

Chapter 32

Service Civilian Court

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A. Service Civilian Court – Record of proceedings and trial result Notification (T-SL-TRN01)	2-32-A-1
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Chapter 32

Service Civilian Court

Introduction

1. **Legal status.** The Service Civilian Court (SCC) is a court created by statute¹, which may sit anywhere whether within or outside the UK to try a case allocated to it by the Director of Service Prosecutions (DSP). It consists of a judge advocate sitting alone and resembles the situation of a magistrates' court sitting with a District Judge instead of a lay bench.

2. **Functions and powers.** The SCC is restricted to trying civilians subject to Service discipline (relevant civilian) (for definitions of civilians subject to Service discipline, see [Chapter 3](#) (Jurisdiction and time limits), paragraphs 17 – 33. In the main, especially when trying adults, the SCC will deal with less serious criminal conduct offences (i.e. those which are not indictable in the courts of England and Wales² or do not have aggravating features), and other Armed Forces Act 2006 (the Act) offences which are applicable to relevant civilians³. However when it tries a juvenile, the SCC has the same powers as the Youth Court in England and Wales and therefore has the power to try all but a small handful of homicide and firearms offences.

3. **Referral to the Court Martial (CM).** The DSP will allocate more serious offences, or offences where there are relevant civilian and Service co-accused, for CM trial. However, even when the DSP has allocated a case for trial at the SCC, the judge advocate may decline jurisdiction if he considers it appropriate to do so (see paragraph 17 below). In this situation the case will be tried by the CM.

4. **Time limits.** For any offence committed under section 42 of the Act (criminal conduct), the trial must start within the time limit that exists for that offence within the criminal law of England and Wales. In addition, where a person subject to Service discipline ceases to be so subject after having allegedly committed an offence, any trial must start within six months from the date on which the offender ceased to be subject to Service discipline⁴, unless special dispensation is granted by the Attorney General⁵.

Preliminaries

5. **Charging.** A case will not be allocated to the SCC unless the DSP has issued a direction to a CO that a specified charge is to be brought. For details of charging relevant civilians, see [Chapter 6](#) (Investigation, charging and mode of trial), Part 5 and [Annex K](#).

6. **Advance Information.** Once the case is allocated for SCC trial, the DSP will serve the following⁶ on defendants, defendant's legal representatives and the Court Administration Officer (CAO):

- a. Copies of statements of witnesses on which the DSP intends to rely.
- b. A list of all exhibits, with locations, which the DSP intends to use.

¹ Section 277 of the Act.

² See [Chapter 3](#) (Jurisdiction and time limits), paragraph 43.

³ See [Chapter 3](#) (Jurisdiction and time limits), paragraph 41.

⁴ Section 58(2) of the Act.

⁵ Section 61(2) of the Act.

⁶ The Armed Forces (Service Civilian Court) Rules 2009, rule 30.

- c. A transcript of any recording of an interview with the defendant.

Where after the DSP has served advance information he intends to adduce evidence not previously served he must, as soon as is practicable, serve that evidence on the defendant and the CAO. Where this occurs during trial proceedings the evidence must be served on the judge advocate instead of the CAO⁷.

7. **Listing.** On receipt of advance information from the DSP the CAO will forward that information to the Judge Advocate General, list the case for a preliminary hearing and request him to specify a judge advocate for the hearing⁸. The CAO will appoint court officials, including interpreters if required.

8. **Notification of hearings.** The defendant will be served with a notice informing him of the date of his hearing. If the defendant is under 18 or the offence concerned is alleged to have been committed during a period of parental recognizance following a previous conviction⁹, then the CAO will also notify the parent(s) or guardian(s) of the hearing¹⁰.

9. The CAO will notify any person identified by either party as needing to attend a preliminary hearing or the trial, and any person so notified will be entitled to reimbursement of expenses incurred by him as a result of attendance. In respect of any witness whom the CAO is unable to notify, or if he thinks it is not reasonably practicable to notify that person, he must inform the judge advocate, the prosecutor and the defendant of this in writing, giving his reasons for not notifying the person¹¹.

