
S T A T U T O R Y I N S T R U M E N T S

2000 No. 2369

DEFENCE

The Air Force Custody Rules 2000

Made - - - - - 4th September 2000

Laid before Parliament 7th September 2000

Coming into force - - 2nd October 2000

ARRANGEMENT OF RULES

PART I

Preliminary

1. Citation and commencement
2. Interpretation
3. Service of documents
4. Service by FAX or other means of electronic data transmission
5. Substituted service
6. Appointment of court administration officer
7. Appointment of court officials

PART II

Notifications

8. Notification of application for an extension of custody without charge
9. Notification that accused is being kept in custody after charge
10. Notification that accused has been arrested and taken into custody
11. Request by the commanding officer for a review
12. Written notification

PART III

Reviews

13. Review dates
14. Requirement for a hearing
15. Written representations
16. Notification of hearing for the purposes of carrying out a review
17. Decisions on reviews carried out without a hearing

PART IV

General Matters

18. Arranging a hearing
19. Legal representation
20. Qualifications to be held by legal representatives
21. Witness summons
22. Evidence through a live TV link

PART V

Hearings

23. Procedure at the hearing
24. Presence at hearing by live TV link
25. Adjournments
26. Presence of witnesses
27. Oaths and affirmations
28. Privileges and immunities
29. Decision of the judicial officer
- Schedule 1—Proper address
- Schedule 2—Forms
- Schedule 3—Witness summons
- Schedule 4—Oaths and affirmations

The Secretary of State, in exercise of the powers conferred upon him by section 75M of the Air Force Act 1955(a), hereby makes the following Rules:—

PART I

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Air Force Custody Rules 2000 and shall come into force on 2nd October 2000.

Interpretation

- 2.—(1) In these Rules—
 - “the accused” means—
 - (a) in relation to proceedings under section 75F(1) of the Act, the person who is required to be brought before a judicial officer under section 75F(1) of the Act;
 - (b) in relation to proceedings on a review under section 75G(1) of the Act, the person to whom the review relates;
 - “the Act” means the Air Force Act 1955;
 - “application” means the application by the commanding officer to the judicial officer for an extension of custody without charge under section 75C of the Act;
 - “the commanding officer” means—
 - (a) in relation to proceedings on an application under section 75C of the Act—
 - (i) the commanding officer of the person to whom the application relates or,

(a) 1955 c. 19; sections 75 to 75E were substituted, and sections 75F to 75M were inserted, by the Armed Forces Discipline Act 2000 (c. 4), sections 1 to 8.

- (ii) where the functions of the commanding officer under that section in relation to the application have been delegated to another officer in accordance with regulations made under section 75E of the Act, that officer; and
- (b) subject to paragraph (2), in relation to proceedings under section 75F(1) of the Act or proceedings on a review under section 75G(1) of the Act, the accused's commanding officer;

“custody” means air-force custody;

“hearing” means, as the case may be—

- (a) a hearing of an application under section 75C of the Act;
- (b) a hearing under section 75F(1) of the Act; or
- (c) a hearing before a judicial officer conducting a review under section 75G(1) of the Act;

“the relevant court administration officer” means—

- (a) the court administration officer; or
- (b) where the court administration officer has for the time being directed an assistant court administration officer to carry out the functions conferred by these Rules on the relevant court administration officer, that officer;

“the relevant time” means—

- (a) in relation to a person arrested under section 74 of the Act or arrested by a constable, the time of the arrest; and
- (b) in relation to a person delivered into custody following surrender under section 188 of the Act or paragraph 6 of Schedule 2 to the Reserve Forces Act 1996(a), the time of the surrender; and

“a review” means a review conducted by the judicial officer under section 75G(1) of the Act.

(2) In Parts III, IV and V of these Rules, any reference to the commanding officer in relation to—

- (a) proceedings under section 75F(1) of the Act;
- (b) proceedings on a review under section 75G(1) of the Act,

shall include a reference to any person under his command who has his authority to exercise his functions under these Rules with respect to those proceedings.

(3) Subject to paragraphs (4) and (5), “the judicial officer” means, in relation to the exercise of any function conferred by these Rules in any proceedings, the judicial officer for the time being specified by or on behalf of the Judge Advocate General to exercise that function in those proceedings.

(4) In relation to a review conducted at any time after the commencement of the trial of the accused by court-martial and before the announcement of the court-martial's finding on the charge or every charge against the accused, references to the judicial officer in these Rules shall have effect as references to the judge advocate.

(5) Where—

- (a) the commanding officer orders a person's arrest under section 75K(1) of the Act; and
- (b) at the time the arrest is made the person is already before a judicial officer,

the judicial officer shall immediately carry out the review required by section 75K(7)(b) of the Act; and any reference in these Rules to the judicial officer in relation to such a hearing shall be construed accordingly.

Service of documents

3.—(1) Subject to paragraph (4) and rule 21(2), any notice or other document required by these Rules to be served on a person may be served on that person by—

- (a) delivering it to him;
- (b) leaving it at his proper address;
- (c) sending it by post to his proper address; or

(a) 1996 c. 14.

