
STATUTORY INSTRUMENTS

2009 No. 1216

**The Armed Forces (Summary Hearing and Activation of
Suspended Sentences of Service Detention) Rules 2009**

PART 1

Preliminary Provisions and Delegation

Citation and commencement

1. These Rules may be cited as the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009 and shall come into force on 31st October 2009.

Interpretation

2.—(1) In these Rules—

“the Act” means the Armed Forces Act 2006;

“activation order” means an order under section 193 of the Act;

“charge sheet” has the same meaning as in regulations made under section 128 of the Act;

“disciplinary record” means all formal disciplinary records of the accused maintained and held by any of Her Majesty’s forces;

“subordinate commander” means an officer under the command of the commanding officer who is of at least the rank of naval lieutenant, military or marine captain or flight lieutenant.

(2) References in these rules to an accused’s assisting officer are to be construed in accordance with rule 10.

(3) References in these Rules to a person’s rank or rate are—

(a) where he holds no acting rank or rate, to his substantive rank or rate;

(b) where he holds an acting rank or rate, to that rank or rate.

(4) References in these Rules to a charge brought against a person include a charge that has been substituted for another charge.

(5) References in these Rules to proven offences are to—

(a) offences in respect of which a charge has been brought, where—

(i) the charge has been found by an officer or the Summary Appeal Court to be proved,
and

(ii) that finding has not been quashed;

(b) service offences of which a person is convicted; and

(c) offences in the British Islands of which a person is convicted.

Delegation and subordinate commanders

3.—(1) Subject to paragraphs (3) and (4), a commanding officer may delegate to a subordinate commander his relevant functions in relation to a charge, subject to such conditions as the commanding officer considers appropriate.

(2) Subject to paragraph (5), where a commanding officer makes a delegation to a subordinate commander under paragraph (1) in relation to a charge, the subordinate commander has all of the commanding officer's relevant functions in relation to the charge.

(3) A commanding officer shall not make a delegation under paragraph (1) in relation to a charge—

- (a) in respect of an offence which is within section 54(2) of the Act;
- (b) in respect of an offence alleged to have been committed by an accused during—
 - (i) the operational period of a suspended sentence of service detention passed on him;
 - (ii) the operational period of a suspended sentence of imprisonment passed on him by the Court Martial, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court;
 - (iii) the term of an order made under section 211 of the Act; or
- (c) brought against a person above the rank or rate of chief petty officer, marine colour sergeant, military staff sergeant, or flight sergeant.

(4) A commanding officer shall not make a delegation under paragraph (1) to a subordinate commander of the rank of naval lieutenant, military or marine captain or flight lieutenant in relation to a charge brought against a person above the rank or rate of leading rate, military or marine corporal or air force corporal.

(5) A subordinate commander to whom a delegation has been made under paragraph (1) may not—

- (a) if he is of the rank of naval lieutenant, military or marine captain or flight lieutenant, award any punishment in column 1 of the Table in Schedule 1;
- (b) if he is of the rank of lieutenant commander, major or squadron leader, award any punishment in column 2 of the Table in Schedule 1; or
- (c) if he is of or above the rank of commander, lieutenant-colonel or wing commander, award any punishment in column 3 of the Table in Schedule 1.

(6) Where a commanding officer has made a delegation under paragraph (1) in relation to a charge, he may revoke it in relation to that charge at any time before a determination is made as to whether or not that charge has been proved.

(7) Where in relation to a charge—

- (a) a delegation under paragraph (1) is revoked, and
- (b) the subordinate commander to whom the delegation was made has complied with rule 12(2) and taken further steps in relation to the charge,

the officer who hears the charge after the revocation shall proceed as if the subordinate commander had taken no further steps in relation to the charge after complying with rule 12(2).

(8) Where a charge in relation to which paragraph (7) applies is one which has been—

- (a) amended under section 123(2)(a) of the Act,
- (b) substituted for another charge under section 123(2)(b) of the Act, or
- (c) added under section 123(2)(c) of the Act,

the reference in paragraph (7)(b) to rule 12(2) is a reference to that rule as modified by rule 26.

(9) In this rule “relevant function” means a function under Chapter 1 of Part 6 of the Act or Part 2 of these Rules.

PART 2

Summary Hearings

Application of Part 2

4.—(1) Subject to paragraph (2), this Part applies where a charge brought against a person (“the accused”) is—

- (a) capable of being heard summarily; and
- (b) regarded for the purposes of Part 5 of the Act as allocated for summary hearing.

