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STATUTORY INSTRUMENTS

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**2000 No. 2367**

**The Naval Custody Rules 2000**

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1. These Rules may be cited as the Naval Custody Rules 2000 and shall come into force on 2nd October 2000.

**Interpretation**

2.—(1) In these Rules—

“the accused” means—

- (a) in relation to proceedings under section 47G(1) of the Act, the person who is required to be brought before a judicial officer under section 47G(1) of the Act;
- (b) in relation to proceedings on a review under section 47H(1) of the Act, the person to whom the review relates;

“the Act” means the Naval Discipline Act 1957;

“application” means the application by the commanding officer to the judicial officer for an extension of custody without charge under section 47D of the Act;

“the commanding officer” means—

- (a) in relation to proceedings on an application under section 47D of the Act—
  - (i) the commanding officer of the person to whom the application relates or,
  - (ii) where the functions of the commanding officer under that section in relation to the application have been delegated to another officer in accordance with regulations made under section 47F of the Act, that officer; and
- (b) subject to paragraph (2), in relation to proceedings under section 47G(1) of the Act or proceedings on a review under section 47H(1) of the Act, the accused’s commanding officer;

“custody” means naval custody;

“hearing” means, as the case may be—

- (a) a hearing of an application under section 47D of the Act;
- (b) a hearing under section 47G(1) of the Act; or
- (c) a hearing before a judicial officer conducting a review under section 47H(1) of the Act;

“the relevant court administration officer” means—

- (a) the court administration officer; or

- (b) where the court administration officer has for the time being directed an assistant court administration officer to carry out the functions conferred by these Rules on the relevant court administration officer, that officer;

“the relevant time” means—

- (a) in relation to a person arrested under section 45 of the Act or arrested by a constable, the time of the arrest; and
- (b) in relation to a person delivered into custody following surrender under section 108 of the Act or paragraph 6 of Schedule 2 to the Reserve Forces Act 1996(1), the time of the surrender; and

“a review” means a review conducted by the judicial officer under section 47H(1) of the Act.

(2) In Parts III, IV and V of these Rules, any reference to the commanding officer in relation to—

- (a) proceedings under section 47G(1) of the Act;
- (b) proceedings on a review under section 47H(1) of the Act,

shall include a reference to any person under his command who has his authority to exercise his functions under these Rules with respect to those proceedings.

(3) Subject to paragraphs (4) and (5), “the judicial officer” means, in relation to the exercise of any function conferred by these Rules in any proceedings, the judicial officer for the time being specified by or on behalf of the Chief Naval Judge Advocate to exercise that function in those proceedings.

(4) In relation to a review conducted at any time after the commencement of the trial of the accused by court-martial and before the announcement of the court-martial’s finding on the charge or every charge against the accused, references to the judicial officer in these Rules shall have effect as references to the judge advocate.

(5) Where—

- (a) the commanding officer orders a person’s arrest under section 47L(1) of the Act; and
- (b) at the time the arrest is made the person is already before a judicial officer,

the judicial officer shall immediately carry out the review required by section 47L(7)(b) of the Act; and any reference in these Rules to the judicial officer in relation to such a hearing shall be construed accordingly.

### **Service of documents**

**3.—**(1) Subject to paragraph (4) and rule 21(2), any notice or other document required by these Rules to be served on a person may be served on that person by—

- (a) delivering it to him;
- (b) leaving it at his proper address;
- (c) sending it by post to his proper address; or
- (d) transmitting it to him by FAX or other means of electronic data transmission in accordance with rule 4.

(2) For the purposes of this rule and rule 4, reference to a person’s proper address shall be to such address determined in accordance with Schedule 1.

(3) Paragraph (4) applies to the service of any notice or other document on the person to whom the proceedings relate, where that person has appointed a legal adviser to act in connection with the conduct of those proceedings and—

- (a) notice has been served in accordance with rule 19(5); and

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(1) 1996 c. 14.

