EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport.)*

These Regulations, which come into operation on 1st October, 1956, revoke and re-enact with amendments the Improvement of Livestock (Licensing of Bulls) (England and Wales) Regulations, 1945. The principal changes are:—

(1) the abolition of the Dairy (Official Milk Record) Licence and the introduction of a Dairy Bull Licence for which records of butter-fat production as well as milk yield in the bull's ancestry are required;

(2) the fixing of a new address to which an application for a licence must be sent;

(3) the prescription of a time within which application must be made for a licence in respect of a bull imported or brought into England or Wales;

(4) the correction and extension of the list of approved cattle breeding societies.

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# ARMY

## DISCIPLINE

## 1956 No. 630

## The Board of Inquiry (Army) Rules, 1956

| | |
|---|---|
| *Made* - - - - | *24th April*, 1956 |
| *Laid before Parliament* | *27th April*, 1956 |
| *Coming into Operation* | 1*st January*, 1957 |

The Secretary of State for War, in exercise of the powers conferred upon him by section 135 of the Army Act, 1955(**a**), and of all other powers him enabling hereby makes the following Rules:—

*Citation and Commencement*

**1.** These Rules may be cited as the Board of Inquiry (Army) Rules, 1956, and shall come into operation on the 1st day of January, 1957.

*Interpretation*

**2.**—(1) The Interpretation Act, 1889(**b**), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(2) In these Rules, except where the context otherwise requires:—

"the Act" means the Army Act, 1955(**a**);

"the authority", in relation to a board, means the Army Council or any military, naval or air-force officer empowered by or under these Rules to convene a board;

"board" means board of inquiry;

"civil authority" includes a coroner and the civil police;

"civilian witness" means a person who gives evidence before a board and is either a person to whom section 209 of the Act or any corresponding

(**a**) 3 & 4 Eliz. 2. c. 18. (**b**) 52 & 53 Vict. c. 63.

provisions of the Naval Discipline Act(a) or the Air Force Act, 1955(b), applies, or a person who is not subject to military law, the Naval Discipline Act, air-force law or the service law (which has the same meaning as in Part I of the Visiting Forces Act, 1952(c)) of a visiting force to which the Visiting Forces (Application of Law) Order, 1954(d), applies;

"president" means president of a board;

"record of the proceedings", in relation to a board, includes the report of the board and any opinion expressed by the board in accordance with any directions given by the authority;

"represented" means represented by an officer or by counsel (which means a barrister-at-law, an advocate or a solicitor and, outside the United Kingdom, a person recognised by the authority as having rights and duties similar to those of a barrister-at-law, advocate or solicitor) and includes, in the case of a civilian employed in the service of Her Majesty, representation by such person's trade union or staff association representative; and the term "representative" shall be construed accordingly.

Other expressions have the same meanings as they have in the Act.

*Duties of boards*

**3.** It shall be the duty of a board to investigate and report on the facts relating to any matter referred to the board under these Rules and, if directed so to do, to express their opinion on any question arising out of any such matter.

*Matters for reference to boards*

**4.** Subject to the provisions of these Rules—

(1) a board shall be convened with reference to—

(*a*) the absence of any person subject to military law who has been continuously absent without leave for a period of not less than twenty-one days and the deficiency (if any) in the clothing, arms, ammunition or other equipment or any other public or service property issued to him for his use;

(*b*) the capture of any person subject to military law by the enemy and his conduct in captivity if, on his return from captivity, the authority considers that there are reasonable grounds for suspecting—

(i) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty; or

(ii) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin Her Majesty's service; or

(iii) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage; and

(*c*) the death of any person in a military establishment, being an establishment in any country or territory outside the United Kingdom where an inquiry into the death is not required to be held by any civil authority.

(2) a board may be convened with reference to any matter which the authority decides to refer to a board.

(a) 29 & 30 Vict. c. 109.
(b) 3 & 4 Eliz. 2. c. 19.
(c) 15 & 16 Geo 6 & 1 Eliz. 2. c. 67.
(d) S.I. 1954/635 (1954 II, p. 2465).

*Deferring and staying of proceedings*

**5.**—(1) Subject to paragraph (2) of this Rule, where any matter is the subject of investigation by the military, naval or air-force police or by a civil authority, or of an inquiry held by the proper naval or air-force authority, or of proceedings under military law, the Naval Discipline Act or air-force law or of proceedings in a civil court whether within or without Her Majesty's dominions, and

(*a*) a board has not been convened with reference thereto, the authority may defer the convening of a board until the completion of such investigation or proceedings as aforesaid and upon completion thereof shall not be required to convene a board, if satisfied that a board is not necessary; or

(*b*) a board has already been convened with reference thereto, the authority may stay the proceedings of the board until such investigation or proceedings as aforesaid have been completed and shall then dissolve the board, if satisfied that a board is not necessary.

(2) The provisions of paragraph (1) of this Rule shall not apply to the convening of a board with reference to such absence and such deficiency (if any) as are mentioned in sub-paragraph (*a*) of paragraph (1) of Rule 4, but, where the authority is satisfied that the absence has terminated, or where the absentee belongs or is attached to Her Majesty's naval or air forces and the authority is satisfied that an inquiry into the absence is being or will be held by the proper naval or air-force authority, and

(*a*) a board has not yet been convened with reference to the absence and deficiency (if any), the authority shall not be required to convene a board; or

(*b*) a board has already been convened with reference thereto, the authority may forthwith dissolve the board.

*Convening*

**6.**—(1) A board of inquiry may be convened by order of—

(*a*) the Army Council; or

(*b*) any officer not below the rank of colonel, or corresponding rank, commanding any command or other area, garrison or place, or any formation or body of troops in Her Majesty's forces; or

(*c*) any officer who is acting for the time being in place of such an officer; or

(*d*) any officer commanding a unit or detachment of Her Majesty's military forces—

(i) with reference to such absence and such deficiency (if any) as are mentioned in sub-paragraph (*a*) of paragraph (1) of Rule 4;

(ii) if authorised by the Army Council or any such officer as is mentioned in sub-paragraph (*b*) or (*c*) of this paragraph, with reference to any particular matter or to matters of any specified class or description.

(2) The following provisions shall apply in relation to the order convening a board—

(*a*) The order shall specify the composition of the board and the place and time at which the board shall assemble;

(*b*) the order may, and where the matter referred to the board is that mentioned in sub-paragraph (*a*) of paragraph (1) of Rule 4 shall, specify the terms of reference of the board and be published in military orders;

(*c*) the order may direct the board to express their opinion on any question arising out of any matter referred to the board; and

(*d*) the authority may at any time revoke, vary or suspend the order.

*Constitution*

**7.**—(1) Subject to paragraph (2) of this Rule, a board shall consist of not less than three officers subject to military law, the Naval Discipline Act or air-force law.

(2) Where a board is convened with reference to such absence and deficiency (if any) as are mentioned in sub-paragraph (*a*) of paragraph (1) of Rule 4 one of the members of the board may be a warrant officer or a member of the Royal Marines not below the rank of quarter-master-sergeant.

(3) The authority shall appoint the president by name and each remaining member of the board either by name or by detailing a commanding officer to appoint an officer of a specified rank.

*Assembly and procedure*

**8.**—(1) A board shall assemble at the time and place specified in the order convening the board.

(2) The president shall lay the terms of reference before the board and the board shall proceed to hear and record evidence in accordance with the provisions of these Rules.

*Adjournment and re-assembly*

**9.**—(1) The president may from time to time adjourn the board which shall sit on such occasions and in such places as he may from time to time direct.

(2) Without prejudice to paragraph (1) of this Rule, the authority may at any time, if it appears necessary or desirable, direct that the board shall re-assemble for such purpose or purposes as may be specified by the authority.

*Witnesses*

**10.**—(1) A board shall hear the evidence of the witnesses who have been made available by the authority and may hear the evidence of such other persons as they think fit.

(2) While a civilian witness is giving evidence before a board he may be represented but, subject to the provisions of Rule 11, his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

*Persons who may be affected by the findings*

**11.**—(1) Where it appears to the authority or, if a board has been convened, either to the authority or to the president that any witness or other person may be affected by the findings of the board, the authority or, as the case may be, the president shall take such steps as are in his view reasonable and necessary to secure that such witness or other person has notice of the proceedings and, if he so desires, has an opportunity of being present, and represented, at the sittings of the board, or at such part thereof as the authority or, as the case may be, the president may specify.

(2) Any such witness or other person as is referred to in paragraph (1) of this Rule may give evidence, question witnesses or produce any witness to

give evidence on the matters which may affect him and, if he is represented, his representative may question witnesses, but a representative shall not address the board except with the permission of the president.

*Evidence*

**12.** A board may receive any evidence which they consider relevant to the matter referred to the board, whether oral or written, and whether or not it would be admissible in a civil court.

*Oaths and affirmations*

**13.**—(1) Subject to paragraph (3) of this Rule, every witness before a board shall be examined on oath:

Provided that where any child of tender years called as a witness does not in the opinion of the board understand the nature of an oath, his evidence may be received, though not given on oath, if in the opinion of the board he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) Subject to paragraph (3) of this Rule, an oath shall be administered to any person in attendance on a board as interpreter.

(3) If—

(*a*) a person objects to taking an oath, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, or

(*b*) it is not reasonably practicable to administer an oath to a person in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation instead of taking an oath.

(4) An oath shall be administered, or an affirmation made, before a board in the form and manner prescribed by Rules of Procedure (Army), 1956(**a**).

*Exhibits*

**14.**—(1) Subject to paragraph (2) of this Rule, any document or thing produced to a board by a witness when giving his evidence shall be made an exhibit.

(2) When an original document or book is produced to a board by a witness, the board may at the request of the witness compare a copy of it or an extract therefrom of the relevant parts with the original and, after they have satisfied themselves that such copy or extract is correct and the president has certified thereon that the board has compared it with the original and found it correct, the board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall—

(*a*) be marked with a number or letter and be signed by the president or have a label affixed to it bearing a number or letter and the signature of the president;

(*b*) be attached to or kept with the record of the proceedings unless in the opinion of the board it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under sub-paragraph (*b*) of paragraph (3) of this Rule, the president shall ensure that proper steps are taken for its safe custody.

(**a**) S.I. 1956/162 (p. 213 below).

*Record of proceedings*

**15.**—(1) The president shall record, or cause to be recorded, the proceedings of the board in writing and in sufficient detail to enable the authority to follow the course of the proceedings.

(2) Where there is no shorthand writer present the evidence shall be taken down in narrative form recording as nearly as possible the words used:

Provided that, if the board consider it necessary, any particular question and answer shall be taken down verbatim.

(3) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (2) of this Rule, shall be read over to him and shall be signed by him.

(4) A record of the proceedings shall be signed by the president and other members of the board and forwarded to the authority.

*Entries of reports in service books*

**16.** Where a board reports that a person subject to military law has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, and that there is a deficiency in any clothing, arms, ammunition or other equipment or any other public or service property issued to him for his use, a record of the report of such deficiency shall, in addition to a record of the report of such absence required under subsection (1) of section 136 of the Act, be entered in accordance with Queen's Regulations in the service books.

Dated this 24th day of April, 1956.

*Antony Head.*

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## EXPLANATORY NOTE

*(This Note does not form part of the Rules, but is intended to indicate their general purport.)*

1. These Rules are made by the Secretary of State for War under section 135 of the Army Act, 1955.

2. Rule 3 requires boards of inquiry to investigate and report on matters referred to them. Rule 4 sets out in paragraph (1) those matters which must be referred to a board and in paragraph (2) those matters which may be so referred. The circumstances in which the proceedings of a board may be stayed or deferred or the board itself be dissolved are set out in Rule 5.

3. Rules 6 and 7 deal respectively with the convening and constitution of boards of inquiry. Rules 8 and 9 provide for the assembly and general procedure of a board and for its adjournment and re-assembly.

4. Rule 10 makes various provisions with regard to witnesses, and Rule 11 provides that those who may be affected by the findings of a board should have notice of the proceedings and be given an opportunity of being present and represented at the sittings of the board or such part thereof as may be specified.

5. Rules 12 to 16 deal respectively with the rules of evidence to be observed by boards, the administration of oaths to witnesses and interpreters, the treatment of exhibits produced to boards, the record of their proceedings, and the entering of reports of certain deficiencies in the service books.

TRIAL AND PUNISHMENT FOR MILITARY OFFENCES

# 1956 No. 162

# The Rules of Procedure (Army), 1956

| | |
|---|---|
| *Made - - - -* | *7th February,* 1956 |
| *Laid before Parliament* | 13*th March,* 1956 |
| *Coming into Operation* | 1*st January,* 1957 |

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1. Sentences.
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1. Petitions.
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The Secretary of State for War in exercise of the powers conferred upon him by sections 103, 104, 105 and 106 of the Army Act, 1955(a), and of all other powers enabling him in that behalf, hereby makes the following Rules:—

CITATION AND COMMENCEMENT

*Citation and commencement*

**1.** These Rules may be cited as the Rules of Procedure (Army), 1956, and shall come into operation on the same day as the Army Act, 1955.

DEFINITIONS AND INTERPRETATION

*Definitions*

**2.**—(1) In these Rules:—

"convening a fresh court" includes dissolving the existing court;

"member" when used in relation to a court-martial does not include the president;

"special finding" means when used in relation to:—

(*a*) Section 98 of the Act, any finding which a court-martial may make in accordance with that section;

(*b*) Section 116 of the Act, a finding in accordance with subsection (2) of that section that the accused is guilty but insane;

(*c*) Rule 66 (3), a finding that the accused is guilty of the charge subject to the exception or variation specified in the finding.

"the Act" means the Army Act, 1955.

(2) Other expressions in these Rules have the same meanings as if these Rules formed part of the Act.

*Interpretation Act,* 1889

**3.** The Interpretation Act, 1889(b), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament and, in particular, words importing the masculine gender shall include females, and words in the singular shall include the plural, and words in the plural shall include the singular.

ARREST AND AVOIDANCE OF DELAY

*Avoidance of delay by commanding officers in investigating charges*

**4.**—(1) When a person is detained by military authority in arrest, his commanding officer shall, unless it is impracticable, within forty-eight hours of becoming aware that he is so detained have such person brought before him, inform him of the charge against him and begin to investigate it.

(2) Every case of such a person being detained in arrest beyond the period of forty-eight hours referred to in this Rule without such investigation having begun and the reason therefor shall be reported by his commanding officer to higher authority.

*Eight day delay reports*

**5.** The report required by subsection (2) of section 75 of the Act with regard to the necessity for further delay in bringing an accused to trial shall be in the form set out in the First Schedule to these Rules and shall

(a) 3 & 4 Eliz. 2. c. 18. (b) 52 & 53 Vict. c. 63.

be signed by his commanding officer. The report shall be sent to the officer who would be responsible for convening a court-martial for the trial of the accused and a copy thereof shall be sent direct to the Director of Army Legal Services or his representative.

*Arrest not to exceed 72 days without permission from higher authority*

**6.** An accused shall not be held in arrest for more than seventy-two consecutive days without a court-martial being convened for his trial, unless the officer who would be responsible for convening the court-martial directs in writing that he shall not be released from arrest. When giving such a direction such officer shall state his reasons for giving it.

INVESTIGATION OF CHARGES BY COMMANDING OFFICER

*Methods of investigating charges*

**7.**—(1) Subject to paragraphs (3) and (4) of this Rule, when a commanding officer investigates a charge he shall first read and, if necessary, explain the charge to the accused and shall then :—

(*a*) hear the evidence himself in accordance with Rule 8 ; or

(*b*) cause the evidence to be reduced to writing, in accordance with paragraph (2) of this Rule, and read and consider it:

Provided that :—

(*a*) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing ;

(*b*) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with Rule 8 ; and

(*c*) before he submits to higher authority a charge against an officer or warrant officer or a civilian to whom Part II of the Act is applied by section 209 of the Act or remands a non-commissioned officer or soldier for trial by court-martial he shall cause the evidence to be reduced to writing.

(2) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with Rule 9 or an abstract of evidence made in accordance with Rule 10 :

Provided that a summary of evidence must be taken if:—

(*a*) the maximum punishment for the offence with which the accused is charged is death ; or

(*b*) the accused, at any time before the charge against him is referred to higher authority in accordance with Rule 13, requires in writing that a summary of evidence be taken ; or

(*c*) the commanding officer is of the opinion that the interests of justice require that a summary of evidence be taken.

(3) Where the evidence taken in accordance with paragraph (1) of this Rule discloses an offence other than the offence which is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated, for the purposes of these Rules, as the investigation of the added or substituted charge.

(4) Where a civilian, to whom Part II of the Act is applied by section 209 of the Act, is charged with an offence with which an appropriate superior authority can deal summarily, it shall not be necessary for his commanding

officer to read the charge to the accused; but it shall be a sufficient compliance with the provisions of this Rule if his commanding officer causes to be delivered to the accused a copy of the charge and of the abstract of evidence and considers them together with any statement made by the accused under Rule 10 (2).

*Hearing of evidence by commanding officer*

**8.** When a commanding officer investigates a charge by hearing the evidence himself:—

(*a*) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness:

Provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;

(*b*) the accused shall be allowed to cross-examine any prosecution witness;

(*c*) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;

(*d*) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence;

(*e*) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;

(*f*) if the evidence is given on oath, the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with Rule 34.

*Summary of evidence*

**9.** A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in the First Schedule to these Rules:—

(*a*) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer;

(*b*) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that, if a person cannot be compelled to attend as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence; but, if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

(*c*) after all the evidence against the accused has been given, the accused shall be asked:—

"Do you wish to say anything? You are not obliged to do so, but, if you wish, you may give evidence on oath, or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be given in evidence."

