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STATUTORY INSTRUMENTS

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**2009 No. 2041**

**The Armed Forces (Court Martial) Rules 2009**

**PART 4**

**MEMBERS OF THE COURT**

**Proceedings without lay members**

- 27.**—(1) For proceedings to which this rule applies, there shall be no lay members.
- (2) This rule applies to preliminary proceedings.
- (3) This rule applies to sentencing proceedings where every offender who falls to be sentenced is either—
- (a) a civilian offender for the purposes of Part 1 of Schedule 3 to the 2006 Act; or
  - (b) an offender to whom Part 2 of that Schedule (ex-servicemen etc) applies, and who was convicted of every offence for which he falls to be sentenced either—
    - (i) in trial proceedings for which no lay member was subject to service law; or
    - (ii) on a guilty plea, where the court administration officer had previously notified him in writing that, if trial proceedings were required, none of the lay members would be subject to service law.
- (4) This rule applies to variation proceedings if—
- (a) it applied to the proceedings in which the sentence that falls to be varied was imposed; or
  - (b) a direction is given under rule 120.
- (5) This rule applies to activation proceedings if—
- (a) the original sentence was imposed by the court, and this rule applied to the proceedings in which it was imposed; or
  - (b) the original sentence was imposed by the Service Civilian Court.
- (6) This rule applies to ancillary proceedings.

**Powers that may be exercised by a judge advocate**

- 28.** Any power of the court may be exercised by a judge advocate, except—
- (a) the power to try a defendant or appellant; and
  - (b) the power—
    - (i) to sentence an offender,
    - (ii) to vary a sentence, or
    - (iii) to make an activation order,otherwise than in proceedings to which rule 27 applies.

### Proceedings requiring [<sup>F1</sup>six] lay members

- 29.**—(1) For proceedings to which this rule applies, the number of lay members shall be [<sup>F2</sup>six].
- (2) This rule applies to trial proceedings if—
- (a) any defendant is charged with an offence listed in Schedule 2 to the 2006 Act;
  - (b) any defendant is aged 18 or over at the commencement of the proceedings and is charged with an offence for which he could, if convicted, be sentenced to more than [<sup>F3</sup>two] years' imprisonment; or
  - (c) any defendant is aged under 18 at the commencement of the proceedings and is charged with an offence for which he could, if convicted while under the age of 18, be sentenced to more than [<sup>F4</sup>two] years' detention under section 209.
- (3) [<sup>F5</sup>Subject to rule 29A, this rule applies to sentencing proceedings] if any offender falls to be sentenced for—
- (a) an offence listed in Schedule 2 to the 2006 Act; or
  - (b) an offence for which he could be sentenced to more than [<sup>F6</sup>two] years' imprisonment or more than [<sup>F6</sup>two] years' detention under section 209.
- (4) [<sup>F7</sup>Subject to rule 29A, this rule applies to variation proceedings] if it applied to the proceedings in which the sentence that falls to be varied was imposed.

#### Textual Amendments

- F1** Word in rule 29 heading substituted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **6(2)**
- F2** Word in rule 29(1) substituted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **6(3)**
- F3** Word in rule 29(2)(b) substituted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **6(4)(a)**
- F4** Word in rule 29(2)(c) substituted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **6(4)(b)**
- F5** Words in rule 29(3) substituted (1.8.2013) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2013 \(S.I. 2013/1851\)](#), rules 1, **3(2)**
- F6** Word in rule 29(3)(b) substituted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **6(5)**
- F7** Words in rule 29(4) substituted (1.8.2013) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2013 \(S.I. 2013/1851\)](#), rules 1, **3(3)**

### [<sup>F8</sup>Disapplication of rule 29

- 29A.** Rule 29 does not apply to—
- (a) sentencing proceedings where the sole defendant has entered a guilty plea before the commencement of trial proceedings;
  - (b) sentencing proceedings where there are two or more co-defendants, and each co-defendant has entered a guilty plea before the commencement of trial proceedings; and
  - (c) variation proceedings where paragraph (a) or (b) applied to the sentencing proceedings in which the sentence which falls to be varied was imposed.]

