
STATUTORY INSTRUMENTS

2009 No. 2657

The Court Martial Appeal Court Rules 2009

PART 3

PROCEEDINGS: GENERAL

Notification of proceedings to the person to whom proceedings relate

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

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

Evidence through live link

14.—(1) If for the time being section 32(1) of the Criminal Justice Act 1988 ^{M1} has effect in relation to proceedings before the Court Martial Appeal Court—

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

(2) If for the time being section 33A(2) of the Youth Justice and Criminal Evidence Act 1999 ^{M2} applies to proceedings before the Court Martial Appeal Court—

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

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

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

Marginal Citations

- M1** 1988 c. 33. Paragraph 8(1) of Schedule 13 to the Criminal Justice Act 1988 provides that the Secretary of State may by order direct that section 32(1), as modified by paragraph 8(2) of that Schedule, shall have effect in relation to proceedings before the Court Martial Appeal Court.
- M2** 1999 c. 23. Section 33A was inserted by section 47 of the [Police and Justice Act 2006 \(c. 48\)](#) and under section 61(1) of the 1999 Act may by order of the Secretary of State be applied, subject to such modifications as the Secretary of State may specify, to proceedings before the Court Martial Appeal Court.

Oaths and affirmations

15.—(1) Sections 1 and 3 to 6 of the Oaths Act 1978 ^{M3} shall apply where, for the purposes of these Rules, an oath or affirmation is to be taken outside of the United Kingdom as they would apply if the person were required to take an oath or affirmation in England, Wales or Northern Ireland.

(2) Where section 1 or 6 of that Act applies, the reference in that section to the words of the oath prescribed by law is to be read as a reference to the words prescribed by Schedule 1 for a person of the class to which the person belongs.

Marginal Citations

- M3** 1978 c. 19.

[^{F1} Interpretation, translation and communication through an intermediary

16.—(1) Where a person to whom proceedings relate is due to attend a hearing, the registrar, where satisfied that the person needs interpretation, must appoint an interpreter to act at the hearing.

(2) Before an interpreter begins to act at a hearing, an oath or affirmation must be administered to the interpreter.

(3) Before an interpreter is sworn or makes his affirmation, the interpreter's name must be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(4) If the court upholds any such objection, the interpreter shall not be sworn or make his affirmation, and the registrar must appoint another interpreter.

(5) On application or on its own initiative, the court may require a written translation of any document or part of a document to be provided for a person to whom proceedings relate, and who needs interpretation, unless—

- (a) translation of that document, or part, is not needed to explain the issues arising in the proceedings in relation to the person; or
- (b) the person agrees to do without, and the court is satisfied—
 - (i) that the agreement is clear and voluntary; and
 - (ii) that the person has had legal advice or otherwise understands the consequences.

(6) On application by a person to whom proceedings relate, the court must give any direction which it thinks appropriate, including a direction for interpretation by a different interpreter, where—

- (a) no interpreter is appointed, or no interpretation provided;
- (b) no translation is ordered, or provided, in response to a previous application by the person; or

(c) the person complains about the quality of any interpretation or translation provided.

(7) In relation to a person who has a hearing or speech impediment, references in these Rules to an interpreter include a person appointed—

(a) to communicate to the person anything said at the hearing, and explain it so far as necessary to enable the person to understand it, or

(b) to communicate any answers given by the person, and any other matters that the person seeks to convey, and explain them so far as necessary to enable the court and others present at the hearing to understand them,

and references to interpretation shall be construed accordingly.

(8) In this rule references to acting at a hearing include assisting the person to communicate with the person's legal representative during the hearing; and in relation to such assistance paragraph (7) (b) has effect as if the reference to the court and others present at the hearing were to the legal representative.

(9) The registrar must record, by such means as the Lord Chancellor directs—

(a) the identity of any interpreter;

(b) any decision on an application under paragraph (5);

(c) any agreement under paragraph (5)(b) to do without a written translation of a document or part of a document; and

(d) any direction given under paragraph (6).]

Textual Amendments

F1 Rule 16 substituted (27.10.2013) by [The Court Martial Appeal Court \(Interpretation and Translation\) Rules 2013 \(S.I. 2013/2524\)](#), rules 1, 3

[^{F2}Interpretation and translation for witnesses other than a person to whom proceedings relate

16A.—(1) Where the complainant is due to attend a hearing as a witness, the registrar, where satisfied that the person needs interpretation, must appoint an interpreter to act at the hearing.

(2) The registrar may also appoint an interpreter for any other witness who is required to give evidence at a hearing, other than a person to whom proceedings relate.

(3) Before an interpreter begins to act at a hearing, an oath or affirmation must be administered to the interpreter.

(4) Before an interpreter is sworn or makes his affirmation, the interpreter's name must be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(5) If the court upholds any such objection, the interpreter shall not be sworn or make his affirmation, and the registrar must appoint another interpreter.

(6) On application or on its own initiative, the court may require a written translation of any document or part of a document to be provided for a complainant or other person (other than a person to whom proceedings relate) who attends a hearing as a witness and who needs interpretation.

(7) The registrar must record, by such means as the Lord Chancellor directs—

(a) the identity of any interpreter; and

(b) any decision on an application under paragraph (6).]

Textual Amendments

- F2** Rule 16A inserted (16.11.2015) by The Court Martial Appeal Court (Amendment) Rules 2015 (S.I. 2015/1814), rules 1, 4

Rights of audience

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

Legal representatives

18.—(1) A party to proceedings to which these Rules apply may appoint a legal representative to act for him in relation to the proceedings.

- (2) A person may not be appointed as a legal representative unless—
- (a) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 ^{M4};
 - (b) he is an advocate or a solicitor in Scotland;
 - (c) he is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
 - (d) he is a person having in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

(3) Any right conferred on a party to proceedings by these Rules may be exercised, and any duty imposed on him by these Rules discharged, by his legal representative on his behalf.

(4) A party who appoints a legal representative must notify the registrar of the legal representative's business address.

Marginal Citations

- M4** 1990 c. 41. Subsection (6) of section 71 of the Courts and Legal Services Act 1990 was substituted by the Access to Justice Act 1999 (c. 22), section 43, **Schedule 6**, paragraphs 4 and 9. Subsections (7) and (8) of section 71 of the 1990 Act were repealed by section 106 of, and Schedule 15, Part 2 to, the 1999 Act. Prospective amendments to section 71 of the 1990 Act are made to subsection (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), **Schedule 11**, Part 2, paragraph 4(1) and (3). Prospective amendments are made to subsections (4) and (6) and a new subsection (6A) is inserted into section 71 of the 1990 Act by the Legal Services Act 2007 (c. 29), section 208(1), **Schedule 21**, paragraphs 83 and 94(a), (b) and (c).

Changes to legislation:

There are currently no known outstanding effects for the The Court Martial Appeal Court Rules 2009, PART 3.