

2023 No. 1152

DEFENCE

The Armed Forces (Disposal of Property) Regulations 2023

<i>Made</i> - - - -	<i>26th October 2023</i>
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<i>Coming into force</i> - -	<i>22nd November 2023</i>

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The Secretary of State makes these Regulations in exercise of the powers conferred by sections 94(1) and (2), 94A(2), (4), (5), (6) and (7) and 373(5) of the Armed Forces Act 2006(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Armed Forces (Disposal of Property) Regulations 2023.

(2) These Regulations come into force on 22nd November 2023.

(3) These Regulations extend to England and Wales, Scotland, Northern Ireland, the Isle of Man and the British overseas territories (except Gibraltar).

Interpretation

2. In these Regulations—

“the Act” means the Armed Forces Act 2006;

(a) 2006 c. 52. Section 94A was inserted by the Armed Forces Act 2021 (c. 35). There are other amendments to the Act that are not relevant to these Regulations.

“judge advocate” means a judge advocate specified by the Judge Advocate General for the purposes of making an order or hearing an appeal under these Regulations;

“offender” means the person awarded the deprivation order that relates to the property;

“service police” means any service police force or the tri-service serious crime unit.

Disposal of property by order of judge advocate

3.—(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—
 - (i) the Director of Service Prosecutions has directed a charge to be allocated for disposal in the Court Martial or Service Civilian Court, or
 - (ii) a notice of appeal to the Summary Appeal Court has been served on the person's commanding officer,
- and
- (b) an application for an order under paragraph (2) has been sent to the court administration officer,

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 its destruction, retention or sale, as the judge advocate considers appropriate.

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

- (a) a service policeman, where the service police are in possession of the property,
- (b) a commanding officer in possession of the property,
- (c) a person claiming to be the owner of the property, or
- (d) a person in whose possession the property was before it was seized.

(4) Before making—

- (a) any order, a judge advocate must invite the service police or commanding officer in possession of the property to make representations concerning delivery of the property to the person appearing to be the owner or disposal of the property;
- (b) an order for the destruction or sale of the property, a judge advocate must invite any person or persons mentioned in paragraph 3(c) or (d) to make representations concerning retention of the property concerned.

(5) Where an order is made under paragraph (2), the court administration officer must send a copy of it to—

- (a) the person who applied for the order;
- (b) the person appearing to the judge advocate to be the owner of the property (unless that person is the applicant);
- (c) the service police or the commanding officer in possession of the property (unless a service policeman or that commanding officer, as the case may be, is the applicant).

(6) An order made under paragraph (2) cannot take effect until the time limit for an appeal under regulation 10 has expired with no appeal being made, or where an appeal has been made under that regulation, until the appeal has been determined.

(7) Where an order is made under paragraph (2), it does 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 the order, that right ceases.

Disposal of property subject to deprivation order: by order of judge advocate

4.—(1) Where any property is in the possession of the service police or a person's commanding officer after a deprivation order has been made in relation to it by the Court Martial, the Service Civilian Court, or the Summary Appeal Court, this regulation applies.

(2) Where an application for an order under paragraph (3) has been made by a person claiming to be the owner of the property by sending it to the court administration officer, a judge advocate may make an order under paragraph (3).

(3) A judge advocate may make an order for the delivery of the property to the person appearing to the judge advocate to be the owner of the property, if the conditions in section 94A(3) of the Act are met.

(4) Where—

- (a) no application has been made under paragraph (2) within 6 months of the deprivation order having been made, or if such an application has been made within that period, it was not successful, and
- (b) an application for an order under paragraph (5) has been made by a service policeman or the offender's commanding officer in relation to the property by sending it to the court administration officer,

a judge advocate may make an order under paragraph (5).

(5) A judge advocate may make such order for the disposal of the property, including its destruction, retention or sale, as the judge advocate considers appropriate, subject to paragraph (7).

(6) Before making an order under paragraph (3) or (5), a judge advocate must invite representations concerning the disposal of the property from—

- (a) the service police, unless a service policeman is the applicant;
- (b) the commanding officer in possession of the property (if there is one), unless that person is the applicant.

(7) Property may not be transferred into the ownership of the Secretary of State where the Court Martial or Service Civilian Court that made the deprivation order also made an order under section 177F(2) of the Act in respect of that property.

(8) Where an order is made under paragraph (3) or (5), the court administration officer must send a copy of it to—

- (a) the person who applied for the order;
- (b) the service police or the commanding officer in possession of the property (unless a service policeman or that commanding officer, as the case may be, is the applicant).

(9) An order made under paragraph (3) or (5) cannot take effect until the time limit for an appeal under regulation 10 has expired with no appeal being made, or where an appeal has been made under that regulation, until the appeal has been determined.

(10) Where the offender has, within 6 months of the deprivation order being made, appealed against—

- (a) the award of that deprivation order, or
- (b) the conviction for which that deprivation order was awarded,

the property may not be disposed of until the appeal has been determined.

