

**2009 No. 1096**

**DEFENCE**

**The Service Custody and Service of Relevant Sentences Rules  
2009**

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The Secretary of State makes the following Rules in exercise of the powers conferred by section 300 of the Armed Forces Act 2006(a):

## PART 1

### Preliminary

#### **Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Service Custody and Service of Relevant Sentences Rules 2009 and shall come into force on 31st October 2009.

(2) In these Rules—

“the Act” means the Armed Forces Act 2006;

“adjudicator” means a judge advocate selected by the Judge Advocate General for the purpose of hearing disciplinary charges under these Rules;

“Convention rights” has the same meaning as in the Human Rights Act 1998(b);

“commandant” means—

- (a) in relation to MCTC, the officer appointed as commandant, or any officer for the time being acting in his place, or
- (b) in relation to a service custody facility, the commanding officer of the unit providing that facility, or any officer from time to time acting in his place,

and any reference in Part 4 or 5 of these Rules to the commandant is a reference to the commandant of MCTC;

“company commander” means in relation to a detainee in MCTC the officer appointed by the commandant to hear cases regarding breaches of discipline;

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(a) 2006 c. 52.  
(b) 1998 c. 42.

“detainee”—

- (a) subject to sub-paragraph (b), means a person who is detained in service custody;
- (b) in Parts 4 and 5 means a person who is detained in MCTC;

“independent monitoring board” means the body appointed under rule 63;

“legal representative” means—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(a);
- (b) an advocate or solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
- (d) a person who has in any of the Channel Islands, the Isle of Man, a Commonwealth country or British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales and is subject to punishment or disability for a breach of professional rules;

and in this definition the reference to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005(b) comes into force;

“local commander” means an officer not below the rank of commodore, brigadier or air commodore in the commandant’s disciplinary chain of command and superior in that chain of command to the commandant;

“MCTC” means the Military Corrective Training Centre at Colchester;

“mechanical restraint” means handcuffs or other mechanisms for holding a person in restraint;

“medical officer” means a registered medical practitioner who has responsibility for the medical care of detainees at a service custody premises;

“member of staff” means in relation to any service custody premises a person who works at these premises;

“principal personnel officer” means the Second Sea Lord, the Adjutant General or the Air Member for Personnel;

“reviewer” means a judge advocate selected by the Judge Advocate General for the purpose of reviews of disciplinary charges heard by an adjudicator under these Rules;

“service custody” means service custody for the purposes of the Act;

“service custody facility” means any service custody premises other than MCTC;

“service visiting officer” means the officer appointed under rule 66;

“subject to air force law” has the same meaning as in the Air Force Act 1955(c);

“subject to military law” has the same meaning as in the Army Act 1955(d);

“subject to the Naval Discipline Act 1957(e)” has the same meaning as in that Act;

“unit” means—

- (a) a naval ship or establishment;

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(a) 1990 c. 41 Subsection (6) of section 71 of the Courts and Legal Services Act 1990 was substituted by the Access to Justice Act (c. 22), section 43, Schedule 6, paragraphs 4 and 9. Subsections (7) and (8) of section 71 of the 1990 Act were repealed by section 106, Schedule 15, Part 2 of the 1990 Act. Prospective amendments to section 71 of the 1990 Act are made to subsections (1) and (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1), (3). Prospective amendments are made to subsections (4) and (6) and a new subsection (6A) is inserted into section 71 of the 1990 Act by the Legal Services Act 2007 (c. 29), section 208(1), Schedule 21, paragraphs 83 and 94(a), (b) and (c).

(b) 2005 c. 4.

(c) 1955 c. 18.

(d) 1955 c. 19.

(e) 1957 c. 53.

- (b) any body of members of Her Majesty's forces formed under the command of a person appointed to be the commanding officer of the body; or
- (c) an air force station;

### **Revocations**

2. The following Rules are revoked—
- (a) the Imprisonment and Detention (Army) Rules 1979(a);
  - (b) the Imprisonment and Detention (Air Force) Rules 1980(b);
  - (c) the Naval Detention Quarters Rules 1973(c).

## **PART 2**

### **Service detention in service custody premises**

#### **Places in which persons may be required to serve sentences of service detention**

3. The only places in which a person may be required to serve the whole or part of a sentence of service detention are service custody premises.

#### **Committal to prisons and service custody premises and removal from service custody premises**

4. A person on whom a relevant sentence has been passed shall not—
- (a) be committed to a prison or to service custody premises, or
  - (b) be moved between one service custody premises and another,

except in accordance with an order of his commanding officer, the commandant of the service custody premises from which he is being transferred, or a judge advocate.

#### **Release from service detention**

5.—(1) No person serving a sentence of service detention shall be released from service custody premises except—

- (a) in accordance with rule 33;
- (b) by an order of a court of competent jurisdiction; or
- (c) on the expiry of his sentence, less any remission provided for in these Rules.

(2) Where his sentence of service detention is due to expire on a Sunday or public holiday, a detainee shall be released on the nearest previous weekday and the balance of the sentence shall be deemed to be remitted.

#### **Service custody facilities overseas**

6.—(1) Subject to paragraph (2), a person upon whom a sentence of service detention has been passed outside the United Kingdom may be detained in one or more service custody facilities outside the United Kingdom for up to sixty days.

(2) A person may only be detained under paragraph (1) if the relevant principal personnel officer, or an officer authorised by him, has approved his detention under that paragraph.

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(a) S.I. 1979/1456.  
(b) S.I. 1980/2005.  
(c) S.I. 1973/270.

(3) In paragraph (2) the relevant principal personnel officer is the principal personnel officer of the regular or reserve force of which the person referred to in paragraph (1) is a member.

### **Inspector of service custody premises**

7.—(1) The Secretary of State shall appoint one or more inspectors of service custody premises.

(2) Any person who immediately before the date on which these Rules come into force was an Inspector of Military Establishments<sup>(a)</sup> shall be deemed to have been appointed as an inspector of service custody premises for the purposes of paragraph (1).

(3) It shall be the duty of an inspector of service custody premises to—

- (a) inspect service custody premises;
- (b) report to the Defence Council on all service custody facilities at least once a year;
- (c) if on an inspection under sub-paragraph (a) he considers a service custody facility is suitable for the confinement of a detainee serving a sentence of service detention, permit its use for that purpose, subject to such conditions, if any, as he may specify;
- (d) train staff for employment in service custody premises;
- (e) advise on the appointment and posting of staff to be employed in service custody premises; and
- (f) decide and issue policy regarding the use of mechanical restraints in service custody premises.

### **Automatic remission of sentence**

8.—(1) A detainee who has been sentenced to twenty-five or more days of service detention shall be entitled to a period of remission in accordance with this rule according to the following provisions.

(2) If his sentence does not exceed twenty-eight days he shall be entitled to a period of remission equal to the number of days by which the sentence exceeds twenty-four days.

