

## SCHEDULE 1

Rule 21(3)

### OATHS AND AFFIRMATIONS

#### 1. The words prescribed are—

- (a) for lay members in trial proceedings, “...I will well and truly try the defendant before the court according to the evidence; I will duly administer justice according to law and without partiality, favour or affection; and I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the Court Martial, unless required to do so in due course of law”;
- (b) for lay members in appellate proceedings, “...I will well and truly try the appellant before the court according to the evidence; I will duly administer justice according to law and without partiality, favour or affection; and I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the Court Martial, unless required to do so in due course of law”;
- (c) for lay members in other proceedings, “...I will duly administer justice according to law and without partiality, favour or affection; and I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the Court Martial, unless required to do so in due course of law”;
- (d) for persons in attendance for instruction, “...I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the Court Martial, unless required to do so in due course of law”;
- (e) for witnesses, “... the evidence I shall give shall be the truth, the whole truth, and nothing but the truth”; and
- (f) for interpreters, “... I will well and faithfully interpret and make true explanation of all such matters and things as shall be required of me according to the best of my skill and understanding”.

## SCHEDULE 2

Rule 168

### TRANSITIONAL PROVISIONS

## PART 1

### GENERAL

#### Interpretation

##### 1.—(1) In this Schedule—

“AA 1955” means the Army Act 1955 <sup>M1</sup>;

“AFA 1955” means the Air Force Act 1955 <sup>M2</sup>;

“the Army Rules” means the Courts-Martial (Army) Rules 2007 <sup>M3</sup>;

“commencement” means the time at which these Rules come into force;

“court-martial rules” means the RN Rules, the Army Rules and the RAF Rules (or any of them);

“NDA 1957” means the Naval Discipline Act 1957 <sup>M4</sup>;

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“preliminary hearing” means a preliminary hearing held under court-martial rules;  
“the RAF Rules” means the Courts-Martial (Royal Air Force) Rules 2007 <sup>M5</sup>;  
“the RN Rules” means the Courts-Martial (Royal Navy) Rules 2007 <sup>M6</sup>;  
“the SDAs” means AA 1955, AFA 1955 and NDA 1957;  
“SDA compensation order” means a compensation order under paragraph 11(1) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957;  
“SDA offence” means any of the following—  
(a) any offence under Part 2 of AA 1955 or AFA 1955;  
(b) any offence under Part 1 of NDA 1957;  
(c) an offence under section 47K of that Act;  
(d) an offence under section 18 or 20 of the Armed Forces Act 1991 <sup>M7</sup> committed before commencement;  
(e) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996 <sup>M8</sup> committed before commencement;  
(f) an offence under paragraph 5(1) of Schedule 1 to that Act committed before commencement by a person within sub-paragraph (2) below;  
“stoppages” has the same meaning as in AA 1955, AFA 1955 or NDA 1957 (as the case may be).

- (2) A person is within this sub-paragraph if—  
(a) after committing the offence and before commencement, he became a member of a reserve force and—  
(i) he remained such a member until commencement; or  
(ii) immediately before commencement, he was subject to military law, air-force law or NDA 1957; or  
(b) after commencement, he becomes a member of the reserve forces.

Marginal Citations	
<b>M1</b>	1955 c. 18.
<b>M2</b>	1955 c. 19.
<b>M3</b>	S.I. 2007/3442.
<b>M4</b>	1957 c. 53.
<b>M5</b>	S.I. 2007/3444.
<b>M6</b>	S.I. 2007/3443.
<b>M7</b>	1991 c. 62.
<b>M8</b>	1996 c. 14.

**Record of court-martial proceedings**

- 2.—(1) Rule 23(5) to (8) shall apply in relation to the record of—  
(a) the proceedings of a court-martial, and  
(b) a preliminary hearing,

with the following modifications.

- (2) In paragraph (5)—

- (a) the reference to exhibits retained under rule 24 is to be read as a reference to exhibits retained under rule 62(3) of the RN Rules or rule 65(3) of the Army Rules or the RAF Rules; and
  - (b) the reference to the court administration officer is to be read as a reference to the court administration officer within the meaning of AA 1955, AFA 1955 or NDA 1957 (as the case may be).
- (3) Paragraph (5) shall have effect as if for sub-paragraphs (a) to (c) there were substituted “ the conclusion of the proceedings of the court-martial (or, in relation to the record of a preliminary hearing which was not followed by proceedings of a court-martial, the conclusion of the last preliminary hearing in the case) ”.
- (4) In paragraph (7)—
- (a) references to proceedings (or part of proceedings) held in camera include a preliminary hearing (or part of such a hearing) in relation to which the judge advocate gave a direction under rule 34(1) of the RN Rules or rule 37(1) of the Army Rules or the RAF Rules; and
  - (b) the reference to proceedings in relation to which a direction under rule 47 was given is to be read as a reference to a preliminary hearing held under rule 35 of the RN Rules or rule 38 of the Army Rules or the RAF Rules.

