

THE BOARD OF INQUIRY (ARMY) RULES 1956

S.I. 1956 No. 630.

The Secretary of State for War¹ in exercise of the powers conferred upon him by section 135 of the Army Act 1955, and of all other powers him enabling hereby makes the following Rules: -

Citation and commencement.

1. These Rules may be cited as the Board of Inquiry (Army) Rules 1956, and shall come into operation on the 1st day of January, 1957.

Interpretation.

2. - (1) The Interpretation Act 1889,² shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

S.I. 1961 No. 2469.

(2) In these Rules, except where the context otherwise requires: -

“the Act” means the Army Act 1955;

“the authority”, in relation to a board, means the Army Council³ or any military, naval or air-force officer empowered by or under these Rules to convene a board;⁴

“board” means board of inquiry;

“civil authority” includes a coroner and the civil police;

“civilian witness” means a person who gives evidence before a board and is either a person to whom section 209 of the Act or any corresponding provisions of the Naval Discipline Act⁵ or the Air Force Act 1955, applies,⁶ or a person who is not subject to military law, the Naval Discipline Act, air-force law or the service law (which has the same meaning as in Part I of the Visiting Forces Act 1952) of a visiting force that is to say, any such body, contingent or detachment of the forces of any country as is for the time being a visiting force for the purpose of any of the provisions of the Visiting Forces Act 1952;⁷

“president” means president of a board;

“record of the proceedings”, in relation to a board, includes the report of the board and any opinion expressed by the board in accordance with any directions given by the authority;⁸

“represented” means represented by an officer or by counsel⁹ (which means a barrister-at-law, an advocate or a solicitor and, outside the United Kingdom, a person recognised by the authority as having rights and duties similar to those of a barrister-at-law, advocate or solicitor) and includes, in the case of a civilian employed in the service of Her Majesty, representation by such person’s trade union or staff association representative; and the term “representative” shall be construed accordingly.

Other expressions have the same meanings as they have in the Act.

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(3) [Omitted having been rendered obsolete as a result of D. (T. of F.) A. 1964.]

¹ By virtue of the D.(T. of F.)A. 1964, s. 3(4) these Rules continue to have effect as if made by the Secretary of State for Defence.

² This must now be construed as a reference to the Interpretation Act 1978; see *ibid.*, s. 25(2).

³ References to the Army Council should be construed as references to the Defence Council, see D. (T. of F.) A. 1964, s. 3(2).

⁴ See r. 6(1).

⁵ In view of N.D.A. 1957, s. 137(2), this includes a reference to that Act.

⁶ See N.D.A. 1957, s. 118 and A.F.A. 1955, s. 209 respectively.

⁷ See s. 1 of that Act and the notes thereto printed in Sec. XIII of Part II of this work as to the forces.

⁸ See this para.

⁹ There is no provision in current regulations for the grant of legal aid.

Duties of boards.

3. It shall be the duty of a board to investigate and report on the facts relating to any matter referred to the board¹ under these Rules and, if directed so to do, to express their opinion² on any question arising out of any such matter.

Matters for reference to boards.

4. Subject to the provisions of these Rules -

(1) a board shall be convened with reference to -

(a) the absence of any person subject to military law³ who has been continuously absent without leave for a period of not less than twenty-one days and the deficiency (if any) in the clothing, arms, ammunition or other equipment or any other public⁴ or service⁵ property⁶ issued to him for his use;

(b)⁷ the capture of any person subject to military law by the enemy and his conduct in captivity if, on his return from captivity, the authority⁸ considers that there are reasonable grounds for suspecting -

(i) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty; or

(ii) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin Her Majesty's service; or

(iii) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage; and

(c)⁹ the death of any person in a military establishment,¹⁰ being an establishment in any country or territory outside the United Kingdom¹¹ where an inquiry into the death is not required to be held by any civil authority.¹²

(2)¹³ A board may be convened with reference to any matter which the authority decides to refer to a board.

¹ See r. 4; see, however, r. 5 under which investigation can be deferred or stayed in certain circumstances.

² The opinion is included in the record of proceedings, see r. 2(2).

³ *Subject to military law*, see A.A. 1955, ss. 205-208.

⁴ *Public, service, property*, see A.A. 1955, s. 225(1).

⁵ *Public, service, property*, see A.A. 1955, s. 225(1).

⁶ *Public, service, property*, see A.A. 1955, s. 225(1).

⁷ (a) The boards referred to in this para. are required to enable an authority acting under A.A. 1955, s. 145(2) to consider whether the person is liable to forfeit pay in respect of his misconduct either before or after capture.

(b) Compare the offences created by A.A. 1955, s. 25(1)(d) and (e).

(c) If it is considered necessary to hold an investigation into the capture of a person before his release from captivity, such an investigation will have to be by way of a board as a regimental inquiry cannot investigate the capture of a person, see A.A. 1955, s. 137(1) proviso. This course may be necessary because the evidence is then readily available. On the other hand, such a board will not have the benefit of hearing the person's explanation.

⁸ *Authority*, see r. 2(2).

⁹ A board may be held to inquire into such a death even if a civil authority does require an inquiry to be held under local law. Such a board will be convened under para. (2).

¹⁰ *Military establishments*, see A.A. 1955, s. 143(1).

¹¹ *United Kingdom* in this r. includes the Channel Islands and the Isle of Man, see A.A. 1955 s. 216(2). The fact that a coroner's inquest may have been held on the death of a person in a military establishment in the United Kingdom would not preclude a board of inquiry or regimental inquiry being held to investigate the circumstances of the death, though in many cases such an inquiry would not be necessary. Where the death results from execution of sentence of death, provision is made for a coroner's inquest, see A.A. 1955, s. 128.

¹² *Civil authority*, see r. 2(2).

¹³ (a) See Q.R. (1975) Ch. 5, Annex A, paras 14-20 as to matters which, as a question of policy, are usually the subject of a Board of Inquiry.

