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STATUTORY INSTRUMENTS

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**1997 No. 172**

**DEFENCE**

**The Standing Civilian Courts Order 1997**

*Made* - - - - - *12th February 1997*  
*Laid before Parliament* *14th February 1997*  
*Coming into force* - - - *1st April 1997*

The Secretary of State, in exercise of the powers conferred on him by paragraphs 1 and 12 of Schedule 3 to the Armed Forces Act 1976<sup>(1)</sup>, hereby makes the following Order:—

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the Standing Civilian Courts Order 1997 and shall come into force on 1st April 1997.

**Interpretation**

2. In this Order—

“the 1976 Act” means the Armed Forces Act 1976;

“the 1955 Act” means—

(a) where the accused is being prosecuted under the Army Act 1955<sup>(2)</sup>, that Act,

(b) where the accused is being prosecuted under the Air Force Act 1955<sup>(3)</sup>, that Act;

“commanding officer”, in relation to an accused, means the officer determined by or under regulations of the Defence Council under section 209(3)(f) of the 1955 Act for the purposes of investigation of offences;

“courts-martial rules” means—

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(1) 1976 c. 52; Schedule 3 was amended by the Armed Forces Act 1996 (c. 46), section 5 and Schedule 1.  
(2) 1955 c. 18.  
(3) 1955 c. 19.

- (a) where the accused is being prosecuted under the Army Act 1955, the Courts-Martial (Army) Rules 1997(4);
- (b) where the accused is being prosecuted under the Air Force Act 1955, the Courts-Martial (Royal Air Force) Rules 1997(5);

“magistrate” means the magistrate for any sitting or succession of sittings of a Standing Civilian Court specified by or on behalf of the Judge Advocate General;

“period of parental recognisance” means a period specified in an order made against the accused’s parent or guardian under paragraph 14(1) of Schedule 5A to the Army Act 1955, of Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957(6), in respect of an offence previously committed by that accused;

“the prosecution papers” has the meaning assigned to it in article 9(2);

“the prosecutor” means the prosecuting authority or any prosecuting officer appointed by the prosecuting authority;

“a service parent or guardian” shall be construed in accordance with paragraph 2(2) of Schedule 5A to the 1955 Act;

“special finding” shall be construed in accordance with article 70.

### **Delegation of the court administration officer’s functions**

3. The court administration officer may delegate any of his functions to persons appointed to act as court administration officers under his direction.

### **Service**

4.—(1) Unless the context otherwise requires, where under this Order any document is to be served on any person, the document may be served—

- (a) by sending the document to the commanding officer of that person;
- (b) by personal delivery; or
- (c) by post in a letter addressed to that person at his last known or usual place of work or abode.

(2) Where a document is received by the commanding officer in accordance with paragraph (1) (a) above, the commanding officer or a person on his behalf shall deliver it to the person on whom the document is to be served as soon as is practicable.

## **PART II**

### **PROSECUTION OF OFFENCES**

#### **Referring a case to the prosecuting authority**

5. Where the higher authority refers a case in respect of an accused to the prosecuting authority, he shall forward to the prosecuting authority—

- (a) a copy of any report concerning the case prepared by the service police or other investigator;

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(4) S.I. 1997/169.  
(5) S.I. 1997/171.  
(6) 1957 c. 53.

- (b) any allegation reported to the commanding officer of the accused in the form of a charge under section 76(1) of the 1955 Act and details of any substitution or amendment of that charge under section 76(3) of the 1955 Act;
- (c) a list of any potential witnesses;
- (d) any written statements or written record of evidence of the potential witnesses;
- (e) any statements made by the accused including records or transcripts of interviews conducted under caution;
- (f) a list of any exhibits;
- (g) any other information in the possession of the higher authority which may be material to the prosecutor's consideration of the institution of proceedings.

### **Conduct of the prosecution**

6.—(1) If the prosecuting authority considers that Standing Civilian Court proceedings should be instituted, he shall—

- (a) determine any charge to be preferred;
- (b) prefer any charge so determined by him; and
- (c) direct that any such charge is to be tried by a Standing Civilian Court.

(2) The prosecuting authority shall have the conduct of any Standing Civilian Court proceedings against the accused.

### **Charge sheet**

7.—(1) A charge sheet shall state—

- (a) the name and date of birth of the accused;
- (b) particulars of how the accused is triable by a Standing Civilian Court; and
- (c) any charge preferred against the accused.

(2) A charge sheet shall be signed and dated by the prosecutor.

### **Charges and joinder**

8. The rules contained in Schedule 1 to this Order shall be observed in proceedings before Standing Civilian Courts.

### **Notifying the court administration officer**

9.—(1) Where the prosecutor has preferred a charge against an accused to be tried by a Standing Civilian Court, the prosecutor shall send to the court administration officer the prosecution papers.

(2) In this Order, “the prosecution papers” means—

- (a) a copy of the charge sheet;
- (b) a list of any witnesses whom the prosecutor proposes to call;
- (c) copies of any statements of the prosecution witnesses, or other record of their evidence;
- (d) a list of any exhibits which the prosecutor proposes to put in evidence and copies of those exhibits or details of their whereabouts; and
- (e) a list of all unused material.

### **Summoning the accused**

- 10.** On receipt of the prosecution papers, the court administration officer shall—
- (a) after consultation with the magistrate, or the Judge Advocate General (or his deputy), appoint the date, time and place for the trial;
  - (b) specify any members of the court or assessors for the trial, if any members or assessors have not previously been specified for a succession of trials;
  - (c) serve on the accused—
    - (i) a summons to the accused in the form set out in Schedule 2 to this Order; and
    - (ii) the prosecution papers.

### **Informing a parent or guardian of the accused**

- 11.**—(1) This article applies where—
- (a) an accused is under 17 years of age, or
  - (b) the offence with which the accused is charged is alleged to have been committed during a period of parental recognisance.
- (2) The court administration officer shall serve on a parent or guardian of the accused who is a service parent or guardian—
- (a) a summons to a parent or guardian in the form set out in Schedule 2 to this Order;
  - (b) a copy of the summons to the accused; and
  - (c) a copy of the prosecution papers.
- (3) Where the prosecutor or the court administration officer is required under this Order to serve any document on the accused, he shall at the same time serve a copy of that document on the parent or guardian of the accused on whom a summons has been served under paragraph (2) above.

### **Notifying the magistrate and commanding officer**

- 12.** The court administration officer shall send to the magistrate and the commanding officer of the accused—
- (a) a copy of the charge sheet;
  - (b) a copy of the summons to the accused; and
  - (c) a copy of any summons to a parent or guardian.

### **Changes to the charge sheet before trial**

- 13.**—(1) Without prejudice to any other power of his in relation to the conduct of the proceedings, at any time before the opening of proceedings in respect of a charge, the prosecutor may—
- (a) amend, or substitute another charge or charges for, that charge;
  - (b) discontinue proceedings on that charge;
  - (c) prefer an additional charge against the accused and direct that the additional charge shall be tried at the same time as the original charge;
  - (d) determine that a charge originally preferred for trial by a Standing Civilian Court be tried by court-martial.
- (2) If the prosecutor exercises any of his powers under paragraph (1) above, he shall serve notice in writing, together with any papers which are required to be added to the prosecution papers, on the accused and the court administration officer.

