
STATUTORY INSTRUMENTS

2009 No. 2041

The Armed Forces (Court Martial) Rules 2009

PART 18

ANCILLARY PROCEEDINGS

CHAPTER 2

Other ancillary proceedings

Review of service compensation order

145.—(1) An application to the court under section 177 (application for discharge of service compensation order or reduction of amount payable)—

- (a) shall be made in writing to the court administration officer;
- (b) shall be served on the person in whose favour the order was made;
- (c) shall state whether the applicant wishes the court—
 - (i) to discharge the order; or
 - (ii) to reduce the amount which remains to be paid, and if so by how much;
- (d) shall specify which of the grounds mentioned in section 177(3) applies; and
- (e) shall state that the application may be granted without a hearing if the person in whose favour the order was made does not serve notice on the court administration officer, within 14 days of being served with the application, that he opposes it.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) The Judge Advocate General may—

- (a) grant the application;
- (b) exercise the court's powers under section 177 in a way other than that proposed in the application;
- (c) dismiss the application; or
- (d) direct a hearing of the application.

(4) The Judge Advocate General may not (without a hearing) grant the application or otherwise exercise the court's powers under section 177 unless—

- (a) at least 14 days have elapsed since the application was served on the person in whose favour the order was made; and
- (b) that person has not served notice on the court administration officer that he opposes the application.

(5) Where the Judge Advocate General (without a hearing) grants the application, otherwise exercises the court's powers under section 177 or dismisses the application, the court administration officer shall give notice in writing of that decision to the applicant and the person in whose favour the order was made.

(6) Where the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the applicant, and the person in whose favour the order was made, of the time and place appointed for the hearing.

Application for time to pay financial penalty

146.—(1) An application to the court under section 251(3) (application for order allowing time for payment of amount due in respect of fine or service compensation order, or directing payment by instalments)—

- (a) shall be made in writing to the court administration officer;
- (b) shall state whether the applicant wishes the court—
 - (i) to allow time for payment of the amount due in respect of the fine or service compensation order, and if so how much time; or
 - (ii) to direct payment of that amount by instalments, and if so by instalments of what amounts and payable on what dates;
- (c) shall specify the grounds on which the application is made;
- (d) if made in respect of a service compensation order—
 - (i) shall be served on the person in whose favour that order was made; and
 - (ii) shall state that it may be granted without a hearing if that person does not serve notice on the court administration officer, within 14 days of being served with the application, that he opposes it.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) The Judge Advocate General may—

- (a) make the proposed, or any other, order under section 251;
- (b) dismiss the application; or
- (c) direct a hearing of the application.

(4) But the Judge Advocate General may not (without a hearing) make an order under section 251 in respect of a service compensation order unless—

- (a) at least 14 days have elapsed since the application for the order was served on the person in whose favour the service compensation order was made; and
- (b) that person has not served notice on the court administration officer that he opposes the application.

(5) Where the Judge Advocate General (without a hearing) makes an order under section 251 or dismisses the application, the court administration officer shall give notice in writing of that decision to—

- (a) the applicant; and
- (b) where the application is in respect of a service compensation order, the person in whose favour that order was made.

(6) Where the Judge Advocate General directs a hearing of the application, the court administration officer shall notify—

- (a) the applicant, and
- (b) where the application is in respect of a service compensation order, the person in whose favour that order was made,

of the time and place appointed for the hearing.

(7) This rule shall apply in relation to an application to the court under section 251(4) (application for variation of order under section 251) as if for paragraph (1)(b) there were substituted—

“(b) shall state the respects in which the applicant wishes the court to vary the order under section 251;”.

Remission of fine

147.—(1) The court's power to remit the whole or part of a fine under section 267 may be exercised—

- (a) on an application to the court under section 251(3) or (4) (whether at a hearing under rule 146 or otherwise); or
- (b) on an application under this rule.

(2) An application under this rule—

- (a) shall be made in writing to the court administration officer;
- (b) shall specify those financial circumstances of the applicant of which the court was unaware when it fixed the amount of the fine; and
- (c) shall include an explanation for the applicant's failure to co-operate with the court in its inquiry under section 249.

(3) The court administration officer shall forward the application to the judge advocate for the proceedings in which the fine was imposed.

(4) The judge advocate may—

- (a) exercise any of the court's powers under section 267;
- (b) dismiss the application; or
- (c) direct a hearing of the application.

