

2015 No. 726

DEFENCE

The Court Martial and Service Civilian Court (Youth Justice and Criminal Evidence Act 1999) (Amendment) Rules 2015

Made - - - - - *16th March 2015*

Laid before Parliament *18th March 2015*

Coming into force in accordance with rule 1

The Secretary of State makes the following Rules in exercise of the powers conferred by sections 163 and 288 of the Armed Forces Act 2006(a) and section 65(1) of the Youth Justice and Criminal Evidence Act 1999(b).

Citation and commencement

1. These Rules may be cited as the Court Martial and Service Civilian Court (Youth Justice and Criminal Evidence Act 1999) (Amendment) Rules 2015 and come into force on the day on which, and immediately after, section 78 of the Criminal Justice and Courts Act 2015(c) comes into force.

Interpretation

2. In these Rules “the 2009 Rules” means the Court Martial and Service Civilian Court (Youth Justice and Criminal Evidence Act 1999) Rules 2009(d).

Amendments to Part 1 of the 2009 Rules

3. In paragraph (1) of rule 3 (interpretation) of the 2009 Rules—

(a) in the definition of “legal representative”, for “SCC Rules.” substitute “SCC Rules;”;

(b) after the definition of “legal representative”, insert—

““person concerned in the proceedings” means—

(a) in relation to an application in any proceedings for a direction under section 45(3), or an excepting direction under section 45(4) or (5) of the 1999 Act, a person falling within section 45(7) of that Act;

(a) 2006 c. 52.

(b) 1999 c. 23; the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083) made under section 61(1) and (2) of the 1999 Act modifies the effect of Chapter 4 of Part 2 of that Act (and sections 62, 63 and 65 so far as having effect for the purpose of that Chapter) for the purposes of proceedings before service courts.. In particular, article 13(3) of the 2009 Order modifies the power in section 65(1) to enable the making of rules of the Court Martial and of the Service Civilian Court.

(c) 2015 c. 2.

(d) S.I. 2009/2100.

- (b) in relation to an application in any proceedings for a reporting direction under section 45A(2), or an excepting direction under section 45A(10), of the 1999 Act, a person falling within section 45A(3) of that Act;
 - (c) in relation to an application in any proceedings for a reporting direction under section 46(2), or an excepting direction under section 46(9), of the 1999 Act, a witness falling within section 46(1) of that Act;
- “reporting direction” means, unless otherwise specified, a reporting direction under section 45A(2) or 46(2) of the 1999 Act.”.

Amendments to Part 4 of the 2009 Rules

4. For rule 9 (application for a reporting direction under section 46(6) of the 1999 Act) of the 2009 Rules substitute—

“Application for a direction under section 45(3) of the 1999 Act or for a reporting direction

9.—(1) An application in any proceedings for a direction under section 45(3) of the 1999 Act or for a reporting direction under section 45A(2) of that Act may be made by any person who in the view of the judge advocate has a legitimate interest in making such an application(a).

(2) Subject to rule 11, an application in any proceedings in relation to a person concerned in the proceedings for a direction under section 45(3) of the 1999 Act or for a reporting direction must be made in writing.

(3) A written application for a direction under section 45(3) of the 1999 Act must include the information specified in paragraphs (6) and (7).

(4) A written application for a reporting direction under section 45A(2) of the 1999 Act must include the information specified in paragraphs (6), (7) and (8).

(5) A written application for a reporting direction under section 46(2) of the 1999 Act must include the information specified in paragraphs (6) and (8).

(6) For the purposes of paragraphs (3), (4) and (5), the specified information is—

- (a) the name, address and date of birth of the person concerned in the proceedings (or the reason for not giving these details);
- (b) brief details of the charges to which the application applies;
- (c) whether the application needs to be determined urgently, and if so why and by when.

(7) For the purposes of paragraphs (3) and (4), the specified information is—

- (a) the grounds on which the applicant asserts that publication of any matter relating to the person concerned in the proceedings is likely to lead members of the public to identify that person as a person concerned in the proceedings;
- (b) whether making the direction or reporting direction sought in relation to the person concerned in the proceedings is in the interests of the welfare of that person.

(8) For the purposes of paragraphs (4) and (5), the specified information is—

- (a) the grounds on which the applicant asserts that, if a reporting direction is not given—
 - (i) the quality of the evidence given by the person concerned in the proceedings,
 - or

(a) An application for a reporting direction under section 46(2) of the 1999 Act may be made by a party to the proceedings (see section 46(1) of that Act).

(ii) the level of co-operation given by that person to any party to the proceedings in the preparation of that party's case,

is likely to be diminished by fear or distress on the part of that person in connection with being identified by members of the public as a person concerned in the proceedings; and

(b) why a reporting direction—

(i) is in the interests of justice; or

(ii) is in the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings.

(9) If an application for a direction under section 45(3) of the 1999 Act or for a reporting direction is made in writing, the applicant must—

(a) send it to the court administration officer; and

(b) at the same time, send copies of it to every party or, as the case may be, every other party to the proceedings.”.

5. For rule 10 (opposing an application for a reporting direction) of the 2009 Rules substitute—

“Opposing an application for a direction under section 45(3) of the 1999 Act or for a reporting direction

10.—(1) If an application for a direction under section 45(3) of the 1999 Act or for a reporting direction is made in writing, any party to the proceedings who wishes to oppose that application must notify the applicant and the court administration officer in writing of his or her opposition and give reasons for it.

(2) A person opposing an application for a direction under section 45(3) of the 1999 Act must include in the written notification the information specified in paragraphs (5) and (6).

(3) A person opposing an application for a reporting direction under section 45A(2) of the 1999 Act must include in the written notification the information specified in paragraphs (5), (6) and (7).