10. **Service of documents.** Documents may be served by a number of acceptable methods including: personally, by post, DX, FAX and other electronic means. The judge advocate may also direct service by any other method if the particular circumstances demand. Proof of service may be achieved in a number of ways. Part 2 of SCC Rules describes the various acceptable methods for the service of documents and the effective date of service. Proof of service may be provided by a signed certificate explaining how and when the document or notice was served.

Methods of securing attendance of witnesses

11. **Summons.** A judge advocate may issue a witness summons on an application by a party to the proceedings or of his own volition¹². The application may be made orally or in writing and is to explain:

- a. What evidence the witness can give;
- b. Why the evidence is material; and
- c. Why the issue of a summons is in the interests of justice.

12. **Arrest.** Where a judge advocate is satisfied that a witness summons would not procure attendance or a person fails to attend before the court in answer to a witness summons without just excuse, the judge advocate may issue a warrant to arrest the witness and bring him before the court. A warrant must¹³ be addressed to a member of a civilian police force if the witness is not subject to Service discipline. A warrant shall only be

⁷ The Armed Forces (Service Civilian Court) Rules 2009, rule 30(3) and (4)

⁸ The Armed Forces (Service Civilian Court) Rules 2009, rule 32.

⁹ Section 233-236 of the Act.

¹⁰ The Armed Forces (Service Civilian Court) Rules 2009, rule 27.

¹¹ The Armed Forces (Service Civilian Court) Rules 2009, rule 48.

¹² The Armed Forces (Service Civilian Court) Rules 2009, rules 49-53.

¹³ The Armed Forces (Service Civilian Court) Rules 2009, rule 54(4).

addressed to a member of a Service Police force if the witness is subject to Service law or a relevant civilian, or to an officer of a British overseas territory police force if the court is sitting in such a territory. Note that a warrant cannot be addressed to a foreign police force.

13. **Custody.** Where a witness has been arrested by civil police under a warrant issued by a judge advocate, he is to be transferred to Service custody as soon as practicable or released. If transferred to Service custody, he must be brought before a judge advocate as soon as practicable for a review of whether he should continue to be kept in Service custody. If he does not appear in front of a judge advocate within 48 hours of the arrest, he must be released¹⁴. If the judge advocate is satisfied that there are substantial grounds for believing that the witness would fail to attend the court as required, he may authorise that the witness is kept in custody for a maximum of 8 days, unless a further review takes place. The judge advocate may alternatively require the witness to comply with such requirements as appear necessary to secure his attendance before the court. Failure to comply creates an offence under Section 107(5) of the Act.

14. **Legal representation.** The defendant is entitled to appoint his own appropriately qualified¹⁵ legal representative to act for him throughout the proceedings and must inform the CAO of the name and address of his legal representative as soon as is practicable after the appointment takes place. For the granting of legal aid, see JSP 838 (The Armed Forces Legal Aid Scheme).

15. **Additional evidence.** Having already received the prosecution papers, the defendant is entitled to copies of any additional evidence (or details of its whereabouts) that the prosecutor, prior to commencement of trial, wishes to adduce at the trial.

16. **Witnesses not being called.** Where the DSP no longer intends to call a witness whose statement he has served as part of the advance information he must as soon as practicable notify that fact to each defendant¹⁶.

17. **SCC as appropriate trial venue.** Before the arraignment of the defendant the judge advocate must decide whether to decline jurisdiction and refer the case to the CM for trial¹⁷. Before making its decision, the SCC must provide the DSP with an opportunity to inform the court of any previous convictions that the defendant might have and allow both the DSP and the defendant to make representations about the appropriate venue for trial¹⁸. When making its decision the court must consider the nature of the case; the seriousness of the offence; whether its powers of punishment are sufficient should the charge be proved; any other circumstances it considers relevant; and any representations made by the parties¹⁹. If the court decides that the charge should be tried by the CM, it must refer the charge to the CM²⁰.

18. **Right to elect trial by the CM.** If the SCC accepts jurisdiction to try a charge the defendant must then be offered the right to elect CM trial²¹. This right of election must be exercised before the defendant is arraigned on any charge by the SCC.

