
STATUTORY INSTRUMENTS

2009 No. 2041

The Armed Forces (Court Martial) Rules 2009

PART 17

ACTIVATION PROCEEDINGS

Interpretation of Part 17

130. In this Part—

“the relevant facts”, “the original sentence”, “the relevant period”, “the new offence”, “summons”, “warrant” and “relevant order” have the meanings given by—

- (a) rule 131(2), where rule 131 applies;
- (b) rule 132(2), where rule 132 applies;
- (c) rule 133(2), where rule 133 applies;

“the offender” means the person convicted of the new offence.

Offence committed during operational period of suspended sentence of imprisonment

131.—(1) This rule applies where the court administration officer is notified of the facts mentioned in paragraph 12(2A)(a) and (b) of Schedule 12 to the 2003 Act, as substituted by paragraph 8(1) of Schedule 7 to the 2006 Act.

(2) Where this rule applies, in this Part—

“the relevant facts” means the facts mentioned in those paragraphs, as so substituted;

“the original sentence” means the suspended sentence mentioned in paragraph 12(2A) of Schedule 12 to the 2003 Act, as substituted by paragraph 8(1) of Schedule 7 to the 2006 Act;

“the relevant period” means the operational period of that sentence;

“the new offence” means the offence mentioned in that sub-paragraph, as so substituted;

“summons” means a summons under that sub-paragraph, as so substituted;

“warrant” means a warrant under that sub-paragraph, as so substituted;

“relevant order” means an order under paragraph 8(2) of Schedule 12 to the 2003 Act in respect of the original sentence.

Offence committed during operational period of suspended sentence of service detention

132.—(1) This rule applies where the court administration officer is notified of the facts mentioned in section 191(2)(a) and (b) and (6)(b).

(2) Where this rule applies, in this Part—

“the relevant facts” means the facts mentioned in those paragraphs;

“the original sentence” means the suspended sentence of service detention mentioned in section 191(2)(a);

- “the relevant period” means the operational period of that sentence;
- “the new offence” means the offence mentioned in section 191(2)(b);
- “summons” means a summons under section 191(6);
- “warrant” means a warrant under that subsection;
- “relevant order” means an order under section 191(3) in respect of the original sentence.

Offence committed during release period of detention and training order

133.—(1) This rule applies where the court administration officer is notified of the facts mentioned in section 214(7)(a) to (c).

(2) Where this rule applies, in this Part—

- “the relevant facts” means the facts mentioned in those paragraphs;
- “the original sentence” means the order under section 211 mentioned in section 214(1); and
- “the relevant period” means the period between the offender’s release from custody under that order and the date on which the term of the order ends;
- “the new offence” has the same meaning as in section 214;
- “summons” means a summons under section 214(7);
- “warrant” means a warrant under that subsection;
- “relevant order” means an order under section 214(3) in respect of the original sentence.

Application for activation proceedings

134.—(1) This rule applies where any of rules 131 to 133 applies.

(2) The court administration officer shall notify the Director that this rule applies, and forward to the Director such of the following as is not already in the Director’s possession—

- (a) the record of the proceedings in which the original sentence was passed;
- (b) information concerning—
 - (i) the new offence, and any other offence proved to have been committed by the offender during the relevant period; and
 - (ii) the sentence passed for each such offence; and
- (c) the record of any proceedings in which a court made, or gave reasons for not making—
 - (i) a relevant order in respect of the original sentence; or
 - (ii) where rule 133 applies, an order under section 105(2) of the Powers of Criminal Courts (Sentencing) Act 2000(1) in respect of the original sentence.

(3) The Director may give written notice to the court administration officer and the offender that he requires activation proceedings to be held.

(4) A notice under paragraph (3) must be given within 28 days of the court administration officer’s compliance with paragraph (2).

(5) Where the Director gives notice under paragraph (3), the court administration officer shall forward to the Judge Advocate General the documents and information mentioned in paragraph (2)(a) to (c).

