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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Armed Forces (Retrial for Serious Offences) Order 2013**

**PART 7**

**Custody**

**Custody before application under article 8(1)**

**20.**—(1) Where a person charged in accordance with article 7(10)(a) is not kept in service custody, his commanding officer must give him notice to attend before a judge advocate —

- (a) at such place, and
- (b) at such time not later than 24 hours after being released,

as the commanding officer decides.

(2) Where such a person is kept in service custody after being charged, he must be brought before a judge advocate as soon as practicable, and in any event not more than 24 hours after he is charged.

(3) For the purposes of calculating the period referred to in paragraph (1) or (2) the following are to be disregarded—

- (a) Saturday;
- (b) Sunday;
- (c) Christmas Day;
- (d) Good Friday; and
- (e) any day which is a bank holiday under the Banking and Financial Dealings Act 1971(1) in the part of the United Kingdom where the person is to appear before the judge advocate as mentioned in paragraph (1) or, where paragraph (2) applies, is for the time being detained.

(4) Where a person appears or is brought before a judge advocate in accordance with paragraph (1) or (2), the judge advocate may either—

- (a) make an order that the person should not be kept in service custody, but, if notice of an application is served on him under article 12(2), must appear before the Court Martial Appeal Court at the hearing of that application; or
- (b) make an order that the person be kept in service custody to be brought before a judge advocate under article 21(2).

(5) If the judge advocate makes an order under paragraph (4)(a), he may revoke the order and make an order authorising the person to be kept in service custody as referred to in paragraph (4)(b).

(6) In paragraph (7) the “relevant period”, in relation to a person who, pursuant to an order under paragraph (4), is released from service custody subject to requirements under section 107(3) of the 2006 Act or kept in service custody, means—

- (a) the period of 42 days beginning with the day on which the judge advocate makes the order under paragraph (4); or
  - (b) that period as extended or further extended under paragraph (8).
- (7) If at the end of the relevant period no notice of an application under article 8(1) in relation to the person has been given under article 12(1), the person—
- (a) if released from service custody pursuant to an order under paragraph 4(a), subject to requirements under section 107(3) of the 2006 Act, ceases to be subject to those requirements; and
  - (b) if in service custody pursuant to an order under paragraph (4)(b) or (5), must be released immediately.
- (8) A judge advocate may, on the application of a prosecuting officer before the period mentioned in paragraph 6(a) expires, extend or further extend that period until a specified date, but only if satisfied that—
- (a) the need for the extension is due to some good and sufficient cause; and
  - (b) the Service Prosecuting Authority has acted with all due diligence and expedition.
- (9) An application under paragraph (8) must be served on the court administration officer and the acquitted person.

### **Custody before hearing under article 13(1)**

- 21.**—(1) This article applies where notice of an application is given under article 12(1).
- (2) If the person to whom the application relates is in service custody under article 20(4)(b) or (5), he must be brought before a judge advocate as soon as practicable and, in any event, within 48 hours after the notice is given.
- (3) If that person is not in service custody pursuant to an order under article 20(4)(b) or (5), the judge advocate may, where an application is made to the judge advocate by the prosecuting officer and served by that officer on the court administration officer and the acquitted person—
- (a) issue a notice requiring the person to appear before the Court Martial Appeal Court at the hearing of the application; or
  - (b) issue a warrant for the person’s arrest;
- (4) A warrant under paragraph (3)(b) may be issued at any time whether or not a notice has previously been issued under paragraph (3)(a).
- (5) Where a notice is issued under paragraph (3)(a), the time and place at which the person must appear may be specified either—
- (a) in the notice; or
  - (b) in a subsequent direction of the judge advocate.
- (6) The time or place specified may be varied from time to time by a direction of a judge advocate.
- (7) A person arrested under a warrant under paragraph (3)(b) must be brought before a judge advocate as soon as practicable and in any event within 48 hours after his arrest.
- (8) If a person is brought before a judge advocate under paragraph (2) or (7) the judge advocate must either—
- (a) by order authorise the keeping of the person in service custody to be brought before the Court Martial Appeal Court at the hearing of the application; or
  - (b) order him to be released from service custody to appear before the Court Martial Appeal Court at the hearing of the application.

(9) If a person is released from service custody pursuant to an order under paragraph (8)(b), a judge advocate may revoke the order and authorise the keeping of the person in service custody as referred to in paragraph (8)(a).

(10) For the purposes of calculating the period referred to in paragraph (2) or (7), the following are to be disregarded—

- (a) Saturday;
- (b) Sunday;
- (c) Christmas Day;
- (d) Good Friday; and
- (e) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the person is for the time being detained.

### **Provision supplementary to articles 20 and 21**

**22.**—(1) Where a judge advocate authorises the keeping of a person in service custody under article 20(4) or 21(8)—

- (a) section 105(2) to (4) of the 2006 Act,
- (b) section 108(4) of that Act (so far as it relates to section 105(2) to(4)), and
- (c) section 108(1) and (5) to (8) of that Act,

shall apply as they apply to the power of a judge advocate by order under section 105(2) of the 2006 Act to authorise the keeping of an accused in service custody.