(2) If an application made under rule 5(2) in relation to the charge is unsuccessful, these Rules shall cease to apply in relation to the charge.

Applications to hear charges summarily

5.—(1) If—

- (a) the charge is one in respect of an offence within section 54(2) of the Act, and
- (b) the commanding officer is below the rank of rear admiral, major-general or air vice-marshal,

this rule applies.

(2) If he considers that the charge should be heard summarily the commanding officer shall make an application to higher authority for permission to hear the charge.

(3) Any application under paragraph (2) shall be made as soon as reasonably practicable and shall contain—

- (a) the commanding officer’s reasons for considering that the charge should be heard summarily;
- (b) a copy of the charge sheet;
- (c) a copy of the written evidence relevant to the charge;
- (d) a copy of any unused written material gathered as part of the investigation of the charge;
- (e) a copy of any disciplinary record of the accused; and
- (f) any other material which may in the opinion of the commanding officer be relevant to the application.

(4) Where an application under paragraph (2) is granted the commanding officer shall provide the accused with a copy of the notification from higher authority that the application has been granted.

Applications for extended powers in relation to punishment

6.—(1) If the commanding officer—

- (a) is below the rank of rear admiral, major-general or air vice-marshal,
- (b) considers that the charge should be dealt with summarily, and
- (c) considers that his powers of punishment might be insufficient to deal with the accused if the charge is proved unless he has extended powers for the purposes of one or more provisions of the Act,

he shall make an application to higher authority for extended powers.

(2) Any application under paragraph (1) shall be made as soon as reasonably practicable and shall contain—

- (a) the commanding officer's reasons for considering that his powers of punishment might be insufficient to deal with the accused if the charge is proved unless he has extended powers for the purposes of one or more provisions of the Act;
- (b) a copy of the charge sheet;
- (c) a copy of the written evidence relevant to the charge;
- (d) a copy of any unused written material gathered as part of the investigation of the charge;
- (e) a copy of any disciplinary record of the accused;
- (f) details of all provisions for the purposes of which the commanding officer considers he needs extended powers; and
- (g) any other material which may in the opinion of the commanding officer be relevant to the application.

(3) Where an application under paragraph (1) is granted the commanding officer shall provide the accused with a copy of the notification from higher authority that the application has been granted.

Applications for extended powers in relation to activation orders

7.—(1) If the commanding officer—

- (a) is below the rank of rear admiral, major-general or air vice-marshal, and
- (b) considers that his powers might be insufficient to deal with the accused if the charge is proved unless he has extended powers for the purposes of section 194 of the Act,

he shall make an application to higher authority for extended powers for the purposes of section 194.

(2) Any application under paragraph (1) shall be made as soon as reasonably practicable and shall contain—

- (a) the commanding officer's reasons for considering that his powers might be insufficient to deal with the accused if the charge is proved unless he has extended powers for the purposes of section 194;
- (b) a copy of the written record of the summary hearing, or a copy of any record of the proceedings before the Summary Appeal Court, at which the suspended sentence of service detention was awarded;
- (c) such details as are known to the commanding officer of all proven offences committed by the accused during the operational period of the suspended sentence of service detention;
- (d) copies of—
 - (i) the written records of any summary hearings,
 - (ii) the written records of any hearings under Part 3 of these Rules, and
 - (iii) any records of proceedings before any of the Summary Appeal Court, the Court Martial and the Court Martial Appeal Court,

at which reasons were given for any decision not to make an order under section 191 or 193 of the Act, in relation to the suspended sentence of service detention;

- (e) a copy of any disciplinary record of the accused;
- (f) a copy of the charge sheet;
- (g) a copy of the written evidence relevant to the charge;

- (h) a copy of any unused written material gathered as part of the investigation of the charge;
- (i) any other material which may in the opinion of the commanding officer be relevant to the application.

(3) Where an application under paragraph (1) is granted the commanding officer shall provide the accused with a copy of the notification from higher authority that the application has been granted.

