

1977 No. 92

DEFENCE

The Rules of Procedure (Army) (Amendment) Rules 1977

Made - - - - - 19th January 1977

Laid before Parliament - - - - - 4th February 1977

Coming into Operation in accordance with Rule 1

The Secretary of State, in exercise of the powers conferred on him by sections 103 to 106, 209 and 225 of the Army Act 1955(a), and of all other powers enabling him in that behalf, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Rules of Procedure (Army) (Amendment) Rules 1977 and shall come into operation on such date as section 5 of the Armed Forces Act 1976(b) comes into force.

Interpretation

2.—(1) In these Rules, “the Principal Rules” means the Rules of Procedure (Army) 1972(c).

(2) Any reference in these Rules (including their 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 these Rules.

(3) The Interpretation Act 1889(d) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

Interpretation of Principal Rules

3.—(1) In Rule 2(1) of the Principal Rules (definitions)—

(a) after the word “child”, in the definition of that word, there shall be inserted the words “, except in Schedule 9 to these Rules,”;

(b) after the definition of “convening a fresh court” there shall be inserted the following definition—

“ “extended detention” has the meaning assigned to it by Rule 11A(1) below;”;

(c) after the definition of “member” there shall be inserted the following definition—

“ “period of parental recognisance” means a period specified in any order previously made against a service parent or guardian of an

(a) 1955 c. 18.

(c) SI 1972/316 (1972 I, p. 965)

(b) 1976 c. 52.

(d) 1889 c. 63.

accused under paragraph 14(1) of Schedule 5A to the Army Act 1955 or of Schedule 5A to the Air Force Act 1955(a) or of Schedule 4A to the Naval Discipline Act 1957(b), in respect of an offence previously committed by that accused;”.

(2) In Rule 2(2) of the Principal Rules (meanings of other expressions), there shall be inserted at the beginning the words “Unless the contrary intention appears,”.

(3) For Rule 2(3) of the Principal Rules (interpretation of certain enactments) there shall be substituted the following paragraph—

“(3) Any reference in these Rules (including their 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 these Rules.”.

(4) In Rule 3 of the Principal Rules (application of Interpretation Act 1889), after the word “particular;” there shall be inserted the words “unless the contrary intention appears;”.

Application of Principal Rules to certain civilians

4.—(1) The following Rules shall be inserted after Rule 3 of the Principal Rules—

“APPLICATION TO CERTAIN CIVILIANS

Civilians under section 208A of the Act

3A.—(1) In their application to persons to whom Part II of the Act is applied by section 208A of the Act, these Rules shall have effect subject to and in accordance with the provisions of paragraphs 1, 2, 10 (except subparagraph (6)) and 13 of Part I of Schedule 9 to these Rules.

(2) Accordingly, any reference in these Rules to a numbered Rule, being a Rule which is modified in those paragraphs of Schedule 9 which are referred to in paragraph (1) above, shall, in relation to such persons, be a reference to that Rule as so modified.

(3) Subject to paragraph (1) above, Rules 7 and 13 below shall have effect in relation to such persons as they have effect in relation to officers and warrant officers.

Civilians under section 209 of the Act

3B.—(1) In their application to persons to whom Part II of the Act is applied by section 209 of the Act (including persons to whom Part II applies by virtue of section 131), these Rules shall have effect subject to and in accordance with the provisions of Schedule 9 to these Rules.

(2) Accordingly, any reference in these Rules to a numbered Rule, being a Rule which is modified in Schedule 9, shall, in relation to such persons, be a reference to that Rule as so modified.

(3) Subject to paragraph (1) above, Rules 7 and 13 below shall have effect in relation to such persons as they have effect in relation to officers and warrant officers.”.

(a) 1955 c. 19.

(b) 1957 c. 53.

- (2) Accordingly—
- (a) Schedule 1 to these Rules shall have effect;
 - (b) Rule 7(4) of the Principal Rules shall cease to have effect and is hereby revoked, and in consequence, in Rule 7(1) of those Rules, there shall be substituted for the words “paragraphs (3) and (4)” the words “paragraph (3)”;
 - (c) in proviso (c) to Rule 7(1) of the Principal Rules, and in Rule 13(1) of those Rules, the words “ or a civilian to whom Part II of the Act is applied by section 208A or section 209 of the Act ” shall cease to have effect and are hereby revoked.

Abstracts and summaries of evidence

5.—(1) In Rule 10 of the Principal Rules (abstract of evidence)—

- (a) in paragraph (1)(c), for the words from “ signed ” onwards there shall be substituted the words “ a signed statement by, or a precis of the evidence of, each witness whose evidence is necessary to prove the charge; and ”;
- (b) in paragraph (4), there shall be added at the end the words “ and shall thereafter form part of it.”;
- (c) in paragraph (5), for the words “ recorded the statement made by the accused in accordance ” there shall be substituted the word “ complied”.

(2) In Rule 22(1)(k) of the Principal Rules (documents to be sent to the prosecutor by the convening officer), for the words from “an unexpurgated” onwards there shall be substituted the words “—

- (i) an unexpurgated copy of the summary or abstract of evidence showing any passages of it which in his opinion would be inadmissible under the Act at the court-martial, and
- (ii) where a judge advocate has been appointed, a copy of the summary or abstract of evidence from which any such passages have been expurgated;”.

Award of extended detention by commanding officers

6.—(1) The following Rule shall be inserted after Rule 11 of the Principal Rules—

“Award of extended detention by commanding officers

11A.—(1) In this Rule—

“extended detention” means a period of detention exceeding 28 days and not exceeding 60 days;

“the offence charged” means—

- (a) the alleged offence in respect of which the commanding officer caused the evidence to be reduced to writing under Rule 7(1)(b) above, or any offence charged in substitution for that offence by virtue of Rule 7(3) above, and
- (b) any offence charged in addition to such an offence by virtue of Rule 7(3) above; and

references to a commanding officer proceeding with a charge in accordance with his ordinary powers are references—

- (a) to his dealing with a charge summarily without the power, in the event of his recording a finding of guilty, to award extended detention, or

(b) to his remanding a charge for trial by court-martial.

(2) Where a commanding officer receives a charge against a soldier and considers that he may wish to deal with it summarily and that, if he does so and records a finding of guilty, he may wish to award extended detention, he shall proceed in accordance with the following provisions of this Rule.

(3) He shall comply with Rule 7 above and shall in so doing cause the evidence to be reduced to writing:

Provided that proviso (b) to Rule 7(1) above shall not apply.

(4) He shall then consider the charge and the evidence with a view to satisfying himself—

(a) that there is nothing in the summary or abstract of evidence which suggests that the accused is likely to dispute any of the material facts there alleged against him, and

(b) that those facts constitute the offence charged.

(5) If the commanding officer so satisfies himself, he may in writing apply to higher authority for permission to award extended detention; and in so applying he shall send to higher authority—

(a) a copy of the charge on which the accused is held;

(b) a draft charge-sheet containing the charge upon which the commanding officer considers that the accused should be dealt with;

(c) a copy of the summary or abstract of evidence; and

(d) a statement of the character and service record of the accused.

(6) If the commanding officer does not apply for permission under paragraph (5) above (whether because he is unable to satisfy himself about the matters referred to in paragraph (4) above or otherwise), he shall proceed with the charge in accordance with his ordinary powers and shall not proceed further under this Rule.

(7) Having considered an application under paragraph (5) above, higher authority shall in writing notify the commanding officer that he gives or does not give permission to award extended detention.

(8) If permission is not given, the commanding officer shall proceed with the charge in accordance with his ordinary powers and shall not proceed further under this Rule.

(9) If permission is given—

(a) the commanding officer shall prepare a charge-sheet in accordance with the draft;

(b) the accused shall be handed a copy of the charge-sheet and of the summary or abstract of evidence, and he shall be told that if he, the accused, does not dispute the material facts alleged against him in the summary or abstract of evidence and does not dispute that those facts constitute the offence charged, then the commanding officer, if he deals with the charge summarily and records a finding of guilty, will have power to award extended detention;

(c) not less than 24 hours after sub-paragraph (b) above has been complied with, the accused shall appear before the commanding officer, and paragraph (10) below shall apply.

(10) Where the accused appears before his commanding officer by virtue of paragraph (9)(c) above—

- (a) the commanding officer shall make a record of the proceedings in accordance with the form set out in Schedule 2A to these Rules; and
- (b) the procedure specified in that form shall be followed and complied with.

(11) The completed record of the proceedings (whether or not the charge is dealt with summarily and, if so, whether or not extended detention is awarded) shall forthwith be sent to higher authority.

(12) Any answer given by an accused in accordance with paragraph 4 of the form set out in Schedule 2A to these Rules shall not be used in evidence if the charge is tried by court-martial.

(13) Notwithstanding the foregoing provisions of this Rule, the commanding officer may at any time after complying with Rule 7 above remand the accused for trial by court-martial if he considers it desirable to do so.”

(2) Accordingly—

- (a) Schedule 2 to these Rules shall have effect;
- (b) in Rule 7(1) of the Principal Rules—
 - (i) there shall be inserted after the word “Rule”, where it first occurs, the words “and to Rule 11A below”, and
 - (ii) in proviso (c), after the word “court-martial”, there shall be inserted the words “or applies to higher authority for permission to award extended detention against a soldier”; and
- (c) in Rule 11 of the Principal Rules, there shall be inserted at the beginning the words “—(1) Subject to paragraph (2) below,”, and the following paragraph shall be added at the end—

“(2) This Rule shall not apply where, on appearing before his commanding officer under Rule 11A(9)(c) below, an accused soldier does not dispute any of the material facts alleged against him in the summary or abstract of evidence and does not dispute that those facts constitute the offence with which he is charged.”.