Any evidence given or statement made, by the accused shall be recorded in writing and, immediately thereafter, the record of his evidence or

statement shall be read over to him and corrected where necessary, and he shall sign it unless he declines to do so;

(*d*) the accused may call witnesses in his defence, who shall give their evidence orally;

(*e*) neither the accused nor the witnesses for the defence shall be subject to cross-examination;

(*f*) the evidence of each witness (other than the accused) who gives evidence orally shall be recorded in writing and, immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary and signed by him;

(*g*) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded *verbatim* if the accused so requires;

(*h*) the oath shall be administered in accordance with Rule 34 by the officer taking the summary of evidence to each witness, before he gives his evidence, and to any interpreter:

Provided that, where any child of tender years, called as a witness, does not, in the opinion of the officer taking the summary, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the officer taking the summary, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and

(*i*) at the conclusion of the taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with the provisions of this Rule.

*Abstract of evidence*

**10.**—(1) An abstract of evidence shall be made in the following way and shall be in accordance with the form set out in the First Schedule to these Rules:—

(*a*) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;

(*b*) the accused should not be present while the abstract of evidence is being made;

(*c*) it shall consist of signed statements by such witnesses as are necessary to prove the charge:

Provided that if, in the case of any witness, a signed statement is not readily procurable, a precis of the evidence to be given by that witness may be included instead of a signed statement; and

(*d*) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with paragraph (1) of this Rule, a copy of it shall be handed to the accused and he shall then be cautioned in the following terms:—

"This is a copy of the abstract of evidence in your case; you are not obliged to say anything with regard to it unless you wish to do so, but you should read it and, when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given in evidence."

Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it. This statement, and a certificate by the person who recorded the statement stating that the accused was duly cautioned in accordance with this Rule,

shall be attached to the abstract of evidence and shall thereafter form part of it. This certificate shall be in the form set out in the First Schedule to these Rules.

*Investigation before summary dealing by commanding officer*

**11.** Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing:—

(*a*) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and

(*b*) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

*Dismissal of charge by commanding officer*

**12.**—(1) A commanding officer may dismiss a charge at any time during his investigation if he is of the opinion that it ought not to be proceeded with further.

(2) After a commanding officer has referred a charge to higher authority in accordance with Rule 13, he shall not dismiss it unless it has been referred back to him with a direction that it shall be dismissed in accordance with the provisions of section 80 of the Act.

*Reference of charges to higher authority*

**13.** When a commanding officer submits to higher authority a charge against an officer or warrant officer or a civilian to whom Part II of the Act is applied by section 209 of the Act or has remanded a non-commissioned officer or soldier for trial by court-martial, he shall send to higher authority:—

(*a*) a copy of the charge on which the accused is held;

(*b*) a draft charge-sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court-martial;

(*c*) the summary or abstract of evidence;

(*d*) a statement of the character and service record of the accused; and

(*e*) a recommendation as to how the charge should be proceeded with.

PREPARATION OF CHARGE-SHEETS AND FRAMING OF CHARGES

*Charge-sheets*

**14.**—(1) A charge-sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character:

Provided that charges under paragraph (*a*) of subsection (1) of section 37, paragraph (*a*) of section 38, paragraphs (*a*) and (*c*) of section 46 (where the charge is connected with a charge under either of the before-mentioned paragraphs) or section 56 of the Act may be included in any charge-sheet, notwithstanding that other charges in that charge-sheet are not founded on the same facts and do not form or are not part of a series of offences of the of the same or similar character.

(2) Every charge-sheet shall in its layout follow the appropriate illustration given in the Second Schedule to these Rules.

(3) The commencement of each charge-sheet shall be in the appropriate form set out in the Second Schedule to these Rules and shall state the number,

rank, name and unit of the accused and show by the description of the accused or directly by an express averment that he is subject to military law or otherwise liable to trial by court-martial.

*Charges*

**15.**—(1) Each charge shall state one offence only.

(2) Offences may be charged in the alternative in separate charges but in no case shall they be charged in the alternative in the same charge. When charges are laid in the alternative they should be set out in order of gravity commencing with the most serious.

(3) Each charge shall consist of two parts, namely:—

(*a*) the statement of the offence; and

(*b*) the particulars of the act, neglect or omission constituting the offence.

(4) The statement of an offence, if it is not a civil offence, shall be in the appropriate form set out in the Second Schedule to these Rules, if it is a civil offence in such words as sufficiently describe that offence.

(5) The particulars shall state:—

(*a*) such circumstances respecting the alleged offence as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;

(*b*) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a less degree of punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted; and

(*c*) any additional facts which it is intended to prove as rendering the accused liable to the punishment of stoppages if convicted.

*Joint charges*

**16.**—(1) Any number of accused may be charged jointly in one charge for an offence committed by them jointly.

(2) Where so charged any one or more of such accused may at the same time be charged in the same charge-sheet with any other offence alleged to have been committed by him or them individually or jointly:

Provided that such charges could, if the accused to whom they relate had been tried separately, have been included under Rule 14 (1) in the same charge-sheet as the other charges against him.

*Construction of charge-sheets and charges*

**17.** In the construction of a charge-sheet or charge there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together.

ACTION BY HIGHER AUTHORITY ON RECEIPT OF A CHARGE

*Action by higher authority on receipt of a charge*

**18.** When a higher authority receives a charge against an accused, he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or himself convene a court-martial to try the accused, refer the charge either to an appropriate superior authority in order that that

authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused, and shall, when he so refers the charge, send to the appropriate superior authority or other officer concerned the documents mentioned in Rule 13 together with his own recommendation as to how the case should be proceeded with.

INVESTIGATION OF, AND SUMMARY DEALINGS WITH, CHARGES BY AN APPROPRIATE SUPERIOR AUTHORITY

*Documents to be given to officers, warrant officers and civilians dealt with summarily*

**19.** An appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is given, not less than twenty-four hours before the charge is so investigated and dealt with, a copy of the charge-sheet containing the charge upon which he will be so dealt with and a copy of the summary or abstract of evidence.

*Investigation of and summary dealing with charges against officers, warrant officers and civilians*

**20.** When an appropriate superior authority investigates and deals summarily with a charge:—

(*a*) he shall first read the charge to the accused;

(*b*) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them. If the witnesses against the accused do not give their evidence orally the appropriate superior authority shall read the summary or abstract of evidence to the accused if he so requires;

(*c*) the accused in his defence may adduce evidence as to the facts of the case and as to his character and in mitigation of punishment;

(*d*) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;

(*e*) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with Rule 34;

(*f*) when an appropriate superior authority awards the punishment of forfeiture of seniority of rank the award shall be in the appropriate form set out in the Fifth Schedule to these Rules;

(*g*) a record shall be made of the proceedings in accordance with the form set out in the Third Schedule to these Rules.

*Alternative courses open to an appropriate superior authority*

**21.** An appropriate superior authority shall, if an accused elects to be tried by court-martial or the appropriate superior authority in the course of investigating a charge determines that it is desirable that the charge should be tried by court-martial, either himself convene the court-martial or refer the charge to higher authority in accordance with Rule 18.

CONVENING OF COURTS-MARTIAL

*Duties of convening officer when convening courts-martial*

**22.**—(1) When an officer convenes a court-martial he shall:—

(*a*) issue a convening order in the appropriate form set out in the Fourth Schedule to these Rules;

(*b*) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who has investigated them ;

(*c*) if he is of the opinion that charges should be put in separate charge-sheets, so direct and direct the order in which they are to be tried ;

(*d*) direct, if there is more than one accused, whether the accused are to be tried jointly or separately ;

(*e*) appoint the president and members of the court and any waiting members in accordance with Rule 23 ;

(*f*) if convening :—

(i) a general court-martial ; or

(ii) a district or field general court-martial at which he considers there should be a judge advocate,

take the necessary steps to procure the appointment of a judge advocate by or on behalf of the Judge Advocate General, and failing such appointment, himself appoint a suitable person so to act ;

(*g*) appoint an officer subject to military law or counsel assisted by such an officer to prosecute or detail a commanding officer to appoint an officer subject to military law to prosecute :

Provided that the convening officer may appoint two such officers to prosecute if he thinks fit ;

(*h*) appoint the date, time and place for the trial ;

(*i*) send to the president the charge-sheet, the convening order and a copy of the summary or abstract of evidence from which any evidence which in his opinion would be inadmissible under the Act at the court-martial has been expurgated ;

(*j*) send to each member of the court and to each waiting member a copy of the charge-sheet ;

(*k*) send to the prosecutor copies of the charge-sheet and convening order and the original summary or abstract of evidence together with an unexpurgated copy thereof showing the passages (if any) which have been expurgated in the copy sent to the president ;

(*l*) send to the judge advocate (if any) copies of the charge-sheet and convening order and an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the president ;

(*m*) ensure that the accused is given a proper opportunity to prepare his defence in accordance with Rule 25 ; and

(*n*) take steps in accordance with Rule 91 to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with Rule 25 :

Provided that the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has requested and if the accused refuses to defray or to undertake to defray, as the case may be, such cost, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

(2) When an officer convenes a field general court-martial he shall not be obliged to comply with paragraphs (*g*), (*i*) (in so far as it relates to the copy

of the summary or abstract of evidence sent to the president being expurgated), (*j*), (*k*) and (*l*) of paragraph (1) of this Rule, if, in his opinion, it is impracticable to do so.

*Appointment of president and members*

**23.** The convening officer shall:—

(*a*) appoint the president of a court-martial by name and appoint the members either by name or by detailing a commanding officer to appoint an officer of a specified rank; and

(*b*) appoint such waiting members as he thinks expedient either by name or by detailing a commanding officer to appoint an officer of a specified rank.

*Officers under instruction*

**24.**—(1) Subject to Rule 81, any officer subject to military law, the Naval Discipline Act or air-force law may, by direction of the convening officer or at the discretion of the president, remain with a court-martial throughout the proceedings as an officer under instruction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

*Preparation of defence*

**25.**—(1) Subject to paragraph (2) of this Rule:—

(*a*) an accused who has been remanded for trial by court-martial shall be afforded a proper opportunity for preparing his defence and shall be allowed proper communication with his defending officer or counsel and with his witnesses;

(*b*) a defending officer or counsel shall be appointed to defend an accused who has been remanded for trial by court-martial unless the accused states in writing that he does not wish such an appointment to be made;

(*c*) if the prosecution is to be undertaken by a legally qualified officer or by counsel, the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him;

(*d*) as soon as practicable after an accused has been remanded for trial by court-martial and in any case not less than twenty-four hours before his trial he shall be given:—

(i) a copy of the charge-sheet;

(ii) an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the president;

(iii) notice of any additional evidence which the prosecution intends to adduce; and

(iv) if the accused so requires, a list of the ranks, names, and units of the president and members who are to form the court and of any waiting members;

(*e*) when an accused is given a copy of the charge-sheet and of the summary or abstract of evidence in accordance with this Rule, he shall:—

(i) if necessary, have the charge explained to him; and

(ii) be informed that, upon his making a written request to his commanding officer not less than twenty-four hours before his trial

requiring the attendance at his trial of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these Rules to procure the attendance of any such witness at his trial;

(*f*) when an accused is served with a copy of a statutory declaration which the prosecutor proposes to hand to the court in accordance with subsection (2) of section 99 of the Act and Rule 57 he shall be informed of his right under the said subsection to require that oral evidence shall be given in lieu of such statutory declaration;

(*g*) when it is intended to try two or more accused jointly notice of this fact shall be given to each such accused when he is given a copy of the charge-sheet. Any such accused may, before trial, by written notice to the convening officer claim to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. In such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused who has so claimed shall be tried separately;

(*h*) when a charge-sheet contains more than one charge, the accused may, before trial, by written notice to the convening officer claim to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

(2) In the case of a field general court-martial the provisions of paragraph (1) of this Rule need only be complied with so far as it is practicable to do so.

ASSEMBLY AND SWEARING OF COURT

*Preliminary matters to be considered by court and beginning of trial*

**26.**—(1) Upon a court-martial assembling, the court shall, before beginning the trial, satisfy themselves in closed court:—

(*a*) that the court has been convened in accordance with the Act and these Rules;

(*b*) that the court consists of not less than the legal minimum of officers;

(*c*) that the president and members are of the required rank;

(*d*) that the president and members have been duly appointed and are not disqualified under the Act;

(*e*) if there is a judge advocate, that he has been duly appointed;

(*f*) that the accused appears from the charge-sheet to be subject to military law or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and

(*g*) that each charge is on its face correct in law and framed in accordance with these Rules.

(2) (*a*) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, the president may appoint a duly qualified waiting member to fill that vacancy.

(*b*) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(3) If the court is not satisfied on any of the matters mentioned in paragraph (1) above, and is not competent to rectify such matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening officer thereon.

(4) When the court has complied with this Rule and is ready to proceed with the trial, the president shall open the court and the trial shall begin.

*Objections to the court*

**27.**—(1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of those officers in accordance with section 92 of the Act.

(2) When a court is convened to try more than one accused whether separately or jointly, each accused shall be given an opportunity to object to any officer on the court in accordance with the preceding paragraph and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to, the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to, in which case the objection to him shall be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers on the court including any officer who has been appointed by the president in accordance with paragraph (9) of this Rule in place of an officer who has retired.

(8) When an objection to an officer is allowed that officer shall forthwith retire and take no further part in the proceedings.

(9) When an officer objected to (other than the president) retires and there is a duly qualified waiting member in attendance, the president should immediately appoint him to take the place of the officer who has retired.

(10) The court shall satisfy themselves that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this Rule.

(11) If an objection to the president is allowed the court shall report to the convening officer without proceeding further with the trial.

(12) If as the result of the allowance of an objection to a member there are insufficient officers available to form a court in compliance with the Act the court shall report to the convening officer without proceeding further with the trial and the convening officer may either appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

*Swearing of court*

**28.**—(1) Immediately after Rule 27 has been complied with, an oath shall be administered to the president and each member of the court in accordance with Rule 34 and in the presence of the accused.

(2) If there is a judge advocate, the oath shall be administered by him to the president first and afterwards to each member of the court. If there is no judge advocate, the oath shall be first administered by the president to the members of the court and then to the president by any member of the court already sworn.

(3) A court may be sworn at one time to try any number of accused then present before it, whether they are to be tried jointly or separately.

(4) When a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if they think fit, proceed to determine that objection in accordance with Rule 27, or postpone the trial of that accused and swear the court for the trial of the other accused only.

*Swearing of judge advocate*

**29.** After the court have been sworn, an oath shall be administered to the judge advocate (if any) in accordance with Rule 34 and in the presence of the accused.

*Swearing of officers under instruction*

**30.** After the court and judge advocate (if any) have been sworn, an oath shall be administered to any officer under instruction in accordance with Rule 34 and in the presence of the accused.

*Appointment and swearing of, and objections to, interpreters and shorthand writers*

**31.**—(1) A competent and impartial person may be appointed at any time to act as an interpreter or shorthand writer at a trial by court-martial and before he so acts an oath shall be administered to him in accordance with Rule 34 and in the presence of the accused.

(2) Before a person is sworn as an interpreter or as a shorthand writer, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court think that the objection is reasonable, that person shall not act as interpreter or shorthand writer.

*No right of objection to judge advocate, prosecutor and officer under instruction*

**32.** The accused shall have no right to object to a judge advocate, prosecutor or any officer under instruction.

*Order of trials*

**33.**—(1) When a court has been convened to try two or more accused separately and have been sworn in accordance with Rule 28 (3), the court shall try them in the order indicated by the convening officer or, where he has given no such indication, then in such order as the court think fit.

(2) When a court has been convened to try an accused on charges which are included in more than one charge-sheet, the court shall take the charge-sheets in the order indicated by the convening officer or, where he has given no such indication, in such order as they think fit.

*Oaths and solemn affirmations*

**34.**—(1) An oath which is required to be administered under these Rules shall be administered in the appropriate form and in the manner set out in the Sixth Schedule to these Rules:

Provided that:—

(*a*) if any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland he shall be permitted to do so;

(*b*) the opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Subject to Rule 28 (2) every oath shall be administered at a court-martial by the president, a member of the court or the judge advocate.

(3) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in the Sixth Schedule to these Rules.

(4) The provisions of section 102 of the Act shall apply to proceedings before a commanding officer, the taking of summaries of evidence and proceedings before an appropriate superior authority as they apply to proceedings before a court-martial.

### Arraignment of accused

*Arraignment of accused*

**35.**—(1) When the court and judge advocate (if any) have been sworn the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court he shall be required to plead separately to each charge.

(3) If there is more than one charge-sheet against the accused before the court the court shall arraign and try the accused upon the charge in the first of such charge-sheets and shall announce their finding thereon and if the accused has pleaded guilty comply with paragraphs (1) and (2) of Rule 45 before they arraign him upon the charge in any subsequent charge-sheet.

*Plea to the jurisdiction of the court*

**36.**—(1) The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court. If he does so:—

(*a*) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(*b*) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea they shall adjourn and report to the convening officer.

(3) When a court report to the convening officer under this Rule, the convening officer shall:—

(*a*) if he approves the decision of the court to allow the plea, dissolve the court;

(*b*) if he disapproves the decision of the court:—

(i) refer the matter back to the court and direct them to proceed with the trial; or

(ii) convene a fresh court to try the accused.

*Objection to charge*

**37.**—(1) An accused before pleading to a charge may object to it on the grounds that it is not correct in law or is not framed in accordance with these Rules, and if he does so, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) If the court uphold the objection, they shall either amend the charge, if permissible under Rule 83, or adjourn and report to the convening officer :

Provided that if there is another charge or another charge-sheet before the court the court may, before adjourning under this Rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court report to the convening officer under this Rule, the convening officer shall:—

(*a*) if he approves the decision of the court to allow the objection :—

(i) dissolve the court ; or

(ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only ; or

(iii) amend the charge to which the objection relates if permissible under Rule 84, and direct the court to try it as amended ;

(*b*) if he disapproves the decision of the court to allow the objection :—

(i) direct the court to try the charge ; or

(ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only ; or

(iii) convene a fresh court to try the accused.