- (d) transmitting it to him by FAX or other means of electronic data transmission in accordance with rule 4.
- (2) For the purposes of this rule and rule 4, the reference to a person's proper address shall be to such address determined in accordance with Schedule 1.
- (3) Paragraph (4) applies to the service of any notice or other document on the person to whom the proceedings relate, where that person has appointed a legal adviser to act in connection with the conduct of those proceedings and—
 - (a) notice has been served in accordance with rule 19(5); and
 - (b) no notice of the revocation of that appointment has been served in accordance with rule 19(6).
- (4) Where this paragraph applies any notice or other document shall be served on the person to whom the proceedings relate by—
 - (a) delivering it to his legal adviser;
 - (b) leaving it at the address notified under rule 19(5);
 - (c) sending it by post to his legal adviser to the address notified under rule 19(5); or
 - (d) transmitting it to his legal adviser by FAX or other means of electronic data transmission in accordance with rule 4.
- (5) Paragraph (6) applies to the service of any notice or other document on the person to whom the proceedings relate in any case not falling within paragraph (3).
- (6) Where this paragraph applies and without prejudice to paragraph (1), any notice or other document may be served on the person to whom the proceedings relate by—
 - (a) delivering it to the commanding officer;
 - (b) leaving it at the commanding officer's proper address;
 - (c) sending it by post to the commanding officer at his proper address; or
 - (d) transmitting it to the commanding officer by FAX or other means of electronic data transmission in accordance with rule 4.
- (7) In these Rules, "FAX" means the making of a facsimile copy of a document by the transmission of electronic signals.

Service by FAX or other means of electronic data transmission

- 4.—(1) A document may be transmitted by FAX to a person if it is transmitted—
 - (a) where the person is the legal adviser of the person to whom the proceedings relate, to the FAX number of any FAX machine at the address notified in accordance with rule 19(5); and
 - (b) in any other case, to the FAX number of any FAX machine at his proper address.
- (2) Paragraph (1) shall not apply if the person concerned has indicated in writing that he is not willing to regard a document as having been duly served on him if it is transmitted to a specified FAX number falling within that paragraph.
- (3) In paragraph (1), the reference to a FAX machine is to any machine which is capable of receiving documents transmitted by FAX.
- (4) A document may be transmitted by FAX where the person to be served has indicated in writing to the person serving the document that he is willing to regard a document as having been duly served on him if it is transmitted to a specified FAX number and the document is transmitted to that number.
- (5) Paragraph (4) shall apply with appropriate modification to a transmission of electronic data other than by FAX as it applies to a transmission by FAX.
- (6) In paragraph (4), the reference to the person to be served is—
 - (a) in a case falling within rule 3(4)(d), a reference to the legal adviser appointed by the person to whom the proceedings relate; and
 - (b) in a case falling within rule 3(6)(d), a reference to the commanding officer.
- (7) Where a document is transmitted by FAX in accordance with this rule, the person to whom the document is addressed shall be specified in the FAX.

Substituted service

5.—(1) Where, in any case not falling within rule 3(3)—

- (a) a notice or other document is required under these Rules to be served by the person to whom the proceedings relate on a person other than the commanding officer; and
- (b) the person to whom the proceedings relate is in air-force custody,

the requirement shall be satisfied by serving the notice or other document on the commanding officer together with a written request that he serve it on the person on whom under these Rules the document is required to be served.

(2) Where a notice or other document is served on the commanding officer in accordance with paragraph (1), he shall serve that document on the person specified in the written request.

Appointment of court administration officer

6.—(1) There shall be a court administration officer, who shall be a person appointed by the Defence Council for the purpose of discharging such administrative functions as shall be provided under these Rules.

(2) The Defence Council may appoint persons to be assistant court administration officers for the purposes of discharging the functions of the relevant court administration officer when so directed by the court administration officer.

Appointment of court officials

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

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

at a hearing.

PART II

NOTIFICATIONS

Notification of application for an extension of custody without charge

8.—(1) Where the commanding officer proposes to make an application he, or someone acting on his behalf, shall—

- (a) notify the relevant court administration officer of that fact and the necessary information; and
- (b) inform the person to whom the application relates in writing of that fact and of the information specified under paragraph (2)(f), (g) and (h) and, if the person to whom the application relates has not appointed a legal adviser, of the entitlement to legal representation at the hearing of the application.

(2) The necessary information to be notified under paragraph (1)(a) is—

- (a) the name, rank, appointment and location of the commanding officer;
- (b) the name, date of birth and location of the person to whom the application relates and, where applicable, his rank, service number and unit;
- (c) the name and address of the legal adviser appointed by the person to whom the application relates, if known;
- (d) the nature of the offence for which the person to whom the application relates has been arrested;
- (e) the relevant time;
- (f) the general nature of the evidence on which the person to whom the application relates was arrested;
- (g) what inquiries relating to the offence have been made and what further inquiries are proposed; and
- (h) the commanding officer's reasons for believing the continued keeping of the person to whom the application relates in custody is justified.

Notification that accused is being kept in custody after charge

9.—(1) Subject to rule 10, where the accused is kept in custody after being charged, the commanding officer, or someone acting on his behalf, shall as soon as practicable—

- (a) notify the relevant court administration officer of that fact and the necessary information; and
 - (b) inform the accused in writing that he is to be brought before a judicial officer as soon as practicable and of the information specified under paragraph (2)(f).
- (2) The necessary information to be notified under paragraph (1)(a) is—
- (a) the name, rank, appointment and location of the commanding officer;
 - (b) the name, date of birth and location of the accused and, where applicable, his rank, service number and unit;
 - (c) the name and address of the accused's legal adviser, if known;
 - (d) the charge;
 - (e) the date and time that the accused was charged; and
 - (f) the commanding officer's reasons for believing that the continued keeping of the accused in custody is justified.

(3) For the purposes of paragraph (1), a person is to be treated as charged with an offence if he is to be so treated by virtue of section 75(4) of the Act.

