



JUDGE ADVOCATE GENERAL'S PRACTICE MEMORANDUM 6

Credit for Time Spent in Pre-Trial Custody, Remission and Additional Detention at the Military Corrective Training Centre Colchester

Credit for Time in Pre-Trial Custody

- 1.1 Section 246 of the Armed Forces Act 2006 states that, subject to certain exceptions, the number of days for which the offender was kept in Service custody in connection with the offence in question or any related offence since being charged is to count as time served by the offender as part of the sentence. When passing sentence, the judge advocate should inform the defendant that the days in custody prior to sentence will count automatically against their sentence. The number of days is shown on the Form TRN/1. The judge advocate should inform the defendant that if the calculation is shown to be wrong the correct number of days will be inserted administratively.
- 1.2 Pre-trial custody does not include any time spent in custody prior to being charged and the court should adjust the length of sentence to make allowance for any day(s) spent in custody prior to charge.

Remission

- 2.2 Remission of sentences ordered to be served at the Military Corrective Training Centre, Colchester (MCTC) is governed by The Service Custody and Service of Relevant Sentences Rules 2009 (SI 2009/1096). Rule 8(1) to (3) provides for automatic remission as follows:
8. —(1) A detainee who has been sentenced to twenty-five or more days of service detention shall be entitled to a period of remission in accordance with this rule according to the following provisions.
(2) If his sentence does not exceed twenty-eight days he shall be entitled to a period of remission equal to the number of days by which the sentence exceeds twenty-four days.
(3) If his sentence exceeds twenty-eight days, he shall be entitled to a period of remission equal to one third of the period of his sentence, except that, if this would

result in the detainee serving fewer than twenty-four days the period of remission shall be such as to require the detainee to serve twenty-four days.

- 2.3 In addition to the above, rule 70(1) provides for detainees to earn additional days of remission, as awarded by the commandant.

70. —(1) The commandant may for good conduct award a detainee serving a sentence of more than ninety days of service detention remission of his sentence (additional to remission under rule 8) to a maximum of one-sixth of the period of his sentence in excess of ninety days.

- 2.4 Remission of a sentence of detention at MCTC under rule 8 is as of right; remission under rule 70 is discretionary and requires good conduct during sentence.

Sentencing Remarks

- 3.1 As part of the sentencing remarks the judge advocate should explain the sentence to the defendant. The rules for supervision on licence following release from a prison sentence should be checked carefully. A suggested form of words is as follows:

Service Detention (over 28 days): *“You will serve 2/3 of the sentence we are about to pass, less time you spent in custody after charge. (If the sentence is over 90 days): You may be released earlier if the commandant awards extra remission for good conduct.”*

Imprisonment: Refer to Crown Court Compendium

In both cases:

“The number of days in pre-trial custody will be calculated administratively and you will be informed of your release date by the Governor/Commandant”.

- 3.2 It is important that sentences are clearly and precisely expressed. Judge advocates should use combinations of days, weeks, months, and years as appropriate. There is no need to adhere to previous traditional formats for expressing the length of sentences of detention.