STATUTORY INSTRUMENTS

2015 No. 1813

DEFENCE

The Summary Appeal Court (Youth Justice and Criminal Evidence Act 1999) Rules 2015

Made - - - -	*20th October 2015*
Laid before Parliament	*23rd October 2015*
Coming into force - -	*16th November 2015*

The Secretary of State, in exercise of the powers conferred by section 151 of the Armed Forces Act 2006(**1**) and sections 37(5), 38(6) and 65(1) of the Youth Justice and Criminal Evidence Act 1999(**2**), makes the following Rules:

PART 1

General

Citation and commencement

1. These Rules may be cited as the Summary Appeal Court (Youth Justice and Criminal Evidence Act 1999) Rules 2015 and shall come into force on 16th November 2015.

Application

2. These Rules apply to any proceedings before the Summary Appeal Court.

Interpretation

3.—(1) In these Rules—

"the 1999 Act" means the Youth Justice and Criminal Evidence Act 1999;

"the 2006 Act" means the Armed Forces Act 2006;

(**1**) 2006 c. 52.

(**2**) 1999 c. 23; the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) (Amendment) (No. 2) Order 2015 (S.I. 2015/1805) amends the Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083, as amended by S.I. 2015/727) so as to apply provisions of Chapters 1 to 5 of Part 2 of the 1999 Act (and sections 62, 63 and 65 so far as having effect for the purpose of those Chapters) with modifications, to proceedings before the Summary Appeal Court.

"SAC Rules" means the Armed Forces (Summary Appeal Court) Rules 2009(**3**);

"appeal proceedings" means proceedings under section 146 of the 2006 Act for the hearing of an appeal;

"appellant" means a person bringing an appeal under section 141 of the 2006 Act;

"the Director" means the Director of Service Prosecutions;

"the judge advocate" means the judge advocate specified for the proceedings under section 142(3) of the 2006 Act;

"legal representative" means a person appointed under rule 41 of the SAC Rules;

"person concerned in the proceedings" means—

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

(b) in relation to an application in any proceedings for a reporting direction under section 45A(2), or an excepting direction under section 45A(10), of the 1999 Act, a person falling within section 45A(3) of that Act;

(c) in relation to an application in any proceedings for a reporting direction under section 46(2), or an excepting direction under section 46(9), of the 1999 Act, a witness falling within section 46(1) of that Act;

"reporting direction" means, unless otherwise specified, a reporting direction under section 45A(2) or 46(2) of the 1999 Act.

(2) A reference in these Rules to proceedings has the same meaning as in Part 1 of the SAC Rules.

(3) A reference in these Rules to a party to any proceedings has the same meaning as in Part 1 of the SAC Rules.

PART 2

Restriction on cross-examination by an appellant acting in person

Application for direction prohibiting appellant from cross-examining witness in person

4.—(1) Subject to paragraph 8(a), an application by the Director for the judge advocate to give a direction under section 36 of the 1999 Act in relation to any witness must be sent to the court administration officer and at the same time a copy of the application must be sent by the applicant to every other party to the proceedings.

(2) In his application the Director must state why, in his opinion—

(a) the evidence given by the witness is likely to be diminished if cross-examination is undertaken by the appellant in person;

(b) the evidence would be improved if a direction were given under section 36(2) of the 1999 Act; and

(c) it would not be contrary to the interests of justice to give such a direction.

(3) On receipt of the application the court administration officer must refer it to the judge advocate.

(4) Where a copy of the application is received by a party to the proceedings more than 14 days before the date set for the appeal proceedings to begin, that party may make observations in writing

(**3**) S.I. 2009/1211, to which there are amendments not relevant to these Regulations.

on the application to the court administration officer, but any such observations must be made within 14 days of the receipt of the application and be copied to the other parties to the proceedings.

(5) A party to whom an application is sent in accordance with paragraph (1) who wishes to oppose the application must give his reasons for doing so to the court administration officer and the other parties to the proceedings.

(6) Those reasons must be notified—

(a) within 14 days of the date the application was served on him, if that date is more than 14 days before the date set for the appeal proceedings to begin;

(b) if the appeal proceedings have begun, in accordance with any directions issued by the judge advocate; or

(c) if neither sub-paragraph (a) nor sub-paragraph (b) applies, before the date set for the appeal proceedings to begin.

(7) Where the application made in accordance with paragraph (1) is made before the date set for the appeal proceedings to begin and—

(a) is not contested by any party to the proceedings, the judge advocate may determine the application without a hearing;

(b) is contested by a party to the proceedings, the judge advocate must direct a hearing of the application.

(8) Where the application is made after the appeal proceedings have begun—

(a) the application may be made orally; and

(b) the judge advocate may give such directions as he considers appropriate to deal with the application.

(9) Where a hearing of the application is to take place, the court administration officer must notify each party to the proceedings of the time and place of the hearing.

(10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.

