

SCHEDULE 6

Rule 84

CIVILIANS

PART I

MODIFICATIONS FOR CIVILIANS

<i>Rule</i>	<i>Modification</i>
2	<p>For the definition of “commanding officer” the substitution of—</p> <p>““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;”.</p> <p>The addition, in the appropriate places, of the following definitions—</p> <p>““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;</p> <p>“service parent or guardian” shall be construed in accordance with paragraph 2(2) of Schedule 5A to the Act;”.</p>
4(1)	<p>The omission of sub-paragraph (g).</p>
7(1)	<p>In sub-paragraph (a), the omission of the words “service number and rank”.</p> <p>The omission of sub-paragraph (b).</p>
15	<p>For paragraph (2) the substitution of—</p> <p>“(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.”.</p>
76	<p>In sub-paragraph (a), the omission of the words “and rank”.</p> <p>The omission of sub-paragraphs (b) and (g).</p> <p>For sub-paragraph (h) the substitution of—</p> <p>“(h) details of the employment of the accused.”.</p>

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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(1), 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.

(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(2), he shall forward the notice to the prosecuting authority with a view to the appeal being heard by a court-martial.

(1) S.I.1997/172.

(2) 1976 c. 52; Schedule 3 was amended by the Armed Forces Act 1996, section 5 and Schedule 1.

(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)(3) 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.

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.

(3) Section 83B was inserted by the Armed Forces Act 1996, section 5 and Schedule 1.

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(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.