STATUTORY INSTRUMENTS

1991 No. 2737

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

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 thay 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.

(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(**1**) 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.

(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.

(**1**) 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 Justic Act 1977 (c. 38), sections 8(3) and 32(4) and Schedule 5, Part III.

(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 underOrder 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 chargeor 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 made 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(**2**) 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(**3**), or unless the accused has admitted 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.

(**2**) 1974 c. 53.
(**3**) Section 129B was inserted by the Armed Forces Act 1971 (c. 33), section 57(1).

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(**4**) 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.

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(**5**) and 85(**6**) 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(**7**) of the Act.

(**4**) Section 86(3) was added by the Armed Forces Act 1971 (c. 33), section 39(3).
(**5**) Section 78 was amended by S.I.1964/488, article 2(1) and Schedule 1, Part I.

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

(**6**) 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.

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