(3) If the prosecutor exercises his power under paragraph (1)(d) above, he shall proceed with the charge in accordance with courts-martial rules.

(4) Where the court administration officer receives notice in accordance with paragraph (2) above, he shall send a copy of the notice to the magistrate.

#### **Change in date, time or place of trial**

14.—(1) At any time before the opening of proceedings, the court administration officer may, after he has consulted the magistrate, or the Judge Advocate General (or his deputy), vary the date, time or place appointed for the trial.

(2) The court administration officer shall serve notice in writing of any change made under paragraph (1) above on the accused, the prosecutor and the magistrate.

#### **Objection before trial to member or assessor**

15.—(1) An accused to whom a summons has been sent shall be entitled to object before the trial to any member of the court or assessor specified for his trial.

(2) An objection under this article shall be made to the court administration officer in writing, stating the grounds for objection, not later than 48 hours before the date appointed for his trial.

(3) The court administration officer shall immediately on receipt of any such objection consider it and notify the accused of his decision in respect of the objection.

#### **Election of trial by court-martial**

16.—(1) An accused to whom a summons has been sent may in accordance with this article elect court-martial trial—

(a) at any time before the date appointed for his trial, by notifying the court administration officer in writing; or

(b) at trial in accordance with article 37 below.

(2) Where a charge sheet contains two or more charges against an accused, he may elect only in respect of both or all such charges.

(3) Where there is more than one charge sheet relating to an accused, he may elect in respect of any one or more of them.

#### **Election where more than one accused**

17. Where two or more accused are charged in the same charge sheet and one of the accused elects court-martial trial in respect of that charge sheet, each accused shall be treated for the purposes of this Order as if he had so elected.

#### **Steps to be taken where accused elects**

18.—(1) Where an election is made under article 16(1)(a) above, the court administration officer shall notify the magistrate and the prosecutor.

(2) Where an election is made under article 16(1)(a) above, and is an election to which article 17 above applies, the court administration officer shall give notice in writing to any accused who as a result of the election is to be treated as if he had elected court-martial trial.

(3) Where an accused elects court-martial trial and his election is not subsequently withdrawn, the prosecutor shall proceed in accordance with courts-martial rules.

### **Withdrawal of election**

**19.**—(1) An accused who elects court-martial trial may not withdraw his election except within 28 days of its being made and in accordance with this article.

(2) Where an accused seeks to withdraw his election, he shall—

- (a) make an application in writing for leave to withdraw his election to the magistrate; and
- (b) serve a copy of the application on the prosecutor.

(3) Before making his decision on the accused's application, the magistrate shall afford the prosecutor the opportunity of making written representations to him.

(4) The magistrate shall, unless he considers that the accused should be afforded an opportunity to appear before him, issue his decision in writing.

(5) If an accused has elected court-martial trial and has with leave withdrawn his election, he may not make a further election for court-martial trial in respect of those proceedings.

## **PART III**

### **GENERAL MATTERS**

#### **Conduct of the defence**

**20.**—(1) An accused who has been notified that he is to be tried by a Standing Civilian Court shall be afforded a proper opportunity for preparing his defence.

(2) An appropriate person shall be appointed by the commanding officer to assist the accused to prepare and conduct his defence, unless the accused states in writing that he does not wish such an appointment to be made.

#### **Representation of the accused**

**21.**—(1) The accused may appoint a legal adviser to act for him.

(2) Any right or responsibility which accrues to the accused by virtue of this Order may be exercised by his legal adviser on his behalf, except—

- (a) electing to be tried by court-martial or stating that he does not wish so to elect, and
- (b) pleading to the charge.

(3) The accused shall inform the court administration officer of the name and address of his legal adviser as soon as is practicable after a legal adviser has been appointed.

(4) A legal adviser may represent an accused before a Standing Civilian Court if he is—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(7);
- (b) an advocate or a solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or
- (d) a person who has in any country outside the United Kingdom 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.

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(7) 1990 c. 41.

(5) Where an accused under 17 years of age is not represented by a legal adviser, the court may allow any parent or guardian of his who is present to represent him in such manner and to such extent as the court thinks fit.

### **Appointment of court officials**

- 22.** The court administration officer may appoint at any time a person or persons to act as—
- (a) court recorder;
  - (b) interpreter,

at a trial by Standing Civilian Court.

### **Additional evidence before trial**

**23.** If before the opening of proceedings the prosecutor wishes to adduce at trial any evidence additional to that contained in the prosecution papers, he shall serve the additional evidence (or details of its whereabouts) on the accused and the court administration officer.

### **Witnesses not called by the prosecutor**

- 24.—**(1) This article applies where the prosecutor does not intend to call as a witness—
- (a) any person whose statement or record of evidence has been served on the accused as part of the evidence for the prosecution; or
  - (b) a person in respect of whose evidence he has served notice under article 56.
- (2) Where this article applies, the prosecutor shall, unless the accused waives the requirement—
- (a) serve notice in writing on the accused that he does not intend to call that person; or
  - (b) tender that person at trial for cross-examination by the accused.

### **Witnesses for the accused**

**25.—**(1) As soon as is practicable after the accused has been summoned to appear before a Standing Civilian Court, the court administration officer shall notify the accused that any person whom he reasonably requires to give evidence at the trial may be summoned on his behalf by the court administration officer.

(2) If the accused requires the court administration officer to summon a witness, the accused shall provide to the court administration officer sufficient information in sufficient time to enable a summons to be served.

(3) If in the opinion of the court administration officer it is not reasonable to summon to trial any witness requested by the accused, he shall inform the accused, the magistrate and the prosecutor in writing of his decision and the reason for it.

### **Witness summons**

**26.—**(1) Where any person is required to give evidence before a Standing Civilian Court the court administration officer may summon the witness by issuing a witness summons in the form set out in Schedule 2 to this Order.

(2) Where any person is required to give evidence before a Standing Civilian Court the magistrate may, after the opening of proceedings, issue a witness summons.

- (3) A witness summons shall be served on the witness—
- (a) by delivering it to him personally;

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

(4) Where any person is served with a summons in accordance with this article, there shall be paid or tendered to him at that time any expenses which by regulations made by the Defence Council are payable to a witness in respect of his attendance at a trial.

(5) For the purposes of paragraph (4) above—

- (a) the tender of a warrant or voucher entitling the 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 the regulations shall constitute tender in respect of those expenses.

### **The magistrate**

27. The magistrate shall conduct the proceedings in accordance with the law of England and Wales.

### **Functions of assessors**

28. An assessor may advise the magistrate on any matter (other than a question of law) arising at any stage during the proceedings, and shall for this purpose, and this purpose alone, remain with the magistrate when he deliberates on any matter, including sentence.

### **Swearing in of magistrates, members and assessors on appointment**

29.—(1) A person appointed a magistrate under section 6(4) of the 1976 Act shall take an oath upon his appointment before the Lord Chancellor or a person authorised by him in that behalf.

(2) A person appointed a member of a panel under subsection (6) or (8) of section 6 of the 1976 Act shall take an oath upon his appointment before the magistrate or the Judge Advocate General.

### **Form of oath**

30.—(1) An oath which is required to be administered under the 1955 Act or this Order shall be administered in the appropriate form and manner set out in Schedule 3 to this Order.

(2) Every oath which under this Order is to be administered in court shall be administered by the magistrate or by any person whom he authorises.

