
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Armed Forces (Court Martial) Rules 2009

PART 20

CONSEQUENCES OF ELECTION FOR COURT MARTIAL TRIAL

Interpretation

155. In this Part—

“election charge” means a charge as regards which an election for Court Martial trial is made under section 129 (including a charge as regards which an election in respect of another charge takes effect by virtue of section 129(3));

“relevant”, in relation to an offence, means relevant for the purposes of section 165 (sentencing powers of Court Martial where election for trial by that court).

Charge referred to Director following election on another charge

156.—(1) Where—

- (a) a person makes an election under section 129,
- (b) another charge brought against the person is, at the time of the election, regarded for the purposes of Part 5 of the 2006 Act as allocated for summary hearing,
- (c) the other charge is not an election charge,
- (d) the person’s commanding officer refers the other charge to the Director under section 123(2)(e) without giving the person the opportunity to make an election under section 129 in respect of it, and
- (e) the court convicts or acquits the person of the offence to which the other charge relates,

that offence is relevant.

(2) Where—

- (a) a charge is in respect of an offence which, if the defendant were convicted or acquitted of it, would be relevant by virtue of this rule,
- (b) another charge (“the new charge”) is brought under section 125 in addition to the charge, or substituted for it, and
- (c) the court convicts or acquits the defendant of the offence to which the new charge relates,

that offence is relevant.

Powers of the Director

157.—(1) This rule applies where a relevant charge is allocated for Court Martial trial.

(2) In this rule, “relevant charge” means a charge in respect of an offence which would be a relevant offence if the defendant were convicted or acquitted of it.

(3) The Director may not, without the written consent of the defendant, substitute under section 125(2)(b)—

- (a) a charge in respect of an offence other than one that may be dealt with at a summary hearing (within the meaning of section 53); or
- (b) a charge which section 54 would have prevented the defendant’s commanding officer from hearing summarily (if no election under section 129 had been made, and the officer had made the substitution but had not obtained the permission of higher authority to hear the charge).

(4) The Director may not, without the written consent of the defendant, bring under section 125(2)(c) a charge in addition to the relevant charge.

Sentence where charge added to, or substituted for, election charge

158. Where—

- (a) the court convicts a person of an offence which is relevant by virtue of section 165(1)(b) (charges brought in addition to, or substituted for, an election charge), and
- (b) section 165(4) does not apply,

the sentence passed in respect of the offence must be such that the person’s commanding officer could have awarded the punishments awarded by that sentence if he had heard the election charge summarily and had recorded a finding that it had been proved.

Sentence where charge referred following election on another charge

159.—(1) Where—

- (a) the court convicts a person of an offence which is relevant by virtue of rule 156, and
- (b) section 165(4) does not apply,

the sentence passed in respect of the offence must be such that the person’s commanding officer could have awarded the punishments awarded by that sentence if he had heard the non-election charge summarily and had recorded a finding that it had been proved.

(2) In this rule “the non-election charge” means the charge referred as mentioned in rule 156(1)(d).

Multiple relevant offences: application of section 165(4)

160.—(1) This rule applies where the court convicts a person of two or more relevant offences.

(2) Where any of the offences is relevant by virtue of section 165(1)(b), the charge in respect of it is to be treated for the purposes of section 165(4) as if, had no election under section 129 been made, the charge would have been heard summarily at the hearing at which the election charge would have been heard if no such election had been made.

(3) Where—

- (a) the offences are relevant by virtue of rule 156(1), and
- (b) the charges in respect of them would have been heard summarily together if they had not been referred as mentioned in rule 156(1)(d),

those charges are to be treated for the purposes of section 165(4) as if they would have been heard summarily together if no election under section 129 had been made.

(4) Where any of the offences is relevant by virtue of rule 156(2)—

- (a) paragraph (3) applies as if the offence were relevant by virtue of rule 156(1); and

(b) for the purposes of paragraph (3)(b) the charge in respect of the offence is to be treated as a charge which, had it not been referred as mentioned in rule 156(1)(d), would have been heard summarily at the hearing at which the non-election charge would have been heard if it had not been so referred.

(5) In paragraph (4) “the non-election charge” means the charge referred as mentioned in rule 156(1)(d).

Sentence for multiple relevant offences

161.—(1) This rule applies where section 165(4) applies.

(2) The relevant offences mentioned in section 165(4) (“the joined offences”) shall for the purposes of section 255 (individual sentence for each offence) be regarded as a single offence, and the court shall accordingly pass a single sentence in respect of them.

(3) Paragraphs (4) and (5) apply where the joined offences are relevant by virtue of section 165(1) (a) or (b).

