

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

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 No other charge can be withdrawn without authority from Convening Offr.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

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

Where all charges are GUILTY, use Record Form B below.

Where all charges are NOT GUILTY, use Record Form D on p 3.

Where some charges are GUILTY and to other charges are NOT GUILTY and,

where such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A)).

Where such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as a discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty to all, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

Responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of President (A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(E), and of witnesses calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 94, 96; and responsibility of JA or Pres to record proceedings see RP 94, 96.

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

The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the plea of Guilty, and that on his plea of Guilty there will be no regular trial but merely a consideration of the appropriate character and make an address in mitigation of punishment. (RP 35 in J. 2. MML p 54 para 47.)

The Court to be accused: The Court will now receive any statement you desire to make in reference to the charges. It appears from your statement that there are circumstances which indicate that you do not understand the plea of Guilty, or which show provocation or extenuation in respect of which in your interest the Prosecution should be examined, we shall advise you to change your plea to Not Guilty. In that event you will not be sworn or subject to cross-examination; and anything you say will not be used against you after you change your plea. If, however, it appears to the Court that your statement in mitigation of punishment to which you are liable, you will not be advised to change your plea and you will have an opportunity later to prove your statement by sworn testimony, if you so desire. (RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(E) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.

Do you wish to make a statement? Ans. Yes. (RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(E) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. If any, recorded per Notes.)

The Court considers the accused's statement. (1) The Court decides (not) to advise accused to change his plea to Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they)

is (are) to change plea(s) on charge(s). Part I of the Schedule is amended accordingly. The Court may be closed to consider the statement. Delete whole or part not used.)

The charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Court on the Schedule. (1)

If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

A Summary of Evidence is marked Ex. 1, initialled and read aloud by the President. (1)

If there is no Summary, or if it is inadequate, comply with RP 37(E). If there is any evidence inconsistent with any plea of Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of Summary of Evidence inclusive of Record Form D on p 3. RP 37(D).)

Where 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.

Where the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 of Record Form D on p 3 before proceeding with C 2 (1) (RP 37(A) (E)).

Where the charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued under RP 35 of Record Form B above. (1)

Under RP 35 each party only of the Summary of Evidence are read as relate to the charges dealt with under C 2. If any plea is changed to Guilty, trial charges proceed by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an amendment thereto, or a separate sheet.)

Where 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) (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. (1)

(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. (1)

(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. (1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s). (2) The Court is closed, and considers the submission. (3) 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). (4)

(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 p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence. (1) 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. (2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination. (3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. (4) 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. Yes. 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 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed. (1) (1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CP 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 48(A) fn 1, 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(e).)

D7. The Court is closed to consider the finding(s). (1) The finding(s) of the Court is (are) recorded in Part I of the Schedule. (2) The Court is re-opened. (1. RP 42, 117(A). 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. (1)

Or: The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed. (1)

(1. AA 54(3), 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 B or C.)

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? (1) Ans. No. (1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service, and certified true copy (copies) of Conduct Sheet(s), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. 1 and Ex. 2, respectively. (1) (1. MFB 335 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment? (1) Ans. Yes. (1. RP 37(C), 44(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

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. (1) (1. AA 54(3), RP 120(A).)

E5. The Court considers the sentence. (1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any. (1)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RD 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 62(1), KR Can 564. 2. RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.