(3) The oath to be taken by a person over 14 but under 17 years of age, or by any person at a trial where no accused is over 17 years of age, shall be in the appropriate form set out in Schedule 3 to this Order.

(4) Where a person is permitted by section 102 of the 1955 Act, as applied in relation to Standing Civilian Courts by article 91 and Schedule 4 below, to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in Schedule 3 to this Order.



## **Bankers' Books Evidence Act 1879**

**31.**—(1) The power to make an order conferred by section 7 of the Bankers' Books Evidence Act 1879(8) may be exercised for the purposes of proceedings before Standing Civilian Courts by the magistrate.

(2) The order shall be in the form set out in Schedule 2 to this Order.

## **PART IV**

### **PROCEDURE AT THE HEARING**

#### **Opening of proceedings**

**32.** At the opening of proceedings, the name of the accused and the name of any person to whom a summons to a parent or guardian was sent under article 11 above shall be called out.

#### **Accused not appearing**

**33.**—(1) If the accused does not appear when his name is called out or within a reasonable time thereafter, the court shall adjourn and report to the court administration officer.

(2) Where the court administration officer receives such a report, he shall enquire into the matter and, after considering the court's report and any representations of the prosecutor, decide whether the accused should be arrested with a view to his being brought before the court for his trial.

#### **Explaining function of members and assessors**

**34.** Where it appears necessary to him, the magistrate shall explain to the accused and to any parent or guardian of the accused who is present the function in relation to the proceedings of any member of the court and assessor who is sitting.

#### **Arraignment of accused**

**35.** Subject to articles 36 and 37 below, when the accused appears before the court he shall be arraigned.

#### **Ascertainment of accused's age**

**36.** Where it appears to the court that any accused was or may have been under 17 years of age at the date when the offence with which the accused is charged is alleged to have been committed, it shall before arraignment obtain evidence of his age, in order to satisfy itself that the court is properly constituted in accordance with section 6 of the 1976 Act.

#### **Opportunity to elect trial by court-martial**

**37.**—(1) Before the accused is arraigned on any charge sheet, the magistrate or any person whom he authorises shall say to the accused words to the effect of—

“You have the right to elect to be tried by court-martial instead of by this court. Do you wish to elect court-martial trial?”

(2) Subject to paragraphs (3) and (4) below, if any accused elects court-martial trial, the court shall adjourn and report the election in writing to the court administration officer.

(3) If there is another charge-sheet against the accused before the court, the court shall, before adjourning under this paragraph, proceed with the other charge-sheet.

(4) Where two or more accused are jointly charged and one or more but not all of the accused elect court-martial trial, the court shall, before adjourning or complying with paragraph (3) above, explain to each accused who has not so elected the effect of article 17 above.

### **Objections in court**

**38.**—(1) An accused, before pleading to a charge, may object to—

- (a) the magistrate;
- (b) any member of the court;
- (c) any assessor;
- (d) any interpreter.

(2) The accused may object to any interpreter appointed during the course of the trial.

(3) The magistrate shall consider any objection and if he upholds it the court shall—

- (a) if the court is still properly constituted, proceed with the case; or
- (b) if the court is not still properly constituted, adjourn and report to the court administration officer.

### **Applications before pleading**

**39.**—(1) Before an accused is required to plead to a charge, the court may make an order or ruling on—

- (a) any question as to the admissibility of evidence;
- (b) any other question of law, practice or procedure relating to the case.

(2) If the court allows any application such that there is no charge remaining to which the accused can be required to plead, the proceedings shall be concluded.

### **Severance**

**40.** Where—

- (a) an accused is charged with more than one offence; or
- (b) two or more accused are charged in the same charge sheet;

and the court rules that the fair trial of an accused may be prejudiced if the charges are not severed or for any other reason it is desirable that the charges are severed, it may—

- (i) try only one or more charges;
- (ii) try only one or more accused;
- (iii) order that any charge or any accused be tried by a differently constituted court.

### **Plea to the charge**

**41.**—(1) Where the trial proceeds, the accused shall be required to plead separately to each charge on which he is arraigned.

(2) Where the court is empowered to make a special finding in respect of an offence, the accused may plead guilty to the charge subject to the matters as would merit the special finding.

(3) Where the accused does not plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

### **Guilty plea**

**42.**—(1) If an accused pleads guilty to a charge, the court may, if it appears necessary to the magistrate and before the court decides to accept the plea, explain to the accused—

- (a) the nature of the charge;
- (b) the general effect of the plea; and
- (c) the difference in procedure following pleas of guilty and not guilty.

(2) The court shall not accept a plea of guilty if, having regard to all the circumstances, it considers that it should not accept the plea.

(3) Where a plea of guilty is not accepted by the court, the court shall enter a plea of not guilty.

### **Alternative charges**

**43.**—(1) Where an accused pleads guilty to the first of two or more alternative charges, the court, if it accepts the plea, shall record a finding of guilty in respect of that charge and shall give the prosecutor leave to discontinue proceedings in respect of any alternative charge or charges.

(2) Where an accused pleads guilty to any other of two or more alternative charges, the court shall—

- (a) if the prosecutor gives his consent—
  - (i) record a finding of guilty on any charge to which the accused has pleaded guilty,
  - (ii) record a finding of not guilty on any alternative charge placed before it on the charge sheet, and
  - (iii) give the prosecutor leave to discontinue proceedings in respect of any further alternative charge or charges; or
- (b) if the prosecutor does not give the consent referred to in sub-paragraph (a) above, proceed as if the accused had pleaded not guilty to all the charges.

(3) If the court records a finding of guilty under paragraph (1) or (2)(a) above and subsequently allows the accused to change his plea under article 49 below, the court may reinstate and arraign the accused on any alternative charge which was discontinued.

### **Changes to the charge sheet during trial**

**44.**—(1) Without prejudice to any other power of his in relation to the conduct of the proceedings, at any time after the opening of proceedings in respect of a charge the prosecutor may, with the leave of the court—

- (a) amend, or substitute another charge or charges for, that charge;
- (b) discontinue proceedings on that charge;
- (c) prefer an additional charge against the accused.

(2) If in accordance with this article the prosecutor intends to seek the leave of the court to prefer an additional charge, he shall, unless the accused waives the requirement, serve notice of such intention on the accused before the application is made.

(3) Where notice is served on him in accordance with paragraph (2) above, the accused may apply for an adjournment of the trial.

(4) Where the court gives leave to discontinue proceedings on a charge, the court shall consider whether to give the direction provided for in section 83B(14) of the 1955 Act, as applied to Standing Civilian Courts by article 91 below and Schedule 4 to this Order.

### **Changes to the charge sheet by the court**

45. If after the opening of proceedings it appears that, with due regard to the fairness to the accused, it is desirable in the interests of justice to amend a charge, the court may do so.

### **Procedure after guilty plea**

- 46.—(1) This article applies where—
- (a) the court has accepted only a plea or pleas of guilty; or
  - (b) the court has accepted a plea or pleas of guilty and the prosecutor does not proceed to the trial of any charge to which an accused has pleaded not guilty.
- (2) This article applies whether the charge sheet is in respect of one or more than one accused.
- (3) After the court records a finding of guilty, the prosecutor shall address the court on the facts of the case.

