

2009 No. 1211

DEFENCE

The Armed Forces (Summary Appeal Court) Rules 2009

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The Secretary of State in exercise of the powers conferred by sections 111, 113, 132 and 135 of, paragraph 5 of Schedule 6 to, and paragraph 2(6) of Schedule 7 to, the Criminal Justice Act 2003(a), and sections 142(2), 144(4), 145, 147(4) and 151 of the Armed Forces Act 2006(b) makes the following Rules:

PART 1
PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Armed Forces (Summary Appeal Court) Rules 2009 and shall come into force on 31st October 2009.

Interpretation: proceedings and parties

2.—(1) Unless otherwise stated, any reference in these Rules to proceedings includes—

- (a) preliminary proceedings,
- (b) appeal proceedings,

but does not include the exercise of any power of the court otherwise than at a hearing.

(2) In these Rules—

(a) 2003 c. 44. By virtue of section 113 of, and paragraph 5 of Schedule 6 to, the Criminal Justice Act 2003 (“the 2003 Act”), section 111 has effect as if, in its subsection (7), the definition of “rules of court” includes rules regulating the practice and procedure of service courts. By virtue of section 135 of, and paragraph 2(6) of Schedule 7 to, the 2003 Act, section 132 is modified so that, in its subsection (10), the definition of “rules of court” includes rules regulating the practice and procedure of service courts. By virtue of paragraph 6 of Schedule 6 and paragraph 8 of Schedule 7 (as amended by paragraph 234(4) and paragraph 235(6) of Schedule 16 to the Armed Forces Act 2006), “service court” includes the Summary Appeal Court.

(b) 2006 c. 52.

“ancillary proceedings” means proceedings under—

- (a) rule 16 for an extension of the initial period or an application for leave to appeal out of time; and
- (b) rule 17 for the consideration of a matter referred to the court by the reviewing authority under section 152(4) or (7);

“appeal proceedings” means proceedings for the hearing of an appeal under section 146;

“preliminary proceedings” means any proceedings of the court held for the purpose of giving directions, orders or rulings for the purpose of appeal or ancillary proceedings;

“related proceedings”, in relation to preliminary proceedings, means—

- (a) appeal proceedings in respect of any charge to which the preliminary proceedings relate; and
- (b) any further preliminary proceedings in relation to such appeal proceedings.

(3) References in these Rules to a party to any proceedings are to—

- (a) a person to whom the proceedings relate (“the appellant”);
- (b) the Director; and
- (c) where the proceedings are for the hearing of an application (and the applicant is not a person to whom the proceedings relate), the applicant.

(4) References in these Rules to a person to whom proceedings relate are to—

- (a) in the case preliminary or appeal proceedings, an appellant;
- (b) in the case of a hearing under rule 89 (certification of contempt of court), the person whose offence the court is to consider certifying.

(5) In these Rules—

“the Director” means the Director of Service Prosecutions;

“appellant” means a person who brings an appeal under section 141 or on whose behalf a reviewing authority seeks leave to refer a finding or punishment to the court under section 152.

Interpretation: general

3.—(1) Any reference in these Rules to a numbered section is to that section of the Act unless otherwise stated.

(2) In these Rules—

“the Act” means the Armed Forces Act 2006;

“the 1967 Act” means the Criminal Justice Act 1967(a);

“the 2003 Act” means the Criminal Justice Act 2003;

“the CPIA Order” means the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009(b);

“advance information” has the meaning given by rule 42(2);

“bad character” has the meaning given by section 98 of the 2003 Act;

“civilian police force” means a UK police force or a British overseas territory police force;

“the court” means the Summary Appeal Court;

“DX” means document exchange;

“the judge advocate”, in relation to any proceedings, means the judge advocate specified for the proceedings under section 142(3);

(a) 1967 c. 80.
(b) S.I. 2009/988.

“lay members” means those persons who are members of the court by virtue of section 142(1)(b) or (c);

“legal representative” means a person appointed under rule 41;

“live link” has the meaning given by rule 25(3)(a);

“pre-sentence report” has the meaning given by section 257; and

“unit” means—

- (a) a naval ship or establishment;
- (b) any body of members of Her Majesty’s forces formed under the command of a person appointed to be the commanding officer of the body; or
- (c) an air force station.

PART 2

SERVICE OF DOCUMENTS

Interpretation of Part 2

4.—(1) References in this Part to service under these Rules include service under any enactment applied by these Rules.

(2) References in this Part to a requirement that a document be served on a person include any requirement that the document be supplied to the person, however expressed.

(3) References in this Part to a person’s agreement to the service of a document in a particular way include his agreement that any document of a description specified by him may be served in that way.

Service on a person to whom proceedings relate

5.—(1) Where under these Rules any document is to be served on a person to whom any proceedings relate, it may be served—

- (a) on him personally;
- (b) by post in a letter addressed to him at his unit;
- (c) if he is not subject to service law—
 - (i) by leaving it at his usual or last known place of abode; or
 - (ii) by post in a letter addressed to his usual or last known place of abode;
- (d) by post in a letter addressed to his legal representative’s place of business; or
- (e) by DX, fax, electronic mail or other electronic means to his legal representative, where his legal representative—
 - (i) has given a DX box number, fax number or electronic mail or other electronic means address; and
 - (ii) has not refused to accept service by that means.

(2) In this rule references to the person’s legal representative are to any person of whose name and address the court administration officer has been notified under rule 41(4).

Service on the court administration officer

6. Where under these Rules any document is to be served on the court administration officer, it may be served—

- (a) by post, DX, fax, electronic mail or other electronic means to any office of the Military Court Service; or

- (b) on a member of that Service personally, with his agreement.

Service on the Director

7. Where under these Rules any document is to be served on the Director, it may be served—
- (a) by post, DX, fax, electronic mail or other electronic means to—
 - (i) the principal office of the Service Prosecuting Authority; or
 - (ii) with the agreement of a prosecuting officer, that Authority's main office in Germany; or
 - (b) on a prosecuting officer personally, with his agreement.

Service on other individuals

8. Where under these Rules any document is to be served on an individual other than a person to whom proceedings relate, the court administration officer or the Director, it may be served—
- (a) on the individual personally;
 - (b) if he is subject to service law, by post in a letter addressed to him at his unit;
 - (c) if he is not subject to service law—
 - (i) by leaving it at his usual or last known place of abode; or
 - (ii) by post in a letter addressed to his usual or last known place of abode.

Service on a corporation

9. Where under these Rules any document is to be served on a corporation within the meaning of the Companies Act 2006^(a), it may be served—
- (a) by post to—
 - (i) the corporation's principal office in the United Kingdom;
 - (ii) if the corporation has no readily identifiable principal office in the United Kingdom, any place in the United Kingdom where it carries on its activities or business; or
 - (iii) if the corporation has no principal office in the United Kingdom and does not carry on its activities or business in the United Kingdom, its principal office; or
 - (b) by DX, fax, electronic mail or other electronic means, where the corporation—
 - (i) has given a DX box number, fax number or electronic mail or other electronic means address; and
 - (ii) has not refused to accept service by that means.

Service by another method

10.—(1) A judge advocate may direct that a document may be served by a method other than those mentioned in rules 5 to 9.

- (2) A direction under this rule—
- (a) must specify—
 - (i) the method to be used; and
 - (ii) the date by which the document must be served; and
 - (b) may specify the time on that date by which the document must be served.

(3) The court may treat a document as served if the addressee responds to it, even if it was not served in accordance with these Rules.

(a) 2006 c. 46.

Service by commanding officer

11. Where a document to be served on a person is sent or delivered to his commanding officer, his commanding officer must arrange for the document to be served on him personally as soon as is reasonably practicable.

Service by fax or electronic means

12. Where a document is served by fax, electronic mail or other electronic means, the person serving it need not provide a paper copy as well.

Date of service

13. Unless the contrary is shown, a document served on a person (otherwise than personally) shall be assumed to have been served—

- (a) in the case of a document sent by post from the United Kingdom to an address within the United Kingdom, on the fifth day after the day on which it was despatched;
- (b) in the case of a document sent by post—
 - (i) from the United Kingdom or Germany to an address within Germany, or
 - (ii) from Germany to an address within the United Kingdom,on the tenth day after the day on which it was despatched;
- (c) in the case of any other document sent by post, on the tenth day after the day on which it was despatched;
- (d) in the case of a document served by DX, on the fifth day after the day on which it was left at the addressee's DX box number or despatched;
- (e) in the case of a document served by fax, electronic mail or other electronic means, on the day after it was transmitted; and
- (f) in any case, on the day on which the addressee responds to it if that is earlier.

Proof of service

14.—(1) Where—

- (a) under any of rules 5 to 9 or a direction under rule 10, a document may be served by a particular method, and
- (b) a certificate is produced which—
 - (i) states that the document was so served, and
 - (ii) is signed by a person who purports to have so served the document,

the document shall be assumed to have been so served, unless the contrary is shown.

(2) Where a certificate is produced which—

- (a) states that a document was despatched, left at a DX box number or transmitted on a particular day, and
- (b) is signed by a person who purports to have despatched, left or transmitted the document,

for the purposes of rule 13 the document shall be assumed to have been despatched, left or transmitted on that day, unless the contrary is shown.

(3) This rule is subject to any provision requiring proof on oath.

PART 3
BRINGING AN APPEAL
CHAPTER 1

APPEALS BROUGHT BY A PERSON TO WHOM A CHARGE RELATES

Notice of appeal

15.—(1) An appeal under section 141 shall be brought by serving (before the expiry of the initial period) a written notice of appeal on the commanding officer.

(2) The commanding officer shall serve the notice on the court administration officer and a copy of the notice and the documents required under paragraph (3) on the Director.