*Plea in bar of trial*

**38.**—(1) An accused before pleading to a charge, may offer a plea in bar of trial in reliance upon section 132 or section 134 of the Act. If he does so :—

(*a*) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto ; and

(*b*) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea they shall adjourn and report to the convening officer :

Provided that if there is another charge or another charge-sheet before the court, the court may, before adjourning under this Rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court report to the convening officer under this Rule, the convening officer shall :—

(*a*) if he approves the decision of the court to allow the plea :—

(i) dissolve the court ; or

(ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only ;

(*b*) if he disapproves the decision of the court to allow the plea:—

(i) direct the court to try the charge; or

(ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or

(iii) convene a fresh court to try the accused.

*Application by an accused at a joint trial to be tried separately*

**39.** Where two or more accused are charged jointly, any one of the accused may, before pleading to the charge, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court are of the opinion that the interests of justice so require they shall allow the application and try separately the accused who made it.

*Application by an accused at a trial to have a charge tried separately*

**40.** Where a charge-sheet contains more than one charge the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge. If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court are of the opinion that the interests of justice so require they shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge-sheet.

*Pleas to the charge*

**41.**—(1) After any pleas under Rules 36 and 38, any objection under Rule 37, and any applications under Rules 39 and 40, have been dealt with, the accused shall be required (subject to paragraph (2) of this Rule) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section 98 of the Act to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment or where they could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with Rule 66, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

*Acceptance of pleas of guilty*

**42.**—(1) If an accused pleads guilty to a charge under either paragraph (1) or paragraph (2) of Rule 41, the president or judge advocate shall, before the court decide to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty under either paragraph (1) or paragraph (2) of Rule 41 if:—

(*a*) the court are not satisfied that the accused understands the nature of the charge or the effect of his plea; or

(*b*) the president having regard to all the circumstances, considers that the accused should plead not guilty ; or

(*c*) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under Rule 41 (2), a court shall also not accept the plea unless the convening officer concurs and they are satisfied of the justice of such course. The concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty under either paragraph (1) or paragraph (2) of Rule 41 is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When a court are satisfied that they can properly accept a plea of guilty under either paragraph (1) or paragraph (2) of Rule 41 they shall record a finding of guilty in respect thereof.

*Pleas on alternative charges*

**43.**—(1) When an accused pleads guilty to the first of two or more alternative charges, the court, if they accept the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges, the court may : —

(*a*) proceed as if the accused had pleaded not guilty to all the charges ; or

(*b*) with the concurrence of the convening officer (which may be signified by the prosecutor) record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge-sheet. Where the court record such findings, the prosecutor shall before the accused is arraigned on it withdraw any charge which is alternative to the charge of which the court have found the accused guilty and which is placed after it in the charge-sheet.

PROCEDURE AFTER RECORDING A FINDING OF GUILTY

*Order of trial where pleas of guilty and not guilty*

**44.** After the court have recorded a finding of guilty, if there is no other charge in the same charge-sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge-sheet, they shall proceed with the trial as directed by Rule 45. If there is another charge in the charge-sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge-sheet, the court shall not comply with Rule 45 until after they have dealt with such other charge or tried such other accused and have announced and recorded their finding in respect thereof.

*Procedure on finding of guilty after plea of guilty*

**45.**—(1) After the court have recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to Rule 44, read the summary or abstract of evidence to the court or inform the court of the facts contained therein :

Provided that if an expurgated copy of the summary or abstract was sent to the president, the prosecutor shall not read to the court those parts of the summary or abstract which have been expurgated or inform the court

of the facts contained in those parts, and shall not hand the original summary or abstract to the court until the trial is concluded.

(2) If there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules sufficient evidence to enable them to determine the sentence.

(3) After paragraphs (1) and (2) of this Rule have been complied with, the accused may:—

(*a*) adduce evidence of character and in mitigation of punishment; and

(*b*) address the court in mitigation of punishment.

(4) After paragraph (3) of this Rule has been complied with, the court shall proceed as directed in paragraphs (1), (2), (3) and (4) of Rule 71.

CHANGES OF PLEA

*Changes of plea*

**46.**—(1) An accused who has pleaded not guilty may at any time before the court close to deliberate on their finding withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under Rule 41 (2)) and in such case the court shall, if they are satisfied that they can accept the accused's changed plea under these Rules, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by Rule 45.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enter a plea of not guilty in respect of any charge under paragraph (2) of this Rule, they shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under Rule 43, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

PROCEDURE ON PLEAS OF NOT GUILTY

*Application for adjournment of trial*

**47.** After a plea of not guilty to any charge has been entered:—

(*a*) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these Rules relating to procedure before trial have not been complied with and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence;

(*b*) if the accused applies for an adjournment:—

(i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and

(ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;

(*c*) the court may grant an adjournment if they think the interests of justice so require.

*Case for the prosecution*

**48.**—(1) The prosecutor may, if he desires, and shall, if required by the court, make an opening address explaining the charge, where necessary,

and the nature and general effect of the evidence which he proposes to adduce.

(2) The witnesses for the prosecution shall then be called and give their evidence.

*Calling of witnesses whose evidence is not contained in summary or abstract of evidence*

**49.** If the prosecutor intends to adduce evidence which is not contained in any summary or abstract of evidence given to the accused, notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused a reasonable time before the evidence is adduced. If such evidence is adduced without such notice or particulars having been given, the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

*Notice to an accused that a witness will not be called by the prosecutor*

**50.** The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the summary or abstract of evidence nor a witness whom he has notified the accused that he intends to call under Rule 49, but if the prosecutor does not intend to call such a witness to give evidence he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available.

CALLING AND EXAMINATION OF WITNESSES

*Swearing of witnesses*

**51.** Save as is otherwise provided by the Act an oath shall be administered to each witness in accordance with Rule 34 before he gives evidence and in the presence of the accused.

*Exclusion of witnesses from court*

**52.** During a trial a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence the court may direct the witness to withdraw during such discussion.

*Examination of witnesses*

**53.**—(1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and unless an objection is made by the witness, court, judge advocate, prosecutor or by the accused, the witness shall reply forthwith. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed.

*Examination of witnesses by court*

**54.**—(1) The president, the judge advocate and, with permission of the president, any member of the court may put questions to a witness.

(2) Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.

*Reading back of evidence to witnesses*

**55.**—(1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done he may ask for the record to be corrected or explain the evidence which he has given. If any such correction is made or explanation given, the prosecutor and the accused may put such questions to the witness respecting the correction or explanation as seem proper to the court.

(2) When a shorthand writer is employed it shall not be necessary to comply with paragraph (1) of this Rule, if, in the opinion of the court and the judge advocate (if any), it is unnecessary to do so:

Provided that if any witness so demands paragraph (1) of this Rule shall be complied with.

*Calling of witnesses by court and recalling of witnesses*

**56.**—(1) The court may, at any time before they close to deliberate on their finding or if there is a judge advocate before he begins to sum up, call a witness or recall a witness, if in the opinion of the court it is in the interests of justice to do so. If the court call a witness or recall a witness under this Rule, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the court close to deliberate on their finding or if there is a judge advocate before he begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

*Statutory declarations*

**57.** A statutory declaration which is admissible in accordance with the provisions of section 99 of the Act shall be handed to the court by the prosecutor or the accused, as the case may be, without being produced by a witness.

SUBMISSION OF NO CASE TO ANSWER AND STOPPING OF CASES

*Submission of no case to answer and power of court to stop a case*

**58.**—(1) At the close of the case for the prosecution the accused may submit to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer and that he should not be called upon to make his defence to that charge. If the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(2) The court shall not allow the submission unless they are satisfied that:—

(*a*) the prosecution has not established a *prima facie* case on the charge as laid; and

(*b*) it is not open to them on the evidence adduced to make a special finding under either section 98 of the Act or Rule 66 (3).

(3) If the court allow the submission they shall find the accused not guilty of the charge to which it relates and announce this finding in open court

forthwith; if the court disallow the submission they shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this Rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor find the accused not guilty of a charge, and if they do so they shall also announce such finding in open court forthwith.

CASE FOR THE DEFENCE

*Explanation to accused of his rights when making his defence*

**59.**—(1) After the close of the case for the prosecution, the president or judge advocate (if any) should explain to the accused that :—

(*a*) if he wishes, he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either;

(*b*) if he gives evidence on oath, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate (if any), but that, if he makes a statement without being sworn, no one will be entitled to ask him any questions; and

(*c*) whether he gives evidence or makes a statement or remains silent, he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the president or judge advocate has complied with paragraph (1) of this Rule, he shall ask the accused if he intends to give evidence on oath or to make a statement without being sworn and if he intends to call any witness on his behalf and, if so, whether he is a witness to fact or to character only.

(3) If the accused intends to call a witness to the facts of the case other than himself he may make an opening address outlining the case for the defence before the evidence for the defence is given.

*Evidence for the defence*

**60.**—(1) After Rule 59 has been complied with the witnesses for the defence (if any) shall be called and give their evidence.

(2) Rules 51, 52, 53, 54, 55, 56 and 57 shall apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

*Evidence in rebuttal*

**61.** After the witnesses for the defence have given their evidence the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

*Closing addresses*

**62.**—(1) After all the evidence has been given the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor unless the accused has called a witness to fact other than himself, in which case the prosecutor shall be entitled, subject to paragraphs (3) and (4) of this Rule, to make his closing address after the closing address by the accused.

(3) Where two or more accused are tried jointly, any one of them who has called a witness to fact other than himself shall make his closing address before the closing address by the prosecutor, and any one of them who has called no such witness shall be entitled to make his closing address after the closing address by the prosecutor.

(4) Where two or more accused are represented by the same defending officer or counsel he may make one closing address only. If any one of the accused for whom he appears has called no witness to fact other than himself such defending officer or counsel shall be entitled to make his closing address after the closing address by the prosecutor.

*Handing in of a statutory declaration by accused*

**63.** For the purposes of Rules 59 and 62, the handing in by the accused of a statutory declaration shall be treated as the calling of a witness by him.

SUMMING UP BY JUDGE ADVOCATE

*Summing up by judge advocate*

**64.** After the closing addresses, if there is a judge advocate, he shall sum up the evidence and advise the court on the law relating to the case in open court.

DELIBERATION ON, AND ANNOUNCEMENT OF, FINDING ON THE CHARGE

*Deliberation on finding on the charge*

**65.**—(1) After the closing addresses, or if there is a judge advocate after his summing up, the court shall close to deliberate on their finding on the charge.

(2) While the court are deliberating on their finding on the charge no person shall be present except the president and members of the court and any officer under instruction.

(3) If there is a judge advocate and the court, while deliberating on their finding on the charge require further advice from him, the court shall suspend their deliberation and ask and be given such advice in open court.

*Expression of opinions on, and form of, finding*

**66.**—(1) The opinion of the president and each member as to the finding shall be given in closed court, orally, and on each charge separately and their opinions shall be given in order of seniority commencing with the junior in rank.

(2) Save as is otherwise provided in paragraph (4) of this Rule the court shall record on every charge on which a plea of not guilty has been recorded:—

(*a*) a finding of guilty or a special finding in accordance with section 98 or subsection (2) of section 116 of the Act or paragraph (3) of this Rule; or

(*b*) a finding of not guilty or of not guilty and honourably acquitted of the charge.

(3) Where the court are of the opinion as regards any charge that the facts which they find to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of

recording a finding of not guilty, record a finding that the accused is guilty of the charge subject to any exception or variation which they shall specify in the finding.

(4) Where the court have recorded a finding of guilty on a charge which is laid in the alternative they shall find the accused not guilty of any charge alternative thereto which is placed before it in the charge-sheet and record no finding on any charge alternative thereto which is placed after it in the charge-sheet.

*Announcement of finding*

**67.**—(1) The finding on each charge shall be announced in open court forthwith.

(2) Every finding which requires confirmation shall be announced as being subject to confirmation.

(3) The finding shall be in the appropriate form set out in the Fourth Schedule to these Rules.

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

*Completion of procedure on plea of guilty before deliberation on sentence*

**68.** After the court have announced their finding on any charge on which the court have entered a plea of not guilty, if there is another charge in the same charge-sheet on which the court have accepted a plea of guilty, the court shall comply with paragraphs (1) and (2) of Rule 45 in respect of that charge before proceeding further with the trial.

*Trial of charges in other charge-sheets before deliberation on sentence*

**69.** Where there is another charge-sheet against the accused before the court, the court shall not comply with Rules 70, 71 and 72 until they have arraigned and tried the accused and have complied with Rule 67 and, if necessary, with Rule 68, in respect of each charge in such other charge-sheet unless that charge-sheet is withdrawn under Rule 82.

*Release of accused*

**70.** If the findings on all charges against the accused are not guilty the court shall order the accused to be released and the president and judge advocate (if any) shall date and sign the record of the proceedings. The president or the judge advocate shall then forward it as directed in the convening order.

*Accused's record and plea in mitigation*

**71.**—(1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 98 of the Act or Rule 66 (3) the court before deliberating on their sentence shall whenever possible take evidence of his age, rank and service record. Such service record shall include:—

(*a*) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled; and

(*b*) particulars of any offence of which the accused has been found guilty during his service and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matters referred to in paragraph (1) of this Rule may be given by a witness producing to the court a written statement containing

a summary of the entries in the service books relating to the accused, after the witness has in court verified such statement and identified the accused as the person to whom it relates. Such statement shall be in the form set out in the Fourth Schedule to these Rules.

(3) In addition to the evidence contained in the statement referred to in paragraph (2) of this Rule, it shall be the duty of the prosecutor whenever possible to call as a witness an officer to give to the court any information in the possession of the military authorities regarding:—

(*a*) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;

(*b*) his general conduct in the service; and

(*c*) particulars of offences which do not appear in the statement above referred to of which the accused has been found guilty by a civil court and which are of the same general nature as that of which the accused has been found guilty by the court-martial:

Provided that the court shall not be informed of any such civil offence unless the finding is proved in accordance with section 199 of the Act, or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

(4) The accused may cross-examine any witness who gives evidence in accordance with paragraphs (2) and (3) of this Rule and if the accused so requires the service books, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service books or such certified copy, the court shall cause the form to be corrected accordingly.

(5) After paragraphs (1), (2), (3) and (4) of this Rule have been complied with the accused may:—

(*a*) give evidence on oath and call witnesses in mitigation of punishment and to his character; and

(*b*) address the court in mitigation of punishment.

*Request by accused for other offences to be taken into consideration*

**72.**—(1) Before the court close to deliberate on their sentence, the accused may request the court to take into consideration any other offence against the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seems proper.

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the president or judge advocate, who shall ask the accused if he admits having committed them. The accused shall sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration. This list shall be signed by the president and be attached to the record of the proceedings as an exhibit.

DELIBERATION ON SENTENCE

*Persons entitled to be present during deliberation on sentence*

**73.** While the court are deliberating on their sentence no person shall be present except the president, members, judge advocate (if any) and any officer under instruction.

*Sentence and recommendation to mercy*

**74.**—(1) The court shall award one sentence in respect of all the offences of which the accused is found guilty. The sentence shall be in the appropriate form set out in the Fifth Schedule to these Rules.

(2) The opinion of the president and each member as to the sentence shall be given orally and in closed court and their opinions shall be given in order of seniority commencing with the junior in rank.

(3) When the court have agreed to take into consideration an offence which is not included in the charge-sheet, the court shall award a sentence appropriate both to the offence of which the accused has been found guilty and to the other offence which they are taking into consideration, but not greater than the maximum sentence which may be awarded under the Act for the offence of which the accused has been found guilty, save that they may include in their sentence a direction that such deductions shall be made from the pay of the accused as they would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he has been found guilty.

(4) The court may make a recommendation to mercy and if they do so shall record in the proceedings their reasons for making it.

*Postponement of deliberation on sentence*

**75.** Where two or more accused are tried separately by the same court upon charges arising out of the same transaction, the court may, if they think that the interests of justice so require, postpone their deliberation upon the sentence to be awarded to any one or more of such accused until they have recorded and announced their findings in respect of all of such accused.

ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL

*Announcement of sentence and conclusion of trial*

**76.**—(1) The sentence, and any recommendation to mercy together with the reasons for making it, shall be announced in open court. The sentence shall also be announced as being subject to confirmation.

(2) When paragraph (1) of this Rule has been complied with the president shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the president and judge advocate (if any) shall date and sign the record of the proceedings. The president or the judge advocate shall then forward it as directed in the convening order.

GENERAL DUTIES OF THE PRESIDENT, PROSECUTOR AND THE DEFENDING OFFICER OR COUNSEL

*General duties of the president*

**77.** It shall be the duty of the president to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice and in particular:—

(*a*) to ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with these Rules;

(*b*) to ensure that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear and intelligible, or otherwise;

(*c*) to ensure that an officer under instruction does not express an opinion to the court on any matter relating to the trial before the court have come to their finding, nor on sentence before the court have decided upon the sentence;

(*d*) when there is no judge advocate present, to ensure that a proper record of the proceedings is made in accordance with Rule 92 and that the record of the proceedings and exhibits are properly safeguarded in accordance with Rule 94.

*General duties of prosecutor and defending officer or counsel*

**78.**—(1) It shall be the duty of the prosecutor and of the defending officer or counsel to assist the court in the administration of justice, to treat the court and judge advocate with due respect and to present their cases fairly and in particular:—

(*a*) to conform with these Rules and the practice of the civil courts in England relating to the examination, cross-examination and re-examination of witnesses;

(*b*) not to refer to any matter not relevant to the charge before the court; and

(*c*) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of any of the provisions of paragraph (1) of this Rule, it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of, the accused.

*Counsel*

**79.**—(1) Subject to these Rules the following persons shall be allowed to appear as counsel at a court-martial:—

(*a*) every person who is qualified as a barrister-at-law or a solicitor according to the law of England or Northern Ireland;

(*b*) every person who is qualified as an advocate or as a solicitor according to the law of Scotland; and

(*c*) with the consent of the convening officer, any person who is recognised by him as having in any Commonwealth country or territory outside the United Kingdom rights and duties similar to those of a barrister-at-law or solicitor in England, and as being subject to punishment or disability for a breach of professional rules.

