
STATUTORY INSTRUMENTS

2009 No. 1098

The Armed Forces (Custody Proceedings) Rules 2009

PART 5

REVIEWS

Review dates

30.—(1) Where a judge advocate makes an order under section 105(2), he shall determine the date on which that order is to be reviewed and specify that date in the record of the order.

(2) A judge advocate may decide to carry out the review on a different date where—

- (a) a request for a review is made under section 108(2)(b) and he considers that it is reasonably practicable for the review to take place before the date determined under paragraph (1), or
- (b) it is not practicable or in the interests of justice for the review to take place on the date determined under paragraph (1),

in which case the court administration officer shall notify the commanding officer and the accused of the different date.

Requirement for a hearing

31.—(1) This rule applies to reviews carried out under sections 108(1), 110(4), 111(4) or 171(2).

(2) A review shall be carried out at a hearing if—

- (a) it is the first review in relation to the accused;
- (b) it has been requested under section 108(2)(b); or
- (c) it is a review carried out at any time after the commencement of the accused's trial by the Court Martial or the Service Civilian Court and before the announcement of that court's finding on every charge against the accused, other than during an adjournment.

(3) In any other case, a review shall be carried out at a hearing unless—

- (a) a judge advocate is satisfied on the basis of the representations made by the commanding officer under rule 32 that the grounds on which the order made under section 105(2) continue to exist;
- (b) the accused has not made representations under rule 32 or, where such representations have been made, they do not contain any arguments as to fact or law which have not been heard previously; and
- (c) a judge advocate is satisfied that there is no other cause for carrying out the review at a hearing.

(4) A judge advocate shall not on a review impose any requirements under section 107(3) unless the review is carried out at a hearing.

Written representations

- 32.**—(1) This rule applies to any review other than a review to which rule 31(1) applies.
- (2) The commanding officer and the accused may make written representations with respect to—
- (a) the need for a hearing for the purposes of carrying out a review;
 - (b) whether or not a judge advocate should on a review make an order under section 105(2) authorising the keeping of the accused in custody.
- (3) Any written representations made under paragraph (2) shall be served on the court administration officer and a copy shall be served on the commanding officer or, as the case may be, the accused.

Notification of hearing for the purposes of carrying out a review

- 33.**—(1) Where a hearing is required for the purposes of carrying out a review, the court administration officer shall, after consultation with the Judge Advocate General or a person acting on his behalf, determine the time and place of the hearing.
- (2) The court administration officer shall ensure that the hearing of a review takes place on the date determined by a judge advocate in accordance with rule 30.
- (3) The court administration officer shall notify the commanding officer and the accused of the time and place of the hearing.

Decisions on reviews carried out without a hearing

- 34.**—(1) This rule applies in any case where a judge advocate carries out a review without a hearing.
- (2) Where the judge advocate decides not to authorise the keeping of the accused in custody he shall—
- (a) notify the court administration officer of that fact as soon as practicable; and
 - (b) record his decision in writing.
- (3) Where the court administration officer is notified under paragraph (2)(a), he shall notify the commanding officer and the accused as soon as practicable of the judge advocate's decision.