(3) The documents are—

- (a) the written record of the summary hearing;
- (b) a copy of the disciplinary record of the appellant;
- (c) a copy of any witness statement prepared for the purposes of the summary hearing;
- (d) details of all exhibits that form part of the evidence (whether used or unused at the summary hearing) and where and when they can be inspected;
- (e) a list of persons whose evidence was not adduced at the summary hearing but who appear to the commanding officer to be potential witnesses in the proceedings before the court;
- (f) any material in the possession of the commanding officer which is not annexed or referred to in the written record but which in his opinion may be material to the proceedings before the court;
- (g) if the commanding officer was granted authority to hear the charge summarily, a copy of any document conveying that authority;
- (h) if the commanding officer had extended powers for the purposes of section 133(1)(a) or (2), 134(1), 135(1) or 136(1)(b), a copy of any document conveying those powers; and
- (i) a document specifying the appellant's age, his rank or rate and any recognised acts of gallantry.

(4) In this rule—

“disciplinary record” means all formal disciplinary records of the appellant maintained and held by any of Her Majesty's forces;

“initial period” has the meaning given in section 141(2)(a); and

“written record” has the meaning given in Rules made under section 153.

Application to extend initial period or for leave to appeal out of time

16.—(1) An application, under section 141(2)(b) (extension of initial period) or 141(3) (leave to appeal out of time) shall be made in writing to the commanding officer and shall state—

(a) if made under section 141(2)(b)—

- (i) why the applicant is not able to bring an appeal within the initial period; and
- (ii) what longer period he wishes the court to grant; or

(b) if made under section 141(3)—

- (i) why the applicant did not appeal within the initial period; and
- (ii) be accompanied by the proposed notice of appeal.

(2) The commanding officer shall serve the application together with a copy of the written record on the court administration officer who shall forward them to the Judge Advocate General and the Director.

(3) The Judge Advocate General may—

- (a) grant the application;
- (b) grant the application and substitute for any period stated in the application a different period;
- (c) inform the court administration officer that he is minded to dismiss the application without a hearing; or
- (d) direct a hearing of the application.

(4) Where the Judge Advocate General is minded to dismiss the application without a hearing, the court administration officer shall notify the applicant in writing of that fact and provide a copy of such notification to the commanding officer.

(5) Where the applicant is given notice under paragraph (4), the application shall be treated as dismissed unless, not more than 14 days from the receipt of the notice, the applicant gives notice in writing to the commanding officer that he requires a hearing of the application.

(6) The commanding officer must forward any notice given under paragraph (5) to the court administration officer and the Director.

(7) There shall be a hearing of the application if—

- (a) the Judge Advocate General directs a hearing; or
- (b) the applicant requires one.

(8) A hearing of the application shall be before a judge advocate.

(9) At a hearing of the application—

- (a) the applicant may address the judge advocate; and
- (b) the Director may, with leave, address the judge advocate.

(10) The court administration officer shall serve notice of any decision to grant or refuse an application under this rule on—

- (a) the applicant;
- (b) the Director; and
- (c) the commanding officer.

(11) In this rule, “initial period” has the meaning given in section 141(2)(a).

CHAPTER 2

APPLICATION OR NOTIFICATION BY THE REVIEWING AUTHORITY

Application by the reviewing authority

17.—(1) An application for leave to refer a finding or punishment to the court under—

- (a) section 152(4) (as on appeal), or
- (b) section 152(7) (referral of new matters after appeal hearing),

shall be made in writing to the court administration officer.

(2) Such an application must—

- (a) state why the reviewing authority considers it appropriate that the court consider an appeal; and
- (b) be accompanied by any other documents the reviewing authority considers relevant to the determination of the application.

(3) The court administration officer shall forward the application to the Judge Advocate General, the Director, the appellant and the commanding officer.

(4) The reviewing authority may withdraw an application at any time before the determination of the application for leave by giving notice in writing to the court administration officer.

(5) The Judge Advocate General may—

- (a) grant the application;

- (b) inform the court administration officer that he is minded to dismiss the application without a hearing; or
- (c) direct a hearing of the application.

(6) Where the Judge Advocate General is minded to dismiss the application without a hearing, the court administration officer shall notify the reviewing authority, the appellant and the commanding officer in writing of that fact.

(7) Where the reviewing authority and the appellant are given notice under paragraph (6), the application shall be treated as dismissed unless the reviewing authority gives notice in writing to the court administration officer, or the appellant gives notice in writing to his commanding officer, as the case may be, before the end of the period of 14 days beginning with the date of the notice under paragraph (6), that he requires a hearing of the application.

(8) Where an appellant has given notice to his commanding officer under paragraph (7) the commanding officer must forward any such notice to the court administration officer and the Director.

(9) There shall be a hearing of the application if—

- (a) the Judge Advocate General directs a hearing; or
- (b) the reviewing authority or the appellant requires a hearing under paragraph (7).

(10) A hearing of the application shall be before a judge advocate.

(11) At a hearing of the application—

- (a) the reviewing authority and appellant may address the judge advocate; and
- (b) the Director may, with leave, address the judge advocate.

(12) The court administration officer shall serve notice of any decision to grant or refuse an application under this rule on—

- (a) the reviewing authority;
- (b) the appellant;
- (c) the Director; and
- (d) the commanding officer.

Notification by the reviewing authority

18.—(1) Notification under section 152(6) shall be made in writing to the court administration officer.

(2) The court administration officer shall forward the notification to the Director and the judge advocate hearing the appeal.

(3) A copy of the notification shall be served on the appellant.

CHAPTER 3

UNCONTESTED APPEALS

Director to give notice of intention on receipt of notice of appeal

19.—(1) Where—

- (a) a notice of appeal under rule 15,
- (b) notice that an application under rule 16 has been granted, or
- (c) notice that an application under rule 17 has been granted,

has been served on the Director and that notice relates to one or more appeals against finding, the Director shall, within 28 days from the date of that notice, give notice in writing to the court administration officer indicating whether or not he intends to contest any such appeal.

(2) Where the Director has given notice under paragraph (1) that he intends to contest an appeal, he may at any time prior to the hearing of the appeal give notice that he no longer intends to

contest it; and any such notice shall have effect for the purposes of these Rules as a notice under paragraph (1) that he does not intend to contest the appeal.

(3) Where the Director does not within the period specified in paragraph (1) give notice that he intends to contest the appeal, the failure to give notice shall have the effect as a notice under paragraph (1) that he does not intend to contest the appeal.

(4) On the application of the Director, the Judge Advocate General may, if he considers it in the interests of justice to so do, extend the period at paragraph (1).

Powers of the court in uncontested appeals

20.—(1) Where the Director gives notice under rule 19(1) that he does not intend to contest an appeal, the court shall quash the finding against which the appeal is brought.

(2) Where any punishment awarded relates to one or more findings each of which is the subject of an appeal and in respect of each of which the Director has given notice under rule 19(1) that he does not intend to contest the appeal—

- (a) the power of the court to quash the finding(s) under section 147(1)(a) may be exercised by the Judge Advocate General without a hearing; and
- (b) any decision of the Judge Advocate General in exercise of those powers shall be recorded in writing and dated and signed by him.

(3) The court administration officer shall serve a copy of any decision of the Judge Advocate General under this rule on—

- (a) the appellant;
- (b) the commanding officer;
- (c) the Director; and
- (d) where the appeal falls to be considered by the court on a reference made by the reviewing authority, the reviewing authority.

PART 4

PROCEEDINGS: GENERAL

The court administration officer

21.—(1) The court administration officer must exercise his functions (other than that of specifying the lay members for any proceedings) subject to any direction given by a judge advocate.

(2) The court administration officer may delegate any of his functions to a member of the Military Court Service.

Listing of proceedings

22.—(1) Proceedings shall commence at such time and place as may be appointed by the court administration officer; but this is subject to paragraph (2).

(2) After the commencement of any proceedings, the court shall sit at such times and for such periods each day as the judge advocate may direct.

Notification of proceedings

23.—(1) The court administration officer must serve notice of any time and place appointed by him for the commencement or resumption of any proceedings on—

- (a) each person to whom the proceedings relate;
- (b) the legal representative (if any) of each such person;

- (c) the commanding officer of each such person;
- (d) the Director;
- (e) where the proceedings are for the hearing of an application, the applicant; and
- (f) any such other person as the judge advocate or Judge Advocate General may direct.

(2) At the same time as serving notice under paragraph (1) of the time and place appointed for the commencement of any proceedings with lay members, or as soon as is reasonably practicable after doing so, the court administration officer must serve on the persons mentioned in that paragraph a notice of the name and relevant particulars of—

- (a) each of the lay members; and
- (b) any person specified as a waiting member under rule 38.

(3) In paragraph (2), “relevant particulars” means his rank or rate and his unit.

Abandonment of appeal

24. Where—

- (a) an appellant fails to appear before the court at the time appointed for the commencement or resumption of the appellate proceedings, and
- (b) the judge advocate considers that there is no reasonable explanation for the failure to appear,

the judge advocate may direct that the appeal be treated as abandoned.

Live links

25.—(1) Any person may (and, if in service custody, must) attend any proceedings by live link, if a judge advocate so directs.

(2) A person who attends any proceedings by live link, and could give oral evidence in the proceedings if he were in the place where the proceedings are being held, may give evidence by live link.

(3) In these Rules—

- (a) “live link” means an arrangement by which a person, when not in the place where proceedings are being held, is able to see and hear, and to be seen and heard by, the court during proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded); and
- (b) references to bringing a person before the court include bringing him to a place from which he can attend proceedings by live link.

(4) A direction under this rule may be given by—

- (a) the judge advocate for the proceedings; or
- (b) the judge advocate for any preliminary proceedings as respects which the proceedings are related proceedings.

(5) Rule 47(3) (effect of a direction given in preliminary proceedings) applies to a direction under this rule given in preliminary proceedings.

(6) Where a direction is given under this rule in relation to a witness, the witness may not give evidence otherwise than by live link without the leave of the judge advocate.

