STATUTORY INSTRUMENTS

2007 No. 3442

DEFENCE

The Courts-Martial (Army) Rules 2007

Made - - - - -	*6th December 2007*
Laid before Parliament	*10th December 2007*
Coming into force - -	*1st January 2007*



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The Secretary of State makes the following Rules in exercise of the powers conferred upon him by section 103 and section 209(3D) of the Army Act 1955(**a**), and sections 111 and 113 of, and paragraph 5 of Schedule 6 to, and sections 132 and 135 of, and paragraph 2(6) pf Schedule 7 to, the Criminal Justice Act 2003(**b**):

(**a**) 1955 c. 18; by virtue of section 378 of, and paragraph 21 of Schedule 16 to, the Armed Forces Act 2006 (2006 c.52) rules under section 103 of the Act may make provision for orders and rulings by a judge advocate at which an accused is arraigned; section 209(3D) of the Act, as amended by the Armed Forces (Alignment of Service Discipline Acts) Order 20071859, allows rules under section 103 of the Act to make provision for persons other than military officers or military warrant officers to be appointed to courts-martial.

(**b**) 2003 c. 44; by virtue of section 113 of, and paragraph 5 of Schedule 6 to, the Criminal Justice Act 2003 ("the 2003 Act"), section 111 has effect as if, in its subsection (7), the definition of "rules of court" includes rules regulating the practice and procedure of service courts. By virtue of section 135 of, and paragraph 2(6) of Schedule 7 to, the 2003 Act, section 132 is modified so that, in its subsection (10), the definition of "rules of court" includes rules regulating the practice and procedure

PART 1

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Courts-Martial (Army) Rules 2007 and shall come into force on 1st January 2008.

Interpretation

2. In these Rules—

"the Act" means the Army Act 1955;

"the 2003 Act" means the Criminal Justice Act 2003;

"the board" means those members of the court-martial other than the judge advocate;

"commanding officer", in relation to an accused, means such officer having powers of command over that person as may be determined by or under regulations of the Defence Council made under section 82(1) of the Act;

"commencement of the trial" shall be construed in accordance with rule 60;

"formal preliminary examination" shall be construed in accordance with rule 6;

"the judge advocate"—

(i) in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial;

(ii) in relation to a preliminary hearing, means the judge advocate appointed by or on behalf of the Judge Advocate General to conduct any such proceedings;

"legal representative" means a person appointed to represent an accused at a formal preliminary examination and at any proceedings before a court-martial, providing he is—

(iii) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(**a**);

(iv) an advocate or a solicitor in Scotland;

(v) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or

(vi) a person having in any of the Channel Islands, the Isle of Man, a Commonwealth country or British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and subject to punishment or disability for breach of professional rules;

"live television link" means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);

"preliminary charge" has the same meaning as in section 83B(3) of the Act;

"preliminary hearing" shall be construed in accordance with rule 36;

"the president of the board" shall be construed in accordance with rule 55;

"the prosecuting authority" means the prosecuting authority or any prosecuting officer or other person appearing on his behalf;

"prosecution papers" shall be construed in accordance with rule 11; and

"special finding" shall be construed in accordance with rule 77.

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of service courts. By virtue of paragraph 6 of Schedule 6 and paragraph 8 of Schedule 7, "service court" includes a court-martial and "court-martial" includes a court-martial convened under the Army Act 1955.

(**a**) 1990 c. 41.

Service on an accused

3.—(1) Unless the context otherwise requires, where under these Rules any document or notice is to be served on an accused by the court administration officer or the prosecuting authority, it may be served—

(a) by sending it to the commanding officer of the accused;

(b) by delivering it to the accused personally;

(c) by leaving it for the accused with a person at the accused's usual place of abode; or

(d) by post in a letter addressed to the accused at his last known or usual place of abode.

(2) Where a document or notice is received by the commanding officer in accordance with paragraph (1)(a), he shall serve it on the accused as soon as is practicable.

PART 2

PROSECUTION OF OFFENCES

Referring a case to the prosecuting authority

4.—(1) Where the higher authority refers a case in accordance with section 76A(1) of the Act, he shall forward to the prosecuting authority—

(a) all documents and any other materials forwarded to him by the commanding officer in accordance with regulations made by the Defence Council under section 83 of the Act;

(b) any other information in his possession which may be material to the prosecuting authority's consideration of the institution of proceedings; and

(c) where the accused has elected trial by court-martial, notification of that fact.

Withdrawal of election in a multiple charge case

5.—(1) Where—

(a) an election for court-martial trial relates to two or more preliminary charges; and

(b) that election is withdrawn with the leave of the prosecuting authority,

section 83B(2) of the Act shall have effect as if it required the prosecuting authority to refer back to the appropriate superior authority or, as the case may be, the commanding officer of the accused, each of the preliminary charges to be dealt with summarily.

Formal preliminary examination

6.—(1) Where a case in respect of an accused has been forwarded to the prosecuting authority but he has not preferred any charge, he may order an examination under this rule and such an examination shall in these Rules be referred to as a formal preliminary examination.

(2) The order for a formal preliminary examination shall—

(a) appoint the date, time and place at which the formal preliminary examination shall take place;

(b) state the nature of the allegations against the accused;

(c) list the witnesses whom the prosecuting authority seeks to examine orally; and

(d) list the witnesses whose written statements or other record of evidence are to be read out.

(3) The order shall be served on the accused and the court administration officer not less than 24 hours before the time appointed for the formal preliminary examination.

(4) On receipt of the order, the court administration officer—

(a) shall notify to attend the formal preliminary examination—

(i) the witnesses listed in the order whom the prosecuting authority requires to examine orally; and

(ii) such additional witnesses as the accused may request;

(b) may arrange for the attendance at the formal preliminary examination of a court recorder and interpreter.

Conduct of formal preliminary examination

7.—(1) Subject to paragraph (3), each witness whom the prosecuting authority seeks to examine orally shall be examined by him, after which the accused shall be entitled to cross-examine the witness.

(2) A signed written statement or other record of the evidence of each witness listed under rule 6(2)(d) shall be read out by the prosecuting authority, unless the accused consents to their inclusion in the record of the examination without being read out.

(3) If the case being investigated concerns behaviour of a violent, cruel or sexual nature and the relevant witness is a person under the age of 17, then—

(a) the prosecuting authority may read out any written statement made by or taken from the witness which would be admissible if given orally; and

(b) the accused may not cross-examine the witness in person.

(4) During the formal preliminary examination the prosecuting authority may notify any witness to attend the examination and give oral evidence.

(5) After paragraphs (1) and (2) have been complied with, the prosecuting authority shall explain to the accused—

(a) that he may give evidence if he so wishes, but he is not obliged to do so;

(b) that he may call witnesses on his behalf.

(6) Any witness for the accused (including the accused himself) may give evidence orally but shall not be subject to cross-examination, except that the prosecuting authority may ask a question where it is necessary to resolve an ambiguity or to enable the evidence to be recorded in a coherent form.

(7) Except where the witness is a person under the age of 14, any evidence given orally during the formal preliminary examination shall be given on oath, administered by the prosecuting authority.

(8) Any evidence given orally during the formal preliminary examination shall be recorded by the prosecuting authority or a court recorder.

(9) Where the evidence is recorded in writing, the record of his evidence shall be read back to the witness at the conclusion of his evidence, corrected where necessary and signed by him.

(10) A copy of any statement read out in accordance with paragraph (2) or (3) and the transcript of any shorthand note or mechanical record shall be included in the record of the examination.

Referring back in a multiple charge case before charges are preferred

8.—(1) Where—

(a) an election for court-martial trial relates to two or more preliminary charges; and

(b) the prosecuting authority considers that a charge or charges different from or additional to a preliminary charge should be preferred,

section 83BB(1) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer of the accused any additional preliminary charge as well as the charge or charges which he would otherwise be required to refer back under that section.

(2) In paragraph (1), the reference to any additional preliminary charge is to any preliminary charge which is different from the preliminary charge referred to in paragraph (1)(b).

Charge sheet

9.—(1) A charge sheet shall be in the form specified in Schedule 1 and shall state—

(a) the name, service number and rank or rate of the accused;

(b) the name of the unit, if any, in which the accused is serving;

(c) particulars of how the accused is subject to military law or otherwise triable under the Act;

(d) any charge preferred against the accused; and

(e) whether any charge preferred against the accused is to be tried by general court-martial or district court-martial.

(2) A charge sheet shall be signed and dated by the prosecuting authority.

Charges and joinder

10. The rules contained in Schedule 1 to these Rules shall be observed in proceedings before courts-martial.

Notifying the accused's commanding officer

11.—(1) Where the prosecuting authority has preferred a charge against an accused to be tried by court-martial, the prosecuting authority shall notify the commanding officer of the accused of the charge by sending to the commanding officer the prosecution papers.

(2) In these Rules, "the prosecution papers" means—

(a) a copy of the charge sheet;

(b) a list of any witnesses whom the prosecuting authority proposes to call;

(c) copies of any statements of the prosecution witnesses, or other record of their evidence;

(d) a list of any exhibits which the prosecuting authority proposes to put in evidence and copies of those exhibits or details of their whereabouts;

(e) a list of any previous convictions of the accused; and

(f) a list of all unused material.

Notifying the court administration officer

12.—(1) The prosecuting authority shall notify the court administration officer of any charge which he has preferred by sending to him a copy of the prosecution papers.

(2) On receipt of a copy of the prosecution papers from the prosecuting authority, the court administration officer shall send a copy of the prosecution papers to the Judge Advocate General.

Notification of proceedings

13.—(1) This rule applies where the commanding officer has been notified in respect of an accused under his command that the prosecuting authority has preferred a charge.

(2) As soon as is practicable after receipt of the prosecution papers, the commanding officer shall notify the accused that he is to be tried by court-martial.

(3) On notifying the accused in accordance with paragraph (2), the commanding officer shall serve the accused with—

(a) the prosecution papers;

(b) a form for notifying the court administration officer of the accused's legal representative;

(c) where so required by the prosecutor, a statement explaining the effect of section 11 of the Criminal Justice Act 1967(a) (notice of alibi) and a form for the accused's notice of alibi;

(d) a form for acknowledgement of receipt of the documents listed at (a) to (c).

Discontinuing proceedings before arraignment

14. If before the arraignment of the accused on a charge the prosecuting authority discontinues proceedings on that charge, he shall serve notice in writing on the accused and the court administration officer.

Description of the court-martial

15. If before the arraignment of the accused on a charge the prosecuting authority determines that any charge should be tried by a court-martial of a different description from that contained in the initial charge sheet, he shall serve notice in writing on the accused and the court administration officer.

Referring back in a multiple charge case after charges already preferred

16.—(1) Where—

(a) an election for court-martial trial relates to two or more preliminary charges; and

(b) the prosecuting authority considers that a charge which has already been preferred ("the original charge") should be amended, or that a charge should be preferred in addition to or in substitution for the original charge,

section 83BB(1) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer any charge (other than the original charge) which has already been preferred, as well as the charge or charges which he would otherwise be required to refer back under that section.