**Textual Amendments**

**F8** Rule 29A inserted (1.8.2013) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2013 \(S.I. 2013/1851\)](#), rules 1, 4

**[<sup>F9</sup>Proceedings with four lay members**

**30.**—(1) A judge advocate may only give a direction under section 155(2A) if the judge advocate considers it necessary to do so, having regard to the expected length and location of the proceedings.

(2) A direction may not be given under section 155(2A) after the commencement of the proceedings unless—

- (a) a direction under section 155(2A) was in effect when the proceedings commenced;
- (b) one or more lay members has been discharged under rule 35(4) (objections); and
- (c) there are three or fewer lay members remaining (including any waiting members).

(3) A judge advocate may rescind a direction under section 155(2A) at any time before the commencement of the proceedings to which it relates.

**Textual Amendments**

**F9** Rules 30, 30A substituted for rule 30 (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), 7

**Reduction in lay members**

**30A.** A judge advocate may direct that the Court Martial is to remain validly constituted despite the reduction of lay members from six to five, or where a direction has been made under section 155(2A), from four to three if—

- (a) the number of lay members reduces in the course of the proceedings after each of the lay members has been sworn; and
- (b) the judge advocate considers it in the interests of justice that the proceedings continue.]

**Textual Amendments**

**F9** Rules 30, 30A substituted for rule 30 (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), 7

**Warrant officers [<sup>F10</sup>and OR-7s]**

**31.**—(1) For any proceedings with lay members where every person to whom the proceedings relate is of or below the rank or rate of warrant officer, the number prescribed for the purposes of section 155(3) (that is to say, the number of lay members who may be [<sup>F11</sup>warrant officers or OR-7 ranks] rather than officers) is [<sup>F12</sup>—

- (a) one, if there are three or four lay members; or
- (b) two, if there are five or six lay members.]

[<sup>F13</sup>(1A) The number prescribed by paragraph (1) may consist of, or include no more than, one OR-7 rank if every person to whom the proceedings relate is of or below that rank or rate.]

(2) For any proceedings with lay members where any person to whom the proceedings relate is an officer subject to service law, every lay member must be an officer qualified for membership under section 156 and not ineligible by virtue of section 157 or rule 32; and section 155(3) shall not apply in relation to any such proceedings.

#### Textual Amendments

- F10** Words in rule 31 heading inserted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **8(2)**
- F11** Words in rule 31(1) substituted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **8(3)(a)**
- F12** Words in rule 31(1) substituted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **8(3)(b)**
- F13** Rule 31(1A) inserted (1.1.2023) by [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2022 \(S.I. 2022/1264\)](#), rules 1(2), **8(3)(c)**

#### Persons ineligible for membership in particular circumstances

**32.—(1)** A person is ineligible for membership of the court for any trial proceedings if, at any time since the date of the commission of any offence charged, he and any defendant were serving in the same unit.

(2) A person is ineligible for membership of the court for any sentencing proceedings if, at any time since the date of the commission of any offence for which an offender falls to be sentenced, he and the offender were serving in the same unit.

(3) A person is ineligible for membership of the court for any variation proceedings if he was not a member of the court for the proceedings in which the sentence that falls to be varied was imposed.

(4) A person is ineligible for membership of the court for any appellate proceedings if at any time since the date of the commission of any offence to which the proceedings relate he and any appellant were serving in the same unit.

(5) A person is ineligible for membership of the court for any activation proceedings if at any time since the date of the commission of the offence for which the original sentence was passed he and the offender were serving in the same unit.

(6) A person is ineligible for membership of the court for any proceedings if he was a member of the court for any previous proceedings to which any person to whom the proceedings relate was a party; but this is subject to paragraphs (7) to (9).

