

2009 No. 1209

DEFENCE

The Armed Forces (Service Civilian Court) Rules 2009

Made - - - - *7th May 2009*

Laid before Parliament *14th May 2009*

Coming into force - - *31st October 2009*

The Secretary of State, in exercise of the powers conferred by sections 111, 113, 132 and 135 of, paragraph 5 of Schedule 6 to, and paragraph 2(6) of Schedule 7 to, the Criminal Justice Act 2003(a); and sections 280(2) and (5), 288 and paragraph 1 of Schedule 10 to the Armed Forces Act 2006(b), makes the following Rules:

PART 1

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Armed Forces (Service Civilian Court) Rules 2009 and shall come into force on 31st October 2009.

Interpretation: proceedings and parties

2.—(1) Unless otherwise stated, any reference in these Rules to proceedings is to—

- (a) preliminary proceedings,
- (b) trial proceedings,
- (c) sentencing proceedings, and
- (d) ancillary proceedings,

and does not include the exercise of any power of the court otherwise than at a hearing.

(2) In these Rules—

“activation order” means—

- (a) an order under paragraph 8(2)(a) or (b) of Schedule 12 to the 2003 Act (activation of suspended sentence of imprisonment); or

(a) 2003 c. 44; by virtue of section 113 of, and paragraph 5 of Schedule 6 to, the Criminal Justice Act 2003 (“the 2003 Act”), section 111 has effect as if, in its subsection (7), the definition of “rules of court” includes rules regulating the practice and procedure of service courts. By virtue of section 135 of, and paragraph 2(6) of Schedule 7 to, the 2003 Act, section 132 is modified so that, in its subsection (10), the definition of “rules of court” includes rules regulating the practice and procedure of service courts. By virtue of paragraph 6 of Schedule 6 and paragraph 8 of Schedule 7 (as amended by paragraph 234(4) and paragraph 235(6) of Schedule 16 to the Armed Forces Act 2006), “service court” includes the Service Civilian Court.

(b) 2006 c.52.

- (b) an order under section 214(3) (reactivation of detention and training order);
- “activation proceedings” means proceedings for the making of an activation order, but does not include sentencing proceedings in which the court has power to make such an order;
- “ancillary proceedings” means proceedings under any provision of Part 15;
- “community order proceedings” means any proceedings under Chapter 1 of Part 15;
- “preliminary proceedings” means any proceedings of the court held for the purpose of—
 - (c) the court making its decision in accordance with section 279 (consideration of trial by Court Martial);
 - (d) allowing the defendant to exercise his right to elect trial by the Court Martial;
 - (e) arraigning a defendant on a charge to be tried in the trial proceedings; or
 - (f) giving directions, orders or rulings for the purpose of the trial proceedings;
- “related proceedings”, in relation to preliminary proceedings, means—
 - (g) trial proceedings in respect of any charge to which the preliminary proceedings relate;
 - (h) any further preliminary proceedings in relation to such trial proceedings; and
 - (i) any sentencing proceedings in respect of any offence found proved in such trial proceedings, or as respects which the offender pleads guilty in the preliminary proceedings or related proceedings;
- “sentencing proceedings” means proceedings for the sentencing of a person convicted by the court on a plea of guilty or in trial proceedings;
- “trial proceedings” means proceedings for the trial of a charge by the court, and does not include sentencing proceedings.

(3) References in these Rules to a party to any proceedings are to—

- (a) a person to whom the proceedings relate;
- (b) the Director; and
- (c) where the proceedings are for the hearing of an application (and the applicant is not a person to whom the proceedings relate), the applicant.

(4) References in these Rules to a person to whom proceedings relate are to—

- (a) in the case of preliminary or trial proceedings, a defendant;
- (b) in the case of sentencing proceedings, an offender who falls to be sentenced in the proceedings;
- (c) in the case of activation proceedings, the offender in respect of whom the court has power to make an activation order in the proceedings;
- (d) in the case of community order proceedings, the offender in respect of whom the overseas community order was made;
- (e) in the case of a hearing of any other application (other than community order proceedings), the applicant;
- (f) in the case of a hearing under rule 108 (certification of contempt of court), the person whose offence the court is to consider certifying.

(5) In these Rules—

- “defendant” means a person against whom a charge allocated for Service Civilian Court trial has been brought;
- “the Director” means the Director of Service Prosecutions.

Interpretation: general

3.—(1) Any reference in these Rules to a numbered section is to that section of the Act unless otherwise stated.

(2) In these Rules—

- “the Act” means the Armed Forces Act 2006;
- “the 1967 Act” means the Criminal Justice Act 1967(a);
- “the 1999 Act” means the Youth Justice and Criminal Evidence Act 1999(b);
- “the 2003 Act” means the Criminal Justice Act 2003;
- “the CPIA Order” means the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009(c);
- “advance information” has the meaning given by rule 30(2);
- “bad character” has the meaning given by section 98 of the 2003 Act;
- “civilian police force” means a UK police force or a British overseas territory police force;
- “the court” means the Service Civilian Court;
- “DX” means document exchange;
- “detention and training order” means an order under section 211;
- “the judge advocate”, in relation to any proceedings, means the judge advocate specified for the proceedings under section 278(2);
- “legal representative” means a person appointed by a party to proceedings under rule 26;
- “live link”, has the meaning given by rule 18(3)(a);
- “pre-sentence report” has the meaning given by section 257; and
- “unit” means—
 - (a) a naval ship or establishment;
 - (b) any body of members of Her Majesty’s forces formed under the command of a person appointed to be the commanding officer of the body; or
 - (c) an air force station.

(3) Any reference in these Rules to Schedule 8 to the 2003 Act is to that Schedule as modified by Schedule 5 to the Act.

PART 2

SERVICE OF DOCUMENTS

Interpretation of Part 2

4.—(1) References in this Part to service under these Rules include service under any enactment applied by these Rules.

(2) References in this Part to a requirement that a document be served on a person include any requirement that the document be supplied to the person, however expressed.

(3) References in this Part to a person’s agreement to the service of a document in a particular way include his agreement that any document of a description specified by him may be served in that way.

Service on a person to whom proceedings relate

5.—(1) Where under these Rules any document is to be served on a person to whom any proceedings relate, it may be served—

- (a) on him personally;
- (b) by leaving it at his usual or last known place of abode; or

(a) 1967 c. 80.
 (b) 1999 c. 23.
 (c) S.I. 2009/988.

- (c) by post in a letter addressed to his usual or last known place of abode;
- (d) by post in a letter addressed to his legal representative's place of business; or
- (e) by DX, fax, electronic mail or other electronic means to his legal representative, where his legal representative—
 - (i) has given a DX box number, fax number or electronic mail or other electronic means address; and
 - (ii) has not refused to accept service by that means.

(2) In this rule references to the person's legal representative are to any person of whose name and address the court administration officer has been notified under rule 26(4).

Service on the court administration officer

6. Where under these Rules any document is to be served on the court administration officer, it may be served—

- (a) by post, DX, fax, electronic mail or other electronic means to any office of the Military Court Service; or
- (b) personally on any member of that Service, with his agreement.

Service on the Director

7. Where under these Rules any document is to be served on the Director, it may be served—

- (a) by post, DX, fax, electronic mail or other electronic means to—
 - (i) the principal office of the Service Prosecuting Authority; or
 - (ii) with the agreement of a prosecuting officer, that Authority's main office in Germany; or
- (b) on a prosecuting officer personally, with his agreement.

Service on other individuals

8. Where under these Rules any document is to be served on an individual other than a person to whom proceedings relate, the court administration officer or the Director, it may be served—

- (a) on the individual personally;
- (b) if he is subject to service law, by post in a letter addressed to him at his unit;
- (c) if he is not subject to service law—
 - (i) by leaving it at his usual or last known place of abode; or
 - (ii) by post in a letter addressed to his usual or last known place of abode.

Service on a corporation

9. Where under these Rules any document is to be served on a corporation within the meaning of the Companies Act 2006^(a), it may be served—

- (a) by post to—
 - (i) the corporation's principal office in the United Kingdom;
 - (ii) if it has no readily identifiable principal office in the United Kingdom, any place in the United Kingdom where it carries on its activities or business; or
 - (iii) if it has no principal office in the United Kingdom and does not carry on its activities or business in the United Kingdom, its principal office; or
- (b) by DX, fax, electronic mail or other electronic means, where the corporation—

(a) 2006 c. 46.

- (i) has given a DX box number, fax number or electronic mail or other electronic means address; and
- (ii) has not refused to accept service by that means.

Service by another method

10.—(1) A judge advocate may direct that a document may be served by a method other than those mentioned in rules 5 to 9.

(2) A direction under this rule—

- (a) must specify—
 - (i) the method to be used; and
 - (ii) the date by which the document must be served; and
- (b) may specify the time on that date by which the document must be served.

(3) The court may treat a document as served if the addressee responds to it, even if it was not served in accordance with these Rules.

Service by commanding officer

11. Where a document to be served on a person is sent or delivered to his commanding officer, his commanding officer must arrange for the document to be served on him personally as soon as is reasonably practicable.

Service by fax or electronic means

12. Where a document is served by fax, electronic mail or other electronic means, the person serving it need not provide a paper copy as well.

Date of service

13.—(1) Unless the contrary is shown, a document served on a person (otherwise than personally) shall be assumed to have been served—

- (a) in the case of a document sent by post from the United Kingdom to an address within the United Kingdom, on the fifth day after the day on which it was despatched;
- (b) in the case of a document sent by post—
 - (i) from the United Kingdom or Germany to an address within Germany, or
 - (ii) from Germany to an address within the United Kingdom,on the tenth day after the day on which it was despatched;
- (c) in the case of any other document sent by post, on the tenth day after the day on which it was despatched;
- (d) in the case of a document served by DX, on the fifth day after the day on which it was left at the addressee's DX box number or despatched;
- (e) in the case of a document served by fax, electronic mail or other electronic means, on the day after it was transmitted; and
- (f) in any case, on the day on which the addressee responds to it if that is earlier.

Proof of service

14.—(1) Where—

- (a) under any of rules 5 to 9 or a direction under rule 10, a document may be served by a particular method, and
- (b) a certificate is produced which—

(i) states that the document was so served, and
(ii) is signed by a person who purports to have so served the document,
the document shall be assumed to have been so served, unless the contrary is shown.

(2) Where a certificate is produced which—

(a) states that a document was despatched, left at a DX box number or transmitted on a particular day, and

(b) is signed by a person who purports to have despatched, left or transmitted the document,
for the purposes of rule 13 the document shall be assumed to have been despatched, left or transmitted on that day, unless the contrary is shown.

(3) This rule is subject to any provision requiring proof on oath.

PART 3

PROCEEDINGS: GENERAL

The court administration officer

15.—(1) The court administration officer must exercise his functions subject to any direction given by a judge advocate.

(2) The court administration officer may delegate any of his functions to a member of the Military Court Service.

Listing of proceedings

16.—(1) Subject to the provisions of this rule, proceedings shall commence at such time and place as may be appointed by the court administration officer.

(2) Where an offender has been convicted in trial proceedings, the sentencing proceedings in respect of him shall commence immediately after the conclusion of the trial proceedings, unless the judge advocate for those proceedings appoints some later time.

(3) After the commencement of any proceedings, the court shall sit at such times and for such periods each day as it may direct.