### **Persons ineligible for membership in particular circumstances**

- 3.—(1) In rule 32(6), the reference to any previous proceedings includes proceedings under any of the SDAs.
- (2) In rule 32(10), the reference to a person who at any time was not subject to service law applies only in relation to a time after commencement.
- (3) In relation to a person who at any time before commencement was not subject to military law, air-force law or NDA 1957, references in rule 32 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.

## **PART 2**

### **STEPS TAKEN BEFORE COMMENCEMENT**

#### **Service of documents**

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

#### **Court administration officers**

5. Anything done before commencement by a court administration officer within the meaning of any of the SDAs, which would have been done in accordance with any provision of these Rules if it had been done by the court administration officer within the meaning of the 2006 Act and that provision had then been in force, is to be treated as having been done by the court administration officer in accordance with that provision.

#### **Prosecuting officers**

6. Anything done before commencement by—
- (a) the prosecuting authority for the Royal Navy, the Army or the Royal Air Force, or

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(b) a prosecuting officer (within the meaning of any of the SDAs), which would have been done in accordance with any provision of these Rules if it had been done by the Director and that provision had then been in force, is to be treated for the purpose of these Rules as having been done by the Director in accordance with that provision.

### **Legal representatives**

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

(2) A person who, immediately before commencement, was a person's legal representative (within the meaning of court-martial rules) is to be treated as having been appointed under rule 39.

### **Arraignment**

#### **8. Where—**

- (a) a defendant was arraigned on a charge under section 91A(2) of AA 1955 or AFA 1955, or section 58A(2) of NDA 1957, and
- (b) the charge is allocated for Court Martial trial,

the defendant is to be regarded for the purposes of these Rules as having been arraigned, and as having pleaded not guilty to the charge, in preliminary proceedings.

### **Directions etc**

9.—(1) A direction, order or ruling given or made in a preliminary hearing by the judge advocate (within the meaning of court-martial rules) has effect in related proceedings as if made in preliminary proceedings by the judge advocate for those proceedings.

(2) Proceedings are “related proceedings” in relation to a preliminary hearing if, had the hearing been preliminary proceedings, they would have been related proceedings in relation to those proceedings.

(3) A summons issued under court-martial rules shall have effect as if issued under these Rules.

(4) A direction given before commencement which, had it been given after commencement, would have been a direction under rule 30 (additional lay members), has effect as if given under that rule.

(5) In rule 50(1) (appeals from preliminary proceedings) the reference to preliminary proceedings includes a preliminary hearing.

(6) In rule 154 (appeals from orders restricting public access etc.) references to an order or direction include an order made, or a direction given, by—

- (a) a court-martial; or
- (b) a judge advocate in a preliminary hearing.

## PART 3

### EVIDENCE

#### **Proof by written statement**

**10.** The reference in rule 75(1)(b) to a person subject to service law or a civilian subject to service discipline is to be read, in relation to a statement made before commencement, as a reference to a person who at the time of making the statement was a person mentioned in section 99A(2)(b) of AA 1955.

#### **Evidence of enlistment or entry for service**

**11.—(1)** In rule 83, references to an enlistment paper used to enlist a person in accordance with regulations made under section 328 include—

- (a) an attestation paper within the meaning of AA 1955 or AFA 1955; and
- (b) a copy of Royal Navy Form S3049 (Notice Form for Entry/Re-Entry into Naval Service) signed by a person on being entered for service in the Royal Navy.

(2) In relation to a document purporting to be a copy of Royal Navy Form S3049, rule 83(1)(a) has effect as if for the word “enlisted” there were substituted “entered for service”.

(3) In rule 83(1)(b) the reference to a recruiting officer includes a recruiting officer within the meaning of Part 1 of AA 1955 or AFA 1955.

#### **Documents signed by or on behalf of a person's commanding officer**

**12.** In relation to a record or certificate purporting to have been signed before commencement, references in rules 85 and 87 to a person's commanding officer are to be read as references to his commanding officer within the meaning of Part 2 of the Armed Forces Act 2001 <sup>M9</sup>.

