
STATUTORY INSTRUMENTS

1991 No. 2737

DEFENCE

The Naval Courts-Martial General Orders (Royal Navy) 1991

Made - - - - *2nd December 1991*
Laid before Parliament *6th December 1991*
Coming into force - - *1st January 1992*

The Secretary of State, in exercise of the powers conferred upon him by sections 58 and 135(4) of the Naval Discipline Act 1957((1), and of all other powers enabling him in that behalf, hereby makes the following General Orders:

PART I
PRELIMINARY

Citation, commencement and application

1. These General Orders may be cited as the Navy Courts-Martial General Orders (Royal Navy) 1991 and shall come into force on 1st January 1992, but nothing therein (other than Orders 67 and 75(2)) shall apply in relation to proceedings commenced before that date.

Interpretation

2. In these General Orders any reference to an Order is, except where the context otherwise requires, a reference to a General Order contained therein and the following expressions have the meanings respectively assigned to them—

“accused’s friend” has the meaning given by Order 14;

“the Act” means the Naval Discipline Act 1957;

“child” means a person under the age of 14 years;

“circumstantial letter” means letter outlining the prosecution case drafted under Order 4;

“civilian counsel” has the meaning given by Order 72;

(1) 1957 c. 53; section 58 was amended by the Armed Forces Act 1971 (c. 33), section 49(2) and by the Armed Forces Act 1976 (c. 52), section 14 and Schedule 7, paragraph 2.

“closed court” means proceedings of the court conducted for the time being in the presence only of the president, members of the court, judge advocate and clerk of the court;

“commanding officer” means the commanding officer of the ship or establishment in which the accused is for the time being serving;

“convening authority” means an officer authorised to order a court-martial in accordance with the provisions of section 53 of the Act(2) or, where a court-martial is ordered by the Defence Council, the Defence Council;

“court” means a court-martial ordered under the Act;

“member” when used in relation to a court-martial does not include the president;

“open court” means proceedings of the court conducted in the presence of all parties and any members of the public present;

“special finding” means when used in relation to—

- (a) section 67 or 68 of the Act, any finding which a court-martial may make in accordance with that section;
- (b) a finding in accordance with section 63 of the Act(3), that the accused is not guilty by reason of insanity;

“young person” means a person who has attained the age of 14 years and is under the age of 17 years.

PART II

PRE-TRIAL PROCEEDINGS

Notice of alibi

3. At the time when he remands the accused for trial by court-martial the commanding officer shall, unless having regard to the nature of the offence, he considers it unnecessary to do so, inform the accused of the requirements of section 11 of the Criminal Justice Act 1967(4) as modified by the Courts-Martial (Evidence) Regulations 1967(5).

Reference of charges to convening authority

4. —

(1) When a commanding officer remands a person for trial by court-martial, there shall be sent to the convening authority a circumstantial letter and annexed thereto as separate documents—

- (a) a charge sheet containing the charges upon which the commanding officer considers that the accused should be tried by court-martial;
- (b) a list of witnesses for the prosecution;
- (c) statements of the witnesses in support of the charges;
- (d) a list of the exhibits;
- (e) any statements made by the accused.

(2) Section 53 was amended by S.I.1964/488, article 2(1) and Schedule 1, Part I and by the Armed Forces Act 1971 (c. 33), section 48(3).

(3) Section 63 was amended by S.I. 1964/488, article 2(1) and Schedule 1, Part I and by the Criminal Procedure (Insanity) Act 1964 (c. 84), sections 7 and 8, Schedule 2, Part II.

(4) 1967 C.80.

(5) S.I. 1967/1807.

(2) Unless the accused is an officer the commanding officer shall also send to the convening authority—

- (a) a certified extract of all entries of offences and punishments in the accused's Advancement and Conduct Record Sheet prior to the date of the offence charged but subsequent to his joining his present ship, with an assessment of his character from the previous 31 December to the date of the offence with which he has been or may be charged but excluding all consideration of conduct relating to the charge;
- (b) a certified copy of the accused's full service documents.

The circumstantial letter

5. —

(1) The circumstantial letter shall report the circumstances on which the charges are founded in sufficient detail to show the real nature and extent of the alleged offences. When words constitute the substance of the alleged offence, they shall be fully and exactly set out.

(2) The circumstantial letter shall not refer to the previous character, conduct or any convictions of the accused, or contain any reference to the facts prejudicial to him other than such as are directly relevant to the charges or which indicate a course of unlawful conduct.

(3) Where the accused is charged under section 19 of the Act(6) (loss or hazarding of any of Her Majesty's ships) or under section 29A of the Act(7) (damage or loss of Her Majesty's aircraft or aircraft material), the circumstantial letter shall specify details of every aspect in which it is alleged that the accused was at fault.

Statements of the accused

6. Unless it constitutes the substance of the offence alleged, any statement made by the accused is not to be included in the circumstantial letter; but the letter shall indicate that such a statement was made, and that its contents are annexed thereto.

Charge sheet

7. —

(1) A charge sheet shall contain the whole of the issue or issues to be tried at one time, and shall be signed by the officer who signs the circumstantial letter or by the prosecutor. Such charges may be in addition to or substitution for charges which were put to the accused during the course of any investigation.

(2) A charge sheet may contain more than one charge if the charges are founded on the same facts or form a part of a series of offences of the same or similar character:

Provided that an offence under section 16(1) of the Act(8) (desertion), section 17(9) (absence without leave), or section 33C(10) (escape from confinement) may be included in any charge sheet, notwithstanding that other charges in that charge sheet are not founded on the same facts and do not form part of a series of offences of the same or similar character. An offence under section 31(1) of the Act (offences relating to issues and decorations) may be so included where it arises in connection with a charge under section 16(1) or 17 of the Act.

(6) Section 19 was amended by the Armed Forces Act 1971 (c. 33), sections 19(3), 77(1) and Schedule 4, Part I.

(7) Section 29A was inserted by the Armed Forces Act 1971 (c. 33), section 17(1) and (3).

(8) Section 16(1) was amended by S.I. 1964/488, article 2(1), Schedule 1, Part I and by the Armed Forces Act 1971 (c. 33), sections 77(1) and 78(4) and Schedule 4, Part I.