### **Pleas of guilty and not guilty on one charge sheet**

- 47.—(1) This article applies where in respect of one charge sheet—
- (a) the court has accepted a plea or pleas of guilty,
  - (b) a plea or pleas of not guilty have been entered, and
  - (c) the prosecutor proceeds to the trial of any charge on which a plea of not guilty has been entered.
- (2) This article applies whether the charge sheet is in respect of one or more than one accused.
- (3) Unless the magistrate directs otherwise, the trial of any charge on which a plea of not guilty has been entered shall proceed in accordance with this Order before the court considers any guilty plea.
- (4) After the court has announced its finding on each charge in respect of which a plea of not guilty has been entered, the court shall consider any guilty plea.
- (5) After the court records a finding of guilty in respect of each charge to which the accused has pleaded guilty, the prosecutor shall address the court on the facts of the case.

### **Dispute on facts after finding of guilty**

- 48.—(1) Where after the court has recorded a finding of guilty in respect of any charge there are disputed facts in the case, any issue of fact may be tried.
- (2) Where an issue of fact is being tried in accordance with this article—
- (a) the court may direct the prosecutor to call any witness to give evidence, and
  - (b) the prosecutor and the accused may, with the leave of the court, adduce evidence.

### **Change of plea**

- 49.—(1) At any time before the court deliberates on its finding on a charge, an accused who has pleaded not guilty to a charge may, with the leave of the court, withdraw his plea and substitute a plea of guilty.
- (2) At any time before the court closes to deliberate on its sentence on a charge, an accused who has pleaded guilty to the charge may, with the leave of the court, withdraw his plea and substitute a plea of not guilty.
- (3) Where an accused changes his plea, the court shall proceed so far as is necessary as if the initial plea to that charge were the plea substituted.

### **Procedure after not guilty plea**

50. Before calling the witnesses for the prosecution, the prosecutor may make an opening address.

### **Adjournment and sittings**

51.—(1) If it appears to the magistrate that the interests of justice so require, the court may adjourn from time to time.

(2) The court shall not sit on Saturday, Sunday, Christmas Day or Good Friday unless in the opinion of the magistrate it is necessary to do so.

(3) The court shall sit at such times and for such periods each day as seems to the magistrate to be reasonable in the circumstances.

### **View by the court**

52. If at any time during a trial before the court deliberates on its finding it appears to the court that it should, in the interests of justice, view any place or thing, it may adjourn for that purpose.

### **Conclusion of trial in interests of justice**

53.—(1) Where, after the opening of proceedings, in the opinion of the court it is necessary in the interests of justice that that court should not continue with the trial, the court shall, subject to paragraph (3) below, conclude the trial and direct that the accused shall be tried afresh before a differently constituted court.

(2) Any direction made under paragraph (1) above shall be reported to the court administration officer with the charge sheet and the note of proceedings.

(3) Where under any provision of this Order the court has postponed deliberation on sentence after recording a finding of guilty in respect of an offence it may, before concluding the trial in accordance with this article, proceed to sentence in respect of that offence if it considers that it can properly do so.

### **Member or assessor not to sit after absence**

54. If any member of the court or assessor is absent during any part of a trial at which he has been specified to sit, he shall take no further part in it.

### **Adjournment of case where court ceases to be properly constituted**

55. Where the court ceases to be properly constituted, the proceedings shall be adjourned and there shall be sent to the court administration officer the charge sheet and the note of proceedings.

### **Additional evidence during trial**

56.—(1) If after the opening of proceedings the prosecutor intends to adduce evidence additional to that referred to in the prosecution papers, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the accused.

(2) Where notice and particulars are served on him in accordance with paragraph (1) above, or where evidence is adduced without such notice being given, the accused may apply to the court for an adjournment of the trial.

### **Expert evidence**

**57.**—(1) Expert evidence shall not be adduced at trial without the leave of the court 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 trial, a statement of the substance of the expert evidence.

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

### **Exhibits**

**58.**—(1) Any exhibit admitted in evidence shall be marked sequentially with either a number or a letter.

(2) The magistrate shall ensure that a list of exhibits is maintained.

(3) Each exhibit or a label attached to each exhibit shall be signed by the magistrate.

(4) Each exhibit shall be retained with the note of proceedings, unless in the opinion of the magistrate having regard to the nature of the exhibit or for other good reason it is not expedient to retain the exhibit with the note.

(5) Where an exhibit is not retained with the note of proceedings, the magistrate shall ensure that proper steps are taken for its safe custody.

### **Presence of witnesses**

**59.**—(1) Except for the accused and any expert or character witness, a witness as to fact shall not, except by leave of the court, 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 court may direct the witness to withdraw for the duration of the discussion.

(3) The court may direct any expert or character witness present in court to withdraw if the court considers in the interests of justice that his presence is undesirable.

### **Evidence through television link**

**60.**—(1) Any application by the prosecutor or an accused for leave under section 32 of the Criminal Justice Act 1988<sup>(9)</sup> for evidence to be given by a witness through a live television link shall be made as soon as is practicable after the opening of proceedings.

(2) An application may not be made under paragraph (1) above without the leave of the court unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in writing on every other party, the court administration officer and the magistrate stating—

- (a) the grounds of the application;
- (b) the name of the witness;
- (c) where the witness is under the age of 18, the date of birth of the witness;
- (d) the country and place where it is proposed the witness will be when giving evidence; and
- (e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

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<sup>(9)</sup> 1988 c. 33; section 32(1)–(3) applies to proceedings before Standing Civilian Courts by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (S.I. 1996/2592) subject to the modifications specified therein.

(3) Where the court gives leave for a witness under the age of 14 to give evidence through a live television link, the witness shall be accompanied by a person acceptable to the court and, unless the court otherwise directs, by no other person.

### **Video recordings of testimony from child witnesses**

**61.**—(1) Any application by the prosecutor or an accused for leave under section 32A of the Criminal Justice Act 1988<sup>(10)</sup> for evidence to be given by a witness by means of a video recording shall be made as soon as is practicable after the opening of proceedings.

(2) An application may not be made under paragraph (1) above without the leave of the court unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in writing together with a copy of the video recording to which the application relates on every other party, the court administration officer and the magistrate stating—

- (a) the grounds of the application;
- (b) where the witness is under the age of 18, the date of birth of the witness;
- (c) the name of the witness;
- (d) the date on which the video recording was made;
- (e) that in the opinion of the applicant the witness is willing and able to attend court for cross-examination; and
- (f) the circumstances in which the video recording was made.

### **Examination of witnesses**

**62.**—(1) The court may allow a request that the cross-examination or re-examination of a witness be postponed if it is satisfied that there is a good reason for such a request and that there is no injustice to the accused in doing so.

(2) The magistrate may question any witness.

(3) A member of the court sitting with the magistrate and an assessor may, with the magistrate's permission, question any witness.

(4) If in the opinion of the court it is in the interests of justice to do so, the court may at any time—

- (a) call any witness whom it has not already heard;
- (b) recall a witness;
- (c) permit the accused or the prosecutor to recall a witness.

### **Submission of no case to answer**

**63.**—(1) At the close of the case for the prosecution the accused may submit, in respect of any charge, that the prosecution has failed to establish a prima facie case for him to answer.

(2) If the submission is allowed, the court shall find the accused not guilty of the charge to which the submission relates.

(3) If the submission is not allowed, the court shall proceed with the trial.

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<sup>(10)</sup> Section 32A was inserted by the Criminal Justice Act 1991 (c. 53), section 54. Section 32A applies to proceedings before Standing Civilian Courts by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 subject to the modifications specified therein.

