

2009 No. 1923

DEFENCE

The Armed Forces (Disposal of Property) Regulations 2009

Made - - - - *16th July 2009*

Laid before Parliament *20th July 2009*

Coming into force - - *31st October 2009*

The Secretary of State, in exercise of the powers conferred by section 94(1) and (2) of the Armed Forces Act 2006(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Disposal of Property) Regulations 2009 and shall come into force on 31 October 2009.

Interpretation

2. In these Regulations—

“the Act” means the Armed Forces Act 2006;

“the Director” means the Director of Service Prosecutions;

“judge advocate” means a judge advocate specified by the Judge Advocate General—

(a) for proceedings under section 142(3) of the Act;

(b) for proceedings under section 155(5) of the Act;

(c) for proceedings under section 278(2) of the Act; or

(d) for the purposes of making an order or hearing an appeal under these Regulations;

“service police” means any service police force and “a service policeman” is a member of such a force.

Disposal of property by order of judge advocate

3.—(1) Where any property has come into the possession of the service police or a person’s commanding officer in connection with the investigation of a service offence and—

(a) the Director has directed a charge to be allocated for disposal in the Court Martial or Service Civilian Court, or

(b) a notice of appeal to the Summary Appeal Court has been served on the person’s commanding officer, and

(c) an application for an order under paragraph (2) has been sent to the court administration officer,

(a) 2006 c. 52.

a judge advocate may make an order under paragraph (2).

(2) A judge advocate may—

- (a) make an order for the delivery of the property to the person appearing to the judge advocate to be the owner of the property; or
- (b) if the owner cannot be ascertained or disclaims their rights in the property, make such order for the disposal of the property including, but not limited to, its destruction, retention or sale as the judge advocate considers appropriate.

(3) An application under paragraph (1)(c) may be made by—

- (a) a service policeman;
- (b) a person claiming to be the owner of the property;
- (c) a person in whose possession the property was before it was seized; or
- (d) a person charged with a service offence in the proceedings.

(4) Where an order is made under paragraph (2) it shall not affect the right of any person to take proceedings for the recovery of that property, but on the expiration of six months from the date of any order made under paragraph (2) that right shall cease.

(5) Before making an order for destruction or sale a judge advocate shall invite any person or persons mentioned in paragraph (3)(b) to (d) to make representations concerning retention of the property concerned and in any event an order made under this regulation shall not take effect until the time limit for an appeal under regulation 8 has expired with no appeal being made.

Disposal of property on determination of commanding officer of person charged with service offence

4.—(1) Where—

- (a) any property has come into the possession of the service police or a person's commanding officer in connection with the investigation of a service offence, and
- (b) an application for a determination under paragraph (2) has been sent to a commanding officer mentioned in paragraph (5),

that commanding officer may make a determination under paragraph (2) and send a copy of it to the person making the application and the person appearing to the commanding officer to be the owner of the property (if that person is not the applicant).

(2) The commanding officer may—

- (a) make a determination for the delivery of the property to the person appearing to the commanding officer to be the owner of the property; or
- (b) if the owner cannot be ascertained or disclaims their rights in the property, make such determination for the disposal of the property, including delivering it to the service police for destruction, retention or sale.

(3) An application under paragraph (1)(b) may be made by—

- (a) a service policeman;
- (b) a person claiming to be the owner of the property;
- (c) a person in whose possession the property was before it was seized; or
- (d) a person charged with a service offence in the proceedings.

(4) Before making a determination for delivery of the property for destruction or sale a commanding officer shall invite any person mentioned in paragraph (3)(b) to (d) to make representations for retention of the property concerned and, in any event, a determination made under this regulation shall not take effect until the time limit for an appeal under regulation 8 has expired with no appeal being made.

(5) In this regulation “commanding officer” means the commanding officer of a person charged with a service offence.

Disposal of property on determination of commanding officer in other circumstances

5.—(1) Where—

- (a) any property has come into the possession of the service police or a person's commanding officer in connection with the investigation of a service offence, and
- (b) an application for a determination under paragraph (2) has been sent to a commanding officer mentioned in paragraph (5),

that commanding officer may make a determination under paragraph (2) and send a copy of it to the person making the application and the person appearing to the commanding officer to be the owner of the property (if that person is not the applicant).

(2) The commanding officer may make a determination for the delivery of the property to—

- (a) the person in whose possession the property was before it was seized; or
- (b) the person who claims to be owner of the property.

(3) An application under paragraph (1)(b) may be made by—

- (a) a service policeman;
- (b) a person claiming to be the owner of the property; or
- (c) a person in whose possession the property was before it was seized.

(4) A determination made under this regulation shall not take effect until the time limit for an appeal under regulation 8 has expired with no appeal being made.

(5) In paragraph (1)(b) "commanding officer" means—

- (a) the commanding officer of a person in whose possession the property was before it was seized under Part 3 of the Act; or
- (b) the commanding officer of a person who claims to be the owner of the property.