(9) Section 17 was amended by S.I. 1964/488, article 2(1) and Schedule 1, Part I and by the Armed Forces Act 1971 (c. 33), sections 12(3) and 77(1) and Schedule 4 Part I.

(10) Section 33C was inserted by the Armed Forces Act 1971 (c. 33), section 22.

(3) The commencement of the charge sheet shall state as appropriate the service number, rank or rate, name of ship or establishment of the accused and shall further state that he is subject to or otherwise triable under the Act.

Charge sheet–joint trials

8. –

(1) Any number of accused may be charged in the same charge sheet with offences alleged to have been committed by them separately if the acts or omissions on which the charges are founded are so connected that it is in the interests of justice that the accused be tried together.

(2) Any number of accused may be charged jointly in one charge for an offence alleged to have been committed by them jointly. Where so charged any one or more of such accused may at the time be charged in the same charge sheet with any other offence alleged to have been committed by him or them individually or jointly, provided such charges could, if the accused to whom they relate had been tried separately, have been included in the same charge sheet because they are founded on the same facts or form part of a series of offences of the same or similar character.

The Charge

9. –

(1) Each charge shall state one offence only.

(2) Offences may be charged in the alternative in separate charges but shall not be charged in the alternative in the same charge. When charges are laid in the alternative they shall be set out in order of gravity commencing with the most serious.

(3) The charge shall state:

- (a) such circumstances respecting the alleged offence as will enable the accused to know every act or omission which it is sought to prove against him as constituting the offence charged;
- (b) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a lesser degree of punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted.

Amendment of charge sheet

10. –

(1) If at any time during the trial it appears to the court that there is in the charge sheet:

- (a) a mistake in the name or description of the accused;
- (b) a mistake which is attributable to a clerical error or omission;

the court may amend the charge sheet so as to correct the mistake.

(2) If at any time during a trial it appears to the court, before they close to deliberate on their finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under paragraph (1) of this Order they may, if such addition, omission, or alteration can be made without unfairness to the accused, so amend the charge if the judge advocate concurs.

Fresh evidence of negligence not alleged in circumstantial letter

11. If, at any time during the trial of an offence involving an allegation of neglect to perform or negligent performance of a Service duty, the court considers that the accused may have been

negligent in any way not specifically detailed in the circumstantial letter, they shall formulate a fresh allegation and inform the accused that they hold this view at that particular stage of the trial, and invite him to deal with the fresh allegation in his defence, allowing him sufficient time to prepare to do so.

Unfitness to stand trial and insanity

12. –

(1) Where on the trial of a person the question of his fitness to be tried falls at any time to be determined in accordance with the provisions of section 63(3) of the Act, the court shall take evidence as to his condition. If after considering the evidence they are of the opinion that the accused is fit to stand trial, they shall proceed with the trial; but if they are of the opinion that the accused is unfit to stand trial they shall so find and their finding shall be announced in open court forthwith.

(2) If a court, in the course of their deliberation on their finding on the charge find pursuant to section 63(1)(b) of the Act that the accused was not guilty of the offence by reason of insanity their finding shall be announced in open court forthwith.

Duties of a convening authority

13. –

(1) Subject to paragraph (2) of this Order, when a convening authority orders a court-martial he shall–

- (a) issue a convening warrant to the president;
- (b) direct the charges upon which the accused is to be brought to trial but where the charge sheet accompanying the circumstantial letter is, in his view, satisfactory, it shall be sufficient for him, in this respect, to countersign the charge sheet;
- (c) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;
- (d) appoint the president and members and any spare members of the court in accordance with section 54 of the Act⁽¹¹⁾;
- (e) appoint as prosecutor a legally qualified officer or any other competent person;
- (f) appoint the date, time and place for the trial;
- (g) appoint a legally qualified and legally experienced officer to officiate as judge advocate;
- (h) appoint a person to officiate as clerk of the court;
- (i) appoint, if he thinks fit, a provost marshal;
- (j) send to the prosecutor and judge advocate copies of the convening warrant, circumstantial letter and charge sheet;
- (k) ensure the accused is given a proper opportunity to prepare his defence in accordance with Order 14;
- (l) take steps to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with Order 14.

(2) Where a convening authority orders a court-martial consequent on an order authorising a re-trial made, under the Courts-Martial (Appeals) Act 1968⁽¹²⁾, by the Courts-Martial Appeals Court or under section 71A of the Act⁽¹³⁾, by the Defence Council

⁽¹¹⁾ 1957 c. 53; section 54 was amended by the Armed Forces Act 1976(c. 52), section 4 and Schedule 2, paragraph 1.

⁽¹²⁾ 1968 c. 20.

- (a) paragraph (1)(b) of this Order shall not apply but the convening authority shall direct that a charge sheet shall be prepared in accordance with the provisions of section 19(3) of the Courts-Martial (Appeals) Act 1968, and with any direction which may have been given by the Courts-Martial Appeal Court under sub-section (4) of that section and that the accused shall be tried on the charge in that charge sheet;
 - (b) when it is proposed to tender any evidence given by any witness at the original trial as evidence at the re-trial in accordance with the provisions of Part I of Schedule 1 to the Courts-Martial (Appeals) Act 1968 the convening authority shall supply a copy of any such evidence to the accused as soon as practicable and in any case not less than 24 hours before his trial and shall also supply a copy to the judge advocate and the prosecutor.
- (3) If, after a trial has been ordered but before the court has assembled, facts become known to the convening authority so that the convening authority considers that the interests of justice no longer require a trial, then that authority may countermand his order and so inform the accused.

