

**2009 No. 1098**

**DEFENCE**

**The Armed Forces (Custody Proceedings) Rules 2009**

*Made* - - - - - *28th April 2009*

*Laid before Parliament* *30th April 2009*

*Coming into force* - - - *31st October 2009*

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The Secretary of State, in exercise of the powers conferred by section 112 of the Armed Forces Act 2006<sup>(a)</sup>, makes the following Rules:

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. These Rules may be cited as the Armed Forces (Custody Proceedings) Rules 2009 and shall come into force on 31st October 2009.

#### **Interpretation**

2.—(1) In these Rules—

“the Act” means the Armed Forces Act 2006;

“civilian policeman” means a member of a UK police forces or a British overseas territory police force;

“custody” means service custody and shall be construed in accordance with sections 98 to 111;

“DX” means document exchange;

“the Director” means the Director of Service Prosecutions;

“hearing” means a hearing in connection with any proceedings;

“the judge advocate” means the Judge Advocate General or a judge advocate specified by him to conduct proceedings under these Rules;

“legal representative” shall be construed in accordance with rule 18;

“live link” has the meaning given in rule 16(3)(a);

“proceedings” shall be construed in accordance with section 112(1); and

“unit” means—

- (a) a naval ship or establishment;
- (b) any body of members of Her Majesty’s forces formed under the command of a person appointed to be the commanding officer of the body;
- (c) an air force station.

(2) References in these Rules to a person to whom proceedings relate are to—

- (a) a person arrested under section 67;
- (b) an accused within the meaning of sections 106 to 109;
- (c) a person arrested under section 110(1) or 111(1); or
- (d) a person remitted under section 171(1).

(3) Any reference in these Rules to a numbered section is to that section of the Act, unless otherwise stated.

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(a) 2006 c. 52

## PART 2

### SERVICE OF DOCUMENTS

#### **Interpretation of Part 2**

3.—(1) References in this Part to a requirement that a document be served on a person include any requirement that the document be supplied to the person, however expressed.

(2) References in this Part to a person's agreement to the service of a document in a particular way include his agreement that any document of a description specified by him may be served in that way.

#### **Service on a person to whom proceedings relate**

4.—(1) Where under these Rules any document is to be served on a person to whom proceedings relate, it may be served—

- (a) on him personally;
- (b) if he is subject to service law, by post in a letter addressed to him at his unit;
- (c) if he is not subject to service law—
  - (i) by leaving it at his usual or last known place of abode; or
  - (ii) by post in a letter addressed to his usual or last known place of abode;
- (d) by post in a letter addressed to his legal representative's place of business; or
- (e) by DX, fax, electronic mail or other electronic means to his legal representative, where his legal representative—
  - (i) has given a DX box number, fax number or electronic mail or other electronic means address; and
  - (ii) has not refused to accept service by that means.

(2) In this rule references to the person's legal representative are to any person of whose name and address the court administration officer has been notified under rule 18(7).

#### **Service on the court administration officer**

5. Where under these Rules any document is to be served on the court administration officer, it may be served—

- (a) by post, DX, fax, electronic mail or other electronic means to any office of the Military Court Service; or
- (b) on a member of that Service personally, with his agreement.

#### **Service on the Director**

6. Where under these Rules any document is to be served on the Director, it may be served—

- (a) by post, DX, fax, electronic mail or other electronic means to—
  - (i) the principal office of the Service Prosecuting Authority; or
  - (ii) with the agreement of a prosecuting officer, that Authority's main office in Germany; or
- (b) on a prosecuting officer personally, with his agreement.

#### **Service on other individuals**

7. Where under these Rules any document is to be served on an individual other than a person to whom proceedings relate, the court administration officer or the Director, it may be served—

- (a) on the individual personally;
- (b) if he is subject to service law, by post in a letter addressed to him at his unit;
- (c) if he is not subject to service law—
  - (i) by leaving it at his usual or last known place of abode; or
  - (ii) by post in a letter addressed to his usual or last known place of abode.