(2) Any right granted by these Rules to the accused at a court-martial to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court-martial and any right granted to the accused by Rules 25 (1) (*e*), (*g*) and (*h*), 27, 31, 36, 37, 38, 39, 40, 47, 58, 72, 80 (2), 92 and 94 (2) may be exercised by his defending officer or his counsel on his behalf, and any reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening officer the accused shall give the convening officer notice of this fact not less than twenty-four hours before his trial.

POWERS AND DUTIES OF THE JUDGE ADVOCATE

*General duties of judge advocate*

**80.**—(1) The judge advocate shall be responsible for the proper discharge of his functions to the Judge Advocate General.

(2) The prosecutor and the accused respectively are at all times after the judge advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial whether he is in or out of court, subject when he is in court to the permission of the court.

(3) On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge-sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise. The court shall accept his advice on all such matters unless they have weighty reasons for not doing so, and if the court do not accept it their reasons for not doing so shall be recorded in the proceedings.

(4) After the closing addresses the judge advocate shall sum up the evidence and advise the court upon the law relating to the case before the court close to deliberate on their finding. If in the course of deliberating on their finding the court require further advice from the judge advocate, they shall suspend their deliberation and ask and be given such advice in open court.

(5) If when the court announce a finding of guilty or a special finding under either section 98 of the Act or Rule 66 (3) the judge advocate is of the opinion that such finding or special finding is contrary to the law relating to the case, he shall once more, but not more than once more, advise the court what findings are, in his opinion, open to them. The court shall then reconsider their finding in closed court. The record of the proceedings relating to such reconsideration shall be in the form set out in the Fourth Schedule to these Rules.

(6) The judge advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(7) The judge advocate has equally with the president the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise.

(8) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with Rule 92 and responsible for the safe custody of the record of the proceedings under Rule 94.

*Judge advocate sitting alone*

**81.**—(1) Where there is a judge advocate and :—

(*a*) during the course of a trial any question as to the admissibility of evidence arises ; or

(*b*) during a joint trial an application is made by any of the accused for a separate trial ; or

(*c*) an application is made by an accused that a charge should be tried separately ;

the president may direct that the point at issue shall be determined by the judge advocate in the absence of the president and the members of the court and of any officer under instruction. Where the president so directs he, the

members of the court and any officer under instruction shall withdraw from the court.

(2) The judge advocate shall, when the president and members of the court and any officer under instruction have withdrawn in accordance with paragraph (1) of this Rule, hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary. After the judge advocate has given his ruling, the president and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate sits alone in accordance with this Rule the proceedings before him shall form part of the proceedings of the court, and subsection (1) of section 57, sections 58 and 93, subsections (1) and (2) of section 94, and sections 95, 99, 100, 101 and 102 of the Act and Rules 34, 51, 52, 53, 54, 55, 56, 57, 78, 79, 85, 86, 87, 91, 92, 93, 94, 97, 98 and 106 shall apply to proceedings before the judge advocate sitting alone as they apply to proceedings before the president and members of the court, and anything which is authorised by those sections and those Rules to be done by the court or by the president may be done by the judge advocate when sitting alone.

(4) When a judge advocate is sitting alone in accordance with this Rule and a person subject to military law commits an offence against subsection (1) of section 57 of the Act, the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(5) The judge advocate shall be responsible for ensuring that the president and members do not see the record of the proceedings before the judge advocate when sitting alone until after the court has announced its finding.

### Withdrawal and amendment of charge-sheets and charges

*Withdrawal of charge-sheets and charges*

**82.** A court may with the concurrence of the convening officer (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon or a charge-sheet before the accused is arraigned on any charge therein.

*Amendment of charge-sheets and charges by the court*

**83.**—(1) At any time during a trial if it appears to the court that there is in the charge-sheet :—

(*a*) a mistake in the name or description of the accused ;

(*b*) a mistake which is attributable to a clerical error or omission ;

the court may amend the charge-sheet so as to correct the mistake.

(2) If at any time during a trial at which there is a judge advocate it appears to the court, before they close to deliberate on their finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under paragraph (1) of this Rule they may, if such addition, omission, or alteration can be made without unfairness to the accused, so amend the charge if the judge advocate concurs.

(3) If at any time during a trial at which there is no judge advocate it appears to the court, before they close to deliberate on their finding, that in the interests of justice it is desirable to make any addition to, omission from or alteration in a charge which cannot be made under paragraph (1) of

this Rule, they may adjourn and report their opinion to the convening officer, who may:—

(*a*) amend the charge if permissible under Rule 84 and direct the court to try it as amended after due notice of the amendment has been given to the accused; or

(*b*) direct the court to proceed with the trial of the charge without amending it; or

(*c*) convene a fresh court to try the accused.

*Amendment of charges by convening officer*

**84.** When a court report to the convening officer under either Rule 37 (2) or Rule 83 (3), he may amend the charge in respect of which they have reported to him by making any addition to, omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

SITTINGS AND ADJOURNMENT OF THE COURT

*Sittings of the court*

**85.** Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day and the court shall sit for such time each day as may be reasonable in the circumstances:

Provided that the court shall not sit on Sunday, Christmas Day, or Good Friday, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

*Adjournment*

**86.**—(1) During a trial the court may adjourn from time to time and from place to place as the interests of justice require.

(2) A court may adjourn at any time to consult the convening officer on a point of law.

(3) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the convening officer.

(4) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

*View by court*

**87.** If at any time during a trial before the court close to deliberate on their finding it appears to the court that they should, in the interests of justice, view any place or thing, they may adjourn for this purpose. When the court view any place or thing the president, members of the court, judge advocate (if any), prosecutor, accused and defending officer or counsel (if any) shall be present.

*Absence of president, members or judge advocate*

**88.**—(1) If after the commencement of a trial the president dies or is otherwise unable to attend, the court shall adjourn and the senior member shall report to the convening officer.

(2) If after the commencement of a trial any member of the court dies or is otherwise unable to attend, the court, if not thereby reduced below the legal minimum, shall continue with the trial, but if reduced below the legal minimum the court shall adjourn and the president shall report to the convening officer.

(3) If a judge advocate who has been appointed to act at a trial dies or is otherwise unable to attend, the court shall adjourn and report to the convening officer.

(4) If the president or a member of the court is absent during any part of a trial, he shall take no further part in it and the like steps shall be taken as if the president or member, as the case may be, had died.

(5) An officer cannot be added to the court after the accused has been arraigned.

INSANITY

*Insanity*

**89.**—(1) If at any time during a trial it appears to the court that the accused may be unfit to stand his trial by reason of insanity, they shall take evidence as to his mental condition. If the court after considering the evidence are of the opinion that the accused is fit to stand his trial they shall proceed with the trial; but if they are of the opinion that the accused is unfit to stand his trial by reason of insanity they shall so find and their finding shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of their deliberation on their finding on a charge find pursuant to subsection (2) of section 116 of the Act that the accused was guilty of the offence but was insane at the time of the act or omission which constituted it, their finding shall be announced in open court forthwith and as being subject to confirmation.

(3) Immediately after a finding has been announced under either paragraph (1) or paragraph (2) of this Rule the president shall announce in open court that the proceedings are terminated and thereupon the president and the judge advocate (if any) shall date and sign the record of the proceedings. The president or judge advocate shall then forward it as directed in the convening order.

INTERVIEWING AND ATTENDANCE OF WITNESSES

*Interviewing of witnesses*

**90.**—(1) The prosecution shall not without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the defence at the taking of the summary of evidence or whose attendance at the trial the accused has requested in accordance with Rule 25 (1) (*e*), or who has made a statutory declaration, a copy of which the accused has served on the prosecution in accordance with section 99 of the Act.

(2) Except as provided in Rule 50, neither the accused nor any person on his behalf shall without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the prosecution at the taking of the summary of evidence or whose evidence is included in the abstract of evidence, or in respect of whom the prosecution have given the accused notice under Rule 49 that they intend to call him as a witness at the trial or who has made a statutory declaration a copy of which the prosecution have served on the accused in accordance with section 99 of the Act.

*Procuring attendance of witnesses*

**91.**—(1) A witness who is subject to military law may be ordered by the proper military authority to attend at the taking of a summary of evidence or a trial by court-martial.

(2) A witness who is not subject to military law may be summoned to attend:—

(*a*) the taking of a summary of evidence by an order under the hand of the commanding officer of the accused; or

(*b*) a trial by court-martial by an order under the hand of an officer authorised to convene a court-martial or of a staff officer on his behalf, or, after the assembly of the court, of the president.

(3) The summons referred to in paragraph (2) of this Rule shall, when it relates to the taking of a summary of evidence be in the appropriate form set out in the First Schedule to these Rules, and, when it relates to a trial by court-martial be in the appropriate form set out in the Fourth Schedule to these Rules, and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode, and at the time of such service there shall be paid or tendered any sum of money necessary to enable such witness to attend the taking of the summary of evidence or the trial, as the case may be, and to return.

(4) The provisions of section 101 of the Act shall apply in relation to proceedings at the taking of a summary of evidence as they apply in relation to proceedings at a court-martial, and when so applied they shall be construed as though the words "officer taking the summary of evidence" were substituted for the words "president of the court-martial".

## Record of proceedings

*Record of proceedings*

**92.**—(1) The proceedings of general and district courts-martial shall be recorded in accordance with the following provisions:—

(*a*) the proceedings of a court-martial shall be recorded in writing in accordance with the appropriate form set out in the Fourth Schedule to these Rules and in sufficient detail to enable the confirming officer to follow the course of the proceedings and to judge of the merits of the case;

(*b*) when there is no shorthand writer present the evidence should be taken down in narrative form as nearly as possible in the words used:

Provided that if the court, judge advocate, prosecutor or accused consider it necessary, any particular question and answer shall be taken down *verbatim;*

(*c*) when an objection, submission or application is made during a trial at which there is no shorthand writer, a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or judge advocate thinks fit:

Provided that if the prosecutor or accused so requests a note shall be made of the objection, submission or application, the grounds therefor, the advice of the judge advocate (if any) thereon and the decision of the court;

(*d*) when any address by the prosecutor or the accused or summing up of the judge advocate is not in writing and there is no shorthand writer present, it shall only be necessary to record so much of such address or summing up as the court or judge advocate thinks proper:

Provided that if the prosecutor or accused so requests a note shall be made of any particular point in such address or summing up;

(*e*) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but if any comment or report seems to the court to be necessary, the president may forward it to the proper military authority in a separate document.

(2) The proceedings of a field general court-martial shall so far as is practicable be recorded in accordance with the provisions of paragraph (1) of this Rule and the record must in any event contain the names of the president and members constituting the court and the judge advocate (if any), the name and description of the accused, the charge-sheet, all pleas, a brief summary of the evidence and the finding and sentence.

*Exhibits*

**93.**—(1) Subject to paragraph (2) of this Rule, any document or thing admitted in evidence shall be made an exhibit.

(2) When an original document or book is produced to the court by a witness, the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after they have satisfied themselves that such copy or extract is correct and the president or the judge advocate has certified thereon that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall:—

(*a*) be marked with a number or letter and be signed by the president or have a label bearing a number or letter and the signature of the president affixed to it;

(*b*) be attached to or kept with the record of the proceedings, unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under paragraph (3) (*b*) of this Rule, the president shall ensure that proper steps are taken for its safe custody.

*Custody and inspection of record of proceedings during trial*

**94.**—(1) During a trial at which there is no judge advocate, the record of the proceedings and the exhibits shall be deemed to be in the custody of the president. During a trial at which there is a judge advocate the record and the exhibits shall be deemed to be in the custody of the judge advocate, save when he is not present in closed court when they shall be deemed to be in the custody of the president.

(2) With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him, and, if proper precautions are taken for its safety, inspect any exhibit.

CONFIRMATION, REVISION AND PROMULGATION

*Confirmation and promulgation*

**95.**—(1) When a confirming officer receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, he shall record his decision thereon and on any sentence and any order which the court may have made under section 138 of the Act, on the record of the

proceedings in the appropriate form set out in the Fourth Schedule to these Rules, and such record of his decision shall form part of the record of the proceedings.

(2) When a court have accepted a plea of guilty made under Rule 41 (2), the confirming officer may confirm their finding notwithstanding that the court have accepted the plea without the concurrence of the convening officer if, in the opinion of the confirming officer, it is in the interests of justice to do so.

(3) When a court have rejected a plea to the jurisdiction of the court or a plea in bar of trial or have overruled an objection to a charge, it shall not be necessary for the confirming officer to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates. If he disapproves the decision of the court to reject the plea or to overrule the objection, he shall withhold confirmation of the finding on the charge to which the plea or objection relates.

(4) A confirming officer may state his reasons for withholding confirmation in any case, but if he withholds confirmation where a court have rejected a plea to the jurisdiction or a plea in bar of trial or have overruled an objection to the charge, because he disapproves this decision of the court, he shall when recording his decision under paragraph (1) of this Rule state that he has withheld confirmation for this reason.

(5) If the sentence of a court-martial is informally expressed, the confirming officer may in confirming the sentence vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears that there is sufficient evidence or a plea of guilty under either paragraph (1) or paragraph (2) of Rule 41 to justify the finding of the court, such finding and any lawful sentence consequent thereon may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

(7) When a confirming officer has confirmed a finding and sentence of a court or has withheld confirmation thereof, he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be. The fact of promulgation shall be recorded on the record of the proceedings in the form set out in the Fourth Schedule to these Rules. If confirmation has been withheld because the confirming officer disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

*Revision*

**96.**—(1) The proceedings and decision of a court on revision shall be recorded on the record of the proceedings in the appropriate form set out in the Fourth Schedule to these Rules, and the president shall date and sign such record and decision and return it to the confirming officer, after it has been signed by the judge advocate (if any).

(2) When an accused is acquitted on revision the revised finding shall be communicated to the accused in such manner as may be specified by the confirming officer.

LOSS OF PROCEEDINGS

*Loss of original record of proceedings before confirmation*

**97.**—(1) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy exists, such

copy may, if the president or the judge advocate certifies it to be correct, be accepted and used in lieu of the original.

(2) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and no copy thereof exists, but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the confirming officer to follow the course of the proceedings and to judge of the merits of the case, the record as so reconstituted may, with the consent of the accused, be accepted and used in lieu of the original:

Provided that where part only of the original record of the proceedings of a court-martial has been lost, and the part which remains is sufficient to enable the confirming officer to follow the course of the proceedings and judge of the merits of the case, such remaining part may, with the consent of the accused, be accepted and used as if it were the complete record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

(3) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and such loss cannot be made good under either paragraph (1) or paragraph (2) of this Rule, the confirming officer shall withhold confirmation and shall record his decision in the appropriate form set out in the Fourth Schedule to these Rules.

*Loss of original record of proceedings after confirmation*

**98.** If after confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy thereof is certified by the president or the judge advocate to be correct, or a sufficient record of the charge, finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit of the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

CUSTODY OF THE RECORD AFTER CONFIRMATION AND COST OF COPIES THEREOF

*Custody and preservation of record of proceedings after confirmation*

**99.** For the purposes of subsection (1) of section 141 of the Act the prescribed period during which the record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General shall be six years from the conclusion of the trial.

*Cost of copies of record of proceedings*

**100.** The rate at which copies of the record of the proceedings of a court-martial shall be supplied in accordance with subsections (2) and (3) of section 141 of the Act shall be the estimated cost of the copy required not exceeding four pence for every folio of 72 words.

PETITIONS

*Petitions*

**101.**—(1) If an accused who has been sentenced by a court-martial wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming officer in the appropriate form set out in the Seventh Schedule to these Rules.

(2) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the finding so as to be able to exercise the rights conferred on him by the Courts-Martial (Appeals) Act, 1951(a), if his petition is rejected, he shall present a petition (hereinafter referred

(a) 14 & 15 Geo. 6. c. 46.

to as an " appeal petition ") to the Army Council in the appropriate form set out in the Seventh Schedule to these Rules, within the period prescribed by the Rules made under section 22 of the said Act.

(3) If an accused who has been sentenced by court-martial wishes to petition after promulgation against the finding otherwise than by means of an appeal petition, he shall present a petition to a reviewing authority at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule to these Rules.

(4) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence, he shall present a petition to a reviewing authority or an officer authorised to reconsider a sentence of a court-martial under section 114 of the Act at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule to these Rules.

(5) In any of the circumstances specified in the first column of the list of persons to whom petitions may be presented under this Rule which is set out in the Seventh Schedule to these Rules, an appeal petition or a petition under paragraph (3) or paragraph (4) of this Rule which is presented to the person specified in relation to those circumstances in the second column of that list shall be treated as having been presented to the authority to whom the petition is addressed.

MISCELLANEOUS PROVISIONS

*Notice requiring oral evidence in lieu of statutory declaration*

**102.** A notice under proviso (*c*) of subsection (2) of section 99 of the Act requiring that oral evidence shall be given in lieu of a statutory declaration shall be in the appropriate form set out in the Fourth Schedule to these Rules.

*Exceptions from Rules on account of the exigencies of the service*

**103.**—(1) Where in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused or, if he is not available, of the senior officer on the spot, the exigencies of the service render compliance with all or any of the provisions of the Rules mentioned in paragraph (4) of this Rule impracticable, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot as the case may be, may make a declaration to that effect in the appropriate form set out in the Fourth Schedule to these Rules.

(2) Any declaration made under paragraph (1) of this Rule by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under paragraph (1) of this Rule it shall not be necessary to comply with any provision of these Rules which is mentioned in such declaration and these Rules shall be construed accordingly.

