STATUTORY INSTRUMENTS

2009 No. 1209

The Armed Forces (Service Civilian Court) Rules 2009

PART 1

PRELIMINARY

Citation and commencement

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

Interpretation: proceedings and parties

2.—(1) Unless otherwise stated, any reference in these Rules to proceedings is to—

(a) preliminary proceedings,

(b) trial proceedings,

(c) sentencing proceedings, [F1]...

(d) ancillary proceedings **[**[F2]; and

(e) variation proceedings**]**

and does not include the exercise of any power of the court otherwise than at a hearing.

(2) In these Rules—

"activation order" means—

(a) an order under paragraph 8(2)(a) or (b) of Schedule 12 to the 2003 Act (activation of suspended sentence of imprisonment); or

(b) an order under section 214(3) (reactivation of detention and training order);

"activation proceedings" means proceedings for the making of an activation order, but does not include sentencing proceedings in which the court has power to make such an order;

"ancillary proceedings" means proceedings under any provision of Part 15;

"community order proceedings" means any proceedings under Chapter 1 of Part 15;

[[F3]"domestic abuse" has the same meaning as in the Domestic Abuse Act 2021;**]**

"preliminary proceedings" means any proceedings of the court held for the purpose of—

(c) the court making its decision in accordance with section 279 (consideration of trial by Court Martial);

(d) allowing the defendant to exercise his right to elect trial by the Court Martial;

(e) arraigning a defendant on a charge to be tried in the trial proceedings; or

(f) giving directions, orders or rulings for the purpose of the trial proceedings;

"related proceedings", in relation to preliminary proceedings, means—

(g) trial proceedings in respect of any charge to which the preliminary proceedings relate;

(h) any further preliminary proceedings in relation to such trial proceedings; and

(i) any sentencing proceedings in respect of any offence found proved in such trial proceedings, or as respects which the offender pleads guilty in the preliminary proceedings or related proceedings;

"sentencing proceedings" means proceedings for the sentencing of a person convicted by the court on a plea of guilty or in trial proceedings **[**F4and does not include variation proceedings**]**;

"trial proceedings" means proceedings for the trial of a charge by the court, and does not include **[**F5sentencing proceedings or variation proceedings;**]**

[F6"variation proceedings" means proceedings under Part 14A.**]**

(3) References in these Rules to a party to any proceedings are to—

(a) a person to whom the proceedings relate;

(b) the Director; and

(c) where the proceedings are for the hearing of an application (and the applicant is not a person to whom the proceedings relate), the applicant.

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

(a) in the case of preliminary or trial proceedings, a defendant;

(b) in the case of sentencing proceedings, an offender who falls to be sentenced in the proceedings;

(c) in the case of activation proceedings, the offender in respect of whom the court has power to make an activation order in the proceedings;

(d) in the case of community order proceedings, the offender in respect of whom the overseas community order was made;

(e) in the case of a hearing of any other application (other than community order proceedings), the applicant;

(f) in the case of a hearing under rule 108 (certification of contempt of court), the person whose offence the court is to consider certifying.

[F7(g) in the case of variation proceedings, an offender in respect of whom a sentence which falls to be varied has been passed.**]**

(5) In these Rules—

"defendant" means a person against whom a charge allocated for Service Civilian Court trial has been brought;

"the Director" means the Director of Service Prosecutions.

Textual Amendments

F1 Word in rule 2 omitted (13.11.2023) by virtue of The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **3(a)**

F2 Rule 2(1)(e) and word inserted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **3(b)**

F3 Words in rule 2(2) inserted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **16**

F4 Words in rule 2(2) inserted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **3(c)(i)**

F5 Words in rule 2(2) substituted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **3(c)(ii)**

F6 Words in rule 2(2) inserted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **3(c)(iii)**

F7 Rule 2(4)(g) inserted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **3(d)**

Interpretation: general

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

(2) In these Rules—

"the Act" means the Armed Forces Act 2006;

"the 1967 Act" means the Criminal Justice Act 1967 [M1];

"the 1999 Act" means the Youth Justice and Criminal Evidence Act 1999 [M2];

"the 2003 Act" means the Criminal Justice Act 2003;

"the CPIA Order" means the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009 [M3];

"advance information" has the meaning given by rule 30(2);

"bad character" has the meaning given by section 98 of the 2003 Act;

"civilian police force" means a UK police force or a British overseas territory police force;

[[F8]"the complainant", in relation to any offence (or alleged offence), means a person against or in relation to whom the offence was (or is alleged to have been) committed;**]**

"the court" means the Service Civilian Court;

"DX" means document exchange;

"detention and training order" means an order under section 211;

"the judge advocate", in relation to any proceedings, means the judge advocate specified for the proceedings under section 278(2);

"legal representative" means a person appointed by a party to proceedings under rule 26;

"live link", has the meaning given by rule 18(3)(a);

"pre-sentence report" has the meaning given by section 257; 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; or

(c) an air force station.

(3) Any reference in these Rules to Schedule 8 to the 2003 Act is to that Schedule as modified by Schedule 5 to the Act.

Textual Amendments

F8 Words in rule 3(2) inserted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **14**

Marginal Citations

M1 1967 c. 80.
M2 1999 c. 23.
M3 S.I. 2009/988.

[F9PART 1A

THE OVERRIDING OBJECTIVE

Textual Amendments

F9 Pt. 1A inserted (1.1.2023) by The Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022 (S.I. 2022/1263), rules 1(2), **8**

The overriding objective

3A.—(1) The overriding objective of these Rules is that cases be dealt with justly.

(2) Dealing with a case justly includes—

(a) acquitting the innocent and convicting the guilty;

(b) treating all participants with politeness and respect;

(c) dealing with the prosecution and defence fairly;

(d) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;

(e) respecting the interests of witnesses and victims and keeping them informed of the progress of the case;

(f) dealing with the case efficiently and expeditiously;

(g) ensuring that appropriate information is available to a judge advocate or the court when either custody before or after charge or sentence are considered; and

(h) dealing with the case in ways that take into account—

(i) the gravity of the offence alleged;

(ii) the complexity of what is in issue;

(iii) the severity of the consequences for the defendant and others affected;

(iv) the needs of other cases; and

(v) the need to maintain the operational effectiveness of Her Majesty's forces.

(3) In this rule "custody before or after charge" means the keeping of the accused in service custody under Part 4 of the 2006 Act.

The duty of the participants in a case

3B.—(1) Each participant, in the conduct of each case, must—

(a) prepare and conduct the case in accordance with the overriding objective;

(b) comply with these Rules and any directions relating to the case given by a judge advocate or the court;

(c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules or any direction. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a case is a participant in its conduct for the purposes of this rule.

The application by the court of the overriding objective

3C. The court or the judge advocate for any proceedings before the court must further the overriding objective, in particular when—

(a) exercising any power given to the court or the judge advocate by legislation (including these Rules); or

(b) interpreting any rule.**]**

PART 2

SERVICE OF DOCUMENTS

Interpretation of Part 2

4.—(1) References in this Part to service under these Rules include service under any enactment applied by these Rules.

(2) 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.

(3) 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

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

(a) on him personally;

(b) by leaving it at his usual or last known place of abode; or

(c) 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 26(4).

Service on the court administration officer

6. 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) personally on any member of that Service, with his agreement.

Service on the Director

7. 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

8. 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 on a corporation

9. Where under these Rules any document is to be served on a corporation within the meaning of the Companies Act 2006 [M4], it may be served—

(a) by post to—

(i) the corporation's principal office in the United Kingdom;

(ii) if it has no readily identifiable principal office in the United Kingdom, any place in the United Kingdom where it carries on its activities or business; or

(iii) if it has no principal office in the United Kingdom and does not carry on its activities or business in the United Kingdom, its principal office; or

(b) by DX, fax, electronic mail or other electronic means, where the corporation—

(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.

Marginal Citations

M4 2006 c. 46.

Service by another method

10.—(1) A judge advocate may direct that a document may be served by a method other than those mentioned in rules 5 to 9.

(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) The court 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

11. 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

12. 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

13.—(1) 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

14.—(1) Where—

(a) under any of rules 5 to 9 or a direction under rule 10, 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 13 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

15.—(1) The court administration officer must exercise his functions subject to any direction given by a judge advocate.

(2) The court administration officer may delegate any of his functions to a member of the Military Court Service.

Listing of proceedings

16.—(1) Subject to the provisions of this rule, proceedings shall commence at such time and place as may be appointed by the court administration officer.

(2) Where an offender has been convicted in trial proceedings, the sentencing proceedings in respect of him shall commence immediately after the conclusion of the trial proceedings, unless the judge advocate for those proceedings appoints some later time.

(3) After the commencement of any proceedings, the court shall sit at such times and for such periods each day as it may direct.

Notification of proceedings

17. The court administration officer must serve notice of any time and place appointed by him for the commencement or resumption of any proceedings 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;

(d) the Director;

(e) where the proceedings are for the hearing of an application, the applicant; and

(f) any such other person as the Judge Advocate General may direct.

Live links

18.—(1) Any person may (and, if in service custody, must) attend any proceedings 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 court 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 court 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—

(a) the judge advocate for the proceedings; or

(b) the judge advocate for any preliminary proceedings as respects which the proceedings are related proceedings.

(5) Rule 36(3) (effect of a direction given in preliminary proceedings) applies to a direction under this rule given in preliminary proceedings.

(6) 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.

(7) A judge advocate may give a direction under this rule, or give permission for the purposes of paragraph (6)—

(a) on an application by a party to the proceedings; or

(b) of his own motion.

Proceedings in absence of defendant etc

19.—(1) Proceedings may be held in the absence of any person to whom they relate, if the court so directs.

(2) This rule does not permit a defendant to be arraigned in his absence.

[F10(3) The court may not impose a driving disqualification order in the absence of an offender, unless the court is satisfied that the offender was informed prior to the hearing that the court was considering disqualification.**]**

Textual Amendments

F10 Rule 19(3) inserted (1.4.2023) by The Armed Forces (Driving Disqualification Orders) Regulations 2023 (S.I. 2023/209), regs. 1(2), **13**

Oaths and affirmations

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

(2) Sections 1 and 3 to 6of the Oaths Act 1978 M5 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.

Marginal Citations

M5 1978 c. 19.

[F11Interpretation, translation and communication through an intermediary]

[F11 21.—(1) Where a person to whom any proceedings relate is due to attend a hearing, the court administration officer, unless satisfied that the person does not need interpretation, shall appoint an interpreter to act at the hearing.

(2) Before an interpreter begins to act at a hearing, an oath shall be administered to the interpreter.

(3) Before an interpreter is sworn, the interpreter's name shall be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(4) If the judge advocate upholds any such objection, the interpreter shall not be sworn, and the court administration officer shall appoint another interpreter.

(5) On application or on his own initiative, the judge advocate may require a written translation of any document or part of a document to be provided for a person to whom any proceedings relate, and who needs interpretation, unless—

(a) translation of that document, or part, is not needed to explain the issues arising in the proceedings in relation to the person (including, in the case of trial proceedings, the case against the defendant); or

(b) the person agrees to do without, and the judge advocate is satisfied—

(i) that the agreement is clear and voluntary; and

(ii) that the person has had legal advice or otherwise understands the consequences.

(6) On application by a person to whom any proceedings relate, the judge advocate shall give any direction which he thinks appropriate, including a direction for interpretation by a different interpreter, where—

(a) no interpreter is appointed, or no interpretation provided;

(b) no translation is ordered, or provided, in response to a previous application by the person; or

(c) the person complains about the quality of any interpretation or translation provided.

(7) In relation to a person who has a hearing or speech impediment, references in these Rules to an interpreter include a person appointed—

(a) to communicate to the person anything said at the hearing, and explain it so far as necessary to enable the person to understand it, or

(b) to communicate any answers given by the person, and any other matters that the person seeks to convey, and explain them so far as necessary to enable the court and others present at the hearing to understand them,

and references to interpretation shall be construed accordingly.