(3) If his sentence exceeds twenty-eight days, he shall be entitled to a period of remission equal to one third of the period of his sentence, except that, if this would result in the detainee serving fewer than twenty-four days the period of remission shall be such as to require the detainee to serve twenty-four days.

(4) In this rule any reference to a sentence for a period of service detention is a reference to the period of service detention which the detainee would apart from this rule and rule 70 be required to serve, including any additional period of service detention which he would be required to serve in accordance with rules 51 and 52.

(5) If the detainee is serving two or more periods of service detention concurrently, remission shall be calculated under this rule in respect of each of those periods, and the date of final release shall be the later or last date so calculated.

(6) For the purposes of calculating a period of remission under this rule a fraction of a day shall be ignored.

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(a) Inspectors of Military Establishments were appointed under rule 5 of the Imprisonment and Detention (Army) Rules S.I. 1979/1456 and rule 5 of the Imprisonment and Detention (Air Force) Rules S.I. 1980/2005.

## PART 3

### Treatment, Employment and Discipline of Detainees

#### Rules to be brought to the notice of detainees

9.—(1) A copy of this Part of these Rules, or a suitable extract of it in a form approved by the Secretary of State, shall be displayed conspicuously in all service custody premises in such places where it can be seen from time to time by every detainee.

(2) In the case of such a detainee aged less than 18, or such a detainee aged 18 or over who cannot read or appears to the commandant to have difficulty in understanding the information provided under paragraph (1), a member of staff shall so explain to him his rights and obligations under this Part of these Rules.

(3) A copy of these Rules shall be made available promptly to any such detainee who requests it.

#### Accommodation

10.—(1) Subject to paragraph (2), no room or cell shall be used for the confinement a detainee serving a sentence of service detention in service custody premises unless—

- (a) a medical officer has certified that its size, lighting, heating, ventilation and fittings are adequate for health and that it allows the detainee to communicate with a member of staff of the service custody premises at any time;
- (b) the room or cell is of a size of at least seventeen cubic metres for each detainee confined in it;
- (c) a permission under rule 7(3)(c) has been issued by an inspector of service custody premises for its use for the confinement of detainees serving a sentence of service detention.

(2) An officer of or above the rank of commodore, brigadier or air commodore may, if required by operational exigencies, authorise the confinement of a detainee for not more than fourteen days in a room or cell outside the UK that does not meet the requirements of paragraph (1)(b).

#### Work and training of detainees in service custody premises

11.—(1) Subject to the other provisions of these Rules, the daily routine of detainees in service custody premises shall be laid down by the commandant in accordance with any instructions issued from time to time by or under the authority of the Defence Council.

(2) Subject to rule 12 a detainee—

- (a) who is being held in service custody premises after being charged with a service offence and who holds a rank or rate up to and including chief petty officer, staff sergeant, Royal Marines colour sergeant, or flight sergeant, or
- (b) who is serving a sentence of service detention in service custody premises,

shall carry out work or training for not more than nine hours each day and not less than six hours.

(3) Time spent on meals shall not count towards the periods mentioned in paragraph (2).

(4) Such a detainee shall not, however, carry out work or training until he has been examined by a medical officer and certified as fit for such work or training.

(5) Training in MCTC shall be carried out in accordance with any syllabus laid down by the Defence Council.

### **Sundays and public holidays**

12.—(1) On Sundays and public holidays a detainee within rule 11(2)(a) or (b) shall not carry out work or training except work which is necessary for the service of the service custody premises in which he is detained.

(2) Such a detainee whose recognised day of religious observance falls on a day other than a Sunday—

- (a) shall not be required to carry out any more work or training on that day than other detainees are required to do on a Sunday; and
- (b) may be required to do work or training on Sundays.

### **Work and training in association**

13.—(1) A detainee within rule 11(2)(a) or (b) shall carry out work or training in association with other such detainees, except where it appears to the commandant that it is desirable in the interests of such a detainee or for the maintenance of good order and discipline for such a detainee not to work in association with others, in which case the commandant may arrange for that detainee to work apart from other detainees for a period of not more than seven days.

(2) In deciding when a detainee should work apart from others or should rejoin them, the commandant shall take into account any advice given by a medical officer.

### **Unauthorised work**

14. No detainee shall be employed directly or indirectly for the private benefit or advantage of any person, nor in any way contrary to these Rules.

### **Reimbursement allowance**

15.—(1) Subject to paragraph (2), a detainee serving a sentence of service detention shall be entitled to a reimbursement allowance.

(2) A detainee serving a sentence of service detention who escapes from service custody premises forfeits his entitlement to the reimbursement allowance from the date of his escape.

(3) The reimbursement allowance shall be allocated to a detainee serving a sentence of service detention at different rates, depending on which stage of training under rule 60(2) the detainee has reached. He shall then be entitled to purchase from the canteen cigarettes, tobacco, sweets, chocolates, writing materials, postage stamps and other articles decided by the commandant of a value within his reimbursement allowance.

(4) The Secretary of State shall approve the rates of reimbursement allowance payable to such detainees and may from time to time issue instructions for alterations to the amount of the allowance.

(5) On release at the end of his sentence of service detention a detainee shall be entitled to the balance of the reimbursement standing to his credit

### **Smoking**

16. A detainee may possess cigarettes and tobacco in such circumstances, and may smoke at such times and in such places, as the commandant may direct from time to time.

### **Communications generally**

17.—(1) Subject to rules 18 and 19, a detainee serving a sentence of service detention shall not be permitted to communicate with any person outside the service custody premises in which he is confined, or such person with him, except with the permission of the commandant or as a privilege under rule 60.

(2) Notwithstanding paragraph (1) and subject to rule 23, the commandant may impose any restriction or condition, either generally or in a particular case, upon the communications to be permitted between such a detainee and any other person, if—

- (a) he considers that the restriction or condition to be imposed does not interfere with the Convention rights of any person; or
- (b) he considers that reliance on a ground specified in paragraph (3) is compatible with the Convention right to be interfered with and that the restriction or condition—
  - (i) is necessary on that ground; and
  - (ii) is proportionate to what is sought to be achieved.

(3) The grounds referred to in paragraph (2) are—

- (a) in the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety;
- (d) securing or maintaining security in service custody premises or good order and discipline in such premises;
- (e) the protection of health or morals;
- (f) maintaining the authority and impartiality of the judiciary;
- (g) the protection of the rights and freedoms of any person.

(4) The commandant may give directions, either generally or in relation to any visit or class or visits, concerning the dates and times when detainees serving a sentence of service detention may be visited.

(5) Every visit to a detainee serving a sentence of service detention shall be within the sight of a member of staff of the service custody premises and with the exception of visits by legal representatives under rule 22 every visit to such a detainee shall take place within the hearing of such a member of staff.

(6) In this rule—

- (a) references to communications include references to communications during visits;
- (b) references to restrictions and conditions upon communications include references to restrictions and conditions in relation to the length, duration and frequency of communications.

