STATUTORY INSTRUMENTS

1983 No. 719

DEFENCE

The Rules of Procedure (Army) (Amendment) Rules 1983

Made - - - - - 11*th May* 1983

Laid before Parliament 12*th May* 1983

Coming into Operation in accordance with Rule 1

The Secretary of State in exercise of the powers conferred on him by sections 103 to 106 and 209 of the Army Act 1955**(a)**, and of all other powers enabling him in that behalf, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Rules of Procedure (Army) (Amendment) Rules 1983 and shall come into operation on such date as section 58 of the Criminal Justice Act 1982**(b)** comes into force.

Interpretation

2. In these Rules, "the Principal Rules" means the Rules of Procedure (Army) 1972**(c)**.

3. The Principal Rules as amended**(d)** shall be further amended in the manner and to the extent prescribed in the Schedule to these Rules.

Michael Heseltine,
Secretary of State for Defence.

Dated this 11th day of May 1983.

(a) 1955 c. 18. **(b)** 1982 c. 48. **(c)** S.I. 1972/316.
(d) The relevant amending instruments are S.I. 1977/92, 1981/1220 and 1982/369.

SCHEDULE

AMENDMENTS TO THE RULES OF PROCEDURE (ARMY) 1972(c)

1. In Rule 9 of the Principal Rules (Summary of evidence) for paragraph (*d*) there shall be substituted the following:—

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

"Do you wish to say anything? You are not obliged to do so, but, if you wish, you may give evidence on oath. Any evidence you give will be taken down in writing and may be given in evidence.".

Any evidence given by the accused shall be recorded in writing and, immediately thereafter, the record of his evidence shall be read over to him and corrected where necessary and he shall be asked to sign it;".

2. In Rule 59 of the Principal Rules (Explanation to accused of his rights when making his defence):—

(*a*) in paragraph (1)(*a*) after the words "as a witness" there shall be deleted the words "or make a statement without being sworn, but that he is not obliged to do either";

(*b*) in paragraph (1)(*b*) there shall be deleted the comma after the words "(if any)" and the words "but that, if he makes a statement without being sworn, no one will be entitled to ask him any questions";

(*c*) in paragraph (1)(*c*) after the words "gives evidence" there shall be deleted the words "or makes a statement";

(*d*) in paragraph (2) after the words "evidence on oath" there shall be deleted the words "or to make a statement without being sworn".

3. In the form contained in Schedule 1(2) to the Principal Rules (SUMMARY OF EVIDENCE):—

(*a*) for the paragraph beginning "The accused having been duly cautioned" and ending "to call a witness(es)." there shall be substituted the following:—

"The accused having been duly cautioned in accordance with Rule of Procedure 9(*d*) elects (to give evidence on oath) (and) (to call (a witness) witnesses)).[3]";

(*b*) in footnote 1 after the words "evidence on oath" there shall be deleted the words "or the accused makes a statement without being sworn";

(*c*) for footnote 3 there shall be substituted the following:—

"3 Include the words appropriate to the election of the accused.".

4. In the form contained in Schedule 4(6) to the Principal Rules (RECORD OF PROCEEDINGS OF A COURT-MARTIAL),

(*a*) in Part D3 there shall be deleted from the first question the words "or do you wish to make a statement without being sworn";

(*b*) Part D4 shall be deleted and the following substituted:—

" "D4 page .....

The witnesses for the defence (including the accused) are called

First witness for the defence. ..... being duly sworn[1] says:—

continued on page .....

5. In Schedule 5 to the Principal Rules (SENTENCES):—

(*a*) under the heading "(1B) SPECIAL SENTENCE FOR YOUNG SERVICE OFFENDERS." there shall be deleted the existing form of Custodial Order and the following shall be substituted:—

"To be committed to be detained in an appropriate institution in accordance with the provisions of section 71AA of the Army Act 1955 for a period of .....".	Custodial order

(*b*) under the heading "(3A) IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE[1]" and in sub-paragraphs (*a*) and (*b*) thereof there shall be deleted the words "(not to exceed 12 months)" wherever they appear.

6. In Appendix 2 to Schedule 9 to the Principal Rules (MODIFICATIONS OF SCHEDULE 5 TO THESE RULES):—

(*a*) under the heading "OFFENDER 17 OR OVER BUT UNDER 21":—

(i) the marginal annotation "Imprisonment" and the words "To be imprisoned for .....[1]" shall be deleted;

(ii) the existing form of Custodial Order shall be deleted and the following shall be substituted:—

"Custodial Order	To be committed to be detained in an appropriate institution in accordance with the provisions of paragraph 10 of Schedule 5A to the Army Act 1955 for a period of .....".

(*b*) under the heading "ORDERS AGAINST SERVICE PARENT OR GUARDIAN" and in relation to the order to enter into a recognisance there shall be deleted the words "(amount, not to exceed £50)".

7. In Appendix 3 to Schedule 9 to the Principal Rules at Serial 8 there shall be substituted for the words "borstal institution" the words "youth custody centre", and for the words "The Governor of the institution" there shall be substituted the words "The Governor of the centre".

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules further amend the Rules of Procedure (Army) 1972 ("the Principal Rules").

Contd. overleaf

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

They are consequential upon the provisions of the Criminal Justice Act 1982 ("the 1982 Act") and are to come into effect on the same date as section 58 of the 1982 Act which deals with certain other provisions affecting courts-martial.

Paragraph 1 of the Schedule amends Rule 9 of the Principal Rules as to provide that an accused at the taking of a summary of evidence has the same choices as at a trial by court-martial, which in consequence of section 72(1) of the 1982 Act no longer include the right to make a statement without being sworn.

Paragraph 3 of the Schedule makes a consequential amendment to the prescribed form of a summary of evidence.

Paragraph 2 of the Schedule amends Rule 59 of the Principal Rules so as to implement section 72 of the 1982 Act in relation to procedure at trial by court-martial.

Paragraph 4 of the Schedule makes a consequential amendment to the prescribed record of proceedings of a court-martial.

Paragraph 5 of the Schedule amends Schedule 5 to the Principal Rules in consequence of the provisions of section 71AA of the Army Act 1955 as amended by the Criminal Justice Act 1982, which now require the form of sentence of a custodial order in respect of a young service offender to commit the offender to be detained in an appropriate institution for a fixed period and not a maximum period. Further, in consequence of the provisions of section 69(2) of the Criminal Justice Act 1982, the forms of sentence of imprisonment in default of payment of a fine are amended to permit the maximum period of imprisonment to be related to the amount of the fine as now prescribed by the table introduced into section 71B(2) of the Army Act 1955.

Paragraphs 6 and 7 of the Schedule amend Appendices 2 and 3 to Schedule 9 to the Principal Rules in consequence of the provisions of section 1(1) and (3) of the 1982 Act, adapted to trial by court-martial in Schedule 8 to the Act, that no court shall pass a sentence of imprisonment on an accused under 21 years of age or any sentence of borstal training. Paragraph 6(*a*)(ii) of the Schedule amends the form of sentence of a custodial order made under paragraph 10 of Schedule 5A of the Army Act 1955 in respect of young civilian offenders. The amendments to paragraph 10 made by the Criminal Justice Act 1982 are similar to those made to section 71AA of the Army Act 1955, referred to above, in respect of young service offenders and the form of sentence has been amended accordingly. The maximum amount of a recognisance into which a parent or guardian may be ordered to enter is no longer limited to £50, being currently limited to £500. The opportunity has been taken to delete any reference to a maximum in Appendix 2 to Schedule 9.

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