
STATUTORY INSTRUMENTS

2009 No. 1096

**The Service Custody and Service
of Relevant Sentences Rules 2009**

PART 3

Treatment, Employment and Discipline of Detainees

Rules to be brought to the notice of detainees

9.—(1) A copy of this Part of these Rules, or a suitable extract of it in a form approved by the Secretary of State, shall be displayed conspicuously in all service custody premises in such places where it can be seen from time to time by every detainee.

(2) In the case of such a detainee aged less than 18, or such a detainee aged 18 or over who cannot read or appears to the commandant to have difficulty in understanding the information provided under paragraph (1), a member of staff shall so explain to him his rights and obligations under this Part of these Rules.

(3) A copy of these Rules shall be made available promptly to any such detainee who requests it.

Accommodation

10.—(1) Subject to paragraph (2), no room or cell shall be used for the confinement a detainee serving a sentence of service detention in service custody premises unless—

- (a) a medical officer has certified that its size, lighting, heating, ventilation and fittings are adequate for health and that it allows the detainee to communicate with a member of staff of the service custody premises at any time;
- (b) the room or cell is of a size of at least seventeen cubic metres for each detainee confined in it;
- (c) a permission under rule 7(3)(c) has been issued by an inspector of service custody premises for its use for the confinement of detainees serving a sentence of service detention.

(2) An officer of or above the rank of commodore, brigadier or air commodore may, if required by operational exigencies, authorise the confinement of a detainee for not more than fourteen days in a room or cell outside the UK that does not meet the requirements of paragraph (1)(b).

Work and training of detainees in service custody premises

11.—(1) Subject to the other provisions of these Rules, the daily routine of detainees in service custody premises shall be laid down by the commandant in accordance with any instructions issued from time to time by or under the authority of the Defence Council.

(2) Subject to rule 12 a detainee—

- (a) who is being held in service custody premises after being charged with a service offence and who holds a rank or rate up to and including chief petty officer, staff sergeant, Royal Marines colour sergeant, or flight sergeant, or

(b) who is serving a sentence of service detention in service custody premises, shall carry out work or training for not more than nine hours each day and not less than six hours.

(3) Time spent on meals shall not count towards the periods mentioned in paragraph (2).

(4) Such a detainee shall not, however, carry out work or training until he has been examined by a medical officer and certified as fit for such work or training.

(5) Training in MCTC shall be carried out in accordance with any syllabus laid down by the Defence Council.

Sundays and public holidays

12.—(1) On Sundays and public holidays a detainee within rule 11(2)(a) or (b) shall not carry out work or training except work which is necessary for the service of the service custody premises in which he is detained.

(2) Such a detainee whose recognised day of religious observance falls on a day other than a Sunday—

(a) shall not be required to carry out any more work or training on that day than other detainees are required to do on a Sunday; and

(b) may be required to do work or training on Sundays.

Work and training in association

13.—(1) A detainee within rule 11(2)(a) or (b) shall carry out work or training in association with other such detainees, except where it appears to the commandant that it is desirable in the interests of such a detainee or for the maintenance of good order and discipline for such a detainee not to work in association with others, in which case the commandant may arrange for that detainee to work apart from other detainees for a period of not more than seven days.

(2) In deciding when a detainee should work apart from others or should rejoin them, the commandant shall take into account any advice given by a medical officer.

Unauthorised work

14. No detainee shall be employed directly or indirectly for the private benefit or advantage of any person, nor in any way contrary to these Rules.

Reimbursement allowance

15.—(1) Subject to paragraph (2), a detainee serving a sentence of service detention shall be entitled to a reimbursement allowance.

(2) A detainee serving a sentence of service detention who escapes from service custody premises forfeits his entitlement to the reimbursement allowance from the date of his escape.

(3) The reimbursement allowance shall be allocated to a detainee serving a sentence of service detention at different rates, depending on which stage of training under rule 60(2) the detainee has reached. He shall then be entitled to purchase from the canteen cigarettes, tobacco, sweets, chocolates, writing materials, postage stamps and other articles decided by the commandant of a value within his reimbursement allowance.

