STATUTORY INSTRUMENTS

1986 No. 2126

DEFENCE

The Rules of Procedure (Army) (Amendment) Rules 1986

Made - - -	*4th December* 1986
Laid before Parliament	*8th December* 1986
Coming into Operation	*1st January* 1987

The Secretary of State in exercise of the powers conferred on him by sections 103, 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 1986 and shall come into operation on 1st January 1987.

Interpretation

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

Amendment

3. The Principal Rules shall be amended as follows:

(1) In Rule 16 by the substitution for paragraph (2)(*a*) of the following:

"(2)*(a)*Any number of accused may be joined together in one charge for an offence alleged to have been committed by all of them, whether jointly or severally."

(2) In Rule 60, paragraph (2) shall be renumbered paragraph (3) and before that paragraph as so renumbered, there shall be inserted the following paragraph:

"(2) If the defence intends to call two or more witnesses to the facts of the case, and those witnesses include the accused, the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs."

(**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; this instrument has been amended by S.I 1977/92, 1981/1220, 1982/369, 1983/719 and 1984/1670.

(3) In Rule 71 by:—

(a) the deletion in paragraph (1)(*b*) of the words "which is recorded in the service books" and by the substitution therefor of the words "which is contained in the service record" and

(b) the deletion in paragraphs (2) and (4) of the word "book" and by the substitution therefore of the word "record".

(4) In Rule 100 by:—

(a) the deletion in paragraph (2) of the comma after the words "Courts-Martial (Appeals) Act 1968" and

(b) the deletion in paragraph (4) of the words "or an officer authorised to reconsider a sentence of a court-martial under section 114 of the Act".

(5) In Schedule 2(2) (Statements of Offences) in forms specified for sections 28(a), 29(b), 33(1)(a), 55(1) and (2) and 65(a) and (b) by the deletion of the word "striking".

(6) In Schedule 2(2) (Statements of Offences), in the form specified for section 69 by the deletion of the word "neglect".

(7) In Schedule 2(2) (Statements of Offences), after the form specified for section 44A, there shall be inserted the following:—

"SECTION 44B

(a) Intentionally impairing the efficiency or effectiveness of equipment which is (public) property contrary to
(service)

(1)

Section 44B(1)(a) of the Army Act 1955.

(b) Intentionally (interfering with) a message or other signal contrary to
(modifying)
section 44B(1)(b) of the Army Act 1955.

(a) Conduct likely to impair the efficiency or effectiveness of equipment which is (public) property contrary to
(service)

(2)

Section 44B(2)(a) of the Army Act 1955.

(b) Conduct likely to (interfere with) a message or other signal contrary
(modify)
to section 44B(2)(b) of the Army Act 1955.".

(8) In Schedule 2(2) (Statements of Offences), for the form specified for section 62, there shall be substituted the following:—

"SECTION 62

(a) Making a false official document or record contrary to section 62(1)(a) of the Army Act 1955.

(b) Making a false entry in an official document or record contrary to section 62(1)(b) of the Army Act 1955.

(c) Tampering with an official document or record contrary to section 62(1)(c) of the Army Act 1955.

(d) Failing to make an entry in an official document or record with intent to deceive contrary to section 62(1)(d) of the Army Act 1955."

(9) In Schedule 2(3) (Illustrations of Charge-Sheets) in the second illustration of charge-sheet, by the deletion:—

(a) of the word "striking" in the statement of offence of the second charge and by the substitution therefor of the words "using violence to" and

(b) of the word "struck" in the particulars of the second charge and the substitution therefor of the word "kicked" and

(c) of the words "Staff Captain "A"" in the endorsement for trial and the substitution therefor of the words "Staff Officer, Grade 3, G1/G4".

(10) In Schedule 4(6) (Record of Proceedings of a Court-Martial) in Form F2 by the substitution for the first three sets of questions and answers there of the following:—

" **Q.** Do you recognise the accused as . . . (number, rank and name)?

A. . . .

Q. Do you produce a summary of the service record of the accused?

A. I produce . . .

Q. Have you compared it with the service record?

A. . . .

Q. Do the entries on it correspond with the service record?

A. . . . "

(11) In Schedule 5 in Form (3) in substitution therefor of the following:—

" (3) CONSECUTIVE SENTENCES OF IMPRISONEMENT (OR PERIODS OF DETENTION UNDER CUSTODIAL ORDERS) FOR OFFENCES AGAINST SECTION 70 OF THE ACT.

(a) In cases where the accused is convicted only of offences under s. 70 of the Act.

To be (imprisoned) (committed to be detained under a custodial order) for . . . in respect of the . . . charge, for . . . in respect of the . . . charge, and for . . . in respect of the . . . charge (etc., as required). These (terms of imprisonment) (periods of detention under the custodial orders) are to run consecutively (or the (terms of imprisonment) (periods of detention under the custodial orders) in respect of the . . . and . . . charges are to run consecutively with each other but concurrently with the (term(s) of imprisonment) (period(s) of detention under the custodial order(s)) in respect of the . . . charge(s)).

(b) In cases where the accused is convicted of offences against s. 70 of the Act and also of one or more offences against ss. 24 to 69 of the Act.

To be (imprisoned) (committed to be detained under a custodial order) for... in respect of the... charge, for... in respect of the... charge, and for... in respect of the... charge (etc., as required, in respect of all the offences against s.70 for which the court desires to award imprisonment or a custodial order) and to be (imprisoned) (to be committed to be detained under a custodial order)/to undergo detention for... in respect of the... charge(s) (specifying the charge or charges other than those against s.70 for which the court desires to award imprisonment, a custodial order or detention). The (terms of imprisonment) (periods of detention under the custodial orders) in respect of the... and... charges are to run consecutively with each other but concurrently with the (terms of imprisonment) (period of detention under the custodial order) (term of detention) in respect of the... charge(s)."