(8) In its application by virtue of paragraph (7), nothing in this rule is limited by anything in Chapter 6 of Part 12 (special measures directions).

(9) In this rule references to acting at a hearing include assisting the person to communicate with the person's legal representative during the hearing; and in relation to such assistance paragraph (7)(b) has effect as if the reference to the court and others present at the hearing were to the legal representative.**]**

Textual Amendments

F11 Art. 21 substituted (27.10.2013) by The Armed Forces (Interpretation, Translation and Alcohol and Drug Tests) Rules 2013 (S.I. 2013/2527), arts. 1(2), **20**

[F12Interpretation, translation for persons other than a person to whom proceedings relate

21A.—(1) Where the complainant is due to attend a hearing as a witness, the court administration officer, where satisfied that the person needs interpretation, shall appoint an interpreter to act at the hearing.

(2) The court administration officer may also appoint an interpreter for any other witness who is required to give evidence at a hearing, other than a person to whom any proceedings relate.

(3) Before an interpreter begins to act at a hearing, an oath shall be administered to the interpreter.

(4) Before an interpreter is sworn, the interpreter's name shall be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(5) If the judge advocate upholds any such objection, the interpreter shall not be sworn, and the court administration officer shall appoint another interpreter.

(6) On application or on his own initiative, the judge advocate may require a written translation of any document or part of a document to be provided for a complainant or other person who attends a hearing as a witness (other than a person to whom any proceedings relate) and who needs interpretation.**]**

Textual Amendments

F12 Rule 21A inserted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **15**

Record of proceedings

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

(2) The record of proceedings must include—

(a) a record of the court's decision under section 279(1) (trial by the Court Martial);

(b) a record of the defendant's decision after being given the opportunity to elect Court Martial trial;

(c) a record of any plea offered, and whether any plea of guilty was accepted by the court;

(d) a record of any finding;

(e) a record of any sentence passed, order made or direction given by the court;

(f) a record of any order made, and any direction or ruling given, by the court;

(g) a sound recording of the proceedings, and any transcript of it (signed by the transcriber)**[**F13;**]**

[F14(h) a record of the identity of any interpreter;

(i) a record of any decision on an application under rule 21(5);

(j) a record of any agreement under rule 21(5)(b) to do without a written translation of a document or part of a document; F15...

(k) a record of any direction given under rule 21(6) **[**F16; and**]]**

[F17(l) a record of any decision on an application under rule 21A(6).**]**

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

(a) the Judge Advocate General;

(b) the Director; and

(c) each defendant.

(4) Where a direction under rule 34 (preliminary proceedings in chambers) was given in relation to the proceedings, paragraph (3) shall have effect as if sub-paragraph (c) were omitted; and, where such a direction was given in relation to part of the proceedings, paragraph (3)(c) shall have effect in relation only to the record of the remainder.

(5) The record of proceedings shall be kept in the custody of the Judge Advocate General, together with any exhibits retained under rule 23 and any file of correspondence or other papers maintained by the court administration officer in connection with the proceedings, for at least six years from—

(a) in the case of trial proceedings in which a defendant is convicted, the conclusion of the sentencing proceedings in relation to him;

(b) in the case of preliminary proceedings where related trial proceedings take place but no defendant is convicted, the conclusion of the trial proceedings;

(c) in any other case, the conclusion of the proceedings.

(6) 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,

but this is subject to paragraphs (7) and (8).

(7) Paragraph (6) does not require the supply of—

(a) a copy of the record of any proceedings held in camera, or in relation to which a direction under rule 34 (preliminary proceedings in chambers) was given;

(b) a copy of any part of a record of proceedings which relates to a part of the proceedings which was held in camera, or in relation to which such a direction was given.

(8) If, following a request for the supply of a copy of the record of proceedings or any part of it, the Secretary of State certifies that it is requisite for reasons of security that the record or part requested (or any part of it) should not be disclosed, paragraph (6) does not require the supply of the record or part requested (or the part of it to which the certificate relates).

Textual Amendments

F13 Art. 22(2) semi-colon substituted for full stop (27.10.2013) by The Armed Forces (Interpretation, Translation and Alcohol and Drug Tests) Rules 2013 (S.I. 2013/2527), arts. 1(2), **21(a)**

F14 Art. 22(2)(h)-(k) inserted (27.10.2013) by The Armed Forces (Interpretation, Translation and Alcohol and Drug Tests) Rules 2013 (S.I. 2013/2527), arts. 1(2), **21(b)**

F15 Word in rule 22(2)(j) deleted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **16(a)**

F16 Word in rule 22(2)(k) substituted (16.11.2015) by virtue of The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **16(b)**

F17 Rule 22(2)(l) inserted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **16(c)**

Exhibits

23.—(1) Any exhibit admitted in evidence must be marked sequentially with either a number or a letter.

(2) Each exhibit, or a label attached to it, must be signed by or on behalf of the court.

(3) Each exhibit must be retained with the record of proceedings, unless the court otherwise directs.

Termination of proceedings

24.—(1) The court may terminate any proceedings if it considers it in the interests of justice to do so.

(2) The Judge Advocate General shall terminate proceedings if the judge advocate dies or is otherwise unable to continue to attend the proceedings.

(3) The termination of trial proceedings under this rule shall not bar further trial proceedings in relation to the same charge or charges.

(4) The termination of sentencing proceedings under this rule or rule 46(4) (change of plea) shall not bar further sentencing proceedings in relation to the same offence or offences.

(5) The termination of activation proceedings under this rule shall not bar further activation proceedings held by virtue of the same conviction.

Circumstances not provided for

25. 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 in magistrates' courts in England and Wales would be conducted in comparable circumstances; and

(b) if he is unable to determine how comparable proceedings in magistrates' courts 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

ASSISTANCE AND REPRESENTATION

Legal representatives

26.—(1) A party to proceedings may appoint a legal representative to act for him in relation to the proceedings.

(2) A person may not be appointed as a legal representative unless—

(a) he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 [M6];

(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 Court of Judicature of Northern Ireland; or

(d) he is a person having 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 subject to punishment or disability for breach of professional rules.

(3) Any right conferred on a party to proceedings by these Rules may be exercised, and any duty imposed on him by these Rules (except pleading to a charge) discharged, by his legal representative on his behalf.

(4) A party who appoints a legal representative shall notify the court administration officer of the legal representative's name and address.

Marginal Citations

M6 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).

Parent or guardian of young civilian

27.—(1) This rule applies where a person to whom proceedings relate ("the young person") is under the age of 18 years at the commencement of the proceedings.

(2) Where a party to the proceedings or the court administration officer is required to serve any document on the young person under these Rules, he must also serve it on the young person's parent or guardian.

(3) Where the young person has not appointed a legal representative—

(a) any right conferred on a party to proceedings by these Rules may be exercised, and any duty imposed on him by these Rules (except pleading to a charge) discharged, by his parent or guardian on his behalf; and

(b) the court may give leave for his parent or guardian to represent him in any proceedings.

PART 5

ARREST OF DEFENDANT

Arrest by service police etc before arraignment

28. Where—

(a) a charge is allocated for Service Civilian Court trial, and

(b) the defendant has not been arraigned before the court,

section 111 shall apply as if the defendant had been so arraigned and proceedings before the court had not concluded.

Warrant for arrest by civilian police

29.—(1) Where a judge advocate has power to direct the arrest of a defendant under section 111 (including that section as applied by rule 28), he also has power to issue a warrant for the defendant's arrest.

(2) A warrant issued under this rule—

(a) must be addressed to one or more officers of a civilian police force;

(b) must state the offence with which the defendant is charged; and

(c) must state that he must be transferred to service custody as soon as is practicable after his arrest.

(3) Where a defendant is arrested under a warrant issued under this rule and is transferred to service custody, subsection (4) of section 111 shall apply as if he had been arrested under that section.

PART 6

ADVANCE INFORMATION

Service of advance information

30.—(1) Where a charge is allocated for Service Civilian Court trial, the Director must, as soon as is practicable—

(a) serve advance information in relation to all defendants on the court administration officer; and

(b) serve advance information in relation to each defendant on—

(i) that defendant; and

(ii) that defendant's legal representative (if any).

(2) "Advance information", in relation to any defendant, means—

(a) copies of the statements of those witnesses on whom the Director intends to rely against the defendant;

(b) a list of all exhibits which the Director intends to adduce in evidence against the defendant, and a statement of where any non-documentary exhibits are held; and

(c) a transcript of any sound recording of an interview with the defendant.

(3) Where, after the Director has served advance information on a defendant, he intends to adduce against the defendant any evidence not included in the advance information, he must as soon as is practicable serve on the defendant and the court administration officer such documents as he would have been required to include in the advance information if he had had that intention at the time when he served advance information.

(4) Where paragraph (3) applies in the course of trial proceedings, the reference in that paragraph to the court administration officer is to be read as a reference to the court.

(5) Where the Director no longer intends to call a witness whose statement he has served under this rule, he must as soon as is practicable give notice of that fact to every defendant.

Information as to possibility of activation order etc

31.—(1) Where a charge is such that, if a defendant to the charge were convicted of it by the court, the court would have power to make an activation order, the advance information in relation to the defendant must include a notice that the court would have that power if he were convicted.

(2) Where a defendant—

(a) has been conditionally discharged by virtue of Schedule 3 to the Act, and

(b) is charged with an offence committed during the period of conditional discharge,

the advance information in relation to him must include a notice that, if he were convicted of the offence, the court would have power to deal with him under section 186(3) for the offence for which he was conditionally discharged.

(3) Where an overseas community order is in force in respect of a defendant, the advance information in relation to him must include a notice that, if he were convicted of the offence while the overseas community order is in force, the court would have the powers conferred by **[**F18paragraph 23(2) of Schedule 10 to the Sentencing Code**]**.

Textual Amendments

F18 Words in rule 31(3) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 372** (with Sch. 27); S.I. 2020/1236, reg. 2

PART 7

PRELIMINARY PROCEEDINGS

Listing of initial preliminary proceedings

32. On receipt of the advance information in relation to a charge, the court administration officer must—

(a) forward it to the Judge Advocate General and request him to specify a judge advocate for preliminary proceedings in relation to the charge; and

(b) appoint a time and place for the commencement of the preliminary proceedings.

Listing of further preliminary proceedings

33.—(1) The court administration officer must appoint a time and place for further preliminary proceedings if so directed by—

(a) the judge advocate for any preliminary proceedings; or

(b) the Judge Advocate General.

(2) The judge advocate for any preliminary proceedings may give a direction under this rule—

(a) on the oral application of the Director or a defendant; or

(b) of his own motion.

(3) The Judge Advocate General may give a direction under this rule on the written application of the Director or a defendant.

(4) A written application for a direction under this rule—

(a) must be made to the court administration officer;

(b) must specify the reason for which further preliminary proceedings are required;

(c) must include an estimate of the likely length of the further preliminary proceedings; and

(d) subject to rule 34 (preliminary proceedings in chambers without notice), must be served on every other party to the proposed trial proceedings.

Preliminary proceedings in chambers without notice to defendant

34.—(1) On application by the Director, the judge advocate for any preliminary proceedings may direct that the proceedings are, or that any part of the proceedings is—

(a) where there is one defendant, to be held in his absence and without notice to him;

(b) where there are two or more defendants, to be held in the absence of both or all of them and without notice to any of them.

(2) The court may not make a decision required by section 279(1) (consideration of trial by Court Martial) at a preliminary proceeding where a judge advocate has made a direction under this rule.

Outline of prosecution case

35. A judge advocate may direct the Director to serve on each defendant and the court administration officer, before any preliminary proceedings, an outline of the prosecution case.

Powers of the court at a preliminary hearing

36.—(1) In preliminary proceedings the court may give such directions as appear to it to be necessary to secure the proper and efficient management of the case.

