

1977 No. 88**DEFENCE****The Standing Civilian Courts Order 1977**

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Coming into Operation in accordance with Article 1

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The Secretary of State, in exercise of the powers conferred on him by paragraph 12 of Schedule 3 to the Armed Forces Act 1976(a), and of all other powers enabling him in that behalf, hereby makes the following Order:—

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. This Order may be cited as the Standing Civilian Courts Order 1977 and shall come into operation on such date as section 6 of the Armed Forces Act 1976(a) comes into force.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“the Act of 1955” means, where the accused is charged under the Army Act 1955(b), that Act, or, where he is charged under the Air Force Act 1955(c), that Act;

“the Act of 1976” means the Armed Forces Act 1976(a);

“commanding officer” has the same meaning as if this Order formed part of the Act of 1955;

“counsel” means a person who falls within the provisions of Article 61 below and, in relation to a trial, who has been appointed under Article 4(1)(a) below;

“defending officer” means a person who falls within the provisions of Article 60 below and, in relation to a trial, who has been appointed under Article 4(1)(a) below;

“the directing officer” means, in relation to a civilian who is to be sent for trial by a Standing Civilian Court, the higher authority who is to send him;

(a) 1976 c. 52.

(b) 1955 c. 18.

(c) 1955 c. 19.

“Direction for Trial” has the meaning assigned to it by Article 3(1)(b) below;

“period of parental recognisance” means a period specified in an order made against the accused’s parent or guardian under paragraph 14(1) of Schedule 5A to the Army Act 1955(a), of Schedule 5A to the Air Force Act 1955(b), or of Schedule 4A to the Naval Discipline Act 1957(c), in respect of an offence previously committed by that accused;

“Rules of Procedure” means, where the accused is charged under the Army Act 1955(a), the Rules of Procedure (Army) 1972(d), or, where he is charged under the Air Force Act 1955(b), the Rules of Procedure (Air Force) 1972(e); and

“service parent or guardian” means a parent or guardian—

- (a) who is subject to service law, or
- (b) to whom Part II of the Army Act 1955(a) or Part II of the Air Force Act 1955(b) is applied by section 209 of either Act, or
- (c) to whom Parts I and II of the Naval Discipline Act 1957(c) are applied by section 118 of that Act.

(2) The trial of an accused commences for the purposes of this Order when, in relation to that accused, Article 22 below has been complied with and, where the plea is guilty, the plea has been accepted; and references in this Order to the commencement of the trial shall be construed accordingly.

(3) Any reference in this Order, including its preamble, to an enactment, or an instrument made under an enactment, shall, unless the contrary intention appears, be construed as a reference to that enactment or instrument as amended by any subsequent enactment or instrument, whether passed or made before, on or after the coming into effect of this Order.

(4) The Interpretation Act 1889(f) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament and, saving the effect of section 31 of that Act, as if this Order were an Act of Parliament.

PART II

PROCEDURE BEFORE THE HEARING

Action by higher authority where he considers trial by Standing Civilian Court appropriate

3.—(1) Where, by virtue of paragraph 23(2) or 24(a) of Schedule 9 to the Rules of Procedure, higher authority is of the opinion that a charge to which Part II of that Schedule applies should be tried by a Standing Civilian Court, that authority shall, as the directing officer—

(a) ensure that a charge-sheet containing the charge is prepared, signed and dated by the commanding officer of the accused:

Provided that—

- (i) where there is more than one such charge and the directing officer is of the opinion that the charges should be put in separate charge-sheets, he shall so direct, and shall direct the order in which the charge-sheets are to be tried;
- (ii) where there is more than one accused, he shall direct whether they are to be tried jointly or separately;

(a) 1955 c. 18.

(c) 1957 c. 53.

(e) S.I. 1972/419 (1972 I, p. 1506).

(b) 1955 c. 19.

(d) S.I. 1972/316 (1972 I, p. 965).

(f) 1889 c. 63.

- (b) direct, in the form contained in Part I of Schedule 1 to this Order (in this Order called a “Direction for Trial”), that the charge shall be tried by a Standing Civilian Court, and attach to the Direction for Trial the charge-sheet containing the charge;
- (c) ensure that a magistrate for the trial is or has been specified by or on behalf of the Judge Advocate General in pursuance of section 6(14) of the Act of 1976;
- (d) where the accused was under 17 years of age at the date of the alleged commission of an offence to which the Direction for Trial relates, specify any assessors or members of the court in pursuance of section 6(15) of the Act of 1976;
- (e) appoint, after consultation with the Judge Advocate General or his deputy, the date, time and place for the trial;
- (f) appoint, or detail a commanding officer to appoint, an officer subject to military or air-force law to prosecute;
- (g) take steps in accordance with Article 78 below to procure the attendance at the court of the witnesses to be called for the prosecution;
- (h) send to the accused—
- (i) a summons in the form contained in Part II of Schedule 1 to this Order;
 - (ii) a copy of the charge-sheet;
 - (iii) a copy of the Direction for Trial;
 - (iv) a copy of the available statements or precis of evidence of witnesses whose evidence the prosecutor intends to adduce at the trial:

Provided that any portion of such statements or precis which in the opinion of the directing officer would be inadmissible evidence under the Act of 1976 shall be lightly ruled through on the copies before they are so sent;
- (j) where an accused—
- (i) is under 17 years of age, or
 - (ii) is under 18 years of age and the alleged date of an offence with which he is charged was during a period of parental recognisance,
- send to a parent or guardian of his who is a service parent or guardian a summons in the form contained in Part III of Schedule 1 to this Order, together with a copy of the documents sent to the accused under sub-paragraph (h) above;
- (k) send to the magistrate—
- (i) the Direction for Trial, with the charge-sheet attached;
 - (ii) a copy of the summons sent to the accused under sub-paragraph (h)(i) above;
 - (iii) a copy of any summons sent to a parent or guardian of the accused under sub-paragraph (j) above;

- (l) send to any assessor or member of the court specified under sub-paragraph (d) above a copy of the documents sent to the magistrate under sub-paragraph (k) above:

Provided that where there is more than one charge-sheet he shall send only the first;

- (m) ensure that the commanding officer of the accused, and the prosecutor, have copies of all the documents required to be sent by sub-paragraphs (h) to (k) above.

(2) A direction made under paragraph (1)(b) above shall be without prejudice to the provisions of Articles 6 to 8 below.

(3) Any direction, appointment, specification or other matter which the directing officer is required or authorised under this Article to give, make, or provide for may be varied or revoked by him at any time before the commencement of the trial:

Provided that—

- (a) the date, time or place appointed for the trial may not be varied unless the directing officer has first consulted the Judge Advocate General or his deputy;
- (b) if the directing officer revokes the Direction for Trial, he shall, as a higher authority, proceed with the charge in accordance with the Rules of Procedure as if he had just received it under those Rules and had not been of the opinion that it should be tried by a Standing Civilian Court;
- (c) notification of any variation or revocation shall be sent in writing by the directing officer to any person who by virtue of any provision of this Order is required to have notice of the matter to which the variation or revocation relates.

Preparation of defence

4.—(1) The directing officer shall ensure, with respect to an accused to whom he has sent a summons under Article 3(1)(h) above, that—

- (a) a defending officer or counsel is appointed to defend the accused, unless the accused notifies the directing officer in writing that he does not wish such an appointment to be made;
- (b) the accused is afforded a proper opportunity for preparing his defence and is allowed proper communication with his defending officer or counsel and with his witnesses.

(2) Where the accused desires to call a witness in his defence (other than a witness for the prosecution), he may, not less than 48 hours before the date appointed for his trial, request the directing officer in writing to take steps to procure the attendance at the court of that witness; and the directing officer, on receiving such a request, shall, if he thinks the request reasonable, take steps in accordance with Article 78 below to procure the attendance of that witness at the court.

Objection before trial to assessor or member of the court

5.—(1) An accused to whom a summons has been sent under Article 3(1)(h) above shall be entitled to object, on any reasonable grounds, to any assessor or

member of the court specified for his trial, by stating in writing to the directing officer, not later than 48 hours before the date appointed for his trial, the grounds for his objection.

(2) The directing officer shall, before the court opens for the trial, consider any such objection and—

(a) if he upholds it, shall ensure that the court is properly constituted without the assessor or member of the court objected to; and

(b) whether he upholds it or not, shall notify the accused of his decision.

(3) The provisions of this Article are without prejudice to those of Article 15 below.

Election of trial by court-martial

6.—(1) Subject to the provisions of this Article, an accused to whom a summons has been sent under Article 3(1)(h) above may elect in the following manner to be tried by court-martial, namely—

(a) by notifying the directing officer in writing to that effect at any time before the date appointed for his trial; or

(b) by informing the court to that effect under Article 14 below.

(2) Where a charge-sheet contains two or more charges against him, the accused may elect only in respect of all such charges.

(3) Where there is more than one charge-sheet relating to him, the accused may elect in respect of one or more such charge-sheets.

(4) An accused may not withdraw an election made in accordance with paragraph (1)(a) above unless the directing officer consents.

(5) An accused may not withdraw an election made in accordance with paragraph (1)(b) above.

Election where more than one accused

7. Where two or more accused are to be tried jointly on the same charge-sheet, and one or more but not all of the accused elect in respect of that charge-sheet to be tried by court-martial, any of the accused who does not so elect shall nonetheless be treated for the purposes of the Act of 1976 and this Order (other than Article 8(3) below) as if he had so elected.

Steps to be taken where accused elects

8.—(1) The directing officer, with respect to a charge which is the subject of an election under this Order, shall proceed as a higher authority in accordance with paragraph 25 of Schedule 9 to the Rules of Procedure.

(2) Where the election is made under Article 6(1)(a) above, the directing officer shall notify the following persons of the election, namely—

(a) the Judge Advocate General or his deputy;

(b) any specified assessor or member of the court;

(c) the commanding officer of the accused;

(d) the prosecutor, if appointed by the directing officer;

(e) any witness who has been ordered or summoned to attend the Standing Civilian Court and whose attendance there the election makes unnecessary.

(3) Where the election is made under Article 6(1)(a) above, and is an election to which Article 7 above applies, the directing officer shall also give notice of the election in writing to—

(a) any accused who as a result of the election is treated by virtue of Article 7 above as if he had so elected;

(b) any parent or guardian of such an accused to whom a notice was sent under Article 3(1)(j) above;

and in so doing the directing officer shall explain that by virtue of Article 7 above such an accused is himself deemed so to have elected.

(4) The magistrate, on receiving notification of an election under paragraph (2) above, shall return to the directing officer the charge-sheet to which the election relates and, unless it applies to another charge-sheet, the Direction for Trial.

