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STATUTORY INSTRUMENTS

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**1987 No. 2000**

**DEFENCE**

**The Rules of Procedure (Air Force) (Amendment) 1987**

*Made* - - - - *23rd November 1987*  
*Laid before Parliament* *27th November*  
*Coming into force* - - *1st January 1988*  
*1987.*

The Secretary of State in exercise of the powers conferred on him by sections 103 and 209 of the Air Force Act 1955(1), hereby makes the following Rules:—

**Citation and commencement**

1. These Rules may be cited as the Rules of Procedure (Air Force) (Amendment) Rules 1987 and shall come into force on 1st January 1988.

**Interpretation**

2. In these Rules, “the Principal Rules” means the Rules of Procedure (Air Force) 1972(2).

**Amendment**

3.—(1) The Principal Rules shall be amended as follows.

(2) In Rule 74(1) the words “or may make a custodial order” shall be inserted after the words “a term of imprisonment”.

(3) In Rule 74 for paragraph (4) there shall be substituted the following:—

“(4) Where the court direct that a term of imprisonment, a custodial order or a term of detention is to begin to run from the expiry of some other term of imprisonment, a custodial order or term of detention, the direction shall be in the appropriate form set out in Schedule 5 to these Rules.”.

(4) In Schedule 5 for paragraph 3 there shall be substituted the following:—

“3. CONSECUTIVE SENTENCES OF IMPRISONMENT OR PERIODS OF DETENTION UNDER CUSTODIAL ORDERS FOR OFFENCES AGAINST SECTION 70 OF THE ACT, UNDER s. 118A(3) OF THE ACT<sup>1</sup>.”

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(1) 1955 c. 19; section 209 was amended by the Armed Forces Act 1976 (c. 52), Schedule 9, paragraph 5.  
(2) S.I.1972/419; relevant amending instruments are S.I. 1977/94, 1982/368, 1983/718 and 1986/2125.

In respect of charges. . . <sup>2</sup> to be [imprisoned for] [committed to be detained in an appropriate institution [in accordance with the provisions of s.71AA of the Air Force Act 1955] (or where the offender is a civilian) [in accordance with the provisions of para. 10 of Schedule 5A of the Air Force Act 1955] for a period of] . . . ; [and] on charge . . . <sup>3</sup> [to be imprisoned for] [to be detained as aforesaid for a period of] . . . ; [and] on charge . . . <sup>3</sup> [to be imprisoned for] [to be detained as aforesaid for a period of]. . . (et seq as required). The Court order that their sentence(s) on charge(s) . . . run from the expiry of the term awarded on charge(s) . . . <sup>4</sup> [and that their sentence(s) on charge(s) . . . run from the expiry of the term awarded on charge(s) . . . <sup>5</sup>] (et seq as needed).

#### Notes

1. Applies *only* to general courts-martial dealing with two or more offences against s.70 of the Act.
2. *Must* include at least one offence under s.70 and *all* offences against any other sections of the Act.
3. Any offence under s.70 the sentence for which is to run *consecutively* with the earlier sentence(s).
4. The first of the terms awarded.
5. Where it is desired to make a subsequent sentence further consecutive to a sentence which was itself made consecutive to an earlier sentence.”.

(5) In Schedule 5 after paragraph 7 there shall be inserted the following:–

“8. DIRECTION OF SUSPENSION OF SENTENCE ON APPEAL FROM THE STANDING CIVILIAN COURT CONSEQUENT UPON SUSPENSION OF SENTENCE UNDER PARAGRAPH 20(4) OF SCHEDULE 3 TO THE ARMED FORCES ACT 1976

In accordance with paragraph 18(12) of Schedule 3 to the Armed Forces Act 1976, the court hereby direct that this sentence of. . . (type of custody, not length) be suspended.”.

(6) In paragraph 10 of Schedule 9 for sub-paragraph (3)(a)(ii) there shall be substituted the following:–

“(ii) subject to paragraph (4) below, any previous convictions of his by a civil court, court-martial or a Standing Civilian Court, including a conviction by a Standing Civilian Court in respect of which the award of sentence has been deferred under paragraph 2A of Schedule 5A to the Act, except, in the case of an accused who has attained 21 years of age, any conviction before he had attained 14 years of age;”.

(7) In Part I of Schedule 9 for paragraph 12 and the heading thereto there shall be substituted the following:–

#### “Sentencing

12.—(1) Rule 74 above (Sentencing and recommendation to mercy) shall have effect as if the following paragraphs were inserted after paragraph (4) of that Rule.

“(4A) Where the court are informed in accordance with sub-paras (3)(a)(ii) and (4) of paragraph 10 of Schedule 9 to these Rules that a Standing Civilian Court had deferred sentence on the accused in respect of one or more offences and it appears that any offence of which the accused has been found guilty before them was committed during the period of that deferment, then (unless such matters have already been dealt with) the court-martial may themselves sentence the accused for the offences in respect of which the award of sentence was deferred.