(2) Section 107 of the 2006 Act shall apply to an order under article 20(4)(a) or article 21(8)(b) as it applies where, at a hearing under section 105(1) of that Act, a judge advocate does not authorise keeping the accused in service custody.

(3) Rules made under section 112 of the 2006 Act (Custody proceedings rules) shall apply to proceedings under articles 20 and 21 as they apply to proceedings under section 105(1), or to an application under section 107(4), of the 2006 Act.

(4) Paragraphs (1) to (3) are subject to articles 20(7) and 21(2).

(5) Where a person is to appear or be brought before a judge advocate pursuant to article 20 or 21—

- (a) the prosecuting officer must serve notice of the need for such a hearing on the court administration officer; and
- (b) the prosecuting officer must as soon as is practicable provide a copy of the charge sheet and case papers to the court administration officer.

(6) On receipt of the charge sheet and case papers the court administration officer must—

- (a) forward them to the Judge Advocate General and request him to specify a judge advocate for the proceedings; and
- (b) appoint a time and place for the commencement of the proceedings before the judge advocate.

(7) The court administration officer must serve notice of any time or place appointed by him for the commencement of the proceedings on—

- (a) each person to whom the proceedings relate;
- (b) the legal representative (if any) of each person;
- (c) the commanding officer of such person;
- (d) the Director; and

(e) any such person as the Judge Advocate General may direct.

(8) The court administration officer must forward to the registrar a copy of any record made in the proceedings.

(9) In paragraph (5)(b) case papers has the same meaning as in article 7(11).

### **Taking a person into service custody**

**23.**—(1) Where—

(a) a judge advocate authorises keeping the person in service custody, and

(b) that person is not before the judge advocate when the order is made,

the judge advocate must order him to surrender himself forthwith to service custody.

(2) Where a person surrenders himself into service custody in compliance with an order under paragraph (1), a judge advocate must authorise his detention in service custody.

(3) A person who has been ordered to surrender to service custody under paragraph (1) may be arrested without a warrant by a service policeman if he fails without reasonable cause to surrender to custody in accordance with the order.

(4) A person arrested under paragraph (3) must be brought as soon as practicable, and, in any event, not more than 24 hours after he is arrested, before a judge advocate and the judge advocate must authorise the keeping of the person in service custody.

(5) For the purposes of calculating the period referred to in paragraph (4), the following are to be disregarded—

(a) Saturday;

(b) Sunday;

(c) Christmas Day;

(d) Good Friday;

(e) any day which is a bank holiday under the Banking and Financial Dealings Act 1971(2) in the part of the United Kingdom where the person is for the time being detained.

### **Bail and custody during and after hearing**

**24.**—(1) The Court Martial Appeal Court may, at any adjournment of a hearing under article 13(1)—

(a) remand the person to whom the application relates on bail; or

(b) remand him in custody.

(2) At a hearing at which the Court Martial Appeal Court—

(a) dismisses the application, and

(b) also gives the prosecuting officer leave to appeal against its decision or the prosecuting officer gives notice that he intends to apply for such leave,

the court may make such order as it sees fit for the custody or bail of the person pending determination of the appeal.

(3) For the purpose of paragraph (2), the determination of an appeal is pending—

(a) until any application for leave to appeal is disposed of, or the time within which it must be made expires;

(b) if leave to appeal is granted, until the appeal is disposed of.

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(2) 1971 c. 80.

- (4) The court may at any time, as it sees fit—
- (a) revoke bail granted under this article and remand the person in custody; or
  - (b) vary an order under paragraph (2).

(5) Where—

- (a) the court revokes a person's bail under paragraph (4), and
- (b) that person is not before the court when his bail is revoked,

the court must order him to surrender forthwith to custody.

(6) Where a person surrenders himself into custody in compliance with an order under paragraph (5), the court must remand him in custody.

(7) The Court Martial Appeal Court (Bail) Order 2009(3) shall apply to orders made by the Court Martial Appeal Court under paragraph (2) as if they were orders made under that Order.

### **Service custody after hearing where retrial ordered**

**25.—**(1) At a hearing at which the Court Martial Appeal Court makes an order for a person to be retried under article 9(1)(a) it may—

- (a) by order authorise the keeping of that person in service custody—
  - (i) for such period, ending not later than 8 days after the order is made, as the court think appropriate; or
  - (ii) if the person is legally represented and consents, for such period, not exceeding 28 days, as the court think appropriate; or
- (b) require that person to comply with such requirements as seem to the court to be necessary for a purpose mentioned in section 107(3) of the 2006 Act.

(2) Where the person is in service custody the court may under paragraph (1)(b) impose a requirement that must be complied with before the person may be released.

(3) An order under paragraph (1)(a) is to be treated, for the purposes of Part 4 of the 2006 Act, as made under section 105(2) of that Act.

(4) A requirement imposed under paragraph (1)(b) is to be treated for the purposes of Part 4 of that Act, as imposed under section 107(3) of that Act (and where appropriate, by virtue of section 107(3)(a) of that Act).