



STATUTORY INSTRUMENTS

S.I. No. 204 of 2008



RULES OF PROCEDURE (DEFENCE FORCES) 2008

(Prn. A8/0872)

RULES OF PROCEDURE (DEFENCE FORCES) 2008

I, WILLIE O'DEA, Minister for Defence, in exercise of the powers conferred on me by sections 184 and 240 of the Defence Act 1954 (No. 18 of 1954) and of all other powers enabling me in this behalf, hereby make the following Rules.

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Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 11th July, 2008.

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Part 1 — Preliminary and General

Citation, commencement and repeal

1. (1) These Rules may be cited as the Rules of Procedure (Defence Forces) 2008.

(2) These Rules shall come into force on 1 September 2008.

Interpretation

2. (1) In these Rules, the following expressions have the following meanings—

“the Act” means the Defence Act 1954 (No. 18 of 1954);

“abstract of evidence” means—

(a) any statement in writing, prepared in accordance with these Rules of Procedure, of the evidence of witnesses proposed to be called at the trial by court-martial of an accused person, or

(b) where the context so admits or requires, any statement or record of evidence of a witness, (including that, if any, of the person charged) given or prepared to be given, or heard, at an investigation of a charge before a commanding officer (pursuant to sections 177, 177A or 178C), or an authorised officer (pursuant to section 177C), or an officer appointed for that purpose by the Deputy Chief of Staff (Support) (pursuant to section 177), as the case may be;

“authorised officer” means an officer in whom powers and duties are vested pursuant to section 184;

a “Board” is an assembly of members of the Defence Forces appointed by a convening authority authorised by rule 49 or rule 68 and convened for the purpose of examining and, if so directed, reporting upon any service subject which may be referred to them by a convening authority;

a “charge” means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence;

“Chief Military Judge” means the person for the time being appointed in accordance with section 184N(1) to be the Chief Military Judge and, where the context so admits or requires, includes the military judge where there is only one appointed and any military judge to whom functions of the Chief Military Judge have been delegated by the Chief Military Judge in accordance with section 184N(3);

“counsel” has the meaning ascribed to it by section 196(6);

a “court of inquiry” is an assembly of officers convened for the purpose of inquiring into any matter which may be referred to it by a convening authority

authorised by rule 49, and to make such finding or declaration as may be required;

“Director” means the Director of Military Prosecutions appointed under Chapter IVB of Part V of the Act;

“investigating officer” means a commanding officer or an officer appointed by, and on the direction of, the Deputy Chief of Staff (Support) in accordance with section 177(1);

“the Minister” means the Minister for Defence;

“oath” and “swear” and cognate expressions, include affirmation or declaration, affirm or declare, in cases where an affirmation or declaration is by law allowed instead of an oath;

“person in waiting” means a person who is qualified to be a member of a court-martial board and who is specified by the Court-Martial Administrator in an order convening a general court-martial or a limited court-martial, as the case may be, to be a reserve member to be available for appointment to that particular court-martial;

“proper military authority” when used in relation to any jurisdiction, power, duty, act or other matter, means such military authority as exercises or performs that jurisdiction, power or duty or is concerned with that act or matter pursuant to regulations made under the Act, or the custom of the service;

“prosecutor” means the Director and includes any prosecuting officer appointed in accordance with section 184F(1) and counsel instructed by or representing either;

“subordinate officer” means an officer to whom power is delegated under section 179(1);

“summary of evidence” means the evidence in relation to a charge against an accused, taken down in writing in accordance with these Rules, and includes any statement made by the accused and taken down in accordance with these Rules and any further statement of evidence included in the summary of evidence in accordance with these Rules.

(2) In these Rules, unless otherwise provided, a reference to a section is to a section of the Act.

(3) The words and expressions defined in section 2(1) of the Act have the same meaning in these Rules as in the Act.

(4) Time for the purpose of any proceedings or other matter under these Rules shall be reckoned exclusive of Sunday, Good Friday, Christmas Day and St. Patrick’s Day. Time reckoned for the purposes of arrest, custody, punishment or forfeiture or deduction of pay shall include those days.

Part 2 — Chief Military Judge and Military Judge

Form of oath

3. The form of oath to be taken or solemn declaration to be made by a military judge before entering upon his or her duties under the Act shall be as follows:

“I, _____, swear by Almighty God (*or* — do solemnly and sincerely promise and declare — *as the case may be*) that I will duly and faithfully and to the best of my knowledge and power execute the office of military judge in accordance with the Defence Act 1954, the Court-Martial Rules and the Rules of Procedure made thereunder without partiality, fear or favour, affection or ill-will towards any person, and that I will uphold the Constitution and the laws.”.

Duties and functions of Chief Military Judge and military judges

4. (1) The Chief Military Judge shall assign military judges to preside at courts-martial and shall perform the judicial duties conferred on him or her and on a military judge under the Act.

(2) In addition to his or her judicial duties, the Chief Military Judge may perform any other functions and duties as he or she may agree to undertake, provided that any such other functions and duties are not incompatible with the Act or with his or her judicial duties under these Rules.

(3) Military judges shall preside at courts-martial and shall perform other judicial duties under the Act, these Rules and any court-martial rules for the time being in force that are required to be performed by military judges.

(4) In addition to such duties, a military judge shall perform any other duties that the Chief Military Judge may direct, provided that any such other duties are not incompatible with the Act or with his or her judicial duties under these Rules.

Part 3 — Appeals to summary court-martial

Appointment of prosecutor

5. The Director shall, promptly upon the receipt of any notice of appeal to the summary court-martial, appoint a prosecutor for the purpose of the appeal.

Forwarding of documents to prosecutor

6. Whenever a determination made and/or a punishment awarded summarily pursuant to section 177C or 178C is appealed to the summary court-martial, the authorised officer or, as the case may be, the commanding officer, who has

disposed of the charge summarily shall promptly forward to the prosecutor the documents referred to in Rule 12 of the Court-Martial Rules 2008.

Listing of appeal for hearing

7. (1) The Court-Martial Administrator shall consult with the Chief Military Judge or the military judge presiding at the summary court-martial for the purpose of settling the dates, times and place on and at which the hearing of appeals, applications or other hearings or matters before the summary court-martial shall be listed.

(2) The Court-Martial Administrator shall give notice in writing, in Form 1 or endorsed on any notice submitted to him, of the date and time which has been fixed for the hearing of any appeal or application to the summary court-martial, and the place where the court is to sit, to:—

(a) the appellant or applicant, and such person's commanding officer and (where relevant) the authorised officer;

(b) the Director; and

(c) the Chief Military Judge or the military judge presiding at the summary court-martial.

(3) If, having notified a person in accordance with sub-rule (2), the Court-Martial Administrator changes the time or place for the hearing of any appeal or application to the summary court-martial he or she shall notify the persons referred to in sub-rule (2) of such change.

Abandonment of appeal

8. (1) An appellant may abandon an appeal (whether wholly or in part) at any time prior to its determination.

(2) Where an appellant abandons his or her appeal prior to the hearing of the appeal, he or she shall do so by serving notice on the Court-Martial Administrator in Form 2 (referred to in this rule as "the notice of abandonment").

(3) The Court-Martial Administrator shall as soon as practicable after receipt serve a copy of the notice of abandonment on the Director and on the appellant's commanding officer, and (where relevant) the authorised officer, and shall notify the military judge presiding at the summary court-martial.

(4) Where the notice of abandonment relates to the whole of any appeal, the appeal shall be treated as having been determined on the date on which the copy of the notice is received by the appellant's commanding officer.

(5) A prosecutor may give notice in writing at any time prior to the hearing of the appeal that he or she does not contest the whole or any specified part of an appeal. In such a case, the notice shall be given to the Court-Martial Administrator, the appellant and the appellant's commanding officer.

Part 4 — Summary or abstract of evidence

Trial pursuant to section 181

9. Where a person subject to military law has been ordered to be tried by court-martial without previous investigation of the charge pursuant to the provisions of section 181, the officer who has made the order shall notify the Court-Martial Administrator of the making of such order and shall refer the order and the charge to the Director and that officer or the Director shall cause to be prepared a statement in writing of the evidence of the witnesses proposed to be called for the prosecution at the trial, without such statement being taken in the presence of the person ordered to be tried.

Summary or abstract of evidence

10. (1) A summary or abstract of evidence in accordance with this rule shall be prepared in each of the following cases:

- (a) where an accused has been remanded for trial by court-martial; or
- (b) in any other case where directed by the Director.

(2) Where a summary of evidence is to be taken, the evidence of all reasonably available witnesses who gave evidence against the accused before the authorised officer, the commanding officer or the investigating officer, and of any other relevant witness shall be taken down in writing or otherwise recorded in the presence of the accused before the commanding officer or before another officer directed by the commanding officer to take such summary.

(3) Every commanding officer and every other officer directed by a commanding officer to take a summary of evidence in accordance with this rule is hereby empowered to administer oaths for that purpose.

(4) The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added to the evidence taken down in writing or otherwise recorded.

(5) The evidence of each witness, when taken down or recorded as provided in sub-rule (2) or (4) shall, unless the witness waives the requirement that it be read or replayed to him or her, be read over or replayed to him or her and the record shall be signed or otherwise authenticated by him or her in such manner as the officer before whom the summary of evidence is taken shall consider satisfactory, and witnessed by that officer.

(6) After all the evidence against him or her has been recorded, the accused shall be asked “Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence”. Any statement or evidence of the accused shall be taken down or recorded, but he or she shall not be cross-examined on it. If the accused is tried by court-martial, no evidence shall be

admitted at the trial of any statement or evidence he or she may have made or given at the taking of the summary of evidence before the above caution was given to him or her.

(7) The accused may call and examine witnesses in his or her defence and their evidence shall be taken as provided in the case of witnesses called for the prosecution.

(8) Save as provided with regard to the accused in sub-rule (6), the evidence of all witnesses shall be taken on oath. The oath shall be administered by the officer taking the summary of evidence.

(9) A witness taking the oath shall hold the New Testament or, if of a faith other than Christian, the appropriate holy book, in his or her hand and shall repeat after the person administering the oath the words: "I swear by Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth."

(10) Where a witness is permitted to make a solemn declaration, the witness shall repeat after the officer taking the summary of evidence the words: "I (name in full) do solemnly promise and declare that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth."

(11) If a person cannot be compelled to attend as a witness, a written statement of such person's evidence purporting to be signed by him or her may be read to the accused and included in the summary of evidence.

(12) If, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him or her in writing) be readily procured, a written statement of such person's evidence purporting to be signed by him or her may be read to the accused and included in the summary of evidence. However, if such person can be compelled to attend, the accused may demand that he or she shall attend for cross-examination.

(13) The officer taking the summary of evidence may put such questions to witnesses as he or she may find necessary to elicit the facts relevant to the charges, but he or she shall not cross-examine the accused.

(14) Subject to the following sub-rule, no counsel or representative shall be allowed to appear for the accused or for the prosecution at the taking of the summary of evidence.