(4) The provisions of these Rules in respect of which a declaration may be made under paragraph (1) of this Rule are:—

(*a*) Provisos (*a*) and (*b*) to Rule 7 (2);

(*b*) Rule 9 (*b*) insofar as it relates to the accused's right to insist that a witness shall be compelled to attend the taking of a summary of evidence for cross-examination;

(*c*) Rule 19 insofar as it provides that the documents specified therein must be given to the accused not less than twenty-four hours before the appropriate superior authority investigates and deals summarily with the charge ;

(*d*) Rule 25 (1) paragraphs (*b*) and (*c*), and paragraph (*d*) insofar as it provides that the documents specified therein shall be given to the accused not less than twenty-four hours before his trial.

(5) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under paragraph (1) of this Rule shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority as the case may be.

*Exceptions from Rules in the interests of security*

**104.**—(1) When in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or, if he is not available, of the senior officer on the spot a charge-sheet, summary or abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly useful to an enemy, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in the appropriate form set out in the Fourth Schedule to these Rules specifying the document concerned.

(2) Any declaration made under paragraph (1) of this Rule by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under paragraph (1) of this Rule it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy of such a document, and it shall be a sufficient compliance with these Rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under paragraph (1) of this Rule shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority as the case may be.

*Deviations from the forms in the Schedules*

**105.** A deviation or omission from a form or form of words set out in a Schedule to these Rules shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

*Cases not covered by Rules*

**106.** In any case not provided for by these Rules such course shall be adopted as appears best calculated to do justice.

Dated this 7th day of February, 1956.

*Antony Head.*

## FIRST SCHEDULE

FORMS FOR COMMANDING OFFICERS

(1) DELAY REPORT.

(2) SUMMARY OF EVIDENCE.

(3) ABSTRACT OF EVIDENCE.

(4) CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED.

(5) SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE.

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### (1) DELAY REPORT

Unit Address:

.....

.....

Tel.: .....

To: .....
(Convening officer)

To: Director of Army Legal Services,[1]

.....

.....

.....[2] EIGHT DAY DELAY REPORT

pursuant to the Army Act, 1955, section 75 (2)

Number, rank, name of accused .....

.....

Date placed in arrest .....19.....

| Alleged Offence(s) | Date of Alleged Offence(s) |
|---|---|
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |

[3]The accused is in $\frac{\text{close}}{\text{open}}$ arrest.

The reasons for his retention in arrest are .....

.....

[3]The $\frac{\text{abstract}}{\text{summary}}$ of evidence { was taken on ..... 19..... / has not yet been taken because ..... }

[3]Application for trial { was made on ..... 19..... / has not yet been made because ..... }

[3]A.L.S. { was consulted on ..... 19..... / has not yet been consulted because ..... }

[3]A.L.S. advice { was received on ..... 19..... / has not yet been received. }

[3]Action { is being taken / has been taken } on A.L.S. advice as follows .....

.....

.....

[3]Date of trial { has not yet been fixed. / has been fixed as .....19.....

Reasons for delay since last report .....
.....
.....
.....

Date .....19..... .....
Officer commanding accused's unit
(*To be signed personally by the C.O.*)

---

[1] Insert the address of the Director of Army Legal Services or his representative to whom the report is to be sent.

[2] Insert " 1st ", " 2nd ", " 3rd ", " Final " or as the case may be.

[3] Strike out words not applicable.

---

(2) SUMMARY OF EVIDENCE

Summary of evidence in the case of.....(*number, rank, name, unit, or other description*).

Taken by [the commanding officer of the accused] [..... (*rank, name, unit*) on the direction of the commanding officer of the accused.]

...witness for the prosecution. .....(*number, rank, name, unit, or other description*), having been duly sworn[1] states:—

(Cross-examined by the accused)

[2] Question 1 .....

Answer 1 .....

*or*

(The accused declines to cross-examine this witness)

.....
(*Signature and rank (if any) of witness*)

*or*

...witness for the prosecution. .....(*number, rank, name, unit, or other description*)

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page ..... Having regard to ..... (*insert grounds for non-attendance of witness—see Rule 9 (b)*) the attendance of this witness cannot in my opinion be readily procured.

[The accused does not demand the attendance of this witness for cross-examination.] [The accused demands the attendance of this witness for cross-examination but the witness is not compellable and has refused to attend.]

.....
(*Signature of officer taking the summary of evidence*)

The accused having been duly cautioned in accordance with Rule of Procedure 9 (*c*) reserves his defence.

*or*

The accused having been duly cautioned in accordance with Rule of Procedure 9 (*c*) elects [to give evidence on oath] [to make a statement without being sworn] and to call a witness(es).[8]

...witness for the defence. The accused ..... (*number, rank, name, unit, or other description*) having been duly sworn[1] states:—

.....
(*Signature and rank (if any) of accused if he signs*)

...witness for the defence. .....(*number, rank, name, unit, or other description*) having been duly sworn[1] states:—

.....
(*Signature and rank (if any) of witness*)

Certified that Rule of Procedure 9 has been complied with.

This summary of evidence was taken by me at ..... in the presence and hearing of the accused on the.....day(s) of ..... 19.....

.....
(*Signature and rank of officer taking the summary of evidence*)

---

[1] When a witness or the accused affirms the words "duly affirmed" should be substituted for the words "been duly sworn" and when a witness is a child who is too young to give evidence on oath or the accused makes a statement without being sworn the words "without being sworn" should be substituted for the words "having been duly sworn".

[2] See however Rule 9 (*g*).

[3] Omit the words "and to call a witness(es)" if they are not applicable.

---

(3) ABSTRACT OF EVIDENCE

Abstract of evidence in the case of ..... (*number, rank, name, unit or other description*) consisting of the ..... (*insert the number of statements*) attached statements and ..... (*insert the number of précis*) précis of evidence[1] of witnesses for the prosecution and compiled by me [the commanding officer of the accused] [.....[2] on the direction of the commanding officer of the accused].

Date ....., 19..... .....
(*Signature and rank*)

---

[1] Strike out any references to statements or précis which are not applicable.
[2] Insert name and rank of the officer making the abstract.

---

(4) CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

Certified that I .....[1] to-day handed to the accused[2].....
.....
.....
the abstract of evidence relating to him dated the ..... day of ....., 19..... and duly cautioned him in accordance with Rule of Procedure 10 (2) and that he [elected to make and sign the statement dated the ..... day of ....., 19..... which is marked ..... and attached to this certificate] [did not make a statement].

Dated ....., 19..... .....
(*Signature of certifying officer*)

---

[1] Insert rank, name and unit of officer signing the certificate.
[2] Insert the number, rank, name, unit or other description of the accused.

(5) SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE

To.....[1]

WHEREAS a charge has been preferred against.....[2] AND WHEREAS I have directed a summary of the evidence to be taken at .....[3] on the.....day of.....19.....

YOU ARE PURSUANT TO SECTION 103 OF THE ARMY ACT, 1955, AND RULE 91 OF THE RULES OF PROCEDURE (ARMY), 1956, MADE THEREUNDER HEREBY SUMMONED and required to attend as a witness the taking of the said summary of evidence at.....[3] on the.....day of.....19..... at .....o'clock in the.....noon and to bring with you the documents hereinafter mentioned, *viz:* [4].....
.....
.....

Whereof you shall fail at your peril.

Given under my hand at.....on the.....day of.....19.....

.....
(*Signature, rank and unit*)
Commanding officer of the accused.

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[1] Insert name and address of the person to whom the summons is to be sent.
[2] Insert the number, rank, name, unit or other description of the accused.
[3] Insert the place where the summary of evidence is to be taken.
[4] Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents, strike out the words relating to documents.

## SECOND SCHEDULE

CHARGE-SHEETS

(1) COMMENCEMENT OF CHARGE-SHEETS.
(2) STATEMENTS OF OFFENCES.
(3) ILLUSTRATIONS OF CHARGE-SHEETS.

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### (1) COMMENCEMENT OF CHARGE-SHEETS

ARMY ACT, 1955
SECTION 205

(1) (*a*) / (1) (*b*) / (1) (*c*) / (1) (*d*) / (1) (*e*) The accused.....(*number, rank, name and unit*) being subject to military law under section 205 (1) { (*a*) / (*b*) / (*c*) / (*d*) / (*e*) } of the Army Act, 1955, is charged with:—

(1) (*f*) The accused.....(*number, rank, name and unit*) { a warrant officer / a non-commissioned officer / a soldier } of the regular forces is charged with:—

(1) (*g*) The accused.....(*number, rank, name and unit*) { a warrant officer / a non-commissioned officer / a man } of the army

reserve { when called out { on permanent service / in aid of the civil power } / undergoing training / employed in Her Majesty's service in employment of which it is an express condition that while employed therein he is to be subject to military law } is charged with:—

(1) (*h*) The accused.....(*number, rank, name and unit*) { a warrant officer / a non-commissioned officer / a man } of the Territorial Army { when embodied / when called out for home defence service / undergoing training / attending a { drill / parade } / serving on the permanent staff of the Territorial Army } is charged with:—

(1) (*i*) The accused.....(*name and unit, etc., with which employed*) being subject to military law under section 205 (1) (*i*) of the Army Act, 1955, is charged with:—

(1) (*j*) The accused.....(*number (if any), rank, name and unit*) being subject to military law under section 205 (1) (*j*) of the Army Act, 1955, is charged with:—

(1) (*k*) The accused.....(*number (if any), rank, name and unit*) a member of the Home Guard { on duty / belonging to a { platoon / [*part*] } of the Home Guard when mustered } is charged with:—





SECTION 206

The accused.....(*number (if any), rank, name, service, Commonwealth unit and unit to which attached*) being subject to military law under section 4 of the Visiting Forces (British Commonwealth) Act 1933, is charged with:—

SECTION 207

(1) The accused.....(*number (if any), rank, name and unit*) being subject to military law under the provisions of section 207 (1) of the Army Act, 1955 and of.....(*insert the section, etc., of the law of the colony which subjects the accused to military law*), is charged with:—

(2) The accused.....(*number (if any), rank, name and unit*) being subject to military law under section 207 (2) of the Army Act, 1955, is charged with:—

(3) The accused.....(*number (if any), rank, name and unit, and unit to which attached*) being subject to military law under section 207 (3) of the Army Act, 1955, is charged with:—

SECTION 208

The accused.....(*number (if any), rank, name, service and unit to which attached*) being subject to military law under section 208 of the Army Act, 1955, is charged with:—

SECTION 209

(1) (2) The accused.....(*name and brief description*) being liable to trial by court-martial under section 209 {(1) (2)} of the Army Act, 1955, is charged with:—

SECTION 131

(1) (2) The accused.....(*name*) formerly.....(*former military description including the manner in which the accused was formerly subject to military law set out in accordance with the appropriate form in this Schedule*) and now liable to trial by court-martial under the provisions of section 131{(1) (2)} of the Army Act, 1955, is charged with:—



ARMY RESERVE ACT, 1950

The accused.....(*number, rank, name and unit*) being liable to trial by court-martial under the provisions of section {14 (1) 14 (2) 17 (2)} of the Army Reserve Act, 1950, is charged with:—

AUXILIARY FORCES ACT, 1953

The accused.....(*number, rank, name and unit*) being liable to trial by court-martial under the provisions of section 27 (1) of the Auxiliary Forces Act, 1953, is charged with:—

NATIONAL SERVICE ACT, 1948 AND ARMY RESERVE ACT, 1950

The accused.....(*number, rank, name and unit*) being liable to trial by court-martial under the provisions of section 5 (4) of the National Service Act, 1948 and of section 14 (1) of the Army Reserve Act, 1950, is charged with:—

NATIONAL SERVICE ACT, 1948 AND AUXILIARY FORCES ACT, 1953

The accused.....(*number, rank, name and unit*) being liable to trial by court-martial under the provisions of section 5 (4) of the National Service Act, 1948 and of section 27 (1) of the Auxiliary Forces Act, 1953, is charged with:—

## (2) Statements of offences

### Army Act, 1955

*Treachery, cowardice and offences arising out of military service*

Section 24

(1)[(a)/(b)/(c)/(d)/(e)] Aiding the enemy with intent contrary to section 24 (1)[(a)/(b)/(c)/(d)/(e)] of the Army Act, 1955.

(2) Knowingly and without lawful excuse doing an act specified in paragraph[(a)/(b)/(c)/(d)/(e)] of section 24 (1) of the Army Act, 1955 contrary to section 24 (2) of the said Act.

Section 25

(1)/(2) [Communicating with / Giving intelligence to] the enemy contrary to section 25[(1)/(2)] of the Army Act, 1955.

Section 26

(1) Cowardice before the enemy contrary to section 26 (1) of the Army Act, 1955.

(2) Inducing cowardice before the enemy contrary to section 26 (2) of the Army Act, 1955.

Section 27

(*a*) Spreading reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 27 (*a*) of the Army Act, 1955.

(*b*) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 27 (*b*) of the Army Act, 1955.

Section 28

(1) Being captured through disobedience or wilful neglect contrary to section 28 (1) of the Army Act, 1955.

(2) [Failing to take / Preventing / Discouraging] [a person from taking] reasonable steps after capture to rejoin Her Majesty's service contrary to section 28 (2) of the Army Act, 1955.

SECTION 29

(1) Sleeping at his post when on {guard duty / duty controlling movement} contrary to section 29 (1) (*a*)
Sleeping when on {guard duty / duty controlling movement} contrary to section 29 (1) (*b*)
Drunkenness when on {guard duty / duty controlling movement} contrary to section 29 (1) (*c*)
{Leaving his post / Absenting himself} when on {guard duty / duty controlling movement} contrary to section 29 (1) (*d*)
} of the Army Act, 1955.

(3) {Striking / Using force against} a person on {guard duty / duty controlling movement}
Compelling a person on {guard duty / duty controlling movement} to let a person pass
} contrary to section 29 (3) of the Army Act, 1955.

SECTION 30

(*a*) / (*b*) / (*c*) Looting contrary to section 30 {(*a*) / (*b*) / (*c*)} of the Army Act, 1955.

*Mutiny and insubordination*

SECTION 31

(1) (*a*) Mutiny {with violence / relating to the enemy} contrary to section 31 (1) (*a*) of the Army Act, 1955.

(1) (*b*) Incitement to mutiny {with violence / relating to the enemy} contrary to section 31 (1) (*b*) of the Army Act, 1955.

(2) {Mutiny / Incitement to mutiny} contrary to section 31 (2) of the Army Act, 1955.

SECTION 32

(*a*) Failing to suppress or prevent mutiny contrary to section 32 (*a*) of the Army Act, 1955.

(*b*) Failing to report mutiny contrary to section 32 (*b*) of the Army Act, 1955.

SECTION 33

(1) (*a*) {Striking / Using / Offering} violence to {his superior officer} contrary to section 33 (1) (*a*) of the Army Act, 1955.

(1) (*b*) Using {threatening / insubordinate} language to his superior officer contrary to section 33 (1) (*b*) of the Army Act, 1955.

SECTION 34

(1) Disobeying a lawful command with wilful defiance of authority contrary to section 34 (1) of the Army Act, 1955.

(2) Disobeying a lawful command contrary to section 34 (2) of the Army Act, 1955.

SECTION 35

(*a*) Obstructing a {provost officer / person exercising authority under or on behalf of a provost officer} contrary to section 35 (*a*) of the Army Act, 1955.

(*b*) Refusing to assist a {provost officer / person exercising authority under or on behalf of a provost officer} contrary to section 35 (*b*) of the Army Act, 1955.

SECTION 36

(1) Disobedience to standing orders contrary to section 36 (1) of the Army Act, 1955.

*Desertion, absence without leave, etc.*

SECTION 37

(1) (*a*) Desertion contrary to section 37 (1) (*a*) of the Army Act, 1955.

(1) (*b*) {Persuading / Procuring} a person to desert contrary to section 37 (1) (*b*) of the Army Act, 1955.

SECTION 38

(*a*) Absence without leave contrary to section 38 (*a*) of the Army Act, 1955.

(*b*) {Persuading / Procuring} a person to absent himself without leave contrary to section 38 (*b*) of the Army Act, 1955.

SECTION 39

(*a*) Assisting a person to desert or absent himself contrary to section 39 (*a*) of the Army Act, 1955.

(*b*) Failing to {report without delay / take steps to cause the apprehension of} {a deserter or absentee / a person attempting to desert or absent himself} contrary to section 39 (*b*) of the Army Act, 1955.

SECTION 40

Making a false statement to {obtain / prolong} leave contrary to section 40 of the Army Act, 1955.

SECTION 41

{Failing to attend for a military duty / Leaving a military duty without permission} contrary to section 41 of the Army Act, 1955.

*Malingering and drunkenness*

35333

SECTION 42

(1) { (a) / (b) / (c) / (d) } Malingering contrary to section 42 (1) { (a) / (b) / (c) / (d) } of the Army Act, 1955.

SECTION 43

(1) Drunkenness contrary to section 43 (1) of the Army Act, 1955.

*Offences relating to property*

SECTION 44

(a) { Stealing / Fraudulently misapplying / Being concerned in / Conniving at } the { stealing of / fraudulent misapplication of } { public / service } property contrary to section 44 (*a*) of the Army Act, 1955.

(b) Receiving { public / service } property contrary to section 44 (*b*) of the Army Act, 1955.

(c) { Wilfully damaging / Being concerned in the wilful damage of } { public / service } property contrary to section 44 (*c*) of the Army Act, 1955.

I* (d) By wilful neglect damaging { public / service } property by fire contrary to section 44 (*d*) of the Army Act, 1955.

SECTION 45.

(*a*) {Stealing / Fraudulently misapplying / Being concerned in / Conniving at} the {stealing of / fraudulent misapplication of} property contrary to section 45 (*a*) of the Army Act, 1955.

(*b*) Receiving property contrary to section 45 (*b*) of the Army Act, 1955.

(*c*) {Wilfully damaging / Being concerned in the wilful damage of} property contrary to section 45 (*c*) of the Army Act, 1955.

SECTION 46

(*a*) {Losing / Negligently damaging} {public / service} property contrary to section 46 (*a*) of the Army Act, 1955.

(*b*) Negligently damaging {public / service} property by fire contrary to section 46 (*b*) of the Army Act, 1955.