### **Service by another method**

**8.**—(1) A judge advocate may direct that a document may be served by a method other than those mentioned in rules 4 to 7.

(2) A direction under this rule—

- (a) must specify—
  - (i) the method to be used; and
  - (ii) the date by which the document must be served; and
- (b) may specify the time on that date by which the document must be served.

(3) A judge advocate may treat a document as served if the addressee responds to it, even if it was not served in accordance with these Rules.

### **Service by commanding officer**

**9.** Where a document to be served on a person is sent or delivered to his commanding officer, his commanding officer must arrange for the document to be served on him personally as soon as is reasonably practicable.

### **Service by fax or electronic means**

**10.** Where a document is served by fax, electronic mail or other electronic means, the person serving it need not provide a paper copy as well.

### **Date of service**

**11.** Unless the contrary is shown, a document served on a person (otherwise than personally) shall be assumed to have been served—

- (a) in the case of a document sent by post from the United Kingdom to an address within the United Kingdom, on the fifth day after the day on which it was despatched;
- (b) in the case of a document sent by post—
  - (i) from the United Kingdom or Germany to an address within Germany, or
  - (ii) from Germany to an address within the United Kingdom, on the tenth day after the day on which it was despatched;
- (c) in the case of any other document sent by post, on the tenth day after the day on which it was despatched;
- (d) in the case of a document served by DX, on the fifth day after the day on which it was left at the addressee's DX box number or despatched;
- (e) in the case of a document served by fax, electronic mail or other electronic means, on the day after it was transmitted; and
- (f) in any case, on the day on which the addressee responds to it if that is earlier.

### **Proof of service**

**12.**—(1) Where—

- (a) under any of rules 4 to 7 or a direction under rule 8, a document may be served by a particular method, and
- (b) a certificate is produced which—
  - (i) states that the document was so served, and
  - (ii) is signed by a person who purports to have so served the document,

the document shall be assumed to have been so served, unless the contrary is shown.

(2) Where a certificate is produced which—

- (a) states that a document was despatched, left at a DX box number or transmitted on a particular day, and
- (b) is signed by a person who purports to have despatched, left or transmitted the document,

for the purposes of rule 11 the document shall be assumed to have been despatched, left or transmitted on that day, unless the contrary is shown.

(3) This rule is subject to any provision requiring proof on oath.

## PART 3

### PROCEEDINGS: GENERAL

#### **The court administration officer**

**13.** The court administration officer or a person acting on his behalf must exercise his functions subject to any direction given by a judge advocate.

#### **Arranging a hearing**

**14.** Where the court administration officer receives notification under rule 24(1)(a), 25(1)(a) or 26(1)(a) or an application under rule 29(1) he shall, after consultation with the Judge Advocate General, determine the time and place of any hearing.

#### **Notification of proceedings**

**15.** The court administration officer must serve notice of any time and place appointed by him for the commencement or resumption of any hearing on—

- (a) each person to whom the proceedings relate;
- (b) the legal representative (if any) of each such person;
- (c) the commanding officer of each such person; and
- (d) any such other person as the Judge Advocate General may direct.

#### **Live links**

**16.—(1)** Any person may (and, if in service custody, must) attend any proceedings under these Rules by live link, if a judge advocate so directs.

(2) A person who attends any proceedings by live link, and could give oral evidence in the proceedings if he were in the place where the proceedings are being held, may give evidence by live link.

(3) In these Rules—

- (a) “live link” means an arrangement by which a person, when not in the place where proceedings are being held, is able to see and hear, and to be seen and heard by, the judge advocate during proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded); and

- (b) references to bringing a person before the judge advocate include bringing him to a place from which he can attend proceedings by live link.
- (4) A direction under this rule may be given by any judge advocate.
- (5) Where a direction is given under this rule in relation to a witness, the witness may not give evidence otherwise than by live link without the leave of the judge advocate.
- (6) A judge advocate may give a direction under this rule, or give permission for the purposes of paragraph (5)—
  - (a) on an application by a party to the proceedings; or
  - (b) of his own motion.

