

**Reprint**  
**as at 1 July 2009**

**Armed Forces Discipline Rules of  
Procedure Amendment Rules 2004**

(SR 2004/27)

Armed Forces Discipline Rules of Procedure Amendment Rules 2004: revoked,  
on 1 July 2009, pursuant to rule 164 of the Armed Forces Discipline Rules of  
Procedure 2008 (SR 2008/237).

Pursuant to section 150 of the Armed Forces Discipline Act 1971,  
Her Excellency the Governor-General, acting on the advice and with  
the consent of the Executive Council, makes the following rules.

**Contents**

	Page
1 Title	2
2 Commencement	2
3 New rules 161 to 163B substituted	2
161 Order for compensation	2
161A Suspension of order for compensation made by officer exercising summary powers	3
161B Suspension of order for compensation made by court-martial	3
161C Suspension of order for compensation made by reviewing authority under Part 8 of Act	5

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989  
have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together  
with other explanatory material about this eprint.

**These rules are administered by the New Zealand Defence Force.**

162	Order for restitution	6
162A	Suspension of order for restitution made by officer exercising summary powers	7
162B	Suspension of order for restitution made by court-martial	7
162C	Suspension of order for restitution made by reviewing authority under Part 8 of Act	9
163	Revesting of stolen property	10
163A	Suspension of revesting of stolen property where finding made by officer exercising summary powers	11
163B	Suspension of revesting of stolen property where finding made by court-martial	11
4	Revocation	13

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## Rules

### 1 Title

- (1) These rules are the Armed Forces Discipline Rules of Procedure Amendment Rules 2004.
- (2) In these rules, the Armed Forces Discipline Rules of Procedure 1983<sup>1</sup> are called “the principal rules”.

### 2 Commencement

These rules come into force on 1 April 2004.

### 3 New rules 161 to 163B substituted

The principal rules are amended by revoking rules 161 to 163, and substituting the following rules:

#### “161 Order for compensation

- “(1) Every order for compensation under section 86 of the Act must be made in the form prescribed by the Chief of Defence Force.
- “(2) The operation of any such order is suspended in accordance with rule 161A or rule 161B or rule 161C unless the offender consents in writing to the operation of the order not being suspended.

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<sup>1</sup> SR 1983/236

“(3) If an order is made under section 86(2) of the Act that the whole or any part of the money found in the possession of the offender be applied in payment of compensation, the money that is subject to the order must, while the operation of the order for compensation is suspended, be held in safe custody as directed by the officer exercising summary powers or the court-martial or the reviewing authority who or which makes the order.

“(4) If an order under section 86 of the Act is varied by a reviewing authority under section 117 of the Act, or under Part 8 of the Act, or on an appeal, payment must be made in accordance with the order as finally varied.

“**161A Suspension of order for compensation made by officer exercising summary powers**

If an order for compensation exceeding 3 days’ basic pay is made under section 86 of the Act by an officer exercising summary powers and the consent referred to in rule 161(2) is not given, the order is suspended until it has been reviewed by a reviewing authority under section 117 of the Act.

“**161B Suspension of order for compensation made by court-martial**

If an order for compensation made under section 86 of the Act is made by a court-martial and the consent referred to in rule 161(2) is not given, the operation of the order is suspended until the latest of the following:

“(a) the close of the day on which, at the conclusion of the review of the order under Part 8 of the Act by a reviewing authority, the decision of the reviewing authority is promulgated:

“(b) the expiry of the period prescribed under the Courts-Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction upon which the order was made must be lodged:

“(c) if, within the period referred to in paragraph (b), an application for leave to appeal of the kind described in that paragraph is duly lodged, the close of the day on

which the application is finally refused or is withdrawn or the appeal is determined or abandoned:

- “(d) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- “(e) if an appeal to the Courts Martial Appeal Court (whether an appeal made with the leave of that Court or an appeal made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953) is brought and determined in respect of the conviction upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 as the period within which an application for a certificate to appeal to the Court of Appeal must be made:
- “(f) if, within the period referred to in paragraph (e), an application of the kind described in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
- “(i) the close of the day on which the application is refused; or
- “(ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- “(g) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against that decision must be made:
- “(h) if, within the period referred to in paragraph (g), an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—

- “(i) the close of the day on which the application is refused; or
- “(ii) if leave to appeal under section 10A of the Courts Martial Appeals Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

**“161C Suspension of order for compensation made by reviewing authority under Part 8 of Act**

If an order for compensation is not made at a trial by a court martial but is made by a reviewing authority under Part 8 of the Act, and the consent referred to in rule 161(2) is not given, the operation of the order is suspended until the latest of the following:

