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STATUTORY INSTRUMENTS

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**2009 No. 1110**

**DEFENCE**

**The Armed Forces (Warrants of Arrest  
for Service Offences) Rules 2009**

<i>Made</i>	- - - -	<i>24th April 2009</i>
<i>Laid before Parliament</i>		<i>1st May 2009</i>
<i>Coming into force</i>	- -	<i>31st October 2009</i>

The Secretary of State, in exercise of the powers conferred by sections 313(3) and 317(3) of the Armed Forces Act 2006<sup>(1)</sup>, makes the following Rules:

**PART 1**  
**PRELIMINARY**

**Citation and commencement**

**1.** These Rules may be cited as the Armed Forces (Warrants of Arrest for Service Offences) Rules 2009 and come into force on 31st October 2009.

**Interpretation**

**2.—(1)** In these Rules—

- “the Act” means the Armed Forces Act 2006;
- “the applicant” means the person who asks a judge advocate to issue a warrant under rule 23;
- “an application” means an application for a warrant;
- “civilian police force” means a UK police force or a British overseas territories police force;
- “the Director” means the Director of Service Prosecutions;
- “DX” means document exchange;
- “hearing” means a hearing of an application for a warrant;
- “the judge advocate” means the judge advocate specified under rule 10;

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<sup>(1)</sup> 2006 c. 52; section 313 has been modified by S.I. 2009/1059, article 180.

“live link” means an arrangement by which a person, when not in the place where proceedings are being held, is able to see and hear, and to be seen and heard by, the judge advocate during proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded);

“proceedings” means proceedings under these Rules for the determination of an application;

“relevant person” means the person who is to be arrested under the warrant;

“service court” means the Service Civilian Court, the Court Martial or the Court Martial Appeal Court;

“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;
- (c) an air force station;

“warrant” means a warrant issued under section—

- (a) 313(1) for the arrest of a person who is reasonably suspected of having committed a service offence; or
- (b) 317(1) for the arrest of a person who, having been released under 315(4)(c) or 316(3)(a)(ii), has failed to comply with the condition subject to which he was released.

(2) Any reference in these Rules to a numbered section is to that section of the Act, unless otherwise stated.

## PART 2

### SERVICE OF DOCUMENTS

#### **Interpretation of Part 2**

3.—(1) References in this Part to a requirement that a document be served on a person include any requirement that the document be supplied to the person, however expressed.

(2) References in this Part to a person’s agreement to the service of a document in a particular way include his agreement that any document of a description specified by him may be served in that way.

#### **Service on the court administration officer**

4. Where under these Rules any document is to be served on the court administration officer, it may be served—

- (a) by post, DX, fax, electronic mail or other electronic means to any office of the Military Court Service; or
- (b) on a member of that Service personally, with his agreement.

#### **Service on other individuals**

5. Where under these Rules any document is to be served on an individual other than the court administration officer it may be served—

- (a) on the individual personally;
- (b) if he is subject to service law, by post in a letter addressed to him at his unit;
- (c) if he is not subject to service law—

- (i) by leaving it at his usual or last known place of abode; or
- (ii) by post in a letter addressed to his usual or last known place of abode.

#### **Service by another method**

6.—(1) A judge advocate may direct that a document may be served by a method other than those mentioned in rules 4 and 5.

(2) A direction under this rule—

(a) must specify—

(i) the method to be used; and

(ii) the date by which the document must be served; and

(b) may specify the time on that date by which the document must be served.

(3) A judge advocate may treat a document as served if the addressee responds to it, even if it was not served in accordance with these Rules.

#### **Service by fax or electronic means**

7. Where a document is served by fax, electronic mail or other electronic means, the person serving it need not provide a paper copy as well.

## **PART 3**

### **APPLICATIONS**

#### **Application**

8.—(1) An application shall be made in writing and shall be addressed to the court administration officer.

(2) An application shall include the following—

(a) the name, rank or rate, appointment and signature of the applicant;

(b) the name, rank or rate (if appropriate) and address of any person who is to give evidence under oath or affirmation in support of the application, if different to the applicant;

(c) the name, date of birth and last known location of the relevant person and, where applicable, his rank or rate, service number and unit; and

(d) any known addresses at which the relevant person may reside.

