

AIR FORCE ACT

AIR FORCE REGULATIONS

STATUTORY RULES 1968, No. 90^(a)

1. Regulation 106 of the Air Force Regulations is amended by omitting from paragraph (d) of sub-regulation (2.) the words "one year" and inserting in their stead the words "two years".

Re-engagement
of airmen.

2. The Second Schedule to the Air Force Regulations is amended by inserting in the table headed "(i) Modifications.", after item (le), the following item:—

Second
Schedule.

"(lf)	163	Add at the end of sub-section (1) the following paragraphs:— ' (n) Any document which by virtue of the law of England would be admissible in proceedings before a civil court in England shall, in the like manner and for the like purpose, be admissible: ' (o) For the purpose of the last preceding paragraph, the Bankers' Books Evidence Act, 1879, of the United Kingdom shall be deemed to apply to and in relation to the production and admissibility of documentary evidence in accordance with that Act as if any reference to a bank in that Act includes a bank as defined by the <i>Banking Act</i> 1959–1967 of the Commonwealth of Australia';
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3. The Third Schedule to the Air Force Regulations is amended—

Third Schedule.

(a) by omitting items (a) and (b) from the table headed "(i) Modifications." and inserting in their stead the following items:—

"(a)	3	Add the following paragraph:— ' (c) The evidence of a witness against the accused may be given orally in the presence of the accused or, with the consent of the accused, by means of a statement in writing from the witness which the commanding officer shall read to the accused.';
"(aa)	5	Insert after paragraph (A) the following paragraph:— ' (AA) Nothing in the last preceding sub-rule prevents the commanding officer from hearing, and taking down, at any time before he exercises the powers conferred upon him by paragraphs (i), (ii) or (iii) of that sub-rule, further evidence that he considers relevant to the charge and for the purposes of the exercise of the powers conferred by those paragraphs the evidence so heard when taken down shall be deemed to be part of the summary of evidence.';
"(ab)	10	Omit all the words from and including the words ' In this rule the expression ' to the end of the rule and insert in their stead the following paragraph:— ' In this rule, the expression " superior officer " means an officer superior in command to the officer or authority who awarded the punishment.';
"(ac)	17	Omit from paragraph (c) the words ' the British Islands ' (wherever occurring) and insert in their stead the word ' Australia '; Omit paragraph (E) and insert in its stead the following paragraphs:— ' (F) The officer convening a court-martial shall send to the officer appointed president of the court-martial the original charge-sheet on which the accused is to be tried and shall send to each of the other officers appointed to compose the court-martial and to the judge-advocate (if any) a copy of that charge-sheet. ' (F) The officer convening a court-martial shall send the summary or abstract of evidence— (i) where a judge-advocate is appointed to the court-martial—to the judge-advocate; or (ii) where a judge-advocate is not so appointed—to the officer appointed president of the court-martial.';

(a) Made under the Air Force Act 1923–1965 on 2 August 1968; notified in the *Commonwealth Gazette* on 15 August 1968.