### **Personal correspondence**

**18.—**(1) Subject to rules 17 and 23, a detainee serving a sentence of service detention in service custody premises shall be permitted to write and send as many letters as he wishes. Writing materials and a stamp for one letter shall be provided to such detainee on admission.

(2) Such a detainee may receive—

- (a) any number of letters; and
- (b) with the consent of the commandant, newspapers and periodicals.

### **Correspondence with legal representatives and courts**

**19.—**(1) A detainee may correspond with his legal representative and any court and such correspondence may only be opened, read or stopped by the commandant in accordance with the provisions of this rule.

(2) Correspondence to which this rule applies may be opened, read and stopped by the commandant if he has reasonable cause to believe that it contains an illicit enclosure and any such enclosures shall be dealt with in accordance with these Rules.

(3) Correspondence to which this rule applies may be opened, read and stopped by the commandant if he has reasonable cause to believe that its contents will endanger the security of service custody premises or the safety of others, or are otherwise of a criminal nature.

(4) A detainee shall be given the opportunity to be present when any correspondence to which this rule applies is opened and shall be informed if it or any enclosure is to be read or stopped.

(5) In this rule “court” includes the European Commission of Human Rights, the European Court of Human Rights and the European Court of Justice; and “illicit enclosure” includes any article possession of which has not been authorised by the commandant and any correspondence to or from a person other than the detainee concerned, his legal representative or a court.

### **Telephone calls**

**20.**—(1) On admission to a service custody premises, a detainee serving a sentence of service detention shall be permitted to make one telephone call at public expense.

(2) The frequency and maximum length of any further telephone calls shall be decided by the commandant.

### **Personal visits**

**21.** A detainee in service custody premises may receive visits from relatives and friends with the consent of the commandant. Such visits shall take place at times and places decided by the commandant. Each such detainee shall be entitled to receive at least one visit from a friend or relative every twenty-eight days.

### **Visits by legal representatives**

**22.**—(1) The commandant shall provide reasonable facilities for a detainee serving a sentence of service detention in service custody premises who is interested in legal proceedings, or proposed legal proceedings, to be visited by his legal representative.

(2) The legal representative of such a detainee may, with the permission of the commandant, visit him in connection with other legal business.

(3) Any visit authorised under this rule shall be within the sight, but out of the hearing, of a member of staff of the service custody premises.

### **Interception of communications**

**23.**—(1) The Secretary of State may give directions to any commandant concerning the interception in service custody premises of any communication by any detainee or category of detainees if the Secretary of State considers that the directions are—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved.

(2) Subject to any directions given by the Secretary of State, the commandant may make arrangements for any communication by a detainee or category of detainees to be intercepted in service custody premises by a member of staff authorised by the commandant for the purposes of this rule if he considers that the arrangements are—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved.

(3) Any communication by a detainee may, during the course of its transmission in a service custody premises, be terminated by a member of staff authorised by the commandant if he considers that to terminate the communication is—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved by the termination.

(4) The grounds referred to in paragraphs (1)(a), (2)(a) and (3)(a) above are—

- (a) the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety;
- (d) securing or maintaining security in service custody premises or good order and discipline in such premises;
- (e) the protection of health or morals; or
- (f) the protection of the rights and freedoms of any person.

(5) For the purposes of this rule “interception” in relation to any written or drawn communication includes opening, reading, examining and copying the communication.

#### **Permanent log of communications**

**24.**—(1) The commandant may arrange for a permanent log to be kept of all communications by or to a detainee serving a sentence of service detention in service custody premises.

(2) The log referred to in paragraph (1) above may include, in relation to a communication by means of a telecommunications system in a service custody premises, a record of the destination, duration and cost of the communication and, in relation to any written or drawn communication, a record of the sender and addressee of the communication.

#### **Disclosure of material**

**25.** The commandant may not disclose to any person, except in the course of duty, any intercepted material or information retained under rule 26, unless—

- (a) he considers that such disclosure is—
  - (i) necessary on grounds specified in rule 23(4); and
  - (ii) proportionate to what is sought to be achieved by the disclosure;
- (b) in the case of intercepted material, all parties to the communication consent to the disclosure; or
- (c) in the case of information retained under rule 26 the detainee to whose communication the information relates, consents to the disclosure.

#### **Retention of material**

**26.**—(1) The commandant shall not retain any intercepted material for a period longer than three months beginning with the day on which the material was intercepted or obtained unless he is satisfied that continued retention of it is—

- (a) necessary on grounds specified in rule 23(4); and
- (b) proportionate to what is sought to be achieved by the continued retention.

(2) Where such material is retained for longer than three months pursuant to paragraph (1), the commandant shall review its continued retention at periodic intervals until such time as it is no longer held by the commandant.

(3) The first review conducted pursuant to paragraph (2), shall take place not more than three months after the decision to retain the material taken pursuant to paragraph (1) above, and subsequent reviews shall take place not more than three months after the last review conducted pursuant to paragraph (2).

(4) If the commandant, on a review conducted pursuant to paragraph (2) or at any other time, is not satisfied that the continued retention of the material satisfies the requirements set out in paragraph (1), he shall arrange for the material to be destroyed.

### **Medical attention**

27.—(1) The commandant shall ensure that a detainee in service custody premises shall be seen by a medical officer at least once every day when the detainee is—

- (a) in cellular confinement; or
- (b) subject to any form of mechanical restraint.

(2) Any case of a detainee who is sick, or injured or complains of sickness or injury shall be reported promptly to a medical officer.

### **Religious books**

28. So far as practicable, the commandant shall make available for the use of every detainee in service custody premises such books of religious observation or instruction as are recognised as such by his denomination or religion and are approved by the Secretary of State for use in service custody premises.

### **Chaplain and other religious ministers**

29. The commandant of service custody premises shall afford facilities to the chaplain and other ministers of religion to have access to detainees at times approved by the commandant, but not less than weekly, for the purpose of visiting them or giving them religious instruction.

### **Duties of chaplain and other religious ministers**

30.—(1) Where the chaplain is of the same denomination as a detainee, he shall visit him as soon as practicable after his admission, at regular intervals during his sentence, and shortly before his release.

(2) Where there is a minister of religion who regularly attends service custody premises and who is of the same faith as a detainee in those premises, he shall visit him as soon as reasonably practicable after his admission, at regular intervals during his sentence, and shortly before his release.

(3) Where there is no such chaplain or minister of religion, the commandant shall ask the detainee on admission if he would like one to visit him; and if the detainee wishes to be so visited, the commandant shall, if it is reasonably practicable, arrange for such a visit to take place.

(4) The commandant shall make available to chaplains and other ministers of religion on the occasion of their visits to service custody premises a list of detainees who are sick or undergoing punishment under these Rules, if the chaplain or minister so requests.

