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STATUTORY INSTRUMENTS

2007 No. 3443

The Courts-Martial (Royal Navy) Rules 2007

PART 1

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Courts-Martial (Royal Navy) Rules 2007 and shall come into force on 1st January 2008.

Interpretation

2.—(1) In these Rules—

"the Act" means the Naval Discipline Act 1957;

"the 2003 Act" means the Criminal Justice Act 2003;

"the board" means those members of the court-martial other than the judge advocate;

"commanding officer", in relation to an accused, means the officer who is for the time being in command of the ship, unit or establishment to which the accused belongs;

"commencement of the trial" shall be construed in accordance with rule 57;

"the judge advocate"—

(i) in relation to a court-martial, means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial;

(ii) in relation to a preliminary hearing, means the judge advocate appointed by or on behalf of the Judge Advocate General to conduct any such proceedings;

"legal representative" means a person appointed to represent an accused at any proceedings before a court-martial, providing he is—

(i) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(**1**);

(ii) an advocate or a solicitor in Scotland;

(iii) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or

(iv) a person having in any of the Channel Islands, the Isle of Man, a Commonwealth country or British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and subject to punishment or disability for breach of professional rules;

(**1**) 1990 c. 41.

"live television link" means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);

"preliminary charge" means the charge which would have been dealt with summarily had the accused not elected court-martial trial;

"preliminary hearing" shall be construed in accordance with rule 33;

"the president of the board" shall be construed in accordance with rule 52;

"the prosecuting authority" means the prosecuting authority or any prosecuting officer or other person appearing on his behalf;

"prosecution papers" shall be construed in accordance with rule 9; and

"special finding" shall be construed in accordance with rule 74.

Service on an accused

3.—(1) Unless the context otherwise requires, where under these Rules any document or notice is to be served on an accused by the court administration officer or the prosecuting authority, it may be served—

(a) by sending it to the commanding officer of the accused;

(b) by delivering it to the accused personally;

(c) by leaving it for the accused with a person at the accused's usual place of abode; or

(d) by post in a letter addressed to the accused at his last known or usual place of abode.

(2) Where a document or notice is received by the commanding officer in accordance with paragraph (1)(a), he shall serve it on the accused as soon as is practicable.

PART 2

PROSECUTION OF OFFENCES

Referring a case to the prosecuting authority

4.—(1) If the higher authority refers a case in respect of an accused to the prosecuting authority in accordance with section 52C(1) of the Act, he shall forward to the prosecuting authority—

(a) a copy of any report concerning the case prepared by the Royal Naval Police or other investigator;

(b) the offence or a list of offences alleged against the accused;

(c) a list of any potential witnesses;

(d) any written statements of the potential witnesses;

(e) any statements made by the accused including records or transcripts of interviews conducted under caution;

(f) a list of any exhibits;

(g) any other evidence, real or documentary; and

(h) where the accused has elected trial by court-martial, notification of that fact.

Withdrawal of election in a multiple charge case

5.—(1) Where—

(a) an election for court-martial trial relates to two or more preliminary charges; and

(b) that election is withdrawn with the leave of the prosecuting authority,

section 52I(2) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer of the accused each of the preliminary charges to be tried summarily.

Referring back in a multiple charge case before charges are preferred

6.—(1) Where—

(a) an election for court-martial trial relates to two or more preliminary charges; and

(b) the prosecuting authority considers that a charge or charges different from or additional to a preliminary charge should be preferred,

section 52II(1) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer of the accused any additional preliminary charge as well as the charge or charges which he would otherwise be required to refer back under that section.

(2) In paragraph (1), the reference to any additional preliminary charge is to any preliminary charge which is different from the preliminary charge referred to in paragraph (1)(b).

Charge sheet

7.—(1) A charge sheet shall be in the form specified in Schedule 1 and shall state—

(a) the name, service number and rank or rate of the accused;

(b) the name of the ship, unit or establishment, if any, in which the accused is serving;

(c) particulars of how the accused is subject to or otherwise triable under the Act; and

(d) any charge preferred against the accused.

(2) A charge sheet shall be signed and dated by the prosecuting authority.

Charges and joinder

8. The rules contained in Schedule 1 to these Rules shall be observed in proceedings before courts-martial.

Notifying the accused's commanding officer

9.—(1) Where the prosecuting authority has preferred a charge against an accused to be tried by court-martial, the prosecuting authority shall notify the commanding officer of the accused of the charge by sending to the commanding officer the prosecution papers.

(2) In these Rules, "the prosecution papers" means—

(a) a copy of the charge sheet;

(b) a list of any witnesses whom the prosecuting authority proposes to call;

(c) copies of any statements of the prosecution witnesses, or other record of their evidence;

(d) a list of any exhibits which the prosecuting authority proposes to put in evidence and copies of those exhibits or details of their whereabouts;

(e) notice of any additional evidence which the prosecutor intends to adduce;

(f) a record of any previous convictions of—

(i) the accused; and

(ii) all witnesses to be called by the prosecutor; and

(g) a list of all unused material.

Notifying the court administration officer

10.—(1) The prosecuting authority shall notify the court administration officer of any charge which he has preferred by sending to him a copy of the prosecution papers.

(2) On receipt of a copy of the prosecution papers from the prosecuting authority, the court administration officer shall send—

(a) a copy of the prosecution papers to the Judge Advocate General; and

(b) to the commanding officer of the accused—

(i) a statement explaining the opportunities available to an accused for legal assistance, and

(ii) a statement explaining the rights of an accused facing court-martial.

Notification of proceedings

11.—(1) This rule applies where the commanding officer has been notified in respect of an accused under his command that the prosecuting authority has preferred a charge.

(2) As soon as is practicable after receipt of

(a) the prosecution papers; and

(b) the statements provided for in rule 10(2)(b),

the commanding officer shall notify the accused that he is to be tried by court-martial.

(3) On notifying the accused in accordance with paragraph (2), the commanding officer shall serve the accused with—

(a) the prosecution papers;

(b) the statements explaining the rights of an accused and concerning legal assistance provided for in rule 10(2)(b);

(c) a form for notifying the court administration officer of the accused's legal representative;

(d) where so required by the prosecutor, a statement explaining the effect of section 11 of the Criminal Justice Act 1967(**2**) (notice of alibi) and a form for the accused's notice of alibi; and

(e) a form for acknowledgement of receipt of the documents listed at (a) to (d).

Discontinuing proceedings before arraignment

12. If before the arraignment of the accused on a charge the prosecuting authority discontinues proceedings on that charge, he shall serve notice in writing on the accused and the court administration officer.