(15) Notwithstanding sub-rule (14), where a person subject to military law is charged with an offence for which a person would be required on conviction to be sentenced to imprisonment for life, then each of the following persons namely, the person charged and the person by whom the charge is preferred may, if he or she so wishes, be represented by counsel or by an officer subject

to military law, and the person who in relation to the proceedings is the commanding officer may have a legal officer or counsel in attendance on him or her as regards the proceedings, and the proceedings shall be conducted in accordance with Part 8 of these Rules.

(16) Any witness who is not subject to military law may be summoned in writing to attend by the commanding officer of the accused in accordance with Rule 74 and Form 20 of the Court-Martial Rules 2008.

(17) When a witness who is not subject to military law is summoned to attend in accordance with the preceding sub-rule, his or her reasonable expenses of attending shall be paid or tendered to him or her on the service of the summons.

(18) Nothing in this rule shall be construed so as to require a summary or abstract of evidence to be taken after the remand for court-martial by an authorised officer of an accused officer holding a commissioned rank lower than that of Lieutenant-Colonel or Commander in whose case a summary or abstract of evidence has been taken before the charge against him or her was investigated by an authorised officer, unless such authorised officer so directs.

(19) An additional summary or summaries of evidence may be taken by or on behalf of the commanding officer, the authorised officer or the investigating officer in the same manner as is herein provided for a summary of evidence.

Part 5 — Charges and charge-sheets

Charge-sheets

11. (1) A charge-sheet shall contain the whole issue or issues to be determined or to be tried by a court-martial at one time.

(2) A charge-sheet may contain one or more charges but each charge shall allege only one offence and in no case should an offence be described in the alternative in the same charge.

(3) A charge-sheet may contain alternative charges.

(4) A charge-sheet which is for summary hearing in accordance with section 177C, 178C or 179C (a “summary charge-sheet”) may be prepared, signed and dated by any person having authority to prefer such a charge.

(5) A charge-sheet in respect of any offence which is to be tried by court-martial (a “court-martial charge-sheet”) shall be signed and dated by or on behalf of the Director.

(6) Any court-martial charge-sheet, when served on the accused person, shall be copied to the Court-Martial Administrator and the accused’s commanding officer.

(7) Where any court-martial charge-sheet is served on an accused, there shall be served also a notice in writing advising of the right of an accused person to apply for a legal aid (preliminary proceedings) certificate, within the meaning of section 26 of the Courts-Martial Appeals Act 1983 or a legal aid (court-martial) certificate, within the meaning of section 27 of the Courts-Martial Appeals Act 1983, and identifying the prescribed authority, within the meaning of section 25 of the Courts-Martial Appeals Act 1983, for the purpose of any application for legal aid.

Commencement of charge-sheets

12. Every charge-sheet shall begin with the name and description of the person charged and should state his or her number, rank, name and unit (if any) and where he or she does not at the time of the trial belong to the Permanent Defence Force should show by the description of him or her, or directly by an express averment, that he or she is subject to military law in respect of the offence charged.

Contents of charge

13. (1) Each charge should be divided into two parts:—

- (a) the statement of the offence; and
- (b) the statement of the particulars of the act, conduct, disorder, neglect or omission constituting the offence.

(2) The offence should be stated, if not a civil offence, in the words of the Act. If a civil offence, it should be stated in such words as sufficiently describe that offence, but not necessarily in technical words. The provisions of rule 5 contained in the First Schedule to the Criminal Justice (Administration) Act 1924 (No. 44 of 1924), shall apply to the charging of statutory civil offences. The provisions of rules 6, 7, 8 and 10 of those Rules shall apply to the charging of all offences.

(3) The particulars should state such circumstances respecting the alleged offence as will enable the accused to know what act, conduct, disorder, neglect or omission is intended to be proved against him or her as constituting the offence. It shall be sufficient to describe any place, time, thing or matter whatsoever to which it is necessary to refer in the particulars in ordinary language in such a manner as to indicate with reasonable clarity the place, time, thing or matter referred to therein.

(4) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge and, in that case, so much of the latter particulars as are so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.

(5) Where it is intended to prove any facts in respect of which any deduction from pay can be awarded or any direction can be given to pay compensation for any personal injury, expense, loss, damage or destruction of property occasioned as a consequence of the offence charged, the particulars should state those facts,

the nature of the personal injury suffered by any injured party, the amount of any expense occasioned or the value of any property lost, damaged or destroyed.

Validity of charge-sheet

14. (1) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged if he or she does not object to the charge-sheet during the trial and it is not shown that injustice has been done to the person charged.

(2) In the construction of a charge-sheet or charge, every proposition which may reasonably be presumed to be impliedly included, though not expressed, therein shall be presumed to support the same.

Joint trial

15. Any number of accused persons may be charged and tried together for an offence charged to have been committed by them collectively. In any such case, notice of intention to try the accused persons together should be given to each of the accused at the time the documents mentioned in rule 26 are delivered to him or her, and any accused person may apply, either by notice to the prosecutor or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him or her will be material to his or her defence. The prosecutor or court, if satisfied that the evidence will be material, and if the nature of the charge admits of it, shall allow the claim, and the person making the claim shall be tried separately.

Part 6- Pre-trial stage

Application to the Director for directions where person remanded or electing for trial by court-martial

16. Where a person charged is remanded for trial by court-martial under Chapter IV of Part V of the Act, by order of the investigating officer, authorised officer or, as the case may be, commanding officer, or where a person charged elects to be tried by court-martial under section 177B(2) or 178B(2), as soon as the summary of evidence or the abstract of evidence has been taken or prepared, the investigating officer, authorised officer or, as the case may be, commanding officer shall without delay apply in writing in Form 3 to the Director for his or her directions in relation to a trial by court-martial.

Application to the Director for consent to dismissal of charge or referral of charge of scheduled offence (Part II) for summary investigation

17. (1) An application for the Director's consent to the dismissal of a charge under Chapter IV of Part V of the Act shall be in writing in Form 4.

(2) An application for the Director's consent to the referral of a charge for a scheduled offence (Part II) for summary investigation by an authorised officer under section 177(2)(a)(ii)(III) or to the decision by a commanding officer to

dispose of a charge for a scheduled offence (Part II) summarily under section 178(2)(b) shall be in writing in Form 5 and shall be made as soon as possible after the investigating officer or the commanding officer has completed his or her investigation.

Prosecution file to be submitted to the Director

18. (1) In any of the following cases, the documents and things referred to in the following sub-rule (in this rule referred to as the “prosecution file”) shall be forwarded to the Director by the investigating officer, the authorised officer or the commanding officer concerned with the application for the Director’s directions or consent or as soon as possible after that application is submitted:—

- (a) where a person charged is remanded for trial by court-martial under Chapter IV of Part V of the Act, by order of the investigating officer, authorised officer or commanding officer;
- (b) where a person charged elects to be tried by court-martial under section 177B(2) or section 178B(2);
- (c) where an investigating officer refers the matter to the Director for his or her directions;
- (d) where the consent of the Director is sought to:
 - (i) the dismissal of a charge under Chapter IV of Part V of the Act,
 - (ii) the referral of a charge for a scheduled offence (Part II) for summary investigation by an authorised officer under section 177(2)(a)(ii)(III), or
 - (iii) the decision by a commanding officer to dispose of a charge for a scheduled offence (Part II) summarily under section 178(2)(b).

(2) The prosecution file to be forwarded to the Director shall contain or include:—

- (a) a copy of any report concerning the case prepared by the investigating officer, authorised officer or the commanding officer concerned;
- (b) a copy of the summary charge-sheet;
- (c) any summary or abstract of evidence;
- (d) any written statements or written record of evidence of any witnesses or potential witnesses;
- (e) a list of any potential witnesses;
- (f) any statements made by the accused including records or transcripts of interviews conducted under caution;

- (g) a list of any exhibits;
- (h) any other information or material in the possession of the investigating officer, authorised officer or commanding officer which may be material to, or which the Director notifies that officer is material to, the Director's consideration of the charge or charges, or to the giving of any consent.

(3) Where in any case, the person charged is remanded for trial by a court-martial and the Director does not withdraw the charge or refer the charge back to an investigating officer, authorised officer or commanding officer, the Director shall, without delay, settle the court-martial charge-sheet and in so doing may do all or any one or more of the following as may appear to him or her to be necessary having regard to the evidence:—

- (a) add to, alter or amend any charge;
- (b) substitute for any charge any other charge or charges;
- (c) add new charges.

Provided, however, that where the person charged has elected to be tried by court-martial the following provisions shall apply:—

- (i) the charge in respect of which the person has so elected shall not be added to nor a charge for a more serious offence substituted therefor but it may be amended so as to conform to the provisions of the Act and of these Rules;
- (ii) where from the summary of evidence or abstract of evidence there appears to be disclosed a more serious offence than that in respect of which the person has elected for trial by court-martial, the Director may direct that the person be charged with the more serious offence so disclosed. On such direction being given the commanding officer of the person shall proceed with the investigation of the charge as a matter of first instance in accordance with the provisions of the Act and of these Rules, provided, however, that if the person is remanded for trial by court-martial the summary of evidence or abstract of evidence already taken may be deemed in compliance with rule 10.

Matters of which Director must be satisfied

19. (1) Where a person charged is remanded for trial by court-martial, the Director shall be satisfied:—

- (a) that the person is charged with an offence under the Act;
- (b) that the evidence is sufficient to justify a trial by court-martial;
- (c) that the provisions of any Regulations made under section 192(4)(a), where applicable, have been complied with;

- (d) that any consent required under section 192(3A), where applicable, has been obtained,

and if he or she is not so satisfied may withdraw the charge, may require an additional summary or abstract of evidence to be taken or prepared, or may direct that such Regulations be complied with or require or procure that such consent be obtained.

(2) The Director shall also satisfy himself or herself that the case is a proper one to be tried by the class of court-martial he or she proposes to specify in his or her direction.

(3) Any court-martial charge-sheet settled by the Director shall promptly be sent to the Court-Martial Administrator, who shall serve the charge-sheet on the person charged, and provide a copy of the charge-sheet to the person's commanding officer. The Court-Martial Administrator shall notify the Director that the charge-sheet has been served on the person charged.

Direction to convene court-martial

20. Any direction of the Director to the Court-Martial Administrator to convene a general or limited court-martial by which the accused is to be tried in respect of the charge, shall be given in writing in Form 6 and shall be given promptly following the service on the accused person of the charge-sheet settled by the Director.

Direction to refer to summary court-martial

21. (1) Any direction of the Director to the Court-Martial Administrator to refer a charge against an accused to the summary court-martial to be heard and determined shall be given in writing in Form 7 and shall be given promptly following the service on the accused person of the charge-sheet settled by the Director.

(2) In such a case, the Court-Martial Administrator shall summon the accused to appear before the summary court-martial to answer the charge in writing in Form 8 and shall copy such summons to the Director.

Withdrawal of charge

22. Where the Director withdraws a charge, he or she shall give notice of such withdrawal in writing to the accused and to the investigating officer, authorised officer or the commanding officer concerned and the person charged, if in custody, shall be released on production to him or her of such notice, unless the person having custody of him or her has some other lawful authority to keep custody of him or her.