(3) Where an application is made under section 313(1), an application must also include—

(a) details of the service offence which the relevant person is reasonably suspected of having committed; and

(b) details of the circumstances which have caused the applicant to consider that there are reasonable grounds for the issue of a warrant for arrest.

(4) Where an application is made under section 317(1), an application must also include—

(a) a copy of any certificate supplied in accordance with regulations made under section 319 at the time that the relevant person was released; and

(b) the details of the conditions imposed when the relevant person was released with which it is alleged he has not complied.

### **Oral applications**

9.—(1) An application under rule 8 may be made orally with the leave of the Judge Advocate General or a judge advocate.

(2) A party who seeks leave to make such an application orally must—

- (a) give as much notice as the urgency of his application permits to the court administration officer; and
- (b) in doing so, explain the reasons for—
  - (i) the application; and
  - (ii) seeking leave to make the application orally.

## **PART 4**

### **PROCEEDINGS: GENERAL**

#### **Specification of judge advocate**

10. As soon as practicable after receipt of an application, the court administration officer shall request the Judge Advocate General to specify a judge advocate to conduct proceedings in relation to that application.

#### **Requirement for a hearing**

- 11.—(1) An application under section 313 shall be determined at a hearing.
- (2) An application under section 317 may be determined at a hearing.

#### **Notification of proceedings**

12. The court administration officer must serve notice of any time and place appointed for the commencement or resumption of any proceedings on—

- (a) the applicant;
- (b) any person whose details have been given in accordance with rule 8(2)(b); and
- (c) any such other person as the Judge Advocate General or the judge advocate may direct.

#### **Live links**

13.—(1) Any person may (and, if in service custody, must) attend any proceedings by live link, if a judge advocate so directs.

(2) A person who attends proceedings by live link, and could give oral evidence in the proceedings if he were in the place where the proceedings are being held, may give evidence by live link.

(3) A direction under this rule may be given by any judge advocate.

(4) Where a direction is given under this rule in relation to a witness, the witness may not give evidence otherwise than by live link without the leave of the judge advocate.

(5) A judge advocate may give a direction under this rule, or give permission for the purposes of paragraph (4)—

- (a) on an application by a party to the proceedings; or
- (b) of his own motion.

### **Record of proceedings**

**14.**—(1) The relevant information shall be retained by the court administration officer for six years from—

- (a) the date of execution of the warrant, or
- (b) the final determination of any related proceedings before an officer or service court,

whichever is the later.

(2) For the purposes of this rule—

- (a) “relevant information” means a copy of—
  - (i) the information provided in writing in accordance with rule 8;
  - (ii) the record of any hearing or, where one has been made, a transcription of the hearing;
  - (iii) the written record of the decision made by the judge advocate with respect to the application and the reasons for that decision;
  - (iv) any warrant issued; and
  - (v) any notification that a warrant has been executed; and
- (b) “related proceedings” means any proceedings before an officer or service court arising from an allegation which indicates, or circumstances which indicate, that the relevant person has or may have committed a service offence to which the application referred.

### **Interpreters**

**15.**—(1) The court administration officer may appoint a person to act as interpreter for the purposes of any proceedings.

(2) Before an interpreter begins to act, an oath must be administered to him.

(3) Before an interpreter is sworn, his name must be read out and any party to the proceedings may object to him on any reasonable ground, and, if the judge advocate upholds any such objection, the interpreter shall not be sworn.

### **Oaths and affirmations**

**16.**—(1) This rule applies where under these Rules an oath is required to be administered to a person.

(2) Sections 1 and 3 to 6 of the Oaths Act 1978(2) shall apply, as modified by paragraph (3), as they would apply if the person were required to take an oath in England and Wales.

(3) Where section 1 or 6 of that Act applies by virtue of this rule, the reference in that section to the words of the oath prescribed by law is to be read as a reference to the words prescribed by Schedule 1 for a person of the class to which the person belongs.

### **Legal representation**

**17.**—(1) The applicant shall have the right to be legally represented at a hearing.

(2) If the applicant requires a legal representative, he shall be represented by the Director.

### **Circumstances not provided for**

**18.** Subject to any other enactment (including any other provision of these Rules), the judge advocate shall ensure that proceedings are conducted—

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(2) 1978 c. 19.

