductions in respect of foreign maintenance orders may only authorise deductions in or towards satisfaction of a payment which the relevant person is required to make under the foreign maintenance order (or, in the case of a maintenance order registered in or confirmed by a UK court, a payment which they are required to make under the maintenance order as so registered, confirmed or varied)<sup>72</sup>. Further, such an order for deductions must not authorise a deduction to be made before the date on which payment is required to be made under the maintenance order (or in the case of a maintenance order registered in or confirmed by a UK court, before the date on which the payment is required to be made under the maintenance order as so registered, confirmed or varied)<sup>73</sup>.

42. **Variations/revocation and suspension of maintenance orders (foreign court).** Where a foreign court has varied a maintenance order, the Defence Council, or authorised officer, will need to review any extant order for deductions made in respect of the previous

<sup>68</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 8(2).

<sup>69</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 8(3)(a).

<sup>70</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 8(3)(b).

<sup>71</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 8(10).

<sup>72</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 8(2).

<sup>73</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 8(3) and 8(4).

maintenance order. The Defence Council, or authorised officer, should vary an extant order for deductions where appropriate and must vary such an order where necessary to meet the requirements at paragraph 41 above<sup>74</sup>. Similarly, when a UK court has varied a foreign maintenance order, registered in or confirmed by a UK court, the Defence Council, or authorised officer, will need to review any extant order for deductions made in respect of the previous maintenance order. The Defence Council, or authorised officer, should vary an extant order for deductions where appropriate and must vary such an order where necessary to meet the requirements at paragraph 41 above.

43. If a foreign court has revoked a maintenance order, the Defence Council, or authorised officer, must revoke any order for deductions made in respect of that order<sup>75</sup>. This is because if a maintenance order has been revoked it can no longer require a person to make payments and therefore all deductions in respect of it must cease as they would no longer have authority<sup>76</sup>.

44. Even if the foreign court has not varied or revoked a maintenance order, subject to the requirements at paragraph 41, the Defence Council, or authorised officer, may still vary or revoke any order for deductions made in respect of a maintenance order<sup>77</sup>. The Defence Council, or authorised officer, should consider exercising their power to vary or revoke an order for deductions whenever an order for deductions is inappropriate or should not have been made. This may arise where new evidence or information comes to light casting doubt on an earlier decision to make an order for deductions. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

45. **Maintenance assessments/maintenance calculations.** The Regulations make provision for pay to be deducted from a Service person in order for them to meet his obligations regarding periodical payments due in accordance with a maintenance assessment or calculation made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991. Where the Defence Council, or authorised officer, makes such an order, the order may only authorise deductions in or towards satisfaction of an obligation on his part to make a periodical payment in accordance with a maintenance assessment or calculation<sup>78</sup>. Further the order for deductions must not authorise a deduction to be made before the date on which the relevant person is obliged to make the periodical payment<sup>79</sup>.

46. **Variation/revocation and suspension.** Subject to the requirements at paragraph 45 above, the Defence Council or authorised officer may, by further order, vary any order for deductions in respect of a deduction for pay for child maintenance<sup>80</sup>. The Defence Council or authorised officer may also revoke an order for deductions in respect of a deduction for pay for child maintenance<sup>81</sup>. The Defence Council, or authorised officer, should consider exercising their power to vary or revoke an order for deductions whenever an order for deductions is inappropriate or should not have been made. This may arise where new evidence or information comes to light casting doubt on an earlier decision to make an order for deductions. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

47. Where the Secretary of State or the Department of Health and Social Services for Northern Ireland has made a decision which supersedes a maintenance calculation or has

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<sup>74</sup> See JSP 754 for further guidance (Tri-Service regulations for pay and charges).

<sup>75</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulations 8(2) and (3).

<sup>76</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 8(1).

<sup>77</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulations 8(7) and 8(8).

<sup>78</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 10(1).

<sup>79</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 10(2).

<sup>80</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 10(3).

<sup>81</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 10(4).

cancelled a maintenance assessment, the Defence Council or authorised officer must revoke an order for deductions in respect of the maintenance calculation or maintenance assessment. This is because if an assessment/calculation has been superseded or cancelled a person will no longer be obliged to make payments in respect of it and therefore all deductions in respect of it must cease as they would no longer have authority<sup>82</sup>.

## **Remission of deductions**

48. Under the Act, the Defence Council (or an authorised officer) has a statutory power enabling it to remit the following deductions<sup>83</sup>:

- a. Those relating to payment of civilian penalties (paragraphs 15 - 17 above); and
- b. Those relating to loss/damage to public or Service property (paragraphs 18 - 22 above).

The Defence Council, or authorised officer, should exercise their power to remit an order for deductions whenever an order for deductions is inappropriate or should not have been made. This may arise where new evidence/information comes to light casting doubt on an earlier decision to make an order for deductions. For further guidance, reference should be made to JSP 754 (Tri-Service regulations for pay and charges).

## **Deductions: Recoveries under Royal Warrant**

49. Section 333 of the Act provides that the Royal Warrant may authorise deductions from pay of members of the regular or reserve forces -

- a. In respect of anything (including any service) supplied;
- b. In order to recover any overpayment or advance; or
- c. In order to claim any “relevant” payment. It should be noted that a payment is relevant if it was made on condition that it would or might be repayable in specified circumstances and any such circumstance has occurred.

The authority, procedures and guidance to be followed in these cases is contained in JSP 754 (Tri-Service regulations for pay and charges).

