
STATUTORY INSTRUMENTS

2009 No. 1216

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

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.