

Draft Rules laid before Parliament under section 373(3) of the Armed Forces Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2022 No. 0000

DEFENCE

The Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022

Made - - - -

Coming into force - - *1st January 2023*

The Secretary of State makes the following Rules in exercise of the powers conferred by sections 151, 163, 288 and 373(5) of the Armed Forces Act 2006⁽¹⁾.

In accordance with section 373(3)(2) of that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Rules may be cited as the Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022.

(2) These Rules come into force on 1st January 2023.

Extent

2. These Rules extend to England and Wales, Scotland, Northern Ireland, the Isle of Man and the British overseas territories (except Gibraltar).

Amendment of the Armed Forces (Court Martial) Rules 2009

3. The Armed Forces (Court Martial) Rules 2009⁽³⁾ are amended as follows.

4. After rule 3 (interpretation: general) insert—

(1) 2006 c. 52. There are amendments to sections 151, 163 and 288 but none are relevant.

(2) Section 373(3) has been amended by section 22(3) of the Armed Forces Act 2021 (c. 35), there are other amendments but none is relevant.

(3) S.I. 2009/2041, to which there are amendments not relevant to these Rules.

“PART 1A

THE OVERRIDING OBJECTIVE

The overriding objective

3A.—(1) The overriding objective of these Rules is that cases be dealt with justly.

(2) Dealing with a case justly includes—

- (a) acquitting the innocent and convicting the guilty;
- (b) treating all participants with politeness and respect;
- (c) dealing with the prosecution and defence fairly;
- (d) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
- (e) respecting the interests of witnesses, victims and lay members (if any) and keeping them informed of the progress of the case;
- (f) dealing with the case efficiently and expeditiously;
- (g) ensuring that appropriate information is available to a judge advocate or the court when either custody before or after charge or sentence are considered; and
- (h) dealing with the case in ways that take into account—
 - (i) the gravity of the offence alleged;
 - (ii) the complexity of what is in issue;
 - (iii) the severity of the consequences for the defendant and others affected;
 - (iv) the needs of other cases; and
 - (v) the need to maintain the operational effectiveness of Her Majesty’s forces.

(3) In this rule “custody before or after charge” means the keeping of the accused in service custody under Part 4 of the 2006 Act.

The duty of the participants in a case

3B.—(1) Each participant, in the conduct of each case, must—

- (a) prepare and conduct the case in accordance with the overriding objective;
- (b) comply with these Rules and any directions relating to the case given by a judge advocate or the court;
- (c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules or any direction. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a case is a participant in its conduct for the purposes of this rule.

The application by the court of the overriding objective

3C. The court or the judge advocate for any proceedings before the court must further the overriding objective, in particular when—

- (a) exercising any power given to the court or the judge advocate by legislation (including these Rules); or

(b) interpreting any rule.”.

5. After rule 34 (the president of the board) insert—

“Gender representation on boards

34A.—(1) When the court administration officer specifies the lay members for any proceedings the court administration officer must ensure, so far as is reasonably practicable, that—

- (a) at least one lay member is a woman; and
- (b) at least one lay member is a man.

(2) This rule does not apply if the court administration officer is specifying lay members for proceedings for which (by virtue of rule 33) no lay member is subject to service law.”.

6.—(1) Rule 62 (notification of witnesses) is amended as follows.

(2) For paragraph (1) substitute—

“(1) Where any person is required to give evidence in any proceedings, the person must be notified of the time and place at which they are required to attend by—

- (a) the Director, if the person is required to give evidence by the Director; or
- (b) the court administration officer.”.

(3) For paragraph (4) substitute—

“(4) Where the Director is required to notify a person under this rule and in the opinion of the Director it is not reasonably practicable to do so, the Director must give notice of that fact to the judge advocate.

(5) Where the court administration officer is required to notify a person under this rule or serve a witness summons on a person and in the opinion of the court administration officer it is not reasonably practicable to do so, the court administration officer must give notice of that fact to the judge advocate and the party who wishes the person to attend.”.

Amendment of the Armed Forces (Service Civilian Court) Rules 2009

7. The Armed Forces (Service Civilian Court) Rules 2009(4) are amended as follows.

8. After rule 3 (interpretation: general) insert—

“PART 1A

THE OVERRIDING OBJECTIVE

The overriding objective

3A.—(1) The overriding objective of these Rules is that cases be dealt with justly.

(2) Dealing with a case justly includes—

- (a) acquitting the innocent and convicting the guilty;
- (b) treating all participants with politeness and respect;
- (c) dealing with the prosecution and defence fairly;

(4) [S.I. 2009/1209](#), to which there are amendments not relevant to these Rules.

- (d) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
- (e) respecting the interests of witnesses and victims and keeping them informed of the progress of the case;
- (f) dealing with the case efficiently and expeditiously;
- (g) ensuring that appropriate information is available to a judge advocate or the court when either custody before or after charge or sentence are considered; and
- (h) dealing with the case in ways that take into account—
 - (i) the gravity of the offence alleged;
 - (ii) the complexity of what is in issue;
 - (iii) the severity of the consequences for the defendant and others affected;
 - (iv) the needs of other cases; and
 - (v) the need to maintain the operational effectiveness of Her Majesty’s forces.

(3) In this rule “custody before or after charge” means the keeping of the accused in service custody under Part 4 of the 2006 Act.