PART III

PROCEDURE AT THE HEARING

Opening of proceedings

9.—(1) When the court opens for a trial, the name of the accused shall be called out.

(2) The name of any parent or guardian of the accused to whom a summons was sent under Article 3(1)(j) above shall also be called out.

Accused not appearing

10.—(1) If the accused does not appear when his name is called out or within a reasonable time thereafter, the court shall adjourn and report to the directing officer.

(2) Where the directing officer receives such a report, he shall enquire into the matter and consider whether the accused should be arrested by virtue of section 74 of the Act of 1955 (as applied with modifications to civilians by section 209(3)(c) of that Act), with a view to his being brought before the court for his trial.

Arraignment of accused

11.—(1) Subject to Articles 12 and 13 below, when the accused appears before the court, he shall be arraigned.

(2) If there is more than one charge against the accused he shall be required to plead separately to each charge.

(3) If there is more than one charge-sheet against the accused, he shall be arraigned and tried upon the charge in the first of such charge-sheets and the court shall announce its finding thereon and if the accused has pleaded guilty

the court may either proceed to comply with Article 26(1) below before he is arraigned upon the charge in any subsequent charge-sheet or may defer compliance with Article 26(1) below until after the accused has been arraigned and tried upon such a charge.

Ascertainment of accused's age

12. Where it appears to the court that the accused or, where more than one, any of the accused was or may have been under 17 years of age at the date of the alleged commission of any offence with which he is charged, it shall before arraignment ask the accused or, where more than one, each accused his age or obtain other evidence of it, in order to satisfy itself that the court is properly constituted in accordance with section 6 of the Act of 1976.

Explaining function of assessors and members of the court

13. Where the magistrate is not sitting alone in the case of an accused who was under 17 years of age at the date of the alleged commission of any offence with which he is charged, the magistrate shall, before arraignment, unless he considers it unnecessary, briefly explain to the accused and to any parent or guardian of his who is present the function in relation to the proceedings of any assessor or member of the court sitting with him.

Opportunity to elect trial by court-martial

14.—(1) Before the accused is required to plead either guilty or not guilty to each charge on which he is arraigned, the magistrate shall say to him—

“You have the right in respect of this charge (these charges) against you to elect to be tried by court-martial instead of by this court. Do you wish so to elect?”;

or words to that effect.

(2) If the accused does not so elect or, where more than one person is jointly charged, if none of the accused so elects, the court shall proceed with the case.

(3) If the accused or any accused with whom he is jointly charged does so elect, the court shall, subject to paragraph (4) below, adjourn and report the election in writing to the directing officer, and shall send to him the Direction for Trial and the charge-sheet:

Provided that if there is another charge-sheet against the accused before the court, the court shall, before adjourning under this paragraph, proceed with the trial of such other charge-sheet, and shall retain the Direction for Trial.

(4) Where two or more accused are jointly charged and one or more but not all of the accused elect under this Article, the court, before adjourning or complying with the proviso to paragraph (3) above, shall explain to any of the accused who has not so elected the effect of Article 7 above.

Objection in court to assessor or member

15.—(1) An accused, before pleading to a charge, may object on any reasonable grounds to any assessor or member of the court sitting with the magistrate.

(2) If he does so—

(a) he may make a statement and call any person to make a statement in support of his objection;

- (b) the assessor or member of the court objected to may state in open court anything relevant to the accused's objection, whether in support or rebuttal of it.
- (3) The court, other than the assessor or member objected to, shall then consider the objection and—
- (a) if it upholds it—
- (i) may proceed with the case without the assessor or member objected to, provided the court is still properly constituted in accordance with section 6 of the Act of 1976, or
- (ii) shall adjourn and report to the directing officer, and send to him the Direction for Trial and charge-sheet;
- (b) if it does not uphold it, the court, including the assessor or member objected to, shall proceed with the case.

No right of objection to the magistrate

- 16.** The accused shall have no right to object to the magistrate.

Plea to the jurisdiction of the court

- 17.**—(1) An accused, before pleading to a charge, may offer a plea to the jurisdiction of the court. If he does so—
- (a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and
- (b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.
- (2) If the court allows the plea, it shall adjourn and report to the directing officer, and shall send to him the Direction for Trial and charge-sheet.
- (3) When he receives a report under paragraph (2) above, the directing officer shall exercise any power which is available to him in the circumstances (whether as directing officer or higher authority and whether under this Order or otherwise) having regard to the effect in law of the plea having been allowed.

Objection to charge

- 18.**—(1) An accused, before pleading to a charge, may object to it on the grounds that it is not correct in law or is not framed in accordance with this Order, and if he does so the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.
- (2) If the court upholds the objection, it shall either—
- (a) amend the charge, if permissible under Article 64 below, and proceed with the case; or
- (b) require the prosecutor to withdraw the charge, which he shall do, whereupon the court shall adjourn and report to the directing officer:
- Provided that if there is another charge or another charge-sheet against the accused before the court, the court shall, before adjourning under this sub-paragraph, proceed with the trial of such other charge or other charge-sheet.

Plea in bar of trial

19.—(1) An accused, before pleading to a charge, may offer a plea in bar of trial in reliance upon section 7(3) or (4) of the Act of 1976, or section 134(1) and (2) of the Act of 1955 as applied in relation to Standing Civilian Courts by paragraph 16 of Schedule 3 to the Act of 1976. If he does so, sub-paragraphs (a) and (b) of Article 17(1) above shall apply in relation to the plea.

(2) If the court allows the plea, it shall require the prosecutor to withdraw the charge, which he shall do, whereupon the court shall adjourn and report to the directing officer:

Providing that if there is another charge or another charge-sheet against the accused before the court, the court shall, before adjourning under this paragraph, proceed with the trial of such other charge or other charge-sheet.

Application by an accused at a joint trial to be tried separately

20. Where two or more accused are charged in the same charge-sheet, any of the accused may, before pleading to a charge, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. If an accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court is of the opinion that the interests of justice so require, it shall allow the application and try separately the accused who made it.

Application by an accused at a trial to have a charge tried separately

21. Where a charge-sheet contains more than one charge the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in that charge-sheet, on the ground that he would be prejudiced in his defence if he were not tried separately on that charge. If the accused makes such an application, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court is of the opinion that the interests of justice so require it shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge-sheet.

Pleas to the charge

22.—(1) Subject to the provisions of Articles 14, 15, and 17 to 21 above, and to paragraph (2) below, the accused shall be required to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section 98 of the Act of 1955, as applied in relation to Standing Civilian Courts by Article 90 below, to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with Article 44(2) below, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

(3) Where the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

Acceptance of pleas of guilty

23.—(1) Subject to paragraph (2) below, if an accused pleads guilty to a charge under either paragraph (1) or (2) of Article 22 above, the court, before it decides to accept the plea, may if it thinks it necessary, and shall in any event where the accused appears to it to be under 17 years of age, explain to the accused the nature of the charge and general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) Paragraph (1) above shall not apply where the accused is represented by counsel.

(3) In the case of a plea of guilty under Article 22(2) above, the court shall not accept the plea unless the directing officer concurs and the court is satisfied of the justice of such a course. The concurrence of the directing officer may be signified by the prosecutor.

(4) Where a plea of guilty under either paragraph (1) or (2) of Article 22 above is not accepted by the court, the court shall enter a plea of not guilty.

(5) Where the court accepts a plea of guilty under either paragraph (1) or (2) of Article 22 above it shall record a finding of guilty in respect of the charge to which the plea relates.

Pleas on alternative charges

24.—(1) Where an accused pleads guilty to the first of two or more alternative charges, the court, if it accepts the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) Where an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges, the court may—

(a) proceed as if the accused had pleaded not guilty to all the charges; or

(b) with the concurrence of the directing officer (which may be signified by the prosecutor) record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge-sheet. Where the court records such findings, the prosecutor shall before the accused is arraigned on it withdraw any charge which is alternative to the charge of which the court has found the accused guilty and which is placed after it in the charge-sheet.

Order of trial where pleas of guilty and not guilty

25. After the court has recorded a finding of guilty, if there is no other charge in the same charge-sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge-sheet, it shall proceed as directed by Article 26 below. If there is another charge in the charge-sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge-sheet, the court shall not, subject to Article 72(2) below, comply with Article 26 below until after it has dealt with such other charge or tried such other accused and has announced and recorded its finding in respect thereof.

Procedure on finding of guilty after plea of guilty

26.—(1) After the court has recorded a finding of guilty in respect of a charge to which an accused has pleaded guilty, the prosecutor shall, subject to Article 25 above, inform the court of the facts of the case:

Provided that he shall not inform the court of any fact which is based on evidence which would be inadmissible.

(2) The court shall then proceed as directed in Article 49 below.

Changes of plea

27.—(1) An accused who has pleaded not guilty may at any time before the court considers its finding withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under Article 22(2) above) and in such case the court shall, if it is satisfied that it can accept the accused's changed plea under this Order, record a finding in accordance with the accused's change of plea and so far as is necessary proceed as directed by Article 26 above.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) Where the court enters a plea of not guilty in respect of any charge under paragraph (2) above, it shall, if there is a charge in the alternative thereto which the prosecutor withdrew under Article 24 above, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

Plea of not guilty—application for adjournment

28.—(1) After the court has recorded a plea of not guilty, the accused may apply for an adjournment on the ground that any provision relating to procedure before trial has not been complied with and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence.

(2) Where the accused applies for an adjournment under paragraph (1) above—

(a) he may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address.

(3) The court may grant an adjournment if it thinks that the interests of justice so require.

Plea of not guilty—case for the prosecution

29. Subject to Article 28 above, after the court has recorded a plea of not guilty—

(a) the prosecutor may if he desires make an opening address explaining the charge, where necessary, and the nature and general effect of the evidence which he proposes to adduce;

- (b) after any such opening address, the witnesses for the prosecution shall be called and give their evidence.

Calling by prosecutor of evidence not sent to accused with summons

30. If the prosecutor intends to adduce evidence which is not contained in a statement or precis of which a copy was sent to the accused under Article 3(1)(h) above, notice of such intention together with the particulars of the evidence shall, wherever practicable, be given to the accused, and to any parent or guardian of his to whom a notice was sent under Article 3(1)(j) above, a reasonable time before the evidence is adduced. If such evidence is adduced without such notice or particulars having been so given, the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

Notice to an accused that a witness will not be called by the prosecutor

31.—(1) The prosecutor shall not be bound to call every witness whose evidence is contained in any statement or precis sent to the accused under Article 3(1)(h) above, or in relation to whose evidence notice has been given under Article 30 above, but if the prosecutor does not intend to call such a witness to give evidence he shall either tender him for cross-examination by the accused, or give the accused, and any parent or guardian of his to whom a notice was sent under Article 3(1)(j) above, reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and the witness is available.