Notification that accused has been arrested and taken into custody

10.—(1) Subject to paragraph (3), where the accused is arrested under subsection (1) or subsection (3) of section 75K of the Act and taken into custody, the commanding officer, or someone acting on his behalf, shall as soon as practicable—

- (a) notify the relevant court administration officer of that fact and the necessary information; and
 - (b) inform the accused in writing that he shall be brought before a judicial officer as soon as practicable and, if the accused has been arrested under section 75K(1) of the Act, the information specified under paragraph (2)(f).
- (2) The necessary information to be notified under paragraph (1)(a) is:
- (a) the name, rank, appointment and location of the commanding officer;
 - (b) the name, date of birth and location of the accused and, where applicable, his rank, service number and unit;
 - (c) the name and address of the accused's legal adviser, if known;
 - (d) the charge;
 - (e) the date and time that the accused was arrested pursuant to the order or direction; and
 - (f) if the arrest is made under section 75K(1) of the Act, the commanding officer's reasons for believing that the keeping of the accused in custody is justified.

- (3) Paragraph (1) shall not apply—
- (a) in relation to an arrest under section 75K(1) of the Act, where the arrest takes place in circumstances falling within rule 2(5);
 - (b) in relation to an arrest under section 75K(3) of the Act, where the accused is already before the judge advocate when the arrest is made.

Request by the commanding officer for a review

11.—(1) Subject to paragraph (3), a request for a review under section 75G(2)(b) of the Act shall be made by the commanding officer to the relevant court administration officer and be supported by the following information—

- (a) the name, rank, appointment and location of the commanding officer;
- (b) the name, date of birth and location of the accused and, where applicable, his rank, service number and unit;
- (c) the name and address of the accused's legal adviser, if known;
- (d) the charge;
- (e) the date on which the extant order under section 75F(2) was made and the period of custody authorised by it;

- (f) the circumstances which have caused the commanding officer to consider that the grounds on which that order was made have ceased to exist; and
- (g) if it appears to the commanding officer that requirements should be imposed by the judicial officer under section 75J(2)(b) of the Act, the suggested requirements.

(2) Where a request is made under paragraph (1), the commanding officer, or someone acting on his behalf, shall inform the accused of that fact in writing and of the information specified under paragraph (1)(f) and (g).

(3) Where the commanding officer requests a review under section 75G(2)(b) of the Act after the commencement of the accused's trial by court-martial and on a day when that court-martial is sitting, the request shall be made to the judge advocate.

Written notification

12. Where—

- (a) a notification required to be given to the relevant court administration officer under paragraph (1)(a) of rule 8, 9 or 10 is given orally; or
- (b) a request under rule 11(1) is made orally,

the commanding officer shall ensure that a notice containing the information so notified or given in support of the request is served on the court administration officer as soon as practicable thereafter.

PART III

REVIEWS

Review dates

13.—(1) Where the judicial officer makes an order under section 75F(2) of the Act, he shall determine the date on which that order is to be reviewed and specify that date in the record of the order.

(2) The judicial officer may decide to carry out the review on a different date where—

- (a) a request for a review is made under section 75G(2)(b) of the Act and he considers that it is reasonably practicable for the review to take place before the date determined under paragraph (1); or
- (b) it is not practicable or in the interests of justice for the review to take place on the date determined under paragraph (1),

in which case the relevant court administration officer shall notify the commanding officer and the accused of the different date.

Requirement for a hearing

14.—(1) A review shall be carried out at a hearing if—

- (a) it is the first review under section 75G(1) of the Act in relation to the accused;
- (b) it has been requested under section 75G(2)(b) of the Act;
- (c) it is a review carried out at any time after the commencement of the accused's trial by court-martial and before the announcement of the court-martial's finding on the charge or every charge against the accused, other than during an adjournment;

(2) In any other case, a review shall be carried out at a hearing unless—

- (a) the judicial officer is satisfied on the basis of the representations made by the commanding officer under rule 15 that the grounds on which the order made under section 75F(2) of the Act continue to exist;
- (b) the accused has not made representations under rule 15 or, where such representations have been made, they do not contain any arguments as to fact or law which have not been heard previously; and

(c) the judicial officer is satisfied that there is no other reason for carrying out the review at a hearing.

(3) The judicial officer shall not on a review impose any requirements under section 75J(2)(b) of the Act unless the review is carried out at a hearing.

Written representations

15.—(1) This rule applies to any review other than a review to which rule 14(1) applies.

(2) The commanding officer and the accused may make written representations with respect to—

(a) the need for a hearing for the purposes of carrying out a review;

(b) whether or not the judicial officer should on a review make an order under section 75F(2) of the Act authorising the keeping of the accused in custody.

(3) Any written representations made under paragraph (2) shall be served on the court administration officer and a copy shall be served on the commanding officer or, as the case may be, the accused.

Notification of hearing for the purposes of carrying out a review

16.—(1) Where a hearing is required for the purposes of carrying out a review, the relevant court administration officer shall, after consultation with the Judge Advocate General or a person acting on his behalf, determine the time and place of the hearing.

(2) The relevant court administration officer shall ensure that the hearing of a review takes place on the date determined by the judicial officer in accordance with rule 13.

(3) The relevant court administration officer shall notify the commanding officer and the accused of the time and place of the hearing.

Decisions on reviews carried out without a hearing

17.—(1) This rule applies in any case where the judicial officer carries out a review without a hearing.

(2) Where the judicial officer decides not to authorise the keeping of the accused in custody he shall—

(a) notify the relevant court administration officer of that fact as soon as practicable; and

(b) record his decision in the form set out in Schedule 2 to these Rules, which form shall be served by the relevant court administration officer on the commanding officer and the accused.

(3) Where the relevant court administration officer is notified under paragraph (2)(a), he shall notify the commanding officer and the accused as soon as practicable of the judicial officer's decision.