19. **Effect of election.** If a defendant elects CM trial then the SCC must refer the charge(s) to the CM for trial by that court. No further action in respect of the charge(s) takes place at the SCC and the election is reported in writing to the CAO. Election on one charge affects other charges and defendants as follows:

¹⁴ The Armed Forces (Service Civilian Court) Rules 2009, rule 54(6).

¹⁵ The Armed Forces (Service Civilian Court) Rules 2009, rule 26.

¹⁶ The Armed Forces (Service Civilian Court) Rules 2009, rule 30(5).

¹⁷ Section 279(1) of the Act.

¹⁸ Section 279(2) of the Act.

¹⁹ Section 279(3) of the Act.

²⁰ Section 279(4) of the Act.

²¹ Section 280 of the Act and The Armed Forces (Service Civilian Court) Rules 2009, rule 42(2).

a. **One defendant, multiple charges.** Where the SCC is to try together two or more charges against a single defendant, the defendant must be given the opportunity to elect CM trial in respect of each charge against him. An election in respect of any of the charges is deemed to be an election on all the charges and hence they must all be referred for CM trial²².

b. **More than one defendant.** If one of the defendants charged on the same charge sheet elects CM trial the SCC must refer all charges to the CM so all the defendants will be tried by that court²³.

20. **Withdrawal of election.** A defendant who elected CM trial may withdraw that election at any time up until arraignment by that court by giving written notification to the CAO, DSP and any other defendants²⁴.

Preliminary proceedings

21. Preliminary proceedings deal with arraignment, plea and case management issues, and to rule on matters of law. The powers of the court are contained in SCC Rules, rule 36.

22. **Arraignment.** Preliminary proceedings may take place in the absence of the defendant, but a defendant cannot be arraigned in his absence²⁵. Once any pre-arraignment matters are resolved the charge sheet will be put to the defendant and he will be asked whether he pleads guilty or not guilty to each charge against him²⁶. A refusal to plead or an unintelligible plea will be entered as a “not guilty” plea, as will any guilty plea that is not accepted by the court²⁷. Any plea of guilty may, before the plea is accepted by the court, result in an explanation to the defendant of the nature of the charge and the general effect of the plea, especially the different procedures involved between guilty and not guilty pleas. It is for the judge advocate to decide if such an explanation is necessary (e.g. the defendant is a juvenile and/or is not legally represented) and it is designed to enable the court to be satisfied that the defendant is pleading guilty with a proper knowledge of what that means.²⁸

23. **Mixed pleas.** Where there are two or more charges against one defendant and pleas of guilty and not guilty have been entered in relation to those charges, sentencing in relation to the charges to which guilty pleas have been entered shall not proceed (unless the judge advocate directs otherwise) until findings have been announced in respect of each charge to which a not guilty plea has been entered. This applies where, at a joint trial, one defendant has entered a plea of guilty and the other defendant has entered a not guilty plea.

24. **Change of plea.** A defendant may withdraw any not guilty plea and substitute for it a guilty plea²⁹. He can do this at any time during proceedings before the court determines the finding on the charge in question. A defendant may, with the leave of the court, withdraw a guilty plea and replace it with a not guilty plea at any time before the judge advocate passes sentence for the relevant charge.³⁰

Procedure during trial

²² Section 280(5) of the Act.

²³ Section 280 (3) and (5) of the Act and SCC Rules, Rule 42(8).

²⁴ The Armed Forces (Service Civilian Court) Rules 2009, rule 42(6) and (7).

²⁵ The Armed Forces (Service Civilian Court) Rules 2009, rule 19(2).

²⁶ The Armed Forces (Service Civilian Court) Rules 2009, rule 43(2).

²⁷ The Armed Forces (Service Civilian Court) Rules 2009, rule 43(5).

²⁸ The Armed Forces (Service Civilian Court) Rules 2009, rule 43(3).

²⁹ The Armed Forces (Service Civilian Court) Rules 2009, rule 46(1).

³⁰ The Armed Forces (Service Civilian Court) Rules 2009, rule 46(3).

25. **Changes to charge sheet during trial.** Once the trial has started, if the court considers that it is in the interests of justice to amend a charge (having due regard to the fairness to the defendant in so amending) then the court may do so. If the DSP wishes to amend or substitute a charge, discontinue proceedings on a charge or prefer an additional charge, after the trial has commenced then leave must be sought from the court.³¹ Additionally, in respect of any additional charge the prosecution may wish to bring, notice of this intention must be served on the defendant³².