Amending charges and additional charges before arraignment

17.—(1) If before the arraignment of the accused the prosecuting authority—

(a) amends, or substitutes another charge or charges for, that charge;

(b) prefers an additional charge against the accused and directs that the additional charge shall be arraigned at the same time as the original charge,

he shall serve notice on the accused and the court administration officer.

(2) Except with the consent of the accused, notice under paragraph (1) shall not be served less than 24 hours before the time appointed for the arraignment of the accused on the original charge.

(3) Where the prosecuting authority is required to serve notice on the accused in accordance with this rule, he shall do so by sending to the accused's commanding officer or, with the consent of the accused, by serving directly on the accused—

(a) a copy of the amended charge sheet; and

(b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet.

(4) Where any document is received by the commanding officer in accordance with paragraph (3), he shall serve it on the accused as soon as is practicable.

(5) Where the prosecuting authority is required to serve notice on the court administration officer in accordance with this rule, he shall do so by sending to the court administration officer

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(**a**) 1967 c. 89; section 11 is applied to proceedings before courts-martial by section 12 of the Criminal Justice Act 1967, subject to the modifications prescribed by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997 (S.I. 1997/173). Section 12 was amended by the Armed Forces Act 1976 (c. 52), section 11 and Schedule 5 and the Armed Forces Act 1996, section 5 and Schedule 1.

or, if less than 24 hours before the time appointed for the arraignment of the accused on the original charge, the judge advocate—

(a) a copy of the amended charge sheet; and

(b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet.

PART 3

COURT ADMINISTRATION

Delegation of the court administration officer's functions

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

Appointment of court officials

19.—(1) The court administration officer may appoint at any time a person or persons to act as—

(a) court recorder;

(b) interpreter,

for the purposes of any proceedings before a court-martial (including a hearing before a judge advocate sitting alone).

Notification of time and place for hearing of the proceedings

20.—(1) On receipt of a copy of the prosecution papers, the court administration officer shall order a court-martial to convene to try the accused.

(2) The court administration officer shall consult the judge advocate before specifying the time and place for the hearing of any proceedings.

(3) Not less than 24 hours before the time appointed for the arraignment of the accused, the court administration officer shall send the convening order to the judge advocate and serve a copy of the convening order on—

(a) the accused;

(b) the prosecuting authority; and

(c) the other members of the court.

(4) At the same time as the accused is served with a copy of the convening order in accordance with paragraph (3), the court administration officer shall notify the accused that any person whom he reasonably requires to give evidence in any proceedings before the court-martial may be notified on his behalf by the court administration officer.

(5) If the court administration officer amends or withdraws the convening order, he shall serve notice in writing on the persons listed in paragraph (3).

Ineligibility for membership of courts-martial

21.—(1) An officer or warrant officer shall not be eligible to be a member of a court-martial for the purpose of any proceedings against an accused if—

(a) he serves under the command of—

(i) the higher authority who referred the case against the accused to the prosecuting authority;

(ii) the prosecuting authority;

(iii) the court administration officer;

(b) he serves in the same unit as the accused; or

(c) he—

(i) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;

(ii) is an advocate or a solicitor in Scotland;

(iii) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;

(iv) has in any of the Channel Islands, the Isle of Man, a Commonwealth country or British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

PART 4

WITNESSES

Notification of witnesses

22.—(1) Where any person is required to give evidence in any proceedings before a court-martial, the court administration officer shall notify that person of the time and place at which he is required to attend.

(2) If the accused requests the court administration officer to notify a witness on his behalf under rule 20(4), the accused shall provide to the court administration officer sufficient information in sufficient time to enable notification to be made.

(3) If the court administration officer is unable to notify a witness under this rule or if, in his opinion, it is not reasonably practicable to notify a witness, he shall inform the judge advocate and the party seeking to call that witness in writing.

Witness not called by the prosecuting authority

23.—(1) This rule applies where the prosecuting authority does not intend to call as a witness—

(a) any person whose statement or record of evidence has been served on the accused as part of the evidence for the prosecution; or

(b) any person in respect of whose evidence he has served notice under rule 63.

(2) Where this rule applies, unless the accused waives the requirement, the prosecuting authority shall—

(a) serve notice in writing on the accused that he does not intend to call that person; or

(b) tender that person at trial for cross-examination by the accused.

Issue of witness summons on application to a judge advocate

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

(a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any proceedings before a court-martial, and

(b) it is in the interests of justice to issue a witness summons under this rule to secure the attendance of that person to give evidence or to produce the document or thing.

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

(a) attend before a court-martial at the time and place stated in the witness summons, and

(b) give the evidence or produce the document or thing.

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

(4) A party who wants the judge advocate to issue a witness summons must apply as soon as practicable after becoming aware of the grounds for doing so.

(5) The party applying must—

(a) identify the proposed witness;

(b) explain—

(i) what evidence the proposed witness can give or produce,

(ii) why it is likely to be material evidence, and

(iii) why it would be in the interests of justice to issue a witness summons.

(6) The application may be made orally unless—

(a) rule 25 applies; or

(b) the judge advocate otherwise directs.

(7) An application in writing must be in the form set out in Schedule 2, containing the same declaration of truth as a witness statement.

(8) The party applying must serve the application—

(a) in every case, on the court administration officer and as directed by the judge advocate; and

(b) as required by rule 25, if that rule applies.

Application for witness summons to produce a document, etc: special rules

25.—(1) This rule applies to an application under rule 24 for a witness summons requiring the proposed witness—

(a) to produce in evidence a document or thing; or

(b) to give evidence about information apparently held in confidence,

that relates to another person.

(2) The application must be in writing in the form required by rule 24(7).

(3) The party applying must serve the application—

(a) on the proposed witness, unless the judge advocate otherwise directs; and

(b) on one or more of the following, if the judge advocate so directs—

(i) a person to whom the proposed evidence relates,

(ii) another party.

(4) The judge advocate must not issue a witness summons where this rule applies unless—

(a) everyone served with the application has had at least 14 days in which to make representations, including representations about whether there should be a hearing of the application before the witness summons is issued; and

(b) the judge advocate is satisfied that he has been able to take adequate account of the duties and rights, including rights of confidentiality, of the proposed witness and of any person to whom the proposed evidence relates.

(5) This rule does not apply to an application for an order to produce in evidence a copy of an entry in a banker's book for the purposes of rule 92.

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

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

(a) it is not likely to be material evidence; or

(b) even if it is likely to be material evidence, the duties or rights, including rights of confidentiality, of the proposed witness or of any person to whom the document or thing relates outweigh the reasons for issuing a witness summons.

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

(3) The judge advocate may invite—

(a) the proposed witness or any representative of the proposed witness; or

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

to help the judge advocate assess the objection.

Power to require advance production

27.—(1) A witness summons which is issued under rule 24 and which requires a person to produce a document or thing as mentioned in rule 24(2) may also require him to produce the document or thing—

(a) at a place stated in the witness summons, and

(b) at a time which is so stated and precedes that stated under rule 24(2),

for inspection by the person applying for the witness summons.

Issue of witness summons of the judge advocate's own motion

28.—(1) For the purpose of any proceedings before a court-martial, the judge advocate may of his own motion issue a witness summons directed to a person and require him to—

(a) attend before the court at the time and place stated in the witness summons, and

(b) give evidence, or produce any document or thing specified in the witness summons.

(2) The judge advocate may withdraw a witness summons issued under this rule if one of the following applies for it to be withdrawn—

(a) the witness, on the grounds that—

(i) he cannot give or produce evidence likely to be material evidence, or

(ii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or

(b) any person to whom the proposed evidence relates, on the grounds that—

(i) that evidence is not likely to be material evidence, or

(ii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness outweigh the reasons for the issue of the witness summons.

Witness summons no longer needed

29.—(1) If—

(a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under rule 27,

(b) the person applying for the witness summons concludes that a requirement imposed by the witness summons under rule 24(2) is no longer needed, and

(c) he accordingly applies to the judge advocate for a direction that the witness summons shall be of no further effect,

the judge advocate may direct accordingly.

Application to withdraw a witness summons

30.—(1) The judge advocate may withdraw a witness summons if one of the following applies for it to be withdrawn—

(a) the party who applied for it, on the ground that it no longer is needed;

(b) the witness, on the grounds that—

(i) he was not aware of any application for it, and

(ii) he cannot give or produce evidence likely to be material evidence, or

(iii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or

(c) any person to whom the proposed evidence relates, on the grounds that—

(i) he was not aware of any application for it, and

(ii) that evidence is not likely to be material evidence, or

(iii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness outweigh the reasons for the issue of the witness summons.

(2) A person applying under this rule must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining why he wants the witness summons to be withdrawn; and

(b) serve the application on the court administration officer and as appropriate on—

(i) the witness,

(ii) the party who applied for the witness summons, and

(iii) any other person who he knows was served with the application for the witness summons.

(3) Rule 26 applies to an application under this rule that concerns a document or thing to be produced in evidence.

Issue of witness summons and variation of requirements

31.—(1) The judge advocate may issue or withdraw a witness summons with or without a hearing.

(2) A hearing under this Part must be in private unless the judge advocate otherwise directs.

(3) The judge advocate may—

(a) shorten or extend (even after it has expired) a time limit under this Part; and

(b) where a rule or direction requires an application under this Part to be in writing, allow that application to be made orally instead.

(4) Someone who wants the judge advocate to allow an application to be made orally under paragraph (3)(b) must—

(a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and

(b) in doing so explain the reasons for the application and for wanting the judge advocate to consider it orally.

Service of witness summonses

32.—(1) A witness summons issued under rule 24(2) or rule 28(1) shall be served on a witness—

(a) by delivering it to him personally;

(b) by leaving it for him with a person at the witness's usual place of abode;

(c) by post in a letter addressed to him at his last known or usual place of abode;

(d) transmitting it to him by fax or other electronic means, but only if he has agreed to accept service by that method; or

(e) where the witness is subject to air force law, military law or the Naval Discipline Act 1957(a), through his commanding officer.

PART 5

EVIDENCE

Procedure for the admission of evidence of bad character

33.—(1) Where a party to the proceedings wishes to obtain the leave of the court under section 100(4) of the 2003 Act to adduce evidence of the bad character of a person other than the accused, he shall apply in the form set out in Schedule 2 to these Rules and the application must be received by the court administration officer and all other parties to the proceedings—

(a) not more than 14 days after the prosecuting authority has—

(i) notified the accused's commanding officer in accordance with rule 11 that a charge or charges are to be preferred, or

(ii) disclosed the previous convictions of that non-accused; or

(b) as soon as reasonably practicable, where the application concerns a non-accused who is to be invited to give (or has given) evidence for an accused.

(2) A party to the proceedings who receives a copy of an application under paragraph (1) may oppose that application by giving notice in writing to the court administration officer and all other parties to the proceedings not more than 14 days after receiving that application.

(3) Where a prosecuting authority wishes to adduce evidence of an accused's bad character he shall give notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after preferment of a charge or charges pursuant to section 83B(4) of the Act.

(4) Where a co-accused wishes to adduce evidence of an accused's bad character he shall give notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after the prosecuting authority has complied or purported to comply with paragraph (1)(a).

