

This Statutory Instrument has been made in consequence of defects in SI 2009/833 and is being issued free of charge to all known recipients of that Statutory Instrument

S T A T U T O R Y I N S T R U M E N T S

2009 No. 1090

DEFENCE

**The Armed Forces (Forfeiture of Service) (No. 2) Regulations
2009**

<i>Made</i> - - - -	<i>28th April 2009</i>
<i>Laid before Parliament</i>	<i>29th April 2009</i>
<i>Coming into force</i> - -	<i>31st October 2009</i>

The Defence Council make the following Regulations in exercise of their powers under sections 328(5) and 330(1) to (3) of the Armed Forces Act 2006(a):

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Forfeiture of Service) (No.2) Regulations 2009 and shall come into force on 31st October 2009.

Interpretation

2. In these Regulations—

“the 2006 Act” means the Armed Forces Act 2006;

“enlisted person” means a member of the regular forces of or below the rank or rate of warrant officer.

Determination that a trial may be dispensed with

3.—(1) This regulation applies where—

- (a) during an interview conducted in accordance with the Service Police Code of Practice for the Treatment and Questioning of Persons by the Service Police(b), a member of the regular forces (“the deserter”) has made a confession to a service policeman that he is guilty of an offence under section 8 of the 2006 Act;
- (b) the confession is in writing, and is signed and dated by the deserter; and
- (c) the confession includes a statement of—
 - (i) the period during which the deserter admits having been in desertion; and
 - (ii) whether, at any time during that period, he intended to avoid a period of active service.

(a) 2006 c. 52.

(b) Code C made under section 113(3) and (4) of the Police and Criminal Evidence Act 1984 (c. 60).

(2) Subject to paragraph (3), the deserter's commanding officer may make a determination that a trial may be dispensed with in the deserter's case.

(3) If—

- (a) the confession includes a statement that the deserter intended, at any time during the period when he was in desertion, to avoid a period of active service, or
- (b) the circumstances are such as would indicate to a reasonable person that the deserter may have so intended,

the commanding officer may not make a determination under paragraph (2) without the consent of the Director of Service Prosecutions.

(4) A commanding officer who makes a determination under paragraph (2) shall as soon as is practicable inform the deserter, or cause him to be informed, of—

- (a) the determination;
- (b) any direction given by the commanding officer under regulation 4(3); and
- (c) the effect, if any, of regulation 4 (including that of any direction under regulation 4(3)) in relation to the deserter.

(5) In this regulation "active service" has the same meaning as in section 8 of the 2006 Act.

Forfeiture of service

4.—(1) Subject to paragraph (5), this regulation applies where—

- (a) a commanding officer makes a determination under regulation 3(2) in relation to an enlisted person; or
- (b) an enlisted person is convicted of an offence under section 8 of the 2006 Act.

(2) Subject to paragraph (3), the relevant period of service shall be forfeited.

(3) Where this regulation applies by virtue of paragraph (1)(a), the commanding officer may direct—

- (a) that no service shall be forfeited, or
- (b) that a specified part of the relevant period of service shall be forfeited,

and if such a direction is given paragraph (2) shall not apply.

(4) Where a period of service is forfeited under paragraph (2) or (3)(b), these Regulations and regulations made under sections 329 and 331 of the 2006 Act shall apply in relation to the deserter, and he shall be liable to serve, as if he had on the appropriate date been enlisted for the term for which he was serving on the relevant date, including any entitlement to be transferred to a reserve force after a particular period of service and any liability to serve in a reserve force.

(5) Where this regulation applies by virtue of paragraph (1)(a), in this regulation—

"the deserter" means the person in relation to whom the determination under regulation 3(2) is made;

"the relevant period of service" means the period during which the deserter admitted having been in desertion;

"the relevant date" means the date of the determination; and

"the appropriate date" means a date earlier than the relevant date by the length of the deserter's service which is not forfeited.

(6) Where this regulation applies by virtue of paragraph (1)(b), in this regulation—

"the deserter" means the person convicted of the offence under section 8 of the 2006 Act;

"the relevant period of service" means—

- (a) if the court states when announcing sentence that the deserter is found to have been in desertion only for a specified part of the period during which he was alleged in the charge sheet to have been in desertion, that part of that period;

(b) otherwise, the period during which he was alleged in the charge sheet to have been in desertion;

“the relevant date” means the date of the conviction; and

“the appropriate date” means a date earlier than the relevant date by the length of the deserter’s service which is not forfeited.