- “(a) the expiry of the period prescribed under the Courts-Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction must be lodged:
- “(b) if, within the period referred to in paragraph (a), an application for leave to appeal of the kind described in that paragraph is duly lodged, the close of the day on which the application is finally refused or is withdrawn or the appeal is determined or abandoned:
- “(c) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- “(d) if an appeal to the Courts Martial Appeal Court (whether an appeal made with the leave of that Court or an appeal made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953) is brought and determined in respect of the conviction upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 within which an application for a certificate to appeal to the Court of Appeal must be made:

- “(e) if, within the period referred to in paragraph (d), an application of the kind referred to in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
  - “(i) the close of the day on which the application is refused; or
  - “(ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- “(f) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against that decision must be made:
- “(g) if, within the period referred to in paragraph (f), an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—
  - “(i) the close of the day on which the application is refused; or
  - “(ii) if leave to appeal under section 10A of the Courts Martial Appeal Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

**“162 Order for restitution**

- “(1) Every order for restitution made under section 87 of the Act (with or without compensation under subsection (3) of that section) must be in the form prescribed by the Chief of Defence Force.
- “(2) The operation of any such order is suspended in accordance with rule 162A or rule 162B or rule 162C unless the officer exercising summary powers or the court-martial or the reviewing authority acting under Part 8 of the Act who or which makes the order states in writing that, in his or her opinion, the right to the possession of the property is not in dispute.

- “(3) The property that is subject to any such order must, while the operation of the order is suspended, be held in safe custody as directed by the officer exercising summary powers or the court-martial or the reviewing authority acting under Part 8 of the Act who or which makes the order.
- “(4) If such an order is varied, by a reviewing authority under section 117 of the Act, or under Part 8 of the Act, or on an appeal, delivery of the property must be made in accordance with the order as finally varied.

“**162A Suspension of order for restitution made by officer exercising summary powers**

If an order for restitution made under section 87 of the Act is made by an officer exercising summary powers and no statement of a kind referred to in rule 162(2) is made, delivery of the property that is subject to the order to the person specified in the order is suspended until the order has been reviewed by a reviewing authority under section 117 of the Act.

“**162B Suspension of order for restitution made by court-martial**

If an order for restitution made under section 87 of the Act is made by a court-martial and no statement of a kind referred to in rule 162(2) is made, delivery of the property that is subject to the order to the person specified in the order, without the written consent of the offender and (in the case of an order made under section 87(4) of the Act) the pawnbroker, is suspended until the latest of the following:

- “(a) the close of the day on which, at the conclusion of the review of the order under Part 8 of the Act by a reviewing authority, the decision of the reviewing authority is promulgated:
- “(b) the expiry of the period prescribed under the Courts-Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction upon which the order was made must be lodged:
- “(c) if, within the period referred to in paragraph (b), an application for leave to appeal of the kind described in that

paragraph is duly lodged or an appeal is made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953, the close of the day on which the application is finally refused or is withdrawn or the appeal (whether made with leave or in the circumstances specified in that proviso) is determined or abandoned:

- “(d) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- “(e) if an appeal to the Courts Martial Appeal Court is brought and determined in respect of the conviction upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 as the period within which an application for a certificate to appeal to the Court of Appeal must be made:
- “(f) if, within the period referred to in paragraph (e), an application of the kind described in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
  - “(i) the close of the day on which the application is refused; or
  - “(ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- “(g) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts-Martial Appeals Act 1953 against that decision must be made:
- “(h) if, within the period referred to in paragraph (g) an application to the Supreme Court for leave to appeal under



section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—

- “(i) the close of the day on which the application is refused; or
- “(ii) if leave to appeal under section 10A of the Courts Martial Appeals Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

**“162C Suspension of order for restitution made by reviewing authority under Part 8 of Act**

If an order for restitution made under section 87 of the Act is not made at a trial by a court-martial but is made by a reviewing authority under Part 8 of the Act, and no statement of a kind referred to in rule 162(2) is made, delivery of the property that is subject to the order to the person specified in the order, without the written consent of the offender, is suspended until the latest of the following:

- “(a) the expiry of the period prescribed under the Courts Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction must be lodged:
- “(b) if, within the period referred to in paragraph (a), an application for leave to appeal of the kind described in that paragraph is duly lodged or an appeal is made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953, the close of the day on which the application is finally refused or is withdrawn or the appeal (whether made with leave or in the circumstances specified in that proviso) is determined or abandoned:
- “(c) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- “(d) if an appeal to the Courts Martial Appeal Court is brought and determined in respect of the conviction

upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 as the period within which an application for a certificate to appeal to the Court of Appeal must be made:

- “(e) if, within the period referred to in paragraph (d), an application of the kind referred to in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
  - “(i) the close of the day on which the application is refused; or
  - “(ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- “(f) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against that decision must be made:
- “(g) if, within the period referred to in paragraph (f) an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—
  - “(i) the close of the day on which the application is refused; or
  - “(ii) if leave to appeal under section 10A of the Courts Martial Appeals Act 1953 is granted, the close of the day on which the appeal is determined or abandoned.