(2) Nothing in this Article affects the operation of section 9 of the Criminal Justice Act 1967(a), as applied with modifications, for the purposes of proceedings before Standing Civilian Courts, by section 99A of the Act of 1955 and Article 90 below.

Swearing of witnesses

32. Save as is otherwise provided by section 93(2) of the Act of 1955, as applied in relation to Standing Civilian Courts by Article 90 below, an oath shall be administered to each witness in accordance with Article 67 below before he gives his evidence and in the presence of the accused.

Exclusion of witnesses from court

33. During a trial a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence the court may direct the witness to withdraw during such discussion.

Examination of witnesses by parties

34.—(1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and unless an objection is made by the witness, court, prosecutor or accused, the witness shall reply forthwith. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed.

Examination of witnesses by court

35.—(1) The magistrate and, where the court is constituted under section 6(13) of the Act of 1976, any member of the court sitting with him may put questions to a witness.

(2) An assessor may put questions to a witness with the permission of the magistrate.

(3) Upon a question put under paragraph (1) or (2) above being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.

Calling of witnesses by court and recalling of witnesses

36.—(1) The court may, at any time before it deliberates on its finding, call a witness or recall a witness, if in the opinion of the court it is in the interests of justice to do so. If the court calls a witness or recalls a witness under this Article, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the court considers its finding, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

Written statements

37. A written statement which is admissible in accordance with the provisions of section 9 of the Criminal Justice Act 1967, as applied with modifications, for the purposes of proceedings before Standing Civilian Courts, by section 99A of the Act of 1955 and Article 90 below, shall be handed to the court by the prosecutor or the accused, as the case may be, without being produced by a witness.

Submission of no case to answer and power of court to stop a case

38.—(1) At the close of the case for the prosecution the accused may submit to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer and that he should not be called upon to make his defence to that charge. If the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(2) The court shall not allow the submission unless it is satisfied that—

(a) the prosecution has not established a *prima facie* case on the charge as laid; and

(b) it is not open to the court on the evidence adduced to make a special finding under either section 98 of the Act of 1955, as applied in relation to Standing Civilian Courts by Article 90 below, or under Article 44(2) below.

(3) If the court allows the submission it shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith.

(4) If the court disallows the submission it shall proceed with the trial of the offence as charged.

(5) Irrespective of whether there has been a submission under this Article or not, the court may at any time after the close of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if it does so it shall announce such finding in open court forthwith.

Rights of accused when making his defence

39.—(1) After the close of the case for the prosecution, the accused may if he wishes give evidence on oath as a witness or make a statement without being sworn, but is not obliged to do either:

Provided that if he gives evidence on oath he shall be liable to be cross-examined by the prosecutor and to be questioned by the court, but that if he makes a statement without being sworn no one will be entitled to ask him any questions.

(2) Whether he gives evidence or makes a statement or remains silent, the accused may call witnesses on his behalf both to the facts of the case and to his character.

(3) Whether or not he intends to give evidence on oath or make a statement without being sworn, or to call any witness on his behalf, the accused may if he so desires address the court at this stage:

Provided that where two or more accused are represented by the same defending officer or counsel, that defending officer or counsel may make one such address only.

(4) The court shall—

(a) unless the accused is represented by counsel, explain to the accused the provisions of paragraphs (1) to (3) above and Article 42(1) and (2) below; and

(b) ask the accused if he intends—

(i) to give evidence on oath or make a statement without being sworn;

(ii) to call any witnesses on his behalf.

Evidence for the defence

40. After Article 39 above has been complied with the evidence for the defence shall be presented.

Evidence in rebuttal

41. After any witnesses for the defence have given their evidence the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

When closing addresses may be made

42.—(1) After all the evidence has been given—

(a) the prosecutor shall be entitled to address the court unless he has done so already by virtue of Article 29(a) above;

(b) the accused shall be entitled to address the court unless he has done so already by virtue of Article 39(3) above.

(2) With the leave of the court, either party may at this stage address the court notwithstanding that he has done so already by virtue of Article 29(a) or, as the case may be, Article 39(3) above:

Provided that where the court grants leave to one party it shall not refuse leave to the other.

(3) Where each party is to make a closing address (whether by right under paragraph (1) above or with leave under paragraph (2) above), the prosecutor shall make his closing address before the accused does so, unless the accused made an opening address but the prosecutor did not, in which case the accused shall make his closing address first.

(4) Where two or more accused are represented by the same defending officer or counsel, that defending officer or counsel may make one address only by virtue of this Article.

Deliberation on finding on the charge

43.—(1) Subject to Article 36 above, after any closing addresses the court shall deliberate on its finding on the charge.

(2) The court may sit in closed court for this purpose, and where it does so no person shall be present except the magistrate and any assessors or members of the court sitting with him.

Form of finding

44.—(1) Subject to paragraph (3) and Article 76 below, the court shall record on every charge on which a plea of not guilty has been recorded—

(a) a finding of guilty, or a special finding in accordance with section 98 of the Act of 1955 as applied in relation to Standing Civilian Courts by Article 90 below or in accordance with paragraph (2) below; or

(b) a finding of not guilty.

(2) Where the court is of the opinion as regards any charge that the facts which it finds to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence

stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused is guilty of the charge subject to any exception or variation which it shall specify in its finding.

(3) Where the court has recorded a finding of guilty on a charge which is laid in the alternative it shall find the accused not guilty of any charge alternative thereto which is placed before it in the charge-sheet and record no finding on any charge alternative thereto which is placed after it in the charge-sheet.

Announcement of finding

45. The finding on each charge shall be announced forthwith in open court and in the presence of the accused.

Completion of procedure on plea of guilty before deliberation on sentence

46. After the court has announced its finding on any charge on which the court has entered a plea of not guilty, if there is another charge in the same charge-sheet on which the court has accepted a plea of guilty, the court shall comply with Article 26(1) above in respect of that charge before proceeding with the trial.

Trial of charges in other charge-sheets before deliberation on sentence

47. Where there is another charge-sheet against the accused before the court, the court shall not comply with Articles 49 to 52 below until—

- (a) it has arraigned and tried the accused and has complied where necessary with Articles 45 and 46 above in respect of each charge in such other charge-sheet; or
- (b) the accused elects in respect of such other charge-sheet to be tried by court-martial; or
- (c) such other charge-sheet is withdrawn under Article 65 below, or is otherwise not proceeded with.

Procedure on acquittal on all charges

48. If on every charge against the accused there is a finding of not guilty, the magistrate shall—

- (a) announce that the trial of that accused is concluded; and
- (b) unless there is a finding of guilty against a person charged jointly with that accused, forthwith comply with Article 81 below.

History of accused, etc, and plea in mitigation

49.—(1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 98 of the Act of 1955 (as applied in relation to Standing Civilian Courts by Article 90 below) or in accordance with Article 44(2) above, it shall be the duty of the prosecutor, before the court deliberates on its sentence, to call wherever possible a person who can give to the court any relevant information—

- (a) regarding the accused, and
 - (b) where the accused is under 17 years of age, or is under 18 years of age and an offence of which the court has found him guilty was committed during a period of parental recognisance, regarding his parents or guardians.
- (2) In paragraph (1) above, “relevant information” includes—
- (a) in relation to the accused—
 - (i) information about his character, conduct, employment, means, family background and responsibilities, and
 - (ii) subject to paragraph (3) below, any previous convictions of his by a civil court, court-martial or a Standing Civilian Court, except, in the case of an accused who has attained 21 years of age, any conviction before he had attained 14 years of age;
 - (b) in relation to a parent or guardian of the accused, information about his character, conduct, employment, means, and family life and responsibilities.
- (3) The court shall not be informed of a previous conviction of the accused unless—
- (a) being a conviction by a civil court, evidence of the conviction is given by virtue of section 199 of the Act of 1955, as applied in relation to Standing Civilian Courts by Article 90 below, or the accused has admitted the conviction after the purpose for which such admission is required has been explained to him;
 - (b) being a conviction by a court-martial (whether under the Army Act 1955(a), the Air Force Act 1955(b) or the Naval Discipline Act 1957(c)) or by a Standing Civilian Court—
 - (i) the conviction is recorded in a service book or other document to which section 198(5) of the Act of 1955 applies and evidence of the conviction is given by virtue of that section as applied in relation to Standing Civilian Courts by Article 90 below;
 - (ii) evidence of the conviction, if by court-martial, is given by virtue of section 200 of the Act of 1955, and, if by a Standing Civilian Court, is given by virtue of that section as applied in relation to the proceedings of Standing Civilian Courts by Article 90 below; or
 - (iii) the accused has admitted the conviction after the purpose for which such admission is required has been explained to him.
- (4) The accused and, where appropriate, any parent or guardian of his who is present may cross-examine any witness who gives information in accordance with paragraph (1) above.
- (5) Where an offence of which the court has found the accused guilty was committed during a period specified in—
- (a) an order of conditional discharge previously made against the accused under paragraph 3(1) of Schedule 5A to the Army Act 1955 or of Schedule 5A to the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957, or

(a) 1955 c. 18.

(b) 1955 c. 19.

(c) 1957 c. 53.

- (b) a community supervision order previously made against the accused under paragraph 4(1) of any of those Schedules,

the court shall explain to the accused that it has power to deal with him not only for the offence of which it has found him guilty but also for the offence in respect of which the order for conditional discharge or, as the case may be, the community supervision order was made.

- (6) After the above paragraphs have been complied with, the accused may—
- (a) give evidence on oath and call witnesses in mitigation of sentence and as to his character; and
 - (b) address the court in mitigation of sentence.

Request by accused for other offences to be taken into consideration

50.—(1) Before the court deliberates on its sentence, the accused may request the court to take into consideration any other offence against the Act of 1955 committed by him of a similar nature to that of which he has been found guilty (other than an offence with which he is charged and has elected to be tried by court-martial); and upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seems proper.

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the court, who shall ask the accused if he admits having committed them. The accused shall sign a list of such offences which he admits having committed and the court shall take the offences in this list into consideration. This list shall be signed by the magistrate and attached to the note of the proceedings as an exhibit.

Opportunity for parent to be heard

51.—(1) Where the accused—

- (a) is under 17 years of age, or
- (b) is under 18 years of age and an offence of which the court has found him guilty was committed during a period of parental recognisance,

the court, after Article 49 and, where appropriate, Article 50 above have been complied with and before it deliberates on its sentence, shall, subject to paragraph (2) below, give any service parent or guardian of the accused who is present an opportunity of being heard, and shall in so doing—

- (i) comply with paragraph (4) below, and
- (ii) explain the provisions of paragraph (5) below.

