
STATUTORY INSTRUMENTS

2009 No. 1098

The Armed Forces (Custody Proceedings) Rules 2009

PART 4

NOTIFICATIONS

Notification of application for an extension of custody without charge

24.—(1) Where a commanding officer proposes to make an application for an extension of custody without charge under section 101(1) he, or someone acting on his behalf, shall—

- (a) notify the court administration officer of that fact and the necessary information; and
 - (b) inform the person arrested in writing of that fact and of the information specified in paragraph (2)(f), (g) and (h) and, if the person arrested has not appointed a legal representative, of the entitlement to legal representation at the hearing of the application.
- (2) The necessary information to be notified under paragraph (1)(a) is—
- (a) the name, rank, appointment and location of the commanding officer;
 - (b) the name, date of birth and location of the person arrested and, where applicable, his rank or rate, service number and unit;
 - (c) the name and address of the legal representative of the person arrested, if known;
 - (d) the nature of the offence or offences for which the person arrested has been arrested;
 - (e) the time of the arrest;
 - (f) the general nature of the evidence on which the person arrested has been arrested;
 - (g) what inquiries relating to the offence have been made and what further inquiries are proposed; and
 - (h) the commanding officer's reasons for believing that the continued keeping of the person arrested in custody is justified.
- (3) In relation to a person arrested under section 67 after—
- (a) being arrested by a civilian policeman, or
 - (b) surrendering to a civilian policeman as being a person subject to service law who has deserted or is absent without leave,

the reference in paragraph (2)(e) to the time of the arrest is to the time of the earlier arrest or of the surrender, as the case may be.

Notification that accused is being kept in custody after charge

25.—(1) Where a person ("the accused") is kept in custody after being charged, the commanding officer, or someone acting on his behalf, shall as soon as practicable—

- (a) notify the court administration officer of that fact and the necessary information; and

- (b) inform the accused in writing that he is to be brought before a judge advocate as soon as practicable and of the information specified in paragraph (2).
- (2) The necessary information to be notified under paragraph (1) is—
 - (a) the name, rank, appointment and location of the commanding officer;
 - (b) the name, date of birth and location of the accused and, where applicable, his rank or rate, service number and unit;
 - (c) the name and address of the accused's legal representative, if known;
 - (d) the charge or charges;
 - (e) the date and time that the accused was charged;
 - (f) the commanding officer's reasons for believing that the continued keeping of the accused in custody is justified; and
 - (g) if he considers it necessary, any requirements that the commanding officer believes that the judge advocate should impose under section 107(3) of the Act.
- (3) For the purposes of this rule, a person is to be treated as charged with an offence when a charge is brought under section 120(2) or 122(1).
- (4) On receipt of such notification, the court administration officer shall arrange a hearing as soon as reasonably practicable.

Notification that accused has been arrested and taken into custody after charge

26.—(1) Subject to paragraph (3), where a person (“the accused”) is arrested under section 110(1) or 111(1) and kept in custody, the accused's commanding officer, or someone acting on his behalf, shall as soon as practicable—

- (a) notify the court administration officer of that fact and the necessary information; and
- (b) inform the accused in writing that he is to be brought before a judge advocate as soon as practicable and, if the accused has been arrested under section 110(1), the information specified in paragraph (2)(f).
- (2) The necessary information to be notified under paragraph (1)(a) is—
 - (a) the name, rank, appointment and location of the commanding officer;
 - (b) the name, date of birth and location of the accused and, where applicable, his rank or rate, service number and unit;
 - (c) the name and address of the accused's legal representative, if known;
 - (d) the charge or charges;
 - (e) the date, time and place of the arrest; and
 - (f) if the arrest is made under section 110(1), the commanding officer's reasons for believing that the keeping of the accused in custody is justified.
- (3) Paragraph (1) shall not apply where the accused is already before a judge advocate when the arrest is made.
- (4) On receipt of notification under paragraph (1)(a), the court administration officer shall arrange a hearing as soon as reasonably practicable.

Request by the commanding officer for a review

27.—(1) Subject to paragraph (3), a request for a review under section 108(2)(b) shall be made to the court administration officer by the commanding officer of the person to whom the proposed review relates (“the accused”) and shall be supported by the following information—

- (a) the name, rank, appointment and location of the commanding officer;
- (b) the name, date of birth and location of the accused and, where applicable, his rank or rate, service number and unit;
- (c) the name and address of the accused's legal representative, if known;
- (d) the charge or charges;
- (e) the date on which the extant order under section 105(2) was made and the period of custody authorised by it;
- (f) the circumstances which have caused the commanding officer to consider that the grounds on which that order was made have ceased to exist; and
- (g) if it appears to the commanding officer that requirements should be imposed by the judge advocate under section 107(3), the suggested requirements.

(2) Where a request is made under section 108(2)(b), the commanding officer, or someone acting on his behalf, shall inform the accused of that fact in writing and of the information specified in paragraph (1)(f) and (g).

(3) Where the commanding officer requests a review under section 108(2)(b) the prosecution has begun to open its case against the accused before the Court Martial or the Service Civilian Court and at a time when that court is sitting, the request shall be made to the judge advocate for the proceedings before that court.

Written notification

28.—(1) Where—

- (a) a notification required to be given to the court administration officer under rule 24(1)(a), 25(1)(a) or 26(1)(a) is given orally, or
- (b) a request under rule 27(1) is made orally,

the commanding officer shall ensure that a written notice containing the information given in support of the notification or request is served on the court administration officer as soon as practicable thereafter.

Application for variation or discharge of a requirement imposed under section 107(3)

29.—(1) An application under section 107(4) shall be made to the court administration officer and be supported by the following information—

- (a) the name, rank, appointment and location of the commanding officer of the person to whom the application relates ("the accused");
- (b) the name, date of birth and location of the accused and, where applicable, his rank or rate, service number and unit;
- (c) the name and address of the accused's legal representative, if known;
- (d) the charge or charges;
- (e) the date of the hearing under section 105(1) and any requirements imposed under section 107(3) (including any such requirement as previously varied or discharged under section 107(4));
- (f) the circumstances which have caused the applicant to consider that any such requirement should be varied or discharged; and
- (g) whether the applicant seeks the variation or discharge of the requirement, and, if he seeks variation, the variation sought.

(2) Where an application is made under section 107(4) by the accused's commanding officer, the commanding officer, or someone acting on his behalf, shall inform the accused of that fact in writing and of the information specified in paragraph (1)(f) and (g).

(3) Where an application is made under section 107(4) by or on behalf of the accused, the accused, or someone acting on his behalf, shall inform his commanding officer of that fact in writing and of the information specified in paragraph (1)(f) and (g).

(4) Where an application under section 107(4) is made orally, the applicant shall ensure that a written notice containing the information specified in paragraph (1) is served on the court administration officer, and a copy shall be served on the commanding officer or the accused, as the case may be, as soon as practicable thereafter.

(5) Where an application under section 107(4) is made after the prosecution has begun to open its case against the accused before the Court Martial or the Service Civilian Court and at a time when that court is sitting, the request shall be made to the judge advocate for the proceedings before that court.