(5) A detainee may request a visit from a chaplain or minister of religion at any time, and the commandant shall, if it is reasonably practicable, arrange for such a visit to take place.

### **Religious services**

31.—(1) Whenever reasonably practicable, the chaplain shall conduct religious services in service custody premises on Sundays, other customary days and on such other convenient occasions approved by the commandant as the chaplain may decide.

(2) The commandant shall make such provision for religious services to be conducted by other ministers of religion as he thinks appropriate from time to time.

(3) A detainee who is in cellular confinement may only attend religious services with the commandant's permission.

32. The commandant may exclude any detainee from attending religious services on the grounds of disorderly conduct.

### **Temporary release**

**33.**—(1) The commandant of a service custody premises may temporarily release a detainee serving a sentence of service detention.

(2) Such a detainee may be released under this rule subject to such conditions as the commandant considers appropriate.

(3) The circumstances in which such a detainee may be released under this rule are—

- (a) on compassionate grounds;
- (b) for the purpose of receiving medical treatment;
- (c) to receive instruction or training;
- (d) to enable him to participate in any proceedings before any court, tribunal or inquiry;
- (e) to assist any police constable or service policeman in any enquiries;
- (f) to enable him to consult his legal representative in circumstances where it is not reasonably practicable for the consultation to take place in service custody premises;
- (g) to facilitate the transfer of the detainee between service custody premises or between service custody premises and a civilian prison;
- (h) as a privilege under rule 60.

(4) The commandant may recall a detainee released under this rule at any time.

### **Complaints**

**34.**—(1) A detainee may submit a complaint relating to any matter to the commandant.

(2) The commandant shall investigate any complaint made to him and, if he decides it is well-founded, he shall decide what redress (if any), within his authority, would be appropriate and grant that redress;

(3) The right of a detainee to submit a complaint under this rule is in addition to his right to make a complaint under section 334 of the Act or under these Rules to the independent monitoring board or the service visiting officer.

### **Admission to service custody premises**

**35.** In the case of a detainee in service custody premises—

- (a) when he is admitted to the service custody premises, except for the clothing and those articles which the detainee is authorised by the commandant to have in his possession, his equipment and any other article shall be taken from him, whether they are his own property or not;
- (b) private property of the detainee shall be retained in safe custody by the commandant, who shall have a record of the property made;
- (c) such private property shall be returned to the detainee on his final release;
- (d) money of the detainee shall be retained in safe custody by the commandant or paid into a bank account and the equivalent amount returned to the detainee on his final release;
- (e) the commandant shall maintain an account of all money retained or returned under paragraph (d);
- (f) any money or other property which is held in safe custody on behalf of the detainee may be sent with the commandant's consent to a relative or friend of the detainee;
- (g) within twenty four hours of admission the commandant, or a member of staff of the service custody premises, shall satisfy himself that the detainee has read or has had explained to him this part of the Rules and the procedure for bringing any complaint in accordance with the Act or these Rules.

## **Searches**

**36.—**(1) A detainee and his belongings shall be searched on admission to service custody premises, on return from a period of temporary release, and on final release.

(2) Such a detainee, his belongings and his room or cell may be searched at any time on the instructions of the commandant.

(3) Any search of any detainee shall be carried out by one or more members of staff of the service custody premises in the presence of at least one other member of staff.

(4) A detainee shall be searched in as seemly a manner as is consistent with discovering anything concealed.

(5) No detainee shall be stripped and searched in the sight of another detainee, or by or in the sight of a person of the opposite sex other than a medical officer.

(6) A member of staff who is authorised by the commandant to conduct a search under this rule may use reasonable force where it is necessary for that purpose.

## **Escapes**

**37.—**(1) Any member of staff of a service custody premises who discovers that a detainee serving a sentence of service detention has escaped shall promptly report the fact to the commandant.

(2) The commandant shall promptly inform the following bodies or persons—

- (a) the Chief Officer of Police in the area in which the service custody premises is situated;
- (b) the nearest unit of service police;
- (c) the local commander;
- (d) an inspector of service custody premises.

## **Duration of sentences: persons unlawfully at large**

**38.—**(1) A person serving a relevant sentence, who would otherwise be treated under section 301 of the Act as having been unlawfully at large for a period for the purposes of that section shall be treated as not having been unlawfully at large for any part of that period in which he was in the custody of a civil authority.

(2) In paragraph (1) “civil authority” means—

- (a) a constable; and
- (b) any other civil authority, whether of the United Kingdom or otherwise, authorised by law to detain persons.

## **Deaths in service custody premises**

**39.—**(1) If a detainee dies, the commandant shall—

- (a) if the death occurs in England, Wales or Northern Ireland, immediately report the fact to the coroner having jurisdiction in the place where the service custody premises is situated;
- (b) if the death occurs in Scotland, immediately report the fact to the procurator fiscal having jurisdiction in the place where the service custody premises is situated;
- (c) if the death occurs outside the United Kingdom, report the fact to any local civil authority which is authorised or required to inquire into the cause of death.

(2) Nothing in this rule shall affect the duty of the commandant to record or report the death to meet the requirements of any other rules, regulations or instructions.

### **Mechanical restraint**

**40.**—(1) Without prejudice to the power to use reasonable force under section 97 of the Act, a detainee may only be put under mechanical restraint in accordance with paragraph (2) or rule 41.

(2) A detainee may be placed in handcuffs for the purpose of safe custody during their removal from one place or establishment to another.

(3) A detainee shall not be subjected to any form of mechanical restraint as a punishment.

### **Authorisation of mechanical restraint**

**41.**—(1) A detainee in service custody premises may be placed under mechanical restraint if the commandant—

(a) considers that he ought to be placed under mechanical restraint to prevent him from injuring himself or others, damaging property or creating a disturbance; and

(b) issues a written order that mechanical restraint is to be applied to the detainee.

(2) An order under paragraph (1) shall specify the date and hour when the restraint is to be applied and the period, not exceeding twenty-four hours, during which it may be applied.

(3) Immediately after making the order the commandant shall notify the local commander and a medical officer that he has made such an order and of the terms it contains.

(4) On receiving such notification the medical officer shall examine the detainee and inform the commandant if he considers there is any objection on medical grounds to the application of the mechanical restraint which has been ordered. If such objection is made the commandant shall revoke or modify the order in accordance with the recommendations of the medical officer.

(5) The commandant shall keep an order under paragraph (1) under review to ensure that a detainee is not kept under mechanical restraint longer than is necessary.

(6) If under an order under paragraph (1) the detainee is kept under mechanical restraint for twenty-four hours the local commander may make a further order or orders under that paragraph for the period or periods of mechanical restraint to be extended for a further period or periods each period not to exceed twenty-four hours.

(7) Whenever mechanical restraint is applied or removed in accordance with this rule, an officer or warrant officer shall be present, and a record of the name of the officer or warrant officer present on each occasion shall be retained by the commandant.