(7) A judge advocate may give a direction under this rule, or give permission for the purposes of paragraph (6)—

- (a) on an application by a party to the proceedings; or
- (b) of his own motion.

Proceedings in absence of appellant etc

26. Proceedings may be held in the absence of any person to whom they relate, if the judge advocate so directs.

Deliberation in private

27.—(1) While the court is deliberating on—

- (a) finding, or
- (b) any other matter as respects which the judge advocate directs that this paragraph is to apply,

no other person may be present.

(2) While the court is deliberating on—

- (a) punishment,
- (b) an issue of fact being tried under rule 84, or
- (c) any other matter as respects which the judge advocate directs that this paragraph is to apply,

no other person may be present except a person in attendance for instruction.

Oaths and affirmations

28.—(1) This rule applies where under these Rules an oath is required to be administered to a person.

(2) Sections 1 and 3 to 6 of the Oaths Act 1978^(a) shall apply, as modified by paragraph (3), as they would apply if the person were required to take an oath in England and Wales.

(3) Where section 1 or 6 of that Act applies by virtue of this rule, the reference in that section to the words of the oath prescribed by law is to be read as a reference to the words prescribed by Schedule 1 for a person of the class to which the person belongs.

Interpreters

29.—(1) The court administration officer may appoint a person to act as interpreter for the purposes of any proceedings.

(2) Before an interpreter begins to act, an oath must be administered to him.

(3) Before an interpreter is sworn, his name must be read out and any party to the proceedings may object to him on any reasonable ground, and, if the judge advocate upholds any such objection, the interpreter shall not be sworn.

Record of proceedings

30.—(1) A record must be made of any proceedings.

(2) The record of proceedings must include—

- (a) a record of any application or notification made in accordance with Part 3;
- (b) a record of any finding;
- (c) a record of any punishment awarded;
- (d) a record of any order made, and any direction or ruling given, by the judge advocate;
- (e) a sound recording of the proceedings, and any transcript of it (signed by the transcriber).

(3) The court administration officer shall send a copy of the record of any preliminary proceedings to—

(a) 1978 c. 19.

- (a) the Judge Advocate General;
- (b) the Director; and
- (c) each appellant.

(4) Where a direction under rule 45 (preliminary proceedings in chambers) was given in relation to the proceedings, paragraph (3) shall have effect as if sub-paragraph (c) were omitted; and, where such a direction was given in relation to part of the proceedings, paragraph (3)(c) shall have effect in relation only to the record of the remainder.

(5) The record of proceedings shall be kept in the custody of the Judge Advocate General, together with any exhibits retained under rule 31 and any file of correspondence or other papers maintained by the court administration officer in connection with the proceedings, for at least six years from—

- (a) in the case of appeal proceedings, the conclusion of the appeal proceedings;
- (b) in the case of preliminary proceedings where there are no further proceedings, the conclusion of the preliminary proceedings;
- (c) in any other case, the conclusion of the proceedings.

(6) A copy of the record of proceedings, or any part of it, shall be supplied on request—

- (a) to any party to the proceedings, without charge, and
- (b) to any other person, on payment of such charge as may be fixed by the Judge Advocate General,

but this is subject to paragraphs (7) and (8).

(7) Paragraph (6) does not require the supply of—

- (a) a copy of the record of any proceedings held in camera, or in relation to which a direction under rule 45 (preliminary proceedings in chambers) was given;
- (b) a copy of any part of a record of proceedings which relates to a part of the proceedings which was held in camera, or in relation to which such a direction was given.

(8) If, following a request for the supply of a copy of the record of proceedings or any part of it, the Secretary of State certifies that it is requisite for reasons of security that the record or part requested (or any part of it) should not be disclosed, paragraph (6) does not require the supply of the record or part requested (or the part of it to which the certificate relates).

Exhibits

31.—(1) Any exhibit admitted in evidence must be marked sequentially with either a number or a letter.

(2) Each exhibit, or a label attached to it, must be signed by or on behalf of the judge advocate.

(3) Each exhibit must be retained with the record of proceedings, unless the judge advocate otherwise directs.

Termination of proceedings

32.—(1) The judge advocate must terminate any proceedings with lay members if—

- (a) a lay member dies or is otherwise unable to continue to attend the proceedings; or
- (b) the number of lay members discharged under rule 37(4) (objections to lay members) exceeds the number of waiting members.

(2) The judge advocate may terminate any proceedings if he considers it in the interests of justice to do so.

(3) The Judge Advocate General shall terminate proceedings if the judge advocate dies or is otherwise unable to continue to attend the proceedings.

(4) Where proceedings with lay members are terminated under this rule, the lay members shall be discharged.

(5) The termination of appeal proceedings under this rule shall not bar further appeal proceedings in relation to the same summary finding or punishment.

Circumstances not provided for

33. Subject to any other enactment (including any other provision of these Rules), the judge advocate shall ensure that proceedings are conducted—

- (a) in such a way as appears to him most closely to resemble the way in which comparable proceedings of the Crown Court would be conducted in comparable circumstances; and
- (b) if he is unable to determine how comparable proceedings of the Crown Court would be conducted in comparable circumstances, in such a way as appears to him to be in the interests of justice.

PART 5

MEMBERS OF THE COURT

Proceedings without lay members

34.—(1) For proceedings to which this rule applies, there shall be no lay members.

(2) This rule applies to preliminary proceedings.

(3) This rule applies to ancillary proceedings.

Powers that may be exercised by a judge advocate

35. Any power of the court may be exercised by a judge advocate, except—

- (a) the power to determine an appeal, other than in proceedings to which rule 20 applies; and
- (b) the power to confirm or substitute a punishment awarded.

Persons ineligible for membership in particular circumstances

36.—(1) A person is ineligible for membership of the court for any appeal proceedings if, at any time since the date of the commission of the offence which is the subject of the finding against the appellant, he and the appellant were serving in the same unit.

(2) A person is ineligible for membership of the court for any proceedings if he was a member of the court or of the Court Martial for any previous proceedings to which any person to whom the proceedings relate was a party.

(3) For the purposes of paragraph (2) a person is not to be regarded as having been a member of the court for any previous proceedings if those proceedings were terminated under rule 32(1) by virtue of sub-paragraph (b) of that paragraph (successful objections exceeding the number of waiting members).

(4) This rule does not apply to the judge advocate.

Objections to lay members

37.—(1) At the commencement of appeal proceedings, the names of the lay members and waiting members shall be read out.

(2) Any party to the proceedings may object to any lay member, on any reasonable ground.

(3) The judge advocate shall rule on any objection to a lay member before the lay member is sworn.

(4) If an objection to a lay member is upheld, the judge advocate shall discharge him.

Waiting members

38.—(1) When the court administration officer specifies the lay members for any proceedings to which rule 37 applies, he shall at the same time specify a person (referred to in these Rules as a “waiting member”) to take the place of any lay member who may be discharged under rule 37(4).

(2) Where a lay member is discharged under rule 37(4) the waiting member shall become a lay member.

(3) Where the court administration officer specifies a waiting member, he shall specify a second waiting member if a judge advocate so directs.

(4) A second waiting member may be specified at any time before the commencement of the proceedings.

(5) Where two waiting members have been specified and paragraph (2) applies, the reference in that paragraph to the waiting member is to the senior waiting member.

(6) Where—

(a) two waiting members have been specified, and

(b) two lay members are discharged under rule 37(4),

both the waiting members shall become lay members.

(7) Rule 37(2) to (4) applies in relation to a waiting member who becomes a lay member by virtue of this rule.

Swearing of lay members

39. At the commencement of any proceedings to which rule 37 applies, an oath shall be administered—

(a) subject to that rule, to each of the lay members; and

(b) to any person in attendance for instruction.

Judge advocate’s power to direct lay members to withdraw

40. In any proceedings with lay members, the judge advocate may direct the lay members to withdraw while he hears submissions or gives a ruling on any question of law, practice or procedure.

PART 6

ASSISTANCE AND REPRESENTATION

Legal representatives

41.—(1) A party to proceedings may appoint a legal representative to act for him in relation to the proceedings.

(2) A person may not be appointed as a legal representative unless—

(a) he 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;

(a) 1990 c. 41. Subsection (6) of section 71 of the Courts and Legal Services Act 1990 was substituted by the Access to Justice Act 1999 (c. 22), section 43, Schedule 6, paragraphs 4 and 9. Subsections (7) and (8) of section 71 of the 1990 Act were repealed by section 106, Schedule 15, Part 2 of the 1999 Act. Prospective amendments to section 71 of the 1990 Act are made to subsections (1) and (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1), (3). Prospective amendments are made to subsections (4) and (6) and a new subsection (6A) is inserted into section 71 of the 1990 Act by the Legal Services Act 2007 (c. 29), section 208(1), Schedule 21, paragraphs 83 and 94(a), (b) and (c).

- (c) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
- (d) he is a person having in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and subject to punishment or disability for breach of professional rules.

(3) Any right conferred on a party to proceedings by these Rules may be exercised, and any duty imposed on him by these Rules discharged, by his legal representative on his behalf.

(4) A party who appoints a legal representative shall notify the court administration officer of the legal representative's name and address.

PART 7

ADVANCE INFORMATION

Service of advance information

42.—(1) In the case of appeal proceedings, the Director must, as soon as is practicable serve advance information on—

- (a) the court administration officer;
- (b) the appellant; and
- (c) the appellant's legal representative (if any).

(2) For an appeal against finding, "advance information" means—

- (a) copies of the statements of those witnesses on whom the Director intends to rely against the appellant;
- (b) a list of all exhibits which the Director intends to adduce in evidence against the appellant, and a statement of where any non-documentary exhibits are held; and
- (c) a transcript of any sound recording of an interview with the appellant.

