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STATUTORY INSTRUMENTS

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**1991 No. 2786**

**DEFENCE**

**The Rules of Procedure (Air Force) (Amendment) Rules 1991**

*Made* - - - - *9th December 1991*  
*Laid before Parliament* *10th December 1991*  
*Coming into force* - - *1st January 1992*

The Secretary of State, in exercise of the powers conferred upon him by sections 103 and 209 of the Air Force Act 1955<sup>(1)</sup>, hereby makes the following Rules:

**Citation and commencement**

1. These Rules may be cited as the Rules of Procedure (Air Force) (Amendment) Rules 1991 and shall come into force on 1st January 1992.

**Interpretation**

2. In these Rules “the principal Rules” means the Rules of Procedure (Air Force) 1972<sup>(2)</sup>.

**Amendment**

3. The principal Rules shall be amended in the manner and to the extent prescribed in the Schedule to these Rules.

9th December 1991

*Archie Hamilton*  
Minister of State, Ministry of Defence

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(1) 1955 c. 19.

(2) S.I.1972/419, amended by S.I. 1974/752, 1976/1772, 1977/94, 1981/1219, 1982/368, 1983/718, 1986/2125, 1987/2000, 1987/2172, 1989/2129.

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SCHEDULE

AMENDMENTS TO THE RULES OF PROCEDURE (AIR FORCE) 1972

- 1. In Schedule 2(2) (charge-sheets—statements of offences)—
  - (a) under Air Force Act 1955 section 44, for each of the expressions “public property”, “service property” and “property belonging to a person subject to air-force law” in each place where they occur there shall be substituted the word “property”;
  - (b) under Air Force Act 1955 section 45, after the word “public” there shall be inserted the word “or”;
  - (c) at the end there shall be inserted the following—

“ARMED FORCES ACT 1991

SECTION 18

(8) Intentionally obstructing a person exercising a power conferred on him by virtue of the making of an assessment order, contrary to section 18(8) of the Armed Forces Act 1991.

SECTION 20

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(9) Intentionally obstructing to remove to prevent the a person exercising a power removal of under a protection order	a child contrary to section 20(9) of the Armed Forces Act 1991.”.
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2. In Schedule 5(1A) (sentences—special sentences for juveniles) there shall be inserted at the beginning the following—

Custody for life (mandatory).	To custody for life in accordance with the provisions of section 71A(1A) of the Air Force Act 1955.
Custody for life (discretionary).	To custody for life in accordance with the provisions of section 71A(1B) of the Air Force Act 1955. The court is satisfied that the accused qualifies for a custodial sentence under paragraph[s] [(a)][(b)][(c)] of section 71A(1F) of that Act for the following reason[s]..... ..... The court is passing a custodial sentence because ..... ..... (to be explained to the accused in ordinary language).

3. For Schedule 5(1B) (sentences—special sentence for young service offenders) there shall be substituted the following—

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Custodial order.

**(1B) SPECIAL SENTENCE FOR YOUNG SERVICE OFFENDERS.**

To be detained in an appropriate institution in accordance with the provisions of section 71AA of the Air Force Act 1955 for a period of .....

The court is satisfied that the accused qualifies for a custodial sentence under paragraph[s] [(a)][(b)][(c)] of section 71A(1F) of that Act for the following reason[s] .....

The court is passing a custodial sentence because .....

*(to be explained to the accused in ordinary language).*

4.—(1) In rule 3A(1), after the words “paragraph 1, 2” there shall be inserted “2A”.

(2) In Schedule 9 Part I (provisions relating to civilians—general modifications), after paragraph 2 there shall be inserted the following paragraph—

“2A. Rule 21 (alternative courses open to an appropriate superior authority) shall have effect as if—

- (a) that Rule were numbered paragraph (1);
- (b) in that paragraph after the words “if an accused elects to be tried by court-martial” there were inserted the words “and does not subsequently in accordance with paragraph (2) of this Rule withdraw his election,”;
- (c) there were inserted after paragraph 1 of that Rule the following paragraph—

“(2) Subject to paragraphs (3) and (4) below, an accused who has elected trial by court-martial may withdraw his election at any time before the trial and the charge may then be dealt with summarily by an appropriate superior authority.

(3) An accused who elects trial by court-martial shall not be entitled to withdraw his election before he has been remanded for trial if his commanding officer is of the opinion that it is undesirable that he should do so.

(4) An accused who elects trial by court-martial shall not be entitled to withdraw his election after he has been remanded for trial except with the permission of the convening officer.””

5. In Appendix 2 to Schedule 9 (provisions relating to civilians—modifications of Schedule 5)—

- (a) for each of the two forms specified for the making of a custodial order there shall be substituted the following form—

Custodial order.

To be detained in an appropriate institution in accordance with the provisions of paragraph 10 of Schedule 5A to the Air Force Act 1955 for a period of .....

The court is satisfied that the accused qualifies for a custodial sentence under paragraph[s] [(a)][(b)][(c)] of paragraph 10(1AB) for the following reasons .....

The court is passing a custodial sentence because .....

*(to be explained to the accused in ordinary language).*

- (b) the form specified for the making of a reception order shall be deleted.

6. In Appendix 3 to Schedule 9 (provisions relating to civilians—modifications of Schedule 7)—

- (a) in the entry against 8—

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- (i) in the first column for the words “youth custody centre” there shall be substituted the words “young offender institution” and the words “or Northern Ireland” shall be deleted;
  - (ii) for the words “The Governor of the centre” there shall be substituted the words “The Governor of the institution”;
- (b) the entries against 9, 12, 13, 14 and 15 shall be deleted.

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### EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules further amend the Rules of Procedure (Air Force) 1972, consequent upon the passing of the Criminal Justice Act 1988 (c. 33) (the 1988 Act) and the Armed Forces Act 1991 (c. 62) (the 1991 Act). The amendments are contained in the Schedule to the Rules.

Paragraph 1 provides for amendments to the forms for statements of offence for charges under the Air Force Act 1955 (the 1955 Act) in respect of offences relating to property and in respect of new offences under the 1991 Act of intentionally obstructing a person exercising a power under child assessment and protection orders.

Paragraph 2 rectifies omissions by providing for forms in respect of mandatory and discretionary sentences of custody for life for juveniles under the 1955 Act. Additionally, provision is made for the court to record in the discretionary sentence as to its satisfaction that the accused qualifies for the sentence.

Paragraph 3 provides for a replacement form for custodial orders for young service offenders. Additional provision is made for the court to record as to its satisfaction that the accused qualifies for the sentence.

Paragraph 4 makes provision for the circumstances in which a civilian accused may withdraw his election to be tried by court-martial.

Paragraph 5 makes similar provision for forms for sentences of young civilian offenders to whom Part II of the 1955 Act applies as is made by paragraph 3 for young service offenders, and deletes the form for reception orders following the removal by the 1991 Act of the power of courts-martial or Standing Civilian Courts to make such orders.

Paragraph 6 makes amendments to the list of persons to whom a petition may be presented by civilians to whom Part II of the 1955 Act applies consequent on changes effected by the 1988 Act and the 1991 Act.