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<sup>82</sup> The Armed Forces (Forfeitures and Deductions) Regulations 2009/1109, regulation 10(1).

<sup>83</sup> See section 342(3) of the Act.

## Transitional guidance regarding forfeitures and deductions

1. This annex provides an overview of the transitional arrangements relating to forfeitures and deductions. The transitional arrangements apply to circumstances which occur wholly or partly before the commencement of the Regulations (i.e. before 31 October 2009). In particular, this annex:
  - a. Deals with pay forfeited, prior to commencement, in respect of absence from duty (figure 1);
  - b. Explains the circumstances in which pay might be forfeited post commencement in respect of absence from duty occurring prior to commencement (figure 1);
  - c. Explains the circumstances in which a deduction may be made from pay post-commencement in respect of a liability occurring or an order made prior to commencement; and (figure 2),
  - d. Explains the circumstances in which a deduction may be made from pay post-commencement in respect of matters occurring prior to commencement (figure 2).
2. The situations described in this annex are dealt with in general terms and are not exhaustive. If there is any doubt, or if the circumstances of a case are not dealt with in this chapter or annex, staff legal advice should be sought.
3. For the purposes of this annex, an SDA financial penalty means:
  - a. A fine or stoppages imposed by virtue of any provision of the SDA (including a fine with respect to which an order for a Service parent or guardian to pay a fine or compensation has been made);
  - b. A compensation order with respect to which such an order has been made;
  - c. A sum adjudged to be paid by virtue of a forfeited recognizance.



Figure 1

### Forfeiture of pay - absence from duty

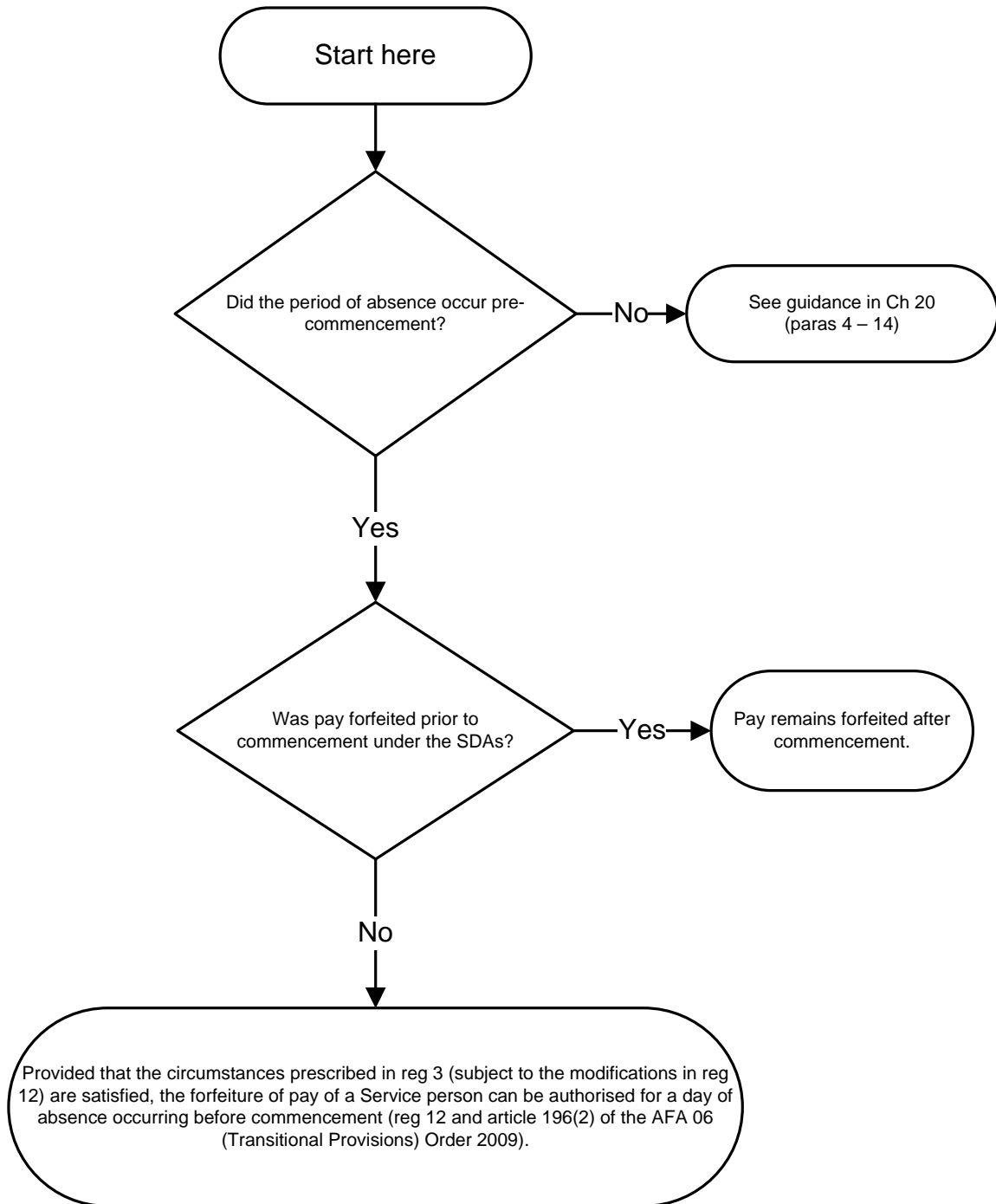


Figure 2

## Deduction from pay