Referring back in a multiple charge case after charges already preferred

13.—(1) Where—

(a) an election for court-martial trial relates to two or more preliminary charges; and

(**2**) 1967 c. 89; section 11 is applied to proceedings before courts-martial by section 12 of the Criminal Justice Act 1967 (c.80), subject to the modifications prescribed by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997 (S.I. 1997/173). Section 12 was amended by the Armed Forces Act 1976 (c. 52), section 11 and Schedule 5 and the Armed Forces Act 1996, section 5 and Schedule 1.

(b) the prosecuting authority considers that a charge which has already been preferred ("the original charge") should be amended, or that a charge should be preferred in addition to or in substitution for the original charge,

section 52II(1) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer any charge (other than the original charge) which has already been preferred, as well as the charge or charges which he would otherwise be required to refer back under that section.

Amending charges and additional charges before arraignment

14.—(1) If before the arraignment of the accused the prosecuting authority—

(a) amends, or substitutes another charge or charges for, that charge;

(b) prefers an additional charge against the accused and directs that the additional charge shall be arraigned at the same time as the original charge,

he shall serve notice on the accused and the court administration officer.

(2) Except with the consent of the accused, notice under paragraph (1) shall not be served less than 24 hours before the time appointed for the arraignment of the accused on the original charge.

(3) Where the prosecuting authority is required to serve notice on the accused in accordance with this rule, he shall do so by sending to the accused's commanding officer or, with the consent of the accused, by serving directly on the accused—

(a) a copy of the amended charge sheet; and

(b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet.

(4) Where any document is received by the commanding officer in accordance with paragraph (3), he shall serve it on the accused as soon as is practicable.

(5) Where the prosecuting authority is required to serve notice on the court administration officer in accordance with this rule, he shall do so by sending to the court administration officer or, if less than 24 hours before the time appointed for the arraignment of the accused on the original charge, the judge advocate—

(a) a copy of the amended charge sheet; and

(b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet.

PART 3

COURT ADMINISTRATION

Delegation of the court administration officer's functions

15. The court administration officer may delegate any of his functions to a member of the Military Court Service.

Appointment of court officials

16.—(1) The court administration officer may appoint in the order assembling the court-martial the clerk of the court.

(2) The court administration officer may appoint at any time a person or persons to act as—

(a) provost marshal;

(b) court recorder;

(c) officer of the court;

(d) interpreter,

for the purposes of any proceedings before a court-martial (including a hearing before a judge advocate sitting alone).

Notification of time and place for hearing of the proceedings

17.—(1) On receipt of a copy of the prosecution papers, the court administration officer shall order a court-martial to convene to try the accused.

(2) The court administration officer shall consult the judge advocate before specifying the time and place for the hearing of any proceedings.

(3) Not less than 24 hours before the time appointed for the arraignment of the accused, the court administration officer shall send the convening order to the judge advocate and serve a copy of the convening order on—

(a) the accused;

(b) the prosecuting authority; and

(c) the other members of the court.

(4) At the same time as the accused is served with a copy of the convening order in accordance with paragraph (3), the court administration officer shall notify the accused that any person whom he reasonably requires to give evidence in any proceedings before the court-martial may be notified on his behalf by the court administration officer.

(5) If the court administration officer amends or withdraws the convening order, he shall serve notice in writing on the persons listed in paragraph (3).

Ineligibility for membership of courts-martial

18.—(1) An officer or warrant officer shall not be eligible to be a member of a court-martial for the purpose of any proceedings against an accused if—

(a) he serves under the command of—

(i) the higher authority who referred the case against the accused to the prosecuting authority;

(ii) the prosecuting authority; or

(iii) the court administration officer;

(b) he serves in the same unit as the accused; or

(c) he—

(i) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;

(ii) is an advocate or a solicitor in Scotland;

(iii) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;

(iv) has in any of the Channel Islands, the Isle of Man, a Commonwealth country or British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

PART 4

WITNESSES

Notification of witnesses

19.—(1) Where any person is required to give evidence in any proceedings before a court-martial, the court administration officer shall notify that person of the time and place at which he is required to attend.

(2) If the accused requests the court administration officer to notify a witness on his behalf under rule 17(4), the accused shall provide to the court administration officer sufficient information in sufficient time to enable notification to be made.

(3) If the court administration officer is unable to notify a witness under this rule or if, in his opinion, it is not reasonably practicable to notify a witness, he shall inform the judge advocate and the party seeking to call that witness in writing.

Witness not called by the prosecuting authority

20.—(1) This rule applies where the prosecuting authority does not intend to call as a witness—

(a) any person whose statement or record of evidence has been served on the accused as part of the evidence for the prosecution; or

(b) any person in respect of whose evidence he has served notice under rule 60.

(2) Where this rule applies, unless the accused waives the requirement, the prosecuting authority shall—

(a) serve notice in writing on the accused that he does not intend to call that person; or

(b) tender that person at trial for cross-examination by the accused.

Issue of witness summons on application to a judge advocate

21.—(1) This rule applies where a judge advocate is satisfied that—

(a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any proceedings before a court-martial, and

(b) it is in the interests of justice to issue a witness summons under this rule to secure the attendance of that person to give evidence or to produce the document or thing.

(2) In such a case, the judge advocate shall, subject to the following provisions of this rule, issue a witness summons directed to the person concerned and require him to—

(a) attend before a court-martial at the time and place stated in the witness summons, and

(b) give the evidence or produce the document or thing.

(3) A witness summons may only be issued under this rule on an application; and the judge advocate may refuse to issue the witness summons if any requirement relating to the application is not fulfilled.

(4) A party who wants the judge advocate to issue a witness summons must apply as soon as practicable after becoming aware of the grounds for doing so.

(5) The party applying must—

(a) identify the proposed witness;

(b) explain—

(i) what evidence the proposed witness can give or produce,

(ii) why it is likely to be material evidence, and

(iii) why it would be in the interests of justice to issue a witness summons.

(6) The application may be made orally unless—

(a) rule 22 applies; or

(b) the judge advocate otherwise directs.

(7) An application in writing must be in the form set out in Schedule 2, containing the same declaration of truth as a witness statement.

(8) The party applying must serve the application—

(a) in every case, on the court administration officer and as directed by the judge advocate; and

(b) as required by rule 22, if that rule applies.

Application for witness summons to produce a document, etc: special rules

22.—(1) This rule applies to an application under rule 21 for a witness summons requiring the proposed witness—

(a) to produce in evidence a document or thing; or

(b) to give evidence about information apparently held in confidence,

that relates to another person.

(2) The application must be in writing in the form required by rule 21(7).

(3) The party applying must serve the application—

(a) on the proposed witness, unless the judge advocate otherwise directs; and

(b) on one or more of the following, if the judge advocate so directs—

(i) a person to whom the proposed evidence relates,

(ii) another party.

