
STATUTORY INSTRUMENTS

2009 No. 1213

DEFENCE

**The Armed Forces (Unfitness to Stand
Trial and Insanity) Regulations 2009**

Made - - - - 7th May 2009

Laid before Parliament 13th May 2009

Coming into force - - 31st October 2009

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 170 of the Armed Forces Act 2006(a) and section 16(2) of the Court Martial Appeals Act 1968(b).

Citation and Commencement

1. These Regulations may be cited as the Armed Forces (Unfitness to Stand Trial and Insanity) Regulations 2009 and shall come into force on 31st October 2009.

Definitions

2. In these Regulations—

“the 1983 Act” means the Mental Health Act 1983(c);

“the 2006 Act” means the Armed Forces Act 2006;

“designated officer” has the meaning given in section 37(1) of the Courts Act 2003(d);

“duly approved” has the meaning given in section 172(1) of the 2006 Act;

“judge advocate” means the judge advocate specified under section 155(5) of the 2006 Act for proceedings in which a service supervision order falls to be considered;

“local justice area” has the meaning given in section 8 of the Courts Act 2003 and “local justice area concerned” shall be interpreted in accordance with regulation 5(2) below;

“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000(e);

(a) 2006 c. 52.

(b) 1968 c. 20. Previously the Courts-Martial (Appeals) Act 1968; renamed by paragraph 53 of Schedule 8 to the Armed Forces Act 2006.

“local social services authority” has the meaning given in section 145(1) of the 1983 Act;
“local social services authority area” means an area for which a local social services authority is responsible;
“service supervision order” means, subject to regulation 18, a service supervision order made by the Court Martial under section 169(2) of the 2006 Act.

Service supervision orders

3.—(1) Where a service supervision order is made and the supervised person will reside in England or Wales, the order shall either—

- (a) specify the local social services authority area in which that person will reside, and require him to be under the supervision of a social worker of the local social services authority for that area; or
- (b) specify the local justice area in which that person will reside, and require him to be under the supervision of an officer of the local probation board appointed for or assigned to that area.

(2) Where the supervised person will reside outside England and Wales, the service supervision order shall—

- (a) specify the registered social worker or such other person as the judge advocate is satisfied is able to provide supervision in accordance with the order; and
- (b) require the supervised person to be under the supervision of that person.

(3) In paragraph (2) above, “registered social worker” has the meaning given in section 257(3) of the 2006 Act.

Requirement to explain

4. Before the Court Martial makes a service supervision order, the judge advocate shall explain to the supervised person in ordinary language—

- (a) the effect of the order (including any requirements proposed to be included in the order in accordance with regulation 7, 8 or 10); and
- (b) that, in accordance with regulation 11 below, either a magistrates’ court or a judge advocate has power under regulations 12 to 14 to the order on the application either of the supervised person or of the supervising officer.

Procedure after making supervision order

5.—(1) After a service supervision order has been made, the court administration officer shall forthwith give a copy of the order to—

- (a) the supervised person; and
- (b) the supervising officer.

(2) Where the Court Martial has made an order to which regulation 3(1) applies, the court administration officer shall also send to the designated officer for the local justice area in which the supervised person will reside (“the local justice area concerned”)—

- (a) a copy of the order; and
- (b) such documents and information relating to the case as he considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.

Requirement for contact with supervising officer

6. Where a service supervision order has been made, the supervised person shall keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

Requirements as to medical treatment

7.—(1) A service supervision order may, if the judge advocate is satisfied as mentioned in paragraph (2) below, include a requirement that the supervised person shall submit, during the whole of the period specified in the order or during such part of that period as may be so specified, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of his mental condition.

(2) The judge advocate may impose such a requirement only if satisfied on the written or oral evidence of two or more registered medical practitioners, at least one of whom is duly approved, that the mental condition of the supervised person—

- (a) is such as requires and may be susceptible to treatment; but
- (b) is not such as to warrant the making of a hospital order within the meaning of the 1983 Act.

(3) The treatment required under this regulation by any such order shall be one of the following—

- (a) treatment as a non-resident patient at such institution or place as may be specified in the order, and
- (b) treatment by or under the direction of such registered medical practitioner as may be so specified,

but the nature of the treatment shall not be specified in the order except as mentioned in subparagraph (a) or (b) above.

8.—(1) This regulation applies where the judge advocate is satisfied on the written or oral evidence of two or more registered medical practitioners that—

- (a) because of his medical condition, other than his mental condition, the supervised person is likely to pose a risk to himself or others; and
- (b) the condition may be susceptible to treatment.

(2) The service supervision order may (whether or not it includes a requirement under regulation 7 above) include a requirement that the supervised person shall submit, during the whole of the period specified in the order or during such part of the period as may be so specified, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the condition.

(3) The treatment required under this regulation by any such order shall be one of the following—

- (a) treatment as a non-resident patient at such institution or place as may be specified in the order, and
- (b) treatment by or under the direction of such registered medical practitioner as may be so specified,

but the nature of the treatment shall not be specified in the order except as mentioned in subparagraph (a) or (b) above.

9.—(1) Where the registered medical practitioner by whom or under whose direction the supervised person is being treated in pursuance of a requirement under regulation 7 or 8 is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which—

- (a) is not specified in the order, and

- (b) is one in or at which the treatment of the supervised person will be by or under the direction of a registered medical practitioner,

he may, with the consent of the supervised person, make arrangements for him to be treated at that institution or place.

(2) Such arrangements may provide for the supervised person to receive part of his treatment as a resident patient in an institution or place of any description.

(3) Where any such arrangements are made for the treatment of a supervised person—

- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the supervising officer, specifying the institution or place in or at which the treatment is to be carried out; and

- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the supervision order.

(4) While the supervised person is under treatment as a resident patient in pursuance of arrangements under this regulation, the supervising officer shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

Requirements as to residence

10.—(1) Subject to paragraph (2) below, a service supervision order may include requirements as to the residence of the supervised person.

(2) Before the Court Martial makes an order containing any such requirement, the judge advocate shall consider the personal circumstances of the supervised person.

Application to have an order revoked or amended

11.—(1) In the case of a service supervision order to which regulation 3(1) applies, any application made under regulations 12 to 14 shall be made to a magistrates' court acting for the local justice area concerned.

(2) In the case of a service supervision order to which regulation 3(2) applies, any application made under regulations 12 or 14 shall be made to a judge advocate.

Revocation of order

12. Where a service supervision order is in force in respect of any person and, on the application of the supervised person or the supervising officer in accordance with regulation 11, it appears to a magistrates' court acting for the local justice area concerned or (as the case may be) a judge advocate that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the magistrates' court or the judge advocate may revoke the order.

Amendment of order by reason of change of residence

13.—(1) This regulation applies in the case of a service supervision order to which regulation 3(1) applies, where a magistrates' court acting for the local justice area concerned is satisfied that the supervised person proposes to change, or has changed, his residence from the area specified in the order to another local social services authority area or local justice area.

(2) Subject to paragraph (3), the magistrates' court may, and on the application of the supervising officer shall, amend the supervision order by substituting the other area for the area specified in the order.

(3) The magistrates' court shall not amend a service supervision order under this regulation if it contains requirements which, in the opinion of the court, cannot be complied with unless the supervised person continues to reside in the area specified in the order, unless in accordance with regulation 14, it either—

- (a) cancels those requirements; or
- (b) substitutes for those requirements other requirements which can be complied with if the supervised person ceases to reside in that area.

Amendment of requirements of order

14.—(1) Without prejudice to the provisions of regulation 13, but subject to paragraph (2), a magistrates' court acting for the local justice area concerned or (as the case may be) a judge advocate may, on the application of the supervised person or the supervising officer in accordance with regulation 11, by order amend a service supervision order—

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the magistrates' court or judge advocate could include if it or he were the Court Martial and were then making the order.

(2) The power of a magistrates' court or judge advocate under paragraph (1) shall not include the power to amend an order by extending the period specified in it beyond the end of two years from the day of the original order.

Amendment of requirements in pursuance of medical report

15.—(1) Where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of any requirement of a service supervision order—

- (a) is of the opinion mentioned in paragraph (2), or
- (b) is for any reason unwilling to treat or direct the treatment of the supervised person,

he shall make a report in writing to that effect to the supervising officer and that officer shall apply under regulation 14 above for the variation or cancellation of the requirement.

(2) The opinion referred to in paragraph (1) is—

- (a) that the treatment of the supervised person should be continued beyond the period specified in the supervision order;
- (b) that the supervised person needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of such an order;
- (c) that the supervised person is not susceptible to treatment; or
- (d) that the supervised person does not require further treatment.

Procedure following revocation of order

16.—(1) On making an order under regulation 12 revoking a service supervision order—

- (a) where the order under regulation 12 was made by a magistrates' court, the designated officer for the local justice area concerned, or
- (b) where the order under regulation 12 was made by a judge advocate, the court administration officer,

shall forthwith give copies of the revoking order to the supervising officer.

(2) A supervising officer to whom copies of a revoking order are given shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person is residing.

Procedure following amendment of an order

17.—(1) On making an order under regulation 13 or 14 amending a service supervision order, (where the order under regulation 13 or 14 was made by a magistrates' court) the designated officer for the local justice area concerned or (where the order under regulation 14 was made by a judge advocate) the court administration officer shall forthwith—

- (a) if the order amends the service supervision order otherwise than by substituting a new area or place for the one specified in the supervision order, give copies of the amending order to the supervising officer;
- (b) if the order amends the service supervision order by substituting a new area or place, send to the designated officer for the new local justice area concerned—
 - (i) copies of the amending order, and
 - (ii) such documents and information relating to the case as he considers likely to be of assistance to a court acting for that area in exercising its functions in relation to the order,

and in a case falling within sub-paragraph (b), the designated officer for that area shall give copies of the amending order to the supervising officer.

(2) Where the order amending the service supervision order is made by a magistrates' court and the designated officer for that court is also the designated officer for the new local justice area—

- (a) sub-paragraph (1)(b) does not apply; but
- (b) the designated officer shall give copies of the amending order to the supervising officer.

(3) Where in accordance with paragraph (1) or (2) copies of an order are given to the supervising officer, he shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person is residing.

Application to the Court Martial Appeal Court

18. Regulations 3 to 17 shall apply to a service supervision order made by the Court Martial Appeal Court under section 169(2) of the 2006 Act^(f) as if—

- (a) any reference to the Court Martial were a reference to the Court Martial Appeal Court;
- (b) any reference to the court administration officer were a reference to the registrar of the Court Martial Appeal Court; and
- (c) the references to the judge advocate in regulations 4, 7, 8 and 10 were references to the Court Martial Appeal Court.

7th May 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

^(f) Section 169(2) is applied to the Court Martial Appeal Court by section 16 of the Court Martial Appeals Act 1968, as amended by paragraph 15 of Schedule 8 to the Armed Forces Act 2006.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for service supervision orders, which may be made by the Court Martial or the Court Martial Appeal Court in respect of offenders who are found to be unfit to stand trial or not guilty by reason of insanity.

Regulations 2 to 17 replace [SI 2005 Nos. 1388 – 1390](#), which were made for the same purpose under the Army Act 1955 (c. 18), the Air Force Act 1955 (c. 19) and the Naval Discipline Act 1957 (c. 53) (which Acts are repealed by the 2006 Act). The Regulations are based on the provisions for supervision orders applicable to civilian courts which are contained in Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 84). That Schedule was inserted by the Domestic Violence, Crime and Victims Act 2004 (c. 28).

Regulation 3 makes provision for the appointment in the service supervision order of an appropriate supervising officer.

Regulation 4 requires the judge advocate to explain to the supervised person the terms of the order and the procedure for its review.

Regulation 5 makes provision for the court administration officer to provide copies of the service supervision order to various persons including the supervised person and the supervising officer.

Regulation 6 requires the supervised person to keep in touch with the supervising officer.

Under regulations 7 and 8 a service supervision order may require the supervised person to submit to treatment by a registered medical practitioner during the whole or part of the period specified in the order. In such cases, regulation 9 makes provision for the medical practitioner to make alternative arrangements to treat the supervised person.

Under regulation 10 a service supervision order may include requirements as to the residence of the supervised person.

Regulation 11 provides for the person to whom an application is made in order to revoke or amend a supervision order.

Regulations 12 to 17 make provision for the revocation or amendment of a service supervision order.

Regulation 18 applies regulations 3 to 17 (with necessary modifications) to service supervision orders made by the Court Martial Appeal Court.