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## STATUTORY INSTRUMENTS

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# 2009 No. 2041

## The Armed Forces (Court Martial) Rules 2009

### PART 3

#### PROCEEDINGS: GENERAL

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

**15.**—(1) The court administration officer must exercise his functions (other than that of specifying the lay members for any proceedings) 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) Proceedings shall commence at such time and place as may be appointed by the court administration officer; but this is subject to paragraph (2).

(2) Where an offender has been convicted in trial or appellate proceedings, the sentencing proceedings in respect of him shall commence immediately after the conclusion of the trial or appellate 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 the judge advocate may direct.

##### **Notification of proceedings**

**17.**—(1) 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.

(2) At the same time as serving notice under paragraph (1) of the time and place appointed for the commencement of any proceedings with lay members, or as soon as is reasonably practicable after doing so, the court administration officer must serve on the persons mentioned in that paragraph a notice of the name and relevant particulars of—

- (a) each of the lay members; and
- (b) any person specified as a waiting member under rule 36.

(3) In paragraph (2), “relevant particulars” means—

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- (a) in relation to a person subject to service law, his rank or rate and his unit;
- (b) in relation to any other person, any position held by him in the service of the Crown and any unit to which he is attached.

### **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 (except Part 15)—

- (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 49(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 leave 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 judge advocate so directs.

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

### **Deliberation in private**

**20.**—(1) While the court is deliberating on—

- (a) finding, or
- (b) any other matter as respects which the judge advocate directs that this paragraph is to apply,

no other person may be present.

(2) While the court is deliberating on—

- (a) sentence,
- (b) an issue of fact being tried under rule 112,

- (c) whether to make an activation order, or
  - (d) any other matter as respects which the judge advocate directs that this paragraph is to apply,
- no other person may be present except a person in attendance for instruction.

### **Oaths and affirmations**

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

(2) Sections 1 and 3 to 6 of the Oaths Act 1978 <sup>M1</sup> 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**

**M1** 1978 c. 19.

### **[<sup>F1</sup> Interpretation, translation and communication through an intermediary**

**22.**—(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—

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- (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

**F1** Rule 22 substituted (27.10.2013) by [The Armed Forces \(Interpretation, Translation and Alcohol and Drug Tests\) Rules 2013 \(S.I. 2013/2527\)](#), rules 1(2), **16**

#### [<sup>F2</sup>Interpretation and translation for persons other than a person to whom proceedings relate

**22A.**—(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 person who attends a hearing as a witness (other than a person to whom any proceedings relate) and who needs interpretation.]

#### Textual Amendments

**F2** Rule 22A inserted (16.11.2015) by [The Armed Forces \(Service Courts Rules\) \(Amendment\) Rules 2015 \(S.I. 2015/1812\)](#), rules 1, **10**

#### Record of proceedings

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

(2) The record of proceedings must include—

- (a) a record of any plea offered, and whether any plea of guilty was accepted by the judge advocate;
- (b) a record of any finding;
- (c) a record of any sentence passed, order made or direction given by the court;

- (d) a record of any order made, and any direction or ruling given, by the judge advocate;
  - (e) a sound recording of the proceedings, and any transcript of it (signed by the transcriber)<sup>[F3]</sup>;
  - <sup>[F4]</sup>(f) a record of the identity of any interpreter;
  - (g) a record of any decision on an application under rule 22(5);
  - (h) a record of any agreement under rule 22(5)(b) to do without a written translation of a document or part of a document; <sup>F5</sup>...
  - (i) a record of any direction given under rule 22(6) <sup>[F6]</sup>; and]]
  - <sup>[F7]</sup>(j) a record of any decision on an application under rule 22A(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 47 (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 24 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 or appellate 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 or appellate proceedings take place but no defendant or appellant is convicted, the conclusion of the trial or appellate 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 47 (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).

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### Textual Amendments

- F3** Semi-colon in rule 23(2) substituted for full stop (27.10.2013) by [The Armed Forces \(Interpretation, Translation and Alcohol and Drug Tests\) Rules 2013 \(S.I. 2013/2527\)](#), rules 1(2), **17(a)**
- F4** Rule 23(2)(f)-(i) inserted (27.10.2013) by [The Armed Forces \(Interpretation, Translation and Alcohol and Drug Tests\) Rules 2013 \(S.I. 2013/2527\)](#), rules 1(2), **17(b)**
- F5** Word in rule 23(2)(h) deleted (16.11.2015) by [The Armed Forces \(Service Courts Rules\) \(Amendment\) Rules 2015 \(S.I. 2015/1812\)](#), rules 1, **11(a)**
- F6** Full stop deleted and word in rule 23(2)(i) inserted (16.11.2015) by [The Armed Forces \(Service Courts Rules\) \(Amendment\) Rules 2015 \(S.I. 2015/1812\)](#), rules 1, **11(b)**
- F7** Rule 23(2)(j) inserted (16.11.2015) by [The Armed Forces \(Service Courts Rules\) \(Amendment\) Rules 2015 \(S.I. 2015/1812\)](#), rules 1, **11(c)**

### Exhibits

**24.**—(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 judge advocate.

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

### Termination of proceedings

**25.**—(1) The judge advocate must terminate any proceedings to which rule 34 (president of the board) applies if—

- (a) the president of the board dies or is otherwise unable to continue to attend the proceedings; and
- (b) there is no other lay member of the court who is qualified to be the president of the board.

(2) The judge advocate must terminate any proceedings with lay members if—

- (a) a lay member dies or is otherwise unable to continue to attend the proceedings, or
- (b) the number of lay members discharged under rule 35(4) (objections to lay members) exceeds the number of waiting members,

and the number of lay members is in consequence reduced below the minimum number [<sup>F8</sup>required for the Court Martial to remain validly constituted].

(3) The judge advocate may terminate any proceedings if he considers it in the interests of justice to do so.

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

(5) Where proceedings with lay members are terminated under this rule, the lay members shall be discharged.

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

(7) The termination of sentencing proceedings under this rule or rule 59(4) (change of plea) shall not bar further sentencing proceedings in relation to the same offence or offences.

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

**Textual Amendments**

- F8** Words in [rule 25\(2\)](#) inserted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), [rules 1\(2\), 5](#)

**Circumstances not provided for**

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

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

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**Changes to legislation:**

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