Referral back of charge

23. Where the Director directs that a charge (with such alterations, amendments, additions, substitutions and additional charges as he or she thinks fit) be referred back to an authorised officer in accordance with section 177D(1) or to a commanding officer in accordance with section 178D(1), the Director shall give notice of such direction in writing to the authorised officer or commanding

officer concerned and shall return the prosecution file to such authorised officer or commanding officer. The authorised officer or commanding officer concerned shall copy a written record of any disposal of the charge to the Director.

Consent to dismissal of charge

24. Where the Director consents to:—

- (i) the dismissal of a charge under Chapter IV of Part V of the Act;
- (ii) the referral of a charge for a scheduled offence (Part II) for summary investigation by an authorised officer under section 177(2)(a)(ii)(III), or
- (iii) the decision by a commanding officer to dispose of a charge for a scheduled offence (Part II) summarily under section 178(2)(b)

the Director shall give notice of such consent in writing to the investigating officer, the authorised officer or the commanding officer concerned and shall return the prosecution file to such investigating officer, authorised officer or commanding officer. The officer concerned shall copy a written record of any disposal of the charge to the Director.

Reasons

25. The Director shall not be required to give reasons for any direction, consent or other decision given or refused in exercise of the powers conferred on him or her by the Act.

Preparation of defence

26. (1) An accused person who is to be tried by court-martial shall be afforded every opportunity of preparing his or her defence, and shall be allowed free communication with any defence witnesses and with any defending officer or legal adviser whom he or she may wish to consult. Certified copies of the court-martial charge-sheet and summary or abstract of evidence shall be delivered to him or her by an officer appointed by the investigating officer, the authorised officer or the commanding officer (in this rule referred to as the “relevant officer”) promptly upon their completion.

(2) At the same time as the accused is supplied with the documents referred to in sub-rule (1) he or she shall be informed by the relevant officer that upon his or her giving the names of any witnesses whom he or she intends to call in his or her defence, reasonable steps will be taken for procuring their attendance.

(3) The relevant officer shall, if necessary, read the charge-sheet and the summary or abstract of evidence to the accused and explain to the accused the charges and his or her rights under these Rules as to preparing his or her defence and being represented at the trial. The relevant officer shall ask the accused whether or not he or she wishes to have an officer assigned to represent him or her at the trial. If the accused wishes to have an officer assigned to represent him or her at his or her trial, the Court-Martial Administrator shall ensure that the accused is represented at his or her trial.

(4) The relevant officer shall, immediately after delivery of the documents referred to in sub-rule (1), furnish to the Court-Martial Administrator a certificate, in Form 9, of conformity with the provisions of this rule.

Selection and appointment of members of court-martial board

27. (1) The Court-Martial Administrator shall select, using random methodology, a number of eligible officers and, where applicable, non-commissioned officers capable of performing the duties of members and persons in waiting for the court-martial board concerned.

(2) The Court-Martial Administrator shall, having regard to sections 189 and 190, appoint the persons selected pursuant to sub-rule (1) to be members or persons in waiting of the court-martial board concerned.

(3) The Court-Martial Administrator shall not appoint a person referred to in section 191(1).

(4) The Court-Martial Administrator may excuse from performing court-martial duties a person selected pursuant to sub-rule (1) where the Court-Martial Administrator is satisfied that:—

- (a) the person will be required, during the period the court-martial is expected to take place, for duties sufficiently urgent and important to warrant the person not being appointed;
- (b) the person is scheduled, during the period the court-martial is expected to take place, to attend a course that is important for the person's professional development or career progression;
- (c) the person has served as a member of a court-martial board within the preceding 24 months;
- (d) the person is unfit to perform court-martial duties as a result of illness or injury;
- (e) the person has compassionate reasons for not being appointed to perform court-martial duties, such as serious illness, injury or death in the person's family or for any other sufficient reasons.

(5) Where a person selected pursuant to sub-rule (1) is not appointed to perform court-martial duties for a reason set out in sub-rule (3) or (4), the Court-Martial Administrator shall record the reason and select a replacement in accordance with this rule.

(6) The Court-Martial Administrator shall, at the request of the military judge, appoint a replacement for any member of a court-martial board where an objection to a member is allowed and no eligible person in waiting remains to replace the member.

(7) The Court-Martial Administrator shall maintain for each general court-martial and limited court-martial a record indicating:—

- (a) the name of each person selected pursuant to sub-rule (1); and
- (b) the name of any person who is not appointed pursuant to sub-rule (3) or who is excused pursuant to sub-rule (4) and the reasons therefor.

(8) The record referred to in sub-rule (7) shall be open to examination on request by the accused or the prosecutor.

Order convening court-martial

28. Where the Court-Martial Administrator convenes a general court-martial or a limited court-martial in accordance with section 187(1), he or she shall do so by Form 10 and shall give a copy of such order to:—

- (a) the Director;
- (b) the military judge;
- (c) members of the court-martial board and persons in waiting;
- (d) the accused; and
- (e) the commanding officer of the accused.

Dissolution by Court-Martial Administrator

29. Where the Court-Martial Administrator dissolves a court-martial in accordance with section 193(2) or 193(4), he or she shall do so by order in Form 11, and shall give a copy of such order to:—

- (a) the Director;
- (b) the military judge;
- (c) members of the court-martial board and persons in waiting;
- (d) the accused; and
- (e) the commanding officer of the accused.

Part 7 — Post-trial stage

Promulgation — court-martial finding

30. (1) Following a trial by court-martial, the Court-Martial Administrator shall arrange for the form of promulgation in Form 12 and a copy of same to be provided to the commanding officer of every person who has been convicted by a court-martial. The form of promulgation shall specify the sentence (including any suspended sentence) imposed on every such person.

(2) The findings and sentence of a court-martial shall be promulgated by the commanding officer by service on the accused of the Form 12. Where the

accused has died or become insane or has absented himself or herself, publication in routine orders shall be sufficient promulgation.

Promulgation — appeal to summary court-martial

31. (1) Following an appeal to the summary court-martial, the Court-Martial Administrator shall arrange for the form of promulgation in Form 13 and a copy of same to be provided to the commanding officer of every appellant to the summary court-martial where the summary court-martial has quashed or confirmed a determination in respect of such appellant, or has quashed, confirmed or substituted a punishment. The form of promulgation shall specify any determination quashed or confirmed or any punishment quashed, confirmed or substituted by the summary court-martial in respect of every such appellant.

(2) The decision of the summary court-martial on any appeal under section 178E shall be promulgated by the commanding officer by service on the appellant of the Form 13. Where the appellant has died or become insane or has absented himself or herself, publication in routine orders shall be sufficient promulgation.

Appeal from court-martial finding

32. Where an accused has appealed from a finding of a court-martial, the Court-Martial Administrator shall notify the commanding officer of the accused that an appeal has been brought.

Execution of sentences and punishments

33. (1) Where a sentence has been imposed upon a person convicted by a court-martial, or a sentence has been confirmed or varied by any court having appellate jurisdiction over a court-martial, and no appeal (or further appeal) has been taken from the finding or sentence within the time permitted for that purpose and such sentence is not suspended or stayed by operation of any order of any court having jurisdiction to do so, the person's commanding officer shall take the necessary action to ensure that the sentence is carried out and shall cause the appropriate entries to be made to the person's service records.

(2) Where a punishment awarded has been confirmed or substituted by the summary court-martial on appeal, and the carrying out of such punishment is not suspended or stayed by operation of any order of any court having jurisdiction to do so, the commanding officer of the person concerned shall take the necessary action to ensure that the punishment is carried out and shall cause the appropriate entries to be made to the service records of the person concerned.

(3) Before taking any action under this rule, a commanding officer may consult with the Court-Martial Administrator.

Effective date of certain sentences

34. (1) Subject to section 20(2) of the Courts-Martial Appeals Act 1983, each of the following sentences:—

(a) dismissal with disgrace from the Defence Forces,

- (b) dismissal from the Defence Forces,
- (c) reduction to a lower commissioned army rank, or to a lower commissioned naval rank,
- (d) discharge with disgrace from the Defence Forces,
- (e) discharge from the Defence Forces,
- (f) reduction to a lower non-commissioned army rank, or to a lower non-commissioned naval rank,

shall take effect on and from such date as may be fixed by the Deputy Chief of Staff (Support) who, in fixing such date, shall act without delay and shall have due regard to the provisions of the preceding rule.

(2) The order relating to the effective date of sentence shall be in Form 14.

(3) Before taking any action under this rule, the Deputy Chief of Staff (Support) may consult with the Court-Martial Administrator.

Orders for committal, transfer or release

35. The orders relating to the committal, transfer or release of persons remanded in close service custody awaiting trial or sentence convicted of offences and military prisoners and personnel under sentence of detention shall be in accordance with the forms in Form 15.

Re-trial

36. Where the conviction by a court-martial of an offence has been quashed and a re-trial ordered by the Courts-Martial Appeal Court pursuant to the Criminal Procedure Act 1993 then the Director may, having satisfied himself or herself as to the matters set out in Part 6, direct the Court Martial Administrator to convene a general court-martial or a limited court-martial in relation to the re-trial of the charge, or direct the Court Martial Administrator to refer the re-trial of the charge to the summary court-martial and the re-trial shall proceed in all respects as if it were the first trial of the charge.

Suspension of Sentence

37. (1) It shall be the duty of the commanding officer of every person to whom an order under section 212A(2) applies to notify the Provost Marshal of any suspected contravention by such person of a condition referred to in the order and to assist the Provost Marshal in the investigation of any such suspected contravention.

(2) Where the Provost Marshal or, as the case may be, the governor of a prison or detention barrack refers a matter to the Director under section 212A(11), he or she shall send to the Director:—

- (a) a summary of the grounds he or she has for believing the person to whom the order under section 212A(2) applies has contravened a condition referred to in the order;

- (b) any written statements or written record of evidence of any witnesses or potential witnesses in support of such grounds;
- (c) any other information or material in his or her possession which may be relevant to the Director's consideration of any direction he or she might give under section 212A(11);
- (d) any other information or material in his or her possession which the Director notifies him or her is relevant to the Director's consideration of any direction he or she might give under section 212A(11).

(3) The Court-Martial Administrator shall follow the procedure in rule 20 or rule 21 as appropriate in respect of any direction under section 212A(11)(a).

Notice of application to revoke suspension of sentence

38. For the purpose of informing the person in respect of whom an application referred to in section 212A(11) will be made for the fixing of a date for the hearing of the application in accordance with section 212A(12), the Court-Martial Administrator shall give notice to the person concerned by a notice in writing in Form 16, delivered in the manner prescribed in these Rules for the service of documents, which notice shall be returnable to such date, to answer the application. If the person is scheduled to be in prison or a detention barrack on the return date, the court-martial shall endorse and issue a copy of Form 16 to the Governor of that prison or detention barrack for the production of the person to answer the application.

Retention and supply of proceedings

39. At the conclusion of the court-martial the proceedings shall be retained and preserved by the Court-Martial Administrator, subject to any direction of the military judge.