(12) In Schedule 5 in Form (3A) in substitution therefor of the following:—

" (3A) IMPRISONMENT (COMMITAL FOR DETENTION UNDER CUSTODIAL ORDER) IN DEFAULT OF PAYMENT OF FINE.

(a) To be (imprisoned) (committed to be detained under a custodial order) and to be fined..., and if any part of that fine is not duly paid or recovered on or before the date on which the accused could otherwise be released from that (term of imprisonment) (period of detention under the custodial order), to (undergo a further consecutive term of imprisonment of...) (be committed to be detained under a custodial order for a further consecutive period of...), subject to and in accordance with the provisions of section 71B of the Army Act 1955. "

(b) To be fined...; and if any part of that fine is not duly paid or recovered on or before the date on which the accused could otherwise be released from the (term of imprisonment) (period of detention under the custodial order) which he is already serving or is otherwise liable to serve, to (undergo a further consecutive term of imprisonment of...) (be committed to be detained under the custodial order for a further consecutive period of...), subject to and in accordance with the provisions of section 71B of the Army Act, 1955)."

(13) In Schedule 5 in Form (4) in substitution therefor of the following:—

" (4) ORDER THAT SENTENCES ARE TO BEGIN TO RUN ON THE EXPIRY OF SOME OTHER SENTENCE.

The court hereby order that the sentence of... (state period) (imprisonment) (detention under a custodial order) (detention) passed on the accused by this court-martial shall begin to run from the expiry of the sentence of... (state period) (imprisonment) (detention under a custodial order) (detention) passed upon him/her by... on... ".

(14) In paragraph 44 of Schedule 9 by the substitution for sub-paragraph (1) of the following:—

"(1) Rule 100 above (petitions) shall apply—

(a) as if, in paragraph (1) of that Rule, for the words from "an accused" to "insanity" there were substituted the words "a person who has a right to petition against the finding or sentence or both of a court-martial by virtue of section 108 of the Act (as modified in relation to appeals from Standing Civilian Courts by Article 89 of the Standing Civilian Courts Order 1977)";

(b) as if, in paragraph (2) of that Rule, for the words from "an accused" to "finding" there were substituted the words "a person who has a right to petition against the finding or sentence or both of a court-martial by virtue of section 108 of the Act (as modified in relation to appeals from Standing Civilian Courts by Article 89 of the Standing Civilian Courts Order 1977) wishes to petition after promulgation against the finding or sentence";

(c) as if, in paragraph (3) of that Rule, for the words from "an accused" to "insanity" there were substituted the words "a person who has a right to petition against the finding of a court-martial by virtue of section 108 of the Act (as modified in relation to appeals from Standing Civilian Courts by Article 89 of the Standing Civilian Courts Order 1977)";

(d) as if, in paragraph (4) of that Rule, for the words "an accused who has been sentenced by a court-martial" there were substituted the words "a person who has a right to petition against the sentence of a court-martial by virtue of section 108 of the Act (as modified in relation to appeals from Standing Civilian Courts by Article 89 of the Standing Civilian Courts Order (1977)";

(e) as if, in paragraphs (1) to (4) of that Rule, for the words "Schedule 7" there were substituted the words "Appendix 6 to Schedule 9".".

(15) In Appendix 2 to Schedule 9 (Modifications of Schedule 5 to the Principal Rules):—

(a) in that Part entitled "Offender 21 or over", after the form specified for the imposition of a fine there shall be inserted the following:—

"Community supervision order. To be subject to a community supervision order for ..... (not to exceed 12 months), that is to say, to comply during that period with the reasonable requirements of ....., a supervisor whom the court specify in this case; (and the court direct that the accused shall comply with the following prescribed requirements:—

.....)"

(b) in that Part entitled "Offender under 17", before the form specified for the making of a reception order, there shall be inserted the following:—

"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....."

(16) In paragraph 26 of Part II of Schedule 9, by the substitution for "section 209(3A)(c)" of "section 209(3B)(c)".

(17) In paragraph 4(*a*) of Appendix 4 to Schedule 9, by the substitution for "section 209(3A)(c) of "section 209(3B)(c)".

R. Freeman,
Parliamentary Under Secretary of State,
Ministry of Defence.

Dated this 4th day of December 1986.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules further amend the Rules of Procedure (Army) 1972. They are for the most part consequential upon the passing of the Armed Forces Act 1986 (c. 21).

Rule 60 of the Principal Rules is amended so as to follow the practice adopted in civil courts since the provisions of the Police and Criminal Evidence Act 1984 (c. 60) came into effect, whereby if an accused person is to give evidence on his own behalf, and to call witnesses as to fact, he must give his evidence first.

Rule 71 and Schedule 4(6) of the Principal Rules are amended to allow documentary evidence of service records to be admitted in evidence where such records are maintained in more modern systems than "service books".

Rule 100 of the Principal Rules is amended to delete reference to section 114 of the Army Act 1955 which is repealed by the Armed Forces Act 1986.

Schedules 2(2) and (3) of the Principal Rules are amended to include statements of offences created or amended by the Armed Forces Act 1986.

Schedule 9 of the Principal Rules is amended to provide for the extension of punishments which may be awarded to civilians as provided for in the Armed Forces Act 1986.

The remaining provisions are minor and technical corrective amendments to the Principal Rules.

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