Preliminary procedures

8.—(1) As soon as reasonably practicable, the commanding officer or a person authorised by him shall—

- (a) prepare a summary of the evidence relevant to the charge (“the case summary”);
- (b) inform the accused in writing of—
 - (i) his right under section 129 of the Act to elect Court Martial trial;
 - (ii) his right under rule 10 to representation;
 - (iii) his right under rule 15 to question witnesses whose evidence is adduced by the commanding officer;
 - (iv) his right under rule 16 to give evidence;
 - (v) his right under rule 17 to adduce the evidence of witnesses;
 - (vi) the right of appeal under section 141 of the Act;
- (c) subject to paragraph (3), provide the accused with—
 - (i) a copy of the charge sheet;
 - (ii) a copy of the case summary;
 - (iii) a copy of the written evidence relevant to the charge;
 - (iv) details of all exhibits which form part of the evidence relevant to the charge together with notice of where and when they may be inspected by the accused or his accused’s assisting officer;
 - (v) a copy of any unused written material gathered as part of the investigation of the charge;
 - (vi) details of any other unused material gathered as part of the investigation of the charge, together with notice of where and when it may be inspected by the accused or his accused’s assisting officer;
 - (vii) an opportunity to inspect all exhibits which form part of the evidence relevant to the charge, and any unused non-written material;
 - (viii) a copy of any disciplinary record of the accused;
- (d) if this sub-paragraph applies, inform the accused in writing of—
 - (i) the power to make an order under section 193 of the Act;
 - (ii) the right of appeal under section 141 of the Act and the effect of section 195 of the Act;
 - (iii) his right to make submissions under rule 23(3);
- (e) if this sub-paragraph applies, and subject to paragraph (3), provide the accused with—
 - (i) a copy of the written record of the summary hearing, or a copy of any record of the proceedings before the Summary Appeal Court, at which the suspended sentence of service detention was awarded;

(ii) such details as are known to the commanding officer of all proven offences committed by the offender during the operational period of the suspended sentence of service detention;

(iii) copies of—

(aa) the written records of any summary hearings,

(bb) the written records of any hearings under Part 3 of these Rules, and

(cc) any records of proceedings before any of the Summary Appeal Court, the Court Martial and the Court Martial Appeal Court,

at which reasons were given for any decision not to make an order under section 191 or 193 of the Act, in relation to the suspended sentence of service detention; and

(f) in accordance with paragraphs (4) to (6), fix a time for the hearing and give the accused notice in writing of that time.

(2) Paragraphs (1)(d) and (e) apply if the offence which is the subject of the charge is alleged to have been committed during the operational period of a suspended sentence of service detention passed on the accused by an officer or the Summary Appeal Court.

(3) If the commanding officer or a person authorised by him is satisfied that the accused already has a copy of a document that is to be provided by virtue of paragraph (1)(c) or (e) he need not provide a further copy.

(4) In fixing a time for the hearing the commanding officer shall allow the accused a reasonable time to prepare for the hearing.

(5) If the commanding officer has made an application under any of rules 5(2), 6(1) and 7(1) he shall not fix the time for the hearing until he has received notification of the result of the application or applications.

(6) The time fixed for the hearing shall be not less than 24 hours after the commanding officer has complied with—

(a) paragraph (1);

(b) where permission to hear the charge summarily has been granted, rule 5(4);

(c) where an application under rule 6(1) has been granted, rule 6(3); and

(d) where an application under rule 7(1) has been granted, rule 7(3).

Changing the time fixed for a hearing

9.—(1) Subject to paragraph (3), at any time before the hearing the commanding officer may fix a different time for the hearing.

(2) Subject to paragraphs (3) and (4), if after the commanding officer fixes a time for the hearing—

(a) he makes an application under any of rules 5(2), 6(1) and 7(1), or

(b) the accused, 24 hours or less before the time fixed, requests the commanding officer's assistance in finding a person to nominate under rule 10(1),

the commanding officer shall cancel the time fixed and fix a different time for the hearing.

(3) Where a different time is fixed for a hearing—

(a) it shall be fixed in accordance with rule 8(4) to (6); and

(b) the commanding officer shall notify the accused of it in writing.

(4) Where the commanding officer fixes a different time for the hearing by virtue of paragraph (2) (b), the time fixed shall be not less than 24 hours after he has complied with rule 10(5).

Representation

10.—(1) Subject to paragraphs (2) and (3) the accused may nominate a person to represent him at the hearing (the “accused’s assisting officer”).

(2) A person may only be nominated as an accused’s assisting officer if he—

- (a) is subject to service law;
- (b) is of at least the rank or rate of petty officer, military or marine sergeant, or air force sergeant; and
- (c) consents to be nominated.

(3) A person may only continue to act as an accused’s assisting officer while subject to service law.

(4) Subject to paragraphs (2) and (3), if a person ceases to act as his accused’s assisting officer the accused may nominate another person to act in that role.

(5) If the accused requests the commanding officer’s assistance in finding a person to nominate under paragraph (1), the commanding officer shall provide him with the names of at least two people available to be nominated under that paragraph.