(*c*) {Losing / Negligently damaging} his equipment contrary to section 46 (*c*) of the Army Act, 1955.

(*d*) Neglect of {an animal / a bird} contrary to section 46 (*d*) of the Army Act, 1955.

(*e*) Making away with {a decoration granted to him / his equipment} contrary to section 46 (*e*) of the Army Act, 1955.

*Offences relating to billeting and requisitioning of vehicles*

SECTION 47

(*a*) {Obtaining / Ordering / Procuring} a person to obtain {billets contrary to section 47 (*a*) of the Army Act, 1955.}

(*b*) Corruption in relation to a billeting requisition contrary to section 47 (*b*) of the Army Act, 1955.

(*c*) {Committing an offence against {a person / property} in / Damaging / Damaging property in} his billets contrary to section 47 (*c*) of the Army Act, 1955.

SECTION 48

(1){(*a*) / (*b*)} Unlawful requisitioning contrary to section 48 (1){(*a*) / (*b*)} of the Army Act, 1955.

(1) (*c*) Corruption in relation to a requisitioning order contrary to section 48 (1) (*c*) of the Army Act, 1955.

*Flying offences*

SECTION 49

Doing an act / Neglect } in { flying / the use of aircraft / relation to { aircraft / aircraft material } } { causing { loss of life / bodily injury } / likely to cause loss of life or bodily injury } to a person contrary to section 49 of the Army Act, 1955.

SECTION 50

Signing a certificate relating to { aircraft / aircraft material } without ensuring its accuracy contrary to section 50 of the Army Act, 1955.

SECTION 51

Unlawful low flying contrary to section 51 of the Army Act, 1955.

SECTION 52

Flying an aircraft in a manner causing or likely to cause unnecessary annoyance contrary to section 52 of the Army Act, 1955.



*Offences relating to and by persons in custody*

SECTION 53

(1) (*a*) Delaying { an investigation / a trial } contrary to section 53 (1) (*a*) of the Army Act, 1955.

(1) (*b*) Failing to release a person in arrest contrary to section 53 (1) (*b*) of the Army Act, 1955.

(2) Failing to report the offence for which a person has been placed in custody contrary to section 53 (2) of the Army Act, 1955.

(3) (*a*) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 53 (3) (*a*) of the Army Act, 1955.

(3) (*b*) Failing to hand in a report relating to a person in custody received by him as guard commander contrary to section 53 (3) (*b*) of the Army Act, 1955.

SECTION 54

(1) Wilfully allowing a person to escape contrary to section 54 (1) of the Army Act, 1955.

(2) (*a*) Releasing a person without authority contrary to section 54 (2) (*a*) of the Army Act, 1955.

(2) (*b*) Allowing a person to escape contrary to section 54 (2) (*b*) of the Army Act, 1955.

SECTION 55

(1) Refusing to obey / Striking / Using / Offering violence to an officer who orders him into arrest contrary to section 55 (1) of the Army Act, 1955.

(2) Striking / Using / Offering violence to a person whose duty it is to apprehend him / in whose custody he is contrary to section 55 (2) of the Army Act, 1955.

SECTION 56

Escaping from custody contrary to section 56 of the Army Act, 1955.

*Offences in relation to courts-martial and civil authorities*

SECTION 57

(1) (*a*) (*b*) (*c*) (*d*) (*e*) (*f*) Contempt of a court-martial contrary to section 57 (1) (*a*) (*b*) (*c*) (*d*) (*e*) (*f*) of the Army Act, 1955.

SECTION 58

(1) Making a false statement contrary to section 58 (1) of the Army Act, 1955.

SECTION 59

(*a*) (*b*) Obstructing / Preventing an arrest by a constable contrary to section 59 (*a*) (*b*) of the Army Act, 1955.

*Miscellaneous offences*

SECTION 60

(1) Disclosing information contrary to section 60 (1) of the Army Act, 1955.

SECTION 61

Making a false answer on enlistment contrary to section 61 of the Army Act, 1955.

SECTION 62

(*a*) {Making / Signing} a false / Making a false entry in a } service document contrary to section 62 (*a*) of the Army Act, 1955.

(*b*) {Altering / Altering an entry in / Making away with / Suppressing / Defacing} a service document contrary to section 62 (*b*) of the Army Act, 1955.

(*c*) Failing to make an entry in a service document with intent to defraud contrary to section 62 (*c*) of the Army Act, 1955.

(*d*) Being party to {making / signing} a false / making a false entry in a / altering a / altering an entry in a / making away with a / suppressing a / defacing a } service document / failing to make an entry in a service document with intent to defraud } contrary to section 62 (*d*) of the Army Act, 1955.

SECTION 63

Committing an offence against the {person / property} of a member of a civil population outside the United Kingdom contrary to section 63 of the Army Act, 1955.

SECTION 64

Scandalous conduct unbecoming the character of an officer and a gentleman contrary to section 64 of the Army Act, 1955.

SECTION 65

(*a*) / (*b*) {Striking / Ill-treating} a person of inferior rank or less seniority contrary to section 65 {(*a*) / (*b*)} of the Army Act, 1955.

SECTION 66

Disgraceful conduct of {a cruel / an indecent / an unnatural} kind contrary to section 66 of the Army Act, 1955.

SECTION 67

(*a*) Making a false accusation contrary to section 67 (*a*) of the Army Act, 1955.

(*b*) {Making a false statement / Wilfully suppressing a material fact} in a complaint contrary to section 67 (*b*) of the Army Act, 1955.

SECTION 68

Attempting to commit a military offence contrary to section 68 of the Army Act, 1955, that is to say.....
.....(*set out the offence*)

SECTION 69

{An act / Conduct / Neglect} to the prejudice of good order and military discipline contrary to section 69 of the Army Act, 1955.

*Civil offences*

SECTION 70

Committing a civil offence contrary to section 70 of the Army Act, 1955 that is to say (*here describe the civil offence in such words as sufficiently describe the offence*).

ARMY RESERVE ACT, 1950

SECTION 14

(1) {Desertion / Absence without leave} contrary to section 14 (1) of the Army Reserve Act, 1950.

(2) Absence without leave contrary to section 14 (2) of the Army Reserve Act, 1950.

SECTION 17

(1) (*a*) Failing to comply with {orders / regulations} respecting the payment of the army reserve contrary to section 17 (1) (*a*) of the Army Reserve Act, 1950.

(1) (*b*) Failing to attend at a place where it was his duty to be contrary to section 17 (1) (*b*) of the Army Reserve Act, 1950.

(1) (*c*) {Using {threatening / insulting} language / Behaving in an insubordinate manner} to {an officer / a warrant officer / a non-commissioned officer} contrary to section 17 (1) (*c*) of the Army Reserve Act, 1950.

(1) (*d*) {Fraudulently obtaining / Being accessory to the fraudulent obtaining of} {pay / [other sum]} contrary to section 17 (1) (*d*) of the Army Reserve Act, 1950.

(1) (*e*) Failing to comply with {orders / regulations} contrary to section 17 (1) (*e*) of the Army Reserve Act, 1950.

AUXILIARY FORCES ACT, 1953

SECTION 27

(1) {(*a*) / (*b*)} {Desertion / Absence without leave} contrary to section 27 (1) {(*a*) / (*b*)} of the Auxiliary Forces Act, 1953.

(3) ILLUSTRATIONS OF CHARGE-SHEETS

CHARGE-SHEET

The accused No. 87654321 Private John Black, 1st Battalion The Loamshire Regiment, a soldier of the regular forces is charged with:—

1st charge

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 44 (*a*) OF THE ARMY ACT, 1955

in that he

at Catterick on 1st January, 1957 stole a pair of binoculars, public property.

2nd charge (Alternative to the 1st charge).

RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 44 (*b*) OF THE ARMY ACT, 1955

in that he

at Catterick on 1st January, 1957 did receive a pair of binoculars, public property, knowing them to have been stolen or fraudulently misapplied.

B. C. GREEN, Lieutenant-colonel.
Commanding 1st Battalion, The Loamshire Regiment,
Commanding officer of the accused.

Catterick.
7th January, 1957.

To be tried by District[1] Court-Martial.

A. D. WHITE, Brigadier.
Commanding 1st Infantry Brigade.[2]

Catterick.
9th January, 1957.

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[1] The type of court will be a general, district or field general court-martial according to the circumstances.

[2] The order for trial may be signed by a staff officer "authorised to sign for" the convening officer as in the second illustration charge-sheet.

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CHARGE-SHEET

The accused No. 12345678 Corporal John Bull, a non-commissioned officer of the army reserve when called out on permanent service, and No. 10000001 Private Thomas Atkins, a man of the Territorial Army when embodied, both of the 2nd Battalion, The Loamshire Regiment, are charged with:—

Both accused jointly

1st charge

COMMITTING A CIVIL OFFENCE CONTRARY TO SECTION 70 OF THE ARMY ACT, 1955 THAT IS TO SAY COMMON ASSAULT

in that they

at Aldershot on 1st January, 1957 assaulted Jack Sprat.

Corporal Bull only

2nd charge

STRIKING HIS SUPERIOR OFFICER CONTRARY TO SECTION 33 (1) (*a*) OF THE ARMY ACT, 1955

in that he

when on active service at Aldershot on 1st January, 1957 struck No. 87654321 Sergeant V. Green, 2nd Battalion, The Loamshire Regiment.

*Private Atkins* only

3rd charge USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER CONTRARY TO SECTION 33 (1) (*b*) OF THE ARMY ACT, 1955

in that he

when on active service at Aldershot on 1st January, 1957 said to No. 87654321 Sergeant V. Green, 2nd Battalion, The Loamshire Regiment, when asked by him for his (the accused's) particulars " Don't be nosey " or words to that effect.

A. M. BROWN, Lieutenant-colonel.
Commanding 2nd Battalion, The Loamshire Regiment,
Commanding officer of the accused.

Aldershot.
9th January, 1957.

To be tried by Field General[1] Court-Martial

P. M. Dunn, Captain.
Staff Captain " A ", authorised to sign for
Commander, 2nd Infantry Brigade.

Aldershot.
10th January, 1957.

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[1] The type of court will be a general, district or field general court-martial according to the circumstances.

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## THIRD SCHEDULE

RECORD OF PROCEEDINGS BEFORE AN APPROPRIATE SUPERIOR AUTHORITY

ACCUSED'S NUMBER, RANK AND NAME.....

UNIT.....

1. *Questions to be put to the accused by the officer dealing with the case before the charge is read.*

Q. Have you received a copy of the charge-sheet and [summary] [abstract] of evidence not less than 24 hours ago?

A. .....

Q. Have you had sufficient time to prepare your defence?

A. .....

2. *The officer dealing with the case shall then read the charge(s) to the accused and ask him the following question :—*

Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?

A. .....

3. *If the accused has agreed in writing that the witnesses against him need not give their evidence in person the officer dealing with the case shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.*

4. *After the summary or abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused :—*

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.

A. .....

Q. Do you wish to adduce any other evidence in your defence?

A. .....

*5. If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then: (i) consider all the evidence and determine whether the accused is guilty of the offence or not; and (ii) if he determines that the accused is guilty examine and consider the accused's record of service. If he intends to award either the punishment of forfeiture of seniority of rank or the punishment of stoppages or the finding will involve a forfeiture of pay or, in the case of a civilian, if he intends to award any punishment, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award.*

Q. Will you accept my award or do you elect to be tried by court-martial?

A. .....

6. FINDING .....

AWARD .....

Date ..... 19.....

.....

*(Signature, rank and appointment of appropriate superior authority)*

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## FOURTH SCHEDULE

### COURT-MARTIAL FORMS

(1) CONVENING ORDERS.

(2) DECLARATIONS UNDER RULES 103 AND 104.

(3) SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL.

(4) NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION.

(5) RECORD OF PROCEEDINGS OF A COURT-MARTIAL.

(6) FINDINGS.

(7) RECORD OF RECONSIDERATION OF FINDING UNDER RULE 80 (5).

(8) SERVICE RECORD OF ACCUSED.

(9) RECORD OF PROCEEDINGS ON REVISION UNDER SECTION 109 OF THE ACT.

(10) CONFIRMATION.

(11) DETERMINATION BY A CONFIRMING OFFICER OR REVIEWING AUTHORITY OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY.

(12) DIRECTION UNDER SECTION 127 (4) OF THE ACT.

(13) RESTITUTION ORDER.

(14) PROMULGATION.

---

### (1) CONVENING ORDERS

CONVENING ORDERS FOR A [GENERAL] [DISTRICT] COURT-MARTIAL

ORDERS BY.....[1]

Commanding.....

*(Place and date)*.....

The detail of officers as mentioned below will assemble at .....at.....hours on the.....day of .....19..... for the purpose of trying by a [general] [district] court-martial the accused person(s) named in the margin.

Name, *etc.*,[2] of accused.
.....
.....
.....
.....
.....
.....

PRESIDENT

.....

MEMBERS[3]

.....
.....
.....
.....
.....
.....

WAITING MEMBERS[3]

.....
.....

JUDGE ADVOCATE*

The judge advocate has been appointed by the [Judge Advocate General] [Deputy Judge Advocate General at .....].

*or*

.....[4] is hereby appointed judge advocate.[5]

* { In the opinion of the convening officer the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service.

* { A field officer having suitable qualifications is not in the opinion of the convening officer available with due regard to the public service.

The record of the proceedings will be forwarded to.....

.....

Signed this.....day of.....19.....

.....

(*Signature, rank and appointment of the convening officer*)

*or*

.....

(*Signature, rank and appointment of the appropriate staff officer*)

Authorised to sign for.....
(*appointment held by the convening officer*)

**Strike out if not applicable.*

---

[1] Insert rank and name of convening officer.

[2] Insert number, rank, name, unit or other description of the accused.

[3] A member or a waiting member may be described either by giving his rank, name and unit or thus: "A.....(*rank*) to be detailed by the officer commanding.....(*unit*)", see Rule of Procedure 23 (*a*).

[4] Insert the judge advocate's name and any legal qualifications which he has.

[5] This form of words is appropriate when the judge advocate is appointed by the convening officer, see Rule of Procedure 22 (1) (*f*).

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CONVENING ORDER FOR A FIELD GENERAL COURT-MARTIAL

ORDERS BY.....[1]
Commanding.....
(*Place and date*).....

In the opinion of the convening officer it is not possible without serious detriment to the public service that the accused should be tried by a general or district court-martial.

The detail of officers as mentioned below will assemble at .....at.....hours on the.....day of .....19.....for the purpose of trying by a field general court-martial the accused person(s) named in the margin.

Name, *etc.*,[2] of accused.
.....
.....
.....
.....
.....
.....

PRESIDENT

.....

MEMBERS[3]

.....
.....
.....
.....
.....
.....

WAITING MEMBER(S)[3]

.....
.....

JUDGE ADVOCATE*

The judge advocate has been appointed by the [Judge Advocate General] [Deputy Judge Advocate General at .....].

*or*

.....[4] is hereby appointed judge advocate.[5]

* In the opinion of the convening officer the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service.

* Three officers having suitable qualifications are not in the opinion of the convening officer available without serious detriment to the public service.

* It is not in the opinion of the convening officer practicable to appoint an officer other than himself as president.

The record of the proceedings will be forwarded to.....
.....

Signed this ..... day of ....., 19...

.....
(*Signature, rank and appointment of the convening officer*)

*or*

.....
(*Signature, rank and appointment of the appropriate staff officer*)

Authorised to sign for.....
(*appointment held by the convening officer*)

* *Strike out if not applicable.*

---

[1] Insert rank and name of convening officer.

[2] Insert number, rank, name, unit or other description of the accused.

[3] A member or a waiting member may be described either by giving his rank, name and unit or thus: "A.....(*rank*) to be detailed by the officer commanding.....(*unit*)", see Rule of Procedure 23 (*a*).

[4] Insert the judge advocate's name and any legal qualifications which he has.

[5] This form of words is appropriate where the judge advocate is appointed by the convening officer, see Rule of Procedure 22 (1) (*f*).

(2) DECLARATIONS UNDER RULES 103 AND 104

*Declaration under Rule of Procedure* 103

In the case of.....[1]

I.....[2] [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the following exigencies of the service, namely.....

.....

.....

render compliance with the following provisions of the Rules of Procedure

.....

.....

.....

impracticable.

Signed at.....this.....day of....., 19...

.....

(*Signature*)

---

[1] Insert number, rank, name, unit or other description of accused.

[2] Insert rank, name and appointment of officer making the declaration.

---

*Declaration under Rule of Procedure* 104

In the case of.....[1]

I.....[2] [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the[3].....
contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

Signed at.....this.....day of....., 19...

.....

(*Signature*)

---

[1] Insert number, rank, name, unit or other description of accused.

[2] Insert rank, name and appointment of officer making the declaration.

[3] Here indicate the document(s).

---

(3) SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL

To.....[1]

WHEREAS a court-martial [has been ordered to assemble at..... .....] [has assembled at.....] on the.....day of....., 19... for the trial of.....[2]

YOU ARE PURSUANT TO SECTION 103 OF THE ARMY ACT, 1955 AND RULE 91 OF THE RULES OF PROCEDURE (ARMY), 1956, MADE THEREUNDER HEREBY SUMMONED and required to attend as a witness at the sitting of the said court at..... on the.....day of....., 19... at.....o'clock in the .....noon and to bring with you the documents hereinafter mentioned, *viz.* [3].....

.....

.....

and so to attend from day to day until you shall be duly discharged; whereof you shall fail at your peril.

Given under my hand at.....on the.....day of....., 19...

.....

*(Signature, rank and appointment)*

An officer authorised to convene a court-martial.*

President of the court.*

.....[4] Authorised to sign for.....[5]

An officer authorised to convene a court-martial.*

* *Strike out if not applicable.*

---

[1] Insert name and address of the person to whom the summons is to be sent.

[2] Insert number, rank, name, unit or other description of the accused.

[3] Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents strike out the words relating to documents.

[4] Insert appointment of staff officer who signs.

[5] Insert the appointment of the officer for whom the staff officer is signing.