(5) Where an accused wishes to apply under section 101(3) of the 2003 Act to exclude evidence of his bad character, he shall apply in the form set out in Schedule 2 to these Rules and the application must be received by the court administration officer and all other parties to the proceedings not more than 14 days after the accused receives a notice under paragraph (3) or (4).

(6) An accused entitled to receive a notice under this rule may waive his entitlement by so informing the court administration officer and the party who would otherwise have given the notice.

(7) The judge advocate may—

(**a**) 1957 c. 53.

(a) allow a notice or application required under this rule to be given or made in a different form, or orally; or

(b) shorten a time limit under this rule, or extend it whether or not it has expired,

if it is in the interests of justice to do so.

(8) Where this rule requires a notice or application to be given or made, it may be given or made by fax or other means of electronic communication.

Procedure for the admission of hearsay evidence

34.—(1) Where a party to the proceedings wishes to adduce hearsay evidence on one or more of the grounds in sections 114(1), 116, 117 or 121 of the 2003 Act, he shall give notice in the form set out in Schedule 2 to these Rules and such notice must be received by the court administration officer and all other parties to the proceedings—

(a) where that party is an accused or co-accused, not more than 14 days after the prosecuting authority has complied or purported to comply with rule 11; or

(b) where that party is the prosecuting authority, not more than 14 days after the preferment of a charge or charges pursuant to section 83B(4) of the Act.

(2) A party to the proceedings who receives a notice under paragraph (1) may oppose the admission of the hearsay evidence by giving notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after receiving that notice.

(3) A party entitled to receive a notice under this rule may waive his entitlement by so informing the court administration officer and the party who would otherwise have given the notice.

(4) The judge advocate may—

(a) dispense with the requirement to give notice of an intention to adduce hearsay evidence;

(b) allow a notice required under this rule to be given in a different form, or orally; or

(c) shorten a time limit under this rule, or extend it whether or not it has expired,

if it is in the interests of justice to do so.

(5) Where this rule requires a notice to be given, it may be given by fax or other means of electronic communication.

Additional evidence

35. If before the commencement of the trial the prosecuting authority wishes to adduce in the proceedings any evidence additional to that contained in the prosecution papers, he shall serve a copy of the additional evidence (or details of its whereabouts) on the accused and the court administration officer.

PART 6

PRELIMINARY PROCEEDINGS

Preliminary hearing

36.—(1) The judge advocate may direct the court administration officer to list a hearing for the purpose of arraigning the accused, giving directions, orders and rulings in preparation for trial by court-martial—

(a) of his own motion; or

(b) on the application of the prosecuting authority or accused,

and such a hearing shall be referred to in these Rules as a preliminary hearing.

(2) For the purposes of this rule, a hearing is a preliminary hearing if it takes place before the commencement of the trial.

(3) An application for a preliminary hearing shall—

(a) be made to the court administration officer in the form set out in Schedule 2 to these Rules; and

(b) specify the reason for which it is made.

(4) Subject to rule 38, the applicant shall serve notice of the application in writing on every other party to the proceedings and the court administration officer.

(5) Before directing the court administration officer to list a preliminary hearing, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(6) Paragraph (5) shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay, or where the application is made in accordance with rule 38.

(7) On receipt of a direction from the judge advocate under paragraph (1), the court administration officer shall—

(a) appoint the date, time and place at which the preliminary hearing will take place;

(b) issue a notice in writing of the date, time and place appointed;

(c) list in the notice such of the matters contained in Schedule 3 to these Rules to be addressed at the hearing as the judge advocate may request;

(d) subject to rule 38, serve the notice on the parties to the proceedings; and

(e) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter.

(8) If in advance of the hearing the judge advocate so directs, the prosecuting authority shall—

(a) prepare an outline of the prosecution case; and

(b) serve a copy of that outline on the accused and the judge advocate.

Preliminary hearing in open court

37.—(1) A preliminary hearing not made under rule 38 shall, unless the judge advocate directs otherwise, take place before the judge advocate in open court.

(2) A preliminary hearing shall be a hearing before the judge advocate sitting alone.

Preliminary hearing without notice to the accused

38.—(1) Where in the public interest it is desirable to seek a direction from the judge advocate without giving notice to the accused, the prosecuting authority may apply for a preliminary hearing in accordance with this rule.

(2) Where the prosecuting authority applies for a preliminary hearing under this rule, the judge advocate shall determine whether in the interests of justice such a hearing is necessary.

(3) Where the judge advocate grants the prosecuting authority's application under this rule, he shall direct that the preliminary hearing shall proceed without notice to the accused and without the participation of the accused.

(4) A preliminary hearing under this rule shall be before the judge advocate in chambers.

Challenges and oaths at a preliminary hearing

39.—(1) At the commencement of the preliminary hearing (not made under rule 38) the accused shall be entitled to object to the judge advocate and any interpreter.

(2) At the commencement of the preliminary hearing the judge advocate, or any other member of the court staff on his behalf, shall administer an oath to any interpreter.

Substance of a preliminary hearing

40.—(1) The parties to the proceedings shall address the judge advocate at the preliminary hearing on such of the matters contained in paragraph (4) as are indicated in the notice listing the hearing.

(2) Paragraph (1) is without prejudice to the right of the judge advocate or any party to the proceedings to raise at the preliminary hearing any other matter.

(3) The judge advocate may at a preliminary hearing make such directions as appear to him to be necessary to secure the proper and efficient management of the case.

(4) At a preliminary hearing the judge advocate may make an order or ruling on—

(a) such of the matters contained in Schedule 3 to these Rules as are indicated in the notice listing the hearing;

(b) any question as to the admissibility of evidence;

(c) any other question of law, practice or procedure relating to the case;

(d) subject to rule 42, any question as to severance or joinder of charges.

(5) The judge advocate may adjourn a preliminary hearing from time to time.

(6) An order or ruling made under this rule shall have effect throughout the proceedings unless it appears to the judge advocate on application made to him at any stage during the proceedings that the interests of justice require him to vary or discharge it.

(7) The court administration officer shall send a copy of the record of the preliminary hearing to the judge advocate.

PART 7

ARRAIGNMENT

Arraignment

41.—(1) The accused need not be arraigned on all the charges in the charge sheet at the same time.

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

(3) Where the court is empowered to make a special finding, the accused may plead guilty to the offence subject to the matters as would merit the special finding.

Severance

42.—(1) Where—

(a) an accused is charged with more than one offence; or

(b) two or more accused are charged in the same charge sheet,

and the judge advocate rules that the fair trial of an accused may be prejudiced if the charges are not severed or that for any other reason it is desirable that the charges are severed, he may—

(i) order that one or more charges shall be tried by the same court;

(ii) order that only one or more of the accused shall be tried before the same court;

(iii) leave any charge or any accused to be tried by a new court.

(2) Where an accused is charged in more than one charge sheet and the judge advocate rules that for any reason it is desirable that the court tries only the charge or charges set out in one charge sheet, he may leave the charge or charges set out in any other charge sheet to be tried by a new court.

Guilty plea

43.—(1) If the accused pleads guilty to a charge, the judge advocate shall, if it appears necessary to him and before he accepts the plea, satisfy himself that the accused understands—

(a) the nature of the charge;

(b) the general effect of the plea; and

(c) the difference in procedure following pleas of guilty and not guilty.

(2) The judge advocate shall not accept a plea of guilty if, having regard to all the circumstances, he considers that he should not accept the plea.

(3) Where—

(a) a plea of guilty is not accepted by the judge advocate; or

(b) the accused does not plead to the charge or does not plead to it intelligibly,

the judge advocate shall record a plea of not guilty.

Alternative charges

44.—(1) Where an accused pleads guilty to the first of two or more alternative charges, the judge advocate, if he accepts the plea, shall record a finding of guilty in respect of that charge and shall give the prosecuting authority leave to discontinue proceedings in respect of any alternative charge or charges.

(2) Where an accused pleads guilty to any other of two or more alternative charges, the judge advocate shall—

(a) if the prosecuting authority gives his consent—

(i) record a finding of guilty on any charge to which the accused has pleaded guilty,

(ii) record a finding of not guilty on any alternative charge placed before him on the charge sheet, and

(iii) give the prosecuting authority leave to discontinue proceedings in respect of any further alternative charge or charges; or

(b) if the prosecuting authority does not give the consent referred to in sub-paragraph (a), proceed as if the accused had pleaded not guilty to all the charges.

(3) If the judge advocate records a finding of guilty under paragraph (1) or (2)(a) and subsequently allows the accused to change his plea under rule 49, the judge advocate may reinstate and arraign the accused on any alternative charge which was discontinued.

Procedure after not guilty plea

45.—(1) This rule applies where the judge advocate has accepted a plea or pleas of not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) After the judge advocate records a plea of not guilty, he shall direct the court administration officer to list the case for trial by the court-martial.

Procedure after guilty plea

46.—(1) This rule applies where—

(a) the judge advocate has accepted a plea or pleas of guilty; or

(b) the judge advocate has accepted a plea or pleas of guilty and the prosecuting authority does not proceed to the trial of any charge to which an accused has pleaded not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) After the judge advocate records a plea of guilty, he shall direct the court administration officer to list the case for sentencing by the court-martial.

Pleas of guilty and not guilty on one charge sheet

47.—(1) This rule applies where in respect of one charge sheet—

(a) the judge advocate has accepted a plea or pleas of guilty;

(b) a plea or pleas of not guilty have been entered; and

(c) the prosecuting authority proceeds to the trial of any charge on which a plea of not guilty has been entered.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) Unless the judge advocate directs otherwise, the trial of any charge to which an accused has pleaded not guilty shall proceed in accordance with these Rules before the court-martial considers any guilty plea.

(4) The prosecuting authority, so far as is possible, shall not—

(a) address the court on any fact, or

(b) lead evidence,

relating to a charge to which any accused has pleaded guilty, except where that fact or evidence relates also to a charge to which any accused has pleaded not guilty.

(5) After the court has announced its finding on each charge in respect of which a plea of not guilty has been entered, the court shall be told of any guilty plea.

(6) The court shall proceed to sentencing of the accused.

PART 8

PROCEEDINGS AT COURT-MARTIAL

Dispute on facts after plea of guilty

48.—(1) Where, after the judge advocate has recorded a plea of guilty in respect of any charge there are disputed facts in the case, any issue of fact may be tried.

(2) Where an issue of fact is being tried in accordance with this rule—

(a) the judge advocate may direct the prosecuting authority to call any witness to give evidence, and

(b) the prosecuting authority and the accused may, with the leave of the judge advocate, adduce evidence.

(3) The court shall sit in closed court while deliberating on its finding on the issue of fact.

(4) The finding of the court on the issue of fact shall be determined by a majority of the votes of the members of the court and announced in open court by the judge advocate.

(5) In the case of an equality of votes on the finding on the issue of fact the court must find for the accused.

Change of plea

49.—(1) At any time before the court closes to deliberate on its finding on a charge, an accused who has pleaded not guilty to the charge may, with the leave of the judge advocate, withdraw his plea and substitute a plea of guilty.

(2) Where an accused changes his plea under paragraph (1), the court shall proceed to sentencing of the accused.