- (b) no notice of the revocation of that appointment has been served in accordance with rule 19(6).
- (4) Where this paragraph applies any notice or other document shall be served on the person to whom the proceedings relate by—
  - (a) delivering it to his legal adviser;
  - (b) leaving it at the address notified under rule 19(5);
  - (c) sending it by post to his legal adviser to the address notified under rule 19(5); or
  - (d) transmitting it to his legal adviser by FAX or other means of electronic data transmission in accordance with rule 4.
- (5) Paragraph (6) applies to the service of any notice or other document on the person to whom the proceedings relate in any case not falling within paragraph (3).
- (6) Where this paragraph applies and without prejudice to paragraph (1), any notice or other document may be served on the person to whom the proceedings relate by—
  - (a) delivering it to the commanding officer;
  - (b) leaving it at the commanding officer's proper address;
  - (c) sending it by post to the commanding officer at his proper address; or
  - (d) transmitting it to the commanding officer by FAX or other means of electronic data transmission in accordance with rule 4.
- (7) In these Rules, "FAX" means the making of a facsimile copy of a document by the transmission of electronic signals.

**Service by FAX or other means of electronic data transmission**

- 4.—(1) A document may be transmitted by FAX to a person if it is transmitted—
  - (a) where the person is the legal adviser of the person to whom the proceedings relate, to the FAX number of any FAX machine at the address notified in accordance with rule 19(5); and
  - (b) in any other case, to the FAX number of any FAX machine at his proper address.
- (2) Paragraph (1) shall not apply if the person concerned has indicated in writing that he is not willing to regard a document as having been duly served on him if it is transmitted to a specified FAX number falling within that paragraph.
- (3) In paragraph (1), the reference to a FAX machine is to any machine which is capable of receiving documents transmitted by FAX.
- (4) A document may be transmitted by FAX where the person to be served has indicated in writing to the person serving the document that he is willing to regard a document as having been duly served on him if it is transmitted to a specified FAX number and the document is transmitted to that number.
- (5) Paragraph (4) shall apply with appropriate modification to a transmission of electronic data other than by FAX as it applies to a transmission by FAX.
- (6) In paragraph (4), the reference to the person to be served is—
  - (a) in a case falling within rule 3(4)(d), a reference to the legal adviser appointed by the person to whom the proceedings relate; and
  - (b) in a case falling within rule 3(6)(d), a reference to the commanding officer.
- (7) Where a document is transmitted by FAX in accordance with this rule, the person to whom the document is addressed shall be specified in the FAX.

### **Substituted service**

5.—(1) Where, in any case not falling within rule 3(3)—

- (a) a notice or other document is required under these Rules to be served by the person to whom the proceedings relate on a person other than the commanding officer; and
- (b) the person to whom the proceedings relate is in naval custody,

the requirement shall be satisfied by serving the notice or other document on the commanding officer together with a written request that he serve it on the person on whom under these Rules the document is required to be served.

(2) Where a notice or other document is served on the commanding officer in accordance with paragraph (1), he shall serve that document on the person specified in the written request.

### **Appointment of court administration officer**

6.—(1) There shall be a court administration officer, who shall be a person appointed by the Defence Council for the purpose of discharging such administrative functions as shall be provided under these Rules.

(2) The Defence Council may appoint persons to be assistant court administration officers for the purposes of discharging the functions of the relevant court administration officer when so directed by the court administration officer.

### **Appointment of court officials**

7. The relevant court administration officer may at any time appoint a person or persons to act as—

- (a) court recorder;
- (b) interpreter,

at a hearing.

## **PART II**

### **NOTIFICATIONS**

#### **Notification of application for an extension of custody without charge**

8.—(1) Where the commanding officer proposes to make an application he, or someone acting on his behalf, shall—

- (a) notify the relevant court administration officer of that fact and the necessary information; and
- (b) inform the person to whom the application relates in writing of that fact and of the information specified under paragraph (2)(f), (g) and (h) and, if the person to whom the application relates has not appointed a legal adviser, of the entitlement to legal representation at the hearing of the application.