Notification of proceedings

17. The court administration officer must serve notice of any time and place appointed by him for the commencement or resumption of any proceedings on—

(a) each person to whom the proceedings relate;

(b) the legal representative (if any) of each such person;

(c) the commanding officer of each such person;

(d) the Director;

(e) where the proceedings are for the hearing of an application, the applicant; and

(f) any such other person as the Judge Advocate General may direct.

Live links

18.—(1) Any person may (and, if in service custody, must) attend any proceedings by live link, if a judge advocate so directs.

(2) A person who attends any proceedings by live link, and could give oral evidence in the proceedings if he were in the place where the proceedings are being held, may give evidence by live link.

- (3) In these Rules—
- (a) “live link” means an arrangement by which a person, when not in the place where proceedings are being held, is able to see and hear, and to be seen and heard by, the court during proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded); and
 - (b) references to bringing a person before the court include bringing him to a place from which he can attend proceedings by live link.
- (4) A direction under this rule may be given by—
- (a) the judge advocate for the proceedings; or
 - (b) the judge advocate for any preliminary proceedings as respects which the proceedings are related proceedings.
- (5) Rule 36(3) (effect of a direction given in preliminary proceedings) applies to a direction under this rule given in preliminary proceedings.
- (6) Where a direction is given under this rule in relation to a witness, the witness may not give evidence otherwise than by live link without the leave of the judge advocate.
- (7) A judge advocate may give a direction under this rule, or give permission for the purposes of paragraph (6)—
- (a) on an application by a party to the proceedings; or
 - (b) of his own motion.

Proceedings in absence of defendant etc

19.—(1) Proceedings may be held in the absence of any person to whom they relate, if the court so directs.

- (2) This rule does not permit a defendant to be arraigned in his absence.

Oaths and affirmations

20.—(1) This rule applies where under these Rules an oath is required to be administered to a person.

(2) Sections 1 and 3 to 6 of the Oaths Act 1978(a) shall apply, as modified by paragraph (3), as they would apply if the person were required to take an oath in England and Wales.

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

Interpreters

21.—(1) The court administration officer may appoint a person to act as interpreter for the purposes of any proceedings.

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

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

Record of proceedings

22.—(1) A record must be made of any proceedings.

- (2) The record of proceedings must include—

(a) 1978 c. 19.

- (a) a record of the court's decision under section 279(1) (trial by the Court Martial);
- (b) a record of the defendant's decision after being given the opportunity to elect Court Martial trial;
- (c) a record of any plea offered, and whether any plea of guilty was accepted by the court;
- (d) a record of any finding;
- (e) a record of any sentence passed, order made or direction given by the court;
- (f) a record of any order made, and any direction or ruling given, by the court;
- (g) a sound recording of the proceedings, and any transcript of it (signed by the transcriber).

(3) The court administration officer shall send a copy of the record of any preliminary proceedings to—

- (a) the Judge Advocate General;
- (b) the Director; and
- (c) each defendant.

(4) Where a direction under rule 34 (preliminary proceedings in chambers) was given in relation to the proceedings, paragraph (3) shall have effect as if sub-paragraph (c) were omitted; and, where such a direction was given in relation to part of the proceedings, paragraph (3)(c) shall have effect in relation only to the record of the remainder.

(5) The record of proceedings shall be kept in the custody of the Judge Advocate General, together with any exhibits retained under rule 23 and any file of correspondence or other papers maintained by the court administration officer in connection with the proceedings, for at least six years from—

- (a) in the case of trial proceedings in which a defendant is convicted, the conclusion of the sentencing proceedings in relation to him;
- (b) in the case of preliminary proceedings where related trial proceedings take place but no defendant is convicted, the conclusion of the trial proceedings;
- (c) in any other case, the conclusion of the proceedings.

(6) A copy of the record of proceedings, or any part of it, shall be supplied on request—

- (a) to any party to the proceedings, without charge, and
- (b) to any other person, on payment of such charge as may be fixed by the Judge Advocate General,

but this is subject to paragraphs (7) and (8).

(7) Paragraph (6) does not require the supply of—

- (a) a copy of the record of any proceedings held in camera, or in relation to which a direction under rule 34 (preliminary proceedings in chambers) was given;
- (b) a copy of any part of a record of proceedings which relates to a part of the proceedings which was held in camera, or in relation to which such a direction was given.

(8) If, following a request for the supply of a copy of the record of proceedings or any part of it, the Secretary of State certifies that it is requisite for reasons of security that the record or part requested (or any part of it) should not be disclosed, paragraph (6) does not require the supply of the record or part requested (or the part of it to which the certificate relates).

Exhibits

23.—(1) Any exhibit admitted in evidence must be marked sequentially with either a number or a letter.

(2) Each exhibit, or a label attached to it, must be signed by or on behalf of the court.

(3) Each exhibit must be retained with the record of proceedings, unless the court otherwise directs.

Termination of proceedings

24.—(1) The court may terminate any proceedings if it considers it in the interests of justice to do so.

(2) The Judge Advocate General shall terminate proceedings if the judge advocate dies or is otherwise unable to continue to attend the proceedings.

(3) The termination of trial proceedings under this rule shall not bar further trial proceedings in relation to the same charge or charges.

(4) The termination of sentencing proceedings under this rule or rule 46(4) (change of plea) shall not bar further sentencing proceedings in relation to the same offence or offences.

(5) The termination of activation proceedings under this rule shall not bar further activation proceedings held by virtue of the same conviction.

Circumstances not provided for

25. Subject to any other enactment (including any other provision of these Rules), the judge advocate shall ensure that proceedings are conducted—

- (a) in such a way as appears to him most closely to resemble the way in which comparable proceedings in magistrates' courts in England and Wales would be conducted in comparable circumstances; and
- (b) if he is unable to determine how comparable proceedings in magistrates' courts in England and Wales would be conducted in comparable circumstances, in such a way as appears to him to be in the interests of justice.

PART 4

ASSISTANCE AND REPRESENTATION

Legal representatives

26.—(1) A party to proceedings 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(a);
- (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 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 (except pleading to a charge) discharged, by his legal representative on his behalf.

(a) 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, Schedule 15, Part 2 of the 1999 Act. Prospective amendments to section 71 of the 1990 Act are made to subsections (1) and (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1), (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).

(4) A party who appoints a legal representative shall notify the court administration officer of the legal representative's name and address.

Parent or guardian of young civilian

27.—(1) This rule applies where a person to whom proceedings relate (“the young person”) is under the age of 18 years at the commencement of the proceedings.

(2) Where a party to the proceedings or the court administration officer is required to serve any document on the young person under these Rules, he must also serve it on the young person's parent or guardian.

(3) Where the young person has not appointed a legal representative—

- (a) any right conferred on a party to proceedings by these Rules may be exercised, and any duty imposed on him by these Rules (except pleading to a charge) discharged, by his parent or guardian on his behalf; and
- (b) the court may give leave for his parent or guardian to represent him in any proceedings.

PART 5

ARREST OF DEFENDANT

Arrest by service police etc before arraignment

28. Where—

- (a) a charge is allocated for Service Civilian Court trial, and
- (b) the defendant has not been arraigned before the court,

section 111 shall apply as if the defendant had been so arraigned and proceedings before the court had not concluded.

Warrant for arrest by civilian police

29.—(1) Where a judge advocate has power to direct the arrest of a defendant under section 111 (including that section as applied by rule 28), he also has power to issue a warrant for the defendant's arrest.

(2) A warrant issued under this rule—

- (a) must be addressed to one or more officers of a civilian police force;
- (b) must state the offence with which the defendant is charged; and
- (c) must state that he must be transferred to service custody as soon as is practicable after his arrest.

(3) Where a defendant is arrested under a warrant issued under this rule and is transferred to service custody, subsection (4) of section 111 shall apply as if he had been arrested under that section.

PART 6

ADVANCE INFORMATION

Service of advance information

30.—(1) Where a charge is allocated for Service Civilian Court trial, the Director must, as soon as is practicable—

- (a) serve advance information in relation to all defendants on the court administration officer; and
- (b) serve advance information in relation to each defendant on—
 - (i) that defendant; and
 - (ii) that defendant’s legal representative (if any).
- (2) “Advance information”, in relation to any defendant, means—
 - (a) copies of the statements of those witnesses on whom the Director intends to rely against the defendant;
 - (b) a list of all exhibits which the Director intends to adduce in evidence against the defendant, and a statement of where any non-documentary exhibits are held; and
 - (c) a transcript of any sound recording of an interview with the defendant.
- (3) Where, after the Director has served advance information on a defendant, he intends to adduce against the defendant any evidence not included in the advance information, he must as soon as is practicable serve on the defendant and the court administration officer such documents as he would have been required to include in the advance information if he had had that intention at the time when he served advance information.
- (4) Where paragraph (3) applies in the course of trial proceedings, the reference in that paragraph to the court administration officer is to be read as a reference to the court.
- (5) Where the Director no longer intends to call a witness whose statement he has served under this rule, he must as soon as is practicable give notice of that fact to every defendant.

Information as to possibility of activation order etc

31.—(1) Where a charge is such that, if a defendant to the charge were convicted of it by the court, the court would have power to make an activation order, the advance information in relation to the defendant must include a notice that the court would have that power if he were convicted.

- (2) Where a defendant—
 - (a) has been conditionally discharged by virtue of Schedule 3 to the Act, and
 - (b) is charged with an offence committed during the period of conditional discharge,
 the advance information in relation to him must include a notice that, if he were convicted of the offence, the court would have power to deal with him under section 186(3) for the offence for which he was conditionally discharged.

(3) Where an overseas community order is in force in respect of a defendant, the advance information in relation to him must include a notice that, if he were convicted of the offence while the overseas community order is in force, the court would have the powers conferred by paragraph 21 of Schedule 8 to the 2003 Act.

PART 7

PRELIMINARY PROCEEDINGS

Listing of initial preliminary proceedings

32. On receipt of the advance information in relation to a charge, the court administration officer must—

- (a) forward it to the Judge Advocate General and request him to specify a judge advocate for preliminary proceedings in relation to the charge; and
- (b) appoint a time and place for the commencement of the preliminary proceedings.

Listing of further preliminary proceedings

33.—(1) The court administration officer must appoint a time and place for further preliminary proceedings if so directed by—

- (a) the judge advocate for any preliminary proceedings; or
- (b) the Judge Advocate General.

(2) The judge advocate for any preliminary proceedings may give a direction under this rule—

- (a) on the oral application of the Director or a defendant; or
- (b) of his own motion.

(3) The Judge Advocate General may give a direction under this rule on the written application of the Director or a defendant.

(4) A written application for a direction under this rule—

- (a) must be made to the court administration officer;
- (b) must specify the reason for which further preliminary proceedings are required;
- (c) must include an estimate of the likely length of the further preliminary proceedings; and
- (d) subject to rule 34 (preliminary proceedings in chambers without notice), must be served on every other party to the proposed trial proceedings.

Preliminary proceedings in chambers without notice to defendant

34.—(1) On application by the Director, the judge advocate for any preliminary proceedings may direct that the proceedings are, or that any part of the proceedings is—

- (a) where there is one defendant, to be held in his absence and without notice to him;
- (b) where there are two or more defendants, to be held in the absence of both or all of them and without notice to any of them.

(2) The court may not make a decision required by section 279(1) (consideration of trial by Court Martial) at a preliminary proceeding where a judge advocate has made a direction under this rule.

Outline of prosecution case

35. A judge advocate may direct the Director to serve on each defendant and the court administration officer, before any preliminary proceedings, an outline of the prosecution case.