(11) Where an order has been made under paragraph (3) or (5), it does not affect the right of any person to take proceedings for the recovery of that property, but on the expiration of 6 months from the date of the order, that right ceases.

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

5.—(1) Where—

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

that commanding officer may make a determination under paragraph (2).

(2) A 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, as the commanding officer 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, or
- (c) a person in whose possession the property was before it was seized.

(4) Before making—

- (a) any determination, if the property is in the possession of the service police, a commanding officer must invite the service police in possession of the property to make representations concerning delivery of the property to the owner or disposal of the property;
- (b) a determination for disposal of the property by destruction or sale, a commanding officer must invite any person or persons mentioned in paragraph (3)(b) or (c) to make representations concerning its retention.

(5) Where a determination is made under paragraph (2), a commanding officer must send a copy of it to—

- (a) the person who made the application,
- (b) the person appearing to the commanding officer to be the owner of the property (unless that person is the applicant), and
- (c) the service police, if they are in possession of the property (unless a service policeman is the applicant).

(6) A determination made under paragraph (2) cannot take effect until the time limit for an appeal under regulation 10 has expired with no appeal being made, or where an appeal has been made under that regulation, until the appeal has been determined.

Disposal of property subject to deprivation order: on determination of commanding officer of offender

6.—(1) Where any property is in the possession of the service police or a person's commanding officer after a deprivation order has been made in relation to it by that commanding officer, this regulation applies.

(2) Where an application for a determination under paragraph (3) has been made by a person claiming to be the owner of the property by sending it to an offender's commanding officer, that commanding officer may make a determination under paragraph (3).

(3) A commanding officer may make a determination for delivery of the property to the person appearing to the commanding officer to be the owner of the property if the conditions in section 94A(3) of the Act are met.

(4) Where no application has been made under paragraph (2) within 6 months of the deprivation order having been made, or if such an application has been made within that period, it was not successful, a commanding officer may make a determination under paragraph (5) where—

- (a) an application for a determination under paragraph (5) has been made by a service policeman by sending it to the offender's commanding officer, or
- (b) the property is in the possession of the commanding officer, of that officer's own motion.

(5) A commanding officer may make any determination for the disposal of the property, including delivering it to the service police for destruction, retention or sale, as the commanding officer considers appropriate.

(6) Before making a determination the commanding officer must invite representations concerning the disposal of the property from the service police, unless a service policeman is the applicant.

(7) Where a determination is made under paragraph (3) or (5), the commanding officer must send a copy of it to—

- (a) the person who applied for the order;
- (b) the service police in possession of the property (unless a service policeman is the applicant).

(8) A determination made under paragraph (3) or (5) cannot take effect until the time limit for an appeal under regulation 10 has expired with no appeal being made, or where an appeal has been made under that regulation, until the appeal has been determined.

(9) Where the offender has, within 6 months of the deprivation order being made, appealed against—

- (a) the award of that deprivation order, or
 - (b) the finding that the charge has been proven for which that deprivation order was awarded,
- the property may not be disposed of until the appeal has been determined.

Disposal of property on determination of commanding officer in other circumstances

7.—(1) Subject to regulations 4 and 6, 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,
- (b) no person is currently charged with a service offence as a result of that investigation, and
- (c) an application for a determination under paragraph (2) has been sent to a commanding officer,

that commanding officer may make a determination under paragraph (2).

- (2) A 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 the owner of the property.
- (3) An application under paragraph (1)(c) may be made by—
- (a) a person claiming to be the owner of the property, or
 - (b) a person in whose possession the property was before it was seized.
- (4) Before making a determination for delivery of the property, a commanding officer must invite representations from the service police.
- (5) Where a determination has been made under this regulation, the commanding officer must send a copy of it to—
- (a) the person who made the application,
 - (b) the person appearing to the commanding officer to be the owner of the property (unless that person is the applicant), and
 - (c) the service police, where the service police made representations or are in possession of the property.
- (6) A determination made under paragraph (2) cannot take effect until the time limit for an appeal under regulation 10 has expired with no appeal being made, or where an appeal has been made under that regulation, until the appeal has been determined.
- (7) For the purposes of paragraph (1)(c), “a 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

- 8.—**(1) If—
- (a) an order under regulation 3(2)(b) or 4(5) or a determination under regulation 5(2)(b) or 6(5) is to be made, and
 - (b) in the opinion of the judge advocate or commanding officer (as the case may be), the property in question (other than money) can be used for service police purposes,
- the judge advocate may order or the commanding officer determine that the property is to be retained by the service police.
- (2) Where property is retained for service police purposes, it vests in the Provost Marshal of the service police in possession of the property on the making of the order or determination.
- (3) An order or determination under paragraph (1) must be recorded in writing and that record must include the date on which the order or determination was made.

Sale of Property

- 9.—**(1) If an order under regulation 3(2)(b) or 4(5) or a determination under regulation 5(2)(b) or 6(5) is to be made, the judge advocate may order, or the 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 must be paid into a Service Fund Sub Account maintained for a charitable purpose.