**“163 Revesting of stolen property**

- “(1) The operation of the provisions of section 26(1) of the Sale of Goods Act 1908 as to the revesting of the property in stolen goods on a finding of guilty or a conviction is suspended in accordance with rule 163A or rule 163B unless the officer exercising summary powers who records the finding of guilty or the court-martial before which the conviction takes place

states in writing that, in that officer's opinion, the title to the property is not in dispute.

- “(2) Any property to which the provisions of section 26(1) of the Sale of Goods Act 1908 apply must, while the operation of those provisions is suspended, be held in safe custody as directed by the officer or the court-martial, as the case may be.

“**163A Suspension of reversion of stolen property where finding made by officer exercising summary powers**

If a finding of guilty to which the provisions of section 26(1) of the Sale of Goods Act 1908 apply is made by an officer exercising summary powers and no statement of a kind referred to in rule 163(1) is made, the operation of those provisions is suspended until the finding has been reviewed by a reviewing authority under section 117 of the Act.

“**163B Suspension of reversion of stolen property where finding made by court-martial**

If a conviction to which the provisions of section 26(1) of the Sale of Goods Act 1908 apply takes place before a court-martial and no statement of a kind referred to in rule 163(1) is made, the operation of those provisions is suspended until the latest of the following:

- “(a) the close of the day on which, at the conclusion of the review of the order under Part 8 of the Act by a reviewing authority, the decision of the reviewing authority is promulgated:
- “(b) the expiry of the period prescribed under the Courts Martial Appeals Act 1953 as the period within which an application for leave to appeal to the Courts Martial Appeal Court against the conviction upon which the order was made must be lodged:
- “(c) if, within the period referred to in paragraph (b), an application for leave to appeal of the kind described in that paragraph is duly lodged or an appeal is made in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953, the close of the day on which the application is finally refused or is withdrawn or the appeal (whether made with leave or in the

circumstances specified in that proviso) is determined or abandoned:

- “(d) if an appeal which is against the conviction upon which the order was made and which is made to the Courts Martial Appeal Court in the circumstances specified in the proviso to section 6 of the Courts Martial Appeals Act 1953 is abandoned, the close of the day on which the appeal is abandoned:
- “(e) if an appeal to the Courts Martial Appeal Court is brought and determined in respect of the conviction upon which the order was made, the expiry of the period prescribed by the Courts Martial Appeals Act 1953 as the period within which an application for a certificate to appeal to the Court of Appeal must be made:
- “(f) if, within the period referred to in paragraph (e), an application of the kind described in that paragraph is made or an application to the Supreme Court for leave to appeal directly to the Supreme Court is made in respect of the conviction,—
  - “(i) the close of the day on which the application is refused; or
  - “(ii) if the certificate or leave to appeal is granted, the close of the day on which the appeal is determined or abandoned:
- “(g) if the decision on the appeal is that of the Court of Appeal, the expiry of the period prescribed under the Supreme Court Act 2003 as the period within which an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against that decision must be made:
- “(h) if, within the period referred to in paragraph (g), an application to the Supreme Court for leave to appeal under section 10A of the Courts Martial Appeals Act 1953 against the decision of the Court of Appeal is made,—
  - “(i) the close of the day on which the application is refused; or
  - “(ii) if leave to appeal under section 10A of the Courts Martial Appeals Act 1953 is granted, the close

of the day on which the appeal is determined or abandoned.”

**4 Revocation**

The Armed Forces Discipline Rules of Procedure 1983, Amendment No 2 (SR 1990/80) is amended by revoking so much of the Schedule as relates to rule 162 of the principal rules.

Diane Morcom,  
Clerk of the Executive Council.

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**Explanatory note**

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

These rules, which come into force on 1 April 2004, revoke rules 161 to 163 of the Armed Forces Discipline Rules of Procedure 1983, and substitute new rules 161 to 163B. Rules 161 to 161C relate to orders for compensation. Rules 162 to 162C relate to orders for restitution. Rules 163 to 163B relate to the revesting of stolen property.

The substitution ensures that the rules cover the circumstances that will arise in relation to the suspension of orders for compensation and orders for restitution and the operation of certain provisions of section 26(1) of the Sale of Goods Act 1908 (which relate to the revesting of stolen property) where an application is made to the Supreme Court for leave to appeal to the Supreme Court.

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

- 1 General
  - 2 About this eprint
  - 3 List of amendments incorporated in this eprint (most recent first)
- 

**Notes****1 General**

This is an eprint of the Armed Forces Discipline Rules of Procedure Amendment Rules 2004. It incorporates all the amendments to the rules as at 1 July 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

**2 About this eprint**

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

**3 List of amendments incorporated in this eprint (most recent first)**

Armed Forces Discipline Rules of Procedure 2008 (SR 2008/237): rule 164

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