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STATUTORY INSTRUMENTS

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**1997 No. 169**

**DEFENCE**

**The Courts-Martial (Army) Rules 1997**

*Made* - - - - *12th February 1997*  
*Laid before Parliament* *14th February 1997*  
*Coming into force* - - *1st April 1997*

The Secretary of State, in exercise of the powers conferred on him by sections 75(2), 83B(11), 84A, 92(5), 93(3), 94(5), 102(1), 103 113(1), 141(1), 143(1) and 209(3B), of the Army Act 1955(1), hereby makes the following Rules:—

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1. These Rules may be cited as the Courts-Martial (Army) Rules 1997 and shall come into force on 1st April 1997.

**Interpretation**

2. In these Rules—

“the Act” means the Army Act 1955;

“commanding officer”, in relation to an accused, means such officer having powers of command over that person as may be determined by or under regulations of the Defence Council made under section 82(1) of the Act;

“commencement of the trial” shall be construed in accordance with rule 42;

“formal preliminary examination” shall be construed in accordance with rule 5;

“hearing for directions” shall be construed in accordance with rule 25;

“the judge advocate”—

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(1) 1955 c. 18; section 103 was substituted by, sections 92(5), 143(1) and 209(3B) were amended by and sections 83B(11) and 84A were inserted by the Armed Forces Act 1996 (c. 46), section 5 and Schedule 1. Section 113 was substituted by the Armed Forces Act 1996, section 16 and Schedule 5.

- (i) in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial;
  - (ii) in relation to preliminary proceedings, means the judge advocate appointed by or on behalf of the Judge Advocate General to conduct any preliminary proceedings;
- “preliminary proceedings” includes a hearing for directions and a preparatory hearing but does not include a formal preliminary examination;
- “preparatory hearing” shall be construed in accordance with rule 29;
- “pre-trial hearing” shall be construed in accordance with rule 37;
- “the prosecutor” means the prosecuting authority or any prosecuting officer appointed by the prosecuting authority;
- “prosecution papers” has the meaning assigned to it in rule 9; and
- “special finding” shall be construed in accordance with rule 71.

### **Service on an accused**

3.—(1) Unless the context otherwise requires, where under these Rules any document or notice is to be served on an accused by the court administration officer or the prosecutor, it may be served by sending it to the commanding officer of the accused.

(2) Where a document or notice is received by the commanding officer in accordance with paragraph (1) above, the commanding officer or a person on his behalf shall serve it on the accused as soon as is practicable.

## **PART II**

### **PROSECUTION OF OFFENCES**

#### **Referring a case to the prosecuting authority**

4. If the higher authority refers a case in respect of an accused to the prosecuting authority in accordance with section 76A(i) of the Act, he shall forward to the prosecuting authority—

- (a) a copy of any report concerning the case prepared by the Royal Military Police or other investigator;
- (b) any allegation reported to the commanding officer of the accused in the form of a charge under section 76(1) of the Act and details of any substitution or amendment of that charge under section 76(3) of the Act;
- (c) a list of any potential witnesses;
- (d) any written statements or written record of evidence of the potential witnesses;
- (e) any statements made by the accused including records or transcripts of interviews conducted under caution;
- (f) a list of any exhibits;
- (g) a copy of any conduct sheets of the accused;
- (h) any other information in the possession of the higher authority which may be material to the prosecutor’s consideration of the institution of proceedings.

### **Formal preliminary examination**

5.—(1) Where a case in respect of an accused has been forwarded to the prosecuting authority but he has not preferred any charge, the prosecutor may order an examination under this rule and such an examination shall in these Rules be referred to as a formal preliminary examination.

- (2) The order for a formal preliminary examination shall—
  - (a) appoint the date, time and place at which the formal preliminary examination shall take place;
  - (b) state the nature of the allegations against the accused;
  - (c) list the witnesses whom the prosecutor requires to examine orally; and
  - (d) list the witnesses whose written statements or other record of evidence are to be read out.
- (3) The order shall be served on the accused and the court administration officer not less than 24 hours before the time appointed for the formal preliminary examination.
- (4) On receipt of the order, the court administration officer—
  - (a) shall summon to attend the formal preliminary examination—
    - (i) the witnesses listed in the order whom the prosecutor seeks to examine orally; and
    - (ii) such additional witnesses as the accused may request;
  - (b) may arrange for the attendance at the formal preliminary examination of a court recorder and interpreter.

### **Conduct of formal preliminary examination**

6.—(1) A formal preliminary examination shall be conducted by an officer of the legal services branch of any corps of the regular forces (“the conducting officer”).

(2) Subject to paragraph (4) below, each witness whom the prosecutor seeks to examine orally shall be examined by the conducting officer, after which the accused shall be entitled to cross-examine the witness.

(3) A signed written statement or other record of the evidence of each witness listed under rule 5(2)(d) above shall be read out by the conducting officer, unless the accused consents to their inclusion in the record of the examination without being read out.

- (4) If—
  - (a) the case being investigated concerns behaviour of a violent, cruel or sexual nature; and
  - (b) the relevant witness is a person under the age of 17,

then—

- (i) the conducting officer may read out any written statement made by or taken from the witness which would be admissible if given orally; and
- (ii) the accused may not cross-examine the witness in person.

(5) During the formal preliminary examination the conducting officer may summon any witness to attend the examination and give oral evidence.

(6) After paragraphs (2) and (3) above have been complied with, the conducting officer shall explain to the accused—

- (a) that he may give evidence if he so wishes but he is not obliged to do so;
- (b) the consequences of choosing to remain silent; and
- (c) that he may call witnesses on his behalf.

(7) Any witness for the accused (including the accused himself) may give evidence orally but shall not be subject to cross-examination, except that the conducting officer may ask a question where it is necessary to resolve an ambiguity or to enable the evidence to be recorded in a coherent form.

(8) Except where the witness is a person under the age of 14, any evidence given orally during the formal preliminary examination shall be given on oath, administered by the conducting officer.

(9) Any evidence given orally during the formal preliminary examination shall be recorded by the conducting officer or a court recorder.

(10) Where the evidence is recorded in writing, the record of his evidence shall be read back to the witness at the conclusion of his evidence, corrected where necessary and signed by him.

(11) A copy of any statement read out in accordance with paragraph (3) or (4) above and the transcript of any shorthand note or mechanical record shall be included in the record of the examination.

(12) After the conclusion of the formal preliminary examination, the conducting officer shall deliver the record of the examination to the prosecuting authority.

### **Charge sheet**

7.—(1) A charge sheet shall state—

- (a) the name, service number and rank of the accused;
- (b) the name of the unit, if any, in which the accused is serving;
- (c) particulars of how the accused is subject to military law or otherwise triable under the Act;
- (d) any charge preferred against the accused; and
- (e) whether any charge preferred against the accused is to be tried by general court-martial or district court-martial.

(2) A charge sheet shall be signed and dated by the prosecutor.

### **Charges and joinder**

8. The rules contained in Schedule 1 to these Rules shall be observed in proceedings before courts-martial.

### **Notifying the accused's commanding officer**

9.—(1) Where the prosecutor has preferred a charge against an accused to be tried by court-martial, the prosecutor shall notify the commanding officer of the accused of the charge by sending to the commanding officer the prosecution papers.

(2) In these Rules, "the prosecution papers" means—

- (a) a copy of the charge sheet;
- (b) a list of any witnesses whom the prosecutor proposes to call;
- (c) copies of any statements of the prosecution witnesses, or other record of their evidence;
- (d) a list of any exhibits which the prosecutor proposes to put in evidence and copies of those exhibits or details of their whereabouts;
- (e) a copy of any conduct sheets of the accused; and
- (f) a list of all unused material.

### **Notifying the court administration officer**

**10.**—(1) The prosecutor shall notify the court administration officer of any charge which he has preferred by sending to him a copy of the prosecution papers.

(2) On receipt of a copy of the prosecution papers from the prosecutor, the court administration officer shall send a copy of the prosecution papers to the Judge Advocate General (or his deputy).

### **Notification of trial**

**11.**—(1) This rule applies where the commanding officer has been notified in respect of an accused under his command that the prosecutor has preferred a charge.

(2) As soon as is practicable after receipt of the prosecution papers, the commanding officer shall notify the accused that he is to be tried by court-martial.

(3) On notifying the accused in accordance with paragraph (2) above, the commanding officer shall serve the accused with—

- (a) the prosecution papers;
- (b) where so required by the prosecutor, a statement explaining the effect of section 11 of the Criminal Justice Act 1967<sup>(2)</sup> (notice of alibi) and a form for the accused's notice of alibi;
- (c) a form for notifying the court administration officer of the accused's legal adviser; and
- (d) a form for acknowledgement of receipt.

### **Discontinuing proceedings before trial**

**12.** If before the commencement of the trial of a charge the prosecutor discontinues proceedings on that charge, he shall serve notice in writing on the accused and the court administration officer.

### **Description of the court-martial**

**13.** If before the commencement of the trial of a charge the prosecutor determines that any charge should be tried by a court-martial of a different description from that contained in the initial charge sheet, he shall serve notice in writing on the accused and the court administration officer.

### **Amending charges and additional charges before trial**

**14.**—(1) If before the commencement of the trial of a charge the prosecutor—

- (a) amends, or substitutes another charge or charges for, that charge;
- (b) prefers an additional charge against the accused and directs that the additional charge shall be tried at the same court-martial trial as the original charge,

he shall serve notice on the accused and the court administration officer.

(2) Except with the consent of the accused, notice under paragraph (1) above shall not be served less than 24 hours before the time appointed for the trial of the original charge.