Exemption of certain judge advocates from duty to take oath at courts-martial

7.—(1) In Rule 29 of the Principal Rules (swearing of judge advocate), there shall be added at the end the following proviso—

“Provided that an oath shall not be required to be administered to a judge advocate who is an exempted person within the meaning of section 93(1A) of the Act.”.

(2) Accordingly—

- (a) in Rule 30 of the Principal Rules, there shall be substituted for the words “After the court and judge advocate (if any) have been sworn” the words “After Rule 28 and, where necessary, Rule 29 have been complied with”;
- (b) in Rule 35(1) of the Principal Rules, there shall be substituted for the words “When the court and judge advocate (if any) have been sworn” the words “When Rule 28 and, where necessary, Rule 29 have been complied with”;

- (c) in Part B of the form contained in Schedule 4(6) to the Principal Rules, for the words “The President, members of the court and judge advocate are duly sworn.” there shall be substituted the following words—

“The president and members of the court are duly sworn.

[The judge advocate is duly sworn.]

[The judge advocate is by virtue of the proviso to Rule of Procedure 29 not required to be sworn.]”.

Shorthand writers, etc

8.—(1) In Rule 31 of the Principal Rules (interpreters and shorthand writers), the words “or shorthand writer”, wherever they appear, and the words “or as a shorthand writer” shall cease to have effect and are hereby revoked; and accordingly the words “and shorthand writers” in the heading to that Rule are also hereby revoked.

- (2) The following Rule shall be inserted after Rule 31 of the Principal Rules—

“Verbatim record

31A.—(1) A competent and impartial person may be appointed at any time to record verbatim, by whatever means, the proceedings of a court-martial.

(2) Before such a person so acts, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court think that the objection is reasonable, that person shall not so act.”.

- (3) Accordingly—

(a) in Rule 55(2) of the Principal Rules (reading back of evidence to witnesses), for the words “a shorthand writer is employed” there shall be substituted the words “a person is employed under Rule 31A(1) above”;

(b) in Rule 92 of the Principal Rules (record of proceedings)—

(i) in paragraph (1), for the words “there is no shorthand writer” and for the words, wherever they occur, “there is no shorthand writer present” there shall be substituted the words “no person is employed under Rule 31A(1) above”, and

(ii) in paragraph (2), for the words from the beginning to “Rule 31” there shall be substituted the words “When a person has been employed under Rule 31A(1) above”, and for the words “the shorthand note”, the words “his record”;

(c) in Part B of the form contained in Schedule 4(6) to the Principal Rules—

(i) the portion under the heading “SWEARING” which relates to a shorthand writer shall cease to have effect and is hereby revoked;

(ii) the following words shall be inserted before the heading “SPECIAL PLEAS AND OBJECTIONS”—

“VERBATIM RECORDER

Q. Do you object torecording these proceedings verbatim?

A.”;

(d) in Schedule 6 to the Principal Rules (form of oaths), the heading and oath for a shorthand writer shall cease to have effect and are hereby revoked.

Proof by written statement

9.—(1) In Rule 25(1)(f) of the Principal Rules (serving accused with copy of written statement), for the words “as modified by paragraphs 1 and 2 of the Schedule to the Courts-Martial (Evidence) Regulations 1967(a)” there shall be substituted the words “as applied with modifications, for the purposes of proceedings before courts-martial, by section 99A of the Act”.

(2) In Rule 50 of the Principal Rules (notifying accused that witness not to be called by prosecutor), there shall be inserted at the beginning the words “—(1)”, and there shall be added at the end the following paragraph—

“(2) Nothing in this Rule affects the operation of section 9 of the Criminal Justice Act 1967(b), as applied with modifications, for the purposes of proceedings before courts-martial, by section 99A of the Act.”.

(3) In Rule 57 of the Principal Rules (written statements), Rule 90 of those Rules (interviewing of witnesses), and Rule 101 of those Rules (notice requiring oral evidence in lieu of written statement), for the words “as modified by the Courts-Martial (Evidence) Regulations 1967”, wherever they appear, there shall be substituted the words “as applied with modifications, for the purposes of proceedings before courts-martial, by section 99A of the Act”.

Charge-sheets and charges

10.—(1) In Schedule 2(1) to the Principal Rules (commencement of charge-sheets), for the forms of commencement specified under the headings “Section 208A” and “Section 209” there shall be substituted the forms of commencement specified in Part I of Schedule 3 to these Rules.

(2) In Schedule 2(2) to the Principal Rules (statements of offences)—

- (a) in the statement for section 44(2)(b) of the Army Act 1955, there shall be substituted for the word “neglect” the words “a negligent”, and the bracket covering the alternative of “act” or “omission” shall be extended to relate to those substituted words;
- (b) in the statement for section 65(a) of that Act, for the words “of inferior rank or less seniority” there shall be substituted, in relation to an officer, a bracketed alternative of “of inferior rank” and “of less seniority”; and
- (c) there shall be inserted after the statement for section 70 of that Act the statement set out in Part II of Schedule 3 to these Rules, being the statement for paragraph 4(6) of Schedule 5A to that Act (breach of a community supervision order).

Service record of accused

11. The form of service record of the accused set out in Schedule 4(9) to the Principal Rules shall be amended in accordance with the provisions of Schedule 4 to these Rules.

New forms of sentence for juveniles

12. Part I of Schedule 5 to these Rules shall have effect for the purpose of providing in Schedule 5 to the Principal Rules (sentences) the forms of sentences for juveniles under section 71A of the Army Act 1955(c), and of making consequential amendments in that latter schedule.

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

(b) 1967 c. 80.

(c) 1955 c. 18.

Imprisonment in default of payment of fines

13.—(1) Part II of Schedule 5 to these Rules shall have effect for the purpose of providing in Schedule 5 to the Principal Rules the forms of sentences under section 71B of the Army Act 1955.

(2) The following Rule shall be inserted after Rule 102 of the Principal Rules—

“Imprisonment in default: manner of payment of fine

102A. For the purposes of section 71B of the Act, the manner in which a fine or part of a fine shall be paid or recovered is—

- (a) where the offender is a person to whose pay section 144 of the Act applies, by deduction in accordance with that section from his pay or from any balance (whether or not representing pay) which may be due to him;
- (b) by payment by or on behalf of the offender to—
 - (i) the Governor of the prison in the United Kingdom where the offender is confined; or
 - (ii) the Director of Personal Services (Army) in the Ministry of Defence or an officer authorised by him.”.

Scottish oaths

14. The form of Scottish oath shall henceforth be the same as the English form; and accordingly, in Schedule 6(3) to the Principal Rules, the words from “except” onwards shall cease to have effect and are hereby revoked.

Transitional provisions

15.—(1) Subject to paragraphs (2) and (3) below, these Rules shall apply in relation to proceedings for an offence whenever the offence was, or is alleged to have been, committed.

(2) Anything done in accordance with the Principal Rules before these Rules came into operation shall remain valid notwithstanding the provisions of these Rules.

(3) In relation to a written statement of a witness made before these Rules came into operation—

- (a) Rules 9(1) and (3) above shall not apply and, accordingly, the Principal Rules shall apply as if Rules 9(1) and (3) above had not come into force;
- (b) Rule 50(2) of the Principal Rules (inserted by Rule 9(2) above) shall have effect as if, for the words “applied with modifications, for the purposes of proceedings before courts-martial, by section 99A of the Act”, there were substituted the words “modified by the Courts-Martial (Evidence) Regulations 1967”.

Dated this 19th day of January 1977.

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

SCHEDULES

Rule 4

SCHEDULE 1

APPLICATION OF PRINCIPAL RULES TO CERTAIN CIVILIANS

The following Schedule shall be added after Schedule 8 to the Principal Rules—

Rules 3A, 3B

“SCHEDULE 9

PROVISIONS RELATING TO CIVILIANS

PART I

GENERAL MODIFICATIONS OF THESE RULES

Investigation by commanding officers

1. Rule 7 above (methods of investigating charges) shall have effect subject to the following modifications, namely, that where the offence with which the accused is charged is an offence which in his case can be dealt with summarily by an appropriate superior authority, the commanding officer may, instead of reading and if necessary explaining the charge to the accused under Rule 7(1), cause a copy of it to be delivered to him, and may order that the evidence shall be reduced to writing notwithstanding that the accused is not present when he so orders.

Reference of charges to higher authority

2. For the reference in Rule 13(1)(d) above to the accused's character and service record there shall be substituted a reference to his character, employment, conduct and circumstances so far as they are known to the commanding officer.

Convening courts-martial

3. Rule 22 above (duties of convening officer when convening court-martial) shall have effect as if the following paragraphs were inserted after paragraph (1) of that Rule—

“(1A) Where the accused—

(a) is under 17 years of age, or

(b) is under 18 years of age and the alleged date of an offence for which he is to be tried falls within a period of parental recognisance,

the officer convening the court-martial shall ensure that the commanding officer of the accused—

(i) requires (whether orally or in writing) a parent or guardian of the accused who is a service parent or guardian to attend the trial;

(ii) furnishes such service parent or guardian with a copy of the charge-sheet and of the summary or abstract of evidence and of any other document which the commanding officer has served on the accused in connection with the proceedings;

(iii) notifies such service parent or guardian that the court-martial will have power in certain circumstances to make financial orders against such service parent or guardian if the accused is found guilty.”.

Appointment of members of court

4. Rule 23 above (appointment of president and members) shall have effect as if the following proviso were added at the end—

“Provided that a person who is to be appointed a member or waiting member by virtue of section 209(3)(fa) of the Act may be appointed only by name.”.

Officers under instruction

5. The reference in Rule 24 above (officers under instruction) to any officer subject to military law, the Naval Discipline Act or air-force law shall include a reference to any person who is qualified for membership of a court-martial under section 209(3)(*fa*) of the Act; and any reference to an officer under instruction in that Rule, and in Rules 30, 32, 65 and 73 above, and in Schedules 4 and 6 to these Rules, shall be construed accordingly.