Powers of the court at a preliminary hearing

36.—(1) In preliminary proceedings the court may give such directions as appear to it to be necessary to secure the proper and efficient management of the case.

(2) Without prejudice to paragraph (1), the court may make an order or ruling on—

- (a) whether the court or the Court Martial should try the case;
- (b) any question as to the admissibility of evidence;
- (c) any question as to the joinder or severance of charges; or
- (d) any other question of law, practice or procedure relating to the case.

(3) Any direction given in preliminary proceedings shall have effect throughout any related proceedings unless varied or discharged by—

- (a) the judge advocate who gave it; or
- (b) the judge advocate for any related proceedings.

(4) Any order or ruling made in preliminary proceedings shall have effect throughout any related proceedings unless varied or discharged by the court.

PART 8

JOINDER, SEVERANCE AND AMENDMENT

Joinder of charges

37.—(1) The court may try two or more charges together, if they are included in the same charge sheet.

(2) Where in accordance with regulations made under section 128 the charges in two or more charge sheets could have been included in the same charge sheet, the Director may consolidate both or all the charge sheets into one.

(3) Where the Director consolidates two or more charge sheets into one, he must immediately serve the new charge sheet on the court administration officer and each defendant.

Severance of charges

38. Where a defendant is charged with more than one offence in the same charge sheet, the court may direct, before the commencement of trial proceedings in relation to the charge sheet, that the charges be divided between two or more charge sheets.

Severance of defendants

39. Where two or more defendants are charged in a single charge, the court may direct, before the commencement of trial proceedings in relation to the charge, that the charge be replaced with charges against the defendants separately and in separate charge sheets.

Amendment of charges

40.—(1) Where in preliminary proceedings (whether before or after arraignment) or trial proceedings it appears to the court that the charge sheet or any charge is defective, it shall make such order for the amendment of the charge sheet or charge (as the case may be) as appears necessary to meet the circumstances of the case.

(2) But the court may not make an order under this rule if, in all the circumstances, the required amendments cannot be made without injustice.

(3) Without prejudice to the generality of paragraph (2), in relation to a proposed amendment in preliminary proceedings the circumstances relevant for the purposes of that paragraph include (in particular) whether the defendant has been arraigned.

(4) Where an order is made under this rule, the Director shall serve the amended charge sheet on every defendant in the way that would be required by regulations made under section 128—

- (a) if the amendment had been made otherwise than in accordance with an order made under this rule; and
- (b) where the amendment is made after arraignment, if it had been made before arraignment.

Consequences of exercise of powers under this Part

41.—(1) Where in preliminary proceedings the court is of opinion that, in consequence of the exercise of any power of the court under this Part, it is in the interests of justice—

- (a) that the commencement of the trial proceedings be postponed, or
- (b) that a defendant be arraigned or re-arraigned on any charge,

the court shall make such order or give such direction as appears necessary.

(2) Where in trial proceedings the court is of the opinion that in consequence of the exercise of any power of the court under this Part it is in the interests of justice—

- (a) that the proceedings be adjourned, or
 - (b) that a defendant be arraigned or re-arraigned on any charge,
- it shall make such order or give such direction as appears necessary.

PART 9

CONSIDERATION OF TRIAL BY THE COURT MARTIAL

Consideration of trial by the Court Martial

42.—(1) The court shall make its decision in accordance with section 279 before the defendant is arraigned and shall give its reasons for its decision in open court.

(2) If the court decides that it should try the charge, the defendant shall be asked if he wants to elect trial by the Court Martial.

(3) If the defendant (or if more than one person is jointly charged, any of the defendants) does not elect trial by the Court Martial, the court may arraign the defendant.

(4) At any time before arraignment, a defendant may give notice that he elects to be tried by the Court Martial.

(5) For the purposes of paragraph (4), if there is more than one charge or more than one charge sheet “arraignment” shall mean arraignment on all of the charges.

(6) A defendant who has indicated that he wishes to elect trial by the Court Martial may, at any time before arraignment by the Court Martial, give notice that he withdraws his election.

(7) Any notice under paragraphs (4) or (6), unless given in court during proceedings in relation to the matter, shall be in writing and shall be served on—

- (a) the court administration officer;
- (b) the Director;
- (c) any other defendant.

(8) Nothing in this rule shall affect the provisions in section 280(3) or (5) (election in respect of one defendant or one charge, as the case may be, takes effect in respect of all of the defendants or all of the charges).

PART 10

ARRAIGNMENT

Arraignment

43.—(1) A defendant shall be arraigned in preliminary proceedings on each charge brought against him, but need not be arraigned on every charge at the same time.

(2) A defendant shall be required to plead separately to each charge on which he is arraigned.

(3) Where a defendant pleads guilty to a charge, the court may accept the plea if satisfied that the defendant understands—

- (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.

(4) Where the court accepts a plea of a guilty to a charge—

- (a) the defendant shall stand convicted of the charge; and

- (b) unless there is a further charge against him to which he has not pleaded guilty (or as respects which a plea of guilty has not been accepted by the court), the court administration officer shall appoint a time and place for sentencing proceedings.

(5) Where—

- (a) a plea of guilty is not accepted by the court, or
- (b) the defendant does not plead (or does not plead intelligibly) to the charge,

the court shall record a plea of not guilty.

Order that charge lie on the file

44. Where the court accepts a plea of guilty to any charge, it may (with the Director's consent) order that any other charge—

- (a) to which the defendant has not pleaded,
- (b) to which the defendant has pleaded not guilty, or
- (c) as respects which the court has recorded a plea of not guilty under rule 43(5),

is to lie on the file, not to be proceeded with without the leave of the court or the Court Martial.

Offer of no evidence

45.—(1) Where—

- (a) a defendant has pleaded not guilty to a charge, or the court has recorded a plea of not guilty to the charge under rule 43(5), and
- (b) the Director indicates that he intends to offer no evidence on the charge,

the court shall record a finding of not guilty in respect of the charge.

(2) A finding of not guilty recorded under this rule shall have effect for all purposes as an acquittal by the court.

Change of plea

46.—(1) At any time before the court determines the finding, a defendant who has pleaded not guilty to the charge may withdraw his plea and substitute a plea of guilty.

(2) But the court may not accept a plea of guilty substituted under paragraph (1) unless satisfied that the defendant understands the matters mentioned in rule 43(3).

(3) At any time before the court passes sentence for an offence, a defendant who has pleaded guilty to the charge of the offence may, with the leave of the court, withdraw his plea and substitute a plea of not guilty.

(4) Where a defendant changes his plea under paragraph (3)—

- (a) in the course of sentencing proceedings in relation to the offence, or
- (b) in the course of trial proceedings in relation to another charge,

the court shall terminate the proceedings.

Powers of Director after arraignment

47.—(1) After a defendant has been arraigned on a charge, the Director may not exercise any of the powers under section 126(2) without the leave of the court.

(2) Where a defendant has been arraigned and the Director (with leave) exercises any of the powers under section 126(2)(a) to (c) in relation to him, the Director shall serve the amended charge sheet on every defendant in the way that would be required by regulations made under section 128 if the power had been exercised before arraignment.

PART 11
ATTENDANCE OF WITNESSES

Notification of witnesses

48.—(1) Where any person is required to give evidence in any proceedings, the court administration officer shall notify him of the time and place at which he is required to attend.

(2) When the court administration officer gives notice of any proceedings to a party to the proceedings other than the Director, he shall offer to notify any person whom the party may require to give evidence.

(3) Where a witness summons is issued under rule 49 or 51, the court administration officer shall serve it on the person to whom it is directed.

(4) If, in the opinion of the court administration officer, it is not reasonably practicable to notify a person under this rule or to serve a witness summons on a person, he shall give notice of that fact to the court and the party who wishes the person to attend.

Issue of witness summons on application to a judge advocate

49.—(1) This rule applies where a judge advocate is satisfied that—

- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any proceedings before the court; and
- (b) it is in the interests of justice to issue a witness summons under this rule to secure the attendance of that person to give evidence or to produce the document or thing.

(2) In such a case, the judge advocate shall, subject to the following provisions of this rule, issue a witness summons directed to the person concerned and requiring him to—

- (a) attend before the court at the time and place stated in the witness summons; and
- (b) give the evidence or produce the document or thing.

(3) A witness summons may be issued under this rule only on an application; and the judge advocate may refuse to issue the witness summons if any requirement relating to the application is not fulfilled.

(4) An application for a witness summons must be made as soon as practicable after the applicant becomes aware of the grounds for making it.

(5) The application must—

- (a) identify the proposed witness;
- (b) explain—
 - (i) what evidence the proposed witness can give or produce;
 - (ii) why it is likely to be material evidence; and
 - (iii) why it would be in the interests of justice to issue a witness summons.

(6) The application may be made orally unless the judge advocate otherwise directs.

(7) An application in writing must contain a declaration that the facts stated in it are true to the best of the applicant's knowledge and belief.

(8) An application in writing must be served on the court administration officer and as directed by the judge advocate.

(9) A witness summons issued under this rule which requires a person to attend before the court and produce a document or thing may also require him to produce the document or thing—

- (a) at a place stated in the witness summons, and
- (b) at a time so stated, before the time at which the summons requires him to attend before the court,

for inspection by the applicant.

(10) A witness summons issued under this rule must state that failure to comply with the summons may result in the issue of a warrant for the arrest of the person to whom the summons is addressed.

Application for witness summons to produce a document, etc: judge advocate's assessment of relevance and confidentiality

50.—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the grounds that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, the duties or rights (including rights of confidentiality) of the proposed witness or of any person to whom the document or thing relates outweigh the reasons for issuing a witness summons.

(2) A judge advocate may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The judge advocate may invite—

- (a) the proposed witness or any representative of the proposed witness, or
- (b) a person to whom the document or thing relates or any representative of such a person,

to help the judge advocate assess the objection.

Issue of witness summons of judge advocate's own motion

51.—(1) For the purpose of any proceedings, a judge advocate may of his own motion issue a witness summons directed to a person and requiring him to—

- (a) attend before the court at the time and place stated in the witness summons; and
- (b) give evidence, or produce any document or thing specified in the witness summons.

(2) A witness summons issued under this rule must state that failure to comply with the summons may result in the issue of a warrant for the arrest of the person to whom the summons is addressed.

(3) A judge advocate may withdraw a witness summons issued under this rule if he no longer considers it necessary or if one of the following applies for it to be withdrawn—

- (a) the witness, on the grounds that—
 - (i) he cannot give or produce evidence likely to be material evidence; or
 - (ii) even if he can, his duties or rights (including rights of confidentiality) or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or
- (b) any person to whom the proposed evidence relates, on the grounds that—
 - (i) that evidence is not likely to be material evidence; or
 - (ii) even if it is, his duties or rights (including rights of confidentiality) or those of the witness outweigh the reasons for the issue of the witness summons.

Application to withdraw a witness summons

52.—(1) A judge advocate may withdraw a witness summons if an application is made under this rule.

(2) An application under this rule may be made by the party who applied for the witness summons, on the ground that it is no longer needed.

(3) An application under this rule may also be made by the witness, on the grounds that—

- (a) he was not aware of any application for it; and
- (b) either—
 - (i) he cannot give or produce evidence likely to be material evidence; or
 - (ii) even if he can, his duties or rights (including rights of confidentiality) or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons.

(4) An application under this rule may also be made by any person to whom the proposed evidence relates, on the grounds that—

- (a) he was not aware of any application for it; and
- (b) either—
 - (i) that evidence is not likely to be material evidence; or
 - (ii) even if it is, his duties or rights (including rights of confidentiality) or those of the witness outweigh the reasons for the issue of the witness summons.