### **Finding of not guilty before conclusion of the defence**

64. The court may at any time after the close of the case for the prosecution find the accused not guilty of a charge, provided that the prosecutor has been given the opportunity to address the court on such a finding.

### **The case for the defence**

65.—(1) After the close of the case for the prosecution, the magistrate shall satisfy himself that the accused understands—

- (a) that he may give evidence in his defence if he wishes but he is not obliged to do so;
- (b) the consequences of choosing to remain silent at trial;
- (c) that if he chooses to give evidence, he will be liable to be cross-examined by the prosecutor and questioned by the court; and
- (d) that he may call witnesses on his behalf.

(2) The accused may make an opening address outlining the case for the defence, but where two or more accused are represented by one legal adviser, only one such address may be made.

### **Witnesses for the defence**

66. Except with the leave of the court, if the accused elects to give evidence he shall be called before any other witness for the defence.

### **Further evidence**

67. With the leave of the court, the prosecutor may call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecutor could not—

- (a) properly have dealt with before the accused disclosed his defence; or
- (b) reasonably have foreseen.

### **Closing addresses**

68.—(1) Subject to paragraph (2) below, the prosecutor and the accused may each make a closing address to the court.

(2) Except with the leave of the court, neither the prosecutor nor the accused may make a closing address to the court if he has already made an opening address, but where one party is granted leave every other party may also make a closing address.

(3) Where two or more accused are represented by the same legal adviser, he may make only one closing address.

### **Deliberation on finding**

69. After any closing address, the court shall deliberate on its finding on each charge.

### **Special finding**

70.—(1) For the purposes of this Order a special finding is—

- (a) where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, a finding of guilty subject to exceptions or variations specified in the finding; or



(b) a finding in accordance with section 98 of the 1955 Act (power to convict of an offence other than that charged) as applied in relation to Standing Civilian Courts by article 91 below and Schedule 4 to this Order.

(2) Before making a special finding, the court shall give the prosecutor and the accused the opportunity to address the court on such a finding.

### **Record of finding**

**71.**—(1) Where the court has reached a finding on a charge, it shall be recorded in writing, dated and signed by the magistrate.

(2) Each finding shall be announced in open court.

### **Offences taken into consideration**

**72.**—(1) Where the court has recorded a finding of guilty or a special finding on any charge, the accused may request the court to take into consideration any other offence against the 1955 Act committed by him of a similar nature to that of which he has been found guilty or in respect of which a special finding has been made and, upon such a request being made, the court may agree to take into consideration any such offence as to the court seems proper.

(2) A list of the offences which the accused admits having committed and which the court agrees to take into consideration shall be signed by the accused and attached to the note of proceedings.

## **PART V**

### **SENTENCING**

### **Pre-sentence report**

**73.**—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the trial, he shall serve a copy on the accused before the opening of proceedings.

(2) Where the prosecutor has obtained a record of the accused's previous convictions in advance of the trial, he shall serve a copy on the accused and the court administration officer before the opening of proceedings.

### **Evidence before sentencing**

**74.**—(1) This article applies where the court has recorded a finding of guilty or a special finding on any charge.

(2) Where practicable, the prosecutor shall present to the court—

- (a) particulars of any conviction (whether under the 1955 Act or otherwise) of which the accused has been found guilty except, in the case of an accused over 21 years of age, any conviction while under 14 years of age, and provided that any convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974<sup>(11)</sup> are clearly marked as such; and
- (b) particulars of any formal police caution administered to the accused by a constable in England and Wales or Northern Ireland.

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<sup>(11)</sup> 1974 c. 53; sections 2 and 6 were amended, and the Schedule was inserted, by the Armed Forces Act 1996 (c. 46), section 13 and Schedule 4.

(3) Unless the accused requires otherwise, the matters referred to in paragraph (2) above need not be adduced in compliance with the strict rules of evidence.

(4) The court shall consider any pre-sentence report concerning the accused in the possession of the court administration officer.

(5) Where an offence of which the court has found the accused guilty was committed during a period specified in—

- (a) an order of conditional discharge previously made against the accused under paragraph 3(1) of Schedule 5A to the Army Act 1955, of Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957, or
- (b) a community supervision order previously made against the accused under paragraph 4(1) of any of those Schedules,

the court shall explain to the accused that it has power to deal with him not only for the offence of which it has found him guilty but also for the offence in respect of which the order for conditional discharge or, as the case may be, the community supervision order was made.

(6) A record of antecedents signed by the person in respect of whom it is made may be accepted in evidence by the court where that person has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought.

#### **Evidence on behalf of the accused**

75.—(1) The accused may—

- (a) give evidence on oath and call witnesses in mitigation of sentence and as to his character;
- (b) produce to the court any document or report; and
- (c) address the court in mitigation of sentence.

(2) Unless the prosecutor requires otherwise, the document or report referred to in paragraph (1) (b) above need not be adduced in compliance with the strict rules of evidence.

#### **Opportunity for parent to be heard**

76.—(1) Where

- (a) the accused is under 17 years of age, or
- (b) the offence with which the accused is charged is alleged to have been committed during a period of parental recognisance,

the court before it deliberates on its sentence, shall, subject to paragraph (2) below, give any service parent or guardian of the accused who is present an opportunity of being heard, and shall in so doing—

- (i) comply with paragraph (4) below, and
- (ii) explain the provisions of paragraph (5) below.

(2) The court need not comply with the provisions of paragraph (1) above where it decides that it will not, in deliberating on its sentence, consider exercising any of its powers to make an order or declaration against a service parent or guardian of the accused.

(3) Any parent or guardian of an accused under 17 years of age who is not given the opportunity of being heard under paragraph (1) above may nonetheless, with the leave of the court, be heard before the court deliberates on its sentence.

(4) Where the court is required under paragraph (1) above to comply with this paragraph, it shall explain to any service parent or guardian of the accused who is present such of its powers to make an order or declaration against him as may be relevant to the case.

- (5) A parent or guardian who is to be heard under this article may—
- (a) give evidence on oath, in which case he shall be treated as a witness in the proceedings;
  - (b) call witnesses on his behalf, whether or not he gives evidence himself; and
  - (c) address the court.

#### **Deliberation on sentence**

77.—(1) Where the magistrate is not sitting alone, the court shall sit in closed court to deliberate on sentence.

(2) Where the court sits in closed court, no person shall be present except the magistrate and any member of the court and assessor sitting with him.

#### **Postponement of deliberation on sentence**

78. The court may, if it thinks that the interests of justice so require and subject to article 53 above, postpone its deliberation on the sentence to be awarded to any accused until—

- (a) where two or more accused are tried separately by the same court on charges arising out of the same transaction, it has recorded and announced its findings in respect of all the accused; or
- (b) where an accused is to be tried on charges arising out of a different transaction, it has recorded and announced its findings in respect of those charges.

#### **Deferment of award of sentence**

79.—(1) Where the court defers the award of sentence under paragraph 2A of Schedule 5A to the 1955 Act, the deferment shall be announced in open court.

(2) A copy of the order of deferment shall be given to the accused, or served on him within 48 hours of the announcement.

(3) The consent of the accused to deferment of the award of sentence shall be obtained in writing.