(4) The Secretary of State shall approve the rates of reimbursement allowance payable to such detainees and may from time to time issue instructions for alterations to the amount of the allowance.

(5) On release at the end of his sentence of service detention a detainee shall be entitled to the balance of the reimbursement standing to his credit

Smoking

16. A detainee may possess cigarettes and tobacco in such circumstances, and may smoke at such times and in such places, as the commandant may direct from time to time.

Communications generally

17.—(1) Subject to rules 18 and 19, a detainee serving a sentence of service detention shall not be permitted to communicate with any person outside the service custody premises in which he is confined, or such person with him, except with the permission of the commandant or as a privilege under rule 60.

(2) Notwithstanding paragraph (1) and subject to rule 23, the commandant may impose any restriction or condition, either generally or in a particular case, upon the communications to be permitted between such a detainee and any other person, if—

- (a) he considers that the restriction or condition to be imposed does not interfere with the Convention rights of any person; or
- (b) he considers that reliance on a ground specified in paragraph (3) is compatible with the Convention right to be interfered with and that the restriction or condition—
 - (i) is necessary on that ground; and
 - (ii) is proportionate to what is sought to be achieved.

(3) The grounds referred to in paragraph (2) are—

- (a) in the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety;
- (d) securing or maintaining security in service custody premises or good order and discipline in such premises;
- (e) the protection of health or morals;
- (f) maintaining the authority and impartiality of the judiciary;
- (g) the protection of the rights and freedoms of any person.

(4) The commandant may give directions, either generally or in relation to any visit or class or visits, concerning the dates and times when detainees serving a sentence of service detention may be visited.

(5) Every visit to a detainee serving a sentence of service detention shall be within the sight of a member of staff of the service custody premises and with the exception of visits by legal representatives under rule 22 every visit to such a detainee shall take place within the hearing of such a member of staff.

(6) In this rule—

- (a) references to communications include references to communications during visits;
- (b) references to restrictions and conditions upon communications include references to restrictions and conditions in relation to the length, duration and frequency of communications.

Personal correspondence

18.—(1) Subject to rules 17 and 23, a detainee serving a sentence of service detention in service custody premises shall be permitted to write and send as many letters as he wishes. Writing materials and a stamp for one letter shall be provided to such detainee on admission.

- (2) Such a detainee may receive—
 - (a) any number of letters; and
 - (b) with the consent of the commandant, newspapers and periodicals.

Correspondence with legal representatives and courts

19.—(1) A detainee may correspond with his legal representative and any court and such correspondence may only be opened, read or stopped by the commandant in accordance with the provisions of this rule.

(2) Correspondence to which this rule applies may be opened, read and stopped by the commandant if he has reasonable cause to believe that it contains an illicit enclosure and any such enclosures shall be dealt with in accordance with these Rules.

(3) Correspondence to which this rule applies may be opened, read and stopped by the commandant if he has reasonable cause to believe that its contents will endanger the security of service custody premises or the safety of others, or are otherwise of a criminal nature.

(4) A detainee shall be given the opportunity to be present when any correspondence to which this rule applies is opened and shall be informed if it or any enclosure is to be read or stopped.

(5) In this rule “court” includes the European Commission of Human Rights, the European Court of Human Rights and the European Court of Justice; and “illicit enclosure” includes any article possession of which has not been authorised by the commandant and any correspondence to or from a person other than the detainee concerned, his legal representative or a court.

Telephone calls

20.—(1) On admission to a service custody premises, a detainee serving a sentence of service detention shall be permitted to make one telephone call at public expense.

(2) The frequency and maximum length of any further telephone calls shall be decided by the commandant.

Personal visits

21. A detainee in service custody premises may receive visits from relatives and friends with the consent of the commandant. Such visits shall take place at times and places decided by the commandant. Each such detainee shall be entitled to receive at least one visit from a friend or relative every twenty-eight days.