(5) An application under this rule—

- (a) must be made in writing to the court administration officer;
- (b) must be made as soon as is practicable after the applicant becomes aware of the grounds for making it; and
- (c) must state the grounds on which it is made.

(6) An application under this rule must be served on—

- (a) the witness (where he is not the applicant);
- (b) the party who applied for the witness summons (where he is not the applicant); and
- (c) any other person who, to the applicant’s knowledge, has been served with the application for the witness summons.

(7) Where—

- (a) a witness summons requires the proposed witness to produce in evidence a document or other thing, and
- (b) a person other than the party who applied for the witness summons makes an application under this rule,

rule 50(2) and (3) apply, with references to “the objection” read as references to the matters mentioned in paragraph (3)(b) or (4)(b) (as the case may be).

Oral applications

53.—(1) Where a rule or direction requires an application under this Part to be in writing, the application may be made orally with the leave of the court.

(2) A party who seeks leave to make such an application orally must—

- (a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and
- (b) in doing so, explain the reasons for—
 - (i) the application; and
 - (ii) seeking leave to make the application orally.

Further process to secure attendance of witness

54.—(1) If a judge advocate is satisfied by evidence on oath that—

- (a) a person is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,

- (b) that it is in the interests of justice that the person should attend to give evidence or to produce the document or thing, and
- (c) it is probable that a witness summons issued under rule 49 or 51 would not procure his attendance,

the judge advocate may, instead of issuing a witness summons, issue a warrant to arrest that person and bring him before the court.

(2) Where—

- (a) any person has failed to attend before the court in answer to a witness summons issued under rule 49 or 51,
- (b) the judge advocate is satisfied by evidence on oath that—
 - (i) the person is likely to be able to give evidence likely to be material evidence or produce any document or other thing likely to be material evidence in the proceedings, and
 - (ii) the person has been duly served with the witness summons and that a reasonable sum has been paid or tendered to him for costs and expenses, and
- (c) it appears to the judge advocate that there is no just excuse for the person's failure to attend,

the judge advocate may issue a warrant to arrest the person and bring him before the court.

(3) Subject to paragraph (4), a warrant issued under this rule shall be addressed to—

- (a) one or more service policemen; or
- (b) one or more officers of a civilian police force.

(4) A warrant issued under this rule may not be addressed to a service policeman unless it appears to the judge advocate that the person for whose arrest it is issued is subject to service law or is a civilian subject to service discipline.

(5) Where a person has been arrested by an officer of a civilian police force under a warrant issued under this rule—

- (a) he must be transferred to service custody as soon as is practicable; and
- (b) if he is not transferred to service custody as soon as is practicable after arrest he must be released.

(6) Where a person has been arrested under a warrant issued under this rule and is in service custody—

- (a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court; and
- (b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released.

Review of custody of witness

55.—(1) Paragraphs (2) to (5) apply where—

- (a) a person is brought before a judge advocate under rule 54(6); or
- (b) the keeping of a person in service custody has been authorised by an order under paragraph (2) and he is brought before a judge advocate before the expiry of the period for which it was so authorised.

(2) The judge advocate may by order authorise the keeping (or further keeping) of the person in service custody if he is satisfied that there are substantial grounds for believing that, if released from service custody, the person would fail to attend the court as required.

(3) The period for which the judge advocate may, by an order under paragraph (2), authorise the keeping of the person in service custody is such period, ending not later than 8 days after the day on which the order is made, as he considers appropriate in all the circumstances.

(4) If the judge advocate makes no order under paragraph (2), the person must be released from service custody without delay; but this is subject to paragraph (5).

(5) The judge advocate may require the person to comply, before release or later, with such requirements as appear necessary to secure his attendance before the court.

(6) Where the keeping of the person in service custody is authorised by an order under paragraph (2), he must be released on the expiry of the period for which it was so authorised unless a judge advocate has made a further order under that paragraph.

(7) On an application made by or on behalf of the person, any requirement imposed by virtue of paragraph (5) may be varied or discharged by a judge advocate.

(8) Section 107(5) shall apply in relation to a requirement imposed by virtue of paragraph (5) as it applies in relation to a requirement imposed by virtue of section 107(3)(a).

(9) A person guilty of an offence under section 107(5) by virtue of paragraph (8) shall be liable to a fine not exceeding level 4 on the standard scale.

Entitlement to witness expenses

56.—(1) Where any person is—

- (a) notified under rule 48 of the requirement to give evidence in any proceedings, or
- (b) served with a witness summons issued under rule 49 or 51,

there shall be paid or tendered to him at that time any expenses in respect of his attendance.

(2) For the purpose of this rule—

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

PART 12

EVIDENCE

CHAPTER 1

General

Application and interpretation of Part 12

57.—(1) The provisions of this Part apply in relation to any proceedings in which an issue of fact falls to be determined, unless otherwise stated.

(2) In relation to any proceedings other than trial proceedings, references in this Part to a defendant are to be read as references to a person to whom the proceedings relate.

Rules of evidence

58.—(1) The rules of evidence applicable in a trial on indictment in England and Wales shall apply, to the extent that—

- (a) they are capable of applying; and
- (b) they are not applied, with or without modifications, by any other enactment or subordinate legislation (whenever passed or made).

(2) In this rule references to rules of evidence include rules conferring or restricting any discretion to exclude admissible evidence.

(3) No person may be required—

- (a) to answer any question which he could not be required to answer in a trial on indictment in England and Wales; or
 - (b) to produce any document which he could not be required to produce in such a trial.
- (4) The court may take judicial notice of matters of which judicial notice could be taken in a trial on indictment in England and Wales.

Oral testimony to be given on oath

- 59.**—(1) Oral testimony shall be given on oath.
- (2) This rule is subject to—
- (a) section 5 of the Oaths Act 1978 (affirmation);
 - (b) section 31 of the 1999 Act (evidence admitted under a special measures direction); and
 - (c) section 56 of that Act (reception of unsworn evidence by witness who is not permitted to be sworn).

Proof by written statement

60.—(1) Without prejudice to rule 58, section 9 of the 1967 Act (proof by written statement) shall apply, subject to paragraph (2), in relation to a statement made—

- (a) in the United Kingdom by any person, or
- (b) outside the United Kingdom by a person subject to service law or a civilian subject to service discipline,

as it applies in criminal proceedings in relation to a statement made in the United Kingdom.

- (2) In its application by virtue of this rule, section 9 of the 1967 Act shall have effect as if—
- (a) subsection (2)(c) required service of the statement on the court administration officer (as well as each of the other parties to the proceedings);
 - (b) in subsection (2)(d), the reference to the parties' solicitors were to their legal representatives; and
 - (c) subsections (5) and (8) were omitted; and
 - (d) in subsection (6), the references to the court were to the judge advocate.
- (3) An application to the court under section 9(4)(b) of the 1967 Act—
- (a) may be made in preliminary proceedings; or
 - (b) in trial proceedings.

(4) Section 89 of the 1967 Act (offence of making a false statement tendered in evidence) shall apply in relation to a statement tendered in evidence in proceedings of the court by virtue of section 9 of that Act, wherever made, as it applies in relation to a statement tendered in evidence in criminal proceedings by virtue of that section.

Proof by formal admission

61.—(1) Without prejudice to rule 58, section 10 of the 1967 Act (proof by formal admission) shall apply, subject to paragraph (2), as it applies in relation to criminal proceedings.

- (2) In its application by virtue of this rule, section 10 of the 1967 Act shall have effect as if—
- (a) in subsection (1), the reference to the prosecutor were to the Director; and
 - (b) in subsection (2), references to a defendant's counsel or solicitor were to his legal representative.

Use of documents to refresh memory

62.—(1) A person giving oral evidence about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if—

- (a) he states in his oral evidence that the document records his recollection of that matter at that earlier time; and
- (b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.

(2) Where—

- (a) a person giving oral evidence about any matter has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at that time,
- (b) his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence, and
- (c) a transcript has been made of the sound recording,

he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

CHAPTER 2

Evidence of bad character

Notice of intention to adduce evidence of a defendant's bad character

63.—(1) Where, in trial proceedings—

- (a) the Director intends to adduce evidence of a defendant's bad character, or
- (b) a defendant intends to adduce evidence of another defendant's bad character, or to cross-examine a witness with a view to eliciting such evidence,

he must serve on the court administration officer and all other parties to the proceedings a notice of that intention.

(2) A notice under this rule—

- (a) must describe the misconduct to which the evidence relates;
- (b) must state what evidence of the misconduct the party serving the notice intends to adduce or elicit;
- (c) if served by the Director, must identify any witness whom he intends to call about the misconduct; and
- (d) identify the paragraph or paragraphs of section 101(1) of the 2003 Act which the party serving the notice asserts to be applicable to the evidence.

(3) If served by the Director, a notice under this rule must be served not more than 14 days after the Director serves advance information in respect of the charge to which the evidence relates.

(4) If served by a defendant, a notice under this rule must be served not more than 14 days after—

- (a) the date on which the Director complies or purports to comply with article 4 of the CPIA Order; or,
- (b) if later, the date on which the Director discloses to the defendant the previous convictions of the co-defendant to whose misconduct the notice relates.

(5) If it is not reasonably practicable to serve a notice under this rule within the time prescribed by paragraph (3) or (4) (as the case may be), the notice must be served as soon as it is reasonably practicable to do so.

(6) The court may dispense with the requirement to serve a notice under this rule if satisfied that no injustice would result.

Application to exclude evidence of a defendant's bad character

64.—(1) An application under section 101(3) of the 2003 Act to exclude evidence of a defendant's bad character in trial proceedings must be made in writing to the court administration officer and served on all other parties to the proceedings, unless the court gives leave for the application to be made orally.

(2) If made in writing, the application—

- (a) must state whether a notice under rule 63 has been served on the applicant in relation to the evidence, and if so on what date; and
- (b) must be made and served not more than 14 days after that date (if any), unless paragraph (3) applies.

(3) Where—

- (a) the court dispenses with the requirement to serve a notice under rule 63, or
- (b) such a notice is served but it is not reasonably practicable to make the application within 14 days of the service of the notice,

the application must be made as soon as is reasonably practicable.

Application for leave to adduce evidence of the bad character of a non-defendant

65.—(1) An application for leave to give evidence in trial proceedings of the bad character of a person other than a defendant must be made in writing to the court administration officer and served on all other parties to the proceedings, unless the court gives leave for the application to be made orally.

(2) If made in writing, such an application—

- (a) must describe the misconduct to which the evidence relates;
- (b) must state what evidence of the misconduct the applicant seeks to adduce or elicit;
- (c) if made by the Director, must identify any witness whom he intends to call about the misconduct; and
- (d) must state the grounds on which the applicant asserts that the evidence is admissible.

(3) If made by the Director, an application under this rule must be made not more than 14 days after the Director serves advance information in respect of the charge to which the evidence relates.

(4) If made by a defendant, an application under this rule must be made not more than 14 days after—

- (a) the date on which the Director complies or purports to comply with article 4 of the CPIA Order; or,
- (b) if later, the date on which the Director discloses to the defendant the previous convictions of the person to whose misconduct the application relates.

(5) If it is not reasonably practicable to make an application under this rule within the time prescribed by paragraph (3) or (4) (as the case may be), the application must be made as soon as it is reasonably practicable to do so.

