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STATUTORY INSTRUMENTS

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**2009 No. 2041**

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

**PART 14**

**SENTENCING PROCEEDINGS**

**Application and interpretation of Part 14**

**111.**—(1) This Part applies in relation to any sentencing proceedings.

(2) In this Part—

“the offender” means any offender who falls to be sentenced in the proceedings; and

“the offence” means any offence for which the offender falls to be so sentenced.

**Dispute on facts after plea of guilty**

**112.**—(1) Where, after the judge advocate has recorded a plea of guilty in respect of any charge, there are disputed facts in the case, the judge advocate may direct that any issue of fact be tried by the court.

(2) The finding of the court on any such issue shall be determined by a majority of the votes of the members of the court.

(3) In the case of an equality of votes, the court must find for the offender.

(4) The finding of the court shall be announced by the judge advocate.

**Pre-sentence report and previous convictions**

**113.**—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the proceedings, he shall serve a copy on the Director and the offender before the time appointed for the proceedings.

(2) Where the Director has obtained a record of the offender's previous convictions in advance of the proceedings, he shall serve a copy on the offender and the court administration officer before the time appointed for the proceedings.

**Information before sentencing**

**114.**—(1) Where—

(a) the offender was convicted on a plea of guilty (other than a plea offered in the course of a trial),

(b) the proceedings are on an appeal against a sentence imposed by the Service Civilian Court (other than an appeal against both conviction and sentence), or

(c) the offender was convicted in trial proceedings but previous sentencing proceedings in respect of him were terminated,

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*Status: Point in time view as at 13/11/2023.*

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the Director shall address the court on the facts of the case.

- (2) Where practicable, the Director shall inform the court of—
- (a) the offender's age and rank or rate;
  - (b) the offender's service record;
  - (c) any recognised acts of gallantry or distinguished conduct on the part of the offender, and any decoration to which he is entitled;
  - (d) any previous convictions of the offender for—
    - (i) service offences,
    - (ii) offences under the law of any part of the [<sup>F1</sup>British Islands] or [<sup>F2</sup>; and
    - (iii) relevant offences of which the offender has been convicted by a court outside the British Islands,]
 any sentence awarded in respect of any such offence, and whether any such conviction is spent for the purposes of the Rehabilitation of Offenders Act 1974 <sup>M1</sup>;
  - (e) any formal police caution administered to the offender by a constable in England and Wales or Northern Ireland;
  - (f) any period for which the offender has been in custody awaiting trial; <sup>F3</sup>...
  - (g) the offender's pay, terminal benefits and future pension entitlements [<sup>F4</sup>; and]
  - [<sup>F5</sup>(h) any statement of the effect of the offence on the victim, the victim's family or others.]

(3) For the purposes of paragraph (2)(d) an offence is “relevant” if the act that constituted the offence would have constituted an offence under the law of any part of the United Kingdom if it had been done in that part at the time when the Director presents information to the court under this rule.

(4) The Director shall inform the court whether the offence is a relevant offence for the purposes of section 165 (sentencing powers following election for trial by the court).

- (5) Where the court has power—
- (a) to make an activation order in respect of the offender, or
  - (b) to deal with him under section 186(2) (offence during period of conditional discharge) or [<sup>F6</sup>paragraph 25 of Schedule 10 to the Sentencing Code] (overseas community order in force),

the Director shall inform the court of that fact, of the previous offence by virtue of which the court has that power, and of the sentence passed for that offence.

(6) Where the offender is not subject to service law but has formerly been so subject, paragraph (2) has effect as if—

- (a) for the words “and rank or rate” in sub-paragraph (a) there were substituted “ and his rank or rate when he last ceased to be subject to service law ”; and
- (b) before the word “pay” in sub-paragraph (g) there were inserted “ employment, ”.

(7) Where the offender is a civilian subject to service discipline and has not formerly been subject to service law, paragraph (2) has effect as if—

- (a) in sub-paragraph (a) the words “and rank or rate” were omitted;
- (b) sub-paragraphs (b) and (c) were omitted;
- (c) for sub-paragraph (g) there were substituted—
 

“(g) details of the offender's employment (if any);” and
- (d) after sub-paragraph (g) there were inserted—

“(h) if the offender was under 18 years of age when convicted, whether he has a service parent or service guardian (within the meaning of section 233).”.

#### Textual Amendments

- F1 Words in rule 114(2)(d)(ii) substituted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **19(a)**
- F2 Rule 114(2)(d)(iii) substituted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **19(b)**
- F3 Word in rule 114(2)(f) deleted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **12(a)**
- F4 Full stop deleted and word in rule 114(2)(g) inserted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **12(b)**
- F5 Rule 114(2)(h) inserted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **12(c)**
- F6 Words in rule 114(5)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 387** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

#### Marginal Citations

- M1 1974 c. 53. Sections 2 and 6 of the Rehabilitation of Offenders Act 1974 were amended, and the Schedule inserted, by the Armed Forces Act 1996 (c. 46), **section 13** and Schedule 4. Sections 1, 2 and 5, and the Schedule, were further amended by paragraphs 63 to 66 of Schedule 16 to the 2006 Act.

### Offences taken into consideration

**115.**—(1) The court may take into consideration any other service offence committed by the offender, of a similar nature to that for which he falls to be sentenced, if he so requests and the judge advocate so directs.

(2) A list of offences taken into consideration shall be signed by the offender and attached to the record of proceedings.

### Mitigation of sentence

**116.** The offender may—

- (a) call witnesses in mitigation of sentence or as to his character;
- (b) produce to the court any document; and
- (c) address the court in mitigation of sentence.

### Pronouncement of sentence

**117.**—(1) The sentence shall be recorded in writing, dated and signed by the judge advocate and the president of the board.

(2) The judge advocate shall make the statement of reasons, and give the explanation, required by section 252(1).

(3) The president of the board shall pronounce sentence.

(4) With leave of the judge advocate, the president of the board may make additional remarks to the offender about—

- (a) the effects of his offence on the service to which he belongs; and
- (b) the likely effects of the sentence on his service career.

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- (5) Where there are no lay members, or none of the lay members is subject to service law—
  - (a) paragraph (1) shall have effect as if the words “and the president of the board” were omitted;
  - (b) in paragraph (3), the reference to the president of the board shall be read as a reference to the judge advocate; and
  - (c) paragraph (4) shall not apply.
- (6) In this rule, “sentence” has the same meaning as in section 252.

**Status:**

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