AIR FORCE ACT—

" (ad)	22	Omit from paragraph (A) the words ' and the summary or abstract of evidence or a true copy thereof ';
" (ae)	39A	<p>Insert after Rule 39 the following Rule:—</p> <p>' 39A.—(A) At the close of the evidence for the prosecution the accused may, in respect of a charge, submit that the prosecution has failed to establish a <i>prima facie</i> case for him to answer and that he should not be called upon to make his defence to that charge, and if the accused makes such a submission, the prosecutor may address the court in answer to that submission and the accused may reply to the prosecutor's address.</p> <p>' (B) The court shall not allow the submission unless it is satisfied that—</p> <p>(i) it would not be open to the court to make an alternative finding under section 56 of the Air Force Act or a special finding under Rule of Procedure 44; and</p> <p>(ii) there has been no evidence to prove an essential element in the alleged offence; or</p> <p>(iii) the evidence adduced by the prosecution has been so discredited as the result of cross-examination, or is so manifestly unreliable, that no reasonable tribunal could safely convict on it.</p> <p>' (C) If the court allows the submission, it shall find the accused not guilty of the offence to which the submission relates and announce this finding in open court forthwith and if the court disallows the submission, it shall proceed with the trial of the offence as charged.</p> <p>' (D) Where, in accordance with Rule 103A, the judge-advocate hears the addresses and determines the submission in the absence of the president and members of the court, the ruling of the judge-advocate as to allowance or disallowance of the submission shall, for the purposes of the last preceding paragraph of this rule, be deemed to be allowance or disallowance, as the case may be, by the court.</p> <p>' (E) Notwithstanding anything in the preceding paragraphs of this Rule, the court may, at any time after the opening address by the prosecutor, find the accused not guilty of any offence covered by the charge, if the court is satisfied that—</p> <p>(i) the evidence available to the prosecution does not disclose an offence; or</p> <p>(ii) there is no evidence available to the prosecution to prove an essential element in the alleged offence or in any offence of which the court could make a special finding,</p> <p>and, if the court so finds, it shall announce this finding in open court forthwith.'</p>
" (b)	40	Insert in paragraph (A), after the word ' prosecution ', the words ' or, if there has been a submission of no case to answer, after the disallowance of that submission ';

and

(b) by inserting after item (bf) in that table the following items:—

" (bfa)	103	<p>Omit from paragraph (c) the words ' and will give his advice on any matter before the court ' and insert in their stead the words ' and shall give his ruling or advice thereon, as the case requires ';</p> <p>Omit paragraph (f) and insert in its stead the following paragraphs:—</p> <p>' (f) Where, during the course of a trial that he attends, any question of law or procedure arises, the judge-advocate shall give his ruling thereon and the court shall follow that ruling;</p> <p>' (fa) Without prejudice to the generality of the meaning of the expression "question of law", that expression, as used in this and the next succeeding Rule, shall be read as including a submission that there is no case to answer and any question relating to the admissibility of evidence.'</p>
" (bfb)	103A	<p>Insert after Rule 103 the following Rule:—</p> <p>' 103A.—(A) Where the accused raises a question of law or procedure, then, he may address the court in respect of the matter, the prosecutor may address the court in answer to that address, and the accused may reply to the prosecutor's address.</p> <p>' (B) Where the prosecutor raises a question of law or procedure, then, he may address the court in respect of the matter, the accused may address the court in answer to that address, and the prosecutor may reply to the accused's address.</p>

* (c) Where a question of law or procedure is raised during a trial, and the judge-advocate considers that the interests of justice would best be served by his hearing argument and determining the issue in the absence of the court, he shall so advise the president and, thereupon, the president shall direct all members of the court and any officer under instruction to withdraw from the court-room, and he and they shall withdraw.

* (d) When the president and members of the court have withdrawn in accordance with the last preceding paragraph of this Rule, the judge-advocate shall hear the arguments and any evidence relevant to the point at issue and in giving his ruling thereon shall state such reasons for that ruling as he considers necessary.

* (e) After the judge-advocate has given his ruling, the president and members of the court and any officer under instruction shall return to the court-room and the judge-advocate shall announce his ruling to the court.

* (f) Where a judge-advocate sits alone in accordance with this Rule, the proceedings before him form part of the proceedings of the court.

* (g) The judge-advocate is responsible for ensuring that the president and members of the court do not see the record of proceedings before him while sitting alone until after the court has announced its finding.'."

4. The Fourth Schedule to the Air Force Regulations is amended—

Fourth
Schedule.

- (a) by omitting from the table headed "(i) *Modifications.*" the words and figures opposite the figures "XV. | III. | 1126" and inserting in their stead the following words and figures:—

"Omit from clause 4 the words 'Every charge' and insert in their stead the words 'Unless the C.O. decides to conduct the investigation personally in the first instance, every charge'.