(3) For an appeal against punishment, "advance information" means—

- (a) a statement of the information that the Director proposes to present to the court in pursuance of rule 86(2); and
- (b) the written record.

(4) Where, after the Director has served advance information on an appellant, he intends to adduce any evidence not included in the advance information, he must as soon as is practicable serve on the appellant and the court administration officer such documents as he would have been required to include in the advance information if he had had that intention at the time when he served advance information.

(5) Where paragraph (4) applies in the course of appeal proceedings, the reference in that paragraph to the court administration officer is to be read as a reference to the judge advocate.

(6) Where the Director no longer intends to call a witness whose statement he has served under this rule, he must as soon as is practicable give notice of that fact to every appellant.

PART 8

PRELIMINARY PROCEEDINGS

Listing of proceedings

43. On receipt of the advance information, the court administration officer must—

- (a) forward it to the Judge Advocate General and request him to—

- (i) determine whether preliminary proceedings are necessary;
 - (ii) specify a judge advocate for proceedings in relation to the appeal; and
- (b) appoint a time and place for the commencement of preliminary or appeal proceedings.

Listing of further preliminary proceedings

44.—(1) Where the Judge Advocate General has determined that preliminary proceedings are necessary, the court administration officer must appoint a time and place for further preliminary proceedings if so directed by—

- (a) the judge advocate for any preliminary proceedings; or
- (b) the Judge Advocate General.

(2) The judge advocate for any preliminary proceedings may give a direction under this rule—

- (a) on the oral application of the Director or an appellant; or
- (b) of his own motion.

(3) The Judge Advocate General may give a direction under this rule on the written application of the Director or an appellant.

(4) A written application for a direction under this rule—

- (a) must be made to the court administration officer;
- (b) must specify the reason for which further preliminary proceedings are required;
- (c) must include an estimate of the likely length of the further preliminary proceedings; and
- (d) subject to rule 45 (preliminary proceedings in chambers without notice), must be served on every other party to the proposed appeal proceedings.

Preliminary proceedings in chambers without notice to appellant

45. On application by the Director, the judge advocate for any preliminary proceedings may direct that the proceedings are, or that any part of the proceedings is—

- (a) where there is one appellant, to be held in his absence and without notice to him;
- (b) where there are two or more appellants, to be held in the absence of both or all of them and without notice to any of them.

Outline of respondent’s case

46. A judge advocate may direct the Director to serve on each appellant and the court administration officer, before any preliminary proceedings, an outline of the respondent’s case.

Powers of judge advocate

47.—(1) In preliminary proceedings the judge advocate may give such directions as appear to him to be necessary to secure the proper and efficient management of the appeal.

(2) Without prejudice to paragraph (1), the judge advocate may make an order or ruling on—

- (a) any question as to the admissibility of evidence;
- (b) any question as to the joinder or severance of charges; or
- (c) any other question of law, practice or procedure relating to the appeal.

(3) Any direction given in preliminary proceedings shall have effect throughout any related proceedings unless varied or discharged by—

- (a) the judge advocate who gave it; or
- (b) the judge advocate for any related proceedings.

(4) Any order or ruling made in preliminary proceedings shall have effect throughout any related proceedings unless varied or discharged—

- (a) by the judge advocate who made it; or
- (b) by the judge advocate for any related proceedings.

PART 9

JOINDER OF APPEALS

Power of the court to hear more than one appeal at the same time

48.—(1) The court may decide to hear two or more appeals at the same time where it appears to be in the interests of justice to do so.

(2) The court may make a determination under paragraph (1) of its own motion or on the application of the Director or of a person who is the appellant in one or more of the appeals to which the application relates.

(3) The power of the court to make a determination under paragraph (1) shall be exercised by a judge advocate sitting alone.

(4) Before refusing an application under paragraph (2) or making a determination under paragraph (1), the judge advocate shall afford the Director and any person who is the appellant in any of the appeals to which the application or determination relates the opportunity of making representations to him.

PART 10

ATTENDANCE OF WITNESSES

Notification of witnesses

49.—(1) Where any person is required to give evidence in any proceedings, the court administration officer shall notify him of the time and place at which he is required to attend.

(2) When the court administration officer gives notice of any proceedings to a party to the proceedings other than the Director, he shall offer to notify any person whom the party may require to give evidence.

(3) Where a witness summons is issued under rule 50 or 52, the court administration officer shall serve it on the person to whom it is directed.

(4) If, in the opinion of the court administration officer, it is not reasonably practicable to notify a person under this rule or to serve a witness summons on a person, he shall give notice of that fact to the judge advocate and the party who wishes the person to attend.

Issue of witness summons on application to a judge advocate

50.—(1) This rule applies where a judge advocate 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, for the purpose of any proceedings before the court; and
- (b) it is in the interests of justice to issue a witness summons under this rule to secure the attendance of that person to give evidence or to produce the document or thing.

(2) In such a case, the judge advocate shall, subject to the following provisions of this rule, issue a witness summons directed to the person concerned and requiring him to—

- (a) attend before the court at the time and place stated in the witness summons; and
- (b) give the evidence or produce the document or thing.

(3) A witness summons may be issued under this rule only on an application; and the judge advocate may refuse to issue the witness summons if any requirement relating to the application is not fulfilled.

(4) An application for a witness summons must be made as soon as is practicable after the applicant becomes aware of the grounds for making it.

(5) The application must—

- (a) identify the proposed witness;
- (b) explain—
 - (i) what evidence the proposed witness can give or produce;
 - (ii) why it is likely to be material evidence; and
 - (iii) why it would be in the interests of justice to issue a witness summons.

(6) The application may be made orally unless the judge advocate otherwise directs.

(7) An application in writing must contain a declaration that the facts stated in it are true to the best of the applicant's knowledge and belief.

(8) An application in writing must be served on the court administration officer and as directed by the judge advocate.

(9) A witness summons issued under this rule which requires a person to attend before the court and produce a document or thing may also require him to produce the document or thing—

- (a) at a place stated in the witness summons, and
- (b) at a time so stated, before the time at which the summons requires him to attend before the court,

for inspection by the applicant.

(10) A witness summons issued under this rule must state that failure to comply with the summons may result in the issue of a warrant for the arrest of the person to whom the summons is addressed.

Application for witness summons to produce a document, etc: judge advocate's assessment of relevance and confidentiality

51.—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the grounds that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, the duties or rights (including rights of confidentiality) of the proposed witness or of any person to whom the document or thing relates outweigh the reasons for issuing a witness summons.

(2) A judge advocate may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The judge advocate may invite—

- (a) the proposed witness or any representative of the proposed witness, or
- (b) a person to whom the document or thing relates or any representative of such a person,

to help the judge advocate assess the objection.

Issue of witness summons of judge advocate's own motion

52.—(1) For the purpose of any proceedings, a judge advocate may of his own motion issue a witness summons directed to a person and requiring him to—

- (a) attend before the court at the time and place stated in the witness summons; and
- (b) give evidence, or produce any document or thing specified in the witness summons.

(2) A witness summons issued under this rule must state that failure to comply with the summons may result in the issue of a warrant for the arrest of the person to whom the summons is addressed.

(3) A judge advocate may withdraw a witness summons issued under this rule if he no longer considers it necessary or if one of the following applies for it to be withdrawn—

- (a) the witness, on the grounds that—
 - (i) he cannot give or produce evidence likely to be material evidence; or
 - (ii) even if he can, his duties or rights (including rights of confidentiality) or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or
- (b) any person to whom the proposed evidence relates, on the grounds that—
 - (i) that evidence is not likely to be material evidence; or
 - (ii) even if it is, his duties or rights (including rights of confidentiality) or those of the witness outweigh the reasons for the issue of the witness summons.

Application to withdraw a witness summons

53.—(1) A judge advocate may withdraw a witness summons if an application is made under this rule.

(2) An application under this rule may be made by the party who applied for the witness summons, on the ground that it is no longer needed.

(3) An application under this rule may also be made by the witness, on the grounds that—

- (a) he was not aware of any application for it; and
- (b) either—
 - (i) he cannot give or produce evidence likely to be material evidence; or
 - (ii) even if he can, his duties or rights (including rights of confidentiality) or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons.

(4) An application under this rule may also be made by any person to whom the proposed evidence relates, on the grounds that—

- (a) he was not aware of any application for it; and
- (b) either—
 - (i) that evidence is not likely to be material evidence; or
 - (ii) even if it is, his duties or rights (including rights of confidentiality) or those of the witness outweigh the reasons for the issue of the witness summons.

(5) An application under this rule—

- (a) must be made in writing to the court administration officer;
- (b) must be made as soon as is practicable after the applicant becomes aware of the grounds for making it; and
- (c) must state the grounds on which it is made.

(6) An application under this rule must be served on—

- (a) the witness (where he is not the applicant);
- (b) the party who applied for the witness summons (where he is not the applicant); and
- (c) any other person who, to the applicant's knowledge, has been served with the application for the witness summons.

(7) Where—

- (a) a witness summons requires the proposed witness to produce in evidence a document or other thing, and

(b) a person other than the party who applied for the witness summons makes an application under this rule,
rule 51(2) and (3) apply, with references to “the objection” read as references to the matters mentioned in paragraph (3)(b) or (4)(b) (as the case may be).

Oral applications

54.—(1) Where a rule or direction requires an application under this Part to be in writing, the application may be made orally with the leave of the judge advocate.

(2) A party who seeks leave to make such an application orally must—

- (a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and
- (b) in doing so, explain the reasons for—
 - (i) the application; and
 - (ii) seeking leave to make the application orally.

Further process to secure attendance of witness

55.—(1) If the judge advocate is satisfied by evidence on oath that—

- (a) a person is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,
- (b) that it is in the interests of justice that the person should attend to give evidence or to produce the document or thing, and
- (c) it is probable that a witness summons issued under rule 50 or 52 would not procure his attendance,

the judge advocate may, instead of issuing a witness summons, issue a warrant to arrest that person and bring him before the court.