(3) Where the prosecutor is required to serve notice on the accused in accordance with this rule, he shall do so by sending to the commanding officer of the accused or, with the consent of the accused, by serving directly on the accused—

- (a) a copy of the amended charge sheet;

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(2) 1967 c. 89; section 11 applies to proceedings before courts-martial by virtue of section 12 of the Criminal Justice Act 1967, subject to the modifications prescribed by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997 (S.I. 1997/173).

- (b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet; and
  - (c) where in the opinion of the prosecutor it is necessary, a statement explaining the effect of section 11 of the Criminal Justice Act 1967 and a form for the accused's notice of alibi.
- (4) Where any document is received by the commanding officer in accordance with paragraph (3) above, he shall serve it on the accused as soon as is practicable.
- (5) Where the prosecutor is required to serve notice on the court administration officer in accordance with this rule, he shall do so by sending to the court administration officer or, if less than 24 hours before the time appointed for the trial of the original charge, the judge advocate—
- (a) a copy of the amended charge sheet; and
  - (b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet.

## PART III

### GENERAL MATTERS

#### Conduct of the defence

**15.**—(1) An accused who has been notified that he is to be tried by court-martial shall be afforded a proper opportunity for preparing his defence.

(2) A defending officer shall be appointed by the commanding officer of the accused to assist the accused to prepare and conduct his defence, unless the accused states in writing that he does not wish such an appointment to be made.

(3) The accused may appoint a legal adviser to act for him and any right or responsibility which accrues to the accused by virtue of these Rules (except pleading to a charge) may be exercised by the accused's legal adviser on his behalf.

(4) The accused shall inform the court administration officer of the name and address of his legal adviser as soon as is practicable after a legal adviser has been appointed.

(5) A legal adviser may represent an accused at a formal preliminary examination, at any preliminary proceedings and before a court-martial if he is—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(3);
- (b) an advocate or a solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or
- (d) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

#### Convening the court

**16.**—(1) On receipt of a copy of the prosecution papers, the court administration officer shall order a court-martial to convene to try the accused.

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(3) 1990 c. 41.

(2) Not less than 24 hours before the time appointed for the trial, a copy of the convening order shall be served on—

- (a) the accused; and
- (b) the officer members of the court, the Judge Advocate General (or his deputy) and the prosecuting authority,

(3) If the court administration officer amends or withdraws the order convening the court-martial, he shall serve a copy of the amended order or serve notice in writing as appropriate on—

- (a) the accused; and
- (b) the officer members of the court, the Judge Advocate General (or his deputy) and the prosecuting authority.

(4) The court administration officer may not withdraw the order convening a court-martial after the time appointed for the trial.

### **Ineligibility for membership of courts-martial**

17. An officer shall not be eligible to be a member of a court-martial for the trial of an accused if—

- (a) he serves under the command of—
  - (i) the higher authority who referred the case against the accused to the prosecuting authority;
  - (ii) the prosecuting authority; or
  - (iii) the court administration officer;
- (b) he—
  - (i) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (ii) is an advocate or a solicitor in Scotland;
  - (iii) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;
  - (iv) has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

### **Appointment of court officials**

18. The court administration officer may appoint at any time a person or persons to act as—

- (a) court recorder;
- (b) interpreter,

at a court-martial or at any preliminary proceedings.

### **Delegation of the court administration officer's functions**

19. The court administration officer appointed by the Defence Council in accordance with section 84A of the Act may delegate any of his functions to persons appointed to act as court administration officers under his direction.

### **Additional evidence before trial**

**20.** If before the commencement of the trial the prosecutor wishes to adduce at trial any evidence additional to that contained in the prosecution papers, he shall serve a copy of the additional evidence (or details of its whereabouts) on the accused and the court administration officer.

### **Witness not called by the prosecutor**

- 21.**—(1) This rule applies where the prosecutor does not intend to call as a witness—
- (a) any person whose statement or record of evidence has been served on the accused as part of the evidence for the prosecution; or
  - (b) any person in respect of whose evidence he has served notice under rule 56 below.
- (2) Where this rule applies, unless the accused waives the requirement, the prosecutor shall—
- (a) serve notice in writing on the accused that he does not intend to call that person; or
  - (b) tender that person at trial for cross-examination by the accused.

### **Witnesses for the accused**

**22.**—(1) As soon as is practicable after the accused has been notified that he is to be tried by court-martial, the court administration officer shall notify the accused that any person whom he reasonably requires to give evidence at preliminary proceedings or the court-martial may be summoned on his behalf by the court administration officer.

(2) If the accused requests the court administration officer to summon a witness, the accused shall provide to the court administration officer sufficient information in sufficient time to enable a summons to be served.

(3) If in the opinion of the court administration officer it is not reasonable to summon to preliminary proceedings or a court-martial any witness requested by the accused, he shall inform the accused, the Judge Advocate General (or his deputy) and the prosecutor in writing of his decision and the reason for it.

### **Witness summons**

- 23.**—(1) Where any person is required to give evidence at—
- (a) a formal preliminary examination;
  - (b) any preliminary proceedings;
  - (c) a court-martial;

the court administration officer may summon the witness by issuing a witness summons in the form set out in Schedule 2 to these Rules.

(2) Where any person is required to give evidence at a court-martial, the judge advocate may, after the commencement of the trial, issue a witness summons.

- (3) A witness summons shall be served on the witness—
- (a) by delivering it to him personally;
  - (b) by leaving it for him with a person at the witness's usual place of abode;
  - (c) by post in a letter addressed to him at his last known or usual place of abode; or
  - (d) where the witness is subject to military law, air force law or the Naval Discipline Act 1957(4), through his commanding officer.

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(4) 1957 c. 53.

(4) Where any person is served with a witness summons in accordance with this rule, there shall be paid or tendered to him at that time any expenses which by regulations made by the Defence Council are payable to a witness in respect of his attendance.

(5) For the purposes of paragraph (4) above—

- (a) the tender of a warrant or voucher entitling the person to travel free of charge shall constitute tender of his expenses in respect of any travelling required; and
- (b) the tender of a written undertaking by the court administration officer or the president of the court-martial to defray any other expenses payable under the regulations shall constitute tender in respect of those expenses.

### **Oaths and affirmations**

**24.** Any oath or affirmation shall be administered in the form and manner set out in Schedule 3 to these Rules.

## **PART IV**

### **PRELIMINARY PROCEEDINGS**

#### **Hearing for directions**

**25.**—(1) The judge advocate may direct the court administration officer to convene a hearing for the purpose of giving directions—

- (a) of his own motion; or
- (b) on the application of the prosecutor or accused for such a hearing;

and such a hearing shall be referred to in these Rules as a hearing for directions.

(2) An application for a hearing for directions shall—

- (a) be made to the Judge Advocate General (or his deputy) in the form set out in Schedule 2 to these Rules; and
- (b) specify the reason for which it is made.

(3) Subject to rule 28 below, the applicant shall serve notice of the application in writing on every other party to the proceedings and the court administration officer.

(4) Before directing the court administration officer to convene a hearing for directions, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(5) Paragraph (4) above shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay, or where the application is made in accordance with rule 28 below.

(6) On receipt of a direction from the judge advocate under paragraph (1) above, the court administration officer shall—

- (a) appoint the date, time and place at which the hearing for directions will take place;
- (b) issue a notice in writing of the date, time and place appointed;
- (c) list in the notice such of the matters contained in Schedule 4 to these Rules to be addressed at the hearing as the judge advocate may request;
- (d) subject to rule 28 below, serve the notice on the parties to the proceedings; and

- (e) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter.
- (7) If in advance of the hearing the judge advocate so directs, the prosecutor shall—
  - (a) prepare an outline of the prosecution case; and
  - (b) serve a copy of that outline on the accused and the judge advocate.

### **Hearing for directions in chambers**

**26.**—(1) A hearing for directions shall take place before the judge advocate in chambers.

(2) Except with the leave of the judge advocate and subject to rule 28 below, the only persons entitled to be present at a hearing for directions are the court administration officer, the prosecutor, the accused, the accused’s legal adviser, the court recorder and any interpreter.

### **Substance of a hearing for directions**

**27.**—(1) The parties to the proceedings shall address the judge advocate at the hearing for directions on such of the matters contained in Schedule 4 to these Rules as are indicated in the notice convening the hearing.

(2) Paragraph (1) above is without prejudice to the right of the judge advocate or any party to the proceedings to raise at the hearing for directions any other matter.

(3) The judge advocate may at a hearing for directions make such directions as appear to him to be necessary to secure the proper and efficient trial of the case.

(4) Subject to rule 28 below, the court administration officer shall serve a copy of the record of the hearing for directions on the judge advocate, the prosecutor and the accused before the court-martial.

### **Hearing for directions without notice to the accused**

**28.**—(1) Where in the public interest it is desirable to seek a direction from the judge advocate without giving notice to the accused, the prosecutor may apply for a hearing for directions in accordance with this rule.

(2) Where the prosecutor applies for a hearing for directions under this rule, the judge advocate shall determine whether in the interests of justice such a hearing is necessary.

(3) Where the judge advocate grants the prosecutor’s application under this rule, he shall direct that the hearing for directions shall proceed without notice to the accused and without the participation of the accused.

### **Preparatory hearing**

**29.**—(1) The judge advocate may direct the court administration officer to convene a hearing for the purpose of giving orders and rulings in preparation for a court-martial—

- (a) of his own motion; or
- (b) on the application of the prosecutor or accused for such a hearing;

and such a hearing shall be referred to in these Rules as a preparatory hearing.

(2) An application for a preparatory hearing shall—

- (a) be made to the judge advocate in the form set out in Schedule 2 to these Rules; and
- (b) specify the reason for which it is made.