Deferring and staying of proceedings.

5.¹ - (1) Subject to paragraph (2) of this Rule, where any matter is the subject of investigation by the military, naval or air-force police or by a civil authority,² or of an inquiry held by the proper naval or air-force authority, or of proceedings under military law, the Naval Discipline Act³ or air-force law or of proceedings in a civil court whether within or without Her Majesty's dominions, and

- (a) A board has not been convened with reference thereto, the authority⁴ may defer the convening of a board until the completion of such investigation or proceedings as aforesaid and upon completion thereof shall not be required to convene a board, if satisfied that a board is not necessary; or
- (b) a board has already been convened with reference thereto, the authority may stay the proceedings of the board until such investigation or proceedings as aforesaid have been completed and shall then dissolve the board, if satisfied that a board is not necessary.

(2)⁵ The provisions of paragraph (1) of this Rule shall not apply to the convening of a board with reference to such absence and such deficiency (if any) as are mentioned in sub-paragraph (a) of paragraph (1) of Rule 4, but, where the authority is satisfied that the absence has terminated,⁶ or where the absentee belongs or is attached to Her Majesty's naval or air-forces⁷ and the authority is satisfied that an inquiry into the absence is being or will be held by the proper naval or air-force authority, and

- (a) a board has not yet been convened with reference to the absence and deficiency (if any), the authority shall not be required to convene a board; or
- (b) a board has already been convened with reference thereto, the authority may forthwith dissolve the board.

(b) There is nothing in the Act, these Rules or R.I.R. 1956, to prevent an authority under r. 6 ordering a board to be convened after a regimental inquiry has already been held.

(c) Any investigation as to the absence or capture of a person subject to military law must be by way of a board of inquiry in view of A.A. 1955, s. 137(1) proviso even though the absence is of short duration.

¹ (a) The object of this rule is to enable the police investigations or the trial to proceed before a board is held. There is a similar provision so far as regimental inquiries are concerned, see R.I.R. 1956, r. 5. It is clearly undesirable for the police to be hampered in their investigations of a crime by a board or a regimental inquiry investigating the matter at the same time and taking evidence.

(b) An authority authorised to convene a board may, after reading the police report or the result of the trial by civil court or court-martial, come to the conclusion that a board need not be held because of admissions made by the person whose conduct is under investigation or who was tried. It will be seen from The Investigation (Lost or Damaged Property) (Army) Regulations 1956, post, made under A.A. 1955, s. 147, that it is not necessary for the Defence Council or an authorised officer to convene a board or order a regimental inquiry to be convened before ordering a deduction under that s. if there is other evidence upon which to act.

² *Civil authority*, see r. 2(2).

³ In view of N.D.A. 1957, s. 137(2), this includes a reference to that Act.

⁴ *Authority*, see r. 2(2)

⁵ (a) The object of this para. is to ensure that a board is always convened after a person subject to military law has been absent without leave for 21 days unless: -

- (i) a naval or air-force inquiry has been convened to inquire into his absence;
- (ii) he has returned to his unit whether by arrest, surrender or otherwise before it has been possible for a board to assemble; or
- (iii) the C.O. is satisfied beyond doubt that the absence is beyond the absentee's control, e.g., that he is detained by the civil police or is in a civil hospital.

(b) When the absentee has returned and the C.O. is not satisfied with the explanation given for the absence, the absentee should be charged with an offence under A.A. 1955, s.37(1) or s. 38(a).

(c) If the C.O. becomes aware of the absentee's whereabouts but is not certain whether in the circumstances in which he went absent his absence is excusable, he should convene a board or allow it to continue to sit, as the case may be, so long as the absentee is still voluntarily absent.

⁶ For example, as a result of the arrest of the absentee by the civil police.

⁷ Under A.A. 1955, s. 179.

Convening.

- 6 - (1) A board of inquiry may be convened by order of -
- (a) the Army Council;¹ or
 - (b) any officer not below the rank of colonel,² or corresponding rank,³ commanding any command or other area, garrison or place, or any formation or body of troops in Her Majesty's forces; or
 - (c) any officer who is acting for the time being in place of such an officer; or
 - (d) any officer commanding a unit or detachment of Her Majesty's military forces -
 - (i) with reference to such absence and such deficiency (if any) as are mentioned in sub-paragraph (a) of paragraph (1) of Rule 4;
 - (ii) if authorised by the Army Council⁴ or any such officer as is mentioned in sub-paragraph (b) or (c) of this paragraph, with reference to any particular matter or to matters of any specified class or description.
- (2) The following provisions shall apply in relation to the order convening a board -
- (a) The order shall specify the composition of the board⁵ and the place and time at which the board shall assemble;
 - (b)⁶ the order may, and where the matter referred to the board is that mentioned in sub-paragraph (a) of paragraph (1) of Rule 4 shall, specify the terms of reference⁷ of the board and be published in military orders;⁸
 - (c) the order may direct the board to express their opinion⁹ on any question arising out of any matter referred to the board; and
 - (d) the authority may at any time revoke, vary or suspend the order.

Constitution.

S.I. 1961 No. 2469. ; S.I. 1971 No. 1257. ; S.I. 1972 No. 847.

7. - (1) Subject to paragraph (2) of this Rule a board shall consist of a president who shall be an officer not below the rank of captain or corresponding rank¹⁰ and be subject to military law, the Naval Discipline Act 1957, or air-force law,¹¹ and not less than two other members each of whom

¹ The reference to Army Council should be construed as a reference to the Defence Council. See D. (T. of F.) A. 1964, s. 3(2) and (4).

² This would not include an officer of the rank of colonel who is commanding a unit, e.g. the O.C. of a hospital, as he is the O.C. of a unit and not the commander of a formation or body of troops and would thus be able to convene only under para. (d).

³ *Corresponding rank*, see Q.R. (1975) J2.041-2.042.