### **Proceedings in absence of a person to whom the proceedings relate**

17. Proceedings may be held in the absence of any person to whom they relate, if the judge advocate so directs.

### **Legal representation**

18.—(1) The person to whom the proceedings relate and the commanding officer shall each have the right to be legally represented at a hearing.

(2) The person to whom the proceedings relate may appoint a legal representative to act for him in these proceedings.

(3) The commanding officer may be legally represented at a hearing.

(4) A person may be appointed as a legal representative under paragraph (2) or (3) only if he is—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(a);
- (b) an advocate or solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
- (d) a person who has in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory 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.

(5) The commanding officer shall ensure that the person to whom proceedings relate is afforded reasonable opportunity of communicating with his legal representative.

(6) 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 representative on his behalf.

(7) A legal representative appointed under this rule shall notify the court administration officer of—

- (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 unit; and
- (c) the proceedings in connection with which he has been appointed.

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(a) 1990 c. 41. Subsection (6) of section 71 of the Courts and Legal Services Act 1990 was substituted by the Access to Justice Act 1999 (c. 22), section 43, Schedule 6, paragraphs 4 and 9. Subsections (7) and (8) of section 71 of the 1990 Act were repealed by section 106, Schedule 15, Part 2 of the 1999 Act. Prospective amendments to section 71 of the 1990 Act are made to subsections (1) and (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1), (3). Prospective amendments are made to subsections (4) and (6) and a new subsection (6A) is inserted into section 71 of the 1990 Act by the Legal Services Act 2007 (c. 29), section 208(1), Schedule 21, paragraphs 83 and 94(a), (b) and (c).

(8) Where the person to whom the proceedings relate revokes his legal representative's appointment, he shall as soon as reasonably practicable notify the court administration officer and the commanding officer of that fact.

### **Witnesses**

19. Schedule 1 shall have effect.

### **Interpreters**

20.—(1) The court administration officer may appoint a person to act as interpreter for the purposes of any proceedings.

(2) Before an interpreter begins to act, an oath must be administered to him.

(3) Before an interpreter is sworn, his name must be read out and any party to the proceedings may object to him on any reasonable ground, and, if the judge advocate upholds any such objection, the interpreter shall not be sworn.

### **Oaths and affirmations**

21.—(1) This rule applies where under these Rules an oath is required to be administered to a person.

(2) Sections 1 and 3 to 6 of the Oaths Act 1978(a) shall apply, as modified by paragraph (3), as they would apply if the person were required to take an oath in England and Wales.

(3) Where section 1 or 6 of that Act applies by virtue of this rule, the reference in that section to the words of the oath prescribed by law is to be read as a reference to the words prescribed by Schedule 1 for a person of the class to which the person belongs.

### **Record of proceedings**

22.—(1) A record must be made of any proceedings under these Rules.

(2) The record of proceedings must include—

- (a) a record of any order made, and any direction or ruling given, by the judge advocate; and
- (b) if a court recorder was appointed for the proceedings, a sound recording of the proceedings, and any transcript of it (signed by the transcriber).

(3) The court administration officer shall send a copy of the record of proceedings to—

- (a) the Judge Advocate General;
- (b) the person to whom the proceedings relate;
- (c) that person's commanding officer; and
- (d) the Director.

(4) The record of proceedings shall be kept in the custody of the Judge Advocate General together with any file of correspondence or other papers maintained by the court administration officer in connection with the proceedings, for at least six years from the conclusion of the proceedings.

(5) A copy of the record of proceedings, or any part of it, shall be supplied on request—

- (a) to any party to the proceedings, without charge; and
- (b) to any other person, on payment of such charge as may be fixed by the Judge Advocate General.

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(a) 1978 c. 19.



### **Circumstances not provided for**

23. Subject to any other enactment (including any other provision of these Rules), the judge advocate shall ensure that proceedings are conducted—

- (a) in such a way as appears to him most closely to resemble the way in which comparable proceedings of a magistrates' court in England and Wales would be conducted in comparable circumstances; and
- (b) if he is unable to determine how comparable proceedings of a magistrates' court in England and Wales would be conducted in comparable circumstances, in such a way as appears to him to be in the interests of justice.