(2) Without prejudice to paragraph (1), the court may make an order or ruling on—

(a) whether the court or the Court Martial should try the case;

(b) any question as to the admissibility of evidence;

(c) any question as to the joinder or severance of charges; or

(d) any other question of law, practice or procedure relating to the case.

(3) Any direction given in preliminary proceedings shall have effect throughout any related proceedings unless varied or discharged by—

(a) the judge advocate who gave it; or

(b) the judge advocate for any related proceedings.

(4) Any order or ruling made in preliminary proceedings shall have effect throughout any related proceedings unless varied or discharged by the court.

PART 8

JOINDER, SEVERANCE AND AMENDMENT

Joinder of charges

37.—(1) The court may try two or more charges together, if they are included in the same charge sheet.

(2) Where in accordance with regulations made under section 128 the charges in two or more charge sheets could have been included in the same charge sheet, the Director may consolidate both or all the charge sheets into one.

(3) Where the Director consolidates two or more charge sheets into one, he must immediately serve the new charge sheet on the court administration officer and each defendant.

Severance of charges

38. Where a defendant is charged with more than one offence in the same charge sheet, the court may direct, before the commencement of trial proceedings in relation to the charge sheet, that the charges be divided between two or more charge sheets.

Severance of defendants

39. Where two or more defendants are charged in a single charge, the court may direct, before the commencement of trial proceedings in relation to the charge, that the charge be replaced with charges against the defendants separately and in separate charge sheets.

Amendment of charges

40.—(1) Where in preliminary proceedings (whether before or after arraignment) or trial proceedings it appears to the court that the charge sheet or any charge is defective, it shall make such order for the amendment of the charge sheet or charge (as the case may be) as appears necessary to meet the circumstances of the case.

(2) But the court may not make an order under this rule if, in all the circumstances, the required amendments cannot be made without injustice.

(3) Without prejudice to the generality of paragraph (2), in relation to a proposed amendment in preliminary proceedings the circumstances relevant for the purposes of that paragraph include (in particular) whether the defendant has been arraingned.

(4) Where an order is made under this rule, the Director shall serve the amended charge sheet on every defendant in the way that would be required by regulations made under section 128—

(a) if the amendment had been made otherwise than in accordance with an order made under this rule; and

(b) where the amendment is made after arraignment, if it had been made before arraingnment.

Consequences of exercise of powers under this Part

41.—(1) Where in preliminary proceedings the court is of opinion that, in consequence of the exercise of any power of the court under this Part, it is in the interests of justice—

(a) that the commencement of the trial proceedings be postponed, or

(b) that a defendant be arraigned or re-arraigned on any charge,

the court shall make such order or give such direction as appears necessary.

(2) Where in trial proceedings the court is of the opinion that in consequence of the exercise of any power of the court under this Part it is in the interests of justice—

(a) that the proceedings be adjourned, or

(b) that a defendant be arraigned or re-arraigned on any charge,

it shall make such order or give such direction as appears necessary.

PART 9

CONSIDERATION OF TRIAL BY THE COURT MARTIAL

Consideration of trial by the Court Martial

42.—(1) The court shall make its decision in accordance with section 279 before the defendant is arraigned and shall give its reasons for its decision in open court.

(2) If the court decides that it should try the charge, the defendant shall be asked if he wants to elect trial by the Court Martial.

(3) If the defendant (or if more than one person is jointly charged, any of the defendants) does not elect trial by the Court Martial, the court may arraign the defendant.

(4) At any time before arraignment, a defendant may give notice that he elects to be tried by the Court Martial.

(5) For the purposes of paragraph (4), if there is more than one charge or more than one charge sheet "arraignment" shall mean arraignment on all of the charges.

(6) A defendant who has indicated that he wishes to elect trial by the Court Martial may, at any time before arraignment by the Court Martial, give notice that he withdraws his election.

(7) Any notice under paragraphs (4) or (6), unless given in court during proceedings in relation to the matter, shall be in writing and shall be served on—

(a) the court administration officer;

(b) the Director;

(c) any other defendant.

(8) Nothing in this rule shall affect the provisions in section 280(3) or (5) (election in respect of one defendant or one charge, as the case may be, takes effect in respect of all of the defendants or all of the charges).

PART 10

ARRAIGNMENT

Arraignment

43.—(1) A defendant shall be arraigned in preliminary proceedings on each charge brought against him, but need not be arraigned on every charge at the same time.

(2) A defendant shall be required to plead separately to each charge on which he is arraigned.

(3) Where a defendant pleads guilty to a charge, the court may accept the plea if satisfied that the defendant understands—

(a) the nature of the charge;

(b) the general effect of the plea; and

(c) the difference in procedure following pleas of guilty and not guilty.

(4) Where the court accepts a plea of a guilty to a charge—

(a) the defendant shall stand convicted of the charge; and

(b) unless there is a further charge against him to which he has not pleaded guilty (or as respects which a plea of guilty has not been accepted by the court), the court administration officer shall appoint a time and place for sentencing proceedings.

(5) Where—

(a) a plea of guilty is not accepted by the court, or

(b) the defendant does not plead (or does not plead intelligibly) to the charge,

the court shall record a plea of not guilty.

Order that charge lie on the file

44. Where the court accepts a plea of guilty to any charge, it may (with the Director's consent) order that any other charge—

(a) to which the defendant has not pleaded,

(b) to which the defendant has pleaded not guilty, or

(c) as respects which the court has recorded a plea of not guilty under rule 43(5),

is to lie on the file, not to be proceeded with without the leave of the court or the Court Martial.

Offer of no evidence

45.—(1) Where—

(a) a defendant has pleaded not guilty to a charge, or the court has recorded a plea of not guilty to the charge under rule 43(5), and

(b) the Director indicates that he intends to offer no evidence on the charge,

the court shall record a finding of not guilty in respect of the charge.

(2) A finding of not guilty recorded under this rule shall have effect for all purposes as an acquittal by the court.

Change of plea

46.—(1) At any time before the court determines the finding, a defendant who has pleaded not guilty to the charge may withdraw his plea and substitute a plea of guilty.

(2) But the court may not accept a plea of guilty substituted under paragraph (1) unless satisfied that the defendant understands the matters mentioned in rule 43(3).

(3) At any time before the court passes sentence for an offence, a defendant who has pleaded guilty to the charge of the offence may, with the leave of the court, withdraw his plea and substitute a plea of not guilty.

(4) Where a defendant changes his plea under paragraph (3)—

(a) in the course of sentencing proceedings in relation to the offence, or

(b) in the course of trial proceedings in relation to another charge,

the court shall terminate the proceedings.

Powers of Director after arraignment

47.—(1) After a defendant has been arraigned on a charge, the Director may not exercise any of the powers under section 126(2) without the leave of the court.

(2) Where a defendant has been arraigned and the Director (with leave) exercises any of the powers under section 126(2)(a) to (c) in relation to him, the Director shall serve the amended charge sheet on every defendant in the way that would be required by regulations made under section 128 if the power had been exercised before arraignment.

PART 11

ATTENDANCE OF WITNESSES

Notification of witnesses

48.—**[**[F19](1) Where any person is required to give evidence in any proceedings, the person must be notified of the time and place at which they are required to attend by—

(a) the Director, if the person is required to give evidence by the Director; or

(b) the court administration officer.**]**

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

(3) Where a witness summons is issued under rule 49 or 51, the court administration officer shall serve it on the person to whom it is directed.

[F20(4) Where the Director is required to notify a person under this rule and in the opinion of the Director it is not reasonably practicable to do so, the Director must give notice of that fact to the judge advocate.

(5) Where the court administration officer is required to notify a person under this rule or serve a witness summons on a person and in the opinion of the court administration officer it is not reasonably practicable to do so, the court administration officer must give notice of that fact to the judge advocate and the party who wishes the person to attend.**]**

Textual Amendments

F19 Rule 48(1) substituted (1.1.2023) by The Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022 (S.I. 2022/1263), rules 1(2), **9(2)**

F20 Rule 48(4)(5) substituted for rule 48(4) (1.1.2023) by The Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022 (S.I. 2022/1263), rules 1(2), **9(3)**

Issue of witness summons on application to a judge advocate

49.—(1) This rule 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 proceedings before the court; and

(b) it is in the interests of justice to issue a witness summons under this rule 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 rule, issue a witness summons directed to the person concerned and requiring him to—

(a) attend before the court 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 be issued under this rule only 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) An application for a witness summons must be made as soon as practicable after the applicant becomes aware of the grounds for making it.

(5) The application 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 the judge advocate.

(9) A witness summons issued under this rule which requires a person to attend before the court 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 the court,

for inspection by the applicant.

(10) A witness summons issued under this rule 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

50.—(1) This rule 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) A 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

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

(a) attend before the court 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 witness summons issued under this rule 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.

(3) 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

52.—(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 rule 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,

rule 50(2) and (3) apply, with references to "the objection" read as references to the matters mentioned in paragraph (3)(b) or (4)(b) (as the case may be).

Oral applications

53.—(1) Where a rule or direction requires an application under this Part to be in writing, the application may be made orally with the leave of the court.

(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.

Further process to secure attendance of witness

54.—(1) If a judge advocate is satisfied by evidence on oath that—

(a) a person is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings,

(b) that it is in the interests of justice that the person should attend to give evidence or to produce the document or thing, and

(c) it is probable that a witness summons issued under rule 49 or 51 would not procure his attendance,

the judge advocate may, instead of issuing a witness summons, issue a warrant to arrest that person and bring him before the court.

(2) Where—

(a) any person has failed to attend before the court in answer to a witness summons issued under rule 49 or 51,

(b) the judge advocate is satisfied by evidence on oath that—

(i) the person is likely to be able to give evidence likely to be material evidence or produce any document or other thing likely to be material evidence in the proceedings, and

(ii) the person has been duly served with the witness summons and that a reasonable sum has been paid or tendered to him for costs and expenses, and

(c) it appears to the judge advocate that there is no just excuse for the person's failure to attend,

the judge advocate may issue a warrant to arrest the person and bring him before the court.

(3) Subject to paragraph (4), a warrant issued under this rule shall be addressed to—

(a) one or more service policemen; or

(b) one or more officers of a civilian police force.

(4) A warrant issued under this rule may not be addressed to a service policeman unless it appears to the judge advocate that the person for whose arrest it is issued is subject to service law or is a civilian subject to service discipline.

(5) Where a person has been arrested by an officer of a civilian police force under a warrant issued under this rule—

(a) he must be transferred to service custody as soon as is practicable; and

(b) if he is not transferred to service custody as soon as is practicable after arrest he must be released.

(6) Where a person has been arrested under a warrant issued under this rule and is in service custody—

(a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court; and

(b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released.

Review of custody of witness

55.—(1) Paragraphs (2) to (5) apply where—

(a) a person is brought before a judge advocate under rule 54(6); or

(b) the keeping of a person in service custody has been authorised by an order under paragraph (2) and he is brought before a judge advocate before the expiry of the period for which it was so authorised.

(2) The judge advocate may by order authorise the keeping (or further keeping) of the person in service custody if he is satisfied that there are substantial grounds for believing that, if released from service custody, the person would fail to attend the court as required.

(3) The period for which the judge advocate may, by an order under paragraph (2), authorise the keeping of the person in service custody is such period, ending not later than 8 days after the day on which the order is made, as he considers appropriate in all the circumstances.

(4) If the judge advocate makes no order under paragraph (2), the person must be released from service custody without delay; but this is subject to paragraph (5).

(5) The judge advocate may require the person to comply, before release or later, with such requirements as appear necessary to secure his attendance before the court.

(6) Where the keeping of the person in service custody is authorised by an order under paragraph (2), he must be released on the expiry of the period for which it was so authorised unless a judge advocate has made a further order under that paragraph.

(7) On an application made by or on behalf of the person, any requirement imposed by virtue of paragraph (5) may be varied or discharged by a judge advocate.