Preparation of defence

6. In Rule 25(1)(*d*) above (documents to be given to accused) the reference in item (iv) to rank shall, where any member or waiting member is not an officer, include a reference to grade and appointment.

Court-martial—assembly

7. In Rule 26(1) above (preliminary matters to be considered by court-martial on assembly)—

- (a) the reference in sub-paragraph (*b*) to officers shall include a reference to a person qualified for membership of the court-martial under section 209(3)(*fa*) of the Act; and
- (b) the reference in sub-paragraph (*c*) to being of the required rank shall, where any member is not an officer, include a reference to being so qualified.

Objections to court

8. In Rule 27 above (objections to the court)—

- (a) any reference to an officer (other than the convening officer) shall include a reference to a person qualified for membership of the court-martial under section 209(3)(*fa*) of the Act;
- (b) the reference in paragraph (4) to the lowest in rank shall be construed, as between an officer and a member who is not an officer, as if the latter were lower in rank, and, as between members who are not officers, according to the order in which they appear in the convening order;
- (c) the reference in paragraph (10) to being of the required rank shall, where the appointed waiting member is not an officer, be construed as a reference to being qualified for membership of the court-martial under section 209(3)(*fa*) of the Act.

Procedure on plea of guilty

9. Rule 45 above (procedure on finding of guilty after plea of guilty) shall have effect—

- (a) as if, in paragraph (3) of that Rule, there were substituted for the words from “the accused” onwards the words “the court shall proceed in accordance with paragraph 10 of Schedule 9 to these Rules.”; and
- (b) as if paragraph (4) of that Rule were omitted.

Accused's record, etc.

10.—(1) The following provisions of this paragraph shall apply in substitution for those of Rule 71 above.

(2) 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 or Rule 66(3) above, it shall be the duty of the prosecutor, before the court deliberate on their 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 have found him guilty was committed during a period of parental recognisance, regarding his parents or guardians.

(3) In paragraph (2) 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 (4) 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.

(4) 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 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 applies and evidence of the conviction is given by virtue of that section;
- (ii) evidence of the conviction is given, where it was by court-martial, by virtue of section 200 of the Act or, where it was by a Standing Civilian Court, by virtue of that section as modified in Article 90 of the Standing Civilian Courts Order 1977(d); or
- (iii) the accused has admitted the conviction after the purpose for which such admission is required has been explained to him.

(5) 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.

(6) Where an offence of which the court have 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

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

the president or judge advocate shall explain to the accused that the court have power to deal with him not only for the offence of which they have 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.

(7) 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.

(a) 1955 c. 18.
(c) 1957 c. 53.

(b) 1955 c. 19.
(d) S.I. 1977/88 (1977 I, p. 210).

Opportunity for parent to be heard

- 11.—(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 have found him guilty was committed during a period of parental recognisance,
- the court, after complying with paragraph 10 and, where appropriate, Rule 72 above and before they deliberate on their 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 they decide that they will not, in deliberating on their sentence, consider exercising any of their 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 deliberate on their sentence.
- (4) Where the court are required under paragraph (1) above to comply with this paragraph, the president or judge advocate shall explain to any service parent or guardian of the accused who is present such of the court's 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 paragraph 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 these Rules; 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.

Sentence where offence taken into consideration

12. In Rule 74(6) above (sentence where offence taken into consideration), for the words from “a direction” onwards there shall be substituted the words “where appropriate a compensation order which relates, wholly or in part, to the offence taken into consideration.”.

Representation by parent

13. 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 the accused who is present to represent him in such manner and to such extent as the court think fit.

Orders under Schedule 5A to the Act

14. Where the court make, or propose to make, any order under Schedule 5A to the Act, they 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.

Modifications of forms, etc, in preceding Schedules

- 15.—(1) Schedule 4 to these Rules (court-martial forms, etc) shall have effect as modified in Appendix 1 to this Schedule.
- (2) Schedule 5 to these Rules (sentences) shall have effect as modified in Appendix 2 to this Schedule.
- (3) Schedule 7 to these Rules (petitions) shall have effect as modified in Appendix 3 to this Schedule.

PART II

PROVISIONS RELATING TO STANDING CIVILIAN COURTS

Extent of this Part

16. The provisions of this Part of this Schedule shall have effect in relation to a charge which—

- (a) is received by the commanding officer of the accused in an area for which trials may be directed to be held before a Standing Civilian Court,
- (b) is capable of being tried by such a court, and
- (c) is supported by written statements.

Interpretation

17.—(1) References in this Part of this Schedule to a numbered Rule, being a Rule which is modified in Part 1 of this Schedule, are reference to that Rule as so modified.

(2) Any reference in these Rules to a charge to which this Part applies shall be construed in accordance with paragraph 16 above.

Procedure for commanding officers

18. Rules 7 and 13 above (methods of investigating charges and reference of them to higher authority) shall have effect in relation to a charge to which this Part applies subject to the provisions of paragraphs 19 to 21 below.

19. When a charge to which this Part applies is first reported to the commanding officer of the accused, the commanding officer shall, before complying with Rule 7 above, consider the charge and the written statements which gave rise to it, with a view to forming an opinion whether the charge should be tried by a Standing Civilian Court.

20. If the commanding officer does then form the opinion that the charge should be so tried, he shall submit it to higher authority without complying with Rule 7 or 13 above, and shall send to higher authority—

- (a) a draft charge-sheet containing the charge;
- (b) a copy of the written statements which gave rise to it;
- (c) any relevant information in his possession about the accused; and
- (d) a statement that the charge is being submitted under this paragraph without investigation under Rule 7 above and that he, the commanding officer, recommends that the charge should be tried by a Standing Civilian Court.

21.—(1) If the commanding officer in considering the charge and written statements under paragraph 19 above does not then form the opinion that the charge should be tried by a Standing Civilian Court, he shall investigate the charge in accordance with Rule 7 above.

(2) He shall then, unless he dismisses it, submit the charge to higher authority in accordance with Rule 13(1) above:

Provided that if, having so investigated the charge, the commanding officer then forms the opinion that it should be tried by a Standing Civilian Court, he shall, in complying with Rule 13(1)(e) above, recommend accordingly; and for the purposes of this proviso Rule 13(1)(b) above shall include a reference to the charges upon which the commanding officer considers that the accused should be tried by a Standing Civilian Court.

Procedure for higher authority

22. Rule 18 above (action by higher authority on receipt of a charge) shall have effect in relation to a charge to which this Part applies subject to the provisions of paragraphs 23 and 24 below.

23.—(1) Where higher authority receives a charge submitted in accordance with paragraph 20 above, being a charge to which this Part applies, the provisions of this paragraph shall apply in substitution for those of Rule 18 above.

(2) If higher authority is of the opinion that the charge should be tried by a Standing Civilian Court, he shall proceed in accordance with Article 3 of the Standing Civilian Courts Order 1977.

(3) If he is not of that opinion, he shall refer the charge back to the commanding officer of the accused with a direction—

- (a) to investigate the charge in accordance with Rule 7 above and to proceed accordingly; or
- (b) to dismiss the charge or to stay all further proceedings thereon, by virtue of section 80(1) of the Act.

24. Where higher authority receives a charge investigated under Rule 7 above and submitted in accordance with Rule 13(1) above, being a charge to which this Part applies, he shall—

- (a) if he is of the opinion that the charge should be tried by a Standing Civilian Court, proceed in accordance with Article 3 of the Standing Civilian Courts Order 1977; or
- (b) if he is not of that opinion, proceed in accordance with Rule 18 above.

Election of trial by court-martial

25.—(1) Where in accordance with the provisions of the Standing Civilian Courts Order 1977 an accused elects to be tried by court-martial instead of a Standing Civilian Court, or is treated as if he had so elected, higher authority, on receiving notice of the election, shall—

- (a) where the charge to which the election relates has been investigated in accordance with Rule 7 above—
 - (i) himself convene a court-martial to try the accused;
 - (ii) refer the charge to the officer who would be responsible for convening the appropriate court-martial to try the accused; or
 - (iii) refer the charge back to the commanding officer of the accused under section 80(1) of the Act, with a direction to dismiss it or to stay all further proceedings thereon;
- (b) where the charge to which the election relates has not been so investigated, refer the charge back to the commanding officer with a direction—
 - (i) to investigate the charge in accordance with Rule 7 above and to proceed accordingly; or
 - (ii) to dismiss the charge or to stay all further proceedings thereon, by virtue of section 80(1) of the Act.

(2) Where a commanding officer submits to higher authority in accordance with Rule 13(1) above a charge which was referred back to him under this paragraph with a direction to investigate it, higher authority shall proceed in accordance with sub-paragraph (1)(a) above.

Statutory modifications for this Part

26. For the purposes of this Part of this Schedule, the modifications of sections 76, 77, 79 and 80 of the Act authorised by section 209(3A)(c) of the Act are as set out in Appendix 4 to this Schedule.

PART III

APPEALS FROM STANDING CIVILIAN COURTS

Extent of this Part

27. The provisions of this Part of this Schedule shall have effect in relation to appeals from Standing Civilian Courts to courts-martial, and to petitions from courts-martial which arise in consequence.

Interpretation

28. For the purposes of this Part of this Schedule, the following expressions and references in these Rules, including this Part, shall, unless the contrary intention appears or the context otherwise requires, be construed as follows, namely—

- (a) any reference, however expressed, to accused, defence, prosecution, or trial shall be construed as a reference to appellant, case for the appellant, case against the appellant, and hearing of the appeal respectively;
- (b) "appeal charge-sheet" means an appeal charge-sheet drawn in accordance with paragraph 33 below;
- (c) "notice of appeal" means a notice of appeal drawn up and lodged in accordance with Article 85(1) of the Standing Civilian Courts Order 1977 by or on behalf of a person who has a right of appeal in respect of the matters which it contains by virtue of paragraph 13(3) of Schedule 5A to the Army Act 1955 or paragraph 18 of Schedule 3 to the Armed Forces Act 1976(a);
- (d) any reference to a charge-sheet shall be construed as a reference to an appeal charge-sheet;
- (e) any reference to proceedings to which this Part applies shall be construed in accordance with paragraph 27 above;
- (f) any reference to a numbered Rule or Schedule, being a Rule or Schedule which is modified in Part I of this Schedule or in this Part, shall be construed as a reference to that Rule or Schedule as so modified.