(6) Where a person consents to act as an accused’s assisting officer he may, on behalf of the accused, exercise any right of the accused to question witnesses or make submissions by virtue of this Part.

Co-accused and multiple charges

11.—(1) The commanding officer may at a single hearing hear—

- (a) a charge brought against more than one accused; and
- (b) charges against more than one accused if the charges are founded on the same facts.

(2) If more than one charge is brought against an accused the commanding officer may at a single hearing hear—

- (a) all charges which are founded on the same facts; and
- (b) all charges in respect of offences which form, or are part of, a series of offences of the same or a similar character.

Election and starting a summary hearing

12.—(1) Before starting the hearing the commanding officer shall—

- (a) satisfy himself that the accused—
 - (i) understands the charge or charges;
 - (ii) has had a reasonable time to prepare for the hearing;
- (b) if section 129(1) of the Act applies in respect of one or more charges, give the accused the opportunity to elect Court Martial trial.

(2) If section 129(1) does not apply or if the accused does not elect Court Martial trial, the commanding officer or a person authorised by him shall start the hearing by—

- (a) reading the charge or charges to the accused; and
- (b) asking him to state whether he admits or denies each charge.

(3) If the accused admits—

- (a) all of the charges, or
- (b) if only one charge is to be heard, that charge,

rule 21 shall apply.

- (4) If the accused denies—
- (a) one or more of the charges, or
 - (b) if only one charge is to be heard, that charge,

the commanding officer shall proceed to hear the evidence and rule 13 shall apply.

(5) Where the accused neither admits nor denies a charge the commanding officer shall proceed as if the accused had denied that charge.

Order of evidence

13.—(1) Subject to paragraph (2), evidence at a hearing shall be heard in the following order—

- (a) evidence adduced by the commanding officer under rule 15(1);
- (b) evidence of the accused if he chooses to give evidence;
- (c) evidence adduced by the accused;
- (d) evidence adduced by the commanding officer under rule 15(2).

(2) Where the commanding officer proceeds with a hearing after a charge has been amended, substituted or added, he may determine the order in which evidence is heard.

Oaths and affirmations

14.—(1) No witness shall give evidence orally under any provision of these Rules unless an oath has first been administered to him.

(2) Paragraphs (3) and (4) apply where an oath is required to be administered to a person by virtue of paragraph (1).

(3) Sections 1 and 3 to 6 of the Oaths Act 1978(1) shall apply, as modified by paragraph (4), as they would apply if the person were required to take an oath in England and Wales.

(4) Where section 1 or 6 of that Act applies by virtue of this rule, the reference in that section to the words of the oath prescribed by law is to be read as a reference to the following words: "... the evidence I shall give shall be the truth, the whole truth, and nothing but the truth".

Evidence adduced by the commanding officer

15.—(1) Subject to paragraph (2), the commanding officer may not adduce the evidence of a witness unless—

- (a) that witness has made a written statement;
- (b) a copy of the statement has been provided to the accused in accordance with rule 8(1)(c)(iii); and
- (c) where the witness is to produce an exhibit, the commanding officer has complied with rules 8(1)(c)(iv) and (vii).

(2) Where evidence given or adduced by the accused gives rise to an issue of fact—

- (a) which could not have been foreseen by the commanding officer, and
- (b) in relation to which no witness whose evidence may be adduced under paragraph (1) can give evidence,

the commanding officer may adduce the evidence of a witness who can give evidence in relation to the issue.

- (3) Where the commanding officer adduces the evidence of a witness—
- (a) if the witness has made a statement it shall be read to the accused by the commanding officer or a person authorised by him;
 - (b) the commanding officer may question the witness before giving the accused an opportunity to do so;
 - (c) the commanding officer shall give the accused an opportunity to question the witness;
 - (d) the commanding officer may question the witness after the accused has had the opportunity to do so.

Evidence given by the accused

- 16.**—(1) The accused may give evidence but shall not be compelled to do so.
- (2) If the accused gives evidence he may do so orally or in writing and the commanding officer may question him.
- (3) If the accused gives evidence in writing his evidence shall be read to the commanding officer by the accused or his accused's assisting officer.

Evidence adduced by the accused

- 17.**—(1) Where the time fixed for the hearing is 48 hours or more after the commanding officer has complied with rule 8(1) the accused may not adduce the evidence of a witness unless—
- (a) he has notified the commanding officer not less than 24 hours before the hearing that he wishes to adduce the evidence of the witness; or
 - (b) he has the permission of the commanding officer.
- (2) Where the accused adduces the evidence of a witness—
- (a) such evidence may be given orally or in writing;
 - (b) if the witness gives evidence in writing—
 - (i) his evidence shall be read to the commanding officer by the accused or his accused's assisting officer; and
 - (ii) the accused shall provide the commanding officer with a copy of the evidence;
 - (c) the commanding officer shall give the accused an opportunity to question the witness; and
 - (d) the commanding officer may question the witness after the accused has had the opportunity to do so.