(3) The applicant shall serve notice in writing of the application with a time estimate of the length of the preparatory hearing on every other party to the proceedings and the court administration officer.

(4) Before directing the court administration officer to convene a preparatory hearing, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(5) Paragraph (4) above shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay.

(6) On receipt of a direction from the judge advocate under paragraph (1) above, the court administration officer shall—

- (a) appoint the date, time and place at which the preparatory hearing will take place;
- (b) issue a notice in writing of the date, time and place appointed;
- (c) serve the notice on the parties to the proceedings; and
- (d) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter.

#### **Challenges and oaths at a preparatory hearing**

**30.**—(1) At the commencement of the preparatory hearing the accused shall be entitled to object to the judge advocate and any interpreter.

(2) At the commencement of the preparatory hearing the judge advocate shall administer an oath to any interpreter.

#### **Substance of a preparatory hearing**

**31.**—(1) At a preparatory hearing the judge advocate may make an order or ruling on—

- (a) any question as to the admissibility of evidence;
- (b) any other question of law, practice or procedure relating to the case.

(2) An order or ruling made under this rule shall have effect until the conclusion of the court-martial trial unless it appears to the judge advocate on application made to him at any stage during the proceedings that in the interests of justice it should be varied or discharged.

## **PART V**

### **PROCEEDINGS AT COURT-MARTIAL**

#### **The judge advocate**

**32.**—(1) The judge advocate shall conduct the court-martial in accordance with the law of England and Wales.

(2) The judge advocate shall ensure that a proper record of the proceedings is made, in sufficient detail to enable the reviewing authority to follow the course of the proceedings.

#### **The president**

**33.**—(1) Subject to rule 32 above, the president shall be responsible for ensuring that the trial befits the traditions and standards of the Army.

(2) It shall be the duty of the president to ensure that any person present during the proceedings for instruction takes no part in the proceedings and expresses no opinion to the court, on any matter relating to the trial, before the conclusion of the trial.

### **Sittings and adjournment**

**34.**—(1) If it appears to the judge advocate necessary in the interests of justice, a court-martial may adjourn from time to time.

(2) A court-martial shall not sit on Saturday, Sunday, Christmas Day or Good Friday unless in the opinion of the court it is necessary to do so.

(3) A court-martial shall sit at such times and for such periods each day as seem to the court to be reasonable in the circumstances.

### **Record of proceedings**

**35.**—(1) The record of proceedings of a court-martial shall include—

- (a) the record of findings; and
- (b) the record of sentence, if any.

(2) A certified transcript or note of evidence given at the court-martial and any preliminary proceedings shall be kept with the record of proceedings.

(3) Any transcript of a shorthand note shall be signed by the shorthand writer.

(4) Any transcript of a mechanical record shall be signed by the person who transcribed it.

(5) At the conclusion of the trial, the record of proceedings shall be signed by the judge advocate and the president.

### **Closed court**

**36.** Where a court-martial sits in closed court, any person under instruction is permitted to be present.

### **Pre-trial hearing**

**37.**—(1) The judge advocate may direct the court administration officer to order a hearing to take place at the court-martial before the commencement of the trial of an accused—

- (a) of his own motion; or
- (b) on the application of the prosecutor or accused for such a hearing;

and such a hearing shall be referred to in these Rules as a pre-trial hearing.

(2) An application for a pre-trial hearing shall—

- (a) be made to the judge advocate in the form set out in Schedule 2 to these Rules; and
- (b) specify the reason for which it is made.

(3) An applicant shall serve notice in writing of the application with a time estimate of the length of the pre-trial hearing on every other party to the proceedings and the court administration officer.

(4) Before directing the court administration officer to order a pre-trial hearing, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(5) Paragraph (4) above shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay.

(6) On receipt of a direction from the judge advocate under paragraph (1) above, the court administration officer shall—

- (a) issue an order convening the court-martial; or
- (b) if the order convening the court-martial has already been issued, amend the order;

so that the order shall specify—

- (i) the date and time at which the pre-trial hearing before the judge advocate shall take place; and
- (ii) the date and time at which the officer members of the court shall convene for the trial.

(7) Nothing in this rule shall prevent the judge advocate from ordering a pre-trial hearing after the full court has assembled.

### **Challenges and oaths at a pre-trial hearing**

**38.**—(1) Where a pre-trial hearing takes place, rules 40 and 41 below shall be complied with at the beginning of the pre-trial hearing, except that—

- (a) the accused may not state his objection to any member of the court other than the judge advocate; and
- (b) the judge advocate shall not administer an oath or affirmation to any officer member of the court,

until after the full court has convened.

(2) When paragraph (1) above applies, the application of rules 40 and 41 below in respect of court members not present at the pre-trial hearing shall be modified accordingly.

### **Substance of a pre-trial hearing**

**39.**—(1) At a pre-trial hearing the judge advocate may make an order or ruling on—

- (a) any question as to the admissibility of evidence;
- (b) any other question of law, practice or procedure relating to the case.

(2) An order or ruling made under this rule shall have effect until the conclusion of the court-martial trial unless it appears to the judge advocate on application made to him at any stage during the proceedings that in the interests of justice it should be varied or discharged.

(3) If the judge advocate allows any application such that there is no charge remaining to which the accused can be required to plead, he shall direct the court administration officer to dissolve the court.

### **Challenges by the accused**

**40.**—(1) This rule applies subject to rule 38 above.

(2) When the full court has assembled, the order convening the court-martial (including the name of any officer specified therein) and the names of the judge advocate and any interpreter shall be read to the accused.

(3) The accused may object to any person whose name is read out and to any interpreter appointed after the commencement of the trial.

(4) If more than one person is objected to, the objection to each shall be considered in the following order—

- (a) the judge advocate;
- (b) the president;
- (c) the other members of the court;

- (d) any waiting member; and
  - (e) any interpreter.
- (5) The determination of the judge advocate on any objection shall be announced in open court.
- (6) If an objection to an officer member other than the president is allowed, any waiting member in respect of whom no objection has been made or allowed shall take his place.
- (7) Where a court-martial is convened to try two or more accused separately and one accused objects to the president or to any other member of the court, the judge advocate may, if he thinks fit, adjourn the trial of that accused and proceed with the trial of the other accused only.

#### **Administration of oaths and affirmations**

- 41.**—(1) This rule applies subject to rule 38 above.
- (2) After the accused has been given the opportunity to challenge the members of the court, oaths or affirmations shall be administered in the presence of the accused.
- (3) The judge advocate, or any other member of the court on his behalf, shall administer an oath or affirmation to—
- (a) the president;
  - (b) each officer member of the court;
  - (c) any person in attendance for instruction;
  - (d) any interpreter;
  - (e) any witness.

#### **Commencement of the trial**

- 42.**—(1) For the purposes of the Act and these Rules the trial of an accused commences immediately after the last court member has been sworn.
- (2) If after the commencement of the trial the judge advocate allows any challenge, objection, plea or application such that there is no charge remaining to which the accused can be required to plead, he shall dissolve the court.

#### **Judge advocate sitting alone**

- 43.**—(1) Where—
- (a) the accused makes a submission of no case to answer; or
  - (b) for any reason the judge advocate is of the opinion that he should rule on a question in the absence of the other members of the court,
- the judge advocate may direct the other members of the court to withdraw.
- (2) If, while the judge advocate is sitting alone in accordance with these Rules, a person commits an offence under section 57 or 101 of the Act, the judge advocate may report the occurrence to—
- (a) the president; or
  - (b) if the offence is committed during preliminary proceedings and the person is subject to military law, the commanding officer of that person.

#### **Severance**

- 44.**—(1) Where—
- (a) an accused is charged with more than one offence; or

(b) two or more accused are charged in the same charge sheet;  
and the judge advocate rules that the fair trial of an accused may be prejudiced if the charges are not severed or that for any other reason it is desirable that the charges are severed, he may—

- (i) order the court to try only one or more charges;
- (ii) order that the court to try only one or more accused;
- (iii) leave any charge or any accused to be tried by a new court.

(2) Where an accused is charged in more than one charge sheet and the judge advocate rules that for any reason it is desirable that the court tries only the charge or charges set out in one charge sheet, he may leave the charge or charges set out in any other charge sheet to be tried by a new court.

### **Arraignment**

**45.**—(1) The accused shall be arraigned by the judge advocate after the commencement of the trial.

(2) The accused need not be arraigned on all the charges in the charge sheet at the same time.

(3) Before the accused is arraigned on any charge, the judge advocate shall pass to each member of the court a copy of the charge sheet which shall set out only the charge or charges on which the accused is to be arraigned and any charge which is stated to be an alternative to a charge on which the accused is to be arraigned.

(4) The accused shall be required to plead separately to each charge on which he is arraigned.

### **Guilty plea**

**46.**—(1) If the accused pleads guilty to a charge, the judge advocate shall, if it appears necessary to him and before the court accepts the plea, satisfy himself that the accused understands—

- (a) the nature of the charge;
- (b) the general effect of the plea; and
- (c) the difference in procedure following pleas of guilty and not guilty.

(2) The court shall not accept a plea of guilty if—

- (a) the judge advocate, having regard to all the circumstances, considers that the court should not accept the plea; or
- (b) the accused is liable, if convicted, to a sentence of death.

(3) Where—

- (a) a plea of guilty is not accepted by the court; or
- (b) the accused does not plead to the charge or does not plead to it intelligibly,

the court shall enter a plea of not guilty.

### **Alternative charges**

**47.**—(1) Where an accused pleads guilty to the first of two or more alternative charges, the court, if it accepts the plea, shall record a finding of guilty in respect of that charge and shall give the prosecutor leave to discontinue proceedings in respect of any alternative charge or charges.