CHAPTER 3

Hearsay evidence

Notice of intention to adduce hearsay evidence

66.—(1) Where a party to trial proceedings proposes to adduce a hearsay statement, or (in the case of a defendant) to cross-examine a witness with a view to eliciting evidence of such a statement, on the basis that the statement is admissible by virtue of—

- (a) section 114(1)(d) of the 2003 Act (interests of justice),

(b) section 116 of that Act (maker of statement unavailable to give oral evidence), or

(c) section 117 of that Act (statement contained in a document),

he must serve on the court administration officer and all other parties to the proceedings a notice to that effect.

(2) A notice under this rule—

(a) must give details of the statement that the party serving the notice proposes to tender in evidence;

(b) where the statement is contained in a document which has not already been served on all the other parties, must include a copy of the document;

(c) where the notice is served by the Director and oral evidence of the statement is to be given, must identify any witness who is to give it;

(d) must specify whether the party serving the notice proposes to tender the statement by virtue of section 114(1)(d), 116 or 117 of the 2003 Act;

(e) where he proposes to tender the statement by virtue of section 114(1)(d) of that Act, must specify which of the factors mentioned in section 114(2) of that Act are relevant, and how they are relevant; and

(f) where the statement is evidence that an earlier hearsay statement was made, must specify whether he proposes to tender it by virtue of section 121(1)(a), (b) or (c) of that Act.

(3) Where a notice under this rule is served by the Director, it must be served not more than 14 days after the Director serves advance information in respect of the charge to which the evidence relates.

(4) Where a notice under this rule is served by a defendant, it must be served not more than 14 days after the Director complies or purports to comply with article 4 of the CPIA Order.

(5) Where—

(a) a notice has been served under this rule in relation to a hearsay statement, and

(b) no counter-notice has been served in accordance with rule 67 in relation to the statement,

the statement is to be treated as admissible by agreement of the parties.

(6) In this rule “hearsay statement” means a statement which—

(a) is not made in oral evidence in the proceedings; and

(b) is relied on as evidence of a matter stated in it.

Counter-notice objecting to the admission of hearsay evidence

67.—(1) Where a party serves a notice under rule 66 in relation to a statement, any other party may serve a counter-notice objecting to the admission of the statement.

(2) A counter-notice served under this rule must state—

(a) the date on which the party serving it was served with the notice under rule 66;

(b) whether he objects to the admission of the whole or only part of the statement, and if only part which part; and

(c) the grounds on which he so objects.

(3) A counter-notice served under this rule must be served on the court administration officer and all other parties to the proceedings not more than 14 days after service of the notice under rule 66.

CHAPTER 4

Evidence of service matters

Evidence of enlistment

68.—(1) A document purporting to be an enlistment paper used to enlist a person in accordance with regulations made under section 328 shall be evidence that—

- (a) that person was enlisted, on the date on which the declaration in the enlistment paper purports to have been signed by him, and on the terms set out in the document; and
- (b) anything recorded in the document as the answer given by him to a question in the document was given by him in answer to that question when it was put to him by or on the direction of the recruiting officer who enlisted him.

(2) A document purporting to be a copy of such a document as is mentioned in paragraph (1) and purporting to be certified to be a true copy by a person stated in the certificate to have custody of the document shall be evidence of the matters mentioned in sub-paragraphs (a) and (b) of that paragraph.

Evidence as to service etc

69. A document stating that a person—

- (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces,
- (b) was discharged from any of Her Majesty's forces at or before any specified time,
- (c) held or did not hold at any specified time any specified rank, rate or appointment in any of Her Majesty's forces,
- (d) had at or before any specified time been attached, posted or transferred to any part of Her Majesty's forces,
- (e) at any specified time or during any specified period was or was not serving or held or did not hold any rank, rate or appointment in any particular country or place, or
- (f) was or was not at any specified time authorised to use or wear any decoration, badge or emblem,

shall, if it purports to be issued by or on behalf of the Defence Council or by a person authorised by them, be evidence of the matters stated in the document.

Service records

70.—(1) A record purporting to be—

- (a) made in any service record in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of naval, military, or air force duty, and
- (b) signed by the commanding officer of the person to whom the record relates or by a person whose duty it was to make or keep the record,

shall be evidence of the matters stated in the record.

(2) A document purporting to be a copy of such a record (including the signature) as is mentioned in paragraph (1) and purporting to be certified to be a true copy by a person stated in the certificate to have custody of the record shall be evidence of the matters stated in the document.

Defence Council instructions, regulations and certificates

71.—(1) A document purporting to be issued by order of the Defence Council and to contain instructions or regulations given or made by the Defence Council shall be evidence of the giving of the instructions or the making of the regulations and their contents.

(2) A certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by them and stating—

- (a) that a decoration of a description specified in, or as annexed to, the certificate is or is not a naval, military or air force decoration, or
- (b) that a badge or emblem of a description specified in, or as annexed to, the certificate is or is not one supplied or authorised by the Defence Council,

shall be evidence of the matters stated in the certificate.

Standing or routine orders

72.—(1) A certificate purporting to be signed by a person's commanding officer or an officer authorised by the commanding officer to give the certificate, and stating the contents of, or of any part of, standing orders, or other routine orders of a continuing nature, of any of Her Majesty's forces, made for any—

- (a) part of Her Majesty's forces,
- (b) area or place, or
- (c) ship, train or aircraft,

shall be evidence of the matters stated in the certificate.

CHAPTER 5

Expert evidence

Expert evidence

73.—(1) Expert evidence shall not be adduced 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 commencement of the proceedings, a statement of the substance of the expert evidence.

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

(3) Where more than one party wishes to introduce expert evidence, the court may direct the experts to—

- (a) discuss the expert issues in the proceedings; and
- (b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.

(4) Except for the statement prepared under paragraph (3)(b), the content of the discussion under paragraph (3)(a) may not be referred to without the court's permission.

(5) Where more than one defendant wishes to introduce expert evidence on an issue, the court may direct that the evidence on that issue is to be given by one expert only.

(6) Where the defendants cannot agree who should be the expert to give evidence under paragraph (5), the court may—

- (a) select the expert from a list prepared or identified by them; or
- (b) direct that the expert be selected in such other manner as the court shall direct.

(7) Where the court gives a direction under paragraph (5) for a single joint expert to be used, each of the defendants may give instructions to the expert.

(8) When a defendant gives instructions to the expert under paragraph (7) he must, at the same time, send a copy of the instructions to every other defendant.

(9) Where—

- (a) a statement has been prepared for the purposes of proceedings, and

- (b) the person who prepared the statement had, or may reasonably be supposed to have had, personal knowledge of the matters stated,

a statement served under paragraph (1) may be accompanied by a notice, given for the purposes of section 127 of the 2003 Act (expert evidence: preparatory work), that another person will in evidence given in the proceedings (whether orally or under section 9 of the 1967 Act, as applied by rule 60) base an opinion or inference on the statement.

CHAPTER 6

Special measures directions

Interpretation of Chapter 6

74.—(1) In this Chapter—

“eligible witness” means a witness eligible for assistance by virtue of rule 75 or 76;

“intermediary” has the same meaning as in section 29 of the 1999 Act;

“sexual offence” means an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—

- (a) an offence under Part 1 of the Sexual Offences Act 2003(a);
- (b) an offence of attempting or conspiring to commit such an offence; or
- (c) an offence under Part 2 of the Serious Crime Act 2007(b) (encouraging and assisting crime) committed in relation to such an offence;

“special measures direction” means a direction providing for one or more of the special measures available in relation to a witness to apply to evidence given by the witness;

“the special measures provisions” means the provisions of Chapter 1 of Part 2 of the 1999 Act applied by an order under section 61(1) of that Act.

(2) In this Chapter—

- (a) references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy (and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively); and
- (b) references to the special measures available in relation to a witness are to be construed in accordance with rule 77.

Witnesses eligible for assistance on grounds of age or incapacity

75.—(1) A witness is eligible for assistance by virtue of this rule if the witness is under the age of 18 at the time when it falls to the court to consider whether to give a special measures direction in relation to the witness.

(2) A witness is also eligible for assistance by virtue of this rule if the court considers that the quality of evidence given by the witness is likely to be diminished because the witness—

- (a) suffers from mental disorder within the meaning of the Mental Health Act 1983(c);
- (b) otherwise has a significant impairment of intelligence and social functioning; or
- (c) has a physical disability or is suffering from a physical disorder.

Witnesses eligible for assistance on grounds of fear or distress about testifying

76.—(1) A witness (other than a defendant) is eligible for assistance by virtue of this rule if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by

(a) 2003 c. 42.
(b) 2007 c. 27.
(c) 1983 c. 20.

reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

- (2) A witness is also eligible for assistance by virtue of this rule if—
- (a) the proceedings are in respect of a sexual offence;
 - (b) the witness is a complainant in respect of that offence; and
 - (c) the witness has not informed the court of the witness's wish not to be so eligible.

Special measures available

77.—(1) Where a witness (other than a defendant) is eligible for assistance by virtue of rule 75, the special measures available in relation to him are those for which provision is made by sections 23, 25 to 27, 29 and 30 of the 1999 Act.

(2) Where a witness is eligible for assistance by virtue of rule 76, the special measures available in relation to him are those for which provision is made by sections 23 and 25 to 27 of that Act.

(3) Where a defendant is eligible for assistance by virtue of rule 75, the special measures available in relation to him are those for which provision is made by sections 29 and 30 of that Act.

Special measures direction relating to eligible witness

78.—(1) Subject to the special measures provisions and this Chapter, the court may give a special measures direction in relation to a witness if—

- (a) the witness is an eligible witness; and
- (b) any of the special measures available in relation to the witness (or any combination of them) would, in the court's opinion, be likely to improve the quality of evidence given by the witness.

(2) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(3) In determining whether any special measure or measures would be likely to improve the quality of evidence given by the witness, and if so whether to give a direction providing for the measure or measures to apply, the court must consider all the circumstances of the case, including in particular—

- (a) any views expressed by the witness; and
- (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) Where there are two or more defendants—

- (a) any reference to the defendant in the special measures provisions may be taken, in connection with the giving of a special measures direction, as a reference to all or any of the defendants, as the court may determine; and
- (b) any such direction may be given on the basis of any such determination.

(5) A special measures direction may provide for one or more special measures to apply in combination with a direction under rule 18 (live links), and for the purposes of this Chapter a measure would be likely to improve the quality of the witness's evidence if, were it combined with such a direction, it would be likely to do so.

(6) The court may give a special measures direction—

- (a) on an application made by a party to the proceedings; or
- (b) of its own motion.

(7) A judge advocate who gives, or refuses an application for, a special measures direction must state in open court his reasons for doing so.

(8) Nothing in this Chapter is to be regarded as affecting any power of the court to make an order or give leave of any description—

- (a) in relation to a witness who is not an eligible witness; or
- (b) in relation to an eligible witness, where the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

Evidence given in private

79. A special measures direction may not provide for the exclusion of persons under section 25 of the 1999 Act unless—

- (a) the proceedings relate to a sexual offence; or
- (b) it appears to the court that there are reasonable grounds for believing that any person other than a defendant has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

Video recorded evidence in chief

80.—(1) A special measures direction may not provide for a video recording, or a part of such a recording, to be admitted under section 27 of the 1999 Act if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(2) In considering for the purposes of paragraph (1) whether any part of a recording should not be so admitted, the court must consider whether any prejudice to a defendant which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(3) Where a special measures direction provides for a recording to be admitted under section 27 of the 1999 Act, the court may nevertheless subsequently direct that it is not to be so admitted if—

- (a) it appears to the court that—
 - (i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction), and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
- (b) rule 83 has not been complied with to the satisfaction of the court.