Exception of Rules 4-13, 18-22, and 25

29. Rules 4 to 13, 18 to 22, and 25 above shall not have effect in relation to proceedings to which this Part applies.

Convening court-martial to hear appeal

30. Where a notice of appeal has been lodged, and the accused, on a review carried out in pursuance of Article 86(a) of the Standing Civilian Courts Order 1977 or otherwise, has not been granted the relief which he seeks, higher authority shall proceed as follows with a view to the appeal being heard by a court-martial, namely—

- (a) he shall himself convene a court-martial to hear the appeal, in accordance with paragraph 32 below; or
- (b) he shall refer the notice to the officer who would be responsible for convening the appropriate court-martial to hear the appeal, with a view to that officer convening it in accordance with paragraph 32 below; and where he does so, he shall send to that officer all the documents relating to the case which are in his possession.

Avoidance of delay

31. A court-martial to hear an appeal shall be convened expeditiously.

Procedure for convening

32.—(1) When an officer convenes a court-martial in pursuance of paragraph 30 above, he shall—

- (a) endorse the notice of appeal with the words "Appeal to be heard by a [general] [district] court-martial", and date and sign the endorsement;

(a) 1976 c. 52.

-
- (b) issue a convening order, which shall be in the form set out first in Schedule 4(1) to these Rules, except that for the words in that form “trying by a [general] [district] court-martial the accused person(s)” there shall be substituted the words “hearing by a [general] [district] court-martial an appeal from a Standing Civilian Court brought by the person(s)”; and for the word “accused” in the marginal heading of that form there shall be substituted the word “appellant(s)”;
- (c) where a person has lodged more than one notice of appeal and the appeals arise from different charge-sheets before a Standing Civilian Court, direct whether the appeals are to be heard together or separately, and, if separately, the order in which they are to be heard;
- (d) where more than one person has lodged notice of appeal arising from the same charge-sheet before a Standing Civilian Court, direct whether the appeals are to be heard together or separately;
- (e) where the accused appeals against conviction on a charge and there are one or more charges which were laid in the alternative to that charge before the Standing Civilian Court and in respect of which no finding was made, direct whether any such alternative charges are to be reinstated for the hearing of the appeal;
- (f) where the accused appeals against conviction, prepare an appeal charge-sheet in accordance with paragraph 33 below;
- (g) appoint the president and members of the court, and any waiting members, in accordance with Rule 23 above;
- (h) take the necessary steps, whether convening a general or district court-martial, to procure the appointment of a judge advocate by or on behalf of the Judge Advocate General, and, failing such appointment, himself appoint a suitable person so to act;
- (j) appoint an officer subject to military law or counsel assisted by such an officer to prosecute, or detail a commanding officer to appoint an officer subject to military law to prosecute:
Provided that the convening officer may appoint two such officers to prosecute if he thinks fit;
- (k) appoint the date, time and place for the hearing of the appeal;
- (l) send to the president the convening order, the notice of appeal and, where the appeal is against conviction, the appeal charge-sheet;
- (m) send to each member of the court and to each waiting member a copy of the notice of appeal and, where the appeal is against conviction, a copy of the appeal charge-sheet;
- (n) send to the judge advocate copies of the documents sent to the president under sub-paragraph (l) above, together with the original documents specified in Article 81 of the Standing Civilian Courts Order 1977, and a note of the result of any review carried out in pursuance of Article 86(a) of that Order or otherwise, signed by or on behalf of the authority which carried out the review;
- (o) send to the prosecutor copies of all documents sent to the judge advocate under sub-paragraph (n) above;
- (p) send to the accused notice of the date, time and place appointed for the hearing of the appeal and, where he appeals against conviction, a copy of the appeal charge-sheet; and inform him that, upon his making a written request to the convening officer not less than 48 hours before his trial requiring the attendance at the hearing of the appeal of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these Rules to procure the attendance of any such witness at the hearing;

- (q) where a direction is given under sub-paragraph (d) above that appeals against conviction by two or more accused are to be heard together, give notice of the direction to each accused to whom the direction relates;
- (r) ensure that the accused is given a proper opportunity to prepare his defence in accordance with paragraph 34 below;
- (s) take steps in accordance with Rule 91 above to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with sub-paragraph (p) above:

Provided that the proviso to Rule 22(1)(n) above shall apply to this sub-paragraph as if it were set out here verbatim.

(2) Where the appellant—

- (a) is under 17 years of age, or
- (b) is under 18 years of age and appeals against conviction for an offence committed during a period of parental recognisance,

the officer convening the court-martial shall also—

- (i) require (whether orally or in writing) a parent or guardian of the accused who is a service parent or guardian to attend the hearing of the appeal;
- (ii) furnish such parent or guardian with a copy of every document sent to the accused under sub-paragraph (1)(p) and (q) above;
- (iii) notify such parent or guardian that, whether or not he attends, the court-martial will have power in certain circumstances to make financial orders against him as parent or guardian in respect of the accused's offence, not exceeding in amount the maximum which the Standing Civilian Court could have awarded.

(3) Where the appellant is a parent or guardian appealing against the imposition on him of a fine or the making against him of a compensation order under paragraph 13 of Schedule 5A to the Act, and the child or ward in respect of whose conviction the fine was imposed or order made does not appeal against that conviction and is still a person to whom Part II of the Act is applied by section 209 of the Act, the officer convening the court-martial shall require that child or ward, whether orally or in writing, to attend the hearing of the appeal.

Appeal charge-sheets

33.—(1) An appeal charge-sheet shall contain—

- (a) the statement and particulars of the offence of which the accused was convicted by the Standing Civilian Court and in respect of which he appeals against conviction; and
- (b) any alternative charge which is the subject of a direction under paragraph 32(1)(e) above.

(2) An appeal charge-sheet shall be headed as such.

(3) The commencement of an appeal charge-sheet shall be in the form contained in Appendix 5 to this Schedule.

(4) An appeal charge-sheet shall be signed by the officer convening the court-martial or an officer authorised by him in that behalf.

(5) Subject to the foregoing provisions of this paragraph, Rules 14 to 17 above, and Schedule 2(2) and (3) to these Rules, shall apply in relation to appeal charge-sheets and the charges they contain to the same extent as they apply in relation to other charge-sheets and charges against accused to whom Part II of the Act is applied by section 209 of the Act.

Preparation of defence

34.—(1) An accused who has lodged a notice of appeal shall be afforded a proper opportunity for preparing his defence and shall be allowed proper communication with any defending officer or counsel of his and with his witnesses.

(2) A defending officer or counsel shall be appointed to defend an accused on appeal unless the accused states in writing that he does not wish such an appointment to be made.

(3) If the accused so requires, he shall be given, not less than 24 hours before the hearing of his appeal, a list showing the rank, name and unit of the president and the rank (or grade and appointment), name, and unit (or place of employment) of each member of the court and of each waiting member.

(4) When, after lodging notice of appeal, an accused is served with a copy of a written statement which the prosecutor proposes to hand to the court in accordance with section 9 of the Criminal Justice Act 1967(a), as applied with modifications, for the purposes of proceedings before courts-martial, by section 99A of the Act, he shall be informed of his right under the said section 9 to require that oral evidence shall be given instead of such written evidence.

(5) An accused who receives notice under paragraph 32(1)(g) above may, before the hearing of the appeal, by written notice to the convening officer claim to have his appeal against conviction heard separately on the ground that he would be prejudiced in his defence if it were not heard separately. In such a case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused who has so claimed shall have his appeal against conviction heard separately.

(6) Where, in the case of an appeal against conviction, an appeal charge-sheet contains more than one charge the accused may, before the hearing of the appeal, by written notice to the convening officer claim 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. In such a case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

Procedure at the court-martial—general

35. Subject to the provisions of paragraphs 36 to 43 below, the procedure at a court-martial hearing an appeal from a Standing Civilian Court shall be that provided for in these Rules with regard to a court-martial trying for the first time a charge against a person to whom Part II of the Act is applied by section 209 of the Act.

Preliminary matters when court assembles

36. Rule 26 above (preliminary matters to be considered by court) shall have effect—

- (a) as if, in paragraph (1)(f) of that Rule, for the words from “charge-sheet” onwards there were substituted the words “notice of appeal to be a person who has a right of appeal to a court-martial in respect of the matters which the notice contains; and”;
- (b) where in relation to an offence the appeal is against sentence alone, as if paragraph (1)(g) of that Rule were omitted in relation to that offence.

Order of hearing appeals

37. A court-martial shall, in relation to appeals arising from the same proceedings before a Standing Civilian Court, hear all appeals against conviction before any appeal against sentence.

Application of paragraphs 39 to 42 below

38.—(1) Where in relation to an offence the appeal is against conviction alone, paragraphs 41 and 42 below shall not apply to the appeal in relation to that offence, except to the extent mentioned in paragraph 40 below.

(2) Where in relation to an offence the appeal is against sentence alone, paragraphs 39 to 41 below shall not apply to the appeal in relation to that offence, except to the extent mentioned in paragraph 42 below.

(3) Where in relation to an offence the appeal is against conviction and sentence, paragraphs 40 and 42 below shall not apply to the appeal in relation to that offence.

Appeal against conviction

39.—(1) Rule 35 above (arraignment of accused) shall apply as if, in paragraph (1) of that Rule, there were added at the end the words “on the appeal charge-sheet”.