Further questioning of witnesses

- 18.**—(1) Where he considers that it would be in the interests of fairness to the accused to do so, the commanding officer may at any time before determining whether or not the charge has been proved give the accused a further opportunity to question any witness whose evidence has been adduced.
- (2) Where the accused has had an opportunity to question a witness by virtue of paragraph (1), the commanding officer may question the witness.

Equivocal admissions

- 19.** If at any time in the course of the hearing the commanding officer is of the opinion that an assertion of fact made by the accused after admitting the charge would have amounted to a defence to the charge if it had been raised as such and proved, he shall proceed to hear the charge as if the accused had denied it.

Procedure at the conclusion of the evidence

20.—(1) At the conclusion of the evidence the accused may address the commanding officer on any matter.

(2) After hearing the evidence and any address from the accused the commanding officer shall determine whether or not each charge denied by the accused has been proved and record his finding.

(3) The commanding officer shall not determine that a charge that was denied has been proved unless, on the basis of all of the evidence heard, he is sure that the accused committed the offence charged.

(4) Rule 22 shall apply in relation to all charges—

(a) which were denied and determined to have been proved;

(b) which were admitted but in respect of which evidence was heard by virtue of rule 12(4).

Determination of facts on admission of all charges

21.—(1) Where this rule applies—

(a) the commanding officer or a person authorised by him shall read the case summary to the accused; and

(b) the commanding officer shall ask the accused whether he disputes any of the facts contained in the case summary.

(2) If the accused does not dispute any of the facts contained in the case summary the commanding officer shall treat them as the facts of the case for the purposes of sentencing and rule 22 shall apply.

(3) If—

(a) the accused disputes any of the facts contained in the case summary, and

(b) the commanding officer considers that any of the disputed facts is relevant to sentencing, he shall determine the facts of the case for the purposes of sentencing and rule 22 shall apply.

(4) For the purposes of making a determination under paragraph (3) the commanding officer shall—

(a) assume that any undisputed facts contained in the case summary are true; and

(b) hear evidence on the disputed facts from—

(i) such witnesses as he considers can give relevant evidence; and

(ii) the accused if he wishes to give evidence.

(5) In determining which witnesses can give relevant evidence for the purposes of paragraph (4) (b)(i) the commanding officer shall take into account any submissions of the accused on that matter.

(6) Where a witness is called to give evidence for the purposes of a determination under paragraph (3)—

(a) the witness shall give evidence orally;

(b) the commanding officer shall give the accused an opportunity to question the witness; and

(c) the commanding officer may question the witness after the accused has had the opportunity to do so.

Sentencing

22.—(1) Where this rule applies the commanding officer shall give the accused an opportunity to—

(a) adduce evidence as to his character;

- (b) make a plea in mitigation.
- (2) Where the accused adduces the evidence of a witness as to his character—
 - (a) such evidence may be given orally or in writing;
 - (b) if the witness gives evidence in writing—
 - (i) his evidence shall be read to the commanding officer by the accused or his accused’s assisting officer; and
 - (ii) the accused shall provide the commanding officer with a copy of the evidence;
 - (c) the commanding officer shall give the accused an opportunity to question the witness; and
 - (d) the commanding officer may question the witness after the accused has had the opportunity to do so.
- (3) Subject to rules 19 and 23(2), after hearing any evidence as to character and any plea in mitigation the commanding officer shall—
 - (a) if the accused admitted the charge, determine that the charge has been proved and record his finding;
 - (b) subject to rule 23(2) award one or more punishments, in accordance with section 131(4)(b) of the Act;
 - (c) give his reasons for deciding on the sentence passed, in accordance with section 252(1)(a) of the Act; and
 - (d) remind the accused of—
 - (i) his right of appeal under section 141 of the Act;
 - (ii) his right to seek independent legal advice on whether to exercise his right of appeal; and
 - (iii) if service detention has been awarded, his right to make an election under whichever of sections 290(2) and 291(2) of the Act applies.

Activation of suspended sentences of service detention

23.—(1) This rule applies where the commanding officer records a finding that a charge has been proved, and the offence was committed during the operational period of a suspended sentence of service detention passed on the accused by an officer or the Summary Appeal Court.