Appeals

10.—(1) A person who comes within paragraph (2) may appeal against the order of a judge advocate or the determination of a commanding officer made under these Regulations by sending a written notice of appeal to the court administration officer within 14 days of the original decision being made or conveyed to that person, whichever is later, subject to paragraph (14).

- (2) The persons who may appeal against an order or determination are—
 - (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 (other than the offender).
- (3) The notice of appeal must state—
 - (a) the order of the judge advocate or determination made by the commanding officer that the appellant wants to appeal,
 - (b) the reasons for appealing against the order or determination, and
 - (c) the order the appellant wants the Judge Advocate General to make.
- (4) The court administration officer must forward the notice of appeal to—
 - (a) the Judge Advocate General, and
 - (b) the judge advocate or commanding officer against whose order or determination the notice of appeal is lodged.
- (5) The Judge Advocate General may—
 - (a) uphold the appeal without a hearing and—
 - (i) where the appeal is made against an order or determination made under regulation 3, 5, or 7, make any order that a judge advocate may make under regulation 3(2) in respect of the property, or
 - (ii) where the appeal is made against an order or determination made under regulation 4 or 6, make any order that a judge advocate may make under regulation 4(3) or (5) in respect of the property,
 - (b) inform the court administration officer that the Judge Advocate General is minded to dismiss the appeal without a hearing, or
 - (c) direct a hearing of the appeal by a judge advocate.
- (6) Where the Judge Advocate General is minded to dismiss the appeal without a hearing, the court administration officer must give written notice to the appellant of that fact.
- (7) Where the appellant is given notice under paragraph (6), the appeal will 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), requesting a hearing of the appeal.
- (8) There must be a hearing of the appeal if—
 - (a) the Judge Advocate General directs a hearing under paragraph (5)(c), or
 - (b) the appellant gave notice in accordance with 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 the judge advocate general may make under paragraph (5)(a) in respect of the property.

(12) Where an order is made under paragraph (5)(a) or (11)(b), the court administration officer must send a copy of it to—

- (a) the appellant;
- (b) the person appearing to be the owner of the property (unless they are the appellant);
- (c) the service police or the commanding officer in possession of the property (unless a service policeman or that commanding officer, as the case may be, is the appellant).

(13) Where an order is made under paragraph (5)(a) or (11)(b) it does 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 ceases.

(14) A person may not appeal against the order of a judge advocate if that order was made pursuant to an appeal under this regulation.

Revocation, saving and consequential amendments

11.—(1) Subject to paragraph (2), the Armed Forces (Disposal of Property) Regulations 2009^(a) (“the 2009 Regulations”) are revoked.

(2) The 2009 Regulations continue to apply in relation to an application made under them before these Regulations come into force.

(3) Schedule 1 to the Service Police (Complaints etc.) Regulations 2023^(b) is amended as follows—

- (a) in the heading of paragraph 6, and in sub-paragraph (1) of that paragraph, for “the Armed Forces (Disposal of Property) Regulations 2009” substitute “the Armed Forces (Disposal of Property) Regulations 2023”;
- (b) for sub-paragraph (2) of paragraph 6 substitute “Regulation 2 of those Regulations is to be read as if the definition of “service police” was omitted.”.

26th October 2023

Andrew Murrison
Parliamentary Under Secretary of State
Ministry of Defence

(a) S.I. 2009/1923, as amended by S.I. 2022/1051.

(b) S.I. 2023/624.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations deal with the disposal of property which has come into the possession of the service police or a person's commanding officer during the investigation of an offence or after a deprivation order has been made. They allow judge advocates to make orders and commanding officers to make determinations in relation to such property.

Under regulation 3, a judge advocate can order the return of property to the person appearing to be the owner of it or, if the owner cannot be found, or disclaims the property, to order its disposal (including retention by the police, its sale or destruction). Under regulation 5, a commanding officer of a person charged with a service offence can make a similar determination in respect of such property.

Where a deprivation order has been made in relation to such property, under regulation 4 a judge advocate can order the return of the property to the person appearing to be the owner of it, subject to the conditions in section 94A(3) being met, or, if the owner cannot be found or disclaims the property, to order its disposal. A commanding officer can make a similar determination under regulation 6.

Under regulation 7, a commanding officer can determine that property is to be returned to the person appearing to be the owner or person from whom it was seized.

Under regulation 8, an order or determination for the disposal of property can provide that property that can be used for service police purposes may be retained by the service police, and the property vests in the Provost Marshall of the service police in possession of it in such a case.

Regulation 9 provides that where property is sold, the proceeds of sale are to be paid into a fund maintained for charitable purposes.

Regulation 10 allows appeals to be made against orders and determinations made under these Regulations.

Regulation 11 revokes the Armed Forces (Disposal of Property) Regulations 2009 (S.I. 2009/1923), although they continue to apply to applications made under them before these Regulations come into force. It also makes consequential amendments to the Service Police (Complaints etc.) Regulations 2023 (S.I. 2023/624).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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