(7) This regulation shall not have the effect of enabling the deserter to exercise any right conferred by regulations made under section 329 of the 2006 Act at a time earlier than that at which he could otherwise have exercised that right.

(8) This regulation does not apply in relation to a person who deserted at a time when he had, by virtue of regulations made under section 329 of the 2006 Act, continued in service after the expiry of the term for which he was enlisted.

Restoration of forfeited service

5.—(1) Where a period of service has been forfeited under regulation 4(2) or (3)(b), the Defence Council may make a determination restoring the whole or part of that period on any ground they see fit.

(2) Where the Defence Council make a determination restoring the whole of the period forfeited, regulation 4 shall cease to apply.

(3) Where the Defence Council make a determination restoring part of the period forfeited, regulation 4 shall have effect as if the period forfeited were that part of the period forfeited which is not restored.

Transitional provisions

6. The Schedule shall have effect.

Revocation of the Armed Forces (Forfeiture of Service) Regulations 2009

7. The Armed Forces (Forfeiture of Service) Regulations 2009(a) are revoked.

28th April 2009

Kevan Jones
Bill Jeffrey
Members of the Defence Council
Ministry of Defence

(a) S.I. 2009/833

SCHEDULE

Regulation 6

TRANSITIONAL PROVISIONS

1. In this Schedule—

“the 1955 Acts” means the Army Act 1955(a) and the Air Force Act 1955(b);

“the 1957 Act” means the Naval Discipline Act 1957(c);

“commencement” means the date on which these Regulations come into force.

2. In regulations 3 and 4—

(a) references to an offence under section 8 of the 2006 Act include an offence under section 37 of either of the 1955 Acts or section 16 of the 1957 Act; and

(b) in relation to such an offence, “desertion” has the same meaning as in the Army Act 1955, the Air Force Act 1955 or the 1957 Act (as the case may be).

3. In relation to a confession made before commencement as respects which no direction has been given under section 81(2) of either of the 1955 Acts and no order has been made under section 74(1) of the 1957 Act, regulation 3 has effect as if paragraph (1)(c)(ii) and the word “and” preceding it were omitted.

4.—(1) Where a direction has been given under section 81(2) of either of the 1955 Acts or an order has been made under section 74(1) of the 1957 Act—

(a) subject to paragraph (b), the direction or order shall have effect as if it were a determination under regulation 3(2);

(b) regulation 4(2) and (3) shall not apply by virtue of the direction or order; but

(c) any period of service forfeited by virtue of the direction or order shall continue to be forfeit (unless restored by virtue of regulations made under section 17(5) of the Army Act 1955, section 17(4) of the Air Force Act 1955 or section 129D(4) of the 1957 Act, or by virtue of regulation 5), and regulation 4(4) shall apply in relation to any period so forfeited (and not so restored) as if the reference to the deserter were to the person in relation to whom the direction or order was made.

(2) The reference in sub-paragraph (1) to a direction given under section 81(2) of either of the 1955 Acts includes a direction given under that subsection of the Army Act 1955 as applied by section 4(1) of the Armed Forces Act 1981(d) (forfeiture of service by members and former members of the Royal Marines, and members of the Royal Marines Reserve).

5. Any period of service forfeited under section 17(1) of either of the 1955 Acts or section 129D(1) of the 1957 Act shall continue to be forfeit (unless restored by virtue of regulations made under section 17(5) of the Army Act 1955, section 17(4) of the Air Force Act 1955 or section 129D(4) of the 1957 Act, or by virtue of regulation 5), and regulation 4(4) shall apply in relation to any period so forfeited (and not so restored) as if the reference to the deserter were to the person convicted.

(a) 1955 c. 18.
(b) 1955 c. 19.
(c) 1957 c. 53.
(d) 1981 c. 55.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the forfeiture of a period of service by a member of the regular forces who has made a written confession of desertion or has been convicted of desertion.

Where the deserter has made a confession, regulation 3 enables his commanding officer to make a determination that a trial may be dispensed with. In certain circumstances the commanding officer may not make such a determination without the consent of the Director of Service Prosecutions.

Regulation 4 provides for the forfeiture of a period of desertion where the deserter has been convicted of the offence or his commanding officer has made a determination under regulation 3. The effect of the forfeiture is that the period for which the deserter is liable to serve is extended by the period forfeited.

Regulation 5 enables the Defence Council to restore some or all of a period of service forfeited under regulation 4.

Regulation 7 revokes the Armed Forces (Forfeiture of Service) Regulations 2009, which are replaced by these Regulations.

The Schedule makes transitional provision.

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STATUTORY INSTRUMENTS

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