(8) Section 107(5) shall apply in relation to a requirement imposed by virtue of paragraph (5) as it applies in relation to a requirement imposed by virtue of section 107(3)(a).

(9) A person guilty of an offence under section 107(5) by virtue of paragraph (8) shall be liable to a fine not exceeding level 4 on the standard scale.

Entitlement to witness expenses

56.—(1) Where any person is—

(a) notified under rule 48 of the requirement to give evidence in any proceedings, or

(b) served with a witness summons issued under rule 49 or 51,

there shall be paid or tendered to him at that time any expenses in respect of his attendance.

(2) For the purpose of this rule—

(a) the tender of a warrant or voucher entitling a person to travel free of charge shall constitute tender of his expenses in respect of any travelling required; and

(b) the tender of a written undertaking by the court administration officer to defray any other expenses payable under these Rules shall constitute tender in respect of those expenses.

PART 12

EVIDENCE

CHAPTER 1

General

Application and interpretation of Part 12

57.—(1) The provisions of this Part apply in relation to any proceedings in which an issue of fact falls to be determined, unless otherwise stated.

(2) In relation to any proceedings other than trial proceedings, references in this Part to a defendant are to be read as references to a person to whom the proceedings relate.

Rules of evidence

58.—(1) The rules of evidence applicable in a trial on indictment in England and Wales shall apply, to the extent that—

(a) they are capable of applying; and

(b) they are not applied, with or without modifications, by any other enactment or subordinate legislation (whenever passed or made).

(2) In this rule references to rules of evidence include rules conferring or restricting any discretion to exclude admissible evidence.

(3) No person may be required—

(a) to answer any question which he could not be required to answer in a trial on indictment in England and Wales; or

(b) to produce any document which he could not be required to produce in such a trial.

(4) The court may take judicial notice of matters of which judicial notice could be taken in a trial on indictment in England and Wales.

Oral testimony to be given on oath

59.—(1) Oral testimony shall be given on oath.

(2) This rule is subject to—

(a) section 5 of the Oaths Act 1978 (affirmation);

(b) section 31 of the 1999 Act (evidence admitted under a special measures direction); and

(c) section 56 of that Act (reception of unsworn evidence by witness who is not permitted to be sworn).

Proof by written statement

60.—(1) Without prejudice to rule 58, section 9 of the 1967 Act (proof by written statement) shall apply, subject to paragraph (2), in relation to a statement made—

(a) in the United Kingdom by any person, or

(b) outside the United Kingdom by a person subject to service law or a civilian subject to service discipline,

as it applies in criminal proceedings in relation to a statement made in the United Kingdom.

(2) In its application by virtue of this rule, section 9 of the 1967 Act shall have effect as if—

(a) subsection (2)(c) required service of the statement on the court administration officer (as well as each of the other parties to the proceedings);

(b) in subsection (2)(d), the reference to the parties' solicitors were to their legal representatives; and

(c) subsections (5) and (8) were omitted; and

(d) in subsection (6), the references to the court were to the judge advocate.

(3) An application to the court under section 9(4)(b) of the 1967 Act—

(a) may be made in preliminary proceedings; or

(b) in trial proceedings.

(4) Section 89 of the 1967 Act (offence of making a false statement tendered in evidence) shall apply in relation to a statement tendered in evidence in proceedings of the court by virtue of section 9 of that Act, wherever made, as it applies in relation to a statement tendered in evidence in criminal proceedings by virtue of that section.

Proof by formal admission

61.—(1) Without prejudice to rule 58, section 10 of the 1967 Act (proof by formal admission) shall apply, subject to paragraph (2), as it applies in relation to criminal proceedings.

(2) In its application by virtue of this rule, section 10 of the 1967 Act shall have effect as if—

(a) in subsection (1), the reference to the prosecutor were to the Director; and

(b) in subsection (2), references to a defendant's counsel or solicitor were to his legal representative.

Use of documents to refresh memory

62.—(1) A person giving oral evidence about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if—

(a) he states in his oral evidence that the document records his recollection of that matter at that earlier time; and

(b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.

(2) Where—

(a) a person giving oral evidence about any matter has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at that time,

(b) his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence, and

(c) a transcript has been made of the sound recording,

he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

CHAPTER 2

Evidence of bad character

Notice of intention to adduce evidence of a defendant's bad character

63.—(1) Where, in trial proceedings—

(a) the Director intends to adduce evidence of a defendant's bad character, or

(b) a defendant intends to adduce evidence of another defendant's bad character, or to cross-examine a witness with a view to eliciting such evidence,

he must serve on the court administration officer and all other parties to the proceedings a notice of that intention.

(2) A notice under this rule—

(a) must describe the misconduct to which the evidence relates;

(b) must state what evidence of the misconduct the party serving the notice intends to adduce or elicit;

(c) if served by the Director, must identify any witness whom he intends to call about the misconduct; and

(d) identify the paragraph or paragraphs of section 101(1) of the 2003 Act which the party serving the notice asserts to be applicable to the evidence.

(3) If served by the Director, a notice under this rule must be served not more than 14 days after the Director serves advance information in respect of the charge to which the evidence relates.

(4) If served by a defendant, a notice under this rule must be served not more than 14 days after—

(a) the date on which the Director complies or purports to comply with article 4 of the CPIA Order; or,

(b) if later, the date on which the Director discloses to the defendant the previous convictions of the co-defendant to whose misconduct the notice relates.

(5) If it is not reasonably practicable to serve a notice under this rule within the time prescribed by paragraph (3) or (4) (as the case may be), the notice must be served as soon as it is reasonably practicable to do so.

(6) The court may dispense with the requirement to serve a notice under this rule if satisfied that no injustice would result.

Application to exclude evidence of a defendant's bad character

64.—(1) An application under section 101(3) of the 2003 Act to exclude evidence of a defendant's bad character in trial proceedings must be made in writing to the court administration officer and served on all other parties to the proceedings, unless the court gives leave for the application to be made orally.

(2) If made in writing, the application—

(a) must state whether a notice under rule 63 has been served on the applicant in relation to the evidence, and if so on what date; and

(b) must be made and served not more than 14 days after that date (if any), unless paragraph (3) applies.

(3) Where—

(a) the court dispenses with the requirement to serve a notice under rule 63, or

(b) such a notice is served but it is not reasonably practicable to make the application within 14 days of the service of the notice,

the application must be made as soon as is reasonably practicable.

Application for leave to adduce evidence of the bad character of a non-defendant

65.—(1) An application for leave to give evidence in trial proceedings of the bad character of a person other than a defendant must be made in writing to the court administration officer and served on all other parties to the proceedings, unless the court gives leave for the application to be made orally.

(2) If made in writing, such an application—

(a) must describe the misconduct to which the evidence relates;

(b) must state what evidence of the misconduct the applicant seeks to adduce or elicit;

(c) if made by the Director, must identify any witness whom he intends to call about the misconduct; and

(d) must state the grounds on which the applicant asserts that the evidence is admissible.

(3) If made by the Director, an application under this rule must be made not more than 14 days after the Director serves advance information in respect of the charge to which the evidence relates.

(4) If made by a defendant, an application under this rule must be made not more than 14 days after—

(a) the date on which the Director complies or purports to comply with article 4 of the CPIA Order; or,

(b) if later, the date on which the Director discloses to the defendant the previous convictions of the person to whose misconduct the application relates.

(5) If it is not reasonably practicable to make an application under this rule within the time prescribed by paragraph (3) or (4) (as the case may be), the application must be made as soon as it is reasonably practicable to do so.

CHAPTER 3

Hearsay evidence

Notice of intention to adduce hearsay evidence

66.—(1) Where a party to trial proceedings proposes to adduce a hearsay statement, or (in the case of a defendant) to cross-examine a witness with a view to eliciting evidence of such a statement, on the basis that the statement is admissible by virtue of—

(a) section 114(1)(d) of the 2003 Act (interests of justice),

(b) section 116 of that Act (maker of statement unavailable to give oral evidence), or

(c) section 117 of that Act (statement contained in a document),

he must serve on the court administration officer and all other parties to the proceedings a notice to that effect.

(2) A notice under this rule—

(a) must give details of the statement that the party serving the notice proposes to tender in evidence;

(b) where the statement is contained in a document which has not already been served on all the other parties, must include a copy of the document;

(c) where the notice is served by the Director and oral evidence of the statement is to be given, must identify any witness who is to give it;

(d) must specify whether the party serving the notice proposes to tender the statement by virtue of section 114(1)(d), 116 or 117 of the 2003 Act;

(e) where he proposes to tender the statement by virtue of section 114(1)(d) of that Act, must specify which of the factors mentioned in section 114(2) of that Act are relevant, and how they are relevant; and

(f) where the statement is evidence that an earlier hearsay statement was made, must specify whether he proposes to tender it by virtue of section 121(1)(a), (b) or (c) of that Act.

(3) Where a notice under this rule is served by the Director, it must be served not more than 14 days after the Director serves advance information in respect of the charge to which the evidence relates.

(4) Where a notice under this rule is served by a defendant, it must be served not more than 14 days after the Director complies or purports to comply with article 4 of the CPIA Order.

(5) Where—

(a) a notice has been served under this rule in relation to a hearsay statement, and

(b) no counter-notice has been served in accordance with rule 67 in relation to the statement,

the statement is to be treated as admissible by agreement of the parties.

(6) In this rule "hearsay statement" means a statement which—

(a) is not made in oral evidence in the proceedings; and

(b) is relied on as evidence of a matter stated in it.

Counter-notice objecting to the admission of hearsay evidence

67.—(1) Where a party serves a notice under rule 66 in relation to a statement, any other party may serve a counter-notice objecting to the admission of the statement.

(2) A counter-notice served under this rule must state—

(a) the date on which the party serving it was served with the notice under rule 66;

(b) whether he objects to the admission of the whole or only part of the statement, and if only part which part; and

(c) the grounds on which he so objects.

(3) A counter-notice served under this rule must be served on the court administration officer and all other parties to the proceedings not more than 14 days after service of the notice under rule 66.

CHAPTER 4

Evidence of service matters

Evidence of enlistment

68.—(1) A document purporting to be an enlistment paper used to enlist a person in accordance with regulations made under section 328 shall be evidence that—

(a) that person was enlisted, on the date on which the declaration in the enlistment paper purports to have been signed by him, and on the terms set out in the document; and

(b) anything recorded in the document as the answer given by him to a question in the document was given by him in answer to that question when it was put to him by or on the direction of the recruiting officer who enlisted him.

(2) A document purporting to be a copy of such a document as is mentioned in paragraph (1) and purporting to be certified to be a true copy by a person stated in the certificate to have custody of the document shall be evidence of the matters mentioned in sub-paragraphs (a) and (b) of that paragraph.

Evidence as to service etc

69. A document stating that a person—

(a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces,

(b) was discharged from any of Her Majesty's forces at or before any specified time,

(c) held or did not hold at any specified time any specified rank, rate or appointment in any of Her Majesty's forces,

(d) had at or before any specified time been attached, posted or transferred to any part of Her Majesty's forces,

(e) at any specified time or during any specified period was or was not serving or held or did not hold any rank, rate or appointment in any particular country or place, or

(f) was or was not at any specified time authorised to use or wear any decoration, badge or emblem,

shall, if it purports to be issued by or on behalf of the Defence Council or by a person authorised by them, be evidence of the matters stated in the document.

Service records

70.—(1) A record purporting to be—

(a) made in any service record in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of naval, military, or air force duty, and

(b) signed by the commanding officer of the person to whom the record relates or by a person whose duty it was to make or keep the record,

shall be evidence of the matters stated in the record.

(2) A document purporting to be a copy of such a record (including the signature) as is mentioned in paragraph (1) and purporting to be certified to be a true copy by a person stated in the certificate to have custody of the record shall be evidence of the matters stated in the document.

