

SCHEDULE 2

Rule 37

TRANSITIONAL PROVISIONS

PART 1

General

Interpretation

1. In this Schedule, and in any provision treated by virtue of this Schedule as inserted or substituted in these Rules—

“commencement” means the beginning of 31st October 2009;

“AA 1955” means the Army Act 1955(1);

“AFA 1955” means the Air Force Act 1955(2);

“NDA 1957” means the Naval Discipline Act 1957(3);

“NSDR” means the Naval Summary Discipline Regulations (July) 2008 or the Naval Summary Discipline Regulations (February) 2009(4), as the case may be;

“the Transitional Order” means the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009(5);

“naval suspended sentence” means a sentence of detention under section 43(1)(e) of NDA 1957 which has been suspended under section 90(1) of that Act, including one awarded and suspended after commencement by virtue of article 55 of the Transitional Order (award of SDA sentence where finding of guilt recorded before commencement);

“the new provisions” means the Act, the Transitional Order and these Rules.

Proven offences

2. In these Rules, references to proven offences include—

(a) offences of which a person has been convicted by court-martial; and

(b) offences as respects which—

(i) a finding that a charge has been proved has been recorded under section 76B(7) of AA 1955 or AFA 1955; or

(ii) a finding of guilt has been recorded under section 52D(7) of NDA 1957.

Charges

3. In these Rules, references to a charge include—

(a) a charge which by virtue of article 46 or 54(5) of the Transitional Order is regarded for the purposes of Part 5 of the Act as allocated for summary hearing; and

(b) a charge which is so regarded by virtue of having been referred to the accused’s commanding officer under section 125(2)(e) of the Act following initial allocation of the

(1) 1955 c. 18.

(2) 1955 c. 19.

(3) 1957 c. 53.

(4) These Regulations are made by the Defence Council under sections 43, 52E and 52F of NDA 1957 and published in the Manual of Naval Law.

(5) S.I. 2009/1059.

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charge (or of a charge for which it was substituted or to which it was added) for Court Martial trial under article 44 or 47(2) of the Transitional Order.

Charges which may be heard summarily only with permission or by senior officer

4. In these Rules, references to an offence within section 54(2) of the Act include an offence which by virtue of article 16 of the Transitional Order (SDA civil offences) is treated as such an offence for the purposes of section 54(1).

Delegation and subordinate commanders

5.—(1) A commanding officer shall not make a delegation under rule 3(1) in relation to a charge if a sentence awarded to the accused under AA 1955, AFA 1955 or NDA 1957 (including one awarded after commencement by virtue of article 55 of the Transitional Order) is for the time being suspended, within the meaning given by article 93 of that Order.

(2) Where—

- (a) before commencement, an officer did anything which, had the new provisions been in force, would have constituted a delegation of his relevant functions in relation to a charge, and
- (b) the officer did nothing before commencement which, had the new provisions been in force, would have constituted a revocation of the delegation,

the officer is to be regarded as having delegated his relevant functions in relation to the charge under rule 3(1).

(3) In this paragraph “relevant function” has the same meaning as in rule 3.

Preliminary steps taken before commencement

6. Where—

- (a) an act was done before commencement, and
- (b) had the new provisions been in force when the act was done, the act would have been done in accordance with any provision of rules 5, 6, 8, 9, 10(1) to (5), 31, 32 and 33(1) to (5),

the act is to be regarded for the purposes of these Rules as having been done in accordance with that provision, at the time when it was in fact done.

PART 2

Activation of naval suspended sentence

Approval by higher authority

7. A commanding officer may not make an activation order in relation to a naval suspended sentence, or include any provision in such an order by virtue of section 193(4) of the Act, without the written approval of—

- (a) Commander-in-Chief Fleet;
- (b) Commander-in-Chief Naval Home Command;
- (c) Deputy Commander-in-Chief Fleet;
- (d) Flag Officer Sea Training;
- (e) Flag Officer Scotland, Northern England and Northern Ireland;

- (f) Chief of Staff (Capability) to Commander-in-Chief Fleet;
- (g) Chief of Staff (Aviation) to Commander-in-Chief Fleet;
- (h) Commander Operations;
- (i) Commander British Forces Gibraltar;
- (j) United Kingdom Maritime Component Commander Bahrain; or
- (k) an officer under the command of an officer mentioned in any of sub-paragraphs (a) to (j), to whom that officer has delegated in writing the power to give such approval.

