

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (SUMMARY HEARING AND ACTIVATION OF
SUSPENDED SENTENCES OF SERVICE DETENTION) RULES 2009**

2009 No. 1216

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 These Rules are made under the Armed Forces Act 2006 (the 2006 Act). They make provision with respect to the summary hearing of charges. They also make provision regarding the making of orders by a Commanding Officer (CO) to activate suspended sentences of Service detention.

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

3.1 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 The 2006 Act enables a CO to hear charges summarily where certain conditions apply (for example, the accused must be of or below the rank of Royal Navy Commander or equivalent). The charges that may be dealt with are limited and are generally not serious in nature. These Rules allow the CO to delegate his power to hear a charge to another officer (referred to as a subordinate commander). These Rules set out the procedure that is to be followed by a CO or a subordinate commander before, during and after the summary hearing.

4.2 The three Service Discipline Acts (the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957) allow COs to dispose of charges summarily and permit delegated legislation to be made governing the procedure to be followed where this occurs. These Rules are more detailed than the delegated legislation made under the Service Discipline Acts but they fulfil a similar function.

4.3 Under the 2006 Act, a CO may by order activate a suspended sentence of Service detention imposed on an offender by a CO in a summary hearing or by the Summary Appeal Court. The CO may make such an order if the offender has been convicted of a new offence committed during the operational period of the suspended sentence of Service detention (a suspended sentence will be operational for a period of between 3 and 12 months after it is imposed). A CO may activate a suspended sentence of Service detention where either the accused is convicted by him of another Service offence at a summary hearing, or if he is convicted of a civilian criminal offence by a civilian court. The Rules set out the procedure to be followed by a CO where the power to activate arises in a summary hearing. The Rules also set out the procedure to be followed in a free-standing activation hearing where a CO has the power to activate the suspended sentence following a conviction in a civilian court.

4.4 Currently, the Naval Discipline Act 1957 gives a Naval CO the power to activate a suspended sentence of detention. Army and RAF COs do not currently have corresponding powers.

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 wherever they are in the world.

6. European Convention on Human Rights

6.1 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 power to hear a charge summarily is an integral aspect of Service discipline, which itself supports operational effectiveness. The summary hearing process ensures that charges can be dealt with quickly and fairly. It also ensures that the CO and other officers in the accused's chain of command are kept at the centre of discipline. The facility to impose and subsequently activate a suspended sentence of Service detention is a useful disciplinary tool.

8. Consultation outcome

8.1 A memorandum about consultation on the Armed Forces Act 2006 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. This particular instrument has been the subject of rigorous consultation with the Services over a period of many months, to ensure that policy goals have been achieved and that the provisions of the instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the Armed Forces Act 2006. The first volume of three within the Manual, which is intended for commanding officers and those who administer the Service justice system, includes a chapter on summary hearings and free-standing hearings at which suspended sentences of Service detention might be activated. The Manual of Service Law will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act and will subsequently be available to the general public on the internet.

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 and review

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 and the provisions made under it 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

13.1 Nick Shaw at the Ministry of Defence telephone 020 7218 0564 or email nick.shaw460@mod.uk can answer any queries regarding the instrument.