(2) Rule 36 above (plea to the jurisdiction of the court) shall apply as if, in paragraph (3)(a) of that Rule, there were added at the end the following proviso—

“Provided that where he dissolves the court he shall take steps with a view to another court being convened to hear the appeal as soon as possible.”.

(3) Rule 37 above (objection to charge) shall apply as if the following paragraph were added at the end—

“(4) Where by virtue of any of the provisions of paragraph (3) above a charge of which the accused was convicted by a Standing Civilian Court is not to be proceeded with on appeal either in its original or in an amended form—

(a) the accused’s conviction on that charge shall be quashed by a reviewing authority under paragraph 20 of Schedule 3 to the Armed Forces Act 1976:

Provided that if the appeal charge-sheet contains any charge which is laid in the alternative to that charge and which is unaffected by the objection, the provisions of this paragraph shall be without prejudice to any such alternative charge being proceeded with on the appeal;

(b) the convening officer shall forthwith give notice to the accused, and to any parent or guardian of his to whom paragraph 32(2) of Schedule 9 to these Rules refers, stating—

(i) that the conviction is being quashed; and

(ii) in a case to which the proviso to sub-paragraph (a) above applies, whether any alternative charge is to be proceeded with on the appeal.”.

(4) Rule 38 above (plea in bar of trial) shall not apply.

(5) Rule 45 above (procedure on finding of guilty after plea of guilty) shall apply—

(a) as if, in paragraph (1) of that Rule, for the words from “the prosecutor”, where they first occur, to the end of the paragraph there were substituted the words—

(a) where there is also an appeal against sentence in respect of that offence or (where that offence is not in its statement or particulars the same as the offence of which the accused was convicted by the Standing Civilian Court) the offence of which he was so convicted, the court shall proceed as directed in paragraph 41 of Schedule 9 to these Rules;

(b) where there is no appeal against sentence in respect of such offence the court shall, subject to Rule 69 below, proceed as directed in paragraph 40 of that Schedule.”;

(b) as if paragraphs (2), (3) and (4) of that Rule were omitted.

(6) Rule 49 above (additional prosecution evidence) shall apply as if, for the words “is not contained in any summary or abstract of evidence given to the accused”, there were substituted the words “was not adduced by the prosecution before the Standing Civilian Court”.

(7) Rule 50 above (notice to an accused that a witness will not be called by the prosecutor) shall apply as if, for the words “is contained in the summary or abstract of evidence” there were substituted the words “was adduced by the prosecution before the Standing Civilian Court”.

(8) Rule 58 above (submission of no case, etc) shall apply as if the following two paragraphs were added at the end—

“(5) Where under the foregoing provisions of this Rule the court find an accused not guilty of a charge of which he was convicted by the Standing Civilian Court, and there is in the appeal charge-sheet any charge which is laid in the alternative to that charge and in respect of which no finding has been made by the court-martial, the finding of not guilty shall not prevent the court from proceeding with any such alternative charge on the appeal.

(6) Where under paragraph (3) or (4) above the court announce a finding of not guilty of a charge on which the accused was convicted by the Standing Civilian Court, they shall also announce that the conviction of the accused on that charge is quashed, but without prejudice, where relevant, to the provisions of paragraph (5) above.”.

(9) The finding on each charge (or the making of no finding) by the court-martial shall, whatever the appellant’s plea to the charge, replace the finding on that charge (or the making of no finding) by the Standing Civilian Court; and accordingly, Rule 67 above (announcement of finding) shall apply as if the following paragraph were inserted after paragraph (2) of that Rule—

“(2A) The finding on each charge (or the making of no finding) shall be announced as replacing any previous finding on that charge (or the making of no finding).”.

(10) Rule 68 above (completion of procedure on plea of guilty, etc) shall apply as if the reference to Rule 45(2) were omitted.

(11) Rule 70 above (release of accused) shall apply as if, after the words “not guilty”, there were inserted the words “and no part of the accused’s appeal remains to be heard”.

(12) Rule 82 above (withdrawal of charge-sheets and charges) shall not apply.

(13) Rule 89 above (unfitness to stand trial and insanity) shall apply as if the following paragraph were inserted after paragraph (2) of that Rule—

“(2A) A finding under paragraph (1) or (2) above shall be announced as replacing any previous finding on a charge to which the finding by the court-martial relates.”.

Appeal against conviction alone—sentence

40.—(1) This paragraph applies where, in relation to an offence of which the accused was convicted by the Standing Civilian Court, he has appealed against conviction but not sentence, and the court-martial have found him guilty on appeal of the charge of which he was convicted or of an alternative charge, or have made a special finding in relation to any such charge in accordance with section 98 of the Act or Rule 66(3) above.

(2) If the court-martial find the accused guilty of the charge on which he was convicted by the Standing Civilian Court, they shall, without prejudice to paragraph 18(7) of Schedule 3 to the Armed Forces Act 1976, adopt and pass as the sentence of the court-martial for that offence the sentence passed for that offence by the Standing Civilian Court, as varied, if at all, on a review already carried out; and accordingly, paragraph 10 in Part I of this Schedule, and Rules 72 to 75 above, shall not apply.

(3) For the purposes of sub-paragraph (2) above—

(a) the age of the accused shall be his age at the time when the Standing Civilian Court passed sentence, and

(b) any explanation given, or consent obtained, by the Standing Civilian Court in passing sentence need not be given or obtained again by the court-martial.

(4) Where the court-martial pass sentence under sub-paragraph (2) above, they shall comply with Rule 76 above as modified by paragraph 41(11) below:

Provided that they shall not comply with Rule 76(2) and (3) if any part of the appeal remains to be heard.

(5) If the court-martial find the accused guilty of an alternative charge, or make a special finding in accordance with section 98 of the Act or Rule 66(3) above, they shall proceed in accordance with paragraph 41(2) to (11) below, and shall award a sentence for the offence which in their opinion is not more severe than that awarded for the original offence by the Standing Civilian Court, as varied, if at all, on a review already carried out.

Appeal against conviction and sentence—sentence

41.—(1) This paragraph applies where, in relation to an offence of which the accused was convicted by the Standing Civilian Court, he appealed against both conviction and sentence and the court-martial have found him guilty on appeal of the charge of which he was convicted or of an alternative charge, or have made a special finding in accordance with section 98 of the Act or Rule 66(3) above, and have announced the finding.

(2) Before proceeding further, the court shall, subject to Rule 69 above—

- (a) where there is any appeal against sentence alone, comply with paragraph 42 (2) below, and
- (b) subject thereto, ask the prosecutor to address them in accordance with sub-paragraph (3) below.

(3) The prosecutor shall inform the court of the facts of the case (except in relation to a charge which they have reheard) and of the proceedings below; and without prejudice to the generality of those matters he shall inform the court of—

- (a) any convictions of the accused by the Standing Civilian Court against which he has not appealed, being convictions in the same proceedings as those from which the appeal arises;
- (b) any offences which, at the accused's request, the Standing Civilian Court took into consideration in passing sentence;
- (c) the result of any review of the findings or sentence of the Standing Civilian Court.

(4) Paragraph 10 in Part I of this Schedule (accused's record, etc.) shall then be complied with, subject to the following modifications, namely—

- (a) as if, in sub-paragraph (7)(b) of that paragraph, there were added at the end the words "and as to why he appeals against the sentence of the Standing Civilian Court.";
- (b) as if the following sub-paragraph were added at the end—
 "(8) The prosecutor, if he so wishes, may reply to any address by the accused made under sub-paragraph (7)(b) above, but, if he does so, the accused shall have the right to respond to his reply."

(5) The court-martial shall take into consideration in deliberating on sentence, so far as they can properly do so, any offence which the Standing Civilian Court took into consideration at the accused's request when it considered sentence.

(6) Where the court feel unable to take into consideration an offence which the Standing Civilian Court did, the president shall announce the fact and specify the offence in open court before announcing sentence, and shall note the decision in the record of the court-martial proceedings.

(7) The accused may request the court to take into consideration any offence which was not taken into consideration by the Standing Civilian Court.

(8) The president shall attach to the record of the proceedings a note of any offences taken into consideration by the court-martial in passing sentence, showing separately those taken into consideration under sub-paragraph (5) above and those under sub-paragraph (7) above.

(9) Rule 72 above shall apply so far as is necessary in relation to sub-paragraphs (5) to (7) above, but shall not otherwise apply.

(10) Rule 74 above (sentence, etc.) shall apply—

(a) as if, for paragraph (1) of that Rule, there were substituted the following paragraph—

“(1) The court shall award a separate sentence for each offence, and shall be subject generally to the provisions of Article 55 of the Standing Civilian Courts Order 1977 as if they were set out here verbatim.”;

(b) as if paragraphs (2), (4) and (7) of that Rule were omitted;

(c) as if, in paragraph (3) of that Rule, the reference to paragraph (2) were omitted and the words “adapted as may be necessary, on the advice of the judge advocate” added at the end;

(d) as if, in paragraph (6) of that Rule, the words “have agreed to” were omitted.

(11) Rule 76 above (announcement of sentence, etc.) shall apply—

(a) as if, in paragraph (1) of that Rule, there were added at the end the words “and as replacing any sentence already passed on the accused in relation to the same matters.”;

(b) as if, at the end of that Rule, there were added the following paragraph—

“(3A) The judge advocate shall return to the convening officer the original documents sent to him under paragraph 32(1)(n) of Schedule 9 to these Rules.”.

Appeal against sentence alone

42.—(1) Rules 33(2), 35, and 37 to 70 above shall not apply.

(2) When Rule 28 and, where necessary, Rule 29 above have been complied with, the judge advocate shall read out the notice of appeal, or so much of it as relates to the appeal against sentence alone.

(3) Rule 36 above (plea to the jurisdiction of the court) shall apply—

(a) with the modification contained in paragraph 39(2) above, as if it were set out in this sub-paragraph; and

(b) as if, in paragraph (1) of that Rule, for the words “before pleading to the charge” there were substituted the words “immediately after the notice of appeal has been read out”.

