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STATUTORY INSTRUMENTS

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**2009 No. 833**

**The Armed Forces (Forfeiture of Service) Regulations 2009**

**Citation and commencement**

1. These Regulations may be cited as the Armed Forces (Forfeiture of Service) 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<sup>(1)</sup>, 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.

(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

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

- (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.

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