## PART 4 NOTIFICATIONS

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

24.—(1) Where a commanding officer proposes to make an application for an extension of custody without charge under section 101(1) he, or someone acting on his behalf, shall—

- (a) notify the court administration officer of that fact and the necessary information; and
- (b) inform the person arrested in writing of that fact and of the information specified in paragraph (2)(f), (g) and (h) and, if the person arrested has not appointed a legal representative, 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 arrested and, where applicable, his rank or rate, service number and unit;
- (c) the name and address of the legal representative of the person arrested, if known;
- (d) the nature of the offence or offences for which the person arrested has been arrested;
- (e) the time of the arrest;
- (f) the general nature of the evidence on which the person arrested has been 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 that the continued keeping of the person arrested in custody is justified.

(3) In relation to a person arrested under section 67 after—

- (a) being arrested by a civilian policeman, or
- (b) surrendering to a civilian policeman as being a person subject to service law who has deserted or is absent without leave,

the reference in paragraph (2)(e) to the time of the arrest is to the time of the earlier arrest or of the surrender, as the case may be.

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

25.—(1) Where a person ("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 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 judge advocate as soon as practicable and of the information specified in paragraph (2).

(2) The necessary information to be notified under paragraph (1) 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 unit;
- (c) the name and address of the accused's legal representative, if known;
- (d) the charge or charges;
- (e) the date and time that the accused was charged;
- (f) the commanding officer's reasons for believing that the continued keeping of the accused in custody is justified; and
- (g) if he considers it necessary, any requirements that the commanding officer believes that the judge advocate should impose under section 107(3) of the Act.

(3) For the purposes of this rule, a person is to be treated as charged with an offence when a charge is brought under section 120(2) or 122(1).

(4) On receipt of such notification, the court administration officer shall arrange a hearing as soon as reasonably practicable.

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

26.—(1) Subject to paragraph (3), where a person (“the accused”) is arrested under section 110(1) or 111(1) and kept in custody, the accused's commanding officer, or someone acting on his behalf, shall as soon as practicable—

- (a) notify the 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 judge advocate as soon as practicable and, if the accused has been arrested under section 110(1), the information specified in 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 unit;
- (c) the name and address of the accused's legal representative, if known;
- (d) the charge or charges;
- (e) the date, time and place of the arrest; and
- (f) if the arrest is made under section 110(1), the commanding officer's reasons for believing that the keeping of the accused in custody is justified.

(3) Paragraph (1) shall not apply where the accused is already before a judge advocate when the arrest is made.

(4) On receipt of notification under paragraph (1)(a), the court administration officer shall arrange a hearing as soon as reasonably practicable.

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

27.—(1) Subject to paragraph (3), a request for a review under section 108(2)(b) shall be made to the court administration officer by the commanding officer of the person to whom the proposed review relates (“the accused”) and shall 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 unit;
- (c) the name and address of the accused's legal representative, if known;
- (d) the charge or charges;

- (e) the date on which the extant order under section 105(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 judge advocate under section 107(3), the suggested requirements.

(2) Where a request is made under section 108(2)(b), the commanding officer, or someone acting on his behalf, shall inform the accused of that fact in writing and of the information specified in paragraph (1)(f) and (g).

(3) Where the commanding officer requests a review under section 108(2)(b) the prosecution has begun to open its case against the accused before the Court Martial or the Service Civilian Court and at a time when that court is sitting, the request shall be made to the judge advocate for the proceedings before that court.