26. **Procedure after guilty plea.** Once the court has accepted and recorded a guilty plea, the DSP will inform the court of the facts of the case and all relevant information. An opportunity will also be given for mitigation on behalf of the defendant to be heard. Thereafter, the court goes on to pass sentence.

27. **Procedure after not guilty plea.** Before calling the prosecution witnesses, the DSP may make an opening address. Defendants may make an opening address only with leave of the judge advocate³³. Thereafter, each prosecution witness in turn will be called to give their evidence on oath, with the rules of evidence being those that apply in the Crown Court in England and Wales.

28. **Misbehaviour in court.** Any person, whether a witness or otherwise, who misbehaves at the SCC is liable to be fined and/or committed to Service custody for contempt of court³⁴, see [Chapter 33](#) (Contempt of Service courts).

29. **Submission of no case to answer.** At any time after the close of the prosecution case, the defendant can submit, in respect of any charge, that the prosecution has failed to establish a case for the defendant to answer. If the court allows any such submission then the defendant will be found not guilty of the charge to which the submission relates³⁵.

30. **Case for the defence.** Following the close of the prosecution case and assuming that the preceding paragraph does not apply, the defendant may give evidence in his defence and also call witnesses but he is under no obligation to do so. Depending on the course adopted, the judge advocate must satisfy himself that the defendant understands the consequences of remaining silent, as well as the liability that he (and any witnesses) will have to being cross-examined by the DSP and that he may face questioning by the judge advocate.

31. **Closing addresses.** A defendant or the DSP may make a closing address, unless they have already made an opening address, where leave of the judge advocate is required. If two or more defendants have the same legal representative, that legal representative can only make one closing address.³⁶

32. **Findings.** Deliberation on findings occurs after any closing addresses, and for each charge the judge advocate will record – in writing, signed and dated - a finding of either guilty or not guilty on the trial result notification. See [Annex A](#) (Trial result notification T-SL-TRN01). The finding on each charge is announced in open court in the presence of the defendant, who may – on any finding of guilty – request the court to take into consideration any other Service offence committed by him of a similar nature to that which relates to the guilty finding in question.³⁷

³¹ The Armed Forces (Service Civilian Court) Rules 2009, rule 47.

³² The Armed Forces (Service Civilian Court) Rules 2009, rule 47(2).

³³ The Armed Forces (Service Civilian Court) Rules 2009, rule 85.

³⁴ Section 309 of the Act.

³⁵ The Armed Forces (Service Civilian Court) Rules 2009, rule 88.

³⁶ The Armed Forces (Service Civilian Court) Rules 2009, rule 91.

³⁷ The Armed Forces (Service Civilian Court) Rules 2009, rule 97.

33. **Power to convict of offence other than that charged.** The SCC has a statutory power to convict any offender of a Service offence other than the one specifically charged in the charge sheet.³⁸ Therefore, although an individual may be acquitted of the offence charged, the SCC can – provided that the allegations in the charge sheet amount to or include (either expressly or by implication) an allegation of a different Service offence – convict the individual of that other offence. ‘Offence’ in this sense also includes an attempted offence.

Rules of evidence

34. The rules as to the admissibility of evidence before the SCC are governed by Part 12 of the SCC Rules. The rules of evidence applicable in a trial on indictment in England and Wales generally apply³⁹, but there are procedures which are particular to the SCC. The following paragraphs summarise a few of the important differences to the civilian system.

35. **Attendance or giving evidence by live link.** Any person, who is not in the place where the proceedings are being held, may attend by live link if the judge advocate so directs. This includes witnesses who may give evidence. An application may be made to the judge advocate for permission to attend by live link or the judge advocate may direct such a course of action⁴⁰.

36. **Use of documents to refresh memory.** The Criminal Justice Act 2003 section 139 does not apply to the SCC, however a person giving oral evidence may refresh his memory from a document made or verified by him at an earlier time or a transcript of a sound recording⁴¹.