(4) Paragraph (3) is without prejudice to rule 84 (power to vary or discharge special measures direction).

(5) Where a recording is admitted under section 27 of the 1999 Act—

- (a) the witness must be called by the party tendering it in evidence, unless the parties to the proceedings have agreed that there is no need for the witness to be called; and
- (b) the witness may not give evidence in chief otherwise than by means of the recording—
 - (i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony; or
 - (ii) without the leave of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.

(6) Where a special measures direction provides for part only of a recording to be admitted under section 27 of the 1999 Act, references in paragraphs (3) and (4) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give leave for the purposes of paragraph (5)(b)(ii) if it appears to him to be in the interests of justice to do so, and may do so either—

- (a) on an application by a party to the proceedings; or
- (b) of his own motion.

Examination of witness through intermediary

81.—(1) Any examination of a witness conducted in pursuance of a provision included in a special measures direction by virtue of section 29(1) of the 1999 Act (examination of witness through intermediary) must take place—

- (a) in the presence of such persons as the direction may provide; and
- (b) in circumstances in which the court, and legal representatives acting in the proceedings, are able to see and hear the examination of the witness and to communicate with the intermediary (and for this purpose any impairment of eyesight or hearing is to be disregarded).

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1)(b) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(3) Before an intermediary begins to act, he shall make a declaration in the following form:

“I solemnly, sincerely and truly declare that I will well and faithfully communicate the questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.”

(4) In this rule “the intermediary” has the same meaning as in section 29 of the 1999 Act.

Application for special measures direction: general

82.—(1) An application for a special measures direction must be made in writing to the court administration officer, unless a judge advocate gives leave for it to be made orally.

(2) A written application must specify—

- (a) unless the application is made by a defendant and does not relate to evidence in support of an alibi, the name and date of birth of the witness in relation to whom it is made;
- (b) the special measure or measures sought;
- (c) where the application is for a direction including provision by virtue of section 27 of the 1999 Act (video recorded evidence in chief), the information mentioned in rule 83(4);
- (d) the grounds on which the applicant asserts—
 - (i) that the witness is an eligible witness; and
 - (ii) that the measure or measures will improve the quality of the witness’s evidence;
- (e) the views of the witness as to the matters specified in accordance with sub-paragraph (d);
- (f) where a previous application for a special measures direction has been refused, any material change of circumstances relied upon in support of the application.

(3) In paragraph (2)(a) “evidence in support of an alibi” has the same meaning as in article 7(5) of the CPIA Order.

(4) A written application must be made, and a copy served on all other parties to the proceedings—

- (a) where the application is made by the Director, not more than 14 days after the Director serves advance information in respect of the charge to which the proposed evidence relates.
- (b) where the application is made by a defendant, not more than 14 days after the Director complies or purports to comply with article 4 of the CPIA Order.

(5) Notwithstanding paragraph (4), a judge advocate may at his discretion consider a written application made outside the period of 14 days there mentioned.

(6) Where a written application has been made, a judge advocate may—

- (a) grant the application without a hearing; or
- (b) direct a hearing.

- (7) But the application may not be granted without a hearing unless—
 - (a) at least 14 days have elapsed since the application was served on each other party to the proceedings, and
 - (b) no other party has served notice on the court administration officer that he opposes the application.
- (8) Any party to the proceedings—
 - (a) may attend a hearing of the application, and be heard;
 - (b) may, with leave of the court, adduce evidence (including expert evidence) at the hearing.

Application for special measures direction permitting admission of video recorded evidence in chief

83.—(1) This rule applies where an application is made for a special measures direction including provision by virtue of section 27 of the 1999 Act.

(2) The application must be accompanied by a copy of the video recording which (or part of which) it is proposed to tender in evidence.

(3) Where the application is made by the Director, he must at the same time serve on each defendant a copy of that recording.

(4) The application must include the following information, in so far as not contained in the recording itself—

- (a) the date on which the recording was made;
- (b) the times at which the recording commenced and finished, including details of any interruptions;
- (c) the address of the premises where the recording was made, and the usual function of those premises;
- (d) in relation to each person present at any point during, or immediately before, the recording—
 - (i) the name, age and occupation of the person;
 - (ii) the time for which he was present; and
 - (iii) his relationship (if any) to the witness;
- (e) in relation to the equipment used for the recording—
 - (i) a description of the equipment;
 - (ii) the number of cameras used;
 - (iii) whether the cameras were fixed or mobile;
 - (iv) the number and location of the microphones;
 - (v) the video format used; and
 - (vi) whether it offered single or multiple recording facilities and, if so, which were used; and
- (f) if the recording is a copy—
 - (i) the location of the master recording; and
 - (ii) details of when and by whom the copy was made.

(5) Where the applicant is a defendant and the application is granted, the applicant must, at the close of the case for the prosecution, serve on each other party to the proceedings a copy of the video recording which (or part of which) it is proposed to tender in evidence under the direction.

Variation or discharge of special measures direction

84.—(1) A judge advocate may vary or discharge a special measures direction if it appears to him to be in the interests of justice to do so.

- (2) A judge advocate may exercise the power conferred by paragraph (1)—
- (a) on an application made by a party to the proceedings, or
 - (b) of the judge advocate's own motion.
- (3) An application under this rule must be made in writing to the court administration officer, unless—
- (a) a judge advocate gives leave for it to be made orally, or
 - (b) paragraph (8) applies.
- (4) A copy of a written application under this rule must be served on each other party to the proceedings
- (5) Where a written application has been made under this rule, a judge advocate may—
- (a) grant the application without a hearing; or
 - (b) direct a hearing.
- (6) But the application may not be granted without a hearing unless—
- (a) at least 14 days have elapsed since the application was served on each other party to the proceedings, and
 - (b) no other party has served notice on the court administration officer that he opposes the application.
- (7) Rule 82(8) applies in relation to a hearing of the application as it applies in relation to a hearing of an application for a special measures direction.
- (8) Where the direction was made on the application of a defendant and includes provision for the admission of a video recording which had not been served on the Director, the Director may make an oral application without leave.
- (9) A judge advocate who varies or discharges, or refuses an application for the variation or discharge of, a special measures direction must state in open court his reasons for doing so.
- (10) In this rule, references to the variation of a special measures direction include the further variation of a direction previously varied.

PART 13

TRIAL PROCEDURE

Opening address

- 85.**—(1) Before the Director adduces any evidence in trial proceedings—
- (a) the Director, and
 - (b) with leave of the court, any defendant,
- may make an opening address.

Examination of witnesses

- 86.**—(1) The court may question any witness.
- (2) If it appears to the court to be in the interests of justice, it may—
- (a) allow the cross-examination or re-examination of a witness to be postponed;
 - (b) call any witness whom it has not already heard;
 - (c) recall a witness;
 - (d) permit any party to recall a witness;
 - (e) permit the Director to call a witness after the close of the case for the prosecution; or

- (f) permit a defendant to give evidence after calling another witness.

Presence of witnesses

87.—(1) Except for a defendant 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 until the question is determined.

(3) The court may direct any expert or character witness present in court to withdraw if it considers his presence undesirable.

(4) For the purposes of this rule a witness is in court if he is able to see and hear the court through a live link (and for this purpose any impairment of eyesight or hearing is to be disregarded).

Submission of no case to answer

88.—(1) At the close of the case for the prosecution a defendant may submit, in respect of any charge, that the Director has failed to establish a case for him to answer.

(2) If such a submission is allowed, the court shall find the defendant not guilty of the charge.

The case for the defence

89.—(1) Where a defendant intends to adduce evidence as to fact (other than by giving evidence himself), he may make an opening address before adducing or giving evidence; but this is subject to paragraph (2).

(2) Where a defendant made an opening address under rule 85, he may not make another address under this rule without the leave of the court.

(3) Where a defendant gives evidence, he must do so before calling any other witness.

(4) Paragraph (3) is subject to rule 86(2).

Finding of not guilty before conclusion of the defence

90.—(1) At any time after the close of the case for the prosecution the court may find a defendant not guilty of a charge.

(2) The court may not make a finding under this rule unless it has invited the Director to address the court as to whether such a finding should be made.

Closing addresses

91.—(1) This rule applies at the close of the case for all defendants.

(2) If the Director has made an opening address the Director may not make a closing address without leave of the court.

(3) Each defendant, who has not made an opening address, may then make a closing address; but this is subject to paragraph (5).

(4) Each defendant who has made an opening address may not make a closing address without leave of the court.

(5) A legal representative who represents more than one defendant may make only one closing or opening address.

Announcement of findings

92.—(1) The finding of the court on each charge shall be announced in open court; and the judge advocate shall sign a record of the findings.

(2) Where no finding is recorded on a charge, the court may direct that the charge is to lie on the file, not to be proceeded with without the leave of the court or the Court Martial.

PART 14

SENTENCING PROCEEDINGS

Application and interpretation of Part 14

93.—(1) This Part applies in relation to any sentencing proceedings.

(2) In this Part—

“the offender” means any offender who falls to be sentenced in the proceedings; and

“the offence” means any offence for which the offender falls to be so sentenced.

Dispute on facts after plea of guilty

94.—(1) Where, after the court has recorded a plea of guilty in respect of any charge, there are disputed facts in the case, the court may direct that any issue of fact be tried by the court.

(2) The finding of the court shall be announced in open court.

Pre-sentence report and previous convictions

95.—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the proceedings, he shall serve a copy on the Director and the offender before the time appointed for the proceedings.

(2) Where the Director has obtained a record of the offender’s previous convictions in advance of the proceedings, he shall serve a copy on the offender and the court administration officer before the time appointed for the proceedings.

Information before sentencing

96.—(1) Where—

(a) the offender was convicted on a plea of guilty (other than a plea offered in the course of a trial), or

(b) the offender was convicted in trial proceedings but previous sentencing proceedings in respect of him were terminated,

the Director shall address the court on the facts of the case.

(2) Where practicable, the Director shall inform the court of—

(a) the offender’s age;

(b) any previous convictions of the offender for—

(i) offences under the law of any part of the United Kingdom, or

(ii) relevant offences under the law of another member State,

(iii) any sentence awarded in respect of any such offence, and whether any such conviction is spent for the purposes of the Rehabilitation of Offenders Act 1974(a);

(a) 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. Sections 1, 2 and 5 and the Schedule were further amended by paragraphs 63 to 66 of Schedule 16 to the Act.

- (c) any formal police caution administered to the offender by a constable in England and Wales or Northern Ireland;
- (d) any period for which the offender has been in custody awaiting trial; and
- (e) details of the offender's employment (if any); and
- (f) if the defendant was under 18 years of age when convicted, whether he has a service parent or service guardian (within the meaning of section 233).

(3) Where the court has power—

- (a) to make an activation order in respect of the offender, or
- (b) to deal with him under section 186(2) (offence during period of conditional discharge) or paragraph 21 of Schedule 8 to the 2003 Act (overseas community order in force),

the Director shall inform the court of that fact, of the previous offence by virtue of which the court has that power, and of the sentence passed for that offence.

(4) For the purposes of paragraph (2)(b) an offence is “relevant” if the act that constituted the offence would have constituted an offence under the law of any part of the United Kingdom if it had been done in that part at the time when the Director presents information to the court under this rule.

(5) Where the offender is not subject to service law but has formerly been so subject, paragraph (2) has effect as if—

- (a) after the word “age” in sub-paragraph (a) there were added “and his rank or rate when he last ceased to be subject to service law”; and
- (b) before the word “employment” in sub-paragraph (f) there were inserted “pay”.