(4) The judge advocate must not issue a witness summons where this rule applies unless—

(a) everyone served with the application has had at least 14 days in which to make representations, including representations about whether there should be a hearing of the application before the witness summons is issued; and

(b) the judge advocate is satisfied that he has been able to take adequate account of the duties and rights, including rights of confidentiality, of the proposed witness and of any person to whom the proposed evidence relates.

(5) This rule does not apply to an application for an order to produce in evidence a copy of an entry in a banker's book for the purposes of rule 89.

Application for witness summons to produce a document, etc: judge advocate's assessment of relevance and confidentiality

23.—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the grounds that—

(a) it is not likely to be material evidence; or

(b) even if it is likely to be material evidence, the duties or rights, including rights of confidentiality, of the proposed witness or of any person to whom the document or thing relates outweigh the reasons for issuing a witness summons.

(2) The judge advocate may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The judge advocate may invite—

(a) the proposed witness or any representative of the proposed witness; or

(b) a person to whom the document or thing relates or any representative of such a person,

to help the judge advocate assess the objection.

Power to require advance production

24.—(1) A witness summons which is issued under rule 21 and which requires a person to produce a document or thing as mentioned in rule 21(2) may also require him to produce the document or thing—

(a) at a place stated in the witness summons, and

(b) at a time which is so stated and precedes that stated under rule 21(2),

for inspection by the person applying for the witness summons.

Issue of witness summons of the judge advocate's own motion

25.—(1) For the purpose of any proceedings before a court-martial, the judge advocate may of his own motion issue a witness summons directed to a person and require him to—

(a) attend before the court at the time and place stated in the witness summons, and

(b) give evidence, or produce any document or thing specified in the witness summons.

(2) The judge advocate may withdraw a witness summons issued under this rule if one of the following applies for it to be withdrawn—

(a) the witness, on the grounds that—

(i) he cannot give or produce evidence likely to be material evidence, or

(ii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or

(b) any person to whom the proposed evidence relates, on the grounds that—

(i) that evidence is not likely to be material evidence, or

(ii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness outweigh the reasons for the issue of the witness summons.

Witness summons no longer needed

26.—(1) If—

(a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under rule 24,

(b) the person applying for the witness summons concludes that a requirement imposed by the witness summons under rule 21(2) is no longer needed, and

(c) he accordingly applies to the judge advocate for a direction that the witness summons shall be of no further effect,

the judge advocate may direct accordingly.

Application to withdraw a witness summons

27.—(1) The judge advocate may withdraw a witness summons if one of the following applies for it to be withdrawn—

(a) the party who applied for it, on the ground that it no longer is needed;

(b) the witness, on the grounds that—

(i) he was not aware of any application for it, and

(ii) he cannot give or produce evidence likely to be material evidence, or

(iii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates outweigh the reasons for the issue of the witness summons; or

(c) any person to whom the proposed evidence relates, on the grounds that—

(i) he was not aware of any application for it, and

(ii) that evidence is not likely to be material evidence, or

(iii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness outweigh the reasons for the issue of the witness summons.

(2) A person applying under this rule must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining why he wants the witness summons to be withdrawn; and

(b) serve the application on the court administration officer and as appropriate on—

(i) the witness,

(ii) the party who applied for the witness summons, and

(iii) any other person who he knows was served with the application for the witness summons.

(3) Rule 23 applies to an application under this rule that concerns a document or thing to be produced in evidence.

Issue etc of witness summons and variation of requirements

28.—(1) The judge advocate may issue or withdraw a witness summons with or without a hearing.

(2) A hearing under this Part must be in private unless the judge advocate otherwise directs.

(3) The judge advocate may—

(a) shorten or extend (even after it has expired) a time limit under this Part; and

(b) where a rule or direction requires an application under this Part to be in writing, allow that application to be made orally instead.

(4) Someone who wants the judge advocate to allow an application to be made orally under paragraph (3)(b) must—

(a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and

(b) in doing so explain the reasons for the application and for wanting the judge advocate to consider it orally.

Service of witness summonses

29.—(1) A witness summons issued under rule 21(2) or rule 25(1) shall be served on a witness—

(a) by delivering it to him personally;

(b) by leaving it for him with a person at the witness's usual place of abode;

(c) by post in a letter addressed to him at his last known or usual place of abode;

(d) transmitting it to him by fax or other electronic means, but only if he has agreed to accept service by that method; or

(e) where the witness is subject to the Act or military or air force law, through his commanding officer.

PART 5

EVIDENCE

Procedure for the admission of evidence of bad character

30.—(1) Where a party to the proceedings wishes to obtain the leave of the court under section 100(4) of the 2003 Act to adduce evidence of the bad character of a person other than the accused, he shall apply in the form set out in Schedule 2 to these Rules and the application must be received by the court administration officer and all other parties to the proceedings—

(a) not more than 14 days after the prosecuting authority has—

(i) notified the accused's commanding officer in accordance with rule 9 that a charge or charges are to be preferred, or

(ii) disclosed the previous convictions of that non-accused; or

(b) as soon as reasonably practicable, where the application concerns a non-accused who is to be invited to give (or has given) evidence for an accused.

(2) A party to the proceedings who receives a copy of an application under paragraph (1) may oppose that application by giving notice in writing to the court administration officer and all other parties to the proceedings not more than 14 days after receiving that application.

(3) Where a prosecuting authority wishes to adduce evidence of an accused's bad character he shall give notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after preferment of a charge or charges pursuant to section 52I of the Act.

(4) Where a co-accused wishes to adduce evidence of an accused's bad character he shall give notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after the prosecuting authority has complied or purported to comply with paragraph (1)(a).

(5) Where an accused wishes to apply under section 101(3) of the 2003 Act to exclude evidence of his bad character, he shall apply in the form set out in Schedule 2 to these Rules and the application must be received by the court administration officer and all other parties to the proceedings not more than 14 days after the accused receives a notice under paragraph (3) or (4).

(6) An accused entitled to receive a notice under this rule may waive his entitlement by so informing the court administration officer and the party who would otherwise have given the notice.

(7) The judge advocate may—

(a) allow a notice or application required under this rule to be given or made in a different form, or orally; or

(b) shorten a time limit under this rule, or extend it whether or not it has expired,

if it is in the interests of justice to do so.

(8) Where this rule requires a notice or application to be given or made, it may be given or made by fax or other means of electronic communication.

Procedure for the admission of hearsay evidence

31.—(1) Where a party to the proceedings wishes to adduce hearsay evidence on one or more of the grounds in section 114(1)(d), section 116, section 117 and section 121 of the 2003 Act, he shall give notice in the form set out in Schedule 2 to these Rules and such notice must be received by the court administration officer and all other parties to the proceedings—

(a) where that party is an accused or co-accused, not more than 14 days after the prosecuting authority has complied or purported to comply with rule 9; or

(b) where that party is the prosecuting authority, not more than 14 days after the preferment of a charge or charges pursuant to section 52I of the Act.