Visits by legal representatives

22.—(1) The commandant shall provide reasonable facilities for a detainee serving a sentence of service detention in service custody premises who is interested in legal proceedings, or proposed legal proceedings, to be visited by his legal representative.

(2) The legal representative of such a detainee may, with the permission of the commandant, visit him in connection with other legal business.

(3) Any visit authorised under this rule shall be within the sight, but out of the hearing, of a member of staff of the service custody premises.

Interception of communications

23.—(1) The Secretary of State may give directions to any commandant concerning the interception in service custody premises of any communication by any detainee or category of detainees if the Secretary of State considers that the directions are—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved.

(2) Subject to any directions given by the Secretary of State, the commandant may make arrangements for any communication by a detainee or category of detainees to be intercepted in service custody premises by a member of staff authorised by the commandant for the purposes of this rule if he considers that the arrangements are—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved.

(3) Any communication by a detainee may, during the course of its transmission in a service custody premises, be terminated by a member of staff authorised by the commandant if he considers that to terminate the communication is—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved by the termination.

(4) The grounds referred to in paragraphs (1)(a), (2)(a) and (3)(a) above are—

- (a) the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety;
- (d) securing or maintaining security in service custody premises or good order and discipline in such premises;
- (e) the protection of health or morals; or
- (f) the protection of the rights and freedoms of any person.

(5) For the purposes of this rule “interception” in relation to any written or drawn communication includes opening, reading, examining and copying the communication.

Permanent log of communications

24.—(1) The commandant may arrange for a permanent log to be kept of all communications by or to a detainee serving a sentence of service detention in service custody premises.

(2) The log referred to in paragraph (1) above may include, in relation to a communication by means of a telecommunications system in a service custody premises, a record of the destination, duration and cost of the communication and, in relation to any written or drawn communication, a record of the sender and addressee of the communication.

Disclosure of material

25. The commandant may not disclose to any person, except in the course of duty, any intercepted material or information retained under rule 26, unless—

- (a) he considers that such disclosure is—
 - (i) necessary on grounds specified in rule 23(4); and
 - (ii) proportionate to what is sought to be achieved by the disclosure;
- (b) in the case of intercepted material, all parties to the communication consent to the disclosure; or
- (c) in the case of information retained under rule 26 the detainee to whose communication the information relates, consents to the disclosure.

Retention of material

26.—(1) The commandant shall not retain any intercepted material for a period longer than three months beginning with the day on which the material was intercepted or obtained unless he is satisfied that continued retention of it is—

- (a) necessary on grounds specified in rule 23(4); and
- (b) proportionate to what is sought to be achieved by the continued retention.

(2) Where such material is retained for longer than three months pursuant to paragraph (1), the commandant shall review its continued retention at periodic intervals until such time as it is no longer held by the commandant.

(3) The first review conducted pursuant to paragraph (2), shall take place not more than three months after the decision to retain the material taken pursuant to paragraph (1) above, and subsequent reviews shall take place not more than three months after the last review conducted pursuant to paragraph (2).

(4) If the commandant, on a review conducted pursuant to paragraph (2) or at any other time, is not satisfied that the continued retention of the material satisfies the requirements set out in paragraph (1), he shall arrange for the material to be destroyed.

Medical attention

27.—(1) The commandant shall ensure that a detainee in service custody premises shall be seen by a medical officer at least once every day when the detainee is—

- (a) in cellular confinement; or
- (b) subject to any form of mechanical restraint.

(2) Any case of a detainee who is sick, or injured or complains of sickness or injury shall be reported promptly to a medical officer.

Religious books

28. So far as practicable, the commandant shall make available for the use of every detainee in service custody premises such books of religious observation or instruction as are recognised as such by his denomination or religion and are approved by the Secretary of State for use in service custody premises.

Chaplain and other religious ministers

29. The commandant of service custody premises shall afford facilities to the chaplain and other ministers of religion to have access to detainees at times approved by the commandant, but not less than weekly, for the purpose of visiting them or giving them religious instruction.

