
STATUTORY INSTRUMENTS

2023 No. 1097

The Armed Forces (Amendment of Court Rules) Rules 2023

Part 2

Amendment of the Armed Forces (Service Civilian Court) Rules 2009

Amendment of the Armed Forces (Service Civilian Court) Rules 2009

2. The Armed Forces (Service Civilian Court) Rules 2009(1) are amended as follows.

Amendment of rule 2 (interpretation: proceedings and parties)

3. In rule 2 (interpretation: proceedings and parties)—

- (a) omit the “and” after paragraph (1)(c);
- (b) after paragraph (1)(d), insert—

“; and

(e) variation proceedings”;

(c) in paragraph (2)—

(i) at the end of the definition of “sentencing proceedings” insert “and does not include variation proceedings”;

(ii) at the end of the definition of “trial proceedings”, for “sentencing proceedings.” substitute “sentencing proceedings or variation proceedings.”;

(iii) after the definition of “trial proceedings”, insert—

““variation proceedings” means proceedings under Part 14A.”;

(d) after paragraph(4)(f), insert—

“(g) in the case of variation proceedings, an offender in respect of whom a sentence which falls to be varied has been passed.”.

Amendment of rule 96 (information before sentencing)

4. In rule 96, for paragraph (2)(b) substitute—

“(b) any previous convictions of the offender for—

(i) offences under the law of any part of the British Islands, or

(ii) relevant offences of which the offender has been convicted by a court outside the British Islands,

and 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(2);”.

Variation proceedings

5. After rule 99 (pronouncement of punishment), insert—

“Part 14A

Variation Proceedings

Application of Part 14A

99A. This Part applies where, on or after 13th November 2023, the court has imposed a sentence.

Interpretation of Part 14A

99B. In this Part—

“original sentence” means a sentence imposed in the course of sentencing proceedings;

“varied sentence” means a sentence substituted for the original sentence in accordance with this Part.

Power to vary sentence

99C.—(1) The court may vary or rescind the original sentence if it appears to the court that it had no power to impose the original sentence.

(2) The power conferred by this rule—

(a) may be exercised within the period of 56 days beginning with the day on which the original sentence was imposed;

(b) may not be exercised in relation to any sentence if an appeal, or an application for leave to appeal, against the sentence has been determined.

(3) Unless the court otherwise orders, a varied sentence takes effect from the beginning of the day on which the original sentence was imposed.

Direction that variation proceedings be held

99D.—(1) Variation proceedings may be held only in accordance with a direction given under this rule.

(2) After conclusion of any proceedings in which an original sentence was imposed, the judge advocate for those proceedings may direct the court administration officer to appoint a time and place for variation proceedings in respect of the sentence.

(3) The judge advocate may give a direction under this rule—

(a) on the application of the Director or the offender, or

(2) 1974 c. 53; sections 2 and 6 were amended, and the Schedule was inserted, by the Armed Forces Act 1996 (c. 46), section 13 and Schedule 4. Sections 1, 2, and 5 were further amended by paragraphs 63 to 66 of Schedule 16 to the Armed Forces Act 2006. Section 5 was further amended by section 18 of the Armed Forces Act 2021 (c. 35).

- (b) of their own motion.
- (4) An application for a direction under this rule—
 - (a) must be made in writing to the court administration officer, stating the grounds on which it is made, and
 - (b) if made by the Director, must be served on the offender, or
 - (c) if made by the offender, must be served on the Director.
- (5) Where the judge advocate dismisses an application for a direction under this rule, the court administration officer must notify the Director and the offender of that fact.

Announcement of varied sentence

99E. Where the court varies the original sentence, rule 99 (pronouncement of sentence) and sections 252 (duty to give reasons and explain sentence) and 253(2) (duties in complying with section 252) of the Act apply as they apply to the passing of a sentence.

Power to order offender’s release from custody

99F.—(1) This rule applies where an offender is in custody by virtue of an original sentence made by the court.

(2) The judge advocate may order that the offender be released immediately if, within the period of 56 days beginning on the day which the original sentence was imposed, it appears to the judge advocate that—

- (a) the court had no power to impose such a sentence, or
- (b) the maximum term for which the court had power to award such a sentence has expired.

(3) The power conferred by this rule may not be exercised in relation to any sentence if an appeal, or an application for leave to appeal, against the sentence has been determined.

(4) This rule is without prejudice to any other provision in this Part.”.