(2) A party to the proceedings who receives a notice under paragraph (1) may oppose the admission of the hearsay evidence by giving notice in the form set out in Schedule 2 to these Rules to the court administration officer and all other parties to the proceedings not more than 14 days after receiving that notice.

(3) A party entitled to receive a notice under this rule may waive his entitlement by so informing the court administration officer and the party who would otherwise have given the notice.

(4) The judge advocate may—

(a) dispense with the requirement to give notice of an intention to adduce hearsay evidence;

(b) allow a notice required under this rule to be given in a different form, or orally; or

(c) shorten a time limit under this rule, or extend it whether or not it has expired,

if it is in the interests of justice to do so.

(5) Where this rule requires a notice to be given, it may be given by fax or other means of electronic communication.

Additional evidence

32. If before the commencement of the trial the prosecuting authority wishes to adduce in the proceedings any evidence additional to that contained in the prosecution papers, he shall serve a copy of the additional evidence (or details of its whereabouts) on the accused and the court administration officer.

PART 6

PRELIMINARY PROCEEDINGS

Preliminary hearing

33.—(1) The judge advocate may direct the court administration officer to list a hearing for the purpose of arraigning the accused, giving directions, orders and rulings in preparation for trial by court-martial—

(a) of his own motion; or

(b) on the application of the prosecuting authority or accused,

and such a hearing shall be referred to in these Rules as a preliminary hearing.

(2) For the purposes of this rule, a hearing is a preliminary hearing if it takes place before the commencement of the trial.

(3) An application for a preliminary hearing shall—

(a) be made to the court administration officer in the form set out in Schedule 2 to these Rules; and

(b) specify the reason for which it is made.

(4) Subject to rule 35, the applicant shall serve notice of the application in writing on every other party to the proceedings and the court administration officer.

(5) Before directing the court administration officer to list a preliminary hearing, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(6) Paragraph (5) shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay, or where the application is made in accordance with rule 35.

(7) On receipt of a direction from the judge advocate under paragraph (1), the court administration officer shall—

(a) appoint the date, time and place at which the preliminary hearing will take place;

(b) issue a notice in writing of the date, time and place appointed;

(c) list in the notice such of the matters contained in Schedule 3 to these Rules to be addressed at the hearing as the judge advocate may request;

(d) subject to rule 35, serve the notice on the parties to the proceedings; and

(e) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter.

(8) If in advance of the hearing the judge advocate so directs, the prosecuting authority shall—

(a) prepare an outline of the prosecution case; and

(b) serve a copy of that outline on the accused and the judge advocate.

Preliminary hearing in open court

34.—(1) A preliminary hearing not made under rule 35 shall, unless the judge advocate directs otherwise, take place before the judge advocate in open court.

(2) A preliminary hearing shall be a hearing before the judge advocate sitting alone.

Preliminary hearing without notice to the accused

35.—(1) Where in the public interest it is desirable to seek a direction from the judge advocate without giving notice to the accused, the prosecuting authority may apply for a preliminary hearing in accordance with this rule.

(2) Where the prosecuting authority applies for a preliminary hearing under this rule, the judge advocate shall determine whether in the interests of justice such a hearing is necessary.

(3) Where the judge advocate grants the prosecuting authority's application under this rule, he shall direct that the preliminary hearing shall proceed without notice to the accused and without the participation of the accused.

(4) A preliminary hearing under this rule shall be before the judge advocate in chambers.

Challenges and oaths at a preliminary hearing

36.—(1) At the commencement of the preliminary hearing (not made under rule 35) the accused shall be entitled to object to the judge advocate and any interpreter.

(2) At the commencement of the preliminary hearing the judge advocate, or any other member of the court staff on his behalf, shall administer an oath to any interpreter.

Substance of a preliminary hearing

37.—(1) The parties to the proceedings shall address the judge advocate at the preliminary hearing on such of the matters contained in paragraph (4) as are indicated in the notice listing the hearing.

(2) Paragraph (1) is without prejudice to the right of the judge advocate or any party to the proceedings to raise at the preliminary hearing any other matter.

(3) The judge advocate may at a preliminary hearing make such directions as appear to him to be necessary to secure the proper and efficient management of the case.

(4) At a preliminary hearing the judge advocate may make an order or ruling on—

(a) such of the matters contained in Schedule 3 to these Rules as are indicated in the notice listing the hearing;

(b) any question as to the admissibility of evidence;

(c) any other question of law, practice or procedure relating to the case;

(d) subject to rule 39, any question as to severance or joinder of charges.

(5) The judge advocate may adjourn a preliminary hearing from time to time.

(6) An order or ruling made under this rule shall have effect throughout the proceedings unless it appears to the judge advocate on application made to him at any stage during the proceedings that the interests of justice require him to vary or discharge it.

(7) The court administration officer shall send a copy of the record of the preliminary hearing to the judge advocate.

PART 7

ARRAIGNMENT

Arraignment

38.—(1) The accused need not be arraigned on all the charges in the charge sheet at the same time.

(2) The accused shall be required to plead separately to each charge on which he is arraigned.

(3) Where the court is empowered to make a special finding, the accused may plead guilty to the offence subject to the matters as would merit the special finding.

Severance

39.—(1) Where—

(a) an accused is charged with more than one offence; or

(b) two or more accused are charged in the same charge sheet,

and the judge advocate rules that the fair trial of an accused may be prejudiced if the charges are not severed or that for any other reason it is desirable that the charges are severed, he may—

(i) order that one or more charges shall be tried by the same court;

(ii) order that only one or more of the accused shall be tried before the same court;

(iii) leave any charge or any accused to be tried by a new court.

(2) Where an accused is charged in more than one charge sheet and the judge advocate rules that for any reason it is desirable that the court tries only the charge or charges set out in one charge sheet, he may leave the charge or charges set out in any other charge sheet to be tried by a new court.

Guilty plea

40.—(1) If the accused pleads guilty to a charge, the judge advocate shall, if it appears necessary to him and before he accepts the plea, satisfy himself that the accused understands—

(a) the nature of the charge;

(b) the general effect of the plea; and

(c) the difference in procedure following pleas of guilty and not guilty.

(2) The judge advocate shall not accept a plea of guilty if, having regard to all the circumstances, he considers that he should not accept the plea.

(3) Where—

(a) a plea of guilty is not accepted by the judge advocate; or

(b) the accused does not plead to the charge or does not plead to it intelligibly,

the judge advocate shall record a plea of not guilty.