(3) At any time before the court closes to deliberate on its sentence on a charge, an accused who has pleaded guilty to the charge may, with the leave of the judge advocate, withdraw his plea and substitute a plea of not guilty.

(4) Where an accused changes his plea under paragraph (3), the judge advocate shall discharge the court and direct the court administration officer to list the case for trial by a new court-martial.

Additional charges after arraignment

50.—(1) If at any time after arraignment the prosecuting authority intends to seek the leave of the judge advocate to prefer an additional charge, he shall, unless the accused waives the requirement, serve notice in writing of such intention on the accused before the application is made.

(2) Where notice is served on the accused in accordance with paragraph (1), he may apply for an adjournment of the trial.

Changes to the charge sheet after arraignment

51.—(1) If at any time after arraignment the prosecuting authority intends to—

(a) amend, or substitute another charge or charges for, a charge;

(b) discontinue proceedings on a charge;

(c) prefer an additional charge;

he shall seek the leave of the judge advocate.

(2) Where the judge advocate gives leave to discontinue proceedings on a charge, he shall consider whether to give the direction provided for in section 83B(14) of the Act.

Changes to the charge sheet by the judge advocate

52. If at any time after arraignment it appears that, with due regard to the fairness to the accused, it is desirable in the interests of justice to amend a charge, the judge advocate may do so.

PART 9

GENERAL MATTERS

Conduct of the defence

53.—(1) An accused who has been notified that he is to be tried by court-martial shall be afforded a proper opportunity for preparing his defence.

(2) A defending officer shall be appointed by the commanding officer of the accused to assist the accused to prepare and conduct his defence, unless the accused states in writing that he does not wish such an appointment to be made.

(3) The accused may appoint a legal representative to act for him and any right or responsibility which accrues to the accused by virtue of these Rules (except pleading to a charge) may be exercised by the accused's legal representative on his behalf.

(4) The accused shall inform the court administration officer of the name and address of his legal representative as soon as is practicable after a legal representative has been appointed.

The judge advocate

54.—(1) The judge advocate shall preside over the court-martial and ensure that the proceedings at the court-martial are conducted in accordance with the law of England and Wales.

(2) The judge advocate shall ensure that a proper record of the proceedings is made.

The president of the board

55.—(1) Subject to paragraph (2), the court administration officer shall appoint the senior service member of the court-martial to be the president of the board.

(2) Where the board includes civilian members, the president of the board shall be chosen by the members of the board from amongst their number.

(3) The choice of a president of the board under paragraph (2) shall be done before any member of the board is sworn.

Sittings and adjournments

56.—(1) If it appears to the judge advocate necessary in the interests of justice, proceedings may be adjourned from time to time.

(2) A court-martial shall not sit on Saturday, Sunday, Christmas Day or Good Friday unless in the opinion of the judge advocate it is necessary to do so.

(3) A court-martial shall sit at such times and for such periods each day as seem to the judge advocate to be reasonable in the circumstances.

(4) Where—

(a) a hearing is adjourned, and

(b) the time and place for the hearing to resume is not fixed by the judge advocate at the adjourned hearing,

the court administration officer shall notify the parties in writing of the time fixed for the hearing to resume and the place where the court is to sit for the resumed hearing.

Record of proceedings

57.—(1) The record of proceedings of a court-martial shall include—

(a) the record of findings; and

(b) the record of sentence, if any.

(2) A certified transcript or note of evidence given at the trial and any other proceedings shall be kept with the record of proceedings.

(3) Any transcript of a shorthand note shall be signed by the shorthand writer.

(4) Any transcript of a mechanical record shall be signed by the person who transcribed it.

(5) At the conclusion of the trial or other proceedings, the record of proceedings shall be signed by the judge advocate.

Challenges by the accused

58.—(1) At the commencement of any proceedings, the names of the persons specified to sit as members of the court (including any person specified as a waiting member) and the names of the judge advocate and any interpreter shall be read to the accused.

(2) The accused may at any time before the opening of the prosecution case object, on any reasonable grounds, to any person whose name is read out and to any interpreter appointed.

(3) If more than one person is objected to, the objection to each shall be considered in the following order—

(a) the judge advocate;

(b) the president of the board;

(c) the other members of the court;

(d) any waiting member; and

(e) any interpreter.

(4) Every objection made by the accused shall be determined by the judge advocate who shall announce his decision in open court.

(5) If an objection to the judge advocate is allowed, the proceedings shall be adjourned.

(6) If an objection to the president of the board is allowed, the court shall adjourn and—

(i) if the president of the board has been appointed under rule 55(1), the court administration officer shall appoint another president of the board; or

(ii) if the president of the board has been chosen under rule 55(2), the judge advocate shall direct the board to choose a new president of the board.

(7) If an objection to a member other than the president of the board is allowed, any waiting member in respect of whom no objection has been made or allowed shall take his place; and, if there is no such member, the court shall be dissolved.

(8) If an objection to the interpreter is allowed, the judge advocate shall adjourn proceedings until the court administration officer has appointed a replacement.

(9) Where the court is assembled to try two or more accused separately and one accused objects to the president of the board or to any other member of the court, the judge advocate may, if he thinks fit, adjourn the trial of that accused and proceed with the trial of the other accused only.

Oaths and affirmations

59.—(1) After the accused has been given the opportunity to challenge the members of the court, oaths shall be administered in the presence of the accused.

(2) The judge advocate, or any other member of the court on his behalf, shall administer an oath to—

(a) the president of the board;

(b) each other member of the court;

(c) any person in attendance for instruction;

(d) any interpreter;

(e) any witness.

(3) If—

(a) a person required to take an oath for the purposes of proceedings before the court objects to being sworn, or

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

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

(4) A person who may be permitted under this rule to make his solemn affirmation may also be required to do so, and for the purposes of this rule "reasonably practicable" means reasonably practicable without inconvenience or delay.

(5) Any oath or affirmation required to be administered under these Rules shall be administered in the form and manner set out in Schedule 4 to these Rules.

PART 10

PROCEEDINGS AT TRIAL

Commencement of the trial

60.—(1) For the purposes of these Rules the trial of an accused commences immediately after the last court member has been sworn.

(2) If after the commencement of the trial the judge advocate allows any challenge, objection, plea or application such that there is no charge remaining for the accused to answer, he shall dissolve the court.

Judge advocate sitting alone

61.—(1) Where—

(a) any question arises as to the admissibility of evidence;

(b) an application is made for evidence to be given by a witness through a live television under rule 67;

(c) the accused makes a submission of no case to answer under rule 69;

(d) a witness is under examination and a question arises as to the admissibility of a question; or

(e) for any reason the judge advocate is of the opinion that he should rule on any other question of law, practice or procedure in the absence of the other members of the court,

the judge advocate may direct the other members of the court to withdraw.

(2) The jurisdiction of the court to make an order—

(a) as to the payment of costs incurred by a party to the proceedings as a result of an unnecessary or improper act or omission by or on behalf of another party to the proceedings; or

(b) disallowing or ordering the legal or other representative as defined in section 27(3) of the Armed Forces Act 2001(a) to meet the whole or any part of any wasted costs as there defined,

may be exercised by the judge advocate sitting alone and he may direct the other members of the court to withdraw for the purpose of exercising the jurisdiction.

(3) If, while the judge advocate is sitting alone in accordance with these Rules, a person commits an offence under section 57 or 101 of the Act, the judge advocate may report the occurrence to—

(a) the president of the board; or

(b) if the offence is committed during a preliminary hearing and the person is subject to military law, the commanding officer of that person.

Opening address

62. Before calling the witnesses for the prosecution, the prosecuting authority may make an opening address.

Additional evidence during trial

63.—(1) If after the commencement of the trial the prosecuting authority intends to adduce evidence additional to that referred to in the prosecution papers, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the accused and the judge advocate before it is adduced.

(2) Where notice and particulars are served on him in accordance with paragraph (1), or where evidence is adduced without such notice being given, the accused may apply to the judge advocate for an adjournment of the trial.

(**a**) 2001 c. 19.

Expert evidence

64.—(1) Expert evidence shall not be adduced at a trial without the leave of the judge advocate unless the party proposing to rely on it has served on every other party and the court administration officer, not less than 14 days before the date appointed for the trial, a statement of the substance of the expert evidence.

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

Exhibits

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

(2) Each exhibit or a label attached to each exhibit shall be signed by the judge advocate or a person acting on his behalf.

(3) Each exhibit shall be retained with the record of proceedings, unless in the opinion of the judge advocate having regard to the nature of the exhibit or for other good reason it is not expedient to retain the exhibit with the record.

(4) Where an exhibit is not retained with the record of proceedings, the judge advocate shall ensure that proper steps are taken for its safe custody or proper disposal.

Presence of witnesses

66.—(1) Except for the accused and any expert or character witness, a witness as to fact shall not, except by leave of the judge advocate, be in court while not under examination.

(2) If while a witness is under examination a question arises as to the admissibility of a question or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined.

(3) The judge advocate may direct any expert or character witness present in court to withdraw if the judge advocate considers in the interests of justice that his presence is undesirable.

Evidence through live television

67.—(1) Any application by the prosecuting authority or an accused for leave under section 32 of the Criminal Justice Act 1988(a) for evidence to be given by a witness through a live television link shall be made as soon as is practicable before the commencement of the trial.

(2) An application may not be made under paragraph (1) without the leave of the judge advocate unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in the form set out in Schedule 2 to these Rules on every other party, the court administration officer and the judge advocate stating—

(a) the grounds of the application;

(b) the name of the witness;

(c) where the witness is under the age of 18 years, the date of birth of the witness;

(d) the country and place where it is proposed the witness will be when giving evidence; and

(e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

(3) Where the judge advocate gives leave for a witness under the age of 14 to give evidence through a live television link, the witness shall be accompanied by a person acceptable to the judge advocate and, unless the judge advocate otherwise directs, by no other person.

(**a**) 1988 c. 33; section 32(1)(a) and (3) apply to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 2006 (S.I. 2006/2890) subject to modifications specified therein.

Examination of witnesses

68.—(1) The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and that there is no injustice to the accused in doing so.

(2) The judge advocate may question any witness and, if he considers it appropriate, may put to the witness a question from any other member of the court.

(3) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may at any time—

(a) call any witness whom it has not already heard;

(b) recall a witness;

(c) permit the accused or the prosecuting authority to recall a witness.

Submission of no case to answer

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

(2) If the submission is allowed, the judge advocate shall direct the court to find the accused not guilty of the charge to which the submission relates.

(3) If the submission is not allowed, the court shall proceed with the trial.

Finding of not guilty before conclusion of the defence

70.—(1) The court may at any time after the close of the case for the prosecution find the accused not guilty of a charge, provided that the prosecuting authority has been given an opportunity to address the court on such a finding.

(2) The power under paragraph (1) may only be exercised at the invitation of the judge advocate.

The case for the defence

71.—(1) After the close of the case for the prosecution, the judge advocate shall satisfy himself that the accused understands—

(a) that he may give evidence in his defence if he so wishes but he is not obliged to do so;

(b) the consequences of choosing to remain silent at trial;

(c) that, if he chooses to give evidence, he will be liable to be cross-examined by the prosecuting authority and questioned by the judge advocate; and

(d) that he may call witnesses on his behalf.