### **Types of mechanical restraint**

**42.** Any means of mechanical restraint shall be of a pattern authorised by the Secretary of State for use in MCTC, and shall be used in such manner and under such conditions as an inspector of service custody premises shall decide.

## **PART 4**

### **Offences and Punishments in MCTC**

#### **Breaches of discipline**

**43.** A detainee commits a breach of discipline under these Rules if he—

(a) detains any person against his will;

(b) treats with disrespect any member of staff or any visitor;

(c) denies access to any part of MCTC to any member of staff or any officer;

(d) intentionally obstructs any person (other than a detainee) in the performance of their work;

- (e) absents himself from any place he is required to be or is present at any place where he is not authorised to be;
- (f) uses any abusive, insolent, threatening or improper language;
- (g) is indecent in any act or gesture;
- (h) has in his possession—
  - (i) any article which he is not authorised by the commandant to have; or
  - (ii) a greater quantity of any article than he is authorised by the commandant to have;
- (i) supplies to another detainee or to a member of staff any article which that person is not authorised by the commandant to have;
- (j) receives from any person an article which he is not authorised by the commandant to have;
- (k) fails to comply with any condition upon which he is temporarily released under rule 33;
- (l) knowingly consumes any alcoholic drink;
- (m) intentionally or recklessly endangers the health or personal safety of others;
- (n) without reasonable excuse fails to perform a task or negligently performs any such task;
- (o) makes repeated groundless complaints;
- (p) intentionally encourages or assists another detainee to commit a breach of discipline under this rule.

#### **Delegation of disciplinary powers by the commandant**

**44.**—(1) The commandant may, subject to rule 46, delegate to a detainee’s company commander the power to hear charges against the detainee of breaches of discipline under rule 43.

(2) The commandant shall not delegate the power under rule 47 to refer a matter to an adjudicator.

#### **Procedure for dealing with breaches of discipline**

**45.**—(1) Where a detainee is to be charged with a breach of discipline under rule 43, the charge shall be brought and heard promptly.

(2) Every charge shall be heard by either the commandant, a company commander with delegated powers or an adjudicator.

(3) Save in exceptional circumstances, every charge shall be heard not later than—

- (a) subject to sub-paragraph (b), where it is heard by the commandant or the detainee’s company commander with delegated powers, the next day, not being a Sunday or public holiday, after the charge is brought;
- (b) where under rule 46 it is referred to the commandant by a company commander with delegated powers, the next day after it is so referred, not being a Sunday or a public holiday;
- (c) where under rule 47 it is referred to an adjudicator, not later than four days after it is so referred.

(4) A detainee who is to be charged with a breach of discipline under rule 43 may be kept apart from other detainees pending the hearing of the charge.

#### **Determination of mode of hearing**

**46.**—(1) Before hearing a charge against a detainee for a breach of discipline under rule 43, a company commander with delegated powers shall decide whether it may merit the imposition of a sentence in excess of his powers if the charge is proved.

(2) If the company commander decides that it is not so serious, he shall proceed to hear the charge.

(3) If the company commander decides that the offence may merit the imposition of a sentence in excess of his powers, he shall—

- (a) refer the charge promptly to the commandant;
- (b) refer to the commandant any other charge which the company commander has power to hear and arises from the same incident; and
- (c) inform the detainee what action he has taken under sub-paragraphs (a) and (b).

(4) If at any time during the hearing of a charge by the company commander it appears to him that a sentence in excess of his powers should be awarded for the offence if the charge is proved he shall act in accordance with paragraph (3).

### **Reference to an adjudicator**

47.—(1) Before hearing a charge against a detainee for a breach of discipline under rule 43 the commandant shall determine whether it is so serious that additional days may be awarded for the offence, if the charge is proved or whether a suspended charge is to be activated.

(2) Where the commandant determines that it is not so serious, he shall proceed to hear the charge.

(3) Where the commandant determines that the offence may merit the award of additional days, he shall—

- (a) refer the charge promptly to an adjudicator;
- (b) refer to the adjudicator any other charge which the commandant has power to hear and arises from the same incident; and
- (c) inform the detainee what action he has taken under sub-paragraphs (a) and (b).

(4) If at any time during the hearing of a charge by the commandant it appears to him that additional days should be awarded for the offence if the charge is proved he shall act in accordance with paragraph (3).

### **Rights of detainees charged**

48.—(1) This rule shall apply where a detainee is charged with a breach of discipline under rule 43.

(2) The detainee shall as soon as possible and, in any case, before the time when it is heard—

- (a) be informed of the charge; and
- (b) be provided with a copy of the charge, and a copy of any statements to be used in evidence.

(3) At any hearing of a charge under these Rules each witness shall give his evidence orally unless the detainee has been supplied in advance with a copy of his statement and agrees otherwise, in which case the written statement made by that witness may be read to the detainee.

(4) The detainee, or in the case of a hearing before an adjudicator his legal representative, shall be allowed to question any witness called by the company commander, commandant or adjudicator.

(5) The detainee may give evidence himself but shall not be compelled to do so. The detainee may call witnesses who shall give their evidence orally and in his presence, or if the company commander, commandant or adjudicator does not require that such a witness gives his evidence orally the detainee may submit a written statement of the witnesses evidence which the company commander, commandant or adjudicator shall read. If the detainee or any witness called by him gives evidence orally the company commander, commandant or adjudicator may question him.

(6) Immediately before reaching his finding the company commander, commandant or adjudicator shall give the detainee or in the case of a hearing before an adjudicator his legal representative an opportunity to address him regarding the facts of the case.

(7) The company commander, commandant or adjudicator shall announce his finding on each charge.

(8) If a charge has been found proved the company commander, commandant or adjudicator shall consider the detainee's character and any other factors relevant to the punishment and shall, before deciding the punishment, give the detainee, or in the case of a hearing before an adjudicator his legal representative, the opportunity to address him.

(9) The company commander, commandant or adjudicator shall state the punishment awarded in respect of each charge and explain the reasons for the punishment awarded.

(10) Before any hearing conducted before an adjudicator the detainee who has been charged shall be given the opportunity to take legal advice and to arrange legal representation at the hearing.

### **Company commander's punishments**

**49.**—(1) If he finds a charge under rule 43 proved, a company commander with delegated powers may, subject to paragraph (2), impose one or both of the following punishments—

- (a) admonition;
- (b) extra military instruction not exceeding three periods of forty-five minutes each.

(2) If the person charged is a civilian subject to service discipline, he may not impose extra military instruction as a punishment.

(3) If more than one charge is found at the same hearing to have been proved, punishments under this rule may be ordered to run consecutively.

### **Commandant's punishments**

**50.**—(1) If he finds a charge under rule 45 proved, the commandant may, subject to paragraphs (2) to (4), impose one or more of the following punishments—

- (a) admonition;
- (b) cellular confinement for a period not exceeding ten days;
- (c) extra military instruction.