Defence Council instructions, regulations and certificates

71.—(1) A document purporting to be issued by order of the Defence Council and to contain instructions or regulations given or made by the Defence Council shall be evidence of the giving of the instructions or the making of the regulations and their contents.

(2) A certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by them and stating—

(a) that a decoration of a description specified in, or as annexed to, the certificate is or is not a naval, military or air force decoration, or

(b) that a badge or emblem of a description specified in, or as annexed to, the certificate is or is not one supplied or authorised by the Defence Council,

shall be evidence of the matters stated in the certificate.

Standing or routine orders

72.—(1) A certificate purporting to be signed by a person's commanding officer or an officer authorised by the commanding officer to give the certificate, and stating the contents of, or of any part of, standing orders, or other routine orders of a continuing nature, of any of Her Majesty's forces, made for any—

(a) part of Her Majesty's forces,

(b) area or place, or

(c) ship, train or aircraft,

shall be evidence of the matters stated in the certificate.

CHAPTER 5

Expert evidence

Expert evidence

73.—(1) Expert evidence shall not be adduced without the leave of the court unless the party proposing to rely on it has served on every other party and the court administration officer, not less than 14 days before the date appointed for the commencement of the proceedings, a statement of the substance of the expert evidence.

(2) The statement referred to in paragraph (1) must be in writing unless every other party consents to its being made orally.

(3) Where more than one party wishes to introduce expert evidence, the court may direct the experts to—

(a) discuss the expert issues in the proceedings; and

(b) prepare a statement for the court of the matters on which they agree and disagree, giving their reasons.

(4) Except for the statement prepared under paragraph (3)(b), the content of the discussion under paragraph (3)(a) may not be referred to without the court's permission.

(5) Where more than one defendant wishes to introduce expert evidence on an issue, the court may direct that the evidence on that issue is to be given by one expert only.

(6) Where the defendants cannot agree who should be the expert to give evidence under paragraph (5), the court may—

(a) select the expert from a list prepared or identified by them; or

(b) direct that the expert be selected in such other manner as the court shall direct.

(7) Where the court gives a direction under paragraph (5) for a single joint expert to be used, each of the defendants may give instructions to the expert.

(8) When a defendant gives instructions to the expert under paragraph (7) he must, at the same time, send a copy of the instructions to every other defendant.

(9) Where—

(a) a statement has been prepared for the purposes of proceedings, and

(b) the person who prepared the statement had, or may reasonably be supposed to have had, personal knowledge of the matters stated,

a statement served under paragraph (1) may be accompanied by a notice, given for the purposes of section 127 of the 2003 Act (expert evidence: preparatory work), that another person will in evidence given in the proceedings (whether orally or under section 9 of the 1967 Act, as applied by rule 60) base an opinion or inference on the statement.

CHAPTER 6

Special measures directions

Interpretation of Chapter 6

74.—(1) In this Chapter—

"eligible witness" means a witness eligible for assistance by virtue of rule 75 or 76;

"intermediary" has the same meaning as in section 29 of the 1999 Act;

[[F21]"modern slavery offence" means an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—

(a) an offence under section 1 (slavery, servitude and forced or compulsory labour) or 2 (human trafficking) of the Modern Slavery Act 2015;

(b) an offence of attempting or conspiring to commit such an offence; or

(c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging and assisting crime) where the offence (or one of the offences) which the offender intended or believed would be committed is a modern slavery offence;**]**

"sexual offence" means an offence under section 42 as respects which the corresponding offence under the law of England and Wales is—

(a) **[**[F22]an offence which is—

((i)) an offence under Part 1 of the Sexual Offences Act 2003, or

((ii)) a relevant superseded offence as defined by section 62(1A) of the 1999 Act (meaning of "sexual offence" and other references to offences);

(b) an offence of attempting or conspiring to commit, or of aiding, abetting, counselling or procuring or inciting the commission of, such an offence; or**]**

(c) an offence under Part 2 of the Serious Crime Act 2007 [M7] (encouraging and assisting crime) committed in relation to such an offence;

"special measures direction" means a direction providing for one or more of the special measures available in relation to a witness to apply to evidence given by the witness;

"the special measures provisions" means the provisions of Chapter 1 of Part 2 of the 1999 Act applied by an order under section 61(1) of that Act.

(2) In this Chapter—

(a) references to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy (and for this purpose "coherence" refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively); and

(b) references to the special measures available in relation to a witness are to be construed in accordance with rule 77.

Textual Amendments

F21 Words in rule 74(1) inserted (31.7.2015) by The Modern Slavery Act 2015 (Consequential Amendments) Regulations 2015 (S.I. 2015/1472), regs. 1, **9(2)**

F22 Words in rule 74(1) substituted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **17(a)**

Marginal Citations
M7 2007 c. 27.

Witnesses eligible for assistance on grounds of age or incapacity

75.—(1) A witness is eligible for assistance by virtue of this rule if the witness is under the age of 18 at the time when it falls to the court to consider whether to give a special measures direction in relation to the witness.

(2) A witness is also eligible for assistance by virtue of this rule if the court considers that the quality of evidence given by the witness is likely to be diminished because the witness—

(a) suffers from mental disorder within the meaning of the Mental Health Act 1983 [M8];

(b) otherwise has a significant impairment of intelligence and social functioning; or

(c) has a physical disability or is suffering from a physical disorder.

Marginal Citations
M8 1983 c. 20.

Witnesses eligible for assistance on grounds of fear or distress about testifying

76.—(1) A witness (other than a defendant) is eligible for assistance by virtue of this rule if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(2) A witness is also eligible for assistance by virtue of this rule if—

[[F23](a) the proceedings are in respect of—

(i) a sexual offence,

(ii) a modern slavery offence, or

(iii) any other offence where it is alleged that the behaviour of the defendant amounted to domestic abuse;**]**

(b) the witness is a complainant in respect of that offence; and

(c) the witness has not informed the court of the witness's wish not to be so eligible.

Textual Amendments
F23 Rule 76(2)(a) substituted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **18**

Special measures available

77.—(1) Where a witness (other than a defendant) is eligible for assistance by virtue of rule 75, the special measures available in relation to him are those for which provision is made by sections 23 **[**[F24]and 25 to 30**]** of the 1999 Act.

(2) Where a witness is eligible for assistance by virtue of rule 76, the special measures available in relation to him are those for which provision is made by sections 23 and **[**[F25]25 to 28**]** of that Act.

(3) Where a defendant is eligible for assistance by virtue of rule 75, the special measures available in relation to him are those for which provision is made by sections 29 and 30 of that Act.

[[F26](4) In a domestic abuse case a special measure for which provision is made by any of sections 23 and 25 to 28 of the 1999 Act is only available under paragraph (2) if section 62 of the Domestic Abuse Act 2021 (special measures in criminal proceedings for offences involving domestic abuse) is in force for the purposes of that section of the 1999 Act.

(5) In this rule "domestic abuse case" means proceedings falling within rule 91(2)(a) by virtue only of paragraph (iii) of that sub-paragraph.**]**

Textual Amendments

F24 Words in rule 77(1) substituted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **19(a)**

F25 Words in rule 77(2) substituted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **19(b)**

F26 Rule 77(4)(5) inserted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **19(c)**

Special measures direction relating to eligible witness

78.—(1) Subject to the special measures provisions and this Chapter, the court may give a special measures direction in relation to a witness if—

(a) the witness is an eligible witness; and

(b) any of the special measures available in relation to the witness (or any combination of them) would, in the court's opinion, be likely to improve the quality of evidence given by the witness.

(2) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(3) In determining whether any special measure or measures would be likely to improve the quality of evidence given by the witness, and if so whether to give a direction providing for the measure or measures to apply, the court must consider all the circumstances of the case, including in particular—

(a) any views expressed by the witness; and

(b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) Where there are two or more defendants—

(a) any reference to the defendant in the special measures provisions may be taken, in connection with the giving of a special measures direction, as a reference to all or any of the defendants, as the court may determine; and

(b) any such direction may be given on the basis of any such determination.

(5) A special measures direction may provide for one or more special measures to apply in combination with a direction under rule 18 (live links), and for the purposes of this Chapter a measure would be likely to improve the quality of the witness's evidence if, were it combined with such a direction, it would be likely to do so.

(6) The court may give a special measures direction—

(a) on an application made by a party to the proceedings; or

(b) of its own motion.

(7) A judge advocate who gives, or refuses an application for, a special measures direction must state in open court his reasons for doing so.

(8) Nothing in this Chapter is to be regarded as affecting any power of the court to make an order or give leave of any description—

(a) in relation to a witness who is not an eligible witness; or

(b) in relation to an eligible witness, where the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

[F27Special provisions relating to a child witness

78A.—(1) Where the court is considering giving a special measures direction under rule 78(1) in relation to a child witness the court must—

(a) first have regards to paragraphs (2) to (6) below; and

(b) then have regard to rule 78(1);

and if the judge advocate is required by paragraphs (2) to (6) to give such a direction, any special measure which must be provided for in the direction under paragraph (2) or (4) is to be treated for the purposes of rule 78(1)(b), as it then applies to the witness, as one which is likely to improve the quality of evidence given by the witness (whether on its own or in combination with any other special measure).

(2) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which provides for any relevant recording to be admitted under section 27 of the 1999 Act (video recorded evidence in chief).

(3) The primary rule is subject to the following limitations—

(a) the requirement contained in paragraph (2) has effect subject to rule 80(1);

(b) if the witness informs the court of the witness's wish that the primary rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence; and

(c) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to improve the quality of the witness's evidence (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(4) Where as a consequence of all or part of the primary rule being disapplied under paragraph (3)(b) a witness's evidence or any part of it would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in section 23 of the 1999 Act (screening witness from accused) for the evidence or that part of it.

(5) The requirement in paragraph (5) is subject to the following limitations—

(a) if the witness informs the court of the witness's wish that the requirement in paragraph (4) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness's evidence; and

(b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to improve the quality of the witness's evidence (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(6) In making a decision under paragraph (3)(b) or (5)(a), the court must take into account the following factors (and any others it considers relevant)—

(a) the age and maturity of the witness;

(b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in paragraph (2) or (as the case may be) in accordance with the requirements in paragraph (4);

(c) the relationship (if any) between the witness and the defendant;

(d) the witness's social and cultural background and ethnic origins;

(e) the nature of the alleged circumstances of the offence to which the proceedings relate.

(7) Where a special measures direction is given in relation to a child witness who is not also an eligible witness in accordance with rule 75(2), then—

(a) subject to paragraph (8) below; and

(b) except where the witness has already begun to give evidence in the proceedings,

the direction shall cease to have effect at the time when the witness attains the age of 18.

(8) Where a special measures direction is given in relation to a child witness who is not also an eligible witness in accordance with 75(2) and—

(a) the direction provides—

(i) for any relevant recording to be admitted under section 27 of the 1999 Act as evidence in chief of the witness, or

(ii) for the special measure available under section 28 of the 1999 Act (video recorded cross-examination or re-examination) to apply in relation to the witness; and

(b) if it provides for that special measure to so apply, the witness is still under the age of 18 when the video recording is made for the purposes of section 28;

then, so far as it provides as mentioned in sub-paragraph (a)(i) or (ii) above, the direction shall continue to have effect even though the witness subsequently attains that age.

(9) In this rule—

(a) a witness is a "child witness" if the witness is an eligible witness by reason of rule 75(1) (whether or not the witness is an eligible witness by reason of any other provision of rule 75 or 76); and

(b) a "relevant recording", in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.**]**

Textual Amendments

F27 Rules 78A, 78B inserted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **20**

[F27Extension of provisions of rule 78A to certain witnesses over 18

78B.—(1) Rule 78(1) and 78A(1) to (3) and (6), so far as relating to the giving of a direction complying with the requirement contained in rule 78A(2), apply to a qualifying witness in respect of a relevant recording made in relation to the witness, as they apply to a child witness (within the meaning of rule 78A).