Duties of chaplain and other religious ministers

30.—(1) Where the chaplain is of the same denomination as a detainee, he shall visit him as soon as practicable after his admission, at regular intervals during his sentence, and shortly before his release.

(2) Where there is a minister of religion who regularly attends service custody premises and who is of the same faith as a detainee in those premises, he shall visit him as soon as reasonably practicable after his admission, at regular intervals during his sentence, and shortly before his release.

(3) Where there is no such chaplain or minister of religion, the commandant shall ask the detainee on admission if he would like one to visit him; and if the detainee wishes to be so visited, the commandant shall, if it is reasonably practicable, arrange for such a visit to take place.

(4) The commandant shall make available to chaplains and other ministers of religion on the occasion of their visits to service custody premises a list of detainees who are sick or undergoing punishment under these Rules, if the chaplain or minister so requests.

(5) A detainee may request a visit from a chaplain or minister of religion at any time, and the commandant shall, if it is reasonably practicable, arrange for such a visit to take place.

Religious services

31.—(1) Whenever reasonably practicable, the chaplain shall conduct religious services in service custody premises on Sundays, other customary days and on such other convenient occasions approved by the commandant as the chaplain may decide.

(2) The commandant shall make such provision for religious services to be conducted by other ministers of religion as he thinks appropriate from time to time.

(3) A detainee who is in cellular confinement may only attend religious services with the commandant's permission.

32. The commandant may exclude any detainee from attending religious services on the grounds of disorderly conduct.

Temporary release

33.—(1) The commandant of a service custody premises may temporarily release a detainee serving a sentence of service detention.

(2) Such a detainee may be released under this rule subject to such conditions as the commandant considers appropriate.

(3) The circumstances in which such a detainee may be released under this rule are—

- (a) on compassionate grounds;
- (b) for the purpose of receiving medical treatment;
- (c) to receive instruction or training;
- (d) to enable him to participate in any proceedings before any court, tribunal or inquiry;
- (e) to assist any police constable or service policeman in any enquiries;
- (f) to enable him to consult his legal representative in circumstances where it is not reasonably practicable for the consultation to take place in service custody premises;
- (g) to facilitate the transfer of the detainee between service custody premises or between service custody premises and a civilian prison;
- (h) as a privilege under rule 60.

(4) The commandant may recall a detainee released under this rule at any time.

Complaints

34.—(1) A detainee may submit a complaint relating to any matter to the commandant.

(2) The commandant shall investigate any complaint made to him and, if he decides it is well-founded, he shall decide what redress (if any), within his authority, would be appropriate and grant that redress;

(3) The right of a detainee to submit a complaint under this rule is in addition to his right to make a complaint under section 334 of the Act or under these Rules to the independent monitoring board or the service visiting officer.

Admission to service custody premises

35. In the case of a detainee in service custody premises—

- (a) when he is admitted to the service custody premises, except for the clothing and those articles which the detainee is authorised by the commandant to have in his possession, his equipment and any other article shall be taken from him, whether they are his own property or not;
- (b) private property of the detainee shall be retained in safe custody by the commandant, who shall have a record of the property made;
- (c) such private property shall be returned to the detainee on his final release;
- (d) money of the detainee shall be retained in safe custody by the commandant or paid into a bank account and the equivalent amount returned to the detainee on his final release;
- (e) the commandant shall maintain an account of all money retained or returned under paragraph (d);
- (f) any money or other property which is held in safe custody on behalf of the detainee may be sent with the commandant's consent to a relative or friend of the detainee;
- (g) within twenty four hours of admission the commandant, or a member of staff of the service custody premises, shall satisfy himself that the detainee has read or has had explained to him this part of the Rules and the procedure for bringing any complaint in accordance with the Act or these Rules.

Searches

36.—(1) A detainee and his belongings shall be searched on admission to service custody premises, on return from a period of temporary release, and on final release.

(2) Such a detainee, his belongings and his room or cell may be searched at any time on the instructions of the commandant.

