

### INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A)). As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authority from Convening Officer. If Convening Officer concurs, Court may accept plea of Guilty to lesser, or offence. (RP 44(H)). Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).

2. The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p. 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

- (a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A)).
- (b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37(A) and in 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instructions as may be appropriate to result of its decision. See MML p 744 Notes (2).

3. As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Officer see RP 60(C), 87(I), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(I), 92(B); and of witnesses see RP 83-85; calling or re-calling of witnesses by Court see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.

### RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charges, and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charges, call witnesses as to character and make an address in mitigation of punishment.<sup>(1)</sup>

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charges.<sup>(1)</sup> If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty<sup>(2)</sup>, or which show provocation or extenuation in respect of which in your interest stand the witnesses for the Prosecution should be examined<sup>(3)</sup>, we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution you will not be sworn or subject to cross-examination; and anything you say will not be used making a statement you after you change your plea. If, however, it appears to the Court that your statement in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.<sup>(4)</sup>

President to accused: Do you wish to make a statement? Ans. No  
(1) RP 37(B). (2) RP 37(D) fn 6. (3) RP 35(B) fn 5 para 2, MML p 54 para 47. (4) See para E of Record Form E.  
5. Statement, if any, recorded per Notes.

B3. The Court considers the accused's statement. The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and (to allow) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.  
(1) Court may be closed to consider the statement. (Delete whole where not used.)

B4. On the charges to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.<sup>(1)</sup>  
(1) RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.

B5. The Summary of Evidence is marked Ex. F, initialled and read aloud by the President.<sup>(1)</sup>  
(1) If there is no Summary, or if it is inadequate, comply with RP 17(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of para 21 to 28 inclusive of Record Form D on p. 3. RP 17(D).

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p. 3.

### RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using para 26 to 28 inclusive of Record Form D on p. 3 before proceeding with C 2.<sup>(1)</sup>  
(1) RP 37(A) (B).

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using para 29 to 35 of Record Form D on p. 3. The charges are read in relation to the charges dealt with under C 1. If any plea is changed to Not Guilty, trial thereof proceeds in accordance with para 21 to 28 inclusive in Record Form D on p. 3 and making an appropriate record thereof on a separate sheet.

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p. 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

### RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No  
(1) If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.

D2. The Prosecutor makes (an) (no) opening address.<sup>(1)</sup>  
(1) RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).

D3. The evidence for the Prosecution is taken.<sup>(1)</sup>  
(1) RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).

D4. The Prosecution is closed.<sup>(1)</sup> The Defending Officer submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).<sup>(2)</sup> The Court is closed, and considers the submission.<sup>(3)</sup> The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).<sup>(4)</sup>

(1) Delete remainder of this para, if submission not made. (2) Arguments on submission, answer and reply are recorded per Notes. (3) RP 40 fn 1. See MML p 72 paras 12-14 and 9 to 11 para 42. (4) Delete part not used. If accused acquitted on all charges, use second alternative in para 26.  
NB: If trial proceeds, accused may be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(E), 114, 115.)

D5. President to accused: You will now proceed with your defence.<sup>(1)</sup> You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.<sup>(2)</sup> You may, however, make a statement without being sworn, and you will not be subject to cross-examination.<sup>(3)</sup> But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.<sup>(4)</sup> You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?  
Ans. No Do you intend to call witnesses on your behalf?  
Ans. No

Are they witnesses as to character only? Ans. No  
(1) RP 115. (2) RP 40(A), see 80(D). (3) RP 40 fn 2. (4) RP 40 fn 2, 9.

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.<sup>(1)</sup>  
(1) RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 2, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).

D7. The Court is closed to consider the finding(s).<sup>(1)</sup> The findings of the Court is (are) recorded in Part I of the Schedule.<sup>(2)</sup> The Court is re-opened.  
(1) RP 43, 117(B). See Notes in Part I of Schedule. (2) RP 44(A).

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.<sup>(1)</sup> Or the President announces that the accused is found Not Guilty on all charges and it is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.<sup>(2)</sup>  
(1) JA 54(2) (b), RP 45, 120(A). (2) AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form C or D.

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

### RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?<sup>(1)</sup>  
Ans. No  
(1) If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 17(C) to 4, 46 fn 1.

E2. Prosecutor provides statement(s) as to Character and Particulars of Service<sup>(1)</sup>, and certified true copy of Conduct Sheet<sup>(2)</sup>, purporting to refer to the accused, which he submits to the Defending Officer for examination, and the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, being having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. F and Ex. G, respectively.<sup>(3)</sup>  
(1) JPS 213 or JPS 214. (2) RP 46. (3) RP 46, KR Can 558. If above documents are filed, see RP 46 fn 1 para 1.

E3. President to accused: Do you wish to address the Court on the Statement and Conduct Sheet, and in mitigation of punishment?<sup>(1)</sup> Ans. Yes  
(1) RP 27(C), 46(D). (2) Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove in oath anything here or previously stated which would affect the amount of punishment. RP 27(F) to 1.

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.<sup>(2)</sup>  
(1) AA 54(6), RP 120(A).

E5. The Court considers the sentence.<sup>(1)</sup> The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.<sup>(2)</sup>  
(1) Where several accused tried separately see RP 325. One sentence only, comprised of the punishment or punishments laid down in AA 47, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-52, 85, 112, 117(A), RP Can 558, 563-568. Overseas RP 205, 1122, MML p 60, 717-728. As to sentences suggested for civil offences by the law of England see AA 41(5), MML p 132. Where accused directly under sentence of imprisonment or detention see AA 46(2), 56(7), KR Can 564. (2) RP 26. As to release from arrest by Convening Officer see KR Can 567. As to custody and disposal of record after trial see notes on back of Convening Order.

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