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STATUTORY INSTRUMENTS

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**2009 No. 1098**

**The Armed Forces (Custody Proceedings) Rules 2009**

**PART 3**

**PROCEEDINGS: GENERAL**

**The court administration officer**

**13.** The court administration officer or a person acting on his behalf must exercise his functions subject to any direction given by a judge advocate.

**Arranging a hearing**

**14.** Where the court administration officer receives notification under rule [24\(1\)\(a\)](#), [25\(1\)\(a\)](#) or [26\(1\)\(a\)](#) or an application under rule [29\(1\)](#) he shall, after consultation with the Judge Advocate General, determine the time and place of any hearing.

**Notification of proceedings**

**15.** The court administration officer must serve notice of any time and place appointed by him for the commencement or resumption of any hearing 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; and
- (d) any such other person as the Judge Advocate General may direct.

**Live links**

**16.—(1)** Any person may (and, if in service custody, must) attend any proceedings under these Rules 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—

- (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 judge advocate 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 judge advocate 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 any judge advocate.

(5) 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.

(6) A judge advocate may give a direction under this rule, or give permission for the purposes of paragraph (5)—

- (a) on an application by a party to the proceedings; or
- (b) of his own motion.

### **Proceedings in absence of a person to whom the proceedings relate**

17. Proceedings may be held in the absence of any person to whom they relate, if the judge advocate so directs.

### **Legal representation**

18.—(1) The person to whom the proceedings relate and the commanding officer shall each have the right to be legally represented at a hearing.

(2) The person to whom the proceedings relate may appoint a legal representative to act for him in these proceedings.

(3) The commanding officer may be legally represented at a hearing.

(4) A person may be appointed as a legal representative under paragraph (2) or (3) only if he is—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(1)</sup>;
- (b) an advocate or solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
- (d) a person who has in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

(5) The commanding officer shall ensure that the person to whom proceedings relate is afforded reasonable opportunity of communicating with his legal representative.

(6) Any right conferred or duty imposed by these Rules on the person to whom the proceedings relate may be exercised or, as the case may be, performed by his legal representative on his behalf.

(7) A legal representative appointed under this rule shall notify the court administration officer of—

- (a) his name and address;
- (b) the name of the person in respect of whom he is acting and, where applicable, that person's rank or rate, service number and unit; and
- (c) the proceedings in connection with which he has been appointed.

(8) Where the person to whom the proceedings relate revokes his legal representative's appointment, he shall as soon as reasonably practicable notify the court administration officer and the commanding officer of that fact.

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(1) 1990 c. 41. Subsection (6) of section 71 of the Courts and Legal Services Act 1990 was substituted by the Access to Justice Act 1999 (c. 22), section 43, Schedule 6, paragraphs 4 and 9. Subsections (7) and (8) of section 71 of the 1990 Act were repealed by section 106, Schedule 15, Part 2 of the 1999 Act. Prospective amendments to section 71 of the 1990 Act are made to subsections (1) and (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1), (3). Prospective amendments are made to subsections (4) and (6) and a new subsection (6A) is inserted into section 71 of the 1990 Act by the Legal Services Act 2007 (c. 29), section 208(1), Schedule 21, paragraphs 83 and 94(a), (b) and (c).

## Witnesses

19. Schedule 1 shall have effect.

## Interpreters

20.—(1) The court administration officer may appoint a person to act as interpreter for the purposes of any proceedings.

(2) Before an interpreter begins to act, an oath must be administered to him.

(3) Before an interpreter is sworn, his name must be read out and any party to the proceedings may object to him on any reasonable ground, and, if the judge advocate upholds any such objection, the interpreter shall not be sworn.

## 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(2) 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.

## Record of proceedings

22.—(1) A record must be made of any proceedings under these Rules.

(2) The record of proceedings must include—

- (a) a record of any order made, and any direction or ruling given, by the judge advocate; and
- (b) if a court recorder was appointed for the proceedings, a sound recording of the proceedings, and any transcript of it (signed by the transcriber).

(3) The court administration officer shall send a copy of the record of proceedings to—

- (a) the Judge Advocate General;
- (b) the person to whom the proceedings relate;
- (c) that person's commanding officer; and
- (d) the Director.

(4) The record of proceedings shall be kept in the custody of the Judge Advocate General together with any file of correspondence or other papers maintained by the court administration officer in connection with the proceedings, for at least six years from the conclusion of the proceedings.

(5) 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.

## Circumstances not provided for

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

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(2) 1978 c. 19.

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