(2) Where—

- (a) any person has failed to attend before the court in answer to a witness summons issued under rule 50 or 52,
- (b) the judge advocate is satisfied by evidence on oath that—
 - (i) the person is likely to be able to give evidence likely to be material evidence or produce any document or other thing likely to be material evidence in the proceedings, and
 - (ii) the person has been duly served with the witness summons and that a reasonable sum has been paid or tendered to him for costs and expenses, and
- (c) it appears to the judge advocate that there is no just excuse for the person’s failure to attend,

the judge advocate may issue a warrant to arrest the person and bring him before the court.

(3) Subject to paragraph (4), a warrant issued under this rule shall be addressed to—

- (a) one or more service policemen; or
- (b) one or more officers of a civilian police force.

(4) A warrant issued under this rule may not be addressed to a service policeman unless it appears to the judge advocate that the person for whose arrest it is issued is subject to service law or is a civilian subject to service discipline.

(5) Where a person has been arrested by an officer of a civilian police force under a warrant issued under this rule, he must be transferred to service custody as soon as is practicable.

(6) Where a person has been arrested under a warrant issued under this rule and is in service custody—

- (a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court; and
- (b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released.

Review of custody of witness

56.—(1) Paragraphs (2) to (5) apply where—

- (a) a person is brought before a judge advocate under rule 55(6); or
- (b) the keeping of a person in service custody has been authorised by an order under paragraph (2) and he is brought before a judge advocate before the expiry of the period for which it was so authorised.

(2) The judge advocate may by order authorise the keeping (or further keeping) of the person in service custody if he is satisfied that there are substantial grounds for believing that, if released from service custody, the person would fail to attend the court as required.

(3) The period for which the judge advocate may, by an order under paragraph (2), authorise the keeping of the person in service custody is such period, ending not later than 8 days after the day on which the order is made, as he considers appropriate in all the circumstances.

(4) If the judge advocate makes no order under paragraph (2), the person must be released from service custody without delay; but this is subject to paragraph (5).

(5) The judge advocate may require the person to comply, before release or later, with such requirements as appear necessary to secure his attendance before the court.

(6) Where the keeping of the person in service custody is authorised by an order under paragraph (2), he must be released on the expiry of the period for which it was so authorised unless a judge advocate has made a further order under that paragraph.

(7) Any requirement imposed by virtue of paragraph (5) may be varied or discharged by a judge advocate on application by the person or the Director.

(8) Section 107(5) shall apply in relation to a requirement imposed by virtue of paragraph (5) as it applies in relation to a requirement imposed by virtue of section 107(3)(a).

(9) A person guilty of an offence under section 107(5) by virtue of paragraph (8) shall be liable to a fine not exceeding level 4 on the standard scale.

Entitlement to witness expenses

57.—(1) Where any person is—

- (a) notified under rule 49 of the requirement to give evidence in any proceedings, or
- (b) served with a witness summons issued under rule 50 or 52,

there shall be paid or tendered to him at that time any expenses in respect of his attendance.

(2) For the purpose of this rule—

- (a) the tender of a warrant or voucher entitling a 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 to defray any other expenses payable under these Rules shall constitute tender in respect of those expenses.

PART 11
EVIDENCE
CHAPTER 1
General

Application and interpretation of Part 11

58. The provisions of this Part apply in relation to any proceedings in which an issue of fact falls to be determined, unless otherwise stated.

Rules of evidence

59.—(1) The rules of evidence applicable in a trial on indictment in England and Wales shall apply, to the extent that they—

- (a) are capable of applying; and
- (b) are not applied, with or without modifications, by any other enactment or subordinate legislation (whenever passed or made).

(2) In this rule, “rules of evidence” includes rules conferring or restricting any discretion to exclude admissible evidence.

(3) No person may be required—

- (a) to answer any question which he could not be required to answer in a trial on indictment in England and Wales; or
- (b) to produce any document which he could not be required to produce in such a trial.

(4) The court may take judicial notice of—

- (a) matters of which judicial notice could be taken in a trial on indictment in England and Wales; and
- (b) matters within the general service knowledge of the court.

Oral testimony to be given on oath

60.—(1) Oral testimony shall be given on oath.

(2) This rule is subject to section 5 of the Oaths Act 1978 (affirmation);

Proof by written statement

61.—(1) Without prejudice to rule 59, section 9 of the 1967 Act (proof by written statement) shall apply, as modified by paragraph (2), in relation to a statement made—

- (a) in the United Kingdom by any person, or
- (b) outside the United Kingdom by a person subject to service law or a civilian subject to service discipline,

as it applies in criminal proceedings in relation to a statement made in the United Kingdom.

(2) In its application by virtue of this rule, section 9 of the 1967 Act shall have effect as if—

- (a) subsection (2)(c) required service of the statement on the court administration officer (as well as each of the other parties to the proceedings);
- (b) in subsection (2)(d), the reference to the parties’ solicitors were to their legal representatives;
- (c) subsections (5) and (8) were omitted; and
- (d) in subsection (6), the references to the court were to the judge advocate.

(3) An application to the court under section 9(4)(b) of the 1967 Act—

- (a) may be made in preliminary proceedings; and
- (b) if made in appeal proceedings, shall be determined by the judge advocate.

(4) Section 89 of the 1967 Act (offence of making a false statement tendered in evidence) shall apply in relation to a statement tendered in evidence in proceedings of the court by virtue of section 9 of that Act, wherever made, as it applies in relation to a statement tendered in evidence in criminal proceedings by virtue of that section.

Proof by formal admission

62.—(1) Without prejudice to rule 59, section 10 of the 1967 Act (proof by formal admission) shall apply, as modified by paragraph (2), as it applies in relation to criminal proceedings.

- (2) In its application by virtue of this rule, section 10 of the 1967 Act shall have effect as if—
 - (a) in subsection (1), the reference to the prosecutor were to the Director; and
 - (b) in subsection (2), references to an appellant’s counsel or solicitor were to his legal representative.

Use of documents to refresh memory

63.—(1) A person giving oral evidence about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if—

- (a) he states in his oral evidence that the document records his recollection of that matter at that earlier time; and
- (b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.

(2) Where—

- (a) a person giving oral evidence about any matter has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at that time,
- (b) his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence, and
- (c) a transcript has been made of the sound recording,

he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

CHAPTER 2

Evidence of bad character

Notice of intention to adduce evidence of an appellant’s bad character

64.—(1) Where, in appeal proceedings—

- (a) the Director intends to adduce evidence of an appellant’s bad character, or
- (b) an appellant intends to adduce evidence of another appellant’s bad character, or to cross-examine a witness with a view to eliciting such evidence,

he must serve on the court administration officer and all other parties to the proceedings a notice of that intention.

(2) A notice under this rule—

- (a) must describe the misconduct to which the evidence relates;
- (b) must state what evidence of the misconduct the party serving the notice intends to adduce or elicit;
- (c) if served by the Director, must identify any witness whom he intends to call about the misconduct; and

- (d) identify the paragraph or paragraphs of section 101(1) of the 2003 Act which the party serving the notice asserts to be applicable to the evidence.
- (3) If served by the Director, a notice under this rule must be served not more than 14 days after the Director serves advance information in respect of the appeal to which the evidence relates.
- (4) If served by an appellant, a notice under this rule must be served not more than 14 days after—
 - (a) the date on which the Director complies or purports to comply with article 4 of the CPIA Order; or,
 - (b) if later, the date on which the Director discloses to the appellant the previous convictions of the co-appellant to whose misconduct the notice relates.
- (5) If it is not reasonably practicable to serve a notice under this rule within the time prescribed by paragraph (3) or (4) (as the case may be), the notice must be served as soon as it is reasonably practicable to do so.
- (6) The court may dispense with the requirement to serve a notice under this rule if satisfied that no injustice would result.

Application to exclude evidence of an appellant's bad character

65.—(1) An application under section 101(3) of the 2003 Act to exclude evidence of an appellant's bad character in appeal proceedings must be made in writing to the court administration officer and served on all other parties to the proceedings, unless a judge advocate gives leave for the application to be made orally.

- (2) If made in writing, the application—
 - (a) must state whether a notice under rule 64 has been served on the applicant in relation to the evidence, and if so on what date; and
 - (b) must be made and served not more than 14 days after that date (if any), unless paragraph (3) applies.
- (3) Where—
 - (a) the court dispenses with the requirement to serve a notice under rule 64, or
 - (b) such a notice is served but it is not reasonably practicable to make the application within 14 days of the service of the notice,the application must be made as soon as is reasonably practicable.

Application for leave to adduce evidence of the bad character of a non-appellant

66.—(1) An application for leave to give evidence in appeal proceedings of the bad character of a person other than an appellant must be made in writing to the court administration officer and served on all other parties to the proceedings, unless a judge advocate gives leave for the application to be made orally.

- (2) If made in writing, such an application—
 - (a) must describe the misconduct to which the evidence relates;
 - (b) must state what evidence of the misconduct the applicant seeks to adduce or elicit;
 - (c) if made by the Director, must identify any witness whom he intends to call about the misconduct; and
 - (d) must state the grounds on which the applicant asserts that the evidence is admissible.
- (3) If made by the Director, an application under this rule must be made not more than 14 days after the Director serves advance information in respect of the appeal to which the evidence relates.
- (4) If made by an appellant, an application under this rule must be made not more than 14 days after—

- (a) the date on which the Director complies or purports to comply with article 4 of the CPIA Order; or,
- (b) if later, the date on which the Director discloses to the appellant the previous convictions of the person to whose misconduct the application relates.

(5) If it is not reasonably practicable to make an application under this rule within the time prescribed by paragraph (3) or (4) (as the case may be), the application must be made as soon as it is reasonably practicable to do so.