(4) After sub-paragraph (2) above has been complied with, and any plea under Rule 36 above dealt with, the court shall proceed as if, in relation to the offence in respect of which the accused has appealed against sentence alone, he had also appealed against conviction, had been found guilty, and the finding announced; and accordingly, the provisions of paragraph 41(2) to (11) above shall apply as if they were set out in this paragraph.

(5) Rule 88 above (absence of president, members or judge advocate) shall apply as if the reference in paragraph (5) of that Rule to the accused having been arraigned were a reference to the court having started to proceed in accordance with paragraph 41(2) of this Schedule.

General matters

43.—(1) Rule 78 above (general duties of prosecutor and defending officer or counsel) shall apply as if, in paragraph (1)(b) of that Rule, for the word “charge” there were substituted the word “appeal”.

(2) Rule 90 above (interviewing of witnesses) shall apply—

- (a) as if, in paragraph (1) of that Rule, for the words from “at the taking” to “Rule 25(1)(e)” there were substituted the words “before the Standing Civilian Court, or whose attendance on the hearing of the appeal the accused has requested in accordance with paragraph 32(1)(p) of Schedule 9 to these Rules”;
- (b) as if, in paragraph (2) of that Rule, for the words from “at the taking” to “abstract of evidence” there were substituted the words “before the Standing Civilian Court”.

(3) Rule 92 above (record of proceedings) shall apply as if, in paragraph (1)(a) of that Rule, after the word “Rules”, there were inserted the words “, adapted where necessary, in accordance with the advice of the judge advocate, to accord with the provisions of Part III of Schedule 9 to these Rules,”;

(4) Rule 93 above (exhibits) shall apply as if the following paragraph were added at the end:—

“(5) When an exhibit which was attached to the magistrate’s note of the proceedings in the Standing Civilian Court is in accordance with this Rule attached to the record of the court-martial proceedings, the judge advocate shall attach to the magistrate’s note a certificate identifying the exhibit and stating what has been done with it.”.

(5) Rule 103 above (exceptions from Rules on account of the exigencies of the service) shall apply as if, for paragraph (4)(d) of that Rule, there were substituted the following paragraph:—

- “(d) paragraph 34(3) of Schedule 9 to these Rules, in so far as it provides that the list which it mentions shall be given to the accused not less than 24 hours before the hearing of his appeal.”.

Petitions

44.—(1) Rule 100 above (petitions) shall apply—

- (a) as if, in paragraphs (1) to (3) of that Rule, for the words in each of those paragraphs from “an accused” to “insanity” there were substituted the words “a person who has a right to petition against the finding or sentence, or both, of a court-martial by virtue of section 108 of the Act (as modified in relation to appeals from Standing Civilian Courts by Article 89 of the Standing Civilian Courts Order 1977)”;
- (b) as if, in paragraphs (1) to (4) of that Rule, for the words “Schedule 7” there were substituted the words “Appendix 6 to Schedule 9”.

(2) The forms set out in Appendix 6 to this Schedule shall be used for petitions in relation to proceedings to which this Part applies, instead of the forms set out in Schedule 7 to these Rules.

Accused not appearing

45.—(1) Where an accused—

- (a) fails to appear before the court-martial at the appointed time or within a reasonable time thereafter, or
 - (b) having so appeared, fails to appear subsequently during the proceedings,
- the court shall adjourn and report to the convening officer.

(2) The convening officer shall thereupon—

- (a) dissolve the court, or
- (b) order it to sit at such later date and time as he may specify, in which case he shall give notice of the new date and time to all persons who under these Rules require to know them.

(3) Where the convening officer considers that there is no reasonable explanation for an accused's failure to appear, he may direct that his appeal shall be treated as abandoned.

(4) Notice of any direction under sub-paragraph (3) above shall be sent by the convening officer to the president and members of the court, the judge advocate, the prosecutor, and the accused at his last known address, and to any parent or guardian of the accused to whom paragraph 32(2) above refers.

(5) An appeal which is treated as abandoned under this paragraph may not be revived.

APPENDIX 1 TO SCHEDULE 9 paragraph 15(1)

MODIFICATIONS OF SCHEDULE 4 TO THESE RULES

In Schedule 4(1)—convening orders

1. Where any member or waiting member is not an officer, for the words "detail of officers" in the two forms set out, there shall be substituted the words "detail of persons".

In Schedule 4(6)—record of proceedings of court-martial

2. Where any member is not an officer, for the word "officers" in the question in Part A of the form of record there shall be substituted the word "persons".

3. Where any person under instruction is not an officer, for the word "officers" in Part B of the form of record there shall be substituted the word "persons".

4. For Parts F1 and F2 of the form of record there shall be substituted the following Part:—

"F(CIV)

Page.....

PROCEEDINGS ON CONVICTION OF A CIVILIAN

- 1.¹ The prosecutor calls evidence under paragraph 10(2) of Schedule 9 to the Rules of Procedure, which is recorded on page
- 2.¹ The accused [declines] [elects] to cross-examine the witness(es) who give(s) the above evidence [and the cross-examination is recorded on page].
- 3.¹ A parent or guardian of the accused [declines] [elects] to cross-examine the witness(es) who give(s) the above evidence [and the cross-examination is recorded on page].
- 4.¹ The [president] [judge advocate] complies with paragraph 10(6) of Schedule 9 to the Rules of Procedure.
5. Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?
A.
- 6.¹ The evidence for the defence as to the accused's character and in mitigation of punishment is recorded on page
7. Q. Do you wish to address the court in mitigation of punishment?
A.
- 8.¹ The accused [makes an address in mitigation of punishment, which is summarised [below] [on page]] [hands in an address in mitigation of punishment, which is read, marked, signed by the president or judge advocate and attached to the record].

- 9.¹ The list of offences which the court have, at the request of the accused, agreed to take into consideration is read to the accused, signed by him, marked, signed by the president or judge advocate and attached to the record.
- 10.¹ The court give any service parent or guardian of a juvenile accused who is present an opportunity to be heard, in accordance with paragraph 11(1) of Schedule 9 to the Rules of Procedure [and, a service [parent] [guardian], avails [himself] [herself] of that opportunity in accordance with paragraph 12 below.]
- 11.¹ (*Name*), a [parent] [guardian] of the accused, applies to be heard under paragraph 11(3) of Schedule 9 to the Rules of Procedure and the court [give] [do not give] leave. [The court's reasons for not giving leave are recorded at page]. [The [parent] [guardian] is heard in accordance with paragraph 12 below].
- 12.¹ (*Name*), a [parent] [guardian] of the accused—
 [gives evidence on oath, which is recorded on page]
 [makes a statement without being sworn, which is recorded on page]
 [calls witnesses on his behalf, whose evidence is recorded on page]
 [makes an address to the court, the substance of which is recorded on page].
13. Final question addressed to the accused personally.
 Q. Is there anything further that you wish to say to the court?
 A.
 [The accused makes a statement, which is recorded on page].
14. The court close to deliberate on sentence.

¹ Strike out this paragraph if inapplicable.

Schedule 4(9)—service record of accused

5. Schedule 4(9) shall be omitted.

In Schedule 4(11)—confirmation

6. In the fifth example given (postponement or suspension of sentence) the reference to suspension shall be omitted.

Schedule 4(12)—determination of suspension

7. Schedule 4(12) shall be omitted.

paragraph 15(2) APPENDIX 2 TO SCHEDULE 9

MODIFICATIONS OF SCHEDULE 5 TO THESE RULES

Schedule 5 to these Rules shall have effect as if the following list were inserted immediately before Part (3) of that Schedule (consecutive sentences, etc.)—

“(2A) PERSONS TO WHOM PART II OF THE ACT IS APPLIED BY
SECTION 209 OF THE ACT

OFFENDER 21 OR OVER

Death. To suffer death.¹

Imprison- To be imprisoned for.....¹
ment.

- Fine. To be fined.....

- Compensation order. To pay compensation in the sum of.....
in respect of.....

- Conditional discharge. To be discharged, subject to the condition that during the period of
..... (*not to exceed 3 years*) from today the accused
commits no offence that may be tried by court-martial under any of the
Services Acts or by a Standing Civilian Court.

- Absolute discharge. To be discharged absolutely.

- OFFENDER 17 OR OVER BUT UNDER 21
- Death. To suffer death.¹

- Imprisonment. To be imprisoned for.....¹

- Custodial order. To be committed to be detained in an appropriate institution in
accordance with the provisions of paragraph 10 of Schedule 5A to the
Army Act 1955.

- Fine. To be fined.....

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

- Compensation order. To pay compensation in the sum of.....
in respect of.....

- Conditional discharge. To be discharged, subject to the condition that during the period of
..... (*not to exceed 3 years*) from today the accused
commits no offence that may be tried by court-martial under any of the
Services Acts or by a Standing Civilian Court.

- Absolute discharge. To be discharged absolutely.

OFFENDER UNDER 17

(see also Part (1A) of this Schedule)

- Reception order. To be subject to a reception order. The court declare that the Secretary of State may authorise any local authority in England and Wales to receive the accused into their care.
-
- Fine. To be fined.....
-
- Community supervision order. To be subject to a community supervision order for..... (not to exceed 12 months), that is to say, to comply during that period with the reasonable requirements of....., a supervisor whom the court specify in this case; [and the court direct that the accused shall comply with the following prescribed requirements:—].
-
- Compensation order. To pay compensation in the sum of..... in respect of.....
-
- Conditional discharge. To be discharged, subject to the condition that during the period of..... (not to exceed 3 years) from today the accused commits no offence that may be tried by court-martial under any of the Services Acts or by a Standing Civilian Court.
-
- Absolute discharge. To be discharged absolutely.
-

ORDERS AGAINST SERVICE PARENT OR GUARDIAN²

- Fine. ³To be fined.....
-
- Compensation order. ³To pay compensation in the sum of..... in respect of.....
-
- Recognisance. ³To enter into a recognisance for..... (amount, not to exceed £50) for a period of..... (not to exceed 1 year) to exercise proper control over the offender..... (full names of accused child/ward).
-
- Forfeiture of recognisance. ³To forfeit and pay..... (amount, not to exceed amount of recognisance), being [part of] the amount of the recognisance entered into in respect of the accused on..... (date).
-

¹ See note 1 to Part (1) of this Schedule.² See paragraphs 13 and 14 of Schedule 5A to the Army Act 1955.³ The wording of Part G of the form of record of proceedings (as prescribed in Schedule 4(6) above) should be modified as necessary to express this award.