(2) The court need not comply with the provisions of paragraph (1) above where it decides that it will not, in deliberating on its sentence, consider exercising any of its powers to make an order or declaration against a service parent or guardian of the accused.

(3) Any parent or guardian of an accused under 17 years of age who is not given by the court under paragraph (1) above the opportunity of being heard may nonetheless, with the leave of the court, be heard before the court deliberates on its sentence.

(4) Where the court is required under paragraph (1) above to comply with this paragraph, it shall explain to any service parent or guardian of the accused who is present such of its powers to make an order or declaration against a service parent or guardian as may be relevant to the case.

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

- (a) give evidence on oath, in which case he shall be liable to be cross-examined by the prosecutor and to have questions put to him by the court, and otherwise to be treated as a witness in accordance with the provisions of the Act of 1976 and this Order; or
- (b) make a statement without being sworn;
- (c) whether or not he gives evidence or makes a statement himself, call witnesses on his behalf; and
- (d) address the court.

Deliberation on sentence

52.—(1) After Article 49 and, where appropriate, Articles 50 and 51 above have been complied with, the court shall, subject to Article 53 below, deliberate on its sentence.

(2) Where the magistrate is not sitting alone, the court shall sit in closed court for this purpose.

(3) Where the magistrate is sitting alone, the court may sit in closed court for this purpose.

(4) Where under this Article the court sits in closed court, no person shall be present except the magistrate and any assessors or members of the court sitting with him.

Postponement of deliberation on sentence

53. Where two or more accused are tried separately by the same court upon charges arising out of the same transaction, the court may, if it 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, subject to Article 72(2) below, it has recorded and announced its findings in respect of all of such accused.

Orders under Schedule 5A to the Act of 1955

54. Where the court makes, or proposes to make, any order under Schedule 5A to the Act of 1955, it shall comply with any requirements relating to the making of the order which are laid down in that Schedule or in any regulations made under it.

Form of sentence

55.—(1) A separate sentence shall be awarded for each offence in respect of which the court has recorded a finding of guilty, and for each offence which is the subject of re-sentencing by virtue of paragraph 3(3) or 4(9) of Schedule 5A to the Act of 1955.

(2) Subject to the provisions of section 8 of the Act of 1976, section 71A of the Act of 1955, and Schedule 5A to that Act, a sentence may consist of one or more punishments, or one or more orders, or one or more punishments and orders.

(3) Where an accused is being sentenced for more than one offence, and by virtue of paragraph (1) above the court makes more than one order against him under paragraphs 3(1), 4(1), 6(1) or 10 of Schedule 5A to the Act of 1955, the period specified by the court in the second and any subsequent such order shall be, and shall be announced as being, concurrent with the period specified by the court in the first such order.

(4) Subject to the provisions of section 8(2) of the Act of 1976, where an accused is being sentenced for more than one offence, and by virtue of paragraph (1) above the court awards against him more than one term of imprisonment, any term of imprisonment after the first may be consecutive to, or concurrent with, any term of imprisonment before it, and shall be announced accordingly.

(5) Where the court has agreed to take into consideration an offence which is not included in the charge-sheet, the court shall award a sentence appropriate both to the offence of which the accused has been found guilty and to the other offence which it is taking into consideration, but (save for any compensation order under paragraph 11 of Schedule 5A to the Act of 1955 which it may make in respect of the offence which it is taking into consideration) not greater than the maximum sentence which may be awarded under the Act of 1976 for the offence of which the accused has been found guilty.

Announcement of sentence and conclusion of trial

56.—(1) The sentence shall be announced in open court and in the presence of the accused, and the date on which it is announced shall be recorded.

(2) The court shall then announce, subject to Article 54 above, that the trial is concluded, and shall comply with Article 81 below.

PART IV

MATTERS RELATING TO THE PROCEEDINGS

Functions, etc, of certain persons

Functions of the magistrate

57. It shall be the duty of the magistrate to ensure that the proceedings are fairly conducted in accordance with the Act of 1976 and this Order, and to keep a note of the proceedings in accordance with Article 79 below.

Functions of assessors

58. An assessor may advise the magistrate on any matter (other than a question of law) arising at any stage during the proceedings, and shall for this purpose, and this purpose alone, remain with the magistrate when he deliberates on any matter, including sentence.

The prosecutor and defending officer or counsel

59.—(1) It shall be the duty of the prosecutor and of the defending officer or counsel to assist the court in the administration of justice, to treat the court with due respect, and to present their cases fairly, and in particular—

- (a) to conform with this Order and, subject thereto, the practice of magistrates' courts in England and Wales relating to the examination, cross-examination and re-examination of witnesses;

- (b) not to refer to any matter not relevant to the charge before the court; and
- (c) not to state as a matter of fact any matter which is not proved or which could not be proved by evidence.

(2) Without prejudice to the generality of any of the provisions of paragraph (1) above, it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of, the accused.

(3) Anything (other than the giving of evidence or the making of a statement without being sworn) which an accused is required or authorised to do by this Order may be done by his defending officer or counsel on his behalf, except—

- (a) electing to be tried by court-martial or stating that he does not wish so to elect;
- (b) pleading to the charge, and withdrawing a plea of not guilty and substituting a plea of guilty;
- (c) stating whether he wishes to give evidence on oath or make a statement without being sworn.

Qualifications for defending officer

60. A defending officer for the purposes of this Order shall be—

- (a) an officer holding a commission in any of Her Majesty's forces, or
- (b) a named civilian who is in the service of the Crown and to whose appointment as defending officer in relation to a named accused the directing officer consents before the trial.

Qualifications for counsel

61. Counsel for the purposes of this Order shall be—

- (a) a practising barrister or a solicitor of England and Wales or Northern Ireland;
- (b) an advocate or solicitor of Scotland;
- (c) with the consent of the directing officer, who shall first consult the Judge Advocate General or his deputy, any person who is recognised by the directing officer as having in any country outside the United Kingdom rights and duties similar to those of a barrister or solicitor in England and Wales, and as being subject to punishment or disability for a breach of professional rules.

Representation by parent or guardian

62. Where an accused under 17 years of age is not represented by a defending officer or counsel, the court may allow any parent or guardian of his who is present to represent him in such manner and to such extent as the court thinks fit.

*Charges and charge-sheets**Preparation of charge-sheets and framing of charges*

63. Rules 14 to 17 of the Rules of Procedure and Schedule 2 to those Rules shall, so far as they apply in relation to civilians, apply to charge-sheets and charges under this Order as if those Rules formed part of this Order, except that a charge-sheet for use in a Standing Civilian Court shall not bear any endorsement as to mode of trial.

Amendment of charges and charge-sheets by the directing officer and the court

64.—(1) The directing officer, at any time after he issues a Direction for Trial and before the court opens the proceedings, or the court, at any time after it opens the proceedings and before it deliberates on its finding—

(a) may amend a charge-sheet to which the proceedings relate, to correct any mistake in it—

(i) in the name or description of the accused; or

(ii) which is attributable to a clerical error or omission;

(b) may amend a charge in such a charge-sheet by making any addition to, omission from or alteration in, the charge which cannot be made under sub-paragraph (a) above, if it appears to the directing officer or the court, as the case may be, that it is desirable in the interests of justice that such amendment should be made and that it can be made without unfairness to the accused.

(2) Where the directing officer amends a charge-sheet or charge by virtue of paragraph (1) above, he shall send particulars of the amendment to every person to whom he is required to send the charge-sheet or a copy of it under Article 3 above.

(3) Where a charge-sheet or charge is amended under paragraph (1) above, the Direction for Trial relating to that charge-sheet or charge shall be construed as relating to the charge-sheet or charge as so amended.

Withdrawal of charges and charge-sheets

65. A court may with the concurrence of the directing officer (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon or a charge-sheet before the accused is arraigned on any charge therein.

*Oaths**Swearing in of magistrates, members and assessors on appointment*

66.—(1) A person appointed a magistrate under section 6(4) of the Act of 1976 shall take an oath upon his appointment before the Lord Chancellor or a person authorised by him in that behalf.

(2) A person appointed a member of a panel under section 6(6) or 6(8) of that Act shall take an oath upon his appointment before an officer in command not below the rank of colonel or group captain.

Form of oaths, etc

67.—(1) An oath which is required to be administered under this Order shall be administered in the appropriate form and in the manner set out in Schedule 2 to this Order:

Provided that—

- (a) if any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland he shall be permitted to do so;
- (b) the opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Every oath which under this Order is to be administered in the court shall be administered by the magistrate or by any person whom he authorises.

(3) The oath to be taken by a person under 17 years of age, or by any person at a trial where no accused is above that age, shall be in the appropriate form set out in Schedule 2 to this Order.

(4) Where by virtue of section 102 of the Act of 1955, as applied in relation to Standing Civilian Courts by Article 90 below, a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in Schedule 2 to this Order.

*Interpreters**Appointment and swearing of interpreter*

68.—(1) A competent and impartial person may be appointed at any time to act as an interpreter in the proceedings before the court, and before he so acts an oath shall be administered to him in accordance with Article 67 above and in the presence of the accused.

(2) Before a person is sworn as an interpreter the accused shall be given an opportunity to object to him on any reasonable grounds.

*Sittings, adjournment and re-trial**Sittings of the court*

69. Subject to the provisions of the Act of 1976 and of this Order relating to adjournment, the proceedings of the court shall be continued from day to day and the court shall sit for such time each day as may be reasonable in the circumstances:

Provided that the court shall not sit on Sunday, Christmas Day or Good Friday, unless in the opinion of the court or of the directing officer there are circumstances which make it necessary to do so.

Adjournment generally

70. The court may adjourn from time to time and, subject to paragraph 2 of Schedule 3 to the Act of 1976, from place to place, as the interests of justice require.

View by the court

71. Subject to paragraph 2 of Schedule 3 to the Act of 1976, if at any time during a trial before the court deliberates on its finding it appears to the court that it should, in the interests of justice, view any place or thing, it may adjourn for this purpose. When the court views any place or thing, the magistrate, any assessors or members of the court, the prosecutor, the accused and any defending officer or counsel shall be present.

Adjournment of case in interests of justice

72.—(1) Where, after the commencement of a trial, anything occurs which, in the opinion of the court, makes it necessary or expedient in the interests of the administration of justice that that court should not continue with the trial, the court shall, subject to paragraph (2) below, adjourn and report to the directing officer, and shall send to him the Direction for Trial, the charge-sheet, and the magistrate's note of the proceedings.

(2) Where under any provision of this Order the court has postponed compliance with Article 26 above or deliberation on sentence in respect of an offence of which it has already recorded a finding of guilty, it may before so adjourning proceed to sentence in respect of that offence if it considers that it can properly do so.