(2) Where 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 is given.

Witnesses for the defence

72. Except with the leave of the judge advocate, if the accused elects to give evidence he shall be called before any other witness for the defence.

Further evidence

73. With the leave of the judge advocate the prosecuting authority may call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecuting authority could not—

(a) properly have dealt with before the accused disclosed his defence; or

(b) reasonably have foreseen.

Closing addresses

74.—(1) Subject to paragraph (4), the prosecuting authority 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 prosecuting authority.

(3) Where two or more accused are represented by the same legal representative, he may make only one closing address.

(4) Except with the leave of the judge advocate, if the accused is not represented and has called in person no witnesses other than himself the prosecuting authority shall not make a closing address.

Summing up

75. After the closing addresses, if any, the judge advocate shall direct the court upon the law relating to the case and summarise the evidence.

Deliberation on finding

76.—(1) After the summing up, the judge advocate shall direct the board to withdraw to deliberate on its finding on each charge before it.

(2) If the court requires further direction on the law during its deliberation on a finding on any charge, it shall suspend its deliberation to seek and be given further direction by the judge advocate in open court.

(3) During its deliberation on a finding, the court shall not separate until the finding has been reached unless the judge advocate directs that in the interests of justice the court may separate.

(4) The vote of each member of the court on the finding on each charge shall be given orally—

(a) in reverse order of seniority; or

(b) for a board with civilian members, in the order determined by the president of the board, save that he shall vote last.

Special finding

77.—(1) For the purposes of these Rules a special finding is—

(a) where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, a finding of guilty subject to exceptions or variations specified in the finding;

(b) a finding in accordance with section 98(1) of the Act (power to convict of mitigated offence);

(c) a finding in accordance with section 98(5) of the Act (power to convict of alternative offence).

(2) If it appears to the judge advocate that the difference is not so material as to have prejudiced the accused in his defence, the judge advocate may direct the court that a special finding under paragraph (1)(a) is open to them.

(3) In any case the judge advocate may direct the court that a special finding under paragraph (1)(b) or (c) is open to them.

(4) Before directing the court on a special finding, the judge advocate shall allow the prosecuting authority and the accused to address him on the matter.

(5) The court may not reach a special finding unless the judge advocate has directed them that such a finding is open to them.

Record of finding

78.—(1) The finding of the court on a charge shall be recorded in writing and dated and signed by the president of the board.

(2) Each finding shall be announced separately by the president of the board.

(3) If the court reaches a finding of guilty or a special finding and the judge advocate is of the opinion that such a finding is contrary to the law relating to the case, he shall direct the court on the findings which are open to it and the court shall retire to reconsider its finding.

(4) If the judge advocate is satisfied that the findings are not incorrect in law, he shall countersign the record of the findings.

Offences taken into consideration

79.—(1) Where the court has recorded a finding of guilty on any charge or a special finding, the accused may request the court to take into consideration any other offence committed by him of a similar nature to that of which he has been found guilty or in respect of which a special finding has been reached, and, upon such a request being made, the court may agree to take into consideration any such offence as to the judge advocate seems proper.

(2) A list of the offences which the accused admits having committed and which the court agrees to take into consideration shall be signed by the accused and attached to the record of proceedings.

PART 11

SENTENCING

Sentencing procedure after guilty plea

80.—(1) This rule applies where the judge advocate has accepted a plea or pleas of guilty.

(2) Before presenting the information required under rule 82, the prosecuting authority shall address the court on the facts of the case.

Pre-sentence report and previous convictions

81.—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the sentencing hearing, he shall serve a copy on the accused and send the report to the judge advocate before the time appointed for the hearing.

(2) Where the prosecuting authority has obtained a record of the accused's previous convictions in advance of the hearing, he shall serve a copy on the accused and the court administration officer before the time appointed for the hearing.

Evidence before sentencing

82.—(1) Where practicable, the prosecuting authority shall present to the court information concerning—

(a) the accused's age and rank or rate;

(b) the accused's service record;

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

(d) particulars, if known, of any offence (whether under the Act or otherwise) of which the accused has been found guilty (during his service or otherwise), provided that any

convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974(a) shall be clearly marked as such;

(e) particulars, if known, of any formal police caution administered to the accused by a constable in England and Wales or Northern Ireland;

(f) particulars, if known, of the length of time the accused has been in custody awaiting trial or in custody under a current sentence;

(g) details of the accused's pay, terminal benefits and future pension entitlements;

(h) whether the commanding officer of the accused wishes to retain the accused in his unit; and

(i) whether the accused elected trial by court-martial.

(2) Unless the accused requires otherwise and the judge advocate so directs, the matters referred to in paragraph (1) need not be adduced in compliance with the strict rules of evidence.

(3) The court shall consider any pre-sentence report concerning the accused.

(4) A record of antecedents signed by the accused may be accepted in evidence by the court under paragraph (1)(d) where the accused has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought.

Evidence on behalf of the accused

83.—(1) The accused may—

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

(b) produce to the court any document or written report; and

(c) address the court in mitigation of sentence.

(2) Unless the prosecuting authority requires otherwise and the judge advocate so directs, any document or report referred to in paragraph (1)(b) need not be adduced in compliance with the strict rules of evidence.

Deliberation on sentence

84.—(1) Subject to section 118A(3) of the Act and to paragraph (5), the court shall award one sentence in respect of all the offences of which the accused has been found guilty and all the offences taken into consideration in accordance with rule 79.

(2) Subject to paragraph (4), the vote of each member of the court as to the sentence shall be given orally —

(a) in reverse order of seniority; or

(b) for a board with civilian members, in the order determined by the president of the board, save that he shall vote last.

(3) The judge advocate shall vote last and the president of the board shall vote immediately before him.

(4) In the case of an equality of votes on sentence, the president of the board shall have the casting vote.

(5) The sentence may include a direction that such deductions shall be made from the pay of the accused as may have been made if the accused had been found guilty by the court of the offence taken into consideration as well as of the offence or offences of which he has been found guilty.

(6) While the court sits in closed court to deliberate on sentence, persons under instruction are permitted to be present but shall take no part in the proceedings.

(**a**) 1974 c. 53; sections 2 and 6 were amended, and the Schedule was inserted, by the Armed Forces Act 1996 (c. 46), section 13 and Schedule 4.

Postponement of deliberation on sentence

85. Where two or more accused are tried separately by the same court upon charges arising out of the same circumstances, the court may, if the judge advocate thinks that the interests of justice so require, postpone its deliberation on the sentence to be awarded to any one or more of such accused until it has recorded its findings in respect of all the accused.

Announcement of sentence

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

(2) The legal reasons for the sentence shall be announced in open court by the judge advocate.

(3) Subject to paragraph (4) the formal pronouncement of sentence, and any direction as to postponement or suspension of sentence, shall be announced in open court by the president of the board.

(4) Where the president of the board has been chosen under rule 55(2), the formal pronouncement of sentence, and any direction as to postponement or suspension of sentence, shall be announced in open court by the judge advocate.

(5) With leave of the judge advocate, the president of the board may make additional remarks to the accused about the effects of his offending on the Service and the effects of the sentence on his Service career.

Conclusion of the proceedings

87.—(1) When each charge on the charge sheet has been disposed of, the president of the board shall announce in open court that the proceedings are concluded.

(2) The judge advocate shall dissolve the court.

PART 12

REVIEW OF COURT-MARTIAL FINDING AND SENTENCE

The petition

88.—(1) The period within which an accused may present a petition against finding or sentence or both in accordance with section 113(1) of the Act shall be 28 days following the day on which sentence is announced.

(2) A petition presented in accordance with section 113(1) of the Act shall be in writing and signed by the accused, or on his behalf by his legal representative.

(3) Petitioners shall have regard to the guidance on the content of a petition contained in Schedule 5 to these Rules.

(4) A petition addressed to the Defence Council shall be treated as having been presented to the Defence Council if it is presented by the petitioner—

(a) to the Director of Personnel Services (Army); or

(b) where the petitioner is—

(i) in custody or detention in any civil prison or institution, to the governor of the prison or institution;

(ii) detained in any military or air force establishment or in naval detention quarters, to the commandant of the establishment or quarters.

(5) A person to whom a petition is presented under paragraph (4)(b) shall transmit it to the Director of Personnel Services (Army) immediately upon receipt.

Reasons

89. Where the reviewing authority completes a review in accordance with section 113 of the Act, it shall—

(a) if a petition has been presented in accordance with section 113(1) of the Act, or

(b) if it exercises any of its powers under section 113AA of the Act,

give reasons for its decision.

PART 13

MISCELLANEOUS

Appeal to the Courts-Martial Appeal Court

90.—(1) The Courts-Martial Appeal Court shall have the jurisdiction(a) to hear appeals against—

(a) orders or rulings made at a preliminary hearing;

(b) any orders or directions of a court-martial prohibiting or restricting the publication of any matter or excluding the public from any proceedings.

(2) An appeal under this rule shall be made only with leave of the Courts-Martial Appeal Court.

Application of the rules to civilians

91.—(1) In their application to any person to whom Part II of the Act is applied by section 209 of the Act, these Rules shall have effect subject to the modifications specified in Part 1 and the additional rules specified in Part 2 of Schedule 6 to these Rules.

(2) Part 3 of Schedule 6 to these Rules shall have effect in respect of the hearing by courts-martial of appeals against findings and sentences by Standing Civilian Courts.

(3) Where a person to be tried by court-martial is a person to whom Part II of the Act is applied by section 209 of the Act, the court administration officer may appoint under section 84D(1)(a) and (c) or (2)(a) and (c) of the Act as a member of the court-martial—

(a) any person not subject to military law, air force law or the Naval Discipline Act 1957;

(b) any person to whom Part II of the Act is applied by section 209 of the Act;

(c) any person to whom Part II of the Air Force Act 1955(b) is applied by section 209 of that Act;

(d) any person to whom Part II of the Naval Discipline Act 1957 is applied by section 118 of that Act.

(4) Where paragraph (3) applies, any reference in these Rules to an officer or warrant officer member of the court shall be construed as meaning any person appointed as a member of the court under paragraph (3).

Bankers' Books Evidence Act 1879

92.—(1) The power to make an order conferred by section 7 of the Bankers' Books Evidence Act 1879(c) may be exercised for the purposes of a court-martial—

(a) during the investigation of any offence and before the accused is notified that he is to be tried by court-martial, by the commanding officer of the accused;

(**a**) Section 103(2A) of the Act as amended by section 378(1) and paragraph 21 of Schedule 16 to the Armed Forces Act 2006.
(**b**) 1955 c.19
(**c**) 1879 c. 11.

(b) at any preliminary proceedings and during the court-martial, by a judge advocate.

(2) The order shall be in the form set out in Schedule 2 to these Rules.

Custody of the record

93. The 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 proceedings.

Circumstances not provided for

94. In any circumstance not provided for by the Act or these Rules such course shall be adopted as appears to the judge advocate best calculated to do justice.

Revocations and transitional proceedings

95.—(1) Subject to paragraph (2), the Rules set out in Schedule 7 to these Rules are hereby revoked.

