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STATUTORY INSTRUMENTS

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**2009 No. 2041**

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

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. These Rules may be cited as the Armed Forces (Court Martial) Rules 2009 and shall come into force on 31st October 2009.

**Interpretation: proceedings and parties**

2.—(1) Unless otherwise stated, any reference in these Rules to proceedings includes—

- (a) preliminary proceedings,
- (b) trial proceedings,
- (c) sentencing proceedings,
- (d) variation proceedings,
- (e) appellate proceedings,
- (f) activation proceedings, and
- (g) ancillary proceedings,

but does not include the exercise of any power of the court otherwise than at a hearing.

(2) In these Rules—

“activation order” means—

- (a) an order under paragraph 8(2)(a) or (b) of Schedule 12 to the 2003 Act (activation of suspended sentence of imprisonment);
- (b) an order under section 191(3) (activation of suspended sentence of service detention); or
- (c) an order under section 214(3) (reactivation of detention and training order);

“activation proceedings” means proceedings for the making of an activation order, but does not include sentencing proceedings in which the court has power to make such an order;

“ancillary proceedings” means—

- (a) a hearing under rule 127 of an application under section 285(4) for leave to appeal out of time from the Service Civilian Court; and
- (b) proceedings under any provision of Part 18;

“appellate proceedings” means proceedings of the court (other than sentencing proceedings) on appeal from the Service Civilian Court;

“community order proceedings” means any proceedings under Chapter 1 of Part 18;

“preliminary proceedings” means any proceedings of the court held for the purpose of arraigning a defendant on a charge or giving directions, orders or rulings for the purpose of trial proceedings;

“related proceedings”, in relation to preliminary proceedings, means—

- (a) trial proceedings in respect of any charge to which the preliminary proceedings relate;
- (b) any further preliminary proceedings in relation to such trial proceedings; and
- (c) any sentencing proceedings in respect of any offence found proved in such trial proceedings, or as respects which the offender pleads guilty in the preliminary proceedings or related proceedings;

“sentencing proceedings” means proceedings for the sentencing of—

- (a) a person convicted by the court on a plea of guilty or in trial or appellate proceedings, or
- (b) a person convicted by the Service Civilian Court who appeals against sentence,

and does not include variation proceedings;

“trial proceedings” means proceedings for the trial of a charge by the court (including proceedings authorised by an order of the Appeal Court under section 19 of the 1968 Act), and does not include sentencing proceedings;

“variation proceedings” means proceedings under Part 15.

(3) References in these Rules to a party to any proceedings are to—

- (a) a person to whom the proceedings relate;
- (b) the Director; and
- (c) where the proceedings are for the hearing of an application (and the applicant is not a person to whom the proceedings relate), the applicant.

(4) References in these Rules to a person to whom proceedings relate are to—

- (a) in the case of preliminary or trial proceedings, a defendant;
- (b) in the case of sentencing proceedings, an offender who falls to be sentenced;
- (c) in the case of variation proceedings, an offender in respect of whom a sentence which falls to be varied has been passed;
- (d) in the case of appellate proceedings, an appellant;
- (e) in the case of activation proceedings, the offender in respect of whom the court has power to make an activation order;
- (f) in the case of community order proceedings, the offender in respect of whom the overseas community order was made;
- (g) in the case of a hearing of an application under section 232(1) for the variation or revocation of a service restraining order, the person in respect of whom the service restraining order was made;
- (h) in the case of a hearing of any other application (other than community order proceedings), the applicant;
- (i) in the case of proceedings under section 229 (service restraining orders) in respect of a case remitted to the court by the Appeal Court under section 230(3), the person whose appeal was allowed; and
- (j) in the case of a hearing under rule 151 (certification of contempt of court), the person whose offence the court is to consider certifying.

(5) In these Rules—

“the Director” means the Director of Service Prosecutions;

“defendant” means a person against whom a charge allocated for Court Martial trial has been brought.

### **Interpretation: general**

**3.—(1)** Any reference in these Rules to a numbered section is to that section of the 2006 Act unless otherwise stated.

(2) In these Rules—

“the 2006 Act” means the Armed Forces Act 2006;

“the 1967 Act” means the Criminal Justice Act 1967<sup>(1)</sup>;

“the 1968 Act” means the Court Martial Appeals Act 1968;

“the 1999 Act” means the Youth Justice and Criminal Evidence Act 1999<sup>(2)</sup>;

“the 2003 Act” means the Criminal Justice Act 2003;

“the CPIA Order” means the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009<sup>(3)</sup>;

“advance information” has the meaning given by rule 43<sup>(2)</sup>;

“allocated for Court Martial trial” means regarded for the purposes of Part 5 of the 2006 Act as allocated for Court Martial trial;

“the Appeal Court” means the Court Martial Appeal Court;

“bad character” has the meaning given by section 98 of the 2003 Act;

“civilian police force” means a UK police force or a British overseas territory police force;

“the court” means the Court Martial;

“DX” means document exchange;

“detention and training order” means an order under section 211;

“the judge advocate”, in relation to any proceedings, means the judge advocate specified for the proceedings under section 155<sup>(5)</sup>;

“the lay members” has the same meaning as in section 155;

“legal representative” means a person appointed under rule 39;

“live link”, except in Part 15, has the meaning given by rule 18<sup>(3)(a)</sup>;

“the minimum number” means—

(a) in the case of proceedings to which rule 29 applies, five;

(b) in the case of any other proceedings, three;

“the original sentence”, in relation to activation proceedings, has the same meaning as in Part 17;

“pre-sentence report” has the meaning given by section 257;

“the president of the board” means the lay member (if any) who by virtue of rule 34 is the president of the board;

“proceedings with lay members” means any proceedings other than those listed in rule 27;

“qualified to be the president of the board” has the meaning given by rule 34<sup>(3)</sup>;

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(1) 1967 c. 80.

(2) 1999 c. 23.

(3) S.I. 2009/988.

“suspended sentence order” means an order under section 189(1) of the 2003 Act (suspended sentence of imprisonment) made by a relevant service court, as defined by section 196(2) of the 2006 Act;

“unit” means—

- (a) a naval ship or establishment;
- (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.

(3) Any reference in these Rules to Schedule 8 to the 2003 Act is to that Schedule as modified by Schedule 5 to the 2006 Act.