(11) The court administration officer must, as soon as possible after the determination of an application made in accordance with paragraph (1), give notice of the decision and the reasons for it to all the parties to the proceedings.

(12) A person making an oral application under paragraph (8)(a) must—

(a) give reasons why the application was not made before the appeal proceedings commenced; and

(b) provide the judge advocate with the information set out in paragraph (2).

Restrictions on cross-examination of witness

5.—(1) This rule and rules 6 and 7 apply where an appellant is prevented from cross-examining a witness in person by virtue of section 35 or a direction under section 36 of the 1999 Act.

(2) The judge advocate must explain to the appellant, as early in the proceedings as is reasonably practicable, that he—

(a) is prevented from cross-examining a witness in person; and

(b) should arrange for a legal representative to act for him for the purpose of cross-examining the witness.

(3) The appellant must notify the court administration officer of the action, if any, he has taken within 7 days of the judge advocate giving his explanation, or within such other period as the judge advocate may in any particular case allow.

(4) Where he has arranged for a legal representative to act for him, the notification must include details of the name and address of the representative.

(5) The notification must be in writing.

(6) The court administration officer must notify all other parties to the proceedings of the name and address of the person, if any, appointed to act for the appellant.

(7) Where at the end of the period of 7 days or such other period as the judge advocate has allowed, the court administration officer has received no notification from the appellant, the judge advocate may grant the appellant an extension of time, whether on his own motion or on the application of the appellant.

(8) Before granting an extension of time, the judge advocate may hold a hearing at which all the parties to the proceedings may attend and be heard.

(9) Any extension of time shall be of such period as the judge advocate considers appropriate in the circumstances of the case.

(10) The decision of the judge advocate as to whether to grant the appellant an extension of time must be notified to all the parties to the proceedings by the court administration officer.

Appointment of legal representative by the judge advocate

6.—(1) Where the judge advocate decides, in accordance with section 38(4) of the 1999 Act, to appoint a legal representative, the court administration officer must notify all the parties to the proceedings of the name and address of the representative.

(2) An appointment made by the judge advocate under section 38(4) of the 1999 Act shall, except to such extent as the judge advocate may in any particular case determine, terminate at the conclusion of the cross-examination of the witness or witnesses in respect of whom a prohibition under section 35 or a direction under section 36 of the 1999 Act applies.

Appointment arranged by appellant

7.—(1) The appellant may arrange for the legal representative, appointed by the judge advocate under section 38(4) of the 1999 Act, to be appointed to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 35 or a direction under section 36 of the 1999 Act applies.

(2) Where such an appointment is made—

(a) both the appellant and the legal representative appointed must notify the court of the appointment; and

(b) the legal representative must, from the time of his appointment, act for the appellant as though the arrangement had been made under section 38(2)(a) of the 1999 Act and shall cease to be the representative of the court under section 38(4) of the 1999 Act.

(3) Where the court receives notification of the appointment either from the legal representative or from the appellant but not from both, the judge advocate must investigate whether the appointment has been made, and if he concludes that the appointment has not been made, paragraph (2)(b) shall not apply.

(4) An appellant may, notwithstanding an appointment by the judge advocate under section 38(4) of the 1999 Act, arrange for a legal representative to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 35 or a direction under section 36 of the 1999 Act applies.

(5) Where the appellant arranges for, or informs the court of his intention to arrange for, a legal representative to act for him, he must notify the court, within such period as the judge advocate may allow, of the name and address of any person appointed to act for him.

(6) Where the court is notified within the time allowed that such an appointment has been made, any legal representative appointed by the judge advocate in accordance with section 38(4) of the 1999 Act shall be discharged.

(7) The court administration officer must, as soon as reasonably practicable after the court receives notification of an appointment under this rule or, where paragraph (3) applies, after the judge advocate is satisfied that the appointment has been made, notify all the parties to the proceedings—

(a) that the appointment has been made;

(b) where the appellant has arranged for a legal representative to act for him in accordance with paragraph (4), of the name and address of that legal representative; and

(c) that the person appointed by the judge advocate under section 38(4) of the 1999 Act has been discharged or has ceased to act for the court.

PART 3

Restrictions on Reporting

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

8.—(1) An application in any proceedings for a direction under section 45(3) of the 1999 Act or for a reporting direction under section 45A(2) of that Act may be made by any person who in the view of the judge advocate has a legitimate interest in making such an application(**4**).

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

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

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

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

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

(a) the name, address and date of birth of the person concerned in the proceedings (or the reason for not giving these details);

(b) brief details of the charges to which the application applies;

(c) whether the application needs to be determined urgently, and if so why and by when.

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

(a) the grounds on which the applicant asserts that publication of any matter relating to the person concerned in the proceedings is likely to lead members of the public to identify that person as a person concerned in the proceedings;

(b) whether making the direction or reporting direction sought in relation to the person concerned in the proceedings is in the interests of the welfare of that person.

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

(a) the grounds on which the applicant asserts that, if a reporting direction is not given—

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