⁴ The reference to Army Council should be construed as a reference to the Defence Council. See D. (T. of F.) A. 1964, s. 3(2) and (4).

⁵ For composition of the board, see A.A. 1955, s. 135(2) and r. 7.

⁶ (a) It is essential that an order convening a board under r. 4(1)(a) should be published in unit orders so that an absentee may be deemed to have had notice of the convening of the board, see note 1(i) to r. 4.

(b) In the case of other boards the authority may not consider it desirable, in the interest of security or otherwise, to publish in orders the fact that a board is to assemble or the terms of reference of the board. Furthermore, as routine orders of higher formations are published at infrequent intervals it may be undesirable to postpone the assembly of a board until an order is published. The r., therefore, does not make publication of the order convening such other board and the terms of reference compulsory.

⁷ The terms of reference of a board other than one convened under r. 4(1)(a) need not be published in orders even though the assembly of the board is published. Where the terms of reference are not published they will be communicated privately to the president.

⁸ That is, in the orders of the authority convening the board; in the case of a board under r. 4(1)(a) the orders will be Part 1 Orders of the unit.

⁹ The opinion forms part of the record of the proceedings, see r. 2(2).

¹⁰ *Corresponding rank*, see Q.R. (1975) J2.041-2.042.

¹¹ (a) See respectively A.A. 1955, ss. 205-208, N.D.A. 1957, ss. 111-115 and A.F.A. 1955, ss. 205-208.

(b) An authority could with the consent of the appropriate naval or air-force authority appoint naval or, as the case may be, air-force officers subject to their own service law, to be members of the board if he thought such a course desirable; it probably would be desirable if one or more of the matters to be considered related to the navy or the air-force, as the case may be. See also A.A. 1955, s. 135(2).

shall be either an officer or a warrant officer so subject or a person not so subject who is in the service of the Crown.¹

(2) *[Omitted by S.I. 1972 No. 847.]*

(3) The authority shall appoint the president² by name and each remaining member of the board either by name or in the case of a person subject to military law, the Naval Discipline Act 1957, or air-force law, by detailing a commanding officer to appoint from persons under his command an officer,³ or a warrant officer

Assembly and procedure.

8. - (1) A board shall assemble at the time and place specified in the order convening the board.

(2) The president shall lay the terms of reference before the board and the board shall proceed to hear and record evidence in accordance with the provisions of these Rules.⁴

Adjournment and re-assembly.

9. - (1) The president may from time to time adjourn the board which shall sit on such occasions and in such places as he may from time to time direct.

(2) Without prejudice to paragraph (1) of this Rule, the authority⁵ may at any time, if it appears necessary or desirable, direct that the board shall re-assemble for such purpose or purposes as may be specified by the authority.⁶

(c) In complicated cases an A.L.S. officer could be appointed a member.

(d) Where the board is to investigate a death, it may be desirable to appoint an officer of R.A.M.C. to be a member especially if the medical evidence is not given by an officer of that corps.

¹ Who should be of one of the grades specified in Q.R. (1975) Ch. 5, Annex A, para. 36.

² Even if naval or air-force officers are members, it is desirable that the president should be an army officer; a civilian cannot in any circumstances be president.

³ In this case the order convening the board should state - "A captain to be appointed by the officer commanding, 1st Battalion, The Blankshire Regiment".

⁴ (a) See r. 12 and, as to exhibits, r. 14.

(b) The record of the proceedings will be made on A.F. A2.

⁵ *Authority*, see r. 2(2).

⁶ This para. enables an authority to order a board to re-assemble after it has made its report or expressed an opinion.

Witnesses.

10. - (1) A board shall hear the evidence of the witnesses¹ who have been made available by the authority² and may hear the evidence of such other persons as they think fit.

(2) While a civilian witness³ is giving evidence before a board he may be represented⁴ but, subject to the provisions of Rule 11, his representative shall not be entitled to be present at any other time.

(3)⁵ A civilian witness shall be entitled to receive the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

Persons who may be affected by the findings.

S.I. 1982 No. 366.

11.⁶ - (1) Where it appears to the authority⁷ or, if a board has been convened, either to the authority or to the president that any witness or other person *to whom this Rule applies* may be affected by the findings of the board, the authority or, as the case may be, the president shall take such steps as are in his view reasonable and necessary to secure that such witness or other person has notice of the proceedings and, if he so desires, has an opportunity of being present, and

¹ The evidence will be taken on oath, see A.A. 1955, s. 135(3)(a) and r. 13, subject always to the provisions of that r. and r. 12.

² *Authority*, see r. 2(2).

³ (a) *Civilian witness*, see r. 2(2).

(b) In normal circumstances a civilian cannot be compelled to attend to give evidence at an inquiry. In certain cases, however, in foreign countries provision is made (in the treaty of agreement under which the British forces are there) for the authorities of that country to arrange for the attendance of civilians at an inquiry.

(c) A civilian who is employed in or accompanies a force on active service (see A.A. 1955, s. 209(1)) could be given an order to attend and if he did not comply with the order he could be charged with an offence under Army Act 1955, s. 34. On the other hand, a civilian, to whom Part II of the Act applies only by virtue of s. 209(2) thereof, could not be ordered to attend as he could not be charged with an offence under s. 34, see s. 209(2) proviso.

⁴ *Represented*, see r. 2(2).

⁵ A.G.A.I., Vol. 2, Ch. 65, para. 65.131 et seq., and Annex D make provision for the payment of witnesses' expenses. The president of the board should see that, if a civilian witness claims expenses, he completes a travelling claim in accordance with current instructions.

⁶ (a) This rule is made pursuant to A.A. 1955, s. 135(4) as amended by A.F.A. 1981, s. 23(1).

(b) The authority or the president, as the case may be, will have to consider what persons may be entitled in the light of A.A. 1955, s. 135(4) to be present at the sitting of the board. A person would be affected if he might be subjected to disciplinary action or suffer a deduction from pay or, if he were a person subject to service law (i.e., military or air-force law or N.D.A. 1957), if he were liable to be censured, as a result of the findings of the board.

