STATUTORY INSTRUMENTS

2009 No. 1211

The Armed Forces (Summary Appeal Court) Rules 2009

PART 11

EVIDENCE

CHAPTER 1

General

Application and interpretation of Part 11

58. The provisions of this Part apply in relation to any proceedings in which an issue of fact falls to be determined, unless otherwise stated.

Rules of evidence

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

(a) are capable of applying; and

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

(2) In this rule, "rules of evidence" includes 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—

(a) matters of which judicial notice could be taken in a trial on indictment in England and Wales; and

(b) matters within the general service knowledge of the court.

Oral testimony to be given on oath

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

(2) This rule is subject to section 5 of the Oaths Act 1978 (affirmation);

Proof by written statement

61.—(1) Without prejudice to rule 59, section 9 of the 1967 Act (proof by written statement) shall apply, as modified by 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;

(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; and

(b) if made in appeal proceedings, shall be determined by the judge advocate.

(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

62.—(1) Without prejudice to rule 59, section 10 of the 1967 Act (proof by formal admission) shall apply, as modified by 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 an appellant's counsel or solicitor were to his legal representative.

Use of documents to refresh memory

63.—(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 an appellant's bad character

64.—(1) Where, in appeal proceedings—

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

(b) an appellant intends to adduce evidence of another appellant'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 appeal to which the evidence relates.

(4) If served by an appellant, 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 appellant the previous convictions of the co-appellant 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 an appellant's bad character

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

(2) If made in writing, the application—

(a) must state whether a notice under rule 64 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 64, 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-appellant

66.—(1) An application for leave to give evidence in appeal proceedings of the bad character of a person other than an appellant must be made in writing to the court administration officer and served on all other parties to the proceedings, unless a judge advocate 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 appeal to which the evidence relates.

(4) If made by an appellant, 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 appellant 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

67.—(1) Where a party to appeal proceedings proposes to adduce a hearsay statement, or (in the case of an appellant) 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 he considers to be 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 appeal to which the evidence relates.

(4) Where a notice under this rule is served by an appellant, 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 68 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

68.—(1) Where a party serves a notice under rule 67 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 67;

(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 67.

CHAPTER 4

Evidence of service matters

Evidence of enlistment

69.—(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

70. 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

71.—(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

72.—(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

73. 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—

(a) any part of Her Majesty's forces,

(b) any area or place, or

(c) any ship, train or aircraft,

shall be evidence of the matters stated in the certificate.

CHAPTER 5

Expert evidence

Expert evidence

74.—(1) Expert evidence shall not be adduced without the leave of the judge advocate 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 judge advocate 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 judge advocate's permission.

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

(6) Where the appellants cannot agree who should be the expert to give evidence under paragraph (5), the judge advocate 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 judge advocate shall direct.

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

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

(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 61) base an opinion or inference on the statement.

[F1CHAPTER 6

Use of specimens in relation to offences under sections 20(1)(a) and 20A of the Armed Forces Act 2006

Textual Amendments

F1 Pt. 11 Ch. 6 inserted (1.11.2013) by The Armed Forces (Interpretation, Translation and Alcohol and Drug Tests) Rules 2013 (S.I. 2013/2527), rules 1(2), **8**

Application and interpretation

74A.—(1) This Chapter applies to proceedings for the hearing of an appeal against a finding that a relevant charge has been proved.

(2) In paragraph (1) "relevant charge" means a charge of an offence under—

(a) section 20(1)(a) of the Act (unfitness for duty through alcohol or drugs); or

(b) section 20A of the Act (exceeding alcohol limit for prescribed safety-critical duties).

(3) 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

74B.—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the appellant 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 appellant'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 appellant 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) in the case of an offence under section 20(1)(a) of the Act, would not have been such as to impair his ability to carry out the duty in question;

(ii) in the case of an offence under section 20A of the Act, would not have exceeded the relevant limit (within the meaning of that section).