Alternative charges

41.—(1) Where an accused pleads guilty to the first of two or more alternative charges, the judge advocate, if he accepts the plea, shall record a finding of guilty in respect of that charge and shall give the prosecuting authority leave to discontinue proceedings in respect of any alternative charge or charges.

(2) Where an accused pleads guilty to any other of two or more alternative charges, the judge advocate shall—

(a) if the prosecuting authority gives his consent—

(i) record a finding of guilty on any charge to which the accused has pleaded guilty,

(ii) record a finding of not guilty on any alternative charge placed before him on the charge sheet, and

(iii) give the prosecuting authority leave to discontinue proceedings in respect of any further alternative charge or charges; or

(b) if the prosecuting authority does not give the consent referred to in sub-paragraph (a), proceed as if the accused had pleaded not guilty to all the charges.

(3) If the judge advocate records a finding of guilty under paragraph (1) or (2)(a) and subsequently allows the accused to change his plea under rule 46, the judge advocate may reinstate and arraign the accused on any alternative charge which was discontinued.

Procedure after not guilty plea

42.—(1) This rule applies where the judge advocate has accepted a plea or pleas of not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) After the judge advocate records a plea of not guilty, he shall direct the court administration officer to list the case for trial by the court-martial.

Procedure after guilty plea

43.—(1) This rule applies where—

(a) the judge advocate has accepted a plea or pleas of guilty; or

(b) the judge advocate has accepted a plea or pleas of guilty and the prosecuting authority does not proceed to the trial of any charge to which an accused has pleaded not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) After the judge advocate records a plea of guilty, he shall direct the court administration officer to list the case for sentencing by the court-martial.

Pleas of guilty and not guilty on one charge sheet

44.—(1) This rule applies where in respect of one charge sheet—

(a) the judge advocate has accepted a plea or pleas of guilty;

(b) a plea or pleas of not guilty have been entered; and

(c) the prosecuting authority proceeds to the trial of any charge on which a plea of not guilty has been entered.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) Unless the judge advocate directs otherwise, the trial of any charge to which an accused has pleaded not guilty shall proceed in accordance with these Rules before the court-martial considers any guilty plea.

(4) The prosecuting authority, so far as is possible, shall not—

(a) address the court on any fact, or

(b) lead evidence,

relating to a charge to which any accused has pleaded guilty, except where that fact or evidence relates also to a charge to which any accused has pleaded not guilty.

(5) After the court has announced its finding on each charge in respect of which a plea of not guilty has been entered, the court shall be told of any guilty plea.

(6) The court shall proceed to sentencing of the accused.

PART 8

PROCEEDINGS AT COURT-MARTIAL

Dispute on facts after plea of guilty

45.—(1) Where, after the judge advocate has recorded a plea of guilty in respect of any charge there are disputed facts in the case, any issue of fact may be tried.

(2) Where an issue of fact is being tried in accordance with this rule—

(a) the judge advocate may direct the prosecuting authority to call any witness to give evidence, and

(b) the prosecuting authority and the accused may, with the leave of the judge advocate, adduce evidence.

(3) The court shall sit in closed court while deliberating on its finding on the issue of fact.

(4) The finding of the court on the issue of fact shall be determined by a majority of the votes of the members of the court and announced in open court by the judge advocate.

(5) In the case of an equality of votes on the finding on the issue of fact the court must find for the accused.

Change of plea

46.—(1) At any time before the court closes to deliberate on its finding on a charge, an accused who has pleaded not guilty to the charge may, with the leave of the judge advocate, withdraw his plea and substitute a plea of guilty.

(2) Where an accused changes his plea under paragraph (1), the court shall proceed to sentencing of the accused.

(3) At any time before the court closes to deliberate on its sentence on a charge, an accused who has pleaded guilty to the charge may, with the leave of the judge advocate, withdraw his plea and substitute a plea of not guilty.

(4) Where an accused changes his plea under paragraph (3), the judge advocate shall discharge the court and direct the court administration officer to list the case for trial by a new court-martial.

Additional charges after arraignment

47.—(1) If at any time after arraignment the prosecuting authority intends to seek the leave of the judge advocate to prefer an additional charge, he shall, unless the accused waives the requirement, serve notice in writing of such intention on the accused before the application is made.

(2) Where notice is served on the accused in accordance with paragraph (1), he may apply for an adjournment of the trial.

Changes to the charge sheet after arraignment

48.—(1) If at any time after arraignment the prosecuting authority intends to—

(a) amend, or substitute another charge or charges for, a charge;

(b) discontinue proceedings on a charge;

(c) prefer an additional charge;

he shall seek the leave of the judge advocate.

(2) Where the judge advocate gives leave to discontinue proceedings on a charge, he shall consider whether to give the direction provided for in section 52I(13) of the Act.

(3) Any direction referred to in paragraph (2) above shall be given in open court.

Changes to the charge sheet by the judge advocate

49. If at any time after arraignment it appears that, with due regard to the fairness to the accused, it is desirable in the interests of justice to amend a charge, the judge advocate may do so.

PART 9

GENERAL MATTERS

Conduct of the defence

50.—(1) An accused who has been notified that he is to be tried by court-martial shall be afforded a proper opportunity for preparing his defence.

(2) The accused may appoint a legal representative to act for him and any right or responsibility which accrues to the accused by virtue of these Rules (except pleading to a charge) may be exercised by the accused's legal representative on his behalf.

(3) The accused shall inform the court administration officer of the name and address of his legal representative as soon as is practicable after a legal representative has been appointed.

The judge advocate

51.—(1) The judge advocate shall preside over the court-martial and ensure that the proceedings at the court-martial are conducted in accordance with the law of England and Wales.

(2) The judge advocate shall ensure that a proper record of the proceedings is made.

The president of the board and members

52.—(1) Subject to paragraph (4), the court administration officer shall appoint the senior service member of the court-martial to be the president of the board.

(2) Members of a board not including civilians shall sit in order of seniority.

(3) If on full pay, an officer on the Retired List or Emergency List of the Royal Navy shall sit in the order in which he takes rank and command, but if he holds acting rank he shall sit in the order in which he would have taken rank and command if he had not been granted acting rank.

(4) Where the board includes civilian members, the president of the board shall be chosen by the members of the board from amongst their number.

(5) The choice of a president of the board under paragraph (4) shall be done before any member of the board is sworn.

Sittings and adjournments

53.—(1) If it appears to the judge advocate necessary in the interests of justice, proceedings may be adjourned from time to time.

(2) A court-martial shall not sit on Saturday, Sunday, Christmas Day or Good Friday unless in the opinion of the judge advocate it is necessary to do so.

(3) A court-martial shall sit at such times and for such periods each day as seem to the judge advocate to be reasonable in the circumstances.