(c) As a rule a person who is likely to be affected will be a witness at the board. If he does not himself apply to be present or represented, the president should explain to him his rights, either before the board begins to hear evidence or as soon as it becomes apparent that he may be affected. If the person likely to be affected is not available, the president should inquire what steps have been taken to ensure that the person has been notified of the date when the board will sit and the nature of the matters to be investigated by the board. If he is not satisfied that reasonable steps have been taken to enable the person to be present and represented, the president should adjourn and report his opinion to the authority.

(d) Where a person who may be affected states that he does not wish to be present or to be represented, as the case may be, the president should make note of that in the record of the proceedings.

(e) In cases where it is possible that an order may be made under A.A. 1955, s. 147, see Q.R. (1975) 6.159-6.165.

⁷ *Authority*, see r. 2(2).

represented,¹ at the sittings of the board, or at such part thereof as the authority or, as the case may be, the president may specify.²

(2) Any such witness or other person as is referred to in paragraph (1) of this Rule may give evidence, question witnesses or produce any witness to give evidence on the matters which may affect him and, if he is represented, his representative may question witnesses, but a representative shall not address the board except with the permission of the president.

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(3) This Rule, so far as it applies to persons other than witnesses who may be affected by the findings, applies to persons of the following descriptions only, that is to say -

- (a) persons who are subject to military law, air-force law or the Naval Discipline Act 1957;
- (b) persons who, though not so subject, are in the service of the Crown and may be so affected in character or professional reputation; and
- (c) persons who, though not so subject, are employed by the Civil Aviation Authority in or in connection with the provision by the Authority of air navigation services and may be so affected in character or professional reputation.

¹ *Represented*, see r. 2(2).

² The authority or the president, as the case may be, will have to consider the interests of security and may direct that a person who may be affected shall only be present at specified times or that at certain times during the proceedings that person's representative shall not be present.

Evidence.

12.¹ A board may receive any evidence which they consider relevant to the matter referred to the board, whether oral or written, and whether or not it would be admissible in a civil court.

Oaths and affirmations.

13.² - (1) Subject to paragraph (3) of this Rule, every witness before a board shall be examined on oath.³

Provided that where any child of tender years called as a witness does not in the opinion of the board understand the nature of an oath, his evidence may be received, though not given on oath, if in the opinion of the board he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) Subject to paragraph (3) of this Rule, an oath shall be administered to any person in attendance on a board as interpreter.⁴

¹ (a) This r. permits hearsay to be given, therefore one witness may produce a written unsworn statement which he has obtained from another person; the witness producing the statement must, however, himself be sworn and explain the circumstances in which the statement came to be made and how he came to be in possession of it, for example: -

(i) An adjutant could produce a report from an officer which was made in the ordinary course of his duty.

(ii) An officer of R.M.P. (S.I.B.) could produce statements which he had taken from a number of witnesses during the course of an investigation.

(iii) A witness could produce a letter which he had received in reply to one written by himself asking for information.

(b) If a person affected requires the attendance of a particular person for cross-examination or if the board thinks it necessary in order to achieve its object that a particular person should give evidence orally, the board should endeavour to obtain the attendance of that person.

(c) As to boards of inquiry on illegal absence of more than 21 days, see note 1(e)-(g) to r. 4.

(d) Certain documents speak for themselves and need not be produced by witnesses, see Ch. V, para. 48 and A.A. 1955, ss. 190A and 198(6), (7) and (8).

² (a) If a witness subject to military law gives false evidence at a board he may be charged with an offence of perjury under A.A. 1955, s. 70.

(b) If, when the witness is sworn, the members of the board are not all present, no proceedings can be taken because the board was not properly constituted at the time when he was sworn.

³ (a) *Oath* includes affirmation, see A.A. 1955, s. 225(1); see also para. (3).

(b) See para. (4) as to method of administering oaths and affirmations.

⁴ (a) *Oath* includes affirmation, see A.A. 1955, s. 225(1); see also para. (3).

(b) See para. (4) as to method of administering oaths and affirmations.

S.I. 1989 No. 256.

- (3) If -
(a) a person objects to taking an oath, . . . or

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- (b) it is not reasonably practicable without inconvenience or without delaying the proceedings to administer an oath to a person in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation instead of taking an oath.

S.I. 1972 No. 847.

- (4) An oath shall be administered, or an affirmation made, before a board in the form and manner prescribed by Rules of Procedure (Army) 1972.¹

Exhibits.

14.² - (1) Subject to paragraph (2) of this Rule, any document or thing produced to a board by a witness when giving his evidence shall be made an exhibit.

(2) When an original document or book is produced to a board by a witness, the board may at the request of the witness compare a copy of it or an extract therefrom of the relevant parts with the original and, after they have satisfied themselves that such copy or extract is correct and the president has certified thereon that the board has compared it with the original and found it correct, the board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall -

- (a) be marked with a number or letter and be signed by the president or have a label affixed to it bearing a number or letter and the signature of the president;
(b) be attached to or kept with the record of the proceedings unless in the opinion of the board it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under subparagraph (b) of paragraph (3) of this Rule, the president shall ensure that proper steps are taken for its safe custody.

¹ For the form and manner of administering oaths and solemn affirmations, see C.M.(A)R. r. 24 and Sch. 3 thereto.

² Certain documents may be put in without production by a witness, see Ch. V, para. 48 and A.A. 1955, ss. 190A and 198(6), (7) and (8). These documents will be made exhibits.

Record of proceedings.

15. - (1) The president shall record, or cause to be recorded, the proceedings of the board in writing and in sufficient detail to enable the authority¹ to follow the course of the proceedings.

(2) Where there is no shorthand writer present the evidence shall be taken down in narrative form² recording as nearly as possible the words used:

Provided that, if the board consider it necessary, any particular question and answer shall be taken down verbatim.

