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STATUTORY INSTRUMENTS

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**2009 No. 1216**

**The Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009**

**PART 1**

**Preliminary Provisions and Delegation**

**Citation and commencement**

1. These Rules may be cited as the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009 and shall come into force on 31st October 2009.

**Interpretation**

2.—(1) In these Rules—

“the Act” means the Armed Forces Act 2006;

“activation order” means an order under section 193 of the Act;

“charge sheet” has the same meaning as in regulations made under section 128 of the Act;

“disciplinary record” means all formal disciplinary records of the accused maintained and held by any of Her Majesty’s forces;

“subordinate commander” means an officer under the command of the commanding officer who is of at least the rank of naval lieutenant, military or marine captain or flight lieutenant.

(2) References in these rules to an accused’s assisting officer are to be construed in accordance with rule 10.

(3) References in these Rules to a person’s rank or rate are—

- (a) where he holds no acting rank or rate, to his substantive rank or rate;
- (b) where he holds an acting rank or rate, to that rank or rate.

(4) References in these Rules to a charge brought against a person include a charge that has been substituted for another charge.

(5) References in these Rules to proven offences are to—

- (a) offences in respect of which a charge has been brought, where—
  - (i) the charge has been found by an officer or the Summary Appeal Court to be proved, and
  - (ii) that finding has not been quashed;
- (b) service offences of which a person is convicted; and
- (c) offences in the British Islands of which a person is convicted.

### **Delegation and subordinate commanders**

3.—(1) Subject to paragraphs (3) and (4), a commanding officer may delegate to a subordinate commander his relevant functions in relation to a charge, subject to such conditions as the commanding officer considers appropriate.

(2) Subject to paragraph (5), where a commanding officer makes a delegation to a subordinate commander under paragraph (1) in relation to a charge, the subordinate commander has all of the commanding officer's relevant functions in relation to the charge.

(3) A commanding officer shall not make a delegation under paragraph (1) in relation to a charge—

- (a) in respect of an offence which is within section 54(2) of the Act;
- (b) in respect of an offence alleged to have been committed by an accused during—
  - (i) the operational period of a suspended sentence of service detention passed on him;
  - (ii) the operational period of a suspended sentence of imprisonment passed on him by the Court Martial, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court;
  - (iii) the term of an order made under section 211 of the Act; or
- (c) brought against a person above the rank or rate of chief petty officer, marine colour sergeant, military staff sergeant, or flight sergeant.

(4) A commanding officer shall not make a delegation under paragraph (1) to a subordinate commander of the rank of naval lieutenant, military or marine captain or flight lieutenant in relation to a charge brought against a person above the rank or rate of leading rate, military or marine corporal or air force corporal.

(5) A subordinate commander to whom a delegation has been made under paragraph (1) may not—

- (a) if he is of the rank of naval lieutenant, military or marine captain or flight lieutenant, award any punishment in column 1 of the Table in Schedule 1;
- (b) if he is of the rank of lieutenant commander, major or squadron leader, award any punishment in column 2 of the Table in Schedule 1; or
- (c) if he is of or above the rank of commander, lieutenant-colonel or wing commander, award any punishment in column 3 of the Table in Schedule 1.

(6) Where a commanding officer has made a delegation under paragraph (1) in relation to a charge, he may revoke it in relation to that charge at any time before a determination is made as to whether or not that charge has been proved.

(7) Where in relation to a charge—

- (a) a delegation under paragraph (1) is revoked, and
- (b) the subordinate commander to whom the delegation was made has complied with rule 12(2) and taken further steps in relation to the charge,

the officer who hears the charge after the revocation shall proceed as if the subordinate commander had taken no further steps in relation to the charge after complying with rule 12(2).

(8) Where a charge in relation to which paragraph (7) applies is one which has been—

- (a) amended under section 123(2)(a) of the Act,
- (b) substituted for another charge under section 123(2)(b) of the Act, or
- (c) added under section 123(2)(c) of the Act,

the reference in paragraph (7)(b) to rule 12(2) is a reference to that rule as modified by rule 26.

(9) In this rule “relevant function” means a function under Chapter 1 of Part 6 of the Act or Part 2 of these Rules.