Adjournment of case where court ceases to be properly constituted

73. Where the court ceases to be properly constituted in accordance with section 6 of the Act of 1976, the proceedings shall be deemed to be adjourned and there shall be sent to the directing officer the Direction for Trial, the charge-sheet, and the magistrate's note of the proceedings.

Assessor or member of court not to sit after absence

74. If an assessor or member of the court is absent during any part of a trial at which he has been specified to sit, he shall take no further part in it.

Re-trial following adjournment under Article 72 or 73 above

75.—(1) Where, following an adjournment under Article 72 or 73 above, the directing officer directs a re-trial by virtue of paragraph 7 or 8 of Schedule 3 to the Act of 1976, he shall—

- (a) so far as is necessary, comply again with Article 3(1)(c), (d), (e), (f), (g), (k) and (l) above; and
- (b) send notice of the direction and of the date, time and place of re-trial to—
 - (i) the accused;
 - (ii) any parent or guardian of the accused to whom a notice was sent under Article 3(1)(j) above;
 - (iii) the commanding officer of the accused;
 - (iv) where appointed by the directing officer, the prosecutor.

(2) The Direction for Trial, so far as it relates to the charge which is to be re-tried, shall be construed as relating to the re-trial.

(3) Any reference to trial, in relation to Standing Civilian Courts, in this Order or in the Act of 1976 (except in subsections (3) and (4) of section 7) shall include a reference to re-trial.

(4) A person who sat in the court of trial, whether as magistrate, member of the court or assessor, shall not sit in the court of re-trial.

(5) Where the court of trial had recorded a finding of guilty but had not announced sentence, the court of re-trial shall proceed to sentence in accordance with the provisions of this Order as if it had recorded the finding of guilty; but before doing so it shall inform itself of the facts relating to the charge in respect of which the finding of guilty was made, by—

- (a) reading the note of the proceedings taken by the magistrate at the court of trial; and
- (b) to such extent as appears to the court of re-trial to be necessary in the interests of the administration of justice, calling on the prosecutor to address the court as to the facts.

Unfitness to stand trial and insanity

76.—(1) Where the court adjourns by virtue of paragraph 6(1) of Schedule 3 to the Act of 1976 (accused unfit), it shall report the matter in writing to the directing officer, and in so reporting—

- (a) shall give details of the accused's condition;
- (b) may make a recommendation as to how the charge should be proceeded with;
- (c) shall send the Direction for Trial, the charge-sheet and the magistrate's note of the proceedings.

(2) Where, having received a report under paragraph (1) above, the directing officer is of the opinion that the charge should be tried by court-martial, he shall proceed as a higher authority in accordance with paragraph 25 of Schedule 9 to the Rules of Procedure as if the accused had elected to be tried by court-martial.

Witnesses

Interviewing witnesses

77.—(1) The prosecution shall not without the consent of the directing officer, or, after the court has opened for the trial, the magistrate, interview any witness—

- (a) who was called for the defence at the taking of any summary of evidence under Rule 9 of the Rules of Procedure;
- (b) whose statement was attached to any abstract of evidence under Rule 10(4) of those Rules;
- (c) whose attendance the accused has requested in accordance with Article 4(2) above; or
- (d) who has made a written statement a copy of which the accused has served on the prosecution in accordance with section 9 of the Criminal Justice Act 1967(a), as applied with modifications, for the purposes of proceedings before Standing Civilian Courts, by section 99A of the Act of 1955 and Article 90 below.

(2) Except as provided in Article 31 above, neither the accused nor any person on his behalf shall without the consent of the directing officer, or, after the court has opened for the trial, the magistrate, interview any witness—

- (a) whose evidence is included in a statement or precis sent to the accused under Article 3(1)(h) above; or
- (b) in respect of whose evidence notice has been given to the accused under Article 30 above.

Procuring attendance of witnesses

78.—(1) A witness who is subject to military or air-force law, or to the Naval Discipline Act 1957(a), may be ordered by the proper military, air-force or naval authority to attend a trial by the court.

(2) Any other witness may be summoned to attend a trial by the court by an order under the hand of the directing officer or, after the court has opened for the trial, the magistrate, in the form set out in Part IV of Schedule 1 to this Order.

(3) A summons under paragraph (2) above shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode.

(4) At the time of service of a summons under paragraph (2) above there shall be paid or tendered any expenses which by regulations made by the Defence Council are payable to a witness in respect of his journey to, attendance at and return from the trial:

Provided that for the purposes of this paragraph—

- (a) the tender of a warrant or voucher entitling the witness to travel free of charge shall be deemed to constitute tender of his expenses in respect of any travelling authorised by the warrant or voucher; and
- (b) the tender of a written undertaking on behalf of the Defence Council to defray at the trial any other expenses payable under such regulations in respect of the witness's attendance shall be deemed to constitute tender of such expenses.

Note of proceedings, etc

Note of the proceedings

79.—(1) Subject to the provisions of this Order, the magistrate shall keep a legible note of the proceedings before the court such as will enable—

- (a) the court to deliberate fairly on any matter before it, and
- (b) a reviewing authority to follow the course and substance of the proceedings;

but, subject thereto, the magistrate shall not be bound to record every particular of the proceedings.

(2) The prosecutor or accused may request the magistrate to make a verbatim note of any question put to a witness and of the answer given by him; and the magistrate shall accede to any such request.

(3) The prosecutor or accused may request the magistrate to make a sufficient note regarding any objection, submission or application, or of any particular point in an address to the court; and the magistrate shall make such a note accordingly.

(4) The prosecutor or accused may at any time during the proceedings request the magistrate to read out any note he may have of a particular part of the proceedings; and the magistrate, if he has a note to which the request relates, shall accede to the request.

Exhibits

80.—(1) Subject to paragraph (2) below, any document or thing admitted in evidence shall be made an exhibit.

(2) When an original document or book is produced to the court by a witness the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after the court has satisfied itself that such a copy or extract is correct and the magistrate has certified thereon that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach a copy or extract to the note of the proceedings as an exhibit.

(3) Every exhibit shall—

(a) be marked with a number or letter and be signed by the magistrate, or have a label bearing a number or letter and the signature of the magistrate affixed to it; and

(b) be attached to or kept with the note of the proceedings, unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to do so.

(4) When an exhibit is not attached to or kept with the note of the proceedings under paragraph 3(b) above, the magistrate shall ensure that proper steps are taken for its safe custody.

(5) With the leave of the court, the prosecutor or the accused may inspect any exhibit if proper precautions are taken for its safety.

Forwarding the proceedings

81. The magistrate shall send to the directing officer at the conclusion of the trial—

(a) the Direction for Trial;

(b) the charge-sheet;

(c) his note of the proceedings, signed by him and dated;

(d) a record of the finding and sentence on each charge, signed by him and dated;

(e) any exhibits attached to his note by virtue of Article 80 above; and

(f) any other document in his possession relating to the proceedings.

Custody of the proceedings

82. Subject to the requirements of any review or appeal, the documents sent by the magistrate under Article 81 above shall be kept by the directing officer for a period of 28 days from the conclusion of the trial and thereafter in the custody of the Judge Advocate General for a period of not less than 5 years.

Loss of the proceedings

83. If the whole or any part of any document referred to in Article 81 above is lost, and a copy thereof is certified by the magistrate to be correct, or a sufficient record of the charge, finding and sentence remains or can be reconstituted to permit of the case being reviewed, such copy of reconstituted matter or remaining part may be accepted and used in lieu of the original.

PART V

REVIEW AND APPEAL

Review

84.—(1) The period during which a person sentenced by the court may by virtue of paragraph 19 of Schedule 3 to the Act of 1976 present a petition addressed to a reviewing authority against finding or sentence or both is 21 days from the date on which he was sentenced by the court, or such longer period as the reviewing authority to whom the petition is to be addressed may allow.

(2) A petition addressed to a reviewing authority shall be in the form set out in Part I of Schedule 3 to this Order.

(3) Such a petition shall be presented either to the reviewing authority to whom it is addressed or to the appropriate person specified in Part III of Schedule 3 to this Order.

(4) Where in response to a petition for review or a notice of appeal an authority reviews a finding or sentence, the result of the review (whether or not the authority exercises any of its powers in relation to the finding or sentence) shall be promulgated as soon as possible after the review is completed.

(5) Where of its own motion an authority reviews a finding or sentence and exercises any of its powers in relation to the finding or sentence, the result of the review shall be promulgated as soon as possible after the review is completed.

(6) The result of a review shall be promulgated in accordance with section 140 of the Act of 1955.

Notice of appeal

85.—(1) Subject to the provisions of this paragraph, a person—

(a) who by virtue of paragraph 18 of Schedule 3 to the Act of 1976 wishes to appeal to a court-martial against his conviction or sentence, or both, by a Standing Civilian Court, or

(b) who by virtue of paragraph 13(3) of Schedule 5A to the Act of 1955 wishes to appeal to a court-martial against the sentence passed on him by a Standing Civilian Court as a parent or guardian of the offender,

shall within 21 days of the date of the court's sentence lodge with the directing officer or the appropriate person specified in Part III of Schedule 3 to this Order a notice of appeal in the form set out in Part II of that Schedule addressed to the directing officer.

(2) Where the appeal is against two or more convictions and those convictions arise from two or more charge-sheets, separate notices of appeal shall be lodged in respect of each charge-sheet from which the convictions arise.

(3) Where two or more persons wish to appeal, they shall lodge separate notices.

Action by directing officer on receipt of notice of appeal

86. When the directing officer receives a notice of appeal drawn up and lodged in accordance with Article 85 above, he shall—

- (a) ensure that the finding or sentence against which the appeal is made is reviewed as soon as practicable in accordance with paragraph 20 of Schedule 3 to the Act of 1976; and
- (b) unless on that review the appellant is granted the relief which he seeks, take the steps referred to in paragraph 30 of Schedule 9 to the Rules of Procedure with a view to the appeal being heard by a court-martial.

Hearing of appeal to be by GCM or DCM

87. An appeal from a Standing Civilian Court to a court-martial shall be heard by a general court-martial or a district court-martial.

Abandonment of appeal

88.—(1) A person who has given notice of appeal in accordance with Article 85 above may abandon the appeal or any part of it at any time before the court-martial commences the proceedings to hear it by giving notice in writing to that effect to the directing officer.

(2) An accused may not abandon an appeal or any part of it after the court-martial commences the proceedings to hear it.

(3) An accused may not revive an appeal or any part of it which he has abandoned.