Preparation of defence

14. –

- (1) An accused who has been remanded for trial by a court-martial shall be afforded a proper opportunity for preparing his defence.
- (2) The accused may have any officer, rating or civilian counsel, to assist him with his defence, providing that the same are reasonably available, and that person shall be known as the accused's friend.
- (3) The convening authority shall ensure that the accused is properly assisted and shall, unless the accused wishes to conduct his defence in person or to secure civilian counsel, nominate a competent officer to act as his friend. The accused shall be allowed proper communication with his friend.
- (4) As soon as practicable after the accused has been remanded for trial by court-martial and in any case not less than 24 hours before his trial he shall be given–
- (a) a copy of the charge sheet;
 - (b) a copy of the circumstantial letter;
 - (c) a copy of the statements of witnesses for the prosecution;
 - (d) notice of any additional evidence which the prosecution intends to adduce;
 - (e) a list nominating the president and members who are to form the court and spare members;
 - (f) a list of exhibits which the prosecutor proposes to put in evidence;
 - (g) a statement setting out the rights of an accused.
- (5) The convening authority shall cause the accused to be informed that, upon his making, not less than 24 hours before his trial, a written request to his commanding officer for there to be summoned any witness whom he desires to call in his defence and whose attendance may reasonably be procured, such a person shall be summoned on his behalf.
- (6) When an accused is served with a copy of a written statement which the prosecutor proposes to put before the court in accordance with section 9 of the Criminal Justice Act 1967(14), as modified by any regulations made under section 12(15) of that Act, he shall be informed of his right under that section.

(13) Section 71(A) was inserted by the Courts-Martial (Appeals) Act 1968, section 58 and Schedule 4.

(14) 1967 c. 89; section 9 was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part II, paragraph 49.

(15) Section 12 was amended by the Armed Forces Act 1976 (c. 52), section 11 and Schedule 5, paragraph 3(b). Regulations were made by S.I. 1967/1078 and S.I. 1977/86.

(7) When an interview with an accused has been recorded on tape he may, before trial, apply by written notice to the convening authority for a transcript of such tape recorded interview or any part thereof. In such cases the convening authority shall, if he is of the opinion that the interests of justice so require, direct that such a transcript, or such parts thereof as he considers necessary, be supplied to the accused as soon as practicable and in any case not less than 24 hours before the trial.

(8) Where it is proposed to adduce expert evidence of fact or opinion during the trial, the party proposing to rely on it shall, as soon as practicable, furnish the other party with a statement in writing, or by agreement orally, of that finding or opinion. If this is not done the evidence may not be adduced during the trial without the leave of the court. If a party has reasonable grounds for believing that the disclosure of any such evidence might lead to intimidation, or attempted intimidation or interference to the course of justice, then he shall give notice in writing to the other party explaining that the evidence is being withheld and the reasons why.

Navigation trials

15. At all trials by the court-martial at which evidence is to be given as to the navigation of one of Her Majesty's ships or vessels, the Captain shall make available to the court such of the official documents and records as exist and are relevant to the case.

Report by navigation expert

16. –

(1) Before a trial at which evidence is to be given on the navigation of one of Her Majesty's ships or vessels, the president shall, unless he considers the circumstances such that the following procedure would serve no practical purpose, order the documents referred to in Order 15 to be handed to one or more navigating or other competent officers and shall direct such officer or officers to work up the ship's reckoning throughout the material time. The result, together with such other details as may be required, is to be delivered to the court as a report given in such form as the president may require, completed in all relevant aspects and attested by the signature of the officer or officers so directed. The officer or officers are to be sworn and available for cross-examination by both prosecution and defence as to the accuracy of that work.

(2) With their report the officer or officers shall also deliver to the court a copy of the tracing of the chart by which the ship was navigated on which the positions of the ship so determined had been laid off, and also the determined position when aground or in danger, as noted in the log book. The rate and direction of the current and of the tidal stream and the state of the tide shall also, if possible, be ascertained and stated in the report.

Navigation of aircraft

17. At trials at which evidence may be required on the navigation of an aircraft, such documents as exist and may be available to serve a similar purpose to that set out in Order 15 shall be made available by the captain of the aircraft, and the court may follow, with such variations as may be necessary or desirable, the procedure prescribed in Order 16.

PART III

GENERAL DUTIES OF PRESIDENT AND JUDGE ADVOCATE

The president

18. The president shall be responsible for the trial being held and conducted in accordance with the provisions of the Act, and with these Orders.

Judge advocate generally

19. –

(1) On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge sheet, and during the trial he shall advise the court (whether or not his advice is requested) upon all questions of law or procedure which may arise. The court shall accept his advice on all such matters unless in their opinion there are compelling reasons for rejecting it, in which event these reasons shall be recorded in the proceedings.

(2) After the closing speeches by the prosecution and the defence the judge advocate shall, before the court close to consider their finding, advise the court upon the law relating to the case and sum up the relevant evidence.

(3) Should the court require further advice on the law during their deliberation on the finding, they shall suspend their deliberation and seek and be given such further advice by the judge advocate in open court.

(4) If the court reach a finding of guilty or a special finding under sections 67 or 68 of the Act and the judge advocate is of the opinion that such finding or special finding is contrary to the law relating to the case, he shall advise the court of the findings which are, in his opinion, open to them. The court shall then reconsider their finding in closed court.

(5) The judge advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding or on a submission of no case to answer.

(6) The judge advocate has the duty of ensuring that the accused, particularly if he is not represented, does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine to cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise.

(7) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with Order 63 and shall be responsible for the safe custody of the record of proceedings under Order 66.

Judge advocate sitting alone

20. –

(1) Where–

- (a) an accused before pleading to a charge pleads that the court is debarred from trying him by virtue of section 52(16) or section 129(17) of the Act or otherwise; or
- (b) during the course of a trial any matter of law arises such as a question as to the admissibility of evidence;

(16) Section 52 was amended by the Armed Forces Act 1971 (c. 33), section 41 and by the Armed Forces Act 1981 (c. 55), section 6 and by the Armed Forces Act 1986 (c. 21), section 7.

(17) Section 129 was amended by the Armed Forces Act 1966 (c. 45), section 35 and by the Armed Forces Act 1971(c. 33), section 55 and by the Criminal Justice Act 1988 (c. 33), section 123(6) and Schedule 8, Part I, paragraph 3(2) and Part II.

the judge advocate may request that he hear the argument and rule upon it in the absence of the president and the members of the court, in which event the president and the members of the court shall then withdraw from the court, and the judge advocate shall, for the time being, exercise the powers and duties of the court.