(7) A person is not ineligible for membership of the court for sentencing proceedings by virtue of having been a member of the court for any trial or appellate proceedings in which any offender was convicted of any offence for which he falls to be sentenced.

(8) A person is not ineligible for membership of the court for variation proceedings by virtue of having been a member of the court for—

- (a) any trial or appellate proceedings in which the offender was convicted of any offence for which the sentence that falls to be varied was imposed; or
- (b) the proceedings in which that sentence was imposed.

(9) For the purposes of paragraph (6) a person is not to be regarded as having been a member of the court for any previous proceedings if those proceedings were terminated under rule 25(2) by virtue of sub-paragraph (b) of that paragraph (successful objections exceeding the number of waiting members).

(10) In relation to a person who at any time was not subject to service law, references in this rule to a unit in which the person was at that time serving are to be read as references to a unit to which he was at that time attached.

(11) This rule does not apply to the judge advocate.

### **Civilians**

**33.**—(1) For proceedings to which this rule applies, each of the lay members must be either—

- (a) a person not subject to service law who is qualified for membership under paragraph (2) and not ineligible by virtue of rule 32; or
- (b) an officer or warrant officer who would be qualified for membership under section 156, and not ineligible by virtue of section 157 or rule 32, if this rule did not apply;

and section 155(3) shall not apply in relation to the proceedings.

(2) For proceedings to which this rule applies, a person not subject to service law is qualified for membership of the court unless—

- (a) he is aged under 18, or has reached the age of 70, at the commencement of the proceedings;
- (b) he is not a United Kingdom national;
- (c) he is a mentally disordered person;
- (d) he is disqualified for jury service;
- (e) he is a member of the Military Court Service; or
- (f) he is on the staff of the Service Prosecuting Authority.

(3) In paragraph (2), “United Kingdom national” has the same meaning as in paragraph 11 of Schedule 15 to the 2006 Act.

(4) For the purposes of paragraph (2)—

- (a) a person is a mentally disordered person if he is one of those listed in Part 1 of Schedule 1 to the Juries Act 1974<sup>M1</sup>; and
- (b) a person is disqualified for jury service if he is one of those listed in Part 2 of that Schedule.

(5) This rule applies to—

- (a) trial proceedings, if any defendant is not subject to service law at the commencement of the proceedings;
- (b) sentencing proceedings with lay members, if any offender who falls to be sentenced was not subject to service law when convicted;
- (c) variation proceedings with lay members, if this rule applied to the sentencing proceedings in which the sentence that falls to be varied was imposed;
- (d) appellate proceedings; and
- (e) activation proceedings with lay members, if the offender is not subject to service law at the commencement of the proceedings.

(6) Where this rule applies to any proceedings and any person to whom the proceedings relate is an officer not subject to service law, paragraph (1) has effect as if the words “or warrant officer” in sub-paragraph (b) were omitted.

**Marginal Citations**

- M1** 1974 c. 23. Schedule 1 to the Juries Act 1974 is substituted by section 321 of, and paragraphs 1 and 15 of Schedule 33 to, the Criminal Justice Act 2003.

**The president of the board**

**34.**—(1) For proceedings to which this rule applies, at least one lay member must be an officer who is qualified to be the president of the board.

(2) This rule applies to any proceedings with lay members, except proceedings for which (by virtue of rule 33) no lay member is subject to service law.

(3) An officer is qualified to be the president of the board if—

- (a) he is of or above the rank of lieutenant commander, major or squadron leader;
- (b) he is subject to service law; and
- (c) where any person to whom the proceedings relate is subject to service law, he is of superior rank to every such person.

(4) For the purposes of paragraph (3)(c) an officer is of superior rank to a person to whom the proceedings relate if—

- (a) that person is of or above the rank of commodore, brigadier or air commodore; and
- (b) the officer holds the same rank as that person, or an equal rank, but is senior to him within that rank.