(4B) A court-martial dealing with an accused for an offence in respect of which the award of sentence was deferred may deal with him by any way in which the Standing Civilian Court which deferred the award could have dealt with him for that offence.

(4C) Where a court-martial has awarded the accused for the offence or offences of which he has been found guilty before it a sentence of imprisonment or a sentence under a custodial order, it may order that such a sentence shall begin to run from the expiry of any sentence of imprisonment or custodial order awarded for any offence or offences in respect of which the award of sentence was deferred, subject to any limit imposed by, or any provision corresponding to, section 85 of the Act or paragraph 10(1A) of Schedule 5A thereto.

(4D) Sentences awarded pursuant to paragraphs (4A) to (4C) above shall be in the appropriate form set out in Schedule 5 to these Rules.”

(2) In paragraph 6 of Rule 74 (sentence where offence taken into consideration), for the words from “a direction” onwards there shall be substituted the words “where appropriate a compensation order which relates, wholly or in part, to the offence taken into consideration.”.”

(8) Appendix 2 to Schedule 9 (Modification of Schedule 5 to these Rules) shall have effect as if the following were inserted immediately after paragraph (5) (determination of a suspended sentence, etc.):—

“(5A) DEALING WITH OFFENCES IN RESPECT OF WHICH THE STANDING CIVILIAN COURT DEFERRED SENTENCE.

The Court deal with the offence(s) in respect of which a Standing Civilian Court sitting at . . . on . . . deferred sentence on the accused' as follows:—

[On charge . . . <sup>2</sup>] [To be imprisoned for] [to be committed to be detained in an appropriate institution in accordance with the provisions of paragraph 10 of Schedule 5A to the Air Force Act 1955 for a period of] . . . ; [on charge . . . <sup>2</sup>] [to be imprisoned for] [detained as aforesaid for a period of] . . . ; the court order that this sentence should run [concurrently] [consecutively with the sentence on charge . . . <sup>3</sup>; on charge . . . [to be imprisoned for] [detained as aforesaid for a period of] . . . ; the court order that this sentence shall run [concurrently] [consecutively with their sentence(s) on charge(s) . . . [or, concurrently with the sentence(s) on charge(s) . . . but consecutively with the sentence(s) on charge(s) . . .] <sup>4</sup>.

[The Court further order that their sentence(s) above for the offence(s) of which the accused has been convicted before them shall begin to run from the expiry of the sentence(s) they have awarded in respect of the offence(s) for which the award of sentence had been deferred] <sup>5</sup>.

Notes

1. See RP 74(4A-D). (As modified by paragraph 1 of Schedule 9 of these Rules). The Court will first sentence the accused in respect of the offence(s) of which he has been found guilty before it and then proceed to sentence him in respect of the deferred SCC sentence(s). (See, however, Note 5 below as to the order in which the sentences are to be ordered to run if made consecutively).

2. If sentence has been deferred on more than one charge.

3. The charge on which sentence has already been announced.

4. Where sentence has been passed on more than two charges.

5. The Court’s power to order that their sentence for the subsequent offences with which they have dealt shall run consecutively with their sentence for the offence or offences in respect of which the award of sentence had been deferred is subject to the application of the aggregate of the sentences of any limit imposed by, or any provision corresponding to section 85 of the

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Act or paragraph 10(1A) of Schedule 5A thereto. The Court is not obliged to make such an order. If they do not do so, the sentence(s) awarded by the Court for the offence(s) before it will begin to run from the day on which it is passed, i.e., concurrently with any sentence they have awarded in respect of the deferred matters.”.

Dated this 23rd day of November 1987

*George Younger*  
Secretary of State for Defence

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## EXPLANATORY NOTE

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

These Rules amend the Rules of Procedure (Air Force) Rules 1972 and are consequential upon the Armed Forces Act 1986 (c. 21).

The forms of sentence prescribed by paragraph 3 of Schedule 5 to the Principal Rules are consolidated.

Paragraph 7 of Schedule 5 to the Principal Rules, in consequence of section 12 of the Armed Forces Act 1986, prescribes a Form of Direction for suspension of sentence by courts-martial when hearing cases on appeal from Standing Civilian Courts.

Paragraph 10 of Schedule 9 to the Principal Rules is amended in consequence of the powers conferred by section 9(S) of the Armed Forces Act 1986, whereby a court-martial may deal with an offender for an offence in respect of which sentence has been deferred by a Standing Civilian Court under the power created by that section. Paragraph 12 of Part I of Schedule 9 to the Principal Rules is amended to provide sentencing procedures for courts-martial dealing with such deferred sentences.

Paragraph (5A) of Appendix 2 to Schedule 9 (modification of Schedule 5 to the Principal Rules) prescribes forms of sentence for use by courts-martial when so dealing.

Rule 74 of the Principal Rules, in consequence of paragraphs 5(1), (2) and (3) of Schedule 1 to the Armed Forces Act 1986, is amended to provide for consecutive periods of detention under custodial orders.