(5) Where, without a hearing, the judge advocate exercises any of the court's powers under section 267 or dismisses the application, the court administration officer shall notify the applicant in writing of the judge advocate's decision.

(6) Where the judge advocate directs a hearing of the application, the court administration officer shall notify the applicant of the time and place appointed for the hearing.

Remission of case by Appeal Court for consideration of service restraining order

148.—(1) This rule applies where the Appeal Court allows an appeal against conviction but remits the case under section 230(3) for the court to consider whether to proceed under section 229 (service restraining orders).

(2) The court administration officer shall appoint a time and place for proceedings under section 229.

(3) Any person to whom notice of the proceedings is given is entitled to be heard at the proceedings.

(4) The person whose appeal was allowed need not attend the proceedings, but the court may make an order under section 229 in his absence.

Variation or revocation of service restraining order

149.—(1) An application under section 232(1) for the variation or revocation of a service restraining order—

- (a) shall be made in writing to the court administration officer;

- (b) shall specify whether the applicant wishes the court—
 - (i) to revoke the order; or
 - (ii) to vary the order, and if so how; and
- (c) shall specify the grounds on which it is made.
- (2) The court administration officer shall forward the application to the judge advocate for the proceedings in which the order was made.
- (3) The judge advocate may—
 - (a) dismiss the application; or
 - (b) direct a hearing of the application.
- (4) Where the judge advocate dismisses the application without a hearing, the court administration officer shall notify the applicant in writing of the judge advocate's decision.
- (5) Where the judge advocate directs a hearing of the application, the court administration officer shall notify—
 - (a) the applicant, and
 - (b) every other person mentioned in the order,of the time and place appointed for the hearing.
- (6) In this rule “the order” means the order under section 229 as respects which the application is made.

Variation or revocation of order for recognizance

- 150.**—(1) An application to the court under section 235(4) for the variation or revocation of an order for a service parent or guardian to enter into a recognizance—
- (a) shall be made in writing to the court administration officer;
 - (b) shall specify whether the applicant wishes the court—
 - (i) to revoke the order; or
 - (ii) to vary the order, and if so how; and
 - (c) shall specify the grounds on which it is made.
- (2) The court administration officer shall forward the application to the judge advocate for the proceedings in which the order was made.
- (3) The judge advocate may—
- (a) vary or revoke the order;
 - (b) dismiss the application; or
 - (c) direct a hearing of the application.
- (4) Where, without a hearing, the judge advocate varies or revokes the order or dismisses the application, the court administration officer shall notify the applicant in writing of the judge advocate's decision.
- (5) Where the judge advocate directs a hearing of the application, the court administration officer shall notify the applicant of the time and place appointed for the hearing.
- (6) In this rule “the order” means the order under section 233 as respects which the application is made.

Certification of contempt of court

151.—(1) The court's powers under section 311(2) (certification of contempt of court) may be exercised only at a hearing under this rule.

(2) If so directed by a judge advocate, the court administration officer shall—

(a) appoint a time and place for a hearing under this rule; and

(b) notify the contemnor and the Director of the time and place so appointed.

(3) The contemnor and the Director are entitled to be heard at the hearing.

(4) The contemnor need not attend the hearing, but the court may exercise its powers under section 311(2) in his absence.

(5) In this rule—

“the contemnor” means the person whose offence the court is to consider certifying; and

“offence” has the same meaning as in section 311.

[^{F1}Certification of failure to comply with production order

151A.—(1) The court's powers to certify a failure to comply with a production order may be exercised only at a hearing under this rule.

(2) If so directed by a judge advocate, the court administration officer shall—

(a) appoint a time and place for a hearing under this rule; and

(b) notify the relevant person and the Director of the time and place so appointed.

(3) 3) The relevant person and the Director are entitled to be heard at the hearing.

(4) The relevant person need not attend the hearing, but the court may exercise its powers in the relevant person's absence.

(5) In this rule—

“production order” means an order under paragraph 5 of Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009;

the reference to the court's powers to certify a failure to comply with a production order is to its powers under paragraph 11A(2) of that Schedule; and

“the relevant person” means the person failing to comply.]

Textual Amendments

F1 [Rule 151A](#) inserted (1.8.2013) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2013 \(S.I. 2013/1851\)](#), rules 1, 5

Changes to legislation:

There are currently no known outstanding effects for the The Armed Forces (Court Martial) Rules 2009, CHAPTER 2.