(2) The rules set out in Schedule 7 shall continue to apply in relation to any trial that commenced before 1st January 2008 until the court is dissolved.

(3) The revocations shall not affect the validity of anything done under those Rules in relation to any proceedings pending at the commencement of these Rules.

Name
Parliamentary Under Secretary of State
Ministry of Defence

Date

SCHEDULE 1

Rules 9 and 10

CHARGES AND JOINDER

PART 1

RULES

1.—(1) A charge sheet shall be in the form specified in Part 2 of this Schedule or in a form substantially to the like effect, and must contain a paragraph called a "charge" —

(a) a statement of the offence charged that—

(i) describes the offence in ordinary language;

(ii) identifies any legislation that creates it; and

(iii) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecuting authority alleges against the accused.

2. More than one incident of the commission of the offence may be included in a charge if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

3.—(1) An charge sheet may contain more than one charge if all the offences charged—

(a) are found on the same facts; or

(b) form or are a part of a series of offences of the same or similar character.

4. The charges must be numbered consecutively

5. Where an offence created by or under an enactment states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment or subordinate instrument may be stated in the alternative in a charge sheet charging the offence.

6. It shall be sufficient in a charge sheet to describe a person whose name is not known as a person unknown.

7. Where the offence charged is one which can be committed in circumstances involving either a higher or a lower degree of punishment, the charge shall state the facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted.

8. Where the offence charged is one which may render the accused liable to the punishment of stoppages, the charge shall state any additional facts which it is intended to prove as rendering the accused liable to that punishment if convicted.

PART 2

FORM

FOR TRIAL BY GENERAL/DISTRICT* COURT-MARTIAL

THE QUEEN V ……

(introductory words)

charged as follows:-

(statement of offence and particulars of offence)

Date …… ……..
Prosecuting authority

*Delete as appropriate

SCHEDULE 2 Rules 24, 33, 34, 36, 67 and 92

FORMS

Where any rule requires the use of a form set out in this Schedule, that requirement shall be satisfied by the use of a form substantially to the like effect as the form set out below.

Form 1—Form of application for a witness summons

Form 2—Form of summons to witness

Form 3—Form of summons to a bank manager

Form 4— Form of application for a preliminary hearing

Form 5—Form of notice of application for leave to adduce evidence through television link

Form 6—Form of order by commanding officer to permit inspection of bankers' books

Form 7—Form of order by judge advocate to permit inspection of bankers' books

Form 8—Form of application for leave to adduce evidence of the bad character of a person other than an accused

Form 9—Form of notice of intention to adduce evidence of accused's bad character

Form 10—Form of application to exclude evidence of accused's bad character

Form 11—Form of notice of intention to adduce hearsay evidence

Form 12—Form of notice of intention to oppose admission of hearsay evidence

FORM 1—Form of application for a witness summons

This is an application by the person named in section 1 for a witness summons to require the person named in section 3 to give evidence*/produce the document(s)* or object(s)* described in that section. *[applicant to delete what does not apply]*

A written application may not be required: rule 24(6). The judge advocate may dispense with service on the proposed witness or give directions for service on others: rules 24(8) and 25(3).

Notice to a person served with this application

If you are named in section 3 and want to make representations to the judge advocate about this application, tell the applicant (at the address in section 1) and the court administration officer *[address]* **at once. If this application is for the production of documents, or for evidence about information held in confidence, then unless the judge advocate otherwise directs, you have 14 days from the date you receive this application to:**

(a) send written comments about the application to the judge advocate and to the applicant without asking for a hearing; or

(b) send written comments about the application to the judge advocate and to the applicant and ask for a hearing.

The judge advocate may decide this application with or without a hearing (even if you ask for one). If you want to take legal advice about this application you should do so at once.

The applicant must complete sections 1 to 5.

1. Details of applicant

Name:……

Address:……
……..

2. Case details

Name of the accused:……

Case No:……

Offences charged:…….

Expected trial date and location (if known):……..…..

Date(s) witness likely to be required:……..

3. Details of application

Identity of proposed witness:……
……..
……..

Name(s) and address(es) of other people served with this application (if any):……..
……..
……..

What is the nature of the evidence the proposed witness can give/produce?
……..
……..
……..
……..
……..
……..

Why is that evidence likely to be material to what is in issue in the case?
……..
……..
……..
……..
……..
……..

Why would it be in the interests of justice for the judge advocate to issue a witness summons?

If the application concerns:

(a) a document/documents; or

(b) information apparently held in confidence

about someone else, the applicant must identify the person to whom it relates and explain why s/he thinks the judge advocate should issue a witness summons despite any apparent confidentiality of the document(s)/information.
……..
……..
……..
……..
……..
……..
……..

4. Time

When did the applicant become aware of the grounds for making this application?
……..
Explain any delay since that date:……
……..
……..
5. Declaration

The statements contained in this application are true to the best of my knowledge and belief. I make them knowing that if I have wilfully stated anything which I know to be false or do not believe to be true I shall be liable to prosecution.

I apply for the issue of a witness summons requiring the proposed witness to give evidence* / produce the document(s)* or object(s)* described in section 3. *[*delete what does not apply]*

Signed:…….

Date:…….

FORM 2—Form of summons to witness

SUMMONS TO WITNESS

To …….
(name)
Of …….
(unit/address)

Name of the accused:

You are hereby summoned to appear on (*date*)……. at (*time*)……

at (*place*)

To*give evidence
*produce the document[s] or thing[s] specified in Part 1 of the Schedule hereto

*at a preliminary hearing to be held in connection with the proceedings.
*at the trial of the above-named person.

*You are hereby summoned to appear on (*date*)……. at (*time*)……

at (*place*) …… to produce the document[s] or thing[s] specified in Part 2 of the Schedule hereto.

(*delete as appropriate)
Failure by a civilian to comply with this summons is an offence under section 101 of the Army Act 1955.

You are to sign, detach and return the receipt slip below.

(signed)

Judge Advocate

(date)

SCHEDULE OF DOCUMENTS OR THINGS TO BE PRODUCED

Part 1—Documents etc. to be produced only at the hearing

Part 2—Documents etc. to be produced prior to as well as at the hearing

Acknowledgement of Receipt of Summons to a Witness
In the matter of …….. *(name of accused)*
I, …… *(full name of witness in BLOCK CAPITALS)*
acknowledge receipt of the summons to me to attend at ……..*(place)*
on ……*(date)*.
Signature …….. Date ……

Return to: Court Administration Officer (*address*)

FORM 3—Form of summons to a bank manager

To the Manager ……
(Name of bank)
In the matter of *(number, rank and full name of accused)* of *(unit)*

I have been informed that you have in your control certain documents which are material to the trial by court-martial of *(number, rank and full name of accused)* of *(unit)*, namely *(description of documents)*. By virtue of the power given to me by section 103 of the Army Act 1955 and rule 92 of the Courts-Martial (Army) Rules 2007, I summon you to attend at the

*preliminary hearing/court-martial

at *(place)* at *(time)* on the *(date)* day of *(month and year),*

and to produce a copy of such entries in the books of the bank, and to prove the description of each such book, whether such book was at the time of making of such entry one of the ordinary books of the bank, whether it is in the custody and control of the bank, whether each such entry was made in the ordinary course of business, and to prove that you have examined the entries and compared such copy with the original, together with such facts concerning the bank as are set out in section 9 of the Bankers' Books Evidence Act 1879

and so to attend from day to day until you shall be duly discharged; and you are hereby required to obey this summons on pain of the penalties declared by section 101 of the Army Act 1955.

(*Note: If you, or a duly authorised officer of the bank, make an affidavit proving all the above matters, in accordance with the Bankers' Books Evidence Act 1879 (enclose relevant paragraphs), and exhibit a copy of the entries specified above, and send the affidavit and exhibit to reach me by the (day) of (month and year), the order for you to attend the trial and give evidence will be withdrawn.)

You are to sign, detach and return the receipt slip below.

Dated this …….. day of ……..20….

……..
Judge Advocate

Acknowledgement of Receipt of Summons to a Bank Manager
In the matter of …….. *(name of accused)*
I, …… *(full name of witness in BLOCK CAPITALS)*
acknowledge receipt of the summons to me to attend at ……..*(place)*
on …….*(date)*.
Signature …….. Date ……

Return to: Court Administration Officer *(address)*

FORM 4—Form of notice of application for a preliminary hearing

From ……..
(*name*)

of ……
(*unit/address*)

To: COURT ADMINISTRATION OFFICER

APPLICATION FOR A PRELIMINARY HEARING

In the matter of: *(Insert here the service number, rank and name of the accused)*

As *prosecuting authority/accused's legal representative/accused, I hereby apply for a preliminary hearing to take place before a judge advocate.

The purpose of the application is:
(State reasons for which the application is made)

I consider that the following matters, as listed in Schedule 3 to the Courts-Martial (Army) Rules 2007, may usefully be addressed at the hearing:
(State or refer by paragraph number)

I estimate that the length of time required for such a preliminary hearing will be:
(Estimate length of time required for preliminary hearing)

It is requested that the witnesses whose details are given below be summoned by the judge advocate to attend the hearing:
(List witnesses and their addresses)

I confirm that the following dates would be convenient for such a hearing:
(indicate convenient dates for the hearing)

Signed ……

Date ……...

*(*delete as appropriate)*

Send copies to:

Accused
Accused's legal representative
Or
Prosecuting Authority

FORM 5—Form of notice of application for leave to adduce evidence through live television link

(Section 32 of the Criminal Justice Act 1988)

From ……..

(*name*)

of ……

(*unit/address*)

To: COURT ADMINISTRATION OFFICER

NOTICE OF APPLICATION FOR LEAVE TO ADDUCE EVIDENCE THROUGH LIVE TELEVISION LINK

In the matter of: *(Insert here the service number, rank and name of the accused)*

As *prosecuting authority/accused's legal representative/accused, I hereby give notice that an application will be made for leave to adduce the evidence of a witness, whose name is given below, by way of live television link in proceeding before the court-martial of the above named accused. This application will relate in particular to the following charge(s) to be tried:

The grounds of the application are as follows:
(State grounds)

The name of the witness is:

*If the witness is under 18 years of age:
The date of birth of the witness is:

The country and place where it is proposed that this witness will be when giving evidence is:

*If required, the name, occupation and relationship to the witness of the person it is proposed should accompany the witness is:

and the grounds for believing that person should accompany the witness are:
(state grounds)

Signed ……

Date ……...

*(*delete as appropriate)*

Send copies to:

Judge Advocate
Accused/Accused's legal representative or Prosecuting Authority

FORM 6—Form of order by commanding officer to permit inspection of banker's books

ORDER BY COMMANDING OFFICER TO PERMIT INSPECTION OF BANKERS' BOOKS

To …….
(Name of bank)

The Secretary of State under the powers conferred on him by section 103 of the Army Act 1955 has directed that the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 may be exercised for the purposes of a court-martial, during the investigation of an alleged offence, by an accused's commanding officer, and having received from *(number, rank and/or full name)* an application to inspect and take copies of entries in the books of *(name of bank)* relating to the accounts of *(full name of accused)* I do now, in exercise of the powers conferred on me, as the Commanding Officer of *(full name of accused)*, order that *(rank and full name of investigator)* or any other person acting on his behalf may inspect and take copies of any entries in any books in the possession of *(name of bank)* accordingly.