Modifications for appeals of certain provisions of the Act of 1955

89. Subject to Articles 86 and 87 above and to paragraph 18 of Schedule 3 to the Act of 1976, the provisions of the Act of 1955 relating to courts-martial shall apply to appeals to such courts from Standing Civilian Courts with the following exceptions and modifications, namely—

- (a) any reference to a trial by court-martial, however expressed, shall include a reference to the hearing by a court-martial of an appeal from a Standing Civilian Court, and “accused” shall be construed accordingly;
- (b) section 97 (finding and sentence) shall apply as if the following subsection were added at the end—

“(4) Any finding or sentence of the court-martial shall, whether subsequently confirmed or not, replace the finding or sentence of the Standing Civilian Court, and shall be so announced.”;

- (c) section 108 (petitions against finding or sentence) shall apply—
 - (i) as if, for the words “sentenced the accused” there were substituted the words “announced sentence”, and
 - (ii) as if, for the words “against finding or sentence or both”, there were substituted the words “against any finding or sentence or both made or awarded against him”;

- (d) section 111 (confirming officers) shall apply as if, in subsection (2)(b), there were inserted after the word “investigated” the words “or considered”;
- (e) section 113A (power of reviewing authority to authorise retrial) shall not apply;
- (f) section 132 (limitation of time for trial of offences under service law) shall not apply;
- (g) section 134 (persons not to be tried under the Act of 1955 for offences already disposed of) shall not operate so as to prevent such appeals being determined.

PART VI

APPLICATION TO STANDING CIVILIAN COURTS OF CERTAIN ENACTMENTS

Application of certain provisions of the Act of 1955

90.—(1) The following provisions of this Article shall have effect for the purpose of applying in relation to Standing Civilian Courts certain enactments contained in the Act of 1955; and in this Article any reference to a section is, unless the contrary intention appears, a reference to a section of that Act.

(2) Section 93(2) (witnesses to be examined on oath) shall apply in relation to a Standing Civilian Court as it applies in relation to a court-martial.

(3) Section 98 (power to convict of offence other than that charged) shall apply in relation to an accused charged before a Standing Civilian Court as it applies to an accused charged before a court-martial.

(4) Section 99A (proof by written statement) shall apply subject to the following modifications, namely, that in section 9 of the Criminal Justice Act 1967(a), as modified by the Courts-Martial (Evidence) Regulations of 1967(b) and 1977(c)—

(a) for the reference in subsection (2)(c) to the commanding officer of the accused, and for the references in subsection (2)(d) to the commanding officer, there shall in each place be substituted a reference to the directing officer;

(b) for subsection (5) there shall be substituted the following subsection—

“(5) An application under subsection (4)(b) above to a Standing Civilian Court may be made before the hearing and, if it is, the powers of the court shall be exercisable by the directing officer.”;

(c) for subsection (8) there shall be substituted the following subsection—

“(8) In this section, “the directing officer” has the meaning assigned to it by paragraph 1(1) of Schedule 3 to the Armed Forces Act 1976.”.

(5) Section 102 (affirmations) shall apply in relation to a person required to take an oath by virtue of this Order as it applies in relation to a person required to take an oath for the purposes of proceedings before a court-martial by virtue of the Act of 1955.

(a) 1967 c. 80.

(c) S.I. 1977/86(1977 I, p. 173).

(b) S.I. 1967/1807 (1967 III, p. 4830).

(6) As applied with modifications to civilians by section 209(3)(g), section 131(1) and (2) (trial and punishment of offences under service law notwithstanding offender ceasing to be subject to it) and section 132(3) (limitation of time for trial) shall apply in relation to consideration of charges and to trial and punishment by Standing Civilian Courts (including review), save that in section 132(3) the words “or the trial is for a civil offence committed outside the United Kingdom and the Attorney General consents to the trial” shall not have effect.

(7) Section 141 (custody of proceedings of courts-martial and right of accused to a copy thereof) shall apply in relation to the documents sent by the magistrate under Article 81 above as it applies in relation to the record of the proceedings of a court-martial subject to the following modifications, namely—

- (a) in subsection (1), for the reference to the prescribed period there shall be substituted a reference to the period specified in an order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976(a);
- (b) in subsections (2), (3) and (5), for any reference to a person tried by court-martial there shall be substituted a reference to a person tried or sentenced by a Standing Civilian Court and, where the person tried was under 17 years of age, to a parent or guardian of his;
- (c) in subsection (5), in addition to the substitution made by sub-paragraph (b) above—
 - (i) for the reference, where it first occurs, to a period of five years beginning on a date as specified in the subsection there shall be substituted a reference to a period of 4 years beginning with the date of acquittal or sentence; and
 - (ii) the proviso shall not have effect; and
- (d) subsection (6) shall not have effect.

(8) The interpretation in section 143(1) of the expression “military sentence of imprisonment” or, as the case may be, “air-force sentence of imprisonment” for the purposes of Part II of the Act of 1955 shall apply in relation to a sentence of imprisonment passed by a Standing Civilian Court as if the reference to a sentence of imprisonment passed by a court-martial included a reference to such a sentence.

(9) Section 190B (arrest of persons unlawfully at large) shall apply in relation to a person sentenced to imprisonment by a Standing Civilian Court, or sentenced by such a court to a reception or custodial order under Schedule 5A to the Act of 1955 or to be detained under section 71A(4) of that Act, as it applies in relation to a person sentenced to imprisonment under Part II of that Act.

(10) Section 198 (general provisions as to evidence) shall apply with respect to evidence in proceedings before Standing Civilian Courts as it applies with respect to evidence in proceedings under the Act of 1955.

(11) Section 198A (provision as to age) shall apply as if the reference in it to any provision of the Act of 1955 regulating the powers of a court-martial included a reference to any provision of the Act of 1976 and of any order or regulations made thereunder regulating the constitution and powers of a Standing Civilian Court.

(12) Section 199 (proof of outcome of civil trial), as applied to civilians by section 209(4B), shall apply as if the reference to the purposes of the Act of 1955 included a reference to the purposes of the Act of 1976 and of any order or regulations made thereunder.

(13) Section 200 (evidence of proceedings of court-martial) shall apply with regard to evidence of the documents specified in Article 81 above as it applies with regard to evidence of proceedings of a court-martial, but as if, for the reference in subsection (1) to the president of the court, there were substituted a reference to the magistrate of the Standing Civilian Court.

(14) Section 204A (exclusion of enactments requiring fiat of Attorney General, etc in connection with proceedings) shall apply as if the reference to proceedings under the Act of 1955 included a reference to proceedings under the Act of 1976.

Application of sections 10 and 11 of the Criminal Justice Act 1967

91.—(1) Section 10 of the Criminal Justice Act 1967(a) (admissions), as modified by virtue of section 12 of that Act for the purposes of proceedings before courts-martial by the Courts-Martial (Evidence) Regulations 1967(b), shall apply in relation to proceedings before Standing Civilian Courts subject to the following further modification, namely, that in subsection (5) the words “or counsel”, wherever they occur, shall not have effect.

(2) Section 11 of the Criminal Justice Act 1967 (alibis), as modified by virtue of section 12 of that Act for the purposes of proceedings before courts-martial by the Courts-Martial (Evidence) Regulations of 1967 and 1977(c), shall apply in relation to Standing Civilian Courts subject to the following further modifications, namely—

(a) in subsection (1), for the reference to a court-martial there shall be substituted a reference to a Standing Civilian Court;

(b) for subsection (3) there shall be substituted the following subsection—

“(3) A Standing Civilian Court shall not refuse leave under this section if it appears to it that the accused was not informed by the directing officer, or by an officer acting on his behalf, of the requirements of this section at the time he received formal notice of the charge against him.”;

(c) in subsection (6), for the reference to the commanding officer of the accused there shall be substituted a reference to the directing officer;

(d) in subsection (8)—

(i) in the definition of “the prescribed period”, for the reference to the date the accused was remanded for a trial by court-martial there shall be substituted a reference to the date upon which formal notice of the charge was sent to the accused;

(ii) there shall be added at the end the following definition—

“ “the directing officer” has the meaning assigned to it by paragraph 1(1) of Schedule 3 to the Armed Forces Act 1976.”.

(a) 1967 c. 80.
(c) S.I. 1977/86(1977 I, p. 173).

(b) S.I. 1967/1807 (1967 III, p. 4830).

Application of section 1AAA of the Perjury Act (Northern Ireland) 1946

92. Section 1AAA of the Perjury Act (Northern Ireland) 1946(a) shall apply in relation to a written statement tendered in evidence in proceedings before a Standing Civilian Court by virtue of Article 90 above as it applies in relation to a written statement tendered in evidence in proceedings before a court-martial by virtue of the provisions referred to in that section.

Order to inspect banker's books, etc.

93.—(1) The powers conferred by section 7 of the Bankers' Books Evidence Act 1879(b) may be exercised for the purposes of proceedings before Standing Civilian Courts by order of the directing officer.

(2) The order shall be in the form set out in Schedule 4 to this Order.

PART VII

MISCELLANEOUS

Exceptions from provisions of Order in interests of security

94.—(1) The appropriate officer may make in writing a declaration that any document or written particulars of which a copy is required by any provision of this Order to be sent or given to the accused or to any parent or guardian of his contain sensitive information.

(2) If he does so, then notwithstanding any other provision of this Order it shall not be necessary to send or give to the accused or to any parent or guardian of his a copy of the document or written particulars to which the declaration relates; and it shall be a sufficient compliance with the provisions of this Order if the accused and, where appropriate, any service parent or guardian of his is given a proper opportunity to inspect such document or particulars while preparing and making his defence.

(3) Any declaration made under paragraph (1) above shall be attached to the record or note of the proceedings.

(4) In this Article—

“the appropriate officer” means the officer who is or would be responsible for directing trial of the accused by a Standing Civilian Court or, if he is not available, the senior officer on the spot;

“sensitive information” means information which would or might be directly or indirectly useful to an enemy.

(5) Any declaration made under paragraph (1) above by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for directing trial of the accused by a Standing Civilian Court.

(a) 1946 c. 13 (N.I.).

(b) 1879 c. 11.

Delegation by directing officer

95.—(1) Subject to paragraph (2) below, the directing officer may authorise any officer on his staff to perform on his behalf any duty or exercise on his behalf any power which under any provision of this Order the directing officer as such is required or authorised to perform or exercise.

(2) Paragraph (1) above shall not apply to directing trial under Article 3(1)(b) above, or to varying or revoking a Direction for Trial by virtue of Article 3(3) above.

Signatures on documents

96. Where a document or other writing which is required or authorised by any provision of this Order to be made purports to be signed by a person whose description or other authority for signing is subscribed under his signature, the document or other writing shall be deemed to be signed by a person of that description or by a person who has that authority unless the contrary is proved.

Manner in which documents under Order are to be sent

97. Subject to the provisions of this Order, where a document or other writing is required or authorised under any provision of this Order to be sent to any person (other than a magistrate or an assessor or member of the court), it may be sent to that person either by its being delivered personally to him or by its being served on him by post in a registered letter addressed to him at his last known place of work or residence.