(2) When the president and members of the court have withdrawn in accordance with paragraph (1) of this Order, the judge advocate shall hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefore as he may consider necessary. After the judge advocate has given his ruling the president and members of the court shall return to the courtroom and the judge advocate if appropriate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate is sitting alone in accordance with this Order and a person subject to the Act commits an offence under section 38(1) of the Act(18), the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(4) Proceedings under this Order shall be recorded.

PART IV

TRIAL PROCEEDINGS

Status of members of the court-martial

21. –

(1) Members shall sit in the confirmed rank they hold in Her Majesty's naval forces, notwithstanding that they may have been appointed to a ship in a superior rank; but Commodores shall sit as Commodores and rank above all Captains and sit with other Commodores according to their seniority as Captains.

(2) Officers on the Retired or Emergency Lists of the Royal Navy if on full pay, shall sit at courts-martial in the order in which they take rank and command; but if holding acting rank they shall sit in the order in which they would have taken rank and command if they had not been granted acting rank.

Challenges by the accused

22. –

(1) The warrant convening the court and the names of the officers nominated to try the accused shall be read to him.

(2) An accused shall state the names of any persons comprising the court to whom he objects.

(3) If more than one person is objected to, the objection to each shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to, in which case the objection to him shall be disposed of before the objection to any other officer.

(4) An accused may make a statement and call any person to make a statement in support of his objection.

(5) A person to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof, but shall thereafter take no part in the disposal of the objection.

(6) Any such objection shall be considered in closed court by all the other persons constituting the court.

(18) Section 38 was amended by the Armed Forces Act 1971 (c. 33), section 23(3) and by the Criminal Justice Act 1982 (c. 48), section 58 and Schedule 8, paragraph 1 and by the Armed Forces Act 1986 (c. 21), section 16(1) and Schedule 1, paragraph 2.

(7) The court shall give the accused an opportunity to object to a spare member who takes the place of a member of the court, and shall deal with any such objection in accordance with this Order.

(8) If an objection to the president is allowed the court shall report to the convening authority without proceeding further with the trial.

(9) If as a result of the allowance of an objection to a member there are insufficient persons available to form a court in compliance with the Act the court shall report to the convening authority without proceeding further with the trial and the convening authority may either appoint a substitute or convene a fresh court to try the accused.

(10) Neither the prosecutor nor the accused shall have any right to object to the judge advocate or the clerk of the court.

Administration of oaths

23. –

(1) Immediately after the requirements of Order 22 have been complied with, the oath to be administered pursuant to section 60 of the Act⁽¹⁹⁾ shall be administered in the presence of the accused and in accordance with Order 25.

(2) The oath shall be administered by the judge advocate to the president first and afterwards to each member of the court.

(3) When a court is convened to try two or more accused separately and one accused objects to the president or to any other member of the court, the court may, if they think fit, proceed to determine that objection in accordance with Order 22, or postpone the trial of that accused and swear the court for the trial of the other accused only.

(4) When the president and members have been sworn an oath shall be administered by the president to the judge advocate, and by the judge advocate to the clerk of the court, any officer in attendance for instruction and any interpreter. This shall be done in accordance with the Schedule to these Orders and in the presence of the accused.

Interpreter and shorthand writer

24. –

(1) A competent and impartial person may be appointed at any time to act as shorthand writer, recorder or interpreter at a trial by court-martial.

(2) Before any such person is employed or sworn the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court think that the objection is reasonable, that person shall not act.

Form of oath

25. –

(1) An oath which is required to be administered under these Orders shall be administered in the appropriate form and in the manner set out in the Schedule to these Orders or in such other manner as is appropriate to that religious belief of the person to whom the oath is administered.

(2) Where a person is a child or young person the oath shall be in the appropriate form set out in the Schedule to these Orders.

⁽¹⁹⁾ Section 60 was amended by the Oaths Act 1961 (c. 21), sections 1(2) and 3(c) and by the Armed Forces Act 1976 (c. 52), sections 12(3), 22(6) and Schedule 10 and by the Administration of Justice Act 1977 (c. 38), sections 8(3) and 32(4) and Schedule 5, Part III.

(3) Where a person, under section 60(4) of the Act, is permitted to make a solemn affirmation instead of swearing an oath the affirmation shall be in the appropriate form set out in the Schedule to these Orders.

Arraignment

26. –

(1) When the court, judge advocate and other officials have been sworn the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court he shall be required to plead separately to each charge.

Challenge to the jurisdiction

27. –

(1) The accused, before pleading to the charge, may challenge the jurisdiction of the court. If he does so–

(a) the accused may adduce evidence in support of the challenge and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the court in answer to the challenge and the accused may reply to the prosecutor's address.

(2) If the Court allow the challenge they shall adjourn and report to the convening authority.

(3) If the court considers that the challenge to the jurisdiction is not well-founded, he shall order that the trial by that court shall continue. Where, however, the court allows the challenge and reports to the convening authority, the convening authority shall order the court to be dissolved and shall consider whether to order a fresh court to try the accused.

Charge defective in law

28. –

(1) The accused before pleading to a charge may object to it on the grounds that it is not correct in law and if he does so, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) When a trial has begun but circumstances arise during the proceedings of the court which, in the opinion of the convening authority, render dissolution of the trial necessary, the convening authority should so inform the president and the president is to declare in open court that the accused is discharged from the custody of the court and that the court is dissolved by order of the convening authority.

Time bar or earlier trial

29. An accused before pleading to a charge, may plead that the court is debarred from trying him by virtue of section 52 or section 129 of the Act. If he does so–

(a) he may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer; and

(b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

Application to sever charges

30. When the accused, or one or more of the several accused, is charged with more than one offence and the defence submits that the fair trial of the accused may be prejudiced if the charges are not severed, the judge advocate shall hear the arguments in the absence of the court and shall then as a matter of law decide whether the court should—

- (a) try all the charges together; or
- (b) try a charge or charges separately from another or others; or
- (c) leave a charge or charges to be tried by a new court.

