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STATUTORY INSTRUMENTS

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**2009 No. 2041**

**The Armed Forces (Court Martial) Rules 2009**

**PART 18**

**ANCILLARY PROCEEDINGS**

**CHAPTER 1**

**Community order proceedings**

**Application and interpretation of Chapter 1**

**139.**—(1) This Chapter applies where an overseas community order made by the court is in force.

(2) In this Chapter—

“the order” means the overseas community order;

“the offender” means the person in respect of whom the order was made.

**Breach of requirements: application for summons or warrant**

**140.**—(1) An application by the responsible officer for a summons or a warrant under paragraph 8 of Schedule 8 to the 2003 Act shall be made in writing to the court administration officer, specifying—

- (a) the requirement of the order with which the offender is alleged to have failed to comply;
- (b) the respect in which, and the date on which (or the dates between which) he is alleged to have failed to comply with that requirement;
- (c) whether he has within the previous twelve months been given a warning under paragraph 5 of Schedule 8 to the 2003 Act in respect of the order, and if so when and in what terms; and
- (d) any grounds on which, to the responsible officer’s knowledge, the offender is likely to rely as constituting a reasonable excuse for the alleged failure to comply.

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

(3) The Judge Advocate General may—

- (a) issue a summons under paragraph 8 of Schedule 8 to the 2003 Act requiring the offender to appear before the court for proceedings under paragraph 10 of that Schedule;
- (b) issue a warrant under paragraph 8 of that Schedule for the offender’s arrest;
- (c) dismiss the application without a hearing; or
- (d) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer of the time and place appointed for the hearing.

**Breach of requirements: arrest under warrant**

**141.**—(1) This rule applies where the Judge Advocate General issues a warrant under paragraph 8 of Schedule 8 to the 2003 Act 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 a civilian subject to service discipline.

(4) The warrant shall state the matters mentioned in rule 140(1)(a) and (b).

(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 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; and
- (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.

(7) Rule 136 (review of custody) applies in relation to an offender brought before a judge advocate under paragraph (6) as it applies in relation to an offender brought before a judge advocate under rule 135(6).

(8) Where the offender has been arrested under a warrant—

- (a) the court administration officer shall appoint a time and place for proceedings under paragraph 10 of Schedule 8 to the 2003 Act; and
- (b) the offender shall be brought before the court at that time and place, unless he has been released from custody under rule 136(4).

**Revocation of order with or without re-sentencing**

**142.**—(1) An application under paragraph 14 of Schedule 8 to the 2003 Act must be made in writing to the court administration officer, specifying—

(a) whether the applicant wants the court—

- (i) to revoke the order; or
- (ii) both to revoke the order and to deal with the offender for the offence in respect of which the order was made; and

(b) the grounds on which the application is made.

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

(3) If the application is made by the offender, the Judge Advocate General may—

- (a) revoke the order;
- (b) dismiss the application; or
- (c) direct a hearing of the application.

(4) If the application is made by the responsible officer, the Judge Advocate General may—

- (a) dismiss the application; or

- (b) direct a hearing of the application, and issue a summons under paragraph 14(5) of Schedule 8 to the 2003 Act requiring the offender to appear at the hearing.
- (5) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer (and, if he is the applicant, the offender) of the time and place appointed for the hearing.
- (6) A warrant for the offender's arrest, issued under paragraph 14(5) of Schedule 8 to the 2003 Act—
  - (a) shall be addressed to—
    - (i) one or more service policemen; or
    - (ii) one or more officers of a civilian police force;
  - (b) shall state that the offender has failed to appear in answer to a summons issued under paragraph 14(5) of Schedule 8 to the 2003 Act; and
  - (c) if addressed to an officer of a civilian police force, shall state that the offender must be transferred to service custody as soon as is practicable after arrest.
- (7) The warrant may not be addressed to a service policeman unless the offender is a civilian subject to service discipline.
- (8) Where the offender is arrested under such a 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; and
  - (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.
- (9) Rule 136 (review of custody) applies in relation to an offender brought before a judge advocate under paragraph (8) as it applies in relation to an offender brought before a judge advocate under rule 135(6).
- (10) Where the offender has been arrested under a warrant—
  - (a) the court administration officer shall appoint a time and place for the hearing of the application; and
  - (b) the offender shall be brought before the court at that time and place, unless he has been released from custody under rule 136(4).

### **Amendment of requirements**

- 143.**—(1) An application under paragraph 17 of Schedule 8 to the 2003 Act must be made in writing to the court administration officer, specifying—
- (a) the amendment of the order that the applicant wants the court to make; and
  - (b) the grounds on which the application is made.
- (2) The court administration officer shall forward the application to the Judge Advocate General.
- (3) The Judge Advocate General may—
- (a) make the proposed amendment (subject to paragraph 17(2) of Schedule 8 to the 2003 Act);
  - (b) dismiss the application; or
  - (c) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer and the offender of the time and place appointed for the hearing.

#### **Extension of unpaid work requirement**

**144.**—(1) An application under paragraph 20 of Schedule 8 to the 2003 Act must be made in writing to the court administration officer, specifying—

- (a) the period for which the applicant wants the court to extend the period of twelve months specified in section 200(2) of that Act; and
  - (b) the grounds on which the application is made.
- (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) extend the period specified in section 200(2) of the 2003 Act by a period shorter than that proposed in the application;
  - (c) dismiss the application; or
  - (d) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer and the offender of the time and place appointed for the hearing.

## **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.