Deviations from forms in Schedules

98. A deviation or omission from a form or form of words set out in a Schedule to this Order shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

Cases not covered by Order

99. In any case not provided for in this Order, the directing officer or, as the case may be, the court shall adopt such course as appears to him or it best calculated to do justice.

Dated this 19th day of January 1977.

Fred Mulley,
One of Her Majesty's Principal
Secretaries of State.

SCHEDULES

Articles 3, 78

SCHEDULE 1

DOCUMENTS RELATING TO TRIAL

PART I

DIRECTION FOR TRIAL

Directing
Officer's
Ref. No.....



JAG's
Ref. No.....

STANDING CIVILIAN COURTS

(Armed Forces Act 1976; Standing Civilian Courts Order 1977)

DIRECTION FOR TRIAL

In pursuance of the Standing Civilian Courts Order 1977, I HEREBY DIRECT that¹ shall be tried by a Standing Civilian Court on the charge(s)² contained in the attached³ charge-sheet(s).

Date:

Place:

(Signed)
(Rank and Name).....
(Appointment).....

The Directing Officer

¹ (a) Here insert the full names of the accused as they appear in the charge-sheet, and also, in the case of an accused who was under 17 years of age at the date of the alleged commission of an offence for which he is to be tried, his apparent date of birth.

(b) Where two or more accused are to be tried jointly by the court, their names may be included in a single form of Direction for Trial.

² Delete as necessary.

³ Insert number of charge-sheets.

PART II

SUMMONS TO ACCUSED



STANDING CIVILIAN COURTS

(Armed Forces Act 1976; Standing Civilian Courts Order 1977)

To¹ From³
of²
.....
..... Tel. No.....

Ref. no.:

(to be quoted in all communications)

SUMMONS TO THE ACCUSED

1. YOU ARE CHARGED with the offence(s)⁴ set out against you in the attached⁵ copy charge-sheet(s)⁴ (*see Note A*).

2. It is directed that trial of the charge(s)⁴ shall be by a Standing Civilian Court. A copy of the Direction for Trial is attached.

3. YOU ARE THEREFORE SUMMONED to appear before the Standing Civilian Court sitting at ⁶ on / day, the day of , at hours⁷, when the charge(s)⁴ will be tried. Failure to attend could result in your arrest.

⁸[4. It is also directed that the magistrate shall sit with the following (assessor(s)) (member(s) of the court)⁴ for your trial⁹:

(see Note B).]

5.⁵ copy statements or precis of evidence of witnesses are also attached (*see Note C*).

6. You have the right to elect to be tried by court-martial instead of by a Standing Civilian Court (*see Note D*).

7. The prosecutor in the case (will) (will not)⁴ be legally qualified.

8. Your attention is drawn to *Note E* with regard to your representation in court and the obtaining of legal advice.

9. If you wish to call witnesses on your behalf at the hearing, you may, not less than 48 hours beforehand (and preferably much sooner), request me in writing to take steps to procure their attendance, and steps will then be taken if I think the request is reasonable. If you make such a request, you should supply the names and addresses of the witnesses concerned.

(Hereafter, any further paragraphs may be inserted as appropriate concerning section 99A of the Army/Air Force Act 1955 and sections 10 and 11 of the Criminal Justice Act 1967, as applied in relation to Standing Civilian Courts, continuing on a plain sheet if necessary.)

Dated this day of , .

(Signed)

(Rank and Name)

(Appointment).....

⁴[The Directing Officer]

⁴[An officer on the staff of the Directing Officer who is authorised to sign this Summons on his behalf]

- ¹ Here insert the full names of the accused as they appear in the charge-sheet.
² Here insert the full address to which the summons is to be sent.
³ Here insert the appointment and address to which the accused should send any communication.
⁴ Delete as necessary.
⁵ Insert number.
⁶ Here insert the address of the court, sufficient to enable the accused to find it.
⁷ Here insert the day, date, month and year.
⁸ Delete this paragraph *unless*—
(1) the person, or *every* person, to be tried was under 17 years of age at the date of the alleged commission of the offence for which he is to be tried, *AND*
(2) *either* (a) the court is to sit in an area covered by an Order under section 6(7) of the Armed Forces Act 1976, in which case the magistrate *must* sit with one or two *members*, or (b) the court is not to sit in such an area, but the directing officer has in his discretion specified one or two *assessors* to sit with the magistrate.
⁹ If paragraph 4 applies, here set out the names of the assessor(s) or member(s) who have been specified by the directing officer to sit with the magistrate.

NOTES

Note A—The charge-sheet

(a) Where the name of another person, as well as yours, appears at the head of a charge-sheet, it means that the Directing Officer has directed that you are to be tried jointly on that charge-sheet.

(b) The officer who has signed the charge-sheet is the officer who has been appointed your commanding officer for the purposes of these proceedings in accordance with the appropriate regulations.

Note B—Persons sitting with the magistrate

(a) You have the right to object, on any reasonable grounds, to any assessor or member whose name appears in paragraph 4 of this Summons. If you wish to object, you must *either* (a) state in writing to the Directing Officer the grounds of your objection not later than 48 hours before the date appointed for your trial, or (b) make your objection orally to the court before you plead to the charge.

(b) You have no right to object to the magistrate.

Note C—Witness statements

Unless you are given notice to the contrary, it is the prosecutor's intention to call these witnesses to give oral evidence to the court in the event of your pleading not guilty.

Note D—Right to elect trial by court-martial

(a) If you wish to exercise the right to elect trial by court-martial you must *either* (a) notify the Directing Officer in writing to that effect before the date of hearing specified in this Summons (and preferably not later than 48 hours before that date), in which case you need not attend the Standing Civilian Court; *or* (b) inform the magistrate at the start of your trial.

(b) You can elect to be tried by court-martial only in respect of all the charges in a charge-sheet. But where there is more than one charge-sheet against you, you can elect in respect of one or more of the charge-sheets.

(c) You cannot withdraw an election unless the Directing Officer consents. If therefore you intend to be legally represented, you are advised not to make any election before taking legal advice.

(d) Where you are to be tried jointly with another person, and that other person elects to be tried by court-martial, you will be treated as if you had elected as well. You will be notified if this happens.

Note E—Representation and legal advice

(a) A defending officer will be appointed to assist you with your case unless you notify the Directing Officer in writing that you do not wish such an appointment to be made. The defending officer can be an officer of Her Majesty's forces or, in certain circumstances, a civil servant of the Crown. If there is anyone in particular you would like to act as your defending officer, inform the Directing Officer in writing at once and he will see if that person can be made available. A defending officer can advise you about the case and represent you at the hearing. His services are free.

(b) You may obtain free preliminary legal advice from (*here insert the title, address and telephone number of the appropriate legal aid office*):

You should normally arrange this through your defending officer.

(c) You are entitled, if you wish, to be represented at the hearing, at your own expense, by a lawyer, who must normally be a barrister or solicitor qualified in the United Kingdom. You may also be entitled to legal aid under Queen's Regulations, depending on the nature of the charge and your, or your family's, financial means. The legal aid office specified in paragraph (b) above and your defending officer will be able to tell you more about legal aid and how to apply for it.

PART III

SUMMONS TO PARENT OR GUARDIAN



STANDING CIVILIAN COURTS

(Armed Forces Act 1976; Standing Civilian Courts Order 1977)

To¹ From³
 of²

 Tel. No.....

Ref. no.:

(to be quoted in all communications)

SUMMONS TO A PARENT OR GUARDIAN

Re⁴:

.....

1. The above-named is charged with the offence(s)⁵ against him/her⁵ set out in the attached copy charge-sheet(s)⁵, and has been summoned to attend the Standing Civilian Court sitting at⁶ on day, the day of , , at hours⁷, when the charge(s)⁵ will be tried.

2. As his/her⁵ parent or guardian, YOU ARE HEREBY SUMMONED to attend the Court at that place and time.

3. Your attention is drawn to the fact that, if the Court makes a finding of guilty against the above-named, it may in certain circumstances have power to make financial orders against you, as parent or guardian. You will at Court have the opportunity to be heard before any such order is made. You are warned, however, that if you do not attend, any such order may be made against you in your absence.

4. Attached to this Summons for your information are copies of the following—

- (a) the charge-sheet(s)⁵;
- (b) the Direction for Trial by a Standing Civilian Court;
- (c)⁸ statements (and precis)⁵ of evidence of witnesses.

You should read all these documents carefully.

Dated this day of , .

(Signed)

(Rank and Name)

⁵[The Directing Officer]

⁵[An officer on the staff of the Directing Officer who is authorised to sign this Summons on his behalf]

¹ Here insert the names of the parent or guardian as far as they are known.

² Here insert the full address to which the summons is to be sent.

³ Here insert the appointment and address to which the parent or guardian should send any communication.

⁴ Here insert the full names of the accused as they appear from the charge-sheet, together with the apparent date of birth.

⁵ Delete as necessary.

⁶ Here insert the address of the court, sufficient to enable the parent or guardian to find it.

⁷ Here insert the day, date, month and year.

⁸ Insert number.

PART IV

SUMMONS TO A WITNESS



STANDING CIVILIAN COURTS

(Armed Forces Act 1976; Standing Civilian Courts Order 1977)

SUMMONS TO A WITNESS

To¹

WHEREAS²
is [to be] [being]³ tried by a Standing Civilian Court sitting at⁴
and the trial [is to commence] [commenced]³ on⁵:

NOW THEREFORE YOU ARE HEREBY SUMMONED, pursuant to Article 78(2) of the Standing Civilian Courts Order 1977, made under paragraph 12 of Schedule 3 to the Armed Forces Act 1976, TO ATTEND AS A WITNESS at the sitting of the Standing Civilian Court at⁴ onday, the day of 19....., at hours⁶ [and to bring with you the following documents⁷, namely—.....

.....]
and so to attend from day to day until the Court releases you.

Failure to attend could result in your arrest and prosecution.

GIVEN under my hand at
on the day of 19.....

(Signature)
(Rank, where applicable,
and name)

(Appointment).....

(Tel. No.)

³[An officer authorised to direct trial before a Standing Civilian Court]

³[A magistrate of the Court]

³[An officer on the staff of the Directing Officer who is authorised to issue this Summons on his behalf]

¹ Insert name and address of person to whom the summons is to be sent.

² Insert name of accused.

³ Delete as appropriate.

⁴ Insert address of court sufficient to enable the witness to find it.

⁵ Insert date of commencement of trial.

⁶ Delete the words in brackets if the witness is not required to bring any documents.

⁷ Specify the documents with a particularity sufficient to enable the witness to identify them.