(2) The commandant may not impose cellular confinement along with any other punishment.

(3) If the person charged is a civilian subject to service discipline, he may not impose extra military instruction as a punishment.

(4) If more than one charge is found at the same hearing to have been proved, punishments under this rule may be ordered to run consecutively, but the total period of cellular confinement shall not exceed ten days.

### **Adjudicator's punishments**

**51.**—(1) If he finds a charge under rule 45 proved, the adjudicator may, subject to paragraph (2), impose one or more of the following punishments—

- (a) any of the punishments mentioned in rule 50(1); and
- (b) an award of additional days of service detention not exceeding twenty-eight days.

(2) If more than one charge is found to be proved at the same hearing, punishments under this rule may be ordered to run consecutively but, the total period of additional days of service detention awarded shall not exceed twenty-eight days and the total period of cellular confinement shall not exceed ten days.

(3) If the adjudicator finds a charge proved and imposes a punishment, he shall inform the person charged of the reasons for the punishment.

(4) The adjudicator shall make and retain a note of the hearing including any reasons given under paragraph (3).

(5) A copy of his note shall be promptly supplied by the adjudicator to the commandant, who shall promptly supply a copy of the note to the detainee concerned.

### **Review of adjudicators's punishment**

**52.**—(1) Where a punishment is imposed by an adjudicator under rule 51, the detainee may, within fourteen days of his receiving a copy of the adjudicator's note of the hearing submit to the commandant in writing a request for a review together with his grounds for the request.

(2) The commandant shall promptly forward the request and grounds to the Judge Advocate General, who shall appoint a reviewer.

(3) The reviewer shall, save in exceptional circumstances, begin the review within four days of his appointment by the Judge Advocate General.

(4) The review shall—

(a) be conducted on the papers alone;

(b) only be of the punishment imposed and shall not be a review of the finding under rule 51 that the charge has been proved.

(5) On completion of the review, if it appears to the reviewer that the punishment imposed was manifestly unreasonable he may—

(a) reduce the number of any additional days of service detention awarded;

(b) for whatever punishment has been imposed by the adjudicator, substitute another punishment which is, in his opinion, less severe; or

(c) quash the punishment entirely.

(6) A detainee requesting a review shall serve any additional days of service detention awarded under rule 51 unless and until they are reduced.

### **Cellular confinement**

**53.** Before deciding whether to impose a punishment of cellular confinement, the adjudicator or reviewer (as the case may be) shall enquire of a medical officer as to whether there are any medical reasons why the punishment is unsuitable and shall take this advice into account when making his decision.

### **Prospective award of additional days**

**54.**—(1) Subject to paragraph (2), where a breach of discipline under rule 43 is committed by a detainee who is in post charge custody, additional days of service detention may be awarded by the adjudicator notwithstanding that the detainee has not (or had not at the time of the offence) been sentenced.

(2) An award of additional days of service detention under paragraph (1) shall have effect only if a sentence of service detention is passed against the detainee in question for a charge in respect of which he was in custody when the breach occurred.

### **Suspended punishments**

**55.**—(1) The power to impose a disciplinary punishment, other than admonition, under any of rules 49 to 52 shall include power to direct that the punishment is not to take effect unless, during a period specified in the direction (not being more than six months from the date of the direction), the detainee commits another breach of discipline under rule 43, the breach is heard by an adjudicator and a direction is given under paragraph (2).

(2) Where a detainee commits a breach of discipline during the period specified in a direction given under paragraph (1), the adjudicator hearing a charge may—

- (a) direct that the suspended punishment shall take effect;
- (b) reduce the period or amount of the suspended punishment and direct that it shall take effect as so reduced;
- (c) vary the original direction by substituting for the period specified a period expiring not later than six months from the date of variation; or
- (d) give no direction with respect to the suspended punishment.

(3) Where a direction under paragraph (1) has been given with respect to an award against a detainee of additional days of service detention and the detainee is charged with committing a breach of discipline under rule 43 during the period specified in the direction, the commandant shall either—

- (a) hear the charge and give no direction with respect to the suspended punishment; or
- (b) refer the charge to the adjudicator for him to hear it.

## PART 5

### MCTC – further provisions

**56.** The purpose of MCTC is to hold detainees safely and securely and to provide purposeful training, activity and facilities in order that—

- (a) those detainees who are to return to service with Her Majesty's forces after completing their sentence improve their service efficiency, discipline and morale and will determine to become better members of the armed forces; and
- (b) those detainees who are to be dismissed or discharged from Her Majesty's forces enhance their potential for self-sufficiency and responsible citizenship.

#### **Appointment of staff of MCTC**

**57.** The commandant, officers and other members of staff shall be appointed by or under the directions of the Secretary of State.

#### **Separate accommodation**

**58.—(1)** So far as reasonably practicable, the commandant shall provide separate accommodation for—

- (a) male detainees under sentence of service detention who are to return to their units on completion of sentence;
- (b) male detainees under sentence of service detention who are to be dismissed or discharged from Her Majesty's forces on completion of their sentence;
- (c) male detainees held in service custody—
  - (i) without charge under section 99 of the Act;
  - (ii) after charge under section 105 of the Act;
  - (iii) during proceeds of the Court Martial or Service Civilian Court under section 109 of the Act; or
  - (iv) who have been awarded a relevant sentence under the Act and are awaiting committal to a prison;
- (d) female detainees.

(2) The commandant may, subject to such conditions as he thinks fit, permit a woman detainee to have her child under the age of one year with her in MCTC, and everything necessary for the child's maintenance and care shall be provided.

## **Segregation of detainees**

**59.** Nothing in rule 58 shall prevent the commandant from segregating a detainee or detainees from other detainees.

## **Privileges of detainees under sentence**

**60.**—(1) Subject to paragraphs (2) and (7), a detainee serving a sentence of service detention shall—

- (a) enjoy such privileges as the commandant determines should be available to such detainees in his stage of training; and
- (b) have the opportunity to progress to higher stages and enjoy greater privileges.

(2) The commandant, with the approval of an inspector of service custody premises, shall from time to time decide—

- (a) the different stages of training through which, subject to paragraph (3), such detainees may progress;
- (b) the privileges available to detainees in each stage; and
- (c) the criteria for, and any procedures relating to, progression to each stage.

(3) The commandant shall decide the progress to higher stages of such detainees by reference to their conduct and the criteria referred to in paragraph 2(c).

(4) A detainee who has been sentenced to service detention for a period of less than twenty-eight days shall not be able to progress to a higher stage of training.

(5) The privileges available to such detainees at different training stages may include—

- (a) free and unescorted movement within limits laid down by the commandant;
- (b) a reduction in supervision by members of the staff of the MCTC;
- (c) permission to purchase articles in accordance with any general or specific approval of the commandant;
- (d) an increased reimbursement allowance;
- (e) temporary release in the locality of MCTC; and
- (f) leave to assist with social or service reintegration after completion of sentence.