Supply of copy of record of proceedings

40. A party to a court-martial may obtain from the Court-Martial Administrator a copy of the proceedings, including a copy of any transcript. Any other person may apply to the military judge for copies and the military judge may order that copies may be obtained subject to such conditions, including a condition as to the payment of a fee to cover the cost of the provision of copies.

Part 8 — Depositions (Preliminary investigation in charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life)

Application of this Part

41. (1) The provisions of this Part shall apply where a charge is preferred against a person of an offence for which a person would be required on conviction to be sentenced to imprisonment for life.

(2) The remaining provisions of these Rules shall apply where a charge is preferred against a person of an offence for which a person would be required on conviction to be sentenced to imprisonment for life with such modifications as are necessitated by this Part.

(3) In the event that any conflict shall arise between the provision of any rule of this Part and any other provision of these Rules, the provision of the rule of this Part shall, where the charge is of an offence for which a person would be required on conviction to be sentenced to imprisonment for life, prevail.

Preparation of defence for a preliminary investigation

42. (1) Where a person is charged with an offence for which a person would be required on conviction to be sentenced to imprisonment for life, certified copies of the following documents shall be delivered to him or her by an officer appointed by the commanding officer or the authorised officer (in this rule referred to as the “relevant officer”) promptly upon their completion:—

- (a) a copy of the summary charge sheet;
- (b) a list of the witnesses whom it is proposed to call on behalf of the prosecution at the trial by court-martial, should the person charged be remanded for such trial, which list shall be in Form 17;
- (c) as regards each such witness, a statement of the evidence that is to be given by him or her at such trial, which statement shall be in Form 18; and
- (d) in relation to such trial, a list of exhibits (if any) which list shall be in Form 19.

(2) At the same time as the person charged is supplied with the documents mentioned in sub-rule (1) he or she shall be informed by the relevant officer that upon his or her giving the names of any witnesses whom he or she intends to call in his or her defence, reasonable steps will be taken for procuring their attendance.

(3) The relevant officer shall also serve on the person charged a notice in writing advising of the right of the person charged to apply for a legal aid (preliminary proceedings) certificate, within the meaning of section 26 of the Courts-Martial Appeals Act 1983 and identifying the prescribed authority, within the meaning of section 25 of the Courts-Martial Appeals Act 1983 for the purpose of any application for legal aid.

(4) Where a statement of the evidence to be given by any witness has already been served on the person charged under this rule, the relevant officer shall cause to be served on the person charged any further statement made by that witness of the evidence to be given by him or her. Such further statement shall be made in Form 18.

(5) The relevant officer shall cause to be furnished to the officer who is to conduct an investigation under rule 43 the summary charge-sheet together with a copy of each other document served on the person charged.

(6) Where a list of exhibits is served on the person charged, the person charged shall have the right to inspect all or any of the exhibits to which the list relates.

(7) The relevant officer shall, if necessary, read the charge-sheet to the person charged and explain to him or her the charges and also as to his or her rights under these Rules as to preparing his or her defence and being represented at the trial, and shall ask him or her whether or not he or she wishes to have an officer assigned to represent him or her at the preliminary investigation and any trial. If the person charged wishes to have an officer assigned to represent him or her at his or her trial, the Court-Martial Administrator shall ensure that the accused is so represented at his or her trial.

(8) The relevant officer shall, immediately after delivery to the person charged of the documents mentioned in sub-rule (1), furnish to the Court-Martial Administrator a certificate, in Form 20, of conformity with the provisions of this rule.

Preliminary investigation

43. (1) The commanding officer shall cause the person preferring the charge and the person charged to appear before him or her at a stated time (to be fixed either by Standing Orders or otherwise) at his or her office or headquarters or other available place, as soon as practicable, with the service record of the person charged, and shall there investigate the charge or charges.

(2) At such investigation, each of the person charged and the person by whom the charge is preferred may, if he or she so wishes, be represented by counsel or by an officer, and the person who in relation to the proceedings is the commanding officer may have a legal officer or counsel to be in attendance on him or her as regards the proceedings.

(3) At an investigation under this rule:—

- (a) the person charged shall be entitled to present anything in his or her defence or mitigation;
- (b) the person by whom the charge is preferred and the person charged shall each be entitled to give evidence on sworn deposition and also to require the attendance at the investigation of any person, whether included in the supplied list of witnesses or not, and to examine him or her by way of sworn deposition;
- (c) any witness at the investigation may be cross-examined and re-examined on his or her evidence and his or her deposition shall be taken down in writing, read over to him or her and signed by him or her and by the commanding officer;

- (d) witnesses who are not subject to military law may be summoned or ordered to attend by the commanding officer by summons in accordance with the Defence Forces (Summoning of Civilian Witnesses) Regulations 1954 (S.I. 297 of 1954) served on the witness, provided that his or her reasonable expenses of attending shall be paid or tendered to the witness with the service of the summons;
- (e) having considered the matters specified in rules 44(a) and (b)—
 - (i) the commanding officer shall as regards the charge, or as may be appropriate, each of the charges, ask the person charged if he or she has anything to say in answer to the charge, and such officer shall caution the person charged that he or she is not obliged to say anything unless he or she wishes to do so and that whatever he or she does say will be taken down in writing and, if he or she is remanded for trial by court-martial, may be given in evidence at such trial,
 - (ii) whatever the person charged says in answer to the commanding officer's question and caution shall be taken down in writing in Form 21 and read over to him or her; the person shall be invited to sign the statement and the statement shall then be signed by the commanding officer who is taking such statement;
- (f) nothing in this rule shall prevent the person by whom the charge is preferred from giving in evidence any confession or other statement made at any time by the person charged which, by virtue of section 201, is admissible in proceedings before courts-martial as evidence against the person charged.

(4) Sub-rule (3) shall not entitle the person by whom the charge is preferred or the person charged in an investigation under this rule to require the attendance before the commanding officer of a person or to examine him or her by way of sworn deposition where the officer is satisfied that the person is outside the State and that it is not reasonably practicable to secure his or her attendance before such officer for examination under this rule.

(5) Where a preliminary investigation is required to be held under this rule, no other summary investigation shall be held under these Rules as regards the charge, or any of the charges, as may be appropriate, to which the preliminary investigation under this rule relates.

(6) Where pursuant to this Part there is in attendance on a commanding officer a legal officer or counsel, such officer or counsel may, as regards the relevant proceedings, advise the commanding officer he or she is so attending, question any witness on behalf of such commanding officer or otherwise act on behalf of or assist such commanding officer in the performance of his or her duties as regards the proceedings.

Materials to be considered

44. In an investigation under this Part, the commanding officer shall consider:—

- (a) any copy document furnished to him or her pursuant to this Part and the exhibits to which a copy list of exhibits (if any) so furnished relates;
- (b) any deposition taken in accordance with this Part;
- (c) any statement referred to in rule 43(3)(e)(ii); and
- (d) anything presented or any submission made by or on behalf of the person charged or any submission made by or on behalf of the person by whom the charges are preferred.

Non-application of provisions as to recording

45. Where an investigation under rule 43 is held, evidence shall not be recorded under rule 10 in relation to the charge, or any of the charges, as may be appropriate, to which the investigation relates.

Service of list of further witnesses, statements and list of exhibits

46. (1) Where the person charged has been remanded for trial by court-martial on a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life and an order for such trial has been made, the Director or prosecutor shall cause to be served on the person charged a list of any further witnesses whom it is proposed to call on behalf of the prosecution at such trial, together with a statement of the evidence that is to be given by each of them, a list of any further exhibits, a statement of any further evidence that is to be given by any witness whose name appears on the list of witnesses already supplied, and also copies of any statement recorded under this Part and any deposition taken under this Part.

(2) The relevant officer who has caused a document to be served on the person charged under sub-rule (1) shall also cause a copy of such document to be furnished to the Court-Martial Administrator.

Use of deposition at trial

47. (1) A deposition taken under this Part may, subject to sub-rule (2), be read as evidence at the trial by court-martial of the accused if it is proved that:—

- (a) the deponent is dead or is unable to attend or is prevented from attending to give evidence at such trial; and
- (b) the deposition was taken in the presence of the accused; and
- (c) an opportunity was given for the cross-examination and re-examination of the deponent.

(2) Except in the case of the deponent's death, a deposition taken under this Part on the application of the person by whom the charges are preferred shall not be read unless the accused consents.

Part 9 — Courts of inquiry and Boards

Court of inquiry

48. A court of inquiry shall convene for the purpose of inquiring into a matter referred to it by a convening authority, and shall make such finding or declaration as may be required.

Convening authorities

49. A court of inquiry may be convened by:—

- (a) the Minister;
- (b) the Chief of Staff;
- (c) a Deputy Chief of Staff;
- (d) a General or Flag Officer;
- (e) a commanding officer holding a commissioned rank not lower than that of Commandant or Lieutenant-Commander, except in the case of a court of inquiry under section 174 which may be convened by any commanding officer.

Composition

50. (1) Subject to sub-rule (2), a court of inquiry shall normally be composed of at least three officers, but may be composed of any number of officers, provided that no court of inquiry may act when its membership has fallen below two in number.

(2) A court of inquiry into a traffic accident or illegal absence may be composed of any number of officers but in no case shall the court be composed of less than two officers.

(3) The selection of officers shall be in accordance with the nature of the inquiry to be carried out by the court. Where the inquiry is into the death or serious injury of a member of the Defence Forces a medical officer may be appointed to be a member of the court.

Appointment and functions of assessors

51. (1) A person not subject to military law may be appointed by the convening authority to act as an assessor to a court of inquiry, provided that such person possesses the professional or technical qualifications necessary to enable him or her to advise the court upon any professional or technical questions.

(2) An appointment of an assessor may be made at any time before the court has closed to consider its findings or, if it is not required to make findings, before the taking of evidence has concluded.

(3) A convening authority (other than the Minister) shall not appoint an assessor without the prior sanction of the Secretary General of the Department of Defence.

(4) An assessor shall not be a member of the court to which he or she is appointed to advise but shall be present throughout so much of the proceedings as the convening authority may direct. The assessor may not question witnesses but may suggest to the president questions to be put to the witnesses, and any such question and the reply thereto will be recorded in the proceedings of the court.

(5) The assessor shall give his or her opinion in closed court upon any professional or technical matter which may be referred to him or her by the convening authority or by the court and such opinion shall be recorded in the proceedings of the court.

(6) If a court of inquiry decides to disregard the opinion of the assessor appointed to advise it upon any professional or technical matter, it shall record in its proceedings such decision and the reasons therefor.

Convening of Courts of Inquiry

52. (1) A convening authority in his or her order convening a court of inquiry shall:—

- (a) appoint the president and any other members of the court and any assessor;
- (b) appoint the place, date and time for the first assembly of the court;
- (c) specify the matters into which the court is to inquire and, in particular, set out any particular questions in respect of which he or she requires a finding; provided that a court of inquiry into a traffic accident involving civilian persons or property shall not be required to make any finding fixing responsibility for the accident;
- (d) state whether the evidence is to be taken on oath.

(2) A convening authority by his or her order convening a court of inquiry may provide for such matters as are referred to in rules 53, 54 and 61.