Retention of property

6.—(1) If, an order under regulation 3(2)(b) or a determination under regulation 4(2)(b) is to be made and in the opinion of the judge advocate or person's commanding officer (as the case may be), the property in question (other than money) can be used for police purposes, the judge advocate may order or commanding officer may determine that the property is to be retained by the service police and the property shall vest in them on the making of the order or determination.

(2) An order or determination under paragraph (1) shall be recorded in writing and that record shall include the date on which the order or determination is made.

Sale of property

7.—(1) If an order under regulation 3(2)(b) or a determination under regulation 4(2)(b) is to be made, the judge advocate may order, or person's commanding officer may determine (as the case may be), that the property in question (other than money) may be sold.

(2) The proceeds of all sales under these Regulations and any money to which these Regulations apply shall be paid into a Service Fund Sub Account maintained for a charitable purpose.

Appeals

8.—(1) Subject to paragraph (13) an appellant may appeal against the order of a judge advocate or the determination of a commanding officer made under these Regulations.

(2) A notice of appeal shall be in writing and sent to the court administration officer within 14 days of the original decision being made or conveyed to the parties, whichever is later.

(3) The notice of appeal must state—

- (a) the order of the judge advocate or determination made by the commanding officer;
- (b) the reasons for appealing against that order or determination; and

- (c) what order the appellant wants the Judge Advocate General to make.
- (4) The court administration officer shall forward the notice of appeal to—
 - (a) the Judge Advocate General; and
 - (b) the judge advocate against whose order the notice or appeal is lodged; or
 - (c) the commanding officer against whose determination the notice of appeal is lodged.
- (5) The Judge Advocate General may—
 - (a) uphold the appeal and—
 - (i) grant the order requested in the notice of appeal; or
 - (ii) make any order that a judge advocate may make under regulation 3(2) in respect of the property;
 - (b) inform the court administration officer that he is minded to dismiss the appeal without a hearing; or
 - (c) direct a hearing of the appeal.
- (6) Where the Judge Advocate General is minded to dismiss the appeal without a hearing, the court administration officer shall notify the appellant in writing of that fact.
- (7) Where the appellant is given notice under paragraph (6), the appeal shall be treated as dismissed unless the appellant gives written notice to the court administration officer no later than 14 days after the date of the notice under paragraph (6), that he requires a hearing of the appeal.
- (8) There shall be a hearing of the appeal if—
 - (a) the Judge Advocate General directs a hearing; or
 - (b) the appellant requires a hearing under paragraph (7).
- (9) If the appeal is against an order of a judge advocate that judge advocate may not hear the appeal.
- (10) At a hearing of an appeal—
 - (a) the appellant may address the judge advocate; and
 - (b) where the appeal is against a determination of a commanding officer that commanding officer may make written representations or, with leave, address the judge advocate.
- (11) The judge advocate may—
 - (a) dismiss the appeal; or
 - (b) make any order that a judge advocate may make under regulation 3(2) in respect of the property.
- (12) Where an order is made under paragraph (5)(a) or (11)(b) it shall not affect the right of any person to take proceedings for the recovery of that property, but on the expiration of six months from the date of any order made under paragraph (5)(a) or (11)(b) that right shall cease.
- (13) A person may not appeal against the order of a judge advocate if that order was made pursuant to an appeal under this regulation.
- (14) In this regulation “appellant” means—
 - (a) a service policeman;
 - (b) a person claiming to be the owner of the property;
 - (c) a person in whose possession the property was before it was seized; or
 - (d) a person charged with a service offence in the proceedings.

16th July 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations deal with the disposal of property which has been acquired by the service police or a person's commanding officer during the investigation of an offence.

The Regulations enable a judge advocate to order the return of property to the person appearing to be the owner of it or, if the owner cannot be found, to order its disposal as appropriate (including retention by the police, its sale or destruction).

The commanding officer of a person charged with a service offence may determine that property is to be returned to the person appearing to be the owner or, if the owner cannot be found, determine that it is to be delivered to the service police for disposal as appropriate.

In other circumstances, for example where no one has been charged with a service offence, a commanding officer may determine that property is to be returned to the person claiming to be the owner of it or to the person in whose possession the property was before it was seized.

Where it is proposed to make an order or determination for sale or destruction of property a judge advocate or commanding officer, as appropriate, must invite representations from interested persons concerning the retention of the property and any order or determination shall not take effect until the time limit for an appeal under these Regulations has expired with no appeal being made.

Time limits are established after which a decision on disposal by a judge advocate cannot be challenged in civil proceedings but such limits are not applied where a decision on disposal is made by a commanding officer.

A decision made by a commanding officer under these Regulations may be appealed to a judge advocate who can make an appropriate order in respect of the property.

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STATUTORY INSTRUMENTS

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