(6) The commandant shall make available to all such detainees details of—

- (a) the number of stages of training currently in place;
- (b) the privileges available to detainees in each stage; and
- (c) the criteria for, and any procedures relating to, progression to each stage.

(7) In the case of such a detainee who has progressed beyond the first stage of training, the commandant may relegate him to a lower stage of training having regard to his conduct generally or failure to maintain the criteria for progression to his current stage of training.

## **Education**

**61.** The commandant shall—

- (a) provide educational training at such times as are available and in accordance with any syllabus laid down by the Defence Council or an officer authorised by them to detainees serving sentences of service detention, including appropriate training and instruction for any detainees with special educational needs;
- (b) where accommodation is available, provide an information room in which detainees serving a sentence of service detention may study current world affairs, read books, pamphlets and newspapers, and consult maps and books of reference at such times and under such conditions as the commandant may decide;

- (c) where radios, television sets or loudspeakers are provided, to make use of them as he considers fit for broadcasting news and educational matters to detainees;
- (d) encourage detainees serving a sentence of service detention to assist in the education of other such detainees;
- (e) encourage other educational activities when circumstances permit.

#### **Welfare officer**

62. The commandant shall appoint a welfare officer and shall afford detainees reasonable opportunities to consult the welfare officer.

#### **Appointment of the independent monitoring board**

63.—(1) The Secretary of State shall appoint an independent monitoring board for MCTC of not more than fourteen members.

(2) The independent monitoring board shall have at least four members, at least two of whom shall be magistrates.

(3) The persons who, immediately before the date of coming into force of these Rules, were members of the independent board of visitors of military establishments appointed under the Imprisonment and Detention (Army) Rules 1979(a) shall be deemed to have been appointed on that date as members of the independent monitoring board.

#### **General duties of the independent monitoring board**

64.—(1) The independent monitoring board shall—

- (a) inspect MCTC at least twice a year in accordance with rule 65;
- (b) inquire into any matter relating to MCTC in accordance with any direction from the Secretary of State;
- (c) inquire into any alleged abuse or shortcoming relating to MCTC that come to their notice; and
- (d) report the results of each inspection and inquiry to the Secretary of State.

(2) The independent monitoring board shall record each visit made to MCTC in a journal that the commandant shall keep for that purpose, and any member of the independent monitoring board may record in that journal any observation that he wishes to make relating to MCTC.

#### **Duties of the independent monitoring board on inspection of MCTC**

65.—(1) On each inspection of MCTC under rule 64(1)(a) the independent monitoring board shall inspect in particular—

- (a) the treatment, health and welfare of detainees;
- (b) the condition of the premises; and
- (c) the administration of detainees' affairs.

(2) Without prejudice to the duties set out in paragraph (1), the members of the independent monitoring board shall, on each inspection of MCTC, ensure that they—

- (a) see all detainees;
- (b) hear, in private if they think that appropriate, any complaint or request that a detainee may wish to make to them; and
- (c) inspect the food prepared for the detainees.

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(a) Rule 47 of S.I. 1979/1456, substituted by S.I. 1980/723.

### **Appointment of service visiting officer**

66. An officer not below the rank of lieutenant commander, major or squadron leader shall be appointed as the service visiting officer by the local commander and shall visit MCTC at weekly intervals.

### **Duties of the service visiting officer**

67.—(1) Subject to paragraph (2), the service visiting officer shall on each visit ensure that he—

- (a) sees all detainees either on parade or in their rooms, except that a detainee confined in a cell or in a medical detention room shall be seen in his cell or that room (as the case may be); and
- (b) asks directly each detainee if he has a complaint that he wishes to bring to his attention.

(2) A service visiting officer is to satisfy himself that he has seen all detainees, except any whom he is specifically requested not to see on medical grounds on the advice of a medical officer.

(3) A detainee who wishes to complain shall be asked by the service visiting officer whether he wishes to make his complaint there or to see him privately. If the detainee wishes to make his complaint privately the commandant shall make a suitable room available for the service visiting officer. If the commandant considers it necessary a member of staff may be present to ensure that there is no breach of discipline by the detainee but, at the discretion of the service visiting officer, that member of staff is to remain within sight but out of hearing.

### **Investigation of complaints by the service visiting officer**

68.—(1) The service visiting officer shall inquire fully into any complaint made to him by a detainee.

(2) On completing any inquiry under paragraph (1)—

- (a) if in his opinion the complaint is not well-founded, he shall inform the detainee accordingly;
- (b) if in his opinion the complaint is well-founded, he shall inform the detainee that he will report the matter to the local commander.

(3) After each visit to MCTC the service visiting officer is to make a report to the local commander, including a full report of every complaint made to him and any subsequent investigation.

### **Resolution of complaints made to the service visiting officer**

69. On receipt of a complaint reported to him by the service visiting officer, the local commander shall investigate it and, if he decides the complaint is well-founded, he shall decide what redress (if any) within his authority would be appropriate and grant any such redress.

### **Earned remission of sentence**

70.—(1) The commandant may for good conduct award a detainee serving a sentence of more than ninety days of service detention remission of his sentence (additional to remission under rule 8) to a maximum of one-sixth of the period of his sentence in excess of ninety days.

(2) In paragraph (1) the reference to a sentence of more than ninety days of service detention is a reference to the period of service detention which the detainee would apart from this rule and rule 8 be required to serve, including any additional period of service detention which he would be required to serve in accordance with rules 51 and 52.

(3) For the purposes of calculating the period of maximum remission under paragraph (1), a fraction of a day shall be ignored.

(4) In deciding what, if any, award of remission to make, the commandant shall have regard to the reports provided under paragraph (5) by the detainee’s company commander.

(5) The detainee’s company commander shall provide to the commandant a report on the detainee’s conduct during each seven days of his detention, except for the period of fourteen days beginning with the date of the detainee’s arrival at MCTC.

## PART 6

### Offences relating to service custody premises and further rules as to access

#### Offences in relation to service custody premises and persons under sentence

71.—(1) The provisions of sections 39 to 42 of the Prison Act 1952(a) and section 22(2) of the Criminal Justice Act 1961(b) shall apply in relation to service custody premises and detainees in such premises, subject to the modifications in the table below and paragraph (2).

| <i>For references to:</i>  | <i>there shall be substituted:</i>  |
|----------------------------|---|
| “governor or director”     | “commandant”  |
| “officer”                  | “any member of staff of service custody premises”   |
| “prison”                   | “service custody premises within the meaning of section 300 of the Armed Forces Act 2006” |
| “prison rules”             | “the Service Custody and Service of Relevant Sentences Rules 2009”                        |
| “the Prison Commissioners” | “the commandant”  |
| “prisoner”                 | “person detained in service custody for the purposes of the Armed Forces Act 2006”        |

(2) In section 22(2) of the Criminal Justice Act 1962 for the words from “or other institutions” to “or detention” there shall be substituted the words “or, who being a person detained in service custody for the purposes of the Armed Forces Act 2006 or serving a relevant sentence within the meaning of section 300(7) of the Armed Forces Act 2006”.

