STATUTORY INSTRUMENTS

1984 No. 1670

DEFENCE

The Rules of Procedure (Army) (Amendment) Rules 1984

Made - - - -	17*th October* 1984
Laid before Parliament	29*th October* 1984
Coming into Operation	20*th November* 1984

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 1984 and shall come into operation on 20th November 1984.

Interpretation

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

Amendment

3. The Principal Rules as amended (**c**) shall be further amended as follows:

(1) In Rule 25 by the substitution for paragraph (1)*(d)* (iv) of the following:—

"(iv) a copy of the convening order and, if the accused so requires, the names of any member or waiting member not appointed by name;".

(2) In Rule 59 by:—

(a) the deletion in paragraph (1) of the word "After" and by the substitution therefor of the words "Where the accused is not represented by a person qualified to appear as counsel at a court-martial, after" and

(b) the insertion in paragraph (2) between the words "has" and "complied" of the words "if necessary".

(3) In Rule 81 by the substitution for paragraphs (1)*(a)* to (1)*(f)* inclusive of the following:—

"*(a)* an accused offers a plea to the jurisdiction of the court; or

(b) an accused before pleading to a charge offers a plea in bar of trial; or

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

(**a**) 1955 c.18; section 209 was amended by the Armed Forces Act 1976 (c.52), Schedule 9, paragraph 5.
(**b**) S.I. 1972/316.
(**c**) The relevant amending instruments are S.I. 1977/92, 1981/1220, 1982/369, 1983/719.

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

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

(f) an application is made by a party calling a witness for permission to treat that witness as hostile; or

(g) a submission is made to the court in respect of any charge that the prosecution has failed to establish a prima facie case for the accused to answer;".

(4) In Rule 92 by the substitution for paragraph (2) of the following:—

"(2) When a person has been employed under Rule 31A(1) above, a transcript of his record of the proceedings need be made only of that part which relates to a charge of which the accused has been found guilty, provided that:—

(a) where there is a judge advocate he may, where a plea of guilty (including a plea of guilty under Rule 41(2)) has been accepted and he has himself made a record sufficient to comply with the requirements of paragraph (1) of this Rule, before or after the conclusion of the trial, direct that the verbatim record need not be transcribed;

(b) where there is a judge advocate and a finding of guilty has been made as provided by Rule 46(1), the judge advocate may, before or after the conclusion of the trial, direct that no transcript need be made of any part of the verbatim record relating to that charge which has in his opinion become no longer material to the confirming officer's consideration of the merits of the case;

(c) the confirming officer, any reviewing authority or the House of Lords, the Courts-Martial Appeal Court, the Judge Advocate General or his Deputy overseas may, notwithstanding any acquittal or application of sub-paragraphs *(a)* or *(b)* above, require the transcription of the verbatim record of the proceedings or any part of them. The references in this sub-paragraph to the confirming authority or a reviewing authority refer also to any officer or authority who would have been the confirming officer or a reviewing authority if the accused had been found guilty of any charge.".

(5) In Rule 100 by the deletion in paragraph (2) of the words "or sentence".

(6) In Schedule 2(1) (commencement of charge-sheets), for the form of commencement specified for section 205(1)*(h)*, there shall be substituted the following:—

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

".

(7) In Schedule 2(3) (illustrations of charge-sheets), in the second illustration of a charge-sheet, for the commencement of that charge-sheet, there shall be substituted the following:—

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

(8) In Schedule 5(1) (sentences)—

(a) under the heading "Warrant Officers and Non-Commissioned Officers", for the form of sentence of dismissal from the Territorial Army, there shall be substituted the following:—

"Dismissal from the Territorial Army	To be dismissed from the Territorial Army (non-commissioned officers of the Territorial Army only). ".

(b) under the heading "Soldiers", for the form of sentence of dismissal from the Territorial Army, there shall be substituted the following:—

"Dismissal from the Territorial Army	To be dismissed from the Territorial Army (men of the Territorial Army only). ".

(9) In paragraph 11 of Schedule 9 by the substitution for sub-paragraph (5) of the following:—

"(5) A parent or guardian who is to be heard under this paragraph may—

(a) give evidence on oath, in which case he shall be liable to be cross-examined by the prosecutor and have questions put to him by the court, and otherwise to be treated as a witness in accordance with the provisions of these Rules;

(b) call witnesses on his behalf, whether or not he gives evidence himself; and

(c) address the court.".

Michael Heseltine,
Secretary of State for Defence.

Dated this 17th day of October 1984.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

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

The amendment to Rule 25 enables an accused person to know in advance precisely the identity of those officers by whom he is liable to be tried by court-martial.

The amendment to Rule 59 dispenses with the need for a judge advocate to explain to an accused who is legally represented the courses of action open to him in the conduct of his defence at a court-martial.

The amendment to Rule 81 enables a judge advocate sitting alone to adjudicate upon a plea to the jurisdiction of a court-martial, in order to avoid the court hearing evidence which could prejudice the subsequent trial of the case.

The amendment to Rule 92 precisely specifies the circumstances in which a verbatim record or parts thereof of the proceedings of a court-martial made by a person employed under Rule 31A(1) need be transcribed and specifically provides authority for the courts, persons and authorities therein mentioned to call for transcripts of such proceedings or part thereof to enable them to carry out their responsibilities under the Army Act 1955 or the Courts-Martial (Appeals) Act 1968 (c.20) in respect of post-trial matters or appeals.

The amendment to Rule 100 reflects the fact that an accused officer or soldier has no right of appeal to the Courts-Martial Appeal Court against sentence only.

The amendments to Schedules 2 and 5 are consequent upon section 1(1) of the Reserve Forces Act 1982 (c.14) by which the name of the Territorial and Army Volunteer Reserve was changed to the Territorial Army.

The amendment to paragraph 11 of Schedule 9 to the Principal Rules abolishes the right of a service parent or guardian to make a statement without being sworn when being heard by a court-martial which is considering exercising any of its powers to make an order or declaration against such parent or guardian under paragraphs 13 and 14 of Schedule 5A to the Army Act 1955. This amendment to the Principal Rules reflects, although it is not directly consequential upon, Section 72 of the Criminal Justice Act 1982 (c.48), which took away a similar right of an accused to make an unsworn statement.

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