Plea to the charge

31. –

(1) After any challenge under Order 27, objection under Order 28, plea under Order 29, or application under Order 30 has been dealt with, the accused shall be required (subject to paragraph (2) of this Order) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court are empowered by section 67 or 68 of the Act to find an accused guilty of committing the offence in circumstances involving a less degree of punishment or guilty of an offence other than that charged or where they could, after hearing the evidence, make a special finding of guilty, the accused may, as the case may be, plead guilty to the offence charged as having been committed in circumstances involving a less degree of punishment or to such other offence or to the offence charged subject to such exception or variations.

Guilty plea

32. –

(1) If an accused pleads guilty to a charge under paragraph (1) or paragraph (2) of Order 31, the judge advocate shall, before the court decide to accept the plea, ensure that the accused understands the nature of the charge and general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty under either paragraph (1) or paragraph (2) of Order 31 if:

- (a) the court are not satisfied that the accused understands the nature of the charge or the effect of his plea; or
- (b) the president having regard to all the circumstances, considers that the accused should plead not guilty; or
- (c) the accused is liable if convicted to be sentenced to death.

(3) When a plea of guilty under either paragraph (1) or paragraph (2) of Order 31 is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(4) When a court are satisfied that they can properly accept a plea of guilty under either paragraph (1) or paragraph (2) of Order 31 they shall record a finding of guilty in respect thereof.

Alternative charges

33. –

(1) When an accused pleads guilty to the more serious of two or more alternative charges (whether they are consistent or inconsistent) the court, if they accept the accused's plea of guilty, shall record

a finding of guilty in respect of that charge and shall not proceed with the lesser alternative or alternatives.

(2) When an accused pleads guilty to the lesser of two or more alternative charges (whether they are consistent or inconsistent), (having heard any submission made by the prosecution and the advice of the judge advocate) the court may:

(a) proceed as if the accused had pleaded not guilty to all the charges; or

(b) record a finding of guilty on the charge to which the accused has pleaded guilty

and shall not proceed with the more serious alternative charge or charges.

Procedure after guilty plea

34. –

(1) Before the court record a finding of guilty in respect of the charge to which an accused pleaded guilty the prosecutor shall, subject to Order 37 make an opening address based on the circumstantial letter, but before doing so the judge advocate shall warn the court that this document does no more than summarise the case for the prosecution against the accused.

(2) After paragraph (1) of this Order has been complied with the Court shall proceed as directed in Order 57.

Changes of plea

35. –

(1) An accused who has pleaded not guilty may at any time before the court close to deliberate on their finding withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under Order 31(2)) and in such case the court shall, if they are satisfied that they can accept the accused's changed plea under these Orders record a finding in accordance with the accused's change of plea and so far as is necessary proceed as directed by Order 34.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enter a plea of not guilty in respect of any charge under paragraph (2) of this Order, they shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under Order 33, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

Procedure after not guilty plea

36. –

(1) After a plea of not guilty to any charge has been entered the judge advocate shall ask the accused whether he disputes the admissibility of any statement made by him and set out in the circumstantial letter.

(2) The prosecutor shall then make an opening address based on the circumstantial letter, but before doing so the judge advocate shall warn the court that the document does no more than summarise the case for the prosecution against the accused.

Provided that if the accused, has disputed the admissibility of any such statement when questioned under paragraph (1) of this Order, then it shall not be read.

(3) The witnesses for the prosecution shall then be called and give their evidence.

Circumstantial letter not copied to the court

37. Copies of the circumstantial letter itself shall not be made available to the persons constituting the court—

Provided that—

- (a) in a trial at which evidence is to be given on the navigation of any of Her Majesty's ships, vessels or aircraft, a copy of those parts of the circumstantial letter containing navigational data; or
- (b) where the accused is charged with contravening section 19 or 29A of the Act, the information referred to in Orders 15 and 17;

may be given to the persons constituting the court after the reading of the charge and before the prosecutor makes his opening address based on the circumstantial letter. Copies of the tracing of the chart referred to in Order 16 may also be given to the court at the same time.

Additional facts or evidence

38. —

(1) If the prosecutor intends to adduce facts or evidence further to that which is mentioned in the circumstantial letter, notice of such intention together with the particulars of the further facts or evidence shall be given to the accused a reasonable time before the evidence is adduced, unless it is not practicable to do so.

(2) If such evidence is adduced without such notice or particulars having been given, the court shall inform the accused of his right to apply for an adjournment or postponement.

Witnesses not called by prosecutor

39. —

(1) If the prosecutor does not propose to call as a witness against the accused a person whose statement has been served on the accused or to call a witness in respect of whom he has notified the accused that he intends to call him under Order 38, he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available.

Oath of witness

40. An oath shall be administered to each witness in accordance with Order 25 before he gives evidence and in the presence of the accused, save that in the case of a witness in respect of whom a different procedure is provided for by section 60 of the Act that procedure shall be followed before that witness gives evidence and in the presence of the accused.

Withdrawal of witnesses

41. —

(1) During a trial a witness as to fact other than the accused or an expert witness shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a question arises as to the admissibility of a question or otherwise with regard to the evidence, the court may direct the witness to withdraw during such discussion.

(2) Expert and character witnesses shall be allowed to remain in court throughout the proceedings unless the president considers this to be undesirable.

Examination of witnesses by prosecution and defence

42. –

(1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and unless an objection is made by the witness, court, judge advocate, prosecutor or by the accused, the witness shall reply forthwith. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed, if it is satisfied that there is a good reason for such a request and that there is no injustice to the accused in doing so.

Examination of navigation expert

43. –

(1) The examination and cross examination of any navigation expert who, in giving evidence under Order 15, is to be limited to ascertaining the accuracy or inaccuracy of the report or other document thus laid before the court.

(2) If no other navigational experts are reasonably available and it is desired to have further evidence from such experts, the court may recall these officers and permit them to be questioned on other relevant navigational matters by both the prosecution and the defence.

Examination of witnesses by president and judge advocate

44. –

(1) The president and the judge advocate may put questions to a witness, particularly to resolve any ambiguity in earlier answers.

(2) Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as may be allowed by the court.