(4) Where the judicial officer makes an order under section 75F(2) of the Act, this shall be recorded in the form set out in Schedule 2 to these Rules, which form shall be served by the relevant court administration officer on the commanding officer and the accused.

PART IV

GENERAL MATTERS

Arranging a hearing

18.—(1) Where the relevant court administration officer receives notification under paragraph (1)(a) of rule 8, 9 or 10 he shall, after consultation with the Judge Advocate General or a person acting on his behalf, determine the time and place of any hearing.

(2) The relevant court administration officer shall notify the commanding officer and the person to whom the proceedings relate of the time and place of the hearing.

(3) If, having notified a person in accordance with paragraph (2), the relevant court administration officer changes the time or place of the hearing, he shall notify that person of the change.

(4) The relevant court administration officer shall arrange for the attendance at a hearing of a court recorder if the judicial officer so requests.

(5) The relevant court administration officer shall arrange for the attendance at a hearing of an interpreter if the judicial officer, the commanding officer or the person to whom the proceedings relate so requests.

Legal representation

19.—(1) Subject to rule 20, the person to whom the proceedings relate and the commanding officer shall each have the right to be legally represented at a hearing.

(2) Subject to rule 20, the person to whom the proceedings relate may appoint a person (referred to in these Rules as his “legal adviser”) to act for him in connection with the conduct of any proceedings to which these Rules relate.

(3) The commanding officer shall ensure that the person to whom the proceedings relate is afforded reasonable opportunity of communicating with his legal adviser for the purposes of preparing for the proceedings in connection with which the legal adviser has been appointed.

(4) Without prejudice to paragraph (1), where paragraph (5) applies, any right conferred or duty imposed by these Rules on the person to whom the proceedings relate may be exercised or, as the case may be, performed by his legal adviser on his behalf.

(5) This paragraph applies where a legal adviser appointed under this rule serves notice on the court administration officer specifying—

- (a) his name and address;
- (b) the name of the person in respect of whom he is acting and, where applicable, that person’s rank, service number and unit; and
- (c) the proceedings in connection with which he has been appointed.

(6) Where the person to whom the proceedings relate revokes his legal adviser’s appointment, he shall as soon as reasonably practicable serve notice on the court administration officer and the commanding officer of that fact.

Qualifications to be held by legal representatives

20.—(1) A person may only—

- (a) represent the commanding officer or, as the case may be, the person to whom the proceedings relate, at a hearing;
- (b) be appointed under rule 19(2) as a legal adviser,

if he is appropriately qualified.

(2) For the purposes of paragraph (1), a person is appropriately qualified if—

- (a) he is a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(a);
- (b) he is an advocate or a solicitor in Scotland;
- (c) he is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;
- (d) he is a person who has in any Commonwealth country or any colony 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.

Witness summons

21.—(1) Schedule 3 shall have effect with respect to summoning persons—

- (a) to give evidence, or

(a) 1990 c. 41; subsection (6) of section 71 was substituted, and subsections (7) and (8) were repealed, by the Access to Justice Act 1999 (c. 22).

(b) to produce any document or thing,
for the purposes of any proceedings to which these Rules apply.

(2) A witness summons issued in accordance with Schedule 3 shall be served on the witness—

- (a) by delivering it to him;
- (b) by leaving it for him with a person at his usual place of abode;
- (c) by post in a letter addressed to him at his last known or usual place of abode;
- (d) where the witness is subject to air-force law, military law or the Naval Discipline Act 1957(a), by serving it on his commanding officer.

(3) Where a witness summons is served on a person's commanding officer under paragraph (2)(d), he shall serve the witness summons on that person.

Evidence through a live TV link

22.—(1) A witness may, with the permission of the judicial officer, give evidence at a hearing through a live television link or other similar arrangements if it is not reasonably practicable for that person to attend the hearing.

(2) An application for permission under paragraph (1) shall be made by the person wishing to call the witness as soon as he believes that—

- (a) a person is likely to be able to give evidence likely to be material evidence; and
- (b) that it is not reasonably practicable for that person to attend the hearing.

(3) The application shall be served on the court administration officer and shall state—

- (a) the grounds of the application;
- (b) the name and, where applicable, the service number, rank and unit of the witness;
- (c) where the witness is under the age of 18 years, 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 when giving evidence.

(4) A copy of the application shall be served on the commanding officer or, as the case may be, the person to whom the proceedings relate.

(5) The judicial officer shall not determine the application without giving the person served under paragraph (4) an opportunity to make representations about the application.

(6) Where the application is determined prior to the hearing in which the evidence is to be given, the relevant court administration officer shall notify the commanding officer and the person to whom the proceedings relate of the decision of the judicial officer in relation to the application and, where permission is granted, the notification shall state any conditions specified by the judicial officer in accordance with paragraph (7).

(7) The judicial officer may make the grant of permission subject to such conditions as he considers necessary with respect to the manner in which the evidence is to be given, including—

- (a) specifying the place where the witness is to give evidence; and
- (b) specifying the persons in whose presence the witness is to give evidence.

(8) This rule is without prejudice to the rights of the commanding officer and the person to whom the proceedings relate to give evidence through a live link or other similar arrangements by virtue of rules 23(4) and 24.

(a) 1957 c. 53.

PART V HEARINGS

Procedure at the hearing

23.—(1) The judicial officer shall not be bound at a hearing by any enactment or rule of law relating to the admissibility of evidence in proceedings before courts of law.

(2) The commanding officer and the person to whom the proceedings relate shall each be heard in such order as the judicial officer shall determine and, in exercising his powers under this paragraph, the judicial officer shall adopt such course as appears to him will best serve the interests of justice.

