
STATUTORY INSTRUMENTS

2009 No. 2041

The Armed Forces (Court Martial) Rules 2009

PART 12

EVIDENCE

CHAPTER 1

General

Application and interpretation of Part 12

72.—(1) The provisions of this Part apply in relation to any proceedings in which an issue of fact falls to be determined, unless otherwise stated.

(2) In relation to any proceedings other than trial proceedings, references in this Part to a defendant are to be read as references to a person to whom the proceedings relate.

Rules of evidence

73.—(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

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

(2) This rule is subject to—

- (a) section 5 of the Oaths Act 1978 (affirmation);
- (b) section 31 of the 1999 Act (evidence admitted under a special measures direction); and

- (c) section 56 of that Act (reception of unsworn evidence by witness who is not permitted to be sworn).

Proof by written statement

75.—(1) Without prejudice to rule 73, 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 trial 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

76.—(1) Without prejudice to rule 73, 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 a defendant's counsel or solicitor were to his legal representative.

Use of documents to refresh memory

77.—(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.

Changes to legislation:

There are currently no known outstanding effects for the The Armed Forces (Court Martial) Rules 2009, CHAPTER 1.