(3) Any search of any detainee shall be carried out by one or more members of staff of the service custody premises in the presence of at least one other member of staff.

(4) A detainee shall be searched in as seemly a manner as is consistent with discovering anything concealed.

(5) No detainee shall be stripped and searched in the sight of another detainee, or by or in the sight of a person of the opposite sex other than a medical officer.

(6) A member of staff who is authorised by the commandant to conduct a search under this rule may use reasonable force where it is necessary for that purpose.

Escapes

37.—(1) Any member of staff of a service custody premises who discovers that a detainee serving a sentence of service detention has escaped shall promptly report the fact to the commandant.

(2) The commandant shall promptly inform the following bodies or persons—

- (a) the Chief Officer of Police in the area in which the service custody premises is situated;
- (b) the nearest unit of service police;
- (c) the local commander;
- (d) an inspector of service custody premises.

Duration of sentences: persons unlawfully at large

38.—(1) A person serving a relevant sentence, who would otherwise be treated under section 301 of the Act as having been unlawfully at large for a period for the purposes of that section shall be treated as not having been unlawfully at large for any part of that period in which he was in the custody of a civil authority.

(2) In paragraph (1) “civil authority” means—

- (a) a constable; and
- (b) any other civil authority, whether of the United Kingdom or otherwise, authorised by law to detain persons.

Deaths in service custody premises

39.—(1) If a detainee dies, the commandant shall—

- (a) if the death occurs in England, Wales or Northern Ireland, immediately report the fact to the coroner having jurisdiction in the place where the service custody premises is situated;
- (b) if the death occurs in Scotland, immediately report the fact to the procurator fiscal having jurisdiction in the place where the service custody premises is situated;
- (c) if the death occurs outside the United Kingdom, report the fact to any local civil authority which is authorised or required to inquire into the cause of death.

(2) Nothing in this rule shall affect the duty of the commandant to record or report the death to meet the requirements of any other rules, regulations or instructions.

Mechanical restraint

40.—(1) Without prejudice to the power to use reasonable force under section 97 of the Act, a detainee may only be put under mechanical restraint in accordance with paragraph (2) or rule 41.

(2) A detainee may be placed in handcuffs for the purpose of safe custody during their removal from one place or establishment to another.

(3) A detainee shall not be subjected to any form of mechanical restraint as a punishment.

Authorisation of mechanical restraint

41.—(1) A detainee in service custody premises may be placed under mechanical restraint if the commandant—

- (a) considers that he ought to be placed under mechanical restraint to prevent him from injuring himself or others, damaging property or creating a disturbance; and
- (b) issues a written order that mechanical restraint is to be applied to the detainee.

(2) An order under paragraph (1) shall specify the date and hour when the restraint is to be applied and the period, not exceeding twenty-four hours, during which it may be applied.

(3) Immediately after making the order the commandant shall notify the local commander and a medical officer that he has made such an order and of the terms it contains.

(4) On receiving such notification the medical officer shall examine the detainee and inform the commandant if he considers there is any objection on medical grounds to the application of the mechanical restraint which has been ordered. If such objection is made the commandant shall revoke or modify the order in accordance with the recommendations of the medical officer.

(5) The commandant shall keep an order under paragraph (1) under review to ensure that a detainee is not kept under mechanical restraint longer than is necessary.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(6) If under an order under paragraph (1) the detainee is kept under mechanical restraint for twenty-four hours the local commander may make a further order or orders under that paragraph for the period or periods of mechanical restraint to be extended for a further period or periods each period not to exceed twenty-four hours.

(7) Whenever mechanical restraint is applied or removed in accordance with this rule, an officer or warrant officer shall be present, and a record of the name of the officer or warrant officer present on each occasion shall be retained by the commandant.

Types of mechanical restraint

42. Any means of mechanical restraint shall be of a pattern authorised by the Secretary of State for use in MCTC, and shall be used in such manner and under such conditions as an inspector of service custody premises shall decide.