(3) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (2) of this Rule, shall be read over to him and shall be signed by him.

(4) A record of the proceedings³ shall be signed by the president and other members of the board and forwarded to the authority.

Entries of reports in service books.

16. Where a board reports that a person subject to military law⁴ has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, and that there is a deficiency in any clothing, arms, ammunition or other equipment or any other public or service property⁵ issued to him for his use,⁶ a record of the report of such deficiency shall, in addition to a record of the report of such absence required under subsection (1) of section 136 of the Act, be entered in accordance with Queen's Regulations⁷ in the service books.⁸

Dated this 24th day of April, 1956.

Antony Head.

ENDNOTE 1 s. 4(1) (a) :

1 (a) As to composition of these boards, see r. 7(1).

(b) The best way of ascertaining when the board is to sit and of being certain that it is not assembled too early is to count the date of absence as day 1. The board can then sit on day 23; e.g., if an absence commences on 2nd January, 1981, the first day on which the board can sit is 24th January, 1981.

(c) A C.O. may convene this type of board, see r. 6(1)(d)(i).

(d) As to publication of the order convening this type of board, see r. 6(2).

(e) Although under r. 12 a board is not bound by the strict rules of evidence, it should be very careful as to the evidence which it admits when it is investigating this class of case in view of the legal consequences of its finding, as to which, see A.A. 1955, ss. 136 and 198(5).

(f) In particular, deficiencies of kit should be strictly proved in the manner stated in para. (g) because A.B. 161 in which they will be recorded can be used to prove them if the absentee is charged on his return with losing his kit.

(g) To prove the absence and the deficiency of kit, etc., if any, the following must be proved by witnesses: -

(i) The commencement of the absence; normally it is possible to do this by calling either the N.C.O. who took the parade at which the man's absence was first noticed or some other person who was present at it. If this is not possible, the absence may be proved by the production of a Part 2/3 Order by a witness who can state that the order relates to the absentee. The production of an A.F. B290

¹ Authority, see r. 2(2).

² This can be done on a typewriter.

³ Any opinion expressed by the board is part of the record of the proceedings, see r. 2(2).

⁴ Subject to military law, see A.A. 1955, ss. 205-208.

⁵ Public, service, property, see A.A. 1955, s. 225(1).

⁶ See r. 4(1)(a) as the convening of a board to investigate this type of deficiency.

⁷ See Q.R. (1975) 5.011. When making the report care must be taken to ensure that there is reference therein to every day on which the board of inquiry sat and that it is clear from the report that the accused was absent on each day on which the board sat; see also note 1 to r. 4.

⁸ That is A.B. 161, see Q.R. (1975) 5.454 and Chap. 5 Annex G.

(absentee report) will not suffice as such a document is not admissible in evidence at a court-martial except in very rare cases.

(ii) That the absentee is still absent on the day on which the board sits. When the board sits on more than one day, evidence must be given to show that the absentee was still absent on the day on which the report is signed by the board.

(iii) The articles with which the absentee was issued before he went absent. The issue of these articles can be proved by a witness producing the A.F. H1157 signed by the absentee admitting that he had received them. The witness must identify the absentee's signature on the form. In order to comply with paragraph 104 of Materiel Regulations, Volume 3, Clothing, pamphlet No. 2, the witness should produce both the original and a copy of the A.F. H1157 and should request the Board, under r. 14(2), to certify and retain the copy and return the original to him. He should also give the Board the original A. F. B253 and the original priced list of deficiencies. As an alternative to producing the A.F. H1157 a witness may be called to state that shortly before the absentee went absent his kit was checked and that he then had the articles in his possession.

(iv) The articles which were found in the absentee's kit when it was inspected after he had gone absent.

(v) The value of the articles missing; this can be proved, e.g., by a C.Q.M.S. stating the value of the articles of his own knowledge or by the production of a document issued by order of the Defence Council showing the values of the articles, provided the document is admissible in evidence under A.A. 1955, s. 198(6).

(h) If during the sitting of the board it comes to the knowledge of the C.O. or the board that the absentee is no longer absent the board should be dissolved, see r. 5(2).

(i) Under A.A. 1955, s. 135(4) and r. 11, the president must take such steps as are reasonable and necessary to ensure that the absentee has had an opportunity of being present and represented. A president will probably be satisfied in a case of absence if evidence is given that the order convening the board was published in unit orders as required in r. 6(2) and that the absentee is not present with the unit.

(j) Before a board makes its report it must be satisfied that the absentee absented himself without leave or other sufficient cause and that his absence was not due to any cause such as illness, misadventure or foul play. The board should, therefore, give any person who wishes to make any statement an opportunity of giving evidence. If, after hearing the evidence, the board is not satisfied that the absence may not have been due to some sufficient cause, it should record that it is unable to make any report and give its reasons therefor. If there is no evidence tending to show that the absence was due to a sufficient cause, the board is entitled to infer that the absence was without sufficient cause and report accordingly.

(k) For the form of report to be made by the board, see r. 16 and Q.R. (1975) 5.011. If the board sits on more than one day care must be taken to ensure that all the dates on which it sat are stated in the record of the report.

(l) When the report is made, a record of it will be entered in the service book (A.B. 161 under A.A. 1955, s. 136 and Q.R. (1975) 5.011). The entry must be signed by the C.O.

(m) Two copies of the entry in A.B. 161 will be made on A.F. B115, one being retained by the unit and one sent to O.I.C. Manning and Records in the case of soldiers and to the Ministry of Defence (PS2(A)) in the case of officers after the copies have been certified to be true copies of the entry in A.B. 161 by the officer or other person having the custody of that book. The officer, or other person who certifies the copies to be true copies must state that he has custody of the book. A.F. B115 will then be admissible in evidence under A.A. 1955, s. 198(5).

(n) The record of the proceedings will be forwarded to the Ministry of Defence (PS2(Army)) in the case of an officer and O.I.C. Manning and Records in the case of a soldier and will be retained there in accordance with Q.R. (1975) 5.011.