- (2) Where this rule applies, the commanding officer shall not—
 - (a) award one or more punishments in accordance with section 131(4)(b) of the Act before he has complied with paragraph (3); or
 - (b) make any activation order before he has complied with rule 22(1).
- (3) The commanding officer shall give the accused an opportunity to make submissions either orally or in writing about—
 - (a) the appropriateness of making an activation order;
 - (b) the appropriate terms of such an order if it were made.
- (4) In considering whether to make an activation order and, if such an order is to be made, what its terms should be the commanding officer shall take into account the following matters—
 - (a) the details of the offence or offences for which the suspended sentence of service detention was imposed;
 - (b) such details as are known to the commanding officer of all proven offences committed by the offender during the operational period of the suspended sentence of service detention;

- (c) the reasons given for any decision not to make an order under section 191 or 193 of the Act in relation to the suspended sentence of service detention;
 - (d) any disciplinary record of the accused;
 - (e) any submissions made by the accused about the matters mentioned in paragraph (3);
 - (f) any character evidence adduced by the accused;
 - (g) any other matters that appear to the commanding officer to be relevant.
- (5) The commanding officer shall—
- (a) inform the accused of his decision as to whether to make an activation order; and
 - (b) give his reasons for the decision.
- (6) If the commanding officer makes an activation order he shall—
- (a) inform the accused of the terms of the order;
 - (b) remind the accused of his right of appeal under section 141 of the Act; and
 - (c) remind the accused of his right to make an election under whichever of sections 290(2) and 291(2) of the Act, as modified by section 292, applies.

Adjournments

24. The commanding officer may adjourn a hearing at any point if he considers that to do so would be—

- (a) in the interests of fairness to the accused; or
- (b) expedient for any purpose and not unfair to the accused.

Rectification of errors

25.—(1) Where—

- (a) the commanding officer has not yet determined whether the charge has been proved, and
- (b) there has been a failure to comply with any provision of these Rules,

the commanding officer may if possible rectify the failure unless to do so would in his opinion be unfair to the accused.

(2) Where—

- (a) the commanding officer has determined that the charge has been proved but has not yet awarded a punishment, and
- (b) there has been a failure to comply with rule 22 or any provision of these rules in respect of sentencing,

the commanding officer may if possible rectify the failure unless to do so would in his opinion be unfair to the accused.

Effect of provisions where charges are amended, substituted or added

26.—(1) This rule applies where, after the start of a summary hearing—

- (a) a charge is amended under section 123(2)(a) of the Act;
- (b) a charge is substituted for another charge under section 123(2)(b) of the Act; or
- (c) an additional charge is brought under section 123(2)(c) of the Act.

(2) In relation to the charge amended, substituted or added, these rules have effect with the following modifications.

(3) Where a charge is amended, rule 8 shall apply as if the charge were a fresh charge falling within rule 4(1)

(4) In rules 8 and 9—

- (a) references to fixing a time for the hearing are to be read as if they were references to fixing a time for proceeding with the hearing; and
- (b) references to the time fixed for a hearing are to be read as references to the time fixed for proceeding with that hearing.

(5) References in rules 12(1) and 12(2) to starting the hearing are to be read as if they were references to proceeding with the hearing;

(6) In rules 12(1)(a)(i) and 12(2)—

- (a) references to a charge are to be read as references to a charge amended, substituted or added after the start of the hearing;
- (b) references to charges are to be read as references to each charge amended, substituted or added after the start of the hearing.

(7) In rule 17—

- (a) the reference to the time fixed for the hearing has effect as if it were a reference to the time fixed for proceeding with the hearing;
- (b) the reference to compliance with rule 8(1) means compliance with that rule in relation to all amended, substituted or additional charges.

Written record

27.—(1) The commanding officer shall produce a written record of the hearing containing the following matters—

- (a) the name, rank or rate and service number of the accused;
- (b) the date and time of the hearing;
- (c) details of the charge or charges heard;
- (d) whether the accused admitted or denied each charge;
- (e) any determination that a charge has been proved;
- (f) any dismissal of a charge;
- (g) details of all punishments awarded;
- (h) any orders made;
- (i) any reasons given in accordance with section 252(1)(a) of the Act;
- (j) the discontinuance, after the start of the hearing, of proceedings on any charge;
- (k) any referral, after the start of the hearing, of a charge to the Director of Service Prosecutions;
- (l) such other matters as he considers should be recorded.

(2) If the power to make an activation order arose in the course of the hearing, the written record shall also contain the commanding officer's reasons for his decision whether or not to make such an order.