Recall of witnesses

45. –

(1) The court may, at any time before the judge advocate begins to sum up, call a witness or recall a witness, if in the opinion of the court it is in the interests of justice to do so. If the court call a witness or recall a witness under this Order, the prosecutor and the accused may put such questions to the witness as may be allowed by the Court.

(2) The accused may, at any time before the judge advocate commences his summing up, recall a witness by leave of the court, and the accused and the prosecutor may put such questions to the witness as may be allowed by the Court.

Transcript of tape recording

46. Whether or not an application has previously been made to the convening authority under Order 14(7), the accused may at any time during the trial apply to the court for a transcript of any tape recording made during an interview with him. If the accused makes such an application, the prosecutor may address the court in answer thereto and the accused, or his representative, may reply to the prosecutor's address. If the court are of the opinion that the interests of justice so require they

may direct that such a transcript or such parts thereof as they consider necessary shall be supplied to the accused.

Submission of no case to answer

47. –

(1) At the close of the case for the prosecution, the accused may submit to the court, in respect of any charge, that the prosecution has failed to establish a prima facie case for him to answer and that he should not be called upon to make his defence to that charge. If the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. The judge advocate shall then advise the court on the legal issues arising and the tests to be applied.

(2) The court shall allow the submission if they are satisfied that—

- (a) the prosecution has not established a prima facie case on the charges laid; and that
- (b) it is not open to them on the evidence adduced to make a special finding under either section 67 or 68 of the Act.

(3) If the court allow the submission they shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith; if the court disallow the submission they shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this Order or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if they do so they shall announce such finding in open court forthwith.

Evidence for the accused

48. –

(1) After the close of the case for the prosecution, the judge advocate shall explain to the accused that—

- (a) if he wishes, he may give evidence on oath as a witness but he is not obliged to do so;
- (b) if he gives evidence on oath, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and by the judge advocate; and
- (c) whether he gives evidence or remains silent, he may call witnesses on his behalf.

(2) After the judge advocate has complied with paragraph (1) of this Order he shall ask the accused if he intends to give evidence on oath and if he intends to call any witnesses on his behalf and, if so, whether these are witnesses to fact or to character only.

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

Witnesses called by the defence

49. –

(1) After Order 48 has been complied with and if the accused elects to give evidence, he shall be called before any other witnesses for the defence unless the court, in special circumstances, allows otherwise.

(2) Any witnesses for the defence shall then be called to give their evidence.

(3) Orders 40, 41, 42, 44 and 45 shall apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

Further evidence for the prosecution

50. After the witnesses for the defence have given their evidence the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have dealt with before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

Closing addresses

51. –

(1) After the evidence has been given the prosecutor 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 closing address by the prosecutor.

(3) Where 2 or more accused are represented by the same accused's friend he may make one closing address only.

(4) Where the accused is not represented, then, whether or not he himself has given evidence, the prosecutor shall not make a closing address unless the accused has called witnesses as to the facts of the case.

Summing up by the judge advocate

52. After the closing addresses, the judge advocate shall advise the court on the law relating to the case and sum up the evidence.

Adjournment

53. If at any time during the trial before the court close to deliberate on their finding it appears to the court that they should, in the interests of justice, view any place or thing they may adjourn for this purpose. When the court view any place or thing, the president, members of the court, judge advocate, prosecutor, accused and accused's friend shall be present.

Reaching of finding

54. –

(1) The court shall then in closed court deliberate on their finding on the charge or charges, and shall not separate until a finding has been reached.

(2) While the court are deliberating on their finding no person shall be present except the president and members of the court.

(3) If the court, while deliberating on their finding on the charge, require further advice from the judge advocate the court shall suspend their deliberations and shall seek and be given such advice in open Court.

Opinions on finding

55. –

(1) The opinion of the president and each member as to their finding shall be given in closed court, orally, on each charge separately, and in order of seniority commencing with the junior in

rank. If the court disagree upon any other question, and on a division the votes be equal, the view most favourable to the accused shall prevail.

(2) The findings of the court shall be recorded in writing and signed by the president and each member of the court (notwithstanding any minority vote).

Advice of judge advocate on finding

56. –

(1) The court shall then re-open and the judge advocate shall countersign the record of the findings of the court unless he considers the findings to be incorrect in law, in which case he shall inform the court of that fact and shall advise them on the law accordingly.

(2) If the judge advocate does so advise, the court shall retire to reconsider its findings in closed court and proceed as in accordance with Orders 54 and 55 above.

Evidence of character and circumstances

57. –

(1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 67 or 68 of the Act, the court, before deliberating on their sentence, shall whenever possible take evidence of his age, rank and certificate of service, and this shall include–

- (a) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled; and
- (b) particulars of any offence (whether under service law or otherwise) of which the accused has been found guilty during his service and which is entered in the Service records relating to the accused: any convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974(20) are to be clearly marked as such; and
- (c) particulars of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matters referred to in paragraph (1) of this Order may be given, in the case of ratings and ranks by the production of the original Service Certificate, Advancement and Conduct Record Sheet (with attached Naval Penalties and Reports of Offenders); in all other cases the evidence should be given by a witness producing to the court a written statement, including a summary of the entries in the Service records relating to the accused, providing that the witness has in court first verified such a statement to the satisfaction of the court and identified the accused to their satisfaction as the person to whom it relates.

(3) In addition to the evidence contained in the statement referred to in paragraph (2) of this Order, the court shall also consider any social enquiry report or other evidence in the possession of the naval authorities regarding–

- (a) the accused's family background and responsibilities and any other circumstances which may have made him more likely to commit the offence charged;
- (b) his general conduct in the Service; and
- (c) particulars of any relevant offences which do not appear in the statement referred to of which the accused has been found guilty by a civil court.

Provided that the court shall not be informed of any such conviction by a civil court unless it is proved in accordance with Section 129B of the Act(21), or unless the accused has admitted

(20) 1974 c. 53.

(21) Section 129B was inserted by the Armed Forces Act 1971 (c. 33), section 57(1).

that he has been found guilty of the offence, having first had explained to him the purpose for which such admission was sought.

(4) Other service records of the accused (including the Divisional Officer Reports), or a duly certified copy of the material entries therein, shall, if he so requests, be produced.