(Return to s. 4)

REGIMENTAL INQUIRY REGULATIONS 1956

A.O. 108 of 1956.

The Army Council¹ in exercise of the powers conferred upon them by section 137 of the Army Act 1955, and of all other powers them enabling, hereby make the following Regulations: -

Citation and commencement.

1. These Regulations may be cited as the Regimental Inquiry Regulations 1956, and shall come into operation on the 1st day of January 1957.

Interpretation.

2. - (1) The Interpretation Act 1889,² shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

A.O. 73 of 1957.

(2) In these Regulations, except where the context otherwise requires:

A.O. 77 of 1961.

“the Act” means the Army Act 1955;

“the authority”, in relation to a regimental inquiry, means an officer empowered under these Regulations to convene a regimental inquiry;³

“civil authority”, includes a coroner and the civil police;

“civilian witness” means a person who gives evidence before a regimental inquiry and is either a person to whom section 209 of the Act or any corresponding provisions of the Naval Discipline Act,⁴ or the Air Force Act 1955, applies, or a person who is not subject to military law, the Naval Discipline Act,⁵ airforce law or the service law (which has the same meaning as in Part I of the Visiting Forces Act 1952) of a visiting force, *that is to say, any such body, contingent or detachment of the forces of any country as is for the time being a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952;*⁶

“president” means the person appointed as such in the order convening a regimental inquiry, and where a regimental inquiry consists of one person means that person;

“record of the proceedings”, in relation to a regimental inquiry, includes the report of the regimental inquiry and any opinion expressed by the regimental inquiry in accordance with any directions given by the authority;

“regimental inquiry” means a person or persons caused to hold an inquiry pursuant to section 137 of the Act;

“represented” means represented by an officer or by counsel⁷ (which means a barrister-at-law, an advocate or a solicitor and, outside the United Kingdom, a person recognised by the authority as having rights and duties similar to those of a barrister-at-law, advocate or solicitor) and includes, in the case of a civilian employed in the service of Her Majesty, representation by such person’s trade union or staff association representative; and the term “representative” shall be construed accordingly.

Other expressions have the same meanings as they have in the Act.

Duties of regimental inquiries.

3. It shall be the duty of a regimental inquiry to investigate and report on the facts relating to any matter referred to them⁸ under these Regulations and, if directed so to do, to express their opinion⁹ on any question arising out of any such matter.

¹ These regulations made by the Army Council continue to have effect as if they had been made by the Defence Council; see D. (T. of F.)A. 1964, s. 3(4).

² This must now be construed as a reference to the Interpretation Act 1978; see *ibid.*, s. 25(2).

³ See r. 6(1).

⁴ In view of N.D.A. 1957, s. 137(2), this includes a reference to that Act.

⁵ In view of N.D.A. 1957, s. 137(2), this includes a reference to that Act.

⁶ See note 6 to B.I.(A)R, 1956, r. 2.

⁷ There is no provision in current regulations for the grant of legal aid.

⁸ See r. 4; see, however, r. 5 under which the investigation may be stayed in certain circumstances.

⁹ The opinion is included in the record of the proceedings, see r. 2(2).

Matters for reference to regimental inquiries.

4. Subject to the provisions of these Regulations, a regimental inquiry may be convened¹ with reference to any matter² not being -

- (a)³ the absence⁴ of a person subject to military law;⁵
- (b)⁶ the capture of any such person by the enemy;
- (c) a matter in respect of which a board of inquiry has been convened; or
- (d)⁷ a matter in respect of which a board of inquiry is required to be convened under rules made pursuant to section 135 of the Act.

Staying of proceedings.

5.⁸ Where a matter is the subject of investigation by the military, naval or air-force police or a civil authority,⁹ or is the subject of proceedings under military law, the Naval Discipline Act¹⁰ or air-force law or of proceedings in a civil court whether within or without Her Majesty's dominions, and a regimental inquiry has been convened with reference thereto, the authority¹¹ may stay the proceedings thereof until such investigation or proceedings as aforesaid have been completed and shall then dissolve the regimental inquiry, if satisfied that it is not necessary.

Convening. D.C.I. (Army) 82 of 1991

6. - (1) A regimental inquiry may be convened by an officer of any of Her Majesty's military forces commanding a unit or detachment of such forces or who is commandant of a prisoner of war camp or cage.

(2) The following provisions shall apply in relation to the order convening a regimental inquiry: -

- (a) the order shall specify the composition of the regimental inquiry and the place and time at which the regimental inquiry¹² shall assemble;
- (b) the order may specify the terms of reference of the regimental inquiry and be published in military orders;¹³

¹ As to convening, see r. 6.

² See Q.R. (1975) Ch. 5, Annex A, para. 21 as to the matters usually referred to a Regimental Inquiry.

³ These matters cannot be investigated by a regimental inquiry because of A.A. 1955, s. 137(1) proviso.

⁴ Irrespective of the length of absence; B.I.(A)R. 1956, r. 4(1)(a) makes provision for the convening of boards to investigate absence of over 21 days.

⁵ *Subject to military law*, see A.A. 1955, ss. 205-208.

⁶ These matters cannot be investigated by a regimental inquiry because of A.A. 1955, s. 137(1) proviso.

⁷ As to these matters, see B.I.(A)R, 1956, r. 4(1).

⁸ (a) The object of this r. is to enable the police investigations or the trial to proceed before an inquiry is held. There is a similar provision so far as boards of inquiry are concerned, see B.I.(A)R, 1956, r. 5; it is clearly undesirable for the police to be hampered in their investigations of a crime by a board or an inquiry investigating the matter at the same time and taking evidence.

(b) A C.O. may, after reading the police report or the result of the trial by a civil court or court-martial, come to the conclusion that an inquiry need not be held because of admissions made by the person whose conduct is under investigation or who was tried.