#### Persons having access to service custody premises

72.—(1) No person shall without the commandant’s permission enter service custody premises or, while there, make any sketch or take any photograph. No person shall remain in service custody premises after being requested to leave by the commandant. In deciding whether to grant permission, grant permission subject to certain conditions or refuse permission to enter a service custody premises, the commandant shall have regard to the orders of any court of competent jurisdiction, the provisions of these Rules and the directions or instructions of higher authority.

(2) Subject to these Rules, the commandant of service custody premises may—

- (a) grant permission to any person to enter the service custody premises subject to such conditions as he considers appropriate; and
- (b) may make it a condition of granting permission to a person to enter or do anything within the service custody premises that such person agrees to being searched if requested.

(3) The commandant may order the removal from a service custody premises of any person who without the commandant’s permission, enters the service custody premises or, while there, makes any sketch or takes any photograph, refuses to be searched or fails to comply with any condition imposed by the commandant under this rule.

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(a) 1952 c. 52.  
(b) 1961 c. 39.

(4) If any member of staff of service custody premises suspects that any visitor or other person has committed an offence against any of sections 39 to 42 of the Prison Act 1952, as modified by these Rules, or against these Rules or of being in improper possession of any property used or intended for use in the service custody premises, he shall stop that person and immediately inform the commandant, who may, if he thinks fit, order that person to be searched.

(5) Paragraphs (1) to (3) do not apply to a member of the independent monitoring board carrying out any of his functions under these Rules or to the service visiting officer.

**73.**—(1) Without prejudice to any other powers to prohibit or restrict entry to service custody premises, the commandant may prohibit visits by a person to service custody premises or to a detainee in a service custody premises for such periods of time as he considers necessary if he considers that such a prohibition is—

- (a) necessary on grounds specified in rule 17(3); and
- (b) is proportionate to what is sought to be achieved by the prohibition.

(2) Paragraph (1) does not apply in relation to—

- (a) any visit by a member of the independent monitoring board carrying out any of his functions under these Rules;
- (b) any visit by a legal representative for the purposes of an interview under rule 22.

## PART 7

### Transitional Provisions

**74.** In these Rules—

- (a) references to a sentence of service detention include an SDA sentence of service detention;
- (b) references to a relevant sentence include (as well as, by reason of paragraph (a), an SDA sentence of service detention)—
  - (i) an SDA custodial sentence; and
  - (ii) a custodial sentence passed in respect of an SDA offence.

**75.** The period of sixty days referred to in rule 6(1) includes any period of service detention before commencement in service custody facilities outside the United Kingdom.

**76.** In rules 7(3)(c) and 10(1)(c) the reference to permission by an inspector of service custody premises for use of a service custody facility for confinement of a detainee includes permission or licence for such use given by an Inspector of Military Establishments before commencement.

**77.**—(1) This rule applies where immediately before commencement a detainee in MCTC was due to be dealt with under rule 85 of the Imprisonment and Detention (Army) Rules 1978 for an alleged offence against discipline under rule 83 of those rules.

(2) Part 4 of these Rules shall apply as if the alleged offence were an alleged breach of discipline under rule 43, except that—

- (a) it shall not be open to the commandant to refer the charge for the alleged offence to an adjudicator, and accordingly rules 47, 51, 52, 53 and 54 and any other provision of Part 4 referring to an adjudicator shall not apply;
- (b) it shall not be open to the commandant to impose a punishment of cellular confinement for a period exceeding three days.

**78.** Where before commencement a detainee in MCTC began a sentence of service detention of more than ninety days, he may be awarded remission under rule 70 but only to a maximum of one-sixth of the period of his sentence which falls to be served on or after commencement.

79. In this Part of these Rules—

“commencement” means the date on which these Rules come into force;

“SDA custodial sentence” means any of the following—

- (a) a sentence of imprisonment passed by—
  - (i) a court-martial;
  - (ii) a Standing Civilian Court;
  - (iii) the Courts-Martial Appeal Court or the Court Martial Appeal Court (in either case on an appeal brought from a court-martial); or
  - (iv) the House of Lords or Supreme Court on an appeal brought from a decision of the Courts-Martial Appeal Court or the Court Martial Appeal Court where the decision was made on an appeal from a court-martial;
- (b) a sentence of custody for life under section 71A(1A) or (1B) of the Army Act 1955 or Air Force Act 1955 or section 43A(1A) or (1B) of the Naval Discipline Act 1957;
- (c) a sentence of detention during Her Majesty’s pleasure under section 71A(3) of the Army Act 1955 or the Air Force Act 1955 or section 43A(3) of the Naval Discipline Act 1957;
- (d) a sentence of detention under section 71A(4) of the Army Act 1955 or the Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957 (detention for serious offence committed by young person);
- (e) a custodial order under—
  - (i) section 71AA of, or paragraph 10 of Schedule 5A to, the Army Act 1955 or the Air Force Act 1955; or
  - (ii) section 43AA of, or paragraph 10 of Schedule 4A to, the Naval Discipline Act 1957;

“SDA offence” means an offence under the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, the Armed Forces Act 1991(a) or the Reserve Forces Act 1996(b) committed before commencement;

“SDA sentence of service detention” means a sentence of detention under section 71(1)(e) or 76C of the Army Act 1955 or the Air Force Act 1955 or section 43(1)(e) of the Naval Discipline Act 1957.

28th April 2009

*Kevan Jones*  
Parliamentary Under Secretary of State  
Ministry of Defence

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- (a) 1991 c. 62.
  - (b) 1996 c. 14.

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## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules make provision concerning service custody and the service of custodial sentences imposed in respect of service offences under the Armed Forces Act 2006, including committal of persons to civil prison or service custody premises, the management of service custody premises, the treatment of persons in service custody and the inspection of service custody premises. They revoke and replace the Imprisonment and Detention (Army) Rules 1979, the Imprisonment and Detention (Air Force) Rules 1980 and the Naval Detention Quarters Rules 1973.

The Rules broadly follow earlier rules made under armed forces legislation preceding the Armed Forces Act 2006. The main new provisions in the Rules include a new system of disciplinary powers at the Military Corrective Training Centre (under Part 4 of the Rules). This includes a power for a judge advocate (acting as an adjudicator under the rules) to award up to twenty-eight additional days of service detention for prescribed breaches of discipline by a detainee (rule 51). A punishment imposed by an adjudicator is subject to review under rule 52.

Rule 70 makes new provision for detainees serving sentences of service detention of more than ninety days to be awarded remission (in addition to automatic remission under rule 8) for good conduct.

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STATUTORY INSTRUMENTS

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**2009 No. 1096**

**DEFENCE**

The Service Custody and Service of Relevant Sentences Rules  
2009

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