Attendance of and production of documents by witnesses subject to military law

53. The convening authority shall order or arrange for, as the case may be, the attendance of persons subject to military law who are required as witnesses at a court of inquiry and, where necessary, shall order or arrange for, as the case may be, the production to the court of all relevant documents and articles which are or may be in military custody or procurement.

Attendance of witnesses not subject to military law

54. Where the attendance of a person not subject to military law is required as a witness at a court of inquiry a notification of the holding of the court shall be sent to such person. The notification shall be in Form 22.

Further witnesses

55. If the court considers that the attendance of witnesses other than those ordered or notified to attend is necessary for the purpose of its inquiry, the president shall apply to the convening authority for the attendance of such witnesses.

Appointment of new members

56. Where, after a court of inquiry has assembled but before it begins to take evidence, a member thereof is, through illness or other valid reason, unable to attend the proceedings of the court, and because of such illness or other valid reason will be unable within a reasonable time to attend at such proceedings, the convening authority may detail another officer as a member of the court to replace the member so unable to attend. Where the member so unable to attend is the president, the convening authority may appoint another member as president, or appoint a new president.

Court to continue, unless reduced below legal minimum

57. (1) Where, after a court of inquiry has begun to take evidence, a member thereof is, through illness or other valid reason, unable to attend the proceedings of the court, and because of such illness or other valid reason, will be unable, within a reasonable time, to attend at such proceedings, the court, if not reduced below two in number, shall proceed with the inquiry to a conclusion, and, if required to make a finding or declaration, such finding or declaration shall be as valid as if the same had been made by the court as originally convened. Where the member so unable to attend is the president, the member of the court next in seniority to the president shall act as president of the court unless otherwise directed by the convening authority.

(2) A member of a court of inquiry, other than a medical officer, who has been absent from any part of the taking of the evidence shall take no further part in the proceedings of that court. Where a medical officer is a member of a court of inquiry, such member may take part in the proceedings of that court notwithstanding any absence, but shall take part following any absence only for the purpose of advising the other members on any medical question or matter.

(3) A medical officer who is a member of a court of inquiry may be excused by the president from attendance at any part of the proceedings of the court of inquiry where the full-time attendance of such medical officer would be impracticable or unreasonable.

Procedure at court of inquiry

58. (1) The members of a court of inquiry shall not be sworn.

(2) Evidence shall not be taken on oath unless the convening authority has so directed or the court has been convened under section 174.

(3) Where the evidence is to be taken on oath the witnesses shall be sworn by the president or one of the other members of the court in the same manner and with the same oath as in the case of witnesses at a court-martial, and every member of a court of inquiry is hereby authorised to administer oaths for that purpose.

(4) The evidence of the witnesses shall be taken down in writing by the president or any other member or by a shorthand writer or recorded by another person authorised to be present to make a record of the proceedings before the court.

(5) Documents and articles produced and handed into court as evidence shall be lettered alphabetically in the order in which they are handed in, signed by the president and attached to the proceedings. Where any such document or article cannot be conveniently lettered it shall be labelled or otherwise identified and forwarded with the proceedings.

(6) It is the duty of the court to put such questions to a witness as it may consider necessary for the purpose of testing the truth or accuracy of any evidence he or she has given and otherwise for eliciting the truth. The court should not normally conclude its sittings until all available witnesses have been examined, all relevant documents and articles produced and the fullest possible investigation made into the matter which is the subject of the inquiry.

(7) When assembled, a court of inquiry shall normally sit from day to day. It may, however, adjourn from time to time and from place to place as may be necessary.

Procedure where reputation is adversely affected

59. (1) Whenever any inquiry affects adversely the reputation of any person, such person must be given notice of the matters (including allegations, documents and evidence) so affecting his or her reputation and full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement or giving any evidence which he or she may wish to make or give and of cross-examining any witness whose evidence, in his or her opinion, adversely affects his or her reputation and of producing any witnesses in defence of his or her reputation.

(2) Whenever it appears probable that the reputation of a person may be affected adversely as the result of a court of inquiry, the convening authority shall take all necessary steps to ensure that such person is given the notice required by, and afforded a full opportunity of availing himself or herself of his or her rights under, sub-rule (1). The responsibility for ensuring that such opportunity is in fact afforded to such person shall rest upon the president of the court.

(3) If during the sittings of the court the reputation of any person is affected adversely by any evidence tendered to the court, the president shall immediately arrange that such person is given notice of that evidence and a full opportunity is afforded to such person to avail himself or herself of his or her rights under

sub-rule (1) and shall, where necessary, adjourn the court for the purpose of securing the attendance of such person or for affording to him or her his or her said rights.

Signature of proceedings or findings

60. The proceedings or findings (if findings have been required) shall be dated and signed by the members of a court of inquiry. If the members are unable to concur in any finding, then any dissenting member may make and sign a separate finding and, in such event, such dissenting member shall not be required to sign the majority finding and such separate finding shall be submitted to the convening authority with the proceedings.

Transmission of proceedings

61. (1) The proceedings of a court of inquiry, together with the findings or declaration (if any) and the exhibits, shall be forwarded by the president of the court to the convening authority within such time as may have been specified by that authority.

(2) So many copies of the proceedings, exhibits, findings or declaration as may be required by the convening authority shall also be forwarded by the president of the court to that authority within such time as may have been specified by him or her.

Re-assembly

62. A court of inquiry may be re-assembled by the convening authority as often as he or she may direct for the purpose of taking further evidence (if necessary) and of reviewing its findings or declaration (if any) or of making a new or further finding or declaration.

When proceedings of court of inquiry admissible in evidence

63. The proceedings of a court of inquiry and any confession, statement or answer to any question made or given at a court of inquiry shall not be admissible in evidence against any person subject to military law, nor shall any evidence respecting the proceedings of a court of inquiry be given against any such person except upon his or her trial in respect of an offence under sections 162 or 169 for committing the civil offence of perjury.

Findings not admissible in evidence

64. A finding of a court of inquiry shall not be admissible in evidence, nor shall any question be asked of any witness in relation thereto.

When copy of proceedings and findings to be furnished

65. (1) A copy of the proceedings and findings of a court of inquiry delivered to a person whose trial by court-martial has been ordered under section 181 shall be delivered to such person free of charge.

(2) A person subject to military law shall be entitled to a copy of the proceedings and findings of a court of inquiry on request by him or her where:—

- (a) he or she is to be tried by court-martial (except as provided in sub-rule (1)) in respect of any matter which is the subject of a finding of such court; or
- (b) his or her reputation is, in the opinion of the convening authority, adversely affected by anything in the proceedings or findings of such court.

Absence without leave — additional matters

66. (1) A court of inquiry under section 174 shall examine all witnesses who intend to come forward on behalf of the absentee.

(2) If the court is satisfied that the person has absented himself the declaration required to be made by the court shall be in Form 23.

Boards

67. (1) Subject to rule 69, a Board appointed by a convening authority shall examine and, if so directed, report to the convening authority upon any service subject referred to them by a convening authority.

(2) A Board shall not be convened for any purpose which involves a point of discipline.

Convening authorities for Boards

68. A Board may be convened by any of the authorities mentioned in rule 49 or by any of the following:—

- (a) a Director of a Corps or Service;
- (b) the Director, Defence Forces Training;
- (c) the Director of Intelligence;
- (d) the Commandant, Military College;
- (e) the Commandant, Combat Support College;
- (f) the Commandant, Combat Services Support College;
- (g) the Director, Defence Forces School of Music;
- (h) the Provost Marshal.

Composition of Board

69. A Board may be composed of any number of members but in no case shall the board be composed of less than two members.

Procedure of board

70. Boards shall, as far as may be convenient and practicable, follow the rules for courts of inquiry.

Part 10 — Prescription and Declarations of Prescribed Officers, Prescribed Authorities and Prescribed Persons for the Purposes of Part V (Except Chapters IV and X)

Prescribed officer

71. Each of the officers specified in column 2 of the table to this rule is hereby declared to be a prescribed officer for the purpose of the section or subsection, as the case may be, of the Act specified in column 1 of that table opposite the mention of each such officer.

Column 1	Column 2
Section 121(b)	The officer in immediate command of that portion of the Defence Forces which the person is accompanying or to which he or she is attached.
Sections 229(3), 229(4) and 229(5)	(i) The Deputy Chief of Staff (Support). (ii) Any General or Flag Officer. (iii) The commanding officer of the military prisoner or man under sentence of detention.
Section 229(6)	Any General or Flag Officer
Section 232	The Deputy Chief of Staff (Support).
Section 250	The Court-Martial Administrator.

Prescribed authority

72. The Minister, the Deputy Chief of Staff (Support), any General or Flag Officer and the commanding officer of a military prisoner or personnel under sentence of detention, as the case may be, is each hereby declared to be a prescribed authority for the purpose of section 230.

Prescribed person

73. The military judge presiding and the Court-Martial Administrator are each hereby declared to be a prescribed person for the purposes of sections 199 and 200.

Part 11 — Miscellaneous

Service or delivery of documents

74. (1) Any document required under these Rules to be transmitted, sent or given to, or served upon, another party or person may be validly transmitted sent, given or served:—

- (a) by delivering it to that party or person;
- (b) by leaving it at, or by sending it by registered prepaid post addressed to that party or person to, the place where he or she is stationed or his or her last known place of abode or, in a case in which an address for service has been furnished by that party or person, that address;
- (c) by transmitting it by fax to a fax number which that party or person has provided to the party sending or delivering the document or by

transmitting it by electronic mail to an electronic mail address which that party or person has provided to the party sending or delivering the document, provided that the sender's fax machine generates a message confirming successful transmission of the total number of pages of the document or the sender's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail comprising or containing the document.

(2) Where a person upon whom service is to be effected is a prisoner or is detained in a place of detention, service upon the governor, director or other person in charge of the prison, military barrack or place of detention shall, unless an authorised officer, commanding officer or court-martial otherwise decides, be deemed good service upon such prisoner or person so detained.

(3) Unless the context otherwise requires, where under these Rules any document or notice is to be served on an accused, it may be served by sending it to the commanding officer of the accused.

(4) Where a document or notice is received by the commanding officer in accordance with sub-rule (3), the commanding officer or a person on his or her behalf shall serve it on the accused as soon as is practicable.

Revocation and saver

75. (1) The Rules set out in the First Schedule are hereby revoked.

(2) Any court-martial, proceeding or thing held, done or commenced under the Rules revoked by sub-rule (1) shall be as valid and may be completed and carried into effect as if such court-martial, proceeding or thing held, done or commenced had been held, done or commenced under these Rules.

Delay report

76. Where a person subject to military law (not on active service) is detained in service custody for a period of 10 days without having his or her case summarily disposed of or without a prosecution file being forwarded to the Director in accordance with rule 18, the commanding officer or other officer who should cause the summary or abstract of evidence to be taken or prepared, shall promptly report to the Director on the steps taken in the case and on the necessity for continued custody. A similar report shall be forwarded every 10 days until a prosecution file is forwarded to the Director or the person is released from custody. The reports required by this rule shall be in Form 24.