37. **Evidence through live link.** Any person may give evidence by live link if the judge advocate so directs, either of his own volition, or on an application⁴².

38. **Special measures.** A judge advocate may give a special measures direction of his own volition or on an application by a party to the proceedings⁴³.

Sentencing and appeal

39. **Mitigation.** An offender, or his legal representative, may call witnesses as to his character, or produce any documentary evidence and address the court in mitigation of sentence.

40. **Available punishments.** The SCC may award the following punishments:

a. **Imprisonment.** The SCC may not award imprisonment for more than 12 months in respect of any one offence and where the SCC imposes 2 or more terms of imprisonment to run consecutively, their aggregate must not exceed 65 weeks.⁴⁴ A person who is under the age of 18 cannot be sentenced to imprisonment.⁴⁵ The SCC may suspend a sentence of imprisonment.⁴⁶

³⁸ Section 281 of the Act.

³⁹ The Armed Forces (Service Civilian Court) Rules 2009, rule 58.

⁴⁰ The Armed Forces (Service Civilian Court) Rules 2009, rule 18.

⁴¹ The Armed Forces (Service Civilian Court) Rules 2009, rule 62.

⁴² The Armed Forces (Service Civilian Court) Rules 2009, rule 18.

⁴³ The Armed Forces (Service Civilian Court) Rules 2009, rules 74-84.

⁴⁴ Section 283 of the Act.

⁴⁵ Section 208 of the Act.

⁴⁶ Section 200 of the Act.

b. **Detention and Training Orders.** Offenders under the age of 18 at conviction may be subjected to a detention and training order.⁴⁷

c. **Fine.** The SCC may not award a fine for a section 42 offence (Criminal Conduct), which a magistrates' court in England and Wales could not have imposed.⁴⁸

c. **Service compensation order (SCO).** The SCC may not award a SCO exceeding the limits prescribed for a Magistrates Court.

d. **Service community order.** A Service community order imposes one or more of the requirements in Section 177(1) of the 2003 Act and specifying the local justice area in England and Wales, the locality in Scotland or the petty sessions district in Northern Ireland where the offender resides or will reside⁴⁹.

e. **Overseas community order.** An overseas community order imposes one or more requirements in Section 177(1) of the 2003 Act and does not specify the area where the offender resides or will reside. The SCC must be satisfied that the offender will be able to comply with the requirement and that arrangements will be made for supervision of his compliance.⁵⁰

f. **Conditional or absolute discharge.** A conditional discharge is an order discharging the offender subject to the condition that he commits no Service offence in a specified period. An absolute discharge discharges the offender without conditions.⁵¹

41. **Activation of a suspended sentence.** Where the offender is subject to a suspended sentence of imprisonment, the DSP will inform the court. The SCC may then make an activation order in relation to that suspended sentence⁵².

42. **Conditional discharge or overseas community order in force.** Where the offender is subject to a conditional discharge or there is an overseas community order in force, the DSP shall inform the court.⁵³

43. **Judge Advocate General's Sentencing Guide.** Sentencing will be carried out in accordance with the Judge Advocate General's Sentencing Guide (see volume 3 Sentencing in Court Martial: A Short Guide).

44. **Announcement and recording of sentence.** Unless the award of a sentence is to be deferred, it will be announced, together with the reasons for it, in open court and in the presence of the defendant. The judge advocate will record the sentence in writing and sign and date the record⁵⁴.

45. **Start of sentence.** Apart from suspended sentences, which take effect only when subsequently activated, any sentence passed by the SCC takes effect from the beginning of the day on which it is passed, unless the court invokes some other statutory provision (be it in the Act or any other Act) which confers upon it a power to direct otherwise.

⁴⁷ Section 211 of the Act.

⁴⁸ Section 284(2) of the Act.

⁴⁹ Section 178 of the Act.

⁵⁰ Section 182 of the Act.

⁵¹ Section 185 of the Act.

⁵² The Armed Forces (Service Civilian Court) Rules 2009, rule 96(3).

⁵³ The Armed Forces (Service Civilian Court) Rules 2009, rule 96(3)(b).

⁵⁴ The Armed Forces (Service Civilian Court) Rules 2009, rule 99.

