
STATUTORY INSTRUMENTS

2023 No. 1097

The Armed Forces (Amendment of Court Rules) Rules 2023

Part 3

Amendment of the Armed Forces (Summary Appeal Court) Rules 2009

Amendment of the Armed Forces (Summary Appeal Court) Rules 2009

6. The Armed Forces (Summary Appeal Court) Rules 2009(1) are amended as follows.

Amendment of rule 2 (interpretation: proceedings and parties)

7.—(1) In rule 2 (interpretation: proceedings and parties)—

(a) after paragraph (1)(b) insert—

“(c) variation proceedings,”;

(b) in paragraph (2), after the definition of “related proceedings”, insert—

““variation proceedings” means proceedings under Part 12A.”;

(c) After paragraph (4)(b), insert—

“(c) in the case of variation proceedings, an offender in respect of whom a sentence which falls to be varied has been imposed or confirmed.”.

Amendment of rule 34 (proceedings without lay members)

8. After rule 34(3)(proceedings without lay members), insert—

“(4) This rule applies to variation proceedings if a direction is given under rule 88E.”.

Amendment of rule 35 (powers that may be exercised by a judge advocate)

9. After rule 35(b), insert—

“; and

(c) the power to vary a punishment, otherwise than in proceedings to which rule 34 applies.”.

Amendment of rule 36 (persons ineligible for membership in particular circumstances)

10.—(1) At the start of rule 36(2)(persons ineligible for membership in particular circumstances), for “A” substitute “Subject to paragraphs (3A) and (3B), a”.

(2) After rule 36(3) insert—

“(3A) A person is ineligible for membership of the court for any variation proceedings if they were not a member of the court for the proceedings in which the punishment that falls to be varied was imposed.

(3B) A person is not ineligible for membership of the court for variation proceedings by virtue of having been a member of the court for—

- (a) any appeal proceedings in which the offender was convicted of any offence for which the punishment that falls to be varied was imposed;
- (b) the appeal proceedings in which the punishment was imposed.”.

Amendment of rule 37 (objections to lay members)

11. After rule 37(4)(objections to lay members), insert—

“(5) This rule applies to any proceedings with lay members, except variation proceedings.”.

Amendment of rule 86 (information before punishment)

12. In rule 86(2)(d)(information before punishment)—

- (a) in paragraph (ii), for “United Kingdom” substitute “British Islands”, and
- (b) for paragraph (iii) substitute—

“(iii) relevant offences of which the offender has been convicted by a court outside the British Islands.”.

Variation proceedings

13. After rule 88 (pronouncement of punishment), insert—

“Part 12A

Variation Proceedings

Application of Part 12A

88A. This Part applies where the court has, on or after 13th November 2023, awarded a punishment in appeal proceedings or confirmed in appeal proceedings a punishment awarded by a commanding officer at summary hearing.

Interpretation of Part 12A

88B. In this Part—

“original punishment” means the punishment, awarded by the commanding officer, which was the subject of appeal proceedings;

“SAC punishment” means the punishment awarded by the court in appeal proceedings or, where in appeal proceedings the court confirms an original punishment, the punishment confirmed by the court;

“varied punishment” means a punishment substituted for the SAC punishment in accordance with this Part.

Power to vary punishment

88C.—(1) The court may vary the SAC punishment if it appears to the court that it had no power to award or confirm the SAC punishment.

- (2) The power conferred by this rule—
 - (a) may be exercised within the period of 56 days beginning with the day on which the SAC punishment was awarded or confirmed;
 - (b) may not be exercised in relation to any SAC punishment if an appeal, or an application for leave to appeal, against the SAC punishment has been determined.
- (3) Unless the court otherwise orders, a varied punishment takes effect—
 - (a) where the SAC punishment is one that was awarded by the court, from the beginning of the day on which the SAC punishment took effect, or
 - (b) where the SAC punishment is one that was confirmed by the court, from the beginning of the day on which the commanding officer awarded the original punishment.

Direction that variation proceedings be held

88D.—(1) Variation proceedings may be held only in accordance with a direction given under this rule.

(2) After conclusion of any proceedings in which an SAC punishment was awarded or confirmed, the judge advocate for those proceedings may direct the court administration officer to appoint a time and place for variation proceedings in respect of that SAC punishment.

- (3) The judge advocate may give a direction under this rule—
 - (a) on the application of the Director or the appellant, or
 - (b) of their own motion.
- (4) An application for a direction under this rule—
 - (a) must be made in writing to the court administration officer, stating the grounds on which it is made, and
 - (b) if made by the Director, must be served on the appellant, or
 - (c) if made by the appellant, must be served on the Director.
- (5) Where the judge advocate dismisses an application for a direction under this rule, the court administration officer must notify the Director and the appellant of that fact.

Direction that variation proceedings be held without lay members

88E.—(1) Where a judge advocate directs under rule 88D that variation proceedings are to be held, they may direct that there are to be no lay members.

(2) A judge advocate may not give a direction under this rule unless they are satisfied that Conditions A and B are met.

(3) Condition A is that one or more of the original lay members could not, without substantial inconvenience, attend the variation proceedings at the time and place appointed.

- (4) Condition B is that the appellant would be unfairly prejudiced if—
 - (a) the proceedings were postponed until the earliest time at which the judge advocate, the original lay members and the appellant could, without substantial

inconvenience, attend the variation proceedings (whether at the place originally appointed or at any other place), and

- (b) the SAC punishment were then varied in the way in which it would be most likely to be varied if no direction were given under this rule and the original lay members were specified for the proceedings and could attend.

(5) In this rule—

- (a) any reference to the attendance of the original lay members includes their attendance by live link, as defined by rule 88F(2) (and for this purpose it is to be assumed that they have been or would be specified as lay members for the variation proceedings); and
- (b) any reference to the attendance of the appellant includes their attendance by live link as defined by rule 25(3)(a).

(6) In this rule—

“inconvenience” includes expense and adverse effect on the operational effectiveness of any of His Majesty’s forces, and

“the original lay members” means the persons who were lay members of the court when it awarded or confirmed the SAC punishment.

Attendance of lay members by live link

88F.—(1) A lay member may attend variation proceedings by live link.

(2) In this rule, “live link” means an arrangement by which a lay member, when not in the place where the variation proceedings are being held, is able to see and hear, and to be seen and heard, by other members of the court during the proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded).

Decision on variation of punishment

88G. In the case of an equality of votes on whether the SAC punishment should be varied, and if so how, the judge advocate has a casting vote.

Announcement of varied punishment

88H. Where the court varies the SAC punishment, rule 88 (pronouncement of punishment) and sections 252 (duty to give reasons and explain sentence) and 253(2) (duties in complying with section 252) of the Act apply as they apply to pronouncement of punishment.

Power to order appellant’s release from detention

88I.—(1) This rule applies where an appellant is in detention by virtue of an SAC punishment.

(2) The judge advocate may order that the appellant be released immediately if, within the period of 56 days beginning on the day which the SAC punishment was awarded or confirmed, it appears to the judge advocate that—

- (a) the court had no power to award or confirm such a punishment, or
- (b) the maximum term for which the court had power to award or confirm such a punishment has expired.

(3) The power conferred by this rule may not be exercised in relation to any SAC punishment if an appeal, or an application for leave to appeal, against the SAC punishment has been determined.

(4) This rule is without prejudice to any other provision in this Part.”.