”.

APPENDIX 3 TO SCHEDULE 9 paragraph 15(3)

MODIFICATIONS OF SCHEDULE 7 TO THESE RULES

The following additions shall be made to the table in Part (2) of Schedule 7 to these Rules:—

Circumstances	Person to whom a petition may be presented
8. Petitioner confined in a borstal institution in England and Wales or Northern Ireland.	The Governor of the institution.
9. Petitioner confined in a civil detention centre in England or Wales.	The Warden of the centre.
10. Petitioner confined in a Scottish young offenders' institution.	The Governor of the institution.
11. Petitioner confined in Northern Ireland in a young offenders' centre.	The Governor of the centre.
12. Petitioner in the care of a local authority in England and Wales.	Either the person in charge of the community or other home in which the offender is placed, or the local authority.
13. Petitioner in the care of a local authority in Scotland.	Either the person in charge of the residential establishment in which the child is located, or the local authority.
14. Petitioner in the care of the managers of a training school in Northern Ireland.	The Principal of the school.
15. Petitioner in the care of the Dept of Health and Social Services in Northern Ireland.	The Director of Social Services of the Health and Social Services Area Board for the area in which the offender is placed.

APPENDIX 4 TO SCHEDULE 9

paragraph 26

STATUTORY MODIFICATIONS FOR PART II OF THIS SCHEDULE

1. Section 76 of the Act shall have effect, for the purposes of trial by a Standing Civilian Court but not otherwise, as if the reference in it to investigating the charge in the prescribed manner included a reference to considering the charge.

2.—(1) Section 77(3) of the Act shall have effect, for the purposes of trial by a Standing Civilian Court but not otherwise—

- (a) as if the reference in it to investigation included a reference to consideration;
- (b) as if for the reference in it to a charge being remanded for trial by court-martial there were substituted a reference to higher authority taking such steps in relation to a charge as might be specified in an order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976, with a view to the charge's being tried by a Standing Civilian Court.

(2) Section 77(4)(a) of the Act shall have effect, for the purposes of section 80 of the Act but not otherwise, as if the reference in it to the commanding officer having investigated a charge included a reference to the commanding officer having considered a charge.

3.—(1) Section 79 of the Act shall have effect subject to the following modifications.

(2) Subsection (1) shall have effect—

- (a) for the purposes of trial by a Standing Civilian Court but not otherwise, as if the reference in it to investigating a charge included a reference to considering a charge;
- (b) as if the reference to submitting it included a reference to resubmitting it in a case where the charge was submitted initially to higher authority without having been investigated and was referred back to the commanding officer for investigation.

(3) For subsections (2) and (3) there shall be substituted the following two subsections—

“(2) Where the charge has been investigated by the commanding officer—

- (a) if it is a charge which can be dealt with summarily, it may be referred to the appropriate superior authority;
- (b) if higher authority is of the opinion that the charge should be tried by a Standing Civilian Court, that authority may take such steps as may be specified in an order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976 with a view to its being so tried;
- (c) where higher authority does not proceed under paragraph (a) or (b) above, the prescribed steps shall be taken with a view to the charge's being tried by court-martial.

(3) Where the charge has been considered but not investigated by the commanding officer—

- (a) if higher authority is of the opinion that the charge should be tried by a Standing Civilian Court, that authority may take such steps as may be specified in an order under paragraph 12 of Schedule 3 to the Armed Forces Act 1976 with a view to its being so tried; or
- (b) if higher authority is not of that opinion, the charge shall be referred back to the commanding officer with a direction to investigate it; and the commanding officer shall proceed accordingly.”.

4. Section 80 of the Act shall have effect—

- (a) as if any reference in it to section 79 (including the reference inserted by sub-paragraph (b) below) were a reference to section 79 as modified by virtue of section 209(3A)(c) of the Act;
- (b) as if the reference in it to a charge's having been submitted to higher authority included a reference to a charge's having been resubmitted to higher authority in the circumstances referred to in section 79(1) of the Act.”.

paragraph 33

APPENDIX 5 TO SCHEDULE 9

FORM OF COMMENCEMENT OF APPEAL CHARGE-SHEETS

The appellant,.....(*full names and brief description*), being a person who has the right of appeal to a court-martial from a Standing Civilian Court by virtue of paragraph 18 of Schedule 3 to the Armed Forces Act 1976, is, on appeal against conviction, charged with—

APPENDIX 6 TO SCHEDULE 9

paragraph 44

FORMS OF PETITION FOLLOWING APPEAL FROM STANDING CIVILIAN COURT TO COURT-MARTIAL

Petition to confirming officer (before confirmation)

To the confirming officer.

PETITION of¹

WHEREAS—

- (1) I² was convicted by a Standing Civilian Court sitting at.....³
on.....⁴ of the following offence(s), namely
.....⁵

and was sentenced as follows:—

.....; ⁶

- (2) I² appealed to a court-martial sitting at.....
.....³ on.....⁴
against my² [conviction] [and] [sentence]⁷ for the [offence] [.....
.....offence]⁸;

- (3) On a review of the [conviction] [and] [sentence] carried out before the hearing of the appeal the following variations were made, namely—¹⁰

- (4) On the hearing of the appeal, the court-martial:—¹¹

NOW THEREFORE I² HEREBY PETITION as follows:—¹²Signed¹³

Dated

Appeal petition to the Army Board (after promulgation)

To the Army Board.*

The petition shall follow the form of a petition to the confirming officer, but with the addition of the following recital:

- (5) The [finding(s)] [and] [sentence(s)]⁷ of the court-martial were promulgated to me² on.....⁴

**The appeal petition may if desired be addressed to the Defence Council. The Army Board is however empowered to deal with appeal petitions even if they are so addressed, by virtue of section 1(5) of the Defence (Transfer of Functions) Act 1964.*

*Petition to reviewing authority (after promulgation)*To.....¹⁴*The petition shall follow the form of petition to the Army Board, above.*

¹ Insert full name of petitioner.

² Where the petition is signed by the petitioner's representative, substitute "the petitioner" or "his", as the context requires. Where the petitioner is a parent or guardian petitioning against a fine or compensation order imposed or made in respect of his child's or ward's offence, the form should be adapted as appropriate.

- ³ Insert place.
⁴ Insert date.
⁵ State briefly each offence of which the court convicted the petitioner.
⁶ State the sentence passed for each offence.
^{7, 8} Adapt as appropriate to show, in relation to each offence appealed against, whether the appeal was against conviction or sentence, or both.
⁹ Delete this recital if no variation was made on review.
¹⁰ If appropriate, here show the variation(s) made on review.
¹¹ State the result of the appeal.
¹² Set out details of the relief now sought and the grounds for seeking it.
¹³ The petitioner 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.
¹⁴ State the reviewing authority whom it is desired to petition.

_____”.

SCHEDULE 2

Rule 6

AWARD OF EXTENDED DETENTION BY COMMANDING OFFICERS

The following Schedule shall be inserted after Schedule 2 to the Principal Rules—

Rule 11A

“SCHEDULE 2A

**RECORD OF PROCEEDINGS BEFORE A COMMANDING OFFICER HAVING
PERMISSION TO AWARD EXTENDED DETENTION**

Accused’s number, rank and name.....

Unit

N.B. The commanding officer may at any stage during the following proceedings remand the accused for trial by court-martial if he considers it desirable to do so: see Rule of Procedure 11A(13).

PART A

- | <i>Question</i> | <i>Answer</i> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 1. Have you received a copy of the charge-sheet and [summary] [abstract] of evidence not less than 24 hours ago? | } YES/NO |
| <i>If YES, proceed to Question 2. If NO, adjourn as appropriate, noting also the terms of Questions 2 and 3; and on recommencement after due time tick here <input type="checkbox"/> and proceed.</i> | |
| 2. Was it explained to you, when you received those documents, that if I dealt with the case myself, and you did not dispute any of the material facts alleged against you in the [summary] [abstract] of evidence, nor dispute that those facts amounted to the offence(s) contained in the charge-sheet, I would have power to award you up to 60 days’ detention? | } YES/NO |
| <i>If YES, proceed to Question 3. If NO, adjourn for not less than 24 hours to allow the explanation to be made and the accused to consider the matter; and on recommencement thereafter tick here <input type="checkbox"/> and proceed.</i> | |
| 3. Have you had the opportunity to discuss the case and this procedure with the officer appointed to advise you? | } YES/NO |
| <i>If YES, proceed to Question 4. If NO, adjourn as appropriate, and on recommencement after due time tick here <input type="checkbox"/> and proceed.</i> | |

4. I am therefore going to ask you formally whether you do dispute any of the matters to which I have referred. You are to understand that your answer will not be used in evidence if the case goes to court-martial. Do you dispute any of those matters? } YES/NO

If NO, proceed to Question 5. If YES, proceed direct to either paragraph 9 or 10 below: the power to award extended detention cannot be exercised.

5. I therefore propose to deal with the case myself. Do you wish to say anything in mitigation of punishment or to call witnesses for that purpose? You may address me orally or by handing me a written plea; and if you address me orally you may do so on oath, if you so wish, or without being sworn. Any witness you call in mitigation must give his evidence orally and on oath. What do you wish to do?