(4) Where—

(a) a hearing is adjourned, and

(b) the time and place for the hearing to resume is not fixed by the judge advocate at the adjourned hearing,

the court administration officer shall notify the parties in writing of the time fixed for the hearing to resume and the place where the court is to sit for the resumed hearing.

Record of proceedings

54.—(1) The record of proceedings of a court-martial shall include—

(a) the record of findings; and

(b) the record of sentence, if any.

(2) A certified transcript or note of evidence given at the trial and any other proceedings shall be kept with the record of proceedings.

(3) Any transcript of a shorthand note shall be signed by the shorthand writer.

(4) Any transcript of a mechanical record shall be signed by the person who transcribed it.

(5) At the conclusion of the trial or other proceedings, the record of proceedings shall be signed by the judge advocate.

Challenges by the accused

55.—(1) At the commencement of any proceedings, the names of the persons specified to sit as members of the court (including any person specified as a waiting member) and the names of the judge advocate and any interpreter shall be read to the accused.

(2) The accused may at any time before the opening of the prosecution case object, on any reasonable grounds, to any person whose name is read out and to any interpreter appointed.

(3) If more than one person is objected to, the objection to each shall be considered in the following order—

(a) the judge advocate;

(b) the president of the board;

(c) the other members of the court;

(d) any waiting member;

(e) the clerk of the court; and

(f) any interpreter.

(4) Every objection made by the accused shall be determined by the judge advocate who shall announce his decision in open court.

(5) If an objection to the judge advocate is allowed, the proceedings shall be adjourned.

(6) If an objection to the president of the board is allowed, and—

(i) if the president of the board has been appointed under rule 52(1), the court shall be dissolved; or

(ii) if the president of the board has been chosen under rule 52(4), the judge advocate shall direct the board to choose a new president of the board.

(7) If an objection to a member other than the president of the board is allowed, any waiting member in respect of whom no objection has been made or allowed shall take his place; and, if there is no such member, the court shall be dissolved.

(8) If an objection to the interpreter is allowed, the judge advocate shall adjourn proceedings until the court administration officer has appointed a replacement.

(9) Where the court is assembled to try two or more accused separately and one accused objects to the president of the board or to any other member of the court, the judge advocate may, if he thinks fit, adjourn the trial of that accused and proceed with the trial of the other accused only.

Oaths and affirmations

56.—(1) After the accused has been given the opportunity to challenge the members of the court, oaths shall be administered in the presence of the accused.

(2) The judge advocate, or any other member of the court on his behalf, shall administer an oath to—

(a) the president of the board;

(b) each other member of the court;

(c) any person in attendance for instruction;

(d) any interpreter;

(e) any witness.

(3) If—

(a) a person required to take an oath for the purposes of proceedings before the court objects to being sworn, or

(b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

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

(4) A person who may be permitted under this rule to make his solemn affirmation may also be required to do so, and for the purposes of this rule "reasonably practicable" means reasonably practicable without inconvenience or delay.

(5) Any oath or affirmation required to be administered under these Rules shall be administered in the form and manner set out in Schedule 4 to these Rules.

PART 10

PROCEEDINGS AT TRIAL

Commencement of the trial

57.—(1) For the purposes of these Rules the trial of an accused commences immediately after the last court member has been sworn.

(2) If after the commencement of the trial the judge advocate allows any challenge, objection, plea or application such that there is no charge remaining for the accused to answer, he shall dissolve the court.

Judge advocate sitting alone

58.—(1) Where—

(a) any question arises as to the admissibility of evidence;

(b) an application is made for evidence to be given by a witness through a live television under rule 64;

(c) the accused makes a submission of no case to answer under rule 66;

(d) a witness is under examination and a question arises as to the admissibility of a question; or

(e) for any reason the judge advocate is of the opinion that he should rule on any other question of law, practice or procedure in the absence of the other members of the court,

the judge advocate may direct the other members of the court to withdraw.

(2) The jurisdiction of the court to make an order—

(a) as to the payment of costs incurred by a party to the proceedings as a result of an unnecessary or improper act or omission by or on behalf of another party to the proceedings; or

(b) disallowing or ordering the legal or other representative as defined in section 27(3) of the Armed Forces Act 2001(**3**) to meet the whole or any part of any wasted costs as there defined,

may be exercised by the judge advocate sitting alone and he may direct the other members of the court to withdraw for the purpose of exercising the jurisdiction.

(3) If, while the judge advocate is sitting alone in accordance with these Rules, a person commits an offence under section 38(1) of the Act, the judge advocate may report the occurrence to—

(a) the president of the board; or

(**3**) 2001 c. 19.

(b) if the offence is committed during a preliminary hearing and the person is subject to the Act, the commanding officer of that person.

Opening address

59. Before calling the witnesses for the prosecution, the prosecuting authority may make an opening address.

Additional evidence during trial

60.—(1) If after the commencement of the trial the prosecuting authority intends to adduce evidence additional to that referred to in the prosecution papers, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the accused and the judge advocate before it is adduced.

(2) Where notice and particulars are served on him in accordance with paragraph (1), or where evidence is adduced without such notice being given, the accused may apply to the judge advocate for an adjournment of the trial.

Expert evidence

61.—(1) Expert evidence shall not be adduced at a trial without the leave of the judge advocate unless the party proposing to rely on it has served on every other party and the court administration officer, not less than 14 days before the date appointed for the trial, a statement of the substance of the expert evidence.

(2) The statement referred to in paragraph (1) shall be in writing unless every other party consents to it being made orally.

Exhibits

62.—(1) Any exhibit admitted in evidence shall be marked sequentially with either a number or a letter.

(2) Each exhibit or a label attached to each exhibit shall be signed by the judge advocate or a person acting on his behalf.

(3) Each exhibit shall be retained with the record of proceedings, unless in the opinion of the judge advocate having regard to the nature of the exhibit or for other good reason it is not expedient to retain the exhibit with the record.

(4) Where an exhibit is not retained with the record of proceedings, the judge advocate shall ensure that proper steps are taken for its safe custody or proper disposal.

Presence of witnesses

63.—(1) Except for the accused and any expert or character witness, a witness as to fact shall not, except by leave of the judge advocate, be in court while not under examination.

(2) If while a witness is under examination a question arises as to the admissibility of a question or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined.

(3) The judge advocate may direct any expert or character witness present in court to withdraw if the judge advocate considers in the interests of justice that his presence is undesirable.

Evidence through live television

64.—(1) Any application by the prosecuting authority or an accused for leave under section 32 of the Criminal Justice Act 1988(**4**) for evidence to be given by a witness through a live television shall be made as soon as is practicable before the commencement of the trial.