(3) Where a written record has been produced in accordance with paragraph (1) in a case where a charge has been determined to have been proved the commanding officer shall, as soon as reasonably practicable after the hearing, provide the accused with a copy of it.

Notification to court administration officer

28.—(1) Where the commanding officer records a finding that a charge has been proved, and the offence was committed during the operational period of a relevant sentence passed on the accused by—

- (a) the Court Martial,
- (b) the Court Martial Appeal Court, or
- (c) the Supreme Court on an appeal brought from the Court Martial Appeal Court,

the commanding officer shall notify the court administration officer of the finding and provide him with a copy of the written record.

(2) In this Rule, “the operational period of a relevant sentence” means—

- (a) the operational period of a suspended sentence of service detention;
- (b) the operational period of a suspended sentence of imprisonment;
- (c) the term of an order made under section 211 of the Act.

PART 3

Hearings as Regards the Making of Activation Orders

Application of Part 3

29. This Part applies where—

- (a) an offender has been convicted of an offence in the British Islands which was committed during the operational period of a suspended sentence of service detention passed on him by an officer or the Summary Appeal Court; and
- (b) the offender’s commanding officer has decided to hold a hearing as regards the making of an activation order.

Applications for extended powers where Part 3 applies

30.—(1) If the commanding officer—

- (a) is below the rank of rear admiral, major-general or air vice-marshal, and
- (b) considers that his powers might be insufficient to deal with the offender unless he had extended powers for the purposes of section 194,

he shall make an application to higher authority for extended powers for those purposes.

(2) Any application under paragraph (1) shall be made as soon as reasonably practicable and shall contain—

- (a) the commanding officer’s reasons for considering that he needs extended powers for the purposes of section 194;
- (b) a copy of the written record of the summary hearing, or a copy of any record of the proceedings before the Summary Appeal Court, at which the suspended sentence of service detention was awarded;
- (c) such details as are known to the commanding officer of all proven offences committed by the offender during the operational period of the suspended sentence of service detention;
- (d) copies of—
 - (i) the written records of any summary hearings,

- (ii) the written records of any hearings under Part 3 of these Rules, and
 - (iii) any records of proceedings before any of the Summary Appeal Court, the Court Martial and the Court Martial Appeal Court,
at which reasons were given for any decision not to make an order under section 191 or 193 of the Act, in relation to the suspended sentence of service detention;
 - (e) any disciplinary record of the offender; and
 - (f) any other material which may in the opinion of the commanding officer be relevant to the application.
- (3) Where an application under paragraph (1) is granted the commanding officer shall provide the offender with a copy of the notification from higher authority that the application has been granted.

Preliminary procedures

- 31.—**(1) The offender's commanding officer shall as soon as reasonably practicable—
- (a) inform the offender in writing of—
 - (i) the power to make an order under section 193 of the Act;
 - (ii) his right under rule 33 to representation;
 - (iii) the right of appeal under section 141 of the Act;
 - (iv) his right to make submissions under rule 34(1)(b);
 - (b) provide the offender with—
 - (i) a copy of the written record of the summary hearing, or a copy of any record of the proceedings before the Summary Appeal Court, at which the suspended sentence of service detention was awarded;
 - (ii) such details as are known to the commanding officer of all proven offences committed by the offender during the operational period of the suspended sentence of service detention;
 - (iii) copies of —
 - (aa) the written records of any summary hearings,
 - (bb) the written records of any hearings under Part 3 of these Rules, and
 - (cc) any records of proceedings before any of the Summary Appeal Court, the Court Martial and the Court Martial Appeal Court,
at which reasons were given for any decision not to make an order under section 191 or 193 of the Act, in relation to the suspended sentence;
 - (iv) a copy of any disciplinary record of the offender; and
 - (c) in accordance with paragraphs (2) to (4), fix a time for the hearing and give the offender notice in writing of that time.
- (2) In fixing the time for the hearing the commanding officer shall allow the offender a reasonable time to prepare for the hearing.
- (3) If the commanding officer has made an application under rule 30(1) he shall not fix a time for the hearing until he has received notification of the result of the application.
- (4) The time fixed for the hearing shall be not less than 24 hours after the commanding officer has complied with—
- (a) paragraph (1); and
 - (b) where an application under rule 30(1) has been granted, rule 30(3).