Where no rule provided

77. In any case not provided for by the Act or these Rules such course shall be adopted as appears best calculated to do justice.

Exercise of powers vested in holder of military office

78. Any power or jurisdiction given to, and any act or thing to be done by, to or before any person holding any military office for the purpose of these Rules, may be exercised by, or done by, to or before any other person for the time being authorised in that behalf according to the custom of the service.

Forms

79. The Forms in the Second Schedule should be followed in all cases in which they are applicable.

First Schedule — instruments repealed

S. I. No.	TITLE
243 of 1954	Rules of Procedure (Defence Forces) 1954.
58 of 1955	Rules of Procedure (Defence Forces) 1954 (Amendment) Rules.
22 of 1983	Rules of Procedure (Defence Forces) 1983.
72 of 1983	Rules of Procedure (Defence Forces) 1983.
202 of 1983	Rules of Procedure (No. 3) (Defence Forces) 1983.
245 of 1987	Rules of Procedure (Defence Forces) 1987.
27 of 1991	Rules of Procedure (Defence Forces) 1991.
661 of 2007	Rules of Procedure (Defence Forces)(Form of Oath of Military Judge) 2007.

Second Schedule — Forms

Form 1

Register Number:

DEFENCE ACT 1954, Section 187A
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 7(2)

NOTICE OF TIME AND PLACE FIXED FOR HEARING OF
APPLICATION OR APPEAL TO THE SUMMARY COURT-MARTIAL

Director of Military Prosecutions

Prosecutor

No. Rank.....

Name Unit.....

*Person charged /*Accused

TAKE NOTICE THAT

the appeal of the above-named person
the application of *the above-named accused *the Director of Military Prosecutions for.....

has been fixed to be heard by the Summary Court-Martial sitting at
on the day of20... athours.

Dated thisday of.....20...

Signed _____
Court-Martial Administrator

To.....
of.....*Person charged /*Accused
To.....
Commanding Officer of the *Person charged /*Accused
To the Director of Military Prosecutions

To the Military Judge

*Delete where inapplicable

Register Number:

DEFENCE ACT 1954, Section 178E
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 8(2)

NOTICE OF ABANDONMENT OF APPEAL

No Rank.....

Name Unit..... Appellant

Director of Military Prosecutions Respondent

WHEREAS the above-named appellant, of

gave notice on theday of 20... that *he or *she would appeal at the sitting of the Summary Court-Martial to be held aton the ...day of20... at hours from the *determination /*punishment/* determination and punishment given on the ... day of20..... by as *Authorised Officer / *Commanding Officer at..... whereby (*give details of determination and/or punishment*):

TAKE NOTICE that the above-named appellant *hereby wholly abandons *his*her appeal

*hereby abandons that part of the appeal relating to (*give details*)

Dated this..... day of..... 20...

Signed.....

*Appellant/*Solicitor for Appellant

To Court-Martial Administrator

To: Director of Military Prosecutions

To:
Commanding Officer

*To:.....
Authorised Officer

Received by *Commanding Officer/*Authorised Officer on the.....day of.....20.....

Signed.....

Name.....Rank.....

Appointment.....Date.....

*Delete where inapplicable

Form 3

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 16

APPLICATION FOR DIRECTIONS OF DIRECTOR OF MILITARY
PROSECUTIONS IN CASE OF A REMAND FOR COURT-MARTIAL

No.....

Rank.....

Name..... Unit Accused

To: Director of Military Prosecutions

I submit.....charge(s) against the above-named who has

*been remanded for trial by court-martial under Chapter IV of Part V of the Act, by my order

*elected to be tried by court-martial under *section 177B(2) or *section 178B(2) of the Act

and apply for your directions in connection with such trial by court-martial.

The case was investigated by.....

*A Court of Inquiry was held on.....

President.....

Members.....

The accused is now under.....arrest at.....

The original charge-sheet is attached.

The prosecution file within the meaning of the Rules of Procedure is (not) attached.

Dated the..... of20...

Signed: _____

*Investigating Officer *Authorised Officer *Commanding Officer

Name.....Rank.....

AppointmentDate:.....

*Delete where inapplicable

Form 4

DEFENCE ACT 1954, Sections 177 and 178
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 17(1)
APPLICATION FOR CONSENT OF DIRECTOR OF MILITARY
PROSECUTIONS TO DISMISSAL OF CHARGE

No..... Rank.....
Name..... Unit Accused

To: Director of Military Prosecutions

A charge of has been made against the above-named. The
summary charge-sheet is attached.

This charge is a *Part II scheduled offence *non-scheduled offence.

The case is being investigated by the undersigned.

The prosecution file within the meaning of the Rules of Procedure is (*not)
attached.

I consider that the charge should not be proceeded with and I propose, subject
to your consent, to dismiss the charge. My reasons for so considering are:

and I hereby apply for your consent to the dismissal of the charge under Chapter
IV of Part V of the Act.

Dated the.....day of.....20....

Signed: _____

*Investigating Officer *Commanding Officer

Name.....Rank
Appointment Date:

*Delete where inapplicable

Form 5

DEFENCE ACT 1954, Sections 177(2)(a)(ii)(III) and 178(2)(b)
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 17(2)

SCHEDULED OFFENCE, PART II

APPLICATION FOR CONSENT OF DIRECTOR OF MILITARY
PROSECUTIONS TO REFERRAL OF A CHARGE FOR SUMMARY
INVESTIGATION BY AN AUTHORISED OFFICER OR TO SUMMARY
DISPOSAL OF A CHARGE BY A COMMANDING OFFICER

No..... Rank.....
Name..... Unit..... Accused

To: Director of Military Prosecutions

A charge of has been made against the above-named. The
summary charge-sheet is attached.

The case is being investigated by the undersigned.

The prosecution file within the meaning of the Rules of Procedure is (not*)
attached.

*I consider that the charge should be referred for summary investigation by an
authorised officer and I propose, subject to your consent, to so refer the charge.

*I consider that the charge should be disposed of summarily and I propose,
subject to your consent, to dispose of the charge summarily.

My reasons for so considering are:

and I hereby apply for your consent to

*refer the charge for summary investigation by an authorised officer

*dispose of the charge summarily

under Chapter IV of Part V of the Act.

Dated the.....day of.....20....

Signed: _____*Investigating Officer *Commanding
Officer

Name.....Rank.....

Appointment

*Delete where inapplicable

Form 6

DEFENCE ACT 1954, Section 187
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 20

DIRECTION TO CONVENE COURT-MARTIAL

No..... Rank
Name..... UnitAccused

To: Court-Martial Administrator

The above-named accused is charged that

I direct that a *General /*Limited Court-Martial be assembled for his or her trial.

The case was investigated by.....

*A Court of Inquiry was held on.....

President.....

Members.....

The accused is *not now in *closed service/open service custody at.....

I enclose the following documents:—

1. Court-martial Charge Sheet.
2. Summary or Abstract of Evidence.
3. List of Witnesses for the Prosecution and Defence (with their present stations).
4. List of exhibits.
5. Appointment of prosecutor.

Dated the.....day of.....20....

Signed: _____

Director of Military Prosecutions

*Delete where inapplicable

Form 7

DEFENCE ACT 1954, Section 187A
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 21(1)

DIRECTION TO REFER CHARGE TO SUMMARY COURT-MARTIAL

No..... Rank.....
Name..... UnitAccused

To: Court-Martial Administrator

The above-named accused is charged that

I direct that he or she be tried before the summary court-martial at the earliest available opportunity

The case was investigated by.....

*A Court of Inquiry was held on.....

President.....

Members.....

The accused is *not now in *closed service/open service custody at.....

I enclose the following documents:—

1. Court-martial Charge Sheet.
2. Summary or Abstract of Evidence.
3. List of Witnesses for the Prosecution and Defence (with their present stations).
4. List of exhibits.
5. Appointment of prosecutor.

Dated the.....day of.....20....

Signed: _____

Director of Military Prosecutions

*Delete where inapplicable

Register Number:

DEFENCE ACT 1954, Section 187A
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 21(2)

SUMMONS TO SUMMARY COURT-MARTIAL TO ANSWER CHARGE

No..... Rank.....
Name..... UnitAccused

To: The above-named accused at.....

You are charged that

THIS IS TO REQUIRE YOU to appear before the summary court-martial sitting atathours on theday of20.... to answer the said charge.

Dated the.....day of.....20....

Signed: _____

Court-Martial Administrator

Form 9

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 26(4)

CERTIFICATE OF CONFORMITY

WITH THE PROVISIONS OF RULE 26

No..... Rank.....
Name..... Unit Accused

Question to accused. Do you understand the nature of the charge(s) and the Summary or Abstract of evidence delivered to you?

A

Question to accused. Do you wish to interview and instruct for the purpose of your defence:

- (a) A solicitor, if so, give his or her name and address?
- (b) An officer as defending officer, if so, give his or her name, rank and Unit?
- (c) Do you wish the Courts-Martial Administrator to assign an officer as defending officer to defend you?

A

Question to accused. Do you wish any military witnesses to be summoned in your defence, if so, give their names, ranks and Units?

A

Question to accused. Do you wish any civilian witnesses to be summoned in your defence, if so, give their names and addresses?

A

Question to accused Do you understand that you may be required to defray the cost (if any) of the attendance of the witnesses summoned in your defence?

A

Signature of accused

I certify that on the..... day of..... 20...., I served the above-named accused with a copy of the charge-sheet(s) and summary or abstract of evidence and at the same time I put to him or her the above questions and received the answers recorded above. I also explained to him or her his or her rights under the Rules of Procedure as to preparing his or her defence and being represented at his or her trial. I also informed the accused that he or she must be ready to stand his or her trial on the..... day of..... 20....or such later date as may be notified to him or her by the Court-Martial Administrator.

Signed _____

Relevant officer within the meaning of rule 26

Name.....Rank.....

Appointment.....Date.....

Form 10

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 28

ORDER CONVENING COURT-MARTIAL

On the direction of the Director, I,, Court-Martial Administrator, appointed pursuant to Warrant of the Judge Advocate General dated the.....day of 20...., DO HEREBY CONVENE aCourt-Martial consisting of a military judge and a court-martial board and any persons in waiting specified below

AND I HEREBY ORDER the court-martial board and the persons in waiting to assemble atathours on theday of20... and thereafter at such time(s) and place(s) as may be directed by the military judge presiding for the purpose of trying the person(s) named below (and such other person(s) as may be brought before them).

.....

are appointed Members of the court-martial board

.....

are appointed persons in waiting for the court-martial board

.....Military Judge will preside.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to the Court-Martial Administrator at Defence Forces Headquarters, Department of Defence.

Signed at.....

This.....day of20....

Court-Martial Administrator

Person(s) to be tried:

No.....Rank.....

Name.....Unit.....

*Delete where inapplicable

DEFENCE ACT 1954, Section 193
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 29

ORDER FOR DISSOLUTION OF COURT-MARTIAL

In accordance with Section 193 of the Defence Act 1954 I hereby order the DISSOLUTION of the *GENERAL/*LIMITED COURT-MARTIAL assembled on the day of20... at for the following reason(s):

Dated the.....day of.....20....