(2) Where an accused pleads guilty to any other of two or more alternative charges, the court shall—

- (a) if the prosecutor gives his consent—
  - (i) record a finding of guilty on any charge to which the accused has pleaded guilty,

- (ii) record a finding of not guilty on any alternative charge placed before it on the charge sheet, and
  - (iii) give the prosecutor leave to discontinue proceedings in respect of any further alternative charge or charges; or
- (b) if the prosecutor does not give the consent referred to in sub-paragraph (a) above, proceed as if the accused had pleaded not guilty to all the charges.
- (3) If the court records a finding of guilty under paragraph (1) or (2)(a) above and subsequently allows the accused to change his plea under rule 54 below, the court may reinstate and arraign the accused on any alternative charge which was discontinued.

#### **Additional charges during trial**

**48.**—(1) If after the commencement of the trial the prosecutor intends to seek the leave of the court to prefer an additional charge, he shall, unless the accused waives the requirement, serve notice in writing of such intention on the accused before the application is made.

(2) Where notice is served on the accused in accordance with paragraph (1) above, he may apply for an adjournment of the trial.

#### **Changes to the charge sheet during trial**

**49.**—(1) If after the commencement of the trial the prosecutor intends to—

- (a) amend, or substitute another charge or charges for, a charge;
- (b) discontinue proceedings on a charge;
- (c) prefer an additional charge;

the prosecutor shall seek the leave of the court.

(2) Where the court gives leave to discontinue proceedings on a charge, it shall consider whether to give the direction provided for in section 83B(14) of the Act.

#### **Changes to the charge sheet by the court**

**50.** If after the commencement of the trial it appears that, with due regard to the fairness to the accused, it is desirable in the interests of justice to amend a charge, the court may do so.

#### **Procedure after guilty plea**

**51.**—(1) This rule applies where—

- (a) the court has accepted only a plea or pleas of guilty; or
- (b) the court has accepted a plea or pleas of guilty and the prosecutor does not proceed to the trial of any charge to which an accused has pleaded not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) After the court records a finding of guilty, the prosecutor shall address the court on the facts of the case.

#### **Pleas of guilty and not guilty on one charge sheet**

**52.**—(1) This rule applies where in respect of one charge sheet—

- (a) the court has accepted a plea or pleas of guilty;
- (b) a plea or pleas of not guilty have been entered; and

- (c) the prosecutor proceeds to the trial of any charge on which a plea of not guilty has been entered.
- (2) This rule applies whether the charge sheet is in respect of one or more than one accused.
- (3) Unless the judge advocate directs otherwise, the trial of any charge on which a plea of not guilty has been entered shall proceed in accordance with these Rules before the court considers any guilty plea.
- (4) After the court has announced its finding on each charge in respect of which a plea of not guilty has been entered, the court shall consider any guilty plea.
- (5) After the court records a finding of guilty in respect of each charge to which the accused has pleaded guilty, the prosecutor shall address the court on the facts of the case.

#### **Dispute on facts after finding of guilty**

- 53.**—(1) Where after the court has recorded a finding of guilty in respect of any charge there are disputed facts in the case, any issue of fact may be tried.
- (2) Where an issue of fact is being tried in accordance with this rule—
    - (a) the judge advocate may direct the prosecutor to call any witness to give evidence, and
    - (b) the prosecutor and the accused may, with the leave of the judge advocate, adduce evidence.
  - (3) The court shall sit in closed court while deliberating on its finding on the issue of fact.
  - (4) The finding of the court on the issue of fact shall be determined by a majority of the votes of the members of the court and announced in open court.
  - (5) In the case of an equality of votes on the finding on the issue of fact, the president shall have a second or casting vote.

#### **Change of plea**

- 54.**—(1) At any time before the court closes to deliberate on its finding on a charge, an accused who has pleaded not guilty to the charge may, with the leave of the judge advocate, withdraw his plea and substitute a plea of guilty.
- (2) At any time before the court closes to deliberate on its sentence on a charge, an accused who has pleaded guilty to the charge may, with the leave of the judge advocate, withdraw his plea and substitute a plea of not guilty.
  - (3) Where an accused changes his plea, the court shall proceed so far as is necessary as if the initial plea to that charge were the plea substituted.

#### **Procedure after not guilty plea**

- 55.** Before calling the witnesses for the prosecution, the prosecutor may make an opening address.

#### **Additional evidence during trial**

- 56.**—(1) If after the commencement of the trial the prosecutor intends to adduce evidence additional to that referred to in the prosecution papers, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the accused and the judge advocate before it is adduced.
- (2) Where notice and particulars are served on him in accordance with paragraph (1) above, or where evidence is adduced without such notice being given, the accused may apply to the judge advocate for an adjournment of the trial.

### **Expert evidence**

**57.**—(1) Expert evidence shall not be adduced at trial without the leave of the judge advocate unless the party proposing to rely on it has served on every other party and the court administration officer, not less than 14 days before the date appointed for the trial, a statement of the substance of the expert evidence.

(2) The statement referred to in paragraph (1) above shall be in writing unless every other party consents to it being made orally.

### **Exhibits**

**58.**—(1) Any exhibit admitted in evidence shall be marked sequentially with either a number or a letter.

(2) Each exhibit or a label attached to each exhibit shall be signed by the judge advocate.

(3) Each exhibit shall be retained with the record of proceedings, unless in the opinion of the judge advocate having regard to the nature of the exhibit or for other good reason it is not expedient to retain the exhibit with the record.

(4) Where an exhibit is not retained with the record of proceedings, the judge advocate shall ensure that proper steps are taken for its safe custody.

### **Presence of witnesses**

**59.**—(1) Except for the accused and any expert or character witness, a witness as to fact shall not, except by leave of the judge advocate, be in court while not under examination.

(2) If while a witness is under examination a question arises as to the admissibility of a question or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined.

(3) The judge advocate may direct any expert or character witness present in court to withdraw if the judge advocate considers in the interests of justice that his presence is undesirable.

### **Evidence through television link**

**60.**—(1) Any application by the prosecutor or an accused for leave under section 32 of the Criminal Justice Act 1988<sup>(5)</sup> for evidence to be given by a witness through a live television link shall be made as soon as is practicable after the commencement of the trial.

(2) An application may not be made under paragraph (1) above without the leave of the judge advocate unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in the form set out in Schedule 2 to these Rules on every other party, the court administration officer and the Judge Advocate General (or his deputy) stating—

- (a) the grounds of the application;
- (b) the name of the witness;
- (c) where the witness is under the age of 18, the date of birth of the witness;
- (d) the country and place where it is proposed the witness will be when giving evidence; and
- (e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

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(5) 1988 c. 33; section 32(1)—(3) applies to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (S.I. 1996/2592) subject to the modifications specified therein.

(3) Where the court gives leave for a witness under the age of 14 to give evidence through a live television link, the witness shall be accompanied by a person acceptable to the court and, unless the court otherwise directs, by no other person.

### **Video recordings of testimony from child witnesses**

**61.**—(1) Any application by the prosecutor or an accused for leave under section 32A of the Criminal Justice Act 1988(6) for evidence to be given by a witness by means of a video recording shall be made as soon as is practicable after the commencement of the trial.

(2) An application may not be made under paragraph (1) above without the leave of the judge advocate unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in the form set out in Schedule 2 to these Rules together with a copy of the video recording to which the application relates on every other party, the court administration officer and the Judge Advocate General (or his deputy) stating—

- (a) the grounds of the application;
- (b) where the witness is under the age of 18, the date of birth of the witness;
- (c) the name of the witness;
- (d) the date on which the video recording was made;
- (e) that in the opinion of the applicant the witness is willing and able to attend the court-martial for cross-examination; and
- (f) the circumstances in which the video recording was made.

### **Examination of witnesses**

**62.**—(1) The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and that there is no injustice to the accused in doing so.

(2) The judge advocate may question any witness and, if he considers it appropriate, may put to the witness a question from any other member of the court.

(3) Any other member of the court may, with the judge advocate's permission, question any witness after the court's finding on the charge has been announced.

(4) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may at any time—

- (a) call any witness whom it has not already heard;
- (b) recall a witness;
- (c) permit the accused or the prosecutor to recall a witness.

### **Submission of no case to answer**

**63.**—(1) At the close of the case for the prosecution the accused may submit, in respect of any charge, that the prosecution has failed to establish a prima facie case for him to answer.

(2) If the submission is allowed, the judge advocate shall direct the court to find the accused not guilty of the charge to which the submission relates.

(3) If the submission is not allowed, the court shall proceed with the trial.

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(6) Section 32A was inserted by the Criminal Justice Act 1991 (c. 53), section 54. Section 32A applies to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 subject to the modifications specified therein.

### **Finding of not guilty before conclusion of the defence**

64. The court may at any time after the close of the case for the prosecution find the accused not guilty of a charge, provided that the prosecutor has been given an opportunity to address the court on such a finding.

### **The case for the defence**

65.—(1) After the close of the case for the prosecution, the judge advocate shall satisfy himself that the accused understands—

- (a) that he may give evidence in his defence if he so wishes but he is not obliged to do so;
- (b) the consequences of choosing to remain silent at trial;
- (c) that, if he chooses to give evidence, he will be liable to be cross-examined by the prosecutor and questioned by the judge advocate; and
- (d) that he may call witnesses on his behalf.

(2) Where the accused intends to call a witness to the facts of the case, other than himself, he may make an opening address outlining the case for the defence before the evidence is given.

### **Witnesses for the defence**

66. Except with the leave of the judge advocate, if the accused elects to give evidence he shall be called before any other witness for the defence.

### **Further evidence**

67. With the leave of the judge advocate the prosecutor may call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecutor could not—

- (a) properly have dealt with before the accused disclosed his defence; or
- (b) reasonably have foreseen.