(4) If there was one election charge, the sentence must be such that the offender’s commanding officer could have awarded the punishments awarded by the sentence if he had heard the election charge summarily and had recorded a finding that it had been proved.

(5) If there were two or more election charges, the sentence must be such that the offender’s commanding officer could have awarded the punishments awarded by the sentence if he had heard the election charges summarily, together, and had recorded findings that they had been proved.

(6) Paragraphs (7) and (8) apply where the joined offences are relevant by virtue of rule 156.

(7) If there was one non-election charge, the sentence must be such that the offender’s commanding officer could have awarded the punishments awarded by the sentence if he had heard the non-election charge summarily and had recorded a finding that it had been proved.

(8) If there were two or more non-election charges, the sentence must be such that the offender’s commanding officer could have awarded the punishments awarded by the sentence if he had heard the non-election charges summarily, together, and had recorded findings that they had been proved.

(9) In relation to the sentence, sections 242 (service detention: general restriction), 243 (length of term of service of service detention) and 248 (forfeiture of seniority and reduction in rank or disrating) shall apply as if the sentence were being passed by an officer at a summary hearing.

(10) In this rule—

“non-election charge” means a charge referred to the Director in such circumstances that the offence to which it relates would be a relevant offence by virtue of rule 156(1) if the defendant were convicted or acquitted of it;

“the sentence” means the sentence passed in respect of the joined offences.

Multiple relevant offences: powers of Appeal Court

162.—(1) In a case in which the court passed a single sentence in respect of two or more offences by virtue of rule 161, the 1968 Act is modified as follows.

(2) Where section 13(1) (power to re-sentence when some but not all convictions successfully appealed) applies but the appellant remains convicted of two or more of the joined offences, those joined offences of which he remains convicted are to be treated for the purposes of section 13(2) as a single offence.

(1) Section 13 of the 1968 Act is substituted by paragraph 11 of Schedule 8 to the 2006 Act.

(3) Where section 14 or 14A(2) (substitution of conviction on different charge) applies in relation to a conviction of any of the joined offences, subsection (2) of that section has effect as if the reference in paragraph (b) to a sentence that the Court Martial would have had power to pass in respect of the offence mentioned in subsection (1)(b) (“the other offence”) were to a sentence which that court would have had power to pass, in respect of the other offence and those of the joined offences of which the appellant remains convicted, if—

- (a) it had convicted him of the other offence; and
- (b) the other offence were one of the joined offences.

(4) Section 16A(2)(3) (powers of Appeal Court on appeal against sentence) has effect as if the reference in paragraph (b) to the offence were to the joined offences.

(5) In this rule “the joined offences” has the same meaning as in rule 161.

Offences associated with a relevant offence

163. Where the court sentences an offender for—

- (a) a relevant offence with which another offence (whether or not a relevant offence) is associated, or
- (b) an offence with which a relevant offence is associated,

for the purposes of Part 9 of the 2006 Act the offences shall be regarded as not being associated with one another.

Activation of suspended sentence of detention

164.—(1) This rule applies where—

- (a) the court makes an order under section 191(3) (activation of suspended sentence of service detention) by virtue of having convicted a person of a relevant offence; and
- (b) the sentence in respect of which the order is made was passed by an officer or the Summary Appeal Court.

(2) The term of the suspended sentence as it takes effect by virtue of the order must not exceed 28 days unless the offender’s commanding officer would have had extended powers for the purposes of section 194 if no election under section 129 had been made.

(3) Paragraph (4) applies where—

- (a) the court awards a term of service detention in respect of the relevant offence, or (by virtue of rule 161) in respect of the relevant offence and one or more other offences; and
- (b) the order provides for the suspended sentence to take effect from the end of the term so awarded.

(4) The aggregate of the terms of the two sentences—

- (a) must not exceed 28 days unless the offender’s commanding officer would have had extended powers for the purposes of section 194 if no election under section 129 had been made; and
- (b) must not exceed 90 days in any event.

(2) Sections 14 and 14A of the 1968 Act are amended by paragraphs 12 and 13 (respectively) of Schedule 8 to the 2006 Act.

(3) Section 16A of the 1968 Act is substituted by paragraph 16 of Schedule 8 to the 2006 Act.

Service restraining orders

165. The court may not make a service restraining order in relation to a person by virtue of having convicted or acquitted him of a relevant offence.

Review of unduly lenient sentence

166. In section 273(1)(a) (review of unduly lenient sentence by Appeal Court) the reference to an offence under section 42 does not include a relevant offence.