Offences taken into consideration

97.—(1) The court may take into consideration any other offence committed by the offender, of a similar nature to that for which he falls to be sentenced, if—

- (a) he so requests; and
- (b) the court so directs.

(2) A list of offences taken into consideration shall be signed by the offender and attached to the record of proceedings.

Mitigation of sentence

98.—(1) The offender may—

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

Pronouncement of sentence

99.—(1) The sentence shall be recorded in writing, dated and signed by the judge advocate.

(2) The court shall make the statement of reasons, and give the explanation, required by section 252(1).

(3) In this rule, “sentence” has the same meaning as in section 252.

PART 15
ANCILLARY PROCEEDINGS
CHAPTER 1

Community order proceedings

Application and interpretation of Chapter 1

100.—(1) This Chapter applies where an overseas community order made by the court is in force.

(2) In this Chapter—

“the order” means the overseas community order;

“the offender” means the person in respect of whom the order was made.

Breach of requirements: application for summons or warrant

101.—(1) An application by the responsible officer for a summons or a warrant under paragraph 8 of Schedule 8 to the 2003 Act shall be made in writing to the court administration officer, specifying—

- (a) the requirement of the order with which the offender is alleged to have failed to comply;
- (b) the respect in which, and the date on which (or the dates between which) he is alleged to have failed to comply with that requirement;
- (c) whether he has within the previous twelve months been given a warning under paragraph 5 of Schedule 8 to the 2003 Act in respect of the order, and if so when and in what terms; and
- (d) any grounds on which, to the responsible officer’s knowledge, the offender is likely to rely as constituting a reasonable excuse for the alleged failure to comply.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) The Judge Advocate General may—

- (a) issue a summons under paragraph 8 of Schedule 8 to the 2003 Act requiring the offender to appear before the court for proceedings under paragraph 10 of that Schedule;
- (b) issue a warrant under paragraph 8 of that Schedule for the offender’s arrest;
- (c) dismiss the application without a hearing; or
- (d) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer of the time and place appointed for the hearing.

Breach of requirements: arrest under warrant

102.—(1) This rule applies where the Judge Advocate General issues a warrant under paragraph 8 of Schedule 8 to the 2003 Act for the offender’s arrest.

(2) The warrant shall be addressed to—

- (a) one or more service policemen;
- (b) one or more officers of a civilian police force; or
- (c) both

(3) The warrant shall state the matters mentioned in rule 101(1)(a) and 101(1)(b).

(4) Where the warrant is addressed to an officer of a civilian police force, it shall state that the offender must be transferred to service custody as soon as practicable after arrest.

(5) Where the offender is arrested under the warrant, or, if arrested by an officer of a civilian police force, is transferred to service custody—

- (a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court; and
- (b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released.

(6) Rule 103 (review of custody) applies in relation to an offender brought before a judge advocate under paragraph (5).

(7) Where the offender has been arrested under a warrant—

- (a) the court administration officer shall appoint a time and place for proceedings under paragraph 10 of Schedule 8 to the 2003 Act; and
- (b) the offender shall be brought before the court at that time and place, unless he has been released from custody under rule 103(4).

Review of custody

103.—(1) Paragraphs (2) to (5) apply where—

- (a) the offender is brought before a judge advocate under rule 102; or
- (b) the keeping of the offender in service custody has been authorised by an order under paragraph (2) and he is brought before a judge advocate before the expiry of the period for which it was so authorised.

(2) The judge advocate may by order authorise the keeping (or further keeping) of the offender in service custody if satisfied that there are substantial grounds for believing that, if released from service custody, the person would fail to attend the court as required.

(3) The period for which the judge advocate may, by an order under paragraph (2), authorise the keeping of the offender in service custody is such period, ending not later than 8 days after the day on which the order is made, as the judge advocate considers appropriate in all the circumstances.

(4) If the judge advocate makes no order under paragraph (2), the offender must be released from service custody without delay; but this is subject to paragraph (5).

(5) The judge advocate may require the offender to comply, before release or later, with such requirements as appear necessary to secure his attendance before the court.

(6) Where the keeping of the offender in service custody is authorised by an order under paragraph (2), he must be released on the expiry of the period for which it was so authorised unless a judge advocate has made a further order under that paragraph.

(7) Any requirement imposed by virtue of paragraph (5) may be varied or discharged by a judge advocate on application by the offender.

(8) Section 107(5) and (6) shall apply in relation to a requirement imposed by virtue of paragraph (5) as they apply in relation to a requirement imposed by virtue of section 107(3)(a).

Revocation of order with or without re-sentencing

104.—(1) An application under paragraph 14 of Schedule 8 to the 2003 Act must be made in writing to the court administration officer, specifying—

- (a) whether the applicant wants the court—
 - (i) to revoke the order; or
 - (ii) both to revoke the order and to deal with the offender for the offence in respect of which the order was made; and
- (b) the grounds on which the application is made.

(2) The court administration officer shall forward the application to the Judge Advocate General.

- (3) If the application is made by the offender, the Judge Advocate General may—
- (a) revoke the order;
 - (b) dismiss the application; or
 - (c) direct a hearing of the application.
- (4) If the application is made by the responsible officer, the Judge Advocate General may—
- (a) dismiss the application; or
 - (b) direct a hearing of the application, and issue a summons under paragraph 14(5) of Schedule 8 to the 2003 Act requiring the offender to appear at the hearing.
- (5) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer (and, if he is the applicant, the offender) of the time and place appointed for the hearing;
- (6) A warrant for the offender's arrest, issued under paragraph 14(5) of Schedule 8 to the 2003 Act—
- (a) shall be addressed to—
 - (i) one or more service policemen; or
 - (ii) one or more officers of a civilian police force;
 - (b) shall state that the offender has failed to appear in answer to a summons issued under paragraph 14(5) of Schedule 8 to the 2003 Act; and
 - (c) if addressed to an officer of a civilian police force, shall state that the offender must be transferred to service custody as soon as is practicable after arrest.
- (7) Where the offender is arrested under such a warrant, or, if arrested by an officer of a civilian police force, is transferred to service custody—
- (a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court; and
 - (b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released.
- (8) Rule 103 (review of custody) applies in relation to an offender brought before a judge advocate under paragraph (7).
- (9) Where the offender has been arrested under a warrant—
- (a) the court administration officer shall appoint a time and place for the hearing of the application; and
 - (b) the offender shall be brought before the court at that time and place, unless he has been released from custody under rule 103(4).

Amendment of requirements

105.—(1) An application under paragraph 17 of Schedule 8 to the 2003 Act must be made in writing to the court administration officer, specifying—

- (a) the amendment of the order that the applicant wants the court to make; and
- (b) the grounds on which the application is made.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) The Judge Advocate General may—

- (a) make the proposed amendment (subject to paragraph 17(2) of Schedule 8 to the 2003 Act);
- (b) dismiss the application; or
- (c) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer and the offender of the time and place appointed for the hearing.

Extension of unpaid work requirement

106.—(1) An application under paragraph 20 of Schedule 8 to the 2003 Act must be made in writing to the court administration officer, specifying—

- (a) the period for which the applicant wants the court to extend the period of twelve months specified in section 200(2) of that Act; and
- (b) the grounds on which the application is made.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) The Judge Advocate General may—

- (a) grant the application;
- (b) extend the period specified in section 200(2) of the 2003 Act by a period shorter than that proposed in the application;
- (c) dismiss the application; or
- (d) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer and the offender of the time and place appointed for the hearing.

CHAPTER 2

Other ancillary proceedings

Remission of fine

107.—(1) The court's power to remit the whole or part of a fine under section 267 may be exercised on an application under this rule.

(2) An application under this rule—

- (a) shall be made in writing to the court administration officer;
- (b) shall specify those financial circumstances of the applicant of which the court was unaware when it fixed the amount of the fine; and
- (c) shall include an explanation for the applicant's failure to co-operate with the court in its inquiry under section 249.

(3) The court administration officer shall forward the application to the judge advocate for the proceedings in which the fine was imposed.

(4) The judge advocate may—

- (a) exercise any of the court's powers under section 267;
- (b) dismiss the application; or
- (c) direct a hearing of the application.

(5) Where, without a hearing, the judge advocate exercises any of the court's powers under section 267 or dismisses the application, the court administration officer shall notify the applicant in writing of the judge advocate's decision.

(6) Where the judge advocate directs a hearing of the application, the court administration officer shall notify the applicant of the time and place appointed for the hearing.

Certification of contempt of court

108.—(1) The court’s powers under section 311(2) (certification of contempt of court) may be exercised only at a hearing under this rule.

(2) If so directed by a judge advocate, the court administration officer shall—

- (a) appoint a time and place for a hearing under this rule; and
- (b) notify the contemnor and the Director of the time and place so appointed.

(3) The contemnor and the Director are entitled to be heard at the hearing.

(4) The contemnor need not attend the hearing, but the court may exercise its powers under section 311(2) in his absence.

(5) In this rule—

“the contemnor” means the person whose offence the court is to consider certifying; and

“offence” has the same meaning as in section 311.

PART 16

RESTRICTIONS ON PUBLIC ACCESS AND REPORTING

Proceedings in camera

109.—(1) A judge advocate may order that any proceedings, or any part of any proceedings, be held in camera, if satisfied that the order is necessary or expedient in the interests of the administration of justice.

(2) Without prejudice to the generality of paragraph (1), a judge advocate may conclude that it is necessary or expedient in the interests of the administration of justice to make an order under this rule on the ground that, if no order were made, the Director would be—

- (a) likely to abandon the proceedings, or
- (b) unlikely to bring comparable proceedings in future,

for fear that information useful to an enemy might be disclosed, or national security endangered.

(3) An order under this rule may be made only on oral application by a party to the proceedings, and such an application shall be made in camera unless the judge advocate otherwise directs.

(4) Paragraph 1 of Schedule 10 (open court) shall not apply in relation to—

- (a) any proceedings, or any part of any proceedings, as respects which an order under this rule has been made; or
- (b) unless the judge advocate hearing the application otherwise directs, the hearing of an application for such an order.

Withholding of matter from the public in proceedings before the court

110. The court may give leave for any name or other matter given in evidence in proceedings to be withheld from the public.

PART 17
TRANSITORY AND TRANSITIONAL PROVISIONS

Supreme Court of Northern Ireland

111. Until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005(a) comes into force, the reference in rule 26(2)(c) to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland.

Transitional

112. Schedule 2 shall have effect.

7th May 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

SCHEDULE 1

Rule 20

OATHS AND AFFIRMATIONS

The words prescribed are—

- (a) for witnesses, “... the evidence I shall give shall be the truth, the whole truth, and nothing but the truth”; and
- (b) for interpreters, “... 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”.

SCHEDULE 2

Rule 112

TRANSITIONAL AND TRANSITORY PROVISIONS

PART 1

GENERAL

Interpretation

1. In this Schedule—

“AA 1955” means the Army Act 1955(a);

(a) 2005 c. 4.

“AFA 1955” means the Air Force Act 1955**(b)**;
“AFA 1976” means the Armed Forces Act 1976**(c)**
“commencement” means the date on which these Rules come into force;
“NDA 1957” means the Naval Discipline Act 1957**(d)**;
“SCCO 1997” means the Standing Civilian Courts Order 1997**(e)**;
“the SDAs” means AA 1955, AFA 1955 and NDA 1957;
“SDA compensation order” means a compensation order under paragraph 11(1) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957;
“SDA offence” any offence under Parts 2 of AA 1955 or AFA 1955, as those Parts are as applied by section 209 of those Acts to those persons described in sub-sections (1) or (2) of those sections; and
“a Standing Civilian Court” means a Standing Civilian Court established under section 6 of AFA 1976.