Preliminary procedures

8.—(1) This paragraph applies where, if a commanding officer found a charge proved, he would (subject to paragraph 7) have power to make an activation order in relation to a naval suspended sentence.

(2) Rule 8(1)(d) applies.

(3) Rule 8(1)(e) applies, with the following modifications.

(4) If the naval suspended sentence was awarded at a summary trial under NDA 1957, for paragraph (i) substitute—

“(i) a copy of—

- (aa) the form S241 (charge sheet and record of punishment) relating to the offence or offences for which the naval suspended sentence was awarded, and to the sentence;
- (bb) the warrant required by regulation 45 of NSDR (approval of punishments by higher authority) in relation to the sentence;”.

(5) If the naval suspended sentence was awarded by the summary appeal court, for paragraph (i) substitute—

“(i) a copy of any record of the proceedings before the summary appeal court in which the naval suspended sentence was awarded;”.

(6) In paragraph (ii), the reference to proven offences committed by the offender during the operational period of the suspended sentence of service detention is to proven offences committed by the offender since the naval suspended sentence was suspended.

(7) In paragraph (iii), the reference to the suspended sentence of service detention is to the naval suspended sentence.

(8) After paragraph (iii), insert—

“(iv) copies of—

- (aa) the written records of any hearings before an officer at which reasons were given for any decision not to make an order under section 91B of NDA 1957 in relation to the naval suspended sentence by virtue of section 91B(1)(b);
- (bb) any records of proceedings before the summary appeal court, a court-martial or the Courts-Martial Appeal Court in which reasons were given for any decision not to make an order under section 91 or 91B of NDA 1957 in relation to the naval suspended sentence; and”.

Activation following finding that a charge has been proved

9.—(1) Paragraphs 10 and 11 apply where a commanding officer—

- (a) records a finding that a charge has been proved; and

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- (b) by virtue of that finding, has power (subject to paragraph 7) to make an activation order in respect of a naval suspended sentence.

10.—(1) Rule 23 applies, with the following modifications.

(2) In paragraph (4), for “In considering whether to make an activation order and, if such an order is to be made, what its terms should be” substitute “In considering whether to seek approval for the making of an activation order and, if so, on what terms”.

(3) In paragraph (4)(a), the reference to the suspended sentence of service detention is to the naval suspended sentence.

(4) In paragraph (4)(b), the reference to proven offences committed by the offender during the operational period of the suspended sentence of service detention is to proven offences committed by the offender since the naval suspended sentence was suspended.

(5) For paragraph (4)(c), substitute—

“(c) the reasons given—

- (i) by an officer for any decision not to make an order under section 91B of NDA 1957 in relation to the naval suspended sentence by virtue of section 91B(1)(b);
- (ii) by the summary appeal court, a court-martial or the Courts-Martial Appeal Court for any decision not to make an order under section 91 or 91B of NDA 1957 in relation to the naval suspended sentence;
- (iii) for any decision not to make an order under section 191 or 193 of the Act in relation to the naval suspended sentence;”.

(6) For paragraph (5), substitute—

“(5) The commanding officer shall—

- (a) inform the accused whether an activation order is to be made;
- (b) if he has not sought approval for the making of an activation order, give his reasons for his decision not to do so;
- (c) if he has sought such approval—
 - (i) give his reasons for his decision to do so; and
 - (ii) inform the accused of any reasons given by another officer for that officer’s decision to give or (as the case may be) to withhold such approval.”