(4) The condition under which a court may deal with an accused at a time when the period of deferment ordered in respect of him has not expired is where the court has reason to believe that the offender is, or may be, about to leave the jurisdiction of the court for a period in excess of 42 days.

(5) A certificate of delivery into custody issued in accordance with paragraph 2A(12) of Schedule 5A of the 1955 Act shall be in the form set out in Schedule 2 to this Order.

#### **Form of sentence**

80.—(1) A separate sentence shall be awarded for each offence—

- (a) in respect of which the court has recorded a finding of guilty or a special finding,
- (b) which is the subject of re-sentencing by virtue of paragraph 3(3) or 4(9) of Schedule 5A to the 1955 Act, and
- (c) upon which the award of sentence was deferred under paragraph 2A of that Schedule.

(2) Subject to the provisions of section 8 of the 1976 Act and section 71A of and Schedule 5A to the 1955 Act, a sentence may consist of—

- (a) one or more punishments, and
- (b) one or more orders,

(3) Where an accused is being sentenced for more than one offence, and the court makes more than one order against him under paragraphs 3(1) or 4(1) of Schedule 5A to the 1955 Act, the period

specified by the court in the second and any subsequent such order shall be concurrent with the period specified by the court in the first such order.

(4) Subject to section 8(2) of the 1976 Act, where an accused is being sentenced for more than one offence and the court awards more than one term of imprisonment or more than one custodial order, any term of imprisonment or any period awarded under a custodial order after the first may be consecutive to, or concurrent with, any term of imprisonment or any period awarded under a custodial order before it.

(5) Where the court has agreed to take into consideration any offence which is not included in the charge sheet, the court shall award a sentence appropriate to any offence of which the accused has been found guilty and to any offence which it is taking into consideration, but (save for any compensation order under paragraph 11 of Schedule 5A to the 1955 Act which it may make in respect of the offence which it is taking into consideration) not greater than the maximum sentence which may be awarded under the 1976 Act for the offence of which the accused has been found guilty.

#### **Announcement of sentence and conclusion of trial**

**81.**—(1) The sentence and the reasons for it shall be announced in open court, and the date on which it is announced shall be recorded.

(2) The magistrate shall announce when the trial is concluded.

#### **Unfitness to stand trial and insanity**

**82.**—(1) Where the court is required to adjourn the hearing and refer the case to the prosecuting authority by virtue of paragraph 6 of Schedule 3 to the 1976 Act (unfitness to stand trial and insanity), it shall give the prosecuting authority, where reasonably possible—

- (a) details of the accused's condition;
- (b) the charge-sheet and the note of proceedings.

#### **Note of proceedings**

**83.** The magistrate shall ensure that a note of the proceedings is made.

## **PART VI**

### **REVIEW AND APPEAL**

#### **Review**

**84.**—(1) Any petition presented in accordance with paragraph 19 of Schedule 3 to the 1976 Act shall be presented to the reviewing authority to whom it is addressed in the form set out in Schedule 2 to this Order.

(2) Where a reviewing authority completes a review in accordance with paragraph 20 of Schedule 3 to the 1976 Act, it shall—

- (a) if a petition has been presented in accordance with paragraph 19 of Schedule 3 to the 1976 Act, or
- (b) if it exercises any of its powers under paragraph 20 of Schedule 3 to the 1976 Act, promulgate its decision in writing to the accused, with reasons.

### Notice of appeal

85. A notice of appeal addressed to the higher authority in accordance with paragraph 18 of Schedule 3 to the 1976 Act shall be lodged with the higher authority in the form set out in Schedule 2 to this Order.

### Modification of the 1955 Act for appeals

86. The provisions of the 1955 Act concerning courts-martial which are specified in column 1 below shall apply to appeals before courts-martial from Standing Civilian Courts subject to the modifications and exceptions specified in column 2 below—

Column 1 <i>Provision applied</i> <i>(finding and sentence)</i>	Column 2 <i>Modifications and exceptions</i>
section 97  <i>(power of reviewing authority to authorise retrial)</i>	after subsection (3) there shall be inserted the following subsection—  “(4) Any finding or sentence of the court-martial shall replace the finding or sentence of the Standing Civilian Court and shall be announced as such.”
section 113A  <i>(limitation of time for trial of offences)</i>	shall not apply
section 132  <i>(persons not to be tried for offences already disposed of)</i>	shall not apply
section 134	shall not operate so as to prevent any appeal being determined

## PART VII

### MISCELLANEOUS

#### Re-trial following adjournment

87.—(1) Where the court administration officer directs a re-trial by virtue of paragraph 8 of Schedule 3 to the 1976 Act, he shall after consulting with the magistrate, or the Judge Advocate General (or his deputy), send notice of the date, time and place of the re-trial to—

- (a) the accused; and
- (b) the prosecutor.

(2) A person who sat in the court of trial, whether as magistrate, member of the court or assessor, shall not sit in the court of re-trial.

(3) Subject to paragraph (4) below, where the court of trial has recorded a finding of guilty but has not announced sentence, the court of re-trial shall proceed to sentence in accordance with the provisions of this Order as if it had recorded that finding of guilty.

(4) The court of re-trial may inform itself of the facts relating to the charge in respect of which the finding of guilty was made, by—

- (a) reading the note of proceedings of the court of trial, or
- (b) calling on the prosecutor to address the court on the facts.

#### **Forwarding the proceedings**

**88.** The magistrate shall send to the Judge Advocate General after the conclusion of the trial—

- (a) the charge sheet;
- (b) the note of proceedings;
- (c) a record of the findings and sentence on each charge, signed by him and dated;
- (d) any exhibits attached to the note; and
- (e) any other document in his possession relating to the proceedings.

#### **Custody of the proceedings**

**89.** Subject to the requirements of any review or appeal, the documents sent by the magistrate under article 89 above shall be kept in the custody of the Judge Advocate General for a period of not less than 6 years.

#### **Loss of the proceedings**

**90.** If the whole or any part of an original document referred to in article 89 above is lost, a copy of the document certified by the magistrate to be correct or a reconstituted document may be accepted and used in lieu of the original.

#### **Application of certain enactments**

**91.** The provisions of the enactments which are specified in column 1 of Schedule 4 to this Order shall apply to proceedings before the Standing Civilian Court as if the references to courts-martial, howsoever expressed, were references to the Standing Civilian Court and subject to the further modifications specified in column 2 of that Schedule.

#### **Circumstances not provided for**

**92.** In any circumstance not provided for by the 1955 Act, the 1976 Act or this Order, such course shall be adopted as appears best calculated to do justice.

#### **Revocation and savings**

**93.**—(1) Subject to paragraph (2) below, the Orders set out in Schedule 5 to this Order are hereby revoked.

(2) The Orders set out in Schedule 5 shall continue to apply in relation to any trial by a Standing Civilian Court which commenced before 1st April 1997 until the conclusion of that trial.

(3) The revocation shall not affect the validity of anything done under those Orders in relation to any proceedings pending at the commencement of this Order.

12th February 1997

*Nicholas Soames*  
Minister of State, Ministry of Defence.

SCHEDULE 1

Article 8

CHARGES AND JOINDER

PART I

RULES

1.—(1) A charge sheet shall be in the form specified in Part II of this Schedule or in a form substantially to the like effect.

(2) Where more than one offence is charged in a charge sheet, the statement and particulars of each offence shall be set out in a separate paragraph called a charge, and paragraphs 2 and 3 of this Part shall apply to each charge in the charge sheet as they apply to a charge sheet where one offence is charged.