Signed _____
Court-Martial Administrator

To Director of Military Prosecutions

To Military Judge

To Members of Court-Martial Board and Persons in Waiting

To.....Accused
No.....Rank.....
Name.....Unit.....

To.....Commanding Officer of accused
Name.....Rank.....
Appointment.....

*Delete where inapplicable

Form 12

Register Number:

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 30(1)

FORM AND CERTIFICATE OF PROMULGATION OF FINDINGS AND
SENTENCE OF COURT-MARTIAL

To the Accused:

No.....Rank.....
Name.....Unit.....

At your trial

*by General Court-martial held at

*by Limited Court-martial held at

*before the Summary Court-Martial exercising its original jurisdiction
at.....on the..... day of..... 20..... you were charged with
the offence/offences set out in attached charge-sheet/sheets.

The Court-Martial found you:

(Here set out finding of the Court-Martial on the charges.)

The Court-Martial sentenced you to:

(Here set out sentence of the Court-Martial.)

Dated thisday of.....20.....

Signed _____

Court-Martial Administrator

And to:

Commanding Officer of the above-named

This form of promulgation to be served by the said Commanding Officer on the
above-named and a copy of this form of promulgation with the certificate of
service below completed to be returned to the Court-Martial Administrator by
the said Commanding Officer.

CERTIFICATE OF SERVICE

I, being the Commanding Officer of the above-named certify that I duly served
the above form of promulgation on the above-named by handing him/her the
original of same at hours on theday of20... at

Signed _____

Commanding Officer

Promulgation in Unit Routine Orders: Reference: Date:

*Delete where inapplicable

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 31(1)

FORM AND CERTIFICATE OF PROMULGATION OF DECISION OF
SUMMARY COURT-MARTIAL IN THE CASE OF AN APPEAL

To the Appellant:

No..... Rank.....
Name..... Unit.....

At your appeal against the determination made and punishment awarded by an *authorised officer / * commanding officer in respect of the charge(s) of the offence/offences set out in attached charge-sheet/sheets before the Summary Court-Martial, exercising its appellate jurisdiction sitting at.....on the..... day of..... 20...

The Summary Court-Martial *quashed /*confirmed the determination made

The Summary Court-Martial *quashed /*confirmed the punishment awarded, namely,...../*substituted for the punishment awarded a punishment of

Signed.....Date.....

Court-Martial Administrator

And to:
Commanding Officer of the above-named

This form of promulgation to be served by the said Commanding Officer on the above-named and a copy of this form of promulgation with the certificate of service below completed to be returned to the Court-Martial Administrator by the said Commanding Officer.

CERTIFICATE OF SERVICE

I, being the Commanding Officer of the above-named certify that I duly served the above form of promulgation on the above-named by handing him/her the original of same at hours on theday of20... at
Promulgation in Unit Routine Orders: Reference:.....
Date:.....

Signed _____
Commanding Officer

*Delete where inapplicable

Form 14

DEFENCE ACT 1954, Section 206
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 34(1)
ORDER FIXING EFFECTIVE DATE OF CERTAIN SENTENCES

To the Officer Commanding.....(Unit) at.....

WHEREAS

(Number)..... (Rank).....(Name).....(Unit).....

was tried by Court-Martial on the.....day of.....20.... and was sentenced by
the said Court-Martial to.....

AND WHEREAS promulgation thereof was duly had by Publication in the
Unit Routine Orders in accordance with the provisions of rule 30 of the Rules
of Procedure (Defence Forces) 2008, on the.....day of.....20....

NOW THEREFORE I, Deputy Chief of Staff (Support) of the Defence Forces,
in exercise of the powers conferred upon me by Section 206 of the Defence Act
1954, as amended, and by rule 34 of the Rules of Procedure (Defence Forces)
2008, and of all other powers me hereunto enabling

DO HEREBY FIX the.....day of.....20....
for and as the date on and from which the said sentence shall take effect.

Signed at.....thisday of.....20....

(Name)

(Rank)

Deputy Chief of Staff (Support) of the Defence Forces

- Copy:** GOC (Brigade/Formation)
- OIC Enlisted Personnel Management Office
- Legal Officer (Brigade/Formation)
- OIC Records and Data Management (Brigade/Formation)

DEFENCE ACT 1954, PART V

RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 35

FORMS OF ORDERS FOR COMMITTAL, TRANSFER OR RELEASE

Part A — Committal on conviction and awaiting sentence

No.....Rank.....

Name.....Unit.....

To the Governor or Officer in charge of the Detention Barrack at.....

WHEREAS the above-named has been convicted of an offence offollowing his/her trial by court-martial and

WHEREAS the court-martial has remanded him/ her in close service custody awaiting promulgation of sentence

NOW, therefore, I, the undersigned, being the Commanding Officer of the said (No)..... (Rank)..... (Name)....., do hereby, in pursuance of the Defence Act 1954 and of all other Acts and powers enabling me in this behalf, order you to receive him/her into your custody for safe custody, and to produce him/her before the court-martial at such time and place as you will be advised for sentencing, there to be further dealt with in accordance with law, and for so doing this shall be your warrant.

Signed at.....this..... day of..... 20...

(Name)

(Rank)

(Appointment)

Commanding Officer of the above-named

Part B — Committal while awaiting trial by court-martial

No..... Rank.....

Name Unit.....

To the Governor or Officer in charge of the Detention Barrack at.....

WHEREAS the above-named is in close service custody awaiting trial by court-martial

NOW, therefore, I, the undersigned, being the Commanding Officer of the said (No.)..... (Rank)..... (Name)....., do hereby, in pursuance of the Defence Act 1954 and of all other Acts and powers enabling me in this behalf, order you to receive him/ her into your custody for safe custody, and to produce him/ her before the court-martial at such time and place as you will be advised for trial, there to be further dealt with in accordance with law, and for so doing this shall be your warrant.

Signed at.....this..... day of..... 20...

(Name)

(Rank)

(Appointment)

Commanding Officer of the above-named

Part C — Committal to temporary civil custody in prison, Section 231(2), Defence Act 1954

No..... Rank.....

Name.....Unit.....

To the Governor or Officer in charge ofPrison at

WHEREAS (No.) (Rank)

(Name) (Unit).....

a person subject to military law as a man is now in service custody

NOW therefore, I, the Commanding Officer of the said (No.)..... (Rank)..... (Name) (Unit) do hereby, in pursuance of the Defence Act 1954 and of all other Acts and powers enabling me in this behalf, order you to receive the said (No.)(Rank) (Name)..... into your custody and detain him/her until you shall receive a further order from me, but not longer than eight days, and for so doing this shall be your warrant.

.....

(Name)

(Rank)

(Appointment)

Commanding Officer of the said person

Part D — Order for Transfer from one prison (or detention barrack) to another

To the Governor or Officer in charge ofPrison (or Detention Barrack) at.....

WHEREAS (No.)..... (Rank)

(Name) (Unit)

a person subject to military law, is now in your custody undergoing sentence of imprisonment passed by court-martial

I, the undersigned, the.....do hereby, in pursuance of the Defence Act 1954 and of all other Acts and powers enabling me in this behalf, order you to deliver the said (No.).... (Rank)..... (Name).....to the officer or non-commissioned officer presenting this order

AND I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said (No.).... (Rank)..... (Name).....may be delivered, to keep him/her in service custody and convey him/her in service custody in such manner as may be directed by the military authority to.....prison (or detention barracks) at.....there to undergo the remainder of his/her sentence, and for so doing this shall be your warrant.

Signed at this day of 20...

(Name)

(Rank)

(Appointment)

Commanding Officer of the military prisoner, or other competent authority for the purposes of Section 229(5) of the Defence Act 1954.

Part E — Order for transfer of a man undergoing detention from one detention barrack to another

To the Governor or Officer in Charge of the Detention Barrack at

WHEREAS(No.)..... (Rank).....

(Name)..... (Unit).....

is now in your custody undergoing sentence of detention awarded bycourt-martial

AND I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said (No.).... (Rank)..... (Name)..... may be delivered, to keep him/her in service custody and convey him/her in service custody in such manner as may be directed by the military authority, to the detention barrack at.....there to undergo the remainder of his/her sentence, and for so doing this shall be sufficient warrant.

Signed at this day of 20...

(Name)

(Rank)

(Appointment)

Commanding Officer of the man under sentence of detention, or other Competent Authority for the purposes of Section 229(5) of the Defence Act 1954.

Part F — Order for delivery into service custody of a person undergoing imprisonment pursuant to sentence of Court-martial

To the Governor or Officer in Charge ofPrison (or Detention Barrack) at...

WHEREAS (No.)..... (Rank).....
(Name) (Unit).....

a person subject to military law, is now in your custody undergoing sentence of imprisonment passed by court-martial

I, the undersigned, the.....do hereby, in pursuance of the Defence Act 1954 and of all other Acts and powers enabling me in this behalf, order you to deliver the said (No.).....(Rank) (Name).....to the officer or non-commissioned officer presenting this order

AND I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said (No.).... (Rank)..... (Name).....may be delivered, to keep him/her in service custody and bring him/her tothere to*

.....
and then to return him/her to the above-named prison (or detention barrack), or to such other prison (or detention barrack) as may be determined by the competent authority, and to detain him/her in service custody until he/she is so returned or is released in due course of law, and for so doing this shall be your warrant.

Signed at this day of 20...

(Name)

(Rank)

(Appointment)

Commanding Officer of the military prisoner, or other competent authority for the purposes of Section 229(5) of the Defence Act 1954.

* State the purpose for which the man is required.

If the Prison (or Detention Barrack) to which he/she is returned is altered

I, the undersigned,

the do hereby, in pursuance of the Defence Act 1954, and of all other Acts and powers enabling me in this behalf, order that he/she be forthwith returned in service custody to prison (or detention barrack) at there to undergo the remainder of his/her sentence.

Signed at this day of 20...

(Name)

(Rank)

(Appointment)

Commanding Officer of the military prisoner, or other competent authority for the purposes of Sections 229(4) and (5) of the Defence Act 1954.

Part G — Order for delivery into service custody of a man undergoing detention

To the Governor or Officer in charge of the Detention Barrack at.....

WHEREAS (No.)..... (Rank).....

(Name) (Unit).....

is now in your custody undergoing sentence of detention awarded bycourt-martial

I, the undersigned, the.....do hereby, in pursuance of the Defence Act 1954 and of all other Acts and powers enabling me in this behalf, order you to deliver the said (No.).... (Rank)..... (Name).....to the officer or non-commissioned officer presenting this order

AND I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said (No.) (Rank).....(Name) may be delivered, to keep him/her in service custody and bring him/her to.....there to *.....and then to return him/her to the above-named detention barrack, or to such other detention barrack as may be determined by the competent authority, and to detain him/her in service custody until he/she is so returned, or is released in due course of law, and for so doing this shall be your warrant.

Signed at this day of 20...

(Name)

(Rank)

(Appointment)

Commanding Officer of the military prisoner, or other competent authority for the purposes of Section 229(5) of the Defence Act 1954

* State the purpose for which the man is required.