(c) In view of The Investigation (Lost or Damaged Property) (Army) Regulations 1956, post, made under A.A. 1955, s. 147 it is not necessary for the Defence Council or an authorised officer to convene a board or order a regimental inquiry to be convened before ordering deductions under that s. if there is other evidence upon which to act.

⁹ *Civil authority*, see r. 2(2).

¹⁰ In view of N.D.A. 1957, s. 137(2), this includes a reference to that Act.

¹¹ Authority, that is the C.O., see rr. 2(2) and 6(1).

¹² For the constitution of an inquiry, see r. 7.

¹³ This para. does not make publication of the order convening an inquiry compulsory, as the C.O. may consider it undesirable for security or other reasons to publish the terms of reference or even to publish the fact that an inquiry is to sit. Where the terms of reference are not to be published they will be communicated privately to the president.

- (c) the order may direct the regimental inquiry to express their opinion¹ on any question arising out of any matter referred to them; and
- (d) the authority may at any time revoke, vary or suspend the order.

Constitution.

7.² - (1) A regimental inquiry may consist of one or more persons.

A.O. 73 of 1957. A.O. 77 of 1961.

(2) The president of a regimental inquiry may be -

- (a) a person who is subject to military law, the Naval Discipline Act 1957, or air-force law³ as an officer, or

¹ The opinion forms part of the record of the proceedings, see r. 2(2).

² (a) So long as the president is an officer or a person in the service of the Crown the other members may be of any rank.

(b) The number of members required for any particular inquiry is a matter for decision by the C.O. In general, the number should be directly related to the importance and probable complication of the inquiry; an inquiry consisting of only one member being confined to cases where a formal inquiry is necessary but the facts are relatively simple.

³ It may be desirable for a C.O., with the consent of the appropriate naval or air-force authority, to appoint a naval or air-force officer to be a member of an inquiry if the matters to be investigated relate to naval or air-force affairs or personnel, as the case may be.

- (b) a person who, not being subject to military law, the Naval Discipline Act 1957, or air-force law, is in the service of the Crown;¹
- (3) A member of a regimental inquiry other than the president shall be -
 - (a) a person who is subject to military law, the Naval Discipline Act 1957, or air-force law, or
 - (b) a person who, not being so subject, is in the service of the Crown.
- (4) An order convening a regimental inquiry shall specify by name² the members of the inquiry, and if there is more than one member, which of them is to act as president.

¹ As to the grades of persons who may sit in the case of civil servants, see Q.R. (1975) Ch. 5, Annex A, para. 36.

² A C.O., therefore, may not detail a company, etc., commander to appoint a member.

Assembly and procedure.

8. - (1) A regimental inquiry shall assemble at the time and place specified in the order convening the regimental inquiry.

(2) The president¹ shall lay the terms of reference before the regimental inquiry and the regimental inquiry shall proceed to hear and record the evidence in accordance with the provisions of these Regulations.²

Adjournment and re-assembly.

9. - (1) The president³ may from time to time adjourn the regimental inquiry which shall sit on such occasions and in such places as he may from time to time direct.

(2) Without prejudice to paragraph (1) of this Regulation, the authority⁴ may at any time, if it appears necessary or desirable, direct that the regimental inquiry shall re-assemble for such purpose or purposes as may be specified by the authority.⁵

¹ *President*, see r. 2(2).

² (a) See r. 12, and as to exhibits, r. 14.

(b) The record of the proceedings will be made on A.F. A2.

³ *President*, see r. 2(2).

⁴ *Authority*, that is, the C.O. of the unit, etc., convening the inquiry, see rr. 2(2) and 6(1).

⁵ This paragraph enables a C.O. to order the inquiry to re-assemble after it has made its report or expressed an opinion.

Witnesses.

10. - (1) A regimental inquiry shall hear the evidence of the witnesses¹ who have been made available by the authority² and may hear the evidence of such other persons as they think fit.

(2) While a civilian witness³ is giving evidence before a regimental inquiry he may be represented⁴ but, subject to the provisions of Regulation 11, his representative shall not be entitled to be present at any other time.

(3)⁵ A civilian witness shall be entitled to receive the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

Persons who may be affected by the findings.

D.C.I. (Army) 144. of 1982.

11.⁶ - (1) Where it appears to the authority⁷ or, if a regimental inquiry has been convened, either to the authority or to the president⁸ that any witness or other person to whom this Regulation applies may be affected by the findings of the regimental inquiry, the authority or, as the case may be, the president shall take such steps as are in his view reasonable and necessary to secure that such witnesses or other person has notice of the proceedings and, if he so desires, has an opportunity of being present, and represented,⁹ at the sittings of the regimental inquiry, or at such part thereof as the authority or, as the case may be, the president may specify.¹⁰

(2) Any such witness or other person may give evidence, question witnesses or produce any witness to give evidence on the matters which may affect him and, if he is represented, his representative may question witnesses, but a representative shall not address the regimental inquiry except with the permission of the president.

D.C.I. (Army) 144. of 1982.

(3) This Regulation, so far as it applies to persons other than witnesses who may be affected by the findings, applies to persons of the following descriptions only, that is to say -

- (a) persons who are subject to military law, air force law or the Naval Discipline Act 1957;
- (b) persons who, though not so subject, are in the service of the Crown and may be so affected in character or professional reputation; and
- (c) persons who, though not so subject, are employed by the Civil Aviation Authority in or in connection with the provision by the Authority of air navigation services and may be so affected in character or professional reputation.

¹ The evidence will only be taken on oath or affirmation when the officer convening the inquiry so orders, see A.A. 1955, s. 137(2) and r. 13, subject always to the provisions of that r. and r. 12.

² Authority, i.e., the C.O. who convenes the inquiry, see rr. 2(2) and 6(1).

³ (a) *Civilian witness*, see r. 2(2).

(b) See note 3(b) and (c) to B.I(A)R. 1956, r. 10.

⁴ *Represented*, see r. 2(2).