Record of Standing Civilian Court proceedings

2.—(1) Rules 22(2) to 22(8) shall apply in relation to the record of the proceedings of a Standing Civilian Court with the following modifications.

(2) In paragraph (5)—

- (a) the reference to exhibits retained under rule 23 is to be read as a reference to exhibits retained under article 58 of the SCCO 1997; and
- (b) the reference to the court administration officer is to be read as a reference to the court administration officer within the meaning of AA 1955 or AFA 1955 (as the case may be).

(3) Paragraph (5) shall have effect as if for sub-paragraphs (a) to (c) there were substituted “the conclusion of the proceedings of a Standing Civilian Court”.

PART 2

STEPS TAKEN BEFORE COMMENCEMENT

Service of documents

3. Any document served on a person before commencement, which would have been served on him in accordance with any provision of these Rules if that provision had then been in force, is to be treated as having been served on him in accordance with that provision.

Court administration officers

4. Anything done before commencement by a court administration officer within the meaning of the SCCO 1997, which would have been done in accordance with any provision of these Rules if it had been done by the court administration officer within the meaning of the Act and that provision had then been in force, is to be treated as having been done by the court administration officer in accordance with that provision.

Prosecuting officers

5. Anything done before commencement by—

-
- (a) 1955 c. 18.
 - (b) 1955 c. 19.
 - (c) 1976 c. 52
 - (d) 1957 c. 53.
 - (e) S.I. 1997/172

- (a) the prosecuting authority for the Royal Navy, the Army or the Royal Air Force, or
- (b) a prosecuting officer (within the meaning of any of the SDAs),

which would have been done in accordance with any provision of these Rules if it had been done by the Director and that provision had then been in force, is to be treated for the purpose of these Rules as having been done by the Director in accordance with that provision.

Legal representatives

6.—(1) Anything done before commencement by a person’s legal advisor within the meaning of article 21 of the SCCO 1997, which would have been done in accordance with any provision of these Rules if it had been done by the person’s legal representative within the meaning of these Rules and that provision had then been in force, is to be treated for the purpose of these Rules as having been done by the person’s legal representative in accordance with that provision.

(2) A person who, immediately before commencement, was a person’s legal advisor (within the meaning of article 21 of the SCCO 1997) is to be treated as having been appointed as that person’s legal representative under rule 26.

Arraignment

7. Where—

- (a) an accused was arraigned on a charge under article 35 of the SCCO 1997, and
- (b) the accused had not elected court-martial trial,

the accused is to be regarded for the purposes of these Rules as having been a defendant arraigned in proceedings under these Rules.

Directions etc

8.—(1) An order or ruling made by the court on an application under article 39 of the SCCO 1997 has effect in related proceedings as if made in preliminary proceedings by the judge advocate for those proceedings.

(2) Proceedings are “related proceedings” in relation to a preliminary hearing if, had the hearing been preliminary proceedings, they would have been related proceedings in relation to those proceedings.

(3) A summons issued under the SCCO 1997 shall have effect as if issued under these Rules.

PART 3

EVIDENCE

Proof by written statement

9. The reference in rule 60(1)(b) to a person subject to service law or a civilian subject to service discipline is to be read, in relation to a statement made before commencement, as a reference to a person who at the time of making the statement was a person mentioned in section 99A(2)(b) of AA 1955.

Evidence of enlistment or entry for service

10.—(1) In rule 68, references to an enlistment paper used to enlist a person in accordance with regulations made under section 328 include—

- (a) an attestation paper within the meaning of AA 1955 or AFA 1955; and
- (b) a copy of Royal Navy Form S3049 (Notice Form for Entry/Re-Entry into Naval Service) signed by a person on being entered for service in the Royal Navy.

(2) In relation to a document purporting to be a copy of Royal Navy Form S3049, rule 68(1)(a) has effect as if for the word “enlisted” there were substituted “entered for service”.

(3) In rule 68(1)(b) the reference to a recruiting officer includes a recruiting officer within the meaning of Part 1 of AA 1955 or AFA 1955.

Documents signed by or on behalf of a person’s commanding officer

11. In relation to a record or certificate purporting to have been signed before commencement, references in rules 70 and 72 to a person’s commanding officer are to be read as references to his commanding officer within the meaning of Part 2 of the Armed Forces Act 2001(a).

Special measures

12.—(1) In Chapter 6 of Part 12, “sexual offence” includes an SDA civil offence as respects which the corresponding civil offence is—

- (a) an offence under Part 1 of the Sexual Offences Act 2003;
- (b) a relevant superseded offence, within the meaning of section 62 of the 1999 Act;
- (c) an offence of attempting or conspiring to commit, or inciting the commission of, an offence within paragraph (a) or (b) above; or
- (d) an offence under Part 2 of the Serious Crime Act 2007 where the offence (or one of the offences) which the offender intended or believed would be committed is an offence under Part 1 of the Sexual Offences Act 2003.

(2) In this paragraph—

“SDA civil offence” means an offence under section 70 of AA 1955 or AFA 1955;

“the corresponding civil offence”, in relation to an SDA civil offence, means—

- (a) the act or omission constituting the SDA civil offence; or
- (b) if that act or omission is not punishable by the law of England and Wales, the equivalent act done or omission made in England or Wales.

PART 4 SENTENCING

Activation of suspended sentence of imprisonment

13.—(1) In these Rules, “activation order” includes an order made by the court determining the suspension of an SDA suspended sentence of imprisonment and committing the offender to imprisonment.

(2) In this paragraph, “SDA suspended sentence of imprisonment” means a sentence of imprisonment—

- (a) passed by—
 - (i) a court-martial,
 - (ii) a Standing Civilian Court,
 - (iii) the Courts-Martial Appeal Court on an appeal brought from a court-martial, or
 - (iv) the House of Lords on an appeal brought from a decision of the Courts-Martial Appeal Court, and
- (b) suspended under section 120 of AA 1955 or AFA 1955, section 90 of NDA 1957, or paragraph 20(4) of Schedule 3 to the Armed Forces Act 1976(a).

(a) 2001 c. 19.

SDA conditional discharge orders

14.—(1) Where—

(a) an SDA conditional discharge order has been made in respect of an offender, and

(b) he is charged with an offence committed during the period of conditional discharge,

the advance information in relation to him must include a notice that, if he were convicted of the offence, the court would have power to deal with him for the offence for which he was conditionally discharged.

(2) In rule 96(3) the reference to power to deal with the offender under section 186(2) includes power to deal with him for an offence as respects which an SDA conditional discharge order was made.

(3) In this paragraph, “SDA conditional discharge order” means an order for a person’s conditional discharge under paragraph 3(1) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

Community supervision orders

15.—(1) Where a notice under this rule is served by the Director, it must be served not more than 14 days after the Director serves advance information in respect of the charge to which the evidence relates. Where—

(a) a community supervision order has been made in respect of an offender, and

(b) he is charged with an offence committed during the period specified in the order,

the advance information in relation to him must include a notice that, if he were convicted of the offence, the court would have power to deal with him for the offence for which the order was made.

(2) In rule 96(3) the reference to power to deal with the offender under paragraph 21 of Schedule 8 to the 2003 Act includes power to deal with him for an offence as respects which a community supervision order was made.

(3) In this paragraph, “community supervision order” means an order under paragraph 4(1) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

EXPLANATORY NOTE

(This note is not part of the Rules)

The Armed Forces Act 2006 (c. 52) (“the Act”) creates a standing Service Civilian Court. These Rules provide for the practice and procedure to be followed at the Service Civilian Court, administrative matters of the court and also make provision with regard to evidential matters such as special measures directions and hearsay evidence.

Part 2 of these Rules makes provision with regard to the service of documents on different people and sets out when service is deemed to have occurred depending upon the method of service.

Part 3 deals with administrative matters including listing and notification of proceedings (rules 16 and 17), providing that a judge advocate may direct attendance at court by live link (rule 18) and the making and retention of records of proceedings (rule 22). Rule 20 provides that oaths taken at the Service Civilian Court are to be the same as those in sections 1 to 3 and 6 of the Oaths Act 1978 (c. 19) as modified by Schedule 1 to these Rules. Rule 24 sets out the circumstances in which a judge advocate must terminate proceedings.

Part 4 sets out who may be a legal representative at court (rule 26) and provides, when a defendant who is a young person has not appointed a legal representative, which rights of the defendant may be exercised by the parent or guardian of that defendant (rule 27).

(a) 1976 c. 52.

Part 5 applies section 111 of the Act (power to arrest a defendant during proceedings of the court) to pre-arraignment where a defendant is to be tried by the court. A judge advocate may either direct his arrest or issue a warrant for his arrest under this part.

Part 6 provides for service of advance information and when that information must include notice that a defendant could become subject to an activation order (rule 31).

Part 7 makes provision with regard to preliminary hearings including the power of a judge advocate to make orders or rulings on matters such as the admissibility of evidence, joinder or severance of charges and other questions of law, practice or procedure (rule 36).

Part 8 provides for the joinder or severance of charges and the amendment of charges.

Part 9 provides for the consideration of the court for trial by the Court Martial and for a defendant to exercise his right to trial that court.

Part 10 deals with arraignment of defendants and the ability of defendants to change their pleas.

Part 11 is concerned with the attendance of witnesses at court and provides for matters such as the notification of witnesses (rule 48), summoning of witnesses (rules 49 to 53) and the powers of a judge advocate to issue warrants for the arrest of witnesses in order to secure their attendance at court (rule 54).

Part 12 deals with evidence and applies provisions that operate in the civilian courts. This part is divided into chapters that in their turn deal with: general evidential matters (chapter 1) (applying provisions of the Criminal Justice Act 1967 (c. 80) to the Service Civilian Court); evidence of bad character (chapter 2) (applying provisions of the Criminal Justice Act 2003 (c. 44) to the Service Civilian Court); hearsay evidence (chapter 3) (applying further provisions of the 2003 Act to the court); evidence of service matters (chapter 4) (which is equivalent to provisions made under section 372 of the Act for civilian courts); expert evidence (chapter 5); and special measures directions (chapter 6) (applying provisions of the Youth Justice and Criminal Evidence Act 1999 (c. 23) to the Service Civilian Court).

Part 13 sets out the procedure to be followed at trial.

Part 14 is concerned with sentencing matters and procedure and includes (at rule 99) that the reasons for a sentence are explained to the offender by the judge advocate.

Part 15 is concerned with ancillary proceedings. Chapter 1 applies when an overseas community order made by the court is in force and the offender has breached the terms of that order. Chapter 2 deals with other ancillary proceedings such as the remission of a fine under section 267 of the Act. It also provides for the procedure to be followed when the court decides to exercise its powers under section 311(2) of the Act and certify a person for contempt of court (rule 108).

Part 16 sets out the power of a judge advocate to order that proceedings are held in camera, including on the bases that otherwise information useful to an enemy may be disclosed or national security endangered (rule 109).

Part 17 makes transitory and transitional provisions. Rule 111 provides that until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4) is in force all references in the Rules to the Court of Judicature of Northern Ireland are to be read as references to the Supreme Court of Northern Ireland. Rule 112 introduces Schedule 2 which sets out transitional provisions.