STATUTORY INSTRUMENTS

1977 No. 91

DEFENCE

The Imprisonment and Detention (Army) (Amendment No. 2) Rules 1977

Made - - - - 19*th January* 1977

Laid before Parliament 4*th February* 1977

Coming into Operation in accordance with Rule 1(1)

The Secretary of State, in exercise of the powers conferred upon him by sections 119, 122, 123, 124, 126, 127 and 129 of the Army Act 1955**(a)** and section 52 of the Courts-Martial (Appeals) Act 1968**(b)** and paragraph 12 of Schedule 3 to the Armed Forces Act 1976**(c)** and Article 90 of the Standing Civilian Courts Order 1976**(d)** and of all other powers enabling him in that behalf, hereby makes the following Rules:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Imprisonment and Detention (Army) (Amendment No. 2) Rules 1977 and shall come into operation on such date as section 6 of the Armed Forces Act 1976**(c)** comes into force.

(2) The Interpretation Act 1889**(e)** shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(3) In these Rules, "the Principal Rules" means the Imprisonment and Detention (Army) Rules 1956**(f)**, as amended **(g)**.

Amendment to the Principal Rules

2.—(1) In Rule 2(2) of the Principal Rules—

(*a*) immediately after the interpretation for the expression "soldier" there shall be inserted the words " "Standing Civilian Court" means a Standing Civilian Court established under section 6 of the Armed Forces Act 1976;";

(*b*) after the concluding words "and other expressions have the same meanings as they have in the Act" there shall be added the words "including any meanings of expressions in that Act which have been applied to Standing Civilian Courts by any order made under paragraph 12 of Schedule 3 to the Armed Forces Act 1976.".

(a) 1955 c. 18.
(b) 1968 c. 20.
(c) 1976 c. 52.
(d) S.I. 1977/88 (1977 I, p. 210).
(e) 1889 c. 63.
(f) S.I. 1956/1914 (1956 I, p. 310).
(g) The relevant amending Instruments are S.I. 1962/2387, 1974/702 (1962 III, p. 3291; 1974 I, p. 2724).

(2) In Rule 11 of the Principal Rules, after the words "overseas establishment" in proviso (*a*) there shall be inserted the words "unless the confirming officer or reviewing authority otherwise directs".

(3) In Rule 13 of the Principal Rules, after the words "United Kingdom" in proviso (i) to paragraph (*a*), there shall be inserted the words "unless the confirming officer or reviewing authority otherwise directs.".

(4) In Rule 22 of the Principal Rules—

(*a*) before paragraph (4) there shall be inserted the following paragraph—

"(3A) has appealed to a court-martial against his conviction by a Standing Civilian Court or against sentence imposed upon him by that court and requires to attend that court-martial whether it is held in the United Kingdom or outside it; or";

(*b*) for the words in paragraph (4) there shall be substituted the words "is required or entitled to be present at any civil court, or at any court-martial or inquiry held within the United Kingdom or elsewhere, or at any Standing Civilian Court outside the United Kingdom; or".

(5) In Rule 24 of the Principal Rules, after paragraph (*a*) there shall be inserted the following paragraph—

"(*aa*) in accordance with an order of a court-martial acting as an appellate court from a conviction or sentence of a Standing Civilian Court;".

(6) In Rule 27 of the Principal Rules—

(*a*) in paragraph (1), after the words "remanded for trial by court-martial," there shall be added the words "or in whose case steps have been taken by higher authority in relation to a charge with a view to it being tried by a Standing Civilian Court,";

(*b*) in paragraph (2), after the words "of this Rule" there shall be added the words "or Rule 22".

(7) In Part I of the First Schedule to the Principal Rules, in the heading to Form 3, for the word "Court-Martial" there shall be substituted the words "Court-Martial/Standing Civilian Court", and for the words in Form 3 "which sentence has been duly confirmed" there shall be substituted the words "which sentence when one imposed by a court-martial has been duly confirmed".

(8) In Part II of the First Schedule to the Principal Rules, in Form A, for the words "passed by court-martial awarded by his/her Commanding Officer" there shall be substituted the words "passed by court-martial passed by Standing Civilian Court awarded by his/her Commanding Officer".

Dated this 19th day of January 1977.

Fred Mulley,
One of Her Majesty's Principal Secretaries of State.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

The Imprisonment and Detention (Army) Rules 1956 (the Principal Rules) include provision as to how a military sentence of imprisonment imposed by court-martial upon a civilian (to whom Part II of the Army Act 1955 applies) is to be served, and as to certain consequential matters. These present Amending Rules make at Rule 2 further amendments to the Principal Rules so as to make the provision (above) applicable also to civilians sentenced to imprisonment by a Standing Civilian Court established under section 6 of the Armed Forces Act 1976. Accordingly, Rule 2(2) of the Principal Rules is amended so as to include, in the interpretation provision, reference to Standing Civilian Courts and so as to make it clear that the meaning of "military sentence of imprisonment" defined in section 143(1) of the Army Act may extend to include sentences of imprisonment imposed by Standing Civilian Court. Rule 22 of the Principal Rules is extended to enable a civilian sentenced to military imprisonment by Standing Civilian Court to be detained temporarily in a form of custody prescribed in the Rule for the purpose (inter alia) of his attending a court-martial or Standing Civilian Court outside the United Kingdom, including a court-martial hearing (by virtue of paragraph 18 of Schedule 3 to the Armed Forces Act 1976) the appeal of that civilian against a conviction or sentence imposed upon him by Standing Civilian Court. Such provision will enable a civilian to be released temporarily for that purpose from a civil prison in the United Kingdom (where, normally, by virtue of Rule 11, he will be serving such sentence of military imprisonment) into forms of custody prescribed in the Rule. Rules 24 and 27, which relate to the custody of any person in a military establishment as opposed to a civil prison (as defined in section 143(1) of the Army Act 1955) are extended to make analagous provision in the case of imprisonment imposed by Standing Civilian Court, as presently exists in the case of imprisonment imposed by court-martial.

These Rules make at Rule 2(2) and 2(3) further and minor amendments to the Principal Rules by removing the mandatory provisions contained in Rules 11 and 13 that a serviceman or civilian sentenced out of the United Kingdom to a term of imprisonment or detention of more than 12 months shall, if he is a person falling within any of the classes specified in Rule 20, be required to serve his sentence out of the United Kingdom. Instead provision is made for the confirming officer or reviewing authority to have power to direct that the sentence be served either inside or outside the United Kingdom (as now in the case of a sentence not exceeding a 12-month term). The classes specified in Rule 20 include persons of non-European descent (whose health might be adversely affected by the climate of the United Kingdom), persons born and domiciled outside the United Kingdom, and persons who enlisted for local service outside it.

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