⁵ A.G.A.I. Vol. 2, Ch. 65, para. 65, 131 et seq., and Annex D make provision for the payment of witnesses' expenses. The president should see that, if a civilian witness claims expenses, he completes a travelling claim in accordance with current instructions.

⁶ (a) This r. is made pursuant to A.A. 1955, ss. 135(4) and 137(3) as amended by A.F.A. 1981 s. 23(1).

(b) See note 1(b)-(e) to B.I(A)R. 1956, r. 11 which apply mutatis mutandis.

⁷ Authority, i.e., the C.O. who convened the inquiry, see rr. 2(2) and 6(1).

⁸ *President*, see r. 2(2).

⁹ *Represented*, see r. 2(2).

¹⁰ The C.O. or the president, as the case may be, will have to consider the interests of security and may direct that a person who may be affected shall only be present at specified times or that at certain times during the proceedings that person's representative shall not be present.

Evidence.

12.¹ A regimental inquiry may receive any evidence which they consider relevant to the matter referred to them, whether oral or written, and whether or not such evidence would be admissible in a civil court.

Oaths and affirmations.

13.² - (1) Where the authority so directs, and subject to paragraph (3) of this Regulation, a witness before a regimental inquiry shall be examined on oath.³

Provided that where any child of tender years called as a witness does not in the opinion of the president understand the nature of an oath or affirmation, his evidence may be received, though not given on oath or affirmation, if in the opinion of the president he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) Where the authority gives a direction under paragraph (1) of this Regulation, and subject to paragraph (3) of this Regulation, an oath shall be administered to any person in attendance as interpreter.⁴

A.O. 77 of 1961.

(3) If -

D.C.I. (Army) 82. of 1991.

(a) a person objects to taking an oath or

(b) it is not reasonably practicable without inconvenience or without delaying the proceedings to administer an oath in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation instead of taking an oath.

¹ (a) Where a witness gives evidence in person before the inquiry, he will be sworn, if the C.O. so directs, under r. 13.

(b) Even in cases where the evidence is to be taken on oath, one witness can produce a written unsworn statement which he has obtained from another, as the r. permits hearsay evidence to be given. The witness producing the statement must, however, himself be sworn and explain the circumstances in which the statement came to be made and how he came to be in possession of it. For example: -

(i) An adjutant could produce a report made by an officer in the course of his duty.

(ii) A N.C.O. of R.M.P. (S.I.B.) could produce statements which he had taken during an investigation.

(iii) A witness could produce a letter which he had received in reply to one written by him asking for information.

(c) When the inquiry is not on oath written statements can be put in and made exhibits.

(d) If a person affected requires the attendance of a particular person for cross-examination or if the inquiry thinks it necessary in order to achieve its object that a person should give evidence orally, the inquiry should endeavour to obtain the attendance of that person whether or not the evidence is taken on oath.

² If a witness subject to military law gives false evidence on oath at an inquiry he may be charged with an offence of perjury under A.A. 1955, s. 70, but if, when the witness is sworn, the members of the inquiry are not all present, no proceedings can be taken because the inquiry was not properly constituted at the time when he was sworn.

³ For form and manner of administering oaths and solemn affirmations, see C.M.(A)R.r.24 and Sch. 3 thereto.

⁴ For form and manner of administering oaths and solemn affirmations, see C.M.(A)R.r.24 and Sch. 3 thereto.

(4) An oath shall be administered, or an affirmation made before a regimental inquiry in the form and manner prescribed by Rules of Procedure (Army) 1972.¹

Exhibits.

14.² - (1) Subject to paragraph (2) of this Regulation, any document or thing produced to a regimental inquiry by a witness when giving his evidence shall be made an exhibit.

(2) When an original document or book is produced to a regimental inquiry by a witness, the regimental inquiry may at the request of the witness compare a copy of it or an extract therefrom of the relevant parts with the original and, after they have satisfied themselves that such copy or extract is correct and the president³ has certified thereon that they have compared it with the original and found it correct, they may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall -

(a) be marked with a number or letter and be signed by the president or have a label affixed to it bearing a number or letter and the signature of the president;

(b) be attached to or kept with the record of the proceedings unless in the opinion of the president it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under paragraph (3)(b) of this Regulation, the president shall ensure that proper steps are taken for its safe custody.

Record of proceedings.

15.⁴ - (1) The president⁵ shall record, or cause to be recorded, the proceedings of the regimental inquiry in writing and in sufficient detail to enable the authority⁶ to follow the course of the proceedings.

¹ For form and manner of administering oaths and solemn affirmations, C.M.(A)R. r. 24 and Sch. 3.

² Where statements of persons who are not present at an inquiry are put in when the inquiry is not ordered to take evidence on oath, the statements will be treated as exhibits.

(c) See Ch. V, paras. 48 and 68. A.A. 1955, ss. 190A and 198(6), (7) and (8) make certain documents admissible without being produced by witnesses. These documents will be treated as exhibits.

³ *President*, see r. 2(2).

⁴ Where the authority convening the inquiry directs that the evidence shall be taken on oath in accordance with r. 13, the president should ensure that a note is made in the record to the effect that the inquiry was ordered to take evidence on oath.

⁵ *President*, see r. 2(2).

⁶ *Authority*, i.e., the C.O. who convened the inquiry, see rr. 2 and 6.

(2) Where there is no shorthand writer present the evidence shall be taken down in narrative form recording as nearly as possible the words used:

Provided that if the president considers it necessary, any particular question and answer shall be taken down verbatim.

(3) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (2) of this Regulation, shall be read over to him and shall be signed by him.

(4) A record of the proceedings¹ of a regimental inquiry shall be signed by the president and other members of the regimental inquiry and forwarded to the authority.

Dated the 9th day of May 1956.

M. S. CHILTON.

W. P. OLIVER.

D. WARD.

¹ Any opinion expressed by the inquiry is part of the record of the proceedings, see r. 2(2).