(3) The charges shall be numbered consecutively.

2.—(1) Subject only to the provisions of paragraph 3 of this Part, every charge sheet shall contain, and shall be sufficient if it contains, a statement of the specific offence with which the accused person is charged describing the offence shortly, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(2) A charge sheet for a specific offence shall not be open to objection in respect of its form if it is framed in accordance with this Schedule.

3. Where the specific offence with which an accused person is charged in a charge sheet is one created by or under an enactment, then (without prejudice to the generality of paragraph 2 of this Part)—

- (a) the statement of offence shall contain a reference to—
  - (i) the section of, or the paragraph of the Schedule to, the Act creating the offence in the case of an offence created by a provision of an Act;
  - (ii) the provision creating the offence in the case of an offence created by a provision of a subordinate instrument;
- (b) the particulars shall disclose the essential elements of the offence:  
Provided that an essential element need not be disclosed if the accused person is not prejudiced or embarrassed in his defence by the failure to disclose it;
- (c) it shall not be necessary to specify or negative an exception, exemption, proviso, excuse or qualification.

4. Where an offence created by or under an enactment states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment or subordinate instrument may be stated in the alternative in a charge sheet charging the offence.

5. It shall be sufficient in a charge sheet to describe a person whose name is not known as a person unknown.

6. Charges for any offences may be joined in the same charge sheet if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character.



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7. Where the offence charged is one which can be committed in circumstances involving either a higher or a lower degree of punishment, the charge shall state the facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted.

**PART II**

**FORM**

**FOR TRIAL BY STANDING CIVILIAN COURT**

**FOR TRIAL BY STANDING CIVILIAN COURT**

**THE QUEEN V .....**

*(introductory words)*

**charged as follows:—**

*(statement of offence and particulars of offence)*

**Date .....**

**Prosecutor**

**SCHEDULE 2**

Articles 10, 11, 26, 31, 79, 84 and 85

**FORMS**

Where any article requires the use of a form set out in this Schedule, that requirement shall be satisfied by the use of a form substantially to the like effect as the form set out below.

Form 1—Form of summons to the accused

Form 2—Form of summons to a parent or guardian

Form 3—Form of witness summons

Form 4—Form of order by magistrate to permit inspection of bankers' books

Form 5—Form of certificate for delivery into custody

Form 6—Form of petition for review

Form 7—Form of notice of appeal

**Form 1** STANDING CIVILIAN COURTS (Armed Forces Act 1976, Schedule 3, paragraph 12(4); Standing Civilian Courts Order 1997, Article 10) **SUMMONS TO THE ACCUSED**

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

To: ..... Ref. No. ....  
(Address)

You are charged with the offence(s) set out against you in the attached copy charge sheet(s) and are hereby summoned to appear before the Standing Civilian Court sitting

at .....

on .....

at .....

to answer the charge(s).

Failure to attend could result in your arrest.

The prosecution papers are also served with this summons.

The magistrate will sit with the following (member(s) of the court) (assessors):

Dated this ..... day of .....

.....  
Court Administration Officer

**Form 2**STANDING CIVILIAN COURTS(Armed Forces Act 1976, Schedule 3, paragraph 12(4); Standing Civilian Courts Order 1997, Article 11)SUMMONS TO A PARENT OR GUARDIAN

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

To: ..... Ref. No. ....  
(Address)

Re .....  
.....

The above named is charged with the offence(s) set out against him/her in the attached copy charge sheet(s) and has been summoned to attend the Standing Civilian Court sitting

at .....

on .....

at .....

to answer the charges.

As his/her parent or guardian you are hereby summoned to attend the court at that place and time.

If the court makes a finding of guilty against the above named, it may in certain circumstances have power to make financial orders against you, as parent or guardian. At court, you will have the opportunity to be heard before any such order is made. If you do not attend, however, any such order may be made against you in your absence.

Attached to this summons for your information are copies of:

- (a) the charge sheet(s) referred to above
- (b) the prosecution papers

You should read all those documents carefully.

Dated this ..... day of .....

.....  
Court Administration Officer

**Form 3**STANDING CIVILIAN COURTS(Armed Forces Act 1976, Schedule 3, paragraph 12(4); Standing Civilian Courts Order 1997, Article 26)SUMMONS TO A WITNESS

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

To: ..... Ref. No. ....  
(Address)

**WHEREAS**

is to be/being tried by a Standing Civilian Court sitting  
at .....  
[and the trial is to commence on ..... ]

You are hereby summoned to attend as a witness at the sitting of the Standing Civilian Court at  
on .....  
at .....  
[and to bring with you the following documents, namely—

..... ]

and so to attend from day to day until the court releases you.  
Failure to attend could result in your arrest and prosecution.

Dated this ..... day of .....

.....  
Magistrate/Court Administration Officer

**Form 4**STANDING CIVILIAN COURTS(Standing Civilian Court Order 1997, Article 31)ORDER TO INSPECT BANKERS BOOKS AND TO TAKE COPIES OF ENTRIES

To the Manager,

.....

**IN THE MATTER OF A TRIAL BY STANDING CIVILIAN COURT OF**

.....

to be held at .....  
on .....

**WHEREAS** application has been made to me by.....

**I HEREBY ORDER** in pursuance of Section 7 of the Bankers' Books Evidence Act 1879 that the said .....

or his/their representatives be at liberty for the purposes of the said trial to inspect and take copies of all entries in the books of .....

at .....

relating to the account in the name of .....

with that bank from the ..... day of ..... to the .....  
day of ..... both dates inclusive.

Dated this ..... day of .....

.....  
Magistrate

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

**Form 5**STANDING CIVILIAN COURTS(Armed Forces Act 1976, Schedule 3, paragraph 12; Standing Civilian Court Order 1997, Article 79)CERTIFICATE IN ACCORDANCE WITH PARAGRAPH 2A(12) OF SCHEDULE 5A TO THE (AIR FORCE ACT) (ARMY ACT) 1955

I certify that .....  
(with last known address at ..... )  
who was arrested at ..... at  
..... on the ..... day of  
..... under a warrant of arrest issued  
pursuant to paragraph 2A of Schedule 5A to the (Air Force Act) (Army Act) 1955 signed on  
the ..... day of .....  
by .....  
was this day delivered by me into (air force) (military) custody.

Dated this ..... day of .....

Signature of officer of police }  
who causes the abovenamed }  
person to be delivered into }  
military or air force custody. }

**Form 6**STANDING CIVILIAN COURTS(Armed Forces Act 1976, Schedule 3, paragraph 19; Standing Civilian Courts Order 1997, Article 84)PETITION FOR REVIEW

To .....  
PETITION of .....  
WHEREAS I was convicted by a Standing Civilian Court at .....  
..... on ..... of the following  
offence(s) namely—  
and the sentence(s) awarded was/were as follows—  
NOW THEREFORE I HEREBY PETITION as follows—

Signed .....  
Dated .....

**Form 7**STANDING CIVILIAN COURTS(Armed Forces Act 1976, Schedule 3, paragraph 18; Standing Civilian Courts Order 1997, Article 85)NOTICE OF APPEAL

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

To  
**APPEAL** by .....

