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STATUTORY INSTRUMENTS

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**2000 No. 2371**

**The Summary Appeal Court (Army) Rules 2000**

**PART V**

**EVIDENCE**

**Rules of evidence etc.**

**27.**—(1) The following enactments, namely—

- (a) section 99(1) and (3) of the Act<sup>(1)</sup> (rules of evidence);
- (b) section 99A(1), (2) and (5) of the Act<sup>(2)</sup> (proof by written statement);
- (c) section 12 of the Criminal Justice Act 1967<sup>(3)</sup> (application of sections 10 and 11 of that Act to courts-martial);
- (d) section 113(12) of the Police and Criminal Evidence Act 1984<sup>(4)</sup> (application of Parts VII and VIII of that Act to the armed forces);
- (e) paragraphs 1 to 6 of Schedule 13 to the Criminal Justice Act 1988<sup>(5)</sup> (evidence before courts-martial etc.),

shall apply in relation to proceedings before the court as they apply in relation to proceedings before courts-martial under the Act, subject to the modifications referred to in paragraph (2).

(2) In relation to proceedings before the court—

- (a) the reference in section 99(1) of the Act to service modifications shall have effect as a reference to the provisions of this Part of these Rules;
- (b) the reference in section 99A(1) of the Act to service modifications shall have effect as a reference to the modifications to section 9 of the Criminal Justice Act 1967<sup>(6)</sup> specified in Part I of Schedule 3;
- (c) the reference in section 12 of the Criminal Justice Act 1967 to such modifications as may be prescribed by the Secretary of State by regulations shall have effect as a reference to the modifications to sections 10 and 11 of that Act specified in Part II of Schedule 3; and
- (d) the reference in section 113(12) of the Police and Criminal Evidence Act 1984 to modifications which the Secretary of State may by order specify shall have effect as a

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(1) Subsection (1) of section 99 was amended by the Armed Forces Act 1976 (c. 52), Schedule 5, paragraph 3; by the Police and Criminal Evidence Act 1984 (c. 60), Schedule 6, paragraph 28(2)(a); by the Armed Forces Act 1991 (c. 62), Schedule 2, paragraph 4; and by the Armed Forces Act 1996 (c. 46), Schedule 1, paragraph 29(2). Subsection (3) was amended by the Armed Forces Act 1996, Schedule 1, paragraph 29(3).

(2) Section 99A was inserted by the Armed Forces Act 1976, Schedule 5, paragraph 1.

(3) Section 12 was amended by the Armed Forces Act 1976, Schedule 5, paragraph 3 and by the Armed Forces Act 1996, Schedule 1, paragraph 99 and Schedule 7, Part I.

(4) 1984 c. 60.

(5) 1988 c. 33; Schedule 13 was amended by the Armed Forces Act 1996, Schedule 1, paragraph 109.

(6) Section 9 was amended by the Courts Act 1971 (c. 23), Schedule 8, paragraph 49; by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 6(1); and by section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25).

reference to the modifications to Parts VII and VIII of that Act specified in Part III of Schedule 3.

### **Admission of facts or matters contained in the respondent's papers**

**28.**—(1) The appellant may admit any fact or matter specified in the respondent's papers, being a fact or matter which the respondent has indicated he proposes to adduce in evidence at the hearing of the appeal, and the admission shall as against the appellant be conclusive evidence in the appeal of the fact or matter admitted.

(2) An admission under this rule—

- (a) may be made before or at the hearing of the appeal to which it relates;
- (b) if made otherwise than at the hearing, shall be in writing; and
- (c) may only be made if the appellant is legally represented and, where it is made in writing, shall be signed by the appellant's legal adviser on his behalf.

(3) An admission under this rule may be withdrawn with the leave of the court.

(4) This rule is without prejudice to section 10 of the Criminal Justice Act 1967 (as it has effect in relation to proceedings before the court by virtue of rule 27 and Schedule 3).

### **Evidence through television link etc.**

**29.**—(1) A person other than the appellant may give evidence through a live television link or other similar arrangements ("live link") if the witness is not in the country where the court is sitting for the purposes of hearing the appeal; but evidence may not be so given without the leave of the court.

(2) Where an application for leave for a witness to give evidence through a live link is made at the hearing of the appeal, it shall be made as soon as practicable after the commencement of the hearing.

(3) Where such an application is to be made at the hearing of the appeal, it may not be made without the leave of the judge advocate unless not less than 7 days before the commencement of the hearing the party making the application has served a notice on the other party and the court administration officer stating—

- (a) the grounds of the application;
- (b) the name 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) The court may make the grant of leave subject to such conditions as it 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.

(5) Where an application for leave for a witness to give evidence through a live link is made at a preliminary hearing, the powers of the court to grant leave shall be exercised by the judge advocate before whom the hearing takes place.

### **Witness summons**

**30.**—(1) Schedule 4 shall have effect with respect to summoning persons—

- (a) to give evidence, or
- (b) to produce any document or thing,

in proceedings on an appeal under section 83ZE of the Act.

(2) A witness summons issued in accordance with Schedule 4 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; or
- (d) where the witness is subject to military law, air-force law or the Naval Discipline Act 1957, by serving it on his commanding officer.

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

### **Oaths and affirmations**

**31.**—(1) An oath shall be administered to any person attending a hearing of the court as an officer or other person under instruction or interpreter.

(2) A witness before the court—

- (a) shall be examined on oath if he has attained the age of 14 years;
- (b) shall give evidence unsworn if he is under that age.

(3) Unsworn evidence admitted by virtue of paragraph (2)(b) may corroborate evidence (sworn or unsworn) given by any other person.

(4) If—

- (a) a person required to take an oath for the purposes of proceedings before the court 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.

(5) 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.

(6) Any oath or affirmation shall be administered in the form and manner set out in Schedule 5 by the judge advocate, or, where the judge advocate so directs, by any other member of the court acting on his behalf.