CHAPTER 3

Hearsay evidence

Notice of intention to adduce hearsay evidence

67.—(1) Where a party to appeal proceedings proposes to adduce a hearsay statement, or (in the case of an appellant) to cross-examine a witness with a view to eliciting evidence of such a statement, on the basis that the statement is admissible by virtue of—

- (a) section 114(1)(d) of the 2003 Act (interests of justice),
- (b) section 116 of that Act (maker of statement unavailable to give oral evidence), or
- (c) section 117 of that Act (statement contained in a document),

he must serve on the court administration officer and all other parties to the proceedings a notice to that effect.

(2) A notice under this rule—

- (a) must give details of the statement that the party serving the notice proposes to tender in evidence;
- (b) where the statement is contained in a document which has not already been served on all the other parties, must include a copy of the document;
- (c) where the notice is served by the Director and oral evidence of the statement is to be given, must identify any witness who is to give it;
- (d) must specify whether the party serving the notice proposes to tender the statement by virtue of section 114(1)(d), 116 or 117 of the 2003 Act;
- (e) where he proposes to tender the statement by virtue of section 114(1)(d) of that Act, must specify which of the factors mentioned in section 114(2) of that Act he considers to be relevant, and how they are relevant; and
- (f) where the statement is evidence that an earlier hearsay statement was made, must specify whether he proposes to tender it by virtue of section 121(1)(a), (b) or (c) of that Act.

(3) Where a notice under this rule is served by the Director, it must be served not more than 14 days after the Director serves advance information in respect of the appeal to which the evidence relates.

(4) Where a notice under this rule is served by an appellant, it must be served not more than 14 days after the Director complies or purports to comply with article 4 of the CPIA Order.

(5) Where—

- (a) a notice has been served under this rule in relation to a hearsay statement, and
- (b) no counter-notice has been served in accordance with rule 68 in relation to the statement,

the statement is to be treated as admissible by agreement of the parties.

(6) In this rule “hearsay statement” means a statement which—

- (a) is not made in oral evidence in the proceedings; and
- (b) is relied on as evidence of a matter stated in it.

Counter-notice objecting to the admission of hearsay evidence

68.—(1) Where a party serves a notice under rule 67 in relation to a statement, any other party may serve a counter-notice objecting to the admission of the statement.

(2) A counter-notice served under this rule must state—

- (a) the date on which the party serving it was served with the notice under rule 67;
- (b) whether he objects to the admission of the whole or only part of the statement, and if only part which part; and
- (c) the grounds on which he so objects.

(3) A counter-notice served under this rule must be served on the court administration officer and all other parties to the proceedings not more than 14 days after service of the notice under rule 67.

CHAPTER 4

Evidence of service matters

Evidence of enlistment

69.—(1) A document purporting to be an enlistment paper used to enlist a person in accordance with regulations made under section 328 shall be evidence that—

- (a) that person was enlisted, on the date on which the declaration in the enlistment paper purports to have been signed by him, and on the terms set out in the document; and
- (b) anything recorded in the document as the answer given by him to a question in the document was given by him in answer to that question when it was put to him by or on the direction of the recruiting officer who enlisted him.

(2) A document purporting to be a copy of such a document as is mentioned in paragraph (1) and purporting to be certified to be a true copy by a person stated in the certificate to have custody of the document shall be evidence of the matters mentioned in sub-paragraphs (a) and (b) of that paragraph.

Evidence as to service etc

70. A document stating that a person—

- (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces,
- (b) was discharged from any of Her Majesty's forces at or before any specified time,
- (c) held or did not hold at any specified time any specified rank, rate or appointment in any of Her Majesty's forces,
- (d) had at or before any specified time been attached, posted or transferred to any part of Her Majesty's forces,
- (e) at any specified time or during any specified period was or was not serving or held or did not hold any rank, rate or appointment in any particular country or place, or
- (f) was or was not at any specified time authorised to use or wear any decoration, badge or emblem,

shall, if it purports to be issued by or on behalf of the Defence Council or by a person authorised by them, be evidence of the matters stated in the document.

Service records

71.—(1) A record purporting to be—

- (a) made in any service record in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of naval, military, or air force duty, and

(b) signed by the commanding officer of the person to whom the record relates or by a person whose duty it was to make or keep the record,
shall be evidence of the matters stated in the record.

(2) A document purporting to be a copy of such a record (including the signature) as is mentioned in paragraph (1) and purporting to be certified to be a true copy by a person stated in the certificate to have custody of the record shall be evidence of the matters stated in the document.

Defence Council instructions, regulations and certificates

72.—(1) A document purporting to be issued by order of the Defence Council and to contain instructions or regulations given or made by the Defence Council shall be evidence of the giving of the instructions or the making of the regulations and their contents.

(2) A certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by them and stating—

- (a) that a decoration of a description specified in, or as annexed to, the certificate is or is not a naval, military or air force decoration, or
- (b) that a badge or emblem of a description specified in, or as annexed to, the certificate is or is not one supplied or authorised by the Defence Council,

shall be evidence of the matters stated in the certificate.

Standing or routine orders

73. A certificate purporting to be signed by a person's commanding officer or an officer authorised by the commanding officer to give the certificate, and stating the contents of, or of any part of, standing orders, or other routine orders of a continuing nature, of any of Her Majesty's forces, made for—

- (a) any part of Her Majesty's forces,
- (b) any area or place, or
- (c) any ship, train or aircraft,

shall be evidence of the matters stated in the certificate.

CHAPTER 5

Expert evidence

Expert evidence

74.—(1) Expert evidence shall not be adduced 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 commencement of the proceedings, a statement of the substance of the expert evidence.

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

(3) Where more than one party wishes to introduce expert evidence, the judge advocate may direct the experts to—

- (a) discuss the expert issues in the proceedings; and
- (b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.

(4) Except for the statement prepared under paragraph (3)(b), the content of the discussion under paragraph (3)(a) may not be referred to without the judge advocate's permission.

(5) Where more than one appellant wishes to introduce expert evidence on an issue, the judge advocate may direct that the evidence on that issue is to be given by one expert only.

(6) Where the appellants cannot agree who should be the expert to give evidence under paragraph (5), the judge advocate may—

- (a) select the expert from a list prepared or identified by them; or
- (b) direct that the expert be selected in such other manner as the judge advocate shall direct.

(7) Where the judge advocate gives a direction under paragraph (5) for a single joint expert to be used, each of the appellants may give instructions to the expert.

(8) When an appellant gives instructions to an expert under paragraph (7) he must, at the same time, send a copy of the instructions to every other appellant.

(9) Where—

- (a) a statement has been prepared for the purposes of proceedings, and
- (b) the person who prepared the statement had, or may reasonably be supposed to have had, personal knowledge of the matters stated,

a statement served under paragraph (1) may be accompanied by a notice, given for the purposes of section 127 of the 2003 Act (expert evidence: preparatory work), that another person will in evidence given in the proceedings (whether orally or under section 9 of the 1967 Act, as applied by rule 61) base an opinion or inference on the statement.

PART 12

HEARING OF AN APPEAL: PROCEDURE

CHAPTER 1

APPEAL AGAINST FINDING

Address to the court

75.—(1) If the appeal is an appeal against finding, and without prejudice to paragraphs (3) and (4), the Director and the appellant may each address the court once with respect to the case against the appellant on the charges being heard by the court.

(2) For the purposes of paragraph (1)—

- (a) the Director shall address the court immediately before adducing any evidence; and
- (b) the appellant shall address the court immediately after the close of his own case or, where there is more than one appellant, after the close of the case for all of the appellants.

(3) The Director or appellant may with the leave of the court address it at any time during the hearing on any matter relating to the appeal or the charges which are being heard by the court.

(4) The court shall not exercise its powers under section 147(1)(b) to substitute another finding without affording the appellant and the Director the opportunity to address it on the exercise of those powers in the particular case.

Provisions which are to apply when there are two or more appellants

76.—(1) This rule shall apply when the court has, in accordance with rule 48, decided to hear appeals by more than one appellant at the same time.

(2) The respondent's case on each of the charges before the court shall be put before the case of any of the appellants, and the Director may make only one address in pursuance of rule 75(1).

(3) Before the opening of the respondent's case, the judge advocate shall decide the order which the appellants are to put their case and to address the court in pursuance of rule 75(1).

(4) Where the same legal representative represents two or more appellants, he may make only one address to the court in pursuance of rule 75(1).

(5) The court shall not close to deliberate on its findings until the close of the case for each of the appellants and each of the appellants have had the opportunity to address the court in pursuance of rule 75(1).

Examination of witnesses

77.—(1) The judge advocate may question any witness, or put to the witness a question from a lay member.

- (2) If it appears to the judge advocate to be in the interests of justice, the court may—
- (a) allow the cross-examination or re-examination of a witness to be postponed;
 - (b) call any witness whom it has not already heard;
 - (c) recall a witness;
 - (d) permit any party to recall a witness;
 - (e) permit the Director to call a witness after the close of the case for the respondent; or
 - (f) permit an appellant to give evidence after calling another witness.

Presence of witnesses

78.—(1) Except for an appellant 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 his presence undesirable.

(4) For the purposes of this rule a witness is in court if he is able to see and hear the court through a live link.

Submission of no case to answer

79.—(1) At the close of the case for the respondent an appellant may submit, in respect of any charge, that the Director has failed to establish a case for him to answer.

(2) Without prejudice to the generality of rule 40, the judge advocate shall hear and rule on such a submission in the absence of the lay members.

(3) If such a submission is allowed, the judge advocate shall direct the court to quash the finding.

The case for the appellant

80. Subject to rule 77(2), where an appellant gives evidence, he must do so before calling any other witness.

Finding for the appellant before conclusion of the case for the appellant

81.—(1) At any time after the close of the case for the respondent, the court may find an appellant not guilty on a charge.

(2) The court may not make a finding under this rule before the summing-up unless the judge advocate has invited the Director to address the court as to whether such a finding should be made.