(5) In paragraphs (3) and (4), “rank” means substantive rank.

(6) Where one lay member is qualified to be the president of the board, he shall be the president of the board.

(7) Where two or more lay members are so qualified, the most senior of them shall be the president of the board.

(8) Paragraph (9) applies where—

- (a) the president of the board is discharged under rule 35(4) (objections);
- (b) the proceedings are not terminated under rule 25(2) (lay members reduced below minimum number);
- (c) no other lay member is qualified to be the president of the board; and
- (d) no waiting member is so qualified.

(9) Where this paragraph applies—

- (a) the proceedings shall be adjourned;
- (b) the court administration officer shall specify as a lay member another officer who is qualified to be the president of the board;
- (c) that officer shall be the president of the board; and
- (d) rule 35 (objections) shall apply on the resumption of the proceedings as it applies on the commencement of the proceedings.

(10) Notwithstanding anything in this rule, in any proceedings with lay members the judge advocate shall preside over the court.

## [<sup>F14</sup>Gender representation on boards

**34A.**—(1) When the court administration officer specifies the lay members for any proceedings the court administration officer must ensure, so far as is reasonably practicable, that—

- (a) at least one lay member is a woman; and
- (b) at least one lay member is a man.

(2) This rule does not apply if the court administration officer is specifying lay members for proceedings for which (by virtue of rule 33) no lay member is subject to service law.]

### Textual Amendments

**F14** Rule 34A inserted (1.1.2023) by The Armed Forces (Service Court Rules) (Amendment) (No. 2) Rules 2022 (S.I. 2022/1263), rules 1(2), 5

## Objections to lay members

**35.**—(1) At the commencement of any proceedings to which this rule applies, the names of the lay members and waiting members shall be read out.

- (2) Any party to the proceedings may object to any lay member, on any reasonable ground.
- (3) The judge advocate shall rule on any objection to a lay member before the lay member is sworn.
- (4) If an objection to a lay member is upheld, the judge advocate shall discharge him.
- (5) This rule applies to any proceedings with lay members except—
  - (a) sentencing proceedings, where every offender who falls to be sentenced was convicted in trial or appellate proceedings of at least one offence for which he falls to be sentenced; and
  - (b) variation proceedings.

## Waiting members

**36.**—(1) When the court administration officer specifies the lay members for any proceedings to which rule 35 applies, he shall at the same time specify a person (referred to in these Rules as a “waiting member”) to take the place of any lay member who may be discharged under rule 35(4).

(2) Where a lay member is discharged under rule 35(4), and rule 34(9) (no member qualified to be president of the board) does not apply, the waiting member shall become a lay member.

(3) Where the court administration officer specifies a waiting member, he shall specify a second waiting member if a judge advocate so directs.

(4) A second waiting member may be specified at any time before the commencement of the proceedings.

(5) Where two waiting members have been specified and paragraph (2) applies, the reference in that paragraph to the waiting member is to the senior waiting member.

- (6) Where—
  - (a) two waiting members have been specified,
  - (b) two lay members are discharged under rule 35(4), and
  - (c) rule 34(9) does not apply,

both the waiting members shall become lay members.

(7) Rule 35(2) to (4) (objections) apply in relation to a waiting member who becomes a lay member by virtue of this rule.

### **Swearing of lay members**

**37.** At the commencement of any proceedings to which rule 35 applies, an oath shall be administered—

- (a) subject to that rule, to each of the lay members; and
- (b) to any person in attendance for instruction.

### **Judge advocate's power to direct lay members to withdraw**

**38.** In any proceedings with lay members, the judge advocate may direct the lay members to withdraw while he hears submissions or gives a ruling on any question of law, practice or procedure.



**Changes to legislation:**

There are currently no known outstanding effects for the The Armed Forces (Court Martial) Rules 2009, PART 4.