**WHEREAS I was convicted by a Standing Civilian Court at** .....  
 ..... **on** ..... **of the following offence(s),**  
 namely—  
 and the sentence(s) awarded was/were as follows—

**NOW THEREFORE I HEREBY GIVE NOTICE OF APPEAL AGAINST [conviction] [and] [sentence] in respect of the above offence(s) on the following grounds:**

**Signed** .....

**Dated** .....

SCHEDULE 3

Article 30

OATHS AND AFFIRMATIONS

PART I

MANNER OF ADMINISTERING OATHS AND AFFIRMATIONS

1. An oath may be administered by the person swearing the oath holding the New Testament, or if a Jew the Old Testament, in his uplifted hand and saying, or repeating after the person administering it, the oath provided in this Schedule for that category of person.
2. A Scottish oath may be administered by the person swearing the oath with uplifted hand and saying, or repeating after the person administering it, the Scottish oath provided in this Schedule for that category of person.
3. An oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs where the oath provided in this Schedule for that category of person is modified in accordance with those religious beliefs.
4. A witness under 17, or over 17 but where no accused is over 17, shall make a promise instead of taking an oath and shall say or repeat after the person administering the promise provided in this Schedule.
5. A person making a solemn affirmation instead of taking an oath shall say or repeat after the person administering the words provided in this Schedule for that category of person.

## PART II

### FORM OF OATH

#### FORM OF OATH ON APPOINTMENT

##### **Magistrate and member of the court**

6. I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law; and that I will well and truly serve Her in the office of [magistrate/member] of the Standing Civilian Court and will do right to all manner of people after the laws and usages of her realm, without fear or favour, affection or ill-will.

##### **Assessor**

7. I do swear that, when called upon to do so, I will to the best of my ability carry out the duties of assessor in the Standing Civilian Court, in accordance with law and without fear or favour, affection or ill-will; and that I will not on any account, at any time, disclose the opinion on any matter expressed by any magistrate or assessor during any proceedings in such Court unless required to do so in due course of law.

#### FORM OF OATH IN COURT

##### **Interpreter**

8. I swear by Almighty God that I will well and faithfully interpret and make true explanation of all such matters and things as shall be required of me according to the best of my skill and understanding.

##### **Witness**

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

#### FORM OF PROMISE

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

## PART III

### FORM OF SCOTTISH OATHS

11. The form of Scottish oath shall in each case be the same as the form of oath set out above except that for the words “I swear by Almighty God” there shall be substituted the words “I swear by Almighty God and as I shall answer to God at the Great Day of Judgement”.

## PART IV

### FORM OF SOLEMN AFFIRMATIONS

12. The form of affirmation shall in each case be the same as the form of oath set out above except that for the words “swear” or “swear by Almighty God” there shall be substituted the words “solemnly, sincerely and truly declare and affirm”.

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## SCHEDULE 4

Article 91

## APPLICATION AND MODIFICATION OF ENACTMENTS

Column 1 <i>Provision applied</i>	Column 2 <i>Modifications</i>
<p>In the 1955 Act—</p> <p><i>(functions of the prosecuting authority)</i></p> <p>section 83B(8) to (14)</p>	<p>for the words “rules under section 103 of this Act” wherever they occur there shall be substituted the words “any order made under paragraph 12 of Schedule 3 to the Armed Forces Act 1976”</p> <p>for the words “commencement of trial” wherever they occur there shall be substituted the words “opening of proceedings”</p>
<p><i>(prosecuting officers)</i></p> <p>section 83C</p> <p><i>(witnesses to be examined on oath)</i></p> <p>section 93(1B)</p> <p><i>(power to convict of offence other than that charged)</i></p> <p>section 98</p>	
<p><i>(proof by written statement)</i></p> <p>section 99A</p> <p><i>(affirmations)</i></p>	
<p>section 102</p>	<p>for the words “this Act” there shall be substituted the words “the Standing Civilian Courts Order 1997”</p> <p>for the words “prescribed form” there shall be substituted the words “form specified in any order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976”</p>
<p><i>(trial and punishment of offences under service law notwithstanding offender ceasing to be subject to it)</i></p> <p>section 131(1)</p> <p>as applied by section 209(3)(g)</p> <p>section 132(3)</p> <p><i>(custody of proceedings)</i></p>	
<p>section 141</p>	<p>for the words “prescribed period” there shall be substituted the words “period specified in an</p>



Column 1 <i>Provision applied</i>	Column 2 <i>Modifications</i>
	order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976”
	after subsection (5), the insertion of the following subsection— “(5A) In this section, the expression “a person tried by court-martial” shall include, where the person tried was under 17 years of age, any parent or guardian of his.”
<i>(interpretation)</i> section 143 <i>(arrest of persons unlawfully at large)</i> section 190B	after the word “detention” there shall be inserted the words “or having been sentenced by a Standing Civilian Court to imprisonment, to a custodial order under Schedule 5A to this Act or to be detained under section 71A(4) of this Act”
<i>(general provisions as to evidence)</i> section 198 <i>(proof of outcome of civil trial)</i> section 199 (as applied by section 209(4B)) <i>(evidence of proceedings)</i> section 200	for the words “president of the court” there shall be substituted the word “magistrate”
<i>(exclusion of enactments requiring the fiat of the Attorney-General)</i> section 204A In the Criminal Justice Act 1967— sections 9 and 10 (as applied and modified by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997(12))	

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## SCHEDULE 5

Article 93

## REVOCATIONS

Orders revoked	Reference
The Standing Civilian Courts Order 1977	<a href="#">1977/88</a>
The Standing Civilian Courts (Amendment) Order 1982	<a href="#">1982/367</a>
The Standing Civilian Courts Order (Amendment) Order 1983	<a href="#">1983/716</a>
The Standing Civilian Courts Order (Amendment) Order 1984	<a href="#">1984/1671</a>
The Standing Civilian Courts (Amendment) Order 1987	<a href="#">1987/2001</a>
The Standing Civilian Courts (Amendment No. 2) Order 1987	<a href="#">1987/2173</a>
The Standing Civilian Courts (Amendment) Order 1989	<a href="#">1989/2130</a>

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision with respect to the prosecution and trial of offences by Standing Civilian Courts, the review of findings and sentences of, and appeals from, such courts. It revokes and replaces the Standing Civilian Courts Order 1977 (S.I. [1977/88](#)) and gives effect to changes to the Armed Forces Act [1976 \(c. 52\)](#) made by the Armed Forces Act [1996 \(c. 46\)](#).

Civilians to whom Part II of the Army Act [1955 \(c. 18\)](#) or Part II of the Air Force Act [1955 \(c. 19\)](#) applies may be prosecuted under those Acts before a Standing Civilian Court if they commit an offence under those Acts while they are accompanying the armed forces abroad.

The Order makes the procedural rules under which the prosecuting authority is responsible for the conduct of the proceedings against the accused. The Order stipulates the rules under which the court administration officer will be responsible for serving the summons on the accused, arranging the attendance of witnesses, the appointment of members and assessors to sit with the magistrate and the date, time and venue of the court.

The Order provides for the summoning of a parent of accuseds under the age of 17.

Provision is also made for the accused to elect trial by court-martial and, in certain circumstances, to withdraw such an election.

The Order makes new provision for the court to resolve disputed issues of fact where it is necessary to do so before deciding what sentence is to be passed. New provision is also made relating to the

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admission of evidence via closed circuit television link and by video recordings of testimony from child witnesses.