(5) After paragraph (1), (2), (3) and (4) of this Order have been complied with the accused may—

- (a) give evidence on oath and call witnesses in mitigation of sentence and as to his character; and
- (b) address the court in mitigation of sentence.

Offences taken into consideration

58. –

(1) Before the court close to deliberate on the sentence, the accused may request the court to take into consideration any other offence against the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seem proper.

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the judge advocate, who shall ask the accused if he admits having committed them. The accused shall sign a list of the offences which he admits having committed and the Court shall take the offences in this list into consideration. The list shall be signed by the president and be attached to the record of proceedings.

Determination of sentence

59. –

(1) While the court are deliberating on the sentence no person shall be present except the president, members of the court, judge advocate, clerk of the court and any officer under instruction.

(2) Subject to section 86(3) of the Act⁽²²⁾ the Court shall award one sentence in respect of all the offences of which the accused is found guilty.

(3) The opinion of the president and each member as to the sentence shall be given orally and in closed court and their opinion shall be given in order of seniority commencing with the junior in rank.

(4) When the court have agreed to take into consideration an offence which is not included in the charge sheet, the court shall award a sentence appropriate for any offence or offences for which the accused has been found guilty and for any other offence or offences which they are taking into consideration under these Orders; provided that they shall not award any sentence which is greater than the maximum sentence which may be awarded under the Act for the offence or offences for which the accused has been found guilty, save that they may include in their sentence a direction that such deductions shall be made from the pay of the accused as they would have had the power to direct to be made if the accused had been guilty by the court of the offence or offences taken into consideration as well as of the offence or offences for which he has been found guilty by them.

Postponement of sentence

60. Where 2 or more accused are tried separately by the same court upon charges arising out of the same circumstances, the court may, if they think that the interests of justice so require, postpone their deliberation upon the sentence to be awarded to any one or more of such accused until they have recorded and announced their findings in respect of all such accused.

(22) Section 86(3) was added by the Armed Forces Act 1971 (c. 33), section 39(3).

Recording of sentence

61. –

(1) The sentence shall be recorded in writing and signed by the president and each member of the court (notwithstanding any minority vote), and shall be countersigned and dated by the judge advocate. The sentence shall be announced in open court by the judge advocate.

(2) Subject to sections 78(23) and 85(24) of the Act the sentence shall have effect forthwith. When a sentence of imprisonment or detention is awarded, the court may consider whether such sentence should be suspended under section 90(25) of the Act.

(3) After reading the sentence, the accused shall be removed and the court dissolved.

PART V

WITNESSES AND THE RECORD

Witness Summons

62. The summons referred to in section 64 of the Act(26) shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode.

Record of proceedings

63. –

(1) If a shorthand note has been taken it shall be transcribed by the shorthand writer and signed by him; if there is no shorthand note the notes of evidence shall be signed by the person who recorded them, or by the person who transcribed them from the mechanical record.

(2) Any such transcriptions or notes shall be certified by the judge advocate or, in his absence, by the clerk of the court.

(3) The person so certifying may first mark on them such corrections, additions and notes, to be clearly distinguished from the original, as he considers necessary.

(4) Such certified transcript or notes shall constitute the record of proceedings of the court-martial.

Documents to accompany record in navigation trials

64. In a trial where a report made under the provisions of Order 16 has been admitted in evidence all relevant documents shall be annexed to and form part of the record of the proceedings.

Exhibits

65. –

(1) Any document or thing admitted in evidence shall be made an exhibit.

(2) Each exhibit shall be marked sequentially in a series with either a number or a letter.

(3) Each exhibit shall either be signed by the clerk of the court or shall have a label attached to it bearing a number or letter and with the signature of the clerk of the court recorded on it.

(23) Section 78 was amended by S.I. 1964/488, article 2(1) and Schedule 1, Part I.

(24) Section 85 was amended by S.I. 1964/488, article 2(1) and Schedule 1, Part I and by the Armed Forces Act 1971 (c. 33), sections 53 and 77(1) and Schedule 4, Part II.

(25) Section 90 was amended by S.I. 1964/488, article 2(1) and Schedule 1, Part I.

(26) Section 64 was amended by S.I. 1964/488, article 2(1) and Schedule 1, Part I.

(4) Each exhibit shall be attached to or kept with the record of the proceedings, unless in the opinion of the court having regard to the nature of the exhibit and for other good reason it is not expedient to attach it to or keep it with the record.

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

Custody of record of proceedings and exhibits during trial

66. During a trial, the record and the exhibits shall be deemed to be in the custody of the judge advocate, save when he is not present in closed court when they shall be deemed to be in the custody of the president.

PART VI

EVIDENCE

Rules of evidence

67. The rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall, subject to the provision of Order 70, be the same as those observed in all criminal courts in England (and shall include provision contained in any enactment whether passed before or after the commencement of these General Orders) and the judge advocate shall so advise the court.

Privileges of witnesses

68. A witness before a court-martial shall be entitled to the same immunities and privileges as a witness before the High Court in England.

Proof of service facts and records

69. –

(1) The following provisions shall have effect with respect to evidence in proceedings before a court-martial.

(2) A letter, return or other document stating that any person–

- (a) was or was not serving at any specified time or during any specified period in any part of Her Majesty's forces or was discharged from any part of those forces at or before any specified time; or
- (b) held or did not hold at any specified time any specified rank or appointment in any of those forces, or had at or before any specified time been attached, posted or transferred to any part of those forces, or at any specified time or during any specified time was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
- (c) was or was not at any specified time authorised to use or wear any decoration, badge, or emblem;

shall if purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, be evidence of the matter stated in the document.

(3) A record made in any service record, being a record made in pursuance of any Act or of Queen's Regulations, or otherwise in pursuance of naval duty and purporting to be signed by the commanding officer or by any person whose duty it was to make or keep the records or a copy of a record (including the signature thereto) in any record as aforesaid, purporting to be certified to be

a true copy by a person stated in the certificate to have the custody of the record, may be received without formal proof in all trials under the Act as prima facie evidence of such record.

(4) A document purporting to be issued by order of the Defence Council and to contain instructions given or regulations made by the Defence Council shall be evidence of the giving of the instructions or making of the regulations and of their contents.