### **Closing addresses**

68.—(1) Subject to paragraph (4) below, the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the prosecutor.

(3) Where two or more accused are represented by the same legal adviser, he may make only one closing address.

(4) Where the accused is not represented by a legal adviser and has called in person no witnesses as to fact other than himself, the prosecutor shall not make a closing address.

### **Summing up**

69. After the closing addresses, if any, the judge advocate shall direct the court upon the law relating to the case and summarise the evidence.

### **Deliberation on finding**

70.—(1) After the summing up, the judge advocate shall withdraw and the court shall close to deliberate on its finding on each charge before it.

(2) If the court requires further direction on the law during its deliberation on a finding on any charge, it shall suspend its deliberation to seek and be given further direction by the judge advocate in open court.

(3) During its deliberation on a finding, the court shall not separate until the finding has been reached unless the judge advocate directs that in the interests of justice the court may separate.

(4) The vote of each member of the court on the finding on each charge shall be given orally in reverse order of seniority.

### **Special finding**

**71.**—(1) For the purposes of these Rules a special finding is, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, a finding of guilty subject to exceptions or variations specified in the finding.

(2) The court may not reach a special finding unless it appears that the difference is not so material as to have prejudiced the accused in his defence.

### **Record of finding**

**72.**—(1) The finding of the court on a charge shall be recorded in writing and dated and signed by the president.

(2) Each finding shall be announced separately by the president.

(3) If the court reaches a finding of guilty or a special finding and the judge advocate is of the opinion that such a finding is contrary to the law relating to the case, he shall direct the court on the findings which are open to it and the court shall retire to reconsider its finding.

(4) If the judge advocate is satisfied that the findings are not incorrect in law, he shall sign the record of the findings.

### **Inquiry into finding**

**73.** Where the interests of justice require it, the judge advocate may in open court question the court on any finding of fact reached during its deliberation on the finding on any charge.

### **Offences taken into consideration**

**74.**—(1) Where the court has recorded a finding of guilty on any charge or a special finding, the accused may request the court to take into consideration any other offence committed by him of a similar nature to that of which he has been found guilty or in respect of which a special finding has been reached, and, upon such a request being made, the court may agree to take into consideration any such offence as to the judge advocate seems proper.

(2) A list of the offences which the accused admits having committed and which the court agrees to take into consideration shall be signed by the accused and attached to the record of proceedings.

## PART VI

### SENTENCING

#### **Pre-sentence report and previous convictions**

**75.**—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the trial, he shall serve a copy on the accused and the Judge Advocate General (or his deputy) before the time appointed for the trial.

(2) Where the prosecutor has obtained a record of the accused's previous convictions in advance of the trial, he shall serve a copy of the accused and the court administration officer before the time appointed for the trial.

#### **Evidence before sentencing**

**76.**—(1) This rule applies where the court has recorded a finding of guilty or a special finding on any charge.

(2) Where practicable, the prosecutor shall present to the court information concerning—

- (a) the accused's age and rank;
- (b) the accused's service record;
- (c) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled;
- (d) particulars of any offence (whether under the Act or otherwise) of which the accused has been found guilty (during his service or otherwise), provided that any convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974(7) shall be clearly marked as such;
- (e) particulars of any formal police caution administered to the accused by a constable in England and Wales or Northern Ireland;
- (f) particulars of the length of time the accused has been under arrest awaiting trial or in custody under a current sentence;
- (g) details of the accused's pay, terminal benefits and future pension entitlements; and
- (h) whether the commanding officer of the accused wishes to retain the accused in his unit.

(3) Unless the accused requires otherwise, the matters referred to in paragraph (2) above need not be adduced in compliance with the strict rules of evidence.

(4) The court shall consider any pre-sentence report concerning the accused in the possession of the court administration officer.

(5) A record of antecedents signed by the accused may be accepted in evidence by the court under paragraph (2)(d) above where the accused has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought.

#### **Evidence on behalf of the accused**

**77.**—(1) The accused may—

- (a) give evidence on oath and call witnesses in mitigation of sentence and as to his character;
- (b) produce to the court any document or written report; and

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(7) 1974 c. 53; sections 2 and 6 were amended, and the Schedule was inserted, by the Armed Forces Act 1996, section 13 and Schedule 4.

- (c) address the court in mitigation of sentence.
- (2) Unless the prosecutor requires otherwise, any document or report referred to in paragraph (1) (b) above need not be adduced in compliance with the strict rules of evidence.

#### **Postponement of deliberation on sentence**

**78.** Where two or more accused are tried separately by the same court upon charges arising out of the same circumstances, the court may, if the judge advocate thinks that the interests of justice so require, postpone its deliberation on the sentence to be awarded to any one or more of such accused until it has recorded its findings in respect of all the accused.

#### **Deliberation on sentence**

**79.**—(1) Subject to section 118A(3) of the Act and to paragraph (2) below, the court shall award one sentence in respect of—

- (a) all the offences of which the accused has been found guilty; and
- (b) all the offences taken into consideration in accordance with rule 74 above.

(2) The sentence may include a direction that such deductions shall be made from the pay of the accused as may have been made if the accused had been found guilty by the court of an offence taken into consideration as well as any offence of which he has been found guilty.

#### **Announcement of sentence**

**80.**—(1) The sentence shall be recorded in writing, dated and signed by the president and the judge advocate.

(2) The reasons for sentence shall be given by the judge advocate.

(3) The sentence, and any direction as to postponement or suspension of sentence, shall be announced by the president.

(4) If the court makes a recommendation to mercy, the reasons for making it shall be given by the president.

#### **Conclusion of the trial**

**81.**—(1) When each charge on the charge sheet or sheets has been disposed of, the president shall announce in open court that the trial is concluded.

(2) The judge advocate shall dissolve the court.

## **PART VII**

### **REVIEW OF COURT-MARTIAL FINDING AND SENTENCE**

#### **The petition**

**82.**—(1) The period within which an accused may present a petition against finding or sentence or both in accordance with section 113(1) of the Act shall be 28 days following the day on which sentence is announced.

(2) A petition presented in accordance with section 113(1) of the Act shall be in writing and signed by the accused, or on his behalf by his legal adviser.

(3) Petitioners shall have regard to the guidance on the content of a petition contained in Schedule 5 to these Rules.

(4) A petition addressed to the Defence Council shall be treated as having been presented to the Defence Council if it is presented by the petitioner—

- (a) to the Director of Personal Services (Army); or
- (b) where the petitioner is—
  - (i) in custody or detention in any civil prison or institution, to the governor of the prison or institution;
  - (ii) detained in any military or air force establishment or in naval detention quarters, to the commandant of the establishment or quarters.

(5) A person to whom a petition is presented under paragraph (4)(b) above shall transmit it to the Director of Personal Services (Army) immediately upon receipt.

### **Reasons**

**83.** Where the reviewing authority completes a review in accordance with section 113 of the Act, it shall—

- (a) if a petition has been presented in accordance with section 113(1) of the Act, or
- (b) if it exercises any of its powers under section 113AA of the Act,

give reasons for its decision.

## **PART VIII**

### **MISCELLANEOUS**

#### **Application of the rules to civilians**

**84.**—(1) In their application to any person to whom Part II of the Act is applied by section 209 of the Act, these Rules shall have effect subject to the modifications specified in Part I and the additional rules specified in Part II of Schedule 6 to these Rules.

(2) Part III of Schedule 6 to these Rules shall have effect in respect of the hearing by courts-martial of appeals against findings and sentences by Standing Civilian Courts.

#### **Periodic review of arrest**

**85.**—(1) In this rule, the “8 day report” means a report made in accordance with section 75(2) of the Act and this rule.

(2) The 8 day report on the necessity for further delay under section 75(2) shall be made to the person immediately superior in command on disciplinary matters to the commanding officer making the report.

(3) The 8 day report shall be made in writing and shall contain the following particulars—

- (a) the name, service number, rank and unit of the person under arrest;
- (b) the date upon which he was taken into arrest;
- (c) whether he is in open or close arrest;
- (d) the allegations against him which are being investigated;
- (e) the reason why it is considered necessary to retain him in arrest;

- (f) the reason why it is considered necessary to delay the convening of the court-martial for his trial; and
- (g) where an allegation against him has been reported in the form of a charge to his commanding officer, the date on which that charge was reported.

#### **Bankers' Books Evidence Act 1879**

**86.**—(1) The power to make an order conferred by section 7 of the Bankers' Books Evidence Act 1879(8) may be exercised for the purposes of a court-martial—

- (a) during the investigation of any offence and before the accused is notified that he is to be tried by court-martial, by the commanding officer of the accused;
  - (b) at preliminary proceedings and during the court-martial, by the judge advocate.
- (2) The order shall be in the form set out in Schedule 2 to these Rules.

#### **Custody of the record**

**87.** The period during which the record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General shall be six years from the conclusion of the trial.

#### **Imprisonment in default; manner of payment of fine**

**88.** For the purposes of section 71B of the Act, the manner in which a fine or part of a fine shall be paid or recovered is—

- (a) where the offender is a person to whose pay section 144 of the Act applies, by deduction in accordance with that section from his pay or from any balance (whether or not representing pay) which may be due to him; or
- (b) by payment by or on behalf of the offender to—
  - (i) the governor of the prison in the United Kingdom where the offender is confined; or
  - (ii) the Director of Personal Services (Army) or an officer authorised by him.

#### **Circumstances not provided for**

**89.** In any circumstance not provided for by the Act or these Rules such course shall be adopted as appears best calculated to do justice.