46. **Appeal.** Appeals from the SCC lie to the CM. The procedures are contained in [Chapter 29](#) (Court Martial proceedings).

47. **Application for remission of a fine.** The SCC may consider an application in writing for remission in whole or part of a fine previously imposed by the court, where the offender's financial circumstances are different from those determined by the court when the amount of the fine was fixed.⁵⁵

48. **Ancillary Proceedings.** Where the court has imposed an overseas community order, the officer responsible for supervision may make an application in writing to the court for a summons, or warrant for arrest, where the requirements of the order have been breached. The responsible officer or the offender may make an application in writing to revoke, amend or extend the order.⁵⁶

⁵⁵ The Armed Forces (Service Civilian Court) Rules 2009, rule 107.

⁵⁶ The Armed Forces (Service Civilian Court) Rules 2009, rules 100-106.

PROTECT PERSONAL DATA (WHEN COMPLETED)

**Annex A to
Vol 2 Ch 32
JSP 830 MSL**

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**SERVICE CIVILIAN COURT
RECORD OF PROCEEDINGS AND TRIAL RESULT NOTIFICATION**

One TRN3 form is required for each defendant

A. TRIAL DATA	OJAG Case Reference Number:		
Location:	Held at		
All Dates of Trial: Do not include arraignment-only or preliminary proceedings	First day 20.... Continuing on (list dates) Last day 20....		
B. DEFENDANT	Surname, first name(s)		Title (Mr, Mrs, etc)
Appropriate description under AFA06 Sch 15 paras 1-10			Relevant Service (Delete not applicable) RN / Army / RAF
C. MODE OF TRIAL	Decision under AFA06 s 279:	Election offered under AFA06 s 280:	Was that election withdrawn?
	SCC or Court Martial	SCC or Court Martial	Yes / No
D. CHARGES, PLEA & FINDING This is the record of plea and finding required by The Armed Forces (Service Civilian Court) Rules 2009, Rules 22 & 92 Attach a copy of the charge sheet(s)	Charge(s): (Must be listed briefly – NOT “see attached”)	Plea:	Finding:
	1.		
	2.		
	3.		
	4.		
	5.		
	6.		
	7.		
	8.		

PROTECT PERSONAL DATA (WHEN COMPLETED)

	9.		
Use a continuation sheet if necessary	10.		

E. SIGNATURE		Findings form to be checked, signed & dated by the Judge Advocate	
Judge Advocate at Arraignment: Print name	Signed	Date signed	
Judge Advocate at contested trial, if any: Print name	Signed	Date signed	

OJAG Case Reference Number:	Defendant (Surname)
F. SENTENCE	
Give numbers in words and figures	
This is the record of sentence required by The Armed Forces (Service Civilian Court) Rules 2009, Rules 22 & 99	

G. SEX OFFENDER		
Is a certificate under Sexual Offences Act 2003 attached to TRN3?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Certificate to be faxed only to the Service staff branch below and the Service Police Crime Bureau		

H. DIRECTIONS of Judge Advocate for post-trial follow-up action, if any. Directions as to costs to be on separate form	
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I. SIGNATURE		Sentence form to be checked, signed & dated by the Judge Advocate	
Judge Advocate at sentence: Print name	Signed	Date signed	

J. FOR OFFICIAL USE	Defendant's time for appeal expires20.....	
	Duration of trial in hearing days..... Count part of a day as a day	
If Compensation was awarded: Give victim's full name, number, unit or home address as applicable & amount	Victim details	Amount in £

PROTECT PERSONAL DATA (WHEN COMPLETED)

Official completing to print name:	Signed	Date signed
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Court Officer must fax the completed TRN3 immediately to:

All cases: MCS - 94344 8060; CMRS - 94344 8048; AFCLAA - 94344 5691; SPCB - 93835 5244; OSC(A) (PTS) - 94344 8053;

plus if:

RN case: FLEET (DCS Law) - 93832 5755

RAF case: HQ Air Comd (Air Pers Casework) - 95221 6853

Custodial sentence case: MCTC - 94660 6708

When case is concluded, return file with the original of this TRN3 Record of Proceedings to:

Office of the Judge Advocate General