#### **Marginal Citations**

**M9** 2001 c. 19.

#### **Special measures**

**13.—(1)** In Chapter 6 of Part 12, “sexual offence” includes an SDA civil offence as respects which the corresponding civil offence is—

- (a) an offence under Part 1 of the Sexual Offences Act 2003;
- (b) a relevant superseded offence, within the meaning of section 62 of the 1999 Act;
- (c) an offence of attempting or conspiring to commit, or inciting the commission of, an offence within paragraph (a) or (b) above; or
- (d) an offence under Part 2 of the Serious Crime Act 2007 where the offence (or one of the offences) which the offender intended or believed would be committed is an offence under Part 1 of the Sexual Offences Act 2003.

(2) In this paragraph—

“SDA civil offence” means an offence under section 70 of AA 1955 or AFA 1955 or section 42 of NDA 1957;

“the corresponding civil offence”, in relation to an SDA civil offence, means—

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- (a) the act or omission constituting the SDA civil offence; or
- (b) if that act or omission is not punishable by the law of England and Wales, the equivalent act done or omission made in England or Wales.

## **PART 4**

### **SENTENCING**

#### **SDA offences**

**14.** In rules 114(2)(d) and 115, references to service offences include SDA offences.

#### **Activation of suspended sentence of imprisonment**

**15.—(1)** In these Rules, “activation order” includes an order made by the court determining the suspension of an SDA suspended sentence of imprisonment and committing the offender to imprisonment.

(2) In this paragraph, “SDA suspended sentence of imprisonment” means a sentence of imprisonment—

- (a) passed by—
  - (i) a court-martial;
  - (ii) the Courts-Martial Appeal Court on an appeal brought from a court-martial; or
  - (iii) the House of Lords or the Supreme Court on an appeal brought from a decision of the Courts-Martial Appeal Court; and
- (b) suspended under section 120 of AA 1955 or AFA 1955 or section 90 of NDA 1957.

#### **SDA conditional discharge orders**

**16.—(1)** Where—

- (a) an SDA conditional discharge order has been made in respect of an offender, and
- (b) he 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 for the offence for which he was conditionally discharged.

(2) In rule 114(5) the reference to power to deal with the offender under section 186(2) includes power to deal with him for an offence as respects which an SDA conditional discharge order was made.

(3) In this paragraph, “SDA conditional discharge order” means an order for a person's conditional discharge under paragraph 3(1) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

#### **Community supervision orders**

**17.—(1)** Where—

- (a) a community supervision order has been made in respect of an offender, and
- (b) he is charged with an offence committed during the period specified in the order,

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 for the offence for which the order was made.

(2) In rule 114(5) the reference to power to deal with the offender under [<sup>F1</sup>paragraph 25 of Schedule 10 to the Sentencing Code] includes power to deal with him for an offence as respects which a community supervision order was made.

(3) In this paragraph, “community supervision order” means an order under paragraph 4(1) of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

#### Textual Amendments

**F1** Words in [Sch. 2 para. 17\(2\)](#) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 395](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, reg. 2

#### Variation proceedings

**18.**—(1) In rule 118(1), the reference to a sentence imposed by the court includes a sentence imposed by a court-martial.

(2) In rule 119(2), the reference to proceedings in which a sentence was imposed includes proceedings of a court-martial in which a sentence was imposed.

(3) In relation to variation proceedings held by virtue of this paragraph—

- (a) rule 29 applies if, at the time when the sentence was imposed, the lay members of the court-martial were more than four in number;
- (b) the reference in rule 32(3) to a member of the court for the proceedings in which the sentence that falls to be varied was imposed is to be read as a reference to a member of the court-martial;
- (c) a person is not ineligible for membership of the court for the variation proceedings by virtue of having been a member of the court-martial;
- (d) rule 32(6) is subject to paragraph (c) above;
- (e) rule 33 applies to the proceedings if any of the lay members of the court-martial was not subject to military or air-force law or to NDA 1957;
- (f) the reference in rule 118(4) to the court is to be read as a reference to the court-martial; and
- (g) references in rule 120 to the original lay members are to be read as references to the lay members of the court-martial.

(4) In this paragraph, references to the lay members of the court-martial are to the members of that court other than the judge advocate.

#### Power to order offender's release from custody

**19.** In rule 124—

- (a) references to the court include a court-martial;
- (b) the reference to a custodial sentence includes—
  - (i) a sentence of imprisonment passed by a court-martial;
  - (ii) a sentence of custody for life under section 71A(1A) or (1B) of AA 1955 or AFA 1955 or section 43A(1A) or (1B) of NDA 1957;
  - (iii) a sentence of detention during Her Majesty's pleasure under section 71A(3) of AA 1955 or AFA 1955 or section 43A(3) of NDA 1957;

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- (iv) a sentence of detention under section 71A(4) of AA 1955 or AFA 1955 or section 43A(4) of NDA 1957 (detention for serious offence committed by young person);
  - (v) a custodial order under section 71AA of, or paragraph 10 of Schedule 5A to, AA 1955 or AFA 1955, or section 43AA of, or paragraph 10 of Schedule 4A to, NDA 1957; and
- (c) the reference to a sentence of service detention includes a sentence of detention under section 71(1)(e) of AA 1955 or AFA 1955 or section 43(1)(e) of NDA 1957.