(5) A certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by them, and stating—

- (a) that a decoration of a description specified in or, as annexed to the certificate is a military, naval or air force decoration; or
- (b) that a badge or emblem of a description specified in or, as annexed to the certificate is one supplied or authorised by the Defence Council;

shall be evidence of the matters stated in the certificate.

(6) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for—

- (a) any ship, train or aircraft;
- (b) any formation or unit or body of Her Majesty's forces; or
- (c) any command or other area, or place;

shall in proceedings against the said person be evidence of the matters stated in the certificate.

(7) Any document which would be evidence in any proceedings under the Army Act 1955(27) or Air Force Act 1955(28) by virtue of section 189 of those Acts shall in like manner, subject to the like conditions, and for the like purposes be evidence in a court-martial under the Act.

Bankers' Books

70. The powers conferred by section 7 of the Bankers' Books Evidence Act 1879(29) may be exercised for the purposes of a court-martial by order of the convening authority.

Evidence in navigational trials

71. —

(1) The documents referred to in Order 15 or Order 17 shall be admissible in evidence in any trial by court-martial as to the navigation of one of Her Majesty's ships or vessels or aircraft.

(2) The report and other documents referred to in Order 16 shall be admissible, in such a trial, if produced by their maker.

(3) If the court approves such a report, the president shall endorse it to that effect but if the court do not approve the report the president shall endorse that fact under his signature, specifying the respects in which the court dissents and the reasons therefore.

(27) 1955 c. 18.

(28) 1955 c. 19.

(29) 1879 c. 11.

PART VII

MISCELLANEOUS

Civilian counsel

72. –

(1) Subject to these Orders the following persons shall be allowed to appear as civilian counsel at a court-martial—

- (a) every person who is qualified as a barrister-at-law or a solicitor according to the law of England or Northern Ireland;
- (b) every person who is qualified as an advocate or as a solicitor according to the law of Scotland; and
- (c) with the consent of the convening authority, any person who is recognised as having in any Commonwealth country or territory outside the United Kingdom rights and duties similar to those of a barrister-at-law or solicitor in England, and as being subject to punishment or disability for a breach of professional rules.

(2) Any right granted by these Orders to the accused at a court-martial to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court-martial and any right granted to the accused by Orders 22, 24, 27, 28, 29, 30, 45, 47 and 58 may be exercised by his friend on his behalf, and any reference in these Orders to any address, request, application, claim, submission, objection or challenge to the jurisdiction or other plea in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address, request, application, claim, submission, objection or challenge to the justification or other plea in bar of trial made, taken or offered at a court-martial by his friend on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening authority the accused shall give the convening authority notice of this fact not less than 24 hours before his trial.

Deviation or omission

73. A deviation or omission from a form or forms of words set out in the Schedule to these Orders shall not, by reason only of such deviation or omission, render any document, act or proceedings invalid.

Unforeseen circumstances

74. In any circumstance not provided for by these Orders such course shall be adopted as appears best calculated to do justice.

Revocation and savings

75. –

(1) Subject to paragraph (2) of this Order, the General Orders set out in the Schedule to the Naval Courts-Martial (Procedure) Order 1957(**30**) and in the Schedule to the Naval Courts-Martial (Procedure) (Amendment) Order 1972(**31**) are hereby revoked.

(2) The General Orders referred to in paragraph (1) of this Order shall continue to apply in relation to proceedings commenced before the coming into force of these General Orders.

(30) S.I. 1957/2225 amended by S.I. 1972/966.

(31) S.I. 1972/966.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

2nd December 1991

Tom King
One of Her Majesty's Principal Secretaries of
State

SCHEDULE

Order 25

OATHS AND AFFIRMATIONS

PART I

manner of administering oaths at courts-martial

1. The oaths referred to in Section 60(1) and (2) of the Act shall be sworn in the following manner:

The category of person to be sworn as described in this Schedule shall hold the New Testament, or if a Jew the Old Testament, in his uplifted right hand and shall say or repeat after the person administering the oath as hereinafter provided in this Schedule for that category of person.

PART II

FORMS OF OATH

President and Members

2. I ... swear by Almighty God that I will duly administer justice according to law and without partiality, favour or affection; and I do further swear that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of this court-martial, unless thereunto required in due course of law.

Judge Advocate

3. I ... swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate according to law and without partiality, favour or affection; and I do further swear that I will not on any account at any time whatsoever disclose the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

Clerk of the Court or Officer Under Instruction

4. I ... swear by Almighty God that I will not on any account, at any time whatsoever, disclose the vote or opinion of the president or any member of this court-martial unless thereunto required in due course of law.

Interpreter

5. I ... swear by Almighty God that I will to the best of my ability truly interpret, translate and explain, as I shall be required to do, touching the matter before this court-martial.

Witness

6. I ... swear by Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

Child or Young Person

7. I ... promise before Almighty God that the evidence which I shall give shall be the truth, the whole truth, and nothing but the truth.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART III

form of scottish oaths

8. The form of Scottish oath shall in each case be the same as the form of oath set out above except that for the words “I swear by Almighty God” shall be substituted the words “I swear by Almighty God and as I shall answer to God at the Great Day of Judgment”.

PART IV

form of solemn affirmations

9. The person permitted under Section 60(4) of the Act to make a solemn affirmation instead of taking an oath shall say or repeat after the person administering the affirmation: “I solemnly, sincerely, and truly declare and affirm” followed by the words of the appropriate oath, but omitting the words “I swear by Almighty God”.

EXPLANATORY NOTE

(This note is not part of the Instrument)

These General Orders prescribe rules for the procedure to be followed, and the rules of evidence in naval courts-martial. The rules of procedure are in general accord with procedures in the criminal courts in England. Special provision is made for trials in which navigation is an issue. These Orders replace and revoke Orders made in 1957 and take account of changes in the law and procedure since then. Such changes include the removal of the right for the accused to make an unsworn statement from his or her place, ensuring that prospective members of the court-martial do not know the nature of the charges in advance of the trial and introduction of revised rules for adducing expert evidence.