If the Detention Barrack to which he/she is returned is altered

I, the undersigned, the....., do hereby, in pursuance of the Defence Act 1954 and of all other Acts and powers enabling me in this behalf, order that the said (No.) (Rank) (Name) be forthwith returned in service custody to the detention barracks at..... there to undergo the remainder of his/her sentence.

Signed at this day of 20.....

(Name)

(Rank)

(Appointment)

Commanding Officer of the man under sentence of detention, or other Competent Authority for the purposes of Sections 229(4) and (5) of the Defence Act 1954.

Part H — Order for release of Military Prisoner or man undergoing sentence of detention

To the Governor or Officer in charge of the Prison (or Detention Barrack) at.....

WHEREAS (No.)..... (Rank).....

(Name) (Unit).....

is now in your custody undergoing sentence of
*imprisonment /*detention awarded bycourt-martial

And whereas the said sentence was on theday of.....20..., remitted by.....to.....

NOW, therefore, I, the undersigned, the in pursuance of the Defence Act 1954 and of all other Acts and powers enabling me in this behalf, do hereby order and require you to release the said (No.)..... (Rank).....(Name) (Unit).....

Signed at this day of 20...

(Name)

(Rank)

(Appointment)

Competent Authority for the purposes of Section 229(6) of the Defence Act 1954.

*Delete where inapplicable

Part I — Order for release in case of confinement in detention barrack for safe custody while awaiting trial by, or sentence of, court-martial

To the Governor or Officer in charge of the Detention Barrack at

You are hereby required to deliver over (No.).....(Rank)..... (Name).....of the..... (Unit), now in your custody for safe custody, pursuant to committal by his/her commanding officer, to the non-commissioned officer of the escort herewith attending to receive him/her.

Signed at this day of 20...

(Name)

(Rank)

(Appointment)

Commanding Officer of the above-named

DEFENCE ACT 1954, Section 212A(12)
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 38

NOTICE OF APPLICATION TO REVOKE SUSPENSION OF
SENTENCE

Director of Military Prosecutions

Prosecutor

No..... Rank
Name..... UnitAccused

Director of Military Prosecutions Applicant

WHEREAS an order was made by theCourt-Martial under Section 212A(2) of the Defence Act 1954 on the day of20... suspending *the whole of /*part of a sentence of imprisonment / detention imposed on you, the above-named offender of..... and you were bound by a recognisance entered into by you under the said Section, to comply with the conditions of, or imposed in relation to that order, namely

AND WHEREAS the applicant has applied under Section 212A(11)(b) of the above-mentioned Act to fix a date for the hearing of an application for an order revoking the order made by the Court-Martial suspending *the whole of /*part of a sentence of imprisonment / detention imposed on you

AND WHEREAS THECOURT-MARTIAL has fixed the date hereinafter stated for the hearing of that application

TAKE NOTICE THAT you the offender are required to appear before aCourt-Martial aton the day of20... at hours for the hearing of an application for an order revoking the order suspending

*the whole of the sentence
*part of the sentence
imposed on you on theday of.....20...as aforesaid.

Dated thisday of.....20...

Signed

Court-Martial Administrator

To.....Accused

To.....Commanding Officer of the above-named offender

Name.....Rank.....

Appointment

*Delete where inapplicable

**To be endorsed by the court-martial if the person is scheduled to be in prison
or a detention barrack on the return date**

To the Governor or Officer in Charge of*prison/*detention
barrack

THIS IS TO COMMAND YOU the Governor or Officer in Charge of
.....*prison/*detention barrack to deliver the above-named
offender..... before aCourt-Martial at on the
.....day of.....20...at.....hours to be dealt with according to law.

Dated thisday of.....20...

Signed _____
Military Judge

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 42(1)(b)

LIST OF WITNESSES

Director of Military Prosecutions

Prosecutor

No..... Rank.....

Name Unit Person charged

WHEREAS you, the above-named person, were on the ... day of20....
charged with the offence of as set out on the attached copy
Charge Sheet

TAKE NOTE that the prosecution intends to call the following witnesses at
your trial by court-martial, should you be remanded for such trial:

(List of witnesses)

Dated the ... day of20....

Signed: _____

Director of Military Prosecutions

Form 18

Register Number:

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 42(1)(c)

STATEMENT OF EVIDENCE TO BE GIVEN BY WITNESS

Director of Military Prosecutions

Prosecutor

No..... Rank.....

Name.....Unit.....Person charged

Name.....ofwitness
giving evidence on behalf of

The above-named witness has made the following statement of the evidence to be given by him or her at the preliminary investigation of the above-named person who, on the ... day of20..., was charged with the offence of as set out on the attached copy Charge Sheet, or at the trial by court-martial of such person, should he or she be remanded for such trial.

(Insert witness statement)

Dated the ... day of20....

Signed: _____
Witness

Signed: _____
Director of Military Prosecutions

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 42(1)(d)

LIST OF EXHIBITS

Director of Military Prosecutions

Prosecutor

No..... Rank
Name.....Unit Person charged

WHEREAS you, the above-named person, were on the ... day of20....
charged with the offence of as set out on the attached copy
Charge Sheet

TAKE NOTE that the prosecution intends to exhibit the following items at your
trial by court-martial, should you be remanded for such trial:

(List of exhibits)

Dated the ... day of20....

Signed: _____
Director of Military Prosecutions

Form 20

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 42(8)

PRELIMINARY INVESTIGATION

CERTIFICATE OF CONFORMITY WITH THE PROVISIONS OF RULE 42
(Delivery of documents to a person charged with an offence for which a person
would be required on conviction to be sentenced to imprisonment for life)

No..... Rank.....
Name.....Unit Person charged

Question to person charged. Do you understand the nature of the charge/charge
preferred against you?

A

Question to person charged. Do you wish to interview and instruct for the pur-
pose of your defence:

- (a) A solicitor, if so, give his/her name and address?
- (b) An officer as defending officer, if so, give his/her name, rank and Unit?
- (c) Do you wish the Court-Martial Administrator to assign an officer as
defending officer to defend you?

A

Question to person charged. Do you wish any military witnesses to be sum-
moned in your defence, if so, give their names, ranks and Units?

A

Question to person charged. Do you wish any civilian witnesses to be summoned
in your to defence, if so, give their names and addresses?

A

Signature of person charged

I certify that on the..... day of..... 20..., I
served the above-named person charged with copies of the documents referred

to in rule 42(1) of the Rules of Procedure and at the same time I put to him* /her* the above questions and received the answers recorded above. I also explained to him* /her* his* /her* rights under the Rules of Procedure as to preparing his* /her* defence and being represented at the preliminary investigation. I also informed the above-named that he* /she* must be ready for the preliminary investigation of the charge(s) on the day of..... 20.... or such later date as may be notified to him* /her* by the investigating officer.

Signed: _____ Date.....

Relevant officer within the meaning of rule 42

Name.....Rank.....

Appointment.....

*delete where inapplicable

Form 21

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 43(3)(e)(ii)

PRELIMINARY INVESTIGATION

STATEMENT OF PERSON CHARGED WITH AN OFFENCE FOR WHICH A
PERSON WOULD BE REQUIRED ON CONVICTION TO BE SENTENCED TO
IMPRISONMENT FOR LIFE

Director of Military Prosecutions

Prosecutor

No..... Rank
Name.....Unit Person charged

WHEREAS the above-named appeared before me at.....on theday
of 20.... for a preliminary investigation into the charge that he/she* did on
the day of 20... commit the offence of, being an offence
for which a person would be required on conviction to be sentenced to imprisonment
for life

AND WHEREAS the above-named was cautioned in accordance with rule 43(3)(e)(i)
of the Rules of Procedure (Defence Forces) 2008

AND WHEREAS the above-named was asked whether he/she* had anything to say in
answer to the charge

the above-named made the following statement:

(Insert statement)

Dated the..... day of..... 20....

Signed: _____ Person charged
No..... Rank.....
Name..... Unit.....

Signed: _____
Commanding Officer
Name Rank.....
Appointment

*delete where inapplicable

DEFENCE ACT 1954, PART V
DEFENCE ACT 1954 (RULES OF PROCEDURE), rule 54

NOTICE TO CIVILIAN WITNESS TO ATTEND A COURT OF INQUIRY

To:of

WHEREAS a Court of Inquiry will assemble at on the
day of..... 20 .. at hours for the purpose of

You are requested to attend the sitting of the Court at the hour named above to give
evidence as to the matter under investigation, and to bring with you the following docu-
ments and articles:

Your reasonable expenses of attendance will be met.

Dated the.....day of.....20...

Signed: _____

Convening Authority

Name..... Rank.....
Appointment.....

*Delete where inapplicable

Form 23

DEFENCE ACT 1954, SECTION 174(3)(b)(ii)
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 66(2)

FORM OF DECLARATION ON ABSENCE TO BE ENTERED IN SERVICE BOOKS

Record of the Declaration of a Court of Inquiry assembled at (Station), (Camp) on the ... day of20.... for the purpose of investigating and recording the absence without leave or other sufficient cause from his/her* duty and the deficiency, if any, in the arms, ammunition, equipment, instruments, service necessaries and clothing of

No.....Rank
Name..... Unit

DECLARATION

The Court declares that

Name..... No.

Rank..... Unit.....

(if attached, add "Attached to" and unit to which attached),

absented himself/herself* without leave (or other sufficient cause) from, on the ... day of20.... at, and that he/she* is still so absent and that on the..... day of20.... (date on which inventory of kit was taken) he/she* was deficient, and that he/she* is still deficient of the following articles (Value of clothing, equipment, etc. to be stated).

Dated this.....day of.....20

_____ PRESIDENT

Name..... Rank.....
Appointment.....

_____ MEMBERS

Name..... Rank.....
Appointment.....

_____ Signature of Commanding Officer of the Absentee

Name..... Rank.....
Appointment.....

*Delete where inapplicable

DEFENCE ACT 1954, PART V
RULES OF PROCEDURE (DEFENCE FORCES) 2008, rule 76

TEN DAY DELAY REPORT

To: Director of Military Prosecutions at.....

No. Rank.....

Name..... Unit.....

Date when placed in service or civil custody.....

Offence.....

The above-named is in close/open* service custody or civil custody.

The Summary/Abstract of Evidence* has (not*) been taken (prepared*) on the.....
day of..... 20..

A prosecution file has (not*) been forwarded to the Director of Military
Prosecutions in accordance with the Rules of Procedure (Defence Forces) 2008
on..... 20..

Reasons for delay since last delay report are:

The necessity for continued custody is:

Dated the.....day of.....20..

Signed: _____

Name.....Rank.....

Appointment.....

Commanding Officer of the Accused, or other Officer who should cause the Summary
or Abstract of Evidence to be taken or prepared.

*Delete where inapplicable



GIVEN under my Official Seal,

2 July 2008

WILLIE O'DEA.
Minister for Defence.

EXPLANATORY NOTE

(This is not part of the Instrument and does not purport to be a legal interpretation)

These Rules set out the procedures to be followed in matters prescribed in section 240 of the Defence Act 1954.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834/37 nó 1890 213434; Fax: 01 - 6476843 nó 094 - 9378964)
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