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STATUTORY INSTRUMENTS

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**1991 No. 2737**

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

**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(1) as modified by the Courts-Martial (Evidence) Regulations 1967(2).

**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) 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(3) (loss or hazarding of any of Her Majesty's ships) or under section 29A of the Act(4) (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(5) (desertion), section 17(6) (absence without leave), or section 33C(7) (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.

(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.

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

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

(5) 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.

(6) 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.

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

## **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<sup>(8)</sup>;
- (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<sup>(9)</sup>, by the Courts-Martial Appeals Court or under section 71A of the Act<sup>(10)</sup>, by the Defence Council

- (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.

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<sup>(8)</sup> 1957 c. 53; section 54 was amended by the Armed Forces Act 1976(c. 52), section 4 and Schedule 2, paragraph 1.

<sup>(9)</sup> 1968 c. 20.

<sup>(10)</sup> Section 71(A) was inserted by the Courts-Martial (Appeals) Act 1968, section 58 and Schedule 4.

## 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(11), as modified by any regulations made under section 12(12) of that Act, he shall be informed of his right under that section.

(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.

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(11) 1967 c. 89; section 9 was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part II, paragraph 49.

(12) 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.

### **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.