

**EXPLANATORY MEMORANDUM TO THE
SERVICE CUSTODY AND SERVICE OF RELEVANT SENTENCES RULES**

2009 No. 1096

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument will provide one set of Rules for all three Services governing Service custody and the service of relevant sentences.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Rules amend the disciplinary system at the Military Corrective Training Centre (MCTC) in respect of minor disciplinary infringements. This includes a power for a judge advocate (acting as an “adjudicator”) to award up to twenty-eight additional days of Service detention for prescribed breaches of discipline by a detainee. A punishment imposed by an adjudicator is subject to review. There is a new provision for detainees serving sentences of Service detention of more than ninety days at MCTC to earn additional remission (in addition to their automatic remission) for good conduct.

3.2 An order under section 380 of the Act has been made which modifies the enabling powers for this instrument to enable transitional provisions to be made.

4. Legislative Context

4.1 These Rules update provisions relating to Service custody and the service of sentences in accordance with the provisions of the Armed Forces Act 2006 (“the 2006 Act”), which comes fully into force in October 2009. The 2006 Act received Royal Assent on 8 November 2006. Under its provisions the Services will continue to be responsible for holding Service personnel and civilians subject to Service discipline in Service custody, including those Service personnel sentenced to Service detention.

4.2 These Rules replace and revoke the obsolete Naval Detention Quarters Rules 1973 SI no 270, the Imprisonment and Detention (Army) Rules 1979, SI no 1456 and the Imprisonment and Detention Rules (Air Force) Rules 1980 SI no 2005.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British overseas territories and applies to persons subject to Service law and civilians subject to Service discipline wherever they are in the world.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objective is that these Rules will apply one tri-Service set of Rules to Service custody. They overhaul existing single Service rules, parts of which are now obsolete.

7.2 These Rules update the existing single Service rules relating to Service custody. They apply to those held in Service custody including those sentenced to Service detention and deal with the management of Service custody premises, the treatment of persons in Service custody and the inspection of Service custody premises. They apply to both Service custody premises and to the MCTC: certain provisions are of limited application.

7.3 The Rules have also updated provisions regarding the Independent Monitoring Board and its role at the MCTC.

8. Consultation outcome

8.1 A memorandum about consultation on the 2006 Act primary legislation was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted. The individual instruments under the 2006 Act have been the subject of consultation with relevant stakeholders such as the Services, the Service police, and the Judge Advocate General over a period of months, to ensure that policy objectives have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 Guidance will be promulgated to the armed forces principally through a new Joint Service Publication, JSP 837. Additional guidance will be contained in the Manual of Service Law (MSL) which will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the 2006 Act. The JSP and the MSL will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act and the MSL will subsequently be available to the general public on the internet. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Armed Forces Act 2006 is subject to a requirement for renewal each year by Order in Council (approved in draft by both Houses of Parliament) and renewal by Act of Parliament every five years. In response to these requirements the Act will be subject to continuing monitoring and a general review will be conducted in order to provide for the Act of Parliament which will be required in 2011.

13. Contact

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