(2) The necessary information to be notified under paragraph (1)(a) is—

- (a) the name, rank, appointment and location of the commanding officer;
- (b) the name, date of birth and location of the person to whom the application relates and, where applicable, his rank or rate, service number and ship or unit;

- (c) the name and address of the legal adviser appointed by the person to whom the application relates, if known;
- (d) the nature of the offence for which the person to whom the application relates has been arrested;
- (e) the relevant time;
- (f) the general nature of the evidence on which the person to whom the application relates was arrested;
- (g) what inquiries relating to the offence have been made and what further inquiries are proposed; and
- (h) the commanding officer's reasons for believing the continued keeping of the person to whom the application relates in custody is justified.

**Notification that accused is being kept in custody after charge**

9.—(1) Subject to rule 10, where the accused is kept in custody after being charged, the commanding officer, or someone acting on his behalf, shall as soon as practicable—

- (a) notify the relevant court administration officer of that fact and the necessary information; and
  - (b) inform the accused in writing that he is to be brought before a judicial officer as soon as practicable and of the information specified under paragraph (2)(f).
- (2) The necessary information to be notified under paragraph (1)(a) is—
- (a) the name, rank, appointment and location of the commanding officer;
  - (b) the name, date of birth and location of the accused and, where applicable, his rank or rate, service number and ship or unit;
  - (c) the name and address of the accused's legal adviser, if known;
  - (d) the charge;
  - (e) the date and time that the accused was charged; and
  - (f) the commanding officer's reasons for believing that the continued keeping of the accused in custody is justified.

(3) For the purposes of paragraph (1), a person is to be treated as charged with an offence if he is to be so treated by virtue of section 47A(4) of the Act.

**Notification that accused has been arrested and taken into custody**

10.—(1) Subject to paragraph (3), where the accused is arrested under subsection (1) or subsection (3) of section 47L of the Act and taken into custody, the commanding officer, or someone acting on his behalf, shall as soon as practicable—

- (a) notify the relevant court administration officer of that fact and the necessary information; and
- (b) inform the accused in writing that he shall be brought before a judicial officer as soon as practicable and, if the accused has been arrested under section 47L(1) of the Act, the information specified under paragraph (2)(f).

- (2) The necessary information to be notified under paragraph (1)(a) is:
- (a) the name, rank, appointment and location of the commanding officer;
  - (b) the name, date of birth and location of the accused and, where applicable, his rank or rate, service number and ship or unit;

- (c) the name and address of the accused's legal adviser, if known;
  - (d) the charge;
  - (e) the date and time that the accused was arrested pursuant to the order or direction; and
  - (f) if the arrest is made under section 47L(1) of the Act, the commanding officer's reasons for believing that the keeping of the accused in custody is justified.
- (3) Paragraph (1) shall not apply—
- (a) in relation to an arrest under section 47L(1) of the Act, where the arrest takes place in circumstances falling within rule 2(5);
  - (b) in relation to an arrest under section 47L(3) of the Act, where the accused is already before the judge advocate when the arrest is made.

### **Request by the commanding officer for a review**

**11.**—(1) Subject to paragraph (3), a request for a review under section 47H(2)(b) of the Act shall be made by the commanding officer to the relevant court administration officer and be supported by the following information—

- (a) the name, rank, appointment and location of the commanding officer;
- (b) the name, date of birth and location of the accused and, where applicable, his rank or rate, service number and ship or unit;
- (c) the name and address of the accused's legal adviser, if known;
- (d) the charge;
- (e) the date on which the extant order under section 47G(2) was made and the period of custody authorised by it;
- (f) the circumstances which have caused the commanding officer to consider that the grounds on which that order was made have ceased to exist; and
- (g) if it appears to the commanding officer that requirements should be imposed by the judicial officer under section 47K(2)(b) of the Act, the suggested requirements.

(2) Where a request is made under paragraph (1), the commanding officer, or someone acting on his behalf, shall inform the accused of that fact in writing and of the information specified under paragraph (1)(f) and (g).

(3) Where the commanding officer requests a review under section 47H(2)(b) of the Act after the commencement of the accused's trial by court-martial and on a day when that court-martial is sitting, the request shall be made to the judge advocate.