(3) The judicial officer shall explain the order of the proceedings which he proposes to adopt at the beginning of the hearing.

(4) Subject to section 75G(6) of the Act, the commanding officer and the person to whom the proceedings relate shall each be entitled to—

- (a) give evidence on oath and call witnesses;
- (b) produce to the judicial officer any document or written report; and
- (c) address the judicial officer at least once;

on any matter relevant to the proceedings.

(5) The judicial officer shall make a record of the hearing, unless a court recorder is in attendance.

Presence at hearing by live TV link

24.—(1) A person mentioned in paragraph (2) shall be treated as being present at a hearing if, whether by means of a live television link or similar arrangements, he is able to see and hear and to be seen and heard by the judicial officer, any witness giving evidence and all other persons mentioned in that paragraph.

(2) The persons are—

- (a) the person to whom the proceedings relate;
- (b) the commanding officer;
- (c) where the commanding officer or, as the case may be, the person to whom the proceedings relate is legally represented, any such legal representative;
- (d) any person appointed under rule 7 to act as an interpreter for the purposes of the hearing.

Adjournments

25. Where a person to whom the application relates is not legally represented at a hearing of an application under 75C of the Act, the judicial officer shall explain—

- (a) the right of the person to whom the application relates to be legally represented;
- (b) the right to an adjournment if he wishes to be so represented; and
- (c) the effect of such an adjournment.

Presence of witnesses

26. Except where the person is the commanding officer or the person to whom the proceedings relate or is present to give expert evidence or evidence as to a person's character, a person who is called to give evidence shall not, except with the consent of the judicial officer, be present at a hearing while not under examination.

Oaths and affirmations

27.—(1) An oath shall be administered at the start of the hearing to any person appointed to act as an interpreter and, before oral evidence is given, to any witness who has attained the age of 14 years.

(2) If—

- (a) a person required by virtue of this rule to take an oath objects to being sworn; or

(b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,
he shall be permitted to make a solemn affirmation instead of taking an oath.

(3) A person who may be permitted under this rule to make his solemn affirmation may also be required to do so, and for the purposes of this rule “reasonably practicable” means reasonably practicable without inconvenience or delay.

(4) An oath or affirmation shall be administered in the form and manner set out in Schedule 4 to these Rules by the judicial officer, or where the judicial officer so directs, by any other person acting on his behalf.

Privileges and immunities

28. A witness at a hearing or any other person whose duty it is to attend on or before the judicial officer at the hearing shall be entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

Decision of the judicial officer

29.—(1) The judicial officer shall announce his decision and the reasons for it at the end of any hearing and record that decision in the form set out in Schedule 2 to these Rules.

(2) The relevant court administration officer shall serve copies of that form on the commanding officer and the person to whom the proceedings relate.

4th September 2000

Symons of Vernham Dean
Minister of State,
Ministry of Defence

SCHEDULE 1

Rules 3 and 4

PROPER ADDRESS

1. Subject to the following provisions of this Schedule, a reference to a person’s proper address is to the address of the unit to which he belongs.

2. Where a person is on attachment to a unit, a reference to his proper address is to the address of the unit to which he is attached.

3. Where a person is being kept in custody at the Military Corrective Training Centre, a reference to his proper address is to the address of that establishment.

4. Where the person to whom the proceedings relate—

(a) is not subject to air force law, or

(b) is subject to air force law only by virtue of section 131 of the Act,

a reference to his proper address is to his usual or last known place of residence.

SCHEDULE 2

Rules 17 and 29

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—Record of Order authorising extension of air-force custody without charge under section 75C of the Act.

Form 2—Notification of refusal of application under section 75C of the Act.

Form 3—Record of Order authorising keeping a person in air-force custody after charge under section 75F(2) of the Act following—

- (a) a hearing under section 75F(1) of the Act; or
- (b) a hearing of a review under section 75G(1) of the Act.

Form 4—Record of Order authorising keeping a person in air-force custody after charge under section 75F(2) of the Act following a review without a hearing under section 75G(1) of the Act.

Form 5—Notification of decision not to authorise the keeping of the accused in air-force custody following—

- (a) a hearing under section 75F(1) of the Act;
- (b) a hearing of a review under section 75G(1) of the Act; or
- (c) a review without a hearing under section 75G(1) of the Act.

Form 1

Record of Order authorising extension of air-force custody without charge under section 75C of the Air Force Act 1955

Place where Judicial Officer sitting:

Date and time Order made:

Details of the person to whom the application relates:

Name:

Rank and service number *(if applicable)*:

Date of birth and age:

Address/unit:

Represented by:

Offence for which arrested:

The relevant time:

Decision:

On hearing the application of

*(*Delete as appropriate)*

I am satisfied that there are reasonable grounds for believing that the continued keeping in air-force custody of the person named above and brought before me today is necessary in order to:

*secure or preserve evidence relating to *the/ *an offence for which *he/ *she is under arrest

*obtain evidence relating to *the/ *an offence for which *he/ *she is under arrest by questioning *him/ *her

for the following reason(s):

and that the investigation is being conducted diligently and expeditiously; and I hereby authorise the keeping of *him/*her in air-force custody until hours on

(Signature)

(Name)
Judicial Officer

(Date).....

Form 2

Notification of refusal of application under section 75C of the Air Force Act 1955

Place where Judicial Officer sitting:

Date and time of decision:

Details of the person to whom the application relates:

Name

Rank and service number *(if applicable)*:

Date of birth and age:

Address/unit:

Represented by:

Offence for which arrested:

The relevant time:

Decision:

Having heard the application of

*(*delete as appropriate)*

*I am not satisfied that there are reasonable grounds for believing that continuing to keep in air-force custody the person named above and brought before me today is justified in accordance with section 75C(4) of the Air Force Act 1955 and I refuse the application.