"Omit from clause 5 the words and figures '(See para 112)'; and

- (b) by omitting from that table the words and figures opposite the figures "XVI. | III. | 1295" and inserting in their stead the following words and figures:—

"Omit from clause 5 the words and figures '(See para 112)'; and

'1. An officer sentenced to a punishment that is lower in the scale of punishments set out in Section 44 of the Air Force Act than dismissal from Her Majesty's service, or an airman sentenced to a punishment that is lower in that scale than discharge from the Defence Force of the Commonwealth may be released from arrest on the order of his C.O. The C.O. should not, except in special circumstances, delay or withhold the release of an officer or airman from arrest in pursuance of this clause. Nothing in this clause prevents an officer or airman who has been released from arrest from being re-arrested at any time;'

Insert after clause 2, the following clauses:—

'3. Where an officer has been sentenced to cashiering or to dismissal from Her Majesty's service, or an airman has been sentenced to discharge with ignominy from Her Majesty's service, the officer who convened the court-martial that sentenced the officer, or the C.O. of the airman, may, if in his opinion the circumstances warrant so doing, order that the officer or the airman be released into open arrest pending promulgation of the sentence. An officer or N.C.O. released into open arrest in pursuance of this clause should not, except in special circumstances, be called upon to perform any air-force duty.

'4. An officer or an airman who has been sentenced to imprisonment or detention shall be retained in close arrest.'"

STATUTORY RULES 1968, No. 98^(b)

1. Regulation 48 of the Air Force Regulations is amended by omitting from sub-regulation (2.) the words "but shall not hold any rank other than that of chaplain of the Air Force" and inserting in their stead the words "and holds the rank of chaplain of the Air Force".

Chaplains.

^(b) Made under the *Air Force Act 1923–1965* on 30 August 1968; notified in the *Commonwealth Gazette* on 5 September 1968.

Principal Air Chaplains.

2. Regulation 48A of the Air Force Regulations is amended by omitting sub-regulation (3.).

Chaplains—precedence.

3. Regulation 51 of the Air Force Regulations is repealed and the following regulation inserted in its stead:—

“ 51.—(1.) For the purpose of precedence, a chaplain who holds an appointment of Principal Air Chaplain shall be deemed to hold a rank that corresponds with the rank of Air Commodore.

“ (2.) For the purpose of precedence, a chaplain, other than a chaplain who holds an appointment of Principal Air Chaplain, shall be deemed to hold a rank that corresponds with the rank specified in the second column of the following table in relation to his length of service in the rank of chaplain:—

Length of service	Corresponding rank
Not less than 18 years	Group Captain
Less than 18 years but not less than 12 years	Wing Commander
Less than 12 years but not less than 4 years	Squadron Leader
Less than 4 years	Flight Lieutenant

Repeal.

4. Regulations 67 and 67A of the Air Force Regulations are repealed.

Retiring ages of officers.

5.—(1.) Regulation 88 of the Air Force Regulations is amended by omitting sub-regulation (1.) and inserting in its stead the following sub-regulation:—

“ (1.) The age for the compulsory retirement of an officer, other than an officer who is a chaplain of the Air Force or a member of the Nursing Service, is the age set out in the following table in relation to the substantive rank that the officer holds and the branch in which he is serving:—

Substantive rank	General Duties Branch	Other Branches
Air Marshal	60	..
Air Vice-Marshal	57	60
Air Commodore	55	58
Group Captain	55	57
Group Officer .. .. .	..	55
Wing Commander	50	55
Wing Officer .. .. .	..	55
Squadron Leader	47	55
Squadron Officer .. .. .	..	50
Flight Lieutenant	45	55
Flight Officer .. .. .	..	50
Flying Officer	45	55
Section Officer .. .. .	..	50
Pilot Officer	45	55

(2.) Regulation 88 of the Air Force Regulations is amended by inserting after sub-regulation (1A.) the following regulation:—

“ (1B.) The age for the compulsory retirement of a chaplain of the Air Force, other than a chaplain who holds an appointment of Principal Air Chaplain, is—

- (a) in the case of a chaplain whose length of service in the rank of chaplain will exceed eighteen years upon his attaining the age of fifty-five years—fifty-seven years; or
- (b) in any other case—fifty-five years.”