### **Written notification**

**12.** Where—

- (a) a notification required to be given to the relevant court administration officer under paragraph (1)(a) of rule 8, 9 or 10 is given orally; or
- (b) a request under rule 11(1) is made orally,

the commanding officer shall ensure that a notice containing the information so notified or given in support of the request is served on the court administration officer as soon as practicable thereafter.

## PART III

### REVIEWS

#### Review dates

**13.**—(1) Where the judicial officer makes an order under section 47G(2) of the Act, he shall determine the date on which that order is to be reviewed and specify that date in the record of the order.

- (2) The judicial officer may decide to carry out the review on a different date where—
- (a) a request for a review is made under section 47H(2)(b) of the Act and he considers that it is reasonably practicable for the review to take place before the date determined under paragraph (1); or
  - (b) it is not practicable or in the interests of justice for the review to take place on the date determined under paragraph (1),

in which case the relevant court administration officer shall notify the commanding officer and the accused of the different date.

#### Requirement for a hearing

**14.**—(1) A review shall be carried out at a hearing if—

- (a) it is the first review under section 47H(1) of the Act in relation to the accused;
- (b) it has been requested under section 47H(2)(b) of the Act;
- (c) it is a review carried out at any time after the commencement of the accused's trial by court-martial and before the announcement of the court-martial's finding on the charge or every charge against the accused, other than during an adjournment;

(2) In any other case, a review shall be carried out at a hearing unless—

- (a) the judicial officer is satisfied on the basis of the representations made by the commanding officer under rule 15 that the grounds on which the order made under section 47G(2) of the Act continue to exist;
- (b) the accused has not made representations under rule 15 or, where such representations have been made, they do not contain any arguments as to fact or law which have not been heard previously; and
- (c) the judicial officer is satisfied that there is no other reason for carrying out the review at a hearing.

(3) The judicial officer shall not on a review impose any requirements under section 47K(2)(b) of the Act unless the review is carried out at a hearing.

#### Written representations

**15.**—(1) This rule applies to any review other than a review to which rule 14(1) applies.

(2) The commanding officer and the accused may make written representations with respect to—

- (a) the need for a hearing for the purposes of carrying out a review;
- (b) whether or not the judicial officer should on a review make an order under section 47G(2) of the Act authorising the keeping of the accused in custody.

(3) Any written representations made under paragraph (2) shall be served on the court administration officer and a copy shall be served on the commanding officer or, as the case may be, the accused.

### **Notification of hearing for the purposes of carrying out a review**

16.—(1) Where a hearing is required for the purposes of carrying out a review, the relevant court administration officer shall, after consultation with the Chief Naval Judge Advocate or a person acting on his behalf, determine the time and place of the hearing.

(2) The relevant court administration officer shall ensure that the hearing of a review takes place on the date determined by the judicial officer in accordance with rule 13.

(3) The relevant court administration officer shall notify the commanding officer and the accused of the time and place of the hearing.

### **Decisions on reviews carried out without a hearing**

17.—(1) This rule applies in any case where the judicial officer carries out a review without a hearing.

(2) Where the judicial officer decides not to authorise the keeping of the accused in custody he shall—

- (a) notify the relevant court administration officer of that fact as soon as practicable; and
- (b) record his decision in the form set out in Schedule 2 to these Rules, which form shall be served by the relevant court administration officer on the commanding officer and the accused.

(3) Where the relevant court administration officer is notified under paragraph (2)(a), he shall notify the commanding officer and the accused as soon as practicable of the judicial officer's decision.

(4) Where the judicial officer makes an order under section 47G(2) of the Act, this shall be recorded in the form set out in Schedule 2 to these Rules, which form shall be served by the relevant court administration officer on the commanding officer and the accused.

## **PART IV**

### **GENERAL MATTERS**

#### **Arranging a hearing**

18.—(1) Where the relevant court administration officer receives notification under paragraph (1) (a) of rule 8, 9 or 10 he shall, after consultation with the Chief Naval Judge Advocate or a person acting on his behalf, determine the time and place of any hearing.

(2) The relevant court administration officer shall notify the commanding officer and the person to whom the proceedings relate of the time and place of the hearing.