11. Rule 27(2) is to be read as requiring the written record of the hearing to contain the matters mentioned in rule 23(5) as substituted by paragraph 10(6) above.

Notification of finding to court administration officer

12. Rule 28 applies where—

- (a) a commanding officer records a finding that a charge has been proved; and
- (b) the Court Martial would, by virtue of that finding, have power to issue a summons or warrant under article 96(8) of the Transitional Order (offender subject to naval suspended sentence passed by court-martial).

Part 3 hearings

13. Part 3 of these Rules (except rule 30) applies, as modified by paragraphs 14 to 16, where—

- (a) a person has been convicted (before or after commencement) of an offence in the British Islands;

- (b) by virtue of that conviction, the person's commanding officer has power (subject to paragraph 7) to make an activation order in respect of a naval suspended sentence; and
- (c) the commanding officer has decided to hold a hearing as regards the making of an activation order.

14.—(1) Rule 31(1)(b) is modified as follows.

(2) If the naval suspended sentence was awarded at a summary trial under NDA 1957, for paragraph (i) substitute—

“(i) a copy of—

- (aa) the form S241 (charge sheet and record of punishment) relating to the offence or offences for which the naval suspended sentence was awarded, and to the sentence;
- (bb) the warrant required by regulation 45 of NSDR (approval of punishments by higher authority) in relation to the sentence;”.

(3) If the naval suspended sentence was awarded by the summary appeal court, for paragraph (i) substitute—

“(i) a copy of any record of the proceedings before the summary appeal court in which the naval suspended sentence was awarded;”.

(4) In paragraph (ii), the reference to proven offences committed by the offender during the operational period of the suspended sentence of service detention is to proven offences committed by the offender since the naval suspended sentence was suspended.

(5) In paragraph (iii), the reference to the suspended sentence of service detention is to the naval suspended sentence.

(6) After paragraph (iii), insert—

“(iiia) copies of—

- (aa) the written records of any hearings before an officer at which reasons were given for any decision not to make an order under section 91B of NDA 1957 in relation to the naval suspended sentence by virtue of section 91B(1)(b);
- (bb) any records of proceedings before the summary appeal court, a court-martial or the Courts-Martial Appeal Court in which reasons were given for any decision not to make an order under section 91 or 91B of NDA 1957 in relation to the naval suspended sentence;”.

15.—(1) Rule 34 is modified as follows.

(2) In paragraph (3), for “In considering whether to make an activation order and, if such an order is to be made, what its terms should be” substitute “In considering whether to seek approval for the making of an activation order and, if so, on what terms”.

(3) In paragraph (3)(a), the reference to the suspended sentence of service detention is to the naval suspended sentence.

(4) In paragraph (3)(b), the reference to proven offences committed by the offender during the operational period of the suspended sentence of service detention is to proven offences committed by the offender since the naval suspended sentence was suspended.

(5) For paragraph (3)(c), substitute—

“(c) the reasons given—

- (i) by an officer for any decision not to make an order under section 91B of NDA 1957 in relation to the naval suspended sentence by virtue of section 91B(1)(b);

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- (ii) by the summary appeal court, a court-martial or the Courts-Martial Appeal Court for any decision not to make an order under section 91 or 91B of NDA 1957 in relation to the naval suspended sentence; and
 - (iii) for any decision not to make an order under section 191 or 193 of the Act in relation to the naval suspended sentence;”.
- (6) For paragraph (4), substitute—
- “(4) The commanding officer shall—
- (a) inform the offender whether an activation order is to be made;
 - (b) if he has not sought approval for the making of an activation order, give his reasons for his decision not to do so;
 - (c) if he has sought such approval—
 - (i) give his reasons for his decision to do so; and
 - (ii) inform the offender of any reasons given by another officer for that officer’s decision to give or (as the case may be) to withhold such approval.”

16. Rule 36(1)(c) and (d) are to be read as requiring the written record of the hearing to contain the matters mentioned in rule 34(4) as substituted by paragraph 15(6) above.