### **Written notification**

**28.**—(1) Where—

- (a) a notification required to be given to the court administration officer under rule 24(1)(a), 25(1)(a) or 26(1)(a) is given orally, or
- (b) a request under rule 27(1) is made orally,

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

### **Application for variation or discharge of a requirement imposed under section 107(3)**

**29.**—(1) An application under section 107(4) shall be made to the court administration officer and be supported by the following information—

- (a) the name, rank, appointment and location of the commanding officer of the person to whom the application relates (“the accused”);
- (b) the name, date of birth and location of the accused and, where applicable, his rank or rate, service number and unit;
- (c) the name and address of the accused’s legal representative, if known;
- (d) the charge or charges;
- (e) the date of the hearing under section 105(1) and any requirements imposed under section 107(3) (including any such requirement as previously varied or discharged under section 107(4));
- (f) the circumstances which have caused the applicant to consider that any such requirement should be varied or discharged; and
- (g) whether the applicant seeks the variation or discharge of the requirement, and, if he seeks variation, the variation sought.

(2) Where an application is made under section 107(4) by the accused’s commanding officer, the commanding officer, or someone acting on his behalf, shall inform the accused of that fact in writing and of the information specified in paragraph (1)(f) and (g).

(3) Where an application is made under section 107(4) by or on behalf of the accused, the accused, or someone acting on his behalf, shall inform his commanding officer of that fact in writing and of the information specified in paragraph (1)(f) and (g).

(4) Where an application under section 107(4) is made orally, the applicant shall ensure that a written notice containing the information specified in paragraph (1) is served on the court administration officer, and a copy shall be served on the commanding officer or the accused, as the case may be, as soon as practicable thereafter.

(5) Where an application under section 107(4) is made after the prosecution has begun to open its case against the accused before the Court Martial or the Service Civilian Court and at a time when that court is sitting, the request shall be made to the judge advocate for the proceedings before that court.

## PART 5 REVIEWS

### **Review dates**

**30.**—(1) Where a judge advocate makes an order under section 105(2), he shall determine the date on which that order is to be reviewed and specify that date in the record of the order.

(2) A judge advocate may decide to carry out the review on a different date where—

- (a) a request for a review is made under section 108(2)(b) 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 court administration officer shall notify the commanding officer and the accused of the different date.

### **Requirement for a hearing**

**31.**—(1) This rule applies to reviews carried out under sections 108(1), 110(4), 111(4) or 171(2).

(2) A review shall be carried out at a hearing if—

- (a) it is the first review in relation to the accused;
- (b) it has been requested under section 108(2)(b); or
- (c) it is a review carried out at any time after the commencement of the accused's trial by the Court Martial or the Service Civilian Court and before the announcement of that court's finding on every charge against the accused, other than during an adjournment.

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

- (a) a judge advocate is satisfied on the basis of the representations made by the commanding officer under rule 32 that the grounds on which the order made under section 105(2) continue to exist;
- (b) the accused has not made representations under rule 32 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) a judge advocate is satisfied that there is no other cause for carrying out the review at a hearing.

(4) A judge advocate shall not on a review impose any requirements under section 107(3) unless the review is carried out at a hearing.

### **Written representations**

**32.**—(1) This rule applies to any review other than a review to which rule 31(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 a judge advocate should on a review make an order under section 105(2) 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**

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

(2) The court administration officer shall ensure that the hearing of a review takes place on the date determined by a judge advocate in accordance with rule 30.

(3) The 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**

**34.—**(1) This rule applies in any case where a judge advocate carries out a review without a hearing.

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

- (a) notify the court administration officer of that fact as soon as practicable; and
- (b) record his decision in writing.

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

## **PART 6**

### **HEARINGS**

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

**35.—**(1) A judge advocate 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 judge advocate shall determine and, in exercising his powers under this paragraph, the judge advocate shall adopt such course as appears to him will best serve the interests of justice.

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

(4) Subject to section 108(6), 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 judge advocate any document or written report, and
- (c) address the judge advocate at least once,

on any matters relevant to the proceedings.

(5) The judge advocate shall make a record of the hearing unless a court recorder is in attendance.

#### **Adjournments**

**36.—**(1) Where a person to whom the application relates is not legally represented at a hearing, the judge advocate shall explain—

- (a) the right of that person 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**

37. Except where the person is the accused, a person who is called to give evidence shall not, except with the consent of the judge advocate, be present at a hearing while not under examination.

