
STATUTORY INSTRUMENTS

2009 No. 2657

The Court Martial Appeal Court Rules 2009

PART 3

PROCEEDINGS: GENERAL

Notification of proceedings to the person to whom proceedings relate

13. Where a person to whom proceedings relate is entitled to be present or has obtained the leave of the court to be present during proceedings of the court (including any examination or investigation) the registrar must give notice of the probable date thereof—

- (a) to the person to whom proceedings relate;
- (b) if he is in custody, to the custodian; and
- (c) if he is in service custody, to the Secretary of State for Defence.

Evidence through live link

14.—(1) If for the time being section 32(1) of the Criminal Justice Act 1988(1) has effect in relation to proceedings before the Court Martial Appeal Court—

- (a) any application for a person other than the accused to give evidence under section 32(1) of that Act must be made by serving a notice in writing on the registrar stating—
 - (i) the grounds of the application;
 - (ii) the name of the witness;
 - (iii) the country and place where it is expected the witness will be when giving evidence;
- (b) the application must not, without the permission of the court, be made fewer than 14 days before the date fixed for the hearing to which the application relates.

(2) If for the time being section 33A(2) of the Youth Justice and Criminal Evidence Act 1999(2) applies to proceedings before the Court Martial Appeal Court—

- (a) any application under section 33A(2) of that Act must be made by serving a notice in writing on the registrar stating the grounds of the application;
- (b) the application must not, without the permission of the court, be made fewer than 14 days before the date fixed for the hearing to which the application relates.

(3) The registrar must, as soon as practicable after receiving a notice referred to in paragraph (1) or (2), send a copy of the notice to the other parties to the proceedings.

(1) 1988 c. 33. Paragraph 8(1) of Schedule 13 to the Criminal Justice Act 1988 provides that the Secretary of State may by order direct that section 32(1), as modified by paragraph 8(2) of that Schedule, shall have effect in relation to proceedings before the Court Martial Appeal Court.

(2) 1999 c. 23. Section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48) and under section 61(1) of the 1999 Act may by order of the Secretary of State be applied, subject to such modifications as the Secretary of State may specify, to proceedings before the Court Martial Appeal Court.

(4) An application under paragraph (1) or (2) shall be decided without a hearing unless the court otherwise directs, and the registrar must notify the applicant and the other parties to the proceedings of the time and place of any hearing and of the decision of the court in relation to an application.

Oaths and affirmations

15.—(1) Sections 1 and 3 to 6 of the Oaths Act 1978(3) shall apply where, for the purposes of these Rules, an oath or affirmation is to be taken outside of the United Kingdom as they would apply if the person were required to take an oath or affirmation in England, Wales or Northern Ireland.

(2) Where section 1 or 6 of that Act applies, 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

16.—(1) The registrar may appoint a person to act as interpreter for the purposes of any proceedings.

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

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

Rights of audience

17. In any proceedings before the court, any of the following persons may address the court—

- (a) the legal representative of a party to proceedings;
- (b) the person to whom proceedings relate, if that person is entitled to be present or has obtained the leave of the court to be present during proceedings, with the leave of the court and if not otherwise represented;
- (c) any other party to proceedings, with the leave of the court and if not otherwise represented; and
- (d) where the court is sitting at a place outside the United Kingdom, any other person allowed by leave of the court to appear on behalf of a party to the proceedings.

Legal representatives

18.—(1) A party to proceedings to which these Rules apply 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(4);
- (b) he is an advocate or a solicitor in Scotland;

(3) 1978 c. 19.

(4) 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 of, and Schedule 15, Part 2 to, the 1999 Act. Prospective amendments to section 71 of the 1990 Act are made to subsection (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1) and (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 is 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 must notify the registrar of the legal representative's business address.