## **PART 5**

### **APPELLATE PROCEEDINGS**

#### **Appeal from a Standing Civilian Court**

**20.** In these Rules—

“appellate proceedings” includes proceedings of the court (other than sentencing proceedings) on appeal from a Standing Civilian Court;

“sentencing proceedings” includes proceedings for the sentencing of a person convicted by a Standing Civilian Court who appeals against sentence.

## **PART 6**

### **ACTIVATION PROCEEDINGS**

#### **Activation proceedings in respect of a suspended sentence of detention under NDA 1957**

**21.—**(1) This paragraph applies where the court administration officer is notified—

(a) that a sentence of detention passed on an offender by a court-martial under NDA 1957 is suspended under section 90 of that Act;

(b) that—

(i) the offender's commanding officer has recorded a finding under the 2006 Act that a charge against the offender in respect of an SDA offence committed since the sentence was suspended, or a service offence, is proved; or

(ii) the offender has been convicted (before or after commencement) of an offence in the British Islands committed since the sentence was suspended; and

(c) the offender has not been dealt with in respect of the suspended sentence.

(2) Where this paragraph applies, in Part 17 and this paragraph—

“the relevant facts” means the facts mentioned in sub-paragraph (1);

“the original sentence” means the sentence mentioned in sub-paragraph (1)(a);

“the relevant period” means the period since the original sentence was suspended (or last suspended);

“the new offence” means the offence mentioned in sub-paragraph (1)(b)(i) or (ii), as the case may be;

“summons” and “warrant” mean a summons or warrant (as the case may be) issued on the basis of the facts mentioned in sub-paragraph (1);



“relevant order” means an order under section 191(3) in respect of the original sentence.

- (3) Where this paragraph applies—
- (a) references in Part 17 to the proceedings in which the original sentence was passed are to be read as references to the proceedings under NDA 1957 in which that sentence was passed; and
  - (b) rule 134(2)(c) includes the record of any proceedings in which a court or an officer made, or gave reasons for not making, an order under section 91(1) or 91B(1) of NDA 1957 <sup>M10</sup> in respect of the original sentence.

#### **Marginal Citations**

**M10** Sections 91 to 91D of NDA 1957 were substituted for section 91 of that Act by article 31 of the Armed Forces (Alignment of Service Discipline Acts) Order 2008, [S.I. 2008/1694](#).

## **PART 7**

### **ANCILLARY PROCEEDINGS**

#### **Review of stoppages or SDA compensation order**

**22.**—(1) Rule 145 applies in relation to an application to the court under section 177 in respect of—

- (a) an award of stoppages; or
- (b) an SDA compensation order.

(2) In rule 145 as applied by this paragraph, references to the order are to be read as references to the award of stoppages or the SDA compensation order, as the case may be.

(3) In relation to an award of stoppages, rule 145 has effect as if the following were omitted—

- (a) paragraph (1)(b);
- (b) paragraph (1)(e), and the word “and” preceding it;
- (c) paragraph (4);
- (d) in paragraph (5), the words “and the person in whose favour the order was made”; and
- (e) in paragraph (6), the words “, and the person in whose favour the order was made,”.

#### **Application for time to pay financial penalty**

**23.**—(1) Rule 146 applies in relation to an application to the court under section 251(3) in respect of—

- (a) a fine awarded under any of the SDAs;
- (b) an award of stoppages; or
- (c) an SDA compensation order.

(2) References in rule 146 to an application made in respect of a service compensation order include an application made in respect of an SDA compensation order.

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### Variation or revocation of order for recognizance

**24.**—(1) Rule 150 applies in relation to an application to the court under section 235(4) in respect of an order under paragraph 14 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

(2) In rule 150 as applied by this paragraph, “the order” means the order under paragraph 14 of Schedule 5A to AA 1955 or AFA 1955 or of Schedule 4A to NDA 1957.

## <sup>F2</sup>**PART 8**

### CONSEQUENCES OF ELECTION FOR COURT-MARTIAL TRIAL

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#### **Textual Amendments**

**F2** Sch. 2 Pt. 8 omitted (1.8.2013) by virtue of [The Armed Forces \(Court Martial\) \(Amendment\) Rules 2013 \(S.I. 2013/1851\)](#), rules 1, 6

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