SCHEDULE 2

Article 67

OATHS AND AFFIRMATIONS

(1) FORMS OF OATH FOR MAGISTRATES, MEMBERS OF COURTS
AND ASSESSORS ON APPOINTMENT*Magistrate*

“I, (*full names*), do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law; and that I will well and truly serve Her in the office of magistrate of Standing Civilian Courts and will do right to all manner of people after the laws and usages of Her realm, without fear or favour, affection or illwill. So help me God.”

Member of the Court

The form shall be the same as that for a magistrate, save that there shall be substituted for the word “magistrate” the word “member”.

Assessor

“I, (*full names*), do swear that, when called upon to do so, I will to the best of my ability carry out the duties of assessor in Standing Civilian Courts, in accordance with the Armed Forces Act 1976 and the Orders made under it, and without fear or favour, affection or illwill; and that I will not on any account, at any time, disclose or discover the opinion on any matter expressed by any magistrate or assessor during any proceedings in such courts unless required to do so in due course of law. So help me God.”

(2) FORMS OF OATHS TO BE TAKEN IN STANDING CIVILIAN COURTS

Witness

[I swear by] [I promise before]* Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth and nothing but the truth.

Interpreter

[I swear by] [I promise before]* Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court.

**The second form of words should be used where either (a) the person taking the oath is under 17 years of age or (b) the accused, or, where more than one, each of the accused, is under 17 years of age.*

(3) FORM OF SCOTTISH OATH

The Scottish oath shall in each case be the same as the form of oath set out above.

(4) MANNER OF ADMINISTERING OATHS

Christians taking the oath shall, unless female, remove their headdress, and holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath. Jews shall take the oath in the same manner except that they shall wear their headdress and hold the Old Testament in their right hand.

(5) SOLEMN AFFIRMATIONS

The person making a solemn affirmation shall say to or repeat after the person administering it the words of the appropriate form of oath except that (a) where the words “I swear by (or promise before) Almighty God” appear, he shall substitute the words “I, (*name in full*), do solemnly, sincerely and truly declare and affirm”; (b) for the word “swear”, wherever it occurs, he shall substitute the words “solemnly, sincerely and truly declare and affirm”; and (c) the words “so help me God”, wherever they occur, shall be omitted.

SCHEDULE 3

Articles 84, 85

REVIEW AND APPEAL

PART I

FORM OF PETITION FOR REVIEW

TO¹
 PETITION of²
 WHEREAS I³ was convicted by a Standing Civilian Court at
⁴ on⁵ of the following offence(s),
 namely—⁶
 and the sentence(s) awarded was/were as follows⁷—
 NOW THEREFORE I⁸ HEREBY PETITION as follows—⁹

Signed¹⁰

Dated

¹ State the reviewing authority whom it is desired to petition.

² Insert full names of petitioner.

³ (a) Where the petition is signed by the petitioner's representative, substitute "the petitioner".

(b) Where the petition is presented by a parent or guardian petitioning against a financial penalty, substitute "my child/ward (*full names*)" or "the petitioner's child/ward (*full names*)", as the case may be.

⁴ Insert place.

⁵ Insert date.

⁶ State briefly each offence of which the court convicted the petitioner.

⁷ State the sentence passed for each offence.

⁸ See Note 3(a) above.

⁹ Set out details of the relief now sought and the grounds for seeking it.

¹⁰ The petitioner should wherever possible sign personally, but his representative may do so on his behalf where necessary, in which case he should state the capacity in which he signs.

PART II

FORM OF NOTICE OF APPEAL

To the Directing Officer.

APPEAL by¹WHEREAS I² was convicted by a Standing Civilian Court at³
on⁴ of the following offence(s), namely—⁵and the sentence(s) awarded was/were as follows—⁶NOW THEREFORE I⁷ HEREBY GIVE NOTICE OF APPEAL AGAINST [conviction] [and] [sentence]⁸ in respect of the above offence(s) on the following grounds:Signed⁹

Dated

¹ (a) Insert name of appellant.

(b) As to when a single appellant must lodge more than one notice of appeal, see Article 85(2) of the Standing Civilian Courts Order 1977.

(c) Where a parent or guardian is appealing against a financial penalty imposed on him in respect of an offence committed by his child or ward, and that child or ward is appealing against his conviction for that offence, separate notices should be lodged by the parent/guardian and child/ward.

² (a) Where the notice is signed by the appellant's representative, substitute "the appellant".

(b) Where the notice is lodged by a parent or guardian appealing against a financial penalty (see Note 1(c) above), substitute "my child/ward (*full names*)" or "the appellant's child/ward (*full names*)", as the case may be.

³ Insert place.

⁴ Insert date.

⁵ Here set out briefly the offence(s) in respect of which appeal is made, whether against conviction or sentence or both. *Any offence which is not the subject of appeal should not be included.*

⁶ Here state the sentence awarded for each offence in respect of which appeal is made.

⁷ See Note 2(a) above.

⁸ Delete as appropriate. Where there is more than once offence which is the subject of appeal, and the types of appeal differ (e.g. appeal against conviction and sentence in respect of one offence, and appeal against sentence alone in respect of another) the wording *must* be adapted to show the Directing Officer clearly how the appellant is appealing in respect of each offence.

⁹ The appellant should wherever possible sign personally, but his representative may do so on his behalf if necessary, in which case he should state the capacity in which he signs.

PART III

PERSONS TO WHOM PETITIONS MAY BE PRESENTED AND WITH WHOM NOTICES OF APPEAL MAY BE LODGED

Situation of petitioner/appellant	Person to whom he may present a petition or with whom he may lodge a notice of appeal
<ol style="list-style-type: none"> 1. Confined in a civil prison. 2. Confined in a civil detention centre in England or Wales. 3. Confined in a Scottish young offenders' institution. 4. Confined in Northern Ireland in a young offenders' centre. 5. In the care of a local authority in England and Wales. 6. In the care of a local authority in Scotland. 7. In the care of the managers of a training school in Northern Ireland. 8. In the care of the Dept. of Health and Social Services in Northern Ireland. 9. Confined in service custody. 10. In any other situation. 	<ol style="list-style-type: none"> 1. The Governor of the prison. 2. The Warden of the centre. 3. The Governor of the institution. 4. The Governor of the centre. 5.—(1) The person in charge of the community or other home in which the offender is placed; or (2) The local authority. 6.—(1) The person in charge of the residential establishment in which the child is located; or (2) The local authority. 7. The Principal of the school. 8. The Director of Social Services of the Health and Social Services Area Board for the area in which the offender is placed. 9. Officer commanding the unit which has custody of him. 10. Officer commanding at the nearest navy, army, or air-force headquarters.

SCHEDULE 4

Article 93

ORDER TO INSPECT BANKERS' BOOKS AND TO TAKE COPIES OF ENTRIES

To the Manager,

.....¹

IN THE MATTER OF A TRIAL BY STANDING CIVILIAN COURT OF

.....² to be held at

on

WHEREAS I have directed that

shall be tried by a Standing Civilian Court sitting at

on

AND WHEREAS application has been made to me by

NOW THEREFORE IT IS HEREBY ORDERED in pursuance of section 7 of the Bankers' Books Evidence Act 1879, and of paragraph 12 of Schedule 3 to the Armed Forces Act 1976 and Article 93 of the Standing Civilian Courts Order 1977 made thereunder, that the said

or [his] [their] representatives be at liberty for the purposes of the trial of the said

.....² to inspect and take copies of

all entries in the books of

at

relating to the account in the name of

with that bank from the day of 19..... to the

day of 19, both dates inclusive.

SIGNED at this

day of 19.....

.....
(Signature, rank and appointment)

An officer authorised to direct trial by Standing Civilian Court.

¹ Insert name, branch and place of bank.

² Insert name of accused.

³ Insert place.

⁴ Insert date.

⁵ Insert particulars of prosecutor or other applicant.

⁶ Insert name of bank.

⁷ Insert address of bank.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order provides for the working of Standing Civilian Courts. It does so in support of Schedule 3 to the Armed Forces Act 1976 ("the 1976 Act"). The Order is made under paragraph 12 of that Schedule.

These Standing Civilian Courts may be established, under section 6 of the 1976 Act, for the trial outside the United Kingdom of persons to whom Part II of the Army Act 1955 or Part II of the Air Force Act 1955 is applied by section 209 of either Act. They are in some respects to be akin to magistrates' courts in England and Wales. Section 6 of the 1976 Act specifies their constitution, and sections 7 and 8 specify their jurisdiction regarding offences and powers of sentence.

This Order is to come into operation when section 6 of the 1976 Act comes into force (*Article 1*). Sections 7 and 8 and Schedules 3 and 4 to the Act will be brought into force at the same time.

Part II of this Order provides for the procedure before the hearing. It provides in particular for the sending of a summons to the accused (*Article 3(1)(h)*), and, where he is a juvenile, to a parent or guardian of his (*Article 3(1)(j)*); for the preparation of the accused's defence and for his representation at court (*Article 4*); and for the ways in which the accused can exercise his right to elect to be tried by court-martial instead of by a Standing Civilian Court (*Article 6*).

Part III of the Order (*Articles 9 to 56*) provides for the procedure at the hearing. It follows in large measure the Rules of Procedure for army and air-force courts-martial, departing from those Rules only in those areas where different provision is appropriate for what will be a less formal mode of trial.

Part IV of the Order deals with a variety of matters relating to the proceedings: the functions and duties of certain persons (*Articles 57 to 59*); those who may represent the accused (*Articles 60 to 62*); charges and charge-sheets (*Articles 63 to 65*); oaths (*Articles 66 and 67*); interpreters (*Article 68*); sittings, adjournment and re-trial (*Articles 69 to 76*); witnesses (*Articles 77 and 78*); and the note of the proceedings and exhibits (*Articles 79 to 83*).

Part V of the Order deals with the procedure for review by the service authorities of findings and sentences of the court (*Article 84*), and with certain aspects of appeal to a court-martial (*Articles 85 to 89*).

Part VI of the Order (*Articles 90 to 93*) applies in relation to Standing Civilian Courts, by virtue of paragraph 12(3) of Schedule 3 to the 1976 Act, certain enactments relating to courts-martial. They are for the most part provisions of the Army Act 1955 and the Air Force Act 1955.

Part VII of the Order (*Articles 94 to 99*) contains a number of miscellaneous provisions regarding the procedures generally.

Schedule 1 prescribes the form of documents relating to trial, including the form of summonses. *Schedule 2* prescribes the forms of oaths and affirmations. The forms of petition for review and of notice of appeal are prescribed in *Schedule 3*, which also specifies the persons with whom such petitions or notices may be lodged. *Schedule 4* prescribes the form of order for inspecting bankers' books in connection with proceedings.

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