#### **Revocations and savings**

**90.**—(1) Subject to paragraph (2) below, the Rules set out in Schedule 7 to these Rules are hereby revoked.

(2) The Rules set out in Schedule 7 shall continue to apply in relation to any trial by a court-martial which commenced before 1st April 1997 until the conclusion of that trial.

(3) The revocations shall not affect the validity of anything done under those Rules in relation to any proceedings pending at the commencement of these Rules.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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12th February 1997

*Nicholas Soames*  
Minister of State, Ministry of Defence

SCHEDULE 1

Rule 8

CHARGES AND JOINDER

PART I

RULES

1.—(1) A charge sheet shall be in the form specified in Part II of this Schedule or in a form substantially to the like effect.

(2) Where more than one offence is charged in a charge sheet, the statement and particulars of each offence shall be set out in a separate paragraph called a charge, and paragraphs 2 and 3 of this Part shall apply to each charge in the charge sheet as they apply to a charge sheet where one offence is charged.

(3) The charges shall be numbered consecutively.

2.—(1) Subject only to the provisions of paragraph 3 of this Part, every charge sheet shall contain, and shall be sufficient if it contains, a statement of the specific offence with which the accused person is charged describing the offence shortly, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) A charge sheet for a specific offence shall not be open to objection in respect of its form if it is framed in accordance with this Schedule.

3. Where the specific offence with which an accused person is charged in a charge sheet is one created by or under an enactment, then (without prejudice to the generality of paragraph 2 of this Part)—

- (a) the statement of offence shall contain a reference to—
  - (i) the section of, or the paragraph of the Schedule to, the Act creating the offence in the case of an offence created by a provision of an Act;
  - (ii) the provision creating the offence in the case of an offence created by a provision of a subordinate instrument;
- (b) the particulars shall disclose the essential elements of the offence:

Provided that an essential element need not be disclosed if the accused person is not prejudiced or embarrassed in his defence by the failure to disclose it;
- (c) it shall not be necessary to specify or negative an exception, exemption, proviso, excuse or qualification.

4. Where an offence created by or under an enactment states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment or subordinate instrument may be stated in the alternative in a charge sheet charging the offence.

5. It shall be sufficient in a charge sheet to describe a person whose name is not known as a person unknown.

6.—(1) Subject to sub-paragraphs (2) and (3) below, charges for any offences may be joined in the same charge sheet if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(2) An offence under section 37(1)(9) (desertion), section 38(10) (absence without leave) or section 56 (escape from confinement) of the Act may be included in any charge sheet.

(3) An offence under section 46(1)(11) (offences relating to issues and decorations) of the Act may be included in any charge sheet where it arises in connection with a charge under section 37(1) or 38 of the Act.

7. Where the offence charged is one which can be committed in circumstances involving either a higher or a lower degree of punishment, the charge shall state the facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted.

8. Where the offence charged is one which may render the accused liable to the punishment of stoppages, the charge shall state any additional facts which it is intended to prove as rendering the accused liable to that punishment if convicted.

## PART II

### FORM

FOR TRIAL BY ..... COURT-MARTIAL.

THE QUEEN V .....

*(introductory words)*

charged as follows:—

*(statement of offence and particulars of offence)*

Date .....

.....  
Prosecutor

### SCHEDULE 2

Rules 23, 25, 29, 37, 60, 61 and 86

### FORMS

Where any rule requires the use of a form set out in this Schedule, that requirement shall be satisfied by the use of a form substantially to the like effect as the form set out below.

Form 1—Form of summons to witness

Form 2—Form of summons to a bank manager

Form 3—Form of application for a hearing for directions

Form 4—Form of application for a preparatory hearing

Form 5—Form of application for a pre-trial hearing

Form 6—Form of notice of application for leave to adduce evidence through television link

Form 7—Form of notice of application for leave to tender in evidence a video recording

Form 8—Form of order by commanding officer to permit inspection of bankers' books

Form 9—Form of order by judge advocate to permit inspection of bankers' books

(9) Section 37(1) was substituted by the Armed Forces Act 1971 (c. 33), section 11(1).

(10) Section 38 was substituted by the Armed Forces Act 1971, section 12(1).

(11) Section 46 was substituted by the Armed Forces Act 1971, section 17(1).

**Form 1**FORM OF SUMMONS TO WITNESS

To *(full name)*

In the matter of *(number, rank and full name of accused)* of *(unit)*

Whereas I have been informed that your evidence will be material to the [<sup>\*</sup>potential] trial by court-martial of *(number, rank and full name of accused)* of *(unit)* [<sup>\*</sup>and that you have in your possession and control certain documents which are also material, namely *(description of documents)*], I do hereby, by virtue of the power given me by section 103 of the Army Act 1955 and rule 23 of the Courts-Martial (Army) Rules 1997, summon you to attend at the

<sup>\*</sup>formal preliminary examination/hearing for directions/preparatory hearing/court-martial

at *(place)* at *(time)* on the *(date)* day of *(month and year)*. [<sup>\*</sup>and to bring the said documents which are within your possession and control with you] and so to attend from day to day until you shall be duly discharged whereof you shall fail at your peril.

[<sup>\*</sup>I enclose a warrant which will enable you to travel to *(place of trial)* free of charge. Payment of any expenses incurred by you in connection with your attendance will be made to the extent authorised by regulations made by the Defence Council.]

You are to sign, detach and return the receipt slip below.

*(signed)*

<sup>\*</sup>Court Administration Officer/Judge Advocate

*(date)*

*(\*Delete as appropriate)*

---

**ACKNOWLEDGEMENT OF RECEIPT OF WITNESS SUMMONS**

In the matter of ..... *(name of accused)*

I, ..... *(full name of witness in BLOCK CAPITALS)*

acknowledge receipt of the summons to me to attend

at ..... *(place)* on ..... *(date)*.

Signature ..... Date.....

**Return to:**

**Court Administration Officer**

*(address)*

**Form 2**FORM OF SUMMONS TO A BANK MANAGER

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

To the Manager (*name of bank*)

In the matter of (*number, rank and full name of accused*) of (*unit*)

Whereas I have been informed that you have in your control certain documents which are material to the [\*potential] trial by court-martial of (*number, rank and full name of accused*) of (*unit*), namely (*description of documents*), I do hereby, by virtue of the power given me by section 103 of the Army Act 1955 and rule 23 of the Courts-Martial (Army) Rules 1997, summon you to attend at the

\*formal preliminary examination/hearing for directions/preparatory hearing/court-martial at (*place*) at (*time*) on the (*date*) day of (*month and year*),

and to produce a copy of such entries in the books of the bank, and to prove the description of each such book, whether such book was at the time of making of such entry one of the ordinary books of the bank, whether it is in the custody and control of the bank, whether each such entry was made in the ordinary course of business, and to prove that you have examined the entries and compared such copy with the original, together with such facts concerning the bank as are set out in section 9 of the Bankers' Books Evidence Act 1879,

and so to attend from day to day until you shall be duly discharged whereof you shall fail at your peril.

[\*Note: If you, or a duly authorised officer of the bank, make an affidavit proving all the above matters, in accordance with the Bankers' Books Evidence Act 1879 (*enclose relevant paragraphs*), and exhibit thereto a copy of the entries specified above, and send the said affidavit and exhibit to reach me by the (*day*) of (*month and year*), the said order for you to attend the trial and give evidence may be withdrawn.]

(*signed*)

\*Court Administration Officer/Judge Advocate

(*date*)

(*\*Delete as appropriate*)

---

ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS TO A BANK MANAGER

In the matter of ..... (*name of accused*)

I, ..... (*full name of witness in BLOCK CAPITALS*)

acknowledge receipt of the summons to me to attend

at ..... (*place*) on ..... (*date*).

Signature ..... Date .....

**Return to:**

**Court Administration Officer**

(*address*)

**Form 3**FORM OF APPLICATION FOR A HEARING FOR DIRECTIONS

**From:** *(full name)*

**To:** The Judge Advocate General (or his deputy)

**APPLICATION FOR A HEARING FOR DIRECTIONS**

**TRIAL BY COURT-MARTIAL OF**

*(number, rank and name of accused)*

As *\*prosecutor/accused's legal adviser/accused*, I hereby apply for a hearing for directions to take place to seek directions on the following matters:  
*(state matters on which directions are sought)*

I consider that the following matters, as listed in Schedule 4 to the Courts-Martial (Army) Rules 1997, may usefully be addressed at the hearing:  
*(state or refer by paragraph number)*

It is requested that the witnesses whose details are given below be summoned by the Court Administration Officer to attend at the hearing.  
*(list witnesses and their addresses)*

I confirm that the following dates would be convenient for such a hearing:  
*(indicate convenient dates for the hearing)*

*(signed)*

*(date)*

*(\*Delete as appropriate)*

***Send copies to***

*Court Administration Officer*

*Accused/Accused's Legal Adviser or Prosecutor*

**Form 4**FORM OF APPLICATION FOR A PREPARATORY HEARING

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From: *(full name)*

To: The Judge Advocate General (or his deputy)

**APPLICATION FOR A PREPARATORY HEARING**

**TRIAL BY COURT-MARTIAL OF**

*(number, rank and name of accused)*

As *\*prosecutor/accused's* legal adviser/accused, I hereby apply for a preparatory hearing to take place before a Judge Advocate. The purpose of this application is:  
*(state reasons for which the application is made)*

I estimate that the length of time required for such a preparatory hearing will be:  
*(estimate length of time required for preparatory hearing)*

It is requested that the witnesses whose details are given below be summoned by the Court Administration Officer to attend at the preparatory hearing:  
*(list witnesses and their addresses)*

I confirm that the following dates would be convenient for such a hearing:  
*(indicate convenient dates for the hearing)*