(2) In this rule—

(a) a witness (other than the defendant) is a "qualifying witness" if the witness—

(i) is not an eligible witness, but

(ii) was under the age of 18 when the relevant recording was made in relation to the witness; and

(b) a "relevant recording", in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.**]**

Textual Amendments

F27 Rules 78A, 78B inserted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **20**

Evidence given in private

79. A special measures direction may not provide for the exclusion of persons under section 25 of the 1999 Act unless—

[F28(a) the proceedings relate to—

(i) a sexual offence,

(ii) a modern slavery offence, or

(iii) any other offence where it is alleged that the behaviour of the defendant amounted to domestic abuse; or**]**

(b) it appears to the court that there are reasonable grounds for believing that any person other than a defendant has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

Textual Amendments

F28 Rule 79(a) substituted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **21**

Video recorded evidence in chief

80.—(1) A special measures direction may not provide for a video recording, or a part of such a recording, to be admitted under section 27 of the 1999 Act if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(2) In considering for the purposes of paragraph (1) whether any part of a recording should not be so admitted, the court must consider whether any prejudice to a defendant which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(3) Where a special measures direction provides for a recording to be admitted under section 27 of the 1999 Act, the court may nevertheless subsequently direct that it is not to be so admitted if—

(a) it appears to the court that—

(i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction), and

(ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or

(b) rule 83 has not been complied with to the satisfaction of the court.

(4) Paragraph (3) is without prejudice to rule 84 (power to vary or discharge special measures direction).

(5) Where a recording is admitted under section 27 of the 1999 Act—

[F29(a) the witness must be called by the party tendering it in evidence, unless –

(i) a special measures direction provides for the witness's evidence on cross-examination to be given in any recording admissible under section 28 of the 1999 Act (video recorded cross-examination or re-examination), or

(ii) the parties to the proceedings have agreed that there is no need for the witness to be called; and**]**

(b) the witness may not give evidence in chief otherwise than by means of the recording—

(i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony; or

(ii) without the leave of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.

(6) Where a special measures direction provides for part only of a recording to be admitted under section 27 of the 1999 Act, references in paragraphs (3) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give leave for the purposes of paragraph (5)(b)(ii) if it appears to him to be in the interests of justice to do so, and may do so either—

(a) on an application by a party to the proceedings; or

(b) of his own motion.

Textual Amendments

F29 Rule 80(5)(a) substituted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **22**

[F30Video recorded cross-examination or re-examination

80A.—(1) Where a special measures direction provides for a video recording to be admitted under section 28 of the 1999 Act (video recorded cross-examination or re-examination), such a recording must be made in the presence of such persons as the direction may provide and in the absence of the defendant, but in circumstances in which—

(a) the court and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and

(b) the defendant is able to see and hear any such examination and to communicate with any legal representative acting for the defendant (and for this purpose any impairment of eyesight or hearing is to be disregarded).

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(3) Where a special measures direction provides for a recording to be admitted under section 28 of the 1999 Act, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of paragraph (1), these Rules or the direction has not been complied with to the satisfaction of the court.

(4) Where in pursuance of section 28(1) of the 1999 Act a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under section 27 (video recorded examination in chief) or 28 of the 1999 Act or otherwise than in

such a recording) unless the court gives a further special measures direction making such provision as is mentioned in section 28(1)(a) and (b) of the 1999 Act in relation to any subsequent cross-examination, and re-examination, of the witness.

(5) The court may only give such a further direction if it appears to the court—

(a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of section 28(1) of the 1999 Act, of a matter which that party could not with reasonable diligence have ascertained by then; or

(b) that for any other reason it is in the interests of justice to give further direction.

(6) Nothing in this rule shall be read as applying in relation to any cross-examination of the witness by the defendant in person (in a case where the defendant is to be able to conduct any such cross-examination).**]**

Textual Amendments

F30 Rule 80A inserted (4.7.2022) by The Armed Forces (Service Court Rules) (Amendment) Rules 2022 (S.I. 2022/605), rules 1(2), **23**

Examination of witness through intermediary

81.—(1) Any examination of a witness conducted in pursuance of a provision included in a special measures direction by virtue of section 29(1) of the 1999 Act (examination of witness through intermediary) must take place—

(a) in the presence of such persons as the direction may provide; and

(b) in circumstances in which the court, and legal representatives acting in the proceedings, are able to see and hear the examination of the witness and to communicate with the intermediary (and for this purpose any impairment of eyesight or hearing is to be disregarded).

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1)(b) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(3) Before an intermediary begins to act, he shall make a declaration in the following form:

"I solemnly, sincerely and truly declare that I will well and faithfully communicate the questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding."

(4) In this rule "the intermediary" has the same meaning as in section 29 of the 1999 Act.

Application for special measures direction: general

82.—(1) An application for a special measures direction must be made in writing to the court administration officer, unless a judge advocate gives leave for it to be made orally.

(2) A written application must specify—

(a) unless the application is made by a defendant and does not relate to evidence in support of an alibi, the name and date of birth of the witness in relation to whom it is made;

(b) the special measure or measures sought;

(c) where the application is for a direction including provision by virtue of section 27 of the 1999 Act (video recorded evidence in chief), the information mentioned in rule 83(4);

(d) the grounds on which the applicant asserts—

(i) that the witness is an eligible witness; and

(ii) that the measure or measures will improve the quality of the witness's evidence;

(e) the views of the witness as to the matters specified in accordance with sub-paragraph (d);

(f) where a previous application for a special measures direction has been refused, any material change of circumstances relied upon in support of the application.

(3) In paragraph (2)(a) "evidence in support of an alibi" has the same meaning as in article 7(5) of the CPIA Order.

(4) A written application must be made, and a copy served on all other parties to the proceedings—

(a) where the application is made by the Director, not more than 14 days after the Director serves advance information in respect of the charge to which the proposed evidence relates.

(b) where the application is made by a defendant, not more than 14 days after the Director complies or purports to comply with article 4 of the CPIA Order.

(5) Notwithstanding paragraph (4), a judge advocate may at his discretion consider a written application made outside the period of 14 days there mentioned.

(6) Where a written application has been made, a judge advocate may—

(a) grant the application without a hearing; or

(b) direct a hearing.

(7) But the application may not be granted without a hearing unless—

(a) at least 14 days have elapsed since the application was served on each other party to the proceedings, and

(b) no other party has served notice on the court administration officer that he opposes the application.

(8) Any party to the proceedings—

(a) may attend a hearing of the application, and be heard;

(b) may, with leave of the court, adduce evidence (including expert evidence) at the hearing.

Application for special measures direction permitting admission of video recorded evidence in chief

83.—(1) This rule applies where an application is made for a special measures direction including provision by virtue of section 27 of the 1999 Act.

(2) The application must be accompanied by a copy of the video recording which (or part of which) it is proposed to tender in evidence.

(3) Where the application is made by the Director, he must at the same time serve on each defendant a copy of that recording.

(4) The application must include the following information, in so far as not contained in the recording itself—

(a) the date on which the recording was made;

(b) the times at which the recording commenced and finished, including details of any interruptions;

(c) the address of the premises where the recording was made, and the usual function of those premises;

(d) in relation to each person present at any point during, or immediately before, the recording—

(i) the name, age and occupation of the person;

(ii) the time for which he was present; and

(iii) his relationship (if any) to the witness;

(e) in relation to the equipment used for the recording—

(i) a description of the equipment;

(ii) the number of cameras used;

(iii) whether the cameras were fixed or mobile;

(iv) the number and location of the microphones;

(v) the video format used; and

(vi) whether it offered single or multiple recording facilities and, if so, which were used; and

(f) if the recording is a copy—

(i) the location of the master recording; and

(ii) details of when and by whom the copy was made.

(5) Where the applicant is a defendant and the application is granted, the applicant must, at the close of the case for the prosecution, serve on each other party to the proceedings a copy of the video recording which (or part of which) it is proposed to tender in evidence under the direction.

Variation or discharge of special measures direction

84.—(1) A judge advocate may vary or discharge a special measures direction if it appears to him to be in the interests of justice to do so.

(2) A judge advocate may exercise the power conferred by paragraph (1)—

(a) on an application made by a party to the proceedings, or

(b) of the judge advocate's own motion.

(3) An application under this rule must be made in writing to the court administration officer, unless—

(a) a judge advocate gives leave for it to be made orally, or

(b) paragraph (8) applies.

(4) A copy of a written application under this rule must be served on each other party to the proceedings

(5) Where a written application has been made under this rule, a judge advocate may—

(a) grant the application without a hearing; or

(b) direct a hearing.

(6) But the application may not be granted without a hearing unless—

(a) at least 14 days have elapsed since the application was served on each other party to the proceedings, and

(b) no other party has served notice on the court administration officer that he opposes the application.

(7) Rule 82(8) applies in relation to a hearing of the application as it applies in relation to a hearing of an application for a special measures direction.

(8) Where the direction was made on the application of a defendant and includes provision for the admission of a video recording which had not been served on the Director, the Director may make an oral application without leave.

(9) A judge advocate who varies or discharges, or refuses an application for the variation or discharge of, a special measures direction must state in open court his reasons for doing so.

(10) In this rule, references to the variation of a special measures direction include the further variation of a direction previously varied.

[F31CHAPTER 7

Use of specimens in proceedings for offences relating to alcohol and drugs

Textual Amendments

F31 Ch. 7 inserted (1.11.2013) by The Armed Forces (Interpretation, Translation and Alcohol and Drug Tests) Rules 2013 (S.I. 2013/2527), arts. 1(2), **22**

Application and interpretation

84A.—(1) This Chapter applies to proceedings for an offence under section 42 of the Act (criminal conduct) as respects which the corresponding offence under the law of England and Wales is an offence under section 78, 79, 92 or 93 of the Railways and Transport Safety Act 2003 (shipping and aviation staff: offences relating to alcohol and drugs).

(2) In this Chapter "drug", "medical establishment", "service police establishment" and "service policeman" have the meanings given by section 93I of the Act.

Use of specimens

84B.—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the defendant shall, in all cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account and, subject to paragraph (2), it shall be assumed that the proportion of alcohol in the defendant's breath, blood or urine at the time of the alleged offence was not less than in the specimen.

(2) That assumption shall not be made if the defendant proves—

(a) that he consumed alcohol before he provided the specimen or had it taken from him, and after the time of the alleged offence; and

(b) that had he not done so the proportion of alcohol in his breath, blood or urine—

(i) where the corresponding offence under the law of England and Wales is an offence under section 78(2) of the Railways and Transport Safety Act 2003, would not have been such as to impair his ability to carry out his duties;

(ii) where that corresponding offence is an offence under subsection (2) of section 79 of that Act, would not have been such as to impair his ability to take the action mentioned in subsection (1)(b) of that section;

(iii) where that corresponding offence is an offence under section 92 of that Act, would not have been such as to impair his ability to perform the function mentioned in subsection (1)(a) or (b) (as the case may be) of that section;

(iv) where that corresponding offence is an offence under section 78(3), 79(3) or 93 of that Act, would not have exceeded the prescribed limit.

(3) A specimen of blood shall be disregarded unless—

(a) it was taken from the defendant under section 93E of the 2006 Act; or

(b) it was taken from the defendant under section 93G of that Act and the defendant subsequently gave his permission for a laboratory test of the specimen.

(4) Where, at the time a specimen of blood or urine was provided by the defendant, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—

(a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the defendant was divided at the time it was provided; and

(b) the other part was supplied to the defendant.

(5) Where a specimen of blood was taken from the defendant under section 93G of the 2006 Act, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the Director unless—

(a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the defendant was divided at the time it was taken; and

(b) any request to be supplied with the other part which was made by the defendant at the time when he gave his permission for a laboratory test of the specimen was complied with.

