



STATUTORY INSTRUMENTS.

S.I. No. 491 of 2023



RULES OF PROCEDURE (DEFENCE FORCES) (AMENDMENT) RULES
2023

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2023

I, MICHEÁL MARTIN, Minister for Defence, in exercise of the powers conferred on me by section 240 of the Defence Act 1954 (No. 18 of 1954), hereby make the following rules:

1. These Rules may be cited as the Rules of Procedure (Defence Forces) (Amendment) Rules 2023.

2. The Rules of Procedure (Defence Forces) 2019 and these Rules may be cited together as the Rules of Procedure (Defence Forces) 2019 and 2023 and shall be construed together as one.

3. The Rules of Procedure (Defence Forces) 2019 (S.I. No. 555 of 2019) are amended—

- (a) In Rule 10, by substituting ‘may be prepared’ for ‘shall be prepared’ in sub-rule (1),
- (b) in Rule 10, by inserting the following immediately after sub-rule (1):

“(1A) Notwithstanding sub-rule (1), a summary of evidence shall not be prepared where an accused has been remanded for trial by court-martial in respect of any of the following offences:

- (a) rape;
 - (b) rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990;
 - (c) aggravated sexual assault under section 3 of the Criminal Law (Rape) (Amendment) Act 1990;
 - (d) sexual assault under section 2 of the Criminal Law (Rape) (Amendment) Act 1990.”,
- (c) by substituting for Rule 37 the following:

“Retention of record of proceedings

37. At the conclusion of a court-martial, the record of proceedings made under Rule 82 of the Court-Martial Rules 2008 shall be retained and preserved by the Court-Martial Administrator, subject to any direction of the military judge.”,

- (d) by substituting for Rule 38 the following:

“Supply of copy of record of proceedings

38. (1) A party to a court-martial or other person who seeks access to any part of the record of proceedings made under Rule 82 of the Court-Martial Rules 2008 may apply to the military judge by the issue and service of a notice of application (in Form 23) signed by the moving party or solicitor for the moving party.

(2) A notice referred to in sub-rule (1)—

- (a) shall be grounded upon an affidavit, and
- (b) such notice and a copy of the affidavit shall be served upon the other party or parties to the court-martial proceedings at least 7 days before the date fixed for the hearing of the application.

(3) When service has been effected, the original of such notice and affidavit, together with a statutory declaration as to service thereof, shall be lodged with the Court-Martial Administrator at least 4 days before the date fixed for such hearing.

(4) On the return date for the hearing of the application, the military judge may—

- (a) direct that copies of the notice and affidavit be served on any other person who the military judge considers has a sufficient interest in, or may be affected by, the application,
- (b) fix time limits for the delivery of any replying affidavit.

(5) Where the military judge considers it necessary in the interests of justice, the military judge may order that access to all or part of the records sought be permitted in such form and subject to such limitations and conditions as the military judge may direct, including a condition as to the payment of a fee to cover the cost of the provision of any copies ordered.”, and

- (e) in Schedule 3, by inserting the following immediately after Form 22:

“Form 23

Rule 38(1)

DEFENCE ACT 1954, PART V

RULES OF PROCEDURE 2019

NOTICE OF APPLICATION FOR ACCESS TO RECORD OF
PROCEEDINGS

OF A COURT-MARTIAL

Court-Martial Register Number:.....

.....of*Prosecutor/*Applicant

.....of*Accused/*Respondent

TAKE NOTICE that

of.....intends to apply to the military judge sitting at on the day of.....20.... athours for an order permitting access to the record of proceedings in the above-entitled court-martial proceedings.

The grounds on which such access is sought are the following: (*specify grounds*)

A copy of the affidavit sworn by or on behalf of the moving party is served herewith.

Dated this day of 20.....

Signed.....

Moving Party/Solicitor for Moving Party

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

To: The Court-Martial Administrator at

To: of

*To: of”.



GIVEN under my Official Seal,
5 October, 2023.

MICHEÁL MARTIN,
Minster for Defence.

EXPLANATORY NOTE

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

These Rules amend the provisions in Rule 10 in relation to the preparation of a summary of evidence in cases where the accused is remanded for trial by court-martial in respect of a sexual offence.

These Rules also amend the provisions set out in Rule 37 in relation to the retention of the records of proceedings of a court-martial and the provisions in Rule 38 for the supply of copies of the records of proceedings.

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