(2) An application may not be made under paragraph (1) without the leave of the judge advocate unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in the form set out in Schedule 2 to these Rules on every other party, the court administration officer and the judge advocate stating—

(a) the grounds of the application;

(b) the name of the witness;

(c) where the witness is under the age of 18 years, the date of birth of the witness;

(d) the country and place where it is proposed the witness will be when giving evidence; and

(e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

(3) Where the judge advocate gives leave for a witness under the age of 14 to give evidence through a live television, the witness shall be accompanied by a person acceptable to the judge advocate and, unless the judge advocate otherwise directs, by no other person.

Examination of witnesses

65.—(1) The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and that there is no injustice to the accused in doing so.

(2) The judge advocate may question any witness and, if he considers it appropriate, may put to the witness a question from any other member of the court.

(3) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may at any time—

(a) call any witness whom it has not already heard;

(b) recall a witness;

(c) permit the accused or the prosecuting authority to recall a witness.

Submission of no case to answer

66.—(1) At the close of the case for the prosecution the accused may submit, in respect of any charge, that the prosecution has failed to establish a case for him to answer.

(2) If the submission is allowed, the judge advocate shall direct the court to find the accused not guilty of the charge to which the submission relates.

(3) If the submission is not allowed, the court shall proceed with the trial.

Finding of not guilty before conclusion of the defence

67.—(1) The court may at any time after the close of the case for the prosecution find the accused not guilty of a charge, provided that the prosecuting authority has been given an opportunity to address the court on such a finding.

(2) The power under paragraph (1) may only be exercised at the invitation of the judge advocate.

(**4**) 1988 c. 33; section 32(1)(a) and (3) apply to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 2006 (S.I. 2006/2890) subject to modifications specified therein.

The case for the defence

68.—(1) After the close of the case for the prosecution, the judge advocate shall satisfy himself that the accused understands—

(a) that he may give evidence in his defence if he so wishes but he is not obliged to do so;

(b) the consequences of choosing to remain silent at trial;

(c) that, if he chooses to give evidence, he will be liable to be cross-examined by the prosecuting authority and questioned by the judge advocate; and

(d) that he may call witnesses on his behalf.

(2) Where the accused intends to call a witness to the facts of the case, other than himself, he may make an opening address outlining the case for the defence before the evidence is given.

Witnesses for the defence

69. Except with the leave of the judge advocate, if the accused elects to give evidence he shall be called before any other witness for the defence.

Further evidence

70. With the leave of the judge advocate the prosecuting authority may call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecuting authority could not—

(a) properly have dealt with before the accused disclosed his defence; or

(b) reasonably have foreseen.

Closing addresses

71.—(1) Subject to paragraph (4), the prosecuting authority and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the prosecuting authority.

(3) Where two or more accused are represented by the same legal representative, he may make only one closing address.

(4) Except with the leave of the judge advocate, if the accused is not represented and has called in person no witnesses other than himself the prosecuting authority shall not make a closing address.

Summing up

72. After the closing addresses, if any, the judge advocate shall direct the court upon the law relating to the case and summarise the evidence.

Deliberation on finding

73.—(1) After the summing up, the judge advocate shall direct the board to withdraw to deliberate on its finding on each charge before it.

(2) If the court requires further direction on the law during its deliberation on a finding on any charge, it shall suspend its deliberation to seek and be given further direction by the judge advocate in open court.

(3) During its deliberation on a finding, the court shall not separate until the finding has been reached unless the judge advocate directs that in the interests of justice the court may separate.

(4) The vote of each member of the court on the finding on each charge shall be given orally—

(a) in reverse order of seniority; or

(b) for a board with civilian members, in the order determined by the president of the board, save that he shall vote last.

Special finding

74.—(1) For the purposes of these Rules a special finding is—

(a) where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, a finding of guilty subject to exceptions or variations specified in the finding;

(b) a finding in accordance with section 67 of the Act (power to convict of mitigated offence);

(c) a finding in accordance with section 68 of the Act (power to convict of alternative offence).

(2) If it appears to the judge advocate that the difference is not so material as to have prejudiced the accused in his defence, the judge advocate may direct the court that a special finding under paragraph (1)(a) is open to them.

(3) In any case the judge advocate may direct the court that a special finding under paragraph (1)(b) or (c) is open to them.

(4) Before directing the court on a special finding, the judge advocate shall allow the prosecuting authority and the accused to address him on the matter.

(5) The court may not reach a special finding unless the judge advocate has directed them that such a finding is open to them.

Record of finding

75.—(1) The finding of the court on a charge shall be recorded in writing and dated and signed by the president of the board.

(2) Each finding shall be announced separately by the president of the board.

(3) If the court reaches a finding of guilty or a special finding and the judge advocate is of the opinion that such a finding is contrary to the law relating to the case, he shall direct the court on the findings which are open to it and the court shall retire to reconsider its finding.

(4) If the judge advocate is satisfied that the findings are not incorrect in law, he shall countersign the record of the findings.

Offences taken into consideration

76.—(1) Where the court has recorded a finding of guilty on any charge or a special finding, the accused may request the court to take into consideration any other offence committed by him of a similar nature to that of which he has been found guilty or in respect of which a special finding has been reached, and, upon such a request being made, the court may agree to take into consideration any such offence as to the judge advocate seems proper.

(2) A list of the offences which the accused admits having committed and which the court agrees to take into consideration shall be signed by the accused and attached to the record of proceedings.

PART 11

SENTENCING

Sentencing procedure after guilty plea

77.—(1) This rule applies where the judge advocate has accepted a plea or pleas of guilty.

(2) Before presenting the information required under rule 79, the prosecuting authority shall address the court on the facts of the case.

Pre-sentence report and previous convictions

78.—(1) Where the court administration officer has arranged for a pre-sentence report to be prepared in advance of the sentencing hearing, he shall serve a copy on the accused and send the report to the judge advocate before the time appointed for the hearing.

(2) Where the prosecuting authority has obtained a record of the accused's previous convictions in advance of the hearing, he shall serve a copy on the accused and the court administration officer before the time appointed for the hearing.

Evidence before sentencing

79.—(1) Where practicable, the prosecuting authority shall present to the court information concerning—

(a) the accused's age and rank or rate;

(b) the accused's service record;

(c) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled;

(d) particulars, if known, of any offence (whether under the Act or otherwise) of which the accused has been found guilty (during his service or otherwise), provided that any convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974(**5**) shall be clearly marked as such;

(e) particulars, if known, of any formal police caution administered to the accused by a constable in England and Wales or Northern Ireland;

(f) particulars, if known, of the length of time the accused has been in custody awaiting trial or in custody under a current sentence;

(g) details of the accused's pay, terminal benefits and future pension entitlements;

(h) whether the commanding officer of the accused wishes to retain the accused in his unit; and

(i) whether the accused elected trial by court-martial.

(2) Unless the accused requires otherwise and the judge advocate so directs, the matters referred to in paragraph (1) need not be adduced in compliance with the strict rules of evidence.