---

(4) NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION

*Notice by a commanding officer*

To .....[1]

I .....[2] commanding .....[3] hereby give notice that I require that .....[4] shall give oral evidence in lieu of [his] [her] statutory declaration dated ..... at your forthcoming trial by court-martial.

Date ....., 19..... .....

*(Signature and rank)*

Commanding officer of the accused.

*Notice by an accused*

To .....[2] commanding .....[3]

I .....[1] hereby give notice that I require that ..... .....[4] shall give oral evidence in lieu of [his] [her] statutory declaration dated ..... at my forthcoming trial by court-martial.

Date ....., 19..... .....

*(Signature)*

---

[1] Insert number, rank, name, unit or other description of the accused.

[2] Insert rank and name of commanding officer.

[3] Insert unit.

[4] Insert name of witness.

---

(5) RECORD OF PROCEEDINGS OF A COURT-MARTIAL

A

PAGE 1

RECORD OF PROCEEDINGS OF A COURT-MARTIAL

Proceedings of a .....[1] court-martial held at.....
on the ..... day of ....., 19..... by order of .....
.....
Commanding .....
dated the ..... day of ....., 19.....

PRESIDENT

MEMBERS

JUDGE ADVOCATE

Trial of .....
.....[2]

The court comply with Rule of Procedure 26.

..... not being available
owing to .....
the president appoints ..... a qualified waiting member to take his place.

The accused is brought before the court.

Prosecutor .....

Defending [officer] [counsel] .....

At ..... hours the trial begins.

The convening order is read in the hearing of the accused, marked .....
signed by the president and attached to the record.

The names of the president and members of the court are read in the hearing of the accused and they severally answer to their names.

Q. Do you object to being tried by me as president, or by any of the officers whose names you have heard read?

A. .....

The proceedings relating to the objection(s) are recorded on .....[3].

---

[1] Insert "general", "district" or "field general" as the case may be.

[2] Insert the number, rank, name, unit or other description of the accused as given in the charge-sheet.

[3] Strike out if not applicable.

---

B

PAGE 2

SWEARING

The president, members of the court and judge advocate are duly sworn. The [following] officers under instruction [listed on page .....] are duly sworn.

Q. Do you object to ..... as shorthand writer?

A. .....[1]
..... is duly sworn as shorthand writer.

Q. Do you object to ..... as interpreter?

A. .....[1]
..... is duly sworn as interpreter.

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under Rule of Procedure 36. The proceedings relating to his plea are recorded on page .....[2].

The accused objects to the ..... charge(s) under Rule of Procedure 37. The proceedings relating to his objection(s) are recorded on page .....[2].

The accused offers (a) plea(s) in bar of trial under Rule of Procedure 38 in respect of the ..... charge(s). The proceedings relating to his plea(s) are recorded on page .....[2].

The accused ..... applies under Rule of Procedure 39 to be tried separately. The proceedings relating to his application are recorded on page .....[2].

The accused applies under Rule of Procedure 40 to have charges ..... and ..... tried separately. The proceedings relating to his application are recorded on page .....[2].

---

[1] If there is an objection the proceedings relating to it should be recorded on a separate numbered page and the fact that this has been done should be recorded in this space with the number of the page.

[2] Strike out if not applicable.

---

C1

PAGE ...

ARRAIGNMENT

The charge-sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the president and inserted in the record immediately before this page as page(s) .....

Q. Are you guilty or not guilty of the first[1] charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the second charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the third charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the fourth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the fifth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the sixth charge against you which you have heard read?[2]

A. .....

The accused having pleaded guilty to the ..... ..... charge(s) Rule of Procedure 42 is duly complied with in respect of [this] [these] charge(s)[2].

The accused's pleas to the remaining charges are recorded overleaf[2].

---

[1] Strike out " first " if there is only one charge.

[2] Strike out if not applicable.

---

C2

PAGE ...

Q. Are you guilty or not guilty of the seventh charge against you which you have heard read?[1]

A. .....

Q. Are you guilty or not guilty of the eighth charge against you which you have heard read?[1]

A. .....

Q. Are you guilty or not guilty of the ninth charge against you which you have heard read?[1]

A. .....

Q. Are you guilty or not guilty of the tenth charge against you which you have heard read?[1]

A. .....

Q. Are you guilty or not guilty of the eleventh charge against you which you have heard read?[1]

A. .....

Q. Are you guilty or not guilty of the twelfth charge against you which you have heard read?[1]

A. .....

[1] Strike out if not applicable.

D1

PAGE ...

PROCEEDINGS ON PLEA(S) OF NOT GUILTY[1]

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A.[2] .....

The prosecutor [makes an opening address shortly outlining the facts] [makes an opening address which is summarised below] [hands in a written address which is read, signed by the president, marked ..... and attached to the record.]

[1] Remove this page if there are no pleas of not guilty.

[2] If the accused asks for an adjournment, the proceedings relating to his application should, if necessary, be recorded on a separate page and a record made here that this has been done.

D2

PAGE ...

The witnesses for the prosecution are called.

First witness for the prosecution. ..... being duly sworn[1] says:

*Continued on page .....*

[1] When a witness affirms the words "having duly affirmed" should be substituted for the words "being duly sworn" and where a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

D3

PAGE ...

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (*continued*)[1]

The prosecution is closed.

The accused submits under Rule of Procedure 58 that there is no case for him to answer in respect of the.....charge(s). The proceedings relating to this submission are recorded on pages.....[2]

DEFENCE

Rule of Procedure 59 is complied with.

Q. Do you apply to give evidence yourself on oath or do you wish to make a statement without being sworn?

A. .....

Q. Do you intend to call any other person as a witness in your defence?

A. .....

Q. Is he a witness as to fact or to character only?

A. .....

Q. Do you wish to make an opening address?

A. .....

[3] The accused [makes an opening address which is summarised below] [hands in a written address which is read, signed by the president, marked ..... and attached to the record].

---

[1] Remove this page if there are no pleas of not guilty.

[2] Strike out this paragraph if not applicable.

[3] Strike out if the accused does not intend to call witnesses as to fact, other than himself.

---

D4

PAGE ...

(*Where the accused makes a statement without being sworn*)[1]

The accused [makes a statement, which is recorded on page .....] [hands in a written statement which is read, marked ..... and signed by the president, and attached to the record].

(*Where evidence on oath is given for the defence*)[1]

The witnesses for the defence (including the accused if sworn) are called.

First witness for the defence ..... being duly sworn[2] says:—

*Continued on page .....*

---

[1] Strike out this paragraph if not applicable.

[2] When a witness or the accused affirms the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

---

D5

PAGE ...

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (*continued*)[1]

The.....[makes a closing address which is summarised on page.....] [hands in a closing address which is read, marked..... signed by the president and attached to the record].

The.....[makes a closing address which is summarised on page.....] [hands in a closing address which is read, marked..... signed by the president and attached to the record].

The note of the summing-up of the judge advocate is recorded on page.....[2]

FINDING(S)

The court close to deliberate on their finding(s).

The court find that the accused[3].....
.....is:[4]

ANNOUNCEMENT OF FINDING(S)

The court being re-opened the accused is again brought before it.

The finding(s) [is] [are] read and (with the exception of the finding(s) of "not guilty")[2] [is] [are] announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES[2]

The accused is released.

Signed at.....this.....day of.....19.....
..... .....
Judge Advocate. President.

---

[1] Strike out this page if not applicable.

[2] Strike out if not applicable.

[3] Insert the number, rank, name, unit or other description of the accused as given on the charge-sheet.

[4] Set out the finding on each charge in the appropriate form set out in the Fourth Schedule to the Rules of Procedure.

---

E

PAGE ...

PROCEEDINGS ON PLEA(S) OF GUILTY[1]

The accused[2].....
.....
is found guilty of[3]

The finding(s) [is] [are] read in open court and [is] [are] announced as being subject to confirmation.

The [summary] [abstract] of evidence is read to the court by the prosecutor, marked....., signed by the president and attached to the record.[4]

*or*

The prosecutor informs the court of the facts contained in the [summary] [abstract] of evidence which is marked..... signed by the president and attached to the record.[4]

---

[1] Strike out this page if not applicable.

[2] Insert number, rank and name, unit or other description of the accused as given on the charge-sheet.

[3] Record the finding on each charge of which the accused is found guilty in the appropriate form set out in the Fourth Schedule to the Rules of Procedure.

[4] Strike out if not applicable. If this paragraph is struck out, Rule of Procedure 45 (2) must be complied with.

---

F1

PAGE ...

PROCEEDINGS ON CONVICTION

Note: *F2 should be completed before F1 if the accused has pleaded not guilty to all charges. F1 should normally be completed before F2 if the accused has pleaded guilty to any charge but the president may in his discretion complete F2 before F1 if there is no danger of the accused making an inconsistent plea.*

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A. .....

The evidence for the defence as to the accused's character and in mitigation of punishment, is recorded on pages.....[1]

Q. Do you wish to address the court in mitigation of punishment?

A. .....

The..... [makes an address in mitigation of punishment, which is summarised [below] [on page .....]] [hands in an address in mitigation of punishment, which is read, marked....., signed by the president and attached to the record].[1]

The list of offences which the court have, at the request of the accused, agreed to take into consideration is read to the accused, signed by him, marked....., signed by the president and attached to the record.[2]

* Final question addressed to the accused personally.

Q. Is there anything further that you wish to say to the court?

A. .....

The accused makes a statement which is recorded on page.....

The court close to deliberate on sentence.

* *Strike out if F1 is completed before F2.*

---

[1] Strike out this paragraph if not applicable.

[2] Strike out this paragraph if the accused has not requested other offences to be taken into consideration.

---

F2

PAGE ...

PROCEEDINGS ON CONVICTION

Note: *F2 should be completed before F1 if the accused has pleaded not guilty to all charges.*

The prosecutor calls evidence as to the accused's character and record.

.....

is duly sworn.

Q. Do you produce the service record of the accused?

A. I produce.....

Q. Have you compared it with the service books?

A. .....

Q. Do the entries on it correspond with the entries in the service books?

A. .....

The..... is read, marked....., signed by the president and attached to the record.

The accused [declines] [elects] to cross-examine this witness [and the cross-examination is recorded on pages.....].

The prosecutor adduces evidence under Rule of Procedure 71 (3) which is recorded on pages.....[1]

Final question addressed to the accused personally.

Q. Is there anything further that you wish to say to the court?

*A. .....

The accused makes a statement which is recorded on page.....

The court close to deliberate on sentence.

* *Strike out if F2 is completed before F1.*

---

[1] Strike out this paragraph if the prosecutor does not adduce evidence under Rule of Procedure 71 (3).

---

G PAGE ...

SENTENCE[1]

The court sentence the accused .....
.....[2]
to[3]

ANNOUNCEMENT OF SENTENCE

The court being re-opened, the accused is again brought before it.

The sentence (and recommendation to mercy[4]) [is] [are] announced in open court; the sentence is announced as being subject to confirmation.

The president announces that the trial is concluded.

Signed at ..... this ..... day of ....., 19.....

..... .....
Judge advocate. President.

---

[1] Remove this page if not applicable.

[2] Insert the number, rank, name, unit, or other description of the accused as given on the charge sheet.

[3] Record the sentence in the appropriate form of words set out in the Fifth Schedule to the Rules of Procedure. Any recommendation to mercy (see Rule of Procedure 74 (4)), recommendation under section 127 (4) of the Army Act, 1955, restitution order (see section 138 of the Army Act, 1955), an order determining a suspended sentence and directing whether the sentences are to run concurrently or consecutively (see section 120 of the Army Act, 1955), made by the court, should be entered on the record immediately after the sentence.

[4] Strike out if not applicable.

---

H PAGE ...

CONFIRMATION[1]

---

[1] For minutes of confirmation see the Fourth Schedule to the Rules of Procedure. Promulgation should be recorded immediately below the minute of confirmation in accordance with Rule of Procedure 95 (7).

---

(6) FINDINGS

*Acquittal on all charges*

not guilty of [the charge] [all the charges].

---

not guilty of [the charge] [all the charges], and honourably acquit him thereof.

*Acquittal on some but not all charges*

not guilty of the .....[1] charge(s) but is guilty of the .....[1] charge(s).

---

not guilty of the .....[1] charge(s) and honourably acquit him thereof but is guilty of the .....[1] charge(s).

*Conviction on all charges*

guilty of [the charge] [all the charges].

*Special findings*

guilty of the .....[1] charge [with the exception of the words .....[2]] [with the exception that .....[2]].

---

not guilty of the offence charged but is guilty of .....[3]

*Where the accused is unfit to stand his trial by reason of insanity*

by reason of insanity unfit to stand his trial.

*Accused guilty but insane at the time when the offence was committed*

guilty but insane.

---

[1] Insert the number of the charge or charges as numbered in the charge-sheet.

[2] Specify the exception in detail. This form is appropriate when a special finding is made under Rule of Procedure 66 (3).

[3] State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 98 (2), (5) or (6) of the Army Act, 1955.

---

(7) RECORD OF RECONSIDERATION OF FINDING UNDER RULE 80 (5)

The judge advocate advises the court that the finding(s) on the.....[1] charge(s) [is] [are] contrary to the law relating to the case, and that in his opinion the following finding(s) [is] [are] open to them:—

.....

.....[2]

The court is closed for reconsideration of finding.

The court on reconsideration find that the accused is[3].....

.....

.....

.....

.....

.....

The finding(s) on reconsideration [is] [are] read in open court and (with the exception of the finding(s) of "not guilty"[4]) [is] [are] announced as being subject to confirmation.

---

[1] Insert number of charge as numbered in the charge-sheet.

[2] Insert the advice given by the judge advocate.

[3] Set out the finding(s) of the court in the appropriate form(s).

[4] Strike out the words relating to findings of "not guilty" if there is no such finding.

---

### (8) SERVICE RECORD OF ACCUSED

SERVICE RECORD OF ACCUSED

*Number* *Rank* *Name* *Regiment or corps*

..... ..... ..... .....

1. The date of his {commission / attestation / enlistment} specified in his {record of service / attestation paper} is .....

2. The accused is serving on a.....
(*insert the type and length of the commission or nature and length of the engagement*).

3. The present age of the accused according to his {record of service / attestation paper} is.....

4. The accused according to his {record of service / attestation paper} is {married / widowed / divorced / unmarried.} and has .....children under the age of 16 years.

5. The accused's rate of pay is.....but he is.....

6. The service which the accused is allowed to reckon towards discharge or transfer to reserve is.....

7. The accused is entitled to reckon.....service for the purpose of determining his pension and/or gratuity, *etc.*

8. The accused is in possession of or entitled to (*state any decoration or award*) ..... and ..... acts of gallantry or distinguished conduct by him are recorded in his conduct sheet.

9. (*In the case of an officer*). The accused holds in the army the rank of..... dated.....and in his corps the rank of.....dated.....

10. (*In the case of W.Os., N.C.Os., and soldiers*). The accused has held the rank of .....from.....without reduction, to the present date.

11. The accused has been awaiting trial for.....days of which:

.....days were spent in civil custody.

.....days were spent in close arrest.

.....days were spent in open arrest.

12. The following is a summary of the awards by the accused's commanding officer under section 78 of the Army Act, 1955 which are recorded in the accused's conduct sheets.

| | *Within the last* 12 *months* | *Since enlistment* |
|---|---|---|
| For..... | .....times | .....times |
| For..... | .....times | .....times |
| For..... | .....times | .....times |
| For..... | .....times | .....times |
| For..... | .....times | .....times |

*or*

There are no entries in the accused's conduct sheets.

13. Previous convictions of the accused by a court-martial or a civil court, summary awards under section 79 of the Army Act, 1955 and dispensations with trial under section 81 of the Army Act, 1955 are set out in the schedule annexed to this statement.

14. The accused is not under sentence at the present time.

*or*

The accused at the present time is under sentence of.....
beginning on the.....day of.....19.....
but suspended on the.....day of.....19.....
and {not yet put into operation again. / put into operation on the.....day of.....19.....}

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT, OF SUMMARY AWARDS UNDER SECTION 79 OF THE ARMY ACT, 1955 AND OF CASES IN WHICH TRIAL OF ACCUSED HAS BEEN DISPENSED WITH

35333

No.....Rank.....Name.....of.....Regiment or Corps

(*Instruction—A verbatim extract from the service books, stating these convictions and dispensations with trial, must be inserted*)

| Description of court, appropriate superior authority, or officer dispensing with trial | Date and place of trial, summary award under Army Act, 1955, section 79, or of order dispensing with trial | Charges upon which found guilty, in respect of which trial was dispensed with and offences taken into consideration | Sentence of the court, award of appropriate superior authority or order of the officer dispensing with trial | Punishment remitted |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

I HEREBY CERTIFY that the foregoing schedule of convictions, summary awards and dispensations with trial is a true extract from the service books in my custody.

K

Signed this.....day of.....

.....

(*Name, rank and appointment of officer signing*)

(9) RECORD OF PROCEEDINGS ON REVISION UNDER SECTION 109 OF THE ACT

At.....[1] on the.....day of.....at.....hours the court re-assembled by order of.....[2] the confirming officer for the purpose of re-considering their finding(s) on the .....[3] charge(s).

Present[4].....
.....
.....
.....

The order directing the re-assembly of the court and giving the reasons therefor is read, marked....., signed by the president and attached to the record.

The court having considered the observations of the confirming officer and the whole of the record of the proceedings do now revoke their finding(s) on the.....[3] charge(s) and find that the accused[5].....
..... is[6].....
.....
.....
and [adhere to their sentence] [sentence the accused to[7].....
.....
in substitution for the original sentence].

*or*

The court having considered the observations of the confirming officer respectfully adhere to their finding(s) on the.....[3] charge(s) [and to their sentence] [but sentence the accused.....[5]
to[7].....
.....
in substitution for the original sentence].

*or*

The court having considered the observations of the confirming officer and the whole of the record of the proceedings do now revoke their finding(s) on the.....[3] charge(s) and find the accused[5].....not guilty of [that] [those] charge(s).