Record below—

- a. the course which the accused wishes to adopt (e.g. "The accused wishes to make an oral statement, without being sworn, but does not wish to call any witnesses");*
b. the substance of any oral plea or evidence.

Any written plea handed in by the accused is to be read, marked 'A', and attached to this record.

(continue on a plain sheet if necessary and attach it to this record).

6. *(This question is to be asked only where it is proposed to award detention for a period exceeding 28 days; otherwise, it is to be struck out).*

As you know, I have power in this case to award you up to 60 days' detention. Will you accept my award or do you elect to be tried by court-martial? } *ELECTS/
DOES NOT
ELECT

**Where the accused elects, the words "does not elect" should NOT be deleted until the accused has had the opportunity in accordance with Queen's Regulations of*

withdrawing his election; and the proceedings must be adjourned for that purpose. If thereafter he maintains his election, the words "Does not elect" should be deleted and the CO should proceed direct to paragraph 10 in Part B below.

Where the accused does not elect, or withdraws his election, the word "Elects" should be deleted, and the CO should proceed to paragraph 8 below.

7. *(This question is to be asked only where it is NOT proposed to award detention for a period exceeding 28 days, but where the proposed award nonetheless requires that the accused should be given the opportunity to elect: see section 78(5) of the Army Act 1955; otherwise, it is to be struck out).*

Although, as you know, I have power in this case to award you up to 60 days' detention, I do not now propose to exercise that power. I propose to exercise only my ordinary powers of punishment, which include detention for up to 28 days. Bearing this in mind, will you accept my award or do you elect to be tried by court-martial?

*ELECTS/
DOES NOT
ELECT

**The notes under Question 6 above apply equally in relation to this Question.*

8. *(This paragraph does not apply where the CO has earlier been directed to paragraph 9 or 10 in Part B below).*

FINDING }
AWARD } *now proceed to Part C below.*

PART B

(This Part deals only with cases where paragraph 8 in Part A above is not completed. Strike this Part out if it does not apply.)

- 9.† *(See notes to Question 4 in Part A above).*

Observing Rule of Procedure 11, the commanding officer deals with the case summarily without the power in the event of his recording a finding of guilty to award detention for a period exceeding 28 days.

FINDING }
AWARD } OR { The accused elects to be tried by court-martial.

(Now proceed to Part C below)

- 10.† *The commanding officer remands the accused for trial by court-martial (now proceed to Part C below).*

†*Strike out whichever of paragraphs 9 and 10 is inapplicable.*

PART C

(To be completed in all cases)

11. The following documents are attached to this record—
 a. permission of higher authority to award extended detention;
 b. charge-sheet;
 c. [summary] [abstract] of evidence;

[d. written plea in mitigation by the accused, marked 'A'.]

Date: (Signed)

Place: (Name and rank)

Commanding (unit)

The commanding officer of the accused.

(This Form, when completed, is to be sent with its attachments to higher authority)."

SCHEDULE 3

Rule 10

CHARGE-SHEETS AND CHARGES

PART I

SUBSTITUTE FORMS FOR COMMENCEMENT OF CHARGE-SHEETS

"SECTION 208A

The accused, (*name and brief description*), being a person to whom Part II of the Army Act 1955 is applied by section 208A of that Act, is charged with:—

SECTION 209

- (1) } The accused, (*name and brief description*) being a person to whom Part II of the Army Act 1955 is applied by section 209 { (1) } of that Act, is charged with:—".
- (2) } { (2) }

PART II

NEW STATEMENT OF OFFENCE

"Breach of a community supervision order

PARAGRAPH 4(6) OF SCHEDULE 5A

Failing to comply with a community supervision order contrary to paragraph 4(6) of Schedule 5A to the Army Act 1955."

SCHEDULE 4

Rule 11

AMENDMENTS TO SERVICE RECORD OF ACCUSED

1. In paragraph 10 of the form, there shall be appended to the word "days", where it first occurs, a superior figure 4; and there shall be inserted in the notes at the foot of the form the following note—

"4 Exclude from the total number of days any period of absence without leave with which he has been charged or in respect of which a dispensation with trial has been directed under section 81 of the Army Act 1955."

2. In consequence of paragraph 1 above, the existing annotation 4 shall be renumbered 5.

3. Note 5 (hitherto Note 4) shall be amended to read as follows:
 “5a. Including any which are “spent” under the Rehabilitation of Offenders Act 1974.
 b. If there are no entries in his conduct sheets, enter “nil”.”
4. In paragraph 12 of the form—
 (a) there shall be appended to the word “For”, where it first occurs, a superior figure 6; and there shall be added to the notes at the foot of the form the following note—
 “6 Here insert a brief description of the offence and section, eg “Drunkenness (s. 43 (1)AA 55)”. In the case of offences against section 69 or 70 of the Act, more particularity is required, eg “Improper use of AD vehicle (s. 69 AA 55)”; “Assault (s. 70 AA 55)”,;”
 (b) the letter “s” in the word “times”, wherever it occurs, shall be bracketed.
5. There shall be substituted for paragraph 13 of the form the following paragraph—
 “13. The Schedule to this form sets out details of any of the following matters which appear in the accused’s conduct sheets”, namely—
 (a) offences previously committed by him, being offences of which he has been convicted by court-martial or found guilty during his service by a court other than a court-martial, offences taken into consideration by such courts, and offences of which he has been found guilty by an appropriate superior authority; and
 (b) dispensations with trial under section 81 of the Army Act 1955.”
6. For the heading to the Schedule to the form, namely, “This Schedule hereinbefore referred to”, there shall be substituted the heading “The Schedule”.

SCHEDULE 5

Rules 12 and 13

NEW FORMS OF SENTENCE

PART I

JUVENILES

1. The following provisions shall be inserted after Schedule 5(1) to the Principal Rules:—

“(1A) SPECIAL SENTENCES FOR JUVENILES

Detention during Her Majesty’s pleasure. To be detained during Her Majesty’s pleasure.

Detention under the Secretary of State’s directions. To be detained for.....under the directions of the Secretary of State.
 _____”.

and the table of contents at the head of Schedule 5 to the Principal Rules shall be amended accordingly.

- 2.—(1) The following annotations shall be made in Schedule 5(1) to the Principal Rules:—

(a) a superior figure 1 shall be appended to each form of sentence for death or imprisonment, and

- (b) there shall be added to the notes at the end of the said Schedule 5(1) the following note:—

“¹ For restrictions on the award of this punishment because of the youth of the offender, see section 71A of the Army Act 1955; and for the forms of sentence under that section, see Part (1A) of this Schedule.”.

- (2) The existing annotations in the said Schedule 5(1) shall be renumbered accordingly.

PART II

IMPRISONMENT IN DEFAULT

3. The following provisions shall be inserted after Schedule 5(3) to the Principal Rules:—

“(3A) IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE¹

- (a) To be imprisoned for..... and to be fined.....; and if any part of that fine is not duly paid or recovered on or before the date on which the accused could otherwise be released from that term of imprisonment, to undergo a further consecutive term of imprisonment of (*not to exceed 12 months*), subject to and in accordance with the provisions of section 71B of the Army Act 1955.
- (b) To be fined.....; and if any part of that fine is not duly paid or recovered on or before the date on which the accused could otherwise be released from the term of imprisonment which he is already serving or is otherwise liable to serve, to undergo a further consecutive term of imprisonment of (*not to exceed 12 months*), subject to and in accordance with the provisions of section 71B of the Army Act 1955.

¹ See section 71B of the Army Act 1955.

_____”;
and the table of contents at the head of Schedule 5 to the Principal Rules shall be amended accordingly.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules further amend the Rules of Procedure (Army) 1972 (“the Principal Rules”). They are for the most part consequential upon the provisions of the Armed Forces Act 1976 (“the 1976 Act”). They are to come into operation when section 5 of the 1976 Act comes into force (*Rule 1*).

Rule 4 introduces two new Rules, 3A and 3B, into the Principal Rules. They provide for the way in which the Principal Rules are to apply to civilians to whom Part II of the Army Act 1955 is applied by section 208A or 209 of that Act. A new Schedule 9 to the Principal Rules, introduced by *Schedule 1*, provides for modifications in some of the procedures for such civilians. The need for these modifications arises largely from the provisions in the 1976 Act regarding Standing Civilian Courts. Thus, Part II of this new Schedule 9 deals with the initial processing of a charge which is to be tried by a Standing Civilian Court, and with ancillary matters; and Part III of the new Schedule 9 lays down the procedures for dealing with an appeal from such a court to a court-martial.

Rule 6 introduces a new Rule 11A into the Principal Rules, which, in conjunction with a new Schedule 2A introduced by *Schedule 2* to these Rules, provides procedural safeguards and limitations on the exercise by a commanding officer of the power to award summarily to a soldier detention for a period exceeding 28 days. At present, 28 days is the maximum period of detention which a commanding officer can award to a soldier. Section 5(1) of the 1976 Act increases the period to 60 days. The new provisions to be introduced into the Principal Rules will mean that a commanding officer cannot exercise this increased power unless, *inter alia*, the evidence in the case is reduced to writing; the permission of higher authority is first obtained; and the accused does not dispute the charge against him.

Rules 7 and 8 are made in consequence of the provisions of subsections (1) and (2) of section 12 of the 1976 Act, which provide that shorthand-writers and certain judge advocates need no longer take an oath at a court-martial.

Rule 9 makes amendments to the Principal Rules as a result of section 11 and Schedule 5 to the 1976 Act (proof at courts-martial by written statement).

Rule 12 follows section 10 of the 1976 Act (powers of courts in relation to juveniles); and *Rule 13* follows section 13 and Schedule 6 to that Act (imprisonment in default of payment of fines).

The remaining provisions are minor and technical amendments.

SI 1977/92
ISBN 0-11-070092-9



780110 700922