(6) The Judge Advocate General shall—

- (a) issue a summons requiring the offender to appear before the court for activation proceedings; or
 - (b) issue a warrant for the offender's arrest.
- (7) The Judge Advocate General may delegate his functions under this rule to any judge advocate.

Warrant for offender's arrest

135.—(1) This rule applies where the Judge Advocate General issues a warrant for the offender's arrest.

- (2) The warrant shall be addressed to—
 - (a) one or more service policemen; or
 - (b) one or more officers of a civilian police force.
- (3) The warrant may not be addressed to a service policeman unless the offender is subject to service law or is a civilian subject to service discipline.
- (4) The warrant shall state the relevant facts.
- (5) Where the warrant is addressed to an officer of a civilian police force, it shall state that the offender must be transferred to service custody as soon as is practicable after arrest.
- (6) Where the offender is arrested under the warrant, or, if arrested by an officer of a civilian police force, is transferred to service custody—
 - (a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court;
 - (b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released;
 - (c) the court administration officer shall appoint a time and place for activation proceedings; and
 - (d) the offender shall be brought before the court at that time and place, unless he has been released from custody under rule 136(4).

Review of custody

- 136.**—(1) Paragraphs (2) to (5) apply where—
- (a) the offender is brought before a judge advocate under rule 135(6); or
 - (b) the keeping of the offender in service custody has been authorised by an order under paragraph (2) and he is brought before a judge advocate before the expiry of the period for which it was so authorised.
- (2) The judge advocate may by order authorise the keeping (or further keeping) of the offender in service custody if satisfied that there are substantial grounds for believing that, if released from service custody, the person would fail to attend the court as required.
- (3) The period for which the judge advocate may, by an order under paragraph (2), authorise the keeping of the offender in service custody is such period, ending not later than 8 days after the day on which the order is made, as the judge advocate considers appropriate in all the circumstances.
- (4) If the judge advocate makes no order under paragraph (2), the offender must be released from service custody without delay; but this is subject to paragraph (5).
- (5) The judge advocate may require the offender to comply, before release or later, with such requirements as appear necessary to secure his attendance before the court.

(6) Where the keeping of the offender in service custody is authorised by an order under paragraph (2), he must be released on the expiry of the period for which it was so authorised unless a judge advocate has made a further order under that paragraph.

(7) Any requirement imposed by virtue of paragraph (5) may be varied or discharged by a judge advocate on application by the offender or the Director.

(8) Section 107(5) and (6) shall apply in relation to a requirement imposed by virtue of paragraph (5) as they apply in relation to a requirement imposed by virtue of section 107(3)(a).

Disclosure by Director

137.—(1) This rule applies where activation proceedings are to be held.

(2) As soon as is reasonably practicable, and in any event not less than 7 days before the time appointed for the commencement of the proceedings, the Director shall serve on the offender such of the information and documents mentioned in rule 134(2) as are in his possession.

Procedure in activation proceedings

138.—(1) This rule applies where the offender appears or is brought before the court for activation proceedings.

(2) The judge advocate shall ask the offender whether he admits the relevant facts.

(3) If the offender does not admit the relevant facts—

- (a) the Director may adduce evidence of them;
- (b) the offender may cross-examine any witness called by the Director, and may give evidence or call witnesses; and
- (c) the judge advocate shall determine whether the relevant facts are proved.

(4) Paragraphs (5) to (9) apply where—

- (a) the offender admits the relevant facts, or
- (b) the judge advocate determines that the relevant facts are proved.

(5) The Director shall address the court on the circumstances of the offence for which the original sentence was passed, and the new offence.

(6) The offender may adduce evidence as to his character, and such evidence may be given orally or in writing.

(7) The offender may address the court as to—

- (a) whether the court should make a relevant order; and
- (b) the terms in which any such order should be made.

(8) The court's decision as to whether to make a relevant order, and if so in what terms, shall be determined by a majority of the votes of the members of the court.

(9) In the case of an equality of votes, the judge advocate has a casting vote.

(10) Where the court makes a relevant order, rule 117 shall apply in relation to the making of the order as it applies in relation to the passing of a sentence, with the omission of paragraph (2).