Documentary evidence as to specimens

84C.—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine may, subject to paragraphs (3) and (4) and to rule 84B(4) and (5), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

(a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a service policeman (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the defendant at the date and time shown in the statement; and

(b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(2) Subject to paragraphs (3) and (4), evidence that a specimen of blood was taken from the defendant with his consent by a registered medical practitioner or a registered nurse may be given by the production of a document purporting to certify that fact and to be signed by a registered medical practitioner or registered nurse.

(3) Subject to paragraph (4)—

(a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in paragraph (1)(a) is admissible in evidence on behalf of the Director in pursuance of this rule only if a copy of it either has been handed to the defendant when the document was produced or has been served on him not later than seven days before the hearing; and

(b) any other document is so admissible only if a copy of it has been served on the defendant not later than seven days before the hearing.

(4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the defendant, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the Director requiring the attendance at the hearing of the person by whom the document purports to be signed.

(5) In this rule "authorised analyst" means—

(a) any person possessing the qualifications prescribed by regulations made under section 27 of the Food Safety Act 1990 as qualifying persons for appointment as public analysts under that Act; and

(b) any other person authorised by the Secretary of State to make analyses for the purposes of section 16 of the Road Traffic Offenders Act 1988 or this rule.**]**

PART 13

TRIAL PROCEDURE

Opening address

85.—(1) Before the Director adduces any evidence in trial proceedings—

(a) the Director, and

(b) with leave of the court, any defendant,

may make an opening address.

Examination of witnesses

86.—(1) The court may question any witness.

(2) If it appears to the court to be in the interests of justice, it may—

(a) allow the cross-examination or re-examination of a witness to be postponed;

(b) call any witness whom it has not already heard;

(c) recall a witness;

(d) permit any party to recall a witness;

(e) permit the Director to call a witness after the close of the case for the prosecution; or

(f) permit a defendant to give evidence after calling another witness.

Presence of witnesses

87.—(1) Except for a defendant and any expert or character witness, a witness as to fact shall not, except by leave of the court, be in court while not under examination.

(2) If while a witness is under examination a question arises as to the admissibility of a question or otherwise with regard to the evidence, the court may direct the witness to withdraw until the question is determined.

(3) The court may direct any expert or character witness present in court to withdraw if it considers his presence undesirable.

(4) For the purposes of this rule a witness is in court if he is able to see and hear the court through a live link (and for this purpose any impairment of eyesight or hearing is to be disregarded).

Submission of no case to answer

88.—(1) At the close of the case for the prosecution a defendant may submit, in respect of any charge, that the Director has failed to establish a case for him to answer.

(2) If such a submission is allowed, the court shall find the defendant not guilty of the charge.

The case for the defence

89.—(1) Where a defendant intends to adduce evidence as to fact (other than by giving evidence himself), he may make an opening address before adducing or giving evidence; but this is subject to paragraph (2).

(2) Where a defendant made an opening address under rule 85, he may not make another address under this rule without the leave of the court.

(3) Where a defendant gives evidence, he must do so before calling any other witness.

(4) Paragraph (3) is subject to rule 86(2).

Finding of not guilty before conclusion of the defence

90.—(1) At any time after the close of the case for the prosecution the court may find a defendant not guilty of a charge.

(2) The court may not make a finding under this rule unless it has invited the Director to address the court as to whether such a finding should be made.

Closing addresses

91.—(1) This rule applies at the close of the case for all defendants.

(2) If the Director has made an opening address the Director may not make a closing address without leave of the court.

(3) Each defendant, who has not made an opening address, may then make a closing address; but this is subject to paragraph (5).

(4) Each defendant who has made an opening address may not make a closing address without leave of the court.

(5) A legal representative who represents more than one defendant may make only one closing or opening address.

Announcement of findings

92.—(1) The finding of the court on each charge shall be announced in open court; and the judge advocate shall sign a record of the findings.

(2) Where no finding is recorded on a charge, the court may direct that the charge is to lie on the file, not to be proceeded with without the leave of the court or the Court Martial.

PART 14

SENTENCING PROCEEDINGS

Application and interpretation of Part 14

93.—(1) This Part applies in relation to any sentencing proceedings.

(2) In this Part—

"the offender" means any offender who falls to be sentenced in the proceedings; and

"the offence" means any offence for which the offender falls to be so sentenced.

Dispute on facts after plea of guilty

94.—(1) Where, after the court has recorded a plea of guilty in respect of any charge, there are disputed facts in the case, the court may direct that any issue of fact be tried by the court.

(2) The finding of the court shall be announced in open court.

Pre-sentence report and previous convictions

95.—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the proceedings, he shall serve a copy on the Director and the offender before the time appointed for the proceedings.

(2) Where the Director has obtained a record of the offender's previous convictions in advance of the proceedings, he shall serve a copy on the offender and the court administration officer before the time appointed for the proceedings.

Information before sentencing

96.—(1) Where—

(a) the offender was convicted on a plea of guilty (other than a plea offered in the course of a trial), or

(b) the offender was convicted in trial proceedings but previous sentencing proceedings in respect of him were terminated,

the Director shall address the court on the facts of the case.

(2) Where practicable, the Director shall inform the court of—

(a) the offender's age;

[F32(b) any previous convictions of the offender for—

(i) offences under the law of any part of the British Islands, or

(ii) relevant offences of which the offender has been convicted by a court outside the British Islands,

and any sentence awarded in respect of any such offence, and whether any such conviction is spent for the purposes of the Rehabilitation of Offenders Act 1974;**]**

(c) any formal police caution administered to the offender by a constable in England and Wales or Northern Ireland;

(d) any period for which the offender has been in custody awaiting trial; and

(e) details of the offender's employment (if any); F33...

(f) if the defendant was under 18 years of age when convicted, whether he has a service parent or service guardian (within the meaning of section 233) **[**F34; and**]**

[F35(g) any statement of the effect of the offence on the victim, the victim's family or others.**]**

(3) Where the court has power—

(a) to make an activation order in respect of the offender, or

(b) to deal with him under section 186(2) (offence during period of conditional discharge) or **[**F36under paragraph 23(2) of Schedule 10 to the Sentencing Code**]** (overseas community order in force),

the Director shall inform the court of that fact, of the previous offence by virtue of which the court has that power, and of the sentence passed for that offence.

(4) For the purposes of paragraph (2)(b) an offence is "relevant" if the act that constituted the offence would have constituted an offence under the law of any part of the United Kingdom if it had been done in that part at the time when the Director presents information to the court under this rule.

(5) Where the offender is not subject to service law but has formerly been so subject, paragraph (2) has effect as if—

(a) after the word "age" in sub-paragraph (a) there were added " and his rank or rate when he last ceased to be subject to service law "; and

(b) before the word "employment" in sub-paragraph (e) there were inserted " pay and ".

Textual Amendments

F32 Rule 96(2)(b) substituted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **4**

F33 Word in rule 96(2)(e) deleted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **17(a)**

F34 Word in rule 96(2)(f) substituted (16.11.2015) by virtue of The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **17(b)**

F35 Rule 96(2)(g) inserted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **17(c)**

F36 Words in rule 96(3)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 373** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Offences taken into consideration

97.—(1) The court may take into consideration any other offence committed by the offender, of a similar nature to that for which he falls to be sentenced, if—

(a) he so requests; and

(b) the court so directs.

(2) A list of offences taken into consideration shall be signed by the offender and attached to the record of proceedings.

Mitigation of sentence

98.—(1) The offender may—

(a) call witnesses in mitigation of sentence or as to his character;

(b) produce to the court any document; and

(c) address the court in mitigation of sentence.

Pronouncement of sentence

99.—(1) The sentence shall be recorded in writing, dated and signed by the judge advocate.

(2) The court shall make the statement of reasons, and give the explanation, required by section 252(1).

(3) In this rule, "sentence" has the same meaning as in section 252.

[F37Part 14A

Variation Proceedings

Textual Amendments

F37 Pt. 14A inserted (13.11.2023) by The Armed Forces (Amendment of Court Rules) Rules 2023 (S.I. 2023/1097), rules 1(2), **5**

Application of Part 14A

99A. This Part applies where, on or after 13th November 2023, the court has imposed a sentence.

Interpretation of Part 14A

99B. In this Part—

"original sentence" means a sentence imposed in the course of sentencing proceedings;

"varied sentence" means a sentence substituted for the original sentence in accordance with this Part.

Power to vary sentence

99C.—(1) The court may vary or rescind the original sentence if it appears to the court that it had no power to impose the original sentence.

(2) The power conferred by this rule—

(a) may be exercised within the period of 56 days beginning with the day on which the original sentence was imposed;

(b) may not be exercised in relation to any sentence if an appeal, or an application for leave to appeal, against the sentence has been determined.

(3) Unless the court otherwise orders, a varied sentence takes effect from the beginning of the day on which the original sentence was imposed.

Direction that variation proceedings be held

99D.—(1) Variation proceedings may be held only in accordance with a direction given under this rule.

(2) After conclusion of any proceedings in which an original sentence was imposed, the judge advocate for those proceedings may direct the court administration officer to appoint a time and place for variation proceedings in respect of the sentence.

(3) The judge advocate may give a direction under this rule—

(a) on the application of the Director or the offender, or

(b) of their own motion.

(4) An application for a direction under this rule—

(a) must be made in writing to the court administration officer, stating the grounds on which it is made, and

(b) if made by the Director, must be served on the offender, or

(c) if made by the offender, must be served on the Director.

(5) Where the judge advocate dismisses an application for a direction under this rule, the court administration officer must notify the Director and the offender of that fact.

Announcement of varied sentence

99E. Where the court varies the original sentence, rule 99 (pronouncement of sentence) and sections 252 (duty to give reasons and explain sentence) and 253(2) (duties in complying with section 252) of the Act apply as they apply to the passing of a sentence.

Power to order offender's release from custody

99F.—(1) This rule applies where an offender is in custody by virtue of an original sentence made by the court.

(2) The judge advocate may order that the offender be released immediately if, within the period of 56 days beginning on the day which the original sentence was imposed, it appears to the judge advocate that—

(a) the court had no power to impose such a sentence, or

(b) the maximum term for which the court had power to award such a sentence has expired.

(3) The power conferred by this rule may not be exercised in relation to any sentence if an appeal, or an application for leave to appeal, against the sentence has been determined.

(4) This rule is without prejudice to any other provision in this Part.**]**

PART 15

ANCILLARY PROCEEDINGS

CHAPTER 1

Community order proceedings

Application and interpretation of Chapter 1

100.—(1) This Chapter applies where an overseas community order made by the court is in force.

(2) In this Chapter—

"the order" means the overseas community order;

"the offender" means the person in respect of whom the order was made.

Breach of requirements: application for summons or warrant

101.—(1) An application by the responsible officer for a summons or a warrant under **[**[F38]paragraph 8A of Schedule 10 to the Sentencing Code (as inserted by paragraph 5 of Schedule 6A to the Act)**]** shall be made in writing to the court administration officer, specifying—

(a) the requirement of the order with which the offender is alleged to have failed to comply;

(b) the respect in which, and the date on which (or the dates between which) he is alleged to have failed to comply with that requirement;

(c) whether he has within the previous twelve months been given a warning under **[**[F39]paragraph 6 of Schedule 10 to the Sentencing Code**]** in respect of the order, and if so when and in what terms; and

(d) any grounds on which, to the responsible officer's knowledge, the offender is likely to rely as constituting a reasonable excuse for the alleged failure to comply.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) The Judge Advocate General may—

(a) issue a summons under **[**F40paragraph 8A of Schedule 10 to the Sentencing Code**]** requiring the offender to appear before the court for proceedings under **[**F41paragraph 11**]** of that Schedule;

(b) issue a warrant under **[**F42paragraph 8A**]** of that Schedule for the offender's arrest;

(c) dismiss the application without a hearing; or

(d) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer of the time and place appointed for the hearing.