*which was made more than 48 hours after the relevant time, it appears to me that it would have been reasonable for this application to have been made before the end of that period and I refuse the application.

*I direct that the person named above forthwith be charged or released from air-force custody.

*I am not satisfied that there are reasonable grounds for believing that continuing to keep in air-force custody the person named above and brought before me today is justified and I adjourn the hearing of this application until

**(insert date and time)*

*such time as shall be notified by the relevant court administration officer being a time not later than 48 hours after the relevant time.

(Signature)

(Name)

Judicial Officer

(Date).....

Form 3

Record of Order authorising keeping a person in air-force custody after charge under section 75F(2) of the Air Force Act 1955 following

(*delete as appropriate)

*** a hearing under section 75F(1) of the Air Force Act 1955**

*** a hearing of a review under section 75G(1) of the Air Force Act 1955**

Place where *Judicial Officer/*Judge Advocate sitting:

Details of the Accused:

Name:

Rank and service number (if applicable):

Date of birth and age:

Address/unit:

Represented by:

Charge(s) (state particulars and statute):

Decision:

Having listened to the arguments made by

and by

(*delete as appropriate)

I am satisfied that the ground(s) specified in the first column of the following Schedule *apply/ *applies for the reason(s) specified in the second column of that Schedule and

*I hereby authorise the keeping of the accused in air-force custody until (insert date which should be a day not later than 8 days after the date on which this order was made)

*with the consent of the accused who was legally represented at the hearing, I hereby authorise the keeping of the accused in air-force custody until (insert a date which should be a day not later than 28 days after the date on which this Order was made)

This order will be reviewed on

(Signature)

(Name).....

*Judicial Officer/ *Judge Advocate

(Date)

Schedule

Grounds for authorising the keeping of the accused in air-force custody

Reasons for being satisfied of the grounds specified in the first column

I am satisfied that there are substantial grounds for believing that if you were released from air-force custody you would—

- *fail to attend a hearing
- *commit an offence while released
- *interfere with witnesses
- *obstruct the course of justice

Grounds for authorising the keeping of the accused in air-force custody**Reasons for being satisfied of the grounds specified in the first column**

Or

I am satisfied that—

*you should be kept in air-force custody for your own protection

*you should be kept in air-force custody for your own welfare (*if aged under 17*)

*it has not been practicable to obtain sufficient information for the purposes of taking a decision under section 75F(2) for want of time since you were charged

Or

You have deserted or absented yourself without leave since being charged.

Or

Your case has been adjourned for inquiries and it would be impracticable to complete the inquiries without keeping you in air-force custody

Or

Your case has been adjourned for a report and it would be impracticable to make the report without keeping you in air-force custody

Form 4

Record of Order authorising keeping a person in air-force custody after charge under section 75F(2) of the Air Force Act 1955 following a review without a hearing under section 75G(1) of the Act.

Details of the Accused:

Name:

Rank and service number *(if applicable)*:

Date of birth and age:

Address/unit:

Charge(s) *(state particulars and statute)*:

Decision:

*(*delete as appropriate)*

*I have considered the request made by that this review be carried out at a hearing and I am satisfied that this was not necessary for the following reason(s):

Having considered the representations made by

I am satisfied that the ground(s) specified in the first column of the following Schedule *apply/ *applies for the reason(s) specified in the second column of that Schedule and I hereby authorise the keeping of the accused in air-force custody until *(insert date which should be a day not later than 8 days after the date on which this order was made)*

This order will be reviewed on

(Signature)

(Name)
*Judicial Officer/ *Judge Advocate

(Date)

Schedule

Grounds for authorising the keeping of the accused in air-force custody

Reasons for being satisfied of the grounds specified in the first column

I am satisfied that there are substantial grounds for believing that if you were released from air-force custody you would—

- *fail to attend a hearing
- *commit an offence while released
- *interfere with witnesses
- *obstruct the course of justice

Grounds for authorising the keeping of the accused in air-force custody**Reasons for being satisfied of the grounds specified in the first column**

Or

I am satisfied that—

*you should be kept in air-force custody for your own protection

*you should be kept in air-force custody for your own welfare (*if aged under 17*)

*it has not been practicable to obtain sufficient information for the purposes of taking a decision under section 75F(2) for want of time since you were charged

Or

You have deserted or absented yourself without leave since being charged.

Or

Your case has been adjourned for inquiries and it would be impracticable to complete the inquiries without keeping you in air-force custody

Or

Your case has been adjourned for a report and it would be impracticable to make the report without keeping you in air-force custody

Form 5

Notification of decision not to authorise the keeping of the accused in air-force custody following

*(*delete as appropriate)*

***a hearing under section 75F(1) of the Air Force Act 1955**

***a hearing of a review under section 75G(1) of the Air Force Act 1955**

***a review without a hearing under section 75G(1) of the Air Force Act 1955.**

Place where *Judicial Officer/ *Judge Advocate sitting *(if applicable)*:

Date and time of decision:

Details of the Accused:

Name:

Rank and service number *(if applicable)*:

Date of birth and age:

Address/unit:

Represented by *(if applicable)*:

Charge(s) *(state particulars and statute)*:

Decision:

*Having listened to the arguments made by

I have decided not to authorise the keeping of the accused who was brought before me today in air-force custody.

