



**THE ARMED FORCES DISCIPLINE RULES OF PROCEDURE 1983,
AMENDMENT NO. 1**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 16th day of May 1988

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 150 of the Armed Forces Discipline Act 1971, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

ANALYSIS

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RULES

1. Title and commencement—(1) These rules may be cited as the Armed Forces Discipline Rules of Procedure 1983, Amendment No. 1, and

shall be read together with and deemed part of the Armed Forces Discipline Rules of Procedure 1983* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 28th day after the date of their publication in the *Gazette*.

2. Summary trial of charge by executive officer—(1) Rule 18 (17) of the principal rules is hereby amended by—

(a) Inserting in paragraph (a), after the words “conduct in the service,”, the words “details of any period during which the accused was held in custody awaiting trial,”;

(b) Omitting from paragraph (c) the expression “subclause (18)”, and substituting the expression “subclauses (18) and (18A)”.

(2) Rule 18 of the principal rules is hereby amended by inserting, after subclause (18), the following subclause:

“(18A) Where the executive officer decides to remand an accused found guilty on any charge to a commanding officer under subclause (18) of this rule, the executive officer shall also,—

“(a) Where the accused has been found guilty on any other charge arising from the same incident or series of incidents, remand the accused to the commanding officer on all such other charges:

“(b) Where any other accused is found guilty on any charge arising from the same incident or series of incidents, remand that accused to the commanding officer on all such charges.”

3. Officer or commander to determine how charge should be disposed of—Rule 20 of the principal rules is hereby amended by inserting, after subclause (4), the following subclause:

“(4A) Where—

“(a) An accused has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents and the officer or commander is required, pursuant to subclause (4) of this rule, to remand any other such person to a commanding officer in respect of any one or more of the charges; or

“(b) An accused has been charged with more than one offence arising from the same incident or series of incidents and the officer or commander is required, pursuant to subclause (4) of this rule, to remand the accused to a commanding officer in respect of any one or more of those charges,—

the officer or commander shall remand the accused to the commanding officer on all such charges.”

4. Summary trial of charge by officer with delegated powers or detachment commander—(1) Rule 21 (5) of the principal rules is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Ascertain details of any period during which the accused was held in custody awaiting trial:”.

(2) Rule 21 (5) of the principal rules is hereby further amended by omitting from paragraph (b) the expression “subclause (6)”, and substituting the expression “subclauses (6) and (7)”.

(3) Rule 21 of the principal rules is hereby amended by adding the following subclause:

“(7) Where an officer to whom powers have been delegated under section 115 of the Act decides to remand an accused found guilty on any charge to a commanding officer in accordance with subclause (6) of this rule, the officer shall also,—

“(a) Where the accused has been found guilty on any other charge arising from the same incident or series of incidents, remand the accused to the commanding officer on all such other charges:

“(b) Where any other accused is found guilty on any charge arising from the same incident or series of incidents, remand that other accused to the commanding officer on all such charges.”

5. Procedure where accused remanded for punishment—(1) Rule 23 of the principal rules is hereby amended by omitting the expression “rule 18 (18) or rule 21 (6)”, and substituting the expression “subclause (18) or subclause (18A) of rule 18 or subclause (6) or subclause (7) of rule 21”.

(2) Rule 23 of the principal rules is hereby further amended by inserting, after paragraph (c), the following paragraph:

“(ca) Ascertain details of any period during which the accused was held in custody awaiting trial.”.

6. Commanding officer to determine whether to investigate or try summarily—Rule 24 (1) (b) of the principal regulations is hereby amended by inserting, after the expression “rule 20 (4)”, the expression “or rule 20 (4A)”.

7. Remand of accused for trial by court-martial on connected charges—The principal rules are hereby amended by inserting, after rule 32, the following rule:

“32A. Where—

“(a) An accused has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents and at least one of those charges is to be remanded for trial by court-martial; or

“(b) An accused has been charged with offences arising from the same incident or series of incidents and at least one of those charges is to be remanded for trial by court-martial,—

the accused shall be remanded for trial by court-martial in accordance with rule 32 of these rules on all such charges.”

8. Subordinate commander to determine how charge should be disposed of—(1) Rule 34 of the principal rules is hereby amended by inserting, after subclause (5), the following subclause:

“(5A) Where—

“(a) An accused has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents and the subordinate commander must, pursuant to subclause (5) of this rule, remand any other such person to a

commanding officer in respect of any one or more of the charges; or

“(b) An accused has been charged with more than one offence arising from the same incident or series of incidents and the subordinate commander must, pursuant to subclause (5) of this rule, remand the accused to a commanding officer in respect of any one or more of those charges,—

the subordinate officer shall, subject to subclause (7) of this rule, remand the accused to the commanding officer on all such charges.”

(2) Rule 34 (7) of the principal rules is hereby amended by inserting, after the expression “subclause (5)”, the expression “or subclause (5A)”.

9. Dealing summarily with charge—Rule 35 of the principal rules is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Ascertain details of any period during which the accused was held in custody prior to the charge being dealt with summarily:”.

10. Remand of accused for trial by court-martial on connected charges—The principal rules are hereby amended by inserting, after rule 50, the following rule:

“50A. Where—

“(a) An accused has been charged with some other person or persons in respect of offences arising from the same incident or series of incidents, and at least one of those charges is to be remanded for trial by court-martial; or

“(b) An accused has been charged with offences arising from the same incident or series of incidents, and at least one of those charges is to be remanded for trial by court-martial,—

the accused shall be remanded for trial by court-martial in accordance with rule 50 of these rules on all such charges.”

11. Rulings by judge advocate on question of law or procedure—Rule 64 (2) of the principal rules is hereby amended by omitting from paragraph (b) the expression “(1) to (3)”, and substituting the expression “(1) to (4) and subsection (9)”.

12. Accused’s record, and plea in mitigation—Rule 116 (2) of the principal rules is hereby amended by inserting in paragraph (c), after the word “trial”, the words “(including the time, if any, during which the accused was held in custody)”.

13. Preparation of record of proceeding—Rule 132 (3) of the principal rules is hereby amended by inserting, after paragraph (c), the following paragraph:

“(cc) Any explanation in respect of a plea of guilty made in accordance with rule 89 (1) of these rules; and”.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules amend the Armed Forces Discipline Rules of Procedure 1983. The main effect of the amendments is to bring the rules of procedure into line with the procedural changes effected by the Armed Forces Discipline Amendment Act 1988 in relation to pre-trial custody and the remand of connected charges to higher authority.

Rule 11 corrects a cross-reference, and *rule 13* makes provision for the verbatim recording of any explanation by a judge advocate in respect of a plea of guilty.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 19 May 1988.
These rules are administered in the Ministry of Defence.