Dated this …….. day of ……..20….

……..
Commanding Officer

FORM 7—Form of order by judge advocate to permit inspection of banker's books

ORDER BY JUDGE ADVOCATE TO PERMIT INSPECTION OF BANKERS' BOOKS

To …….
(Name of bank)

The Secretary of State under the powers conferred on him by section 103 of the Army Act 1955 has directed that the powers conferred by section 7 of the Bankers' Books Evidence Act 1879 may be exercised for the purposes of a court-martial by the judge advocate, and having received from *(number, rank and/or full name)* an application to inspect and take copies of entries in the books of *(name of bank)* relating to the accounts of *(full name of accused)* I do now, in exercise of the powers conferred on me as the judge advocate appointed in connection with the trial by court-martial of *(full name of accused)*, order that *(rank and/or full name)* or any other person acting on his behalf may inspect and take copies of any entries in any books in the possession of *(name of bank)* accordingly.

Dated this …….. day of ……..20….

……..
Judge Advocate

FORM 8—Form of application for leave to adduce evidence of the bad character of a person other than an accused (Section 100(4) of the Criminal Justice Act 2003)	
Details required	*Notes*
1. Details of applicant Name: Service No. (if applicable): Unit/address:	
2. Case details Name of accused: Name of judge advocate (where appointed): Date the court-martial is due to convene: Charge(s):	*Give brief details of the charge or charges to which this application applies.*
3. Details of this application Please provide the following details: (a) the particulars of the bad character evidence including how it is to be introduced or elicited in the proceedings. This should also include the names of the relevant non-accused and all other relevant witnesses; and (b) the grounds of admissibility under section 100 of the Criminal Justice Act 2003.	*Section 100 of the Criminal Justice Act 2003.* *Please attach any relevant documentation.*
4. Extension of time Are you applying for an extension of time for service? (yes/no) If so, please provide details.	
Signed:	
Dated:	

FORM 9—Form of notice of intention to adduce evidence of accused's bad character (Section 100(1) of the Criminal Justice Act 2003)	
Details required	*Notes*
1. Details of party giving notice Name: Whether prosecuting authority or co-accused:	
2. Case details Name of accused: Name of judge advocate (where appointed): Date the court-martial is due to convene: Charge(s):	*Give brief details of the charge or charges to which this application applies.*
3. Details of this Notice To the named accused: You are hereby given notice that bad character evidence, particulars of which are detailed below, is to be adduced or elicited in these proceedings. The particulars of that bad character evidence are as follows.	*In this section state:* *(a) a description of the bad character evidence and how it is to be adduced or elicited in the proceedings (including the names of any relevant witnesses); and* *(b) the grounds for the admission of evidence of the accused's bad character under section 101 of the Criminal Justice Act 2003.* *Please attach any relevant documentation.*
4. Extension of time Are you applying for an extension of time for service? (yes/no) If yes, state your reasons.	
Signed:	
Dated:	

FORM 10—Form of application to exclude evidence of accused's bad character (Section 101(3) of the Criminal Justice Act 2003)	
Details required	*Notes*
1. Details of the accused Name: Address/unit: Date of birth:	
2. Case details Date the court-martial is due to convene: Charge(s): Date that you were served with the notice that bad character evidence is to be adduced in these proceedings:	
3. Details of this application Include the following information: (a) why the admission of bad character evidence would have such an adverse effect on the fairness of the proceedings that the court should not admit it; (b) details as to the length of time between the matters to which the bad character evidence relates and the matters which form the subject of the offence charged; (c) if you are applying for the exclusion of this evidence on grounds other than section 101(3) of the Criminal Justice Act 2003, please set out such objections.	*Note that an application to exclude this evidence under section 101(3) of the 2003 Act can only be made if you have been notified of a party's intention to adduce this evidence under section 101(1)(d) (it is relevant to an important matter in issue between the accused and the prosecution) or subsection 101(1)(g) (that the accused has made an attack on another person's character).* *Section 101(4) of the Criminal Justice Act 2003*
4. Extension of time Are you applying for an extension of time for service? (yes/no) If yes, state your reasons.	
Signed:	
Dated:	

FORM 11—Form of notice of intention to introduce hearsay evidence (Section 114 of the Criminal Justice Act 2003)	
Details required	*Notes*
1. Details of party giving notice Name: Whether prosecuting authority, accused or co-accused:	
2. Case details Name of accused: Name of judge advocate (where appointed): Date the court-martial is due to convene: Charge(s):	*Give brief details of the charge or charges to which this application applies.*
3. To the named recipient(s) of this notice: I give you notice of my intention to introduce hearsay evidence, details of which are set out below, in these proceedings:	
4. Grounds for introducing the hearsay evidence On which of the following grounds do you intend to introduce the hearsay evidence? *(1) it is in the interests of justice for it to be admissible. *(2) the witness is unavailable to attend. *(3) the evidence is contained in a business etc. document. *(4) the evidence is multiple hearsay.	**Delete as appropriate to show which of sections 114(1), 116, 117 or 121 of the Criminal Justice Act 2003 you rely on to introduce the evidence.* *Where ground (1) is relied on, specify below which of the factors set out in section 114(2) are relevant and explain how they are relevant.*
5. Further details of grounds:	

6. Details of hearsay evidence The details of the hearsay evidence are as follows:	*Give brief details of the evidence that you want to introduce as hearsay evidence.* *A complete copy of that evidence must be attached to this notice, if it has not already been served on the other parties.*
4. Extension of time Are you applying for an extension of time for service? (yes/no) If yes, state your reason.	
Signed:	
Dated:	

FORM 12—Form of notice of intention to oppose admission of hearsay evidence (Section 114 of the Criminal Justice Act 2003)	
Details required	*Notes*
1. Details of party opposing the admission of hearsay evidence Name: Whether prosecuting authority, accused or co-accused:	
2. Case details Date the court-martial is due to convene: Charge(s): Date that you were served with the notice of intention to adduce hearsay evidence:	
3. Details of this Notice Include the following information: (a) details of the hearsay evidence that you want to exclude: (b) grounds for excluding the evidence:	*Give a description of the hearsay evidence that you want to exclude from the proceedings. Specify whether you object to all or part of that evidence.* *Set out the grounds for excluding the hearsay evidence that you object to. Any relevant skeleton argument or case law that might bear on the issue may be attached to this notice.*
4. Extension of time Are you applying for an extension of time within which to give notice? (yes/no) If yes, state your reason.	
Signed:	
Dated:	

SCHEDULE 3

Rule 36 and 40

PRELIMINARY HEARING

The matters which may be addressed at a preliminary hearing shall include—

1. the issues in the case;

2. any matters concerning the proper and efficient management of the case including giving parameters to the court administration officer for the listing of the case for trial;

3. issues, if any, as to the mental or medical condition of any accused or witness;

4. the number of witnesses whose evidence will be placed before the court either orally or in writing;

5. the defence witnesses in paragraph 4 whose statements have been served and whose evidence the prosecution will agree and accept in writing;

6. any prosecution witnesses whom the defence require to attend at the trial;

7. any additional witnesses who may be called by the prosecution and the evidence that they are expected to give;

8. any issues as to disclosure;

9. any alibi which should already have been disclosed in accordance with section 11 of the Criminal Justice Act 1967;

10. facts which are to be admitted and which can be reduced into writing in accordance with section 10(2)(b) Criminal Justice Act 1967(**a**), within such time as may be directed at the hearing, and of any witness whose attendance will not be required at the trial;

11. any exhibits and schedules which are to be admitted;

12. the order and pagination of the papers to be used by the prosecution at the trial and the order in which the prosecution witnesses are likely to be called;

13. any point of law which it is anticipated will arise in the course of the proceedings;

14. any question as to the admissibility of evidence which appears on the face of the papers, and any authority on which the party intends to rely;

15. any application to be made for evidence to be given through live television link;

16. any application for a special measures direction under section 19 of the Youth Justice and Criminal Evidence Act 1999(**b**);

17. any application for screens, for use by witnesses seeking a visual break between themselves and any relevant parties;

18. whether any video, tape recorder or other technical equipment will be required during the proceedings;

19. where a tape recorded interview has taken place, of any dispute or agreement as to the accuracy of any transcript or summary;

(**a**) Sections 9 and 10 of the Criminal Justice Act 1967 are applied to proceedings before courts-martial subject to the modifications prescribed by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997 (S.I. 1997/173).

(**b**) 1999 c. 23; section 19 of the Youth Justice and Criminal Evidence Act 1999 is applied, with modifications, to proceedings before courts-martial by the Youth Justice and Criminal Evidence Act 1999 (Application to Courts-Martial) Order 2006 (S.I. 2006/2886).

20. any other significant matter which might affect the proper and convenient trial of the case, and whether any additional work needs to be done by the parties;

21. the estimated length of any trial, to be agreed more precisely taking account of any views expressed by the judge advocate and the other parties;

22. witness availability and the approximate length of witness evidence;

23. availability of advocate;

24. orders prohibiting or restricting the publication of any matter or excluding the public from any proceedings

25. challenges to the jurisdiction of the court;

26. objection to a charge on the grounds that it is not correct in law;

27. plea that the court is debarred from trying a charge;

28. whether there is a need for any further directions.

SCHEDULE 4

Rule 59

OATHS AND AFFIRMATIONS

PART 1

MANNER OF ADMINISTERING OATHS AND AFFIRMATIONS

1. The person taking the oath shall hold the New Testament, or if a Jew the Old Testament, in his uplifted hand and shall say, or repeat after the person administering it, the oath provided in Part 2 of this Schedule for that category of person.

2. If any person to whom an oath is administered desires to swear in the form and manner in which an oath is usually administered in Scotland, he may do so with uplifted hand and saying, or repeating after the person administering it, the Scottish oath provided in Part 3 of this Schedule for that category of person.

3. If none of the forms of oath provided in this Schedule is appropriate to the religious beliefs of the person taking the oath, an oath may be administered in such form and manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

4. A person making a solemn affirmation instead of taking an oath shall say or repeat after the person administering it the affirmation provided in this Schedule for that category of person.

PART 2

FORMS OF OATH

President of the board and members other than the judge advocate

5. I swear by Almighty God that I will well and truly try the accused before the court according to the evidence, and that I will duly administer justice according to law and without partiality, favour or affection; and I do further swear that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of this court-martial, unless thereunto required in due course of law.

Persons under instruction

6. I swear by Almighty God that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of this court-martial given in these proceedings unless thereunto required in due course of law.

Interpreter

7. I swear by Almighty God that I will well and faithfully interpret and make true explanation of all such matters and things as shall be required of me according to the best of my skill and understanding.

Witness aged 18 years or over

8. I swear by Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

Witness under the age of 18 years

9. I promise before Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

PART 3

FORM OF SCOTTISH OATHS

10. The form of Scottish oath shall in each case be the same as the form of oath set out above except for the relevant category of person that for the words "I swear by Almighty God" there shall be substituted the words "I swear by Almighty God and as I shall answer to God at the Great Day of Judgement".