*And I impose the following requirement(s): *(insert requirements imposed under section 75J(2)(b) if applicable)*

which appear(s) to me to be necessary for the purpose of securing the attendance of the accused at *(any hearing in connection with the offence to which the charge relates)*
for the following reason(s):

*Having considered the papers submitted by

I have decided not to authorise the keeping of the accused in air-force custody.

(Signature)

(Name).....

*Judicial Officer/ *Judge Advocate

(Date)

SCHEDULE 3

Rule 21

WITNESS SUMMONS

- 1.—(1) This paragraph applies where the judicial officer is satisfied that—
- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence; and
 - (b) the person will not voluntarily attend as a witness or will not voluntarily produce the document or thing.
- (2) In such a case the judicial officer shall, subject to the following provisions of this paragraph, direct the relevant court administration officer to issue a summons (a witness summons) directed to the person concerned and requiring him to—
- (a) attend a hearing at the time and place stated in the summons, and
 - (b) give evidence or produce the document or thing.
- (3) A witness summons issued under this paragraph shall be in the form specified in the Appendix to this Schedule.
- (4) A witness summons may only be issued under this paragraph on an application made in accordance with paragraph 3; and the judicial officer may refuse to direct that a witness summons be issued if any requirement relating to the application is not fulfilled.
- (5) An application for a witness summons may be made by either the commanding officer or the person to whom the proceedings relate.
2. A witness summons which is issued under paragraph 1 and which requires a person to produce a document or thing as mentioned in paragraph 1(2) may also require him to produce the document or thing—
- (a) at a place stated in the summons, and
 - (b) at a time which is so stated and precedes that stated under paragraph 1(2),
- for inspection by the person applying for the summons.
- 3.—(1) Subject to sub-paragraph (2), an application for a witness summons shall be made in writing to the court administration officer and shall—
- (a) contain a brief description of the stipulated evidence, document or thing;
 - (b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material;
 - (c) specify the grounds for believing that the directed person is likely to be able to give the stipulated evidence or to produce the stipulated document or thing;
 - (d) set out the reasons why the applicant considers that the directed person will not voluntarily attend as a witness or produce the stipulated document or thing;
 - (e) if the witness summons is proposed to require the directed person to produce a document or thing, state whether the applicant seeks a requirement also to be imposed under paragraph 2 and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.
- (2) In the case of an application for a witness summons which is made during the hearing, such application shall be made orally to the judicial officer, who shall determine the application and give such directions as appear to be appropriate.
- (3) In this Schedule—
- (a) references to any stipulated evidence, document or thing are to any evidence, document or thing whose giving or production is proposed to be required by the witness summons; and
 - (b) references to the directed person are to the person to whom the witness summons is proposed to be directed.
- 4.—(1) If—
- (a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under paragraph 2,
 - (b) the person applying for the summons concludes that a requirement imposed by the summons under paragraph 1(2) is no longer needed, and
 - (c) he makes an application to the judicial officer in accordance with paragraph 5 that the summons shall be of no further effect,
- the judicial officer may direct accordingly.
- (2) If a direction is given under this paragraph the relevant court administration officer shall notify the person to whom the witness summons is directed as to the effect of the direction.

5.—(1) An application for a direction under paragraph 4 that a witness summons shall be of no further effect shall be made in writing to the court administration officer as soon as reasonably practicable after the document or thing has been produced for inspection in pursuance of a requirement imposed by the witness summons under paragraph 2.

(2) The application shall state that the applicant concludes that the requirement imposed by the witness summons under paragraph 1(2) is no longer needed.

6.—(1) A person to whom a witness summons issued under paragraph 1 is directed may apply to the judicial officer for a direction that the summons shall be of no effect.

(2) The judicial officer may make such a direction if he is satisfied that the person concerned cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence or that for any other reason the witness summons should be of no effect.

(3) The judicial officer may refuse to make a direction if any requirement relating to the making of an application for a direction under this paragraph is not fulfilled.

7.—(1) Subject to sub-paragraph (5), an application for a direction under paragraph 6 shall be made in writing to the court administration officer and shall set out—

- (a) the reasons why the applicant considers that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence; or
- (b) where there are any other reasons why the applicant considers that the witness summons should be of no effect, those reasons.

(2) On receiving the application, the relevant court administration officer shall serve notice of the application on the person on whose application the witness summons was issued.

(3) The judicial officer shall not grant or, as the case may be, refuse the application unless the applicant and the person on whose application the witness summons has been issued have been given an opportunity to make representations to him.

(4) In a case where the witness summons to which the application relates imposed a requirement to produce any document or thing, then if—

- (a) the applicant can produce that document or thing, but
- (b) he seeks to satisfy the judicial officer that the document or thing is not likely to be material evidence or that for some other reason it should not be produced,

the applicant must, unless the judicial officer directs otherwise, arrange for the document or thing to be available at the hearing.

(5) In the case of an application which is made during the hearing, such application shall be made orally to the judicial officer who shall determine the application and give such directions as appear to be appropriate.

(6) Where the application is made otherwise than at the hearing, the relevant court administration officer shall notify the applicant and the person on whose application the witness summons was issued of the decision of the judicial officer in relation to the application.

Appendix to Schedule 3—Form of Witness Summons

To:

Of:

Summons to Witness

*(*Delete as appropriate)*

Proceedings under section *75C/ *75F(1)/ *75G(1) of the Air Force Act 1955

Name of the person in respect of whom the proceedings relate:

You are hereby summoned to appear on *(date)* at *(time)*

at *(place)*

to *give evidence

*produce the document[s] or thing[s] specified in Part I of the Schedule hereto

at the hearing of this matter at which the Judicial Officer will consider whether to make an order authorising the keeping of the above named person in custody.