Announcement of findings

82. The finding of the court shall be announced by the judge advocate.

CHAPTER 2
APPEAL AGAINST PUNISHMENT

Application and interpretation of this Chapter

83. This Chapter applies in relation to—

- (a) any proceedings where the court has upheld a finding that a charge has been proved;
- (b) any proceedings where the court has exercised its power under section 147(1)(b) to substitute for the finding concerned a finding that another charge has been proved; or
- (c) an appeal against punishment.

Dispute on facts

84.—(1) In the case of an appeal against punishment, where there are disputed facts in the case, the judge advocate may direct that any issue of fact be tried by the court.

(2) The finding of the court on any such issue shall be determined by a majority of the votes of the members of the court.

(3) The finding of the court shall be announced by the judge advocate.

Pre-sentence report and previous convictions

85.—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the proceedings, he shall serve a copy on the Director and the appellant before the time appointed for the proceedings.

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

Information before punishment

86.—(1) Where—

- (a) the proceedings are an appeal against punishment, or
- (b) previous sentencing proceedings in respect of the appellant were terminated,

the Director shall address the court on the facts of the case.

(2) Where practicable, the Director shall inform the court of—

- (a) the appellant's age and rank or rate;
- (b) the appellant's service record;
- (c) any recognised acts of gallantry or distinguished conduct on the part of the appellant, and any decoration to which he is entitled;
- (d) any previous convictions of the appellant for—
 - (i) service offences,
 - (ii) offences under the law of any part of the United Kingdom, or
 - (iii) relevant offences under the law of another member State,

any sentence awarded in respect of any such offence, and whether any such conviction is spent for the purposes of the Rehabilitation of Offenders Act 1974(a);

(a) 1974 c. 53. Sections 2 and 6 of the Rehabilitation of Offenders Act 1974 were amended, and the Schedule inserted, by the Armed Forces Act 1996 (c. 46), section 13 and Schedule 4. Sections 1, 2 and 5, and the Schedule, were further amended by paragraphs 63 to 66 of Schedule 16 to the Act.

- (e) any formal police caution administered to the offender by a constable in England and Wales or Northern Ireland;
- (f) the appellant’s pay, terminal benefits and future pension entitlements;
- (g) whether the commanding officer had extended powers for the purposes of sections 133(1)(a) or (2), 134(1), 135(1) or 136(1)(b); and
- (h) the punishment awarded by the commanding officer.

(3) For the purposes of paragraph (2)(d) an offence is “relevant” if the act that constituted the offence would have constituted an offence under the law of any part of the United Kingdom if it had been done in that part at the time when the Director presents information to the court under this rule.

(4) Where the commanding officer made an activation order under section 193(3) (activation of a suspended sentence of service detention) the Director shall inform the court of that fact, of the previous offence by virtue of which the commanding officer had that power, and of the punishment awarded for that offence.

(5) Where the offender is not subject to service law but has formerly been so subject, paragraph (2) has effect as if—

- (a) for the words “and rank or rate” in sub-paragraph (a) there were substituted “and his rank or rate when he last ceased to be subject to service law”; and
- (b) before the word “pay” in sub-paragraph (f) there were inserted “employment,”.

Mitigation of punishment

87. The appellant may—

- (a) call witnesses in mitigation of punishment or as to his character;
- (b) produce to the court any document; and
- (c) address the court in mitigation of punishment.

Pronouncement of punishment

88.—(1) The punishment shall be recorded in writing, dated and signed by the judge advocate.

(2) The judge advocate shall pronounce punishment and make the statement of reasons, and give the explanation, required by section 252(1).

(3) In this rule “punishment” has the same meaning as “sentence” in section 252.

PART 13

ANCILLARY PROCEEDINGS

Certification of contempt of court

89.—(1) The court’s powers under section 311(2) (certification of contempt of court) may be exercised only at a hearing under this rule.

(2) If so directed by a judge advocate, the court administration officer shall—

- (a) appoint a time and place for a hearing under this rule; and
- (b) notify the contemnor and the Director of the time and place so appointed.

(3) The contemnor and the Director are entitled to be heard at the hearing.

(4) The contemnor need not attend the hearing, but the court may exercise its powers under section 311(2) in his absence.

(5) In this rule—

“the contemnor” means the person whose offence the court is to consider certifying; and

“offence” has the same meaning as in section 311.

PART 14

RESTRICTIONS ON PUBLIC ACCESS AND REPORTING

Proceedings in camera

90.—(1) A judge advocate may order that any proceedings, or any part of any proceedings, be held in camera, if satisfied that the order is necessary or expedient in the interests of the administration of justice.

(2) Without prejudice to the generality of paragraph (1), a judge advocate may conclude that it is necessary or expedient in the interests of the administration of justice to make an order under this rule on the ground that, if no order were made, the Director would be—

- (a) likely to abandon the proceedings, or
- (b) unlikely to contest comparable proceedings in future,

for fear that information useful to an enemy might be disclosed, or national security endangered.

(3) An order under this rule may be made only on oral application by a party to the proceedings, and such an application shall be made in camera unless the judge advocate otherwise directs.

(4) Section 145 (open court) shall not apply in relation to—

- (a) any proceedings, or any part of any proceedings, as respects which an order under this rule has been made; or
- (b) unless the judge advocate hearing the application otherwise directs, the hearing of an application for such an order.

Withholding of matter from the public in proceedings before the court

91. The court may give leave for any name or other matter given in evidence in proceedings to be withheld from the public.

PART 15

APPLICATION TO THE COURT TO STATE A CASE

Application for case to be stated

92.—(1) An application under section 149(2) to the court to have a case stated for the opinion of the High Court shall be made in writing and shall be served on the court administration officer and the appellant or the Director, as the case may be, within 21 days of the date of the decision in respect of which the application is made.

(2) The application shall state the grounds on which the decision of the court is questioned.

(3) On receipt of the application, the court administration officer shall as soon as practicable send it to the judge advocate who presided over the proceedings to which the application relates.

(4) Within 14 days of receipt of the application, the judge advocate shall inform the court administration officer as to whether or not he has decided to state a case and that officer shall give notice in writing to the applicant of the judge advocate’s decision.

(5) If the judge advocate considers that the application is frivolous, he may refuse to state a case and shall in that case, if the applicant so requires, cause a certificate stating the reasons for the refusal to be given to him.

Procedure on stating a case

93.—(1) If the judge advocate decides to state a case the procedure to be followed shall, unless the judge advocate directs otherwise, be the procedure set out in the following provisions of this rule.

(2) The applicant shall, within 21 days of receiving the notice referred to in rule 92(4), draft a case and serve a copy of it on the court administration officer and the appellant or the Director, as the case may be.

(3) The appellant or the Director, as the case may be, shall, within 21 days of receiving a copy of the draft case under paragraph (2), either—

- (a) give notice in writing to the applicant and the court administration officer that he does not intend to take part in the proceedings before the High Court; or
- (b) indicate in writing on the copy of the draft case that he agrees with it and send the copy to the court administration officer; or
- (c) draft an alternative case and serve it, together with a copy of the applicant’s case, on the court administration officer.

(4) The judge advocate shall consider the applicant’s draft case and any alternative draft case served on the court administration officer in accordance with paragraph (3)(c).

(5) The function of the court in stating a case under section 149(2) shall be exercised by the judge advocate sitting alone.

(6) The judge advocate shall state and sign a case within 14 days after either—

- (a) the date on which he receives all the documents required to be served on the court administration officer under paragraph (3), or
- (b) the expiration of the period of 21 days referred to in that paragraph,

whichever is the sooner.

Supplementary provisions relating to stating a case

94.—(1) A case stated by the court shall state the facts found by the court, the submissions of the parties (including any authorities relied on by the parties during the course of those submissions), the decision of the court in respect of which the application is made and the question on which the opinion of the High Court is sought.

(2) Any time limit referred to in this Part may be extended by the judge advocate either before or after it expires.

(3) If the judge advocate decides not to state a case but the stating of a case is subsequently required by the High Court by mandatory order, rule 93 shall apply to the stating of the case save that—

- (a) in paragraph (1), the words “If the judge advocate decides to state a case” shall be omitted; and
- (b) in paragraph (2) for the words “receiving the notice referred to in rule 92(4)” there shall be substituted the words “the day on which the mandatory order was made”.

PART 16
TRANSITORY AND TRANSITIONAL PROVISIONS

Transitory provisions

95. Until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005(a) comes into force, the reference in rule 41(2)(c) to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland.

Transitional

96. Schedule 2 shall have effect.

PART 17
REVOCATIONS

Revocations

97. The Summary Appeal Courts (Amendment) Rules 2005(b) are hereby revoked.

7th May 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

SCHEDULE 1 Rule 28(3)

OATHS AND AFFIRMATIONS

The words prescribed are—

- (a) for lay members “... I will well and truly try the appellant before the court according to the evidence; I will duly administer justice according to law and without partiality, favour or affection; and I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the Summary Appeal Court, unless required to do so in due course of law”;
- (b) for persons in attendance for instruction, “... I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the Summary Appeal Court, unless required to do so in due course of law”;
- (c) for witnesses, “... the evidence I shall give shall be the truth, the whole truth, and nothing but the truth”; and

(a) 2005 c. 4.

(b) S.I. 2005/1536: these Rules were made under section 83ZJ of the Army Act 1955 (c. 18), section 83ZJ of the Air Force Act 1955 (c. 19), section 52FP of the Naval Discipline Act 1957 (c. 53) and sections 111 and 132 of the Criminal Justice Act 2003.

- (d) for interpreters, "... 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".