PART 4

FORM OF SOLEMN AFFIRMATIONS

11. The form of affirmation shall in each case be the same as the form of oath set out above except for the relevant category of person, that for the words "I swear by Almighty God" there shall be substituted the words "I solemnly, sincerely and truly declare and affirm".

SCHEDULE 5

Rule 88

GUIDANCE FOR PETITIONERS

1. The petition should be settled with sufficient particularity to enable the reviewing authority to identify clearly the matters relied upon, and set out in such manner as to be reasonably easily understood.

2. The petition should not contain grounds of appeal unless it is considered that such grounds are properly arguable.

3. The petition should not contain any factual inaccuracy.

4. Any allegation of fact in the petition should be based on evidence identified in the petition.

5. The petition should not contain a suggestion that a person (other than the accused) is guilty of impropriety, crime, fraud or misconduct unless such an allegation goes to a matter in issue which is material to the accused's case and is supported by evidence identified in the petition.

6. Any proposition of law should be supported by references to any relevant authority, and all such authorities must be cited in the petition with sufficient particularity to identify them.

SCHEDULE 6

Rule 91

CIVILIANS

PART 1

MODIFICATIONS FOR CIVILIANS

Rule	*Modification*
2	For the definition of "commanding officer" the substitution of— ""commanding officer", in relation to an accused, means such officer as may be determined by or under regulations of the Defence Council made under section 209(3)(f) of the Act;". The addition, in the appropriate places, of the following definitions— ""period of parental recognisance" means the period specified in an order made against a parent or guardian of the accused under paragraph 14(1) of Schedule 5A to the Act or of Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957; "service parent or guardian" shall be construed in accordance with paragraph 2(2) of Schedule 5A to the Act;".
9(1)	In sub-paragraph (a), the omission of the words "service number and rank". The omission of sub-paragraph (b).
82(1)	In sub-paragraph (a), the omission of the words "and rank or rate". The omission of sub-paragraphs (b) and (g). For sub-paragraph (c) the substitution of— "(c) any decorations to which he is entitled;" For sub-paragraph (h) the substitution of— "(h) details of the employment of the accused.".

PART 2

ADDITIONAL RULES FOR CIVILIANS

Prosecution of civilians

1.—(1) This rule applies where an accused has elected court-martial trial under article 16 of the Standing Civilian Courts Order 1997(**a**), or is to be treated under article 17 of that Order as if he had elected court-martial trial.

(**a**) S.I. 1997/172.

(2) On receipt of notice of the election, the prosecuting authority shall determine whether the charge is to be tried by general court-martial or district court-martial.

(3) Subject to paragraph (4), an accused shall be treated for the purposes of these Rules as if he had been notified by his commanding officer that he is to be tried by court-martial under rule 13.

(4) The prosecuting authority shall serve on the accused and the court administration officer a charge sheet appropriate for the court-martial trial.

Accused's parent or guardian

2.—(1) This rule applies where—

(a) an accused is under the age of 18 years, or

(b) the offence with which the accused is charged is alleged to have been committed during a period of parental recognisance.

(2) Where the prosecuting authority or the court administration officer is required to serve any document on the accused under these Rules, he shall as soon as is practicable serve a copy of that document on a parent or guardian of the accused who is a service parent or guardian.

(3) Where the accused has not appointed a legal representative, any parent or guardian of the accused may exercise on behalf of the accused the rights granted to the accused in these Rules and may represent the accused in any proceedings of the court-martial in such matter and to such extent as the judge advocate thinks fit.

(4) (a) The judge advocate shall issue a witness summons in accordance with rule 24 in respect of any parent or guardian on whom a document has been served in accordance with paragraph (2) to attend the court-martial.

(5) Any parent or guardian of the accused may, if present—

(a) give evidence on oath and call witnesses; and

(b) address the court.

PART 3

APPEALS FROM STANDING CIVILIAN COURTS

Forwarding an appeal to the prosecuting authority

3.—(1) Where the higher authority receives a notice of appeal against conviction or sentence (or both) lodged under paragraph 18(3) of Schedule 3 to the Armed Forces Act 1976(**a**), he shall forward the notice to the prosecuting authority with a view to the appeal being heard by a court-martial.

(2) On receipt of a notice under paragraph (1), the prosecuting authority shall determine whether the appeal is to be heard by general court-martial or district court-martial

(3) Subject to paragraphs 4 to 6, these Rules shall be complied with as if the charge which is the subject of the appeal were a charge preferred against the accused under section 83B(4)(**b**) of the Act.

Charge sheet on appeal

4.—(1) Any alternative charge preferred against the accused for trial by the Standing Civilian Court on which no finding was made may be added to the charge sheet for trial by the court-martial.

(**a**) 1976 c. 52; Schedule 3 was amended by the Armed Forces Act 1996, section 5 and Schedule 1.
(**b**) Section 83B was inserted by the Armed Forces Act 1996, section 5 and Schedule 1.

(2) The prosecuting authority may not amend or substitute another charge or charges for, or discontinue proceedings on, the charge which is the subject of the appeal.

Appeal against sentence alone

5. Where the appeal in respect of a charge is against sentence alone, the court shall proceed as if the accused had pleaded guilty to that charge before the judge advocate.

Sentencing on appeal

6.—(1) Where the appeal in respect of a charge is against conviction alone and the court find the accused guilty of the charge, it shall pass as the sentence of the court-martial in respect of that charge the sentence passed for that offence by the Standing Civilian Court or any lesser sentence which it considers appropriate.

(2) In any other case where, on appeal, the court-martial is required to pass sentence, it shall proceed to sentence the accused in accordance with these Rules subject to sub-paragraphs (3) to (5).

(3) The prosecuting authority shall, where practicable, in addition to the information listed in rule 82(1), as modified by Part 1 of this Schedule, present to the court information concerning—

(a) any offences which the Standing Civilian Court took into consideration;

(b) the result of any review of the findings or sentence of the Standing Civilian Court.

(4) In addition to its power under rule 79, the court may take into consideration any offence which was taken into consideration by the Standing Civilian Court and as to the judge advocate seems proper.

(5) The court shall award a separate sentence for each offence.

Appeal by parent or guardian of an accused

7. Where a parent or guardian appeals against an order against him made by the Standing Civilian Court under paragraph 13 of Schedule 5A to the Act, and the accused in respect of whose conviction the order was made does not appeal against that conviction, the judge advocate shall issue a witness summons in accordance with rule 24 in respect of that accused to attend the court-martial.

Abandonment of appeal

8.—(1) An accused who has given notice of appeal to a court-martial against finding or sentence of the Standing Civilian Court may abandon the appeal or any part of it at any time before the commencement of the hearing by court-martial by giving notice in writing to the court administration officer.

(2) An accused who has given notice of appeal to a court-martial may not abandon the appeal or any part of it after the commencement of the hearing by court-martial except with the leave of the judge advocate.

(3) Where an accused fails to appear before the court-martial at the appointed time or subsequently thereafter, the judge advocate, if he considers that there is no reasonable explanation for the failure to appear, may direct that the appeal be treated as abandoned.

(4) An accused may not revive an appeal or any part of it which he has abandoned or which is treated as abandoned.

SCHEDULE 7

Rule 95

REVOCATIONS

Rules revoked	*Reference*
The Courts-Martial (Army) Rules 1997	S.I. 1997/169
The Courts-Martial (Army) (Amendment) Rules 2000	S.I. 2000/2374
The Courts-Martial (Army) (Amendment) Rules 2002	S.I. 2002/230
The Courts-Martial (Army) (Amendment) Rules 2005	S.I. 2005/3483
The Courts-Martial (Army) (Amendment) Rules 2007	S.I. 2007/2397

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the procedure governing the prosecution and trial of offences at courts-martial under the Army Act 1955 (c.18). The Rules generally accord with procedures in the Crown Court and the Criminal Procedure Rules 2005. They replace and revoke the Courts-Martial (Army) Rules 1997 (S.I. 1997/169) and take account of changes in the law and procedure since then, giving effect in particular to the provisions of the Armed Forces Act 2001 (c.46) and, where possible, align procedures with the Royal Navy and Royal Air Force in preparation for the introduction of the standing Court Martial under the Armed Forces Act 2006 (c.52).

Part 2 of the Rules regulate the functions of the prosecuting authority and his powers to conduct formal preliminary examinations of witnesses and to modify charge sheets. This part also makes provision for notification of the accused's commanding officer and others of proceedings or changes to charges. Matters relating to charges and joinder are also contained in this part and in Schedule 1, the wording of which reflects the newly revised wording of the Criminal Procedure Rules.

Part 3 make provision for administrative functions in relation to courts-martial and detail those not eligible for membership of a court-martial board.

Rules providing for witnesses are at Part 4. These include rules for the summonsing of witnesses to attend in person or to produce a document or thing that are now possible following the commencement of section 25 of the Armed Forces Act 2001.

Evidence as to bad character and hearsay evidence is admissible in courts-martial in the same way as in the Crown Court by virtue of section 135 of, and Schedule 7 to, the Criminal Justice Act 2003. The rules at Part 5 regulate the application for and admission of such evidence: they mirror the Crown Court procedures.

Part 6 unifies and simplifies the various types of preliminary proceedings under the previous rules (the pre-trial hearing, the hearing for directions and the preparatory hearing) into a single hearing, known as the preliminary hearing. At such a hearing the judge advocate may make any necessary directions, orders and rulings to secure the efficient management of the case and deal with any points of law or other matters that may arise before trial.

New in these Rules is the power for a judge advocate to arraign an accused person before the commencement of a trial. These and other provision relating to severance of charges, procedures after not guilty pleas, disputes of facts after finding of guilty and changes of plea are contained in Part 7.

Part 9 makes general provisions as to the appointment of a defending officer and a legal representative as well as to the roles of the judge advocate and president of the board. These Rules also detail the procedures to be followed where an accused wishes to challenge a member or members of the court-martial. The requirements for the swearing of oaths or the making of affirmations and the forms that they should take are found in this Part and Schedule 4.

The sequence of events at a trial and rules relating to the admission of evidence live television and of video recording of testimony from child witnesses are included in Part 10. These mirror the Criminal Proceedings Rules and Crown Court practice.

The procedures for determining sentence, including who may have a casting vote, as well as what evidence shall be presented before sentence is considered, is contained in Part 11.

A period of 28 days from the day sentence is announced is prescribed within which an accused may present a petition against finding or sentence or both to the reviewing authority, who is required to give reasons for his decision if such a petition is presented. These provisions are found in Part 12 and guidance for petitioners is in Schedule 5.

Part 13 makes miscellaneous provisions, in particular rule 90 conveys new jurisdiction (as provided for in paragraph 21 of Schedule 16 to the Armed Forces Act 2006) on the Courts-Martial Appeal Court to hear appeals against rulings, directions and orders made at preliminary hearings and against orders made restricting reporting or excluding the public. This part also including the power for a commanding officer or a judge advocate to make an order under section 7 of the Bankers' Books Evidence Act 1879 (c. 11).

Modifications to these Rules with respect to the courts-martial of civilians, including the appointment of civilian members to the court-martial board, are contained in rule 91 and Schedule 6.

Revocations of previous statutory instruments are at Schedule 7.

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