

Draft Rules laid before Parliament under section 373(3)(f) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.

DEFENCE

The Armed Forces (Court Martial) (Amendment) Rules 2024

Made - - - -

Coming into force

The Secretary of State makes these Rules in exercise of the powers conferred by sections 155 and 163(1) to (3) of the Armed Forces Act 2006⁽¹⁾.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament in accordance with section 373(3)(f) of the Armed Forces Act 2006.

Citation, commencement and extent

- 1.—(1) These Rules may be cited as the Armed Forces (Court Martial) (Amendment) Rules 2024.
- (2) These Rules come into force the day after the day on which they are made.
- (3) These Rules extend to England and Wales, Scotland, Northern Ireland, the Isle of Man and the British overseas territories (except Gibraltar).

Amendment of the Armed Forces (Court Martial) Rules 2009

2. The Armed Forces (Court Martial) Rules 2009⁽²⁾ are amended as follows.

Amendment of rule 2 (interpretation: proceedings and parties)

3. In rule 2 (interpretation: proceedings and parties)—
 - (a) in paragraph (1)—
 - (i) omit the “and” after sub-paragraph (f); and
 - (ii) after sub-paragraph (g), insert “and
 - (h) review of sentence proceedings,”;
 - (b) in paragraph (2), after the definition of “related proceedings” insert—

⁽¹⁾ 2006 c. 52

⁽²⁾ S.I. 2009/2041, as amended by S.I. 2013/1851, 2022/1264 and 2023/1097; there are other amending instruments but none is relevant.

““review of sentence proceedings” means proceedings before the court under section 304D (review of sentence following offer of assistance) or section 304E (review of sentence following failure to assist)(3);”;

- (c) in paragraph (4)—
- (i) after sub-paragraph (i), omit “and”;
 - (ii) after sub-paragraph (j), insert “; and
 - (k) in the case of review of sentence proceedings, the person on whom the court has passed a sentence.”.

Amendment of rule 17 (notification of proceedings)

4. In rule 17(1)(c) (notification of proceedings), after “the commanding officer” insert “, if any”.

Amendment of rule 20 (deliberation in private)

5. In rule 20(2) (deliberation in private), after sub-paragraph (a) insert—
- “(aa) review of sentence under section 304D or 304E.”.

Amendment of rule 23 (record of proceedings)

- 6.—(1) In rule 23(record of proceedings)—
- (a) in paragraph (2)(c), after “sentence passed” insert “or substituted”;
 - (b) after paragraph (5)(b), insert—
 - “(ba) in the case of review of sentence proceedings, the conclusion of the review of sentence proceedings;”.

Amendment of rule 27 (proceedings without lay members)

7. In rule 27 (proceedings without lay members), after paragraph (6) insert—
- “(7) This rule applies to review of sentence proceedings if it applied to the proceedings in which the sentence that falls to be reviewed was imposed.”.

Amendment of rule 28 (powers that may be exercised by a judge advocate)

8. In rule 28(b) (powers that may be exercised by a judge advocate)—
- (a) after sub-paragraph (ii), omit “or”;
 - (b) after sub-paragraph (iii), insert “or
 - (iv) to review the sentence of an offender under section 304D or 304E.”.

Amendment of rule 29 (proceedings requiring six lay members)

9. In rule 29 (proceedings requiring six lay members), after paragraph (4) insert—
- “(5) Subject to rule 29A, this rule applies to review of sentence proceedings if it applied to the proceedings in which the sentence that falls to be reviewed was imposed.”.

(3) Sections 304D and 304E were inserted into the Armed Forces Act 2006 by sections 10 and 11 respectively of the Armed Forces Act 2016 (c. 21).

Amendment of rule 29A (disapplication of rule 29)

10. In rule 29A (disapplication of rule 29)—

- (a) after paragraph (b), omit “and”;
- (b) after paragraph (c), insert “; and
- (d) review of sentence proceedings where paragraph (a) or (b) applied to the sentencing proceedings in which the sentence which falls to be reviewed was imposed.”.

Amendment of rule 32 (persons ineligible for membership in particular circumstances)

11. In rule 32 (persons ineligible for membership in particular circumstances)—

- (a) after paragraph (4) insert—

“(4A) A person is ineligible for membership of the court for any review of sentence proceedings if, at any time since the date of the commission of any offence for which the sentence that falls to be reviewed was imposed, that person and the offender were serving in the same unit.”;
- (b) after paragraph (8), insert—

“(8A) A person is not ineligible for membership of the court for review of sentence proceedings by virtue of having been a member of the court for—

 - (a) any trial or appellate proceedings in which the offender was convicted of any offence for which the sentence that falls to be reviewed was imposed;
 - (b) any proceedings in which the sentence that falls to be reviewed was imposed or varied.”.

Amendment of rule 33 (civilians)

12. In rule 33(5) (civilians)—

- (a) after paragraph (d), omit “and”;
- (b) after paragraph (e), insert “; and
- (f) review of sentence proceedings with lay members if this rule applied to the sentencing proceedings in which the sentence that falls to be reviewed was imposed.”.

Amendment of rule 35 (objections to lay members)

13. In rule 35(5) (objections to lay members)—

- (a) after paragraph (a), omit “and”;
- (b) after paragraph (b), insert “; and
- (c) review of sentence proceedings.”.

Insertion of new Part 14A (review of sentence proceedings)

14. After rule 117 (pronouncement of sentence) insert—

“Part 14A

Review of sentence proceedings

Application of Part 14A

117A. This Part applies in relation to review of sentence proceedings.

Review of sentence

117B. Where, on a single occasion, the court passes two or more sentences on a person, an application for review of any of those sentences is to be treated as an application in respect of both or all of them.

Dispute on facts

117C.—(1) Where a case has been referred back to the court under section 304D or section 304E and there are disputed facts within the subject matter of the review of sentence proceedings, the judge advocate may direct that any issue of fact be tried by the court.

(2) The finding of the court on any such issue is to be determined by a majority of the votes of the members of the court.

(3) In the case of an equality of votes, the court must find for the offender.

(4) The finding of the court is to be announced by the judge advocate.

Attendance of lay members by live link

117D. A lay member may attend review of sentence proceedings by live link, as defined by rule 18(3)(a).

Decision on review of sentence

117E. In the case of an equality of votes on whether the sentence should be changed following the review, or if so how, the judge advocate has a casting vote.

Pronouncement of sentence

117F. Subject to section 304F (sections 304C to 304E: statements in open court), rule 117 (pronouncement of sentence) and sections 252 (duty to give reasons and explain sentence) and 253(2) (duties in complying with section 252) apply in relation to the court’s decision as to whether or not to review the sentence as they apply to the passing of a sentence.

Effect of review of sentence

117G. Unless the court otherwise directs, any sentence substituted by the court under sections 304D(6)(b) or 304E(4) begins to run from the time that the original sentence began to run.”.

[Name]
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Armed Forces (Court Martial) Rules 2009 ([S.I. 2009/2041](#)). The Rules make provision in respect of sentence review proceedings for a service offence further to section 304D (review of sentence following offer of assistance) and section 304E (review of sentence following failure to assist) of the Armed Forces Act 2006 ([c. 52](#)). Sections 304D and 304E were inserted into the Armed Forces Act 2006 by the Armed Forces Act 2016 ([c. 21](#)).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.