*(signed)*

*(date)*

*(\*Delete as appropriate)*

**Send copies to**

*Court Administration Officer*

*Accused/Accused's Legal Adviser or Prosecutor*

**Form 5**FORM OF APPLICATION FOR A PRE-TRIAL HEARING

From: *(full name)*

To: **The Judge Advocate General** (or his deputy)

**APPLICATION FOR A PRE-TRIAL HEARING**

**TRIAL BY COURT-MARTIAL OF**

*(number, rank and name of accused)*

As *\*prosecutor/accused's legal adviser/accused*, I hereby apply for a pre-trial hearing to take place immediately before the commencement of the trial by court-martial before the Judge Advocate appointed as a member of the court-martial. The purpose of this application is:  
*(state reasons for which the application is made)*

I estimate that the length of time required for such a pre-trial hearing will be:  
*(estimate length of time required for pre-trial hearing)*

It is requested that the witnesses whose details are given below be summoned by the Court Administration Officer to attend at the pre-trial hearing:  
*(list witnesses and their addresses)*

*(signed)*

*(date)*

*(\*Delete as appropriate)*

**Send copies to**

*Court Administration Officer*

*Accused/Accused's Legal Adviser or Prosecutor*

**Form 6**FORM OF NOTICE OF APPLICATION FOR LEAVE TO ADDUCE EVIDENCE THROUGH TELEVISION LINK made under s.32 of the Criminal Justice Act 1988

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From: *(full name)*

To: The Court Administration Officer  
*(address)*

**NOTICE OF APPLICATION FOR LEAVE TO ADDUCE EVIDENCE THROUGH TELEVISION LINK**

**TRIAL BY COURT MARTIAL OF:**  
*(number, rank and name of accused)*

As \*prosecutor/accused's legal adviser/accused, I hereby give notice that application will be made at trial for leave to adduce the evidence of a witness, whose name is given below, by way of live television link at the trial by court-martial of the above named accused. This application will relate in particular to the following charge[s] to be tried:  
*(give brief details of charge)*

This application is made on the following grounds:  
*(state grounds)*

The name of the witness is:

\*If the witness is under 18 years of age:  
The date of birth of the witness is:

The country and place where it is proposed this witness will be when giving evidence is:

\*If required: the name, occupation and relationship to the witness of the person it is proposed should accompany the witness is:

and the grounds for believing that person should accompany the witness are:  
*(state grounds)*

*(signed)*

*(date)*

*(\*Delete as appropriate)*

**Send copies to**

*Judge Advocate*

*Accused/Accused's Legal Adviser or Prosecutor*

**Form 7**FORM OF NOTICE OF APPLICATION FOR LEAVE TO TENDER IN EVIDENCE A VIDEO RECORDING made under s.32A of the Criminal Justice Act 1988

From: *(full name)*

To: The Court Administration Officer  
*(address)*

**NOTICE OF APPLICATION FOR LEAVE TO TENDER IN EVIDENCE A VIDEO RECORDING**

**TRIAL BY COURT-MARTIAL OF:**  
*(number, rank and name of accused)*

As \*prosecutor/accused's legal adviser/accused, I hereby give notice that application will be made at trial for leave to tender in evidence a video recording of the evidence of a witness, whose name is given below, at the trial by court-martial of the above named accused. This application will relate in particular to the following charge[s] to be tried:  
*(give brief details of charge)*

The application is made on the following grounds:  
*(state grounds)*

The name of the witness is:

\*If the witness is under 18 years of age: The date of birth of the witness is:

The date on which the video recording was made is:

The circumstances in which the video recording was made were as follows:  
*(state circumstances)*

I confirm that in my opinion the witness is willing and able to attend the court-martial for cross examination.

I enclose a copy of the video recording.

*(signed)*

*(date)*

*(\*Delete as appropriate)*

**Send copies to**

*Judge Advocate*

*Accused/Accused's Legal Adviser or Prosecutor*

**Form 8**FORM OF ORDER BY COMMANDING OFFICER TO PERMIT INSPECTION OF BANKERS' BOOKS

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To *(name of bank)*

Whereas the Secretary of State under the powers conferred on him by section 103 of the Army Act 1955 has directed that the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 may be exercised for the purposes of a court-martial, during the investigation of an alleged offence, by an accused's Commanding Officer, and having received from *(number, rank and/or full name)* an application to inspect and take copies of entries in the books of *(name of bank)* relating to the accounts of *(full name of accused)* I do now, in exercise of the powers conferred on me, as the Commanding Officer of *(full name of accused)*, order that *(rank and full name of investigator)* or any other person acting on his behalf may inspect and take copies of any entries in any books in the possession of *(name of bank)* accordingly.

*(signed)*

Commanding Officer

*(date)*

#### **Form 9** FORM OF ORDER BY JUDGE ADVOCATE TO PERMIT INSPECTION OF BANKERS' BOOKS

To *(name of bank)*

Whereas the Secretary of State under the powers conferred on him by section 103 of the Army Act 1955 has directed that the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 may be exercised for the purposes of a court-martial, at preliminary proceedings or at a court-martial, by the judge advocate, and having received from *(number, rank and/or full name)* an application to inspect and take copies of entries in the books of *(name of bank)* relating to the accounts of *(full name of accused)* I do now, in exercise of the powers conferred on me, as the judge advocate appointed in connection with the trial by court-martial of *(full name of accused)*, order that *(number, rank and/or full name)* or any other person acting on his behalf may inspect and take copies of any entries in any books in the possession of *(name of bank)* accordingly.

*(signed)*

Judge Advocate

*(date)*

### SCHEDULE 3

Rule 24

#### OATHS AND AFFIRMATIONS

### PART I

#### MANNER OF ADMINISTERING OATHS AND AFFIRMATIONS

1. An oath may be administered by the person swearing the oath holding the New Testament, or if a Jew the Old Testament, in his uplifted hand and saying, or repeating after the person administering it, the oath provided in this Schedule for that category of person.

2. A Scottish oath may be administered by the person swearing the oath with uplifted hand and saying, or repeating after the person administering it, the Scottish oath provided in this Schedule for that category of person.

3. An oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs where the oath provided in this Schedule for that category of person is modified in accordance with those religious beliefs.

4. A person under 18 making a promise or a person making a solemn affirmation instead of taking an oath shall say or repeat after the person administering the promise or affirmation provided in this Schedule for that category of person.

## PART II

### FORMS OF OATH

#### **President and members other than the judge advocate**

5. I swear by Almighty God that I will well and truly try the accused before the court according to the evidence, and that I will duly administer justice according to law without partiality, favour or affection; and I do further swear that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of this court-martial, unless thereunto required in due course of law.

#### **Persons under instruction**

6. I swear by Almighty God that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of this court-martial unless thereunto required in due course of law.

#### **Interpreter**

7. I swear by Almighty God that I will well and faithfully interpret and make true explanation of all such matters and things as shall be required of me according to the best of my skill and understanding.

#### **Witness**

8. I swear by Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

#### **Form for a person under 18**

9. I promise before Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

## PART III

### FORM OF SCOTTISH OATHS

10. The form of Scottish oath shall in each case be the same as the form of oath set out above except that for the words "I swear by Almighty God" there shall be substituted the words "I swear by Almighty God and as I shall answer to God at the Great Day of Judgement".

## PART IV

### FORM OF SOLEMN AFFIRMATIONS

**11.** The form of affirmation shall in each case be the same as the form of oath set out above except that for the words “I swear by Almighty God” there shall be substituted the words “I solemnly, sincerely, and truly declare and affirm”.

### SCHEDULE 4

Rule 25

#### HEARING FOR DIRECTIONS

The matters which may be addressed at a hearing for directions shall include—

1. the issues in the case;
2. issues, if any, as to the mental or medical condition of any defendant or witness;
3. the number of witnesses whose evidence will be placed before the court either orally or in writing;
4. the defence witnesses in 3. above whose statements have been served and whose evidence the prosecution will agree and accept in writing;
5. any prosecution witnesses whom the defence require to attend at the trial;
6. any additional witnesses who may be called by the prosecution and the evidence that they are expected to give;
7. facts which are to be admitted and which can be reduced into writing in accordance with section 10(2)(b) Criminal Justice Act 1967(12), within such time as may be directed at the hearing, and of any witness whose attendance will not be required at the trial;
8. any exhibits and schedules which are to be admitted;
9. the order and pagination of the papers to be used by the prosecution at the trial and the order in which the prosecution witnesses are likely to be called;
10. any alibi which should already have been disclosed in accordance with section 11 Criminal Justice Act 1967;
11. any point of law which it is anticipated will arise at trial;
12. any question as to the admissibility of evidence which appears on the face of the papers, and any authority on which the party intends to rely;
13. any application to be made for evidence to be given through live television link;
14. any application to submit pre-recorded video interviews with a child witness as evidence in chief;
15. any application for screens, for use by witnesses seeking a visual break between themselves and any relevant parties;
16. whether any video, tape recorder or other technical equipment will be required during a trial;

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(12) Sections 9, 10 and 11 of the Criminal Justice Act 1967 are applied to proceedings before courts-martial (subject to the modifications prescribed by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997 (S.I. 1997/173).

17. where a tape recorded interview has taken place, of any dispute or agreement as to the accuracy of any transcript or summary;
18. any other significant matter which might affect the proper and convenient trial of the case, and whether any additional work needs to be done by the parties;
19. the estimated length of the trial, to be agreed more precisely taking account of any views expressed by the judge advocate and the other parties;
20. witness availability and the approximate length of witness evidence;
21. availability of advocate;
22. whether there is a need for any further directions.