Changing the time of a hearing

- 32.**—(1) Subject to paragraph (2)—
- (a) at any time before the hearing the commanding officer may fix a different time for the hearing;
 - (b) if after fixing a time for the hearing the commanding officer makes an application under rule 30(1), he shall cancel the time fixed and fix a different time for the hearing;
 - (c) if, 24 hours or less before the time fixed for the hearing, the offender requests the commanding officer's assistance in finding a person to nominate under rule 33(1), the commanding officer shall cancel the time fixed and fix a different time for the hearing.
- (2) Where a different time is fixed for a hearing—
- (a) it shall be fixed in accordance with rule 31(2) to (4);
 - (b) the commanding officer shall notify the offender of it in writing.
- (3) Where the commanding officer fixes a different time for the hearing by virtue of paragraph (1) (c), the time fixed shall be not less than 24 hours after he has complied with rule 33(5).

Representation

- 33.**—(1) Subject to paragraphs (2) and (3) the offender may nominate a person to represent him at the hearing (the "offender's assisting officer").
- (2) A person may only be nominated as an offender's assisting officer if he—
- (a) is subject to service law;
 - (b) is of at least the rank or rate of petty officer, military or marine sergeant, or air force sergeant; and
 - (c) consents to be nominated.
- (3) A person may only continue to act as an offender's assisting officer while subject to service law.
- (4) Subject to paragraphs (2) and (3), if a person ceases to act as his offender's assisting officer the offender may nominate another person to act in that role.
- (5) If the offender requests the commanding officer's assistance in finding a person to nominate under paragraph (1), the commanding officer shall provide him with the names of at least two people available to be nominated under that paragraph.
- (6) Where a person consents to act as an offender's assisting officer he may, on behalf of the offender, exercise any right of the offender to question witnesses or make submissions by virtue of this Part.

The hearing

- 34.**—(1) At the hearing the commanding officer shall—
- (a) satisfy himself that the offender understands the purpose of the hearing and has had sufficient time to prepare for it;
 - (b) give the offender an opportunity to adduce evidence as to his character; and
 - (c) give the offender an opportunity to make submissions either orally or in writing about—
 - (i) the appropriateness of making an activation order;
 - (ii) the appropriate terms of such an order if it were made.
- (2) Where the offender adduces the evidence of a witness as to his character—

- (a) such evidence may be given orally or in writing;
 - (b) if the witness gives evidence in writing—
 - (i) his evidence shall be read to the commanding officer by the offender or his offender's assisting officer; and
 - (ii) the offender shall provide the commanding officer with a copy of the evidence;
 - (c) the commanding officer shall give the offender an opportunity to question the witness; and
 - (d) the commanding officer may question the witness after the offender has had the opportunity to do so.
- (3) In considering whether to make an activation order and, if such an order is to be made, what its terms should be the commanding officer shall take into account the following matters—
- (a) the details of the offence or offences for which the suspended sentence of service detention was imposed;
 - (b) such details as are known to the commanding officer of all proven offences committed by the offender during the operational period of the suspended sentence of service detention;
 - (c) the reasons given for any decision not to make an order under section 191 or 193 of the Act in relation to the suspended sentence of service detention;
 - (d) any disciplinary record of the offender;
 - (e) any submissions made by the offender about the matters mentioned in paragraph (1)(c);
 - (f) any character evidence adduced by the offender;
 - (g) any other matters that appear to the commanding officer to be relevant.
- (4) The commanding officer shall—
- (a) inform the offender of his decision as to whether to make an activation order; and
 - (b) give his reasons for the decision.
- (5) If the commanding officer makes an activation order he shall—
- (a) inform the offender of the terms of the order;
 - (b) remind the offender of his right of appeal under section 141 of the Act; and
 - (c) remind the offender of his right to make an election under whichever of sections 290(2) and 291(2) of the Act, as modified by section 292, applies.

Adjournments

35. The commanding officer may adjourn a hearing at any point if he considers that to do so would be—

- (a) in the interests of fairness to the offender; or
- (b) expedient for any purpose and not unfair to the offender.

Written record

36.—(1) The commanding officer shall produce a written record of the hearing containing the following matters—

- (a) the name, rank or rate and service number of the offender;
- (b) the date of the hearing;
- (c) his decision as to whether to make an activation order;
- (d) his reasons for his decision; and

(e) any order made.

(2) The commanding officer shall, as soon as reasonably practicable after the hearing, provide the offender with a copy of the written record.

PART 4

Supplementary

Transitional provisions

37. Schedule 2 shall have effect.

Transitory provision

38. Until section 23 of the Constitutional Reform Act 2005(2) comes into force, references in these Rules to the Supreme Court are to be read as references to the House of Lords.

7th May 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence