



THE ARMED FORCES DISCIPLINE REGULATIONS 1990

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 2nd day of April 1990

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 205 of the Armed Forces Discipline Act 1971, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Armed Forces Discipline Regulations 1990.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. Interpretation—In these regulations, unless the context other requires,—

“The Act” means the Armed Forces Discipline Act 1971:

“Able rank”, in relation to the Navy, excludes ordinary rank, artificer apprentices, and junior ranks:

“Allowances”, in relation to a member of the Armed Forces, means all allowances payable to that member by the Crown in respect of his or her service in the Armed Forces; but does not include any payment by way of expenses, refunds, or allowances to meet expenditure already incurred:

“Basic pay”, in relation to a member of the Armed Forces, means the daily amount payable to the member as determined by the Chief of Defence Force, but excluding allowances:

“Leading aircraftman”, in relation to the Air Force, excludes aircraftman, cadet aircrew, aircraft apprentice, and airman cadet.

3. Reduction in rank—(1) If a court-martial sentences an officer of any Service to reduction in rank, it may reduce the officer’s rank to any lower commissioned rank in that Service.

(2) Subject to subclause (3) of this regulation, if a court-martial sentences a rating to reduction in rank, or an officer exercising summary powers imposes a punishment of reduction in rank on a rating, the court-martial or officer may reduce the rating’s rank—

(a) To any lower rank, not below able rank, in the rating’s present branch; or

(b) In the case of the Regulating Branch or the Physical Training Branch, to any lower rank, not below able rank, in the rating’s former branch for which the rating is qualified.

(3) No rating of a branch or specialisation specified in the first column of the Schedule to these regulations may be reduced in rank to a rank below that specified in the second column of that Schedule in respect of that branch or specialisation.

(4) If a court-martial sentences a soldier to reduction in rank, or an officer exercising summary powers imposes a punishment of reduction in rank on a soldier, the court-martial or officer may reduce the soldier’s rank to any lower rank, not below private, in the Army.

(5) If a court-martial sentences an airman to reduction in rank, or an officer exercising summary powers imposes a punishment of reduction in rank on an airman, the court-martial or officer may reduce the airman’s rank to any lower rank, not below leading aircraftman, in the Air Force.

(6) Subject to subclauses (7) and (8) of this regulation, if a punishment of reduction in rank is imposed on a member of the Armed Forces, that member shall, notwithstanding the period of seniority credited to the member in the rank to which the member is reduced, serve a minimum of 1 year in that rank before the member is eligible for promotion to the next higher rank.

(7) Where any member of the Armed Forces to whom subclause (6) of this regulation applies is on active service, a superior commander may

authorise such earlier promotion of that member as, in the superior commander's opinion, the exigencies of the service require.

(8) Where, in respect of such a member of the Armed Forces who is not on active service, a superior commander is of the opinion that—

(a) The exigencies of the service require earlier promotion of the member; and

(b) The member's conduct since conviction would justify earlier promotion,—

the superior commander may authorise such earlier promotion of the member as, in the superior commander's opinion, the exigencies of the service require.

4. Forfeiture of seniority—If a court-martial sentences a member of the Armed Forces to forfeiture of seniority, it may forfeit all or part of the member's seniority in the rank that the member holds on the day on which the sentence is passed, and the member shall take rank and precedence in his or her Service accordingly.

5. Stay of seniority—(1) If a court-martial sentences a member of the Armed Forces to a stay of seniority, the member shall remain in the rank and retain the amount of seniority that the member has on the day on which the sentence is passed for such period, not exceeding 2 years, as the court-martial specifies.

(2) If an officer exercising summary powers imposes a punishment of a stay of seniority on a member of the Armed Forces, the member shall remain in the rank and retain the amount of seniority that the member has on the day on which the punishment is imposed for such period, not exceeding 1 year, as the officer specifies.

6. Forfeiture of pay on civil conviction—(1) Where a member of the Armed Forces is convicted of an offence by a civil court, the member shall forfeit 1 day's basic pay and allowances for each day during which the member is in civil custody, or in close arrest, or suspended from duty, in respect of any such offence, whether before or after conviction or both.

(2) Notwithstanding subclause (1) of this regulation but subject to subclause (3) of this regulation, in any case to which subclause (1) of this regulation applies the member's commanding officer may cancel the forfeiture in whole or in part in respect of the period preceding the conviction.

(3) The commanding officer shall not cancel a forfeiture that exceeds 3 days' basic pay and allowances without the prior approval of the Chief of Staff of the Service to which the member belongs or is attached.

7. Forfeiture of pay on service conviction for period before conviction—(1) Where a member of the Armed Forces is convicted of an offence by a court-martial or is found guilty of an offence by an officer exercising summary powers, the member shall forfeit 1 day's basic pay and allowances for each day during which the member is in civil custody, or in close arrest, or suspended from duty, in respect of such offence, before conviction or the finding of guilty.

(2) Notwithstanding subclause (1) of this regulation, in any case to which that subclause applies the court-martial that convicted the member or the officer who found him guilty may cancel the forfeiture in whole or in part.

8. Forfeiture of pay on service conviction for period after conviction—(1) Where a member of the Armed Forces is convicted of an

offence by a court-martial and is sentenced to imprisonment, or to dismissal from Her Majesty's Service, the member shall forfeit 1 day's basic pay and allowances for each day during which the member is in civil or service custody or suspended from duty in respect of such offence after conviction.

(2) Where a member of the Armed Forces is convicted of an offence by a court-martial or is found guilty of an offence by an officer exercising summary powers and is sentenced to detention, the member shall forfeit 1 half-day's basic pay for each day during which the member is in civil or service custody in respect of such offence after conviction.

9. Calculation of period of forfeiture—(1) In calculating the number of days of custody or suspension from duty for the purposes of any of regulations 6 to 8 and 10 of these regulations, if such period, whether a continuous period or a number of separate periods of custody or suspension, calculated in hours,—

(a) Is less than 24 hours, it shall be counted as 1 day; or

(b) Is more than 24 hours, each multiple of 24 hours shall be counted as 1 day and any remaining number of hours shall be counted as a further day.

(2) Notwithstanding subclause (1) of this regulation, no period in respect of which the member of the Armed Forces would not otherwise have been entitled to pay and allowances shall be counted in calculating the number of days of custody or suspension.

10. Withholding of pay, etc.—(1) This regulation applies to every case where a member of the Armed Forces is alleged to have committed an offence and is in civil custody, or in close arrest, or is suspended from duty, as a result of that allegation.

(2) Where the period of custody or suspension from duty does not exceed 14 days, the member's commanding officer may order the withholding of all or part of the pay and allowances to which the member would otherwise be entitled during that period pending conviction or acquittal.

(3) Where the period of custody or suspension from duty exceeds 14 days, the member's commanding officer shall, unless the Chief of Defence Force otherwise directs, order the withholding of any further pay and allowances to which the member would otherwise be entitled during that period pending conviction or acquittal.

(4) All pay and allowances withheld under this regulation shall, subject to regulation 11 of these regulations, be credited to the member on conviction or acquittal, or as soon thereafter as is reasonably practicable.

11. Recovery of forfeitures—Subject to regulation 13 of these regulations, where a member of the Armed Forces is to forfeit pay and allowances under any of regulations 6 to 8 of these regulations, the pay and allowances that are to be forfeited may, without limiting any other mode of recovery, be recovered from the member by the Crown—

(a) By deduction from any pay and allowances that would otherwise have been payable to the member in respect of the whole or any part of the period during which the member was in custody or suspended from duty prior to conviction, but which have been withheld from the member in accordance with regulation 10 of these regulations; and

- (b) To the extent that such pay and allowances (if any) are insufficient to meet the pay and allowances that are to be forfeited, by deduction from, or withholding or delaying payment of, any other pay and allowances or other money due, owing, or payable to the member by the Crown in relation to his or her service in the Armed Forces.

12. Recovery of fines, compensation, etc.—(1) Subject to subclause (2) of this regulation and regulation 13 of these regulations, where a person subject to this Act has been convicted by a court-martial or found guilty by an officer exercising summary powers of an offence against the Act and has been fined or ordered to pay compensation or make some other payment for which the person may be liable under the Act, such fine, compensation, or other payment may be recovered by deduction from, or withholding or delaying payment of, any money due, owing, or payable to the person by the Crown in relation to his or her service in the Armed Forces.

(2) No deduction from, or withholding or delaying payment of, any money pursuant to subclause (1) of this regulation shall exceed such sum as will allow the person to draw a minimum of 20 percent of his or her basic pay per day.

13. Limitation on recovery—Notwithstanding regulations 11 and 12 of these regulations, no deductions from, or withholding or delaying payment of, any retiring allowance or other money granted or payable under the Government Superannuation Fund Act 1956 to any person subject to the Act or on the death of any person subject to the Act shall be made under either of those regulations.

14. Revocation—The Armed Forces Discipline Regulations 1983* are hereby revoked.

*S.R. 1983/235

Reg. 3 (3)

SCHEDULE

LIMITS OF DEGREE TO WHICH RATINGS MAY BE REDUCED IN RANK

Branch or Specialisation	Lowest Rank to which Rating may be Reduced
Marine Engineering Artificer	Petty Officer Marine Engineering Artificer.
Marine Engineering Mechanician	Petty Officer Marine Engineering Mechanician.
Shipwright	Petty Officer Shipwright.
Control Electrical Artificer	Petty Officer Control Electrical Artificer.
Control Electrical Mechanician	Petty Officer Control Electrical Mechanician.
Radio Electrical Artificer	Petty Officer Radio Electrical Artificer.
Radio Electrical Mechanician	Petty Officer Radio Electrical Mechanician.
Weapon Electrical Artificer	Petty Officer Weapon Electrical Artificer.
Weapon Electrical Mechanician	Petty Officer Weapon Mechanician.

C. J. HILL,
for Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are consequential upon the enactment of the Defence Act 1990. The principal change concerns regulation 10 (3), where the powers presently exercisable by the Secretary of Defence are vested in the Chief of Defence Force. The other changes relate to terminology; in particular, the term "serviceman" is replaced by the term "member of the Armed Forces".

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 5 April 1990.

These regulations are administered in the Ministry of Defence.