The duty of the participants in a case

3B.—(1) Each participant, in the conduct of each case, must—

- (a) prepare and conduct the case in accordance with the overriding objective;
- (b) comply with these Rules and any directions relating to the case given by a judge advocate or the court;
- (c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules or any direction. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a case is a participant in its conduct for the purposes of this rule.

The application by the court of the overriding objective

3C. The court or the judge advocate for any proceedings before the court must further the overriding objective, in particular when—

- (a) exercising any power given to the court or the judge advocate by legislation (including these Rules); or
- (b) interpreting any rule.”.

9.—(1) Rule 48 (notification of witnesses) is amended as follows.

(2) For paragraph (1) substitute—

“(1) Where any person is required to give evidence in any proceedings, the person must be notified of the time and place at which they are required to attend by—

- (a) the Director, if the person is required to give evidence by the Director; or
- (b) the court administration officer.”.

(3) For paragraph (4) substitute—

“(4) Where the Director is required to notify a person under this rule and in the opinion of the Director it is not reasonably practicable to do so, the Director must give notice of that fact to the judge advocate.

(5) Where the court administration officer is required to notify a person under this rule or serve a witness summons on a person and in the opinion of the court administration officer it is not reasonably practicable to do so, the court administration officer must give notice of that fact to the judge advocate and the party who wishes the person to attend.”.

Amendment of the Armed Forces (Summary Appeal Court) Rules 2009

10. The Armed Forces (Summary Appeal Court) Rules 2009(5) are amended as follows.

11. After rule 3 (interpretation: general) insert—

“PART 1A THE OVERRIDING OBJECTIVE

The overriding objective

3A.—(1) The overriding objective of these Rules is that cases be dealt with justly.

(2) Dealing with a case justly includes—

- (a) acquitting the innocent and convicting the guilty;
- (b) treating all participants with politeness and respect;
- (c) dealing with the prosecution and defence fairly;
- (d) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
- (e) respecting the interests of witnesses, victims and lay members (if any) and keeping them informed of the progress of the case;
- (f) dealing with the case efficiently and expeditiously;
- (g) ensuring that appropriate information is available to a judge advocate or the court when either custody before or after charge or sentence are considered; and
- (h) dealing with the case in ways that take into account—
 - (i) the gravity of the offence alleged;
 - (ii) the complexity of what is in issue;
 - (iii) the severity of the consequences for the defendant and others affected;
 - (iv) the needs of other cases; and
 - (v) the need to maintain the operational effectiveness of Her Majesty’s forces.

(3) In this rule “custody before or after charge” means the keeping of the accused in service custody under Part 4 of the 2006 Act.

The duty of the participants in a case

3B.—(1) Each participant, in the conduct of each case, must—

- (a) prepare and conduct the case in accordance with the overriding objective;

(5) [S.I. 2009/1211](#), to which there are amendments not relevant to these Rules.

- (b) comply with these Rules and any directions relating to the case given by a judge advocate or the court;
 - (c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules or any direction. A failure is significant if it might hinder the court in furthering the overriding objective.
- (2) Anyone involved in any way with a case is a participant in its conduct for the purposes of this rule.

The application by the court of the overriding objective

3C. The court or the judge advocate for any proceedings before the court must further the overriding objective, in particular when—

- (a) exercising any power given to the court or the judge advocate by legislation (including these Rules); or
- (b) interpreting any rule.”.

12.—(1) Rule 49 (notification of witnesses) is amended as follows.

(2) For paragraph (1) substitute—

“(1) Where any person is required to give evidence in any proceedings, the person must be notified of the time and place at which they are required to attend by—

- (a) the Director, if the person is required to give evidence by the Director; or
- (b) the court administration officer.”.

(3) For paragraph (4) substitute—

“(4) Where the Director is required to notify a person under this rule and in the opinion of the Director it is not reasonably practicable to do so, the Director must give notice of that fact to the judge advocate.

(5) Where the court administration officer is required to notify a person under this rule or serve a witness summons on a person and in the opinion of the court administration officer it is not reasonably practicable to do so, the court administration officer must give notice of that fact to the judge advocate and the party who wishes the person to attend.”.

Date

Name
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041) (“the Court Martial rules”), the Armed Forces (Service Civilian Court) Rules 2009 (S.I. 2009/1209) (“the SCC rules”) and the Armed Forces (Summary Appeal Court) Rules 2009 (S.I. 2009/1211) (“the SAC rules”), which provide the rules of court for the Court Martial, the Service Civilian Court and the Summary Appeal Court.

These Rules insert a new Part 1A in the Court Martial rules, the SCC rules and the SAC rules, which sets out the overriding objective for each of those sets of rules, places a duty on participants in cases to comply with that objective and requires the court and judge advocates to further the objective when exercising statutory powers or interpreting other rules. They also amend rule 62 of the Court Martial rules, rule 48 of the SCC rules and rule 49 of the SAC rules to make the Director of Service Prosecutions responsible for notifying prosecution witnesses of the time and location of the proceedings at which they are required to give evidence. Finally, these Rules insert a new rule 34A in the Court Martial rules, which places a duty on the court administration officer to ensure that if one or more persons subject to service law are specified as lay members for proceedings in the Court Martial at least one of the lay members for the proceedings will be a woman and one a man.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.