Signed at.....[1] this.....day of..... 19...
.....
Judge advocate.

.....
President.

---

[1] Insert the name of the place.

[2] Insert the rank, name, appointment, *etc.*, of the confirming officer.

[3] Specify the number(s) of the charge(s) concerned, *e.g.*, the 5th charge.

[4] Give the name of the president and members of the court who are present. If the president is absent the senior member must report to the confirming officer. If a member is absent and the court is thereby reduced below the legal minimum the president must report to the confirming officer.

[5] Insert accused's number, rank, name, unit, or other description as given in the charge-sheet.

[6] Set out the finding in the appropriate form of words given in this Schedule.

[7] Set out the new sentence in accordance with the appropriate form set out in the Fifth Schedule.

---

(10) CONFIRMATION

*Note: These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case.*

Confirmed.

---

I confirm the court's finding(s), sentence and order under section 138 of the Army Act, 1955, but [remit.....[1]] [commute.....[2]].

---

I confirm the court's finding(s), sentence and order under section 138 of the Army Act, 1955, but mitigate the sentence so that it shall be as follows:—[3]

---

I vary the sentence so that it shall be as follows ..... and confirm the finding and sentence as so varied.[4]

---

I confirm the finding(s) and sentence but [postpone the carrying out of the sentence of ..... until .....[5]] [suspend the sentence of .....].

---

I confirm the finding(s) but substitute the sentence of ..... for the sentence of the court.[6]

---

I substitute a finding of ..... for the finding of the court and confirm the sentence but [remit .....[1]] [commute .....[2]].

---

I substitute a finding of ..... for the finding of the court on the ..... charge and confirm the finding(s) of the court on the ..... charge(s) and the sentence.

---

Not confirmed (on the grounds that .....[7]).

---

I confirm the finding(s) of the court on the ..... charge(s) but do not confirm their finding(s) on the ..... charge(s) (on the grounds that..... .....[7]). I confirm the sentence but [remit .....[1]] [commute .....[2]].

---

I refer the finding(s) and sentence to .....[8] for confirmation.

---

I confirm the finding(s) of the court on the ..... charge(s) and refer the finding(s) on the ..... charge(s) and the sentence to .....[8] for confirmation.

---

I confirm the finding(s) of the court but refer the sentence to .....[8] for confirmation.

---

[The record] [Part of the record] of the proceedings of the ..... court-martial which tried ..... at ..... on the ..... day of ..... 19 ..... having been lost I do not confirm the finding(s) of the court.

Signed at ..... this ..... day of ..... 19 .....

.....[9]

*(Signature, rank and appointment of confirming officer)*

---

[1] State what part of the sentence is remitted.

[2] State what the sentence is commuted to.

[3] This form of words may be used when it is impracticable to use either "remit" or "commute".

[4] This form of words is appropriate when the court have expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.

[5] Insert the date or event to which the carrying out of the sentence is postponed.

[6] This form of words is appropriate when the court have passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.

[7] Where a confirming officer withholds confirmation because he disapproves of the decision of the court on a plea to the jurisdiction, in bar of trial or on an objection to a charge, he should specifically state that he is withholding confirmation for this reason. In other cases the confirming officer is not bound to give his reasons for withholding confirmation.

[8] Insert the appointment of the higher authority to whom the matter is to be referred.

[9] The rank and appointment of the confirming officer should be clearly stated after or under his signature.

---

(11) DETERMINATION BY A CONFIRMING OFFICER OR REVIEWING AUTHORITY OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY[1]

I ..... [the confirming officer] [the reviewing authority] hereby order the accused to be committed to [imprisonment] [detention] under the sentence passed on him by the court-martial held at ..... on the ..... day of ..... 19 ..... and direct that that sentence and the sentence passed on the accused by [this court-martial] [the court-martial held at ..... on ..... day of ..... 19 .....] shall run [concurrently] [consecutively].

..... (*date*). ..... (*signature*)

---

[1] When the confirming officer is making the determination this form of words should be inserted in the record of the proceedings of the court-martial in the confirming officer's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation.

---

(12) DIRECTION UNDER SECTION 127 (4) OF THE ACT[1]

I ..... [confirming officer] [reviewing authority] hereby direct that the accused ..... (*number, rank, name or other description*) shall not be required to be returned to the United Kingdom until he has served [..... months] [..... years] of the sentence of [imprisonment] [detention] passed on him.

.....

Dated ..... 19..... (*Signature*)

---

[1] When the confirming officer is making the direction this form of words should be inserted in the record of the proceedings of the court-martial in the confirming officer's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation.

---

(13) RESTITUTION ORDER[1]

In accordance with subsection ..... of section 138 of the Army Act, 1955 I .....[2] hereby order that .....[3] be [delivered] [paid] to .....[4] and I direct that this order shall be carried out forthwith.

Date ..... 19.....

.....
(*Signature*)
[Confirming officer]
[Reviewing authority]

---

[1] When the confirming officer is making the order this form of words should be inserted in the record of the proceedings of the court-martial in the confirming officer's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation.

[2] Insert the rank, name and appointment of confirming officer or reviewing authority as the case may be.

[3] Insert description of article or amount of money, as the case may be.

[4] Insert name of person to whom restitution is being made.

---

(14) PROMULGATION

Promulgated and extracts taken at ..... (*place*) this ..... day of ..... 19.....

.....
(*Signature, rank and appointment of officer making the promulgation*)

---

## FIFTH SCHEDULE

SENTENCES

(1) SENTENCES.

(2) FORFEITURE OF SENIORITY OF RANK.

(3) DETERMINATION OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY.

(4) RECOMMENDATION UNDER SECTION 127 (4) OF THE ACT.

(5) RESTITUTION ORDER.

---

(1) SENTENCES

Note: *The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence.*

OFFICERS

To suffer death. — Death.

---

To be imprisoned for.....and to be cashiered. — Imprisonment and cashiering.

---

To be cashiered. — Cashiering.

---

To be dismissed with disgrace from Her Majesty's service (*attached naval officers only*). — Dismissal with disgrace.

---

**Dismissal.** To be dismissed from Her Majesty's service.

---

**Forfeiture of seniority of rank.** (*For form of sentence see* (2) *below*).

---

**[Severe reprimand.] [Reprimand.]** To be [severely reprimanded] [reprimanded].

---

**Stoppages.** To be put under stoppages of pay until he has made good the sum of.....[1] in respect of.....[2].

---

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS

**Death** To suffer death.

---

**Imprisonment and reduction to the ranks.** To be imprisoned for.....and to be reduced to the ranks.

---

**Discharge with ignominy** To be discharged with ignominy from Her Majesty's service.

---

**Dismissal with disgrace.** To be dismissed with disgrace (*attached naval personnel only*).

---

**Dismissal.** To be dismissed from Her Majesty's service (*warrant officers only*).

---

**Detention and reduction to the ranks.** To undergo detention for.....and to be reduced to the ranks.

---

**Field punishment and reduction to the ranks.** To undergo field punishment for.....days and to be reduced to the ranks.

---

**Dismissal from the Territorial Army.** To be dismissed from the Territorial Army (*non-commissioned officers of the Territorial Army only*).

---

**[Reduction to the ranks.] [Reduction to .....]** To be reduced [to the ranks] [to the rank of.....].

---

**Disrating.** To be disrated to.....(*attached naval personnel only*).

---

**Forfeiture of seniority of rank.** (*For forms of sentence see* (2) *below*).

---

**Forfeiture of service.** To forfeit.....service.

---

**[Severe reprimand.] [Reprimand.]** To be [severely reprimanded] [reprimanded].

---

**Forfeiture of pay.** To forfeit.....days' pay.

---

**Fine.** To be fined.....

---

**Forfeiture of good conduct badges.** To forfeit his good conduct badges (*non-commissioned officers of the Royal Marines only*).

---

**Stoppages.** To be put under stoppages of pay until he has made good the sum of.....[1] in respect of.....[2].

---

SOLDIERS

To suffer death. — Death.

To be imprisoned for..... — Imprisonment.

To be discharged with ignominy from Her Majesty's service. — Discharge with ignominy.

To be dismissed with disgrace (*attached naval personnel only*). — Dismissal with disgrace.

To undergo detention for..... — Detention.

To undergo field punishment for.....days. — Field punishment.

To be dismissed from the Territorial Army (*men of the Territorial Army only*). — Dismissal from the Territorial Army.

To forfeit.....service. — Forfeiture of service.

To forfeit.....days' pay. — Forfeiture of pay.

To be fined..... — Fine.

To forfeit his good conduct badges (*Royal Marines only*). — Forfeiture of good conduct badges.

To be put under stoppages of pay until he has made good the sum of.....[1] in respect of.....[2]. — Stoppages.

[1] Insert the amount which has to be made good by stoppages in respect of the charge or article specified.

[2] Specify the charge or article in respect of which the stoppage is to be imposed. If stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

(2) FORFEITURE OF SENIORITY OF RANK

ARMY OFFICERS

To take seniority in the rank of ..... in the army and in his corps as if his appointment to that rank bore date the ..... day of ....., 19.....

*or where the officer's rank or seniority in the army and his rank or seniority in his corps differ*

To take seniority in the rank of ..... in the army as if his appointment to that rank bore date the ..... day of ....., 19....., and to take seniority in the rank of ..... in his corps as if his appointment to that rank bore date the ..... day of ....., 19.....

ROYAL MARINE OFFICERS

To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ....., 19.....

NAVAL OFFICERS

To forfeit ..... [months] [years] seniority as a ..... in Her Majesty's Fleet.

*or*

To be placed at the bottom of the list of his rank.

AIR FORCE OFFICERS

To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ....., 19.....

*or*

To take precedence in the rank held by him in the air force as if his name appeared ..... places lower in the Air Force List for .....[1].

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS IN THE ARMY AND NON-COMMISSIONED OFFICERS IN THE ROYAL MARINES

To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ....., 19.....

*or*

To take seniority in the rank of ..... as if his name appeared next below .....[2] in the .....[3] promotion roll serial No. ..... dated the ..... day of ....., 19.....

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS IN THE AIR FORCE

To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ....., 19.....

---

[1] Insert the date of the list.

[2] Insert the number, rank and name of the person whose name is to appear immediately above that of the accused.

[3] Insert "regimental", "brigade", or "corps", as the case may be.

---

(3) DETERMINATION OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY[1]

The court hereby order the accused to be committed to [imprisonment] [detention] under the sentence passed on him by the court-martial held at ..... on the ..... day of ....., 19....., and direct that that sentence and the sentence passed on the accused by this court-martial shall run [concurrently] [consecutively].

---

[1] This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

---

(4) RECOMMENDATION UNDER SECTION 127 (4) OF THE ACT[1]

The court recommends that the accused ..... (*number, rank, name or other description*) shall not be required to be returned to the United Kingdom until he has served [..... months] [..... years] of his sentence.

---

[1] This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

---

(5) RESTITUTION ORDER[1]

In accordance with subsection ..... of section 138 of the Army Act, 1955 the court hereby order that .....[2] be [delivered] [paid] to .....[3].

The court further order that this order shall be carried out forthwith.

---

[1] This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

[2] Insert the description of the article or the amount of money, as the case may be.

[3] Insert name of person to whom restitution is to be made.

---

## SIXTH SCHEDULE

### OATHS AND AFFIRMATIONS

(1) OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES.

(2) OATHS AT COURTS-MARTIAL.

(3) SCOTTISH OATHS.

(4) MANNER OF ADMINISTERING OATHS.

(5) SOLEMN AFFIRMATIONS.

---

### (1) OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES

*Interpreter*

I swear by Almighty God that I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated.

*Witness*

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

---

### (2) OATHS AT COURTS-MARTIAL

*President and members*

I swear by Almighty God that I will well and truly try the [accused] [accused persons] before the court according to the evidence, and that I will duly administer justice according to the Army Act, 1955, without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

*Judge advocate*

I swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate in accordance with the Army Act, 1955, and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the president or any member of this court-martial, unless thereunto required in due course of law.

*Officer under instruction*

I swear by Almighty God that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial unless thereunto required in due course of law.

*Shorthand writer*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

*Interpreter*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

*Witness*

I swear by Almighty God that the evidence which I shall give before this court-martial shall be the truth, the whole truth, and nothing but the truth.

---

(3) SCOTTISH OATHS

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

(4) MANNER OF ADMINISTERING OATHS

Christians taking the oath shall, unless female, remove their head-dress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath. Jews shall take the oath in the same manner except that they shall wear their head-dress and hold the Old Testament in their right hand.

(5) SOLEMN AFFIRMATIONS

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty God" he shall substitute the words "I (*name in full*) do solemnly, sincerely and truly declare and affirm" and for the word "swear" wherever it occurs the words "solemnly, sincerely and truly declare and affirm".

## SEVENTH SCHEDULE

PETITIONS

(1) PETITIONS.

(2) LIST OF PERSONS TO WHOM PETITIONS MAY BE PRESENTED UNDER RULE 101.

(1) PETITIONS

*Petition to confirming officer (before confirmation)*

To the confirming officer.

I.....[1] having been convicted by court-martial on .....[2] at.....[3] and having been sentenced to ..... hereby petition against the finding(s) on the..... .....charge(s)[4] and the sentence[5] on the following grounds:—

.....

.....

.....

.....

.....

Signed.....[6]
Dated.....

*Appeal petition to the Army Council (after promulgation)*

To the Army Council.

I.....[1] having been convicted by court-martial on .....[2] at.....[3] and having had the finding(s) and sentence promulgated to me on.....[7] hereby petition against the finding(s) on the.....charge(s) (and the sentence[8]) on the following grounds:—.....

.....

.....

.....

Signed.....[6]
Dated.....

*Petition to reviewing authority (after promulgation)*

To.....[9]

I.....[1] having been convicted by court-martial on .....[2] at.....[3] and having been sentenced to .....and having had the finding(s) and sentence promulgated to me on.....[7] hereby petition against the finding(s) on the .....charge(s)[4] and sentence[5] on the following grounds:—

.....

.....

.....

.....

.....

.....

Signed.....[6]

Dated.....

---

[1] Insert the accused's number, rank, name, unit or other description.

[2] Insert the date when accused was convicted.

[3] Insert the place where the trial was held.

[4] The words " the finding(s) on the.....charge(s) " should be omitted if the accused is only petitioning against sentence.

[5] The words " and the sentence " should be omitted if the accused is not petitioning against sentence.

[6] Petitions should be signed by the accused personally but may, if necessary, be signed on his behalf by his representative.

[7] Insert the date when the findings and sentence were promulgated.

[8] The accused may combine a petition against sentence with his " appeal petition " and if he wishes to do so he should include in his " appeal petition " the words " and the sentence ". Otherwise any reference to the sentence should be omitted from the " appeal petition ".

[9] Here state the reviewing authority whom it is desired to petition.

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(2) LIST OF PERSONS TO WHOM PETITIONS MAY BE PRESENTED UNDER RULE 101

| Circumstances | Person to whom a petition may be presented |
|---|---|
| 1. Petitioner serving in or in custody on board H.M. ship. | Captain of the ship. |
| 2. Petitioner in custody on board a ship other than one of H.M. ships. | Officer commanding forces on board. |
| 3. Petitioner serving with an army or air force unit. | Officer commanding the unit. |
| 4. Petitioner confined in naval detention quarters. | Officer in charge of the naval detention quarters. |
| 5. Petitioner confined in military or air-force establishment. | Commandant of such establishment. |
| 6. Petitioner confined in a civil prison. | Governor of the prison. |
| 7. Petitioner who is a civilian and is outside the United Kingdom. | Officer commanding at the nearest army, naval or air-force headquarters. |

EXPLANATORY NOTE

*(This Note is not part of the Rules, but is intended to indicate their general purport)*

These Rules, which are made under section 103 of the Army Act, 1955, make provision with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and other military authorities, and with respect to the confirmation and revision of findings and sentences of courts-martial. They take the place of the Rules of Procedure, 1947 (S.R. & O. 1947/2354 (Rev. II, p. 805)), which were made under the Army Act of 1881.

Important changes are:—

(i) Rule 6 has reduced the period of time during which a person may be held in arrest before trial without the approval of a convening officer from 90 days to 72 days and has also applied the provision to persons in open arrest as well as those in close arrest. Queen's Regulations will provide that no order will be made under this Rule without the prior consent of the Commander-in-Chief or the War Office, as the case may be.

(ii) Rule 62 brings the procedure with regard to closing addresses more in line with civil procedure;

(iii) Rules 72 and 74 (3) make provision for the occasions on which an accused requests other offences to be taken into consideration;

(iv) Rule 81 makes provision for a judge advocate to sit alone in accordance with section 104 of the Army Act, 1955;

(v) Rule 82 makes provision for withdrawal of charges and charge sheets;

(vi) Rule 83 (2) enables a court-martial at which there is a judge advocate to make amendments to charges; and

(vii) Rule 101 deals with the procedure to be followed by an accused who wishes to petition both before and after confirmation.

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## 1956 No. 1970

## The Execution of Sentences of Death (Army) Regulations, 1956

| | |
|---|---|
| *Made* - - - - | 12*th December*, 1956 |
| *Laid before Parliament* | 18*th December*, 1956 |
| *Coming into Operation* | 1*st January*, 1957 |

The Secretary of State for War, in exercise of the powers conferred upon him by sections 121, 123 and 126 of the Army Act, 1955(**a**), and section 17 of the Courts-Martial (Appeals) Act, 1951(**b**), as amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955(**c**), and of all other powers him enabling, hereby makes the following Regulations:—

*Citation and Commencement*

**1.** These Regulations may be cited as the Execution of Sentences of Death (Army) Regulations, 1956, and shall come into operation on the 1st day of January, 1957.

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(**a**) 3 & 4 Eliz. 2. c. 18. (**b**) 14 & 15 Geo. 6. c. 46. (**c**) 3 & 4 Eliz. 2. c. 20.