(3) If, having notified a person in accordance with paragraph (2), the relevant court administration officer changes the time or place of the hearing, he shall notify that person of the change.

(4) The relevant court administration officer shall arrange for the attendance at a hearing of a court recorder if the judicial officer so requests.

(5) The relevant court administration officer shall arrange for the attendance at a hearing of an interpreter if the judicial officer, the commanding officer or the person to whom the proceedings relate so requests.

## Legal representation

19.—(1) Subject to rule 20, the person to whom the proceedings relate and the commanding officer shall each have the right to be legally represented at a hearing.

(2) Subject to rule 20, the person to whom the proceedings relate may appoint a person (referred to in these Rules as his “legal adviser”) to act for him in connection with the conduct of any proceedings to which these Rules relate.

(3) The commanding officer shall ensure that the person to whom the proceedings relate is afforded reasonable opportunity of communicating with his legal adviser for the purposes of preparing for the proceedings in connection with which the legal adviser has been appointed.

(4) Without prejudice to paragraph (1), where paragraph (5) applies, any right conferred or duty imposed by these Rules on the person to whom the proceedings relate may be exercised or, as the case may be, performed by his legal adviser on his behalf.

(5) This paragraph applies where a legal adviser appointed under this rule serves notice on the court administration officer specifying—

- (a) his name and address;
- (b) the name of the person in respect of whom he is acting and, where applicable, that person’s rank or rate, service number and ship or unit; and
- (c) the proceedings in connection with which he has been appointed.

(6) Where the person to whom the proceedings relate revokes his legal adviser’s appointment, he shall as soon as reasonably practicable serve notice on the court administration officer and the commanding officer of that fact.

## Qualifications to be held by legal representatives

20.—(1) A person may only—

- (a) represent the commanding officer or, as the case may be, the person to whom the proceedings relate, at a hearing;
- (b) be appointed under rule 19(2) as a legal adviser,

if he is appropriately qualified.

(2) For the purposes of paragraph (1), a person is appropriately qualified if—

- (a) he is a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(2);
- (b) he is an advocate or a solicitor in Scotland;
- (c) he is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;
- (d) he is a person who has in any Commonwealth country or any colony rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

## Witness summons

21.—(1) Schedule 3 shall have effect with respect to summoning persons—

- (a) to give evidence, or
- (b) to produce any document or thing,

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(2) 1990 c. 41; subsection (6) of section 71 was substituted, and subsections (7) and (8) were repealed, by the Access to Justice Act 1999 (c. 22).

for the purposes of any proceedings to which these Rules apply.

- (2) A witness summons issued in accordance with Schedule 3 shall be served on the witness—
- (a) by delivering it to him;
  - (b) by leaving it for him with a person at his usual place of abode;
  - (c) by post in a letter addressed to him at his last known or usual place of abode;
  - (d) where the witness is subject to military law, air force law or the Act, by serving it on his commanding officer.
- (3) Where a witness summons is served on a person's commanding officer under paragraph (2) (d), he shall serve the witness summons on that person.

### **Evidence through a live TV link**

**22.**—(1) A witness may, with the permission of the judicial officer, give evidence at a hearing through a live television link or other similar arrangements if it is not reasonably practicable for that person to attend the hearing.

(2) An application for permission under paragraph (1) shall be made by the person wishing to call the witness as soon as he believes that—

- (a) a person is likely to be able to give evidence likely to be material evidence; and
  - (b) that it is not reasonably practicable for that person to attend the hearing.
- (3) The application shall be served on the court administration officer and shall state—
- (a) the grounds of the application;
  - (b) the name and, where applicable, the service number, rank or rate, and ship or unit of the witness;
  - (c) where the witness is under the age of 18 years, the date of birth of the witness;
  - (d) the country and place where it is proposed the witness will be when giving evidence; and
  - (e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness when giving evidence.

(4) A copy of the application shall be served on the commanding officer or, as the case may be, the person to whom the proceedings relate.

(5) The judicial officer shall not determine the application without giving the person served under paragraph (4) an opportunity to make representations about the application.