#### **Privileges and immunities**

38. A witness at a hearing or any other person whose duty it is to attend before a judge advocate 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 judge advocate**

39.—(1) The judge advocate shall announce his decision and the reasons for it at the end of any hearing and record that decision in writing.

(2) The court administration officer shall serve copies of the decision on the commanding officer and the accused.

## **PART 7**

### **TRANSITORY AND TRANSITIONAL PROVISIONS**

#### **Supreme Court of Northern Ireland**

40. Until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005<sup>(a)</sup> comes into force, the reference in rule 18 to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland.

#### **Transitional**

41. Schedule 3 shall have effect.

28th April 2009

*Kevan Jones*  
Parliamentary Under Secretary of State  
Ministry of Defence

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(a) 2005 c. 4.

## WITNESSES AND SUMMONSES

**Notification of witnesses**

1.—(1) Where any person is required to give evidence in proceedings under these Rules, the court administration officer shall notify him of the time and place at which he is required to attend.

(2) When the court administration officer gives notice of any proceedings under these Rules to a party to the proceedings, he shall offer to notify any person whom the party may require to give evidence.

(3) Where a witness summons is issued under paragraph 2 or 3 of this schedule, the court administration officer shall serve it on the person to whom it is directed.

(4) If, in the opinion of the court administration officer, it is not reasonably practicable to notify a person under this paragraph or to serve a witness summons on a person, he shall give notice of that fact to the judge advocate and the party who wishes the person to attend.

**Issue of witness summons on application to a judge advocate**

2. This paragraph applies where a judge advocate is satisfied that—

- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any hearing under these Rules; and
- (b) it is in the interests of justice to issue a witness summons under this paragraph to secure the attendance of that person to give evidence or to produce the document or thing.

(2) In such a case, the judge advocate shall, subject to the following provisions of this paragraph, issue a witness summons directed to the person concerned and require him to—

- (a) attend before the judge advocate at the time and place stated in the witness summons; and
- (b) give the evidence or produce the document or thing.

(3) A witness summons may only be issued under this paragraph on an application; and the judge advocate may refuse to issue the witness summons if any requirement relating to the application is not fulfilled.

(4) A party who wants a judge advocate to issue a witness summons must apply as soon as practicable after becoming aware of the grounds for doing so.

(5) The party applying must—

- (a) identify the proposed witness;
- (b) explain—
  - (i) what evidence the proposed witness can give or produce;
  - (ii) why it is likely to be material evidence; and
  - (iii) why it would be in the interests of justice to issue a witness summons.

(6) The application may be made orally unless the judge advocate otherwise directs.

(7) An application in writing must contain a declaration that the facts stated in it are true to the best of the applicant's knowledge and belief.

(8) An application in writing must be served on the court administration officer and as directed by a judge advocate.

(9) A witness summons issued under this paragraph which requires a person to attend before a judge advocate and produce a document or thing may also require him to produce the document or thing—

- (a) at a place stated in the witness summons, and

- (b) at a time so stated, before the time at which the summons requires him to attend before a judge advocate,

for inspection by the applicant.

(10) A witness summons issued under this paragraph must state that failure to comply with the summons may result in the issue of a warrant for the arrest of the person to whom the summons is addressed.

### **Application for witness summons to produce a document, etc: judge advocate's assessment of relevance and confidentiality**

3.—(1) This paragraph applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the grounds that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, the duties or rights, including rights of confidentiality, of the proposed witness or of any person to whom the document or thing relates outweigh the reasons for issuing a witness summons.

(2) The judge advocate may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The judge advocate may invite—

- (a) the proposed witness or any representative of the proposed witness; or
- (b) a person to whom the document or thing relates or any representative of such a person, to help the judge advocate assess the objection.

### **Issue of witness summons of judge advocate's own motion**

4.—(1) For the purpose of any proceedings under these Rules, a judge advocate may of his own motion issue a witness summons directed to a person and requiring him to—

- (a) attend before the judge advocate at the time and place stated in the witness summons, and
- (b) give evidence, or produce any document or thing specified in the witness summons.