(4) A person opposing an application for a reporting direction under section 46(2) of the 1999 Act must include in the written notification the information specified in paragraphs (5) and (7).

(5) For the purposes of paragraphs (2), (3) and (4), the specified information is whether he or she disputes that the person concerned in the proceedings is eligible for protection under section 45, 45A or 46 of the 1999 Act.

(6) For the purposes of paragraphs (2) and (3), the specified information is whether he or she disputes that—

(a) publication of any matter relating to the person concerned in the proceedings is likely to lead members of the public to identify that person as a person concerned in the proceedings; or

(b) the granting of protection is in the interests of the welfare of that person.

(7) For the purposes of paragraphs (3) and (4), the specified information is whether he or she disputes that the granting of protection would be likely to improve—

(a) the quality of the evidence given by the person concerned in the proceedings; or

(b) the level of co-operation given by that person to any party to the proceedings in connection with that party's preparation of its case.

(8) The notification under paragraph (1) must be given within 5 working days of the date the application was served on the party to the proceedings unless an extension of time is granted under rule 14.”.

6. For Rule 11 (urgent action on an application under section 46(6) of the 1999 Act) of the 2009 Rules substitute—

“Urgent applications for a direction under section 45(3) of the 1999 Act or for a reporting direction

11. (1) With the leave of the judge advocate, a person who may make an application in writing under rule 9(2) may instead make an oral application under this rule.

(2) An application may be made under this rule whether or not an application has already been made under rule 9(2).

(3) A person who seeks leave to make an application under this rule must explain the circumstances which justify making an oral application.”.

7. For Rule 12 (application for an excepting direction under section 46(9) of the 1999 Act) of the 2009 Rules substitute—

“Application for an excepting direction under section 45(4) or (5), 45A(10) or 46(9) of the 1999 Act

12.—(1) An application for an excepting direction under section 45(4) or (5), 45A(10) or 46(9) of the 1999 Act may be made by—

- (a) a party to proceedings in which restrictions have been imposed by a direction under section 45(3) of the 1999 Act or by a reporting direction;
- (b) any person who, although not a party to those proceedings, is directly affected by those restrictions.

(2) An application for an excepting direction may be made—

- (a) in writing at any time after the commencement of the proceedings in the court; or
- (b) orally, at a hearing of an application for a direction under section 45(3) of the 1999 Act or for a reporting direction.

(3) An application for an excepting direction must state why the applicant considers—

- (a) that the restrictions imposed on the reporting of the proceedings by the direction under section 45(3) of the 1999 Act or the reporting direction are substantial and unreasonable and that it is in the public interest to remove or relax those restrictions; or
- (b) that it is necessary in the interests of justice to remove or relax those restrictions.

(4) A written application for an excepting direction must include the following information—

- (a) name, address and date of birth of the person concerned in the proceedings in relation to whom the application is made (or the reason for not giving these details);
- (b) brief details of the charges to which the application applies;
- (c) the extent to which the applicant invites the judge advocate to dispense with the restrictions imposed by the direction under section 45(3) of the 1999 Act or the reporting direction;
- (d) why the applicant considers—
 - (i) that the restrictions imposed on the reporting of the proceedings by the direction under section 45(3) of the 1999 Act or the reporting direction are substantial and unreasonable and that it is in the public interest to remove or relax those restrictions; or
 - (ii) that it is necessary in the interests of justice to remove or relax those restrictions;
- (e) in the case of an application for an excepting direction under section 45(4) or (5) or 45A(10) of the 1999 Act, a statement explaining whether the applicant disputes that the granting of protection is in the interests of the welfare of the person concerned in the proceedings;

- (f) if an applicant is not a party to the proceedings, a statement explaining how he or she is directly affected by the restrictions imposed with respect to the person in relation to whom the application is made.
- (5) If an application for an excepting direction is made in writing, the applicant must—
 - (a) send it to the court administration officer; and
 - (b) at the same time, send copies to every party or, as the case may be, every other party to the proceedings.
- (6) Any person served with a copy of an application for an excepting direction who wishes to oppose it must notify the applicant and the court administration officer in writing of his or her opposition and give reasons for it.
- (7) The notification under paragraph (6) must be given within 5 working days of the date the application was served on that person unless an extension of time is granted under rule 14.”.

8.—(1) Rule 13 (variation or revocation of a reporting or excepting direction) of the 2009 Rules is amended as follows.

- (2) In the heading of that rule, for “a reporting or excepting direction” substitute “directions”.
- (3) In rule 13(1)(a), after “revoke” insert “a direction under section 45(3) of the 1999 Act or”.

9. In paragraph (1) of rule 14 (application for an extension of time) for “rule 10(3)” substitute “rule 10(8)”.

16th March 2015

Anna Soubry
Minister of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Court Martial and Service Civilian Court (Youth Justice and Criminal Evidence Act 1999) Rules 2009 (S.I.2009/2100). Part 4 of the 2009 Rules contains provisions relating to applications for reporting directions in respect of adult witnesses under section 46 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (“the 1999 Act”).

Rules 9, 10 and 12 of the 2009 Rules govern applications under section 46 of the 1999 Act for directions restricting the reporting of proceedings and directions dispensing with such restrictions. Rules 4, 5, 6 and 7 of these Rules replace rules 9, 10, 11 and 12 of the 2009 Rules with new rules which also govern applications under sections 45 and 45A of the 1999 Act for directions restricting the reporting of proceedings and directions dispensing with such restrictions. Rule 8 of these Rules amends rule 13 of the 2009 Rules, which deals with revocation and variation of various directions, so that it also applies in relation to directions under sections 45 and 45A of the 1999 Act.

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