(6) Where the application is determined prior to the hearing in which the evidence is to be given, the relevant court administration officer shall notify the commanding officer and the person to whom the proceedings relate of the decision of the judicial officer in relation to the application and, where permission is granted, the notification shall state any conditions specified by the judicial officer in accordance with paragraph (7).

(7) The judicial officer may make the grant of permission subject to such conditions as he considers necessary with respect to the manner in which the evidence is to be given, including—

- (a) specifying the place where the witness is to give evidence; and
- (b) specifying the persons in whose presence the witness is to give evidence.

(8) This rule is without prejudice to the rights of the commanding officer and the person to whom the proceedings relate to give evidence through a live link or other similar arrangements by virtue of rules 23(4) and 24.

## PART V

### HEARINGS

#### **Procedure at the hearing**

**23.**—(1) The judicial officer shall not be bound at a hearing by any enactment or rule of law relating to the admissibility of evidence in proceedings before courts of law.

(2) The commanding officer and the person to whom the proceedings relate shall each be heard in such order as the judicial officer shall determine and, in exercising his powers under this paragraph, the judicial officer shall adopt such course as appears to him will best serve the interests of justice.

(3) The judicial officer shall explain the order of the proceedings which he proposes to adopt at the beginning of the hearing.

(4) Subject to section 47H(6) of the Act, the commanding officer and the person to whom the proceedings relate shall each be entitled to—

- (a) give evidence on oath and call witnesses;
- (b) produce to the judicial officer any document or written report; and
- (c) address the judicial officer at least once;

on any matter relevant to the proceedings.

(5) The judicial officer shall make a record of the hearing, unless a court recorder is in attendance.

#### **Presence at hearing by live TV link**

**24.**—(1) A person mentioned in paragraph (2) shall be treated as being present at a hearing if, whether by means of a live television link or similar arrangements, he is able to see and hear and to be seen and heard by the judicial officer, any witness giving evidence and all other persons mentioned in that paragraph.

(2) The persons are—

- (a) the person to whom the proceedings relate;
- (b) the commanding officer;
- (c) where the commanding officer or, as the case may be, the person to whom the proceedings relate is legally represented, any such legal representative;
- (d) any person appointed under rule 7 to act as an interpreter for the purposes of the hearing.

#### **Adjournments**

**25.** Where a person to whom the application relates is not legally represented at a hearing of an application under 47D of the Act, the judicial officer shall explain—

- (a) the right of the person to whom the application relates to be legally represented;
- (b) the right to an adjournment if he wishes to be so represented; and
- (c) the effect of such an adjournment.

#### **Presence of witnesses**

**26.** Except where the person is the commanding officer or the person to whom the proceedings relate or is present to give expert evidence or evidence as to a person's character, a person who is called to give evidence shall not, except with the consent of the judicial officer, be present at a hearing while not under examination.

### **Oaths and affirmations**

**27.**—(1) An oath shall be administered at the start of the hearing to any person appointed to act as an interpreter and, before oral evidence is given, to any witness who has attained the age of 14 years.

(2) If—

- (a) a person required by virtue of this rule to take an oath objects to being sworn; or
- (b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation instead of taking an oath.

(3) A person who may be permitted under this rule to make his solemn affirmation may also be required to do so, and for the purposes of this rule “reasonably practicable” means reasonably practicable without inconvenience or delay.

(4) An oath or affirmation shall be administered in the form and manner set out in Schedule 4 to these Rules by the judicial officer, or where the judicial officer so directs, by any other person acting on his behalf.

### **Privileges and immunities**

**28.** A witness at a hearing or any other person whose duty it is to attend on or before the judicial officer at the hearing shall be entitled to the same immunities and privileges as a witness before the High Court in England and Wales.

### **Decision of the judicial officer**

**29.**—(1) The judicial officer shall announce his decision and the reasons for it at the end of any hearing and record that decision in the form set out in Schedule 2 to these Rules.

(2) The relevant court administration officer shall serve copies of that form on the commanding officer and the person to whom the proceedings relate.

4th September 2000

*Symons of Vernham Dean*  
Minister of State, Ministry of Defence