## SCHEDULE 5

Rule 82

### GUIDANCE FOR PETITIONERS

1. The petition should be settled with sufficient particularity to enable the reviewing authority to identify clearly the matters relied upon, and set out in such manner as to be reasonably easily understood.
2. The petition should not contain grounds of appeal unless it is considered that such grounds are properly arguable.
3. The petition should not contain any factual inaccuracy.
4. Any allegation of fact in the petition should be based on evidence identified in the petition.
5. The petition should not contain a suggestion that a person (other than the accused) is guilty of impropriety, crime, fraud or misconduct unless such an allegation goes to a matter in issue which is material to the accused's case and is supported by evidence identified in the petition.
6. Any proposition of law should be supported by references to any relevant authority, and all such authorities must be cited in the petition with sufficient particularity to identify them.

## SCHEDULE 6

Rule 84

### CIVILIANS

#### PART I

#### MODIFICATIONS FOR CIVILIANS

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<i>Rule</i>	<i>Modification</i>
2	For the definition of "commanding officer" the substitution of— "commanding officer", in relation to an accused, means such officer as may be determined by or under regulations of the Defence Council made under section 209(3)(f) of the Act;"

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<i>Rule</i>	<i>Modification</i>
	The addition, in the appropriate places, of the following definitions— ““period of parental recognisance” means the period specified in an order made against a parent or guardian of the accused under paragraph 14(1) of Schedule 5A to the Act or of Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957; “service parent or guardian” shall be construed in accordance with paragraph 2(2) of Schedule 5A to the Act;”.
4(1)	The omission of sub-paragraph (g).
7(1)	In sub-paragraph (a), the omission of the words “service number and rank”.
	The omission of sub-paragraph (b).
15	For paragraph (2) the substitution of— “(2) If the accused so requests, the commanding officer of the accused may appoint a defending officer to assist the accused to prepare and conduct his defence.”.
76	In sub-paragraph (a), the omission of the words “and rank”.
	The omission of sub-paragraphs (b) and (g).
	For sub-paragraph (h) the substitution of— “(h) details of the employment of the accused.”.

## PART II

### ADDITIONAL RULES FOR CIVILIANS

#### **Prosecution of civilians**

1.—(1) This rule applies where an accused has elected court-martial trial under article 16 of the Standing Civilian Courts Order 1997(13), or is to be treated under article 17 of that Order as if he had elected court-martial trial.

(2) On receipt of notice of the election, the prosecutor shall determine whether the charge is to be tried by general court-martial or district court-martial.

(3) Subject to paragraph (4) below, an accused shall be treated for the purposes of these Rules as if had been notified by his commanding officer that he is to be tried by court-martial under rule 11 above.

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(13) S.I. 1997/172.

(4) The prosecutor shall serve on the accused and the court administration officer a charge sheet appropriate for the court-martial trial.

#### **Accused's parent or guardian**

2.—(1) This rule applies where—

- (a) an accused is under the age of 17 years, or
- (b) the offence with which the accused is charged is alleged to have been committed during a period of parental recognisance.

(2) Where the prosecutor or the court administration officer is required to serve any document on the accused under these Rules, he shall as soon as is practicable serve a copy of that document on a parent or guardian of the accused who is a service parent or guardian.

(3) Where the accused has not appointed a legal adviser, any parent or guardian of the accused may exercise on behalf of the accused the rights granted to the accused in rule 6(2) above and may represent the accused during the court-martial and any preliminary proceedings in such matter and to such extent as the judge advocate thinks fit.

(4) The court administration officer shall issue a witness summons in accordance with rule 23 above in respect of any parent or guardian on whom a document has been served in accordance with paragraph (2) above to attend the court-martial.

(5) Any parent or guardian of the accused may, if present—

- (a) give evidence on oath and call witnesses; and
- (b) address the court.

## **PART III**

### **APPEALS FROM STANDING CIVILIAN COURTS**

#### **Forwarding an appeal to the prosecuting authority**

3.—(1) When the higher authority receives a notice of appeal against conviction or sentence (or both) lodged under paragraph 18(3) of Schedule 3 to the Armed Forces Act 1976<sup>(14)</sup>, he shall forward the notice to the prosecuting authority with a view to the appeal being heard by a court-martial.

(2) On receipt of a notice under paragraph (1) above, the prosecutor shall determine whether the appeal is to be heard by general court-martial or district court-martial.

(3) Subject to rules 4 to 6 below, these Rules shall be complied with as if the charge which is the subject of the appeal were a charge preferred against the accused under section 83B(4)<sup>(15)</sup> of the Act.

#### **Charge sheet on appeal**

4.—(1) Any alternative charge preferred against the accused for trial by the Standing Civilian Court on which no finding was made may be added to the charge sheet for trial by the court-martial.

(2) The prosecutor may not amend or substitute another charge or charges for, or discontinue proceedings on, the charge which is the subject of the appeal.

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<sup>(14)</sup> 1976 c. 52; Schedule 3 was amended by the Armed Forces Act 1996, section 5 and Schedule 1.

<sup>(15)</sup> Section 83B was inserted by the Armed Forces Act 1996, section 5 and Schedule 1.

### **Appeal against sentence alone**

5. Where the appeal in respect of a charge is against sentence alone, the court shall proceed after the commencement of the court-martial trial as if the accused had pleaded guilty to that charge.

### **Sentencing on appeal**

6.—(1) Where the appeal in respect of a charge is against conviction alone and the court find the accused guilty of the charge, it shall pass as the sentence of the court-martial in respect of that charge the sentence passed for that offence by the Standing Civilian Court or any lesser sentence which it considers appropriate.

(2) In any other case where, on appeal, the court-martial is required to pass sentence, it shall proceed to sentence the accused in accordance with these Rules subject to paragraphs (3) to (5) below.

(3) The prosecutor shall, where practicable, in addition to the information listed in rule 76(2) above as modified by Part I of this Schedule, present to the court information concerning—

- (a) any offences which the Standing Civilian Court took into consideration;
- (b) the result of any review of the findings or sentence of the Standing Civilian Court.

(4) In addition to its power under rule 74 above, the court may take into consideration any offence which was taken into consideration by the Standing Civilian Court and as to the judge advocate seems proper.

(5) The court shall award a separate sentence for each offence.

### **Appeal by parent or guardian of an accused**

7. Where a parent or guardian appeals against an order against him made by the Standing Civilian Court under paragraph 13 of Schedule 5A to the Act, and the accused in respect of whose conviction the order was made does not appeal against that conviction, the court administration officer shall issue a witness summons in respect of that accused to attend the court-martial.

### **Abandonment of appeal**

8.—(1) An accused who has given notice of appeal to a court-martial against finding or sentence of a Standing Civilian Court may abandon the appeal or any part of it at any time before the commencement of the trial by court-martial by giving notice in writing to the court administration officer.

(2) An accused who has given notice of appeal to a court-martial may not abandon the appeal or any part of it after the commencement of the trial by court-martial except with the leave of the court-martial.

(3) Where an accused fails to appear before the court-martial at the appointed time or subsequently thereafter, the judge advocate, if he considers that there is no reasonable explanation for the failure to appear, may direct that the appeal be treated as abandoned.

(4) An accused may not revive an appeal or any part of it which he has abandoned or which is treated as abandoned.

## SCHEDULE 7

Rule 90

## REVOCATIONS

Rules revoked	Reference
The Rules of Procedure (Army) 1972	S.I. <a href="#">1972/316</a>
The Rules of Procedure (Army) (Amendment) Rules 1974	S.I. <a href="#">1974/761</a>
The Rules of Procedure (Army) (Amendment) Rules 1977	S.I. <a href="#">1977/92</a>
The Rules of Procedure (Army) (Amendment) Rules 1981	S.I. <a href="#">1981/1220</a>
The Rules of Procedure (Army) (Amendment) Rules 1982	S.I. <a href="#">1982/369</a>
The Rules of Procedure (Army) (Amendment) Rules 1983	S.I. <a href="#">1983/719</a>
The Rules of Procedure (Army) (Amendment) Rules 1984	S.I. <a href="#">1984/1670</a>
The Rules of Procedure (Army) (Amendment) Rules 1986	S.I. <a href="#">1986/2126</a>
The Rules of Procedure (Army) (Amendment) Rules 1989	S.I. <a href="#">1989/2127</a>
The Rules of Procedure (Army) (Amendment) Rules 1991	S.I. <a href="#">1991/2787</a>
The Rules of Procedure (Army) (Amendment) Rules 1996	S.I. <a href="#">1996/1388</a>
The Rules of Procedure (Army) (Amendment No. 2) Rules 1997	S.I. <a href="#">1997/18</a>

**EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules prescribe the procedure governing the prosecution and trial of offences at courts-martial under the Army Act 1955 (c. 18). The Rules generally accord with procedures in the Crown Court. They replace and revoke the Rules of Procedure (Army) 1972 (S.I. [1972/316](#)) and take account of changes in the law and procedure since then, giving effect in particular to the provisions of the Armed Forces Act 1996 (c. 46).

The Rules regulate the functions of the prosecuting authority and the court administration officer. The Rules provide for the form and preferring of charges, the discontinuance of proceedings before

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trial and the procedure to be followed by the court administration officer when convening the court-martial.

The Rules provide for the first time for preliminary proceedings in the form of a hearing for directions, at which the judge advocate may make any necessary directions to secure the efficient trial of the case, and preparatory and pre-trial hearings at which the judge advocate may make rulings before the trial commences.

Specific provision is made for the court-martial to resolve disputed issues of fact other than the accused's guilt, where it is necessary to do so before deciding what sentence is to be passed.

Rules relating to the admission of evidence via closed circuit television link and of video recording of testimony from child witnesses are included.

A period of 28 days from the day sentence is announced is prescribed within which an accused may present a petition against finding or sentence or both to the reviewing authority, who is required to give reasons for his decision if such a petition is presented.