SCHEDULE 2

Rule 96

TRANSITIONAL PROVISIONS

PART 1

GENERAL

Interpretation

1. In this Schedule—

“AA 1955” means the Army Act 1955(a);

“AFA 1955” means the Air Force Act 1955(b);

“2000 Rules” means the RN Rules, the Army Rules and the RAF Rules (or any of them);

“the Army Rules” means the Summary Appeal Court (Army) Rules 2000(c);

“commencement” means the date on which these Rules come into force;

“NDA 1957” means the Naval Discipline Act 1957(d);

“the RAF Rules” means the Summary Appeal Court (Air Force) Rules 2000(e);

“the RN Rules” means the Summary Appeal Court (Navy) Rules 2000(f);

“the SAC” means the summary appeal court established by section 52FF(1) of NDA 1957 or section 83ZA(1) of AA 1955 or AFA 1955;

“the SDAs” means AA 1955, AFA 1955 and NDA 1957;

“SDA offence” means any of the following—

- (a) any offence under Part 2 of AA 1955 or AFA 1955;
- (b) any offence under Part 1 of NDA 1957;
- (c) an offence under section 47K of that Act.

Record of Summary Appeal Court proceedings

2.—(1) Rule 30(5) to (8) shall apply in relation to the record of—

- (a) the proceedings of the SAC, and
- (b) a preliminary hearing,

with the following modifications.

(2) In paragraph (5)—

- (a) the reference to exhibits retained under rule 31 is to be read as a reference to exhibits retained under rule 50(3) of the 2000 Rules; and

-
- (a) 1955 c. 18.
 - (b) 1955 c. 19.
 - (c) S.I. 2000/2371.
 - (d) 1957 c. 53.
 - (e) S.I. 2000/2372.
 - (f) S.I. 2000/2370.

- (b) the reference to the court administration officer is to be read as a reference to the court administration officer within the meaning of AA 1955, AFA 1955 or NDA 1957 (as the case may be).

(3) Paragraph (5) shall have effect as if for sub-paragraphs (a) to (c) there were substituted “the conclusion of the proceedings of the SAC (or, in relation to the record of a preliminary hearing which was not followed by proceedings of a SAC, the conclusion of the last preliminary hearing in the appeal)”.

(4) In paragraph (7)—

- (a) references to proceedings (or part of proceedings) held in camera include a preliminary hearing (or part of such a hearing) where rule 36(1) of the 2000 Rules applies; and
- (b) the reference to proceedings in relation to which a direction under rule 45 was given is to be read as a reference to proceedings where the an order under rule 5(1) of the 2000 Rules has been made or a preliminary hearing held under rule 34 of the 2000 Rules.

Persons ineligible for membership in particular circumstances

3. In rule 36(2), the reference to any previous proceedings includes proceedings under any of the SDAs and “Court Martial” is to be read as “a court-martial convened under the SDAs”.

PART 2

STEPS TAKEN BEFORE COMMENCEMENT

Service of documents

4. Any document served on a person before commencement, which would have been served on him in accordance with any provision of these Rules if that provision had then been in force, is to be treated as having been served on him in accordance with that provision.

Court administration officers

5. Anything done before commencement by a court administration officer within the meaning of any of the SDAs, which would have been done in accordance with any provision of these Rules if it had been done by the court administration officer within the meaning of the Act and that provision had then been in force, is to be treated as having been done by the court administration officer in accordance with that provision.

Prosecuting officers

6. Anything done before commencement by—

- (a) the prosecuting authority for the Royal Navy, the Army or the Royal Air Force, or
- (b) a prosecuting officer (within the meaning of any of the SDAs),

which would have been done in accordance with any provision of these Rules if it had been done by the Director and that provision had then been in force, is to be treated for the purpose of these Rules as having been done by the Director in accordance with that provision.

Legal representatives

7.—(1) Anything done before commencement by a person’s legal advisor within the meaning of 2000 Rules, which would have been done in accordance with any provision of these Rules if it had been done by the person’s legal representative within the meaning of these Rules and that provision had then been in force, is to be treated for the purpose of these Rules as having been done by the person’s legal representative in accordance with that provision.

(2) A person who, immediately before commencement, was a person's legal advisor (within the meaning of the 2000 Rules) is to be treated as having been appointed under rule 41.

Appeal or application to be treated as made in accordance with these Rules

8. Where, before commencement, an—

- (a) appeal has been made in accordance with rule 8 of the 2000 Rules,
- (b) application for leave to extend time for appealing and for leave to bring an appeal out of time has been made in accordance with rule 9 of the 2000 Rules, or
- (c) application by the authority carrying out a review for leave to refer a case to the summary appeal court has been made in accordance with rule 12 of the 2000 Rules,

and that application or appeal has not been determined, the application or appeal is to be regarded for the purposes of these Rules as having been made in accordance with these Rules.

Directions etc

9.—(1) A direction, order or ruling given or made in a preliminary hearing by the judge advocate (within the meaning of 2000 Rules) has effect in related proceedings as if made in preliminary proceedings by the judge advocate for those proceedings.

(2) Proceedings are “related proceedings” in relation to a preliminary hearing if, had the hearing been preliminary proceedings, they would have been related proceedings in relation to those proceedings.

(3) A summons issued under 2000 Rules shall have effect as if issued under these Rules.

PART 3

EVIDENCE

Proof by written statement

10. The reference in rule 61(1)(b) to a person subject to service law or a civilian subject to service discipline is to be read, in relation to a statement made before commencement, as a reference to a person who at the time of making the statement was a person mentioned in section 99A(2)(b) of AA 1955.

Evidence of enlistment or entry for service

11.—(1) In rule 69, references to an enlistment paper used to enlist a person in accordance with regulations made under section 328 include—

- (a) an attestation paper within the meaning of AA 1955 or AFA 1955; and
- (b) a copy of Royal Navy Form S3049 (Notice Form for Entry/Re-Entry into Naval Service) signed by a person on being entered for service in the Royal Navy.

(2) In relation to a document purporting to be a copy of Royal Navy Form S3049, rule 69(1)(a) has effect as if for the word “enlisted” there were substituted “entered for service”.

(3) In rule 69(1)(b) the reference to a recruiting officer includes a recruiting officer within the meaning of Part 1 of AA 1955 or AFA 1955.

Documents signed by or on behalf of a person's commanding officer

12. In relation to a record or certificate purporting to have been signed before commencement, references in rules 71 and 73 to a person's commanding officer are to be read as references to his commanding officer within the meaning of Part 2 of the Armed Forces Act 2001(a).

PART 4
PUNISHMENT

SDA offences

13. In rule 86(2)(d), references to service offences include SDA offences.

(a) 2001 c. 19.

EXPLANATORY NOTE

(This note is not part of the Rules)

The Armed Forces Act 2006 (c. 52) (“the Act”) creates a standing Summary Appeal Court. These Rules provide for the practice and procedure to be followed at the Summary Appeal Court, administrative matters of the court and also make provision with regard to evidential matters such as bad character and hearsay evidence.

Part 2 of these Rules makes provision with regard to the service of documents on different people and sets out when service is deemed to have occurred depending upon the method of service.

Part 3 deals with the procedure for bringing an appeal. Chapter 1 makes provision for the service of an appeal notice and for applications to extend the period in which to appeal or to appeal out of time (rule 16). Chapter 2 sets out the procedure for a reviewing authority to notify the court of new matters or to refer a finding or punishment to the court as on appeal under section 152 of the Act. Chapter 3 makes provision for the quashing of findings on uncontested appeals.

Part 4 deals with administrative matters including listing and notification of proceedings (rules 23), providing that a judge advocate may direct attendance at court by live link (rule 25) and the making and retention of records of proceedings (rule 30). Rule 28 provides that oaths taken at the Summary Appeal Court are to be the same as those in sections 1 to 3 and 6 of the Oaths Act 1978 (c. 19) as modified by Schedule 1 to these Rules. Rule 32 sets out the circumstances in which a judge advocate must terminate proceedings.

Part 5 deals with court membership including when a judge advocate is to sit alone (rule 34) and details those persons ineligible for membership of the court (rule 36).

Part 6 sets out who may be a legal representative at court (rule 41).

Part 7 provides for service of advance information.

Part 8 makes provision with regard to preliminary hearings including the power of a judge advocate to make orders or rulings on matters such as the admissibility of evidence and other questions of law, practice or procedure (rule 47).

Part 9 provides for the joinder appeals.

Part 10 is concerned with the attendance of witnesses at court and provides for matters such as the notification of witnesses (rule 49), summoning of witnesses (rules 50 to 54) and the powers of a judge advocate to issue warrants for the arrest of witnesses in order to secure their attendance at court (rule 55).

Part 11 deals with evidence and applies provisions that operate in the civilian courts. This part is divided into chapters that in their turn deal with: general evidential matters (chapter 1) (applying provisions of the Criminal Justice Act 1967 (c. 80) to the Summary Appeal Court); evidence of bad character (chapter 2) (applying provisions of the Criminal Justice Act 2003 (c. 44) to the Summary Appeal Court); hearsay evidence (chapter 3) (applying further provisions of the 2003 Act to the court); evidence of service matters (chapter 4) (which is equivalent to provisions made under section 372 of the Act for civilian courts); and expert evidence (chapter 5).

Part 12 sets out the procedure to be followed at an appeal hearing.

Part 13 is concerned with ancillary proceedings when the court decides to exercise its powers under section 311(2) of the Act and certify a person for contempt of court (rule 89).

Part 14 sets out the power of a judge advocate to order that proceedings are held in camera, including on the bases that otherwise information useful to an enemy may be disclosed or national security endangered (rule 90).

Part 15 makes provisions for applications for a case to be stated for the opinion of the High Court.

Part 16 makes transitory and transitional provisions. Rule 95 provides that until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4) is in force all references in the Rules to the Court of Judicature of Northern Ireland are to be read as references to the Supreme Court of Northern Ireland. Rule 96 introduces Schedule 2 which sets out transitional provisions.

Part 17 revokes the Summary Appeal Courts (Amendment) Rules 2005.

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