Textual Amendments

F38 Words in rule 101(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 374(2)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F39 Words in rule 101(1)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 374(2)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F40 Words in rule 101(3)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 374(3)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F41 Words in rule 101(3)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 374(3)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F42 Words in rule 101(3)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 374(4)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Breach of requirements: arrest under warrant

102.—(1) This rule applies where the Judge Advocate General issues a warrant under **[**F43paragraph 8A of Schedule 10 to the Sentencing Code (as inserted by paragraph 5 of Schedule 6A to the Act)**]** for the offender's arrest.

(2) The warrant shall be addressed to—

(a) one or more service policemen;

(b) one or more officers of a civilian police force; or

(c) both

(3) The warrant shall state the matters mentioned in rule 101(1)(a) and 101(1)(b).

(4) Where the warrant is addressed to an officer of a civilian police force, it shall state that the offender must be transferred to service custody as soon as practicable after arrest.

(5) Where the offender is arrested under the warrant, or, if arrested by an officer of a civilian police force, is transferred to service custody—

(a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court; and

(b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released.

(6) Rule 103 (review of custody) applies in relation to an offender brought before a judge advocate under paragraph (5).

(7) Where the offender has been arrested under a warrant—

(a) the court administration officer shall appoint a time and place for proceedings under **[**F44paragraph 11 of Schedule 10 to the Sentencing Code**]**; and

(b) the offender shall be brought before the court at that time and place, unless he has been released from custody under rule 103(4).

Textual Amendments

F43 Words in rule 102(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 375(2)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F44 Words in rule 102(7)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 375(3)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Review of custody

103.—(1) Paragraphs (2) to (5) apply where—

(a) the offender is brought before a judge advocate under rule 102; or

(b) the keeping of the offender in service custody has been authorised by an order under paragraph (2) and he is brought before a judge advocate before the expiry of the period for which it was so authorised.

(2) The judge advocate may by order authorise the keeping (or further keeping) of the offender in service custody if satisfied that there are substantial grounds for believing that, if released from service custody, the person would fail to attend the court as required.

(3) The period for which the judge advocate may, by an order under paragraph (2), authorise the keeping of the offender in service custody is such period, ending not later than 8 days after the day on which the order is made, as the judge advocate considers appropriate in all the circumstances.

(4) If the judge advocate makes no order under paragraph (2), the offender must be released from service custody without delay; but this is subject to paragraph (5).

(5) The judge advocate may require the offender to comply, before release or later, with such requirements as appear necessary to secure his attendance before the court.

(6) Where the keeping of the offender in service custody is authorised by an order under paragraph (2), he must be released on the expiry of the period for which it was so authorised unless a judge advocate has made a further order under that paragraph.

(7) Any requirement imposed by virtue of paragraph (5) may be varied or discharged by a judge advocate on application by the offender.

(8) Section 107(5) and (6) shall apply in relation to a requirement imposed by virtue of paragraph (5) as they apply in relation to a requirement imposed by virtue of section 107(3)(a).

Revocation of order with or without re-sentencing

104.—(1) An application under **[**F45paragraph 15 of Schedule 10 to the Sentencing Code**]** must be made in writing to the court administration officer, specifying—

(a) whether the applicant wants the court—

(i) to revoke the order; or

(ii) both to revoke the order and to deal with the offender for the offence in respect of which the order was made; and

(b) the grounds on which the application is made.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) If the application is made by the offender, the Judge Advocate General may—

(a) revoke the order;

(b) dismiss the application; or

(c) direct a hearing of the application.

(4) If the application is made by the responsible officer, the Judge Advocate General may—

(a) dismiss the application; or

(b) direct a hearing of the application, and issue a summons under **[**F46paragraph 15(3)(a) of Schedule 10 to the Sentencing Code**]** requiring the offender to appear at the hearing.

(5) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer (and, if he is the applicant, the offender) of the time and place appointed for the hearing;

(6) A warrant for the offender's arrest, issued under **[**F47paragraph 15(3)(b) of Schedule 10 to the Sentencing Code**]**—

(a) shall be addressed to—

(i) one or more service policemen; or

(ii) one or more officers of a civilian police force;

(b) shall state that the offender has failed to appear in answer to a summons issued under **[**F48paragraph 15(3)(a) of Schedule 10 to the Sentencing Code**]**; and

(c) if addressed to an officer of a civilian police force, shall state that the offender must be transferred to service custody as soon as is practicable after arrest.

(7) Where the offender is arrested under such a warrant, or, if arrested by an officer of a civilian police force, is transferred to service custody—

(a) he must as soon as is practicable be brought before a judge advocate for a review of whether he should continue to be kept in service custody until he can be brought before the court; and

(b) if he has not been brought before a judge advocate for such a review within 48 hours of the arrest he must be released.

(8) Rule 103 (review of custody) applies in relation to an offender brought before a judge advocate under paragraph (7).

(9) Where the offender has been arrested under a warrant—

(a) the court administration officer shall appoint a time and place for the hearing of the application; and

(b) the offender shall be brought before the court at that time and place, unless he has been released from custody under rule 103(4).

Textual Amendments

F45 Words in rule 104(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 376(2)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F46 Words in rule 104(4)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 376(3)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
F47 Words in rule 104(6) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 376(4)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
F48 Words in rule 104(6)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 376(4)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Amendment of requirements

105.—(1) An application under **[**F49paragraph 18 of Schedule 10 to the Sentencing Code**]** must be made in writing to the court administration officer, specifying—

(a) the amendment of the order that the applicant wants the court to make; and

(b) the grounds on which the application is made.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) The Judge Advocate General may—

(a) make the proposed amendment (subject to **[**F50paragraph 18(7) of Schedule 10 to the Sentencing Code**]**);

(b) dismiss the application; or

(c) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer and the offender of the time and place appointed for the hearing.

Textual Amendments

F49 Words in rule 105(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 377(2)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
F50 Words in rule 105(3)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 377(3)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Extension of unpaid work requirement

106.—(1) An application under **[**F51paragraph 21 of Schedule 10 to the Sentencing Code**]** must be made in writing to the court administration officer, specifying—

(a) the period for which the applicant wants the court to extend the period of twelve months specified in **[**F52paragraph 1(1)(b) of Schedule 9 to that Code**]**; and

(b) the grounds on which the application is made.

(2) The court administration officer shall forward the application to the Judge Advocate General.

(3) The Judge Advocate General may—

(a) grant the application;

(b) extend the period specified in **[**F53paragraph 1(1)(b) of Schedule 9 to the Sentencing Code**]** by a period shorter than that proposed in the application;

(c) dismiss the application; or

(d) direct a hearing of the application.

(4) If the Judge Advocate General directs a hearing of the application, the court administration officer shall notify the responsible officer and the offender of the time and place appointed for the hearing.

Textual Amendments

F51 Words in rule 106(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 378(2)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F52 Words in rule 106(1)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 378(2)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

F53 Words in rule 106(3)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 378(3)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

CHAPTER 2

Other ancillary proceedings

Remission of fine

107.—(1) The court's power to remit the whole or part of a fine under section 267 may be exercised on an application under this rule.

(2) An application under this rule—

(a) shall be made in writing to the court administration officer;

(b) shall specify those financial circumstances of the applicant of which the court was unaware when it fixed the amount of the fine; and

(c) shall include an explanation for the applicant's failure to co-operate with the court in its inquiry under section 249.

(3) The court administration officer shall forward the application to the judge advocate for the proceedings in which the fine was imposed.

(4) The judge advocate may—

(a) exercise any of the court's powers under section 267;

(b) dismiss the application; or

(c) direct a hearing of the application.

(5) Where, without a hearing, the judge advocate exercises any of the court's powers under section 267 or dismisses the application, the court administration officer shall notify the applicant in writing of the judge advocate's decision.

(6) Where the judge advocate directs a hearing of the application, the court administration officer shall notify the applicant of the time and place appointed for the hearing.

Certification of contempt of court

108.—(1) The court's powers under section 311(2) (certification of contempt of court) may be exercised only at a hearing under this rule.

(2) If so directed by a judge advocate, the court administration officer shall—

(a) appoint a time and place for a hearing under this rule; and

(b) notify the contemnor and the Director of the time and place so appointed.

(3) The contemnor and the Director are entitled to be heard at the hearing.

(4) The contemnor need not attend the hearing, but the court may exercise its powers under section 311(2) in his absence.

(5) In this rule—

"the contemnor" means the person whose offence the court is to consider certifying; and

"offence" has the same meaning as in section 311.

[F54CHAPTER 3

Driving Disqualification Orders

Textual Amendments

F54 Pt. 15 Ch. 3 inserted (1.4.2023) by The Armed Forces (Driving Disqualification Orders) Regulations 2023 (S.I. 2023/209), regs. 1(2), **14**

Application to remove a disqualification

108A.—(1) This rule applies where under regulation 8 of the Armed Forces (Driving Disqualification Orders) Regulations 2023 (the "Driving Disqualification Order Regulations"), on application by the offender, the court can remove a driving disqualification order.

(2) An offender who wants the court to exercise that power must—

(a) apply in writing, no earlier than the date prescribed by regulation 8(4) of the Driving Disqualification Order Regulations,

(b) serve the application on the court administration officer,

(c) in the application set out—

(i) the date on which the driving disqualification order was made and the disqualification period,

(ii) the offence for which it was imposed, and

(iii) the reasons the offender seeks removal of the driving disqualification order.

(3) The court administration officer must serve a copy of the application on the Director.

(4) A hearing must be held to determine the application.

Information to be supplied on order for disqualification, etc.

108B.—(1) This rule applies where the court—

(a) disqualifies the offender from driving, or

(b) suspends or removes a driving disqualification order.

(2) The court administration officer must, as soon as reasonably practicable, serve on the Secretary of State notice that includes details of—

(a) where paragraph (1)(a) applies—

(i) the date on which the driving disqualification order was made and the disqualification period;

(ii) the power exercised by the court;

(b) where paragraph (1)(b) applies—

(i) the date on which the driving disqualification order was made and the disqualification period;

(ii) the date and terms of the order for its suspension or removal;

(iii) the power exercised by the court;

(iv) where the court suspends the disqualification pending appeal, the court to which the offender has appealed.**]**

PART 16

RESTRICTIONS ON PUBLIC ACCESS AND REPORTING

Proceedings in camera

109.—(1) A judge advocate may order that any proceedings, or any part of any proceedings, be held in camera, if satisfied that the order is necessary or expedient in the interests of the administration of justice.

(2) Without prejudice to the generality of paragraph (1), a judge advocate may conclude that it is necessary or expedient in the interests of the administration of justice to make an order under this rule on the ground that, if no order were made, the Director would be—

(a) likely to abandon the proceedings, or

(b) unlikely to bring comparable proceedings in future,

for fear that information useful to an enemy might be disclosed, or national security endangered.

(3) An order under this rule may be made only on oral application by a party to the proceedings, and such an application shall be made in camera unless the judge advocate otherwise directs.

(4) Paragraph 1 of Schedule 10 (open court) shall not apply in relation to—

(a) any proceedings, or any part of any proceedings, as respects which an order under this rule has been made; or

(b) unless the judge advocate hearing the application otherwise directs, the hearing of an application for such an order.

Withholding of matter from the public in proceedings before the court

110. The court may give leave for any name or other matter given in evidence in proceedings to be withheld from the public.

PART 17

TRANSITORY AND TRANSITIONAL PROVISIONS

Supreme Court of Northern Ireland

111. Until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005 [M9] comes into force, the reference in rule 26(2)(c) to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland.

Marginal Citations

M9 2005 c. 4.

Transitional

112. Schedule 2 shall have effect.

Kevan Jones
Ministry of Defence — Parliamentary Under Secretary of State

Changes to legislation:
There are currently no known outstanding effects for the The Armed Forces (Service Civilian Court) Rules 2009.