***You are also hereby summoned** to appear on *(date)*..... at *(time)*

at *(place)* to produce the document[s] or thing[s] specified in Part II of the Schedule hereto.

You will wish to note that:

(Where the witness is subject to service law) ***Failure to comply with this summons is an offence under:**

***section 57 of the Air Force Act 1955 as amended by paragraph 1 of Schedule 1 to the Armed Forces Discipline Act 2000.**

***section 57 of the Army Act 1955 as amended by paragraph 1 of Schedule 1 to the Armed Forces Discipline Act 2000;**

***section 38 of Naval Discipline Act 1957 as amended by paragraph 6 of Schedule 1 to the Armed Forces Discipline Act 2000;**

(Where the witness is not subject to air-force law) ***Proceedings before the judicial officer are legal proceedings in the same way as proceedings before a civilian court. Failure to comply with this summons may render you liable to punishment for contempt of court by virtue of section 101 of the Air Force Act 1955 as amended by paragraph 3 of Schedule 1 to the Armed Forces Discipline Act 2000.**

**Court Administration Officer/
Assistant Court Administration Officer**

Date:

SCHEDULE OF DOCUMENTS OR THINGS TO BE PRODUCED

Part I—Documents etc. to be produced only at the hearing

Part II—Documents etc. to be produced prior to as well as at the hearing

SCHEDULE 4

Rule 27

OATHS AND AFFIRMATIONS

*Part I**Manner of administering Oaths and Affirmations*

1. The person taking the oath shall hold the New Testament, or if a Jew the Old Testament, in his uplifted hand and shall say, or repeat, after the person administering it, the oath provided in this Schedule for that category of person.

2. If any person to whom an oath is administered desires to swear in the form and manner in which an oath is usually administered in Scotland, he may do so with uplifted hand and saying or repeating after the person administering it the Scottish oath provided in Part III of this Schedule.

3. If none of the forms of oath provided in this Schedule is appropriate to the religious beliefs of the person taking the oath, an oath may be administered in such form and manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

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

*Part II**Forms of Oath***Witness aged 18 years of over**

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

Witness under the age of 18 years

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

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.

*Part III**Forms of Scottish Oaths*

8. 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 Judgment".

*Part IV**Form of Solemn Affirmation*

9. 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" or, as the case may be, "I promise before Almighty God" there shall be substituted the words "I (*state name*) solemnly, sincerely and truly declare and affirm".

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the procedures which are to apply with respect to proceedings under section 75C, 75F(1) or 75G(1) of the Air Force Act 1955 (as inserted by sections 1(2), 2(2) and 3(2) of the Armed Forces Discipline Act 2000). Under those provisions, the authority of a judicial officer is required to keep a person in air-force custody for a period of more than 48 hours without charge, or for any period after charge.

Part I of the Rules concerns preliminary matters. It includes provisions concerning service of documents (*rules 3 and 4*) and for substituted service where the person to whom the proceedings relate is in air-force custody and is not legally represented. In these circumstances, where a document is required to be served by the person to whom the proceedings relate on any person, *rule 5* allows him to serve the document on his commanding officer. A duty is then placed on the commanding officer to serve the document on the person identified by the person to whom the proceedings relate.

Part II specifies the manner in which the court administration officer and the person to whom the proceedings relate are to be notified, and the information to be included in the notification, where it is necessary to bring the person to whom the proceedings relate before a judicial officer in pursuance of section 75C, 75F(1), 75G(2) or 75K(7) or (8) of the Air Force Act 1955 (“the Act”).

Part III concerns reviews under section 75G(1) of the Act. *Rule 13* makes provision as to the date on which the review is to take place. *Rule 14* specifies the circumstances in which a review is to be carried out at a hearing. *Rule 15* confers a right in specified circumstances on the commanding officer and the accused to make written representations, both as to the need for a hearing and the matters which the judicial officer should take into account when reviewing the order.

Part IV provides for the court administration officer to determine the time and place of any hearing which is required to take place by virtue of section 75C or 75F(1) of the Act (*rule 18*). *Rule 19* gives the commanding officer and the person to whom the proceedings relate the right to be legally represented at a hearing and the further right to the person to whom the proceedings relate to be legally represented in respect of the proceedings. *Rule 20* sets out the qualifications which legal representatives are required to hold. *Rule 21* introduces *Schedule 3* and sets out the procedure concerning the issuing of witness summons. *Rule 22* enables witnesses other than the commanding officer and the person to whom the proceedings relate, with the permission of the judicial officer, to give evidence at a hearing via a live TV link or other similar arrangements.

Part V makes provision with respect to the conduct of hearings before a judicial officer. *Rule 23* puts the judicial officer in a similar position to a magistrate considering a bail application in that he is not bound by the strict rules of evidence. It also gives commanding officers and persons suspected or accused of offences the right to give evidence and address the judicial officer. *Rule 24* enables the commanding officer, the person to whom the proceedings relate and their legal representatives to be treated as being present at a hearing if they appear by live TV link or other similar arrangements. *Rules 26 to 28* make provision with respect to witnesses. *Rule 27 and Schedule 4* make provision as to the administration of oaths and affirmations. *Rule 28* provides that witnesses are to be entitled to the same immunities and privileges as witnesses before the High Court in England and Wales.

Schedule 2 is introduced by *rules 17 and 29* and specifies the forms to be used by the judicial officer in recording any decision taken, or order made, in respect of the keeping of a person in custody.

£4.00

© Crown copyright 2000

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1609 9/2000 543134 19585

ISBN 0-11-099800-6



9 780110 998008