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

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

(b) it was taken from the appellant under section 93G of the Act and the appellant 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 appellant, 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 appellant was divided at the time it was provided; and

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

(5) Where a specimen of blood was taken from the appellant under section 93G of the 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 appellant was divided at the time it was taken; and

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

Documentary evidence as to specimens

74C.—(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 74B(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 appellant 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 appellant 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 appellant 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 appellant 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 appellant, 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.**]**

[F2CHAPTER 7

Special Measures Directions

Textual Amendments

F2 Pt. 11 Ch. 7 inserted (16.11.2015) by The Armed Forces (Service Courts Rules) (Amendment) Rules 2015 (S.I. 2015/1812), rules 1, **6**

Interpretation of Chapter 7

74D.—(1) In this Chapter—

"the 1999 Act" means the Youth Justice and Criminal Evidence Act 1999;

"eligible witness" means a witness eligible for assistance by virtue of rule 74E or 74F;

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

"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 74G.

Witnesses eligible for assistance on grounds of age or incapacity

74E.—(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 judge advocate 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 judge advocate 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;

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

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

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

74F. A witness (other than an appellant) is eligible for assistance by virtue of this rule if the judge advocate 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.

Special measures available

74G.—(1) Where a witness (other than an appellant) is eligible for assistance by virtue of rule 74E, the special measures available in relation to him are those for which provision is made by sections 23, 25 to 27, 29 and 30 of the 1999 Act.

(2) Where a witness is eligible for assistance by virtue of rule 74F, the special measures available in relation to him are those for which provision is made by sections 23 and 25 to 27 of that Act.

(3) Where an appellant is eligible for assistance by virtue of rule 74E, the special measures available in relation to him are those for which provision is made by sections 29 and 30 of that Act.

Special measures direction relating to eligible witness

74H.—(1) Subject to the special measures provisions and this Chapter, a judge advocate 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 judge advocate'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, a judge advocate 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) A special measures direction may provide for one or more special measures to apply in combination with a direction under rule 25 (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.

(5) A judge advocate may give a special measures direction—

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

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

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

(7) Nothing in this Chapter is to be regarded as affecting any power of the court or a judge advocate 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.

Evidence given in private

74I. A special measures direction may not provide for the exclusion of persons under section 25 of the 1999 Act unless it appears to the judge advocate that there are reasonable grounds for believing that any person other than an appellant has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

Video recorded evidence in chief

74J.—(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 judge advocate 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 judge advocate must consider whether any prejudice to an appellant 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 judge advocate may nevertheless subsequently direct that it is not to be so admitted if—

(a) it appears to the judge advocate 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 74M has not been complied with to the satisfaction of the judge advocate.

(4) Paragraph (3) is without prejudice to rule 74N (power to vary or discharge special measures direction).

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

(a) the witness must be called by the party tendering it in evidence, unless 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 judge advocate, has been dealt with adequately in the witness's recorded testimony; or

(ii) without the leave of the judge advocate, as to any other matter which, in the opinion of the judge advocate, 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 (4) 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 judge advocate 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.

Examination of witness through intermediary

74K.—(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 members of 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

74L.—(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 an appellant 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 74M(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; and

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

(3) In paragraph (2)(a) "evidence in support of an alibi" has the same meaning as in article 7 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 an appellant, 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 judge advocate, adduce evidence (including expert evidence) at the hearing.

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

74M.—(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 the appellant a copy of that recording.

(4) The application must include the following information—

(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 an appellant and the application is granted, the applicant must, not later than 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

74N.—(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 74L(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 an appellant 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.

Warning to lay members

74O. Where in proceedings with lay members evidence has been given in accordance with a special measures direction, the judge advocate must give the lay members such warning (if any) as he considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the appellant.**]**

Status:
Point in time view as at 13/11/2023.

Changes to legislation:
There are currently no known outstanding effects for the The Armed Forces (Summary Appeal Court) Rules 2009, PART 11.