- (a) in such a way as appears to him most closely to resemble the way in which comparable proceedings of a magistrates' court in England and Wales would be conducted in comparable circumstances; and
- (b) if he is unable to determine how comparable proceedings of a magistrates' court in England and Wales would be conducted in comparable circumstances, in such a way as appears to him to be in the interests of justice.

## PART 5

### HEARINGS

#### **Procedure at the hearing**

**19.**—(1) The judge advocate shall not be bound at a hearing by any enactment or rule of law relating to the admissibility of evidence in proceedings before courts of law.

(2) The judge advocate shall make a record of the hearing unless a court recorder is in attendance.

#### **Presence of witnesses**

**20.** A person who is called to give evidence shall not, except with the consent of the judge advocate, be present at a hearing while not under examination.

#### **Privileges and immunities**

**21.** A witness at a hearing or any other person whose duty it is to attend before the judge advocate at the hearing shall be entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

#### **Decision of the judge advocate**

**22.**—(1) The judge advocate shall announce his decision and the reasons for it at the end of any hearing and record that decision in writing.

(2) The court administration officer shall serve copies of the decision on the applicant and, if the applicant is not the relevant person's commanding officer, the commanding officer.

## PART 6

### WARRANTS

#### **Warrant of arrest**

**23.**—(1) A warrant issued under these Rules must—

- (a) be addressed to one or more officers of a civilian police force;
- (b) state—
  - (i) if the warrant is issued under section 313(1), the service offence that the relevant person is reasonably suspected of having committed; or
  - (ii) if the warrant is issued under section 317(1), details of the conditions imposed when the relevant person was released and those with which it is alleged he has not complied;

- (c) state that he must be transferred to service custody as soon as is practicable after his arrest.

**Execution of the warrant**

- 24.**—(1) A person executing a warrant of arrest shall, upon arresting the relevant person—
- (a) if they have the warrant with them, show it to the relevant person; or
  - (b) otherwise state where the warrant is and what arrangements may be made to allow the relevant person to inspect it;
  - (c) explain in ordinary language the reason for the arrest; and
  - (d) unless he is a constable in uniform, produce documentary proof of his identity.

**Notification that the warrant has been executed**

- 25.** On receipt of information that the relevant person has been arrested under warrant issued under these Rules, the applicant shall as soon as practicable notify the court administration officer and the relevant person's commanding officer of that fact and—
- (a) the physical location of the relevant person; and
  - (b) the date and time of arrest pursuant to the warrant.

24th April 2009

*Kevan Jones*  
Parliamentary Under Secretary of State  
Ministry of Defence

## SCHEDULE

Rule 16

### OATHS AND AFFIRMATIONS

The words prescribed are—

- (a) for witnesses, “... the evidence I shall give shall be the truth, the whole truth, and nothing but the truth”; and
- (b) for interpreters, “... I will well and faithfully interpret and make true explanation of all such matters and things as shall be required of me according to the best of my skill and understanding”.

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### EXPLANATORY NOTE

*(This note is not part of the Rules)*

Section 313(1) of the Armed Forces Act 2006 (“the Act”) allows a judge advocate to issue a warrant for the arrest of a person subject to service law or a civilian subject to service discipline, who is reasonably suspected of having committed a service offence. Section 317(1) of the Act allows a judge advocate to issue a warrant for the arrest of a person subject to service law, who is reasonably believed to be illegally absent and who has previously been released by a civilian policeman or court of summary jurisdiction under condition that he reports to a specified person or place at a specified time, and who has failed to comply with those conditions. A certificate issued under section 319 of the Act is evidence of the conditions imposed.

These Rules are made under section 313(3) and 317(3) of the Act and make provision as to practice and procedure for applying for a warrant and the form of the hearing.

Part 2 makes provision for the service of documents related to an application under these Rules. Part 3 details the information that is required when making an application and allows for an application to be made orally.

Part 4 covers general matters in relation to proceedings under these Rules, and includes provisions allowing for legal representation, live links and the keeping of records of proceedings.

Rule 16 and the Schedule make provision for the swearing and form of oaths or affirmation when giving evidence in support of an application for a warrant.

Part 5 makes provision for the conduct of hearings to determine an application, including the privileges and immunities of witnesses.

Part 6 specifies the form of the warrant and rules 24 and 25 provide for notification of the execution of a warrant to be made to the court administration officer and the relevant person’s commanding officer and for the retention of information relating to the application and execution of the warrant.