(3) The court shall consider any pre-sentence report concerning the accused.

(4) A record of antecedents signed by the accused may be accepted in evidence by the court under paragraph (1)(d) where the accused has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought.

(**5**) 1974 c. 53; sections 2 and 6 were amended, and the Schedule was inserted, by the Armed Forces Act 1996 (c. 46), section 13 and Schedule 4.

Evidence on behalf of the accused

80.—(1) The accused may—

(a) give evidence on oath and call witnesses in mitigation of sentence and as to his character;

(b) produce to the court any document or written report; and

(c) address the court in mitigation of sentence.

(2) Unless the prosecuting authority requires otherwise and the judge advocate so directs, any document or report referred to in paragraph (1)(b) need not be adduced in compliance with the strict rules of evidence.

Deliberation on sentence

81.—(1) Subject to paragraph (5), the court shall award one sentence in respect of all the offences of which the accused has been found guilty and all the offences taken into consideration in accordance with rule 76.

(2) Subject to paragraph (4), the vote of each member of the court as to the sentence shall be given orally —

(a) in reverse order of seniority; or

(b) for a board with civilian members, in the order determined by the president of the board, save that he shall vote last.

(3) The judge advocate shall vote last and the president of the board shall vote immediately before him.

(4) In the case of an equality of votes on sentence, the president of the board shall have the casting vote.

(5) The sentence may include a direction that such deductions shall be made from the pay of the accused as may have been made if the accused had been found guilty by the court of the offence taken into consideration as well as of the offence or offences of which he has been found guilty.

(6) While the court sits in closed court to deliberate on sentence, persons under instruction are permitted to be present but shall take no part in the proceedings.

Postponement of deliberation on sentence

82. Where two or more accused are tried separately by the same court upon charges arising out of the same circumstances, the court may, if the judge advocate thinks that the interests of justice so require, postpone its deliberation on the sentence to be awarded to any one or more of such accused until it has recorded its findings in respect of all the accused.

Announcement of sentence

83.—(1) The sentence shall be recorded in writing, dated and signed by the president of the board and the judge advocate.

(2) The legal reasons for the sentence shall be announced in open court by the judge advocate.

(3) Subject to paragraph (4) the formal pronouncement of sentence, and any direction as to postponement or suspension of sentence, shall be announced in open court by the president of the board.

(4) Where the president of the board has been chosen under rule 52(4), the formal pronouncement of sentence, and any direction as to postponement or suspension of sentence, shall be announced in open court by the judge advocate.

(5) With leave of the judge advocate, the president of the board may make additional remarks to the accused about the effects of his offending on the Service and the effects of the sentence on his Service career.

Conclusion of the proceedings

84.—(1) When each charge on the charge sheet has been disposed of, the president of the board shall announce in open court that the proceedings are concluded.

(2) The judge advocate shall dissolve the court.

PART 12

REVIEW OF COURT-MARTIAL FINDING AND SENTENCE

The petition

85.—(1) The period within which an accused may present a petition against finding or sentence or both in accordance with section 70(1) of the Act shall be 28 days following the day on which sentence is announced.

(2) A petition presented in accordance with section 70(1) of the Act shall be in writing and signed by the accused, or on his behalf by his legal representative.

(3) A petition addressed to the Defence Council shall be treated as having been presented to the Defence Council if it is presented by the petitioner—

(a) to the court administration officer; or

(b) where the petitioner is—

(i) in custody or detention in any civil prison or institution, to the governor of the prison or institution;

(ii) detained in any military or air force establishment or in naval detention quarters, to the commandant of the establishment or quarters.

(4) A person to whom a petition is presented under paragraph (3)(b) shall transmit it to the court administration officer immediately upon receipt.

Reasons

86. Where the reviewing authority completes a review in accordance with section 70 of the Act, it shall—

(a) if a petition has been presented in accordance with section 70(1) of the Act, or

(b) if it exercises any of its powers under section 71 of the Act,

give reasons for its decision.

PART 13

MISCELLANEOUS

Appeal to the Courts-Martial Appeal Court

87.—(1) The Courts-Martial Appeal Court shall have the jurisdiction(**6**) to hear appeals against—

(a) orders or rulings made at a preliminary hearing;

(b) any orders or directions of a court-martial prohibiting or restricting the publication of any matter or excluding the public from any proceedings

(2) An appeal under this rule shall be made only with leave of the Courts-Martial Appeal Court.

Application of the rules to civilians

88.—(1) In their application to any person to whom Parts I and II of the Act are applied by section 118 of the Act, these Rules shall have effect subject to the modifications specified in Part 1 and the additional rules specified in Part 2 of Schedule 5 to these Rules.

(2) Where a person to be tried by court-martial is a person to whom Part II of the Act is applied by section 118 of the Act, the court administration officer may appoint under section 54(1)(a) or (c) of the Act as a member of the court-martial—

(a) any person not subject to military law, air force law or the Naval Discipline Act 1957;

(b) any person to whom Parts I and II of the Act is applied by section 118 of the Act;

(c) any person to whom Part II of the Army Act 1955(**7**) is applied by section 209 of that Act;

(d) any person to whom Part II of the Air Force Act 1955(**8**) is applied by section 209 of that Act.

(3) Where paragraph (2) applies, any reference in these Rules to an officer or warrant officer member of the court shall be construed as meaning any person appointed as a member of the court under paragraph (2).

Bankers' Books Evidence Act 1879

89.—(1) The power to make an order conferred by section 7 of the Bankers' Books Evidence Act 1879(**9**) may be exercised for the purposes of a court-martial—

(a) during the investigation of any offence and before the accused is notified that he is to be tried by court-martial, by the commanding officer of the accused;

(b) at any preliminary proceedings and during the court-martial, by a judge advocate.

(2) The order shall be in the form set out in Schedule 2 to these Rules.

Circumstances not provided for

90. In any circumstance not provided for by the Act or these Rules such course shall be adopted as appears to the judge advocate best calculated to do justice.

(**6**) Section 58(2) of the Act as amended by section 378(1) and paragraph 33 of Schedule 16 to the Armed Forces Act 2006.
(**7**) 1955 c.18
(**8**) 1955 c.19
(**9**) 1879 c.11.

Revocations and transitional proceedings

91.—(1) Subject to paragraph (2), the Rules set out in Schedule 6 to these Rules are hereby revoked.

(2) The Rules set out in Schedule 6 shall continue to apply in relation to any trial that commenced before 1st January 2008 until the court is dissolved.

(3) The revocations shall not affect the validity of anything done under those Rules any in relation to any proceedings pending at the commencement of these Rules.

Derek Twigg
Parliamentary Under Secretary of State
Ministry of Defence

6th December 2007