(2) A judge advocate may withdraw a witness summons issued under this rule if he no longer considers it necessary or if one of the following applies for it to be withdrawn—

- (a) the witness, on the grounds that—
  - (i) he cannot give or produce evidence likely to be material evidence; or
  - (ii) even if he can, his duties or rights (including rights of confidentiality) or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or
- (b) any person to whom the proposed evidence relates, on the grounds that—
  - (i) that evidence is not likely to be material evidence; or
  - (ii) even if it is, his duties or rights (including rights of confidentiality) or those of the witness outweigh the reasons for the issue of the witness summons.

### **Application to withdraw a witness summons**

5.—(1) A judge advocate may withdraw a witness summons if an application is made under this rule.

(2) An application under this rule may be made by the party who applied for the witness summons, on the ground that it is no longer needed.

(3) An application under this rule may also be made by the witness, on the grounds that—

- (a) he was not aware of any application for it; and



- (b) either—
  - (i) he cannot give or produce evidence likely to be material evidence; or
  - (ii) even if he can, his duties or rights (including rights of confidentiality) or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons.

(4) An application under this rule may also be made by any person to whom the proposed evidence relates, on the grounds that—

- (a) he was not aware of any application for it; and
- (b) either—
  - (i) that evidence is not likely to be material evidence; or
  - (ii) even if it is, his duties or rights (including rights of confidentiality) or those of the witness outweigh the reasons for the issue of the witness summons.

(5) An application under this rule—

- (a) must be made in writing to the court administration officer;
- (b) must be made as soon as is practicable after the applicant becomes aware of the grounds for making it; and
- (c) must state the grounds on which it is made.

(6) An application under this paragraph must be served on—

- (a) the witness (where he is not the applicant);
- (b) the party who applied for the witness summons (where he is not the applicant); and
- (c) any other person who, to the applicant’s knowledge, has been served with the application for the witness summons.

(7) Where—

- (a) a witness summons requires the proposed witness to produce in evidence a document or other thing, and
- (b) a person other than the party who applied for the witness summons makes an application under this rule,

paragraph 3(2) and (3) applies, with references to “the objection” read as references to the matters mentioned in sub-paragraph (3)(b) or (4)(b) (as the case may be).

### **Oral applications**

**6.**—(1) Where a paragraph or direction requires an application under this Schedule to be in writing, the application may be made orally with the leave of the judge advocate.

(2) A party who seeks leave to make such an application orally must—

- (a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and
- (b) in doing so, explain the reasons for—
  - (i) the application; and
  - (ii) seeking leave to make the application orally.

## SCHEDULE 2

Rule 21

### OATHS AND AFFIRMATIONS

The words prescribed are—

- (c) for witnesses, "... the evidence I shall give shall be the truth, the whole truth, and nothing but the truth"; and
- (d) for interpreters, "... I will well and faithfully interpret and make true explanation of all such matters and things as shall be required of me according to the best of my skill and understanding".

## SCHEDULE 3

Rule 41

### TRANSITIONAL PROVISIONS

#### PART 1

#### GENERAL

##### **Interpretation**

7.—(1) In this Schedule—

“the Army Rules” means the Army Custody Rules 2000(a);

“commencement” means the date on which these Rules come into force;

“custody proceedings” means proceedings under the Custody Rules;

“the Custody Rules” means the RN Rules, the Army Rules and the RAF Rules (or any of them);

“the RAF Rules” means the Air Force Custody Rules 2000(b);

“the RN Rules” means the Navy Custody Rules 2000(c);

“the SDAs” means the Army Act 1955(d), the Air Force Act 1955(e) and the Naval Discipline Act 1957(f).

##### **Record of custody proceedings**

8. Rule 22(4) shall apply in relation to the record of custody proceedings.

#### PART 2

#### STEPS TAKEN BEFORE COMMENCEMENT

##### **Service of documents**

9. Any document served on a person before commencement, which would have been served on him in accordance with any provision of these Rules if that provision had then been in force, is to be treated as having been served on him in accordance with that provision.

- 
- (a) S.I. 2000/2368.
  - (b) S.I. 2000/2369.
  - (c) S.I. 2000/2367.
  - (d) 1955 c. 18.
  - (e) 1955 c. 19.
  - (f) 1957 c. 53.

## **Notifications**

**10.** A notification made before commencement under Part 2 of the Custody Rules and which has not been determined shall be treated as if made under the corresponding rule in Part 4 to these Rules.

## **Court administration officers**

**11.** Anything done before commencement by a relevant court administration officer within the meaning of any of the SDAs or the Custody Rules, which would have been done in accordance with any provision of these Rules if it had been done by the court administration officer within the meaning of the Act had that provision been in force, is to be treated as having been done by the court administration officer in accordance with that provision.

## **Legal representatives**

**12.—(1)** Anything done before commencement by a person's legal advisor within the meaning of the Custody Rules, which would have been done in accordance with any provision of these Rules if it had been done by the person's legal representative within the meaning of these Rules and that provision had then been in force, is to be treated for the purpose of these Rules as having been done by the person's legal representative in accordance with that provision.

(2) A person who, immediately before commencement, was a person's legal advisor (within the meaning of the Custody Rules) is to be treated as having been appointed under rule 18.

## **Directions etc**

**13.—(1)** A direction, order or ruling given or made in custody proceedings by a judicial officer (within the meaning of the Custody Rules) has effect in as if made in proceedings under these Rules by the judge advocate for those proceedings.

(2) A summons issued under Custody Rules shall have effect as if issued under these Rules.

## EXPLANATORY NOTE

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

Section 101 of the Armed Forces Act 2006 (“the Act”) allows a judge advocate to authorise a person to be held in service custody for a period of up to 96 hours from the time of arrest. After charge, section 105 of the Act allows a judge advocate to authorise the holding in service custody of a person for up to eight days and then, on review, subsequent periods of up to eight days. If the person consents and is legally represented, section 108 allows a person to be kept in custody for up to 28 days between hearings. Section 107 of the Act allows the judge advocate to impose conditions (similar to bail conditions) on the person released from custody. Section 110 of the Act allows a commanding officer to order the arrest of a person whom he reasonably suspects would fail to attend a hearing, commit an offence, interfere with witness, or otherwise obstruct justice. A person so arrested must be brought before a judge advocate as soon as practicable. Section 111 of the Act allows a judge advocate to order the arrest of a person during the course of a trial by the Court Martial or the Service Civilian Court. Section 171 of the Act allows a person subject to a hospital order with restriction (as per section 37 of the Mental Health Act 1983) to be transferred to service custody.

These Rules are made under section 112(1) of the Act and make provision for the constitution and process of hearings and reviews under the above sections of the Act.

Part 2 defines how documents may be served on parties to proceedings under these Rules and makes provision for service by fax, electronic mail or other similar means. Part 3 deals with general matters relating to the functions of the court administration officer, the listing of proceedings, attendance via live links and, through Schedule 1, the production of witnesses.

Part 4 details the information a commanding officer must provide (including the reasons why) when making an application for an extension of custody without charge under section 101(1). Similarly, rule 25 details the information to be provided to the judge advocate when applying to keep a person in custody after charge. Rule 26 requires a commanding officer to notify the court administration officer of the fact that a person has been taken into custody under section 110(1) or 111(1). If the grounds for custody have changed a commanding officer may request a review by notifying the court administration officer under rule 27. Where a person has been released from service custody with conditions under section 107, a commanding officer may apply for variation or discharge of those conditions by following rule 29.

Rule 30 requires a judge advocate to specify the date of review in an order made under section 105(2) (custody after charge) and allows him to vary that date. Rule 31 allows a judge advocate to dispense with the need to conduct a review by formal hearing, unless it is the first review, a review under 108(2)(b) or whilst the accused is before the Court Martial or the Service Civilian Court.

Part 6 makes rules for the conduct of hearings